

Memorandum



CITY OF DALLAS

DATE February 18, 2009

TO The Honorable Mayor and Members of the City Council

SUBJECT Convention Center Hotel Developer Agreement

Attached is the Convention Center Hotel Developer Agreement as presented to the City Council on Wednesday, February 18, 2009.

Please contact me if you need additional information.

A handwritten signature in black ink, appearing to read 'A.C. Gonzalez'.

A.C. Gonzalez
Assistant City Manager

C: Mary K. Suhm, City Manager
Deborah Watkins, City Secretary
Tom Perkins, City Attorney
Craig Kinton, City Auditor
Judge C. Victor Lander, Judiciary
Ryan S. Evans, First Assistant City Manager
Forest Turner, Interim Assistant City Manager
Ramon Miguez, P.E., Assistant City Manager
Jill A. Jordan, P.E., Assistant City Manager
Jeanne Chipperfield, Interim Director, Office of Financial Services
Dave Cook, Chief Financial Officer
Karl Zavitkovsky, Director, Office of Economic Development
Hammond Perot, Assistant Director, Office of Economic Development
Frank Poe, Director, Convention & Event Services
Helena Stevens-Thompson, Assistant to the City Manager

HOTEL DEVELOPER AGREEMENT

February 15, 2009

THIS HOTEL DEVELOPER AGREEMENT (this “**Developer Agreement**”) is made and entered into effective as of _____, 2009 (the “**Effective Date**”), between DALLAS CONVENTION CENTER HOTEL DEVELOPMENT CORPORATION, a public, non-profit local government corporation created pursuant to Section 431.101 of the Texas Transportation Code (the “**Owner**”) and MATTHEWS HOLDINGS SOUTHWEST INC., a Texas corporation (the “**Developer**”). The Owner and the Developer are herein collectively referred to as the “**Parties**” and individually as a “**Party**”.

RECITALS

A. The development and expansion of commerce and the diversification of the economy within the State of Texas and the City is paramount to the continued economic development of the City.

B. To further promote tourism and the convention industry in the City of Dallas, Texas (the “**City**”), the Owner desires to have a premier, full service convention center headquarters hotel and related improvements constructed on the Site (as hereinafter defined), which it acquired June 19, 2008. The Site is within 1,000 feet of the Dallas Convention Center.

C. In response to a request for qualifications process initiated by the City, the Economic Development Committee of the City was briefed on June 16, 2008, that Matthews Holdings Southwest Inc., was selected as the preferred developer for the development of the hotel and City staff was instructed to enter into negotiations for the development of the hotel and related improvements generally in accordance with the major terms of such proposal.

D. In furtherance of the development of the hotel and related improvements, the City and the Developer entered into a memorandum of understanding on August 20, 2008, pursuant to Resolution No. 08-2197, and the City, pursuant to Resolution No. 08-2198, established the Owner to act on the City’s behalf for the purpose of financing the hotel project.

E. On September 10, 2008, the City Council authorized the execution of a three-party pre-development agreement (the “**PD Agreement**”) between the City, the Developer and the Owner for the development of the hotel, which PD Agreement was amended pursuant to Resolution No. 08-2907 approved by the City Council on October 22, 2008.

F. The Developer agrees to design, develop, construct, equip, furnish and fully complete such hotel and related improvements on behalf of the Owner.

G. The City has determined that the construction of a premier, full service convention center headquarters hotel and related improvements by the Developer will increase the City’s convention and trade show business and result in increased receipts from the City’s sales tax and hotel occupancy tax.

H. The Owner and the Developer are executing and entering into this Developer Agreement to set forth certain obligations of the Owner and the Developer with respect to such matters, including the terms, conditions and provisions pursuant to which the Developer shall design, develop, construct, equip, furnish and fully complete, or cause to be designed, developed,

constructed, equipped, furnished, and fully completed, the Hotel Project Improvements (as hereinafter defined) at and within the Site.

For and in consideration of the respective covenants and agreements of the Parties herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Owner and the Developer, intending to be legally bound, do hereby agree as follows:

**ARTICLE 1
GENERAL TERMS**

ARTICLE 1.1 Definitions and Usage. Unless the context shall otherwise require, capitalized terms used in this Developer Agreement shall have the meanings assigned to them in the Glossary of Defined Terms attached hereto as Appendix A, which also contains rules as to usage that shall be applicable herein. Capitalized terms used herein as to which reference is made to the definition thereof in the Indenture shall have the meanings assigned to them in the Master Glossary of Terms For Financing Documents attached as Exhibit A to the Indenture, which Master Glossary of Terms is incorporated herein by reference.

ARTICLE 1.2 Governing Provisions. The governing provisions set forth in Appendix B attached hereto shall apply to and govern this Developer Agreement for all purposes and shall apply to and govern each of the other Project Documents that states in substance that it is governed by Appendix B hereto.

ARTICLE 2
REPRESENTATIVES OF THE PARTIES

ARTICLE 2.1 The Owner Representative. The Owner was created by the City to assist and act on behalf of the City in connection with the design, financing, construction and ownership of the Hotel, to provide a mechanism for financing Hotel Project Improvements and to facilitate the development of the Project. It is understood that the City will provide direction, control and staffing to the Owner to enable the Owner to perform its obligations hereunder. In addition, the Parties acknowledge that the City shall designate key senior personnel as “an expediter” to respond in an expeditious manner to all submissions and requests by the Developer. Incident thereto, the Owner hereby designates the City Manager or her designee as the Owner Representative (the “**Owner Representative**”) for the term of this Developer Agreement. The Owner and the City shall have the right, from time to time, to change the Person (including the City Manager’s designee) who is the Owner Representative by giving Notice to the Developer thereof. The only functions under this Developer Agreement of the Owner Representative shall be as expressly specified in this Developer Agreement. With respect to any such action, decision or determination which is to be taken or made by the Owner under this Developer Agreement, the Owner Representative may take such action or make such decision or determination or shall notify the Developer in writing of the department, bureau, agency, division, section or office of the Owner or the City responsible for such action, decision or determination and shall forward any communications and documentation to such department, bureau, agency, division, section or office for response or action. Anyone of the Persons from time to time serving as the Owner Representative, acting alone and without the joinder of the other Persons then serving as the Owner Representative, shall have the power to bind the Owner in those instances in which this Developer Agreement specifically provides for the Approval, Consent, decision, confirmation or determination of the Owner and in no other instances; provided, however, that notwithstanding anything in this Developer Agreement to the contrary, the Owner Representative shall not have any right to modify, amend or terminate this Developer Agreement or take any action that would require the approval of the City Council.

ARTICLE 2.2 Developer Representative. The Developer hereby designates John H. Matthews or his designee to be the Developer Representative (the “**Developer Representative**”) for the term of this Developer Agreement, who shall be authorized to act on behalf of the Developer under this Developer Agreement. The Developer shall have the right, from time to time, to change the Person (including the designee of John H. Matthews) who is the Developer Representative by giving Notice thereof to the Owner. With respect to any such action, decision or determination to be taken or made by the Developer under this Developer Agreement, the Developer Representative shall take such action or make such decision or determination or shall notify the Owner in writing of the Person(s) responsible for such action, decision or determination pursuant to the Developer’s organizational documents or otherwise, and shall forward any communications and documentation to such Person(s) for response or action. Any written Consent, Approval, decision, confirmation or determination hereunder by the Developer Representative shall be binding on the Developer; provided, however that notwithstanding anything in this Developer Agreement to the contrary, the Developer Representative shall not have any right to modify, amend or terminate this Developer Agreement.

ARTICLE 3
TERM

ARTICLE 3.1 Term. The term of this Developer Agreement shall commence on the Effective Date and, except as otherwise expressly provided herein (including without limitation pursuant to Section 13.2, Section 13.7 and Section 3 of Appendix B), shall expire on the later of the date of Final Completion or compliance with all obligations hereunder, unless sooner terminated in accordance with the applicable provisions hereof, but no such expiration shall negate or impair the obligation of the Parties to make all payments to each other then due as may be required pursuant to the terms of this Developer Agreement, the indemnification obligations of the Developer or any other covenant herein that survives expiration or termination. Notwithstanding the foregoing, if the Financing Date has not occurred by September 30, 2009, (a) this Developer Agreement shall terminate, and (b) unless the Developer is then obligated to reimburse the Owner pursuant to the following sentence, the Owner will reimburse the Developer for its eligible pre-development costs under the Hotel Project Improvements Design Contract, as incurred and invoiced with appropriate backup and in form and detail meeting the City's standard payables policy, up to a maximum Owner pre-development expenditure, including amounts spent by the Owner pursuant to Section 1.4(a) of the PD Agreement, of \$4,000,000; *provided, however,* that the City and the Owner have received unconditional ownership and possession of all project documentation including architectural drawings, without restriction on future use (other than the City's standard allowable restrictions), and, if requested by the Owner, the Developer has assigned to the Owner those design consultants' contracts so requested. Notwithstanding any other provision of this Developer Agreement, during the period from the Effective Date until reasonable approval by the City and the Owner of the Hotel Project Improvements Construction Contract, the Developer shall remain obligated to reimburse the Owner for certain pre-development costs pursuant to Section 1.4(b) of the PD Agreement, pursuant to the terms of that section.

ARTICLE 4
OWNER'S REPRESENTATIONS

ARTICLE 4.1 Owner's Representations. As an inducement to the Developer to enter into this Developer Agreement, the Owner represents and warrants to the Developer that, notwithstanding anything herein to the contrary, as of the Effective Date (collectively, the "**Owner's Representations**"):

ARTICLE 4.1.1 Organization. The Owner is a public, non-profit local government corporation created pursuant to Section 431.101 of the Texas Transportation Code by the City and validly existing under the laws of the State of Texas, with all necessary power and authority to enter into this Developer Agreement and to consummate the transactions herein contemplated.

ARTICLE 4.1.2 Authority; Consent. Upon execution of this Developer Agreement by the Owner, the Owner will have caused all corporate proceedings required to be taken by or on behalf of the Owner to authorize the Owner to execute and deliver this Developer Agreement and to perform the covenants, obligations and agreements of the Owner hereunder. No Consent to the execution or delivery of this Developer Agreement by the Owner or the performance by the Owner of its covenants, obligations and agreements hereunder is required from any board of directors, shareholder, creditor, investor, judicial, legislative or administrative

body, Governmental Authority or other Person, other than any such Consent which already has been given.

ARTICLE 4.1.3 No Conflict. The execution and delivery hereof and the performance by the Owner of its obligations under this Developer Agreement do not violate, conflict with or result in a breach of or constitute an event of default under, and are not inconsistent with any material terms or material provisions of any contract, agreement, instrument or Legal Requirements to which the Owner is a party or is subject or any judgment, order or decree applicable to the Owner.

ARTICLE 4.1.4 Litigation. There are no Actions or Proceedings, at law or in equity, before any court, mediator or arbitrator, which directly relate to the Project and which, if adversely determined, would materially and adversely affect the validity or enforceability of, or the ability of the Owner to fulfill its obligations under, this Developer Agreement. The Parties acknowledge that an election will be held on May 9, 2009, to amend the City Charter with regard to the City's or Owner's ownership or financing of a hotel project.

ARTICLE 4.1.5 Valid and Binding Obligation. This Developer Agreement is the legal, valid and binding obligation of the Owner, enforceable against the Owner in accordance with its terms, except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time, and the exercise of judicial discretion in accordance with general principles of equity, or (ii) any Legal Requirements applicable to the Owner solely as a result the Owner being created by the City.

ARTICLE 4.1.6 Ownership of Site. The Owner is the owner and holder of fee simple title to the real property comprising the Site.

ARTICLE 4.1.7 Competitive Bidding. Pursuant to Section 431.110 of the Texas Transportation Code, any competitive bidding requirement or restriction on the City does not apply to an expenditure by Owner for the Project, and the development and construction of the Hotel Project Improvements, as the Project and the Hotel Project Improvements are to be constructed in a reinvestment zone and the construction is to be managed by the Developer, a private venture participant, pursuant to this Developer Agreement.

All of the Owner's Representations shall be subject to, and shall in all respects be qualified by, the provisions of Section 4.2 of this Developer Agreement. The Owner's Representations are personal to the Developer and its permitted assigns and shall not inure into the benefit of any other Person or run with the ownership of any rights under the Project Documents.

ARTICLE 4.2 Disclaimer of Representations. DEVELOPER ACKNOWLEDGES THAT, EXCEPT FOR THE OWNER'S REPRESENTATIONS, NEITHER THE OWNER NOR THE CITY NOR ANY AFFILIATE OF THE OWNER OR OF THE CITY NOR ANY RELATED PARTY OF THE OWNER OR THE CITY HAS MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER (WHETHER EXPRESS OR IMPLIED) REGARDING THE SUBJECT MATTER OF THIS DEVELOPER AGREEMENT OR ANY OTHER PROJECT DOCUMENT. DEVELOPER AGREES THAT NEITHER THE OWNER NOR THE CITY NOR ANY OF THE OWNER'S OR THE CITY'S AFFILIATES NOR ANY OF THE

OWNER'S OR THE CITY'S RELATED PARTIES SHALL HAVE ANY RESPONSIBILITY FOR (AND HAVE MADE NO REPRESENTATION OR WARRANTIES WHATSOEVER AS TO) ANY OF THE DEVELOPER'S RISKS, EXCEPT AS PROVIDED IN ARTICLE 14.5(F).

NEITHER THE OWNER NOR THE CITY NOR ANY OF THEIR RESPECTIVE AFFILIATES SHALL BE LIABLE AS A RESULT OF ANY FAILURE BY ANY PERSON (OTHER THAN THE OWNER, THE CITY AND/OR PERSONS ENGAGED BY EITHER OF THEM OTHER THAN HENLEY JOHNSON & ASSOCIATES AND TRC ENVIRONMENTAL CORPORATION) UNDER ANY PROJECT DOCUMENT OR CONSTRUCTION DOCUMENT TO PERFORM THEIR RESPECTIVE OBLIGATIONS THEREUNDER. IT IS UNDERSTOOD AND AGREED BY DEVELOPER (FOR ITSELF OR ANY PERSON CLAIMING BY, THROUGH OR UNDER IT) THAT IT HAS ITSELF BEEN, AND WILL CONTINUE TO BE, SOLELY RESPONSIBLE FOR MAKING ITS OWN INDEPENDENT APPRAISAL OF, AND INVESTIGATION INTO, THE FINANCIAL CONDITION, CREDIT WORTHINESS, CONDITION, AFFAIRS, STATUS AND NATURE OF ANY PERSON UNDER THE PROJECT DOCUMENTS AND CONSTRUCTION DOCUMENTS.

ARTICLE 5 DEVELOPER'S REPRESENTATIONS

ARTICLE 5.1 Developer's Representations. The Developer hereby makes each of the following representations to the Owner as of the Effective Date (collectively, "**Developer's Representations**"):

ARTICLE 5.1.1 Organization, Existence, Etc. The Developer is a corporation duly formed, validly existing and in good standing under the laws of the State of Texas. The Developer has the lawful authority to carry on the development of the Project, specifically the Hotel Project Improvements under the terms of and in accordance with this Developer Agreement. The Developer is duly authorized to conduct business in the State of Texas and each other jurisdiction in which the nature of its properties or its activities requires such authorization.

ARTICLE 5.1.2 Power and Authority. The Developer has all necessary corporate power and authority to carry on its present business, to enter into this Developer Agreement, to consummate the transactions herein contemplated and to perform its obligations hereunder. The execution, delivery and performance of this Developer Agreement by the Developer are within the Developer's powers and have been duly authorized by all necessary action of the Developer and the Developer's board of directors.

ARTICLE 5.1.3 No Conflict. None of (i) the execution and delivery of this Developer Agreement, (ii) the consummation of any of the transactions herein contemplated, (iii) compliance with the terms and provisions hereof or (iv) performance hereunder will contravene the organizational documents of the Developer or any Legal Requirements to which the Developer is subject or any judgment, decree, license, order or permit applicable to the Developer, or will conflict or be inconsistent with, or will result in any breach of any of the material terms of the covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of a Lien upon any of the Property or assets of Developer pursuant to the terms of, any indenture, mortgage, deed of trust, agreement or other instrument to

which the Developer is a party or by which the Developer is bound, or to which the Developer is subject.

ARTICLE 5.1.4 No Consents; No Defaults. All proceedings required to be taken by or on behalf of the Developer to authorize the Developer to make and deliver this Developer Agreement and to perform the covenants, obligations and agreements of the Developer hereunder have been duly taken. No Consent, Approval, order, authorization, filing, notice or other action to the execution and delivery of this Developer Agreement by the Developer or the performance by the Developer of its covenants, obligations and agreements hereunder is required from any partner, board of directors, shareholder, creditor, investor, Governmental Authority or other Person, other than any such Consent, Approval, order, authorization, filing, notice or other action which already has been taken or unconditionally given. Developer is not in default (nor are there any circumstances that with notice or lapse of time or both would become a default) under any covenant or obligation pursuant to this Developer Agreement.

ARTICLE 5.1.5 Valid and Binding Obligation. This Developer Agreement is the legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

ARTICLE 5.1.6 No Pending Litigation, Investigation or Inquiry. There is no Action or Proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of the Developer, threatened against or affecting the Developer, which the management of the Developer in good faith believe that the outcome of which would (a) materially and adversely affect the validity or enforceability of or the authority or ability of the Developer to perform its obligations under this Developer Agreement, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of the Developer or on the ability of the Developer to conduct its business as presently conducted or as proposed or contemplated to be conducted (including the construction of the Hotel Project Improvements).

ARTICLE 5.1.7 Conflict of Interest. None of the Developer, any Affiliate of the Developer, or any of their Principals, partners, shareholders, officers, board members, employees or agents are “officials” or “employees” of the Owner or the City as defined in the Ethics Code and, in connection with the Developer’s execution and performance of this Developer Agreement, the Developer has not offered or agreed to confer any benefit on a City employee or official or on an official, employee, agent or consultant of the Owner.

ARTICLE 5.1.8 Decision to Undertake Project. The Developer has engaged the Contractor as the Hotel Project Improvements Contractor, and the Developer’s decision to undertake the Project is based upon the terms and conditions of this Developer Agreement and the Developer’s own independent evaluation and inspection of the Site and existing Improvements. The Developer has accepted the Developer’s Risks, other than as provided in Article 14.5(f). The Owner has afforded the Developer and the Developer Representatives the opportunity for full and complete Investigations, examinations and inspections of the Site and existing Improvements.

ARTICLE 5.2 Disclaimer of Developer Representations. THE OWNER ACKNOWLEDGES THAT, EXCEPT FOR THE DEVELOPER'S REPRESENTATIONS, NEITHER THE DEVELOPER NOR ANY AFFILIATE OF THE DEVELOPER NOR ANY RELATED PARTY OF THE DEVELOPER HAS MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER (WHETHER EXPRESS OR IMPLIED) REGARDING THE SUBJECT MATTER OF THIS DEVELOPER AGREEMENT OR ANY OTHER PROJECT DOCUMENT. THE OWNER AGREES THAT NEITHER THE DEVELOPER NOR ANY OF THE DEVELOPER'S AFFILIATES NOR ANY OF THE DEVELOPER'S RELATED PARTIES SHALL HAVE ANY RESPONSIBILITY FOR (AND HAVE MADE NO REPRESENTATIONS OR WARRANTY WHATSOEVER AS TO) ANY MATTER NOT EXPRESSLY SET FORTH IN THE DEVELOPER AGREEMENT.

ARTICLE 6
ASSIGNMENT; DEVELOPER ENTITY

ARTICLE 6.1 No Assignment, Transfer or Mortgage by the Developer. Except with prior Consent of Owner and the City Council, the Developer shall not (i) sell, assign, transfer, sublease, license or otherwise dispose of this Developer Agreement, or any Interest herein or hereunder, (ii) mortgage, pledge, encumber or otherwise hypothecate this Developer Agreement or any interest herein or hereunder, or (iii) in any other manner transfer or convey any right, title, interest or estate in or under this Developer Agreement or to any portion or all of the Hotel Project Improvements; *provided, however*, the Developer may, without such prior Consent, directly or indirectly assign all or any portion of any of its rights, interests or obligations under this Developer Agreement to an entity that is owned or controlled, directly or indirectly, by the Developer, or to an entity under common control with the Developer; *provided, further*, that no such assignment shall relieve the Developer of any of its obligations to the Owner hereunder. Any attempted act in breach of the provisions of the preceding sentence without such prior Consent shall be void and shall confer no rights upon any third parties.

ARTICLE 6.2 Developer Entity. The Developer shall be and remain a business entity chartered in, or qualified to do business in, the State of Texas during the period of designing, developing, constructing, equipping, furnishing, and fully completing the Premises and the Hotel Project Improvements and completing the Project pursuant to the terms hereof.

ARTICLE 7
SCOPE OF DEVELOPMENT

ARTICLE 7.1 General Provisions.

ARTICLE 7.1.1 Hotel Project Improvements. The Developer shall design, develop, construct, equip, furnish and fully complete the Hotel Project Improvements at and within the Site and in accordance with this Developer Agreement and, subject to changes or conditions entitling the Developer to adjustments pursuant to the terms of this Developer Agreement, the Hotel Project Improvements Plans and all applicable Legal Requirements, within the Hotel Project Improvements Budget and by the Hotel Completion Deadline. Title to Hotel Project Improvements will pass immediately to the Owner, although the risk of loss prior to Final Completion remains with the Developer. The Developer shall be responsible for costs in excess of the Hotel Project Improvements Budget, except for increases in time (not otherwise able to be completed within the Hotel Completion Deadline) and/or costs (i) to the extent incurred as the result of an Owner-initiated change order increasing the scope of the Project not matched by an offsetting reduction or paid for from savings, as described in Article 14.5(e) below, for the benefit of the Owner, or (ii) as a result of unreasonable delays by the Owner in making required and valid payments or in approving designs or other submissions made by the Developer that are within the Hotel Project Improvements Specifications (as such Hotel Project Improvements Specifications may be refined by written consent of the Owner and the Developer), or (iii) as a result of agreements between the Owner and third-parties (not including the Developer) that materially adversely affect time and/or costs; provided, however, in no event shall the Owner be responsible for any such increases to the Hotel Project Improvements Budget as a result of any such time delay or cost event unless the Developer has provided prior notice in writing to the Owner of the potential impact on time or costs thereof.

ARTICLE 7.1.2 Hotel Project Improvements Specifications. The construction of the Hotel Project Improvements at and within the Site shall include the following scope of design/development specifications (the “**Hotel Project Improvements Specifications**”):

- (i) A four-star full service convention center headquarters hotel having at least 1,000 rooms with keys capable of being rented separately;
- (ii) At least 80,000 square feet of meeting space, including approximately 33,500 square feet of grand ballroom and approximately 16,500 square feet of junior ballroom space; provided, however, that de minimus variations in the foregoing square footages shall be permitted;
- (iii) Structured parking containing no less 720 parking spaces, including public parking spaces;
- (iv) Engineered to result in structural elements having a useful life of at least 60 years;
- (v) All-weather connection to the Convention Center; and
- (vi) All in accordance with the Hotel Project Improvements Specifications contained in Schedule 7.1.2.

ARTICLE 7.1.3 Developer’s Fee. The Developer will perform the development services pursuant to this Developer Agreement for a fee (the “**Developer Fee**”) of 2.58% of the Hotel Project Improvements Budget, such fee to be capped at \$15 million. For

purposes of calculating the Developer Fee, the Hotel Project Improvements Budget shall not include the Developer Fee. The Developer Fee is to be earned and paid monthly as a percentage of the draw amount (prior to holdback) for each month of the Project beginning with September 10, 2008, in which the Developer incurs and expends eligible costs and expenses for the Hotel as agreed upon with the Owner as being part of the Hotel Project Improvements Budget. Any portion of the Developer Fee that is earned prior to the issuance of the Series 2009 Bonds for the Hotel shall be accrued and paid beginning with the first month after issuance of the Series 2009 Bonds solely out of the proceeds of the Series 2009 Bonds and only if and to the extent the Series 2009 Bonds are issued. The parties acknowledge that the Developer and the Owner have expended amounts that are part of the Hotel Project Improvements Budget (as set forth on attached **Schedule 7.1.3a**) before the Effective Date, as to which the Developer Fee has been earned. For planning purposes, the expected drawdown schedule is shown on attached **Schedule 7.1.3b**. The Developer Fee shall be part of the Hotel Project Improvements Budget for all purposes other than calculating the Developer Fee.

ARTICLE 7.1.4 Ancillary Development. Contemporaneously with this Developer Agreement, the Parties will enter into (or the Owner will cause the City to enter into) an ancillary development agreement, on the terms outlined on attached **Schedule 7.1.4**, in connection with ancillary development on City-owned property proximate to the Site and identified on **Schedule 7.1.4**.

ARTICLE 7.2 Developer Due Diligence. The Developer hereby acknowledges that it has received, reviewed and approved (i) that certain Draft Phase II Investigation Report dated December 5, 2008, prepared by TRC Environmental Corporation and (ii) that certain Geotechnical Report prepared by Henley Johnson and Associates, dated September 24, 2008. The disclaimer contained in Section 4.2 above shall apply for all purposes and neither the Owner nor the City shall have any liability with respect to the content or conclusions of such studies.

ARTICLE 7.3 Developer's Remedial Work. Upon commencement of the construction of the Hotel Project Improvements Work, the Developer shall be responsible for performing or causing to be performed any and all removal or corrective or remedial actions required by applicable Legal Requirements to be performed as a result of the construction of the Hotel Project Improvements with respect to any Environmental Event or any Contaminated Materials or state historical or archaeological landmarks (including any state archaeological landmarks as such term is used in Chapter 191 of the Texas Natural Resource Code, or any successor statute thereto) present in, on or under the Premises ("**Developer's Remedial Work**"). The Developer shall promptly inform the Owner, the City and all other applicable Governmental Authorities of any Contaminated Materials discovered by the Developer (or by any agent or contractor of the Developer) in, on or under the Premises or the Existing Improvements which Contaminated Materials are (i) in amounts or concentrations in violation of Environmental Laws or (ii) required to be reported to any Governmental Authority (including the City) pursuant to any Environmental Law, and shall promptly furnish to the Owner Representative or the Owner's third-party environmental consultant if so designated by the Owner (and, if requested by the Owner Representative, in lieu of providing same to the Owner) any and all reports and other information available to the Developer concerning the matter. The Developer shall thereafter promptly consult with the Owner as to the steps to be taken to investigate and, if necessary, remedy such matter. All wastes produced at or from the Premises or the Hotel Project Improvements, including construction wastes or any waste resulting from the construction of any

portion of the Hotel Project Improvements Work shall be disposed of appropriately by the Developer based on its waste classification. Regulated wastes, such as asbestos and industrial wastes shall be properly characterized, manifested and disposed of at an authorized facility. The Developer shall be the generator of any construction wastes resulting from any Hotel Project Improvements Work in accordance with Environmental Laws.

ARTICLE 7.4 Hotel Project Improvements Construction Schedule. Without limiting the Developer's obligations under this Developer Agreement, including specifically Section 7.5, the Developer shall provide the Owner with a Hotel Project Improvements Construction Schedule, provided that notwithstanding the foregoing, the Hotel Project Improvements Construction Schedule (other than the Hotel Completion Deadline) is advisory only and the dates set forth on the Hotel Project Improvements Construction Schedule (other than the Hotel Completion Deadline) shall be target dates and any failure by the Developer to meet such target dates (other than the Hotel Completion Deadline) shall not constitute a Developer Default hereunder. Notwithstanding the foregoing or anything herein to the contrary, (i) immediately after the Effective Date, the Developer shall commence to pursue the receipt of all Governmental Authorizations necessary to commence construction of the Hotel Project Improvements and shall thereafter diligently and continuously pursue same and (ii) at such time after the Financing Date as the Developer shall receive such Governmental Authorizations as are necessary to commence construction of the Hotel Project Improvements Work, the Developer shall promptly commence construction of the Hotel Project Improvements and thereafter diligently and continuously pursue the construction of the Hotel Project Improvements pursuant to the terms of this Developer Agreement.

ARTICLE 7.5 Construction of Hotel Project Improvements. The Developer shall cause Substantial Completion to occur on or before the Hotel Completion Deadline, in accordance with the provisions of this Developer Agreement (including Section 7.7 hereof).

ARTICLE 7.6 Utility Relocation and Funding of Same. The Developer shall be responsible for the relocation (without any interruption in service unless Approved in advance by the Owner Representative, such Approval not to be unreasonably withheld) of all existing utility lines, equipment or appurtenances crossing the Premises, known or reasonably knowable to the Developer as of the Effective Date, including those described in Schedule 7.6 (the "**Existing Lines**") but only to the extent such relocation is necessary to accommodate the construction of the Hotel Project Improvements or is otherwise required by the owner or operator of such Existing Lines. Such relocation shall be within the Hotel Project Improvements Budget, and all relocation shall be in compliance with all applicable Legal Requirements and the requirements of the operators and owners of such Existing Lines. Neither the City nor the Owner shall be responsible for the cost of relocating any utility, voice, video or data transmission lines beyond any cost provided therefor in the Hotel Project Improvements Budget. To the extent required by the owner or operator of any Existing Lines and reasonably necessary to accomplish the relocation required under this Section 7.6, the Owner shall grant (or cause the City to grant) the owner or operator of such Existing Line a non-exclusive easement across the Premises (or, with respect to non-Owner and non-City owned real property, reasonably seek for the owner thereof to do so as a part of the Hotel Project Improvements Budget) in order to operate, maintain, repair, replace, remove or modify on such terms and route as are reasonably acceptable to the City or the Owner.

ARTICLE 7.7 Work Performed on Project.

ARTICLE 7.7.1 General Requirements. The Developer, except as otherwise permitted by Owner, shall not do or permit others to do any construction of any portion of the Hotel Project Improvements Work, (i) prior to the Financing Date, (ii) unless and until the Developer shall have first procured and paid for all Governmental Authorizations then required for the work being performed, (iii) except pursuant to the Hotel Project Improvements Schematics, the Hotel Project Improvements Drawings, the Hotel Project Improvements Plans and the Hotel Project Improvements Construction Contract as to which the Owner's Approval has been obtained, (iv) unless and until the Developer shall have delivered to the Owner Representative evidence of its compliance with Section 7.7.3 and (v) unless and until the Developer is in compliance with all Insurance Covenants. It is understood and agreed that, to the extent permitted by Legal Requirements, such Governmental Authorizations may be procured in stages. All such Hotel Project Improvements Work shall be (a) prosecuted with due diligence and completed with all reasonable dispatch in accordance with the terms of this Developer Agreement, (b) constructed and performed in a good and workmanlike manner in accordance with standard construction practices for construction, repair, renewal, renovation, demolition, rebuilding, addition or alteration, as the case may be, of Improvements similar to the Hotel Project Improvements, (c) constructed and performed using qualified workers and subcontractors in accordance with the terms of this Developer Agreement, (d) constructed and performed in accordance with all applicable Legal Requirements, the requirements of this Developer Agreement and the requirements, rules and regulations of all insurers of the Premises and the Hotel Project Improvements and (e) subject to Section 7.8 below, free of any Liens. The Developer shall take all reasonably necessary measures and precautions to minimize damage or disruption caused by such work in accordance in such manner as a Reasonable and Prudent Developer would undertake in light of the particular circumstances and make adequate provisions for the safety and convenience of all Persons affected thereby. Dust, noise, traffic, hazards and other effects of such work shall be controlled in such manner as a Reasonable and Prudent Developer would undertake in light of the circumstance, but in all events so as to comply with all applicable Legal Requirements and not to unreasonably interfere with the continuous use or occupancy of the Convention Center.

ARTICLE 7.7.2 Record Drawings and Other Documents. Upon Final Completion, the Developer shall furnish to the Owner three complete electronic CAD files of all "record drawings" in accordance with accepted industry standards, and certified true copies of all approvals, permits and certificates, including, but not limited to, a certificate of occupancy or its equivalent, which shall then be required by any Governmental Authority.

ARTICLE 7.7.3 Construction Contract Requirements. The Developer shall cause (i) to the extent necessary to cause the Developer to meet its requirements under Section 11.1, any Construction Document with any design professional (including the Hotel Project Improvements Design Contract) or any contractor with respect to any Hotel Project Improvements Work to require such party to such agreement to comply with the SBE and MWBE Policies, (ii) all Construction Documents to contain the immunity, and applicable indemnification and ownership terms outlined on Appendix D, comply with City's applicable insurance requirements and other standard contract provisions, the Owner's rights of review and Approval at each stage of design, no arbitration provisions, and the Owner's right to audit, (iii) all Construction Contracts to require such contractor to perform such Hotel Project

Improvements Work in a good and workmanlike manner, in compliance with all applicable OSHA and ADA standards and prevailing wage rates, (iv) the Hotel Project Improvements Design Contract to include a maximum limit of budgeted construction costs and to permit the Owner to own and use any plans and specifications pursuant to the terms of the Hotel Project Improvements Design Contract, (v) any Construction Contract to contain a representation and warranty that the Hotel Projects Improvements Work covered by such Construction Contract will be warranted from defects in workmanship and materials for a period of at least one (1) year from the date of Substantial Completion (unless a longer period of time is provided for by the manufacturer or supplier of any materials or equipment which is a part of such Hotel Project Improvements Work) and an assignment to the Owner of the right to enforce such warranty, all to the same extent as if the Owner were a party to such contract, and (vi) the Hotel Project Improvements Construction Contract to (A) cover all of the Hotel Project Improvements Work through Final Completion (other than the services provided by the Operator pursuant to the Pre-Opening and Technical Services Agreement), (B) provide for a guaranteed maximum price for all such work in an amount no greater than Three Hundred Thirty Five Million Three Hundred Sixty Three Thousand Nine Hundred Eighty Six and No/100 Dollars (\$335,363,986), (c) require Substantial Completion to be achieved on or before the Hotel Completion Deadline, subject to changes, if any, Approved by the Owner and the Developer, and with extension or delay for Excusable Developer Delay, (D) require the Hotel Project Improvements Construction Contractor to pay the Contractor Daily Delay Damages to the Trustee for each day during any period of delay after the Hotel Completion Deadline, (E) be 100% bonded by a Qualified Surety (or co-Qualified Sureties) pursuant to statutory payment and performance bonds, in form and substance as required by the City for its public works contracts, and which have been Approved by the Owner Representative, such Approval not to be unreasonably withheld, naming the Owner, the City and the Developer as co-obligees (collectively, the “**Hotel Project Improvements Construction Contract Bond**”) and which covers 100% of the payment and performance obligations of the Hotel Project Improvements Contractor under the Hotel Project Improvements Construction Contract, (F) provide that any draws from the contingency accounts contained within the guaranteed maximum price shall only be made upon the Approval of the Developer, (G) require the design and construction of the Hotel Project Improvements to enable the Owner to obtain a LEED Silver Certification, and (H) to require that upon Substantial Completion, at least five percent (5%) of the amount payable under the Hotel Project Improvements Construction Contract and the applicable portion of the Contractor’s fee thereunder shall continue to be withheld until Final Completion (with no deviation of these requirements permitted or allowed in the Hotel Project Improvements Construction Contract which has been Approved by the Owner Representative pursuant to Section 10.1.5, collectively, the “**Construction Contract Requirements**”). The Developer shall execute and deliver to the Owner the Hotel Project Improvements Construction Contract on the earlier of (i) either the day, or the day prior to the day, that is 10 business days before the day the City Council of the City is scheduled to consider authorization for the Owner to issue the Series 2009 Bonds, or (ii) April 30, 2009.

ARTICLE 7.7.4 Crane Swing Agreements. The Developer covenants and agrees that it shall not permit any crane used in connection with the construction of the Hotel Project Improvements Work to swing over the Convention Center or over the air space above any real property or Improvements not within the Premises without first entering into a written agreement with the owner and operator of such real property or Improvements permitting the Developer to swing its crane over such Person’s property or Improvements (a “**Crane Swing**

Agreement”) and thereafter to abide by the terms and conditions of each Crane Swing Agreement.

ARTICLE 7.7.5 Construction Cooperation/Coordination Protocol, Project Safety Plan, and Access Plan. Without in anyway limiting, waiving or releasing any of the obligations of the Developer under this Developer Agreement or any Legal Requirements, the Developer agrees that at all times during the Hotel Project Improvements Work, the Developer will conduct the Hotel Project Improvements Work, and require all of its contractors, subcontractors and agents to conduct the Hotel Project Improvements Work, in accordance with the following:

(a) Construction Cooperation/Coordination Protocol. The protocol for the Owner and the Developer to cooperate and coordinate with each other in their respective activities in connection with the Hotel Project Improvements Work and the access, use and operation of the Convention Center, including (1) a protocol for a reasonable number of Quiet Days, reasonable advance written Notice from the Owner to the Developer of at least thirty (30) days, and appropriate extensions of the Hotel Completion Deadline in connection with Quiet Days during construction of the Hotel Project Improvements Work as established by the Developer and Approved by the Owner Representative, such Approval not to be unreasonably withheld, and (2) a protocol for the Owner and the Developer to cooperate and coordinate scheduling and construction of the all-weather connection, and reasonable changes in the scheduling of the penetration of and work within the Convention Center in connection therewith, such penetration work and work within the Convention Center, and scheduling thereof, not to constitute an extension of the Hotel Completion Deadline;

(b) Project Safety Plan. The minimum safety standards and procedures that would be followed by a Reasonable and Prudent Developer in addition to any set forth in any Crane Swing Agreement; and

(c) Access Plan. The access plan for providing the City and the Owner, their contractors, agents, licensees, employees, guests and the general public access alongside the Premises for purposes of the access, use and operation of the Convention Center, as established by the Developer and Approved by the Owner Representative, such Approval not to be unreasonably withheld.

ARTICLE 7.8 Mechanics’ Liens and Claims. If any Lien or Claim of Lien, whether choate or inchoate, shall be filed against the Premises, the Hotel Project Improvements, the Owner’s interest in the Premises or the Hotel Project Improvements, the Owner, any Property of the Owner by reason of any work, labor, services or materials supplied or claimed to have been supplied on or to the Premises or the Hotel Project Improvements (collectively, any “**Mechanics’ Lien**”), the Developer shall, after Notice of the filing thereof but in no event less than thirty (30) calendar days prior to the foreclosure of any such Mechanics’ Lien, cause the same to be satisfied or discharged of record, or effectively prevent, by bond, order of court or otherwise, the enforcement or foreclosure thereof against the Premises, the Hotel Project Improvements, the Owner, the City, or any Property of the Owner or the City. If the Developer fails to satisfy or discharge of record any such Mechanics’ Lien, or effectively prevent the enforcement thereof, by the date which is thirty (30) calendar days prior to the foreclosure thereof, then the Owner shall have the right, but not the obligation following Notice to the Developer, to satisfy or discharge such Mechanics’ Lien by payment to the claimant on whose behalf it was filed, and the

Developer shall reimburse the Owner within fifteen (15) calendar days after demand therefor for all amounts paid by or on behalf of the Owner (together with reasonable attorneys' fees, costs and expenses so incurred by the Owner) without regard to any defense or offset that the Developer has or may have had against such Mechanics' Lien claim. The Developer shall indemnify, defend and hold the Owner and the City harmless from and against any and all such Mechanics' Liens (including all costs, expenses and liabilities, including reasonable attorneys' fees and costs, so incurred in connection with such Mechanics' Liens). IT IS THE INTENT OF THE OWNER AND DEVELOPER THAT NOTHING CONTAINED IN THIS DEVELOPER AGREEMENT SHALL (A) BE CONSTRUED AS A WAIVER OF THE CITY'S LEGAL IMMUNITY AGAINST MECHANICS' LIENS ON ITS PROPERTY OR ITS CONSTITUTIONAL AND STATUTORY RIGHTS AGAINST MECHANICS' LIENS ON ITS PROPERTY, INCLUDING THE PREMISES OR (B) BE CONSTRUED AS CONSTITUTING THE EXPRESS OR IMPLIED CONSENT OR PERMISSION OF THE OWNER FOR THE PERFORMANCE OF ANY LABOR OR SERVICES FOR, OR THE FURNISHING OF ANY MATERIALS TO, DEVELOPER THAT WOULD GIVE RISE TO ANY SUCH MECHANICS' LIEN AGAINST THE OWNER'S INTEREST IN THE PREMISES, THE HOTEL PROJECT IMPROVEMENTS, THE OWNER, THE CITY OR ANY PROPERTY OF THE OWNER OR THE CITY, OR IMPOSING ANY LIABILITY ON THE OWNER FOR ANY LABOR OR MATERIALS FURNISHED TO OR TO BE FURNISHED TO DEVELOPER UPON CREDIT. THE OWNER SHALL HAVE THE RIGHT AT ALL REASONABLE TIMES DURING ANY CONSTRUCTION ACTIVITY AT THE PREMISES TO POST AND KEEP POSTED AT THE PREMISES SUCH NOTICES OF NON-RESPONSIBILITY AS THE OWNER MAY DEEM NECESSARY FOR THE PROTECTION OF THE OWNER AND THE CITY, AND THE FEE OF THE PREMISES FROM MECHANICS' LIENS.

ARTICLE 7.9 Hotel Project Improvements Construction Contract Bond. The Developer covenants and agrees that (A) proceeds received by or on behalf of the Developer under the Hotel Project Improvements Construction Contract Bond will be applied in satisfaction of the Developer's obligations hereunder to (i) complete the Hotel Project Improvements Work, (ii) pay all Hotel Project Improvements Costs and (iii) pay all Liquidated Damages; and (B) upon the occurrence of a Developer Default, the Owner and the City shall have the sole and exclusive right to enforce, and make claims, collect or direct payment under, the Hotel Project Improvements Construction Contract Bond.

ARTICLE 7.10 Developer Services. Developer shall enforce, except to the extent Approved by the Owner, which Approval will not be unreasonably withheld, all of its rights with respect to its contractors (and shall cause the Contractor to do so with respect to sub-contractors) under, and fulfill all of its obligations pursuant to, the Construction Documents. To the extent not delineated elsewhere in this Developer Agreement, the Developer shall provide, or cause to be provided, the services listed on **Schedule 7.10**.

ARTICLE 8
PROJECT COSTS, DISBURSEMENTS

ARTICLE 8.1 Hotel Project Improvements Budget. The Owner shall be responsible for the Hotel Project Improvements Costs that are included in the Hotel Project Improvements Budget. Following the Financing Date, the Owner shall establish with the Trustee the Construction Fