

EXHIBIT

“A”

CONVENTION CENTER OPERATING LEASE

between

CITY OF ROUND ROCK, TEXAS

and

KR CC, INC.

Dated as of [_____]

CONVENTION CENTER

ROUND ROCK, TEXAS

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LIST OF EXHIBITS

EXHIBIT A	Description of Land
EXHIBIT B	Description of Convention Center Parcel

CONVENTION CENTER OPERATING LEASE

This CONVENTION CENTER OPERATING LEASE (this “**Agreement**”) is made and entered into as of [] (the “**Effective Date**”), between CITY OF ROUND ROCK, TEXAS, a Texas local government home rule 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

A. The City, Tenant and Tenant’s affiliate, KR Acquisitions, LLC, a Delaware limited liability company (“**KR Acquisitions**”) are a party to (i) that certain Master Development Agreement dated as of December 15, 2016 (the “**Master Development Agreement**”), pursuant to which (a) KR Acquisitions has agreed to design, develop and construct a mixed-use project, including a hotel, and indoor water park, including improvements and facilities ancillary to such uses (together with the Convention Center, the “**Project**”), to be located on approximately 9.518 acres of land located east of Kenney Fort Blvd. and south of the Union Pacific Railroad in the City of Round Rock, Texas, as further described in Exhibit A attached hereto (the “**Land**”), and (b) City is agreeing to provide funding for certain components of the Project and to fund and construct certain public infrastructure improvements in connection with the Project (as provided in the Master Development Agreement), (ii) a Ground Lease Agreement dated as of December 20, 2016 by and between Tenant and the City, as amended by that certain First Amendment to Ground Lease Agreement dated February 1, 2017 (collectively, the “**Ground Lease**”), and (iii) this Agreement (collectively, the “**Project Agreements**”).

B. Pursuant to the terms of the Master Development Agreement, City will construct a convention center building and improvements on the “Convention Center Parcel” created as a separate parcel of land as Lot 2, Block “C” Final Plat of Kalahari Resort and Replat of Bertil Telander Subdivision, as described and depicted on Exhibit B attached hereto (the “**Convention Center Parcel**”), and which convention center building and improvements will consist of convention, exhibition, and meeting space (the “**Convention Center**”).

C. As stated in the Master Development Agreement, Section 351.102(b) Texas Tax Code, and the Private Letter Ruling for the Project, the Convention Center must be owned by the City. KR Acquisitions will cause the construction of the Convention Center pursuant to the terms and conditions set forth in the Master Development Agreement.

D. The Parties desire to enter into this Agreement, pursuant to which City leases to Tenant, and Tenant leases from the City, the Convention Center and the Convention Center Parcel during the Leasehold Term (as defined below), on the terms and conditions set forth in this Agreement.

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 of the power to direct the management and policies of the specified Person.

“**Agreement**” is defined in the introductory paragraph of this Agreement.

“**Applicable Law**” means any law, statute, ordinance, rule, regulation, order, determination or requirement of any Governmental Authority.

“**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**” is defined in the introductory paragraph of this Agreement.

“**City Financing**” means any financings by the City to fund the City Commitment (as defined in the Master Development Agreement) and any refinancings of the foregoing.

“**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 Convention Center payable to the Tenant or City, as applicable, as a result of, or in connection with, any Condemnation Action.

“**Control of the Convention Center**” is defined in Section 16.7(I).

“**Convention Center**” is defined in Recital C.

“**Convention Center Parcel**” is defined in Recital C.

“**County**” means Williamson County, Texas.

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

“Depository” means the First Leasehold Mortgagee or an independent third-party financial institution, having at least one hundred million dollars (\$100,000,000) in assets, mutually approved by Tenant, the City and the First Leasehold Mortgagee.

“Effective Date” is defined in the introductory paragraph of this Agreement.

“Emergency” means any condition or situation that presents an imminent and significant threat (or if not immediately acted upon will present an imminent and significant threat) to the health or safety of users of the Convention Center or to the structural integrity of the Convention Center or any portion thereof.

“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 one hundred twenty (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.

“Events” means all convention, exhibition, business, travel, leisure, educational, sports, recreational, entertainment, cultural, civic, and any other activities and events conducted at the Convention Center or upon the Convention Center Parcel, including, without limitation, conventions, trade shows, exhibitions, markets, fairs, meetings and community or civic oriented events, exhibitions and tournaments, concerts and other musical performances, theater performances, family shows, other forms of live entertainment, award shows, charitable events, and private parties.

“Expiration Date” means 11:59 p.m. on December 19, 2115.

“Fee Estate” means the City’s fee title in the Land and/or the Convention Center Parcel, as applicable.

“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 18.3.

“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 entity, political subdivision, agency, department, commission, board, bureau, administrative or regulatory body or other instrumentality having jurisdiction over the Convention Center 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, buildings, fixtures and structures related to the Convention Center and constructed on or part of the Convention Center Parcel.

“Interest Rate” means the interest rate charged by the City for its then most recent issuance of indebtedness. All interest to be paid pursuant to this Agreement shall be computed on the basis of a 360-day year consisting of twelve (12) months of thirty (30) days each.

“Land” is defined in Recital B.

“Lease Impairment” means any (A) cancellation, rejection surrender (whether voluntary or otherwise) or termination of this Agreement, including upon a casualty or condemnation affecting the Convention Center or the Convention Center Parcel,

(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 Convention Center or the Convention Center Parcel.

“Leased Premises” means the Convention Center and Convention Center Parcel, together with all of City’s right, title and interest, if any, in and to all rights, privileges and easements appurtenant to the Convention Center Parcel now existing or created during the Term of this Agreement.

“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).

“Leasehold Term” is defined in Section 2.3(B).

“Liabilities” is defined in Section 13.1.

“Mezzanine Financing” is defined in Section 16.12.

“Mezzanine Lender” is defined in Section 16.12.

“Minimum Property Insurance Coverage” is defined in Section 8.1(A).

“Mortgagee’s Cure” is defined in Section 16.7(E).

“Mortgagee’s Cure Rights” is defined in Section 16.7(E).

“New Agreement” is defined in Section 16.8.

“New Agreement Delivery Date” is defined in Section 16.8(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 16.8.

“Operations Standard” means a level of operation that (A) is in a manner to provide a first-class attendee experience for Events that includes high standards of cleanliness in Convention Center facilities, and (B) complies with Applicable Law.

“Option Purchase Price” is defined in Section 17.3.

“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” is defined in Recital B.

“Purchase Option” is defined in Section 17.1.

“State” means the State of Texas.

“Substantial Completion Date” means the date on which the City issues to Tenant and the City the certificate(s) of occupancy, which may be temporary, providing that the Convention Center is ready for use and occupancy for its intended purposes in accordance with Applicable Laws. The Parties shall document the Substantial Completion Date in writing.

“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’s Cure Period Expiration Notice” is defined in Section 16.7(C).

“Term” is defined in Section 2.3(A).

“Trustee” means the trustee under the indenture for the City Financing.

2. Lease and Grant of Use; Reservation of Rights; Term

2.1 *Lease and Grant of Use.*

- (A) *Lease.* Subject to the terms and conditions of this Agreement, City hereby leases to Tenant, and Tenant hereby leases from City, the Convention Center and Convention Center Parcel during the Leasehold Term. During the Leasehold Term, Tenant is permitted hereunder to use the Convention Center and the Convention Center Parcel for any and all uses that are permitted by Applicable Law.

