EXHIBIT
"A"

MASTER DEVELOPMENT AGREEMENT

This Master Development Agreement ("Agreement") is entered into to be effective as of the 15th day of December 2016 (the "Effective Date"), by and among the City of Round Rock, Texas (the "City"), a home rule city organized under the laws of the State of Texas, the Round Rock Transportation and Economic Development Corporation, a "Type B corporation" created under the authority of Chapter 501, Texas Local Government Code (the "TED Corp."), KR Acquisitions, LLC, a Delaware limited liability company (the "Developer"), and KR CC, INC., a Delaware corporation (the "Tenant"). The City, the TED Corp., the Developer and the Tenant are, collectively, the "Parties" to this Agreement.

RECITALS

WHEREAS, the Developer has entered into a contract to purchase approximately 351.7 acres of land (the "Property") located east of Kenney Fort Blvd. and south of the Union Pacific Railroad as described and shown on **Exhibit A**; and

WHEREAS, the Developer is considering the construction of a master-planned mixed use project on the Property anchored by a Kalahari Resort and Convention Center, including a hotel with a minimum of 975 guest rooms, a convention and exhibition center, and an indoor water park, all as further described in **Sections 5.03**, **5.04** and **5.05** (the "Project"); and

WHEREAS, the Project may also include entertainment, recreation, and other uses of the Property permitted by the zoning at the time of development; and

WHEREAS, the Developer has advised the City that a contributing factor that would induce the Developer to develop the Project would be one or more agreements with the City to provide performance-based economic development incentives to the Developer and the Tenant to defray a portion of the costs to be incurred by the Developer and Tenant as a consequence of developing and constructing the Project; and

WHEREAS, the City Council has found and determined that by entering into this Agreement, the construction and acquisition of the Project and the Public Improvements (as hereinafter defined) will further the public interest and welfare, and that the economic benefits that will accrue to the City under the terms and conditions of this Agreement are consistent with the City's economic development objectives; and

WHEREAS, once the Project is developed and completed, the Project will generate tax revenues for the City that will create funds available for performance-based economic development incentives; and

WHEREAS, the City is authorized by Article III, Section 52-a of the Texas Constitution, Section 380.001 and Chapter 395 of the TEX. LOC. GOV'T CODE, to establish economic development programs and to provide incentives for economic development; and

WHEREAS, the City, the Developer and the Tenant desire to set forth in this Agreement the terms and conditions for the planning, design, construction, development, and financing of the Project and the Public Improvements; and

WHEREAS, the Parties recognize that all agreements of the Parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof;

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

ARTICLE I
PURPOSE AND INTERPRETATION

1.01 Objectives.

(a) The Developer is interested in developing a Kalahari Resort and Convention Center in the Central Texas area and has designated Round Rock and the Property as a potential location for the Project. The Developer or its affiliates currently owns and operates other Kalahari Resorts and Convention Centers in multiple locations in several states. The Developer sees an opportunity to establish its presence in the City, and to play a significant role in the future development of the City. The City believes that the development of the Project will attract additional businesses, development, and investment in the City in particular and Williamson County in general. The City recognizes that development of the Project will likely serve as an economic stimulus to the area, resulting in significant job growth and increased tax revenue for the City, the Round Rock ISD, and Williamson County.

(b) The Parties acknowledge that the present infrastructure of streets and utilities in the vicinity of the Property is insufficient to support the Project. In order to encourage the Developer to locate the Project on the Property, the Developer has requested that the City (i) finance a portion of the Property acquisition costs, which will be repaid as part of the rent associated with the Ground Lease; (ii) finance and construct the Public Improvements as described in **Section 6.02** and **Section 6.03**; and (c) finance the Convention Center construction as described in **Section 7.04**.

1.02 Concept and Structure. Development of the Property will include the Public Improvements and the Project, which may occur on one or more separately platted lots or other legal parcels. To accomplish the objectives listed above, the Developer will be responsible for the development and construction of the Hotel, Convention Center, and Water Park. The City will be responsible for the financing of the Convention Center construction costs as described in **Section 7.04**. The Public Improvements will be financed and constructed as set forth in **Sections 6.02 and 6.03**. The Tenant will operate and maintain the Convention Center pursuant to a Convention Center operating lease to be finalized before commencement of construction of the Convention Center. In addition, the City will finance a portion of the Property acquisition costs, which will be repaid as part of the rent associated with the Ground Lease. The City will also make an application to the Texas Comptroller of Public Accounts for the benefits accorded by Section 151.429(h) of the Texas Tax Code and/or Section 2303.5055 of the Texas Government Code, as they relate to a hotel project under Section 351.102(b) of the Texas Tax Code.

1.03 Interpretation. In this Agreement, unless a clear contrary intention appears;

(a) the singular number includes the plural number and vice versa;

(b) reference to any Party includes such Party's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Party in a particular capacity excludes such Party in any other capacity or individually;

(d) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(e) "hereunder", "hereof", "hereto", and words of similar import shall be deemed references to this Agreement as a whole and not to any particular article, section or other provision thereof;

(f) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and

(g) reference to any constitutional, statutory or regulatory provision means such provision as it exists on the Effective Date and any amendatory provision thereof or supplemental provision thereto.

1.04 Legal Representation of the Parties. This Agreement was negotiated by the Parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party shall not apply.

ARTICLE II

DEFINITIONS

2.01 Definitions. All capitalized terms used in this Agreement shall have the meanings ascribed to them in this **Article II**, or as otherwise provided herein.

"**Agreement**" means this Master Development Agreement by and between the City, the Developer and the Tenant.

"**Alternative Convention Center Debt**" means the debt described in **Section 7.04**.

"**Alternative Public Improvement Debt**" means the debt described in **Section 6.03**.

"**Bonds**" means, collectively, the Public Improvements Debt, the Convention Center Debt, and any other obligations issued in accordance with this Agreement.

"**City**" means the City of Round Rock, Texas.

"**City Council**" means the city council of the City.

"**Convention Center**" means the convention center described in **Sec. 5.04**.

"**Convention Center Debt**" means the debt issued by the City and/or the TED Corp. in an amount sufficient to provide net proceeds of $40,000,000.00 to design and construct the Convention Center. Net proceeds are those amounts deposited into a project fund or similar account. Net proceeds exclude capitalized interest, debt service reserve funds and costs of issuance.

"**Developer**" means KR Acquisitions, LLC a Delaware limited liability company.

"**Economic Development Program Agreement**" means that certain Economic Development Program Agreement between the Parties dated December 15, 2016. A copy of the Economic Development Program Agreement is attached as **Exhibit B**.

"**Full Time Equivalent Employee**" or "**FTE**" means a combination of employees, each of whom individually may not be a full-time employee because they are not employed on average at least 35 hours per week, but who, in combination, are counted as the equivalent of a full-time employee. FTE's shall include original hires or their replacements over time.

"**Ground Lease**" means the ground lease document whereby the City, as landlord, will lease the Property to the Tenant, as tenant. A copy of the Ground Lease is attached as **Exhibit C**.

"Ground Lease Memorandum" means the memorandum of ground lease document that will be recorded to provide notice of the Ground Lease. A copy of the Ground Lease Memorandum is attached as **Exhibit D**.

"Hotel" means the hotel described in **Section 5.03**.

"Initial Rental Payment" means the rental payment as defined in the Ground Lease.

"**Kenney Fort Blvd. Improvements**" means the public improvements described in **Section 6.02 (e).**

"**Offsite Public Improvements**" means the public improvements described **in Section 6.02 (b)(c)** and **(d).**

"**Onsite Public Improvements**" means the public improvements described in **Section 6.02(a)** and includes any improvement or facility together with its associated public site, right-of-way or easement necessary to provide transportation, drainage, public utilities, or similar essential public services and facilities, for which the City will ultimately assume the responsibility for maintenance and operation or ownership, or both. This term also includes the following: drainage facilities, streets and other rights-of-way, potable water system, reuse water system, sanitary sewerage system, survey monuments, illumination including street lights, traffic control signs and traffic signalization, fire hydrants, sidewalks and curb ramps, street name signs, traffic control signs, street pavement markings, and parkland and open space improvements.

"**Parties**" means the City, the TED Corp., the Developer and the Tenant.

"**Party**" means the City or the TED Corp. or the Developer or the Tenant.

"**Private Letter Ruling**" means the letter described in **Section 3.01** and **Section 8.01**, a copy of which is attached hereto as **Exhibit E**.

"**Project**" means Project as described in **Article V**.

"**Property**" means the real property described and shown on **Exhibit A**.

"**Public Improvements**" means the Offsite Public Improvements, the Onsite Public Improvements and the Kenney Fort Blvd. Improvements located within and outside the boundaries of the Property that are necessary to serve the development of the Property and described in **Section 6.02**.

"**Public Improvements Debt**" means the debt issued by the City and/or the TED Corp. in amount sufficient to provide net proceeds of $30,000,000.00 to design and construct the Public Improvements. Net proceeds are those amounts deposited into a project fund or similar account. Net proceeds exclude capitalized interest, debt service reserve funds and costs of issuance.

"**State**" means the State of Texas.

"**State Hotel Occupancy Tax**" means the hotel occupancy taxes imposed by Chapter 156 of the Texas Tax Code.

"**State Sales Tax**" means the sales tax imposed by Chapter 151 of the Texas Tax Code.

"**Supplemental Private Letter Ruling**" means the letter described in **Section 8.01**, a copy of which is attached hereto as **Exhibit F**.

"**TED Corp.**" means the Round Rock Transportation and Economic Development Corporation.

"**Tenant**" means KR CC, INC., a Delaware corporation.

"**Water Park**" means the facility described in **Section 5.05**.

ARTICLE III
ACQUISITION OF PROPERTY; GRANT OF EASEMENTS

3.01 Purchase Contracts. The Developer has entered into one or more real estate purchase contracts to acquire the Property for approximately $28,483,000 (the "Purchase Contracts") and the Developer has assigned the Purchase Contracts to the Tenant. The Parties agree that it is in their best interest to structure the ownership of the Property and the Project so that the Parties will receive the benefits of Sections 351.102(b), 351.102(c), and 151.429(h) of the Texas Tax Code and Section 2303.5055 of the Texas Government Code. In this regard, the City has received Private Letter Ruling #160610180 from the Texas Comptroller of Public Accounts setting forth the facts and analysis and concluding that the City is entitled to the aforesaid benefits. A copy of the Private Letter Ruling is attached hereto as **Exhibit E.** As stated in Section 351.102(b) of the Texas Tax Code and the Private Letter Ruling, the Hotel must be owned by or located on land owned by the City, and the Convention Center must be owned by the City. For these reasons, the Tenant will assign the Purchase Contracts to the City not later than December 23, 2016 using the form of assignment attached hereto as **Exhibit G**, and the City

will own the Convention Center and the Property, including the lot or parcel upon which the Hotel will be constructed.

3.02 Funding for Property Acquisition. Pursuant to **Section 3.03,** the Tenant will make an Initial Rental Payment. The City will use the Initial Rental Payment and approximately $10,585,000 in City funds to purchase the Property.

3.03 Ground Lease. The City agrees to lease the Property to the Tenant pursuant to the terms of the ground lease attached as **Exhibit C** (the "Ground Lease"). The Parties agree to record a memorandum of the Ground Lease in the real property records of Williamson County using the form of memorandum attached as **Exhibit D**. The Parties agree to execute the Ground Lease concurrently with the City's closing on the purchase of the Property. The Parties agree to amend the Ground Lease as reasonably required by a private lender advancing funds for construction of the Project. The Parties agree that the Initial Rental Payment will be placed in escrow to be used by the City for the sole purpose of acquiring the Property pursuant to the terms of the Escrow Instructions attached hereto as **Exhibit H**.

3.04 Taxes. To the extent rollback taxes are assessed on all or any portion of the Property at any time when the Developer or Tenant owns the Property or is the beneficial owner of the Property, the City agrees to rebate such rollback taxes paid to the City as a grant to the Tenant pursuant to Chapter 380 of the Texas Local Government Code. The City acknowledges that the determination of property tax valuation, equalization, exemption, special open space valuation and tax rollback are within the exclusive province of the appraisal district and as a result, the City takes no position on these matters. The City covenants that it will not avail itself of the tax challenge provisions contained in Chapter 41 of the Texas Tax Code for the duration of this Agreement. The City further covenants that it will fully cooperate with the Developer's or the Tenant's efforts to obtain maximum property tax relief for the Property and the Project and will make available all relevant documents and witnesses pertaining to the transaction for any and all property tax proceedings pertaining to the Property or the Project. Within 90 days after the date the City receives a written request from the Developer requesting that the City seek an exemption determination, the City will request from the Texas Comptroller the determination of rollback tax exemption contemplated by Texas Tax Code Section 23.55(m). Such a rollback tax determination by the Texas Comptroller is binding on the City but not on the Developer or the Tenant.

3.05 Public Improvement Easements. The Parties agree that the transportation and utility facilities currently in existence are not adequate to provide acceptable service to the Property and the Project. It is therefore understood that the Public Improvements will be necessary to adequately serve the Property. It is also understood that it may become necessary or convenient to install and/or construct the Public Improvements on, over, across, and/or under the Property.

3.06 Additional Property. The Developer has entered into a contract to purchase an additional 1.5-acre tract of land known by the Parties as the "Boyles Tract," and the Developer has assigned the contract to purchase the Boyles Tract to the Tenant. The Tenant will assign the contract to purchase the Boyles Tract to the City before the closing anticipated in February 2017. Upon the City's acquisition of the Boyles Tract, the Parties agree that the definition and description of the "Property" in this Agreement, the Economic Development Program Agreement, the Ground Lease, and all other affected documents the Parties enter into that govern the Property will be amended to include the Boyles Tract as part of the "Property." Tenant agrees to pay the City an additional rent payment under the Ground Lease equal to the purchase price and closing costs for the Boyles Tract.

ARTICLE IV
ZONING AND PLATTING OF THE PROPERTY

4.01 Current Zoning. A portion of the Property is currently zoned AG Agricultural and a portion of the Property is currently zoned as a Planned Unit Development officially named "PUD 91" and commonly referred to as the "Bison Tract PUD". The current zoning is inconsistent with the plans to develop the Project on the Property. The Parties agree that they will work together in good faith to re-zone the Property for land uses that are consistent with the terms of this Agreement, although nothing herein shall be construed as an obligation on the part of the City to rezone the Property.

4.02 Consent of City to File Development Applications. The City, as the future purchaser of the Property, hereby authorizes the Tenant to file zoning, platting, permitting, and other types of development applications for all or a portion of the Property from time to time following the City's purchase of the Property, and, only as may be required to complete such applications, the City agrees to execute such applications as fee simple owner of the Property.

ARTICLE V
THE PROJECT

5.01 General Description. The Project will be planned, developed and constructed on the Property. The Project will be a master planned, mixed-use development that will be anchored by a Kalahari Resort and Convention Center, which will include the Hotel, the Convention Center, and the Water Park. In addition, the Project may include entertainment, recreation, and other uses of the Property permitted by the zoning at the time of development.

5.02 Amount of Investment. The Developer agrees to spend or cause to be spent a cumulative total of at least $350,000,000 in a combination of rent payments under the Ground Lease by the Tenant and in improvements to real property and additions to personal property

within the Property not later than the date stated in the construction schedule contemplated by **Section 5.07**, subject to (a) the City completing construction of the Offsite Public Improvements consistent with the construction schedule contemplated by **Section 5.07**; (b) the City first issuing bonds to finance the construction of the Convention Center as described in **Section 7.04**; (c) the City issuing all of the permits and other approvals necessary for construction of the Hotel, Convention Center, and Water Park; and (d) any delays caused by an event of force majeure. Such costs shall include all hard costs and soft costs.

5.03 The Hotel. The Hotel shall have a minimum of 975 guest rooms, at least one full-service restaurant, additional food and beverage outlets, room service, valet parking, bell and concierge service, and entertainment and retail facilities. A spa or exercise facility shall be located within the Project. The Hotel shall be located on the Property, and shall be adjacent to the Convention Center. The Hotel may be located on a separate platted lot from the lot on which the Convention Center will be developed.

5.04 The Convention Center. The Convention Center shall have a minimum of 150,000 square feet of indoor convention, exhibition, and meeting space. The Convention Center shall be located on the Property, and shall be attached or adjacent to the Hotel. The Convention Center may be located on a separate platted lot from the lot on which the Hotel will be developed.

5.05 The Water Park. The Water Park shall have a minimum of 200,000 square feet of water and related space attached or adjacent to the Hotel. The indoor portion of the Water Park may be in a separate building from the Hotel. The Water Park may include indoor and outdoor features. The Water Park may be located on a separate platted lot from the Hotel.

5.06 Jobs. The Developer will cause at least 700 FTE's to be employed at the Project no later than 12 months after the Project is opened and at least 700 FTE's will be maintained in the Project thereafter during the term of this Agreement.

5.07 Construction Schedule. The Parties agree that it is their intention that the construction of the Hotel, Convention Center, and the Water Park will be complete no later than December 31, 2021, or such other date agreed upon by the Parties after finalizing the development schedule. It is also the Parties intention that the Onsite Public Improvements and the Offsite Public Improvements be completed within a time frame consistent with the aforesaid goal. The Parties agree that it is their intention to use their best efforts to work together to finalize a development schedule no later than December 31, 2017, that is reasonable and will meet the aforesaid goals.

ARTICLE VI
PUBLIC IMPROVEMENTS

6.01 General. The Developer, the Tenant and the City agree that the transportation and utility facilities currently in existence are not adequate to provide acceptable service to the Property and the Project. It is therefore understood that extension and improvements to the transportation and utility facilities will be necessary to adequately serve the Property.

6.02 Public Improvements. The Public Improvements required for the Project includes the following:

(a) Onsite Public Improvements that are necessary to serve the development of the Project and will be confirmed as part of the platting process up to an amount not to exceed $15 million. The Parties agree that the priority for the Onsite Public Improvements will be to: (i) provide roadways and related facilities and utility improvements needed to provide the Hotel and Convention Center with access to US 79 and Kenney Fort Blvd., and with water and wastewater service; and (ii) construct an extension of a reuse water transmission line from the City's Wastewater Treatment Plant to a point of connection within the Property designated by the Developer to provide the service to the Property (whether such extension is constructed on-site or off-site). If additional funds from the $15 million are available, the Parties agree that they may be spent on transmission lines and related facilities needed to provide potable water to the Project, collection lines and related facilities needed to provide wastewater service to the Project; and drainage facilities needed to provide drainage for the Project. The Parties acknowledge that the City will provide for the Project a point of connection at the Property line for potable water, sewer, road and drainage improvements to be constructed onsite.

(b) Offsite Public Improvements to the intersection of US 79 and Harrell Parkway to include a newly constructed, multi-lane crossing of the Union Pacific Railroad line, turn/cuing expansion along US 79 and signal modifications. This project will also include the extension of a potable water line from the north side of US 79 via underground bore to a point south of US 79 and the rail line.

(c) Offsite Public Improvements to the existing crossing of the Union Pacific Railroad line at the wastewater treatment plant to include additional capacity, turn/cuing expansion, and a signal. (It is anticipated that (b) and (c) will cost approximately $7,000,000.)

(d) Offsite Public Improvements to improve the operation of Joe DiMaggio Blvd., between US 79 and Kenney Fort Blvd. (It is anticipated that (d) will cost approximately $1,000,000)

(e) Kenney Fort Blvd. Improvements to include improved direct access to the Property and an extension from Forest Creek to Gattis School Road. (It is anticipated that when the Offsite Public Improvements described in (b), (c), and (d) above are complete that there will be a balance of approximately $7,000,000 to partially fund the Kenney Fort Blvd. Improvements. Any additional cost will be borne solely by the City.)

The Developer and the City shall coordinate design and construction efforts related to the Public Improvements after which the City will enter into contracts for the construction of the Offsite Public Improvements and the Kenney Fort Blvd. Improvements and the Developer will enter into contracts for the construction of the Onsite Public Improvements. The Parties agree to utilize their best efforts to complete the construction of the Public Improvements in accordance with the construction schedule described in **Sec. 5.07.**

6.03 Financing of Public Improvements. Within 120 days after the date the City receives a written request from the Developer requesting that the City issue bonds to fund the Public Improvements, the City will issue one or more series of bonds and/or Certificates of Obligation in an amount sufficient to provide net proceeds of $30,000,000 to fund the Public Improvements or otherwise make such funds available. The City's intention is to issue Public Improvements Debt consistent with the most recent model (the "Model") shared with the Developer and Tenant, including with respect to the tenure and amortization in the Model. The Parties agree to use their best efforts to work together to determine appropriate terms of the Public Improvements Debt to ensure that the Project is both viable and consistent with the Parties' internal models. In any event, if the City decides to issue Public Improvements Debt with a tenure of less than 25 years, then the Parties agree to utilize a 25 year tenure and an amortization schedule consistent with the Model for purposes of the Project Fund. If the cost to contract for the construction of the Onsite Public Improvements exceeds $15,000,000, the Developer shall be responsible for the cost in excess of $15,000,000 for Onsite Public Improvements. If the cost to contract the construction of the Offsite Public Improvements and the Kenney Fort Blvd. Improvements exceeds $15,000,000, the City shall be responsible for the cost in excess of $15,000,000. If there are cost savings associated with the Offsite Public Improvements, such cost savings shall be shared equally between the City and the Developer with the City's share of such cost savings being expended on the Kenney Fort Blvd. Improvements and the Developer's share of such cost savings being expended on Onsite Public Improvements. If there are cost savings associated with the Onsite Public Improvements, and the City has issued bonds and/or Certificates of Obligation, the Parties agree that such savings may be repurposed or escrowed in a manner as advised by a nationally recognized bond counsel retained by the City. In the event that such savings are repurposed to other City uses not related to the Project, the debt payments for the repurposed proceeds will be excluded from this Agreement. If the City has not issued bonds

and/or Certificates of Obligation, then such cost savings shall reduce the Public Improvements Debt by a like amount (e.g., if the actual costs of Onsite Public Improvements total $10,000,000, then the Public Improvements Debt will be reduced from $30,000,000 to $25,000,000).

If the City fails or refuses to issue bonds or make funds available to fund the Public Improvements the Developer may, at its option, provide funds to construct the Public Improvements. Any funds so provided by the Developer, up to a maximum principal amount of $30,000,000 plus financing costs and the inducement payment amount described in the next sentence, shall be Public Improvements Debt (collectively, the "Alterative Public Improvement Debt"). Such Alternative Public Improvement Debt shall receive the same repayment priority as the City-issued Public Improvements Debt that it replaces plus such repayment will include an inducement payment amount paid to the Developer equal to 15 percent of such Alternative Public Improvement Debt.

6.04 Water and Sewer. The City holds the water and sewer certificates of convenience and necessity to provide retail water and sewer service to the Property. The City acknowledges that it has capacity to serve the full development of the Property with continuous and adequate water and sewer service. In the event the City is unable or unwilling at any time to provide continuous and adequate water and sewer service for the development of the Property contemplated by this Agreement, the City agrees that the Property may obtain retail water and sewer service from an alternative provider. The City agrees that the utility rates for the development within the Property shall not exceed the lowest retail water rate and lowest retail sewer rate charged by the City for other property located within the City's corporate limits.

6.05 Reuse Water. The City encourages the Developer and the Tenant to utilize the City's Reuse Water Utility for non-potable water uses. The City agrees to (a) provide the Developer and the Tenant reuse water sufficient to serve full development of the Project; and (b) sell to the Developer and the Tenant such reuse water at a rate equal to 70% of the regular reuse water rates adopted by the City Council. Current rates for reuse water are adopted in City Ordinance No. O-2014-1645. The Developer or the Tenant may, at their option, elect to drill water well(s) to provide water for non-potable uses. The City agrees that the Developer or the Tenant may drill water wells on the Property and still receive the discounted rate for reuse water described above. The Parties agree that it is their intention to work together on a reservation of capacity for reuse water sufficient to serve full development of the Project once sufficient engineering is completed to quantify the needed reservation.

ARTICLE VII
HOTEL AND CONVENTION CENTER

7.01 Location of the Hotel. As stated in Section 351.102(b) of the Texas Tax Code and the Private Letter Ruling, the Hotel must be located within 1,000 feet of a convention center that is owned by the City. The Developer and the City agree that the Hotel will be located on the Property, and will be adjacent to and within 1,000 feet of the Convention Center within the meaning of Section 351.102(b) of the Texas Tax Code. In addition, any facilities ancillary to the Hotel will be located within 1,000 feet of either the Hotel or the Convention Center within the meaning of Section 351.102(b) of the Texas Tax Code.

7.02 Cost of the Hotel. The design, construction, operation, management, repair and maintenance of the Hotel shall be at the sole cost of the Developer.

7.03 Location of the Convention Center. The Convention Center shall be located on the Property, owned by the City, and located adjacent to the Hotel.

7.04 Financing and Construction of the Convention Center. Within 120 days after the date the City receives a written request from the Tenant requesting that the City issue bonds to fund the Convention Center, the City and/or the TED Corp. shall issue one or more series of bonds and/or debt obligations in an amount sufficient to provide net proceeds of $40,000,000 or otherwise make such funds available to design and construct the Convention Center. The City's intention is to issue Convention Center Debt consistent with the most recent model (the "Model") shared with the Developer and Tenant, including with respect to the tenure and amortization in the Model. The Parties agree to use their best efforts to work together to determine appropriate terms of the Convention Center Debt to ensure that the Project is both viable and consistent with the Parties' internal models. In any event, if the City decides to issue Convention Center Debt with a tenure of less than 25 years, then the Parties agree to utilize a 25 year tenure and an amortization schedule consistent with the Model for purposes of the Project Fund. In the event that the cost of the Convention Center exceeds $40,000,000, then all such additional costs shall be borne solely by the Tenant even though title to the Convention Center is in the City. The Developer, on behalf of the Tenant and the City, shall cause the construction of the Convention Center using the net bond proceeds of $40,000,000 that the City will make available for this purpose. The Developer understands that it may be required to abide by certain requirements regarding bidding and/or other alternative delivery methods as required by state law. The Developer, on behalf of the Tenant and the City, shall cause the development and construction of the Convention Center pursuant to a development and construction agreement, the form of which will be entered into before construction commences on the Convention Center. The Tenant shall operate and maintain the Convention Center pursuant to a Convention Center operating lease, the form of which will be agreed upon before commencement of construction of the Convention Center. If the City fails or refuses to issue bonds or otherwise make funds available to fund the Convention Center, the City agrees the Tenant may, at its option, provide funds to construct the Convention Center. Any funds so provided by the Tenant, up to a

maximum principal amount of $40,000,000 plus financing costs and the inducement payment amount described in the next sentence shall be Convention Center Debt (collectively, the "Alternative Convention Center Debt"). Such Alternative Convention Center Debt shall receive the same repayment priority as the City-issued Convention Center Debt that it replaces plus such repayment will include an inducement payment amount paid to the Developer equal to 15 percent of such Alternative Convention Center Debt.

