

**MASTER DEVELOPMENT AGREEMENT**

**FOR FACILITIES AND RELATED IMPROVEMENTS**

**AMONG**

---

**CITY OF FRISCO, TEXAS,**

**FRISCO INDEPENDENT SCHOOL DISTRICT,  
FRISCO ECONOMIC DEVELOPMENT CORPORATION,  
FRISCO COMMUNITY DEVELOPMENT CORPORATION,  
OMNI STILLWATER WOODS GOLF RESORT, LLC**

**AND**

**THE PROFESSIONAL GOLFERS' ASSOCIATION OF AMERICA**

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## **MASTER DEVELOPMENT AGREEMENT FOR FACILITIES AND RELATED IMPROVEMENTS**

**THIS MASTER DEVELOPMENT AGREEMENT FOR FACILITIES AND RELATED IMPROVEMENTS** (this “Agreement”) is entered into as of this 4<sup>th</sup> day of December 2018 (“Effective Date”), by and among the **CITY OF FRISCO, TEXAS**, a municipal corporation of the State of Texas and a home-rule city located in Collin County, Texas (the “City”), **FRISCO ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (“FEDC”), **FRISCO COMMUNITY DEVELOPMENT CORPORATION**, a Texas non-profit corporation (“FCDC”), **FRISCO INDEPENDENT SCHOOL DISTRICT**, a political subdivision of the State of Texas (“FISD”), **OMNI STILLWATER WOODS GOLF RESORT, LLC**, a Delaware limited liability company (“OSW”), and **THE PROFESSIONAL GOLFERS’ ASSOCIATION OF AMERICA**, a Florida non-profit corporation (the “PGA”). The City, FEDC, FCDC, FISD, OSW and PGA are sometimes referred to herein collectively as the “Parties” or singularly as a “Party”.

### **RECITALS**

A. **WHEREAS**, the City has created a Tax Reinvestment Zone Number One (“TIRZ #1”) within which master-planned projects have been constructed, and within which significant public buildings, public structured and surface parking and public infrastructure have been constructed, and in the future may be constructed, and the City intends to expand the boundaries of TIRZ#1 under the conditions as provided herein;

B. **WHEREAS**, the PGA is the largest working sports organization in the world, comprised of more than 29,000 men and women and is a leader in charitable giving efforts;

C. **WHEREAS**, the City, OSW and the PGA have entertained discussions relating to the development, financing and operation of a golf facility (the “Public Facilities” as further defined herein) that is publicly-owned and that is designed and operated for public recreation, pleasure, enjoyment, golf activities, open space, and entertainment uses and events with meeting, dining, and access to indoor and outdoor event spaces, as set forth in the Public Facilities Lease (defined below) for the benefit of the general public of the City with parking facilities and related infrastructure improvements on approximately 601.215 acres of land in the City, as depicted in **Exhibit “A”** attached hereto and incorporated herein by reference (the “Tract”) for the benefit of the residents of the City and the general public to be further documented as described herein;

D. **WHEREAS**, the City currently owns a portion of the Tract comprised of approximately 48.336 acres (the “City Parcel”) and will acquire approximately 80.717 acres from an adjoining development through dedication (the “Newland Parcel”) to be added to the Tract, and OSW has contracted to purchase the remaining portion of the Tract comprised of approximately 472.162 acres (the “OSW Parcel”);

E. **WHEREAS**, the City, OSW and PGA have entertained discussions regarding the relocation of the PGA global and national corporate headquarters, including the central PGA global and national education center (the “Headquarters Facility,” as more particularly defined below), and the development of an upper upscale resort hotel (the “Hotel Facility,” as more

particularly defined below), which together with the Headquarters Facility and other infrastructure and improvements, will be located on private property adjacent to the Public Facilities and will enhance the use and experience of the Public Facilities (such Headquarters Facility, Hotel Facility, and other infrastructure and improvements, the “Private Facilities,” and together with the Public Facilities, the “Facilities”);

F. **WHEREAS**, the City has determined that OSW has the qualifications and experience in constructing golf facilities similar in scope, character and quality to the Public Facilities and desires to contract with OSW to act as the City’s agent to design, develop and construct the Public Facilities in accordance with the terms of this Agreement and OSW has agreed to act in such capacity;

G. **WHEREAS**, the City, OSW and PGA now desire to set forth the definitive terms and conditions governing the development and operation of the Public Facilities, as well as certain matters regarding the development of the Private Facilities; and

H. **WHEREAS**, the City is coordinating with and will be obtaining approval of the applicable terms and conditions of this Agreement from the FEDC, FCDC and FISC;

**NOW, THEREFORE**, in consideration of the mutual promises and agreements herein contained and for other good, valuable and binding consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

## **ARTICLE I DEVELOPMENT OF PUBLIC FACILITIES**

1.1 Development of Public Facilities. As the City’s agent, OSW will design, construct and develop the Public Facilities, as set forth in subparagraphs (a) through (g) below on the Tract. As used herein, the “Public Facilities” shall include:

(a) Forty-five holes of golf providing a quality and affordable playing opportunity for City residents, FISC students, the general public and golfers from around the world. These will include (i) one public 18-hole championship caliber golf course (“Championship Course”) with a flexible playing distance of up to approximately 7,700 yards equal or better in quality to Torrey Pines South in California and Bethpage State Park Black Course in New York and capable of hosting major golf championships that can test the best golfers in the world, (ii) a public 18-hole course designed as a general recreational resort-style golf course for players who are not professionals or top amateurs (“Recreational Course”) with a flexible playing distance of up to approximately 6,800 yards and (iii) a 9-hole executive course (the “Executive Course”). The Championship Course and Recreational Course will have permanent player restrooms built at mutually agreeable locations, which restrooms may be shared between the courses to the extent practical.

(b) Developmental practice areas, including practice greens for putting, practice greens with bunkers, chipping areas, roughs, short holes, and other shot types found in the game of golf applicable for practice at all levels of golf, individually or in

groups. These practice areas will be of the quality and design to serve as general public practice, professional practice, top amateur practice and academy training.

(c) At least one public clubhouse equal to, or better than the clubhouse currently located at Trinity Forest Golf Club in Dallas, Texas, which includes, at a minimum, a pro shop, bathrooms, washing, and locker facilities, changing area, and sufficient dining/grille space with food and beverage service for public operations (and access to dedicated dining space with food and beverage sufficient for the hosting of golf tournaments) with indoor and outdoor seating and meeting the specifications set forth on Schedule 1.1(c) attached hereto.

(d) Public hike and bike trails consistent with the City's requirements for hike and bike trails in the area encompassed by the Tract.

(e) One or more public parking areas sufficient to support the Public Facilities.

(f) On-site maintenance and parking facility to accommodate staff, equipment, storage facilities, etc., including, but not limited to such items as pesticide storage, covered storage, pump stations, and water treatment.

(g) Onsite infrastructure improvements including but not limited to roads, water lines, sewer lines, storm drainage improvements, water wells for irrigation, IT infrastructure with fiber, and decorative water features, landscaping, open spaces, lighting, walkways, fountains, plazas, street and open space furniture and other improvements to the Tract.

The current depiction of the Public Facilities is attached hereto as Exhibit "I".

1.2 Acquisition of the Tract and Closing. OSW is responsible for acquiring, at its sole cost and expense (subject to Section 1.6(b)) the OSW Parcel and conveying such OSW Parcel to the City in accordance with this Agreement. The City is responsible for obtaining either fee title or a leasehold interest with the unconditional right to acquire fee title to the Newland Parcel within 30 days from the execution of this Agreement and covenants and agrees to combine the OSW Parcel with the City Parcel and the Newland Parcel to create the Tract. Following the execution of the Facilities Lease (referenced hereinafter) between the City, FCDC and OSW, OSW will construct the Public Facilities on the Tract. Prior to the execution of this Agreement, OSW entered into real estate contracts that had been reviewed by the City (the "Real Estate Contracts") to purchase the OSW Parcel and certain other real property. The closing (the "Closing") of the acquisition of the OSW Parcel shall occur, and good and indefeasible title to the OSW Parcel will be conveyed to the City free and clear of all monetary liens and encumbrances and subject only to the standard printed exceptions and such other exceptions contained in an owner's policy of title insurance as approved by the City, within seven (7) business days of the City providing OSW notice of its intent to issue the Public Facilities Debt described below (the "Issuance Notice"). The Issuance Notice shall be provided on or before the first regularly scheduled Council meeting in January 2019. Notwithstanding anything to the contrary set forth herein, OSW shall have no obligation to proceed with the Closing unless and until each of the Completion Guaranty Conditions Precedent have either been satisfied or waived in writing by OSW. In the event the



Closing occurs and the Public Debt is not issued within 120 days after the Closing, the transaction consummated at the Closing may be unwound at OSW's election, whereupon the City must immediately convey the OSW Parcel back to OSW, and the Completion Guaranty shall be terminated without further authorization from the City.

1.3 Development of Offsite Infrastructure; Acquisition of Right-of-Way. The City will construct and develop or cause to be constructed and developed in a good and workmanlike manner and at no cost to OSW the off-site infrastructure improvements more fully described in the attached **Exhibit "B"** (the "Offsite Infrastructure"). The City agrees to commence the design of the Offsite Infrastructure within thirty (30) days after the Effective Date. The City will use its best efforts, subject to force majeure to (a) complete such portion of the Offsite Infrastructure necessary for OSW to commence vertical construction on the Hotel Tract (defined below) no later than February 28, 2020, (b) complete such portion of the Offsite Infrastructure necessary for the PGA to commence vertical construction on the Headquarters Tract (defined below) no later than June 30, 2020, and (c) complete the Offsite Infrastructure within 24 months from the commencement of the design of such Offsite Infrastructure or as soon thereafter as is reasonably practicable. The City will deposit any and all excess soils and dirt produced in connection with the grading and development of the Offsite Infrastructure on the Tract for use by OSW in connection with the development of the Public Facilities. OSW will construct at its sole cost and expense all other offsite infrastructure required for the Public Facilities and the development of the Headquarters Facility and Hotel Facility, including, but not limited to, water lines, sewer lines, storm drainage improvements, private utilities and IT/Telecom infrastructure with fiber, but specifically excluding roads ("Remaining Infrastructure"). As part of the Remaining Infrastructure, the City will permit OSW to tap into the 24 inch grey water line currently located in the vicinity of Teel Parkway and Northwest Community Park. OSW, at its sole cost and expense, will be responsible for acquiring for the Offsite Infrastructure the right-of-way and easements for (i) Legacy Drive from Rockhill Parkway south to the property previously owned by the Estate of Bert Fields, (ii) the western half of Legacy Drive from Rockhill Parkway north to US Route 380, and (iii) for Rockhill Parkway from its current improved location to Teel Parkway (other than those rights-of-way and easements to which the City presently has ownership) ("Offsite Easements", such right-of-way and Offsite Easements are further depicted on **Exhibit "S"** attached hereto) and Remaining Infrastructure (other than those rights-of-way and easements to which the City presently has ownership). The Offsite Easements shall be conveyed or dedicated to the City within seven (7) business days of the date of the Issuance Notice.

The parties agree to the perimeter boundary road alignments as shown on the Site Plan attached hereto as **Exhibit "O"**, which includes the alignment of Rockhill Parkway as shown on **Exhibit "O-1"**. All mitigation costs required or imposed by the U.S. Army Corps of Engineers ("USACE") for areas south of Rockhill Parkway right-of-way shall be a Project expense, rather than an expense to be borne by the City. OSW and the City will reasonably cooperate with one another to determine the final alignment of Fields Parkway and its intersection with Teel Parkway.

To facilitate early access for fire and emergency vehicles to the Facilities, the City shall design and construct the Offsite Infrastructure so that sections L1 and R2 of **Exhibit "O-2"** are completed to a condition that will allow for emergency vehicle access in order to allow permits to be issued to allow for vertical construction of the Hotel to commence on or before February 28, 2020. The City shall construct sections R3 and R4 of **Exhibit "O-2"** so that such roads are in a

condition that will allow permits to be issued to allow for vertical construction of the Retail and PGA HQ to commence by June 30, 2020, notwithstanding any significant delay caused by USACE permitting process. The City and OSW agree to a 50-50 share of the actual construction cost of the emergency asphalt base improvements if necessary.

#### 1.4 Consultation and Approval.

(a) The City and the PGA shall have consultation rights with all aspects of the design, development and construction of the Public Facilities. The City and the PGA will be provided opportunities by OSW to:

(i) Review and recommend action by OSW regarding the design and construction of the Public Facilities, including review and comment on the architectural, engineering and design contracts, the construction contract and testing contracts (collectively, the “Construction Contracts”), including requests for proposal that may be required for any of the foregoing contracts, and all documents of whatever nature relating to the Public Facilities and/or Tract or any part thereof;

(ii) Review the scheduling and budgeting for the design, construction and development of the Public Facilities, including, but not limited to attending meetings to accomplish the design, development and construction of the Facilities;

(iii) Attend OSW meetings with architects, engineers, contractors, subcontractors and any and all other persons engaged or employed in the design, construction and development of the Public Facilities; and

(iv) Advise OSW on any information deemed necessary, appropriate or useful in connection with the design, development and construction of the Public Facilities.

(b) In addition, OSW shall be required to obtain City and PGA written approval of the following, which approval shall not be unreasonably withheld, conditioned or delayed:

(i) The site plan and final plans and specifications, including all phases thereof, that individually or in combination represent, or relate to, the Public Facilities (collectively, the “Public Facilities Final Plans”), including approval of all limited and private use spaces proposed within the Public Facilities; and

(ii) The final guaranteed maximum price for the Public Facilities, including all amendments thereto related to the pricing of allowances and alternates (collectively, the “Public Facilities GMP”), but only to the extent the Public Facilities GMP is less than the Public Facilities Cost Preliminary Budget, and all change orders that materially reduce the original scope of the Public Facilities Final Plans.

1.5 Timing and Process for the Development of the Public Facilities on the Tract. OSW shall use commercially reasonable efforts to achieve utilization of the development processes set forth below.

(a) Design Professionals. OSW, in consultation with the PGA and in accordance with Chapter 2254, Texas Government Code and Chapters 1001 and 1054, Texas Occupations Code, will select the design professionals, including architects and/or designers experienced in the design of golf facilities of the nature contemplated herein, i.e., designers and and/or architects with significant experience in designing and planning of major championship golf facilities that host professional tournaments and land planning experience related thereto, who shall have the primary responsibility for the design of the Public Facilities (the “Design Professionals”). OSW shall require in its contracts with the Design Professionals that the structural elements of the Public Facilities are engineered in accordance with generally accepted engineering practices and engineered at a standard for an estimated useful life of the structural elements of not less than 50 years. OSW shall require the Design Professionals to provide the Public Facilities Final Plans for review by OSW, PGA and the City in a form required to obtain permits from the City and any other governmental permits necessary for the construction of the Public Facilities.

(b) Award of Construction Contract. OSW shall select a contractor (the “Contractor”) to construct the Public Facilities in accordance with the provisions of Chapter 2269, Texas Government Code and shall cause the Contractor to issue the Public Facilities GMP.

(c) Site Plan for Tract and Private Facilities. OSW will cause the Design Professionals to prepare a site plan of the Tract and will diligently pursue approval thereof. The elements of the site plan for the Tract shall be subject to the review of the City and the PGA; however, the City’s input related to any such review shall not be a substitute for obtaining approval of the site plan utilizing the standard City ordinances and procedures. In addition, the site plan for the Private Facilities shall be subject to the reasonable approval of PGA and the City for the purpose of confirming that the Private Facilities will be sufficient to support the efficient operation of the Public Facilities as contemplated in this Agreement and the other agreements referenced herein, including, without limitation, the hosting of golf tournaments.

(d) Tax Increment Reinvestment Zone #1 (“TIRZ #1”). Prior to the issuance of the Public Facilities Debt, the City shall take those lawful steps necessary to amend the boundaries of TIRZ #1 to include the Tract, amend the project plan of TIRZ #1 to include the Public Facilities, and amend the TIRZ #1 financing plan as deemed appropriate by the City and the TIRZ#1 Board to provide funds from TIRZ #1 to pay, or reimburse the City, in its sole and absolute discretion, for a portion of the costs of the Public Facilities.

(e) Expedited Permitting. The City will use its reasonable efforts to expedite the permitting for the Facilities.

(f) Commencement of Construction. Promptly upon approval of the Public Facilities GMP, OSW shall obtain the necessary construction permits and cause the



Contractor to commence construction of the Public Facilities; provided, however, in no event shall OSW be required to commence construction until the Completion Guaranty Conditions Precedent (defined in Section 3.1 hereof) have been satisfied and the City has issued the Public Debt.

(g) Completion of Facilities. OSW shall require the Contractor to complete the Public Facilities and obtain a certificate of occupancy for the structures, final acceptance for the courses and infrastructure and any other governmental approvals necessary for the Public Facilities to open to the public (“Substantial Completion”) on or before August 1, 2022, or as soon thereafter as reasonably practicable, and as contemplated by the Public Facilities Lease. The City must exercise good faith and its customary practices in issuing the certificate of occupancy and other approvals necessary to achieve Substantial Completion.

(h) PGA Certification. The PGA has approved (i) the tentative site plan for the Facilities as depicted on Exhibit “O” attached hereto (the “Site Plan”), (ii) the scope of work for the Public Facilities as set forth on Exhibit “P” attached hereto (the “Scope of Work”) and (iii) the project budget for the Public Facilities as set forth on Exhibit “Q” attached hereto (the “Project Budget”). The PGA represents and warrants to OSW that (A) the design professionals selected to design the Public Facilities, (i.e. Gil Hanse and Beau Welling Design), the Site Plan and the Scope of Work are all sufficient to permit OSW to construct the Public Facilities to the standard that is required by the PGA for hosting the tournaments outlined on the Tournament Schedule, including, without limitation, the PGA Championship and the Ryder Cup (the “PGA Tournament Requirements”) and (B) subject to any budget overages that result from the Budget Qualifications (defined below), the Project Budget is sufficient to build the Public Facilities to the specifications set forth on the Site Plan and in the Scope of Work, all of which satisfies the PGA Tournament Requirements. Notwithstanding the foregoing, the PGA makes no representation under item (B) above with respect to the following (the “Budget Qualifications”): costs or expenses for (1) fill dirt needed to complete the Scope of Work, and (2) the amount in each budget line marked with an asterisk on Exhibit “Q”. If PGA determines that Zeon Zoysia grass should be used for the Public Facilities, then the Project Budget shall be increased by the actual cost of the Zeon Zoysia grass (if any) over the line item in the Project Budget for Bermuda grass, and OSW will implement any revisions to the Scope of Work to provide for the use of the Zeon Zoysia grass. Notwithstanding such certification, under no circumstances shall the PGA be responsible for any of the Public Facilities Costs, including without limitation, to the extent the Public Facilities Costs exceed the Project Budget. OSW acknowledges and agrees that the foregoing certification by the PGA shall not diminish any obligations of OSW under the Facilities Management Services Agreement (as defined below). OSW shall not Materially Amend (as defined below) the Site Plan or the Scope of Work without the prior written consent of the PGA, which may be withheld in the sole discretion of the PGA. If any Material Amendment is required to reduce the costs of the Public Facilities to an amount that does not exceed the Project Budget, the PGA shall propose solutions to reduce costs to enable the Public Facilities to be built within the Project Budget, and to the standard required to meet the PGA Tournament Requirements, which solutions may include: (i) value engineering, (ii) elimination of items in the Scope of Work not required to meet the PGA Tournament Requirements or the requirements of

Section 1.1 of this Agreement and/or (iii) reallocation of line items within the Scope of Work; provided, however, PGA shall not be required to propose solutions to reduce costs for any increase in the Project Budget resulting from (1) imported fill dirt needed to complete the Scope of Work in excess of \$2,000,000, (2) the items marked with an asterisk on Exhibit "Q", (3) the use of Zeon Zoysia grass (if required by PGA) which does not increase the Project Budget by more than \$3,000,000 over the use of Bermuda grass, or (4) any change to the Scope of Work proposed by OSW. OSW will implement the solutions proposed by the PGA to reduce costs and the Site Plan and Scope of Work will be amended to reflect the solutions proposed by the PGA. The term "Materially Amend" means any amendment, alteration, modification or other change to the Site Plan that would adversely impact the holding of the Tournaments at the Public Facilities (e.g., material modifications to the "Championship Course," material changes to the practice facilities or material changes to the items identified on the Site Plan as PGA Tournament Requirements).

#### 1.6 Public Facilities Financing.

(a) Scope of Public Facilities Financing. Based upon the scope of the Public Facilities, it is anticipated by the Parties that the total costs actually incurred in the design and construction of the Public Facilities ("Public Facilities Costs"), will equal approximately *Seventy Million and No/100 dollars* (\$70,000,000.00) (the "Public Facilities Cost Preliminary Budget"). It is the intention of the Parties hereto that the Public Facilities Costs shall include all hard and soft costs incurred in planning, engineering, constructing and developing the Public Facilities. Hard costs shall mean all costs for labor and materials for the Public Facilities arising under all construction contracts related to the Public Facilities. Soft costs include pre-construction phase fees and expenses, and all third party architectural, engineering, surveying, testing and governmental fees or costs related to the planning, engineering, constructing and developing of the Public Facilities. Public Facilities Costs shall not include costs incurred by OSW or others for the acquisition and transfer to the City of any portion of the Tract, Offsite Easements or Remaining Infrastructure. Notwithstanding anything herein to the contrary, the fact that the actual Public Facilities Costs may exceed the Public Cost Facilities Preliminary Budget shall not give OSW the right to terminate this Agreement.

(b) City's Share of Public Facilities Costs. The City shall waive one-half of all permit fees, inspection and tap fees related to the Public Facilities. The City (in conjunction with the FCDC, FEDC and FISD, all of which are included in the reference to the City in this Section 1.6), will fund fifty percent (50%) of the Public Facilities Costs, not to exceed the sum of *Thirty-Five Million and No/100 Dollars* (\$35,000,000.00) reduced by an amount equal to the lesser of (i) the City's cost of issuance of any Public Facilities Debt or (ii) \$300,000.00 (the "City's Share"). The City's Share will be funded through proceeds from the issuance of certificates of obligation by the City ("Public Facilities Debt"); provided, however, the obligation of the City to pay the City's Share shall be subject to: (1) the successful authorization, sale and delivery of such Public Facilities Debt by the City to the underwriters or purchasers thereof; (2) the written approval of the budget for the Public Facilities Costs by the City, which approval shall not be withheld by the City for any budget that equals or exceeds the Public Facilities Cost Preliminary Budget; (3) the delivery by OSW to the City of the Completion Guaranty (each (1), (2) and (3), a "City Funding

Contingency”). Upon completion of the issuance of the Public Debt, the City shall hold the City’s Share in a segregated account earmarked solely for payment of the City’s Share to OSW upon Substantial Completion of the Public Facilities.

(c) OSW Required Contribution. OSW shall be responsible for Public Facilities Costs in excess of the City’s Share (“OSW Required Contribution”). After the City and OSW have approved the Public Facilities Final Plans and the Public Facilities GMP, OSW shall have the right to make change orders or construction change directives deemed necessary by OSW or the PGA without the approval of the City provided that such changes do not materially reduce the scope or quality of the Public Facilities or the site plan related thereto as provided in the Public Facilities Final Plans. OSW shall not have the right to make any change order or construction change directive that would either (i) materially reduce the scope or quality of the Public Facilities or the site plan relating thereto as provided in the Public Facilities Final Plans or (ii) reduce the Public Facilities GMP below the Public Facilities Cost Preliminary Budget, without the prior written approval of the City, which approval may be withheld in the sole and absolute discretion of the City.

(d) Payment of City’s Share of Public Facilities Cost. Within thirty (30) days after receipt by the City of the latter of (i) a notice of Substantial Completion for all of the Public Facilities and (ii) an accounting from OSW of the Public Facilities Costs in form and substance reasonably satisfactory to the City, the City must pay to OSW the City’s Share of the Public Facilities Costs.

(e) Cost Savings. To the extent there are cost savings resulting in expenditures less than the Public Facilities Cost Preliminary Budget (“Public Facilities Cost Savings”), the City and OSW by written consent will allocate such Public Facilities Cost Savings to the enhancement of the Public Facilities or refund such Public Facilities Cost Savings pro rata based upon the financial contributions made by City and OSW to the Public Facilities. It is the intent of the Parties hereto that all costs expended in the construction of the Public Facilities will be for a public purpose as provided in this Agreement and, to the extent allowed by law, that all materials incorporated therein will be exempt from state and municipal sales tax.

1.7 Impact Fees. The City shall waive all thoroughfare impact fees that may arise in relation to the development of the Public and Private Facilities. Further, the City shall waive the requirement under Section 8.04(a) of the City’s Subdivision Ordinance that the Developer escrow or contribute funds relating to (i) the cost of Rockhill Parkway as it abuts the Public and Private Facilities and (ii) the cost of the future construction of those sections of Legacy Drive, Fields Parkway or Teel Parkway which abut the Public Facilities. This waiver of the application of Section 8.04(a) shall not apply to any section of any roadway adjacent to the Private Facilities (other than Rockhill Parkway), nor shall it obligate the City in any manner to contribute to a future extension of Legacy Drive, Fields Parkway or Teel Parkway that might abut the Public Facilities.



## ARTICLE II LEASE, MAINTENANCE AND USE OF THE PUBLIC FACILITIES

2.1 Use of Public Facilities. The Tract will be publicly owned by the City and used for golf activities, public recreation and entertainment uses. In addition to public use, the City, FEDC, FCDC, and FISD shall have the right to use the Public Facilities as set forth in the Public Facilities Lease.

2.2 Lease of Public Facilities. Contemporaneously with the execution of the Public Facilities Construction Contract, the City and FCDC will enter into a lease agreement substantially in the form set forth in **Exhibit "C"** attached hereto ("Public Facilities Lease") with OSW, pursuant to which OSW will lease the Tract from the City and construct the Public Facilities thereon in accordance with this Agreement. Base rent under the Public Facilities Lease will commence on the first day of the month following Substantial Completion of the Public Facilities (the "Rent Commencement Date"), with the annual rental amount for the first five (5) years thereafter being ONE HUNDRED THOUSAND AND NO/100ths DOLLARS (\$100,000.00) payable in advance on the first day of the month of the Rent Commencement Date and a like amount on the same day of such month thereafter. Annual base rent shall be increased as more particularly described in the Public Facilities Lease. OSW will cause the PGA or its wholly-owned affiliates to supervise, manage and operate the Public Facilities pursuant to a written management agreement (the "Facilities Management Services Agreement"), reasonably acceptable to the City and to which the City will be an approved assignee from OSW. License rights with respect to the Public Facilities shall be set out in a license agreement approved by the PGA (the "License Agreement"). The City will be an approved assignee from OSW of the License Agreement. The City will enter into a recognition and non-disturbance agreement reasonably acceptable to PGA which will require the City and any future owner or lessee of the Public Facilities to recognize the rights of PGA or its affiliates under the Facilities Management Services Agreement and the License Agreement, but such non-disturbance agreement shall not obligate the City to assume any obligations, financial or otherwise, contained in the Facilities Management Services Agreement or License Agreement. Notwithstanding the foregoing, in the event the Public Facilities Lease is terminated and the City does not assume or a third party does not assume the obligations of OSW contained in the Facilities Management Services Agreement and the License Agreement, then PGA shall have no obligation to host the golf tournaments pursuant to Section 2.5 of this Agreement. Upon the expiration of the term of the Public Facilities Lease, OSW shall have the option to purchase the Public Facilities in accordance with the provisions set forth in the Public Facilities Lease.

2.3 Maintenance of Public Facilities. During the term of the Public Facilities Lease, OSW shall be responsible for the payment of the respective costs associated with the maintenance and operation of the Public Facilities in accordance with the terms of the Public Facilities Lease. All costs and expenses relating to replacement and renewals of the fixed assets and replacements and major repairs to the Public Facilities (collectively, the "CapEx Expenses") shall be the sole responsibility of OSW. A reserve account for CapEx Expenses funded each year in accordance with the Public Facilities Lease will be established in a bank designated by OSW and approved by City. The use, access, and potential return to OSW of a portion of such reserve will be more particularly set forth in the Public Facilities Lease.

2.4 Revenues from the Public Facilities. During the term of the Public Facilities Lease, OSW will be entitled to the revenues from the Public Facilities in accordance with the terms of the Public Facilities Lease.

2.5 Tournaments. Subject to the delivery of the Facilities contemplated by this Agreement, the PGA or one of its affiliates will host at the Public Facilities the golf tournaments identified on Exhibit "D" (the "Tournament Schedule") during the years set forth therein. If the Public Facilities are not substantially completed and operational on or before July 31, 2022, or the Private Facilities (save and except the Headquarters Facility) are not substantially completed and operational on or before January 31, 2023, then PGA shall have the option to not host the 2027 or 2028 PGA Championship at the Public Facilities. If PGA exercises such option, or if any tournament described on the Tournament Schedule is cancelled or rescheduled to another facility due to a casualty to the Public Facilities, making it reasonably doubtful that the Public Facilities will be in championship condition for the scheduled tournaments, governmental travel restriction or other event or condition not within the control of PGA (including, but not limited to, any material change to the Public Facilities that, in the reasonable judgment of the PGA, would not make it commercially feasible to conduct any one or more of the golf tournaments set forth on the Tournament Schedule in a successful manner) or render the Facilities inaccessible, PGA and City will work in good faith to reach agreement on a readjusted time line for the hosting of the other scheduled tournaments, with the goal of hosting the same number and type of tournaments within a reasonable time frame considering necessary planning, tournament announcements and PGA contractual commitments. If the 2027 or 2028 PGA Championship generates on-site revenues to the PGA of no less than the three (3) year average of the immediately preceding PGA Championships, the 2040 Ryder Cup will be conducted at the Public Facilities. "On-site" revenues shall mean sales associated with tickets, food and beverage, merchandise and hospitality at the Public Facilities. If the 2027 or 2028 PGA Championship does not achieve the above-described financial metric, PGA shall provide written notice to OSW and the City setting forth the items that need to be addressed and the corresponding timelines to address such items. If such items are addressed to the reasonable satisfaction of PGA on or prior to the timelines set forth in PGA's notice, then the 2040 Ryder Cup will be conducted at the Public Facilities. The City will reasonably cooperate with PGA in connection with the hosting of golf tournaments at the Public Facilities, including, without limitations, closing appropriate roads and/or adjusting vehicular and pedestrian traffic flow and providing adequate security and life, fire, and safety support at rates customarily charged by the City for events similar in nature and/or public attendance.

2.6 Obligation to Promote the City. OSW and the PGA shall coordinate all material advertising and promotions controlled by OSW or PGA for the Public Facilities to provide recognition for the City as is mutually agreeable between OSW, the PGA and the City. The name of the Public Facilities will include the name "PGA", "Frisco", and/or similar references as agreed upon by the City, OSW, and the PGA. OSW and PGA will provide advertising and promotion of the City during the term of the Public Facilities Lease.

2.7 VIP Hospitality Access. PGA will provide corporate and/or VIP hospitality access to all PGA Championship Events to the City, FEDC, FCDC and FISC as described in the Public Facilities Lease.

2.8 Park Access. During any Major Tournament (as defined below) held at the Public Facilities, and for a reasonable period of time before and after each Major Tournament and in consideration for the hosting of the Major Tournaments, the City will provide OSW and PGA, collectively, the exclusive right to use an area within Northwest Community Park, located in the vicinity of the Public Facilities as depicted on **Exhibit "O"** as a staging area for such Major Tournaments (the "**Temporary Staging Area**"). Such use may include, without limitation, overflow parking (including semi trailer parking and extra parking for spectators attending the Major Tournaments), staff staging, and temporary staff and media meeting and dining tents. The City shall seek the input of the PGA and OSW in connection with the design of Northwest Community Park in order to allow for the efficient use of the Temporary Staging Area, but the ultimate approval of the design of Northwest Community Park shall belong to the City. Immediately following any use of Northwest Community Park provided herein, PGA shall repair the areas to the same condition (or as close thereto as practicable) as existed before such use, reasonable wear and tear excepted. Prior to the hosting of each Major Tournament, PGA and the City will enter into a tournament agreement, which will set forth the specific restoration obligations of PGA and completion timelines applicable to such Major Tournament and otherwise consistent with the terms of this Section 2.8. To secure the obligations of PGA set forth in the tournament agreements, in the event such repairs are not made in accordance with the terms thereof, the City and FEDC may offset an amount reasonably estimated by the City to complete such repairs against any Tournament Grants owed to the PGA pursuant to the FEDC Performance Agreement. For the purpose of this Agreement, the term "Major Tournament" shall mean any of the following: (a) the Ryder Cup; (b) the PGA Championship; (c) the Women's PGA Championship; or (d) the Senior PGA Championship.

2.9 Reuse Water. The City will make reuse water ("**Reuse Water**") available to OSW in volumes of up to, but not in excess of 2.5 million gallons of water on any given day and up to, but not in excess of 300 million gallons of water per calendar year, without any restrictions, for so long as the Public Facilities are operated as a golf course (whether pursuant to the Facilities Lease or otherwise); and provided, however, that to the extent Reuse Water is available in excess of the quantities afore-stated, OSW may purchase such additional Reuse Water at the rates set forth herein. OSW shall have the obligation to extend the current 24 inch Reuse Water line from its current termination point in the vicinity of Teel Parkway and Northwest Community Park to the Tract at its sole cost and expense; provided, however, if the City desires to utilize such extension for the purpose of extending the existing line to other areas of the City, the City shall participate in the cost of upsizing the line in accordance with current City policy.

The City at all times shall follow its customary procedures for setting the rates for the Reuse Water actually used by OSW (the "**Reuse Water Rates**"), but for a period of twenty (20) years from the opening of the Public Facilities for business to the public (the "**Price Protection Period**"), the Reuse Water Rates actually charged to OSW may not exceed the Maximum Reuse Water Rates (as hereinafter defined). For purposes of this Agreement, the "**Maximum Reuse Water Rates**" shall be as follows:

(i) Prior to the commencement of the Price Protection Period: \$0.75 per 1,000 gallons of Reuse Water actually used by OSW;

(ii) From the commencement of the Price Protection Period:



A. during peak months (June, July and August):

1) first 75,000,000 gallons of Reuse Water: \$1.80 per 1,000 gallons of Reuse Water actually used by OSW; and

2) all Reuse Water in excess of 75,000,000 gallons: \$1.10 per 1000 gallons of Reuse Water actually used by OSW.

B. during off-peak months (September through May):

1) all Reuse Water usage: \$0.75 per 1,000 gallons of Reuse Water actually used by OSW.

(iii) Commencing on the first (1<sup>st</sup>) anniversary date of the Price Protection Period and continuing during the remainder of the Price Protection Period, the City may increase the Reuse Water Rates in conformance with the City's then current procedures for setting the Reuse Water Rates, but in no event may the percentage increase in the Reuse Water Rates actually charged to OSW, measured from such first (1<sup>st</sup>) anniversary date to the date of the first increase and thereafter from the date of the immediately preceding increase to the date of the successive increase, exceed the percentage increase in the consumer price index for all urban consumers, all items for the Dallas/Fort Worth area, for the same period of time.

(iv) After the expiration of the Price Protection Period, the City shall continue to follow its customary procedures for setting the Reuse Water Rates without any limitations on the percentage of increase.

### ARTICLE III COMPLETION GUARANTY

3.1 Completion Guaranty. Provided each of the Completion Guaranty Conditions Precedent (hereinafter defined) have been satisfied (but conditioned upon the issuance of the Public Facilities Debt), OSW shall cause the "Completion Guaranty" set forth herein on **Exhibit "E"**, attached hereto and incorporated herein by reference to be executed contemporaneously with this Agreement. For purposes of this Agreement, the "Completion Guaranty Conditions Precedent" mean (i) the City has provided to OSW evidence that the City has completed the acquisition of the Newland Parcel (or has procured a leasehold interest sufficient to permit the construction of the Public Facilities with an absolute right to convert such leasehold interest into a fee interest prior to completion of the Public Facilities); (ii) the City has executed the Chapter 380 Agreement (hereinafter defined) to provide the Economic Development Grants referenced in Section 5.13 of this Agreement; (iii) OSW has obtained the Private Letter Ruling referenced in Section 5.12 of this Agreement in a form acceptable to OSW in its sole discretion and (iv) no default exists on the part of any other Party under this Agreement. The Completion Guaranty shall be executed by a party acceptable to the City in its sole discretion.

## ARTICLE IV PGA HEADQUARTERS

4.1 Headquarters. PGA has agreed to relocate a portion of the employees located at the current PGA headquarters to a Headquarters Facility (defined below) as more particularly described in the FEDC Performance Agreement (defined below) to be constructed on private land adjacent to the Public Facilities (“Headquarters Tract”), conditioned on the City approving zoning for the Public Facilities and the Headquarters Facility, issuing and selling the Public Facilities Debt, and FEDC executing the FEDC Performance Agreement. The Headquarters Facility shall consist of a Class A (non-tilt wall) office building pursuant to a plan approved by PGA that will house the national and global corporate headquarters of the PGA as set forth in the Performance Agreement, contain approximately 100,000 square feet of office space and related facilities, and the greater of three hundred (300) parking spaces or that required by City Ordinance on the Headquarters Tract of which no less than eighty percent (80%) of City-required parking spaces shall be in a structured parking facility. In addition to the foregoing, OSW shall provide to PGA the right (which right would be transferable at no cost upon a sale or lease of the Headquarters Facility) to use, along with no cost access, during normal business hours, one hundred (100) parking spaces located closest to the Headquarters Facility pursuant to a shared parking agreement. PGA, along with PGA affiliates, will re-locate or hire at least 100 employees by December 31, 2023 (assuming timely completion of the Headquarters Facility) who will occupy the Headquarters Facility. The FEDC and the PGA agree not to modify the terms of Section 5 of the FEDC Performance Agreement in any material respect without the written consent of OSW, such consent not to be unreasonably withheld, conditioned or delayed. Acquisition by OSW of the property for the Headquarters Tract will occur prior to, and is a condition of, the obligation of the City to issue the Public Facilities Debt. The acquisition of the Headquarters Tract and the development, use and financing of the Headquarters Facility shall be in accordance with the provisions of the FEDC performance agreement (“FEDC Performance Agreement”) executed by the FEDC and the PGA in the form attached hereto as Exhibit “F”.

4.2 Commencement of Construction. PGA shall use commercially reasonable efforts to commence construction of the Headquarters Facility on or prior to July 1, 2020, subject to (i) force majeure, (ii) the receipt of all applicable zoning, permits and other governmental approvals, and (iii) completion of the Offsite Infrastructure sufficient to provide access and utilities to the Headquarters Tract sufficient to commence vertical construction.

## ARTICLE V RESORT HOTEL

5.1 Resort Hotel. In partial consideration for the Public Facilities Lease, but subject to the Hotel Conditions Precedent (defined below) and the Completion Guaranty Conditions Precedent, OSW shall convey to the City certain real property adjacent to the Public Facilities, the exact size thereof to be determined at a later date (the “Hotel Tract”). The City will enter into a Ground Lease (the “Hotel Ground Lease”) with OSW conveying a ground leasehold interest to OSW in the Hotel Tract, such Hotel Ground Lease to be in the form and substance as set forth on Exhibit “G” attached hereto and made a part hereof. The Hotel Ground Lease shall include an option in favor of OSW or its Affiliate to purchase the Hotel Tract after twenty (20) years for the price of \$100.00. OSW will construct on the Hotel Tract, a destination resort hotel,



designed to attract visitors nationally and internationally, containing at least 500 guest rooms, and a conference center containing not less than 127,000 total square feet of space in a configuration reasonably acceptable to the City and as further described in Section 5.2 hereof, indoor and outdoor event space and recreational facilities attractive to families and parking sufficient to meet the minimum standard under the City's Code of Ordinance (the "Hotel Facility"). The Hotel Facility shall carry the Omni Hotel's brand or another national brand, which is upper upscale and shall be equal or above in quality and services to the JW Marriot Hill Country Resort and Hyatt Hill Country Resort located in San Antonio, Texas with aquatic features. OSW shall acquire the property for the Hotel Tract prior to the issuance of Public Facilities Debt and convey the Hotel Tract to the City promptly after the issuance of the Public Facilities Debt. OSW's responsibility to construct the Hotel Facility is subject to: (i) the City executing the Chapter 380 Agreement (described in Section 5.13 below); (ii) receipt of a favorable private letter ruling as described in Section 5.12 prior to the sale and delivery of the Public Facilities Debt; (iii) the sale and delivery of the Public Facilities Debt; and (iv) execution of the Hotel Ground Lease ("Hotel Conditions Precedent"). In the event that items (i), (ii) and (iv) of the Hotel Conditions Precedent have not been satisfied prior to the issuance of the Public Facilities Debt, OSW must notify the City in writing prior to the issuance of the Public Facilities Debt of its decision not to construct the Hotel Facility, failing which the obligation of OSW to construct the Hotel Facility shall remain in force.

5.2 Conference Center. Upon substantial completion of the Hotel Facility on the Hotel Tract, OSW will create a mixed-use condominium (the "Condominium") in accordance with the provisions of Section 5.8 of this Agreement, which will consist of at least two units, one of which will be the "Conference Center Unit" (herein so called). The Conference Center Unit will contain 127,000 square feet of total space, including (i) a grand ballroom of 23,000 square feet, (ii) at least 60,000 square feet of meeting/conference space, and (iii) pre- function and back-of-house space sufficient to support the meeting/conference space. The design and finish out of the Conference Center Unit will be consistent with the design and finish out of the Hotel Facility, which shall be constructed to a standard generally consistent with first- class convention center hotels in the Dallas/Fort Worth area (the "Design Standard"). The plans and specifications (the "Plans") for the Conference Center Unit shall be prepared by an architect selected by OSW, and shall be submitted to the City for review and approval; provided, however, that the City may object to the Plans only to the extent they are materially inconsistent with the Design Standard or fail to conform to the ordinances and regulations of the City that are applicable to similar structures within the City. The City hereby designates and intends for the Conference Center Unit to be a "convention center facility" or "convention center complex" as defined in Section 351.001(2) of the Texas Tax Code, and to be utilized primarily to host conventions and meetings and for all other purposes set forth under definition.

5.3 Transfer of the Conference Center Unit. Upon completion and receipt of a temporary certificate of occupancy for the Hotel Facility, OSW will transfer title to the Conference Center Unit (which contains the elements set forth in Section 5.2 of this Agreement) for nominal consideration. The Conference Center Unit will be developed and fully equipped with all furnishings, fixtures and equipment to be selected by OSW and owned by the City ("FF&E") commensurate with the FF&E found and/or utilized in conference facilities in Omni hotels within the Dallas/Fort Worth Metroplex and required to have the Conference Center fully operational. The City will not have any additional expense.

5.4 Lease of Conference Center. Contemporaneously with the transfer of title to the Conference Center Unit from OSW to the City, the City will enter into a lease with OSW substantially in the form attached hereto as **Exhibit "H"** and made a part hereof with a term of at least 50 years, at a lease rate of \$1.00 per year plus payment of all operating expenses (the "Conference Center Unit Lease Agreement") that will obligate OSW to use the Conference Center for the operation of a public conference, meeting and exhibit center for holding conventions, meetings, exhibits and other events to attract conventions, tourists and other visitors and for the benefit of the City and the general public, and at its sole cost and expense, to maintain the Conference Center Unit and all improvements, FF&E incorporated therein or related thereto, in a condition equal to or better than similar conference center space at upper upscale hotels within the Dallas-Fort Worth Metroplex. OSW will retain all income derived from the use thereof.

5.5 Conference Center Unit Purchase Option. Contemporaneously with the transfer of fee simple title to the Conference Center Unit from OSW to the City, OSW and the City shall enter into an Option Agreement in the form attached as hereto as **Exhibit "J"** and made a part hereof, pursuant to which, OSW shall have the right, but not the obligation, to purchase the Conference Center Unit upon the terms and conditions set forth in the Option Agreement.

5.6 Operation of Conference Center Unit. OSW, or its assigns, shall operate the Conference Center Unit as a public conference, meeting and exhibit center for holding conventions, meetings, exhibits and other events to attract conventions, tourists and other visitors for the benefit of the City and the general public. The remedies available to the City for defaults by OSW under the Conference Center Unit Lease Agreement will include the right to obtain monetary damages, an injunction, or specific performance, but the City will not be able to terminate OSW's right of possession; provided, however, that in the event OSW, or its assigns, is in default under the Conference Center Unit Lease Agreement for ceasing to use or operate the Conference Center Unit as a public conference, meeting and exhibit center for holding conventions, meetings, exhibits and other events, the City shall be entitled to terminate OSW's right of possession in addition to its other remedies under the Conference Center Unit Lease Agreement.

5.7 Public Entity Use of Conference Center Unit. The City, the FEDC, the FCDC and the FISD (collectively, the "Public Entities") will have use of the Conference Center Unit for a combined ten (10) one-day events each year at no cost on a space available basis to be booked in accordance with procedures set forth in the Conference Center Unit Lease Agreement. During such periods of use, event set up and tear down and equipment to be furnished at no cost will include tables, chairs, pipe and drape, audio visual equipment (owned by OSW or City) and any other equipment typically provided to Conference Center Unit patrons. The cost of food and beverage services, or other services will be paid for by the Public Entity utilizing the Conference Center Unit.

5.8 Condominium Ownership. The Conference Center Unit will be wholly-owned by the City. OSW will create the condominium in accordance with the summary of terms attached hereto as **Exhibit "K"**. The condominium regime will include appropriate common elements necessary to serve each unit. Upon substantial completion of the Hotel Facility, OSW shall prepare the proposed Condominium Declaration (the "Declaration") and submit the same to the City for approval; provided, however, that the City may object to the Declaration only to the extent it is

materially inconsistent with Exhibit “K” hereto. OSW’s obligations under Sections 5.1 through 5.7 of this Agreement shall be expressly conditioned upon the City’s approval of the Declaration, which approval will not be unreasonably withheld, conditioned or delayed.

5.9 Tax Exempt Status of Conference Center Unit. It is the intent of the City and OSW that, for so long as the Conference Center Unit is owned by the City, the Conference Center Unit and OSW’s leasehold interest in the Conference Center Unit shall not be subject to ad valorem or other property taxes; provided, however, upon OSW’s exercise of the option pursuant to the Option Agreement and the conveyance of the Conference Center Unit to OSW in connection therewith, the Conference Center Unit shall at such time and thereafter be subject to ad valorem and other property taxes.

5.10 Commencement of Construction. OSW shall use commercially reasonable efforts to commence construction of the Hotel Facility on a time line that allows for completion of the construction of the Hotel in accordance with the provisions of Section 5.11 below.

5.11 Completion of Hotel Facility. OSW shall use commercially reasonable efforts to: (i) complete the construction of the Hotel Facility on or prior to the issuance of the final Certificate of Occupancy for the Public Facilities; and (ii) open the Hotel Facility for business to the public within six (6) months after the issuance of such certificate of occupancy.

5.12 State Comptroller Private Letter Ruling Request. The City with assistance from OSW has submitted a private letter ruling request to the Texas Comptroller of Public Accounts which request is attached hereto as Exhibit “R” (the “Private Letter Ruling”).

5.13 City-OSW Chapter 380 Agreement. If the obligations in Sections 5.1 through 5.11 have been met, the City shall provide to OSW, or its designee, the economic development grants (the “Economic Development Grants”) more fully set forth in the Chapter 380 Agreement (herein so called) attached hereto as Exhibit “L”, which exhibit is incorporated herein for all purposes.

5.14 Payment in Lieu of Tax Offset. For a period of twenty (20) years, commencing on the first day of the first month following the month in which a certificate of occupancy is issued for the Hotel Facility, and to the extent that the amount of real property improvements and business personal property ad valorem taxes assessed against the Hotel Project and actually received by all taxing authorities are less than the amounts set forth on Exhibit N, the City shall be entitled to offset such difference in any particular year by reducing the payments made pursuant to the Chapter 380 Agreement.

## ARTICLE VI DEFAULTS; REMEDIES; TERMINATION

6.1 Defaults. A Party shall be in default if any of the following events (“Event of Default”) shall occur:

(a) The failure on the part of the Party to pay an amount when due and owing under this Agreement and the continuation of such failure for thirty (30) days after notice has been provided in accordance with this Agreement;



(b) Any other breach of any covenant or provision of this Agreement and such breach has not been cured within thirty (30) days from and after the date of written notice of such breach is given; provided, however, such Event of Default shall not exist if the defaulting Party shall have commenced to remove or cure such breach and shall be proceeding with reasonable diligence to completely remove or cure such breach; and

(c) As to OSW only, the failure to pay any OSW Installment Debt Service Obligation to the City, which shall be a monetary obligation that arises in the event PGA should fail to host the PGA Championship at the Public Facilities no later than 2028 (subject to the terms of Section 2.5) (such failure to host the PGA Championship other than the for the reasons specified in Section 2.5 is referred to as a “PGA Championship Failure”). The OSW Installment Debt Service Obligation shall be an amount equal to the corresponding annual installment owed by the City for the Public Facilities Debt (reduced by the amount, if any, of Public Facilities Cost Savings allocated to the City pursuant to Section 1.6(e)) and shall be due and payable to the City on or before 180 days prior to the due date of each corresponding installment of Public Facilities Debt owed by the City from and after the PGA Championship Failure through and until a PGA Championship is hosted by the PGA at the Public Facilities. For purposes of clarification, the occurrence of the PGA Championship Failure shall require OSW to pay the OSW Installment Debt Service Obligation to the City for each installment of Public Facilities Debt until the earlier of (i) the installment due following the PGA’s hosting of a PGA Championship at the Public Facilities, or (ii) the Public Facilities Debt has been paid in full. The OSW Installment Debt Service Obligation shall be the City’s sole and exclusive remedy against OSW in connection with a PGA Championship Failure; provided, nothing contained herein shall limit OSW’s remedies against the PGA for a PGA Championship Failure, subject to the terms of the Facilities Management Services Agreement.

6.2 Remedies. Upon the occurrence and during the continuance of an Event of Default, the non-defaulting Party or Parties shall have all remedies available to them at law or in equity, except as may be specifically limited in this Article VI (e.g., if a Tournament Failure occurs, the City’s remedies against OSW are limited under Section 6.1(c)). Notwithstanding anything herein to the contrary, the monetary remedies against any Party or Parties shall be limited to actual damages (but not consequential or punitive damages) suffered by a non-defaulting Party or Parties resulting from an Event of Default.

6.3 Termination Right in Favor of PGA.. Notwithstanding anything herein to the contrary, PGA shall have the right to terminate this Agreement and all other agreements contemplated pursuant to this Agreement to which it is party, without the payment of a fee or penalty, if any of the conditions set forth below are not satisfied by sending written notice to the other Parties within thirty (30) days after the deadline for the occurrence of such condition: (a) the City Council of the City has not approved the issuance of the Public Facilities Debt contemplated under this Agreement on or before February 5, 2019, (b) the City has not issued and received the proceeds from the Public Facilities Debt contemplated under this Agreement on or before May 31, 2019; (c) OSW fails to deliver the Completion Guaranty; (d) OSW fails to timely obtain and convey to the City the OSW Parcel or the Offsite Easements, or (e) OSW fails to timely obtain the Headquarters Tract or the Hotel Tract. For the avoidance of doubt, the termination right

contained in this Section 6.3 shall terminate and be of no further force or effect upon the completion of the Closing and issuance of the Public Debt.

6.4 Termination Right in Favor of City. Notwithstanding anything herein to the contrary, City shall have the right to terminate this Agreement and all other agreements contemplated pursuant to this Agreement to which the City, the FEDC, FCDC, or FISC are a party, if and only if: (a) OSW fails to deliver the Completion Guaranty; (b) OSW fails timely to obtain and convey to the City the OSW Parcel or the Offsite Easements; (c) OSW fails timely to obtain the Headquarters Tract or the Hotel Tract; (d) the City is unable to sell or deliver the Public Facilities Debt or (e) OSW fails to pay timely to the City each OSW Installment Debt Service Obligation; in each case after notice and opportunity to cure as provided in Section 6.1(b) of this Agreement. Notwithstanding any provision contained in this Agreement to the contrary, in the event the City unilaterally terminates the Agreement for any reason, other than as set forth in this Section 6.4, prior to the issuance of the Public Facilities Debt, the City's liability shall be limited to the reimbursement to OSW of all Public Facilities Pre-Construction Costs up to, but not exceeding, \$500,000.00. The termination right contained in items (a), (b), (c) and (d) of this Section 6.4 shall terminate and be of no further force or effect upon the completion of the Closing and the issuance of the Public Debt.

6.5 Termination Due to City Funding Contingency. In the event the City is unable to sell or deliver the Public Facilities Debt, then any Party that is not in default under this Agreement shall have the option, in its sole discretion, to terminate this Agreement and all other agreements described in this Agreement to which such person is a party. In the event of such termination, OSW will be responsible for all pre-development and pre-construction costs including, but not limited to, all architectural, engineering, surveying, and governmental fees related to the planning, engineering, and designing of the Public Facilities, but specifically excluding attorneys' fees, with each Party being responsible for the fees of their respective attorneys ("Public Facilities Pre-Construction Costs").

6.6 Termination Right in Favor of OSW. In the event any one of the Hotel Conditions Precedent or the Completion Guaranty Conditions Precedent does not occur on or before July 31, 2019, and OSW notifies the City in writing of its decision to not move forward with the transaction contemplated by this Agreement prior to the Closing, then OSW shall have the option, in its sole discretion, to terminate this Agreement and all other agreements described in this Agreement to which it is a party, without the payment of a fee or penalty. For the avoidance of doubt, the termination right contained in this Section 6.6 shall terminate and be of no further force or effect upon the successful completion of the Closing and the issuance of the Public Debt

## ARTICLE VII MISCELLANEOUS

7.1 Further Agreements. The Parties hereto agree to use their good faith efforts to complete and execute, as soon as practicable following the date hereof, all agreements or other documents necessary, appropriate or desirable to carry out the transactions contemplated hereby specifically including the agreements described on the attached Exhibits.

7.2 Notices. Any notices or other communications required or desired to be given to the other Parties hereto shall be given in writing and delivered by a reputable independent courier service providing proof of delivery, a reputable overnight courier, or if mailed certified first class mail to the following addresses:

<b><u>To City:</u></b>	City of Frisco 6101 Frisco Square Boulevard Frisco, Texas 75034 Attention: City Manager
<b><u>With copy to:</u></b>	Abernathy, Roeder, Boyd & Hullett, P.C. 1700 Redbud Boulevard, Suite 300 McKinney, Texas 75069 Attention: Randy Hullett and Robert Roeder
<b><u>To FEDC:</u></b>	Frisco Economic Development Corporation 6801 Gaylord Parkway, Suite 400 Frisco, Texas 75034 Attention: Ron Patterson, President
<b><u>With copy to:</u></b>	Abernathy, Roeder, Boyd & Hullett, P.C. 1700 Redbud Boulevard, Suite 300 McKinney, Texas 75069 Attention: Randy Hullett and Robert Roeder
<b><u>To FCDC:</u></b>	Frisco Community Development Corporation 6101 Frisco Square Boulevard Frisco, Texas 75034 Attention: City Manager
<b><u>With copy to:</u></b>	Abernathy, Roeder, Boyd & Hullett, P.C. 1700 Redbud Boulevard, Suite 300 McKinney, Texas 75069 Attention: Randy Hullett and Robert Roeder
<b><u>To FISD:</u></b>	Frisco Independent School District 5515 Ohio Drive Frisco, Texas 75035 Attention: Superintendent
<b><u>With copy to:</u></b>	Abernathy, Roeder, Boyd & Hullett, P.C. 1700 Redbud Boulevard, Suite 300 McKinney, Texas 75069 Attention: Randy Hullett and Robert Roeder
<b><u>To OSW:</u></b>	Omni Stillwater Woods Golf Resort, LLC c/o TRT Holdings, Inc.

4001 Maple Avenue, Suite 600  
Dallas, Texas 75204  
Attention: Paul Jorge & Mike Smith

With copy to: Aaron Sherman  
One Cowboys Way, Suite 160  
Frisco, Texas 75034

With copy to: Haynes and Boone LLP  
2323 Victory Avenue, Suite 700  
Dallas, Texas 75219  
Attention: Scott Drablos

With copy to: Stillwater Capital  
4145 Travis Street, Suite 300  
Dallas, Texas 75204  
Attention: Robert Elliott

With copy to: Winstead PC  
2728 N. Harwood Avenue, Suite 500  
Dallas, Texas 75201  
Attention: T. Andrew Dow

To PGA: The Professional Golfers' Association of America  
100 Avenue of the Champions  
Palm Beach Gardens, FL 33418  
Attention: Henry Smokler

With copy to: Jackson Walker L.L.P.  
2323 Ross Avenue, Suite 2000  
Dallas, Texas 75201  
Attention: William Dahlstrom

With copy to: Kirkland & Ellis LLP  
300 N. LaSalle Street  
Chicago, Illinois 60654  
Attention: Matthew Keiser & Roberto Miceli

7.3 Governing Law: Venue. This Agreement shall be interpreted and the rights of the Parties hereto determined in accordance with the laws of the State of Texas without regard to the conflicts of laws principles thereto, and venue shall be in the District Court in Collin County, Texas.

7.4 Compliance with Laws. The Parties hereto shall comply in all material respects with all applicable laws in connection with the development and construction of the Facilities and Offsite Infrastructure.



7.5 Assignment. Except as may otherwise be provided under this Section 7.5, this Agreement may not be assigned without the City's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed). Any purported assignment in violation of this Agreement is void. Notwithstanding the foregoing, either OSW or PGA, respectively, may assign its rights and obligations under this Agreement without the prior written consent of the other Parties hereto to affiliates or subsidiaries of OSW or PGA, so long as such affiliate or subsidiary continues to be wholly-owned, directly or indirectly, by OSW or PGA as applicable, or one of its constituent parties. In the event the City consents to an assignment of this Agreement by either OSW or PGA, no further assignment shall be made without the express consent in writing of the City, unless such assignment may otherwise be made without such consent pursuant to the terms of this Agreement. Except as otherwise set forth herein, an assignment by OSW or PGA of its interest in this Agreement shall not relieve OSW or PGA from its respective obligations under this Agreement unless approved by the City.

Notwithstanding anything to the contrary set forth in this Agreement, to the extent the Lessee under the Facilities Lease is entitled to assign its rights and obligations under such Facilities Lease to any party, OSW may likewise assign its rights and obligations under this Agreement to such assignee under the Facilities Lease without the further consent of the City or any other party to this Agreement, it being the intent of the Parties that the rights and obligations of OSW under this Agreement follow the rights and obligations of the Lessee under the Facilities Lease, and run with the Tract, the Headquarters Tract, and the Hotel Tract, as the case may be. Likewise, if the Lessee is relieved of its obligations under the Facilities Lease in connection with any such assignment, then OSW shall also be relieved of its obligations under this Agreement without the further approval of the City or any other party to this Agreement.

7.6 Entire Agreement. This Agreement (including the Exhibits hereto) and the other agreements and documents referenced herein constitute the full and entire understanding and agreement of the Parties hereto with regard to the subject matter hereof and thereof and supersede any prior or contemporaneous agreement or understanding among the Parties.

7.7 Amendment. Except as expressly set forth herein, this Agreement may not be amended or terminated without the written consent of the Parties hereto.

7.8 Waiver. No term or condition of this Agreement shall be deemed to have been waived, nor has there been any estoppel to enforce any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel.

7.9 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, such provision shall be reformed to the extent necessary to permit enforcement thereof, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

7.10 Third-Party Beneficiaries. The Parties hereto intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual other than the Parties hereto and their permitted assigns.



7.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

7.12 Headings. The headings of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

7.13 Draftsmanship. This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

7.14 Force Majeure. The time frames contained in this Agreement shall be extended for any delays caused by Force Majeure. For the purposes of this Agreement, the term "Force Majeure" shall mean any unforeseeable causes beyond the control of the Party hereto seeking the extension, including, but not limited to, casualty, damage, strikes or lockouts, acts of God, war, terrorism, riots, governmental restrictions, other than those imposed under the then existing ordinances of the City (unless the City fails to comply with the timing requirements therein or enacts or adopts new ordinances, rules, or moratoriums not in effect on the date of this Agreement that causes any delays), failure or inability to secure materials or labor, reason of priority or similar regulations or order of any governmental or regulatory body other than the City (other than orders by the City pursuant to new ordinances, moratoriums, or rules enacted or adopted after the effective date of this Agreement that causes any delays), enemy action, civil disturbance, fire or unavoidable casualties, and delays incurred in obtaining permits required by the USACE.

7.15 Delays or Omissions. Except as otherwise provided herein to the contrary, no delay or omission to exercise any rights, power or remedy inuring to any Party upon any breach or default of any other Party under this Agreement shall impair any such right, power or remedy of such Party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any breach of default theretofore or thereafter occurring. All remedies either under this Agreement or by law or otherwise afforded to the Parties shall be cumulative and not alternative.

7.16 No Joint Venture. Nothing contained in this Agreement or any other agreement between OSW and the City is intended by the parties to create a partnership or joint venture between OSW on the one hand, and the City on the other hand and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other. Each Party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

7.17 Confidentiality. OSW has advised the City that the information to be included in the documents referenced herein may contain confidential commercial information relating to OSW and/or the PGA and, or their businesses and affairs that are protected from public disclosure under applicable law, and that premature disclosure thereof will have a material adverse business

and financial impact on OSW and/or the PGA. Accordingly, the City agrees that it will follow all procedures established by applicable law that give OSW and/or the PGA the right to contest the public disclosure of confidential commercial and business information relating to OSW and/or the PGA and their respective affiliated business entities.

7.18 Personal Data. In the course of verifying compliance by OSW with the requirements of this Agreement, the City and the City's employees, agents, consultants and contractors assigned to perform any portion of the review and inspection may obtain certain information relating to identified or identifiable individuals "Personal Data". The City acknowledges that it will have no right, title or interest in any Personal Data obtained by it as a result of this Agreement, and will not use Personal Data for any purpose other than verification of compliance by OSW with the requirements of this Agreement. The City will take all appropriate legal, organizational, and technical measures to ensure the confidentiality of Personal Data, and protect Personal Data against unauthorized disclosure or access, and against all other unlawful forms of processing, keeping in mind the nature of such data.

7.19 Approvals. This Agreement, including all exhibits attached hereto, is expressly contingent upon the approval by the Board of Directors of FEDC and FCDC and the Board of Trustees of FISC, which approval is evidenced by each such entity's signature hereto.

7.20 OSW's Acknowledgement of City Compliance with Tex. Govt. Code. OSW has executed a certification in the form attached hereto as Exhibit "M" and acknowledges that the City is required to comply with Chapter 2264 of the Texas Government Code, enacted by House Bill 1196 (80th Texas Legislature), which relates to restrictions on the use of certain public subsidies. In the event that OSW, or any branch, division, or department of OSW, is convicted of a violation under 8 U.S.C. Section 1324a(f) (relating to federal criminal penalties and injunctions for a pattern or practice of employing unauthorized aliens), subject to any appellate rights that may lawfully be available to and exercised by OSW, OSW must repay funds paid to OSW as grants or tax rebates or refunds or expended on infrastructure development and improvements designed to principally benefit OSW, if any, within one hundred twenty (120) calendar days following receipt of written demand from the City, plus simple interest at a rate of one percent (1%) per annum.

7.21 PGA's Acknowledgement of City Compliance with Tex. Govt. Code. PGA has executed a certification in the form attached hereto as Exhibit "M" and acknowledges that the City is required to comply with Chapter 2264 of the Texas Government Code, enacted by House Bill 1196 (80th Texas Legislature), which relates to restrictions on the use of certain public subsidies. In the event that PGA, or any branch, division, or department of PGA, is convicted of a violation under 8 U.S.C. Section 1324a(f) (relating to federal criminal penalties and injunctions for a pattern or practice of employing unauthorized aliens), subject to any appellate rights that may lawfully be available to and exercised by PGA, PGA must repay funds paid to PGA hereunder as grants or tax rebates or refunds, or expended on infrastructure development and improvements designed to principally benefit PGA, if any, within one hundred twenty (120) calendar days following receipt of written demand from the City, plus simple interest at a rate of one percent (1%) per annum.

7.22 OSW Representations Regarding Compliance With Certain Tex. Govt. Code Provisions.

(a) OSW hereby represents that a completed Certificate of Interested Parties Form 1295 ("Form 1295") generated by the Texas Ethics Commission's (the "TEC") electronic filing application in accordance with the provisions of Section 2252.908, Texas Govt. Code and the rules promulgated by the TEC, was previously submitted to the City by OSW in connection with this Agreement. The City hereby agrees to acknowledge such form with the TEC through its electronic filing application within 30 days of the effective date hereof. OSW and the City understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in any Form 1295 and neither the City nor its consultants have verified such information. The City and OSW also agree that the transactions contemplated by this Agreement and the respective obligations of the City and OSW hereunder, shall not be modified, released, or excused by the failure of OSW to properly complete a Form 1295, except as set forth in the following sentence. The submission of any Form 1295 by OSW that does not provide a sufficient basis for the City to enter into this Agreement in accordance with Section 2252.908(d), Texas Govt. Code, shall result in the automatic dismissal and removal of OSW from its duties and rights hereunder and OSW shall not be considered a Party to this Agreement.

(b) OSW represents that, to the extent this Agreement constitutes a governmental contract within the meaning of Section 2252.151 of the Texas Govt. Code, solely for purposes of compliance with Chapter 2252 of the Texas Govt. Code, and except to the extent otherwise required by applicable federal law, neither OSW nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of OSW is a company listed by the Comptroller under Sections 2270.0201 or 2252.153 of the Texas Government Code.

(c) Pursuant to Section 2270.002, Texas Govt. Code, OSW hereby represents that neither OSW, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of OSW "boycotts Israel", and subject to or as otherwise required by applicable federal law, including without limitation 50 U.S.C. Section 4607, agrees it will not boycott Israel during the term of this Agreement. As used in the immediately preceding sentence, "boycott Israel" shall have the meaning given such term in Section 2270.001, Texas Govt. Code.

7.23 PGA Representations Regarding Compliance With Certain Tex. Govt. Code Provisions.

(a) PGA hereby represents that a completed Certificate of Interested Parties Form 1295 ("Form 1295") generated by the Texas Ethics Commission's (the "TEC") electronic filing application in accordance with the provisions of Section 2252.908, Texas Govt. Code and the rules promulgated by the TEC, was previously submitted to the City by PGA in connection with this Agreement. The City hereby agrees to acknowledge such form with the TEC through its electronic filing application within 30 days of the effective date hereof. PGA and the City understand and agree that, with the exception of information



identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in any Form 1295 and neither the City nor its consultants have verified such information. The City and PGA also agree that the transactions contemplated by this Agreement and the respective obligations of the City and PGA hereunder, shall not be modified, released, or excused by the failure of PGA to properly complete a Form 1295, except as set forth in the following sentence. The submission of any Form 1295 by PGA that does not provide a sufficient basis for the City to enter into this Agreement in accordance with Section 2252.908(d), Texas Govt. Code, shall result in the automatic dismissal and removal of PGA from its duties and rights hereunder and PGA shall not be considered a Party to this Agreement.

(b) PGA represents that, to the extent this Agreement constitutes a governmental contract within the meaning of Section 2252.151 of the Texas Govt. Code, solely for purposes of compliance with Chapter 2252 of the Texas Govt. Code, and except to the extent otherwise required by applicable federal law, neither PGA nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of PGA is a company listed by the Comptroller under Sections 2270.0201 or 2252.153 of the Texas Government Code.

(c) Pursuant to Section 2270.002, Texas Govt. Code, PGA hereby represents that neither PGA nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of PGA “boycotts Israel”, and subject to or as otherwise required by applicable federal law, including without limitation 50 U.S.C. Section 4607, agrees it will not boycott Israel during the term of this Agreement. As used in the immediately preceding sentence, “boycott Israel” shall have the meaning given such term in Section 2270.001, Texas Govt. Code.

#### 7.24 Limited License.

(a) PGA hereby grants to the City a non-exclusive, royalty-free, limited, indivisible and nontransferable license during the term of this Agreement and for so long thereafter as PGA uses the Headquarters Facilities to use and display the name (PGA, PGA OF AMERICA, and PROFESSIONAL GOLFERS’ ASSOCIATION OF AMERICA) and then-current logo of PGA (such name and logo, the “Licensed Marks”) solely in connection with the promotion of the Facilities in advertising and promotional materials for the city and/or region. The foregoing license shall permit use of the Licensed Marks in connection with advertising and promotional materials for the city (e.g., “Visit Frisco, Home of the PGA of America”) but not for the Facilities on a standalone basis (e.g., “Visit the PGA Championship Course”). The foregoing license shall be limited to the United States, its territories and possessions; provided that the City may use the Licensed Marks on advertising and promotional materials in territories outside of the United States with the prior written consent of PGA (such consent not to be unreasonably withheld, conditioned, or delayed) and subject to PGA determining that no actual or potential conflicts with third-party rights exist in such territories.

(b) The City shall display and otherwise use the Licensed Marks only in such form and manner as meet (i) PGA’s standards of nature and quality control consistent with

Licensors' brand standards and use guidelines, as promulgated and modified by Licensor from time to time, and (ii) standards consistent with PGA's use of the Licensed Marks and otherwise consistent with a high-quality, reputable, well-managed brand. The City shall submit to PGA for its prior review and written approval, which approval shall be granted or withheld in PGA's sole discretion, for all proposed uses of the Licensed Marks as early as possible prior to use thereof. Within ten (10) business days after receiving a submittal and request for approval from the City, PGA will provide the City with written notice approving or disapproving the proposed use submitted. If written disapproval is not received within ten (10) business days, the submittal will be deemed disapproved.

(c) The City acknowledges that PGA is the owner of the Licensed Marks and the goodwill associated therewith and the City agrees not to contest PGA's ownership or the validity of the Licensed Marks. The City further agrees that all use of the Licensed Marks under this Agreement inures to the benefit of PGA. Apart from the right of the City to use the Licensed Marks pursuant to this Agreement, the City shall acquire no right, title or interest of any kind or nature whatsoever to the Licensed Marks and the goodwill associated therewith. The City shall not use the Licensed Marks in connection with any other branding (including as part of a composite trademark or service mark) or in any modified or derivative form, in each case without PGA's prior written approval, and PGA shall own any composite, modified, or derivative trademark or service mark that includes or is derived from or based on any of the Licensed Marks.

(d) The City shall, upon request by PGA, affix thereto any legends, markings and notices of trademark registration or licensor-licensee (PGA-City) relationship specified by Licensor, or any other notice of PGA's ownership of the Licensed Marks.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned as of the date first written above.

**OMNI STILLWATER WOODS GOLF  
RESORT, LLC, a Texas limited liability company**

By: AA  
Name: Michael G. Smith  
Title: President

**THE PROFESSIONAL GOLFERS'  
ASSOCIATION OF AMERICA, a Florida  
non-profit corporation**

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

**CITY OF FRISCO, TEXAS,  
a Texas home-rule municipality**

By: George Purifoy  
Name: George Purifoy  
Title: City Manager



**Attest:**

Krist Monow  
City Secretary

**FRISCO ECONOMIC DEVELOPMENT  
CORPORATION, a Texas non-profit corporation**

By: Craig Moon  
Name: Craig Moon  
Title: EDC Chairman

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned as of the date first written above.