- (B) *Compliance with Applicable Law.* Tenant covenants and agrees that its use and occupancy of the Convention Center and the Convention Center Parcel shall comply in all material respects with Applicable Law. City covenants and agrees that its performance of this Agreement shall comply in all material respects with Applicable Law.
- (C) *Third Parties.* Subject to the terms and conditions of this Agreement, any of the rights or obligations granted to Tenant under this Agreement may be exploited or satisfied directly by Tenant or indirectly through other Persons (including Affiliates of Tenant).
- (D) *Subordination, Nondisturbance and Attornment.* If requested by Tenant, the City shall enter into a subordination, non-disturbance and attornment agreement that shall provide, among other things, that the City agrees not to disturb Tenant's, or any of its subtenants' or licensees', use of the Convention Center Parcel and the Convention Center pursuant to the terms and conditions of this Agreement.
- (E) *Easements and Other Appurtenant Rights.* City and Tenant shall have the easement and other appurtenant rights set forth in the Master Easement Agreement of even date herewith and recorded with the recorder's office of the County.

2.2 *Reserved.*

2.3 *Term.*

- (A) *Term: Generally.* 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. The Term includes the Leasehold Term.
- (B) *Leasehold Term.* The term of the City's lease of the Convention Center Parcel and the Convention Center to Tenant (the "**Leasehold Term**") commences on the City's creation of the Convention Center Parcel and expires on the Expiration Date, unless terminated earlier as expressly provided for in this Agreement.
- (C) *Early Termination.* If Final Completion of the Convention Center has not been achieved by December 31, 2025, then Tenant shall have the right to terminate this Agreement by written notice to the City, which termination shall be effective on the date specified in such notice.

3. **Intangible Rights**

- 3.1 *Grant of License.* The City hereby grants to Tenant during the Term an exclusive, irrevocable, royalty-free, paid-up right and license to use any replica, model, artistic or photographic rendering or other visual representation of the

Convention Center or any portion thereof owned by or licensed to the City in association with any and all goods and services throughout the world, together with the right to use, enjoy (whether in whole or in part) and sublicense the right to receive and retain all revenues generated from Tenant's or its sublicensees' use of such rights.

4. Rent

4.1 *Rent.* In consideration for Tenant's rights under this Agreement Tenant shall pay to the City annual rent of \$1.00 for each Operating Year (the "**Annual Rent**").

4.2 *Timing of Payment.* Rent for any Operating Year shall be paid on January 1 of such Operating Year. The payment of Rent for the first Operating Year shall be paid within ninety (90) days after the Substantial Completion Date, and thereafter in accordance with the schedule set forth above.

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 Leasehold Term after the Substantial Completion Date, all costs necessary to manage and operate the Convention Center in accordance with this Agreement, including all costs of maintenance, repairs, replacements, renovation, remodeling, removal, alterations, improvements and insurance with respect to the Convention Center and the Convention Center Parcel.

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 Leasehold Term after the Substantial Completion Date, upon or with respect to Tenant's possession, operation, management, maintenance, alteration, repair, rebuilding, use or occupancy of, or employment of personnel in, the Convention Center.
- (B) The City shall not impose or assess, and shall cooperate with the efforts of Tenant to prevent any other Governmental Authority from imposing or assessing, any amusement, ticket, possessory, property or other Taxes against Tenant with respect to the occupancy and/or use of the Convention Center and the Convention Center Parcel.
- (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 Convention Center or Convention Center Parcel or any portion thereof by appropriate proceedings conducted

in good faith and with due diligence, and City shall cooperate with Tenant in such actions as reasonably necessary.

5.3 Operations and Management. Notwithstanding anything to the contrary in this Agreement, the operations and management of the Convention Center shall be performed by (x) Tenant or its Affiliate, (y) an unrelated third-party management company engaged by Tenant or (z) a New Operator.

- (A) *Generally.* Tenant shall (i) have the exclusive right to, and shall, operate and manage the Convention Center on a 24-hour per day, year round basis and (ii) operate and manage the Convention Center in accordance with, and thus furnish janitorial, security and Event staffing sufficient to comply with, the Operations Standard in all material respects. During the Term, Tenant shall have the exclusive right to receive, allocate, use and distribute, in its sole and absolute discretion, all revenues with respect to the Convention Center, the Convention Center Parcel or any portion thereof. Pricing for the foregoing shall be determined by Tenant or its licensees.
- (B) *Permits.* Tenant shall obtain and maintain all necessary licenses and permits required in connection with the operation of the Convention Center and the City shall use commercially reasonable efforts to expedite the process by which Tenant so obtains and maintains such licenses and permits that are to be obtained from the City or other Governmental Authority.
- (C) *Utilities.* Tenant shall be solely responsible for the costs related to the use of sufficient water, sewer, natural gas, heat, air-conditioning, electric, telephone, Internet and other utilities and hookups as are necessary to operate the Convention Center.
- (D) *Maintenance and Repair.* Tenant shall perform all maintenance and repairs so as to maintain the Convention Center Parcel and the Convention Center, including its fixtures, machinery, equipment, improvements and other components, in accordance with the Operations Standards in all material respects. For the avoidance of doubt, Tenant further acknowledges and agrees that Tenant shall be solely responsible at Tenant's own expense for maintaining and repairing the wastewater line which extends from and serves the Convention Center, even if the City in the future no longer owns the Convention Center.
- (E) *Security.* Tenant shall be responsible for, and pay for all costs associated with, maintaining and using reasonable efforts to ensure public order and safety and security in and around the Convention Center in a manner that is consistent with Operations Standards in all material respects.

- (F) *Agreements.* 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 (i) with Persons who desire to schedule Events and telecasts or other transmissions in, from, or to the Convention Center (or any part thereof) or who desire otherwise to license the use of or to occupy the Convention Center (or any part thereof) or (ii) that otherwise pertain to the use, operation and occupancy of the Convention Center or Convention Center Parcel (or any part thereof), including with respect to the sale of tickets for Events, the sale of food, beverages and merchandise, and other commercial activities, at the Convention Center (including at restaurant and retail facilities) or Convention Center Parcel.
- (G) *Additions and Capital Repairs.* Tenant shall be solely responsible for, and shall timely make with reasonable diligence, all additions and capital repairs required to comply with Operations Standards in all material respects. Tenant may also make, at its discretion, such other additions and capital repairs as it believes are appropriate.
- (H) *Emergency and Repairs.* In the event of any Emergency, Tenant shall promptly notify the City and take such steps as are necessary to alleviate the Emergency. If Tenant has not promptly made the repairs necessary to alleviate such Emergency, the City may (but is not obligated to), in addition to any other rights and remedies available to the City, make the repairs necessary to alleviate such Emergency. To the extent practicable, the City shall contact Tenant prior to the City taking any action pursuant to this Section 5.3(H) to discuss the actions to be taken with respect to the Emergency or such repairs and to attempt to avoid the duplication of efforts by Tenant (and its Affiliates) and the City. Tenant shall, within thirty (30) days after written demand from the City, reimburse the City for all reasonable out-of-pocket costs and expenses incurred by the City to make the repairs necessary to alleviate such Emergency.

6. Advertising; Media

6.1 Advertising.

- (A) Tenant shall have the exclusive right to market, price, sell, grant, license, post, exhibit, display, publish, broadcast, and present, and shall have the exclusive right to receive, allocate, use and distribute, in its sole discretion, all revenues from, all advertising, sponsorship and promotional activity, signage, designations, messages and displays of every kind and nature at or regarding the Convention Center and the Convention Center Parcel, whether audio or visual and whether created in a medium now existing or developed in the future.