Before the City issues any Convention Center Debt, the Tenant agrees to: (a) plat that portion of the Property on which the Convention Center will be constructed; and (b) release from the Ground Lease that portion of the Property on which the Convention Center will be located which release will be free of liens or other monetary obligations. The City agrees to convey title to the Convention Center in accordance with the terms of the Convention Center operating lease. Until such a conveyance, title to the Convention Center remains vested in the City.

ARTICLE VIII
STATE OF TEXAS PARTICIPATION

8.01 Private Letter Ruling. The City requested and received the Private Letter Ruling attached as **Exhibit E** from the Texas Comptroller of Public Accounts. As stated in the Private Letter Ruling, the City is a municipality described in Section 351.102(b) of the Texas Tax Code; therefore, pursuant to Section 351.102(c) of the Texas Tax Code, the City is entitled to the benefits under Section 151.429(h) of the Texas Tax Code or Section 2303.5055 of the Texas Government Code, as they relate to a hotel project under Section 351.102(b) of the Texas Tax Code. It is the intention of the Parties hereto to structure the Project so that the Parties will receive such benefits. In addition, the City submitted a request for a Supplemental Private Letter Ruling from the Texas Comptroller of Public Accounts in the form attached as **Exhibit F** on November 18, 2016.

ARTICLE IX
MISCELLANEOUS

9.01 Mutual Assistance. The City, the Developer and the Tenant will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions in order to put each other in the same economic condition contemplated by this Agreement regardless of any changes in public policy, the law, or taxes or assessments attributable to the Property.

9.02 Representations and Warranties. The City represents and warrants to the Developer and the Tenant that: (a) this Agreement is within its authority, (b) it is duly authorized and empowered to enter into this Agreement, (c) this Agreement is enforceable against the City; and (d) all obligations of the City other than issuing the Public Improvement Debt and the

Convention Center Debt are proprietary, unless otherwise ordered by a court of competent jurisdiction. The Developer and the Tenant, respectively, represents and warrants to the City that it has the requisite authority to enter into this Agreement and this Agreement is enforceable against it.

9.03 Default; Remedies.

(a) No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure, such reasonable time determined based on the nature of the alleged failure, but in no event less than 30 days or more than 90 days after written notice of the alleged failure has been given. In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given or another Party begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. A cure by the Developer shall be considered a cure by the Tenant; and a cure by the Tenant shall be considered a cure by the Developer. Notwithstanding the foregoing, however, a Party shall be in default of its obligation to make any payment required under this Agreement if such payment is not made within five business days after it is due.

(b) If a Party is in default, the aggrieved Party may, at its option and without prejudice to any other right or remedy under this Agreement, including the remedies under **Sections 6.03**, **7.04** and **9.03(c)**, seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgement Act, specific performance, mandamus, and injunctive relief. Notwithstanding the foregoing, however, no default under this Agreement shall:

(i) entitle the aggrieved Party to terminate this Agreement; or

(ii) adversely affect or impair the current or future obligations of the City to provide water or sewer service or any other service to the Property; or

(iii) entitle the aggrieved Party to seek or recover consequential monetary damages of any kind; or

(iv) reduce the term of this Agreement as described in **Section 9.17** or reduce the term of the Ground Lease.

(c) In lieu of the remedies identified in **Sections 6.03, 7.04,** and **9.03(b)** of this Agreement, the City may opt to pursue any of the following remedies, in which case such remedy shall be the exclusive remedy for the default to which it applies:

(i) If the Tenant is in default of the rent payment obligations pursuant to the terms of the Ground Lease, the City may elect to exercise its right of partial termination under the Ground Lease.

(ii) If the Developer is in Default of **Section 5.02** (Amount of Investment), the amount by which the investment under **Section 5.02** falls short of $350,000,000 may be deducted from the payments required to be paid by the City to the Developer or the Tenant pursuant to the Economic Development Program Agreement.

(iii) If the Developer is in Default of **Section 5.06** (Jobs), $5,000 for each job not provided may be deducted from the payments required to be paid by the City to the Developer or the Tenant pursuant to the Economic Development Program Agreement.

(iv) For every day the Developer is in default of the requirements of **Section 5.07** (Construction Schedule), the term of this Agreement may be reduced by one day.

(d) In the event any legal action or proceeding is commenced between the Parties to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

(e) A default of this Agreement by either the Developer or Tenant shall be considered at default of this Agreement and a default of the Economic Development Program Agreement by both the Developer and Tenant.

9.04 Undocumented Workers. The Developer certifies that it 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 Developer is convicted of a violation under 8 U.S.C. § 1324a(f), the Developer shall repay (or cause the Tenant to repay) the amount of the public subsidy provided under this Agreement 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.

9.05 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns.

9.06 Assignment. Except as otherwise provided in this section, neither the Developer nor the Tenant may assign all or part of its rights and obligations to a third party without the express written consent of the City unless such assignment is a collateral assignment to a lender. The Developer and the Tenant may each assign all or part of its respective rights and obligations under this Agreement to an entity that is controlled by or under common control with the

Developer or the Tenant, and shall provide a copy of the assignment to the City within 15 days after the effective date of the assignment. The City may not assign this Agreement to an unrelated third party but may assignment to a City-created economic development corporation or other City-created entity.

9.07 Amendment. This Agreement may be amended only by the mutual written agreement of the Parties. As the Parties continue work on the pre-development activities contemplated herein and prepare the various agreements referenced herein in connection with the design, development, and financing of the Project, the parties will amend this Agreement to incorporate additional details, terms and conditions and the various agreements referenced above shall be appended as exhibits to this Agreement.

9.08 Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, by electronic mail, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

If to City: City of Round Rock
221 E. Main Street
Round Rock, TX 78664
Attn: City Manager
Phone: (512) 218-5400
Email: citymanager@roundrocktexas.gov

With a required copy to:

Sheets & Crossfield
309 E. Main Street
Round Rock, TX 78664
Attn: Stephan L. Sheets
Phone: (512) 255-8877
Email: steve@scrrlaw.com

If to the Developer or the Tenant:
KR Acquisitions, LLC and KR CC, INC.
P.O. Box 590
1305 Kalahari Drive
Wisconsin Dells, WI 53965
Attn: Mary Bonte Spath
Phone: (608) 254-5320
Email: mbonte@kalahariresorts.com

With required copy to:

Shupe Ventura Lindelow & Olson, PLLC
9406 Biscayne Blvd.
Dallas, Texas 74218
Attn: Misty Ventura
Phone: (214) 328-1101
Email: misty.ventura@svlandlaw.com

Any Party may designate a different address at any time upon written notice to the other Parties.

9.09 Interpretation. Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

9.10 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.

9.11 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected. It is also the intention of the Parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

9.12 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

9.13 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.

9.14 Force Majeure. Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (an "event of force majeure"). An event of force majeure for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion, vandalism; storm or similar occurrences; orders or acts of military or civil authority; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay; unusual weather events; a recession; and unusual delays in obtaining City approvals of plats, permits, or other development approvals required to construct and operate the Project. For purpose of this Section 9.14, "recession" shall mean a recession consisting of two (2) consecutive quarters of negative economic growth as measured by the gross domestic product for the Dallas-

Fort Worth metropolitan area according to the U.S. Department of Commerce, Bureau of Economic Analysis. Except as otherwise expressly provided herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of force majeure.

9.15 Exhibits. The following exhibits are attached and incorporated by reference for all purposes:

Exhibit A:	Property Description and Depiction
Exhibit B:	Economic Development Program Agreement
Exhibit C:	Form of Ground Lease
Exhibit D:	Form of Memorandum of Ground Lease to be Recorded
Exhibit E:	Existing Private Letter Ruling
Exhibit F:	Form of Request for Additional Private Letter Ruling
Exhibit G:	Form of Assignment of Purchase Contracts
Exhibit H:	Form of Escrow Instructions

9.16 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the Parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

9.17 Term. This Agreement shall become enforceable upon its Effective Date and shall expire 40 years after the date the City has issued the last Certificates of Occupancy for the Hotel, the Convention Center, and the Water Park.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

EXECUTED to be effective as of the Effective Date.

CITY OF ROUND ROCK, TEXAS,
a home rule city and municipal corporation

By:_____
Alan McGraw, Mayor

APPROVED as to form:

_____
Stephan L. Sheets, City Attorney

ROUND ROCK TRANSPORTATION AND ECONOMIC DEVELOPMENT CORPORATION,

By:_____
Alan McGraw, President

APPROVED as to form:

_____
Stephan L. Sheets, Corporation Attorney

KR Acquisitions, LLC
a Delaware limited liability company

By: _____
Todd Nelson, President

KR CC, INC.,
a Delaware corporation

By: _____
Todd Nelson, President

Date: _____

Exhibit A

Property Description and Depiction

(see attached)

351.737 ACRES
LAND
DESCRIPTIONS

FN. NO. 16-433(DLB)
NOVEMBER 28, 2016
FILE NO. 222010482

DESCRIPTION

OF A 351.737 ACRE TRACT OF LAND OUT OF THE P.A. HOLDER SURVEY, ABSTRACT NO 297 SITUATED IN THE CITY OF ROUND ROCK, WILLIAMSON COUNTY, TEXAS BEING A PORTION OF THE REMAINDER OF THAT CERTAIN 157.385 ACRE TRACT OF LAND CONVEYED TO BISON TRACT 79, LTD. BY DEED OF RECORD IN DOCUMENT NO. 2007049657 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS; ALL OF THAT CERTAIN 60.58 ACRE TRACT OF LAND CONVEYED TO ERNEST NELSON JOHNSON, JOHN DAVID JOHNSON AND BERTHA MARIE JOHNSON KELLER BY DEED OF RECORD IN DOCUMENT NO. 2003035323 OF SAID OFFICIAL PUBLIC RECORDS, SAME BEING ALL OF LOT 9 OF THE SWENSON SUBDIVISION, OF RECORD IN VOLUME 13, PAGE 119 OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS; ALL OF THAT CERTAIN 155.589 ACRE TRACT OF LAND CONVEYED TO KEITH KRIENKE AND MARK MEREDITH BY DEED OF RECORD IN DOCUMENT NO. 2006113854 OF SAID OFFICIAL PUBLIC RECORDS, SAME BEING CONVEYED TO GREGORY CARTER BY DEED OF RECORD IN DOCUMENT NO. 2010072268 OF SAID OFFICIAL PUBLIC RECORDS; AND ALSO LOT 1, OF THE BERTIL TELANDER SUBDIVISION, OF RECORD IN CABINET H, SLIDE 126 OF THE PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS AS CORRECTED BY INSTRUMENT OF RECORD IN VOLUME 1419, PAGE 416 OF THE REAL PROPERTY RECORDS OF WILLIAMSON COUNTY, TEXAS; SAID LOT 1 CONVEYED TO DAVID BOYLES BY DEED OF RECORD IN DOCUMENT NO. 2014059825 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS; SAID 351.737 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED IN FOUR PARTS BY METES AND BOUNDS AS FOLLOWS:

PART 1 - 337.295 ACRES

BEGINNING, at a 5/8-inch iron rod found in the southerly right-of-way line of the Union Pacific Railroad (100' R.O.W.) being the northeasterly corner of said 157.385-acre tract, also being the northwesterly corner of said 155.589-acre tract;

THENCE, N63°37'28"E, leaving the northeasterly corner of said 157.385 acre tract, along the southerly right-of-way line of the Union Pacific Railroad, for a portion of the northerly line hereof, a distance of 2864.50 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found at the northwesterly corner of Lot 1, Block A of Final Plat of Brushy Creek Regional Wastewater Treatment Plant, a subdivision of record in Document No. 2007067173 of said Official Public Records, being the northeasterly corner of said 155.589 acre tract and hereof;

THENCE, leaving the southerly right-of-way line of the Union Pacific Railroad, along the common line of said Lot 1 and said 155.589-acre tract, for the easterly line hereof, the following six (6) courses and distances:

1) S26°12'00"E, a distance of 49.99 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found;

2) N63°41'06"E, a distance of 81.63 feet to a 1/2-inch iron rod with illegible cap found;

3) S03°33'52"E, a distance of 1695.07 feet to a 1/2-inch iron rod with "LCRA" cap found;

4) N58°53'53"E, a distance of 362.51 feet to a 1/2-inch iron rod with "LCRA" cap found;

5) N58°35'13"E, a distance of 245.00 feet to a 1/2-inch iron rod with "LCRA" cap found;

6) S02°28'32"E, passing at a distance of 387.44 feet, a 1/2-inch iron rod with "SURVCON INC" cap found, and continuing for a total distance of 463.04 feet to a point in the center of Brushy Creek, being in the northerly line of Lot 59, Block F of Final Plat of Freeman Park Subdivision Phase I, of record in Document No. 2015010846 of said Official Public Records, also being the most southerly southwesterly corner of said Lot 1, for the southeasterly corner hereof;

THENCE, leaving the most southerly southwesterly corner of said Lot 1, along or near the center of Brushy Creek, with the northerly line of said Lot 59; the northerly line of Lot 26, Block B of Lake Forest III, Village III Revised, a subdivision of record in Document No. 2004095851 of said Official Public Records; the northerly line of Lot 43, Block E of Final Plat of Sonoma Section 9, a subdivision of record in Document No. 2004021881 of said Official Public Records; and the northerly line of Lot 46, Block F of Final Plat of Sonoma Section 11, a subdivision of record in Document No. 2005000171 of said Official Public Records for a portion of the southerly line hereof, the following twenty-three (23) courses and distances:

1) S71°58'01"W, a distance of 59.92 feet to an angle point;

2) S66°40'11"W, a distance of 90.58 feet to an angle point;

3) S49°32'25"W, a distance of 78.88 feet to an angle point;

4) S40°47'39"W, a distance of 82.04 feet to an angle point;

5) S23°37'20"W, a distance of 81.79 feet to an angle point;

6) S28°52'04"W, a distance of 110.18 feet to an angle point;

7) S36°12'52"W, a distance of 282.02 feet to an angle point;

8) S38°03'24"W, a distance of 84.64 feet to an angle point;

9) S47°37'12"W, a distance of 329.19 feet to an angle point;

10) S15°41'16"E, a distance of 184.53 feet to an angle point;

11) S07°27'39"E, a distance of 150.82 feet to an angle point;

12) S03°49'27"W, a distance of 142.77 feet to an angle point;

13) S21°18'06"W, a distance of 94.11 feet to an angle point;

14) S44°12'01"W, a distance of 165.58 feet to an angle point;

15) S69°51'49"W, a distance of 215.14 feet to an angle point;

16) S45°25'49"W, a distance of 111.25 feet to an angle point;

17) S26°29'36"W, a distance of 94.25 feet to an angle point;

18) S31°48'00"W, a distance of 125.62 feet to an angle point;

19) S51°58'20"W, a distance of 230.16 feet to an angle point;

20) S61°55'26"W, a distance of 477.59 feet to an angle point;

21) S54°23'53"W, a distance of 144.42 feet to an angle point;

22) S40°28'56"W, a distance of 383.47 feet to an angle point;

23) S42°15'33"W, a distance of 108.54 feet to the southeasterly corner of said 60.58-acre tract, for an angle point hereof;

THENCE, leaving the westerly line of said 155.589-acre tract, along or near the center of Brushy Creek, with the northerly line of Lot 46 of said Sonoma Section 11 and the northerly line of Lot 46, Block F of Final Plat of Sonoma Section 12, a subdivision of record in Document No. 2005000358 of said Official Public Records for a portion of the southerly line hereof, the following five (5) courses and distances:

1) S42°15'33"W, a distance of 148.42 feet to an angle point;

2) S80°51'11"W, a distance of 301.01 feet to an angle point;

3) S83°08'53"W, a distance of 200.01 feet to an angle point;

4) S67°32'04"W, a distance of 132.76 feet to an angle point;

5) S62°26'47"W, a distance of 141.77 feet to the southeasterly corner of said 157.385-acre tract, being the southwesterly corner of said 60.58-acre tract, for an angle point hereof;

THENCE, leaving the southwesterly corner of said 60.58-acre tract, along the approximate center of Brushy Creek, with the northerly line of said Lot 46 and in part along the northerly line of that certain 1.764-acre tract of land conveyed to the City of Round Rock by deed of record in Document No. 2013056475 of said Official

Public Records, for the southerly line hereof, the following four (4) courses and distances:

1) S70°10'09"W, a distance of 138.30 feet to an angle point;

2) S58°52'42"W, a distance of 700.00 feet to an angle point;

3) S67°52'42"W, a distance of 240.00 feet to an angle point;

4) S53°04'42"W, a distance of 132.01 feet to a point in the easterly right-of-way line of Kenney Fort Boulevard (R.O.W. Varies) for the southwesterly corner hereof;

THENCE, leaving the approximate center of Brushy Creek and the northerly line of said 1.764-acre tract, along the easterly right-of-way line of Kenney Fort Boulevard, for a portion of the westerly line hereof, the following nine (9) courses and distances:

1) N03°27'14"W, passing at a distance of 100.00 feet, a 1/2-inch iron rod with "BURY" cap set for reference, and continuing for a total distance of 492.81 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found;

2) N85°58'17"E, a distance of 58.16 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found;

3) N03°26'15"W, a distance of 243.69 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found;

4) N19°10'44"W, a distance of 376.64 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found;

5) N26°22'35"W, a distance of 1454.98 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found;

6) N22°47'26"W, a distance of 160.27 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found;

7) N26°23'34"W, a distance of 114.86 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found;

8) N23°12'13"W, a distance of 254.74 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found;

9) N02°18'29"W, a distance of 323.01 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found at the intersection of the easterly right-of-way line of Kenney Fort Boulevard and the southerly right-of-way line of the Union Pacific Railroad, being in the northerly line of said 157.385-acre tract, for the northwesterly corner hereof;

THENCE, N63°36'45"E, leaving the easterly right-of-way line of Kenney Fort Boulevard, along the southerly right-of-way line of the Union Pacific Railroad, being the northerly line of said 157.385-acre tract for the northerly line hereof, a distance of 2121.63 feet to the **POINT OF BEGINNING**, containing an area of 338.795 acres (14,627,230 square feet) of land, more or less, **SAVE AND EXCEPT THEREFROM THE FOLLOWING TRACT OF LAND:**

THAT CERTAIN 1.50 ACRE TRACT OF LAND CONVEYED TO KEITH KRIENKE AND LAURA RINEHART KRIENKE BY DEED OF RECORD IN DOCUMENT NO. 2006074399 OF SAID OFFICIAL PUBLIC RECORDS, TEXAS; SAID 1.50 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, a 1/2-inch iron rod with "Baker Aicklen" cap found in the southerly right-of-way line of the Union Pacific Railroad for the northwesterly corner of Lot 1, Block A of said Final Plat of Brushy Creek Regional Wastewater Treatment Plant of record, being the northeasterly corner of said 155.589-acre tract;

THENCE, S26°12'00"E, leaving the southerly right-of-way line of the Union Pacific Railroad, along the common line of said 155.589-acre tract and said Lot 1, a distance of 49.99 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found;

THENCE, S03°34'49"E, leaving the westerly line of said Lot 1, over and across said 155.589-acre tract, a distance of 291.32 feet to a 1/2-inch iron rod with "Stan Coalter" cap found for the **POINT OF BEGINNING**, being the northeasterly corner of said 1.50-acre tract and hereof;

THENCE, along the exterior lines of said 1.50-acre tract for the exterior lines hereof, the following four (4) courses and distances:

1) S03°34'49"E, a distance of 298.62 feet to a 1/2-inch iron rod with "Stan Coalter" cap found for the southeasterly corner hereof;

2) S74°24'52"W, a distance of 244.97 feet to a 1/2-inch iron rod with "Stan Coalter" cap found for the southwesterly corner hereof;

3) N06°37'52"E, a distance of 340.30 feet to a 1/2-inch iron rod with "Stan Coalter" cap found for the northwesterly corner hereof;

4) N81°44'34"E, a distance of 179.89 feet to the **POINT OF BEGINNING**, containing an area of 1.500 acres (65,357 square feet) of land, leaving a **TOTAL NET AREA OF 337.295 ACRES** (14,692,570 square feet) of land, more or less, within these metes and bounds.

PART 2 - 0.037 ACRES

BEGINNING, at a 1/2-inch iron rod with "Baker Aicklen" cap found in the westerly right-of-way line of Kenney Fort Boulevard (R.O.W. Varies), being in the common line of said 157.385-acre tract and that certain 107.17-acre tract of land conveyed to John Bolt Harris, Et. Al. by deed of record in Volume 2372, Page 112 of said Official Public Records and to The Hickox Family Living Trust by deed of record in Document No. 2006053683 of said Official Public Records, for the northwesterly corner hereof;

THENCE, S28°42'41"E, leaving the easterly line of said 107.17-acre tract, along the westerly right-of-way line of Kenney Fort Boulevard for the northerly line hereof, a distance of 59.01 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found for the northerly corner of that certain 0.158-acre tract of land conveyed to the City of Round Rock by deed of record in Document No. 2011041098 of said Official Public Records for the northeasterly corner hereof;

THENCE, leaving the westerly right-of-way line of Kenney Fort Boulevard, with the northerly line of said 0.158-acre tract for the easterly and southerly lines hereof, the following two (2) courses and distances:

1) S17°26'31"W, a distance of 55.47 feet to a 1/2-inch iron rod with "SAM" cap found for the southeasterly corner hereof;

2) S63°37'08"W, a distance of 8.52 feet to a 1/2-inch iron rod with "BURY" cap set in the common line of said 107.17-acre tract and said 157.385-acre tract for the southwesterly corner hereof from which, a 1/2-inch iron rod with "SAM" cap found for the apparent northwesterly corner of said 0.158-acre tract as found bears, N76°15'30"E, a distance of 0.67 feet;

THENCE, N02°09'44"W, leaving the northerly line of said 0.158-acre tract, along the common line of said 107.17-acre tract and said 157.385-acre tract for the westerly line hereof, a distance of 108.54 feet to the **POINT OF BEGINNING**, containing an area of 0.037 acres (1,602 square feet) of land, more or less, within these metes and bounds.

PART 3 - 4.609 ACRES

COMMENCING, at a 1/2-inch iron rod with "Baker Aicklen" cap found in the westerly right-of-way line of Kenney Fort Boulevard (R.O.W. Varies), being in the common line of said 157.385-acre tract and that certain 107.17-acre tract of land conveyed to John Bolt Harris, Et. Al. by deed of record in Volume 2372, Page 112 of said Official Public Records and to The Hickox Family Living Trust by deed of record in Document No. 2006053683 of said Official Public Records, for the northwesterly corner hereof;

THENCE, S02°09'44"E, leaving the westerly right-of-way line of Kenney Fort Boulevard, along the common line of said 107.17 acre tract and said 157.385 acre tract, a distance of 196.31 feet to a 1/2-inch iron rod with "BURY" cap set in the southerly line of that certain 0.158 acre tract of land conveyed to the City of Round Rock by deed of record in Document No. 2011041098 of said Official Public Records for the **POINT OF BEGINNING**, being the northwesterly corner hereof from which, a 1/2-inch iron rod with "SAM" cap found for the apparent southwesterly corner of said 0.158 acre tract as found bears, N63°02'14"E, a distance of 0.70 feet;
THENCE, leaving the easterly line of said 107.17-acre tract, with the southerly line of said 0.158-acre tract for the northerly line hereof, the following two (2) courses and distances:

1) N63°33'51"E, a distance of 47.01 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found;

2) S71°12'55"E, a distance of 56.50 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found in the westerly right-of-way line of Kenney Fort Boulevard, being the southeasterly corner of said 0.158-acre tract, for the northeasterly corner hereof;

THENCE, S26°22'11"E, leaving the southeasterly corner of said 0.158-acre tract, over and across said 157.385-acre tract, along the westerly right-of-way line of Kenney Fort Boulevard for the easterly line hereof, a distance of 695.06 feet to a 1/2-inch iron rod found for the northeasterly corner of that certain 0.864-acre tract of land conveyed to the City of Round Rock by deed of record in Document No. 2011041098 of said Official Public Records for the southeasterly corner hereof;

THENCE, leaving the westerly right-of-way line of Kenney Fort Boulevard, with the northerly line of said 0.864-acre tract for the southerly line hereof, the following two (2) courses and distances:

1) S18°36'13"W, a distance of 56.47 feet to a 1/2-inch iron rod found;

2) S63°36'13"W, a distance of 395.45 feet to a 1/2-inch iron rod with "BURY" cap set in the common line of said 107.17-acre tract and said 157.385-acre tract for the southwesterly corner hereof from which, a 1/2-inch iron rod found for the apparent northwesterly corner of said 0.864-acre tract as found bears, N58°21'23"E, a distance of 1.69 feet;

THENCE, N02°09'44"W, leaving the northerly line of said 0.864-acre tract, along the common line of said 107.17-acre tract and said 157.385-acre tract for the westerly line hereof, a distance of 849.94 feet to the **POINT OF BEGINNING**, containing an area of 4.609 acres (200,777 square feet) of land, more or less, within these metes and bounds.

PART 4 - 9.796 ACRES

COMMENCING, at a 1/2-inch iron rod with "Baker Aicklen" cap found in the westerly right-of-way line of Kenney Fort Boulevard (R.O.W. Varies), being in the common line of said 157.385-acre tract and that certain 107.17-acre tract of land conveyed to John Bolt Harris, Et. Al. by deed of record in Volume 2372, Page 112 of said Official Public Records and to The Hickox Family Living Trust by deed of record in Document No. 2006053683 of said Official Public Records, for the northwesterly corner hereof;
THENCE, S02°09'44"E, leaving the westerly right-of-way line of Kenney Fort Boulevard, along the common line of said 107.17 acre tract and said 157.385 acre tract, a distance of 1133.82 feet to a 1/2-inch iron rod with "BURY" cap set in the southerly line of that certain 0.864 acre tract of land conveyed to the City of Round Rock by deed of record in Document No. 2011041098 of said Official Public Records for the **POINT OF BEGINNING**, being the northwesterly corner hereof from which, a 1/2-inch iron rod with "SAM" cap found for the apparent southwesterly corner of said 0.864 acre tract as found bears, N62°52'19"E, a distance of 1.77 feet;

THENCE, leaving the easterly line of said 107.17-acre tract, with the southerly line of said 0.864-acre tract for the northerly line hereof, the following two (2) courses and distances:

1) N63°36'57"E, a distance of 431.40 feet to a 1/2-inch iron rod found;

2) S71°27'38"E, a distance of 56.40 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found in the westerly right-of-way line of Kenney Fort Boulevard, being the southeasterly corner of said 0.864-acre tract, for the northeasterly corner hereof;

THENCE, leaving the southeasterly corner of said 0.864-acre tract, along the westerly right-of-way line of Kenney Fort Boulevard for the easterly line hereof, the following four (4) courses and distances:

1) S26°22'09"E, a distance of 250.82 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found at the point of curvature of a non-tangent curve to the right;

2) Along said non-tangent curve to the right, having a radius of 1441.72 feet, a central angle of 12°09'39", an arc length of 306.00 feet, and a chord which bears, S21°15'08"E, a distance of 305.42 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found at the end of said curve;

3) S00°08'16"E, a distance of 360.25 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found;

4) S16°10'46"W, a distance of 165.87 feet to a 1/2-inch iron rod with "SAM" cap found for the most northerly northeasterly

corner of that certain 12.1-acre tract of land conveyed to the City of Round Rock by deed of record in Document No. 2013049009 of said Official Public Records for the southeasterly corner hereof;

THENCE, S88°41'51"W, leaving the westerly right-of-way line of Kenney Fort Boulevard, along the northerly line of said 12.1-acre tract for the southerly line hereof, a distance of 267.19 feet to a 1/2-inch iron rod with "Baker Aicklen" cap found in the easterly line of that certain 4.42-acre tract of land conveyed to Thomas P. Elrod Et. Ux. By deed of record in Document No. 1813, Page 540 of said Official Public Records, being the westerly line of said 157.385-acre tract, also being the most northerly northwesterly corner of said 12.1-acre tract for the southwesterly corner hereof;

THENCE, N01°23'35"W, leaving the northerly line of said 12.1-acre tract, along the common line of said 157.385-acre tract and said 4.42-acre tract for a portion of the westerly line hereof, a distance of 498.34 feet to a 1/2-inch iron rod found for the northeasterly corner of said 4.42-acre tract;

THENCE, S89°11'33"W, along the irregular westerly line of said 157.385-acre tract and the northerly line of said 4.42-acre tract, passing at a distance of 319.72 feet, a 1/2-inch iron rod found for the northwesterly corner of said 4.42-acre tract, and continuing for a total distance of 323.61 feet to a 1/2-inch iron rod found in the common line of said 157.385-acre tract and said 107.17-acre tract for the southwesterly corner hereof;

THENCE, N02°09'44"W, along the common line of said 157.385-acre tract and said 107.17-acre tract for a portion of the westerly line hereof, a distance of 367.85 feet to the **POINT OF BEGINNING**, containing an area of 9.796 acres (426,728 square feet) of land, more or less, within these metes and bounds.

BEARING BASIS: THE BASIS OF BEARING OF THE SURVEY SHOWN HEREON IS TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, NAD 83(96), UTILIZING WESTERN DATA SYSTEMS CONTINUALLY OPERATING REFERENCE STATION (CORS) NETWORK.

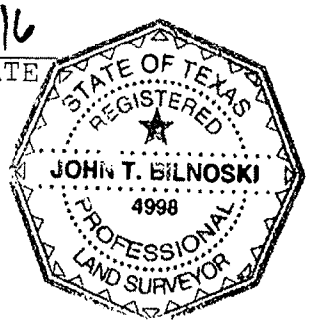
I, JOHN T. BILNOSKI, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION.

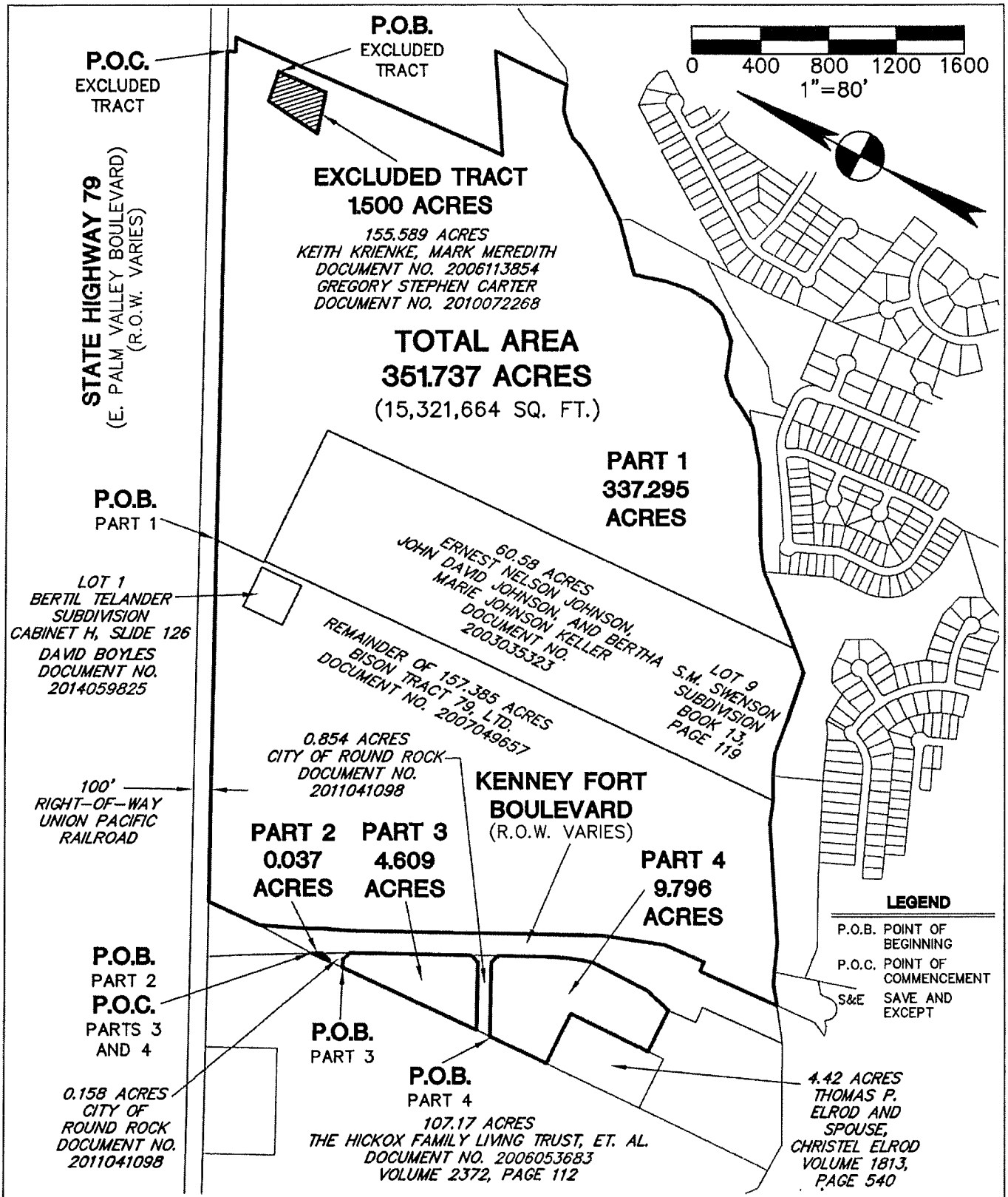
11/29/16

STANTEC CONSULTING
SERVICES INC.
221 WEST SIXTH STREET
SUITE 600
AUSTIN, TEXAS 78701

JOHN T. BILNOSKI
R.P.L.S. NO. 4998
STATE OF TEXAS
TBPLS # F-10194230
john.bilnoski@stantec.com

DATE





Stantec
221 West Sixth Street, Suite 600
Austin, Texas 78701
Tel. (512) 328-0011 Fax (512) 328-0325
TBPE # F-6324 TBPLS # F-10194230

SKETCH TO ACCOMPANY DESCRIPTION

OF 351.737 ACRES OF LAND OUT OF THE P.A. HOLDER SURVEY, ABSTRACT NO. 294, SITUATED IN THE CITY OF ROUND ROCK, WILLIAMSON COUNTY, TEXAS BEING A PORTION OF THAT CERTAIN 157.385 ACRE TRACT OF LAND OF RECORD IN DOCUMENT NO. 2007049657 AND ALL OF THOSE CERTAIN TRACTS OF LAND OF RECORD IN DOCUMENT NO. 2003035323, 2006113854 AND 2010072268, ALL OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS; ALSO BEING ALL OF LOT 9 OF THE S.M. SWENSON SUBDIVISION, OF RECORD IN BOOK 13, PAGE 119 OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS; AND ALSO LOT 1, OF THE BERTIL TELANDER SUBDIVISION, OF RECORD IN CABINET H, SLIDE 126 OF THE PLAT RECORDS OF WILLIAMSON COUNTY, TEXAS

KR CC, INC

DATE: 11/28/2016	DRAWN BY: KWA/DLB	FN: 16-433 (DLB)	FILE: V:\2220\ACTIVE\SURVEY\222010482EX3.DWG	PROJECT No. 222010482

V:\2220\active\222010482\survey\222010482EX3.dwg Nov 29, 16 8:41 AM by: dbogaert

Exhibit B

Economic Development Program Agreement

(see attached)

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement (this "Agreement") is entered into this 15th day of December, 2016 (the "Effective Date"), by and among the City of Round Rock, Texas, a Texas home rule municipal corporation (the "City"), the Round Rock Transportation and Economic Development Corporation, a "Type B corporation" created under the authority of Chapter 501, Texas Local Government Code (the "TED Corp."), KR Acquisitions, LLC, a Delaware limited liability company (the "Developer"), and KR CC, INC., a Delaware corporation (the "Tenant"). The City, the TED Corp., the Developer and the Tenant are, collectively, the "Parties" to this Agreement.

RECITALS

WHEREAS, the City has adopted Resolution No. _____, attached as **Exhibit A** ("Program Resolution"), establishing an economic development program; and

WHEREAS, the Developer is considering the construction of a master-planned mixed use project on the Property anchored by a Kalahari Resort and Convention Center, including a hotel with a minimum of 975 guest rooms, a convention and exhibition center, and an indoor water park, all as further described in Sections 3.03, 3.04, 3.05 (the "Project"); and

WHEREAS, the Project may also include entertainment, recreation, and other uses of the Property permitted by the zoning at the time of development; and

WHEREAS, the City has adopted Resolution No. _____, attached hereto as **Exhibit B** (the "Authorizing Resolution" and together with the Program Resolution, collectively, the "City Resolutions"), authorizing the Mayor to enter into this Agreement with the Developer and the Tenant in recognition of the positive economic benefits to the City through development of the Project on approximately 351.7 acres of land, as described and shown on **Exhibit C** (the "Property"); and

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code whereby the Developer intends to operate portions of the Project in conformance with the City's development approvals for the Project and the Tenant intends to comply with the terms of the Ground Lease, and;

WHEREAS, the Developer intends to invest or cause to be invested a minimum of $350,000,000 in the Property, as further described herein; and

WHEREAS, the Developer intends to employ at least 700 full time equivalent employees in the Project starting no later than 12 months after the Project is opened; and

WHEREAS, the City agrees to provide performance-based Economic Incentive Payments (as defined below) to the Developer and the Tenant to defray a portion of the Project's costs; and

WHEREAS, the City will encourage Williamson County to enter into an agreement with the Developer pursuant to Chapter 381 of the Texas Local Government Code to rebate a portion of the taxes the county collects from the Project.

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, the TED Corp., the Developer and the Tenant agree as follows:

ARTICLE I
AUTHORITY

1.01 Authority. The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code and the City Resolutions, and constitutes a valid and binding obligation of the City in the event development of the Project proceeds. The City acknowledges that the Developer and the Tenant are acting in reliance upon the City's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to the Project.

1.02 Interpretation. In this Agreement, unless a clear contrary intention appears;

(a) the singular number includes the plural number and vice versa;

(b) reference to any Party includes such Party's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Party in any other capacity or individually;

(d) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(e) "hereunder", "hereof", "hereto", and words of similar import shall be deemed references to this Agreement as a whole and not to any particular article, section or other provision thereof;

(f) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and

(g) reference to any constitutional, statutory or regulatory provision means such provision as it exists on the Effective Date and any amendatory provision thereof or supplemental provision thereto.

1.03 Legal Representation of the Parties. This Agreement was negotiated by the Parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party shall not apply.

ARTICLE II
DEFINITIONS

2.01 Definitions.

"Ad Valorem Property Tax" means the City's ad valorem property tax on the assessed value of the Project imposed consistent with the authority granted by Article 8 of the Texas Constitution.

"Agreement" means this Economic Development Program Agreement.

"Alternative Convention Center Debt" means the debt described in Section 7.04 of the Master Development Agreement.

"Alternative Public Improvement Debt" means the debt described in Section 6.03 of the Master Development Agreement.

"Authorizing Resolution" means City Resolution No. _____, attached hereto as **Exhibit B**, authorizing the Mayor to enter into this Agreement with the Developer and the Tenant in recognition of the positive economic benefits to the City through development of the Property and the Project.

"**Bonds**" means, collectively, the Public Improvements Debt, the Convention Center Debt, and any other obligations issued in accordance with this Agreement.

"**City**" means the City of Round Rock, Texas.

"**City Hotel Occupancy Tax**" or "**RRHOT**" means the municipal hotel occupancy taxes imposed by Chapter 351 of the Texas Tax Code.

"City Resolutions" means the Authorizing Resolution and Program Resolution.

"**City Sales Tax**" means the sales tax imposed by Chapter 321 of the Texas Tax Code. City Sales Tax includes only the one percent that is available for general purpose use by the City. City Sales Tax does not include the portion of the sales tax restricted for property tax reduction and the sales tax paid to the Round Rock Transportation and Economic Development Corporation.

"Conditions Precedent" mean those conditions described in Section 5.01 which must be satisfied before all or any portion of the EIPs are paid.

"**Convention Center**" means the convention center described in Section 3.04.

"**Convention Center Debt**" means the debt issued by the City and/or the TED Corp. in an

amount sufficient to provide net proceeds of $40,000,000.00 to design and construct the Convention Center. Net proceeds are those amounts deposited into a project fund or similar account. Net proceeds exclude capitalized interest, debt service reserve funds and costs of issuance.

"Coverage Requirement" means Total Tax Revenue each Fiscal Year shall equal or exceed 125 percent of the Debt Service for that Fiscal Year.

"Debt Service" means the amount of money necessary to pay interest on outstanding Bonds, the principal on maturing Bonds, and any required contributions to a sinking fund for term Bonds.

"Developer" means KR Acquisitions, LLC, a Delaware limited liability company.

"Economic Incentive Payment(s)" (**"EIPs"**) means all of the payments required to be paid by the City to the Developer and the Tenant and fees waived by the City under the Program and this Agreement.

"Effective Date" is December 15, 2016.

"Fiscal Year" means the twelve month period beginning on October 1 and ending on September 30.

"Full Time Equivalent Employee" ("FTE") means a combination of employees, each of whom individually may not be a full-time employee because they are not employed on average at least 35 hours per week, but who, in combination, are counted as the equivalent of a full-time employee. FTE's shall include original hires or their replacements over time.

"Ground Lease" means the ground lease document whereby the City, as landlord, will lease the Property to the Tenant, as tenant.

"Hotel" means the hotel described in Section 3.03.

"Kenney Fort Blvd. Improvements" means the public improvements described in Section 6.02 (e) of the Master Development Agreement.

"Master Development Agreement" means the Master Development Agreement between the City, the TED Corp., the Developer and the Tenant dated December 15, 2016.

"Mixed Beverage Tax" means the tax imposed by Chapter 183 of the Texas Tax Code.

"Offsite Public Improvements" means the public improvements described in Section 6.02 (b)(c) and (d) of the Master Development Agreement.

"Onsite Public Improvements" means the public improvements described in

Section 6.02(a) of the Master Development Agreement and includes any improvement or facility together with its associated public site, right-of-way or easement necessary to provide transportation, drainage, public utilities, or similar essential public services and facilities, for which the City will ultimately assume the responsibility for maintenance and operation or ownership, or both. This term also includes the following: drainage facilities, streets and other rights-of-way, potable water system, reuse water system, sanitary sewerage system, survey monuments, illumination including street lights, traffic control signs and traffic signalization, fire hydrants, sidewalks and curb ramps, street name signs, traffic control signs, street pavement markings, and parkland and open space improvements.

"**Parties**" means the City, the TED Corp., the Developer and the Tenant.

"**Party**" means the City, the TED Corp., the Developer or the Tenant.

"**Program**" means the economic development program established by the City pursuant to Chapter 380 of the Texas Local Government Code and under the City Resolutions to promote local economic development and stimulate business and commercial activity within the City.

"**Program Resolution**" means City Resolution No. _____, attached as **Exhibit A**, establishing an economic development program.

"**Project**" means Project as defined in the recitals.

"**Project Fund**" means the fund described in Section 5.01.

"**Project Fund Balance**" means the amount remaining in the Project Fund after all payments required by Section 5.02(a)-(e) have been paid.

"**Property**" means the real property described and shown on **Exhibit C**.

"**Public Improvements**" means the Offsite Public Improvements, the Onsite Public Improvements and the Kenney Fort Blvd. Improvements located within and outside the boundaries of the Property that are necessary to serve the development of the Property and described in Section 6.02 of the Master Development Agreement.

"**Public Improvements Debt**" means the debt issued by the City in amount sufficient to provide net proceeds of $30,000,000.00 to design and construct the Public Improvements. Net proceeds are those amounts deposited into a project fund or similar account. Net proceeds exclude capitalized interest, debt service reserve funds and costs of issuance.

"**Recapture Liability**" means the total amount of all EIP's that are paid as result of this Agreement that are subject to recapture pursuant to Section 5.06 by the City from the Developer and the Tenant in the event the City terminates this Agreement as a result of a default by the Developer or the Tenant.

"**State**" means the State of Texas.

"**State Hotel Occupancy Tax**" or "**TXHOT**" means the hotel occupancy taxes imposed by Chapter 156 of the Texas Tax Code.

"**State Sales Tax**" means the sales tax imposed by Chapter 151 of the Texas Tax Code.

"**Supplemental Economic Incentive Payment(s)**" ("**Supplemental EIPs**") means all of the payments required to be paid by the City to the Developer under an amendment to this Agreement which amendment will be based on development of the Property with improvements in addition to the Project.

"**TED Corp.**" means the Round Rock Transportation and Economic Development Corporation.

"**Tenant**" means KR CC, INC., a Delaware corporation.

"**Term**" means this Agreement shall become enforceable upon its Effective Date and shall expire 40 years after the date the City has issued the last Certificates of Occupancy for the Hotel, the Convention Center, and the Water Park.

"**Texas Public Information Act**" means Texas Government Code Chapter 552, as amended.

"**Total Tax Revenue**" means the total revenues generated by the Project and which are derived from only the following taxes: Ad Valorem Property Tax, the RRHOT, the City Sales Tax, the Mixed Beverage Tax, the TXHOT, and the State Sales Tax.

"**Water Park**" means the facility described in Section 3.05.

ARTICLE III
THE PROJECT

3.01 General Description. The Project will be planned, developed and constructed on the Property. The Project will be a master planned, mixed-use development that will be anchored by a Kalahari Resort and Convention Center, which will include the Hotel, the Convention Center, and the Water Park. In addition, the Project will include entertainment, recreation, and other uses permitted by the zoning of the Property at the time of development.

3.02 Amount of Investment. The Developer agrees to spend or cause to be spent a cumulative total of at least $350,000,000 in a combination of rent payments under the Ground Lease by the Tenant and in improvements to real property and additions to personal property within the Property not later than the date stated in the construction schedule contemplated by Section 5.07 of the Master Development Agreement, subject to (a) the City completing construction of the Offsite Public Improvements consistent with the construction schedule contemplated by Section 5.07 of the Master Development Agreement; (b) the City first issuing bonds to finance the construction of the Convention Center as described in Section 7.04 of the Master Development Agreement; (c) the

City issuing all of the permits and other approvals necessary for construction of the Hotel, Convention Center, and Water Park; and (d) any delays caused by an event of force majeure. Such costs shall include all hard costs and soft costs.

3.03 The Hotel. The Hotel shall have a minimum of 975 guest rooms, at least one full-service restaurant, additional food and beverage outlets, room service, valet parking, bell and concierge service, and entertainment and retail facilities. A spa or exercise facility shall be located within the Project. The Hotel shall be located on the Property, and shall be adjacent to the Convention Center. The Hotel may be located on a separate platted lot from the lot on which the Convention Center will be developed.

3.04 The Convention Center. The Convention Center shall have a minimum of 150,000 square feet of indoor convention, exhibition, and meeting space. The Convention Center shall be located on the Property and shall be attached or adjacent to the Hotel. The Convention Center may be located on a separate platted lot from the lot on which the Hotel will be developed.

3.05 The Water Park. The Water Park shall have a minimum of 200,000 square feet of water and related space attached or adjacent to the Hotel. The indoor portion of the Water Park may be in a separate building from the Hotel. The Water Park may include indoor and outdoor features. The Water Park may be located on a separate platted lot from the Hotel.

3.06 Additional Property. The Developer has entered into a contract to purchase an additional 1.5-acre tract of land known by the Parties as the "Boyles Tract," and the Developer has assigned the contract to purchase the Boyles Tract to the Tenant. The Tenant will assign the contract to purchase the Boyles Tract to the City before the closing anticipated in February 2017. Upon the City's acquisition of the Boyles Tract, the Parties agree that the definition and description of the "Property" in this Agreement, the Master Development Agreement, the Ground Lease, and all other affected documents the Parties enter into that govern the Property will be amended to include the Boyles Tract as part of the "Property."

ARTICLE IV
OBLIGATIONS OF DEVELOPER AND TENANT

4.01 Operation of the Project. In consideration of and subject to the City's compliance with this Agreement, the Master Development Agreement, and the Ground Lease, the Developer agrees to operate, and maintain the Project, and the Tenant agrees to comply with the terms of the Ground Lease.

4.02 Compliance with Ordinances. The Developer and the Tenant shall each comply with all applicable City ordinances.

4.03 Jobs. The Developer agrees to cause the employment of at least 700 FTE's in the Project no later than 12 months after the Project is opened and to cause to be maintained at least 700 FTE's in the Project thereafter during the term of this Agreement.

4.04 Job Compliance Affidavit. Commencing 12 months after the Project is opened, the Developer agrees to provide to the City an annual Job Compliance Affidavit for the remainder of the term of this Agreement. A copy of the Job Compliance Affidavit form is attached hereto as **Exhibit D**. The City shall have the right, following reasonable advance notice to the Developer, to audit the Developer's records to verify that this obligation has been satisfied.

4.05 Developer and Tenant Accounting. The Developer and Tenant shall each maintain complete books and records showing its compliance with its obligations under this Agreement, which books and records shall be deemed complete if kept in accordance with generally acceptable accounting principles as applied to Texas corporations. Such books and records shall be available for examination by the duly authorized officers or agents of the City during normal business hours upon request made not less than 10 business days prior to the date of such examination. The Developer and Tenant shall each maintain such books and records throughout the term of this Agreement. Such books and records contain confidential information of the Developer, including proprietary information, that is exempt from Texas public information act disclosure. If in the future the City or the TED Corp. receives a request for public information, the City or the TED Corp., as applicable, will (1) immediately notify the Developer or the Tenant, as the case may be, as required by Section 552.305(d) of the Texas Public Information Act of the request for information; (2) withhold the requested information from disclosure pending a Texas Attorney General determination requiring disclosure; and (3) notify the requestor of the withholding pending the Texas Attorney General's determination. The notice to the Developer or Tenant will include a copy of the written request for information and a statement that Developer or Tenant may, within 10 business days of receiving the notice, submit to the Texas Attorney General reasons why the information in question should be withheld and explanations in support thereof. Developer or Tenant, respectively, has 10 business days after receiving notice from the City or the TED Corp. of the request for public information to assert an exception from disclosure under Section 552.101, 552.110, 552.113, or 552.131 of the Texas Public Information Act and present its arguments to the Texas Attorney General for nondisclosure.

4.06 Submission of Data. On a monthly basis, the Developer or its designee shall provide the City with a copy of all State tax returns that are filed monthly for all or any part of the Project. In addition, within 60 days following the end of each calendar year, the Developer shall submit to the City the Job Compliance Affidavit and documents reflecting the payments of taxes generated by the Project for such calendar year. Said documents shall include the following:

(a) A copy of all property tax receipts for the Project, including amended reports, filed by the Developer for that calendar year showing the Ad Valorem Property Tax paid;

(b) A copy of all RRHOT tax returns;

(c) A copy of all State and City Sales Tax returns;

(d) A copy of all Mixed Beverage Tax returns;

(e) A copy of all TXHOT tax returns; and

(f) Such other data reasonably necessary to verify compliance with this Agreement.

This Agreement entitles the City and the TED Corp. to request sales and use tax information from the State Comptroller pursuant to Section 321.3022 of the Texas Tax Code, as amended. This designation allows the City or the TED Corp. to obtain an "Area Report" from the State Comptroller that identifies sales and use tax information relating to the Property. The City and the TED Corp. agree to request such information from the State Comptroller. The Developer agrees upon request to assist the City and the TED Corp. in obtaining sufficient taxpayer information to request such reports. The City and the TED Corp. agrees to keep this information "Confidential" consistent with Section 321.3022(f) of the Texas Tax Code.

4.07 Insufficient Funds in Project Fund. In the event that the Total Tax Revenues deposited in the Project Fund are insufficient to pay the Debt Service requirements of the Public Improvements Debt and/or the Convention Center Debt, then the Developer agrees that it shall be required to deposit money into the Project Fund in an amount sufficient to pay the Debt Service requirements. In such event, when sufficient funds are available from the Total Tax Revenues, the Developer will be entitled to be reimbursed the money it so deposited pursuant to Section 5.03(e).

4.08 Insufficient Funds to Satisfy Coverage Requirement. In the event that the Total Tax Revenues are less than 125 percent of the total Debt Service requirements of the Public Improvements Debt and/or the Convention Center Debt in any Fiscal year, then the Developer agrees that it shall be required to deposit money into the Project Fund in an amount sufficient to pay the Coverage Requirement shortfall. In such event, when sufficient funds are available from the Total Tax Revenues, the Developer will be entitled to be reimbursed the money it so deposited pursuant to Section 5.03(e).

4.09 Security for Project Fund. In the event that the Public Improvements Debt fund and/or the Convention Center Debt fund are not fully funded eighteen (18) months after the City issues the first series of Public Improvement Debt or Convention Center Debt, the City may require the Developer to provide security for Debt Service payment shortfalls (the "Debt Service Security"). At the Developer's option, the Debt Service Security may take the form of: (a) depositing with the City an irrevocable letter of credit in an amount equal to $4,250,000 ("LOC"), or (b) another form of security acceptable to the City and the Developer, which security may take the form of real estate. If the form of Debt Service Security is an LOC, the LOC shall be issued by a bank authorized to do business in Texas and shall be on a form acceptable to the City and the Developer. If the Debt Service Security is an LOC, when sufficient funds are available from the Total Tax Revenues, the Developer will be entitled to be reimbursed the funds deposited from the LOC pursuant to Section 5.03(e). Once the two above described debt funds are fully funded, the City will release the LOC or the alternative security. In the event that any such Debt Service Security is provided and drawn upon by the City (or realized upon from the proceeds of such Debt Service Security), when sufficient funds are available from the Total Tax Revenues, the Developer (or the Tenant as applicable) will be entitled to be reimbursed the money so drawn upon or realized

pursuant to Section 5.03(e).