**OMNI STILLWATER WOODS GOLF  
RESORT, LLC, a Texas limited liability company**

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

**THE PROFESSIONAL GOLFERS'  
ASSOCIATION OF AMERICA, a Florida  
non-profit corporation**

By: Darren R. Crum  
Name: DARREN R. CRUM  
Title: CHIEF OPERATING OFFICER

**CITY OF FRISCO, TEXAS,  
a Texas home-rule municipality**

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

**Attest:**

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


**FRISCO ECONOMIC DEVELOPMENT  
CORPORATION, a Texas non-profit corporation**

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

**FRISCO COMMUNITY DEVELOPMENT  
CORPORATION**, a Texas non-profit corporation

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

**FRISCO INDEPENDENT SCHOOL  
DISTRICT**,  
a Texas political subdivision

By:  \_\_\_\_\_  
Name: JOHN CLASE  
Title: PRESIDENT



**FRISCO COMMUNITY DEVELOPMENT  
CORPORATION**, a Texas non-profit corporation

By: Mike Barber  
Name: MIKE BARBER  
Title: VICE CHAIR

**FRISCO INDEPENDENT SCHOOL  
DISTRICT**,  
a Texas political subdivision

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

**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF TRACT**

**Tract 1**

**BEING** a tract of land situated in the H. G. Hawkins Survey, Abstract No. 589 and the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 941, City of Frisco, Denton County, Texas, and being a portion of a called 219.034-acre tract of land, conveyed to The City of Frisco, Texas, as evidenced in a Special Warranty Deed, recorded in Volume 4205, Page 111 of the Deed Records of Denton County, Texas, and being more particularly described by metes and bounds as follows:

**BEGINNING** at a 1/2-inch iron rod found for the easterly, northeast corner of said 219.034-acre tract, same being the southeast corner of a called "Tract 1" (5.007-acres), conveyed to the Frisco Community Development Corporation, as evidenced in a Special Warranty Deed, recorded in Document No. 2007-76207, of the Official Records of Denton County, Texas, same also being on a westerly line of a called 1,722.364-acre tract of land, conveyed to FHQ Holdings LP, as evidenced in a Special Warranty Deed, recorded in Document 2018-93106 of the Official Records of Denton County, Texas;

**THENCE** South 00°13'48" East, along the easterly line of said 219.034-acre tract and the westerly line of said 1,722.364-acre tract, a distance of 495.41 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for a corner;

**THENCE** North 89°52'38" West, departing the easterly line of said 219.034-acre tract, the westerly line of said 1,722.364-acre tract, crossing said 219.034-acre tract, a distance of 1,974.36 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for a corner;

**THENCE** North 86°06'35" West, continuing across said 219.034-acre tract, a distance of 151.27 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for the point of curvature of a non-tangent curve to the left;

**THENCE** in a westerly direction, continuing across said 219.034-acre tract, along the arc of said curve to the left, through a central angle of 00°38'42", having a radius of 5,055.00 feet, a chord bearing of South 89°31'14" West, a chord distance of 56.91 feet and an arc length of 56.91 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for the point of tangency of said curve;

**THENCE** South 89°11'53" West, continuing across said 219.034-acre tract, a distance of 53.09 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for a corner;

**THENCE** North 45°50'10" West, continuing across said 219.034-acre tract, a distance of 56.60 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for a corner;

**THENCE** North 00°52'14" West, continuing across said 219.034-acre tract, a distance of 160.00 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for a corner;

**THENCE** North 04°41'05" West, continuing across said 219.034-acre tract, a distance of 150.33 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for a corner;

**THENCE** North 00°52'14" West, continuing across said 219.034-acre tract, a distance of 554.08 feet to an "X" cut set in concrete road pavement on the northerly line of said 219.034-acre tract, same being the southeast corner of a called 0.0978-acre tract of land, conveyed to the City of Frisco, Texas, according to the Right of Way Warranty Deed, recorded in Document No. 2015-34257 of the Official Records of Denton County, Texas, same also being a southwesterly corner of aforesaid 1,722.364-acre tract;

**THENCE** South 89°52'38" East, along the northerly line of said 219.034-acre tract and the southerly line of said 1,722.364-acre tract, a distance of 1,307.23 feet to a 1/2-inch iron rod found for the northerly, northeast corner of said 219.034-acre tract, same being on the westerly line of a called 4.997-acre tract of land, conveyed to the Frisco Community Development Corporation, as evidenced in a Special Warranty Deed, recorded in Document No. 2009-124609, of the Official Records of Denton County, Texas;

**THENCE** South 00°33'14" East, along an easterly line of said 219.034-acre tract and the westerly line of said 4.997-acre tract, a distance of 419.88 feet to a 5/8-inch iron rod found for the southwest corner of said 4.997-acre tract;

**THENCE** North 89°54'40" East, along a northerly line of said 219.034-acre tract, the southerly line of said 4.997-acre tract and the southerly line of a called "Tract 1" (5.007-acres), conveyed to the Frisco Community Development Corporation, as evidenced in a Special Warranty Deed, recorded in Document No. 2007-76207, of the Official Records of Denton County, Texas, a distance of 985.79 feet to the **POINT OF BEGINNING** and containing 38.328 acres (1,669,559 square feet) of land, more or less.

#### Tract 2

**BEING** a tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 941, City of Frisco, Denton County, Texas, and being all of a called "Tract 1" (5.007-acres), conveyed to the Frisco Community Development Corporation, as evidenced in a Special Warranty Deed, recorded in Document No. 2007-76207, and all of a called 4.997-acre tract of land, conveyed to the Frisco Community Development Corporation, as evidenced in a Special Warranty Deed, recorded in Document No. 2009-124609, both of the Official Records of Denton County, Texas, and being more particularly described by metes and bounds as follows:

**BEGINNING** at a 1/2-inch iron rod found for the southeast corner of said "Tract 1" (5.007-acres), same being the easterly, northeast corner of a called 219.034-acre tract of land, conveyed to The City of Frisco, Texas, as evidenced in a Special Warranty Deed, recorded in Volume 4205, Page 111 of the Deed Records of Denton County, Texas, same also being on a westerly line of a called 1,722.364-acre tract of land, conveyed to FHQ Holdings LP, as evidenced in a Special Warranty Deed, recorded in Document 2018-93106 of the Official Records of Denton County, Texas;

**THENCE** South 89°54'40" West, departing the westerly line of said 1,722.364-acre tract, along the northerly line of said 219.034-acre tract, the southerly line of said "Tract 1" (5.007-acres), and along the southerly line of aforesaid 4.997-acre tract, a distance of 985.79 feet to a 5/8-inch iron rod found for the southwest corner of said 4.997-acre tract;

**THENCE** North 00°33'14" West, along the westerly line of said 4.997-acre tract and an easterly line of said 219.034-acre tract, a distance of 419.88 feet to a 1/2-inch iron rod found for the northerly, northeast corner of said 219.034-acre tract, same being on a southerly line of aforesaid 1,722.364-acre tract;

**THENCE** North 00°01'52" West, continuing along the westerly line of said 4.997-acre tract and along the southerly line of said 1,722.364-acre tract, a distance of 22.50 feet to a 1/2-inch iron rod found for the northwest corner of said 4.997-acre tract;

**THENCE** North 89°55'31" East, along the northerly line of said 4.997-acre tract, the northerly line of aforesaid "Tract 1" (5.007-acres) and continuing along the southerly line of said 1,722.364-acre tract, a distance of 985.58 feet to a 1/2-inch iron rod found for the northeast corner of said "Tract 1" (5.007-acres);

**THENCE** South 00°33'17" East, along the easterly line of said "Tract 1" (5.007-acres) and a westerly line of said 1,722.364-acre tract, a distance of 442.13 feet to the **POINT OF BEGINNING** and containing 10.008 acres (435,952 square feet) of land, more or less.

#### Tract 3

**BEING** a tract of land situated in the Edgar B. Hawkins Survey, Abstract No. 581, City of Frisco, Denton County, Texas and being a portion of a called 60-acre tract of land described as Fourth Tract in deed to Frank D. Veninga, as Trustee of the Louise A. Veninga Children's Trust I Dated 6-22-05, recorded in Document No. 2013030308000318040, Official Public Records, Collin County, Texas, and being more particularly described by metes and bounds as follows:

**BEGINNING** at a 5/8-inch iron rod with plastic cap stamped "KHA" set (hereinafter referred to as an iron rod set) for the southwest corner of said Fourth Tract, common to an angle point in the easterly line of a called 1,722.364-acre tract of land described as Tract 3 in Warranty Deed to FHQ Holdings, LP, recorded in Document No. 2018-93106, Official Records, Denton County, Texas;

**THENCE** North 0°32'10" West, along the westerly line of said Fourth Tract and the easterly line of said Tract 3, a distance of 194.68 feet to an iron rod set for corner;

**THENCE** South 59°38'03" East, departing the westerly line of said Fourth Tract and the easterly line of said Tract 3 and crossing said Fourth Tract, a distance of 224.18 feet to an iron rod set for corner;

**THENCE** South 83°56'33" East, continuing across said Fourth Tract, a distance of 107.54 feet to an iron rod set for corner;



**THENCE** North 13°28'43" West, continuing across said Fourth Tract, a distance of 243.00 feet to an iron rod set for corner;

**THENCE** North 46°57'12" East, continuing across said Fourth Tract, a distance of 60.00 feet to an iron rod set at the beginning of a non-tangent curve to the left having a central angle of 25°21'27", a radius of 1100.00 feet, a chord bearing and distance of South 64°21'22" East, 482.86 feet;

**THENCE** in a southeasterly direction, continuing across said Fourth Tract and with said curve to the left, an arc distance of 486.83 feet to an iron rod set for the end of said curve to the left;

**THENCE** South 77°02'05" East, continuing across said Fourth Tract, a distance of 72.00 feet to an iron rod set for corner on the southerly line of said Fourth Tract and the easterly line of said Tract 3;

**THENCE** South 89°22'56" West, along the southerly line of said Fourth Tract and the easterly line of said Tract 3, a distance of 913.19 feet to the **POINT OF BEGINNING** and containing 2.717 acres (118,336 sq. ft.) of land, more or less.

#### Tract 4

**BEING** a tract of land situated in the John R. Hague Survey, Abstract No. 1714, and the John R. Hague Survey, Abstract No. 406, City of Frisco, Denton and Collin County, Texas and being a portion of a called 115.5-acre tract of land described as Third Tract in deed to Frank D. Veninga, as Trustee of the Louise A. Veninga Children's Trust I Dated 6-22-05, recorded in Document No. 2013030308000318040, Official Public Records, Collin County, Texas, and being more particularly described by metes and bounds as follows:

**COMMENCING** at a wooden fence corner post found on the southerly line of a called 60-acre tract of land described as Fourth Tract in deed to Frank D. Veninga, as Trustee of the Louise A. Veninga Children's Trust I Dated 6-22-05, recorded in Document No. 2013030308000318040, said Official Public Records, for the northwest corner of said Third Tract, common to an angle point in the easterly line of a called 1,722.364-acre tract of land described as Tract 3 in Warranty Deed to FHQ Holdings, LP, recorded in Document No. 2018-93106, Official Records, Denton County, Texas;

**THENCE** South 0°34'50" West, along the westerly line of said Third Tract and the easterly line of said Tract 3, a distance of 43.82 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" set (hereinafter referred to as an iron rod set) for the **POINT OF BEGINNING** of the herein described tract of land;

**THENCE** South 77°02'05" East, departing the westerly line of said Third Tract and the easterly line of said Tract 3 and crossing said Third Tract, a distance of 398.02 feet to an iron rod set at the beginning of a tangent curve to the right having a central angle of 96°36'33", a radius of 1100.00 feet, a chord bearing and distance of South 28°43'49" East, 1642.72 feet;

**THENCE** in a southeasterly direction, continuing across said Third Tract and with said curve to

the right, an arc distance of 1854.76 feet to an iron rod set for the end of said curve to the right;

**THENCE** South 19°34'28" West, continuing across said Third Tract, a distance of 454.29 feet to an iron rod set for corner on the southerly line of said Third Tract, same being on the easterly line of said Tract 3;

**THENCE** North 89°55'05" West, along the southerly line of said Third Tract and the easterly line of said Tract 3, a distance of 490.38 feet to an iron rod set for corner;

**THENCE** North 54°30'54" West, departing the southerly line of said Third Tract and the easterly line of said Tract 3 and crossing said Third Tract, a distance of 139.79 feet to an iron rod set for corner;

**THENCE** North 45°32'44" West, continuing across said Third Tract, a distance of 248.13 feet to an iron rod set for corner;

**THENCE** South 80°51'29" West, continuing across said Third Tract, a distance of 99.57 feet to an iron rod set for corner;

**THENCE** South 78°16'22" West, continuing across said Third Tract, a distance of 166.91 feet to an iron rod set for corner on the westerly line of said Third Tract, same being on the easterly line of said Tract 3;

**THENCE** North 0°34'50" East, along the westerly line of said Third Tract and the easterly line of said Tract 3, a distance of 1752.04 feet to the **POINT OF BEGINNING** and containing 44.973 acres (1,959,030 sq. ft.) of land, more or less.

#### Tract 5

**BEING** a tract of land situated in the Carter Jackson Survey, Abstract No.665, John T. Landrum Survey, Abstract No. 764, William E. Bates Survey, Abstract No. 90, Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 941, and the Reuben H. Bates Survey, Abstract No. 68, City of Frisco, Denton County, Texas and being a portion of a called 1,722.364-acre tract of land described as Tract 3 in Warranty Deed to FHQ Holdings, LP, recorded in Document No. 2018-93106, Official Records, Denton County, Texas, and being more particularly described by metes and bounds as follows:

**BEGINNING** at a 5/8-inch iron rod with plastic cap stamped "KHA" set (hereinafter referred to as an iron rod set) for the westernmost southwest corner of said Tract3, common to the northwest corner of a called 0.0978-acre tract of land described in Right-of-Way Deed to the City of Frisco, recorded in Document No. 2015-34257, said Official Records, on the easterly line of a called 2.711-acre tract of land described in Right-of-Way Deed to the City of Frisco, recorded in Document No. 2015-34249, said Official Records, same also being on the easterly right-of-way line of Teel Parkway (variable width right-of-way);

**THENCE** North 0°03'09" West, along the westerly line of said Tract 3 and the easterly line of said 2.711-acre tract and said Teel Parkway, a distance of 707.17 feet to an iron rod set for the

westernmost northwest corner of said Tract 3, common to the northeast corner of said 2.711-acre tract, on the southerly line of a called 7.46-acre tract of land described in Right-of-Way Deed to the City of Frisco, recorded in Document No. 2015-9130, said Official Records;

**THENCE** North 89°49'57" East, continuing along the westerly line of said Tract 3 and the easterly right-of-way line of said Teel Parkway and along the southerly line of a called 114.032-acre tract of land described as Tract 2 in Special Warranty Deed to Nash Eland, LLC, recorded in Document No. 2014-33175, said Official Records, a distance of 2339.53 feet to a wooden fence corner post found for the southeast corner of said Tract 2, common to an angle point in the westerly line of said Tract 3;

**THENCE** North 0°19'11" West, continuing along the westerly line of said Tract 3 and along the easterly line of said Tract 2 and the easterly line of a called 65.154-acre tract of land described in Special Warranty Deed to the Frisco Independent School District, recorded in Document No. 2017-153543, said Official Records, a distance of 3525.55 feet to an iron rod set for corner;

**THENCE** departing the westerly line of said Tract 3 and the easterly line of said 65.154-acre tract, and crossing said Tract 3 the following courses and distances:

North 77°50'10" East, a distance of 322.66 feet to an iron rod set for corner;

North 32°24'02" East, a distance of 642.00 feet to an iron rod set for corner;

North 0°31'18" West, a distance of 120.00 feet to an iron rod set for corner;

North 89°28'42" East, a distance of 719.69 feet to an iron rod set for corner;

South 0°31'18" East, a distance of 252.90 feet to an iron rod set for corner;

South 22°00'19" East, a distance of 169.76 feet to an iron rod set for corner;

North 53°29'36" East, a distance of 268.98 feet to an iron rod set for corner;

North 60°13'30" East, a distance of 143.86 feet to an iron rod set for corner;

South 84°41'01" East, a distance of 119.24 feet to an iron rod set for corner;

South 8°55'09" West, a distance of 104.64 feet to an iron rod set for corner;

South 51°39'30" East, a distance of 413.86 feet to an iron rod set for corner;

South 34°57'08" East, a distance of 118.99 feet to an iron rod set for corner;

South 84°31'00" East, a distance of 299.56 feet to an iron rod set for corner;

South 22°34'39" East, a distance of 214.41 feet to an iron rod set for corner;

North 80°22'49" East, a distance of 140.34 feet to an iron rod set for corner;

North 58°50'15" East, a distance of 129.51 feet to an iron rod set for corner;

South 80°39'33" East, a distance of 242.36 feet to an iron rod set for corner;

South 50°52'25" East, a distance of 212.40 feet to an iron rod set for corner;

South 68°25'19" East, a distance of 301.07 feet to an iron rod set for corner;

South 74°05'15" East, a distance of 326.07 feet to an iron rod set for corner;

North 79°41'55" East, a distance of 194.68 feet to an iron rod set for corner;

South 68°36'15" East, a distance of 319.49 feet to an iron rod set for corner;

North 89°35'28" East, a distance of 80.62 feet to an iron rod set for corner;

South 59°38'03" East, a distance of 228.93 feet to an iron rod set for corner on the easterly line of said Tract 3, same being on the westerly line of a called 60-acre tract described as Fourth Tract in deed to Frank D. Veninga, as Trustee of the Louise A. Veninga Children's Trust I Dated 6-22-05, recorded in Instrument No. 2013030308000318040, Official Public Records, Collin County, Texas;

**THENCE** South 0°32'10" East, along the easterly line of said Tract 3 and the westerly line of said Fourth Tract, a distance of 194.68 feet to an iron rod set for an angle point in the easterly line of said Tract 3, common to the southwest corner of said Fourth Tract;

**THENCE** North 89°22'56" East, continuing along the easterly line of said Tract 3 and along the southerly line of said Fourth Tract, a distance of 1095.44 feet to a wooden fence corner post found for an angle point in the easterly line of said Tract 3, common to the northwest corner of a called 115.5-acre tract of land described as Third Tract in deed to Frank D. Veninga, as Trustee of the Louise A. Veninga Children's Trust I Dated 6-22-05, recorded in said Instrument No. 2013030308000318040;

**THENCE** South 0°34'50" West, departing the southerly line of said Fourth Tract and continuing along the easterly line of said Tract 3 and along the westerly line of said Third Tract, a distance of 1795.86 feet to an iron rod set for corner;

**THENCE** departing the easterly line of said Tract 3 and the westerly line of said Third Tract, and crossing said Tract 3 the following courses and distances:

South 80°03'04" West, a distance of 583.34 feet to an iron rod set for corner;

South 49°15'27" West, a distance of 421.84 feet to an iron rod set for corner;



South 46°37'38" West, a distance of 352.07 feet to an iron rod set for corner;  
South 22°33'21" West, a distance of 200.65 feet to an iron rod set for corner;  
South 48°03'39" West, a distance of 473.73 feet to an iron rod set for corner;  
South 81°56'09" West, a distance of 150.33 feet to an iron rod set for corner;  
North 89°10'14" West, a distance of 252.64 feet to an iron rod set for corner;  
North 56°47'02" West, a distance of 212.13 feet to an iron rod set for corner;  
North 11°07'06" West, a distance of 153.19 feet to an iron rod set for corner;  
North 18°33'33" East, a distance of 421.88 feet to an iron rod set for corner;  
North 26°12'44" East, a distance of 376.97 feet to an iron rod set for corner;  
North 29°56'00" East, a distance of 673.75 feet to an iron rod set for corner;  
North 34°02'30" East, a distance of 236.87 feet to an iron rod set for corner;  
North 66°10'08" West, a distance of 288.65 feet to an iron rod set for corner;  
North 36°30'33" West, a distance of 159.88 feet to an iron rod set for corner;  
North 52°01'26" West, a distance of 181.67 feet to an iron rod set for corner;  
North 77°40'01" West, a distance of 171.20 feet to an iron rod set for corner;  
South 81°53'14" West, a distance of 366.29 feet to an iron rod set for corner;  
South 63°42'18" West, a distance of 702.70 feet to an iron rod set for corner;  
South 75°33'22" West, a distance of 278.76 feet to an iron rod set for corner;  
South 51°28'26" West, a distance of 709.70 feet to an iron rod set for corner;  
South 71°50'41" West, a distance of 335.97 feet to an iron rod set for corner;  
South 33°27'25" West, a distance of 487.53 feet to an iron rod set for corner;  
South 24°54'29" West, a distance of 411.17 feet to an iron rod set for corner;  
South 14°13'21" West, a distance of 207.82 feet to an iron rod set for corner;

South 54°08'40" West, a distance of 260.69 feet to an iron rod set for corner;

South 12°40'43" West, a distance of 281.40 feet to an iron rod set for corner;

South 53°47'04" East, a distance of 254.77 feet to an iron rod set for corner;

South 18°52'09" East, a distance of 685.19 feet to an iron rod set for corner;

South 7°40'16" East, a distance of 356.87 feet to an iron rod set at the beginning of a non-tangent curve to the left having a central angle of 3°18'21", a radius of 2000.00 feet, a chord bearing and distance of South 79°03'52" West, 115.37 feet;

In a southwesterly direction, with said curve to the left, an arc distance of 115.39 feet to an iron rod set for the end of said curve to the left;

South 77°24'42" West, a distance of 496.17 feet to an iron rod set at the beginning of a tangent curve to the right having a central angle of 12°42'40", a radius of 2000.00 feet, a chord bearing and distance of South 83°46'02" West, 442.79 feet;

In a southwesterly direction, with said curve to the right, an arc distance of 443.70 feet to an iron rod set for the end of said curve to the right;

North 89°52'38" West, a distance of 160.17 feet to an iron rod set for corner on the westerly line of said Tract 3, same being on the easterly line of a called 219.034-acre tract of land described in Special Warranty Deed to the City of Frisco, recorded in Volume 4205, Page 111, Deed Records, Denton County, Texas;

**THENCE** North 0°22'34" West, along the westerly line of said Tract 3 and the easterly line of said 219.034-acre tract and the easterly line of a called 5.007-acre tract of land described as Tract 1 in Special Warranty Deed to the Frisco Community Development Corporation, recorded in Document No. 2007-76207, said Official Records, a distance of 982.55 feet to a 1/2-inch iron rod found for an angle point in the westerly line of said Tract 3, common to the northeast corner of said Tract 1;

**THENCE** South 89°55'31" West, continuing along the westerly line of said Tract 3 and along the northerly line of said Tract 1 and the northerly line of a called 4.997-acre tract of land described in Special Warranty Deed to the Frisco Community Development Corporation, recorded in Document No. 2009-124609, said Official Records, a distance of 985.58 feet to an iron rod set for an angle point in the westerly line of said Tract 3, common to the northwest corner of said 4.997-acre tract;

**THENCE** South 0°01'52" East, continuing along the westerly line of said Tract 3 and along the westerly line of said 4.997-acre tract, a distance of 22.50 feet to a 1/2-inch iron rod found for an angle point in the westerly line of said Tract 3, common to the northernmost northeast corner of said 219.034-acre tract;

**THENCE** North 89°52'38" West, departing the westerly line of said 4.997-acre tract and continuing along the westerly line of said Tract 3 and along the northerly line of said 219.034-acre tract, a distance of 1307.23 feet to an iron rod set for an angle point in the southerly line of said Tract 3, common to the southeast corner of the aforementioned 0.0978-acre tract;

**THENCE** North 0°52'14" West, departing the northerly line of said 219.034-acre tract and continuing along the westerly line of said Tract 3 and along the easterly line of said 0.0978-acre tract, a distance of 72.76 feet to an iron rod set for an angle point in the westerly line of said Tract 3, common to the northeast corner of said 0.0978-acre tract;

**THENCE** South 89°07'46" West, continuing along the westerly line of said Tract 3 and the northerly line of said 0.0978-acre tract, a distance of 58.33 feet to the **POINT OF BEGINNING** and containing 424.472 acres (18,490,015 sq. ft.) of land, more or less.

#### Tract 6

**BEING** a tract of land situated in the William P. Bates Survey, Abstract No. 73 and the Flavius J. Hawkins Survey, Abstract No. 582, in the City of Frisco, Denton County, Texas, and being a portion of a called "Tract 2" (114.032-acres), conveyed to Nash Eland LLC, as evidenced in a Special Warranty Deed, recorded in Document No. 2014-33175, Official Records of Denton County, Texas, and being more particularly described be metes and bounds as follows:

**BEGINNING** at a wooden fence corner post found for the southeast corner of said "Tract 2", same being at an inner ell corner of the called "Ray Farm" Tract, conveyed to Bert Field's, Jr., as evidenced in a Special Warranty Deed, recorded in Volume 523, Page 687, Deed Records of Denton County, Texas and Volume 665, Page 260, Deed Records of Collin County, Texas;

**THENCE** South 89°49'57" West, along the southerly line of said "Tract 2", a northerly line of said "Ray Farm" tract and generally along a wire fence, a distance of 2,251.29 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set on the easterly right of way line of Teel Parkway as described in a deed to the City of Frisco, recorded in Document No. 2015-9130, Official Records of Denton County, Texas, same also being the point of curvature of a non-tangent curve to the right;

**THENCE** in a northerly direction, departing the southerly line of said "Tract 2" and along the easterly right of way line of said Teel Parkway, the following:

Along the arc of said curve to the right, through a central angle of 06°15'48", having a radius of 1,300.00 feet, a chord bearing of North 02°30'11" East, a chord distance of 142.04 feet and an arc length of 142.11 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for the point of tangency of said curve;

North 05°38'05" East, a distance of 385.50 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for the point of curvature of a tangent curve to the left;

Along the arc of said curve to the left, through a central angle of  $04^{\circ}47'28''$ , having a radius of 2,076.00 feet, a chord bearing of North  $03^{\circ}14'21''$  East, a chord distance of 173.55 feet and an arc length of 173.60 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for the point of tangency of said curve;

North  $00^{\circ}50'37''$  East, a distance of 602.02 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for the northeast corner of said Teel Parkway right of way, same being on the northerly line of said "Tract 2" and the southerly line of a called "Tract 1" (307.985-acres) as conveyed in said Document No. 2014-33175, Official Records of Denton County, Texas;

**THENCE** in an easterly direction, along the northerly line of said "Tract 2" and the southerly line of said "Tract 1", the following:

South  $89^{\circ}54'47''$  East, a distance of 292.60 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North  $84^{\circ}24'22''$  East, a distance of 172.72 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North  $86^{\circ}12'13''$  East, a distance of 242.07 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

South  $59^{\circ}56'05''$  East, a distance of 81.06 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North  $62^{\circ}39'08''$  East, a distance of 41.53 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North  $85^{\circ}27'57''$  East, a distance of 133.72 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North  $61^{\circ}57'40''$  East, a distance of 85.23 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North  $41^{\circ}23'33''$  East, a distance of 134.44 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North  $77^{\circ}59'42''$  East, a distance of 94.92 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North  $03^{\circ}29'36''$  East, a distance of 76.78 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North  $74^{\circ}16'06''$  East, a distance of 110.93 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;



North 79°25'24" East, a distance of 82.20 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North 32°08'51" East, a distance of 187.44 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North 20°50'29" West, a distance of 60.01 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North 02°30'12" West, a distance of 307.01 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner, same being the southwest corner of a called 65.154-acre tract of land, conveyed to the Frisco Independent School District, as evidenced in a Special Warranty Deed, recorded in Document No. 2017-153543, Official Records of Denton County, Texas;

**THENCE** in an easterly direction, continuing along the northerly line of said "Tract 2" and along the southerly line of said 65.154-acre tract, the following:

South 54°38'37" East, a distance of 89.42 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

South 08°12'50" East, a distance of 105.06 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

South 71°50'24" East, a distance of 142.77 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

South 60°51'47" East, a distance of 74.52 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North 36°46'12" East, a distance of 128.19 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North 51°04'55" East, a distance of 87.18 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North 24°34'42" East, a distance of 114.58 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North 01°19'59" East, a distance of 37.04 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North 67°52'17" East, a distance of 80.02 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

South 34°47'27" East, a distance of 91.09 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North 70°17'45" East, a distance of 114.67 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for the northeast corner of said "Tract 2", the southeast corner of said 65.154-acre tract, and being on the westerly line of aforesaid "Ray Farm" tract;

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**THENCE** South 00°19'11" East, along the easterly line of said "Tract 2" the westerly line of said "Ray Farm" tract, and generally along a wire fence, a distance of 2,175.84 feet to the **POINT OF BEGINNING** and containing 80.717 acres (3,516,034 square feet) of land, more or less.

**EXHIBIT "B"**  
**OFFSITE INFRASTRUCTURE**

1. Extension of Rockhill Parkway from its current termination point west of the Dallas North Tollway to Teel Parkway on the west.
2. Extension of Legacy Drive from the future Rockhill Parkway north to U.S. Highway 380 (provided however, that upon the request of OSW and at OSW's sole cost and expense, the City shall further extend Legacy Drive south to a point approximately 1,500 feet south of the future Rockhill Parkway).
3. Water line to be contained within the Rockhill Road right-of-way or adjacent easement sized according to the City's master utility plan.

EXHIBIT "C"  
PUBLIC FACILITIES LEASE

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**FACILITIES LEASE AGREEMENT**

**BY AND AMONG**

**CITY OF FRISCO**

**AND**

**FRISCO COMMUNITY DEVELOPMENT CORPORATION**

**AND**

**OMNI STILLWATER WOODS GOLF RESORT, LLC**

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## FACILITIES LEASE AGREEMENT

THIS FACILITIES LEASE AGREEMENT (this "Lease") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and among the CITY OF FRISCO, TEXAS, a Texas home-rule municipality and FRISCO COMMUNITY DEVELOPMENT CORPORATION, a Texas non-profit corporation (collectively, the "Lessor" or "City"); OMNI STILLWATER WOODS GOLF RESORT, LLC, a Delaware limited liability company (the "Lessee"). Lessor and Lessee sometimes are referred to herein collectively as the "Parties" or singularly as a "Party".

### **RECITALS**

A. Pursuant to City Council Resolution No. [\_\_\_\_\_] , Lessor has heretofore entered into a Master Development Agreement, dated as of [\_\_\_\_\_] (the "Development Agreement"), providing for the acquisition, construction, and operation of the public facilities (the "Public Facilities", as defined in the Development Agreement).

B. Pursuant to the terms of the Development Agreement, Lessor has agreed to lease the Tract on which Lessee will construct for the benefit of and to be owned by Lessor the Public Facilities and operate the same during the term thereof to Lessee on the terms and conditions set forth herein, this Lease being the "Public Facilities Lease" referenced in the Development Agreement.

C. Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the Leased Premises on the terms set forth herein.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the recitals set forth above and the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and confessed by each of the Parties hereto, the Parties hereto have agreed and, intending to be legally bound, do hereby agree as follows:

### **ARTICLE 1**

#### **GRANT, TERM OF LEASE AND CERTAIN DEFINITIONS**

1.1 Leasing Clause. Upon and subject to the terms and provisions contained herein, Lessor does hereby lease, demise and let unto Lessee, and Lessee does hereby take and lease from Lessor, the Leased Premises, to have and to hold the Leased Premises, together with all the rights, privileges, easements and appurtenances belonging to or in any way pertaining to the Leased Premises, for the term and subject to the provisions hereinafter provided.

1.2 Term and Extensions; Purchase Option.

(a) The term of this Lease (the "Term") shall commence on the date that all Parties have executed this Lease (the "Commencement Date"). The date on which Lessee shall be obligated to pay the City an annual base rent pursuant to Section 2 below shall commence on the date all necessary certificates of occupancy have been issued by all governmental authorities with respect to the Public Facilities that are necessary in order for the Public Facilities to open to the

public (the "Base Rent Commencement Date") and the Term shall terminate on December 31<sup>st</sup> of the year following the twenty-fifth (25th) anniversary of the Base Rent Commencement Date, as such Term may be extended as provided in subsection (b) below unless earlier terminated in accordance with the provisions of this Lease.

(b) Unless Lessee, at its sole option, delivers to Lessor a written notice of termination on or prior to the date that is three hundred sixty-five (365) days prior to the end of the Term or any then effective extension of the Term, as the case may be (which termination will be effective as of the expiration of the Term), the Term shall automatically extend for one (1) fifteen (15) year period followed by two (2) ten (10) year periods (the "Extension Periods"). During any extension of the Term as provided above, the rights and obligations of Lessor and Lessee under this Lease shall continue throughout such Extension Period except that the "Term" as used in this Lease shall be extended to include such applicable Extension Period.

(c) Provided that the Term has been extended by each and all of the Extension Periods described in Section 1.2(b) above, and the Lease has not been terminated, Lessor hereby grants to Lessee the sole and exclusive option (the "Purchase Option") to purchase all of Lessee's right, title and interest in and to the Leased Premises and all personal property used in connection with the operation of the Leased Premises, pursuant to the terms of this Section 1.2(c), subject to a reversionary interest (the "Reversionary Interest") to the City should the Leased Premises ever cease to be utilized for the operation of public golf courses and related public activities, recreation, pleasure, enjoyment, sporting activities, entertainment uses and events, and social activities (subject to force majeure and temporary closures for renovation, reconstruction and the like), and subject to the continued public use and school use requirements and discounts to City residents as set forth in Article V of this Lease, and further that the Leased Premises and all Improvements continue to be maintained to the standards currently required in this Lease and the Development Agreement, subject to the same notice and opportunity to cure also set forth in this Lease (the "Use and Maintenance Restriction"). Notwithstanding the foregoing, Lessor shall grant to Lessee an exclusive, perpetual and irrevocable easement (subject to the Reversionary Interest and the Use and Maintenance Restriction) over that portion of the Leased Premises that is currently a portion of Northwest Community Park and that portion of the Leased Premises referred as the Newland Parcel as defined in the Development Agreement, if the Purchase Option is exercised as provided for herein. Lessor shall, at any time upon Lessee's request, execute and deliver to Lessee for recording (at Lessee's option) a memorandum of option describing the Purchase Option, in a form provided by Lessee and approved by Lessor (which approval may not be unreasonably withheld, conditioned or delayed), which memorandum Lessee may, at its option, record in the Real Property Records of Denton County, Texas.

(i) On the date of this Lease, Lessee shall deliver to Lessor an amount equal to *One Hundred and No/100 Dollars* (\$100.00) as consideration for the granting of the Purchase Option.

(ii) If Lessee desires to exercise the Purchase Option, then Lessee shall deliver written notice to Lessor of such exercise (the "Option Notice") at least 365 days prior to the expiration of the Term (the "Option Date"); provided, however, that if Lessee fails to send the Option Notice on or prior to the Option Date, Lessee's right to exercise the Purchase Option shall not terminate or expire unless and until each of the following occurs:

(A) Lessor has delivered written notice to Lessee, notifying Lessee of such failure, including the following language in bold, capitalized letters, of 12-point type or larger: **“THE PURCHASE OPTION UNDER THE FACILITIES LEASE AGREEMENT WILL EXPIRE IF LESSEE FAILS TO DELIVER WRITTEN NOTICE TO LESSOR OF LESSEE’S EXERCISE OF THE PURCHASE OPTION ON OR PRIOR TO THE DATE THAT IS THIRTY (30) DAYS AFTER LESSEE’S RECEIPT OF THIS LETTER.”**; and (B) Lessee fails to deliver the Option Notice on or prior to the date that is thirty (30) days after Lessee’s receipt of the notice from Lessor described in (A) above.

(iii) Lessor represents and warrants to Lessee on and as of the date of this Lease and on and as of the Closing Date that to Lessor’s current, actual knowledge, without obligation for further investigation: (a) Lessor has on the date of this Lease and Lessor will have on the Closing Date and, if Lessee exercises the Purchase Option, Lessor will convey to Lessee good and indefeasible fee simple title to the Leased Premises, subject to the Reversionary Interest and the Use and Maintenance Restriction; and (b) there are no contracts or other obligations outstanding for the sale, exchange or transfer of the Leased Premises or any portion thereof. Notwithstanding the foregoing, Lessee understands and acknowledges that Lessor may be prevented by applicable law from conveying the entire Leased Premises to Lessee in fee simple and should Lessor be prevented by applicable law from conveying any portion of the Leased Premises to Lessee, Lessor shall instead grant to Lessee an exclusive, perpetual and irrevocable easement (subject to the Reversionary Interest and Use and Maintenance Restriction) over and across that portion of the Leased Premises that it is prevented from conveying to Lessee with the result that the combination of the deeded portion of the Leased Premises and the portion of the Leased Premises subject to the easement will provide Lessee complete control over the use of the entire Leased Premises as if the entire Leased Premises had been conveyed to Lessee in fee simple.

(iv) The purchase price (the “Purchase Price”) for the Leased Premises shall be the Fair Market Value (as hereinafter defined) of the Leased Premises at the time the Purchase Option is exercised based upon its use as a golf course subject to the Use and Maintenance Restriction and the Reversionary Interest set forth above (the “Fair Market Value”). Lessee shall receive as a credit against the Purchase Price (A) the sum of all expenditures made by, or on behalf of, Lessee in the construction of the Leased Premises and all infrastructure related thereto, (B) the sum of \$45,000,000.00 for the cost of land contributed by, or on behalf of, Lessee for the Leased Premises, and (C) the sum of all capital expenditures made by, or on behalf of, Lessee to the Leased Premises after the commencement of the Facilities Lease, together with interest on each of the foregoing expenditures set forth in subsections (A), (B) and (C) above from the date such expenditures were made at an annual interest rate of seven percent (7%) (collectively, the “Credits”); provided, however, in no event shall the Purchase Price be less than zero dollars (\$0.00). For purposes of this Section 1.2(c), the Fair Market Value of the Leased Premises shall be determined by an independent appraiser selected by Lessee and reasonably acceptable to Lessor. Lessee shall submit the Fair Market Value of the Leased Premises, as appraised, Lessee’s calculation of the Credits and the resulting Purchase Price to Lessor for approval. If Lessor does not notify Lessee in writing of any concerns or objections that Lessor has with regard to the Fair Market Value of the Leased Premises, the Credits or the



Purchase Price within thirty (30) days following receipt of same, Lessor shall be deemed to have approved and accepted the computation of, and as, the Purchase Price for the Leased Premises. The closing of the Purchase Option, Lessee's delivery of the Purchase Price to Lessor, and Lessor's conveyance of the Leased Premises to Lessee (the "Closing") shall occur on the final day of the Term or as soon thereafter as is practicable under the circumstances (the "Closing Date"), but if the Closing Date does not occur on the final day of the Term, the Term shall be deemed extended until the Closing Date without the Lessee having to pay any additional Base Rent hereunder, not to exceed ninety (90) days beyond the end of the Term. Lessor and Lessee shall conduct an escrow-style closing through a title company as selected by Lessee (the "Title Company") so that it will not be necessary for any Party to physically attend the Closing. At the Closing, Lessor shall deliver to Lessee: (a) a special warranty deed or deeds, properly executed by Lessor and witnessed and notarized for recording, conveying fee simple title to the Leased Premises (or that portion of the Leased Premises to be conveyed by deed) insurable by the Title Company, free and clear of all liens, restrictions, encumbrances, easements, tenancies, contracts and other matters, except for the Reversionary Interest and the Use and Maintenance Restriction and such other matters as may be approved by Lessee in its reasonable discretion; (b) if applicable, an easement covering that portion of the Leased Premises to be conveyed by easement, insurable by the Title Company, free and clear of all liens, restrictions, encumbrances, easements, tenancies, contracts and other matters, except for the Reversionary Interest and the Use and Maintenance Restriction and such other matters as may be approved by Lessee in its reasonable discretion; (c) a bill of sale, conveying title to any and all personal property owned by Lessor and used in connection with the Leased Premises; (d) an owner's title affidavit and indemnity in form and substance satisfactory to the Title Company, insuring Lessee's fee simple title to the Leased Premises and, if applicable, the easement, which affidavit shall be sufficient to permit Lessee to obtain title insurance without standard exception for liens of laborers, mechanics or materialmen, or parties in possession; and (e) such other instruments and documents as are customary for real property closings in Denton County, Texas. At the Closing, the costs for closing, insuring title, and recording shall be paid by the Lessee. Lessor and Lessee shall each pay its own attorneys' fees.

(v) Lessor shall be in default under this Section 1.2(c) upon the occurrence of any one or more of the following events: (i) any of Lessor's warranties or representations set forth herein are untrue or inaccurate in any material respect when made or on the Closing Date and Lessor fails to use commercially reasonable efforts to correct such untrue or inaccurate warranty or representation promptly upon notification to Lessor of any alleged untrue or inaccurate warranty or representation; or (ii) Lessor shall fail to meet, comply with or perform any covenant, agreement, or obligation within the time limits and in the manner required in this Section 1.2(c). Upon a default by Lessor hereunder, Lessee may, at Lessee's sole option, do any of the following: (x) close the purchase of the Leased Premises (with a right to sue for specific performance as necessary or desired by Lessee); (y) terminate this Section 1.2(c) by written notice delivered to Lessor at or prior to the Closing, and upon any such termination, thereafter no party hereto shall have any further rights, claims or liabilities under this Section 1.2(c); or (z) in the event the remedy of specific performance is not available as a result of some act by Lessor, Lessee will have all other right and remedies available at law or in equity.



(vi) Lessee shall be in default under this Section 1.2(c) if Lessee, following Lessee's exercise of the Purchase Option, shall default in its obligations to close the Purchase Option on or before the Closing Date; provided, however, that notwithstanding the foregoing, upon any default by Lessee under this Section 1.2(c), Lessor shall provide written notice to Lessee specifying the default, and Lessee shall be entitled to a reasonable amount of time in order to cure such default. Upon a default by Lessee hereunder, beyond the opportunity to cure granted above, Lessor may terminate this Section 1.2(c) by written notice delivered to Lessee, and upon any such termination, thereafter no party hereto shall have any further rights, claims or liabilities under this Section 1.2(c).

(vii) In addition to the acts recited in this Section 1.2(c) to be performed by Lessor and Lessee, Lessor and Lessee agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated by this Section 1.2(c).

1.3 Certain Definitions. The following terms shall have the meaning set forth in this Section 1.3:

- (a) Acceptable Golf Course Condition. Has the meaning set forth in Section 5.2(a).
- (b) Adjustment Period. Has the meaning set forth in Article 2.
- (c) Affiliate. With respect to any person or entity, (i) each person or entity that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, ten percent (10%) or more of the capital stock having ordinary voting power in the election of directors of such entity, (ii) each entity that controls, is controlled by or is under common control with such person or entity and (iii) the immediate family members, spouses and lineal descendants of such person (if an individual) or of an individual described in clause (i) above. For the purposes of this definition, "control" of a person or entity shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract, by virtue of being an executive officer or a director or otherwise. For the avoidance of doubt, TRT Holdings, Inc. and Omni Hotels Corporation are Affiliates of Lessee.
- (d) AV Taxes. Any and all property taxes and ad valorem taxes assessed against the Leased Premises or Lessee's interest therein that accrue during and are applicable to the Term.
- (e) Base Rent. The lease payments for the Leased Premises provided in Article 2 hereof.
- (f) Base Year Commencement Date. The date set forth above in Section 1.2(a) of this Lease.
- (g) Championship Course. Has the meaning set forth in the Development Agreement.
- (h) City. The City of Frisco, Texas, a Texas home-rule municipality.
- (i) City Events. Has the meaning set forth in Section 5.1(b)(i).

- (j) City Use. Has the meaning set forth in Section 5.1(b).
- (k) Closing. Has the meaning set forth in Section 1.2(c).
- (l) Closing Date. Has the meaning set forth in Section 1.2(c).
- (m) Commencement Date. The date set forth above in Section 1.2(a) of this Lease.
- (n) Comparable Facilities. Has the meaning set forth in Section 5.2(a)(i).
- (o) Development Agreement. Has the meaning set forth in the Recitals.
- (p) Event of Default. Has the meaning set forth in Section 10.1.
- (q) Extension Periods. Has the meaning set forth in Section 1.2(b).
- (r) Fair Market Value. Has the meaning set forth in Section 1.2(c).
- (s) FCDC. Frisco Community Development Corporation, a Texas non-profit corporation.
- (t) FEDC. Frisco Economic Development Corporation, a Texas non-profit corporation.
- (u) FISD. Frisco Independent School District.
- (v) FISD Events. Has the meaning set forth in Section 5.1(c)(i).
- (w) Force Majeure. Any causes beyond a Party's control, including, but not limited to, acts of God, acts of the public enemy, acts of the Federal Government, acts or omissions of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, lockouts, riots, war, acts of terrorism, labor strikes, freight embargoes, casualty, governmental restrictions, failure or inability to secure materials or labor, reason of priority or similar regulations or order of any governmental or regulatory body, civil disturbance, and unusually severe weather or unforeseen environmental or archaeological conditions requiring investigation/mitigation by federal, state or local laws.
- (x) Golf Partner. An individual that acquires from Lessee the right to exercise certain special privileges with respect to the use of the golf courses at the Public Facilities, with such special privileges being available to all members of the general public who pay a membership fee, subject to availability.
- (y) Golf Partner Use. The special privileges that Golf Partners will have to use the golf courses at certain times, which may include, subject to other Lessee Events, City Events and FISD Events, preferred tee times available to Golf Partners on certain days of the week and the exclusive use by Golf Partners of one of the golf courses on certain days so long as such use does not materially impact public availability for rounds of golf at the Public Facilities and the minimum requirements for Resident Use are maintained.
- (z) Hazardous Materials. Has the meaning set forth in Section 7.7(c).

(aa) Impositions. Taxes or assessments assessed by a governmental authority against the Leased Premises or Lessee's interest therein that accrue during and are applicable to the Term.

(bb) Improvements. All buildings, structures, equipment, golf course and ancillary improvements and fixtures, and Related Infrastructure from time to time installed or situated on the Land, including all landscaping, necessary or appropriate for the operation of the Public Facilities as contemplated in the Development Agreement, all of which shall be the property of Lessor, except for the fixtures, materials or equipment constituting Lessee Improvements.

(cc) Preferred Rate. Has the meaning set forth in Section 5.1(a)(i)(A).

(dd) Junior Rate. Has the meaning set forth in Section 5.1(c)(ii).

(ee) Land. The certain tract of land situated in the City of Frisco, Denton County Texas, described on Exhibit "A" attached hereto and incorporated herein for all purposes.

(ff) Laws. Has the meaning set forth in Section 7.7(c).

(gg) Lease. This Lease Agreement by and between Lessor, as lessor, and Lessee, as lessee, covering the Leased Premises.

(hh) Lease Year. Any 12-month period during the Term commencing January 1<sup>st</sup> and ending on the following December 31<sup>st</sup>; save and except the first Lease Year, which shall commence on the Base Rent Commencement Date and end on December 31<sup>st</sup> of the next following year.

(ii) Leased Premises. The Land and all Improvements, together with all other rights, privileges, easements and appurtenances benefiting, belonging to or in any way appertaining thereto, including, without limitation, (i) any and all rights, privileges, easements and appurtenances of Lessor as the owner of fee simple title to the Land now or hereafter existing, (ii) subsurface water rights below the surface of the Land, (iii) reversions which may hereafter accrue to Lessor as owner of fee simple title to the Land by reason of the closing of any adjacent street, sidewalk or alley or the abandonment of any rights by any governmental authority, (iv) any and all strips and gores relating to the Land and (v) any and all air rights over and above the Land.

(jj) Leasehold Mortgage. A mortgage or deed of trust which Lessee grants on its leasehold interest in the Leased Premises.

(kk) Lessee. Omni Stillwater Woods Golf Resort, LLC, a Delaware limited liability company, or any assignee thereof as provided in Section 8.1 hereof.

(ll) Lessee Event. A PGA Event and other corporate, business (including Golf Partner Use) or non-profit events (other than City Events or FISD Events).

(mm) Lessee Improvements. Has the meaning set forth in Section 4.1.

(nn) Lessor. The City of Frisco, Texas, a Texas home-rule municipality and the Frisco Community Development Corporation, located in Collin and Denton Counties, Texas.

(oo) Lessor Entity. Lessor or any governmental body, agency or political subdivision to whom Lessor's power to levy, assess or collect ad valorem taxes is transferred by law or contract.

(pp) Management Services Agreement. Means that certain [Management Services Agreement] by and between Lessee and PGA, as may be amended from time to time.

(qq) Mortgaged Premises. Has the meaning set forth in Section 9.1.

(rr) Operating Standard. Has the meaning set forth in Section 5.2(a).

(ss) Option Date. Has the meaning set forth in Section 1.2(c).

(tt) Option Notice. Has the meaning set forth in Section 1.2(c).

(uu) PGA. The Professional Golfers' Association of America, a Florida non-profit corporation and its subsidiaries and affiliates.

(vv) PGA Event. A PGA related event, including, but not limited to, the tournaments contemplated to be held at the Public Facilities as set forth in the Development Agreement, and other corporate, promotional, or educational events established by PGA from time to time. For PGA Events, use of some or all of the Public Facilities and/or the Land may also include a customary period of time both before and after the actual PGA Event as may be necessary for set-up, tear-down, and other activities related to such PGA Event. For example purposes only, Schedule 1(vv) sets forth certain periods of such time before and after certain PGA Events at other golf facilities.

(ww) Phase I. Has the meaning set forth in Section 7.7(a).

(xx) Plans. The Plans relating to the Leased Premises prepared by an architect(s) selected by Lessor in accordance with the Development Agreement that are acceptable to Lessee and are incorporated into the contract entered into between the CMAR (as defined in the Development Agreement) and the City in accordance with the Development Agreement.

(yy) Public Facilities. Has the meaning set forth in Recital A.

(zz) Purchase Option. Has the meaning set forth in Section 1.2(c).

(aaa) Purchase Price. Has the meaning set forth in Section 1.2(c).

(bbb) Related Infrastructure. Any store, restaurant, concession, parking areas, road, street, water or sewer facility, plaza, pedestrian circulation area, landscaping, exterior lighting, parking and walkways or other improvement on the Land that relates to and enhances the use, value or appeal of the Public Facilities, including, without limitation, any items reasonably necessary to construct, improve, renovate or expand the Public Facilities, excluding environmental remediation.

(ccc) Resident Use. Has the meaning set forth in Section 5.1(a).



(ddd) School Use. Has the meaning set forth in Section 5.1(c).

(eee) Sublessee. Any person or entity to whom or to which Lessee grants or licenses any rights to occupy, use, operate, manage, provide services in or the sale of food, beverages, services, merchandise or sporting goods within the Leased Premises (but for the avoidance of doubt, excluding persons that use the Leased Premises for golf, recreation, and other intended purposes (e.g., golfers that play golf on the courses, persons that use the hike and bike trails, etc.).

(fff) Term. The term of this Lease as provided in Section 1.2 herein.

(ggg) Title Company. Has the meaning set forth in Section 1.2(c).

## **ARTICLE 2**

### **LEASE PAYMENT**

Lessee shall pay the City an annual base rent ("Base Rent") with the first payment being due and payable within thirty (30) days after the Base Rent Commencement Date and on January 10<sup>th</sup> of each Lease Year thereafter. The Base Rent for the first five (5) Lease Years shall be *One Hundred Thousand and No/100 dollars (\$100,000.00)* per Lease Year, payable annually in advance. Thereafter, the annual Base Rent shall be increased, beginning on the fifth (5th) anniversary date of the Base Rent Commencement Date and on each anniversary of the Base Rent Commencement Date thereafter (each Lease Year after the first five Lease Years being an "Adjustment Period") in the amount of two percent (2%) of the previous year's Base Rent. For the avoidance of doubt, the Adjustment Period shall include any Extension Periods.

## **ARTICLE 3**

### **IMPOSITIONS, FEES AND UTILITIES**

3.1 Payment of Impositions. Except as provided elsewhere in this Article 3, beginning on the Commencement Date, Lessee shall be responsible for and pay all Impositions before the same become delinquent, and Lessee, at the request of Lessor, shall furnish to Lessor receipts or copies thereof showing payment of such Impositions. Lessee shall be entitled to pay any Impositions in installments as and to the extent the same may be permitted by the applicable taxing authority or claimant. Lessor agrees to cooperate with Lessee in seeking the delivery of all notices of impositions to Lessee directly from the applicable taxing authorities. Lessor shall promptly deliver all notices of Impositions to Lessee that are delivered to Lessor. In no event shall Lessee be in default under this Lease for failure to pay any Impositions before the same become delinquent for which the notice of such Impositions shall have been delivered to Lessor and not forwarded or delivered to Lessee at least thirty (30) days before the date the same become delinquent.

3.2 Contest of Impositions. If the levy of any of the Impositions shall be deemed by Lessee to be improper, illegal or excessive, or if Lessee desires in good faith to contest the Impositions for any other reason, Lessee may, at Lessee's sole cost and expense, dispute and contest the same and file all such protests or other instruments and institute or prosecute all such proceedings for the purpose of contest as Lessee shall deem necessary and appropriate. Subject to the foregoing, any item of contested Imposition need not be paid until it is finally adjudged to be valid. Lessee shall be entitled to any refund of any Imposition (and the penalties or interest thereon) refunded by the levying authority pursuant to any such proceeding or contest, if such Imposition shall have been



either (a) paid directly by Lessee, or (b) shall have been paid directly by Lessor and Lessor was reimbursed therefor by Lessee.

3.3 Standing. If Lessee determines that it lacks standing to contest any Impositions imposed by a governmental authority other than any Lessor Entity or to obtain an extended payment period for any such non-Lessor Entity Impositions, Lessor (to the maximum extent allowed by law) and at Lessee's expense and request shall join in such contest or otherwise provide Lessee with sufficient authority to obtain such standing.

3.4 Certain Provisions Related to AV Taxes and Impositions. Lessor and Lessee acknowledge that the Leased Premises, other than Lessee's leasehold interest in the Lease and Lessee's leasehold improvements therein, are presently believed to be exempt from AV Taxes and Impositions under the laws of the State of Texas as of the Commencement Date, and it is the intention of the Parties that during the Term, Lessee not incur any AV Taxes or Impositions relating to the Leased Premises, Improvements, renovations and replacements thereof other than such AV Taxes or Impositions as pertain to Lessee's leasehold interest and leasehold improvements. Lessor, at the request and expense of Lessee, agrees to jointly take and pursue such lawful actions with Lessee, including, if necessary, judicial actions, as may be available to Lessor, Lessee, or both, to protect and defend the title of Lessor in and to the Leased Premises or Lessee's leasehold interest in the Lease, against the levy, assessment or collection of AV Taxes or Impositions. In the event that AV Taxes or Impositions are imposed upon the Leased Premises or Lessee's leasehold interest in the Lease or any portion thereof (other than such AV Taxes or Impositions pertaining to Lessee's leasehold improvements), the parties hereto agree to restructure the Lease, and permit Lessee's assignment of its interest in the Lease, if necessary, in order to preserve or establish the tax exempt status of the Leased Premises and the Lessee's leasehold interest therein as long as the tax exempt status of Lessee's economic obligations arising pursuant to the Lease would be the same as they were prior to the change in the tax exempt status.

3.5 Exemption from AV Taxes. If, for any reason, the Leased Premises or interest of Lessor or Lessee in and to any of the Leased Premises should no longer be exempt from AV Taxes by reason of a change of law or otherwise, then Lessee shall, to the extent required by Lessor, pay such AV Taxes before they become delinquent, subject to Lessee's right of contest as provided in Sections 3.2 and 3.4 hereof and the Parties' obligation to restructure the Lease as provided in Section 3.4 hereof.

3.6 Utilities; City Services. Lessee shall pay all bills for utility service provided to the Leased Premises during the Term. City shall (a) cooperate with Lessee to permit Lessee to place wells upon the Leased Premises and to explore, for, develop, produce and withdraw water (groundwater or surface water, as the case may be) from the Leased Premises for Lessee's use, and (b) cooperate with Lessee's efforts to obtain any and all drilling permits, ground water withdrawal permits or other permits necessary or useful for Lessee to carry out its exploration for, development, production and withdraw such water from the Leased Premises. Lessor covenants to make reuse water available to Lessee in accordance with Section 2.9 of the Development Agreement. Lessor will reasonably cooperate with Lessee in providing adequate security and life, fire and safety support for events at the Leased Premises at rates customarily charged by Lessor, as may be amended from time to time, for events similar in nature and/or public attendance.

## **ARTICLE 4**

### **IMPROVEMENTS**

4.1 Improvements, Removals and Replacements. Lessee shall have the right at its option and expense (subject only to the express restrictions set forth in this Lease) to further develop any and all portions of the Leased Premises and to erect Improvements on the Leased Premises for any lawful purpose that advances or complements the use of the Leased Premises for a public golf facility, as long as such development does not materially and adversely interfere with the development or use of the Public Facilities, as provided in Section 5.1 herein. Any fixtures, materials or equipment installed by Lessee in the Leased Premises which are in addition to the Improvements contemplated in the Plans that have not been purchased by Lessor or that are not otherwise the property of Lessor ("Lessee Improvements") may be removed by Lessee at any time (including, without limitation, upon the termination of this Lease), if such removal can be done without material damage to the remainder of the Improvements and Lessee agrees to repair any damage caused by such removal. Any Improvements purchased by Lessor or that are otherwise the property of Lessor may not be removed without the consent of Lessor, unless they are replaced with reasonably comparable Improvements. Any proceeds realized from the sale or disposal of such Lessee Improvements shall belong to Lessee. Lessor shall not construct any Improvements on the Leased Premises during the Term without Lessee's prior written consent.

4.2 Capital Expenditures. Subject to the provisions herein relating to casualty and condemnation, in addition to the Base Rent, and not in lieu thereof, Lessee shall be responsible for all costs associated with the maintenance and operation of the Public Facilities, including all capital maintenance, Improvements, renovations, and replacements (collectively, the "Capital Expenditures") deemed necessary to keep the Public Facilities at the Operating Standard. A reserve account for Capital Expenditures (the "CapEx Reserve") will be established in a bank designated by Lessee and approved by Lessor, which approval shall not be unreasonably withheld, conditioned or delayed. Lessee shall fund the CapEx Reserve each Lease Year with the amounts as follows: (i) on the first (1<sup>st</sup>) day of the second (2<sup>nd</sup>) Lease Year, an amount equal to one percent (1%) of Lessee's operating expenses with respect to the Public Facilities for the first (1<sup>st</sup>) Lease Year (annualized); (ii) on the first (1<sup>st</sup>) day of the third (3<sup>rd</sup>) Lease Year, an amount equal to two percent (2%) of Lessee's operating expenses with respect to the Public Facilities for the second (2<sup>nd</sup>) Lease Year; (iii) on the first (1<sup>st</sup>) day of the fourth (4<sup>th</sup>) Lease Year, an amount equal to three percent (3%) of Lessee's operating expenses with respect to the Public Facilities for the third (3<sup>rd</sup>) Lease Year; (iv) on the first (1<sup>st</sup>) day of the fifth (5<sup>th</sup>) Lease Year, an amount equal to four percent (4%) of Lessee's operating expenses with respect to the Public Facilities for the fourth (4<sup>th</sup>) Lease Year; and (v) on the first (1<sup>st</sup>) day of the sixth (6<sup>th</sup>) Lease Year and on the first (1<sup>st</sup>) day of each Lease Year thereafter during the Term, an amount equal to five percent (5%) of Lessee's operating expenses with respect to the Public Facilities for the immediately preceding Lease Year.

4.3 Zoning and Permits. In the event Lessee deems it necessary or appropriate to obtain zoning, site plan approval or any permit from Lessor or any other governmental entity having jurisdiction over the Leased Premises or any part thereof, Lessor, from time to time on request of Lessee and to the extent necessary as fee owner of the Leased Premises, shall execute such documents or join in such petitions, applications and authorizations, as deemed reasonable or necessary by Lessee and Lessor.

4.4 Personal Property. All personal property installed or situated from time to time in the Leased Premises and paid for by Lessee shall remain the property of Lessee (or any Sublessee installing same) except for such items of equipment or other personal property as Lessor may purchase and own as part of the Leased Premises or such items of personal property acquired for the normal operation of the Leased Premises for operation of the golf facility or which have been purchased by Lessee in substitution or replacement of personal property items in the ownership of Lessor.

4.5 Intellectual Property Rights. Pursuant to the Development Agreement, license rights with respect to the Public Facilities shall be set out in a license agreement (or other appropriate agreement) approved by the PGA which shall provide a license for the Public Facilities and activities therein to utilize the PGA's relevant intellectual property rights, whether now in existence or created in the future, including, without limitation, the relevant copyrights, trademarks, broadcast, trade dress and merchandising rights, the relevant names, logos and likenesses, as well as the rights to protect, enforce and license for any or all of the foregoing (collectively, the "PGA Marks").

## **ARTICLE 5**

### **USE OF PREMISES**

5.1 Use. Subject to the terms of this Lease, the Public Facilities shall, subject to Force Majeure, be used for the development, construction, maintenance, operation and use of two public golf courses and related public activities, recreation, pleasure, enjoyment, sporting activities, entertainment uses and events, retail, and social activities and events for the benefit of the general public, members of the general public that become Golf Partners, the City and the FISD students. Lessee shall be permitted to take all actions necessary or desirable in order to permit the hosting of tournaments by PGA at the Public Facilities as contemplated pursuant to the Development Agreement and the terms of this Lease. Subject to the terms of this Lease, the Public Facilities shall be open and available to the general public at all times during which the Public Facilities are open and in operation, except during Lessee Events, City Events and FISD Events, and so long as the minimum Resident Use is maintained. Lessee will not be in breach of this Lease as a result of closures of the Facility for repairs or renovations. For the avoidance of doubt, to the extent there is any conflict among Lessee Events, City Events and/or FISD Events, the following shall have priority in all respects: (i) PGA Events listed on Exhibit D to the Development Agreement (including for these purposes any golf tournaments described on such Exhibit D that are held at the Public Facilities after 2040); (ii) subject to Section 5.1(b)(i) and Section 5.1(c)(i) and (ii), all other Lessee Events; (iii) City Events; and (iv) FISD Events.

(a) Lessee's Use. Lessee shall have the right to use the Leased Premises for the design, development, construction, maintenance, operation and use of the Public Facilities for Lessee Events and for any other lawful purposes that, subject to the terms of this Lease, do not materially and adversely interfere with or interrupt the public use or operation of the Public Facilities associated with the aforementioned uses, City Use, Resident Use, and School Use, including operations and activities related to public golf activities, recreation, pleasure, enjoyment, sports activities, entertainment uses and events, dining, social activities and events for benefit of the public, the City and the FISD students. Pursuant to and in accordance with a Management Services Agreement, between Lessee and the PGA (or one of its wholly-owned subsidiaries) and as



approved by the City, PGA will supervise, manage and operate the Public Facilities. As provided in Section 8.2 below, Lessee may sublease the Public Facilities and any portions thereof to third parties, as approved in writing by the City, including the Northern Texas PGA and/or PGA.

(b) Public Use.

(A) Subject to the terms of this Facilities Lease, the Public Facilities shall be open to the general public at all times during which the Public Facilities are not used for City Events, FISD Events or a Lessee Event. In consideration of the City's participation in the design and construction of the Public Facilities, Lessee will manage the Public Facilities so that City Residents have access to 20% of all available rounds of golf at the Public Facilities (the "Resident Use"). Further, Lessee will manage the schedule of the Public Facilities to maximize public use and access such that at least sixty-five percent (65%) of the annual available rounds of golf at the Public Facilities are made available to the general public. City Residents will have preferred rates that are a minimum of (i) fifty percent (50%) for Monday through Thursday and twenty-five percent (25%) for Friday through Sunday when scheduled within 48 hours of the day of play, and (ii) twenty percent (20%) for Monday through Thursday and ten percent (10%) for Friday through Sunday when scheduled more than 48 hours from day of play less than the public rates for each nine (9) holes or eighteen (18) holes of golf purchased on each course (the "Preferred Rate"). Lessee and PGA shall reasonably determine the underlying public rate by taking into account peak days, times and seasons.

(B) Within 120 days after the end of each calendar year during the Term, Lessee will provide to the City a written report verifying compliance with the public use requirements of this Lease.

(c) City Use. In accordance with scheduling to be established and agreed upon by the City and Lessee, the City shall, subject to Force Majeure, have the right to use the Public Facilities, as set forth in subparagraph 5.1(b)(i) below.

(i) The City shall have the right to: (A) preferred use of the Championship Course at no cost to the City for up to five (5) days per Lease Year; (B) preferred use of the Recreational Course (as defined in the Development Agreement) at no cost to the City for up to five (5) days per Lease Year; and (C) preferred use of the public clubhouse on those days on which the City has exclusive use of one of the golf courses ("City Events"). The City, Lessee and PGA will work together to schedule such City Events on mutually agreeable dates and further define the parameters of the City's preferred use for such City Events. In exchange for Lessee providing food and beverage to the City for City Events, Lessee shall be entitled to charge the City its standard rates for such items and services.

(ii) During certain PGA Events designated by PGA, Lessee shall cause PGA to provide to the City, FEDC, FCDC, and FISD up to a total (i.e., in the aggregate) of forty (40) grounds passes in a corporate hospitality area that can accommodate forty (40) people. A minimum of ten (10) of the forty (40) grounds passes will be made available to the FISD. The corporate hospitality area will be a private area within a shared structure

with food and beverage costs being the responsibility of Lessee and/or the City. The City shall designate a representative from the City to coordinate with the PGA on such access, usage, and benefits on behalf of the City, the FEDC, the FCDC, and the Fisd. The obligations set forth in this Section 5.1(b)(ii) are intended to satisfy the PGA's obligations under Section 2.7 of the Development Agreement, and any cost associated with such obligations shall be borne solely by the PGA.

(d) School Use. Subject to scheduling procedures to be agreed upon by Lessee and the Fisd that do not conflict with Lessee Events and/or City Events, the Fisd shall have the right to use the Public Facilities subject to Force Majeure and the conditions set forth below:

(i) For purposes of scheduling Fisd Events (e.g., an Fisd-related golf tournament and golf-related training activities) ("Fisd Events"), the Fisd will work to provide to Lessee and PGA the schedule of the requested Fisd Event dates on or about September 1 of each Lease Year of the Term hereof to develop the succeeding Lease Year event schedule for the Public Facilities. If unanticipated and/or unforeseeable Fisd Events arise, the Fisd may also provide Fisd Events dates requests throughout the year and Lessee will make reasonable efforts to accommodate the Fisd Events dates. The Lessee, with approval by PGA, will grant, whenever reasonably possible, the Fisd scheduling requests for the Public Facilities, subject to the following:

(A) Lessee does not plan to schedule a Lessee Event and the City has not scheduled a City Event on a date requested by the Fisd;

(B) Fisd pays the actual costs (including a *pro rata* allocation of staff, operating, and maintenance expenses) of the Fisd Events, except as provided herein; and

(C) If Lessee schedules an Fisd Event and at least fourteen (14) days prior to such event Lessee is able to host a Lessee Event in the Public Facilities on such date, it may be necessary for Fisd to reschedule or relocate the Fisd Event to an alternate facility; provided however, this right to reschedule or relocate shall not apply to golf tournaments once approved and calendared by Lessee. Notwithstanding the preceding sentence, tournaments other than district championships, regional or state championships may be relocated between the east course and the west course on the Public Facility.

(ii) Access and terms for daily usage (September – May), course tournaments, conference center usage, and CTE opportunities are set forth in the attached Schedule 5.1(c). Lessee shall establish a discounted green fees rate for City residents under 18 years of age (the "Junior Rate") that is applicable certain days of the week and during non-peak times of the day. Fisd high school golf team students shall receive a twenty-five percent (25%) discount to the Junior Rate. Fisd and Lessee shall negotiate a special Fisd green fees rate that will apply to Fisd high school golf team students for play on the golf courses on the designated days at the designated times. Notwithstanding the foregoing, if, at any time, such Fisd high school golf team students fail to comply with the rules established by Lessee for the use of the Public Facilities, Lessee shall have the right to



remove such FISD high school golf team students from the Public Facilities (or cause them to be so removed).

(iii) Restaurant areas in the public clubhouse for use by FISD personnel and students.

(e) City and FISD, after first coordinating with Lessee and the PGA, shall provide police, EMS, ticket takers, and parking attendants, as required, for their respective City Events and FISD Events.

(f) In addition to other uses, the public, the City and FISD shall have the right to use hike and bike trail areas at the Public Facilities so long as such uses do not interfere with Lessee Events and subject to Lessee's rights to restrict access at certain times to such hike and bike trails that are within the golf courses to the extent Lessee reasonably determines safety issues exist.

## 5.2 Operation; Maintenance; Casualty.

(a) Lessee shall fund all amounts necessary in order to permit the operation and maintenance of the Public Facilities per the following standards (the "Operating Standard"):

(i) The Championship Course shall be maintained at a level and to the standard commensurate with other major championship courses identified on Exhibit "B" attached hereto and incorporated herein (the "Comparable Facilities"), ordinary wear and tear, Force Majeure, loss by casualty, or damage caused by City Use or School Use (except to the extent Lessee is required under Section 5.2(c) of this Lease to repair casualty damage) excepted.

(ii) All Public Facilities other than the Championship Course, including, but not limited to, golf courses, practice areas and other outdoor amenities, clubhouses, restaurants and parking areas that from time to time may be erected or constructed on the Leased Premises, shall be maintained in good working order and condition, ordinary wear and tear, Force Majeure, loss by casualty, or damage caused by City Use or School Use (except to the extent Lessee is required under Section 5.2(c) of this Lease to repair casualty damage) excepted (the "Acceptable Golf Course Condition").

(b) Lessee shall enter into the Management Services Agreement with the PGA to manage the Public Facilities during the term of this Lease in a manner and commensurate with the terms contained therein (but subject to the Lessee's right to terminate the PGA as the manager of the Public Facilities in accordance with such Management Services Agreement if the PGA commits a material default under such Management Services Agreement and fails to cure such default within the applicable time periods specified therein). Upon termination of this Lease, if Lessee fails or elects not to exercise the Purchase Option, Lessee shall deliver up the Leased Premises and all permanent Improvements located thereon to Lessor in the condition described in the Operating Standard.

(c) In the event of any damage to or destruction of the Leased Premises or any Improvements thereon from fire or other casualty, subject to the following sentence, Lessee shall repair and restore any damage or destruction of the Premises or any Improvements thereon. If the

casualty occurs after the 30th anniversary of the Base Rent Commencement Date, Lessee may elect, by giving written notice to Lessor within 120 days after the casualty occurs, either (i) to restore the Leased Premises as provided above or (ii) to terminate this Lease in lieu of performing said restoration. If Lessee fails or elects not to provide such notice within such 120-day period, Lessee shall be deemed to have elected option (i) above (i.e., to restore the Leased Premises). In the event Lessee elects to terminate this Lease in accordance with this provision, this Lease shall terminate as of the date specified in such notice. Any insurance proceeds payable as a result of such damage or destruction shall be the property of Lessor.

### 5.3 Operational Rights; Revenue.

(a) Other than as set forth in this Section 5.3, Lessee shall receive the revenues generated from and associated with the Leased Premises, including the Public Facilities for the Term of the Lease. Such revenues shall include (without limitation) all sponsorship revenues, advertising revenues and all other revenues associated with the Public Facilities or any components thereof. Notwithstanding the above, Lessee shall pay to Lessor two percent (2%) of the revenue actually received by Lessee that is properly allocable to naming rights for the Public Facility, naming rights for permanent structural components of the Public Facility with such payments to be made to Lessor as such revenue is received by Lessee.

(b) Subject to the terms and provisions of this Lease, Lessee shall have full and exclusive control of the management and operation of the Public Facilities. Without limiting the generality of the foregoing during the Term of this Lease: (i) Lessee shall have the sole right to grant and enter into licenses, rights, subleases (subject to Section 8.2), management agreements, operating agreements and any and all other agreements of any nature relating to the Leased Premises or the name thereof on such terms as Lessee deems appropriate and (ii) Lessee shall own all revenues of any source generated by or from the Leased Premises or the operation or management or the name thereof subject to the provisions of Section 5.3(a) regarding naming rights.

(c) Lessor and Lessee agree that the name of the Public Facilities shall be determined in a manner consistent with Section 2.6 of the Development Agreement, and Lessee shall have the authority to select the sponsor or sponsors for which permanent structural components of the Public Facilities (or portions thereof) will be named from time to time, or for which signage and advertising will be sold within or without the Public Facilities, including, without limitation, the right to retain all advertising proceeds therefrom during the Term of this Lease. Notwithstanding the foregoing, the name of the Public Facilities shall not have a name containing, depicting or related to any alcohol, tobacco or related products.

(d) Subject to the terms and provisions of this Lease, Lessee shall have full and exclusive control of any and all advertising signage displayed in, on, upon or around the Leased Premises. Notwithstanding the foregoing or any other provisions contained in this Lease, Lessee must comply with all ordinances of the City regulating signs, including Ordinance No. 16-03-25.

(e) Subject to the terms of the Management Services Agreement, Lessee shall retain all rights relating in any way to the broadcasting of any Lessee Event via any media, and to all

revenue derived from the sale of broadcast rights, broadcast advertising, or other sources of revenue relating to broadcasting of any Lessee Event during the Term of this Lease.

## **ARTICLE 6** **PROMOTION**

Lessee agrees that it shall use reasonable commercial efforts to promote the Public Facilities, and any media in which it publishes referencing the Public Facilities shall use reasonable commercial efforts to make reference to the name "Frisco" or the "City of Frisco".

## **ARTICLE 7** **INSURANCE AND INDEMNITY**

7.1 Liability Insurance. Lessee agrees, at its sole expense, to obtain and maintain commercial general liability insurance at all times during the Term hereof with reputable insurance companies authorized to transact business in the State of Texas for bodily injury (including death) and property damage with minimum limits of \$1,000,000 Combined Single Limit occurrence/\$2,000,000 aggregate protecting Lessor and Lessee against any liability, damage, claim or demand arising out of or connected with the condition or use of the Leased Premises. Such insurance shall include contractual liability, personal injury and advertising liability, business automobile (including owned, non-owned and hired), independent contractor liability, pollution and sexual molestation. Such insurance shall be written on an "occurrence" basis. It may be maintained by any combination of single policies and/or umbrella or blanket policies and may be obtained and maintained by a Sublessee with respect to that portion of the Leased Premises subleased to such Sublessee. Lessor, and its elected officials, and FISD, and its elected officials, shall be named as an additional insured on all insurance policies required by this Section 7.1. Lessee, its officers, directors, employees, partners and agents shall be named as an additional insured on all public liability policies obtained in amounts and on terms acceptable to Lessee and which shall be required to be by obtained by Lessor and FISD which cover any events at the Public Facilities and such coverage shall be the primary coverage during City Use and School Use.

7.2 Workers' Compensation Insurance. Lessee agrees, at its sole expense, to obtain and maintain workers' compensation insurance, as required by applicable law, during the Term. The policy will be endorsed to provide a waiver of subrogation as to Lessor. As an alternative, coverage may be provided through a responsible non-subscriber program as allowed by the State of Texas.

7.3 Property Insurance. At all times during the Term of this Lease, Lessee shall at its sole expense, keep all Improvements included in the Leased Premises insured against "all risk" of loss for full replacement cost coverage with a deductible not to exceed \$1,000,000.00, which shall include direct loss by fire, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, boiler and machinery, and flood. Coverage must be written by reputable insurance companies authorized to transact business in the State of Texas. Lessor shall be named as an additional insured or additional loss payee, as appropriate.