- 6.2 *Naming Rights.*** Tenant shall have the exclusive right to sell, grant or license, and shall have the exclusive right to receive, allocate, use and distribute, in its sole discretion, all revenues from the naming of the Convention Center or any portion thereof.
- 6.3 *Media Distribution.*** Tenant shall have the exclusive right to control (and thus sell, license or grant), and shall have the exclusive right to receive, allocate, use and distribute, in its sole discretion, all revenues with respect to, all broadcasts, reproductions and transmittals of the pictures, descriptions and accounts of all Events, by any and all forms, means and modalities of distributing video, audio or audio-video programming, whether distributed locally, nationally, internationally or otherwise.
- 6.4 *Signage.*** The Parties agree to cooperate in good faith to have third parties install, at no cost to Tenant, a sufficient number of signs containing the Convention Center name on roadways and at bus stops, streetcar and fixed rail transit locations and other public locations within the City to direct individuals to the Convention Center.

7. Assignment and Subletting

- 7.1 *Assignment.*** Subject to Section 7.2, neither Party shall make or enter into an Assignment of this Agreement without the prior written consent of the other Party. In connection with any Assignment of this Agreement by a Party (whether or not the other Party's consent is required therefor but excluding an assignment of this Agreement by Tenant to an Affiliate), the assigning Party shall provide the other Party with notice of such Assignment and all information reasonably requested by the other Party that relates to the ability of the assignee to satisfy the obligations of the assigning Party under this Agreement and, if such Assignment satisfies one of the conditions set forth in Section 7.2, all information reasonably requested by the other Party to confirm that such condition has been satisfied.
- 7.2 *Permitted Assignments.*** Subject to Section 7.3, the following Assignments shall be permitted by Tenant without the consent of the other Party:
- (A) Tenant may make an Assignment of this Agreement and/or the Purchase Option to any Affiliate of Tenant;
 - (B) Tenant may delegate its rights or obligations hereunder with respect to the Convention Center in accordance with Section 2.1(C); and
 - (C) Subject to Section 16, Tenant may pledge, mortgage, grant a security interest in, encumber, or collaterally assign its interest in this Agreement or the equity interests in Tenant to secure indebtedness for borrowed money of Tenant.

7.3 [Reserved.]

- 7.4 ***Contrary Assignments Void.*** Any Assignment of this Agreement made contrary to this Section 7 is void.
- 7.5 ***Fee Mortgages.*** The City shall not mortgage or otherwise encumber the City's Fee Estate or Convention Center Parcel 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 or Convention Center Parcel.
- 7.6 ***Permitted Subleases.*** Tenant may enter into subleases, licenses, concession or other occupancy agreements, but it shall not enter into any agreement (including those contemplated by Sections 2.1(C) and 5.3(F)) that circumvents the restrictions on Assignments set forth in this Section 7.

8. Insurance

- 8.1 ***Required Insurance.*** At Tenant's sole expense and as mutually determined by the City and Tenant, either the City or Tenant shall procure and maintain (or cause to be procured and maintained by appropriate contractors or vendors) at least the following insurance coverages:
- (A) Property insurance for the Convention Center covering real property and personal property for all risks of physical loss or damage written on the Standard All Risk Property Form in an amount not less than the Minimum Property Insurance Coverage with no coinsurance penalty provisions. "**Minimum Property Insurance Coverage**" means, at any given time, 100% of the full replacement cost (new without deduction for depreciation) of the Convention Center. The policy shall provide coverage for "all risks" of direct physical loss, including the perils of earthquake, earth movement, flood, and certified and non-certified acts of terrorism.
 - (B) 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 \$10,000,000.00 per occurrence relating, directly or indirectly, to Tenant's business operations, conduct or use or occupancy of the Convention Center. Such coverage shall include all activities and operations conducted by any Person on or about the Convention Center or Convention Center Parcel, and any work performed by or on behalf of Tenant at the Convention Center.
- 8.2 ***General Provisions for Tenant's Insurance.***
- (A) All insurance policies required under Section 8.1 (including endorsements thereto) shall, unless otherwise expressly agreed by the City in writing, be issued by insurance companies authorized to do business in the State of Texas and rated "A-VIII" or better by A.M. Best Company (or equivalent).

- (B) The CGL policy required under Section 8.1(B) shall be endorsed to name the City, each Leasehold Mortgagee and their respective officers, officials, employees and agents as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Tenant and its vendors, agents, representatives and employees. For any claims related to the Convention Center, the CGL policy shall be primary insurance with respect to the City, each Leasehold Mortgagee and their respective officers, officials, employees and agents.
- (C) All policies for property insurance required under this Agreement shall name Tenant, the City, each Leasehold Mortgagee and such other Persons who have an insurable interest in the Convention Center as “loss payees” to the extent of their insurable interest in the Convention Center.
- (D) Tenant shall require its insurers to waive rights of subrogation against the City, each Leasehold Mortgagee and their respective officers, officials, employees and agents which any insurer of Tenant may acquire by virtue of the payment of any loss.

8.3 *Adjustment.* The coverages, policy limits and deductibles described in this Section 8 may at the City’s written request, be reviewed every five (5) years after the Substantial Completion Date and may be adjusted if prudent (as mutually agreed upon by the City and Tenant), considering levels of inflation, risk of loss, premium expenses and other relevant factors, including the then practice of other prudent property owners in the vicinity of the Convention Center; provided, however, that the amount of property damage insurance shall never be less than the Minimum Property Insurance Coverage.

8.4 *Required Insurance Policy Clause.* Each policy of insurance required to be carried pursuant to the provisions of this Section 8 shall contain an agreement by the insurer that such policy shall not be canceled, modified or denied renewal without at least sixty (60) days’ prior written notice to each Party and all other named or additional insureds, including each Leasehold Mortgagee.

8.5 *Blanket or Umbrella Policies.* The insurance required to be carried by Tenant pursuant to the provisions of this Section 8 may, at Tenant’s option, be effected by blanket or umbrella policies issued to Tenant covering the Convention Center and other properties owned or leased by Tenant or Affiliates thereof, provided such policies otherwise comply with the provisions of this Agreement and provide to the Convention Center not less than the specified coverage, including the specified coverage for all insureds required to be named as insureds under this Agreement.

8.6 *Delivery of Evidence of Insurance.* With respect to each insurance policy required to be procured or maintained under the terms of this Agreement, Tenant shall deliver to the City and each Leasehold Mortgagee evidence showing that such insurance (including any endorsements required by this Agreement) is in full

force and effect. Such evidence shall include certificates of insurance issued by a responsible officer of the issuer of such policies, or in the alternative, a responsible officer of an agent authorized to bind the named issuer, setting forth the name of the issuing company, the coverage, limits, deductibles and the term thereon.