4.10 Compliance with Tax Code. The Developer agrees that a portion of the EIP's will be from the City Hotel Tax and therefore that portion must be expended in a manner directly enhancing and promoting tourism and the convention and hotel industry and only as permitted by Chapter 351 of the Texas Tax Code, as amended. The Developer agrees that a portion of the EIPs will be from State Sales Tax and therefore that portion must be expended in compliance with Texas Tax Code Chapter 151 restrictions, if applicable. The Developer agrees that a portion of the EIPs will from TXHOT and therefore that portion must be expended in compliance with Texas Tax Code Chapter 156 restrictions, if applicable. The Developer agrees to make or cause others to make monthly reports listing the expenditures made by the Developer with the EIP's. The reports shall be included with a Certificate of Compliance to certify under oath that the Developer and the Tenant are each in full compliance with each of their respective obligations under this Agreement, and shall include documentation to establish that the Developer and the Tenant have each spent previous EIP's for purposes and activities permitted by applicable laws. A copy of the Certificate of Compliance is attached hereto as **Exhibit E**. In the event the City determines that the Developer has made an improper or illegal expenditure of EIP's, the Developer must, no later than 30 days after receipt of written notification from the City, reimburse the City in an amount equal to the improper expenditure, plus the rate of interest paid for delinquent taxes. The Developer's failure to make reimbursement pursuant to this section will constitute a default of this Agreement.

4.11 Compliance with §22.07 of the Texas Tax Code. The Developer agrees to allow the chief appraiser or his authorized representative to enter the premises of the Project in accordance with § 22.07 of the Texas Tax Code, as amended.

4.12 Compliance with Public Finance Requirements. For purposes of Section 4.07, Section 4.08 and Section 4.09, the obligation of the Developer to make such deposit or to provide such security shall not apply to any bond, certificate or other obligations issued by the City if the Developer and the City are advised by nationally recognized bond counsel retained by the City that such deposit or security would adversely affect the tax-exempt status of such bonds, certificates or obligations under the Federal tax code.

ARTICLE V
ECONOMIC INCENTIVE PAYMENTS

5.01 Conditions Precedent to Payment of EIPs. The following conditions must be satisfied before all or any portion of the EIPs or the Supplemental EIPs are paid:

(a) **Construction of the Project.** Developer shall develop, plan, design, and construct the Project in accordance with the Master Development Agreement. Notwithstanding anything to the contrary in this Agreement or the Master Development Agreement, the Developer shall have no construction obligations if the City fails to timely issue the Public Improvements Debt or Convention Center Debt, all as required by the Master Development Agreement.

(b) **Construction Schedule.** The Parties agree that it is their intention that the

construction of the Hotel, Convention Center, and the Water Park will be complete no later than December 31, 2021, or such other date agreed upon by the Parties after finalizing the development schedule. It is also the Parties intention that the Onsite Public Improvements and the Offsite Public Improvements be completed within a time frame consistent with the aforesaid goal. The Parties agree that it is their intention to use their best efforts to work together to finalize a development schedule no later than December 31, 2017, that is reasonable and will meet the aforesaid goals.

5.02 The Project Fund. The City shall establish and maintain the Project Fund, and the Total Tax Revenues shall be deposited therein as soon as allowed upon receipt for the full term of this Agreement and shall be used only for the purposes described in this Article V. The Project Fund shall be utilized for the purpose of serving as a segregated source of funds to be used to pay the Convention Center Debt, the Public Improvements Debt, the EIPs and the Supplemental EIPs. The Project Fund shall be utilized as set forth in Sections 5.03 and 5.04. The Tenant, as owner of the Hotel, acknowledges and agrees that all TXHOT and State Sales Tax revenue will be deposited in the Project Fund and utilized as set forth in Sections 5.03 and 5.04. The Tenant and Developer understand and agree that each tax revenue and debt-related payment is first subject to specific depository and record keeping as required by bond covenants, and state and federal laws. The funds and flows described in this Agreement do not supersede those requirements, but the City will provide a separate accounting record to allow the reporting and tracking of all fund flows for this Agreement, including all deposits into and withdrawals from the Project Fund. The Total Tax Revenues in the Project Fund shall be utilized in the following order: RRHOT, TXHOT, State Sales Tax, Mixed Beverage Tax, Ad Valorem Tax, and City Sales Tax.

5.03 The Project Fund Order of Priority. The Project Fund shall be utilized by the City in the following order of priority and amount,:

(a) To pay the then current Fiscal Year's Debt Service requirements for the Public Improvements Debt or the Alternative Improvement Debt (plus the associated 15 percent inducement payment to the Developer as contemplated by Section 6.03 of the Master Development Agreement).

(b) To pay the then current Fiscal Year's Debt Service requirements for the Convention Center Debt or the Alternative Convention Center Debt (plus the associated 15 percent inducement payment to the Developer as contemplated by Section 7.04 of the Master Development Agreement).

(c) To establish a Public Improvements Debt fund in the amount equal to the average annual Debt Service payments for such debt (as averaged over the full term of such debt). At such time as the said fund is fully funded, no further deposits need to be made thereto, unless proceeds are disbursed therefrom, in which case subsequent deposits shall be made to replace the amounts so used to pay for Public Improvements Debt service.

(d) To establish a Convention Center Debt fund in the amount equal to the average annual Debt Service payments for such debt (as averaged over the full term of such debt).

At such time as the said fund is fully funded, no further deposits need to be made thereto, unless proceeds are disbursed therefrom, in which case subsequent deposits shall be made to replace the amounts so used to pay for Convention Center Debt service.

(e) To reimburse the Developer for any contributions previously made by the Developer pursuant to Section 4.07 or Section 4.08 or Section 4.09.

(f) The balance in the Project Fund each year after all payments required by Sections 5.03(a)-(e) have been made for that year (the "Project Fund Balance") shall be shared between the City, the Developer and the Tenant as set forth in Section 5.04.

(g) The amounts in the Public Improvements Debt Fund shall be released to pay the EIPs when the total annual collection of Ad Valorem Property Tax, the RRHOT, the City Sales Tax, and the City's portion of the Mixed Beverage Tax equals at least 150 percent of the annual Debt Service payments for three consecutive Fiscal Years beginning the first day of the month following the eighth anniversary of the date the City issues a certificate of occupancy for the Hotel, for both the Public Improvements Debt and the Convention Center Debt or the date the Public Improvements Debt is paid in full, whichever first occurs. When released, such revenue will be shared based on the date such revenue was deposited (e.g., if the Public Improvements Debt Fund is fully funded before the tenth anniversary of the date the City issues a certificate of occupancy for the Hotel, the Developer's share of the revenue will be 75 percent consistent with Section 5.04(a) below).

The amounts in the Convention Center Debt Fund shall be released to pay the EIPs when the total annual collection of Ad Valorem Property Tax, the RRHOT, the City Sales Tax, and the City's portion of the Mixed Beverage Tax equals at least 150 percent of the annual Debt Service payments for three consecutive Fiscal Years beginning the first day of the month following the eighth anniversary of the date the City issues a certificate of occupancy for the Hotel, for both the Public Improvements Debt and the Convention Center Debt or the Convention Center Debt is paid in full, whichever first occurs. When released, such revenue will be shared based on the date such revenue was deposited (e.g., if the Convention Center Debt Fund is fully funded before the tenth anniversary of the date the City issues a certificate of occupancy for the Hotel, the Developer's share of the revenue will be 75 percent consistent with Section 5.04(a) below).

5.04 The Project Fund Balance. Subject to the requirements of Section 5.01, Section 5.03, and the Coverage Requirement being met, the Project Fund Balance shall be utilized by the City to pay the Economic Incentive Payments and the Supplemental Economic Incentive Payments on a monthly basis on the last day of each calendar month. The City will remit EIPs within 30 days of the close of the calendar month for which they are due. Within 60 days following the close of each fiscal year, a full accounting of the Project Fund will be provided to the Developer and any remaining funds disbursed. The Project Fund Balance shall accumulate until the Hotel opens for business to the public. The EIP's paid to the Developer from the Total Tax Revenues will be in the following order: RRHOT, TXHOT, State Sales Tax, Mixed Beverage Tax, City Sales Tax, and Ad

Valorem Tax. The EIP's will be paid as follows beginning the date the Hotel opens for business to the public:

(a) Each month from the Effective Date until the 10th anniversary of the date the City issues a certificate of occupancy for the Hotel, the City shall pay an Economic Incentive Payment to the Developer equal to seventy-five percent (75%) of the Project Fund Balance. The first [$28,500,000] payable to the Developer pursuant to this Section 5.04(a) shall be paid to the Tenant. The City shall be entitled to keep the remaining twenty-five percent (25%) to spend for any lawful purpose.

(b) Each month from the 10th anniversary of the date the City issues a certificate of occupancy for the Hotel until the expiration of the Term, the City shall pay an Economic Incentive Payment to the Developer equal to fifty percent (50%) of the Project Fund Balance. If the Tenant has not received [$28,500,000] pursuant to Section 5.04(a), then the amounts payable to the Developer pursuant to this Section 5.04(b) shall be paid to the Tenant until the Tenant has received an amount equal to [$28,500,000] less all amounts received pursuant to Section 5.01(a). The City shall be entitled to keep the remaining fifty percent (50%) to spend for any lawful purpose.

Before the City pays any Supplemental EIPs, the City, the Developer and the Tenant shall amend this Agreement to provide for such payments.

5.05 EIP'S Not Subject to Future Appropriations. Although certain payments under this Agreement are calculated based on a formula utilizing Total Tax Revenues, this Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to the Developer or Tenant that require annual appropriation because the Project Fund is a segregated source of funds to be used to pay the Convention Center Debt, the Public Improvements Debt, and the EIPs. The payments to be made to the Developer and Tenant shall be made from the Project Fund Balance or from such other funds of the City as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 380 of the Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that the City does not timely make payments due under this Agreement, such failure shall not be considered a default under Section 6.06, but shall result in the EIPs being increased to one hundred percent (100%) during the year of non-compliance and the term of this Agreement shall be extended one (1) year for each year the City fails to make payments due under this Agreement. To the extent there is a conflict between this paragraph and any other language or covenant in this Agreement, this paragraph shall control.

5.06 EIP Recapture. In the event the City Council terminates this Agreement as result of a default by the Developer or the Tenant, the City may recapture and collect from the Developer or the Tenant the Recapture Liability. Provided however, the Recapture Liability hereunder shall not exceed, in the aggregate, an amount equal to the EIPs paid hereunder during the immediately preceding two calendar years. Developer or Tenant shall pay to the City the Recapture Liability

within 30 days after the City makes demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which Developer or Tenant may be entitled. Notwithstanding anything herein to the contrary, such Recapture Liability shall not exceed, in the aggregate, an amount equal to all EIPs that were paid pursuant to this Agreement from the Effective Date to the date of termination (together with interest thereon to be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas, but without the addition of a penalty). The City shall have all remedies for the collection of the Recapture Liability as provided generally in the Tax Code for the collection of delinquent property taxes.

5.07 Undocumented Workers. The Developer and Tenant each certify that it 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 Developer or Tenant is convicted of a violation under 8 U.S.C. § 1324a(f), the Developer or Tenant, respectively, shall repay the amount of the public subsidy provided under this Agreement 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.

ARTICLE VI
MISCELLANEOUS

6.01 Permitting. The City shall cooperate with the Developer and the Tenant to expeditiously process all City permit applications and City inspections.

6.02 Waiver of Fees; Expediting Permits. Except as provided below, the City will waive the following fees for the development of any commercial enterprise located on any portion of the Property that is owned or operated by the Developer or the Tenant: zoning and planned unit development fees, subdivision and platting fees, recordation fees, inspection, oversize and regional detention fees, site development permit fees, building permit fees, sign permit fees, tree mitigation fees, park fees, water and wastewater impact fees, road impact fees, all other capital recovery fees of any kind, any utility connection fees, and all other development related fees of any kind. However, the City retains the discretion to not waive the aforesaid fees for commercial enterprises which are national or regional chains, franchise restaurants, national or regional retail outlets, or similar multi-unit national or regional commercial enterprises. The City will not waive third party fees (e.g., structural steel inspections and elevator inspections) or fees charged by either Williamson County or agencies of the State. The City will expedite the review and approval of required permits.

6.03 Rollback Tax Rebate. To the extent rollback taxes are assessed on all or any portion of the Property at any time when the Developer or Tenant owns the Property or is the beneficial owner of the Property, the City agrees to rebate any such rollback taxes paid to the City as a grant to the Tenant pursuant to Chapter 380 of the Texas Local Government Code. The City acknowledges that the determination of property tax valuation, equalization, exemption, special

open space valuation and tax rollback are within the exclusive province of the appraisal district and as a result, the City takes no position on these matters. The City covenants that it will not avail itself of the tax challenge provisions contained in Chapter 41 of the Texas Tax Code for the duration of this Agreement. The City further covenants that it will fully cooperate with the Developer's or the Tenant's efforts to obtain maximum property tax relief for the Property and the Project and will make available all relevant documents and witnesses pertaining to the transaction for any and all property tax proceedings pertaining to the Property or the Project. Within 90 days after the date the City receives a written request from the Developer requesting that the City seek an exemption determination, the City will request from the Texas Comptroller the determination of rollback tax exemption contemplated by Texas Tax Code Section 23.55(m). Such a rollback tax determination by the Texas Comptroller is binding on the City but not on the Developer or the Tenant.

6.04 Mutual Assistance. The City, the Developer and the Tenant will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions in order to put each other in the same economic condition contemplated by this Agreement regardless of any changes in public policy, the law, or taxes or assessments attributable to the Property.

6.05 Representations and Warranties. The City represents and warrants to the Developer and the Tenant that: (a) this Agreement is within its authority, (b) it is duly authorized and empowered to enter into this Agreement, (c) this Agreement is enforceable against the City; and (d) all obligations of the City other than issuing the Public Improvement Debt and the Convention Center Debt are proprietary, unless otherwise ordered by a court of competent jurisdiction. The Developer and the Tenant, respectively, represents and warrants to the City that it has the requisite authority to enter into this Agreement and this agreement is enforceable against it.

6.06 Default; Remedies.

(a) No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure, such reasonable time determined based on the nature of the alleged failure, but in no event less than 30 days or more than 90 days after written notice of the alleged failure has been given. In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given or another Party begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. A cure by the Developer shall be considered a cure by the Tenant; and a cure by the Tenant shall be considered a cure by the Developer. Notwithstanding the foregoing, however, a Party shall be in default of its obligation to make any payment required under this Agreement if such payment is not made within five business days after it is due.

(b) IF A PARTY IS IN DEFAULT, THE AGGRIEVED PARTY MAY, AT ITS OPTION AND WITHOUT PREJUDICE TO ANY OTHER RIGHT OR REMEDY UNDER THIS AGREEMENT, INCLUDING THE REMEDIES UNDER SECTION 6.06(C), SEEK ANY RELIEF AVAILABLE AT LAW OR IN EQUITY, INCLUDING,

BUT NOT LIMITED TO, THE REMEDIES UNDER SECTION 5.06, AN ACTION UNDER THE UNIFORM DECLARATORY JUDGEMENT ACT, SPECIFIC PERFORMANCE, MANDAMUS, AND INJUNCTIVE RELIEF. NOTWITHSTANDING THE FOREGOING, HOWEVER, NO DEFAULT UNDER THIS AGREEMENT SHALL:

(i) entitle the aggrieved Party to terminate this Agreement; or

(ii) entitle the City to suspend performance under this Agreement; or

(iii) adversely affect or impair the current or future obligations of the City to provide water or sewer service or any other service to the Property; or

(iv) entitle the aggrieved Party to seek or recover consequential monetary damages of any kind; or

(v) reduce the term of this Agreement as described in Section 6.21 or reduce the term of the Ground Lease.

(c) In lieu of the remedies identified in Section 6.06(b), the City may opt to pursue any of the following remedies, in which case such remedy shall be the exclusive remedy for the default to which it applies:

(i) If the Tenant is in default of the rent payment obligations pursuant to the terms of the Ground Lease, the City may elect to exercise its right of partial termination under the Ground Lease.

(ii) If the Developer is in Default of Section 3.02 (Amount of Investment), the amount by which the investment under Section 3.02 falls short of $350,000,000 may be deducted from the payments required to be paid by the City to the Developer and the Tenant pursuant to this Agreement.

(iii) If the Developer is in Default of Section 4.03 (Jobs), $5,000 for each job not provided may be deducted from the payments required to be paid by the City to the Developer and the Tenant pursuant to this Agreement.

(d) In the event any legal action or proceeding is commenced between the Parties to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

(e) A default of this Agreement by either the Developer or Tenant shall be considered at default of this Agreement and the Master Development Agreement by both the Developer and Tenant.

6.07 Binding Effect; Entire Agreement. This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns. This Agreement, the Master Development Agreement and the Ground Lease constitute the entire agreement between the

Parties and supersede all prior agreements, whether oral or written, covering the subject matter of this Agreement, the Master Development Agreement and the Ground Lease.

6.08 Attorney's Fees. In the event any legal action or proceeding is commenced between all or some of the Parties to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

6.09 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns.

6.10 Assignment. Except as otherwise provided in this section, neither the Developer nor the Tenant may assign all or part of its rights and obligations to a third party without the express written consent of the City unless such assignment is a collateral assignment to a lender. The Developer and the Tenant may each assign all or part of its respective rights and obligations under this Agreement to an entity that is controlled by or under common control with the Developer or the Tenant, and shall provide a copy of the assignment to the City within 15 days after the effective date of the assignment. The City may not assign this Agreement to an unrelated third party but may assignment to a City-created economic development corporation or other City-created entity.

6.11 Amendment. This Agreement may be amended only by the mutual written agreement of the Parties.

6.12 Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, by electronic mail, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

If to City: City of Round Rock
221 E. Main Street
Round Rock, TX 78664
Attn: City Manager
Phone: (512) 218-5400
Email: citymanager@roundrocktexas.gov

With a required copy to:

Sheets & Crossfield
309 E. Main Street
Round Rock, TX 78664
Attn: Stephan L. Sheets
Phone: (512) 255-8877
Email: steve@scrrlaw.com

If to the Developer or the Tenant:

KR Acquisitions LLC
KR CC, INC.
P.O. Box 590
1305 Kalahari Drive
Wisconsin Dells, WI 53965
Attn: Mary Bonte Spath
Phone: (608) 254-5320
Email: mbonte@kalahariresorts.com

With required copy to:

Shupe Ventura Lindelow & Olson, PLLC
9406 Biscayne Blvd.
Dallas, Texas 74218
Attn: Misty Ventura
Phone: (214) 328-1101
Email: misty.ventura@svlandlaw.com

Any Party may designate a different address at any time upon written notice to the other Parties.

6.13 Interpretation. Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

6.14 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.

6.15 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected. It is also the intention of the Parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.16 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

6.17 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.

6.18 Force Majeure. Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (an "event of force majeure"). An event of force majeure for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion, vandalism; storm or similar occurrences; orders or acts of military or civil authority; litigation; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay; unusual weather events; and unusual delays in obtaining City approvals of plats, permits, or other development approvals required to construct and operate the Project. Except as otherwise expressly provided herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of force majeure.

6.19 Exhibits. The following **Exhibits A - E** are attached and incorporated by reference for all purposes:

Exhibit A:	Program Resolution
Exhibit B:	Authorizing Resolution
Exhibit C:	Property Description and Depiction
Exhibit D:	Job Compliance Affidavit
Exhibit E:	Certificate of Compliance

6.20 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the Parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

6.21 Term. This Agreement shall become enforceable upon its Effective Date. This Agreement shall automatically terminate upon the City's full satisfaction of (a) all payment obligations to the Developer and Tenant described in Section 5.03; and (b) all obligations of the City to reimburse the Developer and the Tenant for any contributions made by the Developer or the Tenant pursuant to Sections 4.07, 4.08 or 4.09.

EXECUTED to be effective as of the Effective Date.

(SIGNATURES ON FOLLOWING PAGES)

CITY OF ROUND ROCK, TEXAS,
a home rule city and municipal corporation

By:_____
Alan McGraw, Mayor

Date: _____

APPROVED as to form:

_____
Stephan L. Sheets, City Attorney

ROUND ROCK TRANSPORTATION AND ECONOMIC DEVELOPMENT CORPORATION

By:_____
Alan McGraw, President

Date: _____

APPROVED as to form:

_____
Stephan L. Sheets, Corporation's Attorney

KR ACQUISITONS, LLC
a Delaware limited liability company

By: _____
Todd Nelson, President

Date: _____

KR CC, INC.
a Delaware corporation

By: _____
Todd Nelson, President

Date: _____

Exhibit C

Form of Ground Lease

(see attached)

GROUND LEASE AGREEMENT

between

CITY OF ROUND ROCK, TEXAS

and

KR CC, INC.

Dated as of [December 20, 2016]

RESORT AND CONVENTION CENTER

ROUND ROCK, TEXAS

TABLE OF CONTENTS

LIST OF EXHIBITS

GROUND LEASE AGREEMENT

This GROUND LEASE AGREEMENT (this "**Agreement**") is made and entered into as of [December 20, 2016] (the "**Effective Date**"), between CITY OF ROUND ROCK, TEXAS, a home rule city and municipal corporation (the "**City**"), and KR CC, INC., a Delaware corporation ("**Tenant**"). The City and Tenant are sometimes referred to in this Agreement as the "**Parties**" and each as a "**Party**".

RECITALS

WHEREAS, the City has adopted Resolution No. _____, attached as **Exhibit C** ("**Program Resolution**"), establishing an economic development program and Resolution No. _____, attached hereto as **Exhibit D** (the "**Authorizing Resolution**"), authorizing the Mayor to enter into this Agreement and an **Economic Development Program Agreement** (the **"Economic Development Program Agreement"**) with Tenant and its affiliate, KR Acquisitions, LLC ("**Developer**"), in recognition of the positive economic benefits to the City through development by the Developer of approximately 351.7 acres of land, as more particularly described on the attached **Exhibit A-1** ("***Property***") as a master planned mixed use development (the "**Project**") anchored by a Kalahari Resort and Convention Center, (the "**Resort**") (the Program Resolution and the Authorizing Resolution being collectively referred to herein as the "**City Resolutions**"); and

WHEREAS, as part of the economic development program established in the Program Resolution, the City agrees to assist Tenant in the purchase of the Property and financing of the Project by entering into this Agreement; and

WHEREAS, concurrently with the Parties' execution of this Agreement, the Parties with the Developer and the Round Rock Transportation and Economic Development Corporation, a "Type B corporation" created under the authority of Chapter 501, Texas Local Government Code, are entering into the Economic Development Program Agreement and the Master Development Agreement (the "**Master Development Agreement**"), pursuant to which Developer will construct the Project to be located on the Property.

WHEREAS, the Parties desire to enter into this Agreement, pursuant to which (i) the City leases to Tenant, and Tenant leases from the City, the Leased Premises during the Term (as defined below) and (ii) Tenant has the option to purchase the Leased Premises from the City at the end of the Term, in each case on the terms and conditions set forth in this Agreement.

WHEREAS, the Parties acknowledge and agree that the Rent paid hereunder constitutes fair market value for the Property and the Leased Premises.

AGREEMENT

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

1. Definitions. As used in this Agreement, capitalized terms shall have the meanings indicated below unless a different meaning is expressed herein.

"**Affiliate**" of a specified Person means a Person who is directly or indirectly controlling, controlled by, or under common control with, the specified Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of the specified Person whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" means this Ground Lease Agreement.

"**Applicable Law**" means any law, statute, ordinance, rule, regulation, order, determination or requirement of any Governmental Authority, including all Environmental Laws.

"**Assignment**" means any sale, transfer, assignment, pledge, mortgage, encumbrance or any other transfer, including transfers as security for obligations, of this Agreement or a Party's rights or obligations under this Agreement.

"**Bankruptcy Proceeding**" means any bankruptcy, insolvency, reorganization, composition or similar proceeding under the United States Bankruptcy Code or any similar state or federal statute for the relief of debtors.

"**Business Day**" means any day other than a Saturday, Sunday or other day on which commercial banks in Austin, Texas are authorized or required by Applicable Law to close. The use of the word "day," instead of "Business Day," means a calendar day.

"**City**" means the City of Round Rock, Texas.

"**Condemnation Action**" means a taking by any Governmental Authority (or other Person with power of eminent domain) by exercise of any right of eminent domain.

"**Condemnation Award**" means all sums, amounts or other compensation for the Improvements and Leased Premises payable to the City or Tenant, as applicable, as a result of, or in connection with, any Condemnation Action.

"**Default Rate**" means an annual interest rate equal to the Interest Rate plus two percent (2%).

"**Deferred Rent Security**" means the 156.769 acre portion of the Leased Premises known as the "Krienke parcel" and that 14.4 acre portion of the Leased Premises on the west side of Kenney Fort known as part of the "Bison parcel" all as described on **Exhibit B** and valued at $12,800,000 which property may be excluded from this Agreement and sold if Tenant fails to timely make the Deferred Rent payment.

"**Developer**" means KR Acquisitions.

"**Economic Development Program Agreement**" means that certain Economic Development Program Agreement between the Parties and the Developer dated December 15, 2016.

"**Effective Date**" is defined in the introductory paragraph of this Agreement.

"**Enforcement Action**" means, with respect to any Leasehold Mortgage and Leasehold Mortgagee, the occurrence of any of the following events: (A) any judicial or non-judicial foreclosure proceeding, the exercise of any power of sale, the taking of a deed or assignment in lieu of foreclosure, the appointment of a receiver, or the taking of any other enforcement action against the Leasehold Estate or any portion thereof or Tenant, including the taking of possession or control of the Leasehold Estate or any portion thereof, (B) any acceleration of, or demand or action taken in order to collect, all or any indebtedness secured by all or any portion of the Leasehold Estate (other than giving of notices of default and statements of overdue amounts), (C) any exercise of any right or remedy available to Leasehold Mortgagee under any and all loan documents evidencing the debt secured by the Leasehold Estate (collectively, the "**Leasehold Loan Documents**"), at law, in equity, or otherwise with respect to Tenant or any portion of the Leasehold Estate, other than the giving of notices of default and statements of overdue amounts or (D) any active negotiation (including the exchange of written correspondence regarding the same and the scheduling and subsequent attending of negotiations, whether in person or via telephone) between Tenant and Leasehold Mortgagee with respect to a workout following any default by Tenant under the terms and conditions of the Leasehold Loan Documents; provided, however, that any Enforcement Action shall be deemed to continue for a period of 120 days following final non-appealable judgment of a court of competent jurisdiction or cessation of any of the events or activities identified in subclauses (A) through (D) above.

"**Environmental Law**" means any Applicable Law, including requirements under permits, licenses, consents and approvals of any Governmental Agency, relating to pollution or protection of human health or the environment, including those that relate to emissions, discharges, releases or threatened releases, or the generation, manufacturing, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials.

"**Expiration Date**" means 11:59 p.m. on the day prior to the ninety-ninth (99^{th}) anniversary of the Effective Date.

"**Fee Estate**" means the City's fee title interest in the Property.

"**First Leasehold Mortgagee**" means the holder of the Leasehold Mortgage constituting a first lien on the Leasehold Estate.

"**Force Majeure Event**" is defined in Section 17.2.

"**Foreclosure Event**" means a foreclosure, trustee's sale, deed, transfer, assignment or other conveyance in lieu of foreclosure, or other similar exercise of rights or remedies under any Leasehold Mortgage, including the occurrence of any transfer of title to the

mortgaged estate by operation of or pursuant to any Bankruptcy Proceeding, in each case whether the transferee is a Leasehold Mortgagee, a party claiming through a Leasehold Mortgagee or a third party.

