

**FIRST AMENDMENT TO  
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

This First Amendment to Economic Development Program Agreement (this "Amendment") is entered into this \_\_\_\_ day of October, 2019 (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 Amendment.

**RECITALS**

**WHEREAS**, the Parties entered into that Certain Economic Development Program Agreement dated December 15, 2016 (the "Agreement"); and

**WHEREAS**, all capitalized terms used in this Amendment shall be defined as stated in the Agreement unless otherwise defined herein; and

**WHEREAS**, except as amended herein, all of the terms and provisions of the Agreement shall remain in effect and shall apply to this Amendment; and.

**WHEREAS**, the Agreement contemplates the deposit of TXHOT and State Sales Tax revenue into the Project Fund; and

**WHEREAS**, the TXHOT and State Sales Tax revenue that will be deposited into the Project Fund will be rebated by the State of Texas pursuant to the provisions of Section 351.102, Texas Tax Code; and

**WHEREAS**, during the 86<sup>th</sup> Regular Texas Legislative Session, the Texas Legislature adopted H.B. 4347 amending the provisions of Chapter 351, Texas Tax Code, which amendments included the adoption of a new Subchapter C entitled Municipal Hotel and Convention Center Projects ("Subchapter C"); and

**WHEREAS**, Subchapter C entitles the City to receive the TXHOT and State Sales Tax revenue, among other tax revenue, generated, paid, and collected by a qualified hotel, as defined therein (a "Qualified Hotel") and each restaurant, bar, and retail establishment, as defined in Section 351.001(12) of the Texas Tax Code (a "Retail Establishment") located in or connected to the hotel or the related qualified convention center facility, as defined therein; and

**WHEREAS**, Subchapter C also entitles the City to receive the State Sales Tax revenue generated, paid, and collected from a qualified establishment, as defined therein, located in the City that is derived from restaurants, bars, and Retail Establishments, as well as swimming pools and swimming facilities owned or operated by the related Qualified Hotel; and

**WHEREAS**, the Project will, upon opening, meet all of the requirements of Subchapter C necessary to entitle the City to receive the rebates described above; and

**WHEREAS**, under Section 5.04(a) of the Agreement, the Economic Incentive Payments to be made to the Tenant, a corporation, are capped at \$28.5 million, an amount which all Parties believe will be met; and

**WHEREAS**, the Amendment does not change the amount of Economic Incentive Payments to be made to the Tenant; and

**WHEREAS**, none of the Parties intend to impact the federal tax treatment of the Economic Incentive Payments to be made to the Tenant; and

**WHEREAS**, the Parties intend for the Project to be subject to rebates of tax revenue pursuant to the provisions of Subchapter C.

**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. **Project Condition Precedent.** The City has reviewed and approved for construction the plans for the Project dated October 5, 2018 (the “Plans”). The City acknowledges and agrees that the Project, will, if constructed materially in accordance with the Plans in all relevant respects, satisfy the condition precedent in the first sentence of Section 5.01(a) of the Agreement.

2. **Pledge and Rebate.** The City agrees to (a) pledge or commit the revenue derived from the tax imposed under Chapter 351 from a qualified hotel, as defined in Subchapter C, and the revenue to which the City is entitled under Sections 351.156 and 351.157, Texas Tax Code, for the payment of obligations related to the Project under the Agreement; and (b) seek rebates of all eligible tax revenues under Subchapter C that are generated, paid, and collected from the Project. The City and Developer agree to work together to prepare all rebate applications that the City will file with the Texas Comptroller's office pursuant to Subchapter C.

3. **New Section 5.08.** The following is added to the Agreement as a new Section 5.08:

**5.08. Amounts Held Under This Agreement.** All amounts held in the Project Fund shall be held in an interest-bearing account or otherwise invested in an appropriate manner. For purposes of clarification, the Project Fund shall include such interest and income earned thereon.

4. **Other Changes.**

- a. The words “Section 5.01” in the definition of Project Fund is hereby deleted and replaced with “Section 5.02.”
- b. The words “Section 5.02(a)-(e)” in the definition of Project Fund Balance is hereby deleted and replaced with “Section 5.03(a)-(e).”

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

6. **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 Amendment, 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 Amendment regardless of any changes in public policy, the law, or taxes or assessments attributable to the Property.

7. **Representations and Warranties.** The City represents and warrants to the Developer and the Tenant that: (a) this Amendment is within its authority, (b) it is duly authorized and empowered to enter into this Amendment, (c) this Amendment 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 Amendment and this Amendment is enforceable against it.

8. **Interpretation.** Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Amendment. Regardless of which party prepared the initial draft of this Amendment, this Amendment 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. **Applicable Law.** This Amendment is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.

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

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: \_\_\_\_\_  
Craig Morgan, Mayor

Date:

\_\_\_\_\_  
APPROVED as to form:

\_\_\_\_\_  
Stephan L. Sheets, City Attorney

**ROUND ROCK TRANSPORTATION  
AND ECONOMIC DEVELOPMENT  
CORPORATION**

By: \_\_\_\_\_  
Craig Morgan, President

Date:

\_\_\_\_\_

APPROVED as to form:

\_\_\_\_\_  
Stephan L. Sheets, Corporation's Attorney

**KR ACQUISITIONS, LLC**  
a Delaware limited liability company

By: Todd Nelson  
Todd Nelson, President

Date: 10/8/19

**KR CC, INC.**  
a Delaware corporation

By: Todd Nelson  
Todd Nelson, President

Date: 10/8/19