7.4 Policies. All insurance policies required by this Article 7 shall provide for at least fifteen (15) days' written notice to Lessor and FISD, as applicable, before cancellation and certificates or

copies of policies of insurance shall be delivered to Lessor and FISD, as applicable. If any blanket general insurance policy of Lessee complies with the terms of this Article 7, the naming of Lessor and FISD, as applicable, therein as an additional insured shall be deemed compliance with the requirements for the insurance coverage provided in any such blanket policy. Lessor, FISD, as applicable, and Lessee hereby waive all claims, rights of recovery and causes of action that either Party or any party claiming by, through or under such Party by subrogation or otherwise may now or hereafter have against the other Party or any of the other Party's present and future subsidiaries, Affiliates, officers, directors, employees, direct or indirect stockholders, partners, and/or members, agents, other representatives, successors and assigns for bodily injury (including death) to persons, or loss or damage to property of Lessor, FISD and Lessee whether caused by the negligence or fault of Lessor, FISD and Lessee or their partners, members, directors, officers, employees, agents or representatives or otherwise, to the extent that the injuries, losses or damages are covered by the proceeds of insurance policies maintained by either Party.

7.5 Adjustment of Losses. At any time during the Term of this Lease, Lessee may name any Leasehold Mortgagee as a mortgagee or an additional insured, as appropriate, under any of the insurance policies required under Section 7.3 hereof, as its interest may appear, provided that such Leasehold Mortgagee shall agree to permit the insurance proceeds to which it is entitled to be used to rebuild, repair or restore the Public Facilities if the Lessee is required under this Lease to repair such casualty damage. Any loss under any such insurance policy required under Section 7.3 hereof shall be made payable to Lessee for the benefit of Lessee and Lessor, to the end that Lessee shall be entitled to collect all money due under such insurance policies payable in the event of and by reason of the loss of or damage to the Leased Premises, to be applied pursuant to Section 7.6 below. Any accumulation of interest on the insurance proceeds collected by Lessee shall be added to, and become a part of, the fund being held by Lessee for the benefit of Lessor and Lessee. The adjustment of losses with the insurer shall be made by Lessee at Lessee's discretion.

7.6 Application of Proceeds of Property Insurance. All proceeds payable pursuant to the provision of any policies of property insurance required to be carried under the terms of this Lease (net of reasonable expenses of collection) shall be applied unless otherwise provided above, for the following purposes:

(a) All such net proceeds shall first be used, subject to any other terms and conditions contained in this Lease, as a fund for the rebuilding, restoration and repair of the portion of the Leased Premises which have become destroyed or damaged for which such proceeds are payable; and

(b) Following completion of all work under subsection (a) above, any proceeds not disbursed pursuant to subsection (a) above shall be applied as directed by Lessee.

7.7 Environmental Investigation and Remediation.

(a) Lessee represents and warrants that it has reviewed all of the Phase I Environmental Site Assessments of the Land (collectively, the "Phase I") and notified the City of any material findings, and that the results of Lessee's review did not identify any condition relating to the environment that could reasonably be expected to materially and adversely impact Lessee's ability



to conduct its operations at the Leased Premises. Lessor makes no representation or warranty concerning the condition of the Leased Premises.

(b) Lessee shall be responsible for performing any environmental investigation and remediation work which may be required in connection with the use and occupancy of the Leased Premises by Lessee and which is caused by the presence of Hazardous Materials on the Leased Premises, except and to the extent the presence thereof results solely from the act of Lessor or its officers, employees, agents or representatives or Lessor's predecessors in title to the Land in which event the Lessor shall be responsible at its sole expense for performing any environmental investigation and remediation work which may be required in connection with the use and occupancy of the Leased Premises and which is caused by the presence of Hazardous Materials on the Leased Premises. Such environmental investigation and remediation work shall be conducted in accordance with all applicable laws. Lessee shall notify and advise Lessor of the remediation Lessee will undertake and the procedures to be used. Lessee shall complete the remediation with due diligence and shall use commercially reasonable efforts to comply with, and shall cause its agents and contractors to comply with, all applicable laws regarding the use, removal, storage, transportation, disposal and remediation of Hazardous Materials. Lessee's obligation as provided herein to undertake environmental investigation and remediation of the Leased Premises shall be a continuing obligation of Lessee which shall survive throughout the Term.

(c) The term "Hazardous Materials" means any substance, material or waste which is now or hereafter classified or considered to be hazardous, toxic or dangerous under any federal, state or local laws, rules and regulations (collectively "Laws") affecting the Leased Premises relating to pollution or the protection of human health, natural resources or the environment, but shall exclude any such items that are necessary for the ordinary performance of Lessee's activities, provided that such are used, stored and disposed of in compliance with all Laws. If Lessee breaches its obligations under this Section 7.7 and such breach is not cured following notice and within the applicable cure period specified in Article 10 below, Lessor may take any and all action reasonably appropriate to remedy such breach and Lessee shall promptly pay all reasonable out-of-pocket costs incurred by Lessor in connection therewith.

(d) The provisions of this Section 7.7 shall survive the termination of this Lease and are solely for the benefit of Lessor, FISC, Lessee, and Lessee's Leasehold Mortgagee (if any) and shall not be deemed for the benefit of any other person or entity.

## **ARTICLE 8**

### **ASSIGNMENT AND SUBLETTING**

#### **8.1 Assignment.**

(a) Lessee shall not sell or assign its interest in the leasehold estate created hereby without the consent of Lessor; which consent may not be unreasonably withheld, conditioned or delayed; provided, however, the parties agree that it would be unreasonable, absent special circumstances, for Lessor to withhold consent to a sale or assignment of Lessee's interest that occurs in connection with a sale or assignment of the Hotel Facility (as defined in the Development Agreement), provided that such assignee is an Approved Transferee (hereinafter defined). Notwithstanding the foregoing, Lessor's consent shall not be required for any of the following



transactions (“Permitted Transfers”): (a) a sale or assignment of Lessee’s interest to any Affiliate, subsidiary or member of Lessee, so long as such Affiliate, subsidiary or member continues to be wholly-owned, directly or indirectly, by Lessee or by Omni Hotels Corporation or TRT Holdings, Inc.; (b) a sale or assignment of Lessee’s interest to the PGA or any Affiliate thereof; or (c) an assignment of Lessee’s interest as described in Section 3.4 hereof. Upon any such assignment, the assignee shall execute and deliver to Lessor a written assumption, in form and substance reasonably satisfactory to Lessor, of all of the obligations of Lessee pertaining to the Leased Premises and accruing under this Lease after such assignment. Lessee shall thereafter be released of all liabilities or obligations thereafter accruing under this Lease. For purposes of this Section 8.1, an “Approved Transferee” means any real estate investment trust, insurance company, pension plan, pension advisory firm, pension fund, trust company, commercial credit corporation, educational endowment, charitable foundation, mutual fund, sovereign wealth fund, private equity fund or other institutional investor, or any third party controlled by any of the foregoing, having at least ten (10) years’ experience operating golf resorts substantially in accordance with the Operating Standard (or if lacking such experience, having a manager with such experience) and financially capable of meeting the obligations of Lessee under this Lease, and approved by Lessor, such approval not to be unreasonably withheld, conditioned or delayed.

(b) Lessor hereby agrees and acknowledges that neither this Section 8.1 nor any other provision in this Lease prohibits Lessee from effecting, without the need for Lessor’s consent, a sale or transfer of equity interests in Lessee or any Affiliate of Lessee (including, without limitation, TRT Holdings, Inc. and Omni Hotels Corporation).

## 8.2 Subletting.

(a) Lessee shall have the right, at any time, to sublease the Leased Premises or the right to operate the Public Facilities to (i) any Affiliate of Lessee, or (ii) the PGA or any Affiliate thereof; provided, however, that no such subletting or assignment shall relieve Lessee of any of its obligations hereunder unless otherwise agreed in writing by Lessor, and all subleases shall be subject to the terms and provisions of this Lease.

(b) Lessee shall have the right at any time, to sublease or otherwise assign the rights of use to goods, services, concessions, retail areas, restaurants and other portions of the Leased Premises incident to the full use and operation thereof as and on such terms as Lessee may desire, including, but not limited to scoreboards, facilities, signs, monitors, and/or screens located within or near, or associated with, the Public Facilities.

(c) No Sublessee shall have any right to sublease or otherwise assign or encumber its interest in the Leased Premises.

8.3 General Provisions. Lessee shall, in connection with any assignment or sublease, provide notice to Lessor of the name and address of any assignee or Sublessee, together with a complete copy of the assignment agreement or sublease.

8.4 Non-Disturbance Agreement. Upon the written request of Lessee, Lessor will enter into a Non-disturbance Agreement (herein so called) with PGA and any Leasehold Mortgagee (herein so called). Such Non-Disturbance Agreement shall include such reasonable provisions as requested

by PGA, or any such Leasehold Mortgagee, subject to the reasonable approval of Lessor, but in any event shall (a) reaffirm Lessor's ownership of the Leased Premises; (b) confirm (if true) that this Lease is in full force and effect without default by Lessee (or, if a default exists, specifying the default and the remedy required by the Lessor); (c) in the case of PGA, provide, in substance, that, so long as PGA complies in all material respects with the terms of the Management Services Agreement, Lessor, in the exercise of any of its rights or remedies under this Lease, will not deprive PGA of its possession, rights and benefits under the Management Services Agreement, or join PGA as a party in any action or proceeding to enforce or terminate this Lease or obtain possession of the Public Facilities which would entitle Lessor to dispossess PGA thereunder or otherwise terminate the PGA's rights thereunder.

## **ARTICLE 9**

### **LEASEHOLD MORTGAGES**

9.1 Leasehold Mortgages Permitted. From time to time, Lessee shall have the right to grant a Leasehold Mortgage on all or a portion of the Leased Premises (the "Mortgaged Premises"); provided, however, the amount of indebtedness that may be secured by such Leasehold Mortgage shall not exceed sixty percent (60%) of Lessee's investment in the Leased Premises pursuant to the Development Agreement. In the event that Lessee grants a Leasehold Mortgage, upon Lessee's written request to Lessor, Lessor will execute and deliver an estoppel certificate addressed to the Leasehold Mortgagee setting forth the information described in Section 14.2 of this Lease, confirming the terms of this Article 9, and providing Lessor's agreement to recognize the Leasehold Mortgagee or any purchaser of the Mortgaged Premises at foreclosure in the same manner as an assignee, pursuant to Section 8.1 of this Lease. Lessor agrees to accept any amendments of this Lease which are requested by a Leasehold Mortgagee prior to the execution of its Leasehold Mortgage which are calculated to protect the Leasehold Mortgagee's interest in this Lease under its Leasehold Mortgage and do not materially diminish the rights of Lessor under this Lease. Notwithstanding the foregoing, no Leasehold Mortgagee shall acquire, by virtue of the Leasehold Mortgage, any greater right in the Mortgaged Premises and in any building or improvements thereon than Lessee then had under this Lease. In no event shall Lessee have the right to encumber, subordinate or render inferior in any way Lessor's fee simple title in and to the Leased Premises.

9.2 Notices to Leasehold Mortgagees. If at any time after execution and recordation of any Leasehold Mortgage in the Official Public Records of Denton County, Texas in accordance with the provisions of Section 9.1 hereof, the Leasehold Mortgagee shall notify Lessor in writing that the Leasehold Mortgage on the Mortgaged Premises has been given and executed by Lessee, and shall furnish Lessor at the same time with the address to which the Leasehold Mortgagee desires copies of notices to be mailed, or designates some person or corporation as its agent and representative for the purpose of receiving copies of notices, Lessor hereby agrees that it will thereafter deliver in the manner specified in Section 14.5 to the Leasehold Mortgagee and to the agent or representative so designated by the Leasehold Mortgagee, at the address so given, duplicate copies of any and all notices in writing which Lessor may from time to time give or serve upon Lessee under and pursuant to the terms and provisions of this Lease and any and all pleadings in suits filed by Lessor against Lessee. No notice to Lessee shall be effective as to the Leasehold Mortgagee unless duplicate copies thereof are delivered to such Leasehold Mortgagee at the same time the notice is given or served upon Lessee.

9.3 Leasehold Mortgagee's Right to Cure. If Lessor shall ever be entitled to exercise a right hereunder to terminate this Lease after the giving of notice and/or the passage of time, as applicable, Lessor, subject to notification by Leasehold Mortgagee pursuant to Section 9.2 hereof, shall deliver written notice to Leasehold Mortgagee of Lessor's intention to so terminate this Lease and describing the existing defaults, and Leasehold Mortgagee thereafter shall have thirty (30) days to cure the defaults described in such written notice. Notwithstanding the foregoing, but subject to the provisions of Section 10.2 hereof, in the event (a) such default is not capable of cure within such 30-day period, this Lease may not be terminated if Leasehold Mortgagee shall deliver to Lessor, within such 30-day period, written notice of Leasehold Mortgagee's intention to cure the specified defaults and shall commence and diligently pursue the cure of the specified defaults and such defaults are cured within 120 days of the date of such notice, or (b) any Leasehold Mortgagee is not in actual possession of the Mortgaged Premises on the date of the additional notice given the Leasehold Mortgagee under this Section 9.3, and possession is necessary in order to cure any default, then the time within which such Leasehold Mortgagee may commence to cure such default shall be extended for a reasonable time not to exceed 120 days until such Leasehold Mortgagee can obtain actual possession of the Mortgaged Premises. No purported termination of this Lease shall be effective until such written notice shall have been given to Leasehold Mortgagee and such 30-day period, or additional time period as provided above, shall have expired without the described defaults having been cured. Leasehold Mortgagee may, at its option and at any time before the rights of Lessee under this Lease have been terminated, pay any of the Base Rent due hereunder, procure any insurance required hereunder, pay any Imposition required hereunder, make any repairs and improvements required hereunder, or do any other act or thing or make any other payment required of Lessee by the terms of this Lease or which may be necessary and appropriate to comply with the covenants and conditions of this Lease to prevent the termination of this Lease. All payments so made and all things so done and performed by any such Leasehold Mortgagee shall be as effective to prevent a forfeiture of the rights of Lessee hereunder as if performed by Lessee.

9.4 New Lease. Notwithstanding anything to the contrary contained in this Lease or otherwise, in the event of termination of this Lease for any reason prior to the stated expiration date, Lessor shall promptly notify all Leasehold Mortgagees of such termination. If the Leasehold Mortgagee having the highest priority with respect to the Lease cures (subject to Section 9.5 hereof) all defaults giving rise to such termination as provided below, Lessor shall enter into a new lease of the Mortgaged Premises with such Leasehold Mortgagee or its designee for the remainder of the Term of this Lease, such new lease to be effective as of the date of termination of this Lease, at the Base Rent payable hereunder and upon all of the same terms, conditions, covenants, agreements, provisions and limitations contained herein, subject to the following:

(a) the Leasehold Mortgagee entitled to the new lease shall make written request to Lessor for a new lease within sixty (60) days of receipt by the Leasehold Mortgagee of written notice from Lessor of the date of termination of this Lease; and

(b) at the time of the execution and delivery of the new lease the Leasehold Mortgagee or its designee shall pay to Lessor all amounts specified in the notice of termination delivered by Lessor which would have been due hereunder except for such termination and which are currently due except for such termination and shall promptly cure (subject to Section 9.5 hereof) all other defaults giving rise to such termination.

9.5 Certain Cure Requirements. Notwithstanding the provisions of Section 9.4 above, a Leasehold Mortgagee's right to enter into a new lease with Lessor as provided in said Section 9.4 shall not be conditioned upon such Leasehold Mortgagee curing any default of Lessee that occurs after the Base Rent Commencement Date which is not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee.

9.6 Survival. The provisions of Section 9.4 and Section 9.5 shall survive the termination of this Lease and shall continue in full force and effect thereafter to the same extent as if said Section 9.4 and Section 9.5 were a separate and independent contract among Lessor, Lessee and any Leasehold Mortgagee.

9.7 Leasehold Mortgagees' Liability. Unless a new lease shall have been executed pursuant to Section 9.4 hereof, no Leasehold Mortgagee shall be or become personally liable to Lessor as an assignee of this Lease, for the payment or performance of any obligation of Lessee unless and until it expressly assumes by written instrument the payment or performance of such obligation, and no assumption of liability shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by any Leasehold Mortgage, or from a conveyance or assignment pursuant to which any purchaser at foreclosure shall acquire the rights and interest of Lessee under the terms of this Lease; provided, however, any such assignee or purchaser must timely and diligently perform all obligations of Lessee hereunder.

## **ARTICLE 10**

### **DEFAULT OF LESSEE**

10.1 Defaults. Lessee shall be in default if any of the following events ("Events of Default") shall occur: (a) subject to the provisions of Section 10.3 below, the failure on the part of Lessee to pay 100% of the Base Rent when due and the continuation of such failure for thirty (30) days after Lessor has provided to Lessee and to each Leasehold Mortgagee, in accordance with Section 9.2 of this Lease, a written notice of such failure; (b) subject to the provisions of Section 10.3 below, any breach by Lessee of any covenant of Lessee, under this Lease or the Development Agreement (including, but not limited to, the requirements that the Lessee enter into and maintain during the Term of this Lease the Management Services Agreement with PGA (but subject to the Lessee's right to terminate the PGA as the manager of the Public Facilities in accordance with such Management Services Agreement if the PGA commits a material default under such Management Services Agreement and fails to cure such material default within the applicable time periods specified therein), and such breach has not been cured within thirty (30) days from and after the date written notice of such breach is given by Lessor to Lessee; provided, however, no Event of Default shall exist if Lessee shall have commenced to remove or to cure such breach and shall be proceeding with reasonable diligence to completely remove or cure such breach (provided such breach must be cured within 180 days after such notice); (c) the failure on the part of Lessee to pay the OSW Installment Debt Service Obligation provided in Section 6.1(c) of the Development Agreement when due and the continuation of such failure for thirty (30) days after Lessor has provided to Lessee and to each Leasehold Mortgagee, in accordance with Section 9.2 of this Lease, a written notice of such failure (but for these purposes, a failure to pay shall not be considered to have occurred if there is a good faith dispute between Lessor and Lessee as to whether such a payment is due until such dispute has been resolved in favor of the Lessor); (d) the making by



Lessee of any general assignment for the benefit of creditors not required by law; (e) the filing by Lessee of a voluntary petition in bankruptcy or a voluntary petition for an arrangement or reorganization under the United States Federal Bankruptcy Act (or similar statute or law of any foreign jurisdiction); (f) the appointment of a receiver or trustee for all or substantially all of Lessee's interest in the Leased Premises or its leasehold estate hereunder if not removed within 120 days; (g) the entry of a final judgment, order or decree of a court of competent jurisdiction adjudicating Lessee to be bankrupt, and the expiration without appeal of the period, if any, allowed by applicable law in which to appeal therefrom, and (h) failure on the part of either the Lessee or the Completion Guarantor to complete the construction of the Public Facilities in accordance with the terms of the Development Agreement, or the Completion Guaranty, as the case may be, and such breach has not been cured within thirty (30) days from and after the date written notice of such breach is given by Lessor to Lessee; provided, however, no Event of Default shall exist if Lessee shall have commenced to remove or to cure such breach and shall be proceeding with reasonable diligence to completely remove or cure such breach (provided such breach must be cured within 180 days after such notice). Notwithstanding anything to the contrary set forth herein, so long as Lessee or Completion Guarantor is disputing in good faith whether it has completed construction of the Public Facilities in accordance with the terms of the Development Agreement and/or the Completion Guaranty, as the case may be, Lessor may not terminate this Lease until Lessor has received a final, non-appealable judgment against Lessee and/or Completion Guarantor confirming Lessor's claim that the Public Facilities are not complete and Lessee or Completion Guarantor fails to complete the same within sixty (60) days after such judgment.

10.2 Remedies. Upon the occurrence and during the continuance of an Event of Default under Section 10.1 (a) or (b) above, Lessor's remedies shall be limited to the following, subject to the provisions of Article 9 of this Lease: (i) specific performance, or (ii) actual, but not consequential, monetary damages resulting from such breach and Lessor shall not have the right to terminate this Lease as a result of such Events of Default.. However, upon the occurrence and during the continuance of an Event of Default under Sections 10.1(c)(d)(e)(f)(g), or (h) Lessor shall have the right to terminate this Lease. All remedies of Lessor under this Lease shall be cumulative, and the failure to assert any remedy or the granting of any waiver (as provided in Section 14.16 hereof) of any event of default shall not be deemed to be a waiver of such remedy or any subsequent event of default. In an Event of Default, the City may, but shall not be obligated to, take over operations and/or continue operations, including the continuation of any and all contracts with the PGA, to continue operations, management services and license agreements.

10.3 Rights of Leasehold Mortgagees. Notwithstanding any other provision of this Article 10, all rights and remedies of Lessor under Section 10.1 and Section 10.2 above are subject to the provisions of Article 9 of this Lease.

## **ARTICLE 11**

### **DEFAULT OF LESSOR**

11.1 Defaults and Remedies. In the event of any breach by Lessor of any covenant of Lessor under this Lease, Lessee shall have the right to deliver to Lessor a written notice specifying such breach or non-payment, and unless within thirty (30) days from and after the date of delivery of such notice, Lessor shall have commenced to remove or to cure such breach or occurrence and shall proceed with reasonable diligence to completely remove or cure such breach or occurrence



(provided such breach or occurrence must be cured within 180 days after such notice), then Lessee shall have all remedies available to it at law or in equity; including, without limitation, termination, injunction and specific performance. All remedies of Lessee under this Lease shall be cumulative, and the failure to assert any remedy or the granting of any waiver of any event of default shall not be deemed to be a waiver of any subsequent event of default.

## **ARTICLE 12**

### **CONDEMNATION**

12.1 Definitions. Whenever used in this Article 12, the following words shall have the definitions and meanings hereinafter set forth:

(a) “Condemnation Proceeding”. Any action brought for the purpose of any taking of the Leased Premises, or any part thereof or of any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Leased Premises), by competent authority as a result of the exercise of the power of eminent domain, including a voluntary sale to such authority either under threat of condemnation or while such action or proceeding is pending.

(b) “Taking” or “Taken”. The event and date of vesting of title to the Leased Premises or any part thereof or any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Leased Premises), pursuant to a Condemnation Proceeding.

12.2 Efforts to Prevent Taking. Lessor shall use its best efforts to refrain from and cause all other competent authorities with the power of eminent domain to refrain from instituting any Condemnation Proceedings or exercising any other powers of eminent domain with respect to the Leased Premises, or any part thereof or any interest therein, during the Term of this Lease.

12.3 Entire Taking. If all or substantially all of the Leased Premises shall be Taken in Condemnation Proceedings, Base Rent shall be fully abated from and after the date of such Taking and from and after such date Lessee and Lessor shall not have any other obligations under this Lease with respect to the Leased Premises, except for those obligations which expressly survive the termination hereof.

12.4 Partial Taking.

(a) If less than all of the Leased Premises shall be Taken in any Condemnation Proceeding, a fair and equitable portion of the Base Rent attributable to the portion of the Leased Premises Taken shall be abated from and after the date of such partial Taking, and from and after such date Lessee and Lessor shall not have any other obligations under this Lease with respect to the portion of the Leased Premises that has been Taken, except for those obligations which expressly survive the termination hereof.

(b) If subsequent to such Taking, Lessee determines in its sole and absolute discretion that the remaining Leased Premises are not sufficient to operate the Public Facilities for its intended purposes, then Lessee, at its election, may vacate the Leased Premises, whereupon the Base Rent shall be fully abated from and after the date of such partial Taking, and from and after

such date Lessee and Lessor shall not have any other obligations under this Lease with respect to the Leased Premises, except for those obligations under this Article 12 which expressly survive the termination hereof. Such election to vacate must be exercised no later than ninety (90) days after the date of such Taking.

(c) If Lessee does not elect to vacate the Leased Premises upon any partial Taking, then (i) the Leased Premises shall be reduced by the portion thereof taken, in the Condemnation Proceedings, and the Base Rent payable hereunder shall be equitably reduced during the unexpired portion of the Term as provided above, and (ii) Lessee shall commence and proceed with reasonable diligence to repair or reconstruct the remaining Improvements on the Leased Premises, if any; provided, however, Lessee's obligation to so repair or reconstruct the remaining Improvements shall be limited to the proceeds of the condemnation award actually received by Lessee.

12.5 Temporary Taking. If any right of temporary (hereinafter defined) possession or occupancy of all or any portion of the Leased Premises shall be taken, the Base Rent shall be reduced during the duration of such Taking in a fair and equitable manner that reflects the inability of Lessee to use the affected portion of the Leased Premises. A Taking shall be considered "temporary" only if the period of time during which Lessee is deprived of usage of all or part of the Leased Premises as the result of such Taking does not materially interfere in Lessee's sole and absolute discretion with the ability of Lessee to use and operate the Public Facilities for their intended purposes. Any other "Taking" that is not "temporary" as described above shall be treated as an entire Taking under Section 12.3 above or as a partial Taking under Section 12.4 above.

12.6 Condemnation Award.

(a) No Taking shall have the effect of terminating this Lease except as expressly provided in this Article 12. None of the provisions of this Article 12 shall affect the right, title or interest of Lessee in the leasehold interest created by this Lease. This Article 12 pertains only to Lessee's and Lessor's continuing obligations under this Lease following a Taking and to the agreement between Lessor and Lessee regarding any condemnation awards.

(b) Any condemnation award (other than awards for the value of Lessee's leasehold interest or for the disruption of Lessee's business, all of which shall be the sole property of Lessee) shall be divided between Lessor and Lessee in accordance with the relative amounts expended by each Party for capital costs pertaining to the Leased Premises. Lessor shall deliver to Lessee that portion of any condemnation award that Lessor may receive to which Lessee is entitled as provided in this Section 12.6(b). The provisions of this Section 12.6(b) shall survive any termination of the Lease.

12.7 Settlement of Proceeding. Lessor shall not make any settlement with the condemning authority in any Condemnation Proceedings nor convey or agree to convey the whole or any portion of the Leased Premises to such authority in lieu of condemnation without first obtaining the written consent of Lessee and all Leasehold Mortgagees.

**ARTICLE 13**  
**REPRESENTATIONS, WARRANTIES AND SPECIAL COVENANTS**

13.1 Lessor's Representations, Warranties and Special Covenants. Lessor hereby represents, warrants and covenants as follows:

(a) Existence. Lessor is a home rule municipal corporation of the State of Texas duly incorporated and currently existing pursuant to the constitution and laws of the State of Texas, including the Texas Local Government Code and Texas Government Code.

(b) Authority. Lessor has all requisite power and authority to own the Leased Premises, to execute, deliver and perform its obligations under this Lease, and to consummate the transactions herein contemplated, and by proper action in accordance with all applicable law, has duly authorized the execution and delivery of this Lease, the performance of its obligations under this Lease and the consummation of the transactions herein contemplated.

(c) Binding Obligation. This Lease is a valid and binding obligation of Lessor and is enforceable against Lessor in accordance with its terms.

(d) No Default. The execution by Lessor of this Lease and the consummation by Lessor of the transactions contemplated hereby: (i) do not as of the date on which this Lease is executed, result in a breach of any of the terms or provisions of, or constitute a default, or a condition which upon notice or lapse of time or both would ripen into a default, under the Lessor's charter or under any resolution, indenture, agreement, instrument or obligation to which Lessor is a party or by which the Leased Premises or any portion thereof is bound; and (ii) do not to the knowledge of Lessor constitute a violation of any law, order, rule or regulation applicable to Lessor or any portion of the Leased Premises of any court or of any federal, state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Lessor or any portion of the Leased Premises.

(e) Consents. No permission, approval or consent by third parties or any other governmental authorities is required in order for Lessor to enter into this Lease, make the agreements herein contained or perform the obligations of Lessor hereunder other than those which have been obtained.

(f) Quiet Enjoyment. During the Term of this Lease and subject to the terms of this Lease, Lessor covenants that Lessee shall have the quiet enjoyment and peaceable possession of the Leased Premises against hindrance or disturbance by Lessor or any person or entity acting by, through or under Lessor.

(g) Proceedings. There are no actions, suits or proceedings pending or, to the reasonable best knowledge of Lessor, threatened or asserted against Lessor affecting Lessor or any portion of the Leased Premises, at law or at equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

(h) Impositions. Lessor has not received any notice of any condemnation actions, special assignments or increases in the assessed valuation of taxes or any Impositions of any nature

which are pending or being contemplated with respect to the Leased Premises or any portion thereof.

(i) Compliance with Laws. Lessor has not received any notice of any violation of any ordinance, regulation, law or statute of any governmental agency pertaining to the Leased Premises or any portion thereof.

(j) Encumbrances. Lessor has good and marketable fee simple title, subject to no liens or security interests, and Lessor has not placed or granted any liens or security interests against the Leased Premises. There are no actions pending, to the knowledge of Lessor, which would result in the creation of any lien on any portion of the Leased Premises, including, without limitation, water, sewage, street paving, electrical or power improvements which give rise to any lien, completed or in progress. Lessor shall not grant any liens or security interest on all or any portion of the Leased Premises other than encumbrances which will not affect Lessee's use or enjoyment of the property.

(k) Limitations. Except as otherwise expressly provided herein, this Lease is made by Lessor without representation or warranty of any kind, either express or implied, as to the condition of the Leased Premises, its merchantability, its condition or its fitness for Lessee's intended use or for any particular purpose.

### 13.2 Lessee's Representations, Warranties and Special Covenants.

(a) Existence. Lessee is duly organized and validly existing under the laws of the state of its organization and is authorized to do business in the State of Texas.

(b) Authority. Lessee has all requisite power and authority to own its property, operate its business, enter into this Lease and consummate the transactions herein contemplated, and by proper action has duly authorized the execution and delivery of this Lease and the consummation of the transactions herein contemplated.

(c) Binding Obligation. This Lease is a valid and binding obligation of Lessee and is enforceable against Lessee in accordance with its terms, subject to (a) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, rearrangement, moratorium, receivership, liquidation and similar laws affecting creditor's rights or (b) general principles of equity.

(d) No Default. The execution by Lessee of this Lease and the consummation by Lessee of the transactions contemplated hereby do not, as of the date on which the Lease is executed, result in a breach of any of the terms or provisions of, or constitute a default or condition which upon notice or the lapse of time or both would ripen into default under, the organizational documents of Lessee or under any indenture, agreement, instrument or obligation to which Lessee is a party or is bound.

(e) Consents. No permission, approval or consent by third parties or any other governmental authorities is required in order for Lessee to enter into this Lease, make the agreements herein contained or perform the obligations of Lessee hereunder other than those which have been obtained.



(f) “As-Is”. Except as provided in Section 7.7 and Section 13.1 herein above, and as otherwise provided in the Development Agreement, Lessee accepts the leasehold interest in the Leased Premises granted by this Lease on an “as-is” basis with all faults.

## **ARTICLE 14**

### **MISCELLANEOUS**

14.1 Inspection. Lessee shall permit Lessor and its agents, upon no less than twenty-four (24) hours' prior written notice and being accompanied by Lessee or its agent, to enter into and upon the Leased Premises during normal business hours for the purpose of inspecting the same on the condition that Lessee's and Lessee's tenants' and invitees' quiet enjoyment of the same is not interfered with.

14.2 Estoppel Certificates. Lessee and Lessor shall, at any time and from time to time upon not less than ten (10) days' prior written request by the other Party or PGA, execute, acknowledge and deliver to Lessor or Lessee, as the case may be, a statement in writing certifying (a) its ownership of the interest of Lessor or Lessee hereunder, as the case may be, (b) that this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (c) the dates to which the Base Rent and any other charges have been paid, and (d) that, to the best knowledge of Lessor or Lessee, as the case may be, no default hereunder on the part of the other Party exists (except that if any such default does exist, the certifying Party shall specify such default.) Upon request by Lessee, Lessor's estoppel certificate also shall be addressed to PGA and any Leasehold Mortgagee, if any.

14.3 Release. If requested by Lessor, upon termination of this Lease, Lessee shall execute and deliver to Lessor, an appropriate release in a proper form for recording, which sets forth all of Lessee's interest in the Leased Premises, and upon request of Lessee, Lessor will execute and deliver a written cancellation and termination of this Lease and a release of all claims (if none are then outstanding) in a proper form for recording to the extent such release is appropriate under the provisions hereof. If requested by Lessee, upon termination of this Lease, Lessor shall execute and deliver a written cancellation and termination of this Lease and a release of all claims (if none are then outstanding) in a proper form reasonably acceptable to Lessee for recording to the extent such release is appropriate under the provisions hereof.

14.4 Lessor's Right to Perform Lessee's Covenants. If Lessee shall fail in the performance of any of its covenants, obligations or agreements contained in this Lease, other than the obligation to pay Base Rent, and such failure shall continue without Lessee curing or commencing to cure such failure within all applicable grace and/or notice and cure periods, Lessor after ten (10) business days additional written notice to Lessee specifying such failure (or shorter notice if any emergency meaning that there is imminent danger to the safety of persons or of substantial damage to property exists) may (but without any obligation to do so) perform the same for the account and at the expense of Lessee, and the reasonably out-of-pocket amount of any payment made or other reasonable expenses (including reasonable attorneys' fees incurred by Lessor for curing such default), with interest thereon at the rate of twelve percent (12%) per annum or the highest rate then allowed by law whichever is less from the date of Lessee's receipt of written demand until paid, shall be payable by Lessee to Lessor on demand, or, if not so paid, shall be treated at Lessor's option as a monetary default hereunder pursuant to and subject to all of the provisions of Section



10.1 hereof. If Lessor shall fail in the performance of any of its covenants, obligations or agreements contained in this Lease, and such failure shall continue without Lessor curing or commencing to cure such failure within all applicable grace and/or notice and cure periods, Lessee after ten (10) days additional written notice to Lessor specifying such failure (or shorter notice if any emergency meaning that there is imminent danger to the safety of persons or of substantial damage to property exists) may (but without any obligation to do so) perform the same for the account and at the expense of Lessor, and the reasonable amount of any payment made or other reasonable expenses (including reasonable attorneys' fees incurred by Lessee for curing such default), with interest thereon at the rate of the lesser of twelve percent (12%) per annum or the highest rate then allowed by law, shall be payable by Lessor to Lessee on demand, or, if not so paid, shall be treated at Lessee's option as a default hereunder pursuant to and subject to all of the provisions of Section 11.1 hereof to the extent allowed by law.

14.5 Notices. All notices, demands, payments and other communications required to be given or made hereunder shall be in writing and shall be duly given if delivered by reputable independent courier service providing proof of delivery or reputable overnight courier or if mailed by certified or registered mail, first class postage prepaid, and shall be effectively received upon the date of such delivery or two (2) days after such mailing, to the respective parties hereto at the addresses set forth below, or to such other address furnished in writing to the other Party hereto.

If to Lessee: Omni Stillwater Woods Golf Resort, LLC  
c/o TRT Holdings, Inc.  
4001 Maple Ave., Suite 600  
Dallas, Texas 75219  
Attn: Michael G. Smith

With a copy to: The Professional Golfers' Association of America  
PGA Golf Properties, Inc.  
PGA Golf Enterprises, Inc.  
100 Avenue of the Champions  
Palm Beach Gardens, Florida 33418  
Attn: Henry Smokler

With a copy to: Stillwater Capital  
4145 Travis Street, Suite 300  
Dallas, Texas 75204  
Attn: Robert Elliot

With a copy to: Haynes and Boone, LLP  
2323 Victory Avenue, Suite 700  
Dallas, Texas 75219  
Attn: Scott Drablos

With a copy to: TRT Holdings, Inc.  
4001 Maple Ave., Ste. 600  
Dallas, Texas 75219  
Attn: Paul Jorge

With a copy to: Winstead PC  
500 Winstead Building  
2728 N. Harwood Street  
Dallas, Texas 75201  
Attn: T. Andrew Dow

If to Lessor: City of Frisco  
6101 Frisco Square Blvd  
Frisco, Texas 75034  
Attn: City Manager

With a copy to: Abernathy, Roeder, Boyd & Hullett, P.C.  
1700 Redbud Boulevard, Suite 300  
McKinney, Texas 75069  
Attn: Robert Roeder and Randy Hullett

If to FISD: Frisco Independent School District  
5515 Ohio Drive  
Frisco, Texas 75035  
Attn: Superintendent

With a copy to: Abernathy, Roeder, Boyd & Hullett, P.C.  
1700 Redbud Boulevard, Suite 300  
McKinney, Texas 75069  
Attn: Robert Roeder and Randy Hullett

14.6 Successors and Assigns. Except as expressly provided in Article 8, this Lease may not be assigned without the prior written consent of the other Party hereto. Subject to the foregoing, this Lease shall be binding upon and shall inure to the benefit of the parties and their permitted successors and assigns.

14.7 Third Party Beneficiary; PGA's Right to Perform Lessee's or Lessor's Covenants. The Parties acknowledge and agree that PGA, as manager under the Management Services Agreement, or any successor-in-interest thereof or assign of the Management Services Agreement (collectively, "PGA Beneficiary") shall be an express and intended third-party beneficiary of this Lease and the Parties' obligations hereunder. Without limiting the generality of the foregoing, PGA Beneficiary shall have the right to enforce the obligations of either Party named herein to the same extent that such rights are accorded the other named Party herein. Neither Party shall amend or waive any provision of this Lease that might adversely affect PGA's rights and obligations under the Management Services Agreement without PGA Beneficiary's prior written consent, which consent shall not be unreasonably withheld. Neither Party shall take any action or fail to take any action which would render this Lease unenforceable or void in any respect. Except as provided above, nothing in this Lease, express or implied, shall confer upon any person or entity, other than the Parties, their authorized successors and assigns, and PGA Beneficiary, any rights or remedies under or by reason of this Lease. If Lessee or Lessor shall fail in the performance of any of their respective covenants, obligations or agreements contained in this Lease, or if Lessee shall fail to provide adequate financial resources to PGA in order to permit PGA to host golf

tournaments per the Operating Standard in accordance with terms and provisions of the Management Services Agreement and the Development Agreement, and such failure shall continue without Lessee or Lessor, as applicable, curing or commencing to cure such failure within all applicable grace and/or notice and cure periods, PGA after ten (10) business days additional written notice to Lessee and Lessor specifying such failure (or shorter notice if any emergency meaning that there is imminent danger to the safety of persons or of substantial damage to property exists) may (but without any obligation to do so) perform the same for the account and at the expense of Lessee or Lessor, as applicable, and the reasonably out-of-pocket amount of any payment made or other reasonable expenses (including reasonable attorneys' fees incurred by PGA for curing such default), with interest thereon at the rate of twelve percent (12%) per annum or the highest rate then allowed by law whichever is less from the date of Lessee's or Lessor's receipt of written demand until paid, shall be payable by Lessee or Lessor, as applicable, to PGA on demand, or, if not so paid, shall be treated at PGA's option as a monetary default pursuant to the provisions of the Management Services Agreement. All revenues generated from the Public Facilities, after satisfaction of Lessee's obligations under this Lease to Lessor if Lessor is not in default, shall be paid to PGA until all amounts owed to PGA pursuant to this Section 14.7 have been repaid in full. Except as expressly provided herein, neither this Lease nor any term hereof may be amended, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

14.8 Headings and Subheadings. The headings of the articles, sections, paragraphs and subparagraphs of this Lease are for convenience or reference only and in no way define, limit, extend or describe the scope of this Lease or the intent of any provisions hereof.

14.9 Unavoidable Default and Delays. After the date of execution of this Lease, the time within which any Party to this Lease shall be required to perform any act under this Lease shall be extended by a period of time equal to the number of days during which performance of such act is delayed by Force Majeure. The provisions of this Section 14.9 shall not operate to excuse either Party from prompt payment of the Base Rent or any other payments required by the terms of this Lease. If a date falls on a Saturday, Sunday or Holiday, the date of performance shall be the next business day.

14.10 Severability. In the event one or more of the terms or provisions of this Lease or the application thereof to any Party or circumstances shall, to any extent, be held invalid, illegal or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

14.11 Governing Law. THIS LEASE SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE UNITED STATES APPLICABLE THERETO AND THE LAWS OF THE STATE OF TEXAS APPLICABLE TO A LEASE EXECUTED, DELIVERED AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO ANY OTHERWISE APPLICABLE PRINCIPLES OF CONFLICTS OF LAW.

14.12 Venue for Actions. The venue for any legal action arising out of this Lease shall lie exclusively in Denton County, Texas.

14.13 Attorneys' Fees. Should either Party to this Lease engage the services of attorneys or institute legal proceedings to enforce its rights or remedies under this Lease, the prevailing Party to such dispute or proceedings shall be entitled to recover its reasonable attorneys' fees, court costs and similar costs incurred in connection with the resolution of such dispute or the institution, prosecution or defense in such proceedings from the other Party.

14.14 Relationship of Parties. Nothing set forth herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of principal and agent, partnership, joint venture or any association between the Parties hereto, it being understood and agreed that none of the provisions contained herein or any acts of the Parties in the performance of their respective obligations hereunder shall be deemed to create any relationship between the Parties hereto other than the relationship of Lessor and Lessee. It is understood and agreed that this Lease does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other. Each Party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

14.15 Net Lease. It is the intention of Lessor and Lessee that the Base Rent payable under this Lease after the Base Rent Commencement Date, and all Impositions and other costs related to Lessee's use or operation of the Leased Premises under this Lease (other than amounts as may be required to be paid by Lessor pursuant to specific provisions of this Lease) shall be absolutely net to Lessor, and that during the Term, without any offset or deduction whatsoever, Lessee shall pay (except as may otherwise expressly provided in this Lease), all such Impositions and other costs due by Lessee under this Lease, other than amounts as may be required to be paid (directly or indirectly) by Lessor pursuant to specific provisions of this Lease.

14.16 Non-Waiver. No Party shall be deemed to have waived any default under this Lease by the other Party, unless such waiver is embodied in a document signed by the waiving Party that describes the default that is being waived. Further, no Party shall be deemed to have waived its rights to pursue any remedies under this Lease, unless such waiver is embodied in a document signed by such Party that describes any such remedy that is being waived.

14.17 Obligations to Defend Validity of Agreement. If litigation is filed by a third party against Lessee or Lessor in an effort to enjoin either Party's performance of this Lease, the Parties hereto who are named as parties in such action shall take all commercially reasonable steps to support and defend the validity and enforceability of this Lease. Either Party may intervene in any such matter in which the other Party hereto has been named as a defendant. Each Party shall be responsible for its attorneys' fees and costs of litigation.

14.18 Survival. Covenants in this Lease providing for performance after termination of this Lease shall survive the termination of this Lease.

14.19 Entire Agreement. This Lease (including the Exhibits attached hereto and incorporated herein, if any) and the other documents delivered pursuant to this Lease or referenced herein constitute the full and entire understanding and agreement between the Parties with regard to the subject matter hereof. There are no representations, promises or agreements of Lessor or Lessee



regarding the subject matter of this Lease not contained in this Lease, the Exhibits attached hereto or the other documents delivered pursuant to this Lease or referenced herein.

14.20 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

14.21 Waiver of Consequential Damages. Notwithstanding anything in this Lease to the contrary, Lessor hereby waives any consequential damages, compensation or claims for inconvenience, loss of business, rents or profits as a result of any injury or damage, whether or not caused by the willful or wrongful act of Lessee or its representatives, agents or employees. Notwithstanding anything in this Lease to the contrary, Lessee hereby waives any consequential damages, compensation or claims for inconvenience, loss of business, rents or profits as a result of any injury or damage, whether or not caused by the willful or wrongful act of Lessor or its representatives, agents or employees.

14.22 Memorandum of Lease Agreement. Upon either Party's request, the other party shall execute and allow such Party to record in Denton County, Texas a Memorandum of Lease Agreement with respect to this Lease. In the event such a memorandum is recorded, the parties agree that upon a termination of this Lease, the parties shall execute and record a termination of such Memorandum of Lease Agreement.

14.23 Lessor's Lien Waiver. Lessor hereby waives all landlord's liens that Lessor might hold, statutory or otherwise, to any of Lessee's (or any Sublessee's) inventory, trade fixtures, equipment or other personal property now or hereafter placed on the Leased Premises.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]**

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Lease as of the date first set forth above.

**LESSEE:**

**OMNI STILLWATER WOODS GOLF RESORT, LLC,**  
a Delaware limited liability company

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**LESSOR:**

**CITY OF FRISCO, TEXAS,**  
a Texas home-rule municipality

By: \_\_\_\_\_  
George Purefoy, City Manager

**FRISCO COMMUNITY DEVELOPMENT CORPORATION,**  
a Texas non-profit corporation

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST:**

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

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

To be attached upon approval of the site plan and conveyance plat of the Land, pursuant to the terms of the Master Development Agreement for Facilities and Related Improvements

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**EXHIBIT "B"**

**COMPARABLE FACILITIES**

1. Bethpage State Park Black Course (Farmingdale, New York)
2. Chambers Bay (University Place, Washington)
3. Erin Hills (Hartford, Wisconsin)
4. Torrey Pines Golf Course South (La Jolla, California)
5. TPC San Antonio (San Antonio, Texas)
6. TPC Four Seasons Las Colinas (Irving, Texas)



**SCHEDULE 1(VV)**

**PGA EVENTS**

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## SCHEDULE 5.1(C)

### FISD USAGE PROPOSAL

Daily Usage (September – April). FISD students will have access to 20 hitting areas for the driving range and a designated short game/putting area(s) that can accommodate an additional 20 students. FISD will reasonably cooperate with OSW and the PGA to develop flexible schedules of usage to reduce impact to public availability of the Golf Facilities to regular golf customers.

- 40 student capacity during the morning, Monday – Thursday, and 40 student capacity during the afternoon, Monday – Thursday to total 80 students per day.
- Students shall have a minimum of 3 tee times per afternoon on Mondays - Thursdays, September-April, weather permitting. OSW to reasonably determine how tee times are allocated between available courses.
- FISD pays no fees or annual operating expenses for practice facility. FISD will pay a discounted student rate for tee times. FISD would be responsible for the costs of replacing hitting mats and range balls.

#### Course Tournaments

- District Tournament - 4 days total (Monday- Thursday). Tournament can be on a single course for 4 consecutive days (Monday-Thursday), or on a single course for 2 consecutive days (Monday-Tuesday) in back to back weeks.
- Frisco Cup - mid-November - 2 days (Monday-Tuesday). Half-day course requirement.
- Frisco Education Foundation fundraiser - 1 weekday (Monday-Thursday). Half-day course requirement.
- Optional tournaments where FISD and OSW to work together to host such event on terms to be mutually agreed to by all parties:
  - o Fall Invitational - mid-October. Friday-Saturday
  - o Spring Invitational - mid-March (statewide and Oklahoma) Friday-Saturday
  - o 5A/6A Region I tournaments
  - o State Tournaments

#### Conference Center usage (Target 300-500 people)

- Four days that the district can lock in a year in advance (2 days guaranteed. Additional dates can be negotiated in good faith as needed) Food and beverage during conference center usage will be at rates commensurate for comparably sized groups

#### CTE Opportunities

- Mentorship and Internship opportunities for students interested in professions that are easily connected to the work of the PGA's operations, as well as other components of the Project. A minimum of 10 internships (with opportunity to increase based on available positions and qualified candidates) for Frisco ISD students annually. FISD will be responsible for managing the program. Engagements will be subject to standard application/selection processes from the onsite operations teams. Potential assignments listed below, with final placement to be determined as operations teams are engaged.
  - a. Sports Management

- b. Sports Broadcasting
  - c. Business Management
  - d. Culinary
  - e. Hotel and Restaurant Management
  - f. Marketing
  - g. Graphic Design
  - h. Landscape Architecture
- 

Other

- Project Search for students with cognitive disabilities (at Hotel). FISD will be responsible for managing the program. Engagements will be subject to standard application/selection processes from the onsite operations teams.
- FISD will work with the City of Frisco related to any hospitality and ticket requests.

**EXHIBIT “D”**  
**TOURNAMENT SCHEDULE**

<b>Year</b>	<b>Event</b>
2023	Senior PGA Championship
2023	PGA Junior League Championship
2024	PGA Professional Championship
2024	PGA Junior League Championship
2025	Women’s PGA Championship
2025	PGA Junior League Championship
2026	PGA Junior Boys & PGA Junior Girls Championships
2026	PGA Junior League Championship
2027	PGA Cup
2027 (or 2028 subject to current agreements)	PGA Championship
2027	PGA Junior League Championship
2028	PGA Junior League Championship
2028	Senior PGA Professional Championship
2029	Senior PGA Championship (subject to continuance of title sponsor)
2029	PGA Junior League Championship
2030	PGA Professional Championship
2030	PGA Junior League Championship
2031	Women’s PGA Championship
2031	PGA Junior League Championship
2032	PGA Assistants Championship
2032	PGA Junior League Championship
2033	PGA Junior League Championship
2033	PGA Professional Championship
2034	PGA Championship
2034	PGA Junior League Championship
2040	Ryder Cup (subject to standard set forth the Master Development Agreement)



**EXHIBIT “E”**  
**COMPLETION GUARANTY**

## **COMPLETION GUARANTY**

This **COMPLETION GUARANTY** (this "Guaranty") is executed this 4<sup>th</sup> day of December 2018, by and between **TRT HOLDINGS, INC.**, a Delaware corporation ("Guarantor") for the benefit of the **CITY OF FRISCO, TEXAS**, a municipal corporation of the State of Texas and a home-rule city located in Collin County, Texas (the "City").

### **RECITALS**

A. The City, Omni Stillwater Woods Golf Resort, LLC, a Delaware limited liability company ("OSW"), The Professional Golfers' Association of America, a Florida non-profit corporation (the "PGA"), Frisco Economic Development Corporation, a Texas non-profit corporation ("FEDC") and Frisco Community Development Corporation, a Texas non-profit corporation ("FCDC"), previously entered into that certain Master Development Agreement For Facilities And Related Improvements, dated December 4, 2018 (the "Development Agreement"), pursuant to which the City, FGP, PGA, FEDC and FCDC, set forth certain definitive terms and conditions governing the development and operation in the City of the Public Facilities, the Headquarters Facility, the Hotel Facility and the Conference Center Unit (as each such term is defined in the Development Agreement). The Public Facilities, the Hotel Facility and the Conference Center Unit are hereinafter referred to collectively as the "Guaranteed Facilities"). For the avoidance of doubt, the Guaranteed Facilities specifically do not include the Headquarters Facility (as such term is defined in the Development Agreement).

B. OSW has agreed to construct the Guaranteed Facilities pursuant to and in accordance with the terms and conditions set forth in the Development Agreement, and in connection therewith, the City intends to issue certificates of obligation (the "Public Facilities Debt") and then use the proceeds of such Public Facilities Debt to fund up to Thirty-Five Million and No/100 dollars (\$35,000,000.00) towards the construction of the Public Facilities upon the terms and conditions set forth in the Development Agreement;

C. Guarantor has agreed pursuant to this Guaranty to unconditionally guaranty to the City the completion of the Guaranteed Facilities and the payment of all of OSW's costs and monetary obligations associated with the construction of the Guaranteed Facilities under the Development Agreement at no cost to the City, except as otherwise provided in this Guaranty (collectively, the "Guaranteed Obligations"); and

D. Guarantor is an affiliate of certain beneficial owners of OSW and expects to derive substantial benefit from OSW's execution and delivery of the Development Agreement and certain other agreements relating to the lease and operation of the Guaranteed Facilities.

### **AGREEMENT**

**NOW, THEREFORE**, as an inducement to City for entering into the Lease, Guarantor and City hereby agree as follows:

1. **Guaranteed Obligations.** Effective upon the issuance of the Public Facilities Debt and the receipt of the proceeds therefrom, Guarantor hereby unconditionally guarantees to the City the payment and performance of the Guaranteed Obligations, at no cost to the City (other than the proceeds of the Public Facilities Debt that are being used, in part, to fund the cost of construction of the Public Facilities). Notwithstanding the immediately preceding sentence, because the actual cost of completion of the Public Facilities will be impossible to determine prior to the approval of the Public Facilities Final Plans (as defined in the Development Agreement), in the event of a default by OSW (after the application of any notice and/or cure period) giving rise to the enforcement of this Guaranty prior to the approval of the Public Facilities Final Plans, the liability of Guarantor hereunder for the "Guaranteed Obligations" shall be limited

to a liquidated amount equal to \$10,000,000.00, plus the actual cost incurred by the City to defease the Public Facilities Debt.

For the avoidance of doubt, this Guaranty is conditioned upon the City's issuance and receipt of proceeds of the Public Facilities Debt, and if the proceeds of the Public Facilities Debt are not received by the City and deposited in a segregated account pursuant to Section 1.6 of the Development Agreement on or before \_\_\_\_\_, 2018, this Guaranty shall terminate and be of no force or effect.

2. **Performance by Guarantor.** If the City enforces this Guaranty against Guarantor for all or any portion of the Guaranteed Obligations, and Guarantor is timely performing such Guaranteed Obligations hereunder, then notwithstanding any provision of the Development Agreement or the Facilities Lease (as defined in the Development Agreement) to the contrary, the City may not (i) terminate the Development Agreement or the Facilities Lease, or (ii) reduce payments due to OSW pursuant to the Development Agreement (including, without limitation, payment of the City's Share [as defined in the Development Agreement] and payments under the Economic Development Agreement Grants [as defined in the Development Agreement]) on account of OSW's failure to timely complete or pay all costs associated with the construction of the Public Facilities pursuant to the Development Agreement.

3. **Scope and Extent of Guaranty.** The obligation of Guarantor under Section 1 hereof is absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 3 that the obligations of Guarantor hereunder shall be absolute and unconditional under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantor hereunder, which shall remain absolute and unconditional as described above:

- (a) at any time and from time to time, without notice to Guarantor, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended or modified;
- (b) any of the acts of OSW mentioned in any of the provisions of the Development Agreement be done or omitted;
- (c) the Lease, or any portion thereof, may be amended, modified, supplemented or terminated, in whole or in part, so long as any such action does not materially increase the liability of the Guarantor hereunder; and
- (d) the Guaranteed Obligations shall be modified, supplemented or amended in any respect, or any right under the Lease shall be waived, so long as any such action does not materially increase the liability of the Guarantor hereunder.

4. **Waiver.** Guarantor hereby waives diligence, presentment, demand of payment, protest and all notice whatsoever, under the Lease as a prerequisite or condition to pursuit or collection by the City under this Guaranty.

5. **Period of Guarantee.** The obligations of Guarantor as to the Guaranteed Obligations shall continue in full force and effect against Guarantor in accordance with the terms hereof, until the date on which the Guaranteed Facilities are open for business in the manner contemplated under the Development Agreement (the "Termination Date"). On the Termination Date, the Guaranty shall terminate and Guarantor shall have no further liability hereunder. This Guaranty is irrevocably binding upon and enforceable against

Guarantor and the successors of Guarantor in accordance with the terms hereof, and shall inure to the benefit of the City and its successors and assigns.

6. **Primary Liability of Guarantor.** This is a primary and continuing guaranty of payment and not of collection of the Guaranteed Obligations. Guarantor agrees that neither bankruptcy, insolvency, other disability, cessation of existence or dissolution of OSW or any other party shall in any manner impair, affect, or release the liability of Guarantor hereunder, and Guarantor shall be and remain fully liable hereunder in accordance with the terms hereof.

7. **Creditworthiness of Guarantor; Default.** The City is relying upon the balance sheet of Guarantor dated \_\_\_\_\_, 2018, executed by Guarantor, in agreeing to accept this Guaranty; and Guarantor represents and warrants to City that such balance sheet is a true, correct and accurate statement of the assets and liabilities set forth thereon. Guarantor shall allow the City to review, on an annual basis, during the term of this Guaranty an updated, signed balance sheet of Guarantor. In the event the value of the unencumbered liquid assets of Guarantor fall below an amount equal to 150% of the cost to complete the Public Facilities (as defined in the Development Agreement), City shall have the right to require Guarantor to deposit with City in current funds an amount equal to the cost of completing the Public Facilities. Failure of Guarantor to deposit such funds with City shall be an event of default under this Guaranty for which City may (i) immediately terminate the Development Agreement and the Facilities Lease and (ii) pursue all other legal and equitable remedies against Guarantor relating to the Guaranteed Obligations.

8. **Place of Performance.** All payments to be made hereunder shall be payable in Collin County, Texas.

9. **Applicable Law.** This Guaranty shall be governed by and construed in accordance with the laws of the United States of America and the State of Texas, and is intended to be performed in accordance with and as permitted by such laws. Wherever possible each provision of this Guaranty shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Guaranty or application thereof shall be prohibited by or be invalid under such law, such provision or application (as the case may be) shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or other applications or the remaining provisions of this Guaranty.

10. **No Third-Party Beneficiaries.** There shall be no third-party beneficiaries of this Guaranty.

11. **Notices.** Any notices given to Guarantor or City hereunder shall be given in the manner set forth in the Lease, but to the respective addresses set forth herein below, or at such other addresses as the parties may hereafter designate in writing from time to time.

**To City:**

**City of Frisco**

6101 Frisco Square Blvd, 5<sup>th</sup> Floor  
Frisco, Texas 75034  
Attention: City Manager

**With copy to:**

Abernathy, Roeder, Boyd & Hullett, P.C.  
1700 Redbud Blvd., Suite 300  
McKinney, Texas 75069  
Attention: Randy Hullett and Robert Roeder



**To Guarantor:**

TRT Holdings, Inc.  
4001 Maple Ave., Suite 600  
Dallas, Texas 75219  
Attention: Paul Jorge

**With a copy to:**

Winstead PC  
2728 N. Harwood Avenue, Suite 500  
Dallas, Texas 75201  
Attention: T. Andrew Dow

12. **Multiple Counterparts.** This Guaranty may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

13. **Modifications.** This Guaranty may not be modified without the written consent of the Parties hereto.

14. **Entire Agreement.** This Guaranty contains the entire agreement of Guarantor with respect to the subject matter hereof, and all prior oral and written discussions and all contemporaneous oral discussions and agreements with respect to the subject matter hereof are hereby superseded and replaced by this Guaranty.

*[Remainder of page intentionally left blank; signature pages follow.]*

**IN WITNESS WHEREOF**, this Guaranty has been executed and delivered by the undersigned,  
as of the date first written above.

**TRT HOLDINGS, INC.,**  
a Delaware corporation

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

**AGREED AND ACCEPTED:**

**CITY OF FRISCO, TEXAS,**  
a Texas home-rule municipality

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

Name:\_\_\_\_\_

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

**EXHIBIT “F”**  
**FEDC PERFORMANCE AGREEMENT**

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**FRISCO ECONOMIC DEVELOPMENT CORPORATION  
PERFORMANCE AGREEMENT**

This Performance Agreement (this "Agreement") by and between **THE PROFESSIONAL GOLFERS' ASSOCIATION OF AMERICA**, a Florida non-profit corporation (the "PGA"), and the **FRISCO ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation ("FEDC"), is made and executed based on the following recitals, terms, and conditions to be effective \_\_\_\_\_, 2018 (the "Effective Date"). The PGA and the FEDC are each referred to as a "Party" and collectively as the "Parties".

Words or phrases used in this Agreement that have their initial letters capitalized shall have the meanings given to them in Section 3, unless the context in which the words or phrases are used clearly requires a different meaning.

**RECITALS**

**WHEREAS**, the City of Frisco, Texas (the "City"), FEDC, Frisco Community Development Corporation ("FCDC"), Frisco Independent School District ("FISD") have entered into a Master Development Agreement with PGA and Omni Stillwater Woods Golf Resort, LLC ("Developer") dated as of the Effective Date (the "Master Agreement") wherein the City will construct the Golf Facility on the Golf Tract and will lease the Golf Facility to Developer under the terms of the Facility Lease as described in the Master Agreement;

**WHEREAS**, the Master Agreement, if all preconditions thereof have been satisfied, requires Developer and/or PGA to construct an office facility adjacent to the Golf Facility to be occupied by PGA as its national corporate headquarters, along with an education center that can be used by PGA professionals (collectively, the "Headquarters Facility") on a continuous basis during the term of the Facility Lease;

**WHEREAS**, PGA has applied to the FEDC for a financial incentive to facilitate its relocation of its national corporate headquarters to the Headquarters Facility to be located within the Headquarters Tract;

**WHEREAS**, the FEDC is a Type A economic development corporation operating in the City pursuant to the Development Corporation Act of 1979 (Art. 5190.6, V.C.T.S.), later codified as Chapters 501 through 504 of the Texas Local Government Code, as amended (the "Act"), and the Texas Non-Profit Corporation Act as codified in the Texas Business Organizations Code, as amended;

**WHEREAS**, the Act authorizes the FEDC to participate in economic development programs for the benefit of the City and its present and future citizens, and to enter into agreements to participate financially in economic development projects within and for the City and its citizens;

**WHEREAS**, under Section 501.101 of the Act the economic development projects in which the FEDC may participate includes land, buildings, equipment facilities, expenditures, targeted infrastructure, and improvements that are regional or national corporate headquarters;



**WHEREAS**, the Act prohibits the provision of a direct incentive by the FEDC unless the FEDC enters into a performance agreement providing, at a minimum: (a) a schedule of additional payroll or jobs to be created or retained by the investment; (b) a schedule of capital investments to be made as consideration for any direct incentives provided by the FEDC; and (c) a provision specifying the terms and conditions upon which repayment must be made if the performance standards are not met;

**WHEREAS**, the Board has determined that the financial incentives provided to the PGA for the Project are consistent with and meet the definitions of "project" and "costs" contained in the Act;

**WHEREAS**, the financial incentives are not granted in exchange for goods or services provided by the PGA;

**WHEREAS**, the FEDC expects the financial incentives to result in an indirect benefit to the community in the form of increased jobs, sales tax revenues, and ad valorem tax revenues;

**WHEREAS**, the Board has made a finding that this Agreement will promote economic development within the City;

**WHEREAS**, the costs funded by the FEDC hereunder are necessary to promote or develop new or expanded business enterprises;

**WHEREAS**, to secure the financial incentives, the PGA will satisfy performance standards described in this Agreement, and as a result, the incentives will serve legitimate public purposes and provide a clear public benefit in return;

**WHEREAS**, the predominant purpose of this Agreement is to accomplish a public purpose, namely the promotion and development of new and expanded business enterprises to provide and encourage employment and the public welfare and not to solely benefit private parties;

**WHEREAS**, the provisions of this Agreement, including the performance standards and associated penalties ensure that a public purpose is satisfied and the City receives a benefit in return for the financing of Project by the FEDC; and

**WHEREAS**, the Board finds that the Project and costs therefor authorized by this Agreement are required or suitable for the development of a national corporate headquarters facility within the Headquarters Tract, which will promote a new business enterprise within the Property and create Primary Jobs.

**NOW THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the FEDC and the PGA agree as follows:

**SECTION 1. FINDINGS INCORPORATED.** The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration, and promises that bind the Parties.

**SECTION 2. TERM.** This Agreement shall be effective as of the Effective Date of this Agreement, and shall terminate on the later of (x) 15<sup>th</sup> anniversary of the date of the issuance of a certificate of occupancy for all or a portion of the Headquarters Facility by the City or (y) the date that PGA is no longer eligible to receive any Tournament Grant.

**SECTION 3. DEFINITIONS.** The following words shall have the following meanings when used in this Agreement:

“Act” means Chapters 501, 502 and 504, Texas Local Government Code, as amended.

“Agreement” means this Frisco Economic Development Corporation Performance Agreement, together with all exhibits and schedules attached hereto from time to time.

“Board” means the Board of Directors of the FEDC.

“City” means the City of Frisco, Texas, a Texas home-rule municipality.

“City Taxable Revenue” means all gross revenues that are subject to City sales tax, generated at the Golf Facility from the sale of merchandise, tickets, concessions, hospitality and other taxable goods and services collected during or with respect to the tournaments listed in Exhibit “E”.

“Completion Deadline” is defined in Section 5(b).

“Default” is defined in Section 6.

“Developer” means Omni Stillwater Woods Golf Resort, LLC.

“Effective Date” has the meaning set forth in the introductory paragraph.

“Employee Grant” is defined in Section 4(c).

“Facility Lease” means the lease between the City and Developer for the use of the Golf Facility.

“Force Majeure” means any unforeseeable causes beyond the control of either Party hereto, including, but not limited to, casualty, damage, strikes or lockouts, acts of God, war, terrorism, riots, governmental restrictions, failure or inability to secure materials or labor, reason of priority or similar regulations or order of any governmental or regulatory body other than the City, enemy action, civil disturbance, fire, unavoidable casualties or any other cause beyond the reasonable control of the Party seeking the extension or excuse from performance.

“Full-time Employee” means an employee (not employee-equivalent) of the PGA or any of its wholly-owned subsidiaries from time to time, initially including PGA Corporation, a Florida corporation, PGA Golf Properties, Inc., a Florida corporation and PGA Golf Enterprises, a Florida corporation, including individuals who are employed on a full-time basis by a combination of any of the foregoing and/or of any other wholly-owned subsidiary of PGA, hired to work a minimum of One Thousand Nine Hundred Fifty (1,950) hours of work over a twelve (12) month term (37.50 hours per week) including allowance for vacation and sick leave, with full company benefits and employed on the Property, unless the employee’s job function requires traveling.

“Golf Facility” means the improvements constructed by the City or Developer on the Golf Tract as described in the Master Agreement.

“Golf Tract” means approximately five hundred twenty (520) acres of land located adjacent to the Headquarters Tract as more particularly described in the attached Exhibit “A”, the exact legal description of which shall be determined by a plat thereof approved by the City and recorded in the Map and Plat Records of Denton County, Texas, and appended to this Agreement prior to the obligation of the FEDC to provide any economic incentive under this Agreement.

“Headquarters Facility” means a Class A (non-tilt wall) office building, together with appurtenant infrastructure to be constructed within the Headquarters Tract and continuously occupied (except for reasonable times for remodeling and subject to events of Force Majeure) as the national corporate headquarters and Education Center of the PGA and as the principal office for the PGA’s administrative and management services, during the Term of the Agreement, which will contain approximately 100,000 square feet and related facilities, with a minimum of *Thirty Million and No/100 Dollars* (\$30,000,000.00) expended on Headquarters Facility Costs.

“Headquarters Facility Costs” means the construction costs (including all soft costs, including but not limited to, architectural and engineering costs directly associated therewith) actually incurred for the construction of the Headquarters Facility. Costs are to include real property improvements to the Headquarters Tract and business personal property in the building.

“Headquarters Tract” means approximately three and one quarter (3.25) acres of land located adjacent to the Golf Tract as more particularly described in the attached Exhibit “B”, the exact legal description of which shall be determined by a plat thereof approved by the City and recorded in the Map and Plat Records of Denton County, Texas, and appended to this Agreement prior to the obligation of the FEDC to provide any economic incentive under this Agreement.

“HQ Relocation Grant” is defined in Section 4(b).

“HQ Relocation Performance Criteria” is defined in Section 4(b).

“Master Agreement” means the Master Development Agreement entered into by the City, PGA and Developer as of the Effective Date, which provides for the development of improvements on the Property.

“Maximum Incentive Amount” means an amount not to exceed *Fourteen Million Three Hundred Fifty Thousand and No/100 Dollars* (\$14,350,000.00).

“Occupancy Deadline” is defined in Section 5(d).

“PGA” means the Professional Golfer’ Association of America, a Florida non-profit corporation, for itself and as the agent for its wholly owned subsidiaries The PGA Corporation, a Florida corporation, PGA Golf Properties, Inc., a Florida corporation and PGA Golf Enterprises, Inc., a Florida Corporation (collectively, the “PGA”).

“Primary Job” means primary job, as defined by Section 501.002(12) of the Act.

“Project” means the land, building, equipment facilities, expenditures, targeted infrastructure, and improvements found by the Board to be desired or suitable to the development, retention and expansion of the Headquarters Facility as set forth in Section 4 of this Agreement.

“Purchase Deadline” is defined in Section 5(a).

“Property” means the Golf Tract and the Headquarters Tract collectively.

#### **SECTION 4. ECONOMIC INCENTIVE GRANTS.**

Project expenditures shall be made by FEDC to PGA as set forth in this Section 4. A portion of the Project expenditures shall be paid only upon the hosting of tournaments and satisfaction of the performance criteria for each tournament as set forth below.

- (a) Notwithstanding any provision contained in this Agreement to the contrary, the maximum aggregate economic incentives that PGA is eligible to receive from FEDC under this Agreement shall not exceed the Maximum Incentive Amount.
- (b) Following receipt of documentation from PGA evidencing: (i) completion of the Headquarters Facility and issuance of the corresponding certificate of occupancy for all or a portion of the Headquarters Facility on or before the Completion Deadline defined below; (ii) occupancy of the Headquarters Facility by PGA as its national corporate headquarters on or before the Occupancy Deadline defined below; and (iii) at least 100 Full-time Employees at the Headquarters Facility at an average salary amount of \$95,000 per employee (the “HQ Relocation Performance Criteria”), FEDC shall deliver to PGA economic incentive payments in an amount not to exceed a total of *Four Million Four Hundred Thousand and No/100 Dollars* (\$4,400,000.00) (the “HQ Relocation Grant”), subject to the following additional conditions and paid as follows:
  - (i) Contingent upon satisfaction of the HQ Relocation Performance Criteria and PGA’s continuing compliance with the terms of the Master Agreement, FEDC will pay PGA the sum of *One Million One Hundred Thousand and No/100 Dollars* (\$1,100,000.00) within forty-five (45) days of receipt of the required documentation evidencing satisfaction of the HQ Performance Criteria;
  - (ii) Thereafter, for the next three (3) years and contingent upon the continued satisfaction of the HQ Relocation Performance Criteria and the terms of the Master Agreement, FEDC will pay PGA the sum of *One Million One Hundred Thousand and No/100 Dollars* (\$1,100,000.00) each year on the anniversary date of the first payment within forty-five (45) days of receipt of the required documentation evidencing satisfaction of the HQ Performance Criteria for each payment.



- (c) PGA will receive an employment grant for up to 250 Full-time Employees at the Headquarters Facility (relocated employees, replacement hire or new hires) created, staffed and maintained through the nine-year anniversary of the first payment under this grant up to a total of *Five Million and No/100 Dollars* (\$5,000,000.00) (the “Employment Grant”). The Employment Grant will be paid to PGA subject to the following conditions and as follows:
- 
- (i) PGA will be paid \$25,000 per employee for up to 100 Full-time Employees of the total grant (up to \$2,500,000) upon certification by PGA that it has created, staffed and maintained employment of at least 100 Full-time Employees at the Headquarters Facility at the average salary amount of \$95,000 (“Employment Incentive No. 1”). Payment is to be made within forty-five (45) days of receipt of certification.
- (ii) On the one-year-anniversary of the first payment under this grant, so long as the PGA continues to occupy the Headquarters Facility as its national corporate headquarters, PGA will certify the net new number of Full-time Employees created during the proceeding twelve (12) month period. Payment equal to (i) \$25,000 for each Full-time Employee created, staffed or maintained during that year in excess of 100 Full-time Employees, up to a total of 150 Full-time Employees, plus (ii) \$12,500 for each Full-time Employee created, staffed or maintained during that year in excess of 150 Full-time Employees, up to a total of 250 Full-time Employees will be made within forty-five (45) days of certification (“Employment Incentive No. 2”); notwithstanding the foregoing, the maximum amount of the Employment Grant that will be paid for Employment Incentive No. 2 is \$1,250,000.
- (iii) On the two-year-anniversary of the first payment under this grant, so long as the PGA continues to occupy the Headquarters Facility as its national corporate headquarters, PGA will certify the net number of Full-time Employees. Payment equal to (i) \$25,000 for each Full-time Employee created, staffed or maintained during that year in excess of the number of full time jobs paid prior to the two-year-anniversary, up to a total of 150 Full-time Employees, plus (ii) \$12,500 for each new Full-time Employee created, staffed or maintained during that year in excess of 150 Full-time Employees, up to a total of 250 Full-time Employees will be made within forty-five (45) days of certification (“Employment Incentive No. 3”); notwithstanding the foregoing, the maximum amount of the Employment Grant that will be paid for Employment Incentive No. 3 is \$500,000.
- (iv) On the three-year-anniversary of the first payment under this grant, so long as the PGA continues to occupy the Headquarters Facility as its national corporate headquarters, PGA will certify the net number of Full-time Employees. Payment equal to (i) \$25,000 for each Full-time Employee created, staffed or maintained during that year in excess of the number of full time jobs paid prior to the three-year-anniversary, up to a total of 150 Full-time Employees, plus (ii) \$12,500 for each Full-time Employee created, staffed or maintained during that year in excess



of 150 Full-time Employees, up to a total of 250 Full-time Employees will be made within forty-five (45) days of certification ("Employment Incentive No. 4")"; notwithstanding the foregoing, the maximum amount of the Employment Grant that will be paid for Employment Incentive No. 4 is \$375,000.