"**Governmental Authority**" means any federal, state or local governmental entity, political subdivision, agency, department, commission, board, bureau, administrative or regulatory body or other instrumentality having jurisdiction over the Project, Improvements, Leased Premises, or the Parties.

"**Hazardous Materials**" means those materials that are regulated by, or form the basis of liability under, any Environmental Law, including, but not limited to, polychlorinated biphenyls (PCBs), petroleum (including oil, motor oil and gasoline), natural gas (and synthetic gas usable for fuel), asbestos and asbestos containing materials (ACMs), underground storage tanks (USTs), above-ground storage tanks (ASTs), as well as substances, materials or conditions now or in the future defined as "hazardous substances", "pollutants" or "contaminants" in the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. Section 9601, et seq.), those substances, materials or conditions now or in the future defined as "hazardous waste" in any applicable Environmental Law and any other substance, material or condition that is now or in the future considered hazardous or otherwise subject to any statutory or regulatory requirement governing handling, disposal and/or clean up.

"Improvements" means all improvements, structures, buildings and fixtures of any kind whatsoever, other than trade fixtures which constitute personal property, whether above or below grade, including buildings, the foundations and footings thereof, utility installations, storage, loading facilities, walkways, driveways, landscaping, signs, site lighting, site grading and earth movement, and all fixtures, plants, apparatus, appliances, furnaces, boilers, machinery, engines, motors, compressors, dynamos, elevators, fittings, piping, connections, conduits, ducts and equipment of every kind and description now or hereafter affixed or attached to any of such buildings, structures or improvements and used or procured for use in connection with the heating, cooling, lighting, plumbing, ventilating, air conditioning, refrigeration, or general operation of any of such buildings, structures or improvements, and any exterior additions, changes or alterations thereto or replacements or substitutions therefor.

"**Initial Rent Payment**" means an amount of money equal to the purchase price of the Property plus all of the purchaser's closing costs, less the Krienke Tract Purchase Price, which is equal to [$10,585,368.69]. The Initial Rent Payment may be made in more than one installment to coincide with the closings of the purchase of the separate tracts of land included in the Property. The final total Initial Rent Payment will be determined at the closing of the Boyles Tract but Parties estimate that the total Initial Rent Payment will be [$17,908,520.60].

"**Intangible Rights**" is defined in Section 3.1.

"**Interest Rate**" means the one-month LIBOR Rate quoted by U.S. Bank National Association from Reuters Screen LIBOR01 Page or any successor thereto, plus one

percent (1%). All interest to be paid pursuant to this Agreement shall be compounded annually.

"KR Acquisitions" means KR Acquisitions, LLC, a Delaware limited liability company and an affiliate of Tenant.

"Krienke Tract" means the tract of land described in **Exhibit G** .

"Krienke Tract Purchase Price" means the contract purchase price plus closing costs paid by the purchaser at the closing of the Krienke Tract, which is [$10,585,368.69].

"**Lease Impairment**" means any (A) cancellation, amendment, modification, rejection surrender (whether voluntary or otherwise) or termination of this Agreement, including upon a casualty or condemnation affecting the Improvements or the Leased Premises, (B) consent, or affirmative acquiescence, by Tenant to a sale of any property, or interest in any property, under 11 U.S.C. § 363 or otherwise in any Bankruptcy Proceeding by the City, (C) exercise of any right of Tenant to treat this Agreement as terminated under 11 U.S.C. § 365(h)(1)(A)(i) or any comparable provision of law or (D) subordination of this Agreement or the Leasehold Estate to any other estate or interest in the Improvements or the Leased Premises.

"**Leased Premises**" shall mean that portion of the Property as identified on **Exhibit A-2** (excluding the Fee Estate), together with (a) all air rights and air space above the Property; (b) all mineral and water rights; and (c) all of City's right, title and interest, if any, in and to all rights, privileges and easements appurtenant to the Property now existing or created during the Term of this Agreement. Provided however, (i) the Convention Center, as defined in the Master Development Agreement and/or the Economic Development Program Agreement, and (ii) any and all public streets, rights of way, and utility easements dedicated to the City during the platting and development process, shall not be included in the Leased Premises.

"**Leasehold Estate**" means Tenant's leasehold and subleasehold estate and all other rights, titles and interests of Tenant arising under this Agreement.

"**Leasehold Mortgage**" means a mortgage, deed of trust, security deed, deed to secure debt or any similar other instrument or agreement constituting a lien upon, or similarly encumbering, the Leasehold Estate held by a Leasehold Mortgagee, as renewed, restated, modified, consolidated, amended, extended or assigned (absolutely or collaterally) from time to time.

"**Leasehold Mortgagee**" means the holder of a Leasehold Mortgage (including any trustee, servicer or administrative agent acting on behalf of the holder or holders of a Leasehold Mortgage).

"**Liabilities**" is defined in Section 12.1.

"**Mortgagee's Cure**" is defined in Section 15.7(E).

"**Mortgagee's Cure Rights**" is defined in Section 15.7(E).

"**New Agreement**" is defined in Section 15.8(A).

"**New Agreement Delivery Date**" is defined in Section 15.8(A).

"**New Operator**" means a Person, including, without limitation, Leasehold Mortgagee or its assignee, nominee or designee, that (A) acquires the Leasehold Estate through a Foreclosure Event or (B) enters into a New Agreement with the City under Section 15.8.

"**Option Purchase Price**" is defined in Section 16.3.

"**Party**" or "**Parties**" is defined in the introductory paragraph of this Agreement.

"**Person**" means any individual, trust, estate, partnership, joint venture, company, corporation, association, limited liability company, or other legal entity, business organization or enterprise.

"**Personal Default**" means any nonmonetary default under this Agreement that is not susceptible to cure by a Leasehold Mortgagee.

"Project" means the Project as described in Article V. of the Master Development Agreement.

"Property" means the approximately 351.7 acres of land more particularly described in **Exhibit A** excluding any roadways, easements or other facilities which have been dedicated to the City.

"**Purchase Option**" is defined in Section 16.1.

"**Purchase Price"** is defined in Section 2.1(E)

"**Rent**" is defined in Section 4.1 and means the total amount of the Purchase Price of the Property, plus the rent paid pursuant to Section 4.1(B).

"**Tax**" means any general or special, ordinary or extraordinary, tax, imposition, assessment, levy, usage fee, excise or similar charge (including any ad valorem or other property taxes), however measured, regardless of the manner of imposition or beneficiary, that is imposed by any Governmental Authority.

"**Tenant**" means KR CC, Inc.

"**Tenant Default**" is defined in Section 10.1.

"**Tenant's Cure Period Expiration Notice**" is defined in Section 15.7(C).

"**Term**" is defined in Section 2.2

2. Lease and Grant of Use; Term

2.1 *Lease and Grant of Use.*

(A) *Lease.* Subject to the terms and conditions of this Agreement, the City hereby leases to Tenant, and Tenant hereby leases from the City, the Leased Premises during the Term. The Parties agree that, during the Term, Tenant is permitted hereunder to use the Leased Premises only for the Project, including without limitation, to perform and engage in the design, development, construction, operation and management of the Project on the Leased Premises, together with all infrastructure necessary for the Project.

(B) *Additional Property.* The Parties acknowledge that Developer has entered into a contract to purchase an additional 1.5-acre tract of land known by the Parties as the "Boyles Tract," that such contract has been assigned to Tenant, and that Tenant will assign that purchase contract to City. Upon City's acquisition of the Boyles Tract, the Parties agree to concurrently amend the definition and description of the "Property" in this Agreement to include the Boyles Tract as part of the "Property." A condition precedent to the City's acquisition of the Boyles Tract is Tenant's payment, as the remaining amount of the Initial Rent, an amount equal to the purchase price and closing costs for the Boyles Tract.

(C) *Convention Center Property.* The Convention Center will be constructed on a portion of the Property to be excluded from the Leased Premises. Once that portion of the Property is platted, the Parties agree to promptly amend this Agreement such that **Exhibit A** attached hereto will be replaced with a legal description that excludes from the Property the platted lot on which the Convention Center will be located. That platted lot will be released from this Agreement. Upon the release, such property will be free of liens or other monetary obligations. The City agrees to convey title to the Convention Center in accordance with the terms of the Convention Center operating lease.

(D) *Development of Leased Premises; Zoning.* Tenant may use, improve, develop and occupy the Leased Premises as contemplated by the Master Development Agreement and the Economic Development Program Agreement, and Tenant may rezone or otherwise plat, subdivide, apportion, and/or subject any portion of the Leased Premises to a condominium, entitle, permit or seek approvals for the Leased Premises (collectively "**Entitlement Actions**") at its option and the City, solely as owner of the Fee Estate, shall cooperate in such efforts and execute all consents and documents necessary for the submission and pursuit of such Entitlement Actions. The City shall not, without the written consent of Tenant, take any Entitlement Actions regarding the Leased Premises. Notwithstanding, the foregoing Tenant shall comply with the City's

development approval processes and shall develop the Project on the Leased Premises in compliance with City ordinances, City-approved PUD zoning ordinance for the Leased Premises, City-approved development regulations, and other City development requirements, and any requirements of the City to cooperate here under shall not be deemed any approval outside of such legal requirements.

(E) *Acquisition and Aggregation of Leased Premises.* The Developer has previously entered into contracts to acquire the Property (the "**Purchase Contracts**"), with an aggregate purchase price of Twenty Eight Million Four Hundred Eighty Five Thousand and no/100 Dollars $28,483,372.77 (the "**Purchase Price**"). All of purchaser's closing costs shall be included in the final Purchase Price. The Developer has previously assigned the Purchase Contracts to the Tenant. Concurrent with the execution of this Agreement, the Parties are entering into an Assignment and Assumption Agreement and Lease-Back Agreement (the "**Assignment Agreement**") pursuant to which the Tenant is agreeing to assign, and City is agreeing to assume, the Tenant's rights under the Purchase Contracts. City hereby agrees to use reasonable efforts to consummate the acquisitions of the Property by December 23, 2016, and to cooperate with Tenant in aggregating and/or dividing the Property and the Leased Premises as requested by Tenant to accommodate the Project in accordance with applicable subdivision and condominium related regulations. The form of Assignment Agreement is attached hereto as **Exhibit E**.

(F) *Nondisturbance and Attornment.* If requested by Tenant, the City and Tenant shall, at any time at the request of Tenant, enter into a non-disturbance and attornment agreement that shall provide, among other things, that the City agrees not to disturb Tenant's or its subtenants' use of the Leased Premises pursuant to the terms and conditions of this Agreement.

2.2 ***Term.*** The term of this Agreement (the "**Term**") commences on the Effective Date and expires on the Expiration Date, unless terminated earlier as expressly provided for in this Agreement.

3. Intangible Rights

3.1 ***Tenant's Rights.*** Tenant shall have sole ownership, as owner of the Project and other Improvements, of all intellectual property rights associated therewith, and the exclusive right and license to use any replica, model, artistic or photographic rendering or other visual representation of the Project or Improvements or any portion thereof owned by or licensed to the Tenant in association with any and all goods and services throughout the world (the "**Intangible Rights**"), together with the right to use, enjoy (whether in whole or in part) the Intangible Rights to advertise, market and promote the Project and Improvements, and to receive and retain all revenues from such use of the Intangible Rights by Tenant.

4. Rent and Other Payments.

4.1 ***Rent.*** The total rent to be paid hereunder shall be equal to the Purchase Price (the "**Rent**"). Tenant shall pay the Rent as follows:

(A) make a partial Initial Rent Payment to the City of [Sixteen Million Eight Hundred Eight Thousand and no/100 Dollars ($16,808,112.23)] concurrent with City's closing on the acquisition of the Property (less the Boyle's Tract) and the execution and delivery of this Agreement;

(B) make an additional partial Initial Rent Payment to the City equal to the purchase price and closing costs for the Boyles Tract concurrent with the City's closing on the acquisition of the Boyles Tract;

(C) make an annual rent payment to the City of One Dollar ($1.00), which shall be paid, without demand, deduction, or offset, on the fifth (5^{th}) day of January of each year during the Term of this Agreement; and

(D) make a one-time rent payment to the City equal to the Krienke Tract Purchase Price on the first Business Day following the day which is the eight year anniversary date of this Agreement (the "**Deferred Rent**"). Payment of the Deferred Rent shall include all interest on the Deferred Rent amount accrued at the Interest Rate.

4.2 ***Utilities.*** Tenant shall pay or cause to be paid when due all charges for public or private utility services to or for the Property during the Term, including without limiting the generality of the foregoing, all charges for heat, light, electricity, water, gas, telephone service, garbage collection and sewage and drainage service and the cost of installation thereof from the boundaries of the Property.

4.3 ***Maintenance and Repairs.*** During the Term of this Lease, Tenant shall maintain the Property and the Leased Premises at Tenant's own expense, and Tenant shall keep the Leased Premises in good condition and repair. Landlord shall not be required to maintain or repair any portion of the Leased Premises or any improvements located thereon.

5. Taxes; Operations; Capital Repairs; Recordkeeping

5.1 ***Tenant's Sole Cost.*** In consideration for Tenant's rights under this Agreement, Tenant shall be responsible for paying, throughout the Term, all costs necessary to manage and operate the Project and Leased Premises in accordance with this Agreement, including, subject to the terms and conditions of this Agreement, including all costs of maintenance, repairs, replacements, renovation, remodeling, removal, alterations, improvements and insurance, as well as all Taxes, with respect to the Project and the Leased Premises.

5.2 ***Tax Matters.***

(A) Without limiting the generality of Section 5.1 and in consideration for Tenant's rights under this Agreement, except as provided in Section 5.2(B), Tenant shall be solely responsible for, and shall pay and discharge as and when due, all Taxes, to the extent allocable to the Term, upon or with respect to the Leased Premises and Tenant's possession, operation, management, maintenance, alteration, repair, rebuilding, use or occupancy of, or employment of personnel in, the Project or any portion thereof.

(B) The City will own the Property at the time a change of use occurs and will continue to own the Fee Estate of the Property for the Term. To the extent rollback taxes are owed on all or any portion of the Leased Premises, the City agrees to rebate the City portion of such rollback taxes as a grant to Tenant pursuant to Chapter 380 of the Texas Local Government Code. Within 90 days after the date the City receives a written request from the Tenant requesting that the City seek an exemption determination, the City will request from the Texas Comptroller the determination of rollback tax exemption contemplated by Texas Tax Code Section 23.55(m). Such a rollback tax determination by the Texas Comptroller is binding on the City but not on the Developer or the Tenant.

(C) Tenant shall have the right, at its sole cost and expense, to contest the amount, validity, or applicability, in whole or in part, of any Taxes affecting, against, or attaching to the Leased Premises or any portion of the Property by appropriate proceedings. The City acknowledges that the determination of property tax valuation, equalization, exemption, special open space valuation and tax rollback are within the exclusive province of the appraisal district and as a result, the City takes no position on these matters. The City grants to the Tenant the right to file any and all applications, documents, requests, forms or other required submissions with respect to any Taxes affecting, against, or attaching to the Leased Premises or any portion of the Property, and does hereby appoint the Tenant as the agent of the City for all such actions. The City covenants that it will not avail itself of the tax challenge provisions contained in Chapter 41 of the Texas Tax Code for the duration of this Agreement. The City further covenants that it will fully cooperate with the Tenant's efforts to obtain maximum property tax relief for the Property and will make available all relevant documents and witnesses pertaining to the transaction for any and all property tax proceedings pertaining to the Property.

(D) This Section 5.2 shall survive the expiration of the Term or termination of this Agreement.

5.3 ***Operations and Management of the Leased Premises.*** Tenant shall be exclusively responsible for the operations and management of the Project, Improvements, and Leased Premises during the Term of this Agreement.

Notwithstanding anything to the contrary in this Agreement, operations and management of the Project may be performed by (i) Tenant or its Affiliates, (ii) an unrelated third-party management company engaged by Tenant and/or (iii) any other third-party contracted by Tenant to perform such services. During the Term, Tenant shall have the exclusive right to negotiate, execute and perform, and to receive allocate, use and distribute, in its sole discretion, all revenues from, all use agreements, licenses and other agreements with respect to the use of Project or Leased Premises (or any part thereof).

6. Assignment and Subletting

6.1 ***Covenant Regarding Assignment and Subletting.*** *Tenant shall have the right at any time, and without the consent of City and with no limitation as to frequency or number, to assign, in whole or in part, this Agreement or sublet all or any portion of the Leased Premises and all or any portion of the Improvements.* Tenant shall provide a copy of such assignment or sublease to City within 15 days after the effective date of such assignment or sublease. City shall not assign this Agreement.

6.2 ***Covenant Regarding Encumbrances.*** *Tenant, its successors and assigns, shall have the right, without the consent of City, to mortgage, pledge, or otherwise encumber this Lease, the Improvements or Tenant's interest herein, in accordance with the requirements of Section 15.*

6.3 ***Tenant's Right to Lease.*** *Tenant may, without the consent of City, enter into subleases, licenses, concession agreements, leases, or other occupancy agreements related to the Project or Leased Premises.* Notwithstanding any such subleases, licenses, concessions, leases, or other occupancy agreements, Tenant shall at all times remain liable for the performance of all of the covenants and agreements under this Agreement due on Tenant's part to be so performed.

6.4 ***Assignment of Purchase Option.*** Tenant may, without the consent of City, make an Assignment of the Purchase Option to any Person, provided that such Person shall agree to be bound by all terms and conditions in this Agreement regarding the Purchase Option.

6.5 ***City Encumbrances or Fee Mortgages.*** The City shall not mortgage or otherwise encumber the City's Fee Estate with any mortgage, deed of trust, security deed, deed to secure debt, or any other similar instrument or agreement constituting a lien upon, or similarly encumbering, the Fee Estate.

7. Insurance

7.1 ***Required Insurance.*** Tenant shall, at its sole expense, unless otherwise agreed by the City in writing, procure and maintain (or cause to be procured and maintained by appropriate contractors or vendors) the following insurance coverage during the Term; provided that nothing herein shall prohibit Tenant from procuring and maintaining additional insurance coverages that Tenant deems desirable:

(A) Commercial general liability insurance (CGL) written on an "occurrence" policy form and covering liability for death, bodily injury, personal injury, and property damage with limits of not less than $5,000,000 per occurrence relating, directly or indirectly, to Tenant's business operations, conduct or use or occupancy of the Improvements. Such coverage shall include all activities and operations conducted by any Person on or about the Leased Premises, and any work performed by or on behalf of Tenant at the Leased Premises. Coverage should be as broad as ISO policy form CG 0001, or any replacement thereof that becomes standard in the insurance industry, or an equivalent form reasonably acceptable to the City.

(B) Physical property damage insurance covering all real and personal property, excluding personal property paid for by subtenants or paid for by Tenant for which subtenants have reimbursed Tenant, located on or in, or constituting a part of, the Leased Premises, in an amount equal to at least one hundred percent (100%) of the new replacement cost of all such property (or such lesser amount as Landlord may approve in writing). Tenant shall not be required to maintain insurance for earthquake, flood or war risks.

8. Damage or Destruction; Condemnation

8.1 ***Damage; Destruction.*** In the event of damage to, or destruction of, the Project, this Agreement shall remain in full force and effect and Tenant, in its sole discretion, may elect to repair and restore the Project.

8.2 ***Insurance Proceeds.*** Any insurance proceeds paid under any property insurance for the Project as a result of damage or destruction of any portion of the Project shall be deposited with Tenant or a Leasehold Mortgagee.

8.3 ***Condemnation.***

(A) *Total Condemnation.* In the event of any Condemnation Action, other than a temporary taking, that prevents the use or occupancy of any portion of the Leased Premises necessary for the location or use of Improvements (including access to and from Improvements), then, subject to Tenant's rights under Section 16 (which survive the termination of this Agreement) and the rights of any Leasehold Mortgagee under Section 15, Tenant shall have the right to terminate this Agreement by delivering written notice to the City within ninety (90) days after the Condemnation Action becomes final and non-appealable. If this Agreement is so terminated, any such termination shall be without penalty to Tenant or the City. If Tenant terminates this Agreement, it shall not be entitled to a refund of any rent payments made.

(B) *Partial Condemnation.* If Tenant does not have a right to terminate this Agreement as a result of a Condemnation Action or elects not to do so, Tenant, at its option, may, at no cost to City, as promptly as practicable and in any event within twelve (12) months after such Condemnation Action, repair and restore any damage to the Project resulting from such Condemnation Action.

(C) *Proceedings.* To the maximum extent permitted by Applicable Law, Tenant and the City each shall have the right, at its own expense, to appear in any Condemnation Action and to participate in any and all hearings, trials, and appeals relating thereto even if this Agreement has been terminated. The Leasehold Mortgagee shall also be entitled to appear and participate in any Condemnation Action and in any and all hearings, trials and appeals relating thereto even if this Agreement has been terminated. Neither Party shall settle or compromise any right of the other Party to receive a Condemnation Award without the prior written consent of the other Party and, with respect to Tenant's rights, the prior written consent of each Leasehold Mortgagee. Subject to the other provisions of this Section 8.3, in any Condemnation Action Tenant shall have the right to assert a claim for any Condemnation Awards for the value of the Improvements. Tenant and the City shall each have the right to assert a claim for any Condemnation Awards for (x) the loss in value of its rights under this Agreement as if this Agreement had not terminated, and (y) any other damages to which the City or Tenant, as applicable, may be entitled under Applicable Law. City agrees that Tenant or Leasehold Mortgagee shall be entitled to receive any Condemnation Awards received by City in connection with the Leased Premises.

8.4 ***Survival.*** This Section 8 survives the expiration or earlier termination of this Agreement, but only insofar as such provisions relate to any damage or destruction of the Project (or insurance proceeds therefrom) or Condemnation Action (or Condemnation Award therefrom) that arose prior to the expiration or earlier termination of this Agreement.

9. Representations and Warranties

9.1 ***Representations and Warranties.*** The City represents and warrants to the Tenant that: (a) this Agreement is within its authority, (b) it is duly authorized and empowered to enter into this Agreement, (c) this Agreement is enforceable against the City; and (d) all obligations of the City are proprietary, unless otherwise ordered by a court of competent jurisdiction. Tenant represents and warrants to City that it has the requisite authority to enter into this Agreement. Neither Party has incurred or created any liabilities or claims for broker's commissions or finder's fees in connection with the negotiation, execution or delivery of this Agreement.

9.2 ***"As Is"; No Representations or Warranties***. Except as expressly set forth herein, it is understood and agreed that the Leased Premises will be leased and, if applicable, conveyed "as is" with any and all faults and latent and patent defects without any express or implied representation or warranty by the City. Specifically, City disclaims any warranty of suitability that may otherwise arise by operation of law. Tenant accepts the Leased Premises whether suitable or not, and waives the implied warranty of suitability.

9.3 ***Mutual Covenants***. Commencing with the Effective Date, each Party covenants and agrees to the other Party as follows:

(A) *Additional Documents and Approval.* Each Party, upon the reasonable request of the other Party, shall execute or cause to be executed any further documents, take any further actions and grant any further approvals as may be reasonably necessary in order to consummate the transactions provided for in this Agreement.

(B) *Notice of Matters.* Should Tenant or the City receive knowledge about any matter that may constitute a breach of any of its representations, warranties or covenants set forth in this Agreement, it shall promptly notify the other Party of the same in writing.

10. Default and Remedies

10.1 ***Default.*** No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure, such reasonable time determined based on the nature of the alleged failure, but in no event less than 30 days or more than 90 days after written notice of the alleged failure has been given (subject to Force Majeure Events), provided, however, such 90 day period shall be extended as may be reasonably necessary provided that the such defaulting Party is pursing cure with due diligence. In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. Notwithstanding the foregoing, however, a Party shall be in default of its obligation to make any payment required under this Agreement if such payment is not made within five Business Days after it is due.

10.2 ***Remedies.***

10.2.1 If a Party is in default, the aggrieved Party may, at its option and without prejudice to any other right or remedy under this Agreement, including the remedies under Section 10.2.2, seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act, specific performance, mandamus, and

injunctive relief. Notwithstanding the foregoing, however, no default under this Agreement shall: (a) entitle the aggrieved Party to terminate this Agreement; (b) entitle City to suspend performance under this Agreement; (c) adversely affect or impair the current or future obligations of the City of Round Rock to provide water or sewer service or any other service to the Leased Premises; (d) entitle the aggrieved Party to seek or recover monetary damages of any kind; or (e) reduce the Term of this Agreement.

10.2.2 If the Tenant is in default of Section 4.1 (Rental Payments) the amount of any overdue rent may be deducted from the payments required to be paid by the City of Round Rock to Tenant pursuant to the Economic Development Program Agreement. If the Deferred Rent is not paid when due as provided at Section 4.1(D) herein, the City may alternatively elect to terminate this Agreement with respect to all or a portion of the Deferred Rent Security. If the City elects such remedy, the City may terminate this Agreement as to all or a portion of the Deferred Rent Security only after an additional 90 days prior written notice to the Tenant of default under Section 4.1(D) of this Agreement and the election by the City to seek such remedy and Tenant's failure to cure such default within such 90 day period. The Deferred Rent Security is valued at $12,800,000. At Tenant's option, but subject to the prior written consent of the City, which shall not be unreasonably withheld, the Deferred Rent Security may be replaced with an alternative portion of the Leased Premises or reduced acreage if the Tenant provides to the City (a) a legal description for the portion of the Leased Premises that will replace the Deferred Rent Security; and (b) an appraisal or other evidence acceptable to the City confirming the substituted security has a value equal to at least $12,800,000. The value determination may not be the basis for the City to withhold its consent to the Deferred Rent Security if the City selects the appraiser who provides the appraisal confirming the minimum value of $12,800,000. These remedies shall be the exclusive remedy for a Tenant default of the obligations in Section 4.1 (Rental Payments) of this Agreement.

10.3 ***Immunity.*** The Parties agree that the City's functions under this Agreement are proprietary, not governmental. Pursuant to *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427 (Tex. 2016), the City agrees that it cannot assert governmental immunity in connection with any claim under this Agreement.

11. Title; Surrender

11.1 ***Title.*** Notwithstanding any other provisions of this Agreement, the Improvements erected on the Leased Premises and all alterations, additions, equipment and fixtures built, made, or installed by Tenant in, on, under, or to the Improvements shall be the sole property of Tenant (subject to the terms of this Agreement and any Leasehold Mortgage) until the termination of this Agreement by the passage of time or otherwise (but shall become the property of City thereafter, subject to the terms of Section 16 hereof) and Tenant shall have all corresponding tax and

other rights associated therewith until the expiration or other termination of the Term.

11.2 ***Surrender***. Upon the expiration of the Term, if Tenant has not exercised the Purchase Option pursuant to Section 16, then Tenant shall, on or before the Expiration Date, peaceably and quietly leave, surrender and yield to the City the Improvements and the Leased Premises.

12. Indemnification

12.1 ***Tenant***. To the extent permitted by Applicable Law, Tenant hereby agrees to defend, hold harmless and indemnify the City from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, whether arising on or off the Leased Premises (hereafter collectively referred to as "**Liabilities**"), suffered or incurred by City as a result of Tenant's use or operation of the Leased Premises; provided that the foregoing indemnity does not apply to any Liability to the extent arising from (A) the negligence or willful misconduct of the City or its agents, consultants or employees, or (B) any breach by the City of this Agreement.