9. Damage or Destruction; Condemnation

9.1 *Damage; Repair Obligation.*

- (A) In the event of damage to, or destruction of, the Convention Center, this Agreement shall remain in full force and effect and Tenant shall repair and restore the Convention Center as soon as possible after the date of the damage or destruction. In furtherance of the foregoing, the City acknowledges and agrees that in addition to complying with the requirement herein to repair and restore the Convention Center, Tenant may desire changes to the Convention Center as originally constructed to upgrade the guest experience at, and/or the level of design of, the Convention Center, and the City agrees to cooperate in approving such changes and as to such repairs and restoration of the Convention Center.
- (B) Notwithstanding anything contained in Section 9.1(A), if the Convention Center is damaged or destroyed (i) during the last five (5) years of the Leasehold Term then in effect, and (ii) it is reasonably projected to take longer than twelve (12) months from the date of the damage or destruction to repair and restore the Convention Center, then Tenant shall have the right, subject to the rights of any Leasehold Mortgagee pursuant to Section 16, to terminate this Agreement by delivering written notice to the City within ninety (90) days after the determination that the repair and restoration of the Convention Center will take longer than twelve (12) months.
- (C) Notwithstanding anything contained in Section 9.1(A), if any portion of the Convention Center is damaged or destroyed at any time and the total cost to repair and restore the Convention Center exceeds the sum of (i) the insurance proceeds actually received by Tenant on account of the damage or destruction, plus (ii) any applicable deductible or self-retention amount, then Tenant shall have the right, subject to the rights of any Leasehold Mortgagee pursuant to Section 16, to terminate this Agreement by delivering written notice to the City within ninety (90) days after the determination that the foregoing conditions to such termination have occurred. Notwithstanding the foregoing, the City may, by written notice delivered to Tenant no later than thirty (30) days following Tenant's election to terminate this Agreement pursuant to this Section 8.1(C), elect to pay the amount by which the total cost to repair and restore the Convention Center exceeds the amounts set forth in clauses (i) and (ii) above. If the City makes such an election and provides such excess

funds in a manner satisfactory to Tenant and its lenders (in their reasonable discretion), then this Agreement will not terminate and Tenant shall repair and restore the Improvements pursuant to Section 9.1(A) at Tenant's cost, provided that (x) the City will be responsible for paying the excess amounts as described in the preceding sentence and (y) notwithstanding anything to the contrary contained in Section 9.1(A) or the Master Development Agreement, the City shall have the right to review and approve all plans and specifications for such repair and restoration, and all changes thereto, which approval shall not be unreasonably withheld, conditioned or delayed. In addition, if Tenant is prohibited from repairing the Convention Center due to a final and non-appealable judgment by a court or due to Applicable Law, then Tenant shall have the right, subject to the rights of any Leasehold Mortgagee, to terminate this Agreement upon written notice to the City.

- (D) If Tenant terminates this Agreement pursuant to Section 9.1(B) or 9.1(C) any such termination shall be without penalty to Tenant, including without loss of any rights by Tenant under Section 17. If Tenant does not exercise the Purchase Option following any such termination pursuant to Section 9.1(B) or 9.1(C), the City may, by written notice delivered to Tenant no later than thirty (30) days following the expiration of the Purchase Option, require Tenant, at Tenant's sole expense, to tear down and remove, prior to the termination of this Agreement, all portions of the Convention Center that were damaged or destroyed, including the debris resulting therefrom, and to otherwise clean and restore the area affected by such casualty to a level and clean condition; provided, however, Tenant shall not be obligated to incur any expenses in connection with such demolition and debris removal in excess of the amount of insurance proceeds that are available therefor (except to the extent insurance proceeds are unavailable because (x) Tenant failed to satisfy the insurance requirements of Section 8 to the extent commercially available and not approved by the City or (y) if insurance does not pay out insurance proceeds because the damage or destruction resulted from the gross negligence or willful misconduct of Tenant).

9.2 Insurance Proceeds. Any insurance proceeds paid under any property insurance for the Convention Center required to be maintained pursuant to Section 8 as a result of damage or destruction of the Convention Center shall be deposited with the Depository, to act as escrow agent. The funds held in escrow shall be administered and disbursed pursuant to the terms of a commercially reasonable escrow agreement, mutually acceptable to the Parties, the Trustee and the First Leasehold Mortgagee, which escrow agreement shall provide for the allocation and distribution of such proceeds as follows:

- (A) *Agreement Terminated.* If this Agreement is terminated pursuant to the provisions of Section 9.1

- (1) First, (i) seventy-five percent (75%) to City to pay the outstanding amount of the City Financing and (ii) twenty-five percent (25%) to the Leasehold Mortgagees to pay the aggregate outstanding amounts of the Leasehold Mortgages and the Mezzanine Financing, respectively, which "75/25" distributions shall continue until the earlier to occur of (x) the full repayment of the outstanding amount of the City Financing or (y) the full repayment of the aggregate outstanding amounts of the Leasehold Mortgages (provided, the City and Tenant agree to mutually determine the applicable distribution in accordance with the ratio of the City Financing to the total cost of construction for the Convention Center); then
 - (2) Second, one hundred percent (100%) to the full repayment of (i) the outstanding amount of the City Financing or (ii) the Leasehold Mortgagees, until the full repayment of the aggregate outstanding amounts of the Leasehold Mortgages; then
 - (3) Third, the remainder to Tenant (subject to the rights of Leasehold Mortgagee under any Leasehold Mortgage).
- (B) *Agreement Not Terminated.* If this Agreement is not terminated pursuant to the provisions of Section 9.1, then: (i) first, to pay for costs to repair or restore the Improvements pursuant to the provisions of Section 9.1 and (ii) second, the remainder to Tenant (subject to the rights of Leasehold Mortgagee under any Leasehold Mortgage).

9.3 *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 Convention Center or Convention Center Parcel necessary for the location or use of the Convention Center or facilities or amenities necessary or convenient for the Convention Center (including access to and from the Convention Center), then, subject to Tenant's rights under Section 17 (which survive the termination of this Agreement) and the rights of any Leasehold Mortgagee under Section 16, 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.
- (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 will use commercially reasonable efforts to, 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

Convention Center resulting from such Condemnation Action (which time shall be extended by such reasonable time as is commensurate with any reasonable delays due to Force Majeure Events, adjustment or recovery of insurance, preparation of plans and specifications, bidding of contracts and obtaining the necessary approvals from the City and other Persons).

- (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 9.3, in any Condemnation Action, Tenant shall have the right to assert a claim for any Condemnation Awards for the value of the Improvements or related facilities or amenities. 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.

9.4 *Condemnation Award.* Any Condemnation Awards shall be deposited with the Depository, to act as escrow agent. The funds held in escrow shall be administered and disbursed pursuant to the terms of a commercially reasonable escrow agreement, mutually acceptable to the Parties, the Trustee and the First Leasehold Mortgagee, which escrow agreement shall provide for the allocation and distribution of such Condemnation Awards as follows (notwithstanding any allocations of the Condemnation Awards made by the applicable Governmental Authority):

- (A) If this Agreement is terminated pursuant to the provisions of Section 9.3:
- (1) If the Condemnation Award is paid prior to there being any amount outstanding under the City Financing or is due to Condemnation Action by the City or an agency or authority of City, then, (i) first, one hundred percent (100%) to pay the aggregate outstanding amounts of the Leasehold Mortgages, until the full repayment of the aggregate outstanding amounts of the Leasehold Mortgages, and (ii) second, the remainder to the Tenant; or
 - (2) If the Condemnation Award is paid after any amounts are outstanding under the City Financing and is not due to

Condemnation Action by the City or an agency or authority of City, then:

- (a) First, (i) seventy-five percent (75%) to City to pay the outstanding amount of the City Financing and (ii) twenty-five percent (25%) to the Leasehold Mortgagees to pay the aggregate outstanding amounts of the Leasehold Mortgages and the Mezzanine Financing, respectively, which "75/25" distributions shall continue until the earlier to occur of (x) the full repayment of the outstanding amount of the City Financing or (y) the full repayment of the aggregate outstanding amounts of the Leasehold Mortgages (provided, the City and Tenant agree to mutually determine the applicable distribution in accordance with the ratio of the City Financing to the total cost of construction for the Convention Center);
 - (b) Second, one hundred percent (100%) to the full repayment of (i) the outstanding amount of the City Financing or (ii) the Leasehold Mortgagees, until the full repayment of the aggregate outstanding amounts of the Leasehold Mortgages; then
 - (c) Third, the remainder to Tenant (subject to the rights of Leasehold Mortgagee under any Leasehold Mortgage).
- (B) *Agreement Not Terminated.* If this Agreement is not terminated pursuant to the provisions of Section 9.3, then: first, to pay for costs to repair and restore the Convention Center pursuant to the provisions of Section 9.3. Thereafter, (a) if the Condemnation Award is not due to the Condemnation Action by the City or any agency or authority thereof, to the Parties pursuant to any allocations of the Condemnation Awards between the Parties made by the applicable Governmental Authority and (b) otherwise, to Tenant.