- (v) On the four-year-anniversary of the first payment under this grant, so long as the ~~PGA continues to occupy the Headquarters Facility as its national corporate~~ headquarters, PGA will certify the net number of Full-time Employees. Payment equal to (i) \$25,000 for each Full-time Employee created, staffed or maintained during that year in excess of the number of full time jobs paid prior to the four-year-anniversary up to a total of 150 Full-time Employees, plus (ii) \$12,500 for each Full-time Employee created, staffed or maintained during that year in excess of 150 Full-time Employees, up to a total of 250 Full-time Employees will be made within forty-five (45) days of certification ("Employment Incentive No. 5")"; notwithstanding the foregoing, the maximum amount of the Employment Grant that will be paid for Employment Incentive No. 5 is \$375,000.
- (vi) On the five-year-anniversary of the first payment under this grant, so long as the PGA continues to occupy the Headquarters Facility as its national corporate headquarters, PGA will certify the net number of Full-time Employees. Payment equal to (i) \$25,000 for each Full-time Employee created, staffed or maintained during that year in excess of the number of full time jobs paid prior to the five-year-anniversary up to a total of 150 Full-time Employees, plus (ii) \$12,500 for each Full-time Employee created, staffed or maintained during that year in excess of 150 Full-time Employees, up to a total of 250 Full-time Employees will be made within forty-five (45) days of certification ("Employment Incentive No. 6")"; notwithstanding the foregoing, the maximum amount of the Employment Grant that will be paid for Employment Incentive No. 6 is \$375,000.
- (vii) On the six-year-anniversary of the first payment under this grant, so long as the PGA continues to occupy the Headquarters Facility as its national corporate headquarters, PGA will certify the net number of Full-time Employees. Payment equal to (i) \$25,000 for each Full-time Employee created, staffed or maintained during that year in excess of the number of full time jobs paid prior to the six-year-anniversary up to a total of 150 Full-time Employees, plus (ii) \$12,500 for each Full-time Employee created, staffed or maintained during that year in excess of 150 Full-time Employees, up to a total of 250 Full-time Employees will be made within forty-five (45) days of certification ("Employment Incentive No. 7")"; notwithstanding the foregoing, the maximum amount of the Employment Grant that will be paid for Employment Incentive No. 7 is \$375,000.
- (viii) On the seven-year-anniversary of the first payment under this grant, so long as the PGA continues to occupy the Headquarters Facility as its national corporate headquarters, PGA will certify the net number of Full-time Employees. Payment equal to (i) \$25,000 for each Full-time Employee created, staffed or maintained during that year in excess of the number of full time jobs paid prior to the seven-

year-anniversary up to a total of 150 Full-time Employees, plus (ii) \$12,500 for each Full-time Employee created, staffed or maintained during that year in excess of 150 Full-time Employees, up to a total of 250 Full-time Employees will be made within forty-five (45) days of certification ("Employment Incentive No. 8") ; notwithstanding the foregoing, the maximum amount of the Employment Grant that will be paid for Employment Incentive No. 8 is \$375,000.

- (ix) On the eight-year-anniversary of the first payment under this grant, so long as the PGA continues to occupy the Headquarters Facility as its national corporate headquarters, PGA will certify the net number of Full-time Employees. Payment equal to (i) \$25,000 for each Full-time Employee created, staffed or maintained during that year in excess of the number of full time jobs paid prior to the eight-year-anniversary up to a total of 150 Full-time Employees, plus (ii) \$12,500 for each Full-time Employee created, staffed or maintained during that year in excess of 150 Full-time Employees, up to a total of 250 Full-time Employees will be made within forty-five (45) days of certification ("Employment Incentive No. 9") ; notwithstanding the foregoing, the maximum amount of the Employment Grant that will be paid for Employment Incentive No. 9 is \$375,000.
- (x) On the nine-year-anniversary of the first payment under this grant, so long as the PGA continues to occupy the Headquarters Facility as its national corporate headquarters, PGA will certify the net number of Full-time Employees. Payment equal to (i) \$25,000 for each Full-time Employee created, staffed or maintained during that year in excess of the number of full time jobs paid prior to the nine-year-anniversary up to a total of 150 Full-time Employees, plus (ii) \$12,500 for each Full-time Employee created, staffed or maintained during that year in excess of 150 Full-time Employees, up to a total of 250 Full-time Employees will be made within forty-five (45) days of certification ("Employment Incentive No. 10") ; notwithstanding the foregoing, the maximum amount of the Employment Grant that will be paid for Employment Incentive No. 10 is \$375,000.

No incentives will be paid to the PGA in any year for employees for which incentives have previously been paid. Notwithstanding anything to the contrary contained herein, no portion of the Employment Grant will be paid for any new Full-time Employees created after the nine-year-anniversary of the first payment under this grant. For the avoidance of doubt, any incentive earned by PGA in excess of the maximum payout of such incentive for any given year will be carried over into future grant years until such point the unpaid amount is payable in future years as illustrated by the examples of such payouts on Exhibit "F".

- (d) So long as the PGA continues to comply in all material respects with the terms of this Agreement and in all material respect the Master Agreement, PGA will be eligible to receive additional economic incentives for hosting national and international golf tournaments at the Golf Facility up to a sum of *Four Million Nine Hundred Fifty Thousand and No/100 Dollars* (\$4,950,000.00) subject to the schedule and performance criteria, as set forth herein on Exhibit "E".

- (e) In the event the PGA relocates its national corporate headquarters outside the City, for any reason, prior to the five-year-anniversary of the first payment under this grant, the PGA agrees to refund to the FEDC one hundred percent (100%) all or any portion that has been advanced of the HQ Relocation Grant. In the event the PGA relocates its national corporate headquarters outside the City, for any reason, after the five-year-anniversary of the first payment under this grant and prior to the ten-year-anniversary of the first payment under this grant, the PGA agrees to refund to the FEDC fifty percent (50%) all or any portion that has been advanced of the HQ Relocation Grant. Except for the foregoing, for the avoidance of doubt, none of the incentives or grants available to PGA pursuant to this Agreement will be subject to “claw-back”, tournament hosting provisions or similar conditions; provided, however, the applicable Tournament Grant will be conditioned on the hosting of the applicable tournament.

#### **SECTION 5. OBLIGATIONS OF THE PGA.**

- (a) PGA shall purchase and take title to the Headquarters Tract or enter into a long-term lease with an option to purchase that is acceptable to FEDC and the City on or before six (6) months after the later of (i) the Completion Deadline or (ii) the date of actual substantial completion and issuance of a certificate of occupancy for all or a portion of the Headquarters Facility (the “Purchase Deadline”). This date shall be subject to delays in the delivery of the Headquarters Facility beyond the reasonable control of the PGA and other delays as defined in the Master Agreement and Purchase Agreement (as defined in the Master Agreement).
- (b) Developer or PGA shall complete the Headquarters Facility and receive a certificate of occupancy from the City no later than June 30, 2022, subject to Force Majeure delays and delays approved by the PGA, City and FEDC (the “Completion Deadline”).
- (c) At least *Thirty Million and No/100 Dollars* (\$30,000,000.00) in Headquarters Facility Costs shall be expended to develop, construct and fit out the Headquarters Facility by Developer or PGA.
- (d) The Headquarters Facility shall be occupied by the PGA as its national corporate headquarters on or before six (6) months after the Purchase Deadline (the “Occupancy Deadline”) and continuously thereafter throughout the remaining Term of this Agreement. This date shall be subject to delays in the delivery of the Headquarters Facility beyond the reasonable control of the PGA and other delays as defined in the Master Agreement and Purchase Agreement (as defined in the Master Agreement). FEDC acknowledges and agrees that while the Headquarters Facility will serve as the national corporate headquarters of PGA that PGA may have a significant number of employees working from other locations, including but not limited to, facilities located in Florida, the location of the prior national corporate headquarters of PGA. The presence of such employees at locations other than the Headquarters Facility shall not be a breach or default by PGA of its obligations under this Agreement and shall not, in and of itself, prevent PGA from qualifying and receiving any grants or incentives under this Agreement.

- (e) PGA shall create standard operating procedures to incorporate the identification of the City as the location of its Headquarters Facility in press releases, promotional materials, videos, films and interviews as reasonably determined by PGA. PGA shall share such guidelines with any employees of PGA having responsibility for media relations and shall require such employees to comply with such guidelines. PGA will reasonably cooperate with the FEDC and City in licensing the FEDC and/or City to utilize logos, drawings, pictures and other materials in print and media presentations developed by or for the FEDC and/or City. For the avoidance of doubt, this provision does not require that "Frisco" be used in the formal name of the Golf Facility or Headquarters Facility.
- (f) To qualify for a Tournament Grant payment in any of the years set forth in this Agreement, the measuring period will commence after the expiration of twelve (12) months after the Golf Facility has been fully-operational and for twelve (12) years thereafter pursuant to the tournament schedule attached hereto as Exhibit "E".
- (g) The PGA will certify and provide in the form attached hereto as Exhibit "D", to the extent necessary, PGA records, documents, agreements, construction contracts both at the prime and sub-contractor level, and other instruments in furtherance of the following purposes: (i) to insure PGA's compliance with the affirmative covenants as set forth within the Performance Agreement; (ii) to determine the existence of an event of default; (iii) to insure compliance with any terms or conditions set forth in the Agreement or related documents. PGA will provide reports certifying the status of compliance and any other relevant information until the termination of the Agreement.
- (h) Although not an event of default or condition of any reimbursement hereunder, the PGA agrees to endeavor to actively participate in community and charitable organizations and/or activities, the purpose of which are to improve the quality of life in the City of Frisco, Texas, and to actively encourage its employees to be involved in such organizations and/or activities.
- (i) Although not an event of default or condition of any reimbursement hereunder, the FEDC requests that PGA, and its affiliates, endeavor to satisfy its need for all additional employees from Frisco residents and purchase all materials, supplies and services (subject to the receipt by PGA of an appropriate number of bids from qualified vendors) necessary to effect the occupancy of the Headquarters Facility from Frisco merchants and businesses. The FEDC also requests that PGA use reasonable efforts to place hotel room nights related to PGA's business at hotel facilities located in the City whenever practicable.
- (j) The PGA shall perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between the PGA and the FEDC, and shall perform and comply with all terms, conditions, and provisions of the Master Agreement.
- (k) The PGA covenants and agrees that its business does not consist primarily of purchasing taxable items using a resale certificate and then reselling them to a related entity.



## **SECTION 6. DEFAULT REMEDIES.**

- (a) If any Party fails to perform any material covenant required by this Agreement, the other Party may give written notice of such failure to the non-performing Party, which notice shall describe in reasonable detail the nature of the failed performance. If the non-performing Party does not cure or remedy the failed performance within a reasonable period of time after the notice is given (taking into consideration the nature of the failed performance, but in no event more than ninety (90) days after the notice is given), then the non-performing Party shall be in “Default” under this Agreement. Notwithstanding anything herein to the contrary, if PGA is in Default, the remedies against PGA shall be limited to recapture of any payments made to PGA for any year in which PGA was in Default.
- (b) In addition to the Defaults described in Section 6(a), the PGA is in default if it becomes delinquent in the payment of any ad valorem taxes or sales taxes owed to the City and such delinquencies, including penalties and interest, are not paid in full within sixty (60) days after written notice of such delinquencies is given. If the PGA is in Default under this Section 6(b), the FEDC may pursue any remedies available at law or in equity (excluding termination of this Agreement) including, but not limited to, exercise of the right of off-set against any amounts to which the PGA is entitled under this Agreement. Notwithstanding the foregoing, other than as provided by paragraph (o) of Section 9, FEDC’s remedies shall not include the right to recapture any payments made to PGA for any year in which PGA was in material compliance with this Agreement.
- (c) If the FEDC is in Default, the PGA may enforce specific performance of this Agreement.

## **SECTION 7. REPRESENTATIONS OF THE FEDC.**

- (a) The FEDC is duly authorized, created, and existing in good standing under the laws of the State of Texas and is qualified and authorized to implement and conduct the functions and actions contemplated by this Agreement.
- (b) The FEDC has the power, authority, and legal right to enter into and perform its obligations under this Agreement; and the execution, delivery, and performance of those obligations has been duly authorized; will not, to the best of the FEDC’s knowledge, violate any applicable judgment, order, law, or regulation; and does not constitute a default under, or result in the creation of, any lien, charge, encumbrance, or security interest upon any of the FEDC’s assets under any agreement or instrument to which the FEDC is a party, or by which the FEDC or its assets may be bound or affected.
- (c) This Agreement has been duly authorized, executed and delivered by the FEDC and constitutes a legal, valid, and binding obligation of the FEDC enforceable in accordance with its terms.
- (d) The execution, delivery, and performance of this Agreement by the FEDC do not require the consent or approval of any person or entity that has not already been obtained.



## **SECTION 8. REPRESENTATIONS OF THE PGA.**

- (a) The PGA has the power, authority, and legal right to enter into and perform its obligations under this Agreement, and the execution, delivery, and performance of those obligations has been duly authorized; will not, to the best of the PGA's knowledge, violate any applicable judgment, order, law, or regulation applicable to the PGA; and does not constitute a default under, or result in the creation of, any lien, charge, encumbrance, or security interest upon any assets of the PGA under any agreement or instrument to which the PGA is a party, or by which the PGA or its assets may be bound or affected.
- (b) This Agreement has been duly authorized, executed, and delivered by the PGA and constitutes a legal, valid, and binding obligation of the PGA enforceable in accordance with its terms.
- (d) The execution, delivery, and performance of this Agreement by the PGA do not require the consent or approval of any person or entity that has not already been obtained.

## **SECTION 9. ADDITIONAL PROVISIONS.**

- (a) This Agreement and the Master Agreement constitute the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. Except as provided in this Section 9(a), no alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the Party or Parties sought to be charged or bound by the alteration or amendment. No course of dealing on the part of any Party or failure or delay by any Party with respect to the exercise of any right, power, or privilege under this Agreement shall operate as a waiver thereof.
- (b) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in the City. Venue for any action arising under this Agreement shall lie in the state district courts of Collin County, Texas.
- (c) The PGA has the right to assign this Agreement in whole, including all obligations, rights, title, and interests of the PGA under this Agreement, and to assign this Agreement in part, with respect to any obligations of the PGA under this Agreement, to any affiliate (i.e., an entity that controls, is controlled by, or is under common control with the PGA) without the consent of FEDC and to any other entity only with the consent of the FEDC, which consent may be withheld in its sole discretion.
- (d) This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto or to any assignment hereof.
- (e) Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.
- (f) This Agreement is a contract made under, and shall be construed in accordance with, and governed by the laws of the United States of America and the State of Texas.

- (g) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (h) If the performance by any Party of its obligations under this Agreement is delayed due to unexpected circumstances beyond the reasonable control of such Party, then such Party shall be excused from performance during the period that such circumstances continue so long as such Party is diligently and continuously seeking to eliminate the circumstances or otherwise resume performance in spite of such circumstances.
- (i) Any notice or other communication required or permitted by this Agreement (a “Notice”) is effective when in writing (i) and personally delivered by any nationally recognized delivery service such as FedEx or UPS, or (ii) three (3) days after the Notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows or, in the case of a change of address, as provided in a Notice notifying the other Party of such address change:

To PGA: The Professional Golfers’ Association of America.  
100 Avenue of the Champions  
Palm Beach Gardens, FL 33418  
Attention: Henry Smokler

With a copy to: Jackson Walker L.L.P.  
2323 Ross Avenue, Suite 2000  
Dallas, Texas 75201  
Attention: William Dahlstrom

Kirkland & Ellis LLP  
300 N. LaSalle Street  
Chicago, Illinois 60654  
Attention: Matthew Keiser & Roberto Miceli

To FEDC: Frisco Economic Development Corporation  
6801 Gaylord Parkway, Suite 400  
Frisco, Texas 75034  
Attn: Ron K. Patterson

With a copy to: Abernathy, Roeder, Boyd & Hullett, P.C.  
1700 Redbud Blvd., Suite 300  
McKinney, TX 75069  
Attn: Randy Hullett

- (j) If a court finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render the provision invalid or unenforceable as to any other persons or circumstances. To the extent feasible, any provision found to be invalid or unenforceable shall be deemed to be modified to be valid and enforceable; however, if the provision cannot be so modified, it shall be stricken

from this Agreement, and all other provisions of this Agreement shall remain valid and enforceable and unaffected by the stricken provision.

- (k) Where the context permits, words used in this Agreement in the singular also include the plural and vice versa, and the definitions of such words in the singular also apply to such words when used in the plural and vice versa.
- (l) Time is of the essence in the performance of this Agreement.
- (m) The Board shall authorize the Board's President to execute this Agreement on behalf of the FEDC.
- (n) The FEDC is not required by State law to comply with the competitive bidding requirements applicable to the City.
- (o) The PGA certifies that it, and any branches, divisions, or departments of PGA, does not and will not knowingly employ an undocumented worker (in accordance with Chapter 2264 of the Texas Government Code, as amended). If during the Term of this Agreement, the PGA or any branch, division or department of PGA, is convicted of a violation under 8 U.S.C. § 1324a(f), the PGA shall repay the amount of the public subsidy provided under this Agreement with simple interest at a rate of two percent (2%) per annum as required by law. Pursuant to Section 2264.101, Texas Government Code, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.
- (p) Once the legal description of the Headquarters Tract is appended to this Agreement as provided in Section 3 herein, the Parties will execute and record in the Real Property Records of Denton County a Memorandum of Agreement with the property description attached as evidence, in part, of the Parties' obligations and rights herein.
- (q) The following exhibits are attached hereto and incorporated herein for all purposes:

**Exhibit "A"** – Description of the Golf Tract

**Exhibit "B"** – Description of the Headquarters Tract

**Exhibit "C"** – Intentionally Removed

**Exhibit "D"** – Certificates of Compliance

**Exhibit "E"** – Tournament Schedule

**Exhibit "F"** – Employment Grant Payout Examples

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

**PGA:**

**THE PROFESSIONAL GOLFERS' ASSOCIATION  
OF AMERICA**, a Florida non-profit corporation

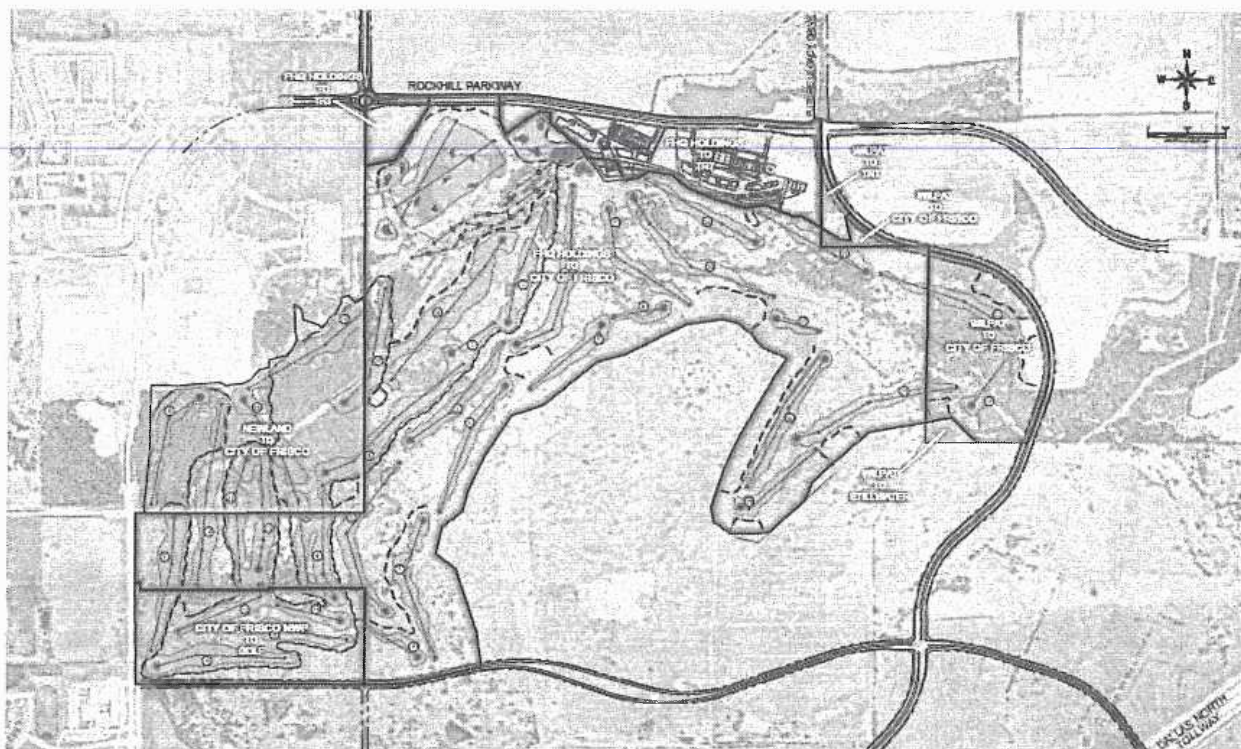
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**FEDC:**

**FRISCO ECONOMIC DEVELOPMENT  
CORPORATION**, a Texas non-profit corporation

By: \_\_\_\_\_  
Ron K. Patterson, President

**EXHIBIT "A"**  
**(Description of the Golf Tract)**

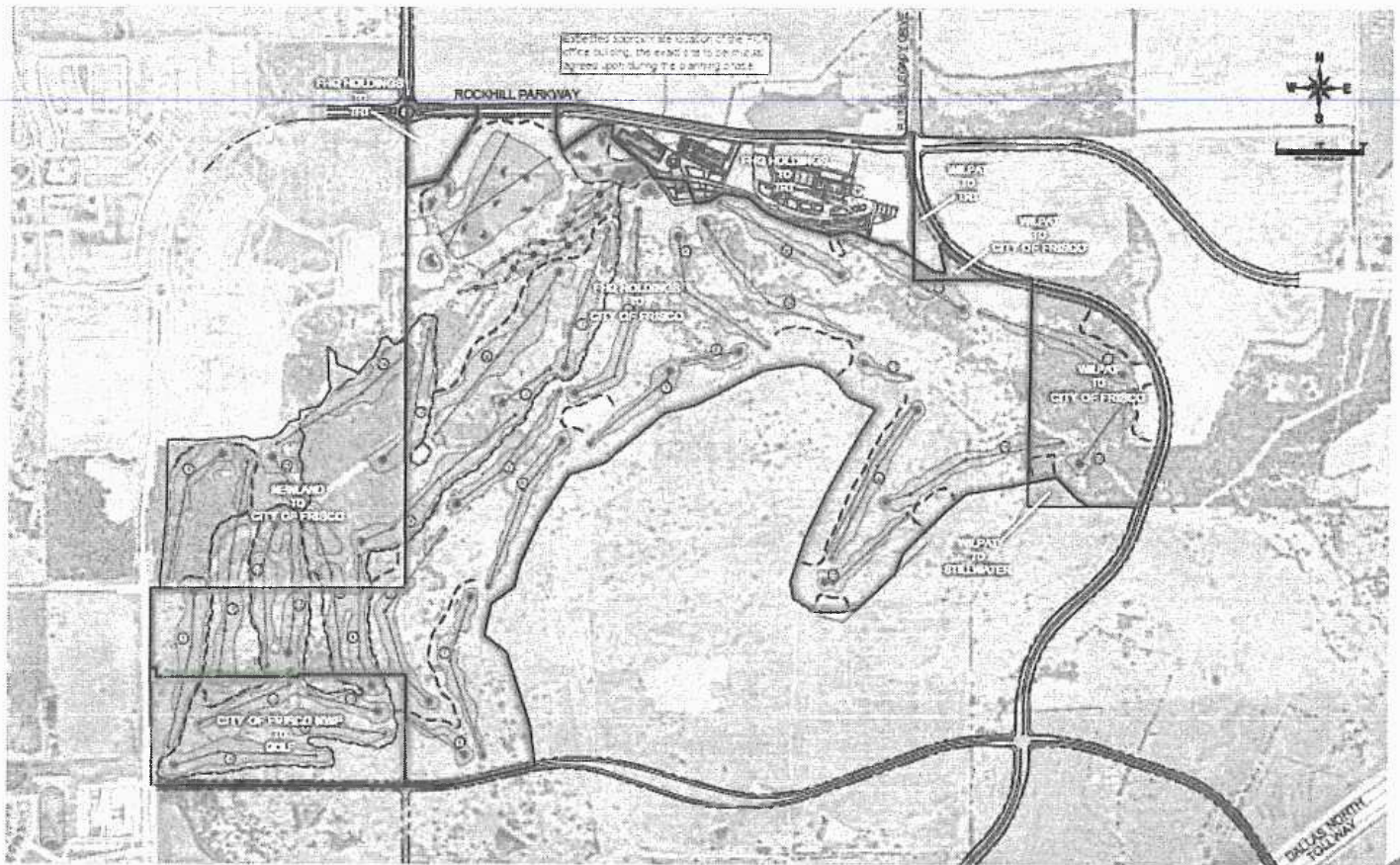


**Frisco Golf Parcel Exhibit**  
Frisco, Texas      October 2018

**Kimley Horn**  
Civil & Environmental Engineers  
10000 North Central Expressway, Suite 100  
Dallas, Texas 75243  
Phone: (214) 391-1000  
Fax: (214) 391-1001  
www.kimleyhorn.com



**EXHIBIT "B"**  
**(Description of the Headquarters Tract)**



**Frisco Golf Parcel Exhibit**  
Frisco, Texas      October 2016

**Kimley»Horn**  
Kimley-Horn and Associates, Inc.  
10000 North Central Expressway, Suite 200  
Dallas, Texas 75243  
Phone: (214) 391-1000  
Fax: (214) 391-1001  
www.kimley-horn.com

**EXHIBIT “D”**  
**(Certificates of Compliance)**

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**EXHIBIT "E"**  
**(Tournament Schedule)**

<b>Tournament One Grant - \$700,000 (Subject to below, must host both 2023 tournaments and meet performance criteria)</b>	<b>Required Tournaments and Performance Criteria</b>
2023	<b><i>**Senior PGA Championship</i></b>
	<b>Performance Criteria:</b> City Taxable Revenue of at least – \$1,600,000 Hotel Room Nights of at least – 1,100 as reported by Frisco Convention and Visitors Bureau (“Frisco CVB”) and confirmed by PGA* <b>Note:</b> “Hotel Room Nights” listed for each of the tournaments below shall be located within the City and shall be calculated by adding all room nights associated with such tournament including the room nights booked directly by the PGA.
2023	<b><i>PGA Junior League Championship</i></b>
	<b>Performance Criteria:</b> City Taxable Revenue of at least – NA Hotel Room Nights of at least – 1,200 as reported by Frisco CVB and confirmed by PGA
<b>No Additional Grant – General Requirement Related to Tournament Incentive Package</b>	<b>Required Tournaments</b>
2024	<b><i>PGA Professional Championship</i></b>
	<b>Performance Criteria:</b> City Taxable Revenue of at least – NA Hotel Room Nights of at least – 1,300 as reported by Frisco CVB and confirmed by PGA
2024	<b><i>PGA Junior League Championship</i></b>
	<b>Performance Criteria:</b> City Taxable Revenue of at least – NA Hotel Room Nights of at least – 900 as reported by Frisco CVB and confirmed by PGA

<b>Tournament Two Grant - \$750,000 (Subject to below, must host both 2025 tournaments and meet performance criteria)</b>	<b>Required Tournaments and Performance Criteria</b>
2025	<b>**Women's PGA Championship</b>
	<u>Performance Criteria:</u> City Taxable Revenue of at least – \$1,600,00 Hotel Room Nights of at least – 1,100 as reported by Frisco CVB and confirmed by PGA
2025	<b>PGA Junior League Championship</b>
	<u>Performance Criteria:</u> City Taxable Revenue of at least – NA Hotel Room Nights of at least – 1,200 as reported by Frisco CVB and confirmed by PGA
<b>No Additional Grant – General Requirement Related to Tournament Incentive Package</b>	<b>Required Tournaments</b>
2026	<b>PGA Junior Boys &amp; PGA Junior Girls Championships</b>
	<u>Performance Criteria:</u> City Taxable Revenue of at least – NA Hotel Room Nights of at least – 240 as reported by Frisco CVB and confirmed by PGA
2026	<b>PGA Junior League Championship</b>
	<u>Performance Criteria:</u> City Taxable Revenue of at least – NA Hotel Room Nights of at least – 1,200 as reported by Frisco CVB and confirmed by PGA
<b>Tournament Three Grant - \$800,000 (Subject to below, must host both 2027 tournaments and meet performance criteria)</b>	<b>Required Tournaments and Performance Criteria</b>
2027	<b>PGA Cup</b>
	<u>Performance Criteria:</u> City Taxable Revenue of at least – NA Hotel Room Nights of at least – 475 as reported by Frisco CVB and confirmed by PGA
2027 (or 2028 subject to current agreements)	<b>**PGA Championship</b>
	<u>Performance Criteria:</u> City Taxable Revenue of at least – \$30,700,000 Hotel Room Nights of at least – 6,100 as reported by Frisco CVB and confirmed by PGA
2027	<b>PGA Junior League Championship</b>
	<u>Performance Criteria:</u> City Taxable Revenue of at least – NA Hotel Room Nights of at least – 1,200 as reported by Frisco CVB and confirmed by PGA

<b>No Additional Grant – General Requirement Related to Tournament Incentive Package</b>	<b>Required Tournaments</b>
2028	<i>PGA Junior League Championship</i>
	<u>Performance Criteria:</u> City Taxable Revenue of at least – NA Hotel Room Nights of at least – 1,200 as reported by Frisco CVB and confirmed by PGA
2028	<i>Senior PGA Professional Championship</i>
	<u>Performance Criteria:</u> City Taxable Revenue of at least – NA Hotel Room Nights of at least – 160 as reported by Frisco CVB and confirmed by PGA
<b>Tournament Four Grant - \$850,000 (Subject to below, must host both 2029 tournaments and meet performance criteria)</b>	<b>Required Tournaments and Performance Criteria</b>
2029	<b><i>**Senior PGA Championship</i></b>
	<u>Performance Criteria:</u> City Taxable Revenue of at least – \$1,600,00 Hotel Room Nights of at least – 1,100 as reported by Frisco CVB and confirmed by PGA
2029	<i>PGA Junior League Championship</i>
	<u>Performance Criteria:</u> City Taxable Revenue of at least – NA Hotel Room Nights of at least – 1,200 as reported by Frisco CVB and confirmed by PGA
<b>No Additional Grant – General Requirement Related to Tournament Incentive Package</b>	<b>Required Tournaments</b>
2030	<i>PGA Professional Championship</i>
	<u>Performance Criteria:</u> City Taxable Revenue of at least – NA Hotel Room Nights of at least – 1,300 as reported by Frisco CVB and confirmed by PGA
2030	<i>PGA Junior League Championship</i>
	<u>Performance Criteria:</u> City Taxable Revenue of at least – NA Hotel Room Nights of at least – 1,200 as reported by Frisco CVB and confirmed by PGA



<b>Tournament Five Grant - \$900,000 (Subject to below, must host both 2031 tournaments and meet performance criteria)</b>	<b>Required Tournaments and Performance Criteria</b>
2031	<b><i>**Women's PGA Championship</i></b>
	Performance Criteria: City Taxable Revenue of at least – \$1,600,00 Hotel Room Nights of at least – 1,100 as reported by Frisco CVB and confirmed by PGA
2031	<b><i>PGA Junior League Championship</i></b>
	Performance Criteria: City Taxable Revenue of at least – NA Hotel Room Nights of at least – 1,200 as reported by Frisco CVB and confirmed by PGA
<b>No Additional Grant – General Requirement Related to Tournament Incentive Package</b>	<b>Required Tournaments</b>
2032	<b><i>PGA Assistants Championship</i></b>
	Performance Criteria: City Taxable Revenue of at least – NA Hotel Room Nights of at least – 50 as reported by Frisco CVB and confirmed by PGA
2032	<b><i>PGA Junior League Championship</i></b>
	Performance Criteria: City Taxable Revenue of at least – NA Hotel Room Nights of at least – 1,200 as reported by Frisco CVB and confirmed by PGA
<b>No Additional Grant – General Requirement Related to Tournament Incentive Package</b>	<b>Required Tournaments</b>
2033	<b><i>PGA Junior League Championship</i></b>
	Performance Criteria: City Taxable Revenue of at least – NA Hotel Room Nights of at least – 1,200 as reported by Frisco CVB and confirmed by PGA
2033	<b><i>PGA Professional Championship</i></b>
	Performance Criteria: City Taxable Revenue of at least – NA Hotel Room Nights of at least – 1,300 as reported by Frisco CVB and confirmed by PGA

<b>Tournament Six Grant - \$950,000 (Subject to below, must host both 2034 tournaments and meet performance criteria)</b>	<b>Required Tournaments and Performance Criteria</b>
2034	<b>**PGA Championship</b>
	<u>Performance Criteria:</u> City Taxable Revenue of at least – \$30,700,000 Hotel Room Nights of at least – 6,100 as reported by Frisco CVB and confirmed by PGA
2034	<b>PGA Junior League Championship</b>
	<u>Performance Criteria:</u> City Taxable Revenue of at least – NA Hotel Room Nights of at least – 1,200 as reported by Frisco CVB and confirmed by PGA

\*PGA shall have the right, at its sole cost and expense, to audit and confirm the hotel room nights reported by Frisco CVB. Frisco CVB shall reasonably cooperate with PGA and provide such information reasonably requested by PGA in order for PGA to confirm the information set forth in the hotel room night reports.

\*\*For the PGA Championship, Women's PGA Championship, and Senior PGA Championship tournaments (collectively the "Championship Events") only the following proration calculations shall apply:

1. In order to qualify for any portion the Tournament Grants each of the Championship Events must produce at a minimum 60% of each of the Performance Criteria (Taxable Sales and Hotel Room Nights, collectively the "Performance Criteria"). All Tournament Grant amounts listed above are capped at the amount shown.
2. Assuming a Championship Event produces at least 60% of each of the Performance Criteria then a proration calculation will be used to calculate the actual Tournament Grant amount based on the following table of values:
  - 60% to 69.99% of Criteria achieved yields 70% of the Grant Amount (% Earned)
  - 70% to 79.99% of Criteria achieved yields 80% of the Grant Amount (% Earned)
  - 80% to 89.99% of Criteria achieved yields 90% of the Grant Amount (% Earned)
  - 90% to 100% of Criteria achieved yields 100% of the Grant Amount (% Earned)

#### EXAMPLE CALCULATIONS ON NEXT PAGE

**Example Calculations:**

2023 Senior PGA Championship  
Potential Grant Amount \$700,000

	Performance Criteria	Criteria Achieved	% of Criteria Achieved	% Earned (See Table)	Grant Amount Achieved
City Taxable Revenue at least	\$1,600,000	\$1,440,000	90%	100%	
Hotel Room Nights at least	1,100	990	90%	100%	
			<b>**Overall % Earned:</b>	100%	\$700,000

	Performance Criteria	Criteria Achieved	% of Criteria Achieved	% Earned (See Table)	Grant Amount Achieved
City Taxable Revenue at least	\$1,600,000	\$880,000	55%	0%	
Hotel Room Nights at least	1,100	880	80%	0%	
			<b>**Overall % Earned:</b>	0%	\$ - 0 -

	Performance Criteria	Criteria Achieved	% of Criteria Achieved	% Earned (See Table)	Grant Amount Achieved
City Taxable Revenue at least	\$1,600,000	\$960,000	60%	70%	
Hotel Room Nights at least	1,100	660	60%	70%	
			<b>**Overall % Earned:</b>	70%	\$490,000

	Performance Criteria	Criteria Achieved	% of Criteria Achieved	% Earned (See Table)	Grant Amount Achieved
City Taxable Revenue at least	\$1,600,000	\$1,280,000	80%	90%	
Hotel Room Nights at least	1,100	990	90%	100%	
			<b>**Overall % Earned:</b>	95%	\$665,000

**\*\*Assuming both “% of Criteria Achieved” numbers reach at least 60% then the “Overall % Earned” will be calculated by adding both “%Earned” numbers and dividing by two. Example directly above would result in the following calculation – (90%+100% = 190) ÷ 2 = 95%.**

**For all Tournament Grants**

Failure of the PGA to hold a Championship Event, or if PGA holds the Championship Event and such event fails to meet the minimum performance criteria listed above, at the “Facilities”, as such is defined in the Master Development Agreement, the PGA will not receive the grant designated for such Championship event. Failure to bring any of the listed Championship events does not preclude the PGA from receiving the other Tournament Grants listed above subject to meeting the performance criteria list for each event.

If a Championship Event listed above does not occur during the particular grant period reflected in the table, PGA will not be eligible to receive the Tournament Grant associated with such period; provided, however, PGA will have the opportunity to host another Championship Event which meets at least the same performance criteria as the event being moved to a date mutually agreed to by the City and PGA subject to the following terms and conditions:

1. For any Championship Event that is moved the PGA will provide no less than six months' notice of a new proposed schedule date for the replacement event, however, in no case shall there be more than one Tournament Grant, including Championship Events and replacement events, paid in any given fiscal year (October 1<sup>st</sup> through September 30<sup>th</sup>);
2. The replacement event to be eligible for a Tournament Grant must be held no more than forty-eight months prior to or subsequent from the original event schedule listed in this **Exhibit "E"**. No grants will be paid beyond 2035, unless related to a replacement event that occurs on or before 2040 that was rescheduled by reason of an event of Force Majeure. For purposes of this provision, "Force Majeure" shall mean unforeseeable causes beyond the control of PGA, including, limited to, casualty, damage, strikes or lockouts, acts of God, war, terrorism, riots, governmental restrictions, inability to secure materials or labor, or order of any governmental body other than the City, enemy action, civil disturbance, fire, or unavoidable casualties;
3. The replacement event must be a Championship Event meeting at least the same performance criteria as the event being moved; and
4. Subject to compliance with the Performance Criteria including items 1 through 3 above:
  - (i) if a replacement event is held the PGA would be eligible to receive the previously established Tournament Grant listed in this **Exhibit "E"** for the moved tournament based on the same Performance Criteria previously established for such moved Championship Event; and
  - (ii) if a replacement event is held prior to the date it was previously scheduled, as reflected in this **Exhibit "E"**, the FEDC may consider making the Tournament Grant payment in the year the event is actually held, however, the FEDC has no obligation to pay the Tournament Grant associated with such event until the year it was originally scheduled; or
  - (iii) if the replacement event is held after the date it was previously scheduled, as reflected in the above table, the FEDC will pay the Tournament Grant in the year the event is actually held so long as such payment does not result in two Tournament Grants being paid in one FEDC fiscal year.

**EXHIBIT "F"**  
**(Employment Grant Payout Examples)**

**Exhibit F: Payment Cadence Example of Employment Grant**

Amount for First 150 Jobs           \$25,000  
Amount for Jobs 151 - 250       \$12,500

*Note: scheduled occupancy date is October 2020, but based on timing it will take for staff to move and payment to be made listing payment as 2021 but could be in 2020 if able to certify within time frame*

**Example Scenario 1**

Incentive Type	Total	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Number of EE's	250	0	100	20	10	10	10	20	20	20	20	20
Employment Grant Earned	\$5,000,000	\$0	\$2,500,000	\$500,000	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000
ANNUAL CAP			\$2,500,000	\$1,250,000	\$500,000	\$375,000	\$375,000	\$375,000	\$375,000	\$375,000	\$375,000	\$375,000
CARRY OVER STILL OWED		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AMOUNT PAID TO PGA	\$5,000,000	\$0	\$2,500,000	\$500,000	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000

**Example Scenario 2: Faster and Staggered Growth**

Incentive Type	Total	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Number of EE's	250	0	125	50	10	5	5	5	5	35	5	5
Employment Grant Earned	\$5,000,000	\$0	\$3,125,000	\$937,500	\$125,000	\$62,500	\$62,500	\$62,500	\$62,500	\$437,500	\$62,500	\$62,500
ANNUAL CAP			\$2,500,000	\$1,250,000	\$500,000	\$375,000	\$375,000	\$375,000	\$375,000	\$375,000	\$375,000	\$375,000
CARRY OVER STILL OWED		\$0	\$625,000	\$312,500	\$0	\$0	\$0	\$0	\$0	\$62,500	\$0	\$0
AMOUNT PAID TO PGA	\$5,000,000	\$0	\$2,500,000	\$1,250,000	\$437,500	\$62,500	\$62,500	\$62,500	\$62,500	\$375,000	\$125,000	\$62,500

**Example Scenario 3: Limited Growth Post 150**

Incentive Type	Total	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Number of EE's	175	0	100	20	10	10	10	5	5	5	5	5
Employment Grant Earned	\$4,062,500	\$0	\$2,500,000	\$500,000	\$250,000	\$250,000	\$250,000	\$62,500	\$62,500	\$62,500	\$62,500	\$62,500
ANNUAL CAP			\$2,500,000	\$1,250,000	\$500,000	\$375,000	\$375,000	\$375,000	\$375,000	\$375,000	\$375,000	\$375,000
CARRY OVER STILL OWED		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AMOUNT PAID TO PGA	\$4,062,500	\$0	\$2,500,000	\$500,000	\$250,000	\$250,000	\$250,000	\$62,500	\$62,500	\$62,500	\$62,500	\$62,500



**EXHIBIT "G"**  
**HOTEL GROUND LEASE**

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GROUND LEASE AGREEMENT

by and between

THE CITY OF FRISCO, TEXAS,  
as Lessor

and

\_\_\_\_\_,  
as Lessee

Dated: \_\_\_\_\_, 2018

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## GROUND LEASE AGREEMENT

This Ground Lease Agreement ("Lease") is made and entered into as of April \_\_, 2005 (the "Effective Date"), by and between the City of Frisco, Texas, a Texas home-rule municipality ("Lessor"), and \_\_\_\_\_, a \_\_\_\_\_ ("Lessee").

### WITNESSETH:

**WHEREAS**, Lessor owns in fee simple that certain tract of real property described in Exhibit "A", together with any improvements located thereon and appurtenances thereto (herein called the "Leased Premises").

**WHEREAS**, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the Leased Premises, subject to and upon the terms and conditions set forth herein.

**WHEREAS**, Lessee has agreed to construct and operate an approximate \_\_\_\_\_-room luxury hotel on the Leased Premises.

**WHEREAS**, Lessee may, at its option, also construct other improvements on the Leased Premises which complement the hotel use, such as, without limitation, parking, a conference center, restaurants and retail space.

**NOW THEREFORE**, in consideration of the rents herein required to be made by Lessee, and the covenants and agreements hereinafter contained to be kept and performed by Lessee, Lessor does by these presents demise, lease and let unto Lessee, for the term and upon the conditions hereinafter stated, the Leased Premises, UNDER AND SUBJECT, however, to the Permitted Exceptions (as hereinafter defined);

**SUBJECT** to the following terms and conditions:

### ARTICLE I

#### DEFINITIONS

**Section 1.1 Definitions.** In addition to terms defined elsewhere in this Lease, the following terms, for the purposes of this Lease, shall have the meanings set forth below:

"Act" shall have the meaning ascribed to such term in Section 3.5(c).

"Act of Bankruptcy" means the commencement of a bankruptcy or similar proceeding by or against Lessee, including, but not limited to, the following: the making of a general assignment for the benefit of creditors, the commencing of a voluntary or involuntary case under the Federal Bankruptcy Code or the filing of a petition thereunder, petitioning or applying to any tribunal for the appointment of, or the appointment of, a receiver, or any trustee for Lessee or for a substantial part of the assets of the Lessee, commencing any proceeding under any bankruptcy, reorganization, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect.

"Acquisition Closing Date" shall have the meaning ascribed to such term in Section 9.3.

"Applicable Laws" shall have the meaning ascribed to such term in Section 2.1(f).

"Business Day" means any day which is not a Sunday, a Saturday, a legal holiday or a day on which banking institutions in the City of Frisco, Texas, are authorized by law or executive order to close.

"Commencement Date" means the date upon which Lessee obtains a building permit from the applicable governmental authorities relating to the construction of the Hotel.

"Conference Center Unit" shall have the meaning ascribed to such term in Section 3.5(c).



"County" means the County of Denton, Texas.

"Damages" shall have the meaning set forth in **Section 7.1**.

"Declaration" shall have the meaning ascribed to such term in **Section 3.5(c)**.

"Development Agreement" means that certain Master Development Agreement dated \_\_\_\_\_, 2018, by and among the City of Frisco, Texas, Frisco Economic Development Corporation, Frisco Community Development Corporation, Frisco Independent School District, Omni Stillwater Woods Golf Resort, LLP, and the Professional Golfers' Association of America, relating to the development of, among other facilities, the Hotel.

"Effective Date" shall have the meaning ascribed to such term in the first paragraph of this Lease.

"Environmental Law" means applicable federal, state, and local laws relating to protection of the public health, welfare, and the environment, including, without limitation, those laws relating to the storage, handling and use of chemicals and other hazardous materials, those relating to the generation, processing, treatment, storage, transport, disposal, or other management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

"Event of Default" shall have the meaning ascribed to such term in **Section 10.1**.

"Fair Market Rental Value of the Leased Premises" shall have the meaning ascribed to such term in **Section 3.2**.

"Fair Market Value of the Leased Premises" shall have the meaning ascribed to such term in **Section 9.1.3**.

"Force Majeure" means Acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States of America, or of any state thereof, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tornadoes, storms, floods, washouts, droughts, arrests, restraining of government and people, civil disturbances, explosions, nuclear accidents, wars, part or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other cause not reasonably within the control of the party claiming inability to perform due to such cause.

"Guaranty" means that certain Guaranty to be executed by TRT Holdings, Inc., as guarantor, as further described in the \_\_\_\_\_.

"Hazardous Materials" shall have the meaning ascribed to said term in **Section 5.9**.

"Hotel" means the approximate \_\_\_\_\_-room hotel to be constructed by Lessee on the Leased Premises

"Hotel Unit" shall have the meaning ascribed to such term in **Section 3.5(c)**.

"Improvements" means the Hotel and all other improvements that may be constructed upon the Leased Premises by Lessee from time to time.

"Indemnatee" and "Indemnites" shall have the meaning ascribed to those terms in **Section 7.1.1**.

"Leased Premises" shall have the meaning ascribed to such term in the first recital of this Lease. As used herein, the term "Leased Premises" specifically excludes any Improvements. The legal description of the Leased Premises is subject to change in accordance with **Section 4.5** hereof.

"Lessee" means the party defined as "Lessee" in the first paragraph of this Lease, or any successor thereto or assignee thereof.

"Lessor" means the party defined as "Lessor" in the first paragraph of this Lease, or any successor thereto

or assignee thereof.

“Lessor's Work” shall have the meaning ascribed to such term in **Section 4.4**.

“Option” shall have the meaning ascribed to such term in **Section 9.1.1**.

“Option Period” shall have the meaning ascribed to such term in **Section 9.1.2**.

“Permitted Exceptions” means those certain liens, encumbrances, easements, restrictions and other matters of record more specifically set forth in **Exhibit “B”** attached hereto and incorporated herein by reference.

“Person” means any association, individual, corporation, governmental entity, partnership, joint venture, business association, estate or any other organization or entity.

“Put Option” shall have the meaning ascribed to such term in **Section 9.2**.

“Release” or “Released” shall have the meaning ascribed to such terms in **Section 5.9(a)**.

“Rent Commencement Date” shall have the meaning ascribed to such term in **Section 3.2**.

“Rentals” shall have the meaning ascribed thereto in **Section 3.2**.

“Response Action” shall have the meaning ascribed to such term in **Section 5.9(b)(iii)**.

“State” means the State of Texas.

“Subsidiary” means, as to any Person, any corporation, association or other business entity in which such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such entity, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries.

“Taxes” shall have the meaning ascribed to such term in **Section 5.2**.

“Term” shall have the meaning ascribed thereto in **Section 3.1**.

“Units” shall have the meaning ascribed to such term in **Section 3.5(c)**.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

**Section 2.1 Representations and Warranties by Lessor.** Lessor makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) Lessor has taken all action and has complied with all provisions of law with respect to the execution, delivery and performance of this Lease and the due authorization of the consummation of the transactions contemplated hereby, and this Lease has been duly executed and delivered by, and constitutes the valid and legally binding obligation of, Lessor, enforceable against Lessor in accordance with their respective terms.

(b) Neither the execution and delivery of this Lease, nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Lease, violate any law or regulation, or any judicial order, judgment, decree, or injunction, conflict with or results in a breach of any of the terms, conditions or provisions of any restriction, ordinance or any agreement or instrument to which Lessor is now a party or by which it is bound, or constitute a default under any of the foregoing, or result in the creation or

imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Lessor under the terms of any instrument or agreement.

(c) Lessor has good and indefeasible title to the Leased Premises, subject only to the Permitted Exceptions.

(d) There are no third parties in possession of any portion of the Leased Premises.

(e) There is no suit, action, legal or other proceeding pending, or to the best of Lessor's actual knowledge, threatened, which materially and adversely affects the Leased Premises.

(f) The Leased Premises is not currently subject to (i) any existing, pending or threatened investigation or inquiry by any governmental authority, or (ii) any remedial obligations under any applicable law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any board of fire underwriters (or other body exercising similar functions), or any restrictive covenant or deed restriction affecting the Leased Premises which would prevent Lessee from developing and using the Leased Premises for its intended use, including, without limitation, all applicable building codes, fire codes, health codes, water codes, flood disaster laws and health and applicable Environmental Laws and regulations (hereinafter sometimes collectively called the "Applicable Laws"). Lessor has received no notice from any municipal, state, federal or other governmental authority of any violation of any Applicable Laws issued in respect of the Leased Premises which has not been heretofore corrected, and no such violation exists.

(g) To the best of Lessor's actual knowledge, there is no judicial or other action by adjacent landowners which would adversely affect, prevent, or limit the use of the Leased Premises as contemplated by Lessee.

**Section 2.2 Representations and Warranties by Lessee.** Lessee makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) Lessee is a limited partnership organized under the laws of Delaware and qualified to do business in the State, is in good standing in the State, has power to execute and enter into each of the Development Documents to which it is a party and by proper corporate action has been duly authorized to execute and deliver such Development Documents.

(b) This Lease has been duly executed and delivered by duly authorized officers of the Lessee, and constitute valid and binding obligations of Lessee, enforceable against Lessee in accordance with its terms.

(c) No approvals or consents, other than those that have been or will in normal course be obtained, are necessary in order for Lessee to execute and deliver this Lease.

(d) There is no litigation now pending or, to the best of Lessee's actual knowledge, threatened, challenging the corporate existence of the Lessee and there is no pending, or to the best of Lessee's actual knowledge, threatened action or proceeding before any court or administrative agency that individually (or in the aggregate in the case of any group of related lawsuits) is expected to have a material adverse effect on the financial condition of the Lessee or the ability of the Lessee to perform its obligations under this Lease.

(e) The execution and delivery of any of this Lease, the consummation of any of the transactions contemplated hereby or compliance with the terms and provisions thereof do not and will not (i) violate any law or regulation or any order or decree of any court or governmental instrumentality applicable to Lessee or any of its Subsidiaries, which violation would materially and adversely affect the ability of Lessee to perform its obligations under any of the Development Documents to which it is a party; (ii) conflict with or would result in the breach of, or constitute a default under, any of the Development Documents to which it is a party, or any other contract, lease, indenture, loan agreement, mortgage, deed of trust or other agreement or instrument to which Lessee is a party or by which Lessee or its property may be bound, which conflict, breach or default would materially and adversely affect the ability of Lessee to perform its obligations under any of the Development Documents to which it is a party; or (iii) violate the charter, articles of incorporation or bylaws of Lessee. No consent, approval authorization or order of any governmental or regulatory authority, agency, commission or board of arbitration was or will be required in

connection with the execution and delivery by Lessee of any of the Development Documents to which it is a party or the consummation of the transactions contemplated thereby or compliance with the terms and provisions thereof, except such as have been obtained and are in full force and effect.

(f) Lessee has obtained all material certificates, licenses and permits from all public authorities, both federal and state, required to enable Lessee to carry on its business as it is now conducted and to enter into this Lease.

### ARTICLE III

#### LEASE OF LEASED PREMISES

**Section 3.1 Term.** This Lease shall be effective as of the date hereof, but the term (the "Term") of this Lease shall not commence until the Commencement Date and shall continue for \_\_\_\_\_ (\_\_\_\_) years thereafter, unless earlier terminated in accordance with the terms hereof; provided, however, that the provisions of **Sections 5.9 and 7.1** hereof shall survive any termination of this Lease. On or about the Commencement Date, Lessor and Lessee shall execute a Memorandum of Commencement Date in the form of **Exhibit "E"** attached hereto confirming the Commencement Date. Lessee shall have the right to enter the Leased Premises at any time prior to the Commencement Date as may be necessary to prepare for Lessee's intended use and development of the Leased Premises. Lessee's obligations under this Lease (including, without limitation, Lessee's obligation to maintain insurance, indemnify Lessor, and pay any taxes or other expenses) will not accrue prior to the Commencement Date.

**Section 3.2 Rent.** During the Term of this Lease, Lessee shall pay to Lessor a rental (the "Rentals") payable without demand, commencing on the date the Hotel opens for business (the "Rent Commencement Date"). Rentals shall be paid annually in advance, due each year on or before the anniversary of the Rent Commencement Date. The annual amount of Rentals shall be \_\_\_\_\_. Lessor acknowledges and agrees that Lessor is bound by the 380 Agreement to make economic development grants (as defined in the Development Agreement) to Lessee in accordance with the terms thereof.

**Section 3.3 Permitted Uses.** Throughout the Term, Lessee shall use the Leased Premises for the primary purposes of operating the Hotel, and may also use the Leased Premises for purposes related and incidental thereto (including, without limitation, the operation of restaurant(s), bar(s), gift shops, coffee shops, meeting facilities, catering services, fitness and spa facilities and other supporting facilities commensurate with a full-service, resort hotel). Lessee shall not use the Leased Premises for any purpose other than expressly set forth in this **Section 3.3** unless Lessee has received Lessor's prior written consent.

**Section 3.4 Compliance with Environmental and Other Laws.**

(a) Lessee shall, throughout the Term, and at no expense to Lessor, promptly comply or cause compliance with all laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities, which may be applicable from time to time to the Leased Premises and the ownership, use, operation, repair and alteration of improvements thereon. With regard to Lessor, Lessee accepts the Leased Premises in their condition on the date of the commencement of the Term, and assumes all risks, if any, resulting from any present or future, latent or patent defects therein or from the failure of the Leased Premises to comply with all legal requirements, reserving, however, any and all rights of Lessee with respect to parties other than Lessor.

(b) Lessee shall not, however, be required to comply or cause compliance with such laws, ordinances, orders, rules, regulations or requirements, if Lessee is, after prior written notice to Lessor, contesting the same or the validity thereof in good faith, at Lessee's expense by appropriate proceedings; and provided further, such non-compliance will not have a material adverse effect on the Leased Premises or the Lessee or the performance of its obligations hereunder. Such contest may be made by Lessee in the name of Lessor or Lessee, or both, as Lessee shall reasonably determine, and Lessor shall, at Lessee's expense, cooperate with Lessee in any such contest to such extent as Lessee may reasonably request; provided, however, the Lessee may not contest in the name of Lessor any law, ordinance, rule, regulation, order or requirement of Lessor, and the Lessor has no obligation to cooperate in any such contest against Lessor. Lessor shall not, however, be subject to any liability for the payment of any costs or expenses in connection with any such proceedings brought by Lessee, and Lessee covenants to pay, and to



indemnify and save Lessor harmless from, any such costs or expenses, including, but not limited to, court costs and attorneys' fees.

**Section 3.5 Title.**

(a) During the Term, Lessor shall not mortgage or encumber the Leased Premises, without Lessee's prior written approval, which may be withheld by Lessee in its sole and absolute discretion.

(b) From time to time during the Term, Lessor shall grant, or join in the granting of, such utility easements, ingress and egress easements and similar easements on the Leased Premises as Lessee may reasonably request in connection with its use of the Leased Premises. Any such easements granted by Lessor at Lessee's request shall be additional "Permitted Exceptions" for all purposes under this Lease.

(c) Lessor acknowledges that Lessee's proposed development of the Leased Premises includes, in addition to the construction of the Hotel, the construction of a conference center (as more particularly described in Article 5 of the Development Agreement). In that regard, Lessor acknowledges that Lessee may enter into a condominium declaration (the "Declaration") for purposes of dividing the Improvements situated on the Leased Premises into separate parcels of real property including the Hotel (the "Hotel Unit"), and the Conference Center (the "Conference Center Unit") (collectively, the "Units"). The Declaration shall be executed by the Lessor and shall include the matters set forth in Section 82.056(a) of the Texas Uniform Condominium Act (the "Act"). Lessor agrees to cooperate with Lessee in any manner that is reasonably necessary to create the condominium regime and file the Declaration of record. In addition, Lessor hereby agrees to subordinate its interest in this Ground Lease to the provisions of the Declaration and the rights of the owners of the Units thereunder in accordance with the provisions of Section 82.056 of the Act and will execute any and all documents evidencing such subordination and agreements as may be reasonably requested by Lessee or owners of the Units.

**Section 3.6 Obligations of Lessee Unconditional.** The obligation of the Lessee to pay the Rentals, to pay the premiums or charges necessary to maintain or cause to be maintained the insurance required by **Article VI**, and to provide the indemnity required by **Section 7.1** hereof shall be absolute and unconditional and shall not be subject to any defense (other than payment) or any right of set-off, counterclaim, abatement or otherwise, unless specifically permitted under the terms of this Lease or the Development Agreement.

**ARTICLE IV**

**BEGINNING CONDITION, ALTERATIONS AND IMPROVEMENTS**

**Section 4.1 Improvements and Alterations.** Any alterations and additions to the Leased Premises after the initial construction of the Hotel that Lessee may deem necessary during the Term may be made by Lessee, at Lessee's sole cost and expense, without Lessor's consent. Any Improvements constructed on the Leased Premises during the term of this Lease will be the property of Lessee and will remain the property of Lessee after the termination or expiration of this Lease.

**Section 4.2 Compliance with Regulatory Requirements.** Lessee agrees that all improvements and alterations on or to the Leased Premises shall be constructed in accordance with all applicable ordinances and statutes and in accordance with the requirements of all regulatory authorities. Lessee shall, at its sole cost and expense, procure or cause to be procured all necessary building permits, other permits, licenses and other authorizations required for the lawful and proper construction, use, occupation, operation, and management of the Leased Premises. Upon final completion of construction of the Hotel, Lessee shall deliver to Lessor at Lessee's expense a current, "as-built" survey of the Leased Premises, showing the location of all improvements on the Leased Premises, certified to Lessor.

**ARTICLE V**

**ADDITIONAL COVENANTS OF LESSOR AND LESSEE**

**Section 5.1 Maintenance of the Leased Premises.** Lessee shall, at its sole cost and expense, keep and maintain the Leased Premises, including the interior and exterior, structural and non-structural portions of the



Hotel, in good repair and in compliance with all applicable laws, regulations, orders and other governmental requirements applicable to the Leased Premises from time to time. Lessor has no maintenance and repair obligations under this Lease.

**Section 5.2 Taxes and Other Charges.** Lessee shall pay prior to delinquency, in addition to the payment of Rentals, each and every lawful cost, expense and obligation of every kind and nature, foreseen or unforeseen, by reason of Lessee's estate or interest in the Leased Premises and the Improvements or by reason of or in any manner connected with or arising out of Lessor's or Lessee's possession, operation, maintenance, alteration, repair, rebuilding, use or occupancy of the Improvements, or any part thereof. Lessee shall pay and discharge, prior to the delinquency thereof, all lawful assessments, ad valorem taxes, sales taxes, business and occupation taxes, occupation license taxes, water charges, or sewage disposal charges, and all other governmental taxes, impositions, and charges of every kind and nature, ordinary or extraordinary, general or special, foreseen or unforeseen, whether similar or dissimilar to any of the foregoing, and all applicable interest and penalties, if any, which at any time during the Term becomes due and payable by Lessee because of its rights or obligations under this Lease and which is lawfully levied, assessed or imposed on Lessee, the Leased Premises or the Improvements under or by virtue of any present or future law, statute, ordinance, regulation or other requirement of any governmental authority, whether federal, state, county, city, municipal, school or otherwise (collectively, "Taxes"), imposed on the Leased Premises and the Improvements and Lessee's use and occupancy of the Leased Premises and the Improvements or against personal property, furniture or fixtures placed or situated in or on the Leased Premises during the Term. Lessee, upon written notice to Lessor, may contest in good faith any Taxes (other than water charges or sewage disposal charges), and in such event may permit such Taxes (other than water charges or sewage disposal charges) to remain unsatisfied during the period of such contest and any appeal; provided, however, that prior to the commencement of such contest Lessee shall demonstrate to Lessor either (a) that Lessee will have sufficient funds to pay such assessment if the contest is unsuccessful or (b) that Lessee has deposited into a separate escrow account funds equal to the contested amount, together with the anticipated interest and penalties, if any, that would be incurred in the event of an unfavorable disposition. Lessee also shall pay or cause to be paid all lawful charges for gas, water, sewer, electricity, light, heat, power, telephone, and other utilities and services used, rendered or supplied to, upon or in connection with the Improvements. Lessee shall furnish to Lessor promptly upon request proof of the payment or timely contest of any Taxes or any utility charge which is payable by Lessee, or evidence of the deposit of such funds into a reserve account, all as set forth above. Notwithstanding anything to the contrary contained in this **Section 5.2**, Lessor and Lessee acknowledge and agree that certain ad valorem real property taxes and assessments levied by the City of Frisco against the Hotel and certain other portions of the Improvements will be reimbursed by Lessor each year pursuant to the Economic Development Grants payable to Lessee (or its Affiliate) under Section 5.13 of the Development Agreement.

**Section 5.3 Liens and Encumbrances.** Lessee covenants and agrees that it will not create or suffer to be created any lien, encumbrance or charge upon the Leased Premises or Lessee's interest in this Lease, except for mortgages permitted under **Section 8.6**, the Declarations, and any other encumbrance expressly permitted under this Lease or the Development Agreement or which is necessary in order for Lessee to exercise its rights or perform its obligations under this Lease or any of the other agreements contemplated by the Development Agreement. Lessee shall satisfy or cause to be discharged, or will make adequate provision to satisfy and discharge, within sixty (60) days after the same occurs, all claims and demands for labor, materials, supplies or other items which, if not satisfied, might by law become a lien upon the Leased Premises or any part thereof. If any such lien is filed or asserted against Lessee or the Leased Premises by reason of work, labor, services or materials supplied or claimed to have been supplied on or to Lessee or the Leased Premises at the request or with the permission of Lessee or of anyone claiming under it, Lessee shall, within sixty (60) days after it receives notice of the filing thereof or the assertion thereof against the Leased Premises, cause the same to be discharged of record, or effectively prevent the enforcement or foreclosure thereof, by contest, payment, deposit, bond, order of court or otherwise. Notwithstanding anything to the contrary set forth herein, the terms of this **Section 5.3** relating to deadlines for discharging or contesting liens and claims for labor, materials, supplies and other matters shall not apply during the initial construction of the Improvements, but Lessee hereby agrees to indemnify Lessor for, from and against any damages that Lessor may actually suffer or any liability imposed upon Lessor arising under Section 2253.027 of the Texas Government Code as a result of Lessee's failure to bond around any liens.

**Section 5.4 Warranty of Peaceful Possession.** Lessor covenants and warrants Lessee may peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full and exclusive use and enjoyment of the Leased Premises during the Term subject to the terms and conditions of this Lease. Lessor warrants and agrees

to forever defend Lessee's leasehold estate in the Leased Premises against the claims of any and all parties whomsoever lawfully claiming or to claim the same or any part thereof by, through, or under Lessor, but not otherwise.

**Section 5.5 Surrender of Possession.** Upon the termination of this Lease (unless terminated as a result of Lessee's purchase of the Leased Premises pursuant to **Section 9.1** or **Section 9.2** hereof), Lessee shall surrender the Leased Premises (including all improvements thereon) to Lessor in a condition which would have been in compliance with the maintenance requirements of **Section 5.1** of this Lease had the Lease not terminated, reasonable wear and tear, and damage by casualty or condemnation, excepted.

**Section 5.6 Operation.** This Lease does not contain or impose on Lessee any requirement to operate the Improvements in accordance with any standard or to continuously operate the Improvements.

**Section 5.7 Condition of Leased Premises.** Lessee acknowledges that, except as set forth in this Lease, neither Lessor nor any agent of Lessor has made any representation or warranty to Lessee with respect to the suitability or fitness of the Leased Premises either for Lessee's intended use or for any other purposes. By taking possession of the Leased Premises, Lessee (a) acknowledges that it has inspected the Leased Premises; (b) establishes conclusively that the Leased Premises are at such time in satisfactory condition; and (c) accepts the Leased Premises in its condition as of the date of such possession or use "AS IS" and subject to all faults and infirmities, subject to the completion of Lessor's Work described in **Section 4.4** above. Nothing contained in this **Section 5.7** shall affect the commencement of the Term or the obligation of Lessee to pay the Rentals as provided in **Section 3.2**. Lessee represents and warrants to Lessor as follows: (i) Lessee does not intend to, and will not, use the Leased Premises for any purpose other than that set forth in **Section 3.3**; and (ii) Lessee has undertaken and has reasonably and diligently completed all appropriate investigations regarding the suitability of the Leased Premises for Lessee's intended use. Lessee acknowledges and agrees that Lessor has no obligation with respect to such completion of the Hotel except as expressly set forth herein or in the Development Agreement.

**Section 5.8 Signage.** Lessee may display any signage or other visible media on the Leased Premises or the Improvements, so long as such signage or other visible media complies with all applicable governmental rules and regulations.

**Section 5.9 Hazardous Materials.**

(a) For purposes of this Lease, the following terms shall have the following meanings: (1) "Hazardous Materials" shall mean (i) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers, or other equipment that contain dielectric fluid containing polychlorinated biphenyls, and radon gas; (ii) any chemicals or substances now or hereafter defined as or included in the definition of "hazardous materials", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "contaminants" or "pollutants", or words of similar import, under any applicable Environmental Law; and (iii) any other chemical, material, or substance, exposure to which is now or hereafter prohibited, limited, or regulated, by any applicable Environmental Law or governmental authority; and (2) "Release" or "Released" means disposed, discharged, injected, spilled, leaked, leached, migrated, dumped, emitted, escaped, emptied, seeped, or placed, in, on, or under any land, water, or air, or otherwise entered into the environment, and as otherwise more broadly defined in applicable Environmental Law.

(b) Lessee covenants and agrees with Lessor as follows: (1) the construction and installation of all improvements and the use and operation of the Leased Premises shall at all times be in material compliance with applicable Environmental Law; (2) Lessee will obtain prior to the opening of the Hotel all environmental permits, licenses, and approvals that are necessary or required by applicable Environmental Law to conduct its business and operations on the Leased Premises, and Lessee shall at all times comply with such environmental permits, licenses, and approvals; (3) neither Lessee nor any person claiming by, through, or under Lessee shall bring onto, use, store, generate, treat, process, dispose of, recycle, incinerate or transport any Hazardous Materials in, on, or under the Leased Premises except in compliance with applicable Environmental Law and in a reasonable and prudent manner so as to prevent the Release or threat of Release of any Hazardous Material on, onto or from the Leased Premises; (4) Lessee shall regularly inspect the Leased Premises to monitor and ensure that the Leased Premises are at all times in material compliance with applicable Environmental Law; (5) Lessee shall use reasonable efforts to protect

the Leased Premises against intentional or negligent acts or omissions of third parties which might result, directly or indirectly, in the Release of Hazardous Materials on the Leased Premises in violation of applicable Environmental Law; and (6) if Lessee has actual knowledge that any Hazardous Materials are Released in, on, or under the Leased Premises during the Term of this Lease:

(i) Lessee shall immediately notify all applicable governmental agencies having competent jurisdiction of the occurrence of the Release of Hazardous Materials in accordance with the requirements of applicable Environmental Law;

(ii) Lessee shall immediately notify Lessor of the occurrence of the Release of the Hazardous Materials and shall immediately furnish or make available to the Lessor such information, documents, and other communications as Lessor shall reasonably request;

(iii) Lessee shall promptly and timely commence or cause to be commenced appropriate actions required by applicable Environmental Law to clean up the Hazardous Materials that have been Released on the Leased Premises (collectively referred to as "Response Action") and shall conduct and perform all appropriate Response Action in accordance with applicable Environmental Law; and

(iv) Lessee, at its sole cost, shall contract for or perform all Response Action in the Lessee's own name or cause the violator to do so in the violator's name.

(c) Lessee hereby covenants and agrees that it shall be responsible for, and waives, releases, and forever discharges the Indemnitees from, and agrees to indemnify, defend, and hold the Indemnitees harmless from and against, all expenses, costs (including reasonable attorneys' fees and court costs), losses, damages, penalties, fines, and other expenditures of any nature arising from or in connection with any claims, demands, liens, investigations, notices of violation, governmental directives, causes of action or any other administrative or legal proceedings of any nature which result from, relate to, or arise out of (1) the breach of any covenant or agreement of Lessee in this **Section 5.9**, (2) the presence or alleged presence of Hazardous Materials in, on, or under the Leased Premises in violation of any Environmental Law which arose during the Term of this Lease, or (3) the violation of any applicable Environmental Law with respect to the Leased Premises during the Term of this Lease; so long as, in each instance, the presence of the Hazardous Material or the violation of any Environmental Law was not caused directly or indirectly by Lessor or an Indemnitee. This release and indemnity specifically includes (a) all costs of "removal" and/or "remedial action" and all other costs of "response" as those terms are defined and used in applicable Environmental Law, and (b) all other costs and expenses of any nature incurred by, assessed against, imposed upon, or charged to the Indemnitees relating to compliance with or enforcement of applicable Environmental Law. If any Indemnitee incurs costs or expenses described in this indemnity, Lessee shall reimburse the Indemnitee for those reasonable costs or expenses within thirty (30) days of the date of receipt by Lessee of notice from the Indemnitee, including copies of invoices or other verification, that the costs or expenses have been incurred. The foregoing release and indemnity shall survive the expiration or termination of this Lease.

(d) If (i) there exists any uncorrected violation by Lessee of an Environmental Law or any condition, caused directly or indirectly by Lessee, which requires a cleanup, removal or other remedial action by Lessee under any Environmental Law, and such cleanup, removal or other remedial action is not initiated within the time period required by Environmental Law or (ii) Lessor reasonably determines that (A) such uncorrected violation or condition poses an imminent threat to the safety or well being of any other users of the Leased Premises, the citizens of the City of Frisco or the County, or other persons, or (B) the Leased Premises is likely to be further damaged or contaminated or other land on or in the vicinity of the Leased Premises is likely to be damaged or contaminated by virtue of the continued failure to correct such violation or condition; and such cleanup, removal or other remedial action is not initiated within ninety (90) days from the date of written notice from Lessor to Lessee, and diligently pursued to completion, the same shall, at the election of Lessor, constitute an Event of Default as described in **Section 10.1(b)** hereof; and provided, further, that Lessor will not consider any failure to initiate such cleanup, removal or other remedial action within the aforesaid ninety (90) day period an Event of Default if such cleanup, removal or other remedial action is of such a nature that it cannot readily be initiated within the ninety (90) days and so long as Lessee commences in good faith to cure such uncorrected violation or condition and diligently pursues the cure continuously thereafter.



(e) Lessee hereby grants to Lessor, its agents, employees, consultants, contractors, successors, and assigns, an irrevocable license and authorization, upon reasonable notice, to enter upon and inspect the Leased Premises (but not any facilities or improvements thereon), and perform such tests, including without limitation, subsurface testing, soils and groundwater testing, and any other tests thereon, as the Lessor, in its sole discretion, determines is necessary to protect its interest in the Leased Premises.

(f) During the term of the Lease, Lessee agrees to provide Lessor with copies of any environmental reports Lessee obtains (without Lessee being obligated to obtain any such reports) relating to the Leased Premises.

(g) Lessor represents and warrants (i) that it has never placed, generated, stored, handled or disposed of any Hazardous Material in or about the Leased Premises; and (ii) that Lessor is not aware of the existence, placement, generation, storage, handling or disposal of any Hazardous Material in or upon the Leased Premises at any time by anyone else.

**Section 5.10 Notification of Events of Default.** Lessee covenants and agrees that it will promptly notify Lessor of the occurrence of an Event of Default, or of the occurrence of any event that with notice or lapse of time might become an Event of Default, under **Section 10.1(b) or (c)** hereof, after Lessee has notice of same, specifying the details of such event or Event of Default and the action that Lessee proposes to take with respect thereto.

## ARTICLE VI

### INSURANCE

**Section 6.1 Lessee's Insurance.** [NOTE: SUBJECT TO REVIEW BY LESSEE'S RISK MANAGEMENT TEAM] Lessee represents that it currently has in effect, and Lessee further covenants that it shall maintain in effect at all times during the full Term of this Lease, insurance coverages with limits not less than those set forth below with insurers licensed to do business in the State of Texas and reasonably acceptable to Lessor and under forms of policies reasonably satisfactory to Lessor. Lessee shall maintain such insurance coverages at its sole cost and expense. Lessor shall be under no obligation to maintain any such insurance coverage should Lessee be found to be in default under this Article VI. None of the requirements contained herein as to types, limits or Lessor's approval of insurance coverage to be maintained by Lessee are intended to and none shall in any manner limit, qualify or quantify the liabilities and obligations assumed by Lessee under this Lease or otherwise provided by law.

#### **Section 6.1.1 Schedule of Insurance Coverages.**

##### **COVERAGE**

##### **MINIMUM AMOUNTS AND LIMITS**

#### **Section 6.1.1.1 Workers' Compensation.**

Workers' Compensation	Statutory Limits
Employers' Liability, or alternative \$100,000 work-place injury or non-subscription plan as may be permitted under applicable law	

This policy shall include a waiver of subrogation in favor of the Indemnitees.

#### **Section 6.1.1.2 Commercial General Liability.**

Bodily Injury/Property Damage (Occurrence Basis)	\$1,000,000 each occurrence or equivalent; subject to a \$2,000,000 aggregate
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Such commercial general liability policy shall be on an occurrence form reasonably acceptable to Lessor,  
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endorsed to include the Indemnitees as additional insureds, contain cross-liability and severability of interest endorsements, state that this insurance is primary insurance as regards any other insurance carried by any Indemnitee, and shall include the following coverages:

- (a) Leased Premises/Operations;
- (b) Independent Contractors;
- (c) Broad Form Contractual Liability specifically in support of, but not limited to, the Indemnification section of this Lease; and
- (d) Personal Injury Liability with the employee and contractual exclusions removed.

**Section 6.1.1.3 Comprehensive Automobile Liability.**

Bodily Injury/Property Damage	\$1,000,000 combined single limit of liability
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This policy shall be on a standard form written to cover all owned, hired and non-owned automobiles.