13. Covenant of Quiet Enjoyment. So long as Tenant performs in all material respects its obligations under this Agreement, the City shall do nothing (other than the acts permitted or required by this Agreement) that will prevent Tenant or its licensees, guests or invitees from peaceably and quietly enjoying, using and occupying the Leased Premises or Improvements in the manner described in this Agreement, and the City shall (i) defend Tenant's quiet enjoyment, use and occupancy of the Leased Premises and Improvements in the manner described in this Agreement against the claims of all Persons claiming by, under, or through the City and (ii) not permit any lien, encumbrance, right-of-way, covenant, condition, invalidity or other matter adversely affecting the City's right to possess and use, or its title to, the Leased Premises to diminish, disturb or impair Tenant's and its licensees', guests' and invitees' quiet enjoyment, use and occupancy of the Leased Premises and Improvements hereunder.

14. Estoppel Certificate; Memorandum of Agreement

14.1 ***Estoppel Certificate***. Each of the Parties shall, upon the reasonable request of the other (or any current or prospective source of financing for the City, Tenant, or any of their Affiliates or any transferee or assignee), and in each case within ten (10) Business Days after the other Party has requested it, execute and deliver to the appropriate Persons a certificate in recordable form stating:

(A) That this Agreement is unmodified and is in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect as modified and stating the modifications or, if this Agreement is not in full force and effect, that such is the case);

(B) That, to the knowledge of the Party providing the certificate, there are no defaults by it or the other Party under this Agreement (or specifying each such default as to which it may have knowledge);

(C) The Effective Date and the then-current Expiration Date;

(D) The date(s) to which any financial obligation of the Party has been paid under this Agreement;

(E) To the knowledge of the Party providing the certificate, whether there are any counterclaims against the enforcement of any Party's obligations under this Agreement; and

(F) Any other matters reasonably requested.

14.2 ***Memorandum of Agreement.***

(A) *Recordation.* At any time Tenant may cause a memorandum of this Agreement or any amendment hereto to be recorded in the Real Property Records of Williamson County, Texas and Tenant shall pay and discharge the costs, fees and taxes in connection therewith. The initial form of such memorandum shall be as set forth in **Exhibit F** attached hereto, and upon any amendment to this Agreement, the form of any memorandum of amendment shall be subject to the approval of the City (not to be unreasonably withheld, conditioned or delayed) prior to the recordation thereof, and the City shall sign such memorandum when so requested by Tenant. The City Manager is authorized to grant such City approval.

(B) *Release of Memorandum of Agreement.* Tenant shall, at its cost, execute and record a release of any such memorandum within ten (10) Business Days after the expiration of Tenant's Purchase Option under Section 16 without the exercise thereof by Tenant, which release shall include language whereby Tenant acknowledges that the Purchase Option has terminated and Tenant quitclaims to the City all rights of Tenant in and to the Leased Premises.

15. Leasehold Mortgages

15.1 ***Right to Obtain Leasehold Mortgages***. Notwithstanding anything to the contrary contained in this Agreement, Tenant shall have the right, without the City's consent, to execute and deliver one or more Leasehold Mortgages encumbering the Leasehold Estate or the direct or indirect ownership interests in Tenant at any time and from time to time; provided, that no such Leasehold Mortgage shall encumber the Fee Estate. The City's interests in the Leased Premises shall be subject and subordinate to any such Leasehold Mortgages, provided, however, no Leasehold Mortgage shall encumber the Fee Estate and the City's interest in the Fee Estate shall remain in priority to that of Tenant or any Leasehold Mortgagee during the Term. Each Leasehold Mortgage shall provide that the Leasehold Mortgagee shall send to the City copies of all notices of material default sent to Tenant in connection with the Leasehold Mortgage or the debt secured thereby, provided that the failure to provide any such notice shall not affect the validity of the notice in any manner.

15.2 ***Effect of a Leasehold Mortgage.*** Notwithstanding anything to the contrary in this Agreement, Tenant's making of a Leasehold Mortgage shall not be deemed to constitute an Assignment of the Leasehold Estate, nor shall any Leasehold Mortgagee, as such, or in the exercise of its rights under this Agreement, be deemed to be an assignee or transferee or mortgagee in possession of the Leasehold Estate so as to require such Leasehold Mortgagee, as such, to assume or otherwise be obligated to perform any of Tenant's obligations under this Agreement except when, and then only for so long as, such Leasehold Mortgagee has acquired ownership and possession of the Leasehold Estate pursuant to a Foreclosure Event (as distinct from its rights under this Agreement to cure defaults or exercise Mortgagee's Cure Rights). No Leasehold Mortgagee (or other Person acquiring the Leasehold Estate pursuant to a Foreclosure Event) shall have any liability beyond its interest in this Agreement nor shall Leasehold Mortgagee (or any Person acquiring the Leasehold Estate pursuant to a Foreclosure Event under a Leasehold Mortgage) be liable under this Agreement unless and until such time as it becomes the owner of the Leasehold Estate. Without further notice to or consent from the City, the City recognizes and agrees that a Leasehold Mortgagee may acquire directly, or may cause its assignee, nominee, or designee to acquire, the Leasehold Estate through a Foreclosure Event and such party shall enjoy all the rights and protections granted to Leasehold Mortgagee under this Agreement with the same force and effect as if such party were the Leasehold Mortgagee itself.

15.3 ***Foreclosure; Further Assignment.*** Notwithstanding anything to the contrary in this Agreement, any Foreclosure Event or any exercise of rights or remedies under any Leasehold Mortgage shall not be deemed to violate this Agreement or require the consent of the City. If a Leasehold Mortgagee or a successor or assignee of a Leasehold Mortgagee, or an Affiliate thereof, acquires Tenant's Leasehold Estate following a Foreclosure Event, or if a Leasehold Mortgagee or a successor or assignee of a Leasehold Mortgagee, or an Affiliate thereof, enters into a New Agreement, such Leasehold Mortgagee or successor or assignee of a Leasehold Mortgagee, or an Affiliate thereof, shall enjoy all of the rights and protections granted to Leasehold Mortgagee under this Agreement with the same force and effect as if such successor, assign or Affiliate were the Leasehold Mortgagee itself and may thereafter assign or transfer this Agreement or such New Agreement without prior notice to or consent of the City; provided, that the assignee or transferee expressly agrees in writing to assume and to perform all of the obligations under this Agreement or such New Agreement, as the case may be, from and after the effective date of such assignment or transfer. No Leasehold Mortgagee (or Person acquiring the Leasehold Estate pursuant to a Foreclosure Event under a Leasehold Mortgage) shall have any liability beyond its interest in this Agreement nor shall Leasehold Mortgagee (or person acquiring the Leasehold Estate pursuant to a Foreclosure Event under a Leasehold Mortgage) be liable under this Agreement unless and until such time as it becomes, and then only for so long as it remains, the owner of the Leasehold Estate.

15.4 ***Notice of Leasehold Mortgages***. Promptly after Tenant enters into any Leasehold Mortgage, Tenant or the Leasehold Mortgagee shall deliver to the City a true and correct copy of the Leasehold Mortgage together with written notification specifying the name and address of the Leasehold Mortgagee. The Leasehold Mortgagee identified in such notice or the mortgage filed of record shall be entitled to all the rights and protections of a Leasehold Mortgagee under this Agreement (as against both the City and any successor holder of the Fee Estate). The City agrees to acknowledge to Tenant and such Leasehold Mortgagee the City's receipt of any such materials and, following notification thereof, notice of any Assignment of such Leasehold Mortgage and to confirm that such Leasehold Mortgagee is or will be, upon closing of its financing or its acquisition of an existing Leasehold Mortgage, entitled to all of the rights and protections granted to Leasehold Mortgagee under this Agreement with the same force and effect as if such successor, assign or Affiliate were the Leasehold Mortgagee itself, in this Agreement, including after any premature termination of this Agreement. If the City has received actual or constructive notice of any Leasehold Mortgage, then such notice shall automatically bind the City's successors and assigns.

15.5 ***Modifications Required by Leasehold Mortgagee***. If, in connection with obtaining, continuing or renewing any financing for which the Leasehold Estate, or the direct or indirect equity interests in Tenant, represents collateral in whole or in part, the Leasehold Mortgagee requires any modifications of this Agreement as a condition to such financing, then the City shall, at Tenant's or such Leasehold Mortgagee's request, promptly consider any such modifications in good faith. If such modifications do not (A) modify the Rent or the Term or (B) lessen the City's rights or increase the City's obligations under this Agreement by more than a de minimis amount in the reasonable judgment of the City, then the City shall execute and deliver to Tenant an amendment to this Agreement to effect such modifications.

15.6 ***Further Assurances***. Upon request by Tenant or by any existing or prospective Leasehold Mortgagee, the City shall deliver to the requesting party such documents and agreements as the requesting party shall reasonably request to further effectuate the terms of this Agreement, including a separate written instrument in recordable form signed and acknowledged by the City setting forth and confirming, directly for the benefit of Leasehold Mortgagee and its successors and assigns, any or all rights of Leasehold Mortgagee; provided, however, that Tenant shall reimburse the City immediately upon demand therefor for any and all reasonable third-party costs or expenses actually incurred by the City in complying with this Section 15.6.

15.7 ***Protection of Leasehold Mortgagees***. Notwithstanding anything to the contrary set forth in this Agreement, if, and only for so long as, any Leasehold Mortgage is in effect, the following shall apply:

(A) *Lease Impairments.* Any Lease Impairment made without First Leasehold Mortgagee's prior written consent (or any deemed consent under its

Leasehold Mortgage) shall be null, void, and of no further force or effect, and shall not bind Tenant, Leasehold Mortgagee or New Operator. For clarification, this Section 15.7(A) shall be inapplicable during any period that no Leasehold Mortgage is in effect.

(B) *Copies of Notices.* If the City shall give any notice to Tenant under this Agreement, then the City shall at the same time and by the same means give a copy of such notice to any Leasehold Mortgagee. No notice to Tenant shall be effective unless and until such notice has been duly given to Leasehold Mortgagee, provided the City has received notice of such Leasehold Mortgagee pursuant to Section 15.4. No exercise of the City's rights and remedies under or termination of this Agreement shall be deemed to have occurred or arisen or be effective unless the City has given like notice to each Leasehold Mortgagee as this Section 15.7(B) requires. Any such notice shall describe in reasonable detail the alleged Tenant default or other event allegedly entitling the City to exercise such rights or remedies.

(C) *Tenant's Cure Period Expiration Notice.* If Tenant is in default under this Agreement and the cure period applicable to Tenant expires without cure of Tenant's default, then the City shall promptly give notice of such fact to any Leasehold Mortgagee, which notice shall describe in reasonable detail Tenant's default (an "**Tenant's Cure Period Expiration Notice**").

(D) *Right to Perform Covenants and Agreements.* Any Leasehold Mortgagee shall have the right, but not the obligation, to perform any obligation of Tenant under this Agreement and to remedy any default by Tenant. The City shall accept performance by or at the instigation of a Leasehold Mortgagee in fulfillment of Tenant's obligations, for the account of Tenant, and with the same force and effect as if performed by Tenant. No performance by or on behalf of such Leasehold Mortgagee shall cause it to become a "mortgagee in possession" or otherwise cause it to be deemed to be in possession of the Improvements or bound by or liable under this Agreement.

(E) *Notice of Default and Cure Rights.* Upon receiving any notice of default, any Leasehold Mortgagee shall have the right within the same cure period granted to Tenant under this Agreement, extended through the date 90 days after such Leasehold Mortgagee shall have received Tenant's Cure Period Expiration Notice within which to take (if any Leasehold Mortgagee so elects; such actions, "**Mortgagee's Cure**"; and a Leasehold Mortgagee's rights to take such actions, including pursuit of an Enforcement Action, collectively, "**Mortgagee's Cure Rights**").

(F) *During Cure Period.* At any time during the cure period (if any) that applies to Tenant, extended through the date that is 120 days after such Leasehold Mortgagee's receipt of Tenant's Cure Period Expiration Notice

as to such nonmonetary default, or if no cure period applies to Tenant, then within 120 days after such Leasehold Mortgagee's receipt of notice of such default, such Leasehold Mortgagee shall be entitled to institute proceedings, and (subject to any stay in any Bankruptcy Proceedings affecting Tenant or any injunction, unless such stay or injunction is lifted) provided that from and after the institution of such proceedings, such Leasehold Mortgagee shall diligently prosecute the same to completion, to obtain possession of the Improvements as mortgagee (including possession by a receiver), or acquire directly, or cause its assignee, nominee, or designee to acquire, the Leasehold Estate through a Foreclosure Event, or foreclose on its pledged collateral, as applicable (the obtaining of such possession or the completion of such acquisition, "**Control of the Leased Premises**").

(1) *Further Cure After Control of Leased Premises.* Upon obtaining Control of the Leased Premises (whether before or after expiration of any otherwise applicable cure period), such Leasehold Mortgagee or, in the event the Leasehold Estate is acquired through a Foreclosure Event, such New Operator, shall be required to proceed with reasonable diligence and reasonable continuity to cure such nonmonetary defaults as are then reasonably susceptible of being cured by such Leasehold Mortgage or New Operator (excluding Tenant's Personal Defaults, which Leasehold Mortgagee need not cure), within a reasonable time under the circumstances, but, subject to Force Majeure Events, in no event more than 120 days after Leasehold Mortgagee obtains Control of the Leased Premises.

(2) *Effect of Cure.* Upon the cure of a default by such Leasehold Mortgagee or New Operator, as the case may be, in accordance with this Agreement, this Agreement shall continue in full force and effect as if no default(s) had occurred. Leasehold Mortgagee's exercise of Mortgagee's Cure Rights shall not be deemed an assumption of this Agreement in whole or in part.

(G) *Forbearance by the City.*

(1) So long as a Leasehold Mortgagee shall be diligently exercising its Mortgagee's Cure Rights, including the commencement and pursuit of an Enforcement Action, within the applicable cure periods set forth above, the City shall not, to the extent permitted under this Agreement, (i) re-enter the Leased Premises to cure the Tenant Event of Default, (ii) bring a proceeding on account of such default to (a) re-enter the Leased Premises to cure the Tenant Event of Default, (b) dispossess Tenant or other occupants of the Leased Premises, (c) terminate the Leasehold Estate, or

(d) accelerate payment of Rent or any other amounts payable by Tenant under this Agreement.

(2) Nothing in this Section 15 shall, however, be construed to either (i) extend the Term beyond the Expiration Date that would have applied if no default had occurred or (ii) require any Leasehold Mortgagee to cure any Personal Default by Tenant as a condition to preserving this Agreement or to obtaining a New Agreement (but this shall not limit such Leasehold Mortgagee's obligation to seek to obtain Control of the Leased Premises, and thereafter consummate a Foreclosure Event, by way of Mortgagee's Cure Rights, if such Leasehold Mortgagee desires to preclude the City from terminating this Agreement on account of a Personal Default of Tenant).

(3) Nothing in this Section 15 shall preclude the City from exercising its rights to sue for damages, specific performance, or other equitable relief (excluding "self-help", dispossession, termination or engagement of new management company) under Section 10.2(B).

(H) *Leasehold Mortgagee's Right to Enter Leased Premises.* The City and Tenant authorize each Leasehold Mortgagee to enter the Improvements and the Leased Premises as necessary to affect Mortgagee's Cure and take any action(s) reasonably necessary to effect Mortgagee's Cure without such action being deemed to give Leasehold Mortgagee possession of the Leased Premises.

(I) *Rights of New Operator Upon Acquiring Control.* If any New Operator shall acquire the Leasehold Estate pursuant to a Foreclosure Event and shall continue to exercise Mortgagee's Cure Rights as to any remaining defaults (other than Personal Defaults, which New Operator need not cure), then any Personal Defaults by Tenant shall no longer be deemed defaults and the City shall recognize the rights of such New Operator hereunder as if such New Operator were Tenant.

(J) *Interaction Between Agreement and Leasehold Mortgage.* Tenant's default as mortgagor under a Leasehold Mortgage shall not constitute a default under this Agreement, except to the extent that Tenant's actions or failure to act in and of itself constitutes a breach of this Agreement. The exercise of any rights or remedies of a Leasehold Mortgagee under a Leasehold Mortgage, including the consummation of any Foreclosure Event, shall not constitute a default under this Agreement (except to the extent such actions otherwise constitute a breach of this Agreement).

15.8 ***First Leasehold Mortgagee's Right to a New Agreement.***

(A) If this Agreement shall terminate by reason of the City exercising any right it has under this Agreement to terminate, a rejection in Tenant's bankruptcy, or option of Tenant to treat this Agreement as terminated under 11 U.S.C. § 365(h)(1)(A)(i), or any comparable provision of Applicable Law, the City shall promptly give notice of such termination to any Leasehold Mortgagee of which the City has notice. The City shall, upon a First Leasehold Mortgagee's request given within 30 days after such First Leasehold Mortgagee's receipt of such notice, enter into (and if the City fails to do so, shall be deemed to have entered into) a new lease of the Leased Premises effective as of (or retroactively to) the date of the termination of this Agreement, for the remainder of the Term, as if no termination had occurred, with a New Operator on the same terms and provisions of this Agreement, including the Purchase Option and all other rights, options, privileges and obligations of Tenant under this Agreement, but excluding any requirements that have already been performed or no longer apply (a "**New Agreement**"); provided, that the First Leasehold Mortgagee shall, at the time of execution and delivery of such New Agreement, (i) pay the City any and all Rent and any other amounts required to be paid by Tenant to the City under this Agreement (determined as if this Agreement had not been terminated), and (ii) cure any nonmonetary defaults (other than Personal Defaults, which First Leasehold Mortgagee need not cure) under this Agreement (determined as if this Agreement had not been terminated) or, if such nonmonetary default is of a nature that it cannot with due diligence be cured upon such execution and delivery, then the First Leasehold Mortgagee shall (x) upon such execution and delivery, advise the City of its intention to take all steps necessary to remedy such nonmonetary default (other than Personal Defaults, which First Leasehold Mortgagee need not cure), and (y) promptly and duly commence the cure of such default and thereafter diligently prosecute to completion the remedy of such default, which completion must be achieved within a reasonable time under the circumstances, subject to Force Majeure Events. In no event, however, shall the New Operator be required to cure a Personal Default of Tenant as a condition to obtaining or retaining a New Agreement or otherwise. From the date this Agreement terminates until the date of execution and delivery of any such New Agreement (the "**New Agreement Delivery Date**"), the City may, at its option, perform maintenance and repair of the Improvements and the Leased Premises; provided, however, the City shall not (1) operate the Leased Premises in an unreasonable manner, (2) take any affirmative action to cancel any license or sublease or accept any cancellation, termination or surrender of a sublease, except due to such licensee's or subtenant's default, or (3) lease any of the Leased Premises except to New Operator.

(B) The following additional provisions shall apply to any New Agreement:

(1) *Form and Priority.* Any New Agreement (or, at the City's option, a memorandum thereof) shall be in recordable form. Such New Agreement shall not be subject to any rights, liens, or interests other than permitted exceptions and other exceptions to title existing as of the date of such New Agreement which were not created by the City.

(2) *Adjustment for Expenses.* On the New Agreement Delivery Date, the New Operator shall pay to the City expenses incurred by the City during the period from the termination date of this Agreement to the New Agreement Delivery Date.

(3) *Assignment of Certain Items.* On the New Agreement Delivery Date, the City shall assign to New Operator all of the City's right, title and interest in and to all moneys (including security deposits, insurance proceeds and condemnation awards), if any, then held by, or payable to, the City that Tenant (or Leasehold Mortgagee) would have been entitled to receive but for termination of this Agreement. On the New Agreement Delivery Date, the City shall also transfer to New Operator all sublease and service contracts to the extent assignable by the City.

(4) *Preservation of Licenses and Subleases.* Between the date of the termination of this Agreement and the New Agreement Delivery Date, the City shall not take any affirmative action to cancel any license or sublease or accept any cancellation, termination or surrender of a license or sublease (it being understood that the City shall not be obligated to take any action to keep any licenses or subleases in effect). Any license or sublease which was terminated upon the termination of this Agreement as a matter of law, shall, at New Operator's option, be reinstated upon execution of the New Agreement.

(5) *Separate Instrument.* The City hereby agrees, at the request of any Leasehold Mortgagee, to enter into a separate instrument (and memorandum thereof in recordable form) memorializing such Leasehold Mortgagee's rights under this Section 15.8.

15.9 ***Priority of Leasehold Mortgages.*** If there is more than one Leasehold Mortgage, then whenever this Agreement provides a Leasehold Mortgagee with the right to consent or approve or exercise any right granted in this Agreement, the exercise or waiver of same by the First Leasehold Mortgagee shall control and be binding upon the holder(s) of all junior Leasehold Mortgages or other holders of debt, such as Mezzanine Lenders.

15.10 ***Liability of Leasehold Mortgagee.*** If a New Operator shall acquire Tenant's Leasehold Estate through a Foreclosure Event or a New Agreement shall be

granted to a New Operator pursuant to Section 15.8, such New Operator shall be liable for the performance of all of Tenant's covenants under this Agreement or such New Agreement, as the case may be, from and after the effective date of such Foreclosure Event or New Agreement. If (A) the New Operator is a Leasehold Mortgagee or its assignee, nominee or designee, (B) such Leasehold Mortgagee, or its assignee, designee or nominee, as applicable, then assigns this Agreement or the New Agreement to a third-party assignee, and (C) such third-party assignee delivers to the City an agreement under which such assignee assumes and agrees to perform all the terms, covenants, and conditions of this Agreement or such New Agreement, in form reasonably acceptable to the City, the Leasehold Mortgagee, or its assignee, designee or nominee, as applicable, shall be automatically and entirely released and discharged from the performance, covenants, and obligations of the New Operator under this Agreement or the New Agreement, thereafter accruing.

15.11 ***Casualty and Condemnation Proceeds.*** If a casualty or a Condemnation Action shall occur with respect to all or any portion of the Improvements and the Leased Premises and restoration is to occur pursuant to the provisions of this Agreement, any insurance proceeds shall be handled in accordance with Section 8. The City understands that Tenant may irrevocably appoint Leasehold Mortgagee as its representative to participate in any settlement regarding, and with regard to, the disposition and application of said insurance proceeds or Condemnation Awards. The City will recognize and deal with Leasehold Mortgagee for such purposes. The City hereby acknowledges that no election by Tenant not to restore in the event of a casualty or Condemnation Action shall be effective unless Leasehold Mortgagee's consent has been granted to such election.

15.12 ***Mezzanine Lenders as Leasehold Mortgagees.*** The Parties agree that each lender under a Mezzanine Financing (as hereinafter defined) (each such lender, a "**Mezzanine Lender**") is intended to and shall be entitled to substantially the same protections and rights set forth in this Section 15 as provided to a Leasehold Mortgagee, modified as appropriate to reflect the nature of the limited liability company or limited partnership interest or stock pledge, as applicable, in favor of each such Mezzanine Lender, mutatis mutandis. If requested by Tenant in connection with a Mezzanine Financing, the Parties agree to negotiate, in good faith and with due diligence, an amendment to this Agreement or a separate agreement, containing commercially reasonable terms and conditions in order to specifically reflect such protections and rights set forth in this Section 15 as applicable to a Mezzanine Lender. Tenant shall be responsible for the out-of-pocket costs and expenses of the City's participation in such negotiations, including reasonable attorney's fees. As used herein, a "**Mezzanine Financing**" means a financing transaction which is secured by, inter alia, a pledge or collateral assignment of any or all of the limited liability company or limited partnership interests or the corporate stock of Tenant (or any entity holding a direct or indirect interest in Tenant), as applicable, either together with or in lieu of a Leasehold Mortgage (provided that if the same lender holds both a Leasehold Mortgage and such a pledge or collateral assignment, such lender shall be a

Leasehold Mortgagee, and such financing transaction shall be a Leasehold Mortgage, hereunder).

15.13 ***Rights of City. Notwithstanding anything contained herein to the contrary, any Leasehold Mortgage executed by Tenant shall comply with the following requirements:***

(A) the Leasehold Mortgage and all rights acquired thereunder shall be subject to each and all of the covenants, conditions, restrictions and provisions set forth in this Ground Lease, and to all rights of City hereunder; and

(B) no Leasehold Mortgage shall encumber any interest in real property other than Tenant's leasehold interest in the Property, or secure debt which is not utilized for the purpose of the Project.

16. Purchase Option

16.1 ***Purchase Option***. Tenant shall have the option to purchase all, or any part of, the Property (including, without limitation the Fee Estate and all rights and appurtenances thereto, and all Improvements (if any are owned by the City) thereon from the City on the terms and conditions set forth in this Section 16 (the "**Purchase Option**"). The Purchase Option shall be a continuing right and there shall be no limitation on the frequency or number of times Tenant may exercise its rights under the Purchase Option and this Section 16.

16.2 ***Exercise***. Tenant may exercise the Purchase Option (i) by delivering written notice thereof to the City at any time during the Term; or (ii) if this Agreement is terminated pursuant to Section 8, by delivering written notice thereof to the City within six (6) months after the effective date of such termination. Tenant acknowledges that exercising the Purchase Option may trigger the collection of rollback taxes assessed upon a change of use of the Property, if any are owed.

16.3 ***Option Purchase Price***. The purchase price to be paid by Tenant to the City in connection with the exercise of the Purchase Option (the "**Option Purchase Price**") shall be equal to One Dollar ($1.00) per acre of the Property plus assessed, but uncollected rollback taxes, if any are owed, provided the Deferred Rent has been paid pursuant to Section 4.1(c), otherwise it shall be equal to One Dollar ($1.00) per acre of Property plus assessed, but uncollected rollback taxes, if any are owed, plus the Deferred Rent that has not been paid.

16.4 ***Closing***. If Tenant exercises the Purchase Option in accordance with this Section 16, then the closing of the conveyance of the Property and all Improvements thereon shall occur on a date set forth by Tenant in the notice by which Tenant exercised its Purchase Option, subject to the City's approval of such date, which will not be unreasonably withheld, conditioned or delayed. At such closing, (A) the City shall convey fee title to the Leased Premises and all Improvements thereon (to the extent of City's interest in such Improvements if any), free and clear of any liens, encumbrances and obligations, except for

easements and similar restrictions that do not adversely affect or impact the use and operation of the Improvements and the Leased Premises for their intended purposes and that impose no monetary obligations for Tenant, to Tenant, (B) Tenant shall pay the Option Purchase Price to the City and (C) the City and Tenant shall deliver such customary closing documents (e.g., settlement statements, title insurance, a survey tax reporting forms) and take such customary actions as shall be required in order to effect such conveyance in accordance with then-common Texas real estate conveyancing practice. The Parties agree that any transfer Taxes that are imposed in connection with the conveyance of the Leased Premises and all Improvements thereon to Tenant pursuant to this Section 16 shall be paid by the City.

16.5 ***Survival/Forfeiture***. This Section 16 shall survive the expiration of the Term or termination of this Agreement pursuant to Section 8 (and regardless of Tenant, Leasehold Mortgagees or Mezzanine Lenders receiving any amounts set forth in Section 8.2 or 8.4).