9.5 *Prompt Notice.* If either Party becomes aware of any material damage or destruction of the Convention Center Parcel or the Convention Center, or any actual, contemplated, or threatened Condemnation Action, then such Party shall promptly notify the other Party and the Leasehold Mortgagee.

9.6 *Survival.* This Section 9 survives the expiration or earlier termination of this Agreement, but only insofar as such provisions relate to any damage or destruction of the Convention Center (or insurance proceeds therefrom) or Condemnation Action (or Condemnation Award therefrom) that arose prior to the expiration or earlier termination of this Agreement.

10. Representations, Warranties and Covenants

10.1 *Representations and Warranties of Tenant.* Tenant represents and warrants to the City that, as of the Effective Date:

- (A) *Organization.* Tenant is a corporation duly organized and validly existing under the laws of the State of Delaware. Tenant has all requisite limited liability company power and authority to enter into this Agreement.
- (B) *Authorization; No Violation.* The execution, delivery and performance by Tenant of this Agreement have been duly authorized by all necessary action, will not violate the organizational documents of Tenant and will not result in the breach of, or constitute a default under, any material agreement or any judgment or decree to which Tenant is a party or by which Tenant or its material assets are bound. This Agreement has been duly executed and delivered by Tenant and constitutes valid and binding obligations of Tenant.
- (C) *Litigation.* No suit is pending or, to the knowledge of Tenant, threatened against Tenant that could reasonably be expected to have a material adverse effect upon Tenant's performance under this Agreement.
- (D) *No Broker's Fees or Commissions.* Tenant has not 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.

10.2 *Representations and Warranties of the City.* The City represents and warrants to Tenant that, as of the Effective Date:

- (A) *Organization.* The City is a local government home rule corporation of the State of Texas. The City has all requisite power and authority to enter into this Agreement.
- (B) *Authorization; No Violation.* The execution, delivery and performance by the City of this Agreement have been duly authorized by all necessary action, will not violate the organizational documents of the City and will not result in the breach of, or constitute a default under, any material agreement or any judgment or decree to which the City is a party or by which the City or its material assets are bound. This Agreement has been duly executed and delivered by the City and constitutes valid and binding obligations of the City.
- (C) *Litigation.* No suit is pending or, to the knowledge of the City, threatened against the City that could reasonably be expected to have a material adverse effect upon the City's performance under this Agreement, the Convention Center Parcel or the Convention Center.

- (D) *No Broker's Fees or Commissions.* The City has not 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.
- (E) *No Restrictions.* Use of the Convention Center Parcel for the Convention Center as contemplated by this Agreement is permitted under, and the City's execution, delivery and performance of this Agreement do not violate any Applicable Laws.

10.3 *"As Is"; No Representations or Warranties; Hazardous Materials.* Except as expressly set forth herein, it is understood and agreed that the Convention Center Parcel and the Convention Center 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. Except as expressly set forth in this Agreement, the City has not made and does not hereby make and specifically disclaims any representations or warranties of any kind or character whatsoever, express or implied, with respect to the condition of the Convention Center Parcel and the Convention Center (including their suitability or fitness for any particular purpose or their compliance with Environmental Laws or other Applicable Laws), and the City hereby disclaims and renounces any such representation or warranty not expressly set forth in this Agreement. Tenant acknowledges and agrees that it is entering into this Agreement without relying upon any such representation or warranty not expressly set forth in this Agreement, oral or written, made by the City or any representative of the City or any other Person acting or purporting to act on the behalf of the City, but rather is relying upon its own examination and inspection of the Convention Center Parcel. If any Hazardous Materials in any quantities that violate any Environmental Laws are discovered on any portion of the Convention Center Parcel or within the Convention Center, Tenant shall, at its sole cost and expense, cause such Hazardous Materials to be removed in accordance with all applicable Environmental Laws; provided, however, that the City shall be liable to Tenant for the foregoing to the extent resulting from the willful misconduct or gross negligence of the City.

10.4 *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.

11. Default and Remedies

11.1 *Tenant Default.* Each of the following events will, unless otherwise expressly agreed by the City in writing, constitute a “**Tenant Default**” under this Agreement:

- (A) Tenant materially breaches any material provision of this Agreement applicable to Tenant, and such material breach continues for a period of sixty (60) days after written notice thereof by the City to Tenant; or, if such material breach cannot reasonably be cured within such 60-day period, Tenant does not commence to cure such material breach within such 60-day period or, after commencing to cure such material breach, does not thereafter pursue such cure in good faith to completion.
- (B) Except as otherwise permitted under Section 16, the Leasehold Estate is taken upon execution or by other process of law attached against Tenant, or is subject to any attachment by any creditor or claimant against Tenant and such attachment is not discharged or disposed of within ninety (90) days after levy.
- (C) Tenant files a petition in bankruptcy or insolvency, or for reorganization or arrangement under any Applicable Laws related to bankruptcy or insolvency, or voluntarily takes advantage of any such Applicable Laws by answer or otherwise, or dissolves or makes a general assignment for the benefit of creditors, or involuntary proceedings under any such Applicable Laws or for the dissolution of Tenant are instituted against Tenant, or a receiver or trustee is appointed for the Leasehold Estate or for all or substantially all of Tenant’s property, and such involuntary proceedings are not dismissed or such receivership or trusteeship vacated within ninety (90) days after such institution or appointment.

11.2 *City’s Remedies.* If any Tenant Default occurs, the City shall have the right, subject to the rights of Leasehold Mortgagees, if any, under Section 16, to exercise any one or more of the remedies described below. Exercise of any of such remedies shall not prevent the concurrent or subsequent exercise of any other remedy provided for in this Agreement or otherwise available to the City at law or in equity, except as otherwise expressly stated in this Agreement.

- (A) The City may, without releasing Tenant from any obligations under this Agreement, make any payment or take any action as the City deems necessary or desirable to cure any Tenant Default in such manner and to such extent as the City in good faith deems necessary or desirable. Tenant shall pay the City, upon demand, all reasonable advances, costs and expenses of the City in connection with making any such payment or taking any such action, including reasonable attorneys’ fees, together with interest on all such amounts at the Default Rate from the date of payment of any such advances, costs and expenses by the City.

- (B) The City may seek to obtain damages, specific performance, other equitable relief or any combination of the foregoing pursuant to Section 18.22; provided, however, that the City may not terminate this Agreement for a Tenant Default.

11.3 City Default. Each of the following events will, unless otherwise expressly agreed by the Tenant in writing, constitute a “**City Default**” under this Agreement:

- (A) The City materially breaches any material provision of this Agreement applicable to the City, and such material breach continues for a period of sixty (60) days after written notice thereof by Tenant to the City; or, if such material breach cannot reasonably be cured within such 60-day period, the City does not commence to cure such material breach within such 60-day period or, after commencing to cure such material breach, does not thereafter pursue such cure in good faith to completion.
- (B) Except as otherwise permitted under Section 16, the Fee Estate is taken upon execution or by other process of law attached against the City, or is subject to any attachment by any creditor or claimant against the City and such attachment is not discharged or disposed of within ninety (90) days after levy.
- (C) The City files a petition in bankruptcy or insolvency, or for reorganization or arrangement under any Applicable Laws related to bankruptcy or insolvency, or voluntarily takes advantage of any such Applicable Laws by answer or otherwise, or dissolves or makes a general assignment for the benefit of creditors, or involuntary proceedings under any such Applicable Laws or for the dissolution of the City are instituted against the City, or a receiver or trustee is appointed for the Convention Center, the Convention Center Parcel or all or substantially all of the City’s property, and such involuntary proceedings are not dismissed or such receivership or trusteeship vacated within ninety (90) days after such institution or appointment.

11.4 Tenant’s Remedies. If any City Default occurs, Tenant shall have the right, subject to the rights of each Leasehold Mortgagee, if any, under Section 16, to exercise any one or more of the remedies described below. Exercise of any of such remedies shall not prevent the concurrent or subsequent exercise of any other remedy provided for in this Agreement or otherwise available to Tenant at law or in equity, except as otherwise expressly stated in this Agreement.

- (A) Tenant may, without releasing the City from any obligations under this Agreement, make any payment or take any action as Tenant deems necessary or desirable to cure any City Default in such manner and to such extent as Tenant in good faith deems necessary or desirable. The City shall pay Tenant, upon demand, all reasonable advances, costs and

expenses of Tenant in connection with making any such payment or taking any such action, including reasonable attorneys' fees, together with interest on all such amounts at the Default Rate from the date of payment of any such advances, costs, and expenses by Tenant.

- (B) Tenant may seek to obtain damages, specific performance, other equitable relief or any combination of the foregoing pursuant to Section 18.22; provided, however, that Tenant may not terminate this Agreement for a City Default.

11.5 Waiver. The Parties hereby waive any and all rights to consequential, punitive or exemplary damages for a Tenant Default or a City Default, as the case may be; provided, however, the foregoing waiver shall not apply to third-party claims for which a Party is entitled to indemnification under Section 13 or fraud.

12. Title; Surrender

12.1 Title. The Parties acknowledge and agree that, during the Leasehold Term, and subject to Tenant's Leasehold Estate and Purchase Option, any Leasehold Mortgage and Section 18.1, the City will own and have fee title to the Convention Center Parcel and the Convention Center (including all improvements that are now or hereafter permanently fixed to the Convention Center Parcel or to the Convention Center), notwithstanding the fact that the same may have been, or may be, as appropriate, acquired, financed, installed or placed on the Convention Center Parcel or in the Convention Center by Tenant.

12.2 Surrender. Subject to Section 9.1(D), upon the expiration of the Leasehold Term or earlier termination of this Agreement, if Tenant does not exercise, the Purchase Option pursuant to Section 17, then Tenant shall, on or before the Expiration Date or earlier termination, as the case may be, peaceably and quietly leave, surrender and yield to the City (i) the Convention Center and the Convention Center Parcel, free of subtenancies, in a reasonably clean condition and free of debris and otherwise in the condition required under this Agreement, (ii) all keys and codes for the Convention Center, (iii) to the extent in the possession or control of Tenant or any of its Affiliates, all plans and specifications, operating manuals and computer programs and software used in connection with the operation or management of the Convention Center and (iv) all personal property used in connection with the operation or management of the Convention Center; provided, however, that Tenant shall remove or cause to be removed (as opposed to surrendering and yielding to the City) at or prior to the Expiration Date or earlier termination, as the case may be, any personal property of Tenant, or any of Tenant's other sublicensees or Concessionaires and shall repair, at Tenant's sole cost and expense, any damage to the Convention Center or the Convention Center Parcel caused by Tenant's removal of such personal property. To the extent Tenant fails to surrender the Convention Center and the Convention Center Parcel to the City in the condition required by this Section 12.2, the City shall have the right (in addition to all other rights and remedies under this Agreement), but not

the obligation, to put the Convention Center and the Convention Center Parcel in such condition and Tenant shall reimburse the City promptly upon demand for any costs incurred by the City with respect thereto (including any costs incurred by the City with respect to removal, transportation or storage of abandoned items of personal property).

13. Indemnification

13.1 *Tenant.* To the extent permitted by Applicable Law, Tenant hereby agrees to defend, hold harmless and indemnify the City, the Leasehold Mortgagee, and their respective officers, employees, and agents, and each and every one of them, 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 Convention Center Parcel, including, but not limited to, any fees and costs reasonably incurred by outside counsel, and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as “**Liabilities**”), suffered or incurred by such indemnified party as a result of (i) Tenant’s use or operation of the Convention Center, (ii) any breach by Tenant of this Agreement; (iii) the negligent acts or omissions or willful misconduct of Tenant and any of its agents, contractors or employees, including any fraudulent acts or misrepresentations in the performance or non-performance of its duties and obligations under this Agreement; (iv) Tenant acting outside the scope of its duties or authority hereunder or (v) the presence, release or discharge of Hazardous Materials on or from the Convention Center Parcel or the Convention Center; 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.

13.2 *The City.* To the extent permitted by Applicable Law, the City hereby agrees to defend, hold harmless and indemnify Tenant, its members, managers, officers, parents, subsidiaries, employees and agents, and each and every one of them, from and against any and all Liabilities suffered or incurred by such indemnified party as a result of (i) any breach by the City of this Agreement, or (ii) the negligent acts or omissions or willful misconduct of the City or its agents, consultants or employees, including any fraudulent acts or misrepresentations in the performance or non-performance of its duties and obligations under this Agreement; provided that the foregoing indemnity does not apply to any Liability to the extent arising from (A) the negligence or willful misconduct of, or defects in design furnished by, Tenant, or its respective agents, contractors or employees or (B) any breach by Tenant of this Agreement.

14. *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 Convention Center in the manner described in this Agreement, and the City shall (x) defend Tenant’s quiet enjoyment, use and

occupancy of the Convention Center in the manner described in this Agreement against the claims of all Persons claiming by, under, or through the City and (y) 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 Convention Center Parcel to diminish, disturb or impair Tenant's and its licensees', guests' and invitees' quiet enjoyment, use and occupancy of the Convention Center hereunder.

15. Estoppel Certificate; Memorandum of Agreement

15.1 *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, the Substantial Completion 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.

15.2 *Memorandum of Agreement.* At any time Tenant may cause a memorandum of this Agreement or any amendment hereto to be recorded in the recorder's office for the County and Tenant shall pay and discharge the costs, fees and taxes in connection therewith.

16. Leasehold Mortgages

16.1 *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 (A) no such Leasehold Mortgage shall

encumber the Fee Estate, and (B) the proceeds from the debt secured by such Leasehold Mortgage will not be used for purposes other than the design, development, construction, financing, management, maintenance, repair, replacement, leasing, use or operation of the Land, the Convention Center, and other improvements related to the Project, and the refinancing of mortgage loans related thereto. The City shall not be required to join in or subordinate the Fee Estate and no such Leasehold Mortgage shall extend to or affect the Fee Estate. 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.

16.2 *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.

16.3 *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.

- 16.4 *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.
- 16.5 *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 annual 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.
- 16.6 *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 16.6.

16.7 *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.* Except as set forth in Section 16.7(J), 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 16.7(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 16.4. 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 16.7(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 Convention Center 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, plus the additional time provided for below within which to take (if any Leasehold Mortgagee so elects) whichever of the actions set forth below in the remainder of this Section 16.7 shall apply as to the default described in such notice of default (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) *Monetary Defaults.* In the case of a monetary default, any Leasehold Mortgagee shall be entitled (but not required) to cure such default within a cure period consisting of Tenant’s cure period under this Agreement extended through the date ninety (90) days after such Leasehold Mortgagee shall have received Tenant’s Cure Period Expiration Notice as to such monetary default.
- (G) *Nonmonetary Defaults Curable Without Obtaining Possession.* In the case of any nonmonetary default that any Leasehold Mortgagee is reasonably capable of curing without obtaining possession of the Convention Center (excluding in any event a Personal Default), such Leasehold Mortgagee, provided that the Annual Rent (and all other amounts required to be paid by Tenant under this Agreement) shall continue to be paid timely during the pendency of such extended cure period, shall have the right (but not the obligation) to cure such nonmonetary default by taking the following actions:
- (1) Within a period consisting of Tenant’s cure period for such nonmonetary default, extended through the date ninety (90) days after receipt of Tenant’s Cure Period Expiration Notice as to such default, such Leasehold Mortgagee shall provide written notice to the City of such Leasehold Mortgagee’s intention to take all reasonable steps necessary to remedy such default (it being understood that such notice is a statement of intention and not an obligation); and
 - (2) Duly commence the cure of such nonmonetary default within such extended period, and thereafter (during and after such extended period) diligently prosecute to completion the remedy of such default, but, subject to Force Majeure Events, in no event more than one hundred twenty (120) days after Leasehold Mortgagee’s receipt of Tenant’s Cure Period Expiration Notice as to such default.

For the purposes of this Section 16.7(G), a nonmonetary default will not be deemed incapable of cure by a Leasehold Mortgagee simply because the timeline for performance of the underlying obligation has passed.

- (H) *Defaults Curable Only by Obtaining Possession and Personal Defaults.* In the case of (i) a nonmonetary default that is not reasonably susceptible of being cured by such Leasehold Mortgagee without obtaining possession of the Convention Center or (ii) a Personal Default by Tenant, such Leasehold Mortgagee shall be entitled (but not required) to proceed as described in Sections 16.7(I) and 16.7(J) (provided that (x) the annual Rent and any other amounts required to be paid by Tenant hereunder shall continue to be paid timely during the pendency of such extended cure period, and (y) with respect to any nonmonetary defaults outstanding under Section 16.7(G), such Leasehold Mortgagee shall be exercising its Mortgagee's Cure Rights thereunder).
- (I) *During Cure Period.* At any time during the cure period (if any) that applies to Tenant, extended through the date that is one hundred twenty (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 ninety one hundred twenty (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 Convention Center 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 Convention Center**").
- (1) *Further Cure After Control of Convention Center.* Upon obtaining Control of the Convention Center (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 Mortgagee 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 one hundred twenty (120) days after Leasehold Mortgagee obtains Control of the Convention Center.
- (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.

(J) *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 Convention Center to cure the Tenant Event of Default, (ii) bring a proceeding on account of such default to (a) re-enter the Convention Center to cure the Tenant Event of Default, (b) dispossess Tenant or other occupants of the Convention Center, (c) terminate the Leasehold Estate, or (d) replace the management company pursuant to Section 11.2(B)), or (iii) accelerate payment of the Annual Rent or any other amounts payable by Tenant under this Agreement. Upon (A) any cessation of a Leasehold Mortgagee exercising Mortgagee's Cure Rights or (B) the expiration of the applicable cure period, as extended in connection with Mortgagee's Cure Rights, without cure, the City may, upon notice to such Leasehold Mortgagee, exercise any of the City's rights under this Agreement with respect to dispossession or termination. Notwithstanding the foregoing, the City shall have the right to re-enter the Convention Center, or bring a proceeding to so re-enter the Convention Center, to cure the applicable Tenant Event of Default if the Leasehold Mortgagee that is exercising its Mortgagee's Cure Rights does not have Control of the Convention Center at such time; provided, however, that (1) the City gives prior written notice thereof to such Leasehold Mortgagee, and (2) no such cure by the City shall be deemed to diminish any of the Mortgagee's Cure Rights.
- (2) Nothing in this Section 16 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 Convention Center, 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 16 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 11.2(B).

- (K) *Leasehold Mortgagee’s Right to Enter Convention Center.* The City and Tenant authorize each Leasehold Mortgagee to enter the Convention Center and the Convention Center Parcel as necessary to effect 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 Convention Center or the Convention Center Parcel.
- (L) *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.
- (M) *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).

16.8 *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 thirty (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 Convention Center 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 Annual 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 Convention Center and the Convention Center Parcel; provided, however, the City shall not (1) operate the Convention Center or the Convention Center Parcel 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 Convention Center or the Convention Center Parcel 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 16.8.

16.9 *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. If there is Mezzanine Financing in addition to a 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 Leasehold Mortgagee shall control and be binding upon the Mezzanine Lender.

16.10 *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 16.8, 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.

16.11 *Casualty and Condemnation Proceeds.* If a casualty or a Condemnation Action shall occur with respect to all or any portion of the Convention Center and the Convention Center Parcel and restoration is to occur pursuant to the provisions of this Agreement, any insurance proceeds shall be handled in accordance with Section 9. 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.

16.12 *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 16 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 16 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).

17. Purchase Option

17.1 *Purchase Option.* Tenant shall have the option to purchase all, or any part of, the Convention Center and Convention Center Parcel and all Improvements thereon from the City on the terms and conditions set forth in this Section 17 (the "**Purchase Option**"). The Purchase Option shall be a continuing right.

17.2 *Exercise.* Tenant may exercise the Purchase Option by delivering written notice thereof to the City at any time during the Term or, if there is any attempt by City

to terminate this Agreement or reject this Agreement, within six (6) months after the effective date of such termination.

17.3 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 \$1.00.

17.4 Closing. If Tenant exercises the Purchase Option in accordance with this Section 17, then the closing of the conveyance of the Convention Center Parcel 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 Convention Center Parcel 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.

17.5 Survival/Forfeiture. This Section 17 shall survive the expiration of the Term or termination of this Agreement pursuant to Section 9 (and regardless of Tenant, Leasehold Mortgagees or Mezzanine Lenders receiving any amounts set forth in Section 9.2 or 9.4).

18. Miscellaneous

18.1 Notices. Any notice or other communication under this Agreement must be in writing and will be considered properly given and effective upon receipt if delivered personally, by certified or registered mail (postage prepaid and return receipt requested) or by overnight courier to the Parties at the following addresses:

<i>If to the City:</i> City of Round Rock 221 E. Main Street Round Rock, TX 78664 Attn: City Manager Phone: (512) 218-5400 Email: citymanager@roundrocktexas.gov	<i>If to Tenant:</i> 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
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<i>With copies to:</i>	<i>With copies to:</i>
Sheets & Crossfield 309 E. Main Street Round Rock, TX 78664 Attn: Stephan L. Sheets Phone: (512) 255-8877 Email: steve@scrrlaw.com	Michael Best & Friedrich LLP One South Pinckney Street, Suite 700 Madison, WI 53703 Attn: Michael S. Green Phone: (608) 257.7482 Email: msgreen@michaelbest.com

Either Party may from time to time designate a different address or persons for notices by giving notice to that effect to the other Party in accordance with the terms and conditions of this Section 18.2.

- 18.2 Force Majeure.** Failure in performance by a Party under this Agreement due to a Force Majeure Event shall not be deemed a breach of this Agreement. In addition, when this Agreement provides a time for the performance of any obligation, the time provided is extended if compliance is not possible due to a Force Majeure Event. The extension time shall be equal to one day for each day the Force Majeure Event prevents compliance. “**Force Majeure Event**” means any act, event or condition that is beyond the reasonable control of the Party asserting the Force Majeure Event, if it prevents or delays such Party from performing any obligation under this Agreement, including the following: any act of public enemy, terrorism, blockade, war, insurrection, civil disturbance, explosion or riot; epidemic; landslide, earthquake, fire, storm, flood, washout or other catastrophic weather event; any other act of God; and any strike, lockout or other industrial disturbance.
- 18.3 Severability.** If a court with jurisdiction rules that any part of this Agreement is invalid, unenforceable or contrary to law or public policy, then the rest of this Agreement remains valid and fully enforceable.
- 18.4 Obligations of the Parties.** The obligations and undertakings of each Party under or in accordance with this Agreement are obligations solely of such Party. Except as otherwise expressly stated in this Agreement, no recourse shall be had, whether in contract, in tort, or otherwise against any officer, director, employee, agent, member, manager or representative of a Party in his, her or its individual capacity on account of any obligation or undertaking of or any act or omission by such Party under or pursuant to this Agreement.
- 18.5 Time of the Essence.** Time is of the essence in the performance of this Agreement.
- 18.6 Binding Effect.** This Agreement binds and inures to the benefit of the Parties’ permitted successors and assigns.

- 18.7 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.
- 18.8 Interpretation.** 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.
- 18.9 Integration and Modification.** This Agreement sets forth the Parties' entire understanding regarding the matters set forth in this Agreement and is intended to be their final, complete and exclusive expression of those matters.
- 18.10 Relationship of the Parties.** The Parties do not intend to create any agency, partnership, joint venture, trust or other relationship with duties or incidents different from those of parties to an arm's-length contract.
- 18.11 Third-Party Beneficiaries.** Except for rights of a Leasehold Mortgagee and a Mezzanine Lender provided herein, and as otherwise specifically provided in this Agreement, this Agreement is solely for the benefit of the Parties and their successors and assigns permitted under this Agreement and no provision of this Agreement shall be deemed to confer upon any other Person any remedy, claim, liability, reimbursement, cause of action or right.
- 18.12 Attorneys' Fees.** Except as otherwise expressly stated herein, the Parties shall bear their own costs and attorneys' fees incurred in connection with this Agreement.
- 18.13 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.
- 18.14 Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Texas located in Williamson County or the Texas Western District Court located in Austin.

- 18.15 *Payments.*** If any payment under this Agreement is required to be made on a day other than a Business Day, the date of payment shall be extended to the next Business Day.
- 18.16 *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.
- 18.17 *Survival.*** This Section 18 shall survive the expiration of the Term or termination of this Agreement.

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

CITY:
CITY OF ROUND ROCK

TENANT:
KR CC, INC.

By: _____
Craig Morgan, Mayor

By: _____
Todd Nelson, President

Exhibit A

Description of the Land

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;

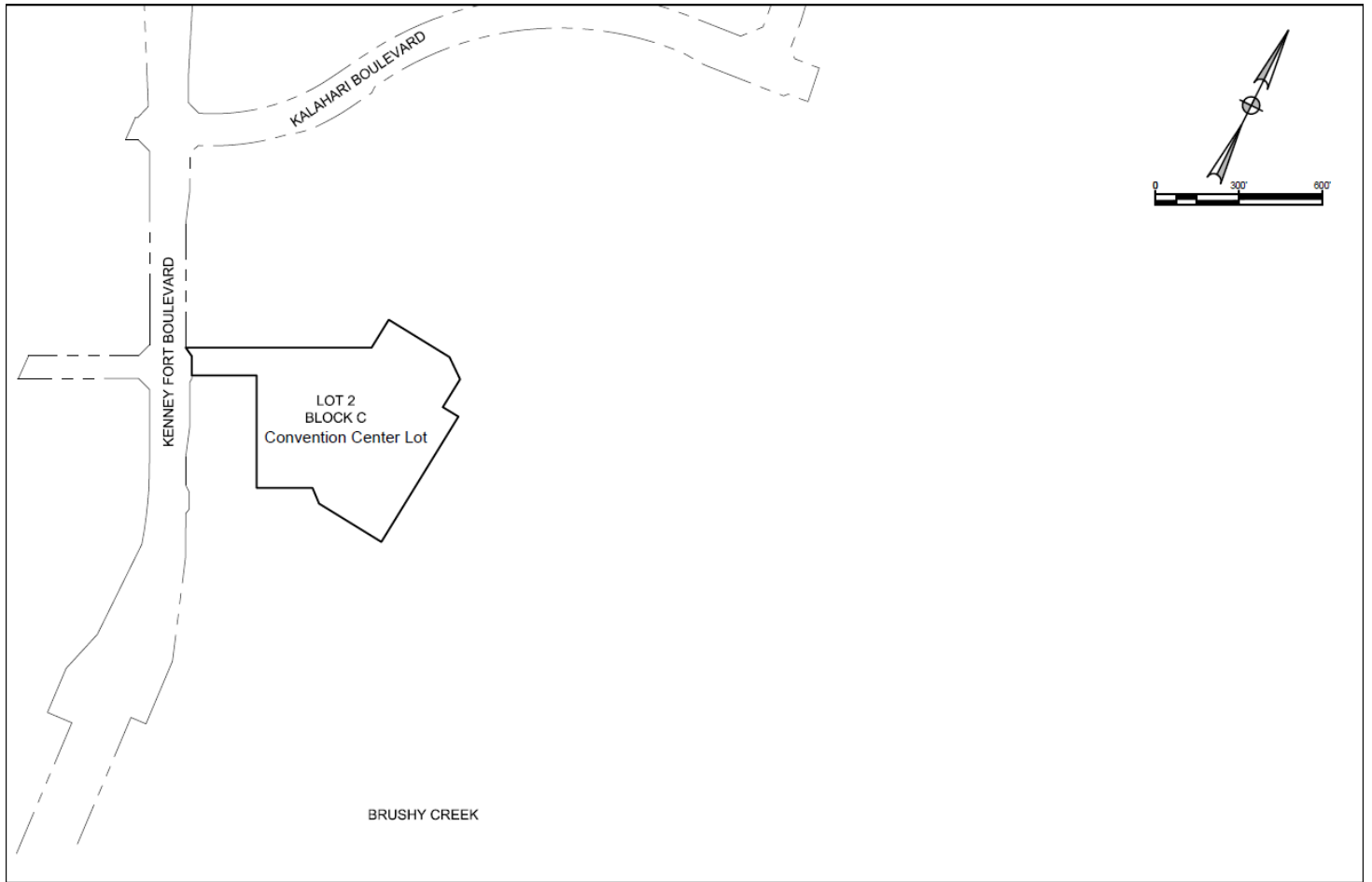
THENCE, N02°09'44"W, along the common line of said 157.385-acre tract and said 107.17-acre tract for a portion of the westerly line hereof, a distance of 367.85 feet to the **POINT OF BEGINNING**, containing an area of 9.796 acres (426,728 square feet) of land, more or less, within these metes and bounds.

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.

Exhibit B

Legal Description and Depiction of the Convention Center Parcel

Lot 2, Block "C", Final Plat of Kalahari Resort and Replat of Bertil Telander Subdivision, recorded _____ as Document Number _____ in the office of the Clerk of Williamson County, Texas.



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