**Section 6.1.1.4 Garagekeeper's Liability.**

Physical Damage to Parked Vehicles	\$100,000 combined single limit each occurrence
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This policy shall be endorsed to include the Indemnitees as additional insureds and include a waiver of subrogation in favor of the Indemnitees.

**Section 6.1.1.5 Umbrella Excess Liability Insurance.**

Bodily Injury/Property Damage (Occurrence Basis)	\$10,000,000 per occurrence \$10,000,000 aggregate
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This policy shall be written on a following form umbrella excess basis above the coverages described in Sections 6.1.1.2, 6.1.1.3, and 6.1.1.4 above and shall include the Indemnitees as additional insureds.

**Section 6.1.1.6 Property Insurance.** Such property insurance as Lessee, in its sole discretion, deems appropriate.

**Section 6.2 Intentionally Deleted.**

**Section 6.3 Evidence of Insurance.** Evidence of the insurance coverage required under Section 6.1, represented by Certificates of Insurance issued by the insurance carrier, must be furnished to Lessor on the effective date of this Lease. Certificates of Insurance shall specify the additional insured status required above as well as the waivers of subrogation. Such Certificates of Insurance shall state that Lessor will be notified in writing thirty (30) days prior to cancellation, material change or non-renewal of insurance. Lessee shall provide to Lessor a certified copy of any and all applicable insurance policies upon request of Lessor. Timely renewal certificates will be provided to Lessor as the coverage renews. In no event shall Lessee handle any materials which would void or reduce the insurance coverage of Lessee required herein.

**Section 6.4 Insurance Requirements for Lessee's Contractors and Subcontractors.**

**Section 6.4.1 General Requirements.** Subject to Lessor's right to waive such requirements for a contractor or subcontractor at Lessor's sole discretion, insurance similar to that required of Lessee with limits reasonably acceptable to Lessor shall be provided by or on behalf of all contractors and their subcontractors to cover



their operations performed for Lessee. The Commercial General Liability policy outlined in **Section 6.1.1.2** will be extended to include Completed Operations coverage for any contractor doing construction work on the Leased Premises. Lessee shall consult with Lessor with respect to such matters to determine if Lessor desires to waive such requirements for a contractor or subcontractor. Lessee shall maintain Certificates of Insurance from all contractors and their subcontractors enumerating, among other things, the waivers in favor of, and insured status of, Lessor and the other Indemnitees as required herein, and Lessee shall provide to Lessor a copy of each Certificate of Insurance from each contractor and subcontractor if requested by Lessor.

**Section 6.4.2 Subcontractors.** The term "subcontractor(s)" for the purposes of this Lease shall include subcontractors, consultants, or sub-operators of any tier.

**Section 6.5 Release and Waiver.** LESSEE HEREBY RELEASES, AND SHALL CAUSE ITS INSURERS, CONTRACTORS, THEIR SUBCONTRACTORS, AND EACH OF THEIR RESPECTIVE INSURERS TO RELEASE, THE INDEMNITEES (AS DEFINED IN SECTION 7.1.1) FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION WHATSOEVER THAT LESSEE, ITS INSURERS, ITS CONTRACTORS, THEIR SUBCONTRACTORS, AND/OR ANY OF THEIR RESPECTIVE INSURERS MIGHT OTHERWISE POSSESS RESULTING IN OR FROM OR IN ANY WAY CONNECTED WITH ANY LOSS COVERED OR WHICH SHOULD HAVE BEEN COVERED BY INSURANCE, INCLUDING THE DEDUCTIBLE PORTION THEREOF, MAINTAINED AND/OR REQUIRED TO BE MAINTAINED BY LESSEE AND/OR ITS CONTRACTORS OR THEIR SUBCONTRACTORS PURSUANT TO THIS LEASE, EVEN IF SUCH CLAIMS OR CAUSES OF ACTION ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY INDEMNITEE. THE FOREGOING WAIVER, HOWEVER, WILL NOT APPLY TO ANY CLAIMS OR CAUSES OF ACTION WHICH ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE.

**Section 6.6 Survival; Right to Enforce.** The provisions of **Section 6.5** shall survive the termination of this Lease. In the event that Lessee shall fail to maintain full insurance coverage required by this Lease and such failure continues for thirty (30) days after Lessee's receipt of written notice from Lessor, Lessor may (but shall be under no obligation to) take out the required policies of insurance, pay the required premiums or otherwise comply with the covenants set forth in this **Article VI**. All amounts advanced by Lessor in payment of the required premiums for such insurance or otherwise to comply with the covenants set forth in this **Article VI** shall be payable by Lessee to Lessor within fifteen (15) days after demand therefor.

## ARTICLE VII

### INDEMNIFICATION

#### **Section 7.1 Indemnification.**

**Section 7.1.1 Indemnity.** Lessee shall indemnify, protect, defend, and hold harmless Lessor, Lessor's officers, directors, affiliates, employees, agents, and council members (collectively, the "Indemnitee" or "Indemnitees") for, from, and against any and all damages, losses, liabilities (joint or several), payments, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses (including, without limitation, fees, disbursements and reasonable expenses of attorneys, accountants, and other professional advisors and of expert witnesses and costs of investigation and preparation) of any kind or nature whatsoever (collectively, the "Damages"), directly or indirectly resulting from, relating to or arising out of:

(a) the design, installation, construction, development, maintenance, operation, use, occupancy, or ownership of the Hotel, or the business of Lessee, and the other Improvements, including, without limitation, any Damages with respect to contracts or attributable to bodily injury, sickness, disease or death, to personal injury, or to injury or destruction of property, including loss of use resulting therefrom; provided, however, that the foregoing indemnity shall only apply during Lessee's ownership of the Hotel;

(b) the formation, organization and operation of Lessee, or any subsidiaries of Lessee;

(c) any breach of or inaccuracy in any representation or warranty made or given by Lessee or any of its agents, officers, or employees contained in this Lease; or

(d) any breach or non-performance, partial or total, by Lessee of any covenant or agreement of Lessee contained in this Lease.

**Section 7.1.2 Indemnification Procedures.** In case any claim shall be brought or, to the knowledge of any Indemnatee, threatened against any Indemnatee in respect of which indemnity may be sought against Lessee, such Indemnatee shall promptly notify Lessee in writing; provided, however, that any failure so to notify shall not relieve Lessee of its obligations under **Section 7.1** unless (i) such failure so to notify precludes Lessee's investigation and defense of such claims as a matter of law, and (ii) Lessee does not otherwise have knowledge, either actual or constructive, of such claim. Lessee shall have the right (and obligation, subject to the terms below) to assume the investigation and defense of all claims, including the employment of counsel and the payment of all expenses. Each Indemnatee shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnatee unless (i) the employment of such counsel has been specifically authorized by Lessee, in writing, (ii) Lessee has failed after receipt of notice of such claim to assume the defense and to employ counsel, or (iii) the named parties to any such action (including any impleaded parties) include both an Indemnatee and Lessee, and the Indemnatee, after consultation with its counsel, reasonably believes that there may be one or more legal defenses available to it which are different from or additional to those available to Lessee (in which case, if such Indemnatee notifies Lessee in writing that it elects to employ separate counsel at Lessee's expense, Lessee shall not have the right to assume the defense of the action on behalf of such Indemnatee; provided, however, that Lessee shall not, in connection with any one action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegation or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys for the Indemnatee, which firm shall be designated in writing by the Indemnitees). Each Indemnatee shall cooperate with Lessee in the defense of any action or claim. Lessee shall not be liable for any settlement of any action or claim without Lessee's consent, but if any such action or claim is settled with the consent of Lessee or there be final judgment or agreement for the plaintiff in any such action or with respect to any such claim, Lessee shall indemnify and hold harmless the Indemnitees from and against any Damages by reason of such settlement or judgment as provided in **Section 7.1**.

**Section 7.1.3 Negligence of Indemnatee.** THIS INDEMNIFICATION REMAINS IN FULL FORCE AND EFFECT EVEN IF ANY CLAIM DIRECTLY OR INDIRECTLY RESULTS FROM, ARISES OUT OF, OR RELATES TO OR IS ASSERTED TO HAVE RESULTED FROM, ARISEN OUT OF, OR RELATED TO THE SOLE NEGLIGENCE OR CONCURRENT NEGLIGENCE OF AN INDEMNITEE. THE ONLY CIRCUMSTANCES UNDER WHICH THIS INDEMNITY SHALL NOT APPLY SHALL BE IN CONNECTION WITH LIABILITIES ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

**Section 7.1.4 Survival; Right to Enforce.** The provisions of this **Section 7.1** shall survive the termination of this Lease. In the event of failure by Lessee to observe the covenants, conditions and agreements contained in this **Section 7.1**, any Indemnatee may take any action at law or in equity to collect amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of Lessee under this **Section 7.1**. The obligations of Lessee under this **Section 7.1** shall not be affected by any assignment or other transfer by the Lessor of its rights, titles or interests under this Lease and will continue to inure to the benefit of the Indemnitees after any such transfer. The provisions of this **Section 7.1** shall be cumulative with and in addition to any other agreement by Lessee to indemnify any Indemnatee.

## ARTICLE VIII

### ASSIGNMENTS; LEASEHOLD MORTGAGES

**Section 8.1 Assignment and Subleasing.** Lessee may assign or sublet its interest in this Lease or any of its rights or obligations hereunder relating to the Hotel without the prior written consent of Lessor so long as the assignee or sublessee assumes in writing all of Lessee's obligations under this Lease relating to the Hotel. Upon any such assignment, Lessee will be released from all further liability under this Lease occurring as of or after the effective date of such assignment.

**Section 8.2 Sublease of Other Improvements; Conveyance of Units.** At all times during the Term, Lessee shall have the right to sublease or develop portions of the Leased Premises for other Hotel-related purposes

(including, without limitation, the operation of restaurants, bars, gift shops and coffee shops), the costs of which are paid for solely by Lessee and to be owned by Lessee during the Term hereof. All revenues generated by any such Hotel-related purposes shall belong to Lessee. In addition, Lessee shall have the right to convey the Conference Center Unit to Lessor pursuant to the terms of the Development Agreement.

**Section 8.3 Leasehold Mortgages.** Without the requirement of any consent of Lessor, Lessee shall have the right to place a loan on Lessee's entire interest under this Lease, the leasehold estate in the Leased Premises arising hereunder and the improvements constructed thereon secured by a leasehold mortgage, and collaterally assign this Lease and any subleases with respect to the improvements to the leasehold mortgagee in connection with such leasehold mortgage. The execution and delivery of any such leasehold mortgage and the foreclosure of such leasehold mortgage or a transfer in lieu of foreclosure shall not be deemed to constitute a transfer or assignment of this Lease for purposes of **Article VIII**, nor shall the holder of any such leasehold mortgage be deemed (prior to a foreclosure judgment or transfer in lieu thereof) an assignee or transferee of this Lease so as to require such holder to assume the performance of any of the terms, covenants or conditions on the part of Lessee to be performed hereunder.

## ARTICLE IX

### OPTION TO PURCHASE

#### Section 9.1 Lessee's Option to Purchase.

(a) **Grant of Option.** Lessor hereby grants to Lessee the sole and exclusive option (the "Purchase Option") to purchase all of Lessee's right, title and interest in and to the Leased Premises and all personal property used in connection with the operation of the Leased Premises, pursuant to the terms of this **Section 9.1**.

(b) On the date of this Lease, Lessee shall deliver to Lessor an amount equal to *One Hundred and No/100 Dollars* (\$100.00) as consideration for the granting of the Purchase Option.

(c) Lessee shall deliver written notice to Lessor of Lessee's intention to exercise the Purchase Option (the "Option Notice") on or prior to [insert date 10 years after Effective Date] (the "Option Date"); provided, however, that if Lessee fails to send the Option Notice on or prior to the Option Date, Lessee's right to exercise the Purchase Option shall not terminate or expire unless and until each of the following occurs: (i) Lessor has delivered written notice to Lessee, notifying Lessee of such failure, including the following language in bold, capitalized letters, of 12-point type or larger: "**THE PURCHASE OPTION UNDER THE GROUND LEASE AGREEMENT WILL EXPIRE IF LESSEE FAILS TO DELIVER WRITTEN NOTICE TO LESSOR OF LESSEE'S EXERCISE OF THE PURCHASE OPTION ON OR PRIOR TO THE DATE THAT HIS THIRTY (30) DAYS AFTER LESSEE'S RECEIPT OF THIS LETTER.**"; and (ii) Lessee fails to deliver the Option Notice on or prior to the date that is thirty (30) days after Lessee's receipt of the notice from Lessor described in (i) above.

(d) Lessor represents and warrants to Lessee on and as of the date of this Lease and on and as of the Closing Date that to Lessor's current, actual knowledge, without obligation for further investigation: (a) Lessor has on the date of this Lease and Lessor will have on the Closing Date and, if Lessee exercises the Purchase Option, Lessor will convey to Lessee good and indefeasible fee simple title to the Leased Premises; and (b) there are no contracts or other obligations outstanding for the sale, exchange or transfer of the Leased Premises or any portion thereof.

(e) The purchase price (the "Purchase Price") for the Leased Premises shall, subject to **Section 9.3** below, be the then fair market value of the Leased Premises (which will be for the land only as if it were unimproved and no improvements were located thereon), which fair market value shall be determined by a licensed real estate appraiser selected by Lessor who has experience in the Frisco, Texas market and who is reasonably acceptable to Lessee. The closing of the Purchase Option, Lessee's delivery of the Purchase Price to Lessor, and Lessor's conveyance of the Leased Premises to Lessee (the "Closing") shall occur on a date designated by Lessee (by at least ten (10) days' advance written notice to Lessor) not later than sixty (60) days after the determination of the fair market value (the "Closing Date"), but if the Closing Date has not yet occurred on the final day of the Term, the Term shall be deemed extended until the Closing Date without the Lessee having to pay any additional Rentals



hereunder. Lessor and Lessee shall conduct an escrow-style closing through a title company as selected by Lessee (the "Title Company") so that it will not be necessary for any party to physically attend the Closing. At the Closing, Lessor shall deliver to Lessee: (a) a special warranty deed or deeds, properly executed by Lessor and witnessed and notarized for recording, conveying fee simple title to the Leased Premises insurable by the Title Company, free and clear of all liens, restrictions, encumbrances, easements, tenancies, contracts and other matters, except for matters as may be approved by Lessee in its reasonable discretion; (b) a bill of sale, conveying title to any and all personal property owned by Lessor and used in connection with the Leased Premises; (c) an owner's title affidavit and indemnity in form and substance satisfactory to the Title Company, insuring Lessee's fee simple title to the Leased Premises and, if applicable, the easement, which affidavit shall be sufficient to permit Lessee to obtain title insurance without standard exception for liens of laborers, mechanics or materialmen, or parties in possession; and (d) such other instruments and documents as are customary for real property closings in Denton County, Texas. At the Closing, the costs for closing, insuring title, and recording shall be paid by the Lessee. Lessor and Lessee shall each pay its own attorneys' fees.

(f) Lessor shall be in default under this **Section 9.1** upon the occurrence of any one or more of the following events: (i) any of Lessor's warranties or representations set forth herein are untrue or inaccurate in any material respect when made or on the Closing Date and Lessor fails to correct such untrue or inaccurate warranty or representation promptly upon notification to Lessor of any alleged untrue or inaccurate warranty or representation; or (ii) Lessor shall fail to meet, comply with or perform any covenant, agreement, or obligation within the time limits and in the manner required in this **Section 9.1**. Upon a default by Lessor hereunder, Lessee may, at Lessee's sole option, do any of the following: (A) close the purchase of the Leased Premises (with a right to sue for specific performance as necessary or desired by Lessee) and sue for any damages Lessee may have incurred as a result of such default; or (B) terminate this **Section 9.1** by written notice delivered to Lessor at or prior to the Closing, and upon any such termination, thereafter no party hereto shall have any further rights, claims or liabilities under this **Section 9.1**.

(g) In addition to the acts recited in this **Section 9.1** to be performed by Lessor and Lessee, Lessor and Lessee agree to perform or cause to be performed at the Closing or after the Closing any and all such further acts as may be reasonably necessary to consummate the transactions contemplated by this **Section 9.1**.

**Section 9.2 Termination of Lease.** In the event that the Leased Premises are to be acquired by Lessee pursuant to Lessee's exercise of the Option, Lessor and Lessee shall terminate this Lease and file a memorandum of termination in the Deed Records of Denton County.

**Section 9.3 Reimbursement of Purchase Price.** Subject to the terms of the 380 Agreement, if Lessee purchases the Leased Premises pursuant to Lessee's exercise of the Purchase Option, the acquisition of the Leased Premises will be subject to any provisions in the 380 Agreement requiring Lessor to return to Lessee any amount of the purchase price that exceeds [\$ \_\_\_\_\_], with the result that the net purchase price shall never exceed \$ \_\_\_\_\_.]

## ARTICLE X

### DEFAULT

**Section 10.1 Events of Default.** The occurrence of any of the following shall constitute an "Event of Default" by Lessee hereunder:

(a) The failure of Lessee to pay when due any installment of Rentals pursuant to **Section 3.2** hereof, provided such failure continues for more than five (5) days after Lessee receives written notice from Lessor that such installment is due.

(b) The breach by Lessee of any other covenant, condition, or agreement required to be performed or observed hereunder, if such breach has not been cured within thirty (30) days of delivery of notice of such breach to Lessee by Lessor, unless such breach, by its nature, cannot be cured within such thirty (30) day period, in which case so long as Lessee is diligently, in Lessor's good faith judgment, proceeding to cure such breach and is making reasonable progress in effectuating a cure, it shall not be deemed to be an Event of Default.

(c) The occurrence of an Act of Bankruptcy, provided that with respect to the filing of an involuntary petition in bankruptcy or other commencement of a bankruptcy or similar proceeding against Lessee, such petition or proceeding shall remain undismissed for ninety (90) days.

**Section 10.2 Remedies of the Lessor on Default.**

(a) If any Event of Default shall have occurred, Lessor may, as its sole and exclusive remedies, elect to institute such action against Lessee as may appear necessary or desirable to collect such Rentals and any other amounts then due under this Lease, or to enforce performance and observance of such covenant, condition or obligation of Lessee hereunder, or to recover damages for Lessee's non-payment, non-performance or non-observance of the same. In no event, however, will the occurrence of an Event of Default entitle Lessor to terminate this Lease or terminate Lessee's possession of the Leased Premises. Lessor shall use its best efforts to mitigate its damages after the occurrence of an Event of Default.

(b) Lessee shall pay all of Lessor's reasonable fees and expenses, including reasonable attorneys' fees, in enforcing any covenant to be observed by Lessee or pursuing any remedy upon an Event of Default.

**Section 10.3 Intentionally Deleted.**

**Section 10.4 No Remedy Exclusive.** No remedy herein conferred upon Lessor is intended to be exclusive of any other available remedy or remedies, and each such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease except as otherwise stated in this Lease to the contrary.

**Section 10.5 No Additional Waiver Implied By One Waiver; Consents to Waiver.** The waiver of either party of any breach by the other party of any covenant, condition or obligation under this Lease shall not operate as a waiver of any subsequent breach of the same or a waiver of any breach of any other covenant, condition or obligation under this Lease, nor shall any forbearance by the non-defaulting party not breaching to seek a remedy for any breach by the other party be a waiver by such non-defaulting party not breaching any of its rights and remedies with respect to such breach or any subsequent breach of the same or with respect to any other breach.

**Section 10.6 Delay not a Waiver.** No delay or omission by Lessor of the exercise of any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or any acquiescence therein, and every power or remedy given by this Lease to the Lessor may be exercised from time to time and as often as may be deemed expedient. Lessor may waive any Event of Default which in its opinion has been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions of this Lease or before the completion of the enforcement of any other remedies under this Lease. No such waiver shall extend to or affect any other existing or subsequent Event of Default or impair any rights or remedies consequent thereon.

**Section 10.7 Default by Lessor.** Lessor will be in default under this Lease if Lessor fails to perform any of its obligations hereunder and such failure continues for a period of thirty (30) days after Lessee delivers written notice of such failure to Lessor. Lessee must also deliver written notice of such failure to the holder(s) of any indebtedness or other obligations secured by any mortgage or deed of trust affecting Lessor's interest in the Leased Premises, of which Lessee has received notice. If such failure cannot reasonably be cured within the 30-day period, Lessor will not be in default hereunder as long as Lessor or such holder(s) commences the remedying of such failure within the 30-day period and diligently prosecutes the same to completion.

**Section 10.8 Arbitration.** If the parties are in disagreement regarding any provision of this Lease, the parties shall submit disputes to mandatory arbitration in accordance with the provisions of this **Section 10.8**. Each of Lessor and Lessee waives the right to commence an action in connection with this Lease in any court and expressly agrees to be bound by the decision of the arbitrator determined in this **Section 10.8**; provided, however, the waiver in this **Section 10.8** will not prevent Lessor or Lessee from commencing an action in any court for the sole purposes of enforcing the obligation of the other party to submit to binding arbitration or the enforcement of an award granted by arbitration herein. Any dispute between Lessor and Lessee as to the interpretation of any provision of this Lease or the rights and obligations of any party hereunder shall be resolved through binding arbitration as hereinafter provided in Frisco, Texas. Notwithstanding the foregoing, prior to submitting any dispute



hereunder to arbitration, Lessor and Lessee shall first attempt in good faith, for thirty (30) days after the first notice given under this Lease regarding such dispute, to resolve any such dispute promptly by negotiation between executives of each party who have authority to settle the dispute, which shall include an in person meeting between such executives in Frisco, Texas.

**Section 10.8.1 Selection of Arbitrator.** If arbitration is required to resolve a dispute between Lessor and Lessee, Lessor and Lessee shall agree upon one (1) arbitrator to resolve the dispute. The arbitrator must be a neutral party having at least five (5) years experience in commercial real estate in general and hotel buildings in particular in the Frisco, Texas area and must be mutually acceptable to both parties.

**Section 10.8.2 Rules of Arbitration.** The arbitrator selected pursuant to **Section 10.8.1** above will establish the rules for proceeding with the arbitration of the dispute, which will be binding upon all parties to the arbitration proceeding. The arbitrator may use the rules of the American Arbitration Association for commercial arbitration but is encouraged to adopt the rules the arbitrator deems appropriate to accomplish the arbitration in the quickest and least expensive manner possible. Accordingly, the arbitrator may (1) dispense with any formal rules of evidence and allow hearsay testimony so as to limit the number of witnesses required, (2) minimize discovery procedures as the arbitrators deem appropriate, and (3) limit the time for presentation of any party's case as well as the amount of information or number of witnesses to be presented in connection with any hearing. In any event, the arbitrator (A) shall permit each side no more than two (2) depositions (including any deposition of experts), which depositions may not exceed four (4) hours each, one set of 10 interrogatories (inclusive of sub-parts) and one set of five (5) document requests (inclusive of sub-parts), (B) shall not permit any requests for admissions, (C) shall limit the hearing, if any, to two (2) days, and (D) shall render his or her decision within sixty (60) days of the filing of the arbitration.

**Section 10.8.3 Costs of Arbitration.** The arbitrators will have the exclusive authority to determine and award costs of arbitration and the costs incurred by any party for its attorneys, advisors and consultants.

**Section 10.8.4 Award of Arbitrators.** Any award made by the arbitrators shall be binding on Lessor, Lessee and all parties to the arbitration and shall be enforceable to the fullest extent of the law.

**Section 10.8.5 Governing Law; Actual Damages; Etc.** In reaching any determination or award, the arbitrators will apply the laws of the state in which the Leased Premises is located. Except as permitted under **Section 10.8.3** above, the arbitrators' award will be limited to actual damages and will not include consequential, special, punitive or exemplary damages. Nothing contained in this Lease will be deemed to give the arbitrators any authority, power or right to alter, change, amend, modify, add to or subtract from any of the provisions of this Lease. All privileges under state and federal law, including, without limitation, attorney-client, work product and party communication privileges, shall be preserved and protected. All experts engaged by a party must be disclosed to the other party within fourteen (14) days after the date of notice and demand for arbitration is given.

**Section 10.9 Injunctive/Ancillary/Emergency Relief.** Notwithstanding any provision of **Section 10.8** of this Lease 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 Denton County, Texas. In the event that a dispute or controversy requires emergency relief before the matter may be resolved under the arbitration procedures of **Section 10.8** above, notwithstanding the fact that any court of competent jurisdiction may enter an order providing for injunctive or other form of ancillary relief, the parties expressly agree that such arbitration procedures will still govern the ultimate resolution of that portion of the dispute or controversy not resolved pursuant to said court order.

## ARTICLE XI

### MISCELLANEOUS

**Section 11.1 Amendments, Changes and Modification.** No amendment, change, addition to or waiver of any of the provisions of this Lease shall be binding upon the parties hereto unless in writing signed by Lessee and Lessor.

**Section 11.2 Applicable Law.** The Lease shall be governed exclusively by the provisions hereof and by the applicable laws of the State.

**Section 11.3 Severability.** If any provision of this Lease is held to be illegal, invalid, or unenforceable under present or future laws effective during the Term such provision shall be fully severable and this Lease shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Lease. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Lease a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and still be legal, valid, or enforceable.

**Section 11.4 Notices and Demands.** Any notices or other communications required or desired to be given to the other party hereto shall be given in writing and delivered by courier, overnight delivery service, facsimile transaction or through the U.S. postal service, postage prepaid and by certified mail, return receipt requested, at the following addresses:

To Lessor:	City of Frisco 6101 Frisco Square Boulevard Frisco, Texas 75034 Attention: City Manager
With a copy to:	Abernathy, Roeder, Boyd & Hulett, P.C. 1700 Redbud Boulevard, Suite 300 McKinney, Texas 75069 Attention: Randy Hulett and Robert Roeder
To Lessee:	c/o TRT Holdings, Inc. 4001 Maple Ave., Suite 600 Dallas, Texas 75219 Attention: Paul Jorge
With a copy to:	Winstead PC 2728 N. Harwood Street, Suite 500 Dallas, TX 75201 Attention: T. Andrew Dow

**Section 11.5 References.** All references in this Lease to particular Articles or Sections are references to Articles or Sections of this Lease, unless otherwise indicated. Article and Section headings are furnished for convenience only and do not constitute a part of this Lease. References in the singular number in this Lease shall be considered to include the plural, if and when appropriate, and vice versa. Any times referred to herein shall be deemed references to Frisco, Texas, time. Any capitalized terms not specifically defined herein shall have the meanings ascribed to them in the Master Agreement.

**Section 11.6 Successors and Assigns.** The terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**Section 11.7 Multiple Counterparts.** This Lease may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same instrument.

**Section 11.8 Recordation.** Lessor and Lessee shall not record this Lease, but both parties agree, on request of the other, to execute a memorandum of lease in the form attached hereto as Exhibit "D", which memorandum of lease may be recorded by the requesting party.

**Section 11.9 Right of Entry.** Lessor shall have the right to enter upon the Leased Premises, the Hotel and the Hotel Garage for purposes of inspecting same to confirm Lessee is in compliance with the terms and conditions of this Lease, so long as Lessor delivers at least forty-eight (48) hours' prior written notice to Lessee and, if required by Lessee, is accompanied by a representative of Lessee.

**Section 11.10 Estoppel Agreements.** Within twenty (20) days after receipt of written request from the other party, Lessor and Lessee shall execute and deliver to each other (and to such other person as the requesting party may designate) an estoppel certificate or agreement certifying that this Lease is unmodified and is in full force and effect (or if there have been modifications, stating that this Lease is in full force and effect as modified), stating that the requesting party is not in default (or stating the nature of any alleged default) and further stating any matters reasonably requested by the other party. Notwithstanding anything to the contrary set forth in this Section 11.10, neither Lessor nor Lessee will be required to execute such an estoppel certificate more often than two (2) times in any twelve (12)-month period.

**IN TESTIMONY WHEREOF**, Lessor has caused its name to be subscribed below and attested by its City Secretary, pursuant to a resolution duly adopted by its City Council; and Lessee has caused its corporate name to be subscribed by its duly authorized officer pursuant to a resolution duly adopted by its board of directors, as of the year and day first above written.

**LESSOR:**

Approved as to form:

**CITY OF FRISCO, TEXAS**

\_\_\_\_\_  
City Attorney

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

ATTEST:

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

**LESSEE:**

\_\_\_\_\_  
a \_\_\_\_\_

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

**EXHIBIT A**  
**DESCRIPTION OF THE LAND COMPRISING THE LEASED PREMISES**

NOTE: The land comprising the Leased Premises is subject to change pursuant to **Section 4.5** of this Lease.



**EXHIBIT B**  
**PERMITTED EXCEPTIONS**

1.

**EXHIBIT C**

**PLAT**

[A copy of the Plat recorded in \_\_\_\_\_,  
Plat Records of Denton County, Texas follows this cover page.]

## EXHIBIT D

### MEMORANDUM OF LEASE

This Memorandum of Lease (herein the "Memorandum") is executed by and between the CITY OF FRISCO, TEXAS, a Texas home-rule municipality ("Lessor") and \_\_\_\_\_, a \_\_\_\_\_ ("Lessee").

#### RECITALS:

A. The parties hereto have made and entered into that certain Ground Lease Agreement (as described and defined hereinbelow).

B. The parties desire to record a Memorandum of Lease to provide notice to third parties of the Lease.

#### AGREEMENTS:

NOW, THEREFORE, Lessor and Lessee do hereby make and enter into this Memorandum for the purposes described above:

1. Description of Leased Premises. Lessor and Lessee have made and entered into that certain Ground Lease Agreement (as same may be hereafter renewed or amended, the "Lease") dated effective as of \_\_\_\_\_, 20\_\_\_\_, covering the Leased Premises described hereinbelow, providing for the lease by Lessee from Lessor of such Leased Premises upon the terms and conditions set forth in such Lease. The Lease applies to all of that certain tract or parcel of land situated in the City of Frisco, Denton County, Texas, which land is more particularly described in **Exhibit "A"** attached hereto, incorporated herein by this reference, and made a part hereof for all purposes (the "Leased Premises").

2. Term of Lease. The Term of the Lease commences on the date Lessee obtains a building permit from the applicable governmental authorities relating to the construction of the Hotel and continues for \_\_\_\_\_ ( ) years thereafter. Lessor and Lessee will execute a Memorandum of Commencement Date confirming the actual Commencement Date and the expiration date of the Term.

3. Option to Purchase. Lessee has the option to purchase the Leased Premises commencing on the [tenth (10<sup>th</sup>) anniversary] of the opening of the Hotel located thereon, and expiring one (1) year thereafter. Lessee's option to purchase is subject to the terms and conditions more particularly described in Article IX of the Lease.

4. Lease Amendments. The Lease may not be orally amended.

5. General. Nothing contained in this Memorandum shall be deemed or construed to amend, modify, change, alter, amplify, interrupt or supersede any of the terms or provisions of the Lease. In the event of a conflict between the terms of the Lease and the terms of this Memorandum, the terms of the Lease shall prevail and be controlling. This Memorandum may be executed in multiple counterparts, and each counterpart shall be deemed an original hereof. Accordingly, this Memorandum shall become binding, notwithstanding the execution of separate originals hereof, one by each of the parties hereto. Capitalized terms used but not defined in this Memorandum will have the definitions ascribed to such terms in the Lease.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum on the dates set forth in the acknowledgments attached hereto, but to be effective as to the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

LESSOR:

CITY OF FRISCO,  
a Texas home-rule municipality

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Manager

LESSEE:

\_\_\_\_\_  
a \_\_\_\_\_

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

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

      This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_, the City Manager of the CITY OF FRISCO, TEXAS, a Texas home-rule municipality,  
on behalf of said city.

[ S E A L ]

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

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

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

[ S E A L ]

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



EXHIBIT A

Leased Premises

**EXHIBIT E**

**MEMORANDUM OF COMMENCEMENT DATE**

This MEMORANDUM OF COMMENCEMENT DATE ("Memorandum") is entered into on \_\_\_\_\_, 2005, between the CITY OF FRISCO, TEXAS ("Lessor"), and \_\_\_\_\_, a \_\_\_\_\_ ("Lessee").

**RECITALS**

A. Lessor and Lessee entered into that certain Ground Lease Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the "Lease"), relating to the land described on Exhibit "A" attached hereto. The Lease is evidenced by that certain Memorandum of Lease recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_ of the Real Property Records of Denton County, Texas. All terms used but not defined herein have the meanings set forth in the Lease.

B. Lessor and Lessee wish to confirm certain matters relating to the Lease.

**AGREEMENT**

1. Commencement Date. Lessor and Lessee certify that the Commencement Date under the Lease is \_\_\_\_\_, 20\_\_\_\_, and the Lease Term is scheduled to expire on \_\_\_\_\_, 2\_\_\_\_.

2. Entire Agreement; No Amendment. The Lease constitutes the entire agreement between Lessor and Lessee. The Lease has not been amended and is in full force and effect. This Memorandum supplements but does not amend the Lease. This Memorandum may be recorded by either Lessor or Lessee in the Real Property Records of Denton County, Texas.

EXECUTED as of the date set forth above.

LESSOR:

CITY OF FRISCO, TEXAS

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

Name: \_\_\_\_\_

Title: City Manager

TENANT:

\_\_\_\_\_

a \_\_\_\_\_

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

Name: \_\_\_\_\_

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

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

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_, the City Manager of the CITY OF FRISCO, TEXAS, a Texas home-rule municipality, on behalf of said city.

[ S E A L ]

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

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name of Notary Public)

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

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

[ S E A L ]

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

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name of Notary Public)

EXHIBIT A

Leased Premises

EXHIBIT "H"  
CONFERENCE CENTER LEASE AGREEMENT



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**LEASE AGREEMENT**

Between

**THE CITY OF FRISCO, TEXAS**

And

**OMNI STILLWATER WOODS GOLF RESORT, LLC**

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## LEASE AGREEMENT

This LEASE AGREEMENT (this "Lease") is made this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the **CITY OF FRISCO, TEXAS**, a municipal corporation of the State of Texas and a home rule city located in Collin County, Texas ("Lessor" or "City") and **OMNI STILLWATER WOODS GOLF RESORT, LLC**, a Delaware limited liability company ("Lessee"). Lessor and Lessee sometimes are referred to herein collectively as the "Parties" or singularly as a "Party".

### RECITALS

A. Lessor is the owner of that certain Conference Center Unit (the "Unit") more particularly described on Exhibit A attached hereto and incorporated herein by reference for all purposes, together with the furniture, fixtures, equipment and other personal property used in connection with the operation thereof as a convention center and meeting space (collectively, the "Facilities") within an Omni hotel being developed by Lessee.

B. The Unit, together with that certain Hotel Unit (the "Hotel Unit") more particularly described on Exhibit B attached hereto and incorporated herein by reference for all purposes, constitute all of the units in the condominium regime known as " \_\_\_\_\_ Condominium", established pursuant to that certain Condominium Declaration for \_\_\_\_\_ Condominium, recorded as Document No. \_\_\_\_\_ of the Official Public Records of Denton County, Texas (the "Declaration").

C. Pursuant to the terms of that certain Master Development Agreement for Facilities and Related Improvements by and among Lessor, Lessee, FEDC, FCDC and PGA, dated effective as of \_\_\_\_\_, 20\_\_ (the "Master Development Agreement"), Lessee developed the Unit and conveyed the Unit to Lessor with the intent that Lessor lease the Unit back to Lessee on the terms and conditions set forth in this Lease.

D. Lessor now desires to lease to Lessee, and Lessee desires to lease and take from Lessor, the Leased Premises on the terms set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and confessed by each or the Parties hereto, the Parties hereto have agreed and, intending to be legally bound, do hereby agree as follows:

#### ARTICLE 1.

##### Grant, Term of Lease and Certain Definitions

1.1 Leasing Clause. Upon and subject to the terms and provisions contained herein, Lessor does hereby lease, demise and let unto Lessee, and Lessee does hereby take and lease from Lessor, the Leased Premises, to have and to hold the Leased Premises, together with all the rights, privileges, easements and appurtenances belonging to or in any way pertaining to the Leased Premises, for the term and subject to the provisions hereinafter provided.

1.2 Term. The term of this Lease shall commence on \_\_\_\_\_, 20\_\_\_\_ (the "Commencement Date"), and shall terminate on \_\_\_\_\_, 20\_\_\_\_ ~~[[fiftieth (50th)]~~ **anniversary of the Commencement Date**], unless earlier terminated in accordance with the provisions of this Lease.

1.3 Purchase Option. Lessee shall have the right, but not the obligations, to purchase the Leased Premises as set forth in that certain Option Agreement executed of even date herewith by and between Lessor and Lessee.

1.4 Certain Definitions. The following terms shall have the meaning set forth in this Section 1.4:

(a) Affiliate. With respect to any person or entity, (a) each person or entity that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, ten percent (10%) or more of the capital stock having ordinary voting power in the election of directors of such entity, (b) each entity that controls, is controlled by or is under common control with such person or entity and (c) in the case of individuals, the immediate family members, spouses and lineal descendants of individuals who are Affiliates of the person. For the purposes of this definition, "control" of a person or entity shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract, by virtue of being an executive officer or a director or otherwise.

(b) AV Taxes. All ad valorem taxes, if any, assessed against the Leased Premises or Lessee's interest therein that accrue during and are applicable to the Term.

(c) Base Rent. The lease payments for the Leased Premises provided in Article 2 hereof.

(d) City. The City of Frisco, Texas, a municipal corporation of the State of Texas and a home rule city located in Collin County, Texas.

(e) Commencement Date. The date first set forth above in Section 1.2 of this Lease.

(f) Event of Default. Has the meaning set forth in Section 10.1.

(g) Facilities. Has the meaning set forth in Recital A.

(h) FCDC. Frisco Community Development Corporation.

(i) FEDC. Frisco Economic Development Corporation

(j) FISD. Frisco Independent School District.

(k) Force Majeure. Any causes beyond a Party's control and without such Party's negligence, including, but not limited to, acts of God, acts of the public enemy, acts of the Federal Government, acts of the other Party, fires, floods, epidemics, quarantine restrictions,



strikes, lockouts, riots, war, acts of terrorism, labor strikes, freight embargoes, casualty, governmental restrictions, failure or inability to secure materials or labor, reason of priority or similar regulations or order of any governmental or regulatory body, civil disturbance, and unusually severe weather or unforeseen environmental or archaeological conditions requiring investigation/mitigation by federal, state or local laws.

(l) Hazardous Materials. Has the meaning set forth in Section 7.7(c).

(m) Hotel. Shall mean and refer to the Hotel Unit along with the Unit as a full-service hotel and conference center.

(n) Impositions. Taxes or assessments against the Leased Premises or Lessee's interest therein that accrue during, and are applicable to, the Term.

(o) Improvements. All leasehold improvements, equipment, furnishings, and fixtures from time to time installed or situated in the Unit.

(p) Lease. This Lease Agreement by and between Lessor, as lessor, and Lessee, as lessee, covering the Leased Premises.

(q) Lease Year. Any 12 month period during the Term commencing on the Commencement Date, or each anniversary of the Commencement Date and ending on the day prior to the anniversary of the Commencement Date.

(r) Leasehold Mortgage. A mortgage or deed of trust which Lessee grants on its leasehold interest in the Leased Premises.

(s) Leased Premises. The Facilities, the Unit, and all other Improvements, together with all other rights, privileges, easements and appurtenances benefiting, belonging to or in any way appertaining thereto, including, without limitation, any and all rights, privileges, easements and appurtenances of Lessor as the owner of fee simple title to the Unit now or hereafter existing.

(t) Lessee. Omni Stillwater Woods Golf Resort, LLC, or any assignee thereof as provided in Section 8.1 hereof.

(u) Lessee Event. Any event other than a Public Entity Use which Lessee schedules in the Facilities for the purposes described in Section 5.1.

(v) Lessor. The City of Frisco, Texas, a municipal corporation of the State of Texas and a home rule city located in Collin County, Texas.

(w) Lessor Entity. Lessor or any governmental body, agency or political subdivision to whom Lessor's power to levy, assess or collect ad valorem taxes is transferred by law or contract.

(x) PGA. The Professional Golfers' Association of America.

(y) Plans. The Plans relating to the Leased Premises prepared by an architect selected by Lessee and approved by Lessor.

(z) Public Entity. Any of the following entities: the City; Fisd; FCDC; the Frisco Convention and Visitors Bureau; and the Frisco Economic Development Corporation. The foregoing may be collectively referred to herein as the "Public Entities".

(aa) Public Entity Use. Has the meaning set forth in Section 5.1(b).

(bb) Sublessee. Any person or entity to whom or to which Lessee grants or licenses any rights to occupy, use, operate, manage, or provide other services in within the Leased Premises.

(cc) Term. The term of this Lease as provided in Section 1.2 hereof.

(dd) Unit. Has the meaning set forth in Recital A.

## ARTICLE 2. Lease Consideration

The consideration from by Lessee to Lessor for rights granted under this Lease shall consist of (i) annual net rent in the amount of \$1.00 (the "Base Rent") payable in advance on the Commencement Date and on each annual anniversary date thereafter during the term of the Lease; (ii) Lessee's payment of all costs, including losses, arising from or relating to the operating of the Leased Premises; (iii) Lessee's payment of all costs for those services to be provided for Public Entity Use set forth in Section 5.1(b); and (iv) Lessee's payment of all maintenance expenses and future capital investments required to keep the Leased Premises throughout the term of the Lease at the level and to the standard commensurate with other Class A convention centers and meeting spaces at first-class hotels within the Dallas-Fort Worth Metroplex. With the exception of the annual net rent payment, the remaining consideration is intended and acknowledged by Lessor to be of significant value by allowing the Leased Premises to be operated for the benefit of the public without Lessor bearing the on-going costs and risks of management, maintenance and operations necessarily related to the facility and without Lessor having to invest significant future sums for the capital improvements that will be essential to keep the Leased Premises in Class A condition throughout the term of the Lease, all for the benefit of Lessor, its taxpayers and the general public.

## ARTICLE 3. Impositions, Fees and Utilities

3.1 Payment of Impositions. Except as provided elsewhere in this Article 3, Lessee shall pay all Impositions before the same become delinquent, and Lessee, at the request of Lessor, shall furnish to Lessor receipts or copies thereof showing payment of such Impositions. Lessee shall be entitled to pay any Impositions in installments as and to the extent the same may be permitted by the applicable taxing authority or claimant. Lessor agrees to cooperate with Lessee in seeking the delivery of all notices of impositions to Lessee directly from the applicable taxing authorities. Lessor shall promptly deliver all notices of Impositions to Lessee which are delivered to Lessor. In no event shall Lessee be in default under this Lease for failure to pay any Impositions before the same become delinquent for which the notice of such Impositions shall have been

delivered to Lessor and not forwarded or delivered to Lessee at least thirty (30) days before the date the same become delinquent.

3.2 Contest of Impositions. If the levy of any of the Impositions shall be deemed by Lessee to be improper, illegal or excessive, or if Lessee desires in good faith to contest the Impositions for any other reason, Lessee may, at Lessee's sole cost and expense, dispute and contest the same and file all such protests or other instruments and institute or prosecute all such proceedings for the purpose of contest as Lessee shall deem necessary and appropriate. Subject to the foregoing, any item of contested Imposition need not be paid until it is finally adjudged to be valid. Lessee shall be entitled to any refund of any Imposition (and the penalties or interest thereon) refunded by the levying authority pursuant to any such proceeding or contest, if such Imposition shall have been either (a) paid directly by Lessee, or (b) shall have been paid directly by Lessor and Lessor was reimbursed therefor by Lessee.

3.3 Standing. If Lessee determines that it lacks standing to contest any Impositions imposed by a governmental authority other than any Lessor Entity or to obtain an extended payment period for any such non-Lessor Entity Impositions, Lessor (to the maximum extent allowed by law) and at Lessee's expense and request shall join in such contest or otherwise provide Lessee with sufficient authority to obtain such standing.

3.4 Certain Provisions Related to AV Taxes and Impositions. Lessor and Lessee acknowledge that the Leased Premises, other than Lessee's leasehold interest in the Lease and Lessee's leasehold improvements therein, presently are presumed to be exempt from AV Taxes and Impositions under the laws of the State of Texas as of the Commencement Date, and it is the intention of the Parties that during the Term, Lessee not incur any AV Taxes or Impositions relating to the Leased Premises, Improvements, renovations, replacements other than as such AV Taxes or Impositions pertain to Lessee's leasehold interest and leasehold improvements. Lessor, at the request and expense of Lessee, agrees to jointly take and pursue such lawful actions with Lessee, including, if necessary, judicial actions, as may be available, to protect and defend the title of Lessor in and to the Leased Premises or Lessee's leasehold interest in the Lease, against the levy, assessment or collection of AV Taxes or Impositions. In the event that AV Taxes or Impositions are subsequently imposed upon the Leased Premises or Lessee's leasehold interest in the Lease (other than such AV Taxes or Impositions pertaining to Lessee's leasehold improvements), the parties hereto agree to restructure the Lease, and permit Lessee's assignment of its interest in the Lease, if necessary, in order to preserve or establish the tax exempt status of the Leased Premises and Lessee's leasehold interest therein as long as the tax exempt status of Lessor's indebtedness and Lessee's economic obligations arising pursuant to the Lease would be the same as they were prior to the change in the tax exempt status.

3.5 Exemption from AV Taxes. If, for any reason, the Leased Premises or interest of Lessor or Lessee in and to any of the Leased Premises should no longer be exempt from AV Taxes by reason of a change of law or otherwise, or any Lessor Entity levies and assesses an AV Tax against the Leased Premises or the interest of Lessee in the Leased Premises, then Lessee shall, to the extent required by Lessor, pay such AV Taxes before they become delinquent, subject to Lessee's right of contest as provided in Sections 3.2 and 3.4 hereof and the Parties' obligation to restructure the Lease as provided in Section 3.4 hereof.



3.6 Utilities. Lessee shall pay all bills for utility service provided to the Leased Premises during the Term.

#### **ARTICLE 4.** **Improvements**

4.1 Improvements, Removals and Replacements. Lessee shall have the right, at its option and expense (subject only to the express restrictions set forth in this Lease) to modify the Improvements without Lessor's consent as long as the Leased Premises retains no less than 127,000 square feet with at least 23,000 square feet of main ballroom space, and 60,000 square feet of total meeting space and the Leased Premises as modified, together with the Improvements therein, is commensurate with those found and/or utilized in conference facilities in other Omni hotels within the Dallas/Fort Worth Metroplex and is a fully functional conference center. Any other contemplated improvements to the Leased Premises by Lessee shall require the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. All fixtures, materials or equipment installed by Lessee in the Leased Premises shall become the property of Lessor at the termination of this Lease. Any materials or equipment owned by Lessee and located in the Leased Premises which are in addition to the Improvements ("Lessee Property") may be removed by Lessee at any time (including, without limitation, upon the termination of this Lease), if such can be done without material damage to the Improvements and Lessee agrees to repair any damage caused by such removal, including the patching of holes and the painting thereof. Any proceeds realized from the sale or disposal of such Lessee Property shall belong to Lessee. Lessor shall not construct any Improvements on the Leased Premises during the Term without Lessee's consent.

4.2 Maintenance, Operation and Capital Expenditures. In addition to the Base Rent and not in lieu thereof, Lessee shall be responsible for all costs associated with the maintenance and operation of the Facilities, including all capital maintenance, Improvements, renovations, and replacements (collectively, the "Capital Expenditures") deemed necessary to keep any of the Facilities at a level and to the standard commensurate with other Class A convention centers and meeting spaces at first-class hotels within the Dallas-Fort Worth Metroplex, subject to the provisions herein relating to casualty damage and condemnation.

4.3 Zoning and Permits. In the event Lessee deems it necessary or appropriate to obtain zoning, site plan approval or any permit from Lessor or any other governmental entity having jurisdiction over the Leased Premises or any part thereof, Lessor, from time to time on request of Lessee and to the extent necessary as fee owner of the Leased Premises, shall execute such documents or join in such petitions, applications and authorizations, as deemed reasonable or necessary by Lessee.

4.4 Personal Property. All personal property installed or situated from time to time in the Leased Premises and paid for by Lessee shall remain the property of Lessee (or any Sublessee installing same) except for such items of personal property as Lessor may purchase and own as part of the Leased Premises or such items of personal property which have been purchased by Lessee in substitution or replacement of personal property items originally purchased by Lessor, which personal property shall be the property of Lessor.

**ARTICLE 5.**  
**Use of Premises**

5.1 Use. Subject to the terms of this Lease, the Facility shall be used for the operation of a public conference, meeting and exhibit center for holding conventions, meetings, exhibits and other events for the benefit of the City and the general public. Lessor shall have the right from time-to-time to review the records of Lessee at the Premises in order to ensure that the Premises is being used for the purposes provided in this Section 5.1. Lessor agrees to keep all information reviewed by Lessor relating to Lessee and the Premises strictly confidential and Lessee may not disclose any such information to any third party.

(a) Lessee's Ability to Sublet. Lessee may sublease or licensee the Facilities and any portions thereof to third parties in furtherance of the purposes described above and which do not conflict with the Public Entity Use as set forth in Section 5.1(b) below.

(b) Public Entity Use. Subject to the scheduling procedures established by Lessee and City, the Public Entities shall, in the aggregate, have the right to use the Facilities for up to **[ten (10)]** one-day events that do not directly compete with a Lessee Event. The set-up and tear-down of the Facilities in connection with a Public Entity Use, and the use of Lessee's equipment typically provided by Lessee to users of the Facilities, including, without limitation, tables, chairs, pipe and drape, and audio visual equipment, shall be at no cost to the Public Entities. The Public Entities shall be responsible for the actual cost of food, beverage, and all other services provided in connection with the Public Entity Use.

5.2 Compliance with Laws. Lessee agrees not to use the Leased Premises for any use or purpose in violation of any valid and applicable law, regulation or ordinance of the United States, the State of Texas, the City of Frisco or other lawful governmental authority having jurisdiction over the Leased Premises, including, without limitation, the Americans with Disabilities Act of 1990, as amended; provided, however, there shall be no violation by Lessee of this provision (i) so long as Lessee shall, in good faith within a reasonable time after Lessee acquires actual knowledge thereof, by appropriate proceedings and with due diligence, contest the alleged violation or the validity or applicability of the law, regulation or ordinance; (ii) until Lessee has had a reasonable time after a final adjudication that such law, regulation or ordinance, in fact, has been violated; (iii) so long as neither Lessor nor any portion of the Leased Premises, during the period of such contest, will be subject to any liability, loss, penalty or forfeiture; and (iv) so long as Lessee is in compliance with the terms of the planned development ordinance governing the Facilities as of the date of this Lease and are using the Leased Premises in accordance with the use provision set forth in this Lease. To the extent permitted by applicable law, Lessor will reasonably cooperate with Lessee to structure any proposed law or ordinance in a manner that would minimize its effect on the use of the Leased Premises.

5.3 Maintenance; Casualty.

(a) Lessee shall keep all Improvements that from time to time may exist on the Leased Premises to a standard commensurate with other convention center facilities at first-class hotels within the Dallas-Fort Worth Metroplex and in a state of good repair on a regular and ongoing basis ordinary wear and tear, acts of war, terrorism, acts of God and loss by casualty, acts



or omissions by Lessor or damage caused by Public Entity Use (except to the extent Lessee is required under this Lease to repair casualty damage) excepted. Upon termination of this Lease, Lessee shall deliver up the Leased Premises and all Improvements then situated therein in good condition, ordinary wear and tear, acts of war, terrorism, acts of God, and loss by casualty acts or omissions by Lessor or damage caused by Public Entity Use (except to the extent Lessee is required under this Lease to repair casualty damage) excepted.

(b) With regard to casualty damage to the Leased Premises, Lessee shall, as soon as reasonably practicable but in no event later than 180 days after the date of a casualty, commence the work of repair, reconstruction or replacement of the damaged Improvement. If such casualty occurs during the last two (2) years of the Lease and the extent of the damage to the Leased Premises is greater than twenty percent (20%) of the then replacement value thereof (exclusive of the value of the Hotel Unit) or in the event the net insurance proceeds together with the amount of any deductible are in the case of any casualty (regardless of when same occurs) not sufficient to repair, reconstruct, or replace the damaged Improvement to substantially the same condition as of the date of such casualty, then, Lessee shall have the option, within 180 days from the date of the occurrence of such casualty damage, to terminate this Lease by giving written notice of such termination to Lessor within said 180-day period, in which event (i) this Lease shall terminate as of the termination date specified in such notice to Lessor, which shall not be less than 30 days after the date of such notice; (ii) Lessee shall no longer be required to pay Base Rent as contemplated by Article 2 hereof and all other payments due and owing as of the termination date; (iii) Lessee shall not be required to repair the damage; (iv) all casualty insurance proceeds available as a result of such damage shall be paid to and be the property of Lessee; and (v) the parties hereto shall have no further liability or obligations one to the other except as expressly provided for herein.

#### 5.4 Operational Rights; Revenue.

(a) Other than as set forth in this section, Lessee shall receive all revenues generated from and associated with the Facilities for the duration of the lease.

(b) Subject to the terms and provisions of this Lease, Lessee shall manage and operate the Leased Premises in accordance with Section 5.1. Without limiting the generality of the foregoing during the Term of this Lease, (i) Lessee shall have the sole right to grant and enter into licenses, rights, subleases, management agreements, operating agreements and any and all other agreements of any nature relating to the Leased Premises or the name thereof on such terms as Lessee deems appropriate for use of the Leased Premises for the purposes described in Section 5.1, and (ii) Lessee shall own all revenues of any source generated by or from the Leased Premises or the operation or management or the name thereof.

(c) Lessee shall have exclusive authority, control and rights in selecting the name of the Leased Premises (or portions thereof); provided, however, Lessee shall not name any portion of the Leased Premises any name that is offensive to the general public. Lessor shall have no right to name all or any portion of the Leased Premises.

(d) Subject to the terms and provisions of this Lease, Lessee shall have full and exclusive control of any and all advertising signage displayed in, on, upon or around the Leased

Premises; provided, however, in no event shall any signage that is offensive to the general public be permitted in, on, upon or around the Leased Premises.

(e) Lessee shall not discriminate in the attendance of an event held at the Leased Premises based on whether or not any individual is a Hotel guest. The public may access events at the Leased Premises without being required to be a Hotel guest (provided that the customary admittance requirements are satisfied (e.g., registration for the event, etc.)).

## **ARTICLE 6.**

### **Promotion**

Lessee agrees that it shall use commercially reasonable efforts to promote the Hotel and Facilities and in any media which it publishes that makes a reference to the Hotel or Facilities shall use commercially reasonable efforts to make reference to the name "Frisco" or the "City of Frisco".

## **ARTICLE 7.**

### **Insurance and Indemnity**

7.1 Liability Insurance. Lessee agrees, at its sole expense, to obtain and maintain commercial general liability insurance at all times during the Term hereof with reputable insurance companies authorized to transact business in the State of Texas for bodily injury (including death) and property damage with minimum limits of \$1,000,000 Combined Single Limit occurrence/\$2,000,000 aggregate protecting Lessor and Lessee against any liability, damage, claim or demand arising out of or connected with the condition or use of the Leased Premises. Such insurance shall include contractual liability, personal injury and advertising liability, business automobile (including owned, non-owned and hired) and independent contractor liability. Such insurance coverage must be written on an "occurrence" basis. It may be maintained by any combination of single policies and/or umbrella or blanket policies and may be obtained and maintained by a Sublessee with respect to that portion of the Leased Premises subleased to such Sublessee. Lessor and its elected officials shall be named as an additional insured, as their interests appear, on all insurance policies required by this Section 7.1. Lessee, its officers, directors, employees, partners and agents shall be named as an additional insured, as their respective interests appear, on all public liability policies obtained by Lessor and the other Public Entities which cover any events at the Facilities and such coverage shall be the primary coverage during Public Entity Use.

7.2 [Intentionally Deleted].

7.3 Property Insurance. At all times during the Term of this Lease, Lessee shall, at its sole expense, keep all buildings and structures included in the Leased Premises insured against "all risk" of loss for full replacement cost coverage, with a deductible in an amount consistent with Lessee's or Lessee's Affiliates' then current practices, to include direct loss by fire, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, boiler and machinery and flood. Coverage must be written by reputable insurance companies authorized to transact business in the State of Texas. Lessor shall be named as an additional insured or additional loss payee, as appropriate.

7.4 Policies. All insurance policies required by this Article 7 shall provide for at least thirty (30) days written notice to Lessor before cancellation and certificates or copies of policies of insurance shall be delivered to Lessor. If any blanket general insurance policy of Lessee or Lessee's Affiliate complies with the terms of this Article 7, the naming of Lessor therein as an additional insured shall be deemed compliance with the requirements for the insurance coverage provided in any such blanket policy. Lessor and Lessee hereby waive all claims, rights of recovery and causes of action that either Party or any party claiming by, through or under such Party by subrogation or otherwise may now or hereafter have against the other Party or any of the other Party's present and future subsidiaries, Affiliates, partners, officers, directors, employees, direct or indirect stockholders, agents, other representatives, successors and assigns for bodily injury (including death) to persons, or loss or damage to property of Lessor and Lessee whether caused by the negligence or fault of Lessor and Lessee or their partners, directors, officers, employees, agents or representatives or otherwise, to the extent that the injuries, losses or damages are covered by the proceeds of insurance policies maintained by either Party.

7.5 Adjustment of Losses. At any time during the Term of this Lease, Lessee may name any Leasehold Mortgagee as a mortgagee or an additional insured, as appropriate, under any of the insurance policies required under Section 7.3 hereof, as its interest may appear, provided that such Leasehold Mortgagee shall agree to permit the insurance proceeds to which it is entitled to be used to rebuild, repair or restore the Facilities if Lessee is required under this Lease to repair such casualty damage. Any loss under any such insurance policy required under Section 7.3 hereof shall be made payable to Lessee for the benefit of Lessee and Lessor, to the end that Lessee shall be entitled to collect all money due under such insurance policies payable in the event of and by reason of the loss of or damage to the Leased Premises, to be applied pursuant to Section 7.6 below. Any accumulation of interest on the insurance proceeds collected by Lessee shall be added to, and become a part of, the fund being held by Lessee for the benefit of Lessor and Lessee. The adjustment of losses with the insurer shall be made by Lessee.

7.6 Application of Proceeds of Property Insurance. All proceeds payable pursuant to the provision of any policies of property insurance required to be carried under the terms of this Lease (net of reasonable expenses of collection) shall be applied unless otherwise provided above, for the following purposes:

(a) All such net proceeds shall first be used, subject to any other terms and conditions contained in this Lease, as a fund for the rebuilding, restoration and repair of the portion of the Leased Premises which have become destroyed or damaged for which such proceeds are payable; and

(b) Following completion of all work under subsection (a) above, any proceeds not disbursed pursuant to subsection (a) above shall be disbursed to Lessee.

7.7 Environmental Investigation and Remediation.

(a) Lessor makes no representation or warranty concerning the condition of the Leased Premises.

(b) Lessee shall be responsible for performing any environmental investigation and remediation work which may be required in connection with the use and occupancy of the Leased Premises by Lessee and which is caused by the presence of Hazardous Materials on the Leased Premises, except and to the extent the presence thereof results solely from the act of Lessor or its officers, employees, agents or representatives or Lessor's predecessors in title to the Unit in which event Lessor shall be responsible at its sole expense for performing any environmental investigation and remediation work which may be required in connection with the use and occupancy of the Leased Premises and which is caused by the presence of Hazardous Materials on the Leased Premises. Such environmental investigation and remediation work shall be conducted in accordance with all applicable laws. Lessee shall notify and advise Lessor of the remediation Lessee will undertake and the procedures to be used. Lessee shall complete the remediation with due diligence and shall use commercially reasonable efforts to comply with, and shall cause its agents and contractors to comply with, all applicable laws regarding the use, removal, storage, transportation, disposal and remediation of Hazardous Materials. Lessee's obligation as provided herein to undertake environmental investigation and remediation of the Leased Premises shall be a continuing obligation of Lessee which shall survive throughout the Term.

(c) The term "Hazardous Materials" means any substance, material or waste which is now or hereafter classified or considered to be hazardous, toxic or dangerous under any federal, state or local laws, rules and regulations (collectively "Laws") affecting the Leased Premises relating to pollution or the protection of human health, natural resources or the environment, but shall exclude any such items that are necessary for the ordinary performance of Lessee's activities, provided that such are used, stored and disposed of in compliance with all Laws. If Lessee breaches its obligations under this Section 7.7 and such breach is not cured following notice and within the applicable cure period specified in Article 10 below, Lessor may take any and all action reasonably appropriate to remedy such breach and Lessee shall promptly pay all reasonable costs incurred by Lessor in connection therewith.

(d) The provisions of this Section 7.7 shall survive the termination of this Lease and are solely for the benefit of Lessor, Lessee, and Lessee's Leasehold Mortgagee (if any) and shall not be deemed for the benefit of any other person or entity.

## ARTICLE 8.

### Assignment and Subletting

8.1 Assignment. Lessee shall not sell or assign the leasehold estate created hereby without the consent of Lessor, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, Lessee may, without the consent of Lessor, assign or transfer this Lease to (a) any Affiliate of Lessee, (b) any other person or entity or an Affiliate thereof who acquires the ownership interest in Lessee, or (c) any other person or entity or an Affiliate thereof who acquires the Hotel Unit as long as the Hotel is operated as an Omni branded hotel. Upon any such assignment, the assignee shall execute and deliver to Lessor a written assumption, in form and substance reasonably satisfactory to Lessor, of all of the obligations of Lessee pertaining to the Leased Premises and accruing under this Lease after such assignment. Lessee shall thereafter be released of all liabilities or obligations thereafter accruing under this Lease.

8.2 Subletting. Lessee shall have the right at any time, without the consent of Lessor, to sublease all or a portion of the Leased Premises or all or a portion of the right to operate the Facilities to any Affiliate of Lessee; provided, however, that no such subletting or assignment shall relieve Lessee of any of its obligations hereunder unless otherwise agreed in writing by Lessor, and all subleases shall be subject to the terms and provisions of this Lease. It is further provided that any subletting of the Leased Premises must comport and be in furtherance of the purposes described in Section 5.1 and which do not conflict with the Public Entity Use as set forth in Section 5.1(b) below. No Sublessee shall have any right to sublease or otherwise assign or encumber its interest in the Leased Premises.

8.3 General Provisions. Lessee shall, in connection with any assignment or sublease, provide notice to Lessor of the name and address of any assignee or Sublessee, together with a complete copy of the assignment agreement or sublease.

8.4 Nondisturbance Agreement. Upon the written request of Lessee, Lessor will enter into a Nondisturbance Agreement (herein so called) with any Sublessee, Leasehold Mortgagee or Subleasehold Mortgagee. Such Nondisturbance Agreement shall include such reasonable provisions as requested by a Sublessee, Leasehold Mortgagee or Subleasehold Mortgagee, subject to the reasonable approval of Lessor, but in any event shall (a) reaffirm Lessor's ownership of the Leased Premises, (b) confirm (if true) that this Lease is in full force and effect without default by Lessee (or, if a default exists, specifying the default and the remedy required by Lessor), (c) and, in the case of Sublessee, provide, in substance, that, so long as the Sublessee complies with all of the terms of its sublease or other applicable agreement, Lessor, in the exercise of any of its rights or remedies under this Lease, shall not deprive the Sublessee of possession, or the right of possession, of the subleased property during the term of the sublease, deprive the Sublessee of any other rights under the sublease or other applicable agreement or join the Sublessee as a party in any action or proceeding to enforce or terminate this Lease or obtain possession of the property leased in the sublease or other applicable agreement which would entitle Lessor to dispossess the Sublessee thereunder or otherwise terminate the Sublessee's rights thereunder.

## ARTICLE 9. Leasehold Mortgages

9.1 Leasehold Mortgages Permitted. Lessee, from time to time and at any time, shall have the right to grant a Leasehold Mortgage. In the event that Lessee grants a Leasehold Mortgage, upon Lessee's written request to Lessor, Lessor will execute and deliver an estoppel certificate addressed to the Leasehold Mortgagee setting forth the information described in Section 14.2 of this Lease, confirming the terms of this Article 9, and providing Lessor's agreement to recognize the Leasehold Mortgagee or any purchaser of the Mortgaged Premises at foreclosure in the same manner as an assignee pursuant to Section 8.1 of this Lease. Lessor agrees to accept any amendments of this Lease which are requested by a Leasehold Mortgagee prior to the execution of its Leasehold Mortgage which are calculated to protect the Leasehold Mortgagee's interest in this Lease under its Leasehold Mortgage and do not materially diminish the rights of Lessor under this Lease. Notwithstanding the foregoing, no Leasehold Mortgagee shall acquire, by virtue of the Leasehold Mortgage, any greater right in the Mortgaged Premises and in any building or improvements thereon than Lessee then had under this Lease. In no event shall Lessee have the right to encumber, subordinate or render inferior in any way Lessor's fee simple title in



and to the Leased Premises. In the event that Lessee grants a Leasehold Mortgage, the Leased Premises must continue to be used for the purposes described in Section 5.11 of this Lease.

9.2 Notices to Leasehold Mortgagees. If at any time after execution and recordation of any Leasehold Mortgage in the Real Property Records of Denton County, Texas, in accordance with the provisions of Section 9.1 hereof, the Leasehold Mortgagee shall notify Lessor in writing that the Leasehold Mortgage on the Mortgaged Premises has been given and executed by Lessee, and shall furnish Lessor at the same time with the address to which the Leasehold Mortgagee desires copies of notices to be mailed, or designates some person or corporation as its agent and representative for the purpose of receiving copies of notices, Lessor hereby agrees that it will thereafter deliver in the manner specified in Section 14.5 to the Leasehold Mortgagee and to the agent or representative so designated by the Leasehold Mortgagee, at the address so given, duplicate copies of any and all notices in writing which Lessor may from time to time give or serve upon Lessee under and pursuant to the terms and provisions of this Lease and any and all pleadings in suits filed by Lessor against Lessee. No notice to Lessee shall be effective as to the Leasehold Mortgagee unless duplicate copies thereof are delivered to such Leasehold Mortgagee at the same time the notice is given or served upon Lessee.

9.3 Leasehold Mortgagee's Right to Cure. If Lessor shall ever be entitled to exercise a right hereunder to terminate this Lease after the giving of notice and/or the passage of time, as applicable, Lessor, subject to notification by Leasehold Mortgagee pursuant to Section 9.2 hereof, shall deliver additional written notice to Leasehold Mortgagee of Lessor's intention to so terminate this Lease and describing the existing defaults, and Leasehold Mortgagee thereafter shall have thirty (30) days to cure the defaults described in such written notice. Notwithstanding the foregoing, but subject to the provisions of Section 10.2 hereof, in the event (a) such default is not capable of cure within such 30-day period, this Lease may not be terminated if Leasehold Mortgagee shall deliver to Lessor, within such 30-day period, written notice of Leasehold Mortgagee's intention to cure the specified defaults and shall commence and diligently pursue the cure of the specified defaults and such defaults are cured within one hundred twenty (120) days of the date of such notice, or (b) any Leasehold Mortgagee is not in actual possession of the Mortgaged Premises on the date of the additional notice given the Leasehold Mortgagee under this Section 9.3, and possession is necessary in order to cure any default, then the time within which such Leasehold Mortgagee may commence to cure such default shall be extended for a reasonable time not to exceed one hundred twenty (120) days until such Leasehold Mortgagee can obtain actual possession of the Mortgaged Premises. No purported termination of this Lease shall be effective until such written notice shall have been given to Leasehold Mortgagee and such 30-day period, or additional time period as provided above, shall have expired without the described defaults having been cured. Leasehold Mortgagee may, at its option and at any time before the rights of Lessee under this Lease have been terminated, pay any of the Base Rent due hereunder, procure any insurance required hereunder, pay any Imposition required hereunder, make any repairs and improvements required hereunder, or do any other act or thing or make any other payment required of Lessee by the terms of this Lease or which may be necessary and appropriate to comply with the covenants and conditions of this Lease to prevent the termination of this Lease. All payments so made and all things so done and performed by any such Leasehold Mortgagee shall be as effective to prevent a forfeiture of the rights of Lessee hereunder as if performed by Lessee.

9.4 New Lease. Notwithstanding anything to the contrary contained in this Lease or otherwise, in the event of termination of this Lease for any reason prior to the stated expiration date, Lessor shall promptly notify all Leasehold Mortgagees of such termination. If the Leasehold Mortgagee having the highest priority with respect to the Lease cures (subject to Section 9.5 hereof) all defaults giving rise to such termination as provided below, Lessor shall enter into a new lease of the Mortgaged Premises with such Leasehold Mortgagee or its designee for the remainder of the Term of this Lease, such new lease to be effective as of the date of termination of this Lease, at the Base Rent payable hereunder and upon all of the same terms, conditions, covenants, agreements, provisions and limitations contained herein, subject to the following:

(a) the Leasehold Mortgagee entitled to the new lease shall make written request to Lessor for a new lease within sixty (60) days of receipt by the Leasehold Mortgagee of written notice from Lessor of the date of termination of this Lease; and

(b) at the time of the execution and delivery of the new lease, the Leasehold Mortgagee or its designee shall pay to Lessor all amounts specified in the notice of termination delivered by Lessor which would have been due hereunder except for such termination and which are currently due except for such termination, and shall promptly cure (subject to Section 9.5 hereof) all other defaults giving rise to such termination.

9.5 Certain Cure Requirements. Notwithstanding the provisions of Section 9.4 above, a Leasehold Mortgagee's right to enter into a new lease with Lessor as provided in said Section 9.4 shall not be conditioned upon such Leasehold Mortgagee curing any default of Lessee not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee.

9.6 Survival. The provisions of Section 9.4 and Section 9.5 shall survive the termination of this Lease and shall continue in full force and effect thereafter to the same extent as if said Section 9.4 and Section 9.5 were a separate and independent contract among Lessor, Lessee and any Leasehold Mortgagee.

9.7 Leasehold Mortgagees' Liability. Unless a new lease shall have been executed pursuant to Section 9.4 hereof, no Leasehold Mortgagee shall be or become personally liable to Lessor as an assignee of this Lease, for the payment or performance of any obligation of Lessee unless and until it expressly assumes by written instrument the payment or performance of such obligation, and no assumption of liability shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by any Leasehold Mortgage, or from a conveyance or assignment pursuant to which any purchaser at foreclosure shall acquire the rights and interest of Lessee under the terms of this Lease; provided, however, any such assignee or purchaser must timely and diligently perform all obligations of Lessee hereunder.

## ARTICLE 10. Default of Lessee

10.1 Defaults. Lessee shall be in default if any of the following events ("Events of Default") shall occur: (a) subject to the provisions of Section 10.3 below, the failure on the part of Lessee to pay 100% of the Base Rent when due and the continuation of such failure for ten (10)

days after Lessor has provided to Lessee and to each Leasehold Mortgagee, in accordance with Section 9.2 of this Lease, a written notice of such failure; (b) subject to the provisions of Section 10.3 below, any breach by Lessee of any covenant of Lessee under this Lease other than the failure to pay Base Rent when due, and such breach has not been cured within thirty (30) days from and after the date written notice of such breach is given by Lessor to Lessee, provided, however, no Event of Default shall exist if Lessee shall have commenced within such thirty (30) day period to remove or to cure such breach and shall be proceeding with reasonable diligence to completely remove or cure such breach; (c) the making of any general assignment for the benefit of creditors by Lessee; (d) the filing of a voluntary petition in bankruptcy or a voluntary petition for an arrangement or reorganization under the United States Federal Bankruptcy Act (or similar statute or law of any foreign jurisdiction) by Lessee; (e) the appointment of a receiver or trustee for all or substantially all of Lessee's interest in the Leased Premises or its leasehold estate hereunder if not removed within one hundred twenty (120) days; (f) the entry of a final judgment, order or decree of a court of competent jurisdiction adjudicating Lessee to be bankrupt, and the expiration without appeal of the period, if any, allowed by applicable law in which to appeal therefrom; and (g) Lessee or its successors or assigns cease to operate the Facilities for the purposes set forth in Section 5.1 for a period in excess of one hundred twenty (120) consecutive days (other than any cessation in operations in connection with any repairs, restoration, renovation or maintenance of the Leased Premises or any of the common areas as set forth in the Declaration, and in all events subject to Section 14.9 below), and such breach has not been cured within thirty (30) days from and after the date written notice of such breach is given by Lessor to Lessee.

10.2 Remedies. Upon the occurrence and during the continuance of an Event of Default by one party (the "Defaulting Party"), the other party (the "Non-defaulting Party") shall have the right to (i) bring an action for monetary damages; (ii) pursue an injunction against the Defaulting Party; or (iii) seek specific performance against the Defaulting Party. In addition, and without waiving its rights to the remedies set forth in the immediately preceding sentence, Lessor shall have the additional remedy solely for an Event of Default under Section 10.01(g) of terminating this Lease, at which time Lessee immediately shall surrender the Leased Premises to Lessor, failing which Lessor shall have the right to seek judicial action to enforce such termination. The foregoing remedies shall be exclusive and each party waives any and all other remedies that may be available to it at law or in equity. The failure to assert any remedy or the granting of any waiver (as provided in Section 14.16 above) of any event of default shall not be deemed to be a waiver of such remedy or any subsequent event of default.

10.3 Rights of Leasehold Mortgagees. Notwithstanding any other provision of this Article 10, all rights and remedies of Lessor under Section 10.1 and Section 10.2 above are subject to the provisions of Article 9 of this Lease.

## **ARTICLE 11.**

### **Default of Lessor**

11.1 Defaults and Remedies. In the event of any breach by Lessor of any covenant of Lessor under this Lease, Lessee shall have the right to deliver to Lessor a written notice specifying such breach or non-payment, and unless within thirty (30) days from and after the date of delivery of such notice Lessor shall have commenced to remove or to cure such breach or occurrence and shall be proceeding with reasonable diligence to completely remove or cure such breach or



occurrence, then Lessee shall have all remedies available to it at law or in equity; including, without limitation, termination, injunction and specific performance. All remedies of Lessee under this Lease shall be cumulative, and the failure to assert any remedy or the granting of any waiver of any event of default shall not be deemed to be a waiver of any subsequent event of default.

## ARTICLE 12. Condemnation

12.1 Definitions. Whenever used in this Article 12, the following words shall have the definitions and meanings hereinafter set forth:

(a) "Condemnation Proceeding". Any action brought for the purpose of any taking of the Leased Premises, or any part thereof or of any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Leased Premises), by competent authority as a result of the exercise of the power of eminent domain, including a voluntary sale to such authority either under threat of condemnation or while such action or proceeding is pending.

(b) "Taking" or "Taken". The event and date of vesting of title to the Leased Premises or any part thereof or any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Leased Premises), pursuant to a Condemnation Proceeding.

12.2 Efforts to Prevent Taking. Lessor shall use its best efforts to refrain from and cause all other competent authorities with the power of eminent domain to refrain from instituting any Condemnation Proceedings or exercising any other powers of eminent domain with respect to the Leased Premises, or any part thereof or any interest therein, during the Term of this Lease.

12.3 Entire Taking. If all or substantially all of the Leased Premises shall be Taken in Condemnation Proceedings, Base Rent shall be fully abated from and after the date of such Taking and from and after such date Lessee and Lessor shall not have any other obligations under this Lease with respect to the Leased Premises, except for those obligations which expressly survive the termination hereof.

12.4 Partial Taking.

(a) If less than all of the Leased Premises shall be Taken in any Condemnation Proceeding, a fair and equitable portion of the Base Rent attributable to the portion of the Leased Premises Taken shall be abated from and after the date of such partial Taking, and from and after such date Lessee and Lessor shall not have any other obligations under this Lease with respect to the portion of the Leased Premises that has been Taken, except for those obligations which expressly survive the termination hereof.

(b) If, following such Taking, Lessee determines in its sole and absolute discretion, that the remaining Leased Premises are not sufficient to operate the Facilities for their intended purposes, then Lessee, at its election, may vacate the Leased Premises, whereupon the Base Rent shall be fully abated from and after the date of such partial Taking, and from and after such date Lessee and Lessor shall not have any other obligations under this Lease with respect to

the Leased Premises, except for those obligations which expressly survive the termination hereof. Such election to vacate must be exercised no later than ninety (90) days after the date of such Taking.

(c) If Lessee does not elect to vacate the Leased Premises upon any partial Taking, then (i) the Leased Premises shall be reduced by the portion thereof taken, in the Condemnation Proceedings, and the Base Rent payable hereunder shall be equitably reduced during the unexpired portion of the Term as provided above, and (ii) Lessee shall commence and proceed with reasonable diligence to repair or reconstruct the remaining Improvements on the Leased Premises, if any; provided, however, Lessee's obligation to so repair or reconstruct the remaining Improvements shall be limited to the proceeds of the condemnation award actually received by Lessee.

12.5 Temporary Taking. If any right of temporary (hereinafter defined) possession or occupancy of all or any portion of the Leased Premises shall be Taken, the Base Rent shall be reduced during the duration of such Taking in a fair and equitable manner that reflects the inability of Lessee to use the affected portion of the Leased Premises. A Taking shall be considered "temporary" only if the period of time during which Lessee is deprived of usage of all or part of the Leased Premises as the result of such Taking does not materially interfere in Lessee's sole and absolute discretion, with the ability of Lessee to use and operate the Facilities for their intended purposes. Any other "Taking" that is not "temporary" as described above shall be treated as an entire Taking under Section 12.3 above or as a partial Taking under Section 12.4 above.

#### 12.6 Condemnation Award.

(a) No Taking shall have the effect of terminating this Lease. None of the provisions of this Article 12 shall affect the right, title or interest of Lessee in the leasehold interest created by this Lease. For the purposes of determining the portion of any condemnation award to which Lessee is entitled to receive from the condemning authority as a matter of law, Lessee's right, title and interest in the Leased Premises shall be granted and arising under this Lease without consideration of this Article 12. This Article 12 pertains only to Lessee's and Lessor's continuing obligations under this Lease following a Taking and to the agreement between Lessor and Lessee regarding any condemnation awards.

(b) Lessee shall be entitled to receive all condemnation awards related to Lessee's interest in the Leased Premises, and Lessor shall deliver to Lessee any condemnation award that Lessor may receive related to Lessee's interest in the Leased Premises. The provisions of this Section 12.6(b) shall survive any such termination.

12.7 Settlement of Proceeding. Lessor shall not make any settlement with the condemning authority in any Condemnation Proceedings nor convey or agree to convey the whole or any portion of the Leased Premises to such authority in lieu of condemnation without first obtaining the written consent of Lessee and all Leasehold Mortgagees.



**ARTICLE 13.**  
**Representations, Warranties and Special Covenants**

13.1 Lessor's Representations, Warranties and Special Covenants. Lessor hereby represents, warrants and covenants as follows:

(a) Existence. Lessor is a home rule municipal corporation of the State of Texas duly incorporated and currently existing pursuant to the constitution and laws of the State of Texas, including the Texas Local Government Code and Texas Government Code.

(b) Authority. Lessor has all requisite power and authority to own the Leased Premises, to execute, deliver and perform its obligations under this Lease and to consummate the transactions herein contemplated and, by proper action in accordance with all applicable law, has duly authorized the execution and delivery of this Lease, the performance of its obligations under this Lease and the consummation of the transactions herein contemplated.

(c) Binding Obligation. This Lease is a valid and binding obligation of Lessor and is enforceable against Lessor in accordance with its terms.

(d) No Defaults. The execution by Lessor of this Lease and the consummation by Lessor of the transactions contemplated hereby (i) do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default, or a condition which upon notice or lapse of time or both would ripen into a default, under Lessor's charter or any resolution, indenture, agreement, instrument or obligation to which Lessor is a party or by which the Leased Premises or any portion thereof is bound; and (ii) do not, to the knowledge of Lessor, after reasonable inquiry, constitute, a violation of any law, order, rule or regulation applicable to Lessor or any portion of the Leased Premises of any court or of any federal, state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Lessor or any portion of the Leased Premises.

(e) Consents. No permission, approval or consent by third parties or any other governmental authorities is required in order for Lessor to enter into this Lease, make the agreements herein contained or perform the obligations of Lessor hereunder other than those which have been obtained.

(f) Quiet Enjoyment. During the Term of this Lease and subject to the terms of this Lease, Lessee shall have the quiet enjoyment and peaceable possession of the Leased Premises against hindrance or disturbance by Lessor or any person or entity acting by, through or under Lessor.

(g) Proceedings. There are no actions, suits or proceedings pending or, to the reasonable best knowledge of Lessor, threatened or asserted against Lessor affecting Lessor or any portion of the Leased Premises, at law or at equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

(h) Impositions. Lessor has not received any notice of any condemnation actions, special assignments or increases in the assessed valuation of taxes or any Impositions of

any nature which are pending or being contemplated with respect to the Leased Premises or any portion thereof.

(i) Compliance with Laws. Lessor has not received any notice of any violation of any ordinance, regulation, law or statute of any governmental agency pertaining to the Leased Premises or any portion thereof.

(j) Encumbrances. Lessor has good and marketable fee simple title, subject to no liens or security interests, and Lessor has not placed or granted any liens or security interests against the Leased Premises. There are no actions pending, to the knowledge of Lessor, which would result in the creation of any lien on any portion of the Leased Premises, including, without limitation, water, sewage, street paving, electrical or power improvements which give rise to any lien, completed or in progress. Lessor shall not grant any liens or security interest on all or any portion of the Leased Premises other than (i) encumbrances which will not affect Lessee's use or enjoyment of the property, or (ii) a mortgage secured by the leased premises, provided that such mortgagee has provided to Lessee a non-disturbance agreement, in a form mutually acceptable to Lessee and such mortgagee.

(k) Limitations. Except as otherwise expressly provided herein, this Lease is made by Lessor without representation or warranty of any kind, either express or implied, as to the condition of the Leased Premises, its merchantability, its condition or its fitness for Lessee's intended use or for any particular purpose.

#### 13.2 Lessee's Representations, Warranties and Special Covenants.

(a) Existence. Lessee is duly organized and validly existing under the laws of the state of its organization and is authorized to do business in the State of Texas.

(b) Authority. Lessee has all requisite power and authority to own its property, operate its business, enter into this Lease and consummate the transactions herein contemplated, and by proper action, has duly authorized the execution and delivery of this Lease and the consummation of the transactions herein contemplated.

(c) Binding Obligation. This Lease is a valid and binding obligation of Lessee and is enforceable against Lessee in accordance with its terms, subject to (a) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, rearrangement, moratorium, receivership, liquidation and similar laws affecting creditors rights or (b) general principles of equity.

(d) No Default. The execution by Lessee of this Lease and the consummation by Lessee of the transactions contemplated hereby do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default or condition which upon notice or the lapse of time or both would ripen into default under, the organizational documents of Lessee or under any indenture, agreement, instrument or obligation to which Lessee is a party or is bound.

(e) Consents. No permission, approval or consent by third parties or any other governmental authorities is required in order for Lessee to enter into this Lease, make the

agreements herein contained or perform the obligations of Lessee hereunder other than those which have been obtained.

(f) As-Is. Except as otherwise provided in Section 13.1 above, Lessee accepts the leasehold interest in the Unit granted by this Lease on an "as-is" basis with all faults.

(i) Disclaimers By Lessor. Except as expressly set forth in this Lease, it is understood and agreed that Lessor and Lessor's agents or employees have not at any time made and are not now making, and they specifically disclaim, any warranties, representations or guaranties of any kind or character, express or implied, with respect to the Leased Premises, including, but not limited to, warranties, representations or guaranties as to (1) matters of title (other than Lessor's ownership of fee simple title to the Leased Premises), (2) environmental matters relating to the Leased Premises or any portion thereof, including, without limitation, the presence of Hazardous Materials in, on, under or in the vicinity of the Leased Premises, (3) access to the Leased Premises or any portion thereof, (4) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, suitability, structural integrity, operation, title to, or physical condition of the Leased Premises or any portion thereof, or any liens, encumbrances, rights or claims on or affecting or pertaining to the Leased Premises or any part thereof, (5) the condition or use of the Leased Premises or compliance of the Leased Premises with any or all past, present or future federal, state or local ordinances, rules, regulations or laws, building, fire or zoning ordinances, codes or other similar laws, (6) the existence or non-existence of underground storage tanks, surface impoundments, or landfills, (7) the merchantability of the Leased Premises or fitness of the Leased Premises for any particular purpose, (8) tax consequences, or (9) any other matter or thing with respect to the Leased Premises.

(ii) Lease "As Is, Where Is". Lessee acknowledges and agrees Lessor is leasing to Lessee and Lessee accepts the Leased Premises "AS IS, WHERE IS, WITH ALL FAULTS," except to the extent expressly provided otherwise in this Lease and any document executed by Lessor and delivered to Lessee in connection herewith. Except as expressly set forth in this Lease, Lessee has not relied and will not rely on, and Lessor has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Leased Premises or relating thereto made or furnished by Lessor, or any property manager, real estate broker, agent or third party representing or purporting to represent Lessor, to whomever made or given, directly or indirectly, orally or in writing. Lessee will conduct such inspections and investigations of the Leased Premises as Lessee deems necessary, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same. Lessee acknowledges that Lessor has afforded Lessee a full opportunity to conduct such investigations of the Leased Premises as Lessee deemed necessary to satisfy itself as to the condition of the Leased Premises and the existence or non-existence or curative action to be taken with respect to any Hazardous Materials on or discharged from the Leased Premises, and will rely solely upon same and not upon any information provided by or on behalf of Lessor or its agents or employees with

respect thereto, other than such representations, warranties and covenants of Lessor as are expressly set forth in this Lease. Lessee hereby assumes the risk that adverse matters, including, but not limited to, adverse physical or construction defects or adverse environmental, health or safety conditions, may not have been revealed by Lessee's inspections and investigations.

(iii) Lessor Released from Liability. Lessee hereby FOREVER RELEASES AND DISCHARGES Lessor from all responsibility and liability, including without limitation, liabilities under the Comprehensive Environmental Response, Compensation and Liability Act Of 1980 (42 U.S.C. Sections 9601 et seq.), as amended ("CERCLA"), the Texas Solid Waste Disposal Act (Texas Health and Safety Code § 361.001 et seq. (Vernon 2001), as amended ("SWDA"), the Resource Conservation and Recovery Act (42 U.S.C. Section 9601 et seq.), as amended, and the Oil Pollution Act (33 U.S.C. Section 2701 et seq.) regarding the condition, valuation, salability or utility of the Leased Premises, or its suitability for any purpose whatsoever (including, but not limited to, with respect to the presence in the soil, air, structures and surface and subsurface waters, of Hazardous Materials or other materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Leased Premises under current or future federal, state and local laws, regulations or guidelines, and any structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Materials on, under, adjacent to or otherwise affecting the Leased Premises). Lessee further hereby WAIVES any and all objections and complaints (including, but not limited to, federal, state and local statutory and common law based actions, and any private right of action under any federal, state or local laws, regulations or guidelines to which the Leased Premises is or may be subject, including, but not limited to, CERCLA) concerning the physical characteristics and any existing conditions of the Leased Premises. Lessee further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental conditions on the Leased Premises and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Materials or other contaminants, may not have been revealed by its investigation.

(iv) "Hazardous Materials" Defined. For purposes hereof, "Hazardous Materials" means "Hazardous Material," "Hazardous Substance," "Pollutant or Contaminant," and "Petroleum" and "Natural Gas Liquids," as those terms are defined or used in Section 101 of CERCLA, any "solid waste" as defined in the SWDA and any other substances regulated because of their effect or potential effect on public health and the environment, including, without limitation, PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials.

(v) Lessee acknowledges and agrees that the disclaimers and other agreements set forth herein are an integral part of this Lease and that Lessor would



not have agreed to Lease the Leased Premises to Lessee without the disclaimers and other agreements set forth above.

**ARTICLE 14.**  
**Miscellaneous**

14.1 Inspection. Lessee shall permit Lessor and its agents, upon no less than twenty-four (24) hours' prior written notice and being accompanied by Lessee or its agent, to enter into and upon the Leased Premises during normal business hours for the purpose of inspecting the same on the condition that Lessee's and Lessee's tenants' and invitees' quiet enjoyment of the same is not interfered with.

14.2 Estoppel Certificates. Lessee and Lessor shall, at any time and from time to time upon not less than ten (10) days' prior written request by the other Party, execute, acknowledge and deliver to Lessor or Lessee, as the case may be, a statement in writing certifying (a) its ownership of the interest of Lessor or Lessee hereunder, as the case may be, (b) that this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (c) the dates to which the Base Rent and any other charges have been paid, and (d) that, to the best knowledge of Lessor or Lessee, as the case may be, no default hereunder on the part of the other Party exists (except that if any such default does exist, the certifying Party shall specify such default.) Upon request by Lessee, Lessor's estoppel certificate also shall be addressed to the Leasehold Mortgagee, if any.

14.3 Release. If requested by Lessor, Lessee shall, upon termination of this Lease, execute and deliver to Lessor an appropriate release, in form proper for recording, of all Lessee's interest in the Leased Premises, and upon request of Lessee, Lessor will execute and deliver a written cancellation and termination of this Lease and release of all claims (if none are then outstanding) in proper form for recording to the extent such release is appropriate under the provisions hereof. If requested by Lessee, Lessor shall, upon termination of this Lease, execute and deliver a written cancellation and termination of this Lease and release of all claims (if none are then outstanding) in proper form reasonably acceptable to Lessee for recording to the extent such release is appropriate under the provisions hereof.

14.4 [Intentionally Deleted].

14.5 Notices. All notices, demands, payments and other communications required to be given or made hereunder shall be in writing and shall be duly given if delivered by reputable independent courier service providing proof of delivery or reputable overnight courier or if mailed by certified or registered mail, first class postage prepaid, and shall be effectively received upon the date of such delivery or two (2) days after such mailing, to the respective parties hereto at the addresses set forth below, or to such other address furnished in writing to the other Party hereto.

If to Lessee:	Omni Stillwater Woods Golf Resort, LLC c/o Omni Hotels Management Corporation 4001 Maple Avenue, Suite 600 Dallas, Texas 75219 Attention: Michael G. Smith
---------------	--



With a copy to:       Winstead PC  
500 Winstead Building  
2728 N. Harwood Street  
Dallas, Texas 75201  
Attn: T. Andrew Dow

And to:               Omni Stillwater Woods Golf Resort, LLC  
4145 Travis Street, Suite 300  
Dallas, Texas 75204  
Attention: Robert Elliott

And to:               Omni Stillwater Woods Golf Resort, LLC  
One Cowboys Way, Suite 160  
Frisco, Texas 75034  
Attention: Aaron Sherman

And to:               Haynes and Boone LLP  
2323 Victory Avenue, Suite 700  
Dallas, Texas 75219  
Attention: Scott Drablos

If to Lessor:       The City of Frisco, Texas  
6891 Main Street  
Frisco, Texas 75034  
Attn: City Manager

With a copy to:       Abernathy, Roeder, Boyd & Hullett, P.C.  
1700 Redbud Boulevard, Suite 300  
McKinney, Texas 75069  
Attn: Robert Roeder and Randy Hullett

14.6 Successors and Assigns. Except as expressly provided in Article 8, this Agreement may not be assigned without the prior written consent of the other Party hereto. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their permitted successors and assigns.

14.7 Amendment. Except as expressly provided herein, neither this Lease nor any term hereof may be amended, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

14.8 Headings and Subheadings. The headings of the articles, sections, paragraphs and subparagraphs of this Lease are for convenience or reference only and in no way define, limit, extend or describe the scope of this Lease or the intent of any provisions hereof.

14.9 Unavoidable Default and Delays. After the date of execution of this Lease, the time within which any Party to this Lease shall be required to perform any act under this Lease shall be extended by a period of time equal to the number of days during which performance of such act is delayed by Force Majeure. The provisions of this Section 14.9 shall not operate to excuse either

Party from prompt payment of the Base Rent or any other payments required by the terms of this Lease. If a date falls on a Saturday, Sunday or Holiday, the date of performance shall be the next business day.

14.10 Severability. In the event one or more of the terms or provisions of this Lease or the application thereof to any Party or circumstances shall, to any extent, be held invalid, illegal or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

14.11 Governing Law. THIS LEASE SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE UNITED STATES APPLICABLE THERETO AND THE LAWS OF THE STATE OF TEXAS APPLICABLE TO A LEASE EXECUTED, DELIVERED AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO ANY OTHERWISE APPLICABLE PRINCIPLES OF CONFLICTS OF LAW.

14.12 Venue for Actions. The venue for any legal action arising out of this Lease shall lie exclusively in Collin County, Texas.

14.13 Attorneys' Fees. Should either Party to this Lease engage the services of attorneys or institute legal proceedings to enforce its rights or remedies under this Lease, the prevailing Party to such dispute or proceedings shall be entitled to recover its reasonable attorneys' fees, court costs and similar costs incurred in connection with the resolution of such dispute or the institution, prosecution or defense in such proceedings from the other Party.

14.14 Relationship of Parties. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of principal and agent, partnership, joint venture or any association between the Parties hereto, it being understood and agreed that none of the provisions contained herein or any acts of the Parties in the performance of their respective obligations hereunder shall be deemed to create any relationship between the Parties hereto other than the relationship of Lessor and Lessee. It is understood and agreed that this Lease does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other. Each Party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

14.15 Net Lease. It is the intention of Lessor and Lessee that the Base Rent payable under this Lease after the Commencement Date and all Impositions and other costs related to Lessee's use or operation of the Leased Premises under this Lease (other than amounts as may be required to be paid by Lessor pursuant to specific provisions of this Lease) shall be absolutely net to Lessor, and that Lessee shall pay during the Term, without any offset or deduction whatsoever (except as may otherwise expressly provided in this Lease), all such Impositions and other costs due by Lessee under this Lease (other than amounts as may be required to be paid (directly or indirectly) by Lessor pursuant to specific provisions of this Lease).

14.16 Non-Waiver. No Party shall have or be deemed to have waived any default under this Lease by the other Party unless such waiver is embodied in a document signed by the waiving Party that describes the default that is being waived. Further, no Party shall be deemed to have waived its rights to pursue any remedies under this Lease, unless such waiver is embodied in a document signed by such Party that describes any such remedy that is being waived.

14.17 Obligations to Defend Validity of Agreement. If litigation is filed by a third party against Lessee or Lessor in an effort to enjoin either Party's performance of this Lease, the Parties hereto who are named as parties in such action shall take all commercially reasonable steps to support and defend the validity and enforceability of this Lease. Either Party may intervene in any such matter in which the other Party hereto has been named as a defendant. Each Party shall be responsible for its attorneys' fees and costs of litigation.

14.18 Survival. Covenants in this Lease providing for performance after termination of this Lease shall survive the termination of this Lease.

14.19 Entire Agreement. This Lease (including the Exhibits attached hereto and incorporated herein, if any) and the other documents delivered pursuant to this Lease or referenced herein constitute the full and entire understanding and agreement between the Parties with regard to the subject matter hereof. There are no representations, promises or agreements of Lessor or Lessee regarding the subject matter of this Lease not contained in this Lease, the Exhibits attached hereto or the other documents delivered pursuant to this Lease or referenced herein.

14.20 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

14.21 Waiver of Consequential Damages. Notwithstanding anything in this Lease to the contrary, Lessor hereby waives, to the extent permitted by law, any consequential damages, compensation or claims for inconvenience, loss of business, rents or profits as a result of any injury or damage, whether or not caused by the willful or wrongful act of Lessee or its representatives, agents or employees. Anything to the contrary in this Lease notwithstanding, Lessee hereby waives any consequential damages, compensation or claims for inconvenience, loss of business, rents or profits as a result of any injury or damage, whether or not caused by the willful or wrongful act of Lessor or its representatives, agents or employees.

14.22 Memorandum of Lease Agreement. Upon either Party's request, the other party shall execute and allow such Party to record in Denton County, Texas a Memorandum of Lease Agreement in the form attached hereto as Exhibit C evidencing the existence and terms this Lease. In the event such a memorandum is recorded, the parties agree that upon a termination of this Lease, the parties shall execute and record a termination of such Memorandum of Lease Agreement.

14.23 Lessor's Lien Waiver. To the extent permitted by law, Lessor hereby waives all landlord's liens that Lessor might hold, statutory or otherwise, to any of Lessee's (or any Sublessee's) inventory, trade fixtures, equipment or other personal property now or hereafter placed on the Leased Premises.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

WITNESS WHEREOF, the parties hereto have executed and delivered this Lease as of the date first set forth above.

**LESSEE:**

**OMNI STILLWATER WOODS GOLF RESORT, LLC,**  
a Delaware limited liability company

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

Name: \_\_\_\_\_

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

**LESSOR:**

**THE CITY OF FRISCO, TEXAS**

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

Name: George Purefoy

Title: City Manager



## **EXHIBIT A**

### **The Unit**

The Conference Center Unit of the \_\_\_\_\_ Condominium, created pursuant to the Condominium Declaration for \_\_\_\_\_ Condominium, recorded as Document No. \_\_\_\_\_ of the Official Public Records of Denton County, Texas, and all amendments thereto (the "Declaration"), covering a building built on land located in Denton County, Texas as described in such Declaration; together with an undivided interest, appurtenant thereto, in and to the Common Elements in the percentage designated on Exhibit C attached to the Declaration and the exclusive right to use the Limited Common Elements appurtenant to the Conference Center Unit (as more particularly described in the Declaration).

## EXHIBIT B

### The Hotel Unit

The Hotel Unit of the \_\_\_\_\_ Condominium, created pursuant to the Condominium Declaration for \_\_\_\_\_ Condominium, recorded as Document No. \_\_\_\_\_ of the Official Public Records of Denton County, Texas, and all amendments thereto (the "Declaration"), covering a building built on land located in Denton County, Texas as described in such Declaration; together with an undivided interest, appurtenant thereto, in and to the Common Elements in the percentage designated on Exhibit C attached to the Declaration and the exclusive right to use the Limited Common Elements appurtenant to the Hotel Unit (as more particularly described in the Declaration).

## **EXHIBIT C**

### **Memorandum of Lease**

[The form of Memorandum of Lease follows this cover page.]

## MEMORANDUM OF LEASE

This Memorandum of Lease (herein the "Memorandum") is executed by and between THE CITY OF FRISCO, TEXAS, a municipal corporation of the State of Texas and a home rule city located in Collin County, Texas ("Lessor") and OMNI STILLWATER WOODS GOLF RESORT, LLC, a Delaware limited liability company ("Lessee").

### RECITALS:

A. The parties hereto have made and entered into that certain Lease (as described and defined hereinbelow).

B. The parties desire to record a Memorandum of Lease to provide notice to third parties of the Lease.

### AGREEMENTS:

NOW, THEREFORE, Lessor and Lessee do hereby make and enter into this Memorandum for the purposes described above:

1. Description of Leased Premises. Lessor and Lessee have made and entered into that certain Lease Agreement (as same may be hereafter renewed or amended, the "Lease") dated effective as of \_\_\_\_\_, 20\_\_, covering the Leased Premises described hereinbelow, providing for the lease by Lessee from Lessor of such Leased Premises upon the terms and conditions set forth in such Lease. The Lease applies to all of that certain condominium unit situated in the City of Frisco, Denton County, Texas, which condominium unit is more particularly described in Exhibit "A" attached hereto, incorporated herein by this reference, and made a part hereof for all purposes (the "Leased Premises").

2. Primary Term of Lease. The primary term of the Lease commenced on \_\_\_\_\_, 20\_\_ and ends on [the **[fiftieth (50th)]** anniversary of the Commencement Date].

4. General. Nothing contained in this Memorandum shall be deemed or construed to amend, modify, change, alter, amplify, interrupt or supersede any of the terms or provisions of the Lease. In the event of a conflict between the terms of the Lease and the terms of this Memorandum, the terms of the Lease shall prevail and be controlling. This Memorandum may be executed in multiple counterparts, and each counterpart shall be deemed an original hereof. Accordingly, this Memorandum shall become binding, notwithstanding the execution of separate originals hereof, one by each of the parties hereto. Capitalized terms used but not defined in this Memorandum will have the definitions ascribed to such terms in the Lease.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum on the dates set forth in the acknowledgments attached hereto, but to be effective as to the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

LESSOR:

THE CITY OF FRISCO, TEXAS

By: \_\_\_\_\_  
George Purefoy  
City Manager

STATE OF TEXAS                   §  
  §  
COUNTY OF COLLIN           §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by George Purefoy, City Manager of THE CITY OF FRISCO, TEXAS, a municipal corporation of the State of Texas and a home rule city located in Collin County, Texas, on behalf of said municipal corporation and home rule city.

[ S E A L ]

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



**LESSEE:**

**OMNI STILLWATER WOODS GOLF RESORT, LLC,**  
a Delaware limited liability company

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

STATE OF TEXAS                   §  
  §  
COUNTY OF DALLAS           §

          This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by \_\_\_\_\_ of OMNI STILLWATER WOODS  
GOLF RESORT, LLC, a Delaware limited liability company, on behalf of said limited liability  
company.

[ S E A L ]

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

**EXHIBIT A**  
**Leased Premises**

EXHIBIT "I"  
CURRENT DEPICTION OF FACILITIES



**EXHIBIT "J"**  
**OPTION AGREEMENT**

## OPTION AGREEMENT

This OPTION AGREEMENT ("Agreement") is made and entered into by and between **THE CITY OF FRISCO, TEXAS**, a municipal corporation of the State of Texas and a home rule city located in Collin County, Texas ("Optionor") and **OMNI STILLWATER WOODS GOLF RESORT, LLC**, a Delaware limited liability company ("Optionee").

### WITNESSETH:

**WHEREAS**, Optionor is the owner of the Property (as hereinafter defined), and pursuant to the terms of that certain Lease Agreement of even date herewith by and between Optionor and Optionee (the "Lease"), Optionor leases the Property to Optionee;

**WHEREAS**, Optionor acquired the Property pursuant to the terms of the Master Development Agreement (as defined in the Lease), whereby Optionee developed the Property and conveyed the Property to Optionor with the intent that Optionor lease the Property back to Optionee pursuant to the Lease; and

**WHEREAS**, as an additional material part of the consideration under the Master Development Agreement, Optionor agreed to grant Optionee the right to purchase the Property on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, for and in consideration of the premises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Optionor and Optionee hereby agree as follows:

### ARTICLE 1 DEFINITIONS

1.1 Definitions. As used herein, the following terms shall have the following meanings:

Bill of Sale: A Bill of Sale in the form of Exhibit "F" attached hereto, vesting in Optionee, without warranty, Optionor's right, title and interest in and to the property described therein free of any claims, except for the Permitted Exceptions to the extent applicable.

City Debt: Any bond or other debt obligation issued or incurred by the City or the Frisco Community Development Corporation for which the proceeds have been used to purchase or improve the Property.

Closing: The exchange of documents and funds to consummate the transaction(s) triggered by the delivery of an Exercise Notice.

Closing Date: A date upon which the Closing occurs, which shall be a date which is thirty (30) days after delivery by Optionee to Optionor of the Exercise Notice, or on such earlier date as may be mutually agreed to by the Optionor and Optionee; provided,



however, in no event shall the Closing Date be earlier than the date all City Debt has been fully paid or otherwise satisfied or later than the Option Termination Date.

Code: The Internal Revenue Code of 1986, as heretofore or hereafter amended, and the regulations from time to time promulgated thereunder.

Conference Center Unit: The condominium unit described on Exhibit "A" attached hereto and incorporated herein by reference for all purposes.

Deed: A special warranty deed, in the form of Exhibit "B" attached hereto and incorporated herein by reference for all purposes, conveying good and indefeasible title in the Conference Center Unit and Improvements to Optionee, subject to no exceptions other than the Permitted Exceptions.

Declaration: That certain Condominium Declaration for \_\_\_\_\_ Condominium dated \_\_\_\_\_, 20\_\_\_\_, and recorded under Instrument No. \_\_\_\_\_, Real Property Records of Denton County, Texas, creating the Hotel Unit and the Conference Center Unit.

Effective Date: The date the last of Optionor and Optionee executes this Agreement.

Exercise: An election by Optionee to exercise the Option, which Exercise shall be evidenced by delivery from Optionee to Optionor of an Exercise Notice.

Exercise Notice: The notice delivered by Optionee to Optionor pursuant to Section 3.1 of this Agreement, notifying Optionor of Optionee's Exercise to exercise the Option.

FIRPTA Certificate: A certificate in the form of Exhibit "D" attached hereto and incorporated herein by reference for all purposes, certifying that Optionor is not a "foreign person," as such term is defined in Section 1445 of the Code, and the sale of the Property is not subject to the federal income tax withholding requirements of such section of the Code.

Hotel Unit: That certain Hotel Unit more particularly described on Exhibit "A-1" attached hereto and incorporated herein by reference for all purposes, which, together with the Conference Center Unit, constitute all of the units in the condominium regime known as \_\_\_\_\_ Condominium, established pursuant to the Declaration.

Improvements: The right, title and interest of Optionor in and to those certain structures, fixtures, furnishings, leasehold improvements, utility lines and infrastructure appurtenant to the Conference Center Unit, if any.

Memorandum of Option: A memorandum of option, in the form of Exhibit "C" attached hereto and incorporated herein by reference for all purposes, which shall be executed by Optionor and Optionee in accordance with the terms of this Agreement and shall be filed of record in the appropriate real property records of Denton County, Texas.

Option: The Option to purchase the Property granted to Optionee by Optionor pursuant to the terms of this Agreement.

Option Payment: The sum of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00), which shall be paid by Optionee to Optionor pursuant to the terms of Section 3.3 of this Agreement.

Option Period: The period of time from the Effective Date through and including the Option Termination Date.

Option Termination Date: The date that is the later to occur of: (i) \_\_\_\_\_, 20\_\_\_\_; or (ii) the expiration date of the Lease, as the same may be renewed, extended or modified from time to time, provided, however, if Optionee has not delivered an Exercise Notice to Optionor prior to the later of the foregoing dates, Optionor must notify Optionee in writing that the Option Termination Date has occurred and that Optionor has not received an Exercise Notice prior to such date, and the Option shall remain in full force and effect, and shall not terminate, until sixty (60) days after Optionee's receipt of such notice.

Optionee: The party described as Optionee in the initial paragraph of this Agreement.

Optionor: The party described as Optionor in the initial paragraph of this Agreement.

Permitted Exceptions: The defects, liens, encumbrances and other matters affecting title to the Conference Center Unit as of the date hereof which are set forth on Exhibit "E" attached hereto and incorporated herein by reference for all purposes or any additional matters affecting title to the Conference Center Unit as the result of actions by the Optionee.

Personal Property: The right, title and interest of Optionor, without warranty, in the equipment, machinery, furniture, furnishings, supplies and other tangible personal property, if any, owned by Optionor and now or hereafter located in and used in connection with the operation, ownership or management of the Conference Center Unit.

Property: The Conference Center Unit, Improvements and Personal Property.

Purchase Price: The purchase price to be paid by Optionee to Optionor for the Property pursuant to an Exercise of the Option, which shall be calculated as set forth in Section 3.4.

Survey: A current condominium survey of the Conference Center Unit, prepared by a licensed Texas surveyor selected by Optionee.

1.2 Additional Definitions. As used herein, the following terms shall have the following meanings:

(a) "Hereof," "hereby," "hereto," "hereunder," "herewith," and similar terms mean of, by, to, under and with respect to, this Agreement.

(b) "Heretofore" means before, "hereafter" means after, and "herewith" means concurrently with, the date of this Agreement.

(c) "Include," "including," and similar terms shall mean including, without limitation.

(d) All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require.

(e) All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.

## **ARTICLE 2**

### **GRANT OF OPTION**

Subject to the terms, provisions and conditions hereinafter set forth, Optionor hereby agrees to grant to Optionee the Option to purchase the Property. The Option is irrevocable for the Option Period.

## **ARTICLE 3**

### **TERMS OF OPTION**

3.1 Exercise of Option. Optionee may elect to Exercise the Option at any time after the original final maturity date of the City Debt) and prior to the Option Termination Date by delivering to Optionor the Exercise Notice setting forth the Closing Date and any other information necessary to close the transaction contemplated by the Exercise. In the event Optionee delivers the Exercise Notice to Optionor, the Purchase Price shall be due and payable by Optionee to Optionor in immediately available funds at the Closing.

3.2 Duration of Option. The Option granted hereby shall be exercisable (in whole or in part) at any time during the Option Period, but shall expire at 5:00 p.m. on the Option Termination Date, unless otherwise extended or exercised as provided in this Agreement.

3.3 Option Payment. As consideration for the granting of this Option, Optionee shall pay the Option Payment to Optionor concurrently with the execution of this Agreement. If Optionee Exercises the Option, the Option Payment shall be credited against the Purchase Price. Except as otherwise provided herein, in the event the Option is never exercised, the Option Payment shall be retained by Optionor.

3.4 Purchase Price. The Purchase Price shall be ONE HUNDRED AND NO/100 DOLLARS (\$100.00).

**ARTICLE 4**  
**SURVEY AND TITLE MATTERS**

4.1 Title Policy. At Closing, Optionee (at Optionee's sole cost and expense) shall have the right to purchase a title policy for the Property.

4.2 "AS IS, WHERE IS"; NO WARRANTIES OR REPRESENTATIONS. Optionee shall take the Property on an "AS IS, WHERE IS" basis without any warranties or representations from Optionor (except for the warranties contained in the Deed and other Closing documents) and the Deed shall contain such provisions.

**ARTICLE 5**  
**RISK OF LOSS**

5.1 Casualty. In the event that, after Optionee delivers the Exercise Notice but prior to the Closing Date, all or any portion of the Property is damaged or destroyed, Closing shall occur as scheduled with no reduction in the Purchase Price and Optionor shall pay or assign to Optionee at Closing Optionor's interest in and to all insurance proceeds and/or other causes of action arising from or with respect to such casualty.

5.2 Condemnation. In the event that, after Optionee delivers the Exercise Notice but prior to the Closing Date, proceedings in eminent domain are instituted with respect to the all or any portion of the Property, Closing shall occur as scheduled with no reduction in the Purchase Price and Optionor shall pay or assign to Optionee at Closing Optionor's interest in and to all condemnation awards or proceeds and/or other causes of action arising from or with respect to such condemnation.

**ARTICLE 6**  
**CLOSING**

6.1 Time and Place. The Closing shall take place on the Closing Date at 10:00 a.m. Dallas, Texas time at the offices of Winstead PC, 500 Winstead Building, 2728 N. Harwood Street, Dallas, Texas 75201.

6.2 Optionor Delivery. At the Closing, Optionor shall deliver or cause to be delivered to Optionee, at Optionor's sole cost and expense, each of the following:

- (a) The Deed, duly executed and acknowledged by Optionor.
- (b) The FIRPTA Certificate, duly executed and acknowledged by Optionor.
- (c) The Memorandum of Option, duly executed and acknowledged by Optionor.
- (d) The Bill of Sale, duly executed by Optionor.
- (e) The Closing Credit.

(f) Such evidence or documents as may reasonably be required by Optionee or the Title Company evidencing the status and capacity of Optionor and the authority of the person or persons who are executing the various documents on behalf of Optionor in connection with the sale of the Property.

(g) All additional documents and instruments as in the mutual and reasonable opinion of Optionor's and Optionee's counsel are reasonably necessary to the proper consummation of this transaction.

6.3 Optionee Delivery. At the Closing, Optionee, at Optionee's sole cost and expense, shall deliver to Optionor, the following:

(a) The Purchase Price in the amount and manner required herein.

(b) The Memorandum of Option, duly executed and acknowledged by Optionee.

(c) The Bill of Sale, duly executed by Optionee.

(d) All additional documents and instruments as in the mutual and reasonable opinion of Optionor's and Optionee's counsel are reasonably necessary to the proper consummation of this transaction.

6.4 Adjustments and Prorations. Pursuant to the Lease, Optionee shall be responsible for all costs, and entitled to all revenues, from the Property, and Optionee shall remain responsible for such costs and entitled to such revenues after Closing, therefore, no prorations shall be made at Closing.

6.5 Possession. Possession of the Property shall be delivered to Optionee by Optionor at the Closing, subject only to such rights of others as have been expressly disclosed herein or in the documents delivered at the Closing.

6.6 Reporting Person. Optionor and Optionee hereby designate Optionor as the "Reporting Person" as such term is utilized in Section 6045 of the Code. Optionee agrees to provide the Optionor with such information as may be required for the Optionor to file a Form 1099 or other required form relative to the Closing with the Internal Revenue Service. A copy of the filed Form 1099 or other filed form shall be provided to Optionor and Optionee simultaneously with its being provided to the Internal Revenue Service.

6.7 Costs and Expenses. All costs and expenses in connection with the transactions contemplated by this Agreement shall, except as otherwise expressly provided herein, be borne by Optionor and Optionee in the manner in which such costs and expenses are customarily allocated between the parties at closings of the purchase or sale of real property similar to the Property in the Collin County, Texas area.



**ARTICLE 7**  
**REAL ESTATE COMMISSION**

7.1 Commission. Optionor and Optionee covenant and agree one with the other that no real estate commissions, finders' fees or brokers' fees have been or will be incurred in connection with this Agreement or the sale(s) contemplated hereby.

7.2 Indemnity. Each party hereto represents to the other that such party has not authorized any broker or finder to act on such party's behalf in connection with the sale(s) and purchase(s) hereunder. To the extent permitted by law, each party hereto agrees to indemnify and hold harmless the other party from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party with any broker or finder in connection with this Agreement or the transaction(s) contemplated hereby. This obligation shall survive the Closing or any earlier termination of this Agreement.

**ARTICLE 8**  
**REMEDIES OF DEFAULT**

8.1 Optionor Default. In the event of a default hereunder by Optionor, then Optionee, in addition to any and all other remedies available at law or in equity, shall be entitled to enforce specific performance hereunder.

8.2 Optionee Default. In the event of a default hereunder by Optionee, then Optionor, as its sole and exclusive remedy (Optionor hereby waiving any and all other remedies that may be available to it at law or in equity), shall have the right to bring an action against Optionee for monetary damages.

**ARTICLE 9**  
**MISCELLANEOUS**

9.1 Notices. All notices, demands or other communications of any type given by Optionor to Optionee or by Optionee to Optionor, whether required by this Agreement or in any way related to the transactions contracted for herein, shall be void and of no effect unless given in accordance with the provisions of this Section 9.1. All such notices shall be in writing and delivered to the person to whom the notice is directed, either in person, by expedited delivery service with proof of delivery, or by United States Mail, postage prepaid, as a Registered or Certified item, Return Receipt Requested. Notices delivered by expedited delivery service shall be deemed to have been given at the time of such delivery to the office of the addressee and notices delivered by mail shall be effective when deposited in a Post Office or other depository under the care or custody of the United States Postal Service, enclosed in a wrapper with proper postage affixed and addressed, as provided below. Notice may additionally be provided by facsimile transmission so long as a copy of such notice is simultaneously forwarded by one of the other means described above. Facsimile notice shall be effective upon receipt at the facsimile station indicated below.

The proper address and facsimile number for Optionee is as follows:

Omni Stillwater Woods Golf Resort, LLC  
c/o Omni Hotels Management Corporation  
4001 Maple Avenue, Suite 600  
Dallas, Texas 75219  
Attention: Michael G. Smith

With a copy to: Winstead PC  
500 Winstead Building  
2728 N. Harwood Street  
Dallas, Texas 75201  
Attn: T. Andrew Dow

And to: Omni Stillwater Woods Golf Resort, LLC  
4145 Travis Street, Suite 300  
Dallas, Texas 75204  
Attention: Robert Elliott

And to: Omni Stillwater Woods Golf Resort, LLC  
One Cowboys Way, Suite 160  
Frisco, Texas 75034  
Attention: Aaron Sherman

And to: Haynes and Boone LLP  
2323 Victory Avenue, Suite 700  
Dallas, Texas 75219  
Attention: Scott Drablos

The proper address and facsimile number for Optionor is as follows:

The City of Frisco, Texas  
6101 Frisco Square Blvd.  
5<sup>th</sup> Floor  
Frisco, Texas 75034  
Attention: City Manager

with copy to:

Abernathy, Roeder, Boyd & Hullett, P.C.  
1700 Redbud Blvd., Suite 300  
McKinney, Texas 75069  
Attention: Robert Roeder

Any party hereto may change the address for notice specified above by giving the other party ten (10) days' advance written notice of such change of address.

9.2 Confidentiality. Optionor and Optionee agree not to cause any public announcements to be made of the execution of this Agreement or the Closing of the transactions contemplated hereby, and further agree not to disclose to any party the Purchase Price payable

hereunder. Optionor and Optionee further agree not to disclose to any unrelated third party any of the facts concerning the execution and delivery of this Agreement or the consummation of the purchase(s) and sale(s) contemplated hereby. Notwithstanding any of the foregoing, Optionor or Optionee may disclose any aspect of this transaction to any governmental agency, or any officer thereof, upon proper request or requirement therefor, where required, in accordance with applicable law.

9.3 Successors and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, and permitted successors and assigns. Optionee shall not sell or assign the Option granted herein without the consent of Optionor, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, Optionee may, without the consent of Optionor, assign or transfer this Agreement to (a) any affiliate of Optionee, (b) any other person or entity or an affiliate thereof who acquires the ownership interest in Optionee, or (c) any other person or entity or an affiliate thereof who acquires the Hotel Unit as long as the Hotel Unit is operated as an Omni hotel.

9.4 Memorandum. The parties hereby agree to file the Memorandum of Option in the applicable real property records of Denton County, Texas.

9.5 Governing Law. THIS AGREEMENT SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE OBLIGATIONS OF THE PARTIES HERETO ARE AND SHALL BE PERFORMABLE IN THE COUNTY WHEREIN THE PROPERTY IS LOCATED. BY EXECUTING THIS AGREEMENT, EACH PARTY HERETO EXPRESSLY (a) CONSENTS AND SUBMITS TO PERSONAL JURISDICTION CONSISTENT WITH THE PREVIOUS SENTENCE, (b) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CLAIM OR DEFENSE THAT SUCH VENUE IS NOT PROPER OR CONVENIENT, AND (c) CONSENTS TO THE SERVICE OF PROCESS IN ANY MANNER AUTHORIZED BY TEXAS LAW. ANY FINAL JUDGMENT ENTERED IN AN ACTION BROUGHT HEREUNDER SHALL BE CONCLUSIVE AND BINDING UPON THE PARTIES HERETO.

9.6 No Oral Modification. This Agreement may not be modified or amended, except by an agreement in writing signed by both Optionor and Optionee.

9.7 No Oral Waiver. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions or obligations.

9.8 Time of Essence. Time is of the essence in the performance of the covenants contained in this Agreement.

9.9 Attorneys' Fees. In the event it becomes necessary for either party hereto to file a suit to enforce this Agreement or any provisions contained herein, the party prevailing in such action shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and court costs incurred by such prevailing party in such suit.

9.10 Headings. The descriptive headings of the various Articles and Sections contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

9.11 Entire Agreement. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representation, warranty, covenant, agreement or condition not expressed in this Agreement shall be binding upon the parties hereto or shall affect or be effective to interpret, change or restrict the provisions of this Agreement.

9.12 Partial Invalidity. If any clause or provisions of this Agreement is or should ever be held to be illegal, invalid, or unenforceable under any present or future law applicable to the terms hereof, then and in the event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and that in lieu of each such clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

9.13 Counterpart Execution. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

9.14 Holidays. In the event that the date upon which any duties or obligations hereunder to be performed shall occur upon a Saturday, Sunday or legal holiday, then, in such event, the due date for performance of any duty or obligation shall thereupon be automatically extended to the next succeeding business day.

[Remainder of Page Intentionally Left Blank]

EXECUTED on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Optionee.

**OPTIONEE:**

**OMNI STILLWATER WOODS GOLF RESORT,  
LLC, a Delaware limited liability company**

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

Name: \_\_\_\_\_

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



EXECUTED on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Optionor.

**OPTIONOR:**

**THE CITY OF FRISCO, TEXAS**

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

Name: George Purefoy

Title: City Manager

**ATTACHMENTS:**

Exhibit "A"	–	Conference Center Unit Description
Exhibit "B"	–	Deed
Exhibit "C"	–	Memorandum of Option
Exhibit "D"	–	FIRPTA Certificate
Exhibit "E"	–	Permitted Exceptions
Exhibit "F"	–	Bill of Sale

**EXHIBIT "A"**  
**CONFERENCE CENTER UNIT DESCRIPTION**

The Conference Center Unit of the \_\_\_\_\_ Condominium, created pursuant to the Condominium Declaration for \_\_\_\_\_ Condominium, recorded as Document No. \_\_\_\_\_ of the Official Public Records of Denton County, Texas, and all amendments thereto (the "Declaration"), covering a building built on land located in Denton County, Texas as described in such Declaration; together with an undivided interest, appurtenant thereto, in and to the Common Elements in the percentage designated on Exhibit C attached to the Declaration and the exclusive right to use the Limited Common Elements appurtenant to the Conference Center Unit (as more particularly described in the Declaration).

**EXHIBIT "B"**  
**SPECIAL WARRANTY DEED**

The form of Deed follows this cover page.

SPECIAL WARRANTY DEED

STATE OF TEXAS           §  
  §       KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF DENTON   §

\_\_\_\_\_, a \_\_\_\_\_ ("**Grantor**"), for and in consideration of the sum of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has GRANTED, BARGAINED, SOLD, and CONVEYED and by these presents does GRANT, BARGAIN, SELL, and CONVEY unto \_\_\_\_\_, a \_\_\_\_\_ ("**Grantee**") the real property in Denton County, Texas, described in Exhibit A, together with all rights, titles, and interests appurtenant thereto including, without limitation, Grantor's interest, if any, in any and all adjacent streets, alleys, rights of way and any adjacent strips and gores (such land and interests are hereinafter collectively referred to as the "**Property**").

This Special Warranty Deed and the conveyance hereinabove set forth is executed by Grantor and accepted by Grantee subject to all easements, restrictions, reservations and covenants now of record and further subject to all matters that a current, accurate survey of the Property would show, together with the matters described in Exhibit B attached hereto and incorporated herein by this reference, to the extent the same are validly existing and applicable to the Property (hereinafter referred to collectively as the "**Permitted Exceptions**").

Grantee acknowledges that Grantee has independently and personally inspected the Property. The Property is hereby conveyed to and accepted by Grantee in its present condition, "AS IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED." Notwithstanding anything contained herein to the contrary, it is understood and agreed that Grantor and Grantor's agents or employees have never made and are not now making, and they specifically disclaim, any warranties, representations or guaranties of any kind or character, express or implied, oral or written, with respect to the Property, including, but not limited to, warranties, representations or guaranties as to i) matters of title (other than Grantor's warranty of title set forth herein), ii) environmental matters relating to the Property or any portion thereof, including, without limitation, the presence of Hazardous Materials (as defined in the purchase and sale agreement, the "**Sale Agreement**" between Grantor and Grantee) in, on, under or in the vicinity of the Property, iii) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water, and geologic faults and the resulting damage of past and/or future faulting, iv) whether, and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, wetlands, flood prone area, flood plain, floodway or special flood hazard, v) drainage, vi) soil conditions, including the existence of instability, past soil repairs, soil additions or conditions of soil fill, or susceptibility to landslides, or the sufficiency of any undershoring, vii) the presence of endangered species or any environmentally sensitive or protected areas, viii) zoning or building entitlements to which the Property or any portion thereof may be subject, ix) the availability of any utilities to the Property or any portion thereof including, without limitation, water, sewage, gas and electric, x) usages of adjoining property, xi) access to the Property or any portion thereof, xii) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, suitability, structural integrity, operation, title to, or physical or financial condition of the Property or any

portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Property or any part thereof, xiii) the condition or use of the Property or compliance of the Property with any or all Regulation federal, state or local ordinances, rules, regulations or laws, building, fire or zoning ordinances, codes or other similar laws, xiv) the existence or non-existence of underground storage tanks, surface impoundments, or landfills, xv) any other matter affecting the stability and integrity of the Property, xvi) the potential for further development of the Property, xvii) the merchantability of the Property or fitness of the Property for any particular purpose, xviii) the truth, accuracy or completeness of the Property Documents, xix) tax consequences, or xx) any other matter or thing with respect to the Property. **EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN THE SALE AGREEMENT, GRANTOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND TO GRANTEE, INCLUDING, WITHOUT LIMITATION, THE PHYSICAL CONDITION OF THE PROPERTY, OR THEIR SUITABILITY FOR ANY PARTICULAR PURPOSE OR OF MERCHANTABILITY. GRANTEE IS RELYING ON ITS INVESTIGATIONS OF THE PROPERTY IN DETERMINING WHETHER TO ACQUIRE IT. THE PROVISIONS OF THIS PARAGRAPH ARE A MATERIAL PART OF THE CONSIDERATION FOR GRANTOR EXECUTING THIS SPECIAL WARRANTY DEED, AND SHALL SURVIVE CLOSING.**

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 Exceptions.

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



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

**GRANTOR:**

**THE CITY OF FRISCO, TEXAS,**  
a municipal corporation of the State of Texas and  
a home rule city located in Collin County, Texas

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

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

This instrument was ACKNOWLEDGED before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of THE CITY OF FRISCO, TEXAS, a municipal corporation of the State of Texas and a home rule city located in Collin County, Texas, on behalf of said corporation.

[SEAL]

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

**GRANTEE'S ADDRESS FOR TAX NOTICES:**

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

**When recorded, return to:**

Winstead PC  
500 Winstead Building  
2728 N. Harwood Street  
Dallas, Texas 75201  
Attention: T. Andrew Dow

Exhibit "A"  
Property Description

[Property Description to be subsequently inserted here.]

Exhibit "B"  
Permitted Exceptions

[Permitted Exceptions to be subsequently inserted here.]

**EXHIBIT "C"**  
**MEMORANDUM OF OPTION**

The Memorandum of Option follows this cover page.

MEMORANDUM OF OPTION

STATE OF TEXAS           §  
                                      §     I KNOW ALL MEN BY THESE PRESENTS THAT:  
COUNTY OF DENTON     §

This MEMORANDUM OF OPTION is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between THE CITY OF FRISCO, TEXAS, a municipal corporation of the State of Texas and a home rule city located in Collin County, Texas ("Optionor") and FRISCO HOTEL CORPORATION, a Delaware corporation ("Optionee").

WITNESSETH

Pursuant to that certain Option Agreement (herein so called), dated \_\_\_\_\_, 20\_\_, by and between Optionor and Optionee, Optionor has granted to Optionee an Option (herein so called) to purchase the condominium unit (the "Conference Center Unit") described on Exhibit A, attached hereto and incorporated herein by reference for all purposes, together with certain other rights and interests described in the Option Agreement (the Conference Center Unit and such other rights and interests being hereinafter referred to collectively as the "Property").

The Option expires on \_\_\_\_\_.

This Memorandum of Option is executed pursuant to the provisions of the Option Agreement, and is not intended to vary or supersede the terms and conditions of the Option Agreement. In the event any conflict exists between this Memorandum of Option and the Option Agreement, the provisions of the Option Agreement shall control.

IN WITNESS WHEREOF, Optionor and Optionee have executed this Memorandum of Option as of the day and year first above written.



EXECUTED on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by Optionee.

**OPTIONEE:**

OMNI STILLWATER WOODS GOLF RESORT,  
LLC,  
a Delaware limited liability company

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

Name: \_\_\_\_\_

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

STATE OF TEXAS           §

§

COUNTY OF \_\_\_\_\_ §

This instrument was ACKNOWLEDGED before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of OMNI STILLWATER WOODS GOLF RESORT, LLC, a Delaware limited liability company, on behalf of said limited liability company.

[SEAL]

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

EXECUTED on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by Optionor.

**OPTIONOR:**

THE CITY OF FRISCO, TEXAS,  
a municipal corporation of the State of Texas and  
a home rule city located in Collin County, Texas

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

Name: \_\_\_\_\_

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

STATE OF TEXAS           §

§

COUNTY OF COLLIN       §

This instrument was ACKNOWLEDGED before me, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of THE CITY OF FRISCO, TEXAS, a municipal corporation of the State of Texas and a home rule city located in Collin County, Texas, on behalf of said corporation.

[SEAL]

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

**EXHIBIT "D"**  
**FIRPTA CERTIFICATE**

The form of FIRPTA Certificate follows this cover page.

### FIRPTA CERTIFICATE

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform \_\_\_\_\_ ("**Transferee**") that withholding of tax is not required upon the disposition of a U.S. real property interest by \_\_\_\_\_ ("**Transferor**"), the undersigned, in their capacity as \_\_\_\_\_ of \_\_\_\_\_, but not individually, hereby certifies to Transferee the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor's U.S. employer identification number is \_\_\_\_\_; and
3. Transferor's office address is \_\_\_\_\_.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

Dated: \_\_\_\_\_, 20\_\_.

#### **TRANSFEROR:**

\_\_\_\_\_

a \_\_\_\_\_

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

Name: \_\_\_\_\_

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

**EXHIBIT "E"**  
**PERMITTED EXCEPTIONS**

- 1.
- 2.



**EXHIBIT "F"**  
**BILL OF SALE**

The form of Bill of Sale follows this cover page.

## BILL OF SALE

THIS BILL OF SALE is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ ("Assignor"), and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee").

### W I T N E S S E T H :

For good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignor hereby sells, transfers, assigns and conveys to Assignee, all right, title and interest of Assignor in and to all tangible personal property ("Personalty") set forth in the inventory on Exhibit A attached hereto and made a part hereof, and located on, and used in connection with the management, maintenance or operation of that certain land and improvements located in the County of Denton, State of Texas, as more particularly described in Exhibit B attached hereto and made a part hereof ("Real Property"), but excluding tangible personal property leased by Assignor.

2. This Bill of Sale is given pursuant to that certain Option Agreement (as amended, the "Option Agreement") dated as of \_\_\_\_\_, between Assignor and Assignee, providing for, among other things, the conveyance of the Personalty.

3. The property conveyed hereunder is conveyed by Assignor and accepted by Assignee **AS IS, WHERE IS, AND WITHOUT ANY WARRANTIES OF WHATSOEVER NATURE, EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY SET FORTH IN THE PURCHASE AGREEMENT, IT BEING THE INTENTION OF ASSIGNOR AND ASSIGNEE EXPRESSLY TO NEGATE AND EXCLUDE ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE PROPERTY CONVEYED HEREUNDER, OR BY ANY SAMPLE OR MODEL THEREOF, AND ALL OTHER WARRANTIES WHATSOEVER CONTAINED IN OR CREATED BY THE TEXAS UNIFORM COMMERCIAL CODE.**

4. Assignee hereby accepts the assignment of the Personalty, and Assignee agrees to indemnify and hold harmless Assignor from any cost, liability, damage or expense (including attorneys' fees) arising out of or relating to the Personalty arising from and accruing on or after the date hereof.

5. Assignor agrees to indemnify and hold harmless Assignee from any cost, liability, damage or expense (including attorneys' fees) arising out of or relating to the Personalty to the extent accruing prior to the date hereof.

6. This Bill of Sale may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Bill of Sale as of the date first above written.

**ASSIGNOR:**

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

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

\_\_\_\_\_  
Name: \_\_\_\_\_

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

**ASSIGNEE:**

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

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

\_\_\_\_\_  
Name: \_\_\_\_\_

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

Exhibit A      Personalty  
Exhibit B      Real Property

**EXHIBIT "K"**  
**SUMMARY OF CONDOMINIUM STRUCTURE**

The Hotel Facility will be subjected to a Master Condominium (the "Condominium") that will contain two units, appurtenant common elements and appropriate easements. OSW, as the owner of the Property (the "Declarant"), will file a Master Condominium Declaration (the "Declaration") in the Official Public Records of Collin County, Texas, that will provide the following:

- The Condominium will contain two units (a Hotel Unit and a Conference Center Unit), a rough rendering of which is attached hereto as Exhibit K-1.
- The Hotel Unit will be comprised of all of the floors in the building to be built on the Property (except the Conference Center Unit) and will be owned by OSW.
- The Conference Center Unit will consist of the [entire \_\_\_\_\_ floor and a portion of the \_\_\_\_\_ floor of the building] and will be owned by the City.
- An access easement and a specific use easement (on condition) will be granted by the Declarant, in the Declaration for the benefit of the Conference Center Unit. The access easement area will be a reasonably restricted area from the kitchen in the Hotel Unit to the Conference Center Unit, and the specific use easement (on condition) will provide for access to and use of the kitchen area in the Hotel Unit if the hotel is not operational. Both easement areas will be properly and definitively described in the condominium survey of the Condominium (the "Condominium Map").
- Other access to and from the Conference Center Unit (from agreed loading dock locations and through the Hotel Unit lobby and elevators) will be assured by appropriate easements granted by the Declarant in the Declaration, and properly and definitively described in the Condominium Map.
- The parking located will be part of the Hotel Unit and will be owned and exclusively used by the owner of the Hotel Unit.
- Common elements will consist of all areas that are shared in any way by the Hotel Unit and the Conference Center Unit. The parties are in agreement that the common elements will be kept to a minimum, and during the preparation of the Condominium Map, all shared areas will be properly and definitively described and located on the Condominium Map and properly described in the Declaration.
- The cost allocations for common expenses relating to the common elements of the Condominium will be allocated and set forth in an Allocation Document agreed to by the City and OSW on or before completion of the construction of the Hotel Facility.
- The Declaration will contain additional provisions commonly included in sophisticated, commercial, mixed-use condominium developments.

The Hotel Facility (including the Conference Center Unit) will be constructed by OSW.

OSW will transfer to the City the Conference Center Unit upon substantial completion of same at no cost to the City.

Simultaneously, with the transfer of the Conference Center Unit to the City, the City and OSW will enter into a long term lease pursuant to which the City will lease the Conference Center Unit to OSW.



**EXHIBIT "L"**  
**CITY-OSW 380 AGREEMENT RELATING TO RESORT HOTEL**

## **CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT**

This Agreement (the "Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018, to be effective as of the \_\_\_\_ day of \_\_\_\_\_, 2018 (the "Effective Date"), by and between the CITY OF FRISCO, TEXAS, a Texas home rule municipality (the "City"), and OMNI STILLWATER WOODS GOLF RESORT, LLC, a Delaware limited liability company ("OSW").

### **RECITALS:**

**WHEREAS**, OSW intends to construct and operate a destination resort hotel, designed to attract visitors nationally and internationally, containing at least 500 guest rooms, a minimum of 127,000 total square feet of meeting/conference space in a configuration acceptable to the City, parking lots/spaces in amount required by City ordinances, and indoor and outdoor recreational facilities attractive to families (the "Hotel Facility") to be located on a \_\_\_\_ acre parcel at \_\_\_\_\_ as more particularly described on **Exhibit "A"** attached hereto (the "Property"), which Hotel Facility shall carry a national brand which is upper upscale and shall be equal or above in quality and services to the JW Marriot Hill Country Resort and Hyatt Hill Country Resort located in San Antonio, Texas with aquatic features; and

**WHEREAS**, the Hotel Facility will be part of a larger project that will include: (i) a golf facility and clubhouse that is publicly-owned and that is designed and operated for public recreation, pleasure, enjoyment, golf activities, open space, and entertainment uses and events with meeting, dining, and access to indoor and outdoor event spaces (the "Public Facilities"); (ii) retail businesses and other facilities (such businesses, facilities, and revenue-generating activities together with the Hotel Facility and the Public Facilities, collectively, the "Hotel Project"); and

**WHEREAS**, OSW will construct as part of the Hotel Facility and transfer to the City a completed, finished-out conference center (the "Conference Center") that will contain at least 127,000 total square feet of meeting/conference space; and

**WHEREAS**, OSW and the City are parties to that certain Master Development Agreement for Facilities and Related Improvements (the "MDA") dated \_\_\_\_\_, by and among OSW, the City, Frisco Economic Development Corporation, Frisco Community Development Corporation, Frisco Independent School District, and The Professional Golfers' Association of America; and

**WHEREAS**, OSW has requested that the City authorize and provide certain economic development grants as provided herein; and

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code and for the public purpose of promoting economic development and diversity, increasing employment, reducing unemployment and underemployment, expanding commerce, and stimulating business and commercial activity in the State of Texas, Collin County, and the City, the City desires to offer certain economic development grants to OSW as more particularly described in this Agreement.

**NOW, THEREFORE**, for and in consideration of the promises, covenants, and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the City and OSW agree as follows:

1. **Subject of this Agreement.** OSW will construct and operate the Hotel Facility and the Conference Center pursuant to the terms of the MDA, as further described in the submittals filed with the City in order to obtain such permits as may be required under applicable City ordinances, and generally in accordance with the Site Plan attached hereto as Exhibit "B" (the "Site Plan"), as such Site Plan may be modified during the approval process with the City.

2. **Economic Development Grants.** Subject to the terms and conditions of this Agreement and the MDA, and specifically the satisfaction of the conditions for qualifying in Section 3 below, the City will provide economic development grants (each a "Grant") to OSW as follows:

a. On a quarterly calendar basis, the reimbursement of (i) an amount equal to one hundred percent (100%) of the hotel occupancy tax ("HOT") lawfully assessed and actually collected and received by the City pursuant to Chapter 351 of the Texas Tax Code that is derived from or attributable to the Hotel Facility for a period of ten (10) years commencing on the first day of the first month following the month in which a certificate of occupancy is issued for the Hotel Facility, and then (ii) an amount equal to seventy percent (70%) of the HOT for an additional period of five (5) years (the "HOT Grant").

b. On a quarterly calendar basis, and in accordance with the timing prescribed in Section 5 hereof, (i) one hundred percent (100%) of the amount of revenue from a municipal sales tax lawfully assessed and actually received by the City pursuant to Texas Tax Code Sections 321.101(a) and 321.103 that is derived from or attributable to sales transacted in the geographic area within, adjacent to, or near the Hotel Facility that is approved by the Texas State Comptroller as meeting the requirements of Section 351.102(b) of the Tax Code (the "Approved Tax Zone"), whether by OSW or another person or entity, for a period of ten (10) years commencing on the first day of the first month following the month in which a certificate of occupancy is issued for the Hotel Facility, and then (ii) an amount equal to fifty percent (50%) of such municipal sales tax for an additional period of ten (10) years (the "Merchandise Tax Grant").

c. On a quarterly calendar basis, or within five days of receipt by the City, whichever is later, one hundred percent (100%) of the amount of the revenue collected by the State of Texas and actually paid to and received by the City from permittees in the City as described in Section 183.051(b) of the Texas Tax Code from the mixed beverage sales taxes and mixed beverages gross receipts taxes lawfully assessed and collected by the State of Texas pursuant to Subchapters B and B-1 of Chapter 183 of the Texas Tax Code that are derived from or attributable to mixed beverage sales transacted in the Approved Tax Zone, whether by OSW or another person or entity, for a period of ten (10) years commencing on the first day of the first month following the month in which a certificate of occupancy is issued for the Hotel Facility (the "Beverage Tax Grant").

d. The reimbursement each year of (i) an amount equal to seventy-five percent (75%) of the real property improvements and business personal property ad valorem taxes assessed against the Hotel Facility and actually received by the City, for a period of ten (10) years commencing on the year in which a certificate of occupancy is issued for the Hotel Facility, and then (ii) an amount equal to fifty percent (50%) of such real property improvement and business personal property ad valorem taxes for an additional period of ten (10) years (the "Ad Valorem Tax Grant").

e. Subject to the receipt of a favorable Private Letter Ruling (as described below), on a quarterly basis, or within sixty (60) days of receipt by the City, whichever is later, one hundred percent (100%) of the amount of revenue from the hotel occupancy tax lawfully assessed and collected by the State of Texas pursuant to Chapter 156 of the Texas Tax Code and actually refunded to the City by operation of Sections 351.102 and 151.429(h) of the Texas Tax Code, and that is derived from or attributable to the Hotel Facility, for a period of ten (10) years, commencing on the first day of the first month following the month in which a certificate of occupancy is issued for the Hotel Facility.

f. Subject to the receipt of a favorable Private Letter Ruling (as described below), on a quarterly basis, or within sixty (60) days of receipt by the City, whichever is later, one hundred percent (100%) of the amount of revenue from a sales tax lawfully assessed and collected by the State of Texas pursuant to Chapter 151 of the Texas Tax Code that is derived from or attributable to sales transacted in the Approved Tax Zone, whether by OSW or another person or entity, for merchandise physically located in the Approved Tax Zone, and actually refunded to the City by operation of Sections 351.102 and 151.429(h) of the Texas Tax Code, for a period of ten (10) years, commencing on the first day of the first month following the month in which a certificate of occupancy is issued for the Hotel Facility.

g. For a period of twenty (20) years, commencing on the first day of the first month following the month in which a certificate of occupancy is issued for the Hotel Facility, and to the extent that the amount of real property improvements and business personal property ad valorem taxes assessed against the Hotel Facility and actually received by all taxing authorities are less than the amounts set forth on **Exhibit "E"**, the City shall be entitled to offset such difference in any particular year by reducing the payments made pursuant to this Agreement. City shall have the right to decide in its sole discretion which of the Grants shall be reduced in any such year.

"Private Letter Ruling" will mean a private letter ruling from the Texas Comptroller of Public Accounts on which the City and/or OSW may rely regarding, among other things: (1) whether the City and the Hotel Project meet the necessary requirements pursuant to Sections 351.102 and 151.429(h) of the Texas Tax Code and Section 2303.5055 of the Texas Government Code in order for the City to receive certain tax refunds; and (2) whether sales tax exemptions are available for some or all of the services and materials to be purchased for construction of the Hotel Project, (including the Public Facilities and the Conference Center).

3. **Conditions to Qualify for Grants.** The following conditions will be satisfied by OSW for the entire term of this Agreement in order to qualify for the Grants:

a. OSW shall use commercially reasonable efforts to commence construction of the Hotel Facility on a time line that allows for completion of the construction of the Hotel Facility in accordance with the provisions of Section 3(b) below.

b. OSW shall use commercially reasonable efforts to: (i) complete the construction of the Hotel Facility and the Conference Center on or prior to the issuance of the final certificate of occupancy for the Public Facilities; and (ii) open the Hotel Facility and Conference Center for business to the public within six (6) months after the issuance of such certificate of occupancy for the Public Facilities.

c. OSW must not be in default under the terms of the MDA, including, but not limited to, Article V of the MDA.

d. At the time of payment of any portion of the Grants, OSW must not be delinquent in the payment of any ad valorem taxes then owed by OSW on the Hotel Facility (provided, however, OSW retains the right to timely and properly protest and contest any such ad valorem taxes).

If, after all of the conditions set forth in subsections (a)-(d) above have been initially satisfied, any of the conditions set forth in subsections (c)-(d) above are thereafter not satisfied during any period of time (quarterly for the HOT Grant, the Merchandise Tax Grant, and the Beverage Tax Grant; and annually for the Ad Valorem Tax Grant) for which a Grant is calculated, then if such failure of a condition is not cured within thirty (30) days after written notice from the City to OSW of such failure, the City will be relieved of its obligation to pay the portions of the Grants related to such calendar quarter or year; provided, however, that the subsequent failure of any of the conditions set forth in subsections (c)-(d) above (after such conditions have been initially satisfied) will not constitute a default hereunder, unless such failure is not cured prior to the expiration of the notice and cure period set forth in Section 7(b). Furthermore, in the event the City pays any portion of a Grant to OSW for a particular period based upon a statement or information provided by OSW to the City that is incorrect and which, if corrected, would have resulted in OSW not being entitled to the portion of such Grant related to the applicable period for which the statement or information was provided, then OSW will refund to the City the portion of such Grant which OSW received based upon such statement or information within thirty (30) days after receipt of written demand by the City and determination of the inaccuracy of such statement or information. If OSW fails to refund such portion of the Grant as provided above, the City will have the right to bring an action against OSW for the payment of such refund.

4. **Term of this Agreement.** The term of this Agreement will commence on the Effective Date and will continue until the date that each Grant has been fully disbursed in accordance with the terms of this Agreement, unless earlier terminated under Section 7(d) hereof (the "Term").



5. **Calculation and Payment of Merchandise Tax Grants.**

The parties agree that the dollar amount of sales tax receipts eligible for the Merchandise Tax Grant payable to OSW will be derived from the sale within the Approved Tax Zone of all eligible items subject to the sales and use tax (collectively the "Taxable Items"), and the sales and use tax information furnished by OSW and the Texas Comptroller or any successor agency charged with collecting such information and preparing such reports. In order to obtain the Merchandise Tax Grants, OSW must provide the City with a Sales Tax Certificate ("Sales Tax Certificate") in the form attached hereto as **Exhibit "C"** for each applicable calendar quarter, or portion thereof, during the term of this Agreement. The Sales Tax Certificate will at a minimum contain, include, or be accompanied by the following:

- a. A schedule detailing the amount of sales and use tax collected by OSW or its permitted assignees or its Affiliates, lessees, sublessees, or licensees and/or any other party conducting business at the Hotel Project (collectively, the "OSW Parties") and paid to the Texas Comptroller for the previous calendar quarter;
- b. A copy of all sales and use tax returns and reports, sales and use tax prepayment returns, direct payment permits and reports, including amended sales and use tax returns or reports, filed by the OSW Parties with the Texas Comptroller for the previous calendar quarter period showing the sales and use tax collected and paid to the Texas Comptroller for the Hotel Project;
- c. A copy of all direct payment and self-assessment returns, including amended returns, filed by the OSW Parties with the Texas Comptroller for the previous calendar quarter period showing the sales and use tax collected at the Approved Tax Zone;
- d. Information concerning any refund or credit received by the OSW Parties from the Texas Comptroller of sales and use tax paid or collected at the Approved Tax Zone which has been reported by any one or more of the OSW Parties in a Sales Tax Certificate for a previous calendar quarter and for which an installment of one or more Merchandise Tax Grants has been paid by the City; and
- e. A schedule detailing the total sale of Taxable Items at the Approved Tax Zone for the previous calendar quarter.

OSW's failure to provide the City with a Sales Tax Certificate for an applicable calendar quarter within ninety (90) days after the end of such calendar quarter will not constitute a default under this Agreement, but will relieve the City of its obligation to pay that portion of such applicable Merchandise Tax Grants that relate to such calendar quarter. The City will pay OSW installments of the applicable Merchandise Tax Grants from the sales tax receipts received for each quarter of the calendar year within sixty (60) days of receipt of the Sales Tax Certificate and accompanying information required above.

In the event the City pays any portion of a Merchandise Tax Grant to OSW for a particular period based upon a statement or information provided by OSW to the City that the State Comptroller had indicated is incorrect and which, if corrected, would have resulted in OSW not being entitled to a portion of such Merchandise Tax Grant related to the applicable period for which the statement

or information was provided, then OSW will refund to the City the portion of such Merchandise Tax Grant which OSW received based upon such inaccurate statement or information within thirty (30) days after receipt of written demand by the City. The City will have the right to either (i) credit such portion of the previously-paid Merchandise Tax Grant against the next forthcoming Merchandise Tax Grant to be paid by the City to OSW, or (ii) require repayment of the amounts in excess of what was due.

In the event that the City pays any portion of a Merchandise Tax Grant to OSW for a particular period based upon a statement or information provided by OSW to the City that is incorrect and which, if corrected, would have resulted in OSW being entitled to additional funds for such Merchandise Tax Grant related to the applicable period for which the statement or information was provided, then upon verification by the City of such inaccurate information, the City will pay to OSW the portion of such Merchandise Tax Grant which OSW would have received, but did not receive, based upon such inaccurate statement or information. The City will pay the additional portion due to OSW with the next forthcoming Merchandise Tax Grant to be paid to OSW.

6. **Confidentiality.** The OSW Parties will sign and submit to the City and the Texas Comptroller, the Waiver of Sales Tax Confidentiality form attached hereto as Exhibit "D". OSW and the City acknowledge that the information regarding sales taxes generated by within the Approved Tax Zone is commercial or financial information which is proprietary and confidential, the disclosure of which could cause competitive harm to the OSW Parties. To the extent permitted by law and in conformity with the Texas Public Information Act (the "PIA"), the City will maintain the confidentiality of the information contained in the Sales Tax Certificates or similar reporting forms filed by the OSW Parties with the Texas Comptroller regarding the sales tax revenue generated by the Approved Tax Zone (collectively, the "Sales Information"), but will be permitted to disclose the Sales Information to such employees and consultants of the City as the City, in its reasonable discretion, deems appropriate in order to process and pay the Merchandise Tax Grant.

If the City receives any PIA requests for public information or court orders to release any of the Sales Information, then prior to responding to the same, the City will, as soon as practically possible after receipt of any such request or court order, provide OSW with prior written notice by email or overnight mail to the OSW contacts listed in Section 10(g) below.

7. **Default.**

a. Each of the following will constitute an "Event of Default" under this Agreement:

(i) the City's failure to pay any portion of the Grants owing to OSW in accordance with this Agreement;

(ii) OSW's failure to satisfy any of the conditions set forth in Section 3 above, including the occurrence of a default by OSW under the MDA;

(iii) OSW's failure to pay any real or business personal ad valorem taxes or other material fees or charges owed by OSW to the City prior to delinquency (provided, however, OSW retains the right to timely and properly protest and

contest any such taxes or fees, and so long as OSW is timely and properly protesting or contesting the same, it will not constitute an Event of Default);

(iv) a breach of any representation or covenant made in this Agreement by OSW or the City;

(v) an attempted assignment of this Agreement by OSW in violation of the terms set forth in Section 9 hereof; or

(vi) a breach under the Completion Guaranty by and between the Omni Hotels Corporation, a Delaware corporation, and the City.

b. Notice and Cure Periods. In the event of the occurrence of an Event of Default described under Section 7(a)(i), (ii), (iii), (v), or (vi), the non-defaulting party must provide written notice in accordance with Section 10(g) hereof to the defaulting party of such default, and the defaulting party will have thirty (30) days thereafter (as may be extended by Force Majeure) to cure said default.

In the event of the occurrence of an Event of Default described under Section 7(a)(iv), the non-defaulting party must provide written notice in accordance with Section 10(g) hereof to the defaulting party of such default, and the defaulting party will have thirty (30) days thereafter (as may be extended by Force Majeure) to cure said default; provided, however, if the defaulting party is diligently pursuing the cure of such default, but such default is not reasonably curable within thirty (30) days, then the defaulting party will have such additional amount of time as is reasonably necessary to cure such default.

c. Remedies. Upon the occurrence and during the continuance of an Event of Default, the non-defaulting party shall have all remedies available to it at law or in equity, except as may be specifically limited in this Section 7.

Without terminating this Agreement, OSW and the City have the right hereunder to enforce specific performance or bring an action to collect amounts owing upon an Event of Default. Either party will further have the right to seek a judicial declaration of the total amount of Grants owed. No action will lie for damages by either party (beyond the foregoing amounts owed by the City upon an Event of Default by the City), including punitive damages, and no special or consequential damages will be recovered by either party.

Upon the occurrence of an Event of Default described in Section 7(a)(ii) (i.e., the conditions set forth in Section 3(c)-(d) are not satisfied during any period of time (quarterly for the Grants described in Section 2(e) and (f) hereof, quarterly for the HOT Grant, the Merchandise Tax Grant, and the Beverage Tax Grant, and annually for the Ad Valorem Tax Grant)), and without terminating this Agreement, the City will be relieved of its obligation to pay the portions of the Grants related to such calendar quarter or year until such default is cured within the cure period described in Section 7(b) hereof. If such default is cured by OSW within the cure period set forth in Section 7(b) hereof, the City will be

obligated to pay to OSW the portions of the Grants withheld during OSW's failure to comply with Section 3(c) and (d) hereof.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE CITY VOLUNTARILY WAIVES ITS RIGHT TO ASSERT SOVEREIGN OR GOVERNMENTAL IMMUNITY FROM SUIT OR LIABILITY IN RESPONSE TO AN ACTION BY OSW SEEKING ONLY THE REMEDIES SPECIFIED IN THIS AGREEMENT. THE CITY DOES NOT OTHERWISE WAIVE IMMUNITIES EXISTING UNDER APPLICABLE LAWS, AND IT IS EXPRESSLY UNDERSTOOD THAT THE WAIVER HEREIN GRANTED IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CLAIMS UNDER THIS AGREEMENT.

d. Termination. This Agreement will terminate upon the occurrence of any one of the following:

(i) the execution by both parties of a written agreement terminating this Agreement;

(ii) the expiration of the term of this Agreement;

(iii) at the option of the non-defaulting party, upon the occurrence and continuation of an Event of Default (subject to the notice and cure provisions of Section 7(b) above).

e. Attorney's fees may be awarded by a court of competent jurisdiction in any legal proceeding to enforce this Agreement, in which case the attorney's fees will be paid by the party so ordered to pay.

8. Force Majeure. For purposes of this Agreement, the term "Force Majeure" will mean and include (a) labor disputes, strikes, lockouts, action of labor unions; (b) inability after expending reasonable efforts to procure, or general shortage of, labor, equipment, facilities, materials, or supplies in the ordinary course of business on the open market; (c) fire, earthquake, floods, explosion, act of God, severe and adverse weather conditions; (d) war, invasion, riots, insurrections, civil commotion, mob violence, sabotage, act of the public enemy, terrorist acts; (e) condemnation, requisition, moratorium, unusual delay in transportation, unforeseeable acts, or failures to act by the City or any other governmental entity or their respective agents or employees, unforeseeable governmental restrictions, regulations, or controls; or (f) other causes beyond the reasonable control of OSW after the exercise of due diligence. Force Majeure will not mean nor include delays caused by OSW's lack of, or inability to obtain, funding.

9. Assignment. Except as may otherwise be provided under this Section 9, this Agreement may not be assigned without the City's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed). Any purported assignment in violation of this Agreement is void. Notwithstanding the foregoing, so long as no OSW Event of Default under this Agreement exists and remains uncured, OSW may assign its rights and obligations under this Agreement without the prior written consent of the City to affiliates or subsidiaries of OSW, so long as such affiliate or subsidiary continues to be wholly-owned, directly or indirectly, by OSW or one of its constituent parties. In the event the City consents to an assignment of this Agreement



by OSW, no further assignment shall be made without the express consent in writing of the City, unless such assignment may otherwise be made without such consent pursuant to the terms of this Agreement. Except as otherwise set forth herein, an assignment by OSW of its interest in this Agreement shall not relieve OSW from its obligations under this Agreement unless approved by the City.

Notwithstanding anything to the contrary set forth in this Agreement, to the extent the Lessee under the Facilities Lease is entitled to assign its rights and obligations under such Facilities Lease to any party, OSW may likewise assign its rights and obligations under this Agreement to such assignee under the Facilities Lease without the further consent of the City, it being the intent of the parties hereto that the rights and obligations of OSW under this Agreement follow the rights and obligations of the Lessee under the Facilities Lease, and run with the Tract, the Headquarters Tract, and the Hotel Tract, as the case may be.

10. **Miscellaneous.**

a. It is acknowledged and agreed by the parties that the terms hereof are not intended to and will not be deemed to create a partnership or joint venture among the parties. It is further understood and agreed by the parties that OSW and the City, in satisfying the conditions of this Agreement, have acted independently, and assume no responsibility or liability to third parties in connection with these actions.

b. This Agreement contains the entire understanding of the parties with respect to the matters contained herein and may not be modified or terminated except in accordance with the provisions hereof or by the mutual written agreement of the parties hereto.

c. This Agreement will be construed in accordance with the laws of the State of Texas and will be performable in Collin County, Texas.

d. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

e. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others (i) that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, (ii) that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement, and (iii) that each individual affixing his or her signature hereto is authorized to do so and such authorization is valid and effective on the date hereof. This Agreement was approved by the City Council of the City at its meeting on \_\_\_\_\_, 2018.

f. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

g. Any notice and/or statement required and permitted to be delivered will be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:



<u>If to the City:</u>	City of Frisco, Texas 6101 Frisco Square Blvd. Frisco, Texas 75034 Attn: City Manager
<u>With required copy to:</u>	Abernathy, Roeder, Boyd & Hullett, P.C. 1700 Redbud Blvd., Suite 300 McKinney, Texas 75069 Attn: Randy Hullett and Bob Roeder
<u>If to OSW:</u>	Omni Stillwater Woods Golf Resort, LLC 4145 Travis Street, Suite 300 Dallas, Texas 75204 Attention: Robert Elliott
<u>With required copy to:</u>	Omni Stillwater Woods Golf Resort, LLC One Cowboys Way, Suite 160 Frisco, Texas 75034 Attention: Aaron Sherman
<u>With required copy to:</u>	Haynes and Boone LLP 2323 Victory Avenue, Suite 700 Dallas, Texas 75219 Attention: Scott Drablos
<u>With required copy to:</u>	TRT Holdings, Inc. 4001 Maple Avenue, Suite 600 Dallas, Texas 75219 Attention: Paul Jorge
<u>With required copy to:</u>	Winstead PC 2728 N. Harwood Avenue, Suite 500 Dallas, Texas 75201 Attention: T. Andrew Dow

Each party may change the address to which notice may be sent to that party by giving notice of such change to the other parties in accordance with the provisions of this Agreement.

h. This Agreement may be executed in any number of identical counterparts, each of which will be deemed an original for all purposes.

i. In case any one or more of the provisions contained in this Agreement will for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision hereof, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. If any subsequent federal or state legislation or any decision of a court

of competent jurisdiction declares or renders this Agreement or any part hereof invalid or illegal, the parties agree to terminate (or if feasible, modify) this Agreement and to negotiate in good faith a remedy that preserves the intent of the parties hereunder as much as reasonably possible.

j. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

k. Time is of the essence in this Agreement.

l. The recitals to this Agreement are incorporated herein for all purposes. The following exhibits are attached to this Agreement and incorporated by reference herein for all purposes:

Exhibit "A" — Property

Exhibit "B" — Site Plan

Exhibit "C" — Form of Sales Tax Certificate

Exhibit "D" — Waiver of Sales Tax Confidentiality

Exhibit "E" — Projected Ad Valorem Taxes

m. The parties agree this Agreement has been drafted jointly by the parties and their legal representatives.

n. This Agreement shall confer no vested rights on the Hotel Project, or any portion thereof, unless specifically enumerated herein. In addition, nothing contained in this Agreement will constitute a "permit" as defined in Chapter 245, Texas Local Government Code. **OSW WAIVES ANY STATUTORY CLAIM THAT THIS AGREEMENT ESTABLISHES VESTED RIGHTS UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE. THIS SECTION WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

o. It is expressly understood that this Agreement will be binding upon and benefit the parties hereto only upon execution by both parties.

p. Pursuant to Section 2270.002, Texas Govt. Code, OSW hereby represents that neither OSW, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of OSW "boycotts Israel", and subject to or as otherwise required by applicable federal law, including without limitation 50 U.S.C. Section 4607, agrees it will not boycott Israel during the term of this Agreement. As used in the immediately preceding sentence, "boycott Israel" shall have the meaning given such term in Section 2270.001, Texas Govt. Code.

q. OSW hereby represents that a completed Certificate of Interested Parties Form 1295 ("Form 1295") generated by the Texas Ethics Commission's (the "TEC") electronic filing application in accordance with the provisions of Section 2252.908, Texas Govt. Code and the rules promulgated by the TEC, was previously submitted to the City by OSW in connection with this Agreement. The City hereby agrees to acknowledge such form with the TEC through its electronic filing application within 30 days of the effective date hereof. OSW and the City understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in any Form 1295 and neither the City nor its consultants have verified such information. The City and OSW also agree that the transactions contemplated by this Agreement and the respective obligations of the City and OSW hereunder, shall not be modified, released, or excused by the failure of OSW to properly complete a Form 1295, except as set forth in the following sentence. The submission of any Form 1295 by OSW that does not provide a sufficient basis for the City to enter into this Agreement in accordance with Section 2252.908(d), Texas Govt. Code, shall result in the automatic dismissal and removal of OSW from its duties and rights hereunder and OSW shall not be considered a party to this Agreement.

r. OSW represents that, to the extent this Agreement constitutes a governmental contract within the meaning of Section 2252.151 of the Texas Govt. Code, solely for purposes of compliance with Chapter 2252 of the Texas Govt. Code, and except to the extent otherwise required by applicable federal law, neither OSW nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of OSW is a company listed by the Comptroller under Sections 2270.0201 or 2252.153 of the Texas Government Code.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the Effective Date as described herein.

CITY:

CITY OF FRISCO, TEXAS,  
a Texas home rule municipality

By: \_\_\_\_\_  
Name: George Purefoy  
Title: City Manager

OSW:

OMNI STILLWATER WOODS GOLF  
RESORT, LLC, a Delaware limited liability  
company

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

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2018, by George Purefoy, City Manager of the City of Frisco, Texas, a Texas home rule municipality, on behalf of said municipality.

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

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

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, \_\_\_\_\_, of OMNI STILLWATER WOODS GOLF RESORT, LLC, a Delaware limited liability company, on its behalf.

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

**Exhibit "A"**  
**Property — Metes and Bounds Description**

Tract 1

**BEING** a tract of land situated in the H. G. Hawkins Survey, Abstract No. 589 and the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 941, City of Frisco, Denton County, Texas, and being a portion of a called 219.034-acre tract of land, conveyed to The City of Frisco, Texas, as evidenced in a Special Warranty Deed, recorded in Volume 4205, Page 111 of the Deed Records of Denton County, Texas, and being more particularly described by metes and bounds as follows:

**BEGINNING** at a 1/2-inch iron rod found for the easterly, northeast corner of said 219.034-acre tract, same being the southeast corner of a called "Tract 1" (5.007-acres), conveyed to the Frisco Community Development Corporation, as evidenced in a Special Warranty Deed, recorded in Document No. 2007-76207, of the Official Records of Denton County, Texas, same also being on a westerly line of a called 1,722.364-acre tract of land, conveyed to FHQ Holdings LP, as evidenced in a Special Warranty Deed, recorded in Document 2018-93106 of the Official Records of Denton County, Texas;

**THENCE** South 00°13'48" East, along the easterly line of said 219.034-acre tract and the westerly line of said 1,722.364-acre tract, a distance of 495.41 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for a corner;

**THENCE** North 89°52'38" West, departing the easterly line of said 219.034-acre tract, the westerly line of said 1,722.364-acre tract, crossing said 219.034-acre tract, a distance of 1,974.36 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for a corner;

**THENCE** North 86°06'35" West, continuing across said 219.034-acre tract, a distance of 151.27 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for the point of curvature of a non-tangent curve to the left;

**THENCE** in a westerly direction, continuing across said 219.034-acre tract, along the arc of said curve to the left, through a central angle of 00°38'42", having a radius of 5,055.00 feet, a chord bearing of South 89°31'14" West, a chord distance of 56.91 feet and an arc length of 56.91 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for the point of tangency of said curve;

**THENCE** South 89°11'53" West, continuing across said 219.034-acre tract, a distance of 53.09 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for a corner;

**THENCE** North 45°50'10" West, continuing across said 219.034-acre tract, a distance of 56.60 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for a corner;

**THENCE** North 00°52'14" West, continuing across said 219.034-acre tract, a distance of 160.00 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for a corner;



**THENCE** North 04°41'05" West, continuing across said 219.034-acre tract, a distance of 150.33 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for a corner;

**THENCE** North 00°52'14" West, continuing across said 219.034-acre tract, a distance of 554.08 feet to an "X" cut set in concrete road pavement on the northerly line of said 219.034-acre tract, same being the southeast corner of a called 0.0978-acre tract of land, conveyed to the City of Frisco, Texas, according to the Right of Way Warranty Deed, recorded in Document No. 2015-34257 of the Official Records of Denton County, Texas, same also being a southwesterly corner of aforesaid 1,722.364-acre tract;

**THENCE** South 89°52'38" East, along the northerly line of said 219.034-acre tract and the southerly line of said 1,722.364-acre tract, a distance of 1,307.23 feet to a 1/2-inch iron rod found for the northerly, northeast corner of said 219.034-acre tract, same being on the westerly line of a called 4.997-acre tract of land, conveyed to the Frisco Community Development Corporation, as evidenced in a Special Warranty Deed, recorded in Document No. 2009-124609, of the Official Records of Denton County, Texas;

**THENCE** South 00°33'14" East, along an easterly line of said 219.034-acre tract and the westerly line of said 4.997-acre tract, a distance of 419.88 feet to a 5/8-inch iron rod found for the southwest corner of said 4.997-acre tract;

**THENCE** North 89°54'40" East, along a northerly line of said 219.034-acre tract, the southerly line of said 4.997-acre tract and the southerly line of a called "Tract 1" (5.007-acres), conveyed to the Frisco Community Development Corporation, as evidenced in a Special Warranty Deed, recorded in Document No. 2007-76207, of the Official Records of Denton County, Texas, a distance of 985.79 feet to the **POINT OF BEGINNING** and containing 38.328 acres (1,669,559 square feet) of land, more or less.

#### Tract 2

**BEING** a tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 941, City of Frisco, Denton County, Texas, and being all of a called "Tract 1" (5.007-acres), conveyed to the Frisco Community Development Corporation, as evidenced in a Special Warranty Deed, recorded in Document No. 2007-76207, and all of a called 4.997-acre tract of land, conveyed to the Frisco Community Development Corporation, as evidenced in a Special Warranty Deed, recorded in Document No. 2009-124609, both of the Official Records of Denton County, Texas, and being more particularly described by metes and bounds as follows:

**BEGINNING** at a 1/2-inch iron rod found for the southeast corner of said "Tract 1" (5.007-acres), same being the easterly, northeast corner of a called 219.034-acre tract of land, conveyed to The City of Frisco, Texas, as evidenced in a Special Warranty Deed, recorded in Volume 4205, Page 111 of the Deed Records of Denton County, Texas, same also being on a westerly line of a called 1,722.364-acre tract of land, conveyed to FHQ Holdings LP, as evidenced in a Special Warranty Deed, recorded in Document 2018-93106 of the Official Records of Denton County, Texas;

**THENCE** South 89°54'40" West, departing the westerly line of said 1,722.364-acre tract, along the northerly line of said 219.034-acre tract, the southerly line of said "Tract 1" (5.007-acres), and along the southerly line of aforesaid 4.997-acre tract, a distance of 985.79 feet to a 5/8-inch iron rod found for the southwest corner of said 4.997-acre tract;

**THENCE** North 00°33'14" West, along the westerly line of said 4.997-acre tract and an easterly line of said 219.034-acre tract, a distance of 419.88 feet to a 1/2-inch iron rod found for the northerly, northeast corner of said 219.034-acre tract, same being on a southerly line of aforesaid 1,722.364-acre tract;

**THENCE** North 00°01'52" West, continuing along the westerly line of said 4.997-acre tract and along the southerly line of said 1,722.364-acre tract, a distance of 22.50 feet to a 1/2-inch iron rod found for the northwest corner of said 4.997-acre tract;

**THENCE** North 89°55'31" East, along the northerly line of said 4.997-acre tract, the northerly line of aforesaid "Tract 1" (5.007-acres) and continuing along the southerly line of said 1,722.364-acre tract, a distance of 985.58 feet to a 1/2-inch iron rod found for the northeast corner of said "Tract 1" (5.007-acres);

**THENCE** South 00°33'17" East, along the easterly line of said "Tract 1" (5.007-acres) and a westerly line of said 1,722.364-acre tract, a distance of 442.13 feet to the **POINT OF BEGINNING** and containing 10.008 acres (435,952 square feet) of land, more or less.

#### Tract 3

**BEING** a tract of land situated in the Edgar B. Hawkins Survey, Abstract No. 581, City of Frisco, Denton County, Texas and being a portion of a called 60-acre tract of land described as Fourth Tract in deed to Frank D. Veninga, as Trustee of the Louise A. Veninga Children's Trust I Dated 6-22-05, recorded in Document No. 2013030308000318040, Official Public Records, Collin County, Texas, and being more particularly described by metes and bounds as follows:

**BEGINNING** at a 5/8-inch iron rod with plastic cap stamped "KHA" set (hereinafter referred to as an iron rod set) for the southwest corner of said Fourth Tract, common to an angle point in the easterly line of a called 1,722.364-acre tract of land described as Tract 3 in Warranty Deed to FHQ Holdings, LP, recorded in Document No. 2018-93106, Official Records, Denton County, Texas;

**THENCE** North 0°32'10" West, along the westerly line of said Fourth Tract and the easterly line of said Tract 3, a distance of 194.68 feet to an iron rod set for corner;

**THENCE** South 59°38'03" East, departing the westerly line of said Fourth Tract and the easterly line of said Tract 3 and crossing said Fourth Tract, a distance of 224.18 feet to an iron rod set for corner;

**THENCE** South 83°56'33" East, continuing across said Fourth Tract, a distance of 107.54 feet to an iron rod set for corner;

**THENCE** North 13°28'43" West, continuing across said Fourth Tract, a distance of 243.00 feet to an iron rod set for corner;

**THENCE** North 46°57'12" East, continuing across said Fourth Tract, a distance of 60.00 feet to an iron rod set at the beginning of a non-tangent curve to the left having a central angle of 25°21'27", a radius of 1100.00 feet, a chord bearing and distance of South 64°21'22" East, 482.86 feet;

**THENCE** in a southeasterly direction, continuing across said Fourth Tract and with said curve to the left, an arc distance of 486.83 feet to an iron rod set for the end of said curve to the left;

**THENCE** South 77°02'05" East, continuing across said Fourth Tract, a distance of 72.00 feet to an iron rod set for corner on the southerly line of said Fourth Tract and the easterly line of said Tract 3;

**THENCE** South 89°22'56" West, along the southerly line of said Fourth Tract and the easterly line of said Tract 3, a distance of 913.19 feet to the **POINT OF BEGINNING** and containing 2.717 acres (118,336 sq. ft.) of land, more or less.

#### Tract 4

**BEING** a tract of land situated in the John R. Hague Survey, Abstract No. 1714, and the John R. Hague Survey, Abstract No. 406, City of Frisco, Denton and Collin County, Texas and being a portion of a called 115.5-acre tract of land described as Third Tract in deed to Frank D. Veninga, as Trustee of the Louise A. Veninga Children's Trust I Dated 6-22-05, recorded in Document No. 2013030308000318040, Official Public Records, Collin County, Texas, and being more particularly described by metes and bounds as follows:

**COMMENCING** at a wooden fence corner post found on the southerly line of a called 60-acre tract of land described as Fourth Tract in deed to Frank D. Veninga, as Trustee of the Louise A. Veninga Children's Trust I Dated 6-22-05, recorded in Document No. 2013030308000318040, said Official Public Records, for the northwest corner of said Third Tract, common to an angle point in the easterly line of a called 1,722.364-acre tract of land described as Tract 3 in Warranty Deed to FHQ Holdings, LP, recorded in Document No. 2018-93106, Official Records, Denton County, Texas;

**THENCE** South 0°34'50" West, along the westerly line of said Third Tract and the easterly line of said Tract 3, a distance of 43.82 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" set (hereinafter referred to as an iron rod set) for the **POINT OF BEGINNING** of the herein described tract of land;

**THENCE** South 77°02'05" East, departing the westerly line of said Third Tract and the easterly line of said Tract 3 and crossing said Third Tract, a distance of 398.02 feet to an iron rod set at the beginning of a tangent curve to the right having a central angle of 96°36'33", a radius of 1100.00 feet, a chord bearing and distance of South 28°43'49" East, 1642.72 feet;

**THENCE** in a southeasterly direction, continuing across said Third Tract and with said curve to

the right, an arc distance of 1854.76 feet to an iron rod set for the end of said curve to the right;

**THENCE** South 19°34'28" West, continuing across said Third Tract, a distance of 454.29 feet to an iron rod set for corner on the southerly line of said Third Tract, same being on the easterly line of said Tract 3;

**THENCE** North 89°55'05" West, along the southerly line of said Third Tract and the easterly line of said Tract 3, a distance of 490.38 feet to an iron rod set for corner;

**THENCE** North 54°30'54" West, departing the southerly line of said Third Tract and the easterly line of said Tract 3 and crossing said Third Tract, a distance of 139.79 feet to an iron rod set for corner;

**THENCE** North 45°32'44" West, continuing across said Third Tract, a distance of 248.13 feet to an iron rod set for corner;

**THENCE** South 80°51'29" West, continuing across said Third Tract, a distance of 99.57 feet to an iron rod set for corner;

**THENCE** South 78°16'22" West, continuing across said Third Tract, a distance of 166.91 feet to an iron rod set for corner on the westerly line of said Third Tract, same being on the easterly line of said Tract 3;

**THENCE** North 0°34'50" East, along the westerly line of said Third Tract and the easterly line of said Tract 3, a distance of 1752.04 feet to the **POINT OF BEGINNING** and containing 44.973 acres (1,959,030 sq. ft.) of land, more or less.

#### Tract 5

**BEING** a tract of land situated in the Carter Jackson Survey, Abstract No.665, John T. Landrum Survey, Abstract No. 764, William E. Bates Survey, Abstract No. 90, Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 941, and the Reuben H. Bates Survey, Abstract No. 68, City of Frisco, Denton County, Texas and being a portion of a called 1,722.364-acre tract of land described as Tract 3 in Warranty Deed to FHQ Holdings, LP, recorded in Document No. 2018-93106, Official Records, Denton County, Texas, and being more particularly described by metes and bounds as follows:

**BEGINNING** at a 5/8-inch iron rod with plastic cap stamped "KHA" set (hereinafter referred to as an iron rod set) for the westernmost southwest corner of said Tract3, common to the northwest corner of a called 0.0978-acre tract of land described in Right-of-Way Deed to the City of Frisco, recorded in Document No. 2015-34257, said Official Records, on the easterly line of a called 2.711-acre tract of land described in Right-of-Way Deed to the City of Frisco, recorded in Document No. 2015-34249, said Official Records, same also being on the easterly right-of-way line of Teel Parkway (variable width right-of-way);

**THENCE** North 0°03'09" West, along the westerly line of said Tract 3 and the easterly line of said 2.711-acre tract and said Teel Parkway, a distance of 707.17 feet to an iron rod set for the



westernmost northwest corner of said Tract 3, common to the northeast corner of said 2.711-acre tract, on the southerly line of a called 7.46-acre tract of land described in Right-of-Way Deed to the City of Frisco, recorded in Document No. 2015-9130, said Official Records;

**THENCE** North 89°49'57" East, continuing along the westerly line of said Tract 3 and the easterly right-of-way line of said Teel Parkway and along the southerly line of a called 114.032-acre tract of land described as Tract 2 in Special Warranty Deed to Nash Eland, LLC, recorded in Document No. 2014-33175, said Official Records, a distance of 2339.53 feet to a wooden fence corner post found for the southeast corner of said Tract 2, common to an angle point in the westerly line of said Tract 3;

**THENCE** North 0°19'11" West, continuing along the westerly line of said Tract 3 and along the easterly line of said Tract 2 and the easterly line of a called 65.154-acre tract of land described in Special Warranty Deed to the Frisco Independent School District, recorded in Document No. 2017-153543, said Official Records, a distance of 3525.55 feet to an iron rod set for corner;

**THENCE** departing the westerly line of said Tract 3 and the easterly line of said 65.154-acre tract, and crossing said Tract 3 the following courses and distances:

North 77°50'10" East, a distance of 322.66 feet to an iron rod set for corner;

North 32°24'02" East, a distance of 642.00 feet to an iron rod set for corner;

North 0°31'18" West, a distance of 120.00 feet to an iron rod set for corner;

North 89°28'42" East, a distance of 719.69 feet to an iron rod set for corner;

South 0°31'18" East, a distance of 252.90 feet to an iron rod set for corner;

South 22°00'19" East, a distance of 169.76 feet to an iron rod set for corner;

North 53°29'36" East, a distance of 268.98 feet to an iron rod set for corner;

North 60°13'30" East, a distance of 143.86 feet to an iron rod set for corner;

South 84°41'01" East, a distance of 119.24 feet to an iron rod set for corner;

South 8°55'09" West, a distance of 104.64 feet to an iron rod set for corner;

South 51°39'30" East, a distance of 413.86 feet to an iron rod set for corner;

South 34°57'08" East, a distance of 118.99 feet to an iron rod set for corner;

South 84°31'00" East, a distance of 299.56 feet to an iron rod set for corner;

South 22°34'39" East, a distance of 214.41 feet to an iron rod set for corner;



North 80°22'49" East, a distance of 140.34 feet to an iron rod set for corner;

North 58°50'15" East, a distance of 129.51 feet to an iron rod set for corner;

South 80°39'33" East, a distance of 242.36 feet to an iron rod set for corner;

South 50°52'25" East, a distance of 212.40 feet to an iron rod set for corner;

South 68°25'19" East, a distance of 301.07 feet to an iron rod set for corner;

South 74°05'15" East, a distance of 326.07 feet to an iron rod set for corner;

North 79°41'55" East, a distance of 194.68 feet to an iron rod set for corner;

South 68°36'15" East, a distance of 319.49 feet to an iron rod set for corner;

North 89°35'28" East, a distance of 80.62 feet to an iron rod set for corner;

South 59°38'03" East, a distance of 228.93 feet to an iron rod set for corner on the easterly line of said Tract 3, same being on the westerly line of a called 60-acre tract described as Fourth Tract in deed to Frank D. Veninga, as Trustee of the Louise A. Veninga Children's Trust I Dated 6-22-05, recorded in Instrument No. 2013030308000318040, Official Public Records, Collin County, Texas;

**THENCE** South 0°32'10" East, along the easterly line of said Tract 3 and the westerly line of said Fourth Tract, a distance of 194.68 feet to an iron rod set for an angle point in the easterly line of said Tract 3, common to the southwest corner of said Fourth Tract;

**THENCE** North 89°22'56" East, continuing along the easterly line of said Tract 3 and along the southerly line of said Fourth Tract, a distance of 1095.44 feet to a wooden fence corner post found for an angle point in the easterly line of said Tract 3, common to the northwest corner of a called 115.5-acre tract of land described as Third Tract in deed to Frank D. Veninga, as Trustee of the Louise A. Veninga Children's Trust I Dated 6-22-05, recorded in said Instrument No. 2013030308000318040;

**THENCE** South 0°34'50" West, departing the southerly line of said Fourth Tract and continuing along the easterly line of said Tract 3 and along the westerly line of said Third Tract, a distance of 1795.86 feet to an iron rod set for corner;

**THENCE** departing the easterly line of said Tract 3 and the westerly line of said Third Tract, and crossing said Tract 3 the following courses and distances:

South 80°03'04" West, a distance of 583.34 feet to an iron rod set for corner;

South 49°15'27" West, a distance of 421.84 feet to an iron rod set for corner;

South 46°37'38" West, a distance of 352.07 feet to an iron rod set for corner;  
South 22°33'21" West, a distance of 200.65 feet to an iron rod set for corner;  
South 48°03'39" West, a distance of 473.73 feet to an iron rod set for corner;  
South 81°56'09" West, a distance of 150.33 feet to an iron rod set for corner;  
North 89°10'14" West, a distance of 252.64 feet to an iron rod set for corner;  
North 56°47'02" West, a distance of 212.13 feet to an iron rod set for corner;  
North 11°07'06" West, a distance of 153.19 feet to an iron rod set for corner;  
North 18°33'33" East, a distance of 421.88 feet to an iron rod set for corner;  
North 26°12'44" East, a distance of 376.97 feet to an iron rod set for corner;  
North 29°56'00" East, a distance of 673.75 feet to an iron rod set for corner;  
North 34°02'30" East, a distance of 236.87 feet to an iron rod set for corner;  
North 66°10'08" West, a distance of 288.65 feet to an iron rod set for corner;  
North 36°30'33" West, a distance of 159.88 feet to an iron rod set for corner;  
North 52°01'26" West, a distance of 181.67 feet to an iron rod set for corner;  
North 77°40'01" West, a distance of 171.20 feet to an iron rod set for corner;  
South 81°53'14" West, a distance of 366.29 feet to an iron rod set for corner;  
South 63°42'18" West, a distance of 702.70 feet to an iron rod set for corner;  
South 75°33'22" West, a distance of 278.76 feet to an iron rod set for corner;  
South 51°28'26" West, a distance of 709.70 feet to an iron rod set for corner;  
South 71°50'41" West, a distance of 335.97 feet to an iron rod set for corner;  
South 33°27'25" West, a distance of 487.53 feet to an iron rod set for corner;  
South 24°54'29" West, a distance of 411.17 feet to an iron rod set for corner;  
South 14°13'21" West, a distance of 207.82 feet to an iron rod set for corner;

South 54°08'40" West, a distance of 260.69 feet to an iron rod set for corner;

South 12°40'43" West, a distance of 281.40 feet to an iron rod set for corner;

South 53°47'04" East, a distance of 254.77 feet to an iron rod set for corner;

South 18°52'09" East, a distance of 685.19 feet to an iron rod set for corner;

South 7°40'16" East, a distance of 356.87 feet to an iron rod set at the beginning of a non-tangent curve to the left having a central angle of 3°18'21", a radius of 2000.00 feet, a chord bearing and distance of South 79°03'52" West, 115.37 feet;

In a southwesterly direction, with said curve to the left, an arc distance of 115.39 feet to an iron rod set for the end of said curve to the left;

South 77°24'42" West, a distance of 496.17 feet to an iron rod set at the beginning of a tangent curve to the right having a central angle of 12°42'40", a radius of 2000.00 feet, a chord bearing and distance of South 83°46'02" West, 442.79 feet;

In a southwesterly direction, with said curve to the right, an arc distance of 443.70 feet to an iron rod set for the end of said curve to the right;

North 89°52'38" West, a distance of 160.17 feet to an iron rod set for corner on the westerly line of said Tract 3, same being on the easterly line of a called 219.034-acre tract of land described in Special Warranty Deed to the City of Frisco, recorded in Volume 4205, Page 111, Deed Records, Denton County, Texas;

**THENCE** North 0°22'34" West, along the westerly line of said Tract 3 and the easterly line of said 219.034-acre tract and the easterly line of a called 5.007-acre tract of land described as Tract 1 in Special Warranty Deed to the Frisco Community Development Corporation, recorded in Document No. 2007-76207, said Official Records, a distance of 982.55 feet to a 1/2-inch iron rod found for an angle point in the westerly line of said Tract 3, common to the northeast corner of said Tract 1;

**THENCE** South 89°55'31" West, continuing along the westerly line of said Tract 3 and along the northerly line of said Tract 1 and the northerly line of a called 4.997-acre tract of land described in Special Warranty Deed to the Frisco Community Development Corporation, recorded in Document No. 2009-124609, said Official Records, a distance of 985.58 feet to an iron rod set for an angle point in the westerly line of said Tract 3, common to the northwest corner of said 4.997-acre tract;

**THENCE** South 0°01'52" East, continuing along the westerly line of said Tract 3 and along the westerly line of said 4.997-acre tract, a distance of 22.50 feet to a 1/2-inch iron rod found for an angle point in the westerly line of said Tract 3, common to the northernmost northeast corner of said 219.034-acre tract;

**THENCE** North 89°52'38" West, departing the westerly line of said 4.997-acre tract and continuing along the westerly line of said Tract 3 and along the northerly line of said 219.034-acre tract, a distance of 1307.23 feet to an iron rod set for an angle point in the southerly line of said Tract 3, common to the southeast corner of the aforementioned 0.0978-acre tract;

**THENCE** North 0°52'14" West, departing the northerly line of said 219.034-acre tract and continuing along the westerly line of said Tract 3 and along the easterly line of said 0.0978-acre tract, a distance of 72.76 feet to an iron rod set for an angle point in the westerly line of said Tract 3, common to the northeast corner of said 0.0978-acre tract;

**THENCE** South 89°07'46" West, continuing along the westerly line of said Tract 3 and the northerly line of said 0.0978-acre tract, a distance of 58.33 feet to the **POINT OF BEGINNING** and containing 424.472 acres (18,490,015 sq. ft.) of land, more or less.

Tract 6

**BEING** a tract of land situated in the William P. Bates Survey, Abstract No. 73 and the Flavius J. Hawkins Survey, Abstract No. 582, in the City of Frisco, Denton County, Texas, and being a portion of a called "Tract 2" (114.032-acres), conveyed to Nash Eland LLC, as evidenced in a Special Warranty Deed, recorded in Document No. 2014-33175, Official Records of Denton County, Texas, and being more particularly described be metes and bounds as follows:

**BEGINNING** at a wooden fence corner post found for the southeast corner of said "Tract 2", same being at an inner ell corner of the called "Ray Farm" Tract, conveyed to Bert Field's, Jr., as evidenced in a Special Warranty Deed, recorded in Volume 523, Page 687, Deed Records of Denton County, Texas and Volume 665, Page 260, Deed Records of Collin County, Texas;

**THENCE** South 89°49'57" West, along the southerly line of said "Tract 2", a northerly line of said "Ray Farm" tract and generally along a wire fence, a distance of 2,251.29 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set on the easterly right of way line of Teel Parkway as described in a deed to the City of Frisco, recorded in Document No. 2015-9130, Official Records of Denton County, Texas, same also being the point of curvature of a non-tangent curve to the right;

**THENCE** in a northerly direction, departing the southerly line of said "Tract 2" and along the easterly right of way line of said Teel Parkway, the following:

Along the arc of said curve to the right, through a central angle of 06°15'48", having a radius of 1,300.00 feet, a chord bearing of North 02°30'11" East, a chord distance of 142.04 feet and an arc length of 142.11 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for the point of tangency of said curve;

North 05°38'05" East, a distance of 385.50 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for the point of curvature of a tangent curve to the left;

Along the arc of said curve to the left, through a central angle of  $04^{\circ}47'28''$ , having a radius of 2,076.00 feet, a chord bearing of North  $03^{\circ}14'21''$  East, a chord distance of 173.55 feet and an arc length of 173.60 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for the point of tangency of said curve;

North  $00^{\circ}50'37''$  East, a distance of 602.02 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for the northeast corner of said Teel Parkway right of way, same being on the northerly line of said "Tract 2" and the southerly line of a called "Tract 1" (307.985-acres) as conveyed in said Document No. 2014-33175, Official Records of Denton County, Texas;

**THENCE** in an easterly direction, along the northerly line of said "Tract 2" and the southerly line of said "Tract 1", the following:

South  $89^{\circ}54'47''$  East, a distance of 292.60 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North  $84^{\circ}24'22''$  East, a distance of 172.72 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North  $86^{\circ}12'13''$  East, a distance of 242.07 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

South  $59^{\circ}56'05''$  East, a distance of 81.06 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North  $62^{\circ}39'08''$  East, a distance of 41.53 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North  $85^{\circ}27'57''$  East, a distance of 133.72 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North  $61^{\circ}57'40''$  East, a distance of 85.23 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North  $41^{\circ}23'33''$  East, a distance of 134.44 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North  $77^{\circ}59'42''$  East, a distance of 94.92 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North  $03^{\circ}29'36''$  East, a distance of 76.78 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North  $74^{\circ}16'06''$  East, a distance of 110.93 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;



North 79°25'24" East, a distance of 82.20 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North 32°08'51" East, a distance of 187.44 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North 20°50'29" West, a distance of 60.01 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North 02°30'12" West, a distance of 307.01 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner, same being the southwest corner of a called 65.154-acre tract of land, conveyed to the Frisco Independent School District, as evidenced in a Special Warranty Deed, recorded in Document No. 2017-153543, Official Records of Denton County, Texas;

**THENCE** in an easterly direction, continuing along the northerly line of said "Tract 2" and along the southerly line of said 65.154-acre tract, the following:

South 54°38'37" East, a distance of 89.42 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

South 08°12'50" East, a distance of 105.06 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

South 71°50'24" East, a distance of 142.77 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

South 60°51'47" East, a distance of 74.52 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North 36°46'12" East, a distance of 128.19 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North 51°04'55" East, a distance of 87.18 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North 24°34'42" East, a distance of 114.58 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North 01°19'59" East, a distance of 37.04 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North 67°52'17" East, a distance of 80.02 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

South 34°47'27" East, a distance of 91.09 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for corner;

North 70°17'45" East, a distance of 114.67 feet to a 5/8-inch iron rod with red plastic cap stamped "KHA" found for the northeast corner of said "Tract 2", the southeast corner of said 65.154-acre tract, and being on the westerly line of aforesaid "Ray Farm" tract;

**THENCE** South 00°19'11" East, along the easterly line of said "Tract 2" the westerly line of said "Ray Farm" tract, and generally along a wire fence, a distance of 2,175.84 feet to the **POINT OF BEGINNING** and containing 80.717 acres (3,516,034 square feet) of land, more or less.

**Exhibit “B”  
Site Plan**

**Exhibit “C”**  
**Form of Sales Tax Certificate**

**Exhibit "D"**  
**Waiver of Sales Tax Confidentiality**

Date: \_\_\_\_\_, 2018

I authorize the Texas Comptroller of Public Accounts to release sales tax information pertaining to the taxpayer indicated below to the City of Frisco. I understand that this waiver applies only to our retail store located in

Please print or type the following information as shown on your Texas Sales and Use Tax permit:

Name of Taxpayer Listed on Texas Sales Tax Permit:

\_\_\_\_\_

Name under Which Taxpayer is Doing Business (d/b/a or Outlet Name):

\_\_\_\_\_

Taxpayer Mailing Address:

\_\_\_\_\_

Physical Location of business Permitted for Sales Tax in Frisco, Texas

\_\_\_\_\_

Texas Taxpayer Number: \_\_\_\_\_

Tax Outlet Number: \_\_\_\_\_

(As Shown on Texas Sales Tax Permit)

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name of Authorized Signature

\_\_\_\_\_  
Position of Authorized Signature

\_\_\_\_\_  
Phone of Authorized Signature

The authorized signature must be the owner, officer, director, partner, or agent authorized to sign its Texas Sales Tax Return. If you have any questions concerning this waiver of confidentiality, please contact the Texas Comptroller of Public Accounts (512) 531-5441.



**Exhibit “E”**  
**Projected Ad Valorem Taxes**

<b>Year:</b>	<b>Total Property Taxes (including personal property):</b>
1 (Dec-22)	\$2,000,000
2 (Dec-23)	\$2,465,000
3 (Dec-24)	\$2,735,000
4 (Dec-25)	\$2,985,000
5 (Dec-26)	\$3,060,000
6 (Dec-27)	\$3,140,000
7 (Dec-28)	\$3,220,000
8 (Dec-29)	\$3,300,000
9 (Dec-30)	\$3,460,000
10 (Dec-31)	\$3,550,000
11 (Dec-32)	\$3,639,000
12 (Dec-33)	\$3,730,000
13 (Dec-34)	\$3,823,000
14 (Dec-35)	\$3,919,000
15 (Dec-36)	\$4,016,000
16 (Dec-37)	\$4,117,000
17 (Dec-38)	\$4,220,000
18 (Dec-39)	\$4,325,000
19 (Dec-40)	\$4,433,000
20 (Dec-41)	\$4,544,000

**EXHIBIT "M"**  
**CERTIFICATIONS REGARDING EMPLOYMENT OF UNDOCUMENTED ALIENS**

**OMNI STILLWATER WOODS GOLF RESORT, LLC**, a Delaware limited liability company ("Company") hereby certifies that Company, and the branches, divisions, and departments of Company, do not and will not knowingly employ an Undocumented Worker. For purposes of this certification "Undocumented Worker" means an individual who, at the time of employment, is not: (A) lawfully admitted for permanent residence to the United States or (B) authorized under law to be employed in that manner in the United States.

In the event that during the term of an agreement for a Public Subsidy from the City of Frisco, Company or any branch, division, or department of Company, is convicted of a violation under 8 U.S.C. Section 1324a(f) (relating to federal criminal penalties and injunctions for a pattern or practice of employing unauthorized aliens), subject to any appellate rights that may lawfully be available to and exercised by Company, Company must repay, within one hundred twenty (120) calendar days following receipt of written demand from the City of Frisco, the aggregate amount of any Public Subsidy received by Company from the City of Frisco, if any, plus Simple Interest at a rate of two percent (2%) per annum.

For the purposes of this Certification, "Public Subsidy" means a public program or public benefit or assistance of any type that is designed to stimulate the economic development of a corporation, industry, or sector of the state's economy or to create or retain jobs in this state. The term includes grants, loans, loan guarantees, benefits relating to an enterprise or empowerment zone, fee waivers, land price subsidies, infrastructure development and improvements designed to principally benefit a single business or defined group of businesses, matching funds, tax refunds, tax rebates, or tax abatements. "Simple Interest" is defined as a rate of interest applied only to an original amount of a grant payment made to Company by the City. This rate of interest can be applied each year or prorated as to partial years, but will only apply to the amount of subsidies received hereunder and is not applied to interest calculated. For example, if a subsidy payment received by Company is \$10,000 and it is required to be paid back with one percent (1%) interest five years later, the total amount would be  $\$10,000 + [5 \times (\$10,000 \times 0.01)]$ , which is \$10,500. As provided by Chapter 2264 of the Government Code, this repayment obligation shall not apply to convictions of any affiliate of Company, any franchisee of Company, or any person or entity with whom Company contracts.

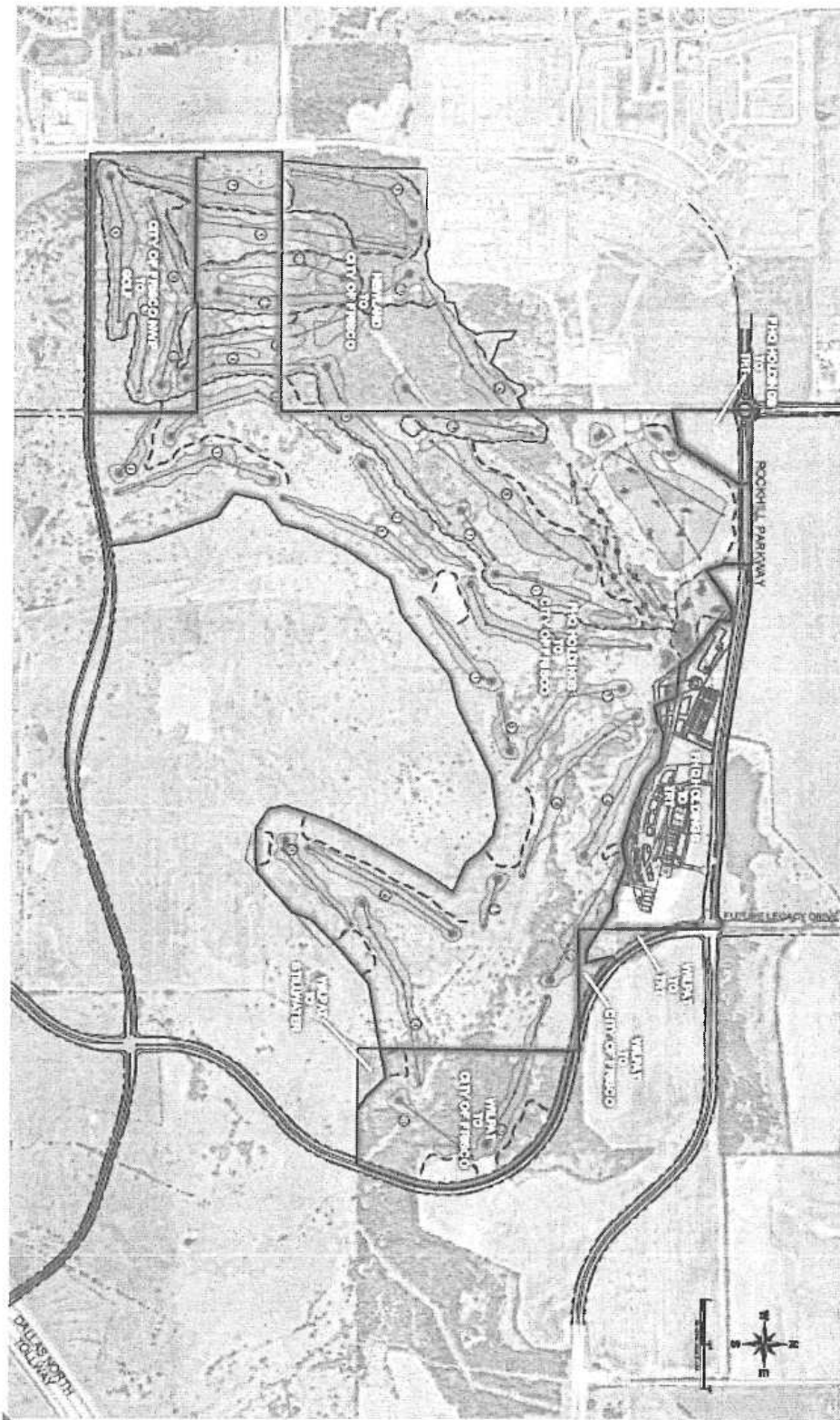
**COMPANY:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT "N"**  
**PROJECTED AD VALOREM TAXES**

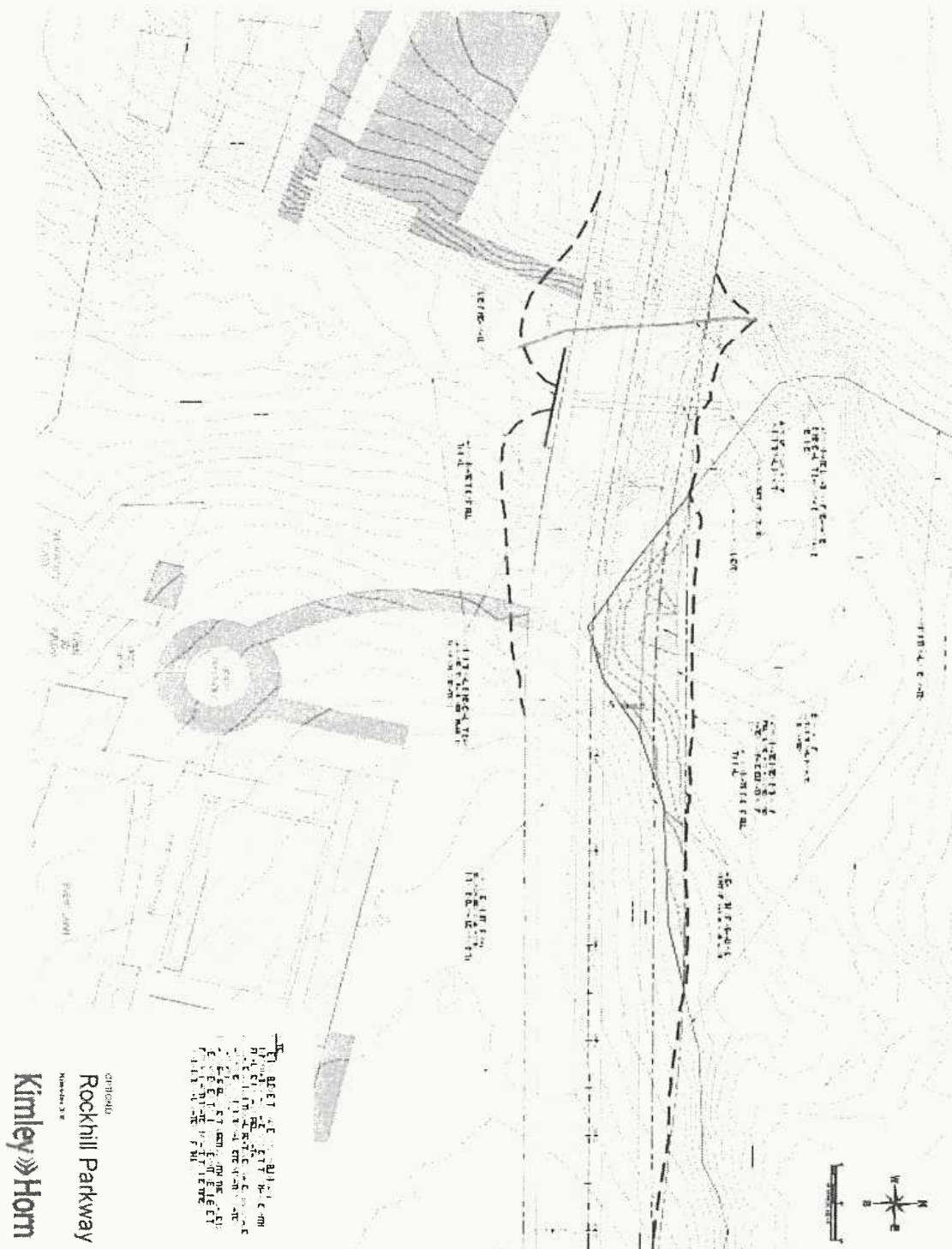
<b>Year:</b>	<b>Total Property Taxes (including personal property):</b>
1 (Dec-22)	\$2,000,000
2 (Dec-23)	\$2,465,000
3 (Dec-24)	\$2,735,000
4 (Dec-25)	\$2,985,000
5 (Dec-26)	\$3,060,000
6 (Dec-27)	\$3,140,000
7 (Dec-28)	\$3,220,000
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17 (Dec-38)	\$4,220,000
18 (Dec-39)	\$4,325,000
19 (Dec-40)	\$4,433,000
20 (Dec-41)	\$4,544,000

**EXHIBIT "O"**  
**SITE PLAN FOR FACILITIES**



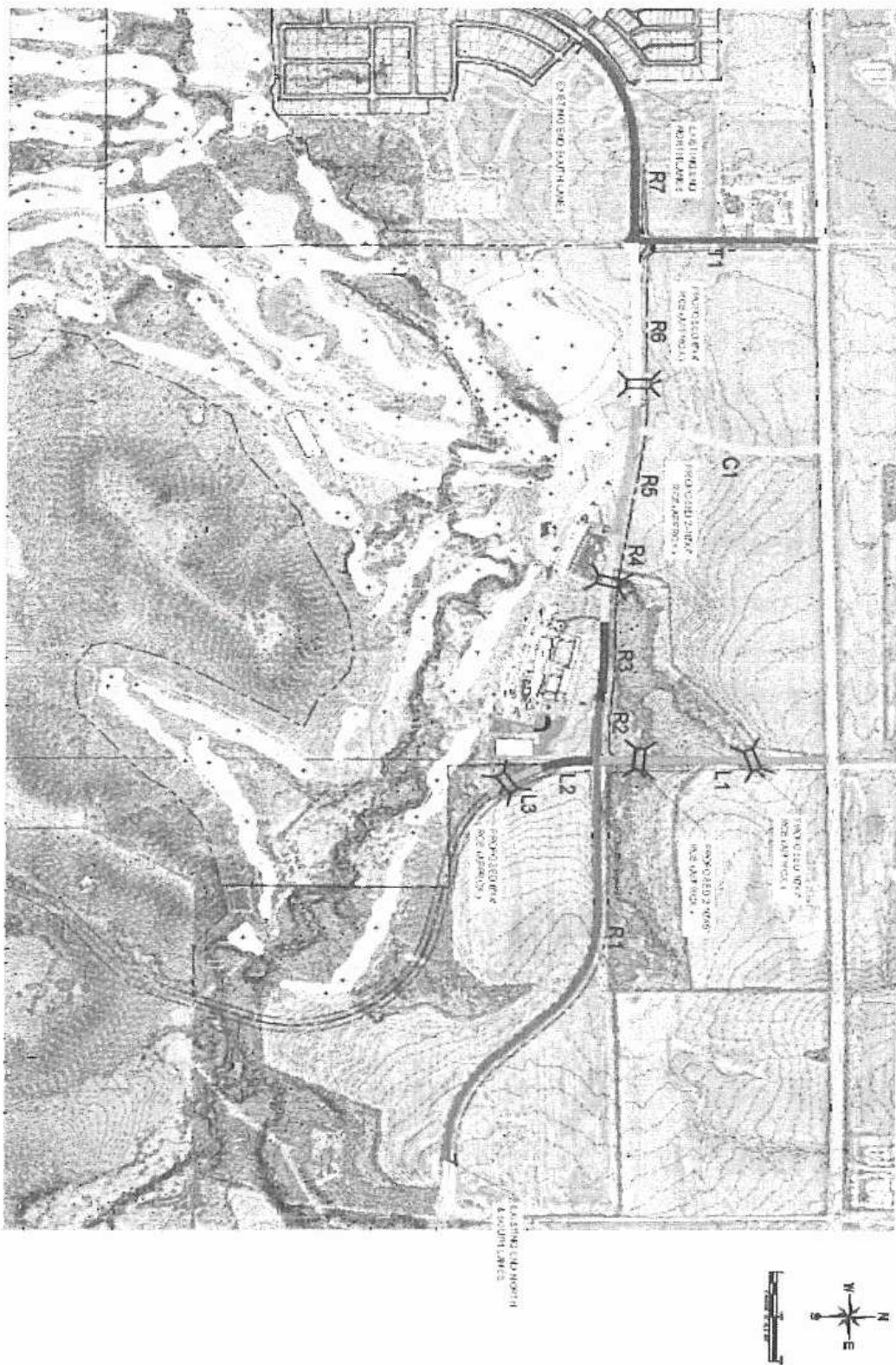


# EXHIBIT "O-1" ROCKHILL ALIGNMENT





**EXHIBIT "O-2"**  
**OFFSITE INFRASTRUCTURE SEGMENTS**



**EXHIBIT "P"**  
**SCOPE OF WORK FOR PUBLIC FACILITIES**

# PROJECT PROGRAM

FOR:

FRISCO GOLF CLUB  
FRISCO, TEXAS

DESIGNED BY:



HANSE  
GOLF  
COURSE  
DESIGN  
INCORPORATED



BEAU WELLING  
DESIGN™

PRESENTED TO:

Stillwater Frisco Golf Project, LLC

July 2018

PREPARED BY:



ONCORE Group, LLC  
P.O. Box 6806  
Lincoln, Nebraska 68506

## Quality Standard

Frisco Golf Club (the “PROJECT”) is a project of significant scope and expectations including two (2) 18 hole championship golf courses and large scale practice facility/academy/short game/short course designed by Gil Hanse Golf Design (East Course) and Beau Welling Design (West Course and Practice Facilities), the “DESIGNERS”. Stillwater Frisco Golf Partners, LLC (“OWNER”), ONCORE Group, LLC (“ONCORE”), DESIGNERS, Kimley-Horn (“ENGINEER”) and other consultants, collectively, the “PROJECT TEAM” shall work closely together and collaborate to refine the program elements below to the goals and objectives of the OWNER and to implement effective controls for the PROJECT.

## Project Approach

It is assumed under this Program that a “*Construction Manager whereas the Construction Manager is also the Constructor*” approach or some similar structure will be utilized. This will provide OWNER with overall Project Management, Construction of all specialty and suited scopes and Construction Management of certain infrastructure and support structures, if requested.

As part of its Project Management responsibilities, ONCORE shall act as the primary point of contact for the OWNER and will provide offsite and onsite staff to manage and coordinate on behalf of the OWNER the efforts of the PROJECT TEAM and other PROJECT Stakeholders and liaison with Municipal and public agencies, adjacent land owners and other groups having interest in or around the PROJECT.

The PROJECT components within this Program include golf course and practice facility construction with support structures (maintenance building(S), pump house(s), well house, cart barn, if applicable, etc...), utility infrastructure, fencing, interior service road infrastructure, development landscaping and miscellaneous civil works to be determined in future programming.

## Jurisdictional, Regulatory and Constraints

ONCORE shall cooperate with, and assist, OWNER and ENGINEER in obtaining all regulatory reviews and/or approvals for the Project.

ONCORE shall coordinate with OWNER’s engineer in developing the Storm Water Pollution Prevention Plan (SWPPP) and make recommendations for Best Management Practices (BMP) on site. Thereafter, ONCORE shall monitor and keep records to support and stay in compliance with the SWPPP.

Should the OWNER be required to secure a grading bond for all development activity, ONCORE shall keep the OWNER informed as to open ground for the PROJECT so the level of coverage under this bond may be monitored by the OWNER and adjusted as needed when aggregated with development activity elsewhere.

ONCORE shall work closely with the ENGINEER to identify all project constraints and communicate such to the OWNER and DESIGNERS and assist in identifying solutions to minimize their impact on the design and development of the PROJECT.

## **Site Inundation**

The PROJECT site is prone to frequent inundation. It is estimated by the ENGINEER that approximately 70% of the golf course area will be at or below a 2 Year flood event after development of the course, meaning that this estimated area will have a 50% annual chance of being inundated. Per the ENGINEER, a 2 year event has a velocity of +/- 6,500 CFS (Cubic Feet per Second), or about 50,000 gallons moving through and above the banks of Panther Creek every second. This would equate to about 2 average sized residential swimming pools. Elsewhere in this Program, a 100 Year event is referred to as Q100.

This site characteristic will weigh significantly on PROJECT sequencing/schedule and how the OWNER will provide for casualty risk both during development of the course and during stabilized operations. This Program assumes that rebuilding costs and loss due to flooding events will be a covered event under the OWNER's Builders Risk Policy. ONCORE shall work closely with the OWNER to establish a PROJECT-specific risk and casualty plan.

## **Project Preparation**

### ***Mobilization***

Normal mobilization requirements.

### ***Pre-Development***

ONCORE shall perform Pre-Development services as required to advance the PROJECT. Such Pre-Development services shall include meetings, planning, scheduling, estimating, preliminary site work, coordination and/or engagement of consultants and other work required to advance the planning and start of the PROJECT and to establish detailed scope, costs and schedules for the OWNER's review and approval. Temporary crossings will also be installed during the Pre-Development stage to facilitate site access and set up for construction routing.

### ***General Conditions***

Includes cost items such as housing, per diems, onsite construction office and its related operating expenses, utilities, temporary facilities, project management and principals, travel, travel related expenses, insurance, trash/dumpsters, gasoline, testing, safety administration, and miscellaneous accounts for equipment, labor & materials.

### ***Onsite Supervision & Design Implementation***

Includes ONCORE Project Superintendents and Assistant Project Superintendents for construction and dedicated staff from the DESIGNERS for onsite coordination and design implementation.



***Layout/Staking***

OWNER shall engage civil engineering and surveying under separate agreements. ONCORE shall coordinate with OWNER's civil engineer and survey firm(s) for PROJECT needs. This may include needed benchmarks, existing utility locations, proposed utilities, boundary lines, property lines, SWPPP adjustments, delineation of any known mitigation or wetland areas, civil designs for any lake systems, monument staking for each back tee, landing area and green and scorecard measurements.

ONCORE will perform the golf hole centerline staking, if needed, as well as the golf course features staking and continual grade checking. ONCORE will also collect limits of disturbance for purposes of staying in compliance with the SWPPP and assisting the irrigation designer, as needed.

**Environmental Controls**

***Erosion Control***

The SWPPP plan outlines the initial plan for protecting the site. ONCORE shall implement best practices and record all deviations from this initial plan. Inspections after significant rain events will be used to measure effectiveness of installed devices and to identify corrective measures, if needed. An allowance will be established for this scope and the anticipated installed measures may be:

- Standard silt fence w/wood stakes
- Reinforced silt fence w/wire mesh and steel T-Posts
- Check dams and Diversion swales
- Sediment basins
- Construction Entrance
- Mulch berms and Straw Waddles
- Construction Entrances
- Dust Control
- Other measures as may be necessary

***Erosion Control Maintenance***

Erosion control maintenance is based on maintaining and repairing the erosion control structures and removal of sediment around erosion control structures onsite. This only applies to the structures installed by ONCORE.

This Program assumes that the golf course maintenance staff will remove all erosion control structures during and/or after the grow-in process.

**Clearing**

An allowance for the following items will be established:

***Grasslands***

Grasslands will be stripped during the earthwork operation and placed in non-critical fill areas. Thereafter, periodic spraying will be performed on areas as needed until final stabilization of the site. No hauling or off-site disposal of stripped vegetation is included.

***Mass Clearing (Zone A)***

Mass clearing will consist of two phases Zone A and Zone B. Zone A will be complete removal of all material 40' – 50' on both sides of the golf hole centerline. This will include complete tree removal, including stumps, root raking and disposal by mulching to a "rough" grind. Any remaining tree slash, root clean up and debris not mulched will be conventionally compacted in bury pits located in non-critical areas.

***Mass Clearing (Zone B)***

Zone B will be the same means and methods as Zone A with clearing limits extended to anticipated edges of grading, native out of play areas and/or other alignments as directed by the Designer.

***Select Clearing (Zone C)***

Zone C clearing will be individual tree clearing and under-brushing performed site wide for architectural adjustments, aesthetics and agronomic benefits. Disposal of select clearing will be the same as noted above. In some cases, existing root mat and forest floor may be left intact with no root raking to occur.

***Demolition***

Site demolition includes the removal of existing paths, fences, structures and other miscellaneous debris across the site. It is anticipated that existing septic system(s) may be encountered. Tank(s) will be crushed and filled in with gravel to prevent future settling. Debris that is not hazardous shall be buried on site. Any hazardous material shall be hauled off site and suitably disposed of. Location of bury pits will be recorded and included on the Project as-builts.

**Storm Drainage**

An allowance for Storm Drainage will be provided. This allowance is meant for the extension of development drainage, if required, and larger piping networks that intercept sheet flow drainage from the surrounding development and/or native areas.

**Utility Adjustments**

Existing utilities traverse the site. Predominantly, a large sanitary sewer transmission line on an alignment generally following Panther Creek. It is anticipated that manhole and venting structures will need to be relocated in several areas along this transmission line. Remedial work may also be required with respect to grading and drainage along the easement. This will be included in future programming.

**Mass Excavation**

***Earthwork***

The earthwork allowance will include mass earthworks and architectural cuts and fills directed by the DESIGNERS.

A program allowance for mass earthworks is +/- 1,000,000. It is anticipated that export from the commercial excavations will be available for golf course fill if those additional quantities can be properly mitigated.

Architectural cut and fill is an important design element, especially on a project where the majority of the golf features will be sculpted with fill. This process will provide for additional soil for the DESIGNERS use to enhance features and provide for more natural shapes and forms. A Program allowance of +/- 200,000 CY should be allocated to this effort.

No structural fill is included at this time. No grading plans are provided at this time. Cut/Fill sources shall include golf holes, lakes, borrow areas and reclamation areas. It is not anticipated that off-site fill will be utilized, other than adjacent site development. However, off-site soil by others may also be placed on the PROJECT as available and per the approval of the OWNER and ENGINEER and under the direction of DESIGNERS and ONCORE.

It is assumed in this Program that the acceptable 10% storage loss as stated by ENGINEER will be fully utilized in fill calculations with fill in excess of this being subject to compensatory storage requirements within the site and/or mitigated upstream of the site.

Detention construction has been mentioned as a possible mitigation facility to allow for more fill on the golf course within the floodplain. Detention construction is not included in the Program at this time.

Fill limitations due to floodplain and compensatory storage requirements are not known at this time. There are two methods by which fill in the floodplain may be approved. One is meeting compensatory storage requirements – generally have cuts and fills match. The other is proving out through hydrology studies that there is no appreciable change in velocities for the site. The latter may be a more preferential analysis although both should be evaluated.

## **Lake, Stream/Creek and Water Feature Development**

The following features anticipated for the PROJECT under this category include:

### ***Irrigation and Golf Course Lakes***

These are built primarily for the function of irrigation storage and are also an aesthetic element of the West Course. Their current location and grading concepts appear to be below Q100. Lakes are protected to ELEV 549.00. Q100 appears to be +/- 552.0. This will require further review prior to final placement and construction means/methods for these lakes. It is also anticipated that an irrigation source may be effluent water which will also require specific lining specifications.

Current concept is 7.7 acres of lake surface distributed over 3 interconnected lakes. All lakes having the same surface elevation at ELEV 546.0.

Levee construction around the lakes will use up a sizeable portion of the allowable fill in the floodplain. An alternate scenario with an irrigation pond in higher ground may be worthwhile to evaluate if their current location is not a significant design element.

***Creek Bank Enhancements (above Ordinary High Water“OHW”)***

In many areas of the East Course, it may be desired to excavate down to the OHW level and lower the banks in these areas to expose more “down creek” views. On a smaller scale, this would also provide golf course fill and compensatory storage. In these areas, there may be some type of bank stabilization required to stabilize these newly created lower areas.

***Slope armoring and rock work***

Scope may include work around features that are immediately adjacent to Panther Creek, but not within the active creek channel so that when future bank erosion occurs, these features will be more prominent.

***Lowland/Wetland***

Created wetlands to serve as a fill source for the golf course and to serve as compensatory storage. These will be primarily in the lowland areas and some of these could be quite expansive. These will have a controlled water supply and appropriate aquatic plantings.

**Shaping**

***Rough Shaping***

All golf course shaping is included in this Program and will be coordinated and/or supported by ONCORE. Shaping will be performed by DESIGNERS selected staff and/or subcontractors with support shaping, as required, provided by ONCORE.

Shaping to include constructing all golf course features, native area enhancements, cart path sub grades, bunkers, drainage & irrigation clean-up, import material spreading and final sweep of the golf holes. ONCORE to work closely with the DESIGNERS during the shaping operations. 2% surface drainage is the minimum, with 3% being the most desirable, unless otherwise directed by the DESIGNERS.

Any material that cannot be productively ripped with a John Deere 750 sized dozer, or Caterpillar D6, will be considered hard excavation and would be charged to contingency.

**Import Material**

***Greens***

It is anticipated that many of the greens and greens complexes will be below Q100. An alternate greens construction method discussed would be “Push-Up” style with a locally sourced sandy loam. This material would not have significant vertical draining characteristics and would rely on proper surface drainage. Due to being prone to flooding, any material that has significant vertical drainage would likely be compromised with silt and fines over time from flooding sediment. This will require further discussion between the DESIGNERS and other consultants.

## **Golf Course Drainage**

### ***Pipe & Catch Basins***

Drainage pipe shall be installed as directed by the DESIGNER and shall be ADS N-12 ST corrugated plastic pipe with a smooth wall interior. See link below for product data.

[http://www.ads-pipe.com/en/product.asp?page=N-12\\_ST\\_IB\\_\(soiltight\)\\_Pipe](http://www.ads-pipe.com/en/product.asp?page=N-12_ST_IB_(soiltight)_Pipe)

For any installations where the pipe is completely submerged in water, such as an outfall into a lake, the drainage pipe sections that are submerged shall be ADS N-12 WT corrugated plastic pipe with a smooth wall interior. See link below for product data.

[http://www.ads-pipe.com/en/product.asp?page=n\\_12\\_wt\\_watertight\\_pipe](http://www.ads-pipe.com/en/product.asp?page=n_12_wt_watertight_pipe)

All perforated pipe shall be standard ADS N-12. Any perforated N-12 pipe bedded in gravel may utilize standard single wall fittings. See link below for product data:

[http://www.ads-pipe.com/en/product.asp?page=N-12\\_Plain\\_End\\_Pipe](http://www.ads-pipe.com/en/product.asp?page=N-12_Plain_End_Pipe)

Catch basins in turf areas shall be Nyloplast inline grates, drilled/perforated and encased in gravel. See links below for product data:

<http://www.ads-pipe.com/en/product.asp?productID=118>

[http://www.ads-pipe.com/pdf/en/nyloplast\\_installations\\_-\\_combined.pdf](http://www.ads-pipe.com/pdf/en/nyloplast_installations_-_combined.pdf)

### ***Trench excavation***

The lowland nature of parts of the site will require deeper and longer drainage installations in areas. Due to these deeper excavations, production will be less than typical golf installations and granular backfill may be required in certain excavations.

All backfill material will be compacted by vibratory, hand-held compactors such as “jumping jacks” and plate compactors and where trench conditions allow, compaction may also be achieved by machine tracking in uniform lifts. Any excess excavated soils will be shaped in close proximity to the excavated drainage lines and/or hauled to other areas to spread.

In all cases possible, drainage pipe will be installed to self-cleaning slope percentages or greater. In all other cases, drainage pipe will be installed with positive drainage.

Tracer wire (#14 Gauge) will be installed with all of the drainage lines and continuity checked at time of installation.

All trench excavation is qualified to the efficient operation of a John Deere 85 Excavator, or equal. Any other material encountered will be considered rock excavation.

Dewatering is expected in certain areas and during the wetter months during installation. In these areas, granular backfill will be utilized until the pipe can be safely backfilled with native soils.



No plans are provided for the golf course drainage system at this time. An allowance will be established for this work. Anticipated sizing and structures are as follows:

4" N-12 ST / WT Solid Pipe  
4" N-12 Perforated Pipe w/Gravel  
6" N-12 ST Solid Pipe  
8" N-12 ST Solid Pipe  
10" N-12 ST Solid Pipe  
12" N-12 ST Solid Pipe  
12" Nyloplast Inline Drain  
18" Nyloplast Inline Drain  
Rip Rap outlet protection  
Backfill material

The drainage allowance will also provide for perforated drainage to be added in concentrated flow areas and around area inlets.

It is anticipated that there will be some storm drainage lines installed by others from the surrounding development that will traverse the course. ONCORE will work with those other developers to take advantage of tying into these systems, where feasible.

If the ENGINEER does not size the drainage lines, ONCORE will either 1) install per DESIGNER direction or 2) field check drainage areas for size of watershed and ensure that pipe sizing meets or exceeds the drainage requirements using the Rational Method Equation "RME" with the following factors:

- Coefficient Factor of .2. (Lawns range from 0.05 – 0.35).
- Rainfall rate of 1"/Hour

The RME is defined as follows, with an example calculation below:

**Rational Method Equation:  $Q=ciA$**

The Rational equation requires the following units:

Q = Peak discharge, cfs

c = Rational method runoff coefficient (Lawns 0.05 – 0.35)

i = Rainfall intensity, inch/hour

A = Drainage area, acre

<a href="#">Click to Calculate</a>		
Rational runoff coefficient, c:	0.2	
Rainfall intensity, i:	1	inch/hour ▼
Drainage area, A:	1	acre ▼
Peak discharge, Q:	0.2	ft <sup>3</sup> /s (cfs) ▼

In this example, an area of 1 Acre in size receiving rainfall at the rate of 1"/HR will require a pipe sizing to evacuate .2 CFS of water.

## **Irrigation System**

OWNER shall engage EC Design Group LTD to design a fully automated irrigation system, or if requested by OWNER, ONCORE will engage. All irrigation work shall be per the plans and specifications provided by EC Design and as may be amended by the OWNER, DESIGNERS and/or ONCORE. It is anticipated that there will be 240 acres of fully irrigated turf with all native areas being provided for by an in-ground distribution network and above-ground temporary irrigation for establishment.

## **Clean-Up, Finish and Detail Grading/Shaping**

Includes the clean-up and initial detail shaping after drainage and irrigation installations.

All areas that will be hydroseeded with a native seed blend (mostly out of play areas) will be “dozer-tracked” with the hydroseed being applied directly to the native soils with the dozer cleat marks providing for “germination pockets.”

## **Topsoil - Fairways and Near roughs**

For purposes of initial budgeting, all turf areas will be planted into properly prepared native soils. Due to inundation risk over such a large portion of the site, import soils would likely change over time and the additional time requirement for import material may be better used in turf establishment. Efforts will be implemented on site to manage soils during mass excavation.

Two other scenarios have been discussed:

Import material over all turfgrass areas ranging in depth from 4” – 8”+. Import material will feather out to the edges of the fairways/roughs to the existing or newly created native areas.

There may be intermediary areas of an in-play native/outer rough. In these areas, topsoil will generally transition from the fairway plating depths to 2” - 4” and then feathered out to tie into the native soils where these areas meet the existing or newly created “out of play” native areas. The import soil would be anticipated to be a sandy loam/loamy sand with little to no vertical draining characteristics.

The other scenario that has been brought forward which would involve incorporating a much thinner layer of a sandier material to be topically incorporated and lightly incorporated prior to grassing.

This will require further discussion among the DESIGNERS and other consultants.

## **Greens Construction**

For purposes of initial budgeting, the greens will be constructed as described above in Import Material – Greens.

If USGA Construction is chosen, the below would apply.

### ***USGA Style Greens Construction***

No barrier liner is included. Area of greens is anticipated to be 275,000 for the courses and 90,000 SF for the practice facilities.

The flush outs will be covered with a 6" Amtek valve box. No Sub Air/ Precision Air equipment or prerequisite piping/valving is included at this time. Fumigation is not included. The perforated tile will be AdvanEdge as manufactured by ADS. See link below.

<http://www.ads-pipe.com/en/product.asp?page=advanedge>

Quality Control testing of gravel and sand/rootzone shall be conducted each 1,000 Tons. All material will be tested from stockpiles at the point of manufacture. No material will be shipped to the Project until quality control testing is performed and confirmed to be within allowable tolerances from the baseline results. All material approvals will be based upon testing that is performed on samples sourced at the point of manufacture.

### **Tee Construction**

#### ***Tee Construction***

Golf Course tee construction is based on using the best native soils. No subsurface drainage is included. Finish grade of the tee tops will be laser leveled to an acceptable pitch, as directed by the DESIGNERS. It is assumed that tee tops will be sodded. All Academy tees will have a 4" sand cap and sub-surface drainage.

### **Bunker Construction**

#### ***Formal Bunker Construction***

Includes the hand work for the formal bunker edges, clean up, installation of drainage tile, cleaning up of the sub-grade, and preparing the subgrade for the installation of lining system and sand.

All interior drainage pipe will be the perforated pipe noted above under Golf Course Drainage. Tracer wire will be installed with the tile lines. No flush out will be installed at the end of tile lines in the bunker. Wire tracing will direct a locator to the end of the line and end cap.

Bunker edging and sand installation will occur prior to the grassing phase unless otherwise directed by the OWNER. There may be some remedial edging required during and after grow-in by the golf maintenance staff.

Due to inundation risk, bunker lining systems, if any, to be determined in future programming.

It is assumed that sand depth will generally average 4". However, the final sand depth on the faces may be less than that to aid in ball release. Note that some lining systems have a warranty requirement to maintain 4" of sand on all bunker faces.

Sand color is desired to be off white or light tan/earth tone in color. Area of formal bunkers is anticipated to be 200,000+SF for the courses and 30,000 SF for the practice facilities.

Bunkers around the target greens in the practice academy (those not being played out of) will be constructed with a layer of crushed limestone screenings and built to surface drain with no interior drainage or formal construction methods. This will aid in ball-picking and reduced maintenance costs. As a final step prior to opening, a dusting of the golf course bunker sand will be applied by golf maintenance staff to assist with aesthetics.

## **Waste Bunker Construction**

No waste bunkers are anticipated at this time for the West Course. The East Course may implement a "Barranca" type of concept in the native areas and an allowance will be provided for this. This would predominantly be in the upland areas and may require a soil amendment of some type to create the proper aesthetics.

## **Cart Paths & Trails**

### ***General***

Cart paths and trails will be roughed in during the mass excavation and rough shaping phase. Paths will then be fine graded during the clean-up shaping stage, or earlier, and checked for positive drainage. The path subgrades will be compacted with a smooth drum roller and made ready for aggregate and concrete placement.

### ***Concrete Cart Paths***

Concrete paths will be hand formed and poured. Once the concrete has cured sufficiently, the forms will be stripped and the concrete paths will be backfilled.

Cart paths will be constructed with 3,000 PSI (5 Sack) concrete. Periodic cylinder breaks will be performed to confirm that compressive strength is achieved. Concrete will be reinforced with fibermesh at the rate of 1.5 LBS/CY and colored to #755 Driftwood by Solomon or another natural tone as selected by the OWNER and DESIGNERS.

Expansion joints will be located 80' O.C. Expansion joints will be pressure treated lumber or compression board. Hand tooled joints will be constructed 10' O.C. It is anticipated that cold weather additives and/or other measures may be required as well as re-handling of concrete material in areas inaccessible to concrete trucks.

Concrete will be poured directly onto the rolled native subgrade. An allowance will be provided to address unsuitable subgrades.

Anticipated length of concrete paths is estimated to be 70,000+LF.

### ***Concrete Curb***

A provision for 4" flare curb (for directing water), 4" roll curb for traffic deterrence and a 4" safety curb is included. It is anticipated that 35,000+LF of curbing will be installed in a combination of the types illustrated in the schematic below.



### ***Service Road & Perimeter Network***

The Service Road will be constructed with an aggregate material at a depth of 3" – 4" with a finer aggregate topping. No additives or polymers are included. Length of service road is anticipated to be 40,000 LF.

The aggregate will be installed directly onto the native subgrade. Aggregate material may be a recycled concrete material "Flexbase" and/or a "crusher run" base course of local aggregates, typically sized #57 minus.

It is anticipated that portions of this network will be used for construction traffic and will be maintained for that purpose. Upon completion of adjacent areas, those portions of this network will be re-graded, topped off with aggregate as required and stabilized along both sides.

Three bridges are anticipated on this perimeter network. See below.

## **Bridges**

### ***Temporary Crossings***

Crossings used for construction will be fabricated out of steel beams and/or overseas shipping "flat racks". Some of these may be able to be repurposed after construction for permanent bridges. In most cases, temporary bridges will be positioned away from the permanent bridge location.

### ***Permanent Bridges - Golf***

There will be a significant number of crossings for the PROJECT. These will include crossings at Panther Creek, smaller tributaries that are jurisdictional and other wetland areas. Thirteen clear span bridges are included at this time.

It is anticipated that most of the bridges will have a steel super-structure and clad with a natural wood product. Wetland bridges, in particular those across "created" wetlands, may be a "boardwalk" style bridge.

All bridges are desired to have a 12' clear width, inside of curbing and railing.

### ***Permanent Bridges – Service Road and Tournament Network***

The bridges used for the Service Road network are anticipated to be used for tournament set up and will have an HL93 / HS20-44 load rating requirement.



## **Golf Course Landscaping**

This Program assumes the following landscape components:

A native tree and shrub program will be implemented for 1) re-establishing a native environment onto large shapes and forms used to soften and “tie down” golf features; 2) screening of structures, paths and other facilities; 3) creating patron areas to use during tournaments and 4) to create natural vegetation lines in previously cleared areas that were modified due to grading requirements.

As mentioned above, additional created landscape components may include wetlands and barranca areas.

An allowance for the cleaning and under-brushing, in particular along Panther Creek, will also be provided.

## **Grassing**

### ***Preparation – Turf***

This includes the final clean-up / seedbed prep with tractors and hand labor. Includes tying in all the edges and features, checking for positive drainage for each golf hole, and hand raking around the greens, tees, bunkers and structures, as needed, prior to grassing.

### ***Preparation – Native***

Intermediary Native - Includes the final clean-up with a tractor only. Does not include hand labor other than hand-picking large debris.

General Native – Includes the final clean-up via dozer tracking only. No hand labor.

### ***Preparation - Borrow Area Reclamation, if any.***

Includes clean up per the General Native description above.

### ***Soil Amendments & Fertilizer***

An allowance for Soil Amendments & Fertilizers are provided.

### ***Sodding, Seeding and Hydroseeding***

**Greens** – Assumed to be sprigged with Champion Bermuda with aprons potentially sodded/sprigged to a finer-bladed version of the fairway turf variety. Champion II is also an option for green aprons and surrounds. Champion II is best maintained slightly higher than the Champion used on greens.

**Tees** – Assumed to be sodded with the same turf as the fairways.

**Fairways & Near roughs** – Assumed to be sprigged/sodded with a Bermuda variety. Sprig to sod ratio approximately 1:1.

**Practice Academy** – Assumed sprigged/sodded with the same variety as the Fairways.

**Other feature rough areas and/or bunker backs** – Assumed to be hydroseeded/sodded with a native variety (Buffalo, etc...).

**Native Areas** - Hydroseeded with a blend as determined by the DESIGNERS and other consultants.

**Sod Notes** – For any sod delivered with netting, all netting will be removed during installation with the exception of any outer area sod (ie...Buffalo).

**Hydroseed Notes** – Hydromulch will be Flexterra as supplied by Profile Products. For steep slope areas, straw logs will be installed perpendicular to the slope every 30' and Curlex II Matting, as manufactured by American Excelsior, will be installed in any areas of concentrated flow.

It is anticipated that a total area of 320+ AC will be addressed with the above coverages.

It would be recommended to allocate sod to those holes prone to inundation and sprigging to take place on the higher elevation golf holes. This decision will be the primary driver as to sequencing the PROJECT.

## **Turf Nursery**

An allowance will be provided for on onsite Champion Bermuda turf nursery 10,000 SF in size.

## **Grow-In**

All grassing scope items are “drop seed.” All watering, maintenance, repair and maturation of any planted area will be the responsibility of the OWNER’s maintenance staff. If requested by OWNER, ONCORE will assist in the grow-in of the PROJECT and/or development landscape areas.

## **Other Scope & Support Structures**

ONCORE will perform other ancillary scopes of work for the OWNER as requested. This may include development landscaping, including water features and hardscapes, utility infrastructure, other civil works, fencing, support structures and other development needs.

## **Miscellaneous Items**

All necessary permits, licenses, fee, etc... to be obtained and paid by OWNER prior to the start of construction.

Taxes - Local sales taxes will be included on all orders. In other instances, use tax will be collected and a use tax return will be filed by ONCORE.

ONCORE will require subcontractors to list the OWNER as additional insured in their insurance certificates. OWNER is responsible for all Builder's Risk and Property insurance. ONCORE will direct all subcontractors to remove this coverage to avoid any duplicative costs.

ONCORE will properly engage all significant suppliers under purchase orders/commitments and subcontractors and consultants under appropriate subcontract agreements.

### Duration & Schedule

This Program assumes an 18 month build out period, exclusive of grow-in, with both courses being constructed concurrently.

### Concept Program Budget

DESCRIPTION	Program Total
GENERAL CONDITIONS	\$ 3,698,258.00
EARTHWORK & SHAPING	\$ 12,332,941.53
CLEARING	\$ 1,386,218.62
GREENS CONSTRUCTION	\$ 1,871,909.41
TRAP CONSTRUCTION	\$ 1,350,463.49
TEE CONSTRUCTION	\$ 793,185.53
GRASSING	\$ 6,650,073.13
DRAINAGE	\$ 1,284,166.16
CART PATH / PERIMETER NETWORK	\$ 5,241,280.28
BRIDGES	\$ 1,468,424.03
IRRIGATION	\$ 7,703,333.27
LAKES, LANDSCAPING, HARD/SOFTSCAPES	\$ 4,442,907.57
<b>Total Concept Program Budget</b>	<b>\$ 48,223,161.02</b>

- 5% contingency included

EXHIBIT "O"  
PROJECT BUDGET FOR PUBLIC FACILITIES

## Omni Frisco Resort Golf Detailed Budget

9/12/18

OMNI		Omni Frisco Resort Golf Budget	Additional Notes
Budget		616	Acreage Escalation (End of 2015) SBE Requirements (Applied to FF&E, OS&E, & IT) No Prevailing Wage & Location Factor
<u>Pre-Acquisition &amp; Land</u>			
<b>Preacquisition Land</b>		\$	
<b>Subtotal Pre-Acquisition/Land</b>		\$	
<u>General and Administration</u>			
★ 200.05	Bank Charges	\$	
★ 200.10	Blueprints/Drawings	\$	
★ 200.15	Insurance-Builders Risk	\$	Carried Under GC Cost
★ 200.20	Insurance Deductibles	\$	Carried Under GC Cost
★ 200.25	Legal	\$ 200,000	
★ 200.30	Office Supplies/Equipment	\$	
★ 200.35	Office Rent	\$	
★ 200.40	Onsite Management	\$ 150,000	
★ 200.45	Photo Copying	\$	
★ 200.50	Photograph Documentation	\$	
★ 200.55	Postage/Delivery	\$	
★ 200.60	Travel & Entertainment	\$	
★ 200.65	Utilities	\$	
★ 200.70	Telephone	\$	
★ 200.75	Impact Fees	\$	Excluded
★ 200.80	Permits	\$ 204,722	
★ 200.85	Liquor License	\$	
★ 200.90	Office Cleaning	\$	
<b>Subtotal G &amp; A</b>		\$ 554,722	
<u>Consultants</u>			
300.01	<b>Architect</b>		
300.01.01	Architect - Gil Hanse	\$ 1,300,000	
300.01.02	Reimbursable	\$ 200,000	
300.01.03	Onsite Design Associate - Hanse	\$ 200,000	
300.01.49	Architect - BWD	\$ 1,025,000	
300.01.50	Reimbursable	\$ 200,000	
300.01.03	Interior Designer	\$	
300.01.04	Reimbursables	\$	
300.01.05	Structural Engineer	\$ 75,000	For Maintenance Facility & Vertical Structures
300.01.06	Reimbursables	\$	
300.01.07	Civil Engineer	\$ 871,500	
300.01.08	Reimbursables	\$ 70,000	
300.01.09	MEPF Engineer	\$ 75,000	For Maintenance Facility & Vertical Structures
300.01.10	Reimbursables	\$	
300.01.11	Landscape Architect	\$ 250,000	
300.01.12	Reimbursables	\$ 20,000	
300.01.13	Irrigation Designer	\$ 100,000	EC Design Group
300.01.14	Reimbursables	\$	
300.01.15	LEED Management	\$	Excluded, assumed not required
300.01.16	Reimbursables	\$	
300.01.17	Food Service & Laundry	\$	
300.01.18	Reimbursables	\$	
300.01.19	Hotel AV, Data, Security, & Telecom	\$	
300.01.20	Reimbursables	\$	
300.01.23	Life Safety/Building Code	\$ 5,000	
300.01.24	Reimbursables	\$	
300.01.25	Accessibility	\$	Carried in Life Safety
300.01.41	Graphics-Signage	\$ 10,000	
300.01.42	Reimbursables	\$	
300.05	<b>Commissioning</b>		
300.05.01	Basic Services	\$	Excluded
300.05.02	Reimbursables	\$	
300.10	<b>Geotechnical</b>		
300.10.01	Basic Services	\$	Previously provided
300.10.02	Reimbursables	\$	
300.15	<b>Surveying Services</b>		
300.15.01	Basic Services	\$	Carried in Architects
300.15.02	Reimbursables	\$	
300.20	<b>Materials Testing</b>		
300.20.01	Basic Services	\$ 50,000	
300.20.02	Reimbursables	\$	
300.35	<b>Purchasing Agent FFE/OS&amp;E</b>		
300.35.01	Basic Services	\$	
300.35.02	Reimbursables	\$	
300.40	<b>Cost Segregation</b>		
300.40.01	Basic Services	\$	Excluded
300.40.02	Reimbursables	\$	
300.45	<b>Auditor</b>		
300.45.01	Basic Services	\$	Excluded



300.50	300.45.02 Reimbursables	\$	-	
	<b>Technical Services</b>			
	300.50.01 Basic Services	\$	-	
	300.50.02 Reimbursables	\$	-	
300.55	<b>SBE Consultant</b>			
	300.55.01 Basic Services	\$	-	Excluded
	300.55.02 Reimbursables	\$	-	
300.60	<b>Peer Reviews</b>			
	300.60.01 Basic Services	\$	-	Excluded
	300.60.02 Reimbursables	\$	-	
	<b>Subtotal Consultants</b>	\$	4,451,500	
	<b>General Construction</b>			
400.01	<b>Construction Manager-GC</b>			
	400.00.00 General Conditions	\$	3,698,258	Per Oncore Concept Program Budget 07/2018
	400.00.01 Earthwork & Shaping	\$	12,332,942	Per Oncore Concept Program Budget 07/2019
	400.00.02 Clearing	\$	1,386,219	Per Oncore Concept Program Budget 07/2020
	400.00.03 Greens Construction	\$	1,871,909	Per Oncore Concept Program Budget 07/2021
	400.00.04 Trap Construction	\$	1,350,463	Per Oncore Concept Program Budget 07/2022
	400.00.05 Tee Construction	\$	793,186	Per Oncore Concept Program Budget 07/2023
	400.00.06 Grassing	\$	6,650,073	Per Oncore Concept Program Budget 07/2024
	400.00.07 Drainage	\$	1,284,166	Per Oncore Concept Program Budget 07/2025
	400.00.08 Cart Path / Perimeter Network	\$	5,241,280	Per Oncore Concept Program Budget 07/2026
	400.00.09 Bridges	\$	1,468,424	Per Oncore Concept Program Budget 07/2027
	400.00.10 Irrigation	\$	7,703,333	Per Oncore Concept Program Budget 07/2028
	400.00.11 Lakes, Landscaping, Hard/Softscapes	\$	4,442,908	Per Oncore Concept Program Budget 07/2029
	Subtotal Golf per Oncor	\$	48,223,161	Subtotal Golf per Oncor
	400.01.01 Added Greens Cost	\$	700,000	Per PGA Review 8/15/18
	400.01.02 Added Bunker Cost	\$	400,000	Per PGA Review 8/15/18
	400.01.03 Added Tee Cost	\$	600,000	Per PGA Review 8/15/18
	400.01.04 Sodding Needed	\$	1,000,000	Per PGA Review 8/15/18
	400.01.05 Added Bridges	\$	1,500,000	Per PGA Review 8/15/18
	400.01.06 Possible Irrigation Savings	\$	-	
	400.01.07 North Texas PGA Building	\$	-	Excluded
	400.01.15 Maintenance Facility	\$	3,500,000	Per PGA Review 8/15/18
	400.01.25 Other Buildings on Golf Course	\$	1,500,000	Per PGA Review 8/15/18
	400.01.30 Sewer Extensions to South	\$	478,250	Assume extensions to North by City
	400.01.31 Builders Risk			
	400.01.35 Contractor Insurance & Subguard			
	Pre-Construction			
	400.01.40 Fee			
	<b>Subtotal GC Construction</b>	\$	57,901,411	
400.05	<b>Owner Construction</b>			
	400.05.01 Utility Consumption	\$	300,000	Water consumption for 1 yr grow in \$300k max.
	400.05.10 Owner Construction	\$	-	
	<b>Subtotal Owner Construction</b>	\$	300,000	
	<b>FF&amp;E</b>			
500.01	Golf Furniture	\$	-	Excluded
500.90	BOH	\$	-	
500.92	Exterior Signage	\$	-	Carried in Startup Costs
500.93	Interior Signage	\$	-	
	<b>Subtotal FF&amp;E</b>	\$	-	
	<b>OS&amp;E</b>			
550.01	Startup Costs	\$	1,800,000	Per PGA Review 8/15/18
550.02	Golf Carts	\$	-	Excluded
550.03	Maintenance Equipment	\$	2,000,000	
550.04	Rental Clubs	\$	-	Excluded
	<b>Subtotal OS&amp;E</b>	\$	3,800,000	
	<b>IT, Telephone, &amp; Security Equipment</b>			
590.05	Admin Hardware			
	<b>Subtotal IT, Telephone, &amp; Security</b>	\$	-	
	<b>Freight/Installation/Warehousing/Sales Tax</b>			
	Freight	\$	-	
	Installation	\$	-	
	Warehousing	\$	-	
	Sales Tax	\$	-	
	<b>Subtotal Freight/Install./Ware./Sales Tax</b>	\$	-	
	<b>Miscellaneous</b>			
	Membership/Marketing	\$	500,000	Per PGA Review 8/15/18
	PGA Incentives			Carried on Full Budget
	Pre-Opening (1 Year Grow In)	\$	3,350,000	Per PGA Review 8/15/18
	<b>Subtotal Misc.</b>	\$	3,850,000	
	<b>Owner Contingency</b>			
		\$	3,542,882	5.00%
	<b>Subtotal Owner Contingency</b>	\$	3,542,882	
	<b>TOTAL BUDGET</b>	\$	74,400,515	

**EXHIBIT "R"**  
**PRIVATE RULING LETTER REQUEST**

September 28, 2018  
Texas Comptroller of Public Accounts  
Tax Policy Division  
P.O. Box 13528  
Austin, Texas 78711-3528

RE: Private Letter Ruling Request  
Hotel Project Tax Rebates  
Texas Sales and Use Tax

Please allow this letter to serve as a request for Private Letter Ruling pursuant to Texas Administrative Code Section 3.1 and under the Comptroller's detrimental reliance policy. The firm of Abernathy, Roeder, Boyd & Hullett, PC is authorized to request the private letter ruling on behalf of the City of Frisco, Texas (the "City") and the firm of Winstead PC is authorized to request the private letter ruling on behalf of TRT Holdings, Inc. and affiliated entities ("Developer"). Executed powers of attorney are attached hereto as Exhibit "A".

**I. Statement of Relevant Facts:**

The City, Developer, and the Professional Golfers' Association of America ("ProSportAssoc") are prepared to enter into a "Master Development Agreement" governing the development, financing and operation of a golf-related development that would include Golf Facilities, a ProSportAssoc Headquarters Facility, and a Hotel Project that would include a Hotel Facility, a Conference Center, and facilities ancillary thereto (the "Facilities") (all as further described below). The Facilities will be located within the boundaries of the City and Denton County, Texas. Based on the 2010 federal census, the City has a population of 116,989. The City is located within Collin County (2010 federal census population of 782,341) and Denton County (2010 federal census population of 662,614).

The Golf Facilities. The Master Development Agreement memorializes agreements relating to the development, financing and operation of golf facilities that will be constructed by the Developer and owned by the City (the "Golf Facilities") for public recreation, golf activities, open space, and entertainment uses and events with meeting, dining, and access to indoor and outdoor event spaces, for the benefit of the general public of the City, with parking facilities and related infrastructure improvements. The Golf Facilities are expected to encompass two golf courses providing a quality and affordable playing opportunity for City residents, Frisco Independent School District ("FISD") students, the general public and golfers from around the world. These are expected to include (i) one public 18-hole championship caliber golf course capable of hosting major golf championships, and (ii) one public 18-hole course designed as a general recreational resort-style golf course for players who are not professionals or top amateurs. It is expected that the ProSportAssoc or one of its affiliates will host golf tournaments at the Golf Facilities.

The ProSportAssoc Headquarters Facility. The Master Development Agreement also provides the major terms regarding the relocation to the City of the ProSportAssoc global and national corporate headquarters, including the central ProSportAssoc global and national education center (the “Headquarters Facility”). ProSportAssoc has tentatively agreed to relocate the ProSportAssoc Headquarters to a Headquarters Facility to be constructed on private land adjacent to the Golf Facilities, and to re-locate or hire a certain number of employees by December 31, 2023 (assuming timely completion of the Headquarters Facility). The requirement to re-locate or hire employees is expected to be memorialized in an agreement with the Frisco Economic Development Corporation (“FEDC”).

The Destination Golf Resort Hotel. The Master Development Agreement also provides for the development and construction of a destination golf resort hotel, designed to attract visitors nationally and internationally, containing at least 500 guest rooms, indoor and outdoor meeting, dining, and event spaces, a conference center in a configuration acceptable to the City, and indoor and outdoor recreational facilities attractive to families, including pools, hot tubs, and a putting green (the “Hotel Facility”, together with facilities ancillary to the Hotel Facility (the “Other Business Facilities”), the “Hotel Project”). The Developer will convey to the City a certain number of acres of real property adjacent to the Golf Facilities for construction of the Hotel Project and the Conference Center (the “City Tract”). The City will enter into a Ground Lease with Developer conveying a ground leasehold interest to Developer in the City Tract and providing the Developer with an option to purchase the City Tract. Developer will construct the Hotel Project on the City Tract, and will own the Hotel Facility.

The Other Business Facilities that will likely be located within the Hotel Facility are expected to include: (1) a spa and salon facility; (2) retail shops; (3) food and beverage outlets, including coffee shops, restaurants, and bars; (4) a tennis shop providing for the retail sale of tennis-related items and the rental of tennis-related gear and use of the tennis courts; and (5) parking facilities (valet and parking garage fees).

The Other Business Facilities that are expected to be located outside the Hotel Facility will likely include: (1) retail shops that sell golf-related items and (2) a golf clubhouse (the “Clubhouse”) that is expected to contain food and beverage outlets, including coffee shops, restaurants, and bars, along with retail areas for the sale of: (A) golf-related gear and the rental of such gear; (B) reservations for use of the Golf Facilities; and (C) memberships in a members-only portion of the Clubhouse and access to tee times for the Golf Facilities reserved for members’ use.

The Conference Center. In order to provide meeting spaces throughout the Hotel Project, the Conference Center will be constructed by Developer as three or more separate buildings on the City Tract (the “Conference Center”), one of which will contain a larger portion of the meeting space (the “Main Conference Center”, and two or more which will contain smaller meeting spaces (each a “Conference Center Annex”). The Main Conference Center will be located outside the Hotel Facility; each Conference Center Annex will either be located within the Hotel Facility or within a building that houses one or more of the Other Business Facilities.

As described above, the City Tract will be owned by the City and will be ground leased to Developer for Developer’s construction of the Hotel Project and the Conference Center. Upon completion of the Hotel Facility and the Conference Center, Developer will create a mixed-use

condominium which will consist of at least two units, one of which will be the Conference Center and one of which will be the Hotel Facility. The Conference Center unit (consisting of the Main Conference Center and each Conference Center Annex) will contain meeting spaces and pre-function and back-of-house support areas, together with access to areas common to both the Conference Center unit and the Hotel Facility unit such as corridors, the kitchen, and the loading dock, for example. Upon completion, Developer will transfer title to the Conference Center unit to the City. The Conference Center will be developed and fully equipped with all furnishings, fixtures and equipment to be owned by the City (“FF&E”) and required to have the Conference Center fully operational.

Contemporaneously with the transfer of title to the Conference Center unit from Developer to the City, the City will enter into an operating lease with Developer pursuant to which Developer must use the Conference Center for a public conference, meeting and exhibit center for holding conventions, meetings, exhibits and other events to attract conventions, tourists and other visitors for the benefit of the City and the general public. Developer will also be obligated, at Developer’s sole cost and expense, to maintain the Conference Center and all improvements, and FF&E incorporated therein or related thereto, in a condition equal to or better than similar conference center space at upper upscale hotels within the Dallas-Fort Worth Metroplex. Developer will retain the net income derived from the use thereof, and will have an option to purchase the Conference Center.

The City, the FEDC, the Frisco Community Development Corporation, and the FISD (collectively, the “Public Entities”) will have use of the Conference Center for a certain number of days each year at no cost on a space available basis. During such periods of use, equipment typically provided to Conference Center patrons will be provided to the Public Entities free of charge. The cost of food and beverage services or other services will be paid for by the Public Entities.

## **II. Documents**

Powers of Attorney

Forms of Master Development Agreement, Facilities Lease Agreement (Golf Clubhouse and Courses), Ground Lease (for Hotel Tract), Lease Agreement (for JV operation/management of Conference Center Unit), and Option Agreement (for JV option to purchase Conference Center)

## **III. Statements Relating to Request**

These issues are not under consideration by the Texas Comptroller of Public Accounts in connection with an audit examination of any type, a refund request, a voluntary disclosure agreement, an administrative hearing, or litigation for the City or Developer. Neither the City nor Developer have made a similar request from a taxing jurisdiction of another state.



#### IV. Questions and Requested Rulings Regarding Hotel Project Tax Rebates

##### **Overview**

Generally, Developer and City request this private letter ruling, with detrimental reliance, to confirm that the Hotel Project is a qualified hotel project such that the City would be entitled to a rebate or refund of taxes under Tax Code Section 151.429(h) and Government Code Section 2303.5055, pursuant to Tax Code Section 351.102(c).

Question One: Does the City qualify as an “eligible central municipality”?

Ruling One: Please confirm that upon adoption of a capital improvement plan that includes the construction of the Conference Center, the City will qualify as an “eligible central municipality” as defined in Tax Code Section 351.001(7)(C).<sup>1</sup>

Analysis: Upon adoption of a capital improvement plan for the construction of the Conference Center, the City will qualify as an eligible central municipality pursuant to Tax Code Section 351.001(7)(C), as a city with a population of at least 116,000 that is located in two counties, both of which have a population of at least 660,000, that has adopted a capital improvement plan for the construction or expansion of a convention center facility.

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Question Two: Is the Conference Center a “convention center facility owned by the City” as referenced in Tax Code Section 351.102(b)?

Ruling Two: Please confirm that as the Conference Center unit will be primarily used to host conventions and/or meetings within the meaning of Tax Code Section 351.001(2), it will qualify as a “convention center facility.” Please also confirm City ownership of the Conference Center unit assuming it will be located on the City Tract, the City will hold the title to the Conference Center unit, and will lease the Conference Center unit to Developer for operation and maintenance pursuant to an operating lease. The Developer will also have an option to purchase the Conference Center unit pursuant to an option agreement.

Analysis: Pursuant to Tax Code Section 351.102(b), “[a]n eligible central municipality.....may pledge the revenue derived from the tax imposed under this chapter from a hotel project that is owned by or located on land owned by the municipality....., and that is located within 1,000 feet of a *convention center facility owned by the municipality* for the payment of bonds or other obligations issued or incurred to acquire, lease, construct, and equip the hotel and any facilities ancillary to the hotel.....” (Emphasis added.) A facility will qualify as a convention center facility, if the facility is primarily used to host conventions and meetings. (See Tax Code Section 351.001(2)). “Primarily used” in this context should be interpreted to mean that more than 50% of the bookings for the facility are to host conventions or meetings that directly promote tourism

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<sup>1</sup> Note that the City might also qualify for the tax rebates under Tax Code Section 351.102(e)(4) as a city with a population of at least 95,000 that borders Lake Lewisville, but we submit that if you confirm that the City is an “eligible central municipality”, that the City will have all of the rights related thereto, without the restrictions that would apply to a city defined under Tax Code Section 351.102(e)(4).



and the hotel and convention industry. (See Tax Code Sections 351.001(2) and 351.101(a)-(b).) The Conference Center falls within the definition of a convention center facility because as described in the Master Development Agreement, the City and Developer will enter into an operating lease that will obligate Developer to use the Conference Center for the operation of a public conference, meeting and exhibit center for holding conventions, meetings, exhibits and other events to attract conventions, tourists and other visitors for the benefit of the City and the general public. The City and Developer represent and anticipate that the Conference Center unit will meet this “primary usage” test through (1) bookings to host conventions or meetings that directly promote the tourism and the hotel and convention industry and/or (2) bookings for out- of-town visitors who may in part stay at the Hotel Facility.

The Conference Center will be owned by the City and leased to Developer for operation and maintenance; the Developer will have the option to purchase the Conference Center pursuant to a separate option agreement. (See PLR No. 2017010126 for ruling that city will retain ownership so long as the purchase option isn’t exercised.) The Main Conference Center will be constructed outside of the Hotel Facility, with each Conference Center Annex located either within the Hotel Facility or in a building that houses one or more Other Business Facilities, but in any case, all portions of the Conference Center will be located on the City Tract. The City Tract will be leased by the City to Developer pursuant to a ground lease for Developer’s construction of the Hotel Project and the Conference Center. (See PLR No. 160600648 for a ruling that ground lease of land back to third party is acceptable if the lease doesn’t transfer title or ownership of the land from the governmental entity.) Developer and the City will then create a mixed-use condominium consisting of at least two units, one of which will be the Conference Center, the other of which will be the Hotel Facility. The Conference Center unit (consisting of the Main Conference Center and each Conference Center Annex) will include all meeting spaces and pre-function and back-of-house support areas. An access easement and a specific use easement will be granted to the City for the benefit of the Conference Center unit, for access to areas in the Hotel Facility that are needed for operation of the Conference Center. Other access to and from the Conference Center unit (from agreed loading dock locations and through the Hotel Facility) will be assured by appropriate easements granted to the City. Common elements will consist of all areas that are shared in any way by the Hotel Facility unit and the Conference Center unit. Upon completion of the Conference Center unit, Developer will transfer title in the Conference Center unit to the City. Because the City owns the land (the City Tract) on which the Conference Center will be located, along with the title to the Conference Center unit, the City owns the Conference Center.

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Question Three: Does the Hotel Facility meet the requirements of a “hotel project” under Tax Code Section 351.102(b)?

Ruling Three: Please confirm that the Hotel Facility will qualify as a “hotel project” under Tax Code Section 351.102(b) since it will be located on land owned by the City and will be located within 1,000 feet of the Main Conference Center and each Conference Center Annex. Please confirm that if one or more components of the Conference Center should be located more than 1,000 feet from the Hotel Facility, but at least one other component of the Conference Center is located within 1,000 feet of the Hotel Facility, that the Hotel Facility would still qualify as a “hotel project” under Tax Code Section 351.102(b).

Analysis: Tax Code Section 351.102(b) requires that a hotel project be located within 1,000 feet of a convention center owned by a city. Tax Code Section 351.102 is silent about how to measure the 1,000-foot distance between the hotel and the convention center facility. Based on issued PLRs, the Comptroller's Office has determined that the 1,000-foot distance between the hotel and convention center facility is measured as follows: the closest exterior wall of the hotel must be within 1,000 feet of the closest exterior wall of the convention center facility. (See PLR Nos. 2017010126 and 2017010131.)

Under our facts, the Main Conference Center and one Conference Center Annex are expected to be located outside the Hotel Facility. The City and the Developer hereby represent that, based on preliminary plans, it's expected that the closest exterior wall of each of the Main Conference Center and that particular Conference Center Annex will be located within 1,000 feet of the closest exterior wall of the Hotel Facility. The second Conference Center Annex is expected to be located within the Hotel Facility. For that Conference Center Annex, there will not be any exterior wall separation, and we were unable to find an issued PLR with a statement of facts regarding location of a convention center facility within a hotel. We submit that if a Conference Center Annex is located within the Hotel Facility, it would more than fulfill the intent behind the 1,000 feet location requirement, and that the location requirement for that Conference Center Annex be deemed to have been met under those facts.

We further submit that if the location of one or more of the components of the Conference Center is moved so that not all of the components of the Conference Center meet the distance requirement, the Hotel Facility will still qualify so long as it is located within 1,000 feet of at least one of the Conference Center components. (See PLR No. 160600648 for the ruling that even though the distance requirement would not be met between the hotel and an existing convention center, the hotel would qualify because it would be located within 1,000 feet of a convention center annex being constructed as an expansion of the existing convention center.)

Therefore, the Hotel Facility will qualify as a hotel project described in Tax Code Section 351.102(b) because it will be located on the City Tract, and will be within 1,000 feet of each component of the Conference Center. However, should the preliminary plans change so that the distance requirement is not met between the Hotel Facility and all components of the Conference Center, the Hotel Facility will continue to qualify if it meets the distance requirement, measured in accordance with Comptroller rulings, with respect to at least one component of the Conference Center.

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Question Four: Are the Other Business Facilities considered to be "facilities ancillary to the hotel" under Tax Code Section 351.102(b), so that the City may receive rebates of the taxes described in Tax Code Section 151.429(h) and Government Code Section 2303.5055 pursuant to Tax Code Section 351.102(c) generated at the Other Business Facilities during the first 10 years after the Hotel Facility is open for initial occupancy?

Ruling Four: Please confirm that for purposes of Tax Code Section 351.102(b), "facilities ancillary to the hotel" will include the Other Business Facilities.

Analysis: The Other Business Facilities will qualify to the extent that: (1) they are located on the City Tract; (2) they are considered “facilities ancillary to the hotel...including convention center entertainment-related facilities, meeting spaces, restaurants, shops, street and water and sewer infrastructure necessary for the operation of the hotel or ancillary facilities, and parking facilities located within 1,000 feet of the hotel or convention center facility” (Tax Code Section 351.102(b)); and (3) each such business has provided the Developer or City with a waiver of confidentiality allowing the Comptroller’s Office to disclose tax information relating to the business to the City. (See PLR No. 13337562 regarding required waivers.)

The terms “ancillary” and “convention center entertainment-related facilities” are not defined. The Comptroller’s Office has looked to the common usage of the term “ancillary” and its usage in the Tax Code to provide context to its meaning, and has determined that “facilities ancillary to the hotel” means facilities that provide necessary support for the operation and function of the hotel. (See PLR No. 2017010126.) Based on this analysis, the Comptroller’s Office determined that office spaces used by hotel staff qualify, and that food and beverage operations, retail outlets, and spa/fitness centers would qualify as restaurants and shops. Id. (But see PLR No. 2017010131 stating that spas and fitness/wellness centers wouldn’t qualify under facts dissimilar to our facts: where the spa/fitness center would likely be used by hotel guests and by residents of a residential building with approximately 385 residences.) The Comptroller’s Office also relied on the common usage of the term “entertainment” in finding that “convention center entertainment-related facilities” means facilities used for convention center events, activities, and performances. (See PLR No. 2017010126.) Examples would include a performance hall, permanent or temporary stage, amphitheater, and pavilion. Id. It would not include a waterpark, sports stadium, or other sporting venue, museum, or zoo because these are not ancillary to the convention center. Id. Medical or dental offices, spas, fitness/wellness centers, cultural/civic and educational units, museums, and laundry/dry cleaning centers do not qualify. (See PLR No. 2017010131.)

The Other Business Facilities should qualify as “facilities ancillary to a hotel” as restaurants, shops, or parking facilities. These Other Business Facilities specifically include: (1) a spa and salon facility; (2) retail shops; (3) food and beverage outlets, including coffee shops, restaurants, and bars; (4) a tennis shop providing for the retail sale of tennis-related items and the rental of tennis-related gear and use of the tennis courts; (5) parking facilities; and (6) the Clubhouse. The Clubhouse will contain food and beverage outlets, including coffee shops, restaurants, and bars, and retail areas for the sale of: (A) golf-related gear and the rental of such gear; (B) reservations for use of the Golf Facilities; and (C) memberships in a members-only portion of the Clubhouse and access to tee times reserved for members’ use.

Tax Code Section 351.102(b) also requires facilities ancillary to the hotel to be owned by or located on land owned by a city. Under our facts, the Other Business Facilities will be located on the City Tract and will therefore meet this statutory requirement.

Finally, Tax Code Section 351.102(b) requires facilities ancillary to the hotel to be within 1,000 feet of the hotel or convention center facility. Tax Code Section 351.102 is silent about how to measure the 1,000-foot distance between the ancillary facilities and the hotel or convention center facility. Based on issued PLRs, the Comptroller’s Office has determined that, with respect to facilities ancillary to the hotel, the 1,000-foot distance is measured as follows:



- if the facility ancillary to the hotel is located in a single-tenant building, the closest exterior wall of the ancillary facility must be within 1,000 feet of the closest exterior wall of the convention center facility or hotel; or
- if the facility ancillary to the hotel is located in a multi-tenant building, the closest demising wall of the ancillary facility must be within 1,000 feet of the closest exterior wall of the convention center facility or the hotel.

Under our facts, some of the Other Business Facilities will be located within the Hotel Facility, and some will be located outside of the Hotel Facility. With respect to Other Business Facilities located within the Hotel Facility, there will not be any exterior wall separation and therefore the method of measurement described above will not apply. We were unable to find Comptroller- issued PLRs regarding ancillary facilities being located within the hotel or convention center and, as proposed above regarding the measurement of distance between the Conference Center and Hotel Facility, we propose that Other Business Facilities located within the Hotel Facility or the Conference Center be deemed to have met the distance requirement. With respect to the Other Business Facilities located outside the Hotel Facility or the Conference Center, such Other Business Facilities must be located within 1,000 feet of the Hotel Facility or Conference Center, using the Comptroller's measurement methodology. The City and Developer represent that such Other Business Facilities will meet this requirement. Therefore, assuming the waivers of confidentiality are provided, the City should be entitled to receive rebates of taxes generated at or by the Other Business Facilities so long as these facilities are located on the City Tract and are located either (1) within the Hotel Facility or one or more components of the Conference Center or (2) within 1,000 feet of one or more components of the Conference Center or the Hotel Facility, using the Comptroller's methodology of measurement.

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Question Five: Is the City entitled to receive the tax rebates described in Tax Code Section 151.429(h) and Government Code Section 2303.5055 pursuant to Tax Code Section 351.102(c) of taxes generated by the Hotel Project?

Ruling Five: Please confirm that the City is entitled to the tax rebates described in Tax Code Section 151.429(h) and Government Code Section 2303.5055 pursuant to Tax Code Section 351.102(c) of taxes generated by the Hotel Project (Hotel Facility and Other Business Facilities), and describe the taxes that may be rebated.

Analysis: Under Section 351.102(c), the City is entitled to receive from the Hotel Project the funds that an owner of a qualified hotel project receives under Tax Code Section 151.429(h) or under Government Code Section 2303.5055. These rebates should include State sales and use taxes and State hotel occupancy taxes generated at the Hotel Project (the Hotel Facility and Other Business Facilities) under Tax Code Section 151.429(h). Under Government Code Section 2303.5055, the rebates should include "eligible taxable proceeds," generated at the Hotel Project (Hotel Facility and Other Business Facilities) which are ad valorem taxes, local sales and use taxes, local hotel occupancy taxes, and the local portion of the mixed beverage gross receipts and mixed beverage sales taxes that a governmental body agrees to rebate to the City.

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Question Six: Regarding the Other Business Facilities that qualify as “facilities ancillary to the hotel,” will the City receive rebates of taxes generated by the qualifying Other Business Facilities even though neither the City nor the Developer will own the businesses that will be renting space and providing the goods or services described above as “Other Business Facilities” (other than City ownership of the City Tract and Developer ownership of a leasehold interest in the City Tract)?

Ruling Six: Please confirm that the City will receive rebates of taxes generated by the qualifying Other Business Facilities even though neither the City nor the Developer will own the businesses that will rent space and provide the goods or services described above as “Other Business Facilities” (other than City ownership of the City Tract and Developer ownership of a leasehold interest in the City Tract).

Analysis: Tax Code Section 351.102(c) provides that a city described in Tax Code Sections 351.102(b) or 351.102(e) “is entitled to receive all funds from a project....that an owner of a project may receive under Section 151.429(h) of this code, or Section 2303.5055, Government Code....” Tax Code Section 151.429(h) provides that *the owner of a qualified hotel project shall receive* a rebate, refund, or payment of the State sales and use taxes paid or collected by the qualified hotel project or *businesses located in the qualified hotel project*. (Emphasis added.) Government Code Section 2303.5055 provides that a governmental body may agree to rebate, refund, or pay “eligible taxable proceeds” to the *owner of a qualified hotel project*. (Emphasis added.) Issued PLRs regarding hotel project tax rebates discuss payment of the tax rebates to a city, not to the owner of an ancillary facility. Issued PLRs also state that waivers of confidentiality from such facilities are required for the rebates; it’s unlikely the waivers would be required if payment was to be made to owners of the ancillary facilities. (See PLRs No. 13337562 and 160600648 regarding need for waivers.) Based on the statutory language and issued PLRs, the tax rebates will be paid to the City, regardless of the ownership of the Other Business Facilities, so long as the Other Business Facilities are located on the City Tract.

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Question Seven: Would the total amount of mixed beverage taxes received by the City from the State with respect to the Hotel Project be equal to 10.7143% of the total of the mixed beverage gross receipts taxes and mixed beverage sales taxes collected by the State at the Hotel Project?

Ruling Seven: Please confirm that the total amount that the City would receive from the State mixed beverage taxes collected at the Hotel Project would equal 10.7143% of the total of the mixed beverage gross receipts taxes and the mixed beverage sales taxes collected by the State at the Hotel Project.

Analysis: Mixed beverage taxes include the mixed beverage gross receipts tax of 6.7% under Tax Code Section 183.021 and the mixed beverage sales tax of 8.25% under Tax Code Section 183.041. Pursuant to Tax Code Section 183.051(b), the Comptroller is to remit to a county 10.7143% of the aggregate of the mixed beverage gross receipts tax and the mixed beverage sales tax collected by the Comptroller from permittees located in the county, and remit to a city



10.7143% of the aggregate of the mixed beverage gross receipts tax and mixed beverage sales tax collected by the Comptroller from permittees located in the city. Winstead PC received an email communication on May 25, 2018 from Mr. Don Dillard, Tax Policy Analyst, Comptroller's Office, that for permittees located in a city, each of the city and the county receive 10.7143% of the total of the State mixed beverage gross receipts and sales taxes collected. Please confirm that the total amount the City would receive from State mixed beverage taxes generated at the Hotel Project would be equal to 10.7143% of the total of the mixed beverage gross receipts taxes (6.7%) and the mixed beverage sales taxes (8.25%) collected by the State at the Hotel Project, such amount being the portion of the mixed beverage gross receipt taxes and mixed beverage sales taxes to be sent to the City pursuant to Tax Code Section 183.051(b).

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Question Eight: Assuming that the Comptroller's office agrees that the City is entitled to receive the rebates under Section 351.102(c), what is the process for obtaining the tax rebates described in Tax Code Section 151.429(h) and Government Code Section 2303.5055 pursuant to Tax Code Section 351.102(c)?

Ruling Eight: Please confirm that the following are the current agency requirements to initiate a request for rebate, refund, or payment of taxes under both Tax Code Section 151.429(h) and Government Code Section 2303.5055 and that, pursuant to such requirements, the City may submit a written request to the Comptroller's Audit Division along with the following required information:

1. Copy of the Certificate of Formation for Developer;
2. Copy of City's Capital Improvement Plan;
3. Copy of City ordinance or resolution approving the tax rebate agreement between City and the Developer;
4. Copy of the architect's plan for the Hotel Project;
5. A map that shows the Hotel Facility is within 1,000 feet of one or more components of the Conference Center, and that the Other Business Facilities are within 1,000 feet of one or more components of the Conference Center or the Hotel Facility;
6. Name and address of the Hotel Facility along with the Comptroller-issued taxpayer identification and location number for sales and use tax and hotel occupancy taxes;
7. Records from the Hotel Facility, the operator of the Conference Center unit, and City, such as guest folios and press releases, which show the date when the Hotel Project was or will open for initial occupancy;
8. Name and Comptroller-issued taxpayer identification, and location numbers that the Hotel Project is using, or will use, for each Other Business Facility under agreement with the Hotel Project;

9. Waiver of confidentiality releases signed by the authorized officer or director of the Hotel Project and from each Other Business Facility under agreement with the Hotel Project. These forms allow the Comptroller's office to release the Other Business Facility's sales and use tax information to City and/or Developer. Releases must be renewed annually, unless the release specifically states it is in effect for three years;
10. Name and phone numbers of the contact person with City and Developer; and
11. Completed direct deposit authorization form from the Developer and City.

Also please confirm that, after review, the Comptroller's Office will give the City written notice as to the results of that review and will initiate the rebate process as appropriate.

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Question Nine: Assuming that the Comptroller's Office agrees that the City is entitled to receive the rebates under Section 351.102(c), what taxes would the rebates encompass and what would be the general timeline for payment of the rebates after the taxes are received by the Comptroller's Office?

Ruling Nine: Please confirm that the rebates that the City should receive pursuant to Tax Code Section 351.102(c) are: (1) the State sales and use taxes and State hotel occupancy taxes generated by the Hotel Project pursuant to Tax Code Section 151.429(h); and (2) the ad valorem taxes, local sales and use taxes, local hotel occupancy taxes, and the local portions of the mixed beverage gross receipts and mixed beverage sales taxes, all of which that a governmental body agrees to rebate to the City under Government Code Section 2303.5055, during the first 10 years after the Hotel Facility is open for initial occupancy. Please confirm that the Comptroller's Office will make monthly payments of such tax rebates that are collected by or forwarded to the Comptroller's Office.

Analysis: Tax Code Section 351.102(c) provides that a qualifying city is entitled to receive all funds from a hotel project that an owner of a project may receive under Tax Code Section 151.429(h) or Government Code Section 2303.5055. Tax Code Section 151.429(h) provides that the rebates are available "during the first 10 years after such qualified hotel project is open for initial occupancy." Government Code Section 2303.5055 provides that "[f]or a period that may not exceed 10 years," a governmental body may agree to pay eligible taxable proceeds to the owner of a qualified hotel project. The Comptroller has ruled that while the language regarding the ten year period is different in each statute, that calculation of the ten year period begins when the hotel is open for initial occupancy. (See PLR No. 13337562.) Therefore the rebates will be available for the first 10 years after the Hotel Facility is open for initial occupancy. The Comptroller's office makes monthly payments of taxes rebated pursuant to Tax Code Section 151.429(h) and Government Code Section 2303.5055. (See PLRs No. 13337562 (regarding 151.429(h) rebates), 2017010131 (Comptroller's Office makes monthly payments of eligible taxes that are collected by or forwarded to the Comptroller's Office)). Tax rebates that a governmental body has agreed to rebate pursuant to Government Code Section 2303.5055 that are paid directly to the City will be paid according to the timing agreed to in the rebate agreement.

**V. Statutory Authorities in Support of Requested Rulings Regarding Hotel Project Tax Rebates**

Texas Tax Code Sec. 351.001; 351.102; 151.429(h)

Government Code Sec. 2303.003; 2303.5055

**VI. Authorities Contrary to Requested Rulings Regarding Hotel Project Tax Rebates**

We have reviewed the Texas Tax Code, the rules of the Comptroller of Public Accounts, and spoken with Senior Tax Policy Staff with the Comptroller's Office; however, no definitive or contrary authority was identified on these issues.

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**VII. Requested Rulings Regarding Sales and Use Tax**

Question 1: Are the design and construction contracts for the construction of (A) the Golf Facilities, (B) the Conference Center, and (C) the Hotel Project considered "exempt contracts"?

Ruling 1: The design and construction contracts for the construction of (A) the Golf Facilities, (B) the Conference Center, and (C) the Hotel Project are "exempt contracts", pursuant to which taxable services and materials, provided under such contracts, are exempt from State and local sales and use taxes.

Analysis:

(A) Golf Facilities – Statutory Presumption of Public Purpose and Agency Arrangement. The Golf Facilities will be owned by the City pursuant to the statutory authority found in Government Code Section 1504.001 and leased to Developer for operation and management. The Developer will construct the Golf Facilities pursuant to the Master Development Agreement. The Golf Facilities will include two public golf courses for City residents, FISD students, the general public and visiting golfers, together with customary practice areas, public/private clubhouse, associated open parkland with hike and bike trails, public parking, associated maintenance facilities and related infrastructure, such as roads, water lines, sewer lines, water drainage systems and irrigation systems.

Tax Code Section 151.311 exempts from sales and use tax certain purchases of taxable items for use in the performance of a contract for an improvement to realty for exempt entities. This exemption applies even when the contract is between a nonexempt entity and a contractor, if the contract is an "exempt contract." (Comptroller's Decision Nos. 44,896 and 47,235 (2009).)

Rule 3.291(a)(5) defines an "exempt contract" as "a contract with a nonexempt entity to improve real property for the primary use and benefit of an organization exempted under Tax Code Section 151.309.... "

Rule 3.291(c)(2)(B) further provides, "[a] contract with a private party to improve real property owned by an exempt entity, other than a governmental entity described in Tax Code

Section 151.309, is not an exempt contract if the improvement to real property is for the primary use and benefit of the private party.” (See also Comptroller’s Decision No. 41,946 (2003); STAR Accession No. 201405903L (May 9, 2014); STAR Accession No. 200108598L (Aug. 20, 2001).)

The design and construction contracts between Developer and contractors will involve the incorporation of tangible personal property for the improvement of real property. The City is an exempt entity under Tax Code Section 151.309(5). Thus, to qualify for the exemption, the improvements contemplated by the Master Development Agreement must be for the “primary use and benefit” of the City. This “primary use and benefit” test should be deemed met by the statutory authorities described below.

The City is authorized by Government Code Section 1504.001 to provide for “a golf course, tennis court, or other similar recreational facility....” Thus, the Golf Facilities serve a recognized public and governmental purpose of the City.

In addition, Tax Code Section 25.07 (regarding property tax exemption of leasehold interests) provides that “[e]xcept as provided by Subsection (b) of this section, a leasehold or other possessory interest in real property that is exempt from taxation to the owner of the estate or interest encumbered by the possessory interest shall be listed in the name of the owner of the possessory interest if the duration of the interest may be at least one year. (b) Except as provided by Sections 11.11(b) and (c) [PUF land taxable for county purposes; county school land held as agricultural taxable], a leasehold or other possessory interest in exempt property may not be listed if:....(4) the interest is in a part of: (A) *a park, market, fairground, or similar public facility that is owned by a municipality*; or (B) *a convention center, visitor center, sports facility with permanent seating, concert hall, arena, or stadium that is owned by a municipality as such leasehold or possessory interest serves a governmental, municipal, or public purpose or function when the facility is open to the public, regardless of whether a fee is charged for admission....*” (Emphasis added.) The Golf Facilities should constitute a “similar public facility”.

Thus, the Golf Facilities are statutorily presumed to have the requisite dominant “public purpose”, even if leased to or subject to a possessory interest of the Developer. Since the dominant purpose of the lease to the Developer is to operate and manage the Golf Facilities for the City for authorized City purposes, and since the Developer contracts with design and construction professionals will be for the improvement of real property owned by the City, any taxable services used in and tangible personal property incorporated into the real property or completely consumed in the construction is exempt from State and local sales and use tax.

(B) Conference Center – Statutory Presumption of Public Purpose. The Hotel Facility and the Other Business Facilities (the “Hotel Project”), together with the Conference Center, will be constructed on land owned by the City (the “City Tract”). The City Tract will be leased by the City to Developer pursuant to a ground lease for Developer’s construction of the Hotel Project and the Conference Center. Developer and the City will then create a mixed-use condominium consisting of at least two units, one of which will be the Conference Center, the other of which will be the Hotel Facility.

Upon completion of the Conference Center unit, Developer will transfer title in the Conference Center unit to the City. Since the City will own the land (the City Tract) on which the



Conference Center will be located, along with the title to the Conference Center unit, the City will own the Conference Center. The Conference Center will be operated by Developer pursuant to an operating lease with the City. Developer will be obligated under the operating lease to use the Conference Center for a public conference, meeting and exhibit center for holding conventions, meetings, exhibits and other events to attract conventions, tourists and other visitors for the benefit of the City and the general public. In addition, the Public Entities will have use of the Conference Center for a certain number of days each year at no cost on a space available basis.

In order to fully integrate the Conference Center and the Hotel Project into the overall project, aesthetically and functionally, Developer, rather than the City, will enter into contracts for the design and construction of the Conference Center and the Hotel Project with design and construction professionals. These contracts will not directly qualify as exempt contracts under Rule Section 3.291(c)(2)(A) since the Developer is a private party. However, Tax Code Section 151.311 exempts from sales and use tax certain purchases of taxable items for use in the performance of a contract for an improvement to realty for exempt entities. This exemption applies even when the contract is between a nonexempt entity and a contractor, if the contract is an “exempt contract.” (Comptroller’s Decision Nos. 44,896 and 47,235 (2009).) Rule 3.291(a)(5) defines an “exempt contract” as “a contract with a nonexempt entity to improve real property for the primary use and benefit of an organization exempted under Tax Code Section 151.309.... “

Rule 3.291(c)(2)(B) further provides, “[a] contract with a private party to improve real property owned by an exempt entity, other than a governmental entity described in Tax Code, §151.309, is not an exempt contract if the improvement to real property is for the primary use and benefit of the private party.” (See also Comptroller’s Decision No. 41,946 (2003); STAR Accession No. 201405903L (May 9, 2014); STAR Accession No. 200108598L (Aug. 20, 2001).)

The design and construction contracts between Developer and contractors will involve the incorporation of tangible personal property for the improvement of real property. The City is an exempt entity under Tax Code Section 151.309(5). Thus, to qualify for the exemption, the improvements contemplated by the ground lease relating to the Conference Center must be for the “primary use and benefit” of the City. This “primary use and benefit” test should be deemed met by the statutory authorities described below.

The State Legislature has determined that city ownership and operation of a convention or conference center facility serves a public purpose. Tax Code Chapter 351 provides, among other things, for the pledge of city hotel occupancy taxes to obligations incurred by cities for the construction of “convention center facilities”. Local Government Code Section 334.001(4)(B) provides cities and counties with a mechanism to finance “venue projects” including convention center facilities as defined in Tax Code Section 351.001(2). Local Government Code Section 301.001(a) provides cities and counties with the authority to jointly establish certain facilities, including a civic center or convention center. And cities have the authority pursuant to Government Code Section 1504.001 to “establish, acquire, lease as lessee or lessor, construct, improve, enlarge, equip, repair, operate, or maintain a facility such as .... a civic center, auditorium, opera house, music hall, exhibition hall, coliseum, museum, library, or other municipal building.”



In addition, Tax Code Section 25.07 (regarding property tax exemption of leasehold interests) provides that “[e]xcept as provided by Subsection (b) of this section, a leasehold or other possessory interest in real property that is exempt from taxation to the owner of the estate or interest encumbered by the possessory interest shall be listed in the name of the owner of the possessory interest if the duration of the interest may be at least one year. (b) Except as provided by Sections 11.11(b) and (c) [PUF land taxable for county purposes; county school land held as agricultural taxable], a leasehold or other possessory interest in exempt property may not be listed if:....(4) the interest is in a part of: (A) a park, market, fairground, or similar public facility that is owned by a municipality; or (B) *a convention center, visitor center, sports facility with permanent seating, concert hall, arena, or stadium that is owned by a municipality as such leasehold or possessory interest serves a governmental, municipal, or public purpose or function when the facility is open to the public, regardless of whether a fee is charged for admission....*” (Emphasis added.)

The State Legislature has also provided, and voters in the State have agreed, that economic development serves a public purpose. Article III, Sec. 52-a of the Texas Constitution allows the State Legislature to provide for the creation of programs and the making of loans and grants of public money for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state, ... or the development or expansion of transportation or commerce in the state.” And Local Government Code Section 380.001 implements this by permitting a city to “establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality.”

Since the dominant purpose of the ground lease and the operating lease is to construct the Conference Center to be owned by and operated for the City for authorized City purposes, and the Developer contracts with design and construction professionals will be for the improvement of real property, any taxable services used in and tangible personal property incorporated into the real property or completely consumed in the construction is exempt from State and local sales and use tax.

(C) Hotel Project – Statutory Presumption of Public Purpose. The Hotel Project will also be located on the City Tract owned by the City. The City will lease the City Tract to Developer for construction of the Hotel Project. The City and Developer will not be entering into an operating agreement for the Hotel Project, but pursuant to the Master Development Agreement, Developer has committed to construct on the City Tract a destination golf resort hotel, designed to attract visitors nationally and internationally, containing at least 500 guest rooms, with the Conference Center in a configuration acceptable to the City, and indoor and outdoor recreational facilities attractive to families. The Hotel Facility must carry the Omni Hotels brand or another national brand which is upper upscale and must be equal or above in quality and services to the JW Marriot Hill Country Resort and Hyatt Hill Country Resort located in San Antonio, Texas, with aquatic features.

Developer will enter into contracts for the design and construction of the Hotel Project in order to fully integrate it (aesthetically and functionally) with the Conference Center. Those contracts will not qualify as exempt contracts under Tax Code Section 151.309, but Tax Code

Section 151.311 exempts from sales and use tax certain purchases of taxable items for use in the performance of a contract for an improvement to realty for exempt entities. This exemption applies even when the contract is between a nonexempt entity and a contractor, if the contract is an “exempt contract.” (Comptroller’s Decision Nos. 44,896 and 47,235 (2009).) Rule 3.291(a)(5) defines an “exempt contract” as “a contract with a nonexempt entity to improve real property for the primary use and benefit of an organization exempted under Tax Code Section 151.309.... “

Rule 3.291(c)(2)(B) further provides, “A contract with a private party to improve real property owned by an exempt entity, other than a governmental entity described in Tax Code Section 151.309, is not an exempt contract if the improvement to real property is for the primary use and benefit of the private party.” (See also Comptroller’s Decision No. 41,946 (2003); STAR Accession No. 201405903L (May 9, 2014); STAR Accession No. 200108598L (Aug. 20, 2001).)

The design and construction contracts between Developer and contractors will involve the incorporation of tangible personal property for the improvement of real property. The City is an exempt entity under Tax Code Section 151.309(5). To qualify for the exemption, the improvements contemplated by the ground lease relating to the Hotel Project must be for the primary use and benefit of the City.

The acquisition or construction of a hotel, whether owned by a city or not, in connection with a conference center owned by a city, serves the public purpose of promoting tourism and economic development. Tax Code Section 351.101 provides that hotel occupancy tax revenues may be used only for the promotion of tourism and the hotel and convention center industry. Local Government Code Section 334.001(4) provides cities and counties with a mechanism to finance “venue projects” including convention center facilities as defined in Tax Code Section 351.001(2), and related improvements such as a civic center hotel. And eligible central municipalities (as defined in Tax Code Section 351.001) like the City have the authority pursuant to Government Code Section 1504.001(b) to “establish, acquire, lease as lessee or lessor, construct, improve, enlarge, equip, repair, operate, or maintain a hotel and any facilities ancillary to the hotel, including convention center entertainment-related facilities, restaurants, shops and parking facilities that *are owned by or located on land owned by the city and that are located within 1,000 feet of a hotel or convention center facility owned by the city.*” (Emphasis added.) Perhaps most importantly, the State Legislature has allowed for the rebate of taxes to owners of certain hotel projects (pursuant to Tax Code Section 151.429(h) and Government Code Section 2303.5055 and to certain cities to encourage the establishment of hotels owned by or located on land owned by any such city and located within 1,000 feet of a city-owned convention center (pursuant to Tax Code Section 351.102). In either case, city ownership of the hotel itself is not required. With respect to tax rebates available pursuant to Tax Code Section 351.102, the hotel must at least be located on city-owned land, as is the case with the Hotel Project.

As discussed above in connection with the Conference Center, the State Legislature has provided (pursuant to Local Government Code Section 380.001), and voters in the State have agreed (by adoption of Art. III, Section 52-a, Texas Constitution), that economic development serves a public purpose.

Because the dominant purpose of the ground lease and the Master Development Agreement is to provide the City with the Hotel Project needed to work in conjunction with the City's Conference Center and Golf Facilities and the Headquarter Facilities to bring golf tournaments to the City and otherwise facilitate tourism and economic development in the City, and the Developer contracts will be for the improvement of real property, taxable services used in and any tangible personal property incorporated into the real property or completely consumed in the construction is exempt from State and local sales and use tax.

(D) Facts and Circumstances Analysis regarding Conference Center and Hotel Project.

Restated, the City's Golf Facilities, Conference Center, and Hotel Project, as described above, serve the public purposes of the City and/or Public Entities, which are governmental entities. As stated above, Tax Code Section 151.311 exempts from sales and use tax certain purchases of taxable items for use in the performance of a contract for an improvement to realty for exempt entities, such as governmental entities. This exemption applies even when the contract is between a nonexempt entity and a contractor, if the contract is an "exempt contract." (Comptroller's Decision Nos. 44,896 and 47,235 (2009).) Rule Section 3.291(a)(5) defines an "exempt contract" as "a contract with a nonexempt entity to improve real property for the primary use and benefit of an organization exempted under Tax Code Section 151.309 [governmental entities] or 151.310 [other exempt entities]...."

The contracts between the Developer and various contractors involve the incorporation of tangible personal property for the improvement of real property. The City and the other Public Entities are exempt governmental entities under Tax Code Section 151.309. To qualify for the exemption, therefore, the improvements contemplated by the design contract and construction contracts must be for the primary use and benefit of City (and/or the other Public Entities).

When the governmental entity is the lessor and a nonexempt entity is the lessee, the Comptroller has sometimes used a facts and circumstance test to determine "primary use and benefit". For example, under this test, the Comptroller has previously stated that leases between exempt universities as lessors and nonexempt lessees to build dormitories for universities can be for the primary use and benefit of the exempt lessor. (See STAR Accession Nos. 201405903L and 200108598L.) However, if a taxable entity will use an improvement primarily for a business purpose for its benefit, a construction contract executed pursuant to a lease between an exempt entity and a taxable entity will not constitute an exempt contract. (See Comptroller's Decision No. 41,946 (2003).)

Although we believe the statutory presumptions of "primary use and benefit" that are discussed above fully establish that the "primary use and benefit" test is met, we maintain that this facts and circumstances test is also met.

The facts of this PLR request do not differ significantly from the facts in STAR Accession Nos. 201405903L and 200108598L. These letters involved the construction of dormitory facilities and leases that explicitly stated that the improvements were for the benefit of exempt entities.

First, the Golf Facilities serve an essential public function of the City. The Golf Facilities will be operated by Developer pursuant to an operating lease with the City. The Golf Facilities

will include two public golf courses for City residents, FISD students, the general public and visiting golfers, together with customary practice areas, a public/private clubhouse, associated open parkland with hike and bike trails, public parking, associated maintenance facilities and related infrastructure, such as roads, water lines, sewer lines, water drainage systems and irrigation systems. Developer will be obligated under the operating lease to use the Golf Facilities for public recreation, pleasure, enjoyment, golf activities, open space, and entertainment uses and events with meeting, dining, and access to indoor and outdoor event spaces, for the benefit of the City and the general public. Thus, the operation of the City's Golf Facilities will benefit the City in the same manner as the operation of dormitory facilities for a University as discussed in PLR 201405903L and PLR 200108598L.

Second, the Conference Center serves an essential public function of the City. The Conference Center will be operated by Developer pursuant to an operating lease with the City. Developer will be obligated under the operating lease to use the Conference Center for a public conference, meeting and exhibit center for holding conventions, meetings, exhibits and other events to attract conventions, tourists and other visitors for the benefit of the City and the general public. In addition, the Public Entities will have use of the Conference Center for a certain number of days each year at no cost on a space available basis. Thus, the operation of the City's Conference Center will benefit the City in the same manner as the operation of dormitory facilities for a University as discussed in PLR 201405903L and PLR 200108598L.

Third, the Hotel Project is integral to the operation of the Conference Center and to a lesser extent, the Golf Facilities. Accordingly, the operation of the Hotel Project will also directly enhance the operations of the City's Conference Center and the Golf Facilities and thus, the City, in the same manner as the operation of dormitory facilities for a University as discussed in PLR 201405903L and PLR 200108598L. Without the Hotel Facility and its supporting functions, the success of the Conference Center would be limited or not possible. The Hotel Facility and its operations will specifically enhance the operations of the Conference Center and the Other Business Facilities because the operation of the Hotel Facility and its supporting functions will primarily or solely serve the persons, entities and companies using the Conference Center and Golf Facilities. This serves the goals and objectives of the City (and the Public Entities) and supports essential public purposes and functions of the City (and the Public Entities).

The facts of this PLR request are not analogous to the situation in Comptroller's Decision No. 41,946 (2003). In that hearing, a corporation (lessee) had a lease with a tax-exempt airport (lessor) for the operation of a café at the airport. The airport had final approval over the construction done on the café. A construction company claimed that its contract with the lessee for improvements to the café was exempt. The Comptroller followed Attorney General Opinion No. MW-94 (1979), in which a church granted its private lessee permission to remodel improvements on the church's land to suit its business needs. The Attorney General determined that the contract was not an exempt contract because the dominant purpose of the lease contracts was to make the improvements for the private lessee. Following this reasoning, the Comptroller held that the lease between the airport and the corporation to make improvements to the café was for the primary use and benefit of the corporation.

In contrast, Comptroller's Decision No. 31,770 (1999) concludes that an aircraft hangar that was constructed by and leased to a private party at an airport met the primary use and benefit



test. Under the lease agreement, the improvements would be used for aircraft and ground equipment maintenance, warehousing, training and business office, and as hangar facilities and related activities, and employee parking. The Comptroller states that “There is no dispute that AIRLINE COMPANY uses the hangars for its benefit, but it cannot be denied that THE AIRPORT also benefits.” The Comptroller concluded that statutory presumptions of public purpose in relevant statutory pronouncements [the Municipal Airports Act] coupled with the facts of the case clearly established that the hangars in question passed the primary use and benefit test expressly stated in Comptroller’s Rule 3.291(c)(2). Accordingly, the statutory presumptions of public purpose described above and the anticipated use of the facilities provide the necessary support for the determination that the “primary use and benefit” of the Hotel Project is with the City, although as in this Comptroller Decision, the Developer also receives benefit. (See also PLR Nos. 200204006L and 200204005L.)

The dominant purpose of the design contracts and construction contracts (under the Master Development Agreement) is to provide the City with (i) a Conference Center and (ii) a Hotel Project that is needed to work in conjunction with the City’s Conference Center and the Golf Facilities. Unlike the café situation, the dominant purpose of the design and construction contracts is to construct a Hotel Project that provides essential and unambiguous support to the Conference Center and its related facilities. This means that the primary use and benefit will go to the City (and/or the Other Public Entities). See Rule 3.291(c)(2)(B); Comptroller’s Decision No. 33,049 (1996). See Comptroller’s Decision No. 44,896 and 47,235 (2009).

In summary, under the facts and circumstance test, the Conference Center and the Hotel Project are for the “primary benefit and use” of the City and the Public Entities. Accordingly, the contracts between the Developer and its contractors involved in the construction of the Conference Center and the Hotel Project pursuant to the Master Development Agreement are “exempt contracts”.

### **VIII. Authorities in Support of Requested Rulings Regarding Sales and Use Taxes**

#### **Statutes and Rule(s):**

Article III, Sec. 52-a, Texas Constitution

Tax Code Sections 25.07; 151.309(5); 151.311; 151.429(h); 351.001(2); 351.101; 351.102

Local Government Code Sections 301.001(a); 334.001(4); 380.001

Government Code Sections 1504.001; 2303.5055

Comptroller Rule 3.291(a)(5); 3.291(c)(2)(A); 3.291(c)(2)(B)

#### **Other Authorities:**

Comptroller’s Decision No. 31,770 (1999)

Comptroller’s Decision No. 33,049 (1996)

Comptroller’s Decision No. 41,946 (2003)

Comptroller’s Decision Nos. 44,896 and 47,235 (2009)

State Tax Automated Research System (STAR) Accession Nos. 201405903L; 200108598L; 200204006L; 200204005L

Sincerely,



Robert Roeder  
Abernathy, Roeder, Boyd & Hullett, PC

David Dawson  
Winstead PC

On behalf of the City of Frisco, Texas  
6101 Frisco Square Blvd., Frisco, TX 75034  
Texas Taxpayer No. 17560005310  
Federal EIN: 75-6000531  
Ph. No.: (972) 292-5109

On behalf of TRT Holdings, Inc.  
4001 Maple Ave., Ste 600, Dallas, TX 75219  
Texas Taxpayer No. 17417298191  
Federal EIN: 74-1729819  
Ph. No.: (214) 283-8619

Exhibit "A"  
Enclosures

# **EXHIBIT "S"** **RIGHT-OF-WAY AND OFFSITE EASEMENTS**



**SCHEDULE 1.1(C)**  
**PUBLIC CLUBHOUSE SPECIFICATIONS**

A clubhouse with two (2) sets of locker rooms (men's and women's) with a minimum of twelve (12) lockers in each locker room.

4,000 square feet of dining/grille space for public golf operations, inclusive of kitchen.

Sufficient parking to support public golf operations, but in no event fewer parking spaces than required under City ordinances.

Sufficient bathroom facilities throughout the clubhouse to accommodate both men and women in many and different parts of the clubhouse.

1,200 square feet of golf shop (retail) to support 36-hole public golf operations. Storage, office, and meeting space to support public golf operation.