17. Miscellaneous

17.1 ***Notices***. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, by electronic mail, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

If to City:

City of Round Rock
221 E. Main Street
Round Rock, TX 78664
Attn: City Manager
Phone: (512) 218-5400
Email: citymanager@roundrocktexas.gov

With a required copy to:

Sheets & Crossfield
309 E. Main Street
Round Rock, TX 78664
Attn: Stephan L. Sheets
Phone: (512) 255-8877
Email: steve@scrrlaw.com

If to Tenant:

KR CC, INC.
P.O. Box 590
1305 Kalahari Drive
Wisconsin Dells, WI 53965
Attn: Mary Bonte Spath
Phone: (608) 254-5320
Email: mbonte@kalahariresorts.com

With required copy to:

Shupe Ventura Lindelow & Olson, PLLC
9406 Biscayne Blvd.
Dallas, Texas 74218
Attn: Misty Ventura
Phone: (214) 328-1101
Email: misty.ventura@svlandlaw.com

Michael Best & Friedrich LLP
One South Pinckney Street, Suite 700
Madison, Wisconsin 53703
Attn: Michael S. Green
Phone: (608) 257-3501
Email: msgreen@michaelbest.com

Either Party may designate a different address at any time upon written notice to the other Party.

17.2 ***Force Majeure.*** Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (a "**Force Majeure Event**"). An event of force majeure for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion, vandalism; storm or similar occurrences; orders or acts of military or civil authority; litigation; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay; unusual weather events; and unusual delays in obtaining City approvals of plats, permits, or other development approvals required to construct and operate the Project. Except as otherwise expressly provided herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of force majeure.

17.3 ***Severability.*** In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected. It is also the intention of the Parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

17.4 ***Time of the Essence.*** Time is of the essence in the performance of this Agreement.

17.5 ***Binding Effect; Amendments.*** This Agreement binds and inures to the benefit of the Parties' permitted successors and assigns. This Agreement may be amended only by the mutual written agreement of the Parties.

17.6 ***Waiver***. A Party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon breach of this Agreement will not constitute a waiver of the performance, right, or remedy. A Party's waiver of the other Party's breach of any provision in this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in a writing signed by the waiving Party.

17.7 ***Interpretation***.

17.7.1 The term "including" shall mean "including, without limitation" and "including, but not limited to" and shall not be interpreted to imply any limitation on the more general preceding provision unless otherwise expressly stated. All references in this Agreement to Sections, Exhibits, or Schedules refer to the Sections, Exhibits, and Schedules of this Agreement unless otherwise expressly stated. Each Exhibit and Schedule referenced in this Agreement is incorporated herein by reference and made a part hereof. The headings and captions of the Sections, Exhibits and Schedules are included for convenience only and shall have no effect upon the construction or interpretation of this Agreement.

17.7.2 Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

17.8 ***Entire Agreement***. This Agreement, together with the Master Development Agreement and the Economic Development Program Agreement, constitute the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the subject matter of this Agreement.

17.9 ***No Joint Venture.*** It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the Parties.

17.10 ***No Third-Party Beneficiaries***. Except for the rights of a Leasehold Mortgagee and a Mezzanine Lender provided herein, and as otherwise specifically provided in this Agreement, this Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.

17.11 ***Attorneys' Fees***. Except as otherwise expressly stated herein, the Parties shall bear their own costs and attorneys' fees incurred in connection with this Agreement.

17.12 ***Counterparts***. The Parties may sign this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same

Agreement. Facsimile signatures or signatures transmitted by e-mail or other electronic means shall be effective to bind the Parties.

17.13 ***Applicable Law.*** This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.

17.14 ***Interest.*** Except as otherwise expressly set forth in this Agreement, any payment required under this Agreement that is not timely made shall bear interest at the Interest Rate from the due date until paid in full.

17.15 ***Paragraph Headings.*** The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

17.16 ***Survival.*** This Section 17 shall survive the expiration of the Term or termination of this Agreement.

17.17 ***Hazardous Materials.*** Tenant shall not use, generate, manufacture, refine, produce process, store or dispose of any Hazardous Materials in, on, under or about the Property, except in strict compliance with all Applicable Laws.

[signature page follows]

IN WITNESS WHEREOF, the Parties have entered in this Agreement as of the day and year first above written.

CITY OF ROUND ROCK, TEXAS
a home rule city and municipal corporation

By: _____
Alan McGraw, Mayor

KR CC, INC.
a Delaware corporation

By: _____
Todd Nelson, President

[Signature Page to Ground Lease]

Exhibit D

Form of Memorandum of Ground Lease to be Recorded

(see attached)

Recording Requested By and
When Recorded Mail To:

Michael Best & Friedrich LLP
One South Pinckney Street, Suite 700
Madison, Wisconsin 53703
Attention: Michael S. Green

MEMORANDUM OF LEASE AND OPTION

This **MEMORANDUM OF LEASE AND OPTION** (this "**Memorandum**"), dated as of December _____, 2016 is entered into between CITY OF ROUND ROCK, TEXAS, a Texas local government home rule corporation (the "**City**"), and _____, INC., a Delaware corporation ("**Tenant**").

RECITALS

A. The City and Tenant entered into that certain Ground Lease Agreement, dated as of _____ (the "**Lease Agreement**"), pursuant to which the City will lease to Tenant, and Tenant will lease from the City, for the Term (as such term is defined in the Lease), the real property described in Exhibit "A" attached hereto and incorporated herein by reference (the "**Leased Premises**").

B. The City and Tenant desire to execute this Memorandum to provide constructive notice of Tenant's rights under the Lease Agreement to all third parties.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Term. The City has agreed to lease the Leased Premises to Tenant for the Term, which Term will end approximately 99 years after the Effective Date (as such term is defined in the Lease).

2. Lease Terms. The lease of the Leased Premises to Tenant is pursuant to the Lease Agreement, which is incorporated into this Memorandum by reference.

3. Purchase Option. Tenant shall have the option to purchase the Leased Premises from the City (the "**Purchase Option**") upon and subject to the terms and conditions set forth in the Lease Agreement.

4. Assignment. Tenant's ability to transfer its rights under the Lease Agreement and to sublease the Leased Premises is set forth in more detail in the Lease Agreement.

5. Leasehold Mortgagee's Right to New Agreement. Tenant's leasehold mortgagees are granted certain rights and protections, including notice and cure rights with respect to

Tenant's defaults and the right, under certain circumstances that result in the termination of the Lease Agreement, to require the City to enter into a new lease with Tenant's senior leasehold mortgagee or its assignee, nominee or designee, all as set forth in more detail in the Lease Agreement.

6. Encumbrances. The Lease Agreement prohibits City from mortgaging or otherwise encumbering City's fee title interest in the Leasehold Premises with any mortgage, deed of trust, security deed, deed to secure debt, or any other similar instrument or agreement constituting a lien upon, or similarly encumbering, City's fee title interest in the Leasehold Premises.

7. Successors and Assigns. This Memorandum and the Lease Agreement shall bind and inure to the benefit of the parties and their respective heirs, successors and assigns, subject, however, to the provisions of the Lease Agreement.

8. Release. The Lease Agreement provides that Tenant will execute and record a release of this Memorandum within ten (10) Business Days (as defined in the Lease Agreement) following the expiration of the Purchase Option.

9. Governing Law. This Memorandum and the Lease Agreement are governed by Texas law.

* * *

IN WITNESS WHEREOF, the City and Tenant have entered in this Memorandum as of the day and year first above written.

CITY OF ROUND ROCK, TEXAS
a home rule city and municipal corporation

By: _____
Alan McGraw, Mayor

KR CC, INC.
a Delaware corporation

By: _____
Todd Nelson, President

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the __ day of December, 2016, by Alan McGraw, as Mayor of the CITY OF ROUND ROCK, TEXAS, a home rule city and municipal corporation.

_____
Notary Public
State of Texas
My Commission: _____

ACKNOWLEDGMENT

STATE OF WISCONSIN §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the __ day of December, 2016, by Todd Nelson, as President of KR CC, INC., a Delaware corporation.

_____
Notary Public
State of Wisconsin
My Commission: _____

Exhibit E

Existing Private Letter Ruling

(see attached)

GLENN HEGAR TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

P.O. Box 13528 • Austin, TX 78711-3528

June 7, 2016

Mr. Stephan L. Sheets
City Attorney
City of Round Rock, Texas
Sheets & Crossfield, P.C.
309 E. Main Street
Round Rock, Texas 78664-5246

Re: Private Letter Ruling #160610180
Hotel Tax and Municipally Owned Convention Center

Dear Mr. Sheets:

We issue this private letter ruling in accordance with Rule 3.1, Private Letter Rulings and General Information Letters,[1] in response to your February 25, 2016 request. Detrimental reliance relief is provided in accordance with Rule 3.10, the Taxpayer Bill of Rights.

Requested Ruling:

The City is entitled to the benefits of Government Code Section 2303.5055, Refund, Rebate, Or Payment Of Tax Proceeds To Qualified Hotel Project, for a qualified hotel project meeting the requirements of the Government Code as it is a municipality with a population of 96,000 or more and is located in a county that contains the headwaters of the San Gabriel River.

Relevant Facts:

The City of Round Rock (City) is located in Williamson County.

The San Gabriel River forms in Georgetown, Texas, at the confluence of the North and South Forks of the river. Georgetown, Texas is also located in Williamson County.

The United States Census Bureau estimates that the City's population was 112,774 in 2014. The City's Planning Department estimates its population to be 106,360 in 2016.

[1] Unless otherwise indicated, all references to "Section" are to the Texas Tax Code, and all references to "Rule" are to Title 34 of the Texas Administrative Code.

Analysis:

The analysis below discusses a "hotel project" rather than a "qualified hotel project." The term "qualified hotel project" is defined in Government Code Section 2303.003(8) and applies to a project located in "a municipality with a population of 1,500,000 or more," which is currently only the City of Houston.

In 2015, the 84th Legislature amended Tax Code Section 351.102(b), Pledge for Bonds, to add "a municipality with a population of 96,000 or more that is located in a county that borders Lake Palestine or contains the headwaters of the San Gabriel River..."

The term "headwaters" is not defined by statute. In common usage, the term refers to the source or starting point of a river. In interpreting Section 351.102, therefore, we applied the common usage of the term and determined that "the headwaters of the San Gabriel River" means the confluence of the North and South Forks of the San Gabriel River in Georgetown, Texas.

The headwaters of the San Gabriel River are located in Williamson County, as is the City. In addition, the City's population exceeds 96,000. The City therefore qualifies as a municipality to which Section 351.102(b) applies.

Pursuant to Section 351.102(c), a municipality to which subsection (b) applies "is entitled to receive all funds from a project described by this section that an owner of a project may receive under Section 151.429(h) of this code, or Section 2303.5055, Government Code."

Section 351.102(b) describes a hotel project as follows:

- a hotel located within 1,000 feet of an operational convention center that is owned by a municipality described in Section 351.102(b);
- the hotel must be owned by or located on land owned by the municipality or, for an eligible central municipality, a nonprofit corporation acting on its behalf;
- any facilities ancillary to the hotel must be owned by or located on land owned by the municipality or, for an eligible central municipality, a nonprofit corporation acting on its behalf;[2] and
- the facilities ancillary to the hotel must be located within 1,000 feet of the hotel or convention center facility.

[2] Facilities ancillary to the hotel include "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 within 1,000 feet of the hotel or convention center facility."

Conclusion:

The City is a municipality described in Section 351.102(b), and is entitled to the benefits under Tax Code Section 151.429(h) or Government Code Section 2303.5055, as they relate to a hotel project under Section 351.102(b), described above. The Comptroller will approve a hotel project for tax rebates once the project is open for initial occupancy.

If you have questions about this private letter ruling, please email us at tax.help@texas.cpa.gov and reference Private Letter Ruling #160610180.

Sincerely,

Tax Policy Division – Indirect Taxes
Texas Comptroller of Public Accounts

Exhibit F

Form of Request for Additional Private Letter Ruling

(see attached)

Sheets & Crossfield, P.C.

ATTORNEYS AT LAW

309 East Main Street • Round Rock, TX 78664-5246

Phone 512-255-8877 • Fax 512-255-8986

www.sheets-crossfield.com

November 18, 2016

Texas Comptroller of Public Accounts
Tax Policy Division
P.O. Box 13528
Austin, TX 78711-3528

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Private Letter Ruling Request
Hotel Tax and Hotel Project on Municipally Owned Land

Dear Sir or Madam:

Please allow this letter to serve as a request for a Private Letter Ruling pursuant to Texas Administrative Code Section 3.1. As the City Attorney for the City of Round Rock (the "City"), I am authorized to request the Private Letter Ruling on behalf of the City.

The City's identifying information is set out as follows:

City of Round Rock, Texas
221 E. Main Street
Round Rock, Texas 78664
Federal ID No.: 74-6017485
A Texas Home Rule City

Statement of Relevant Facts

KR Acquisitions, LLC or its affiliate ("KR Acquisitions") has proposed developing and constructing a hotel project and convention center facility including facilities ancillary to the hotel (the "Project") located on approximately 351.7 acres in the City's corporate limits (the "Land"). The City previously received Private Letter Ruling #160610180 dated June 7, 2016 from the Texas Comptroller of Public Accounts ruling that the City "is entitled to the benefits under Tax Code Section 151.429(h) or Government Code Section 2303.5055, as they relate to a hotel project under Section 351.102(b)" and that "The Comptroller will approve a hotel project for tax rebates once the project is open for initial occupancy." Private Letter Ruling #160610180 concluded that the City is a municipality with a population of 96,000 or more that is located in a county that contains the headwaters of the San Gabriel River within the meaning of Section 351.102(b) of the Texas Tax Code.

To satisfy the requirements of the "hotel project" under Section 351.102(b) of the Texas Tax Code, the Project must comply with the following:

(1) the "hotel project" must be owned by or located on land owned by the municipality;

(2) the "hotel project" must be located within 1,000 feet of a convention center facility that is owned by a municipality;

(3) the facilities ancillary to the hotel must be located within 1,000 feet of the hotel or convention center facility.

To satisfy the requirements (1) above, the City intends to acquire fee simple title ownership to the Land, and immediately enter into a ground lease for the Land (the "Ground Lease") with an affiliate of KR Acquisitions (the "Ground Tenant"), through which the Ground Tenant will undertake development of the Project. The terms of the Ground Lease shall provide that the City will retain fee simple ownership of the Land, and the Ground Tenant will hold a leasehold interest in the Land and all improvements on the Land, with the exception of the convention center facility, which will be owned by the City. The City will lease the convention center facility to KR Acquisitions for operation.

The hotel project and convention center facility will be attached or adjacent to each other, and may be located on separate platted lots. To satisfy the requirement in (2) above that the hotel project be within 1,000 feet of the convention center facility, the hotel project will either (a) be located on the same platted lot as the convention center facility (the "Consolidated Lot"), in which case not more than a 1,000 foot distance will exist between the closest exterior walls of the hotel building and the convention center building; or (b) the hotel project will be developed on a separate platted lot (the "Hotel Lot"), the boundary of which will be located within 1,000 feet of the boundary of the platted lot on which the convention center facility is to be developed (the "Convention Center Lot"). To satisfy the requirement in (3) above that the facilities ancillary to the hotel be located within 1,000 feet of the hotel or the convention center facility, the ancillary facilities within the Project will be located within 1,000 feet of the boundary of the Consolidated Lot, the Hotel Lot, or the Convention Center Lot, depending on how the Project is platted.

The facilities ancillary to the hotel will include 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, all of which are expressly referenced in Section 351.102(b) of the Texas Tax Code (collectively, the "Ancillary Facilities"). The entertainment related facilities, meeting spaces, restaurants, and shops within the Project will include food and beverage operations, retail outlets, entertainment and recreation facilities, spa/fitness facilities, museum/zoo facilities, performance and sporting venues, and office space.

Section 2303.5055 of the Texas Government Code provides that a municipality may agree to rebate, refund, or pay eligible taxable proceeds to the owner of a qualified hotel project. The term eligible taxable proceeds means taxable proceeds generated, paid, or collected by a qualified hotel project or a business at a qualified hotel project, including hotel occupancy taxes, ad valorem taxes, sales and use taxes, and mixed beverage taxes. Section 2303.5055 does not include restrictions on the use of such funds rebated, refunded, or paid to the owner of a qualified hotel project.

Section 151.429(h) of the Texas Tax Code provides that, notwithstanding the other provisions of Section 151.429, the owner of qualified hotel project shall receive a rebate, refund, or payment of 100 percent of the sales and use taxes paid or collected by the qualified hotel project or businesses located in the qualified hotel project pursuant to Chapter 151 of the Texas Tax Code and 100 percent of the hotel occupancy taxes paid by persons for the use or possession of or for the right to the use or possession of a room or space at the qualified hotel project pursuant to the provisions of Chapter 156 during the first ten years after such qualified hotel project is open for initial occupancy. Section 151.429(h) of the Texas Tax Code does not include restrictions on the use of such funds rebated, refunded, or paid to the owner of qualified hotel project.

Documents

Terms of the Ground Lease at Exhibit A attached hereto.

Statements Relating to Request

This issue is 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.

The City has not made and will note make a similar request from a taxing jurisdiction in another state.

Requested Rulings

The City requests Private Letter Rulings confirming the following:

(i) that, for purposes of Section 351.102(b) of the Texas Tax Code, the City will "own" the Land following acquisition of the Land by the City, and will continue to "own" the Land under the terms of the Ground Lease; and

(ii) that, for purposes of Section 351.102(b) of the Texas Tax Code, the City's "hotel project" may include the hotel and the Ancillary Facilities, even if the Ancillary Facilities are not located within, or attached to, the hotel or located on the same platted lot as the hotel; and

(iii) that, for purposes of Section 351.102(b) of the Texas Tax Code, the Ancillary Facilities include food and beverage operations, retail outlets, entertainment and recreation facilities, spa/fitness facilities, museum/zoo facilities, performance and sporting venues, and office space facilities planned for the Project; and

(iv) that, for purposes of Section 351.102(b) of the Texas Tax Code, the 1,000-foot distances for the Project are measured as follows: (a) the hotel project must be located within 1,000 feet of the boundary of the Convention Center Lot, or if the hotel project and the convention center facility are developed on the Consolidated Lot, not more than a 1,000 foot distance will exist between the closest exterior walls of the hotel building and the

convention center building; and (b) the Ancillary Facilities must be located within 1,000 feet of the boundary of the Consolidated Lot, the Hotel Lot, or the Convention Center Lot, depending on the platting of the Project; and

(v) that, for purposes of Section 351.102(b) of the Texas Tax Code, the Ancillary Facilities are not required to be located within 1,000 feet of the convention center facility as long as the Ancillary Facilities are within 1,000 feet of the boundary of the Hotel Lot or the Consolidated Lot, depending on the platting of the Project; and

(vi) that, pursuant to Section 151.429(h) of the Texas Tax Code, Section 351.102(c) of the Texas Tax Code, and Section 2303.5055 of the Texas Government Code, the City may pledge revenue from hotel occupancy taxes, ad valorem taxes, sales and use taxes, and mixed beverage taxes collected from hotel project, the convention center facility, and the Ancillary Facilities; and

(vii) that a "hotel project" referenced in Section 351.102(b) of the Texas Tax Code is a "qualified hotel project" under Section 2303.003(8) of the Texas Government Code for purposes of applying Section 2303.5055 of the Texas Government Code and Section 151.429(h) of the Texas Tax Code; and

(viii) that the City is not required to be an "eligible central municipality" within the meaning of Section 351.102(b) of the Texas Tax Code or to meet the definition of an "eligible central municipality" under Section 351.001(7) of the Texas Tax Code, including the portion of the definition that requires the adoption of a capital improvement plan, because Section 351.102(b) of the Texas Tax Code applies to the City as a municipality with a population of 96,000 or more that is located in a county that contains the headwaters of the San Gabriel River; and

(ix) that the purpose for which funds rebated, refunded, or paid to the owner of qualified hotel project pursuant to Section 2303.5055 of the Texas Government Code are used by the owner is not restricted; and

(x) that the purpose for which funds rebated, refunded, or paid to the owner of qualified hotel project pursuant to Section 151.429(h) of the Texas Tax Code are used by the owner is not restricted.

Authorities Supporting this Request

Section 351.102(b) of the Texas Tax Code reads as follows:

(b) An eligible central municipality, a municipality with a population of 173,000 or more that is located within two or more counties, a municipality with a population of 96,000 or more that is located in a county that borders Lake Palestine or contains the headwaters of the San Gabriel River, or a municipality with a population of at least 99,900 but not more than 111,000 that is located in a county with a population of at least 135,000 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 or, in an eligible central municipality, by a nonprofit corporation acting on behalf of an eligible central 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, 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 within 1,000 feet of the hotel or convention center facility. For bonds or other obligations issued under this subsection, an eligible central municipality or a municipality described by this subsection may only pledge revenue or other assets of the hotel project benefiting from those bonds or other obligations.

See also Putnam v. City of Irving, 331 S.W.3d 869 (Tex. App. 2011, pet. denied) (holding that Section 351.102(b) of the Texas Tax Code does not require that facilities must be physically connected to the hotel to be ancillary to the hotel).

Section 351.102(c) of the Texas Tax Code reads as follows:

> A municipality to which Subsection (b) applies is entitled to receive all funds from a project described by this section that an owner of a project may receive under Section 151.429(h) of this code, or Section 2303.5055, Government Code, and may pledge the funds for the payment of obligations issued under this section.

Section 351.001(7) of the Texas Tax Code reads as follows:

> "Eligible central municipality" means:
>
> (A) a municipality with a population of more than 140,000 but less than 1.5 million that is located in a county with a population of one million or more and that has adopted a capital improvement plan for the construction or expansion of a convention center facility;
>
> (B) a municipality with a population of 250,000 or more that:
>
> (i) is located wholly or partly on a barrier island that borders the Gulf of Mexico;
>
> (ii) is located in a county with a population of 300,000 or more; and
>
> (iii) has adopted a capital improvement plan to expand an existing convention center facility;
>
> (C) a municipality with a population of 116,000 or more that:
>
> (i) is located in two counties both of which have a population of 660,000 or more; and

(ii) has adopted a capital improvement plan for the construction or expansion of a convention center facility;

(D) a municipality with a population of less than 50,000 that contains a general academic teaching institution that is not a component institution of a university system, as those terms are defined by Section 61.003, Education Code; or

(E) a municipality with a population of 640,000 or more that:

(i) is located on an international border; and

(ii) has adopted a capital improvement plan for the construction or expansion of a convention center facility.

Section 151.429(h) of the Texas Tax Code reads as follows:

Notwithstanding the other provisions of this section, the owner of a qualified hotel project shall receive a rebate, refund, or payment of 100 percent of the sales and use taxes paid or collected by the qualified hotel project or businesses located in the qualified hotel project pursuant to this chapter and 100 percent of the hotel occupancy taxes paid by persons for the use or possession of or for the right to the use or possession of a room or space at the qualified hotel project pursuant to the provisions of Chapter 156 during the first 10 years after such qualified hotel project is open for initial occupancy. The comptroller shall deposit the taxes in trust in a separate suspense account of the qualified hotel project. A suspense account is outside the state treasury, and the comptroller may make a rebate, refund, or payment authorized by this section without the necessity of an appropriation. The comptroller shall rebate, refund, or pay to each qualified hotel project eligible taxable proceeds to which the project is entitled under this section at least monthly.

Section 2303.003(8) of the Texas Government Code reads as follows:

"Qualified hotel project" means a hotel proposed to be constructed by a municipality or a nonprofit municipally sponsored local government corporation created under the Texas Transportation Corporation Act, Chapter 431, Transportation Code, that is within 1,000 feet of a convention center owned by a municipality having a population of 1,500,000 or more, including shops, parking facilities, and any other facilities ancillary to the hotel.

Section 2303.5055 of the Texas Government Code reads as follows:

(a) For a period that may not exceed 10 years, a governmental body, including a municipality, county, or political subdivision, may agree to rebate, refund, or pay eligible taxable proceeds to the owner of a qualified hotel project at which the eligible taxable proceeds were generated.

(b) A municipality with a population of 1,500,000 or more may agree to guarantee from hotel occupancy taxes the bonds or other obligations of a municipally sponsored local

government corporation created under the Texas Transportation Corporation Act, Chapter 431, Transportation Code, that were issued or incurred to pay the cost of construction, remodeling, or rehabilitation of a qualified hotel project.

(c) An agreement under this section must be in writing, contain an expiration date, and require the beneficiary to provide documentation necessary to support a claim.

(d) A governmental body that makes an agreement under this section shall make the rebate, refund, or payment directly to the beneficiary.

(e) In this section, "eligible taxable proceeds" means taxable proceeds generated, paid, or collected by a qualified hotel project or a business at a qualified hotel project, including hotel occupancy taxes, ad valorem taxes, sales and use taxes, and mixed beverage taxes.

(f) Notwithstanding any other law, the comptroller shall deposit eligible taxable proceeds that were collected by or forwarded to the comptroller, and to which the qualified hotel project is entitled according to an agreement under this section, in trust in a separate suspense account of the project. A suspense account is outside the state treasury, and the comptroller may make a rebate, refund, or payment authorized by this section without the necessity of an appropriation. The comptroller shall rebate, refund, or pay to each qualified hotel project eligible taxable proceeds to which the project is entitled under this section at least quarterly.

Explanation of Grounds for Requested Ruling

In order to satisfy the requirements of Section 351.102(b) of the Texas Tax Code, the City must either own the Project or own the Land. The City will own the Land for purposes of Section 351.102(b) because it will purchase the Land. The City will continue to own the Land, for purposes of Section 351.102(b), during and after development and construction of the Project. The City will own the convention center facility. The Ground Tenant will own the hotel project, and lease the Land pursuant to the Ground Lease, including those portions of the Land upon which the convention center facility will be constructed.

Additionally, Section 351.102(b) provides that the City "...may pledge the revenue derived from the tax imposed....from a ***hotel project....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,*** 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 ***within 1,000 feet of the hotel or convention center facility....***" (emphasis added)

The City seeks to confirm that the hotel project must be within 1,000 feet of the convention center facility, and that the Ancillary Facilities must be located within 1,000 feet of the hotel or the convention center facility, but not within 1,000 feet of both. Section 351.102(b) of the Texas Tax Code does not specify how this distance must be measured, and contains no requirement that a hotel project be located within 1,000 feet of all portions of a convention center facility, or that the Ancillary Facilities be located within 1,000 feet of all portions of either of the hotel or convention center facility. If the hotel project is within 1,000 feet of the boundary of the Convention Center Lot, the distance requirement is satisfied based on a plain reading of the

statute. Similarly, if the hotel project and convention center facility are located on the Consolidated Lot, not more than a 1,000 foot distance will exist between the closest exterior walls of the hotel building and the convention center building, which satisfies the distance requirement based on a plain reading of the statute. In addition, if the Ancillary Facilities are within 1,000 feet of the boundary of the Consolidated Lot, the Hotel Lot, or the Convention Center Lot, depending on the platting of the Project, the statutory distance requirement is satisfied, even if the Ancillary Facilities are not located within 1,000 feet of both the hotel and the convention center facility.

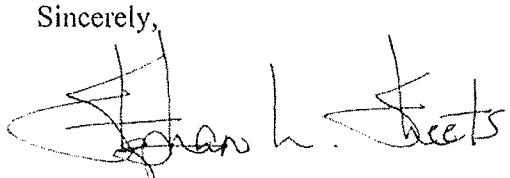
The authorities cited in this memo contain no requirement that a hotel project be attached to, or located on the same platted lot as, a convention center facility; therefore, the hotel project and convention center facility will be either adjacent or attached to each other, and may be located on separate platted lots.

Section 2303.5055 of the Texas Government Code and Section 151.429(h) of the Texas Tax Code contain no restrictions on the purposes for which an owner of a qualified hotel project may use funds rebated, refunded, or paid to the owner under such sections; therefore, an owner of qualified hotel project may use such funds for any purpose.

Authorities Contrary to the Requested Ruling

The City has identified all relevant authorities to the best of the City's knowledge.

Sincerely,



Stephan L. Sheets
Round Rock City Attorney

Exhibit A

Ground Lease Agreement
Proposed Basic Terms

Term:	99 years
Property:	Approximately 351.7 acres in the City of Round Rock, LLC
Ground Lessor:	City of Round Rock, Texas
Ground Lessee:	KR Acquisitions, LLC or its affiliate
Initial Rent:	Approximately $17,000,000
Rent Due in Year 8:	Approximately $11,000,000
Annual Rent:	$1.00 per year
Assignability and Mortgage:	Ground Lessee may freely assign and mortgage, pledge, or otherwise encumber the Ground Lease interest without Ground Lessor's consent. Ground Lessor shall always be subordinate to any lender of Ground Lessee
Use:	Ground Lessee may use the property for any use permitted by law
Development Rights:	Ground Lessee may develop the Property in any manner allowed by law and may subdivide, apportion, and condominiumize any portion of the Property allowed by law without Ground Lessor's consent
Option to Purchase:	Ground Lessee may purchase all or any portion of the Property upon 60 days' notice within the term and at any time within the term of the ground lease (provided a total of at least $28,000,000 in rent has been paid)
Option Purchase Price:	$1.00

Exhibit G

Form of Assignment of Purchase Contracts

(see attached)

MB Draft 12.7.16

ASSIGNMENT AND ASSUMPTION AND LEASE-BACK AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AND LEASE-BACK AGREEMENT (this "Agreement") is made and entered into as of this [20th day of December, 2016], by KR CC, Inc., a Delaware corporation (the "Assignor") and the City of Round Rock, Texas, a Texas local government home rule corporation (the "City").

RECITALS:

WHEREAS, Assignor, as Buyer, is the assignee of that certain Commercial Contract - Unimproved Property dated as of October 30, 2015 (the "Bison Commercial Contract", a true and correct copy of which is attached hereto as Exhibit A), with Bison Tract 79, Ltd., a Texas limited partnership, as Seller (the "Bison Seller"); and

WHEREAS, Assignor, as Buyer, is the assignee of that certain Commercial Contract - Unimproved Property dated as of December 23, 2015 (the "Krienke Commercial Contract", a true and correct copy of which is attached hereto as Exhibit B), with Keith Krienke, Mark Meredith, Greg Carter, and the Estate of Lisa M. Carter, as Seller (collectively, the "Krienke Seller"); and

WHEREAS, Assignor, as Buyer, is the assignee of that certain Commercial Contract - Unimproved Property dated as of December 16, 2015, as amended by that certain First Amendment to Commercial Contract – Improved Property dated December 21, 2015 (together, the "Keller Commercial Contract", a true and correct copy of which is attached hereto as Exhibit C), with Gladys B. Johnson, John D. Johnson, and Bertha M. Keller, as Seller (collectively, the "Keller Seller"). The Keller Commercial Contract, together with the Bison Commercial Contract, and the Krienke Commercial Contract, are collectively referred to herein as the "Commercial Contracts"). The Keller Seller, together with the Bison Seller, and the Krienke Seller, are collectively referred to herein as the "Sellers"); and

WHEREAS, pursuant to the Commercial Contracts, Assignor has agreed to purchase and Sellers have agreed to sell certain real and personal property in Round Rock, Texas as further described in each commercial contract (collectively, the "Property");

WHEREAS, the Property consists of approximately 350.2 acres of land located east of Kenney Fort Boulevard and south of the Union Pacific Railroad, in Round Rock, Texas, all as further described on Exhibit D attached hereto (the "Land");

WHEREAS, concurrent with the execution hereof, Assignor, KR Acquisitions, LLC, a Delaware limited liability company ("Developer") and City have entered into that certain Master

Development Agreement (the "Master Development Agreement") pursuant to which Assignor and Developer will develop the Property;

WHEREAS, pursuant to this Agreement and the Master Development Agreement, Assignor has agreed to assign, and City has agreed to take assignment of, the Commercial Contracts and close on the purchase of the Property pursuant to such Commercial Contracts and this Agreement; and

WHEREAS, pursuant to this Agreement and the Master Development Agreement, Assignor and City have agreed to enter into that certain Ground Lease Agreement of even date herewith and as referenced in Section 3.03 of the Master Development Agreement, the form of which is attached hereto as Exhibit E (the "Ground Lease").

AGREEMENT:

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and City hereby agree as follows:

1. Defined Terms. Terms utilized but not defined herein, or otherwise noted, shall have the meanings set forth in the Master Development Agreement

2. Assignment and Assumption. Assignor hereby assigns all of its right, title and interest in and to, and delegates all of its related obligations under, the Commercial Contracts to City. City hereby assumes and agrees to be bound by the terms of the Commercial Contracts, and agrees to perform all of Assignor's obligations thereunder with regard to the Commercial Contracts as if City had been the party originally named as "Buyer" therein.

3. Acquisition of the Property. City hereby agrees to acquire the Property pursuant to the terms and conditions of the Commercial Contracts. Assignor shall assist and facilitate the closing on the acquisition of the Property (the "Closing") which shall occur on or before December 23, 2016, unless otherwise agreed upon the parties hereto (the "Closing Date").

4. Lease-Back of Land. Concurrent with the Closing, Assignor and City shall enter into the Ground Lease.

5. Closing and Closing Deliveries for Assignment and Assumption and Lease-Back. The Closing shall take place at the offices of First American Title Insurance Company and Austin Title Company (collectively, the "Escrow Agent") on the Closing Date. At the Closing and to the extent not previously executed and delivered, the Assignor, City and Developer, as applicable, shall execute and deliver to each of the following:

a. This Agreement

b. The Master Development Agreement

c. The Ground Lease;

d. The Memorandum of the Ground Lease (as defined in the Ground Lease)

e. The Economic Development Program Agreement (as defined in the Master Development Agreement);

Assignor and City further agree to execute escrow instructions substantially in the form attached hereto as Exhibit F, as amended as may be necessary to enable the Escrow Agent to comply with the terms of this Agreement and the Commercial Contracts (the "Escrow Instructions").

6. Closing and Closing on Purchase of Property. At the Closing, City shall close on the acquisition of the Property pursuant to the Commercial Contracts and the Escrow Instructions. All deeds, title policies, affidavits, settlement statements, and other closing documents for the acquisition of the Property shall be approved by Assignor prior to execution of the Closing. All costs, taxes, fees or other expenses payable by the "buyer" with respect to the Closing shall be the responsibility of Assignor and shall be paid directly or funded into the Escrow Agent on or before the Closing Date for disbursement at the Closing.

7. Acceptance of the Land. City acknowledges and agrees that, upon its acquisition of the Land, it accepts the Land in an "AS IS, WHERE IS" condition and Assignor acknowledges and agrees that City has not agreed and has no obligation to make any representations or warranties as to the condition to title or physical condition of the Land and has no obligations to improve the Land, except as specifically set forth in the Master Development Agreement or herein.

8. Representations and Warranties of Assignor. Assignor represents, warrants, and covenants to City, that Assignor has full right, power, and authority to enter into this Agreement and the execute the transactions contemplated hereby, and that the signatory hereunder has full right, power, and authority to execute this Agreement.

9. Representations and Warranties of City. City represents, warrants, and covenants to Assignor, that City has full right, power, and authority to enter into this Agreement and the execute the transactions contemplated hereby, and that the signatory hereunder has full right, power, and authority to execute this Agreement.

10. Brokers. Assignor and City each hereby represent and warrant that neither party has dealt with any broker in connection with this Agreement and there are no unpaid brokerage commissions or finders' fees payable in connection herewith, except for those to be paid by Assignor to Summit Commercial, as set forth in the Commercial Contracts. Assignor shall indemnify and hold City harmless, including reasonable attorney's fees, from any claim made by any broker, including, but not limited to, any brokers, in respect of this Agreement. This indemnification shall survive the termination of this Agreement.

11. Mutual Assistance; Further Assurances. Assignor and City will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and the transactions contemplated hereby. Assignor and City agree to furnish to each other such further information, execute and deliver such other documents and do all such other acts and things as may be necessary or appropriate to evidence, document or conclude the transactions contemplated hereby

12. Counterparts. This Agreement may be executed, by original signature, facsimile or electronic signature, in counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

13. Headings. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provision of this Agreement.

14. Binding Effect; Entire Agreement. This Agreement shall be binding on and inure to the benefit of Assignor and City, their respective successors and assigns. This Agreement, the Master Development Agreement, the Ground Lease and the Economic Development Program Agreement constitute the entire agreement between Assignor and City, and supersede all prior agreements, whether oral or written, covering the subject matter of this Agreement.

15. Assignment. Except as provided herein, neither party assign all or part of its rights and obligations to a third party without the express written consent of the other party unless such assignment is a collateral assignment to a lender. Assignor may assign all or part of its rights and obligations under this Agreement to an entity that is controlled by or under common control with the Assignor, and shall provide a copy of the assignment to the City within 15 days after the effective date of the assignment. The City may not assign this Agreement.

16. Amendment. This Agreement may be amended only by the mutual written agreement of Assignor and City.

17. Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, by electronic mail, or by depositing the same in the

United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

If to City:

City of Round Rock
221 E. Main Street
Round Rock, TX 78664
Attn: City Manager
Phone: (512) 218-5400
Email: citymanager@roundrocktexas.gov

With a required copy to:

Sheets & Crossfield
309 E. Main Street
Round Rock, TX 78664
Attn: Stephan L. Sheets
Phone: (512) 255-8877
Email: steve@scrrlaw.com

If to the Assignor:

KR CC, Inc.
P.O. Box 590
1305 Kalahari Drive
Wisconsin Dells, WI 53965
Attn: Mary Bonte Spath
Phone: (608) 254-5320
Email: mbonte@kalahariresorts.com

With required copy to:

Shupe Ventura Lindelow & Olson, PLLC
9406 Biscayne Blvd.
Dallas, Texas 74218
Attn: Misty Ventura
Phone: (214) 328-1101
Email: misty.ventura@svlandlaw.com

Michael Best & Friedrich LLP
One South Pinckney Street, Suite 700
Madison, Wisconsin 53703
Attn: Michael S. Green
Phone: (608) 257-7482
Email: msgreen@michaelbest.com

Either party may designate a different address at any time upon written notice to the other party.

18. Interpretation. Each of Assignor and City has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.

19. Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.

20. Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of Assignor and City that the remainder of this Agreement shall not be affected. It is also the intention of Assignor and City that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

21. No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.

22. No Joint Venture. It is acknowledged and agreed by the parties hereto that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among Assignor and City. The City, its past, present and future officers, elected officials, employees and agents, do not assume any responsibilities or liabilities to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

[Signature Page Follows]

IN WITNESS WHEREOF, Assignor and City have executed this Agreement as of the date first above written.

ASSIGNOR:

KR CC, INC.
a Delaware corporation

By: _____
Todd Nelson, President

CITY:

CITY OF ROUND ROCK TEXAS
a Texas local government home rule corporation

By: _____
Alan McGraw, Mayor

Exhibit H

Form of Escrow Instructions

(see attached)

Michael Best

Michael Best & Friedrich LLP
Attorneys at Law
One South Pinckney Street
Suite 700
Madison, WI 53703
P.O. Box 1806
Madison, WI 53701-1806
Phone 608.257.3501
Fax 608.283.2275

Michael S. Green
Direct 608.28257-7482
Email msgreen@michaelbest.com

December __, 2016

Via E-mail & Fed Ex

Mr. Troy Conover
Austin Title Insurance Company
Hartland Plaza Building
1717 West 6th Street #105
Austin, Texas 78703

Re: Escrow Instruction Letter for the Purchase & Sale of 131.972 acres of vacant land located along Highway 79 & Kenney Fort Blvd. in Round Rock, Texas ("Property") on December __, 2015 ("Closing Date")

Dear Troy:

This letter will serve as escrow instructions for the closing of the purchase and sale of the referenced Property, more specifically described in Austin Title Insurance Company Commitment No. AUT15001885 ("Title Commitment"), pursuant to the terms of that certain Commercial Contract – Unimproved Property dated October 30, 2015, as amended by First Amendment to Commercial Contract ("Purchase Contract") by and between KR Acquisitions LLC ("KR Acquisitions") and Bison Tract 79, Ltd. ("Seller"), as assigned to KR CC, Inc. ("KR CC") and further assigned to the City of Round Rock, Texas (the "City").

A. City's Deposits. On or before the Closing Date, the City will deposit the following items:

1. Documentation sufficient to satisfy all City requirements as "Buyer" set forth in Item Nos. 3, 6 and 9 of Schedule C of the Title Commitment;
2. Assignment & Assumption Agreement and Lease-Back Agreement executed by KR CC and the City;
3. Title Commitment Mark-up;
4. Settlement Statement executed by the City; and
5. A wire transfer in the amount of the closing funds due from the City as indicated on the Settlement Statement approved and executed by the City ("Closing Proceeds").

The Title Company shall hold the City's closing funds in trust until the Title Company confirms all requirements of this closing instruction letter have been met.

B. Seller's Deposits. On or before the Closing Date, Seller will deposit the following documents, in form and substance as attached hereto:

1. Documentation sufficient to satisfy all Seller requirements set forth in Item Nos. 1, 2, 7, 8 and 9 of Schedule C of the Title Commitment;

2. First Amendment to Commercial Contract executed by Seller;
3. Notice to Seller of Assignment & Assumption of Commercial Contract regarding assignment to KR CC and further assignment to the City;
4. Special Warranty Deed executed by Seller;
5. Commercial Owner's Affidavit executed by Seller;
6. Gap Indemnity executed by Seller;
7. Bill of Sale executed by Seller;
8. Certificate of Non-Foreign Status executed by Seller;
9. 1099-S Form executed by Seller;
10. [Termination of Leases executed by Lessor and Lessee];
11. Settlement Statement executed by Seller; and
12. Wire Instructions.

These documents will be delivered to you to hold in trust and disburse in accordance with the terms of this Escrow Instruction Letter. All documents delivered to you from the Seller and the City are hereinafter collectively referred to as the "Closing Documents."

CLOSING AND DISBURSEMENT INSTRUCTIONS. Upon receipt of the above items from the City, KR CC and the Seller, you are authorized and instructed on behalf of the City and KR CC to:

1. Indicate your willingness to comply with these instructions by countersigning where indicated below and returning the countersigned letter by e-mail to Steve Sheets at steve@scrrlaw.com and Michael Green at msgreen@michaelbest.com upon receipt of this letter;

2. Transmit to the undersigned via email to the undersigned your acceptance (indicated by initialing) of the enclosed Title Commitment Mark-up of the Commitments provided by the City and KR CC;

3. Confirm all of Seller's deposits must be properly executed and notarized. In addition, each legal description of the Property attached to any of the Closing Documents must match the legal description set forth in the Title Commitment Mark-up;

4. Upon email confirmation from the undersigned and when you are irrevocably committed to: (i) record/file the Special Warranty Deed with the County Clerk in Williamson County, Texas; and (ii) issue an Owner's Policy in favor of the City, including the endorsements as shown in the attached markup of the Title Commitment Mark-up, you are then authorized to disburse the Closing Proceeds pursuant to the Settlement Statement; and

5. Forward copies of all Closing Documents to the undersigned.

Notwithstanding any terms to the contrary contained herein, if you are unable to disburse the Closing Proceeds, or otherwise complete this transaction on the Closing Date, we ask that you hold all Closing Proceeds and Closing Documents pending receipt of instructions from both of the undersigned.

If you have questions regarding this matter, please contact either of the undersigned.

Sincerely,

MICHAEL BEST & FRIEDRICH LLP

Michael S. Green
msgreen@michaelbest.com

CITY OF ROUND ROCK, TEXAS

Stephan L. Sheets
steve@scrrlaw.com

Attachments

Cc: Ralph Gundrum *(via e-mail)*
Misty Ventura *(via e-mail)*

CLOSING ESCROW INSTRUCTION LETTER ACCEPTED AS OF THE __ DAY OF DECEMBER, 2016:

AUSTIN TITLE COMPANY

By:_____
Troy Conover, Authorized Representative

Michael Best

Michael Best & Friedrich LLP
Attorneys at Law
One South Pinckney Street
Suite 700
Madison, WI 53703
P.O. Box 1806
Madison, WI 53701-1806
Phone 608.257.3501
Fax 608.283.2275

Michael S. Green
Direct 608.28257-7482
Email msgreen@michaelbest.com

December __, 2016

Via E-mail & Hand Delivery

Ms. Pat Katte
First American Title Insurance Company
10 West Mifflin Street, Suite 302
Madison, WI 53703

Re: Escrow Instruction Letter for the Purchase & Sale of 156.769 acres of vacant land located at 3401 E. Palm Valley Blvd., Round Rock, Texas ("Property") on December __, 2015 ("Closing Date")

Dear Pat:

This letter will serve as escrow instructions for the closing of the purchase and sale of the referenced Property, more specifically described in First American Title Insurance Company Commitment No. NCS-818998-MAD ("Title Commitment"), pursuant to the terms of that certain Commercial Contract – Unimproved Property dated December 17, 2015, as amended by First Amendment to Commercial Contract – Unimproved Property dated December 21, 2015 ("Purchase Contract") by and between KR Acquisitions LLC ("KR Acquisitions") and Bertha M. Keller, John D. Johnson (collectively, the "Seller"), as assigned to KR CC, Inc. ("KR CC") and further assigned to the City of Round Rock, Texas (the "City").

A. City's Deposits. On or before the Closing Date, the City will deposit the following items:

1. Documentation sufficient to satisfy all City requirements as "Buyer" set forth in Item No. 3 of Schedule C of the Title Commitment;
2. Assignment & Assumption Agreement and Lease-Back Agreement executed by KR CC and the City;
3. Title Commitment Mark-up;
4. Settlement Statement executed by the City; and
5. A wire transfer in the amount of the closing funds due from the City as indicated on the Settlement Statement approved and executed by the City ("Closing Proceeds").

The Title Company shall hold the City's closing funds in trust until the Title Company confirms all requirements of this closing instruction letter have been met.

B. Seller's Deposits. On or before the Closing Date, Seller will deposit the following documents, in form and substance as attached hereto:

1. Documentation sufficient to satisfy all Seller requirements set forth in Item Nos. 1, 2, 4, 5, 6, 7, 8, 9, and 10 of Schedule C of the Title Commitment;

2. Notice to Seller of Assignment & Assumption of Commercial Contract regarding assignment to KR CC and further assignment to the City;
3. Special Warranty Deed executed by Seller;
4. Commercial Owner's Affidavit executed by Seller;
5. Gap Indemnity executed by Seller;
6. Bill of Sale executed by Seller;
7. Certificate of Non-Foreign Status executed by Seller;
8. 1099-S Form executed by Seller;
9. [Termination of Leases executed by Lessor and Lessee];
10. Settlement Statement executed by Seller; and
11. Wire Instructions.

These documents will be delivered to you to hold in trust and disburse in accordance with the terms of this Escrow Instruction Letter. All documents delivered to you from the Seller and Buyer are hereinafter collectively referred to as the "Closing Documents."

CLOSING AND DISBURSEMENT INSTRUCTIONS. Upon receipt of the above items from the City, KR CC and the Seller, you are authorized and instructed on behalf of the City and KR CC to:

1. Indicate your willingness to comply with these instructions by countersigning where indicated below and returning the countersigned letter by e-mail to Steve Sheets at steve@scrrlaw.com and Michael Green at msgreen@michaelbest.com upon receipt of this letter;

2. Transmit to the undersigned via email to the undersigned your acceptance (indicated by initialing) of the enclosed Title Commitment Mark-up of the Commitments provided by the City and KR CC;

3. Confirm all of Seller's deposits must be properly executed and notarized. In addition, each legal description of the Property attached to any of the Closing Documents must match the legal description set forth in the Title Commitment Mark-up;

4. Upon email confirmation from the undersigned and when you are irrevocably committed to: (i) record/file the Special Warranty Deed with the County Clerk in Williamson County, Texas; and (ii) issue an Owner's Policy in favor of the City, including the endorsements as shown in the attached markup of the Title Commitment Mark-up, you are then authorized to disburse the Closing Proceeds pursuant to the Settlement Statement; and

5. Forward copies of all Closing Documents to the undersigned.

Notwithstanding any terms to the contrary contained herein, if you are unable to disburse the Closing Proceeds, or otherwise complete this transaction on the Closing Date, we ask that you hold all Closing Proceeds and Closing Documents pending receipt of instructions from both of the undersigned.

If you have questions regarding this matter, please contact either of the undersigned.

Sincerely,

MICHAEL BEST & FRIEDRICH LLP

Michael S. Green
msgreen@michaelbest.com

CITY OF ROUND ROCK, TEXAS

Stephan L. Sheets
steve@scrrlaw.com

Attachments

Cc: Ralph Gundrum *(via e-mail)*
Misty Ventura *(via e-mail)*
Merlin Lester *(via e-mail)*

CLOSING ESCROW INSTRUCTION LETTER ACCEPTED AS OF THE __ DAY OF DECEMBER, 2016:

FIRST AMERICAN TITLE INSURANCE COMPANY

By:_____
Pat Katte, Authorized Representative

Michael Best

Michael Best & Friedrich LLP
Attorneys at Law
One South Pinckney Street
Suite 700
Madison, WI 53703
P.O. Box 1806
Madison, WI 53701-1806
Phone 608.257.3501
Fax 608.283.2275

Michael S. Green
Direct 608.28257-7482
Email msgreen@michaelbest.com

December __, 2016

Via E-mail & Hand Delivery

Ms. Pat Katte
First American Title Insurance Company
10 West Mifflin Street, Suite 302
Madison, WI 53703

Re: Escrow Instruction Letter for the Purchase & Sale of 156.769 acres of vacant land located at 3801 E. Palm Valley Blvd., Round Rock, Texas ("Property") on December __, 2015 ("Closing Date")

Dear Pat:

This letter will serve as escrow instructions for the closing of the purchase and sale of the referenced Property, more specifically described in First American Title Insurance Company Commitment No. NCS-818999-MAD ("Title Commitment"), pursuant to the terms of that certain Commercial Contract – Unimproved Property dated December 23, 2015 ("Purchase Contract") by and between KR Acquisitions LLC ("KR Acquisitions") and Keith Krienke, Mark Meredith & Greg Carter and Greg Carter, Executer of Lisa M. Carter Estate (collectively, the "Seller"), as assigned to KR CC, Inc. ("KR CC") and further assigned to the City of Round Rock, Texas (the "City").

A. City's Deposits. On or before the Closing Date, the City will deposit the following items:

1. Documentation sufficient to satisfy all City requirements as "Buyer" set forth in Item No. 3 of Schedule C of the Title Commitment;
2. Assignment & Assumption Agreement and Lease-Back Agreement executed by KR CC and the City;
3. Title Commitment Mark-up;
4. Settlement Statement executed by the City; and
5. A wire transfer in the amount of the closing funds due from the City as indicated on the Settlement Statement approved and executed by the City ("Closing Proceeds").

The Title Company shall hold the City's closing funds in trust until the Title Company confirms all requirements of this closing instruction letter have been met.

B. Seller's Deposits. On or before the Closing Date, Seller will deposit the following documents, in form and substance as attached hereto:

1. Documentation sufficient to satisfy all Seller requirements set forth in Item Nos. 1, 2, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of Schedule C of the Title Commitment;

2. Notice to Seller of Assignment & Assumption of Commercial Contract regarding assignment to KR CC and further assignment to the City;
3. Special Warranty Deed executed by Seller;
4. Commercial Owner's Affidavit executed by Seller;
5. Gap Indemnity executed by Seller;
6. Bill of Sale executed by Seller;
7. Certificate of Non-Foreign Status executed by Seller;
8. 1099-S Form executed by Seller;
9. [Termination of Leases executed by Lessor and Lessee];
10. Settlement Statement executed by Seller; and
11. Wire Instructions.

These documents will be delivered to you to hold in trust and disburse in accordance with the terms of this Escrow Instruction Letter. All documents delivered to you from the Seller and the City are hereinafter collectively referred to as the "Closing Documents."

CLOSING AND DISBURSEMENT INSTRUCTIONS. Upon receipt of the above items from the City, KR CC and the Seller, you are authorized and instructed on behalf of the City and KR CC to:

1. Indicate your willingness to comply with these instructions by countersigning where indicated below and returning the countersigned letter by e-mail to Steve Sheets at steve@scrrlaw.com and Michael Green at msgreen@michaelbest.com upon receipt of this letter;

2. Transmit to the undersigned via email to the undersigned your acceptance (indicated by initialing) of the enclosed Title Commitment Mark-up of the Commitments provided by the City and KR CC;

3. Confirm all of Seller's deposits must be properly executed and notarized. In addition, each legal description of the Property attached to any of the Closing Documents must match the legal description set forth in the Title Commitment Mark-up;

4. Upon email confirmation from the undersigned and when you are irrevocably committed to: (i) record/file the Special Warranty Deed with the County Clerk in Williamson County, Texas; and (ii) issue an Owner's Policy in favor of the City, including the endorsements as shown in the attached markup of the Title Commitment Mark-up, you are then authorized to disburse the Closing Proceeds pursuant to the Settlement Statement; and

5. Forward copies of all Closing Documents to the undersigned.

Notwithstanding any terms to the contrary contained herein, if you are unable to disburse the Closing Proceeds, or otherwise complete this transaction on the Closing Date, we ask that you hold all Closing Proceeds and Closing Documents pending receipt of instructions from both of the undersigned.

If you have questions regarding this matter, please contact either of the undersigned.

Sincerely,

MICHAEL BEST & FRIEDRICH LLP

Michael S. Green
msgreen@michaelbest.com

CITY OF ROUND ROCK, TEXAS

Stephan L. Sheets
steve@scrrlaw.com

Attachments

Cc: Ralph Gundrum *(via e-mail)*
Misty Ventura *(via e-mail)*
Merlin Lester *(via e-mail)*

CLOSING ESCROW INSTRUCTION LETTER ACCEPTED AS OF THE __ DAY OF DECEMBER, 2016:

FIRST AMERICAN TITLE INSURANCE COMPANY

By:_____
Pat Katte, Authorized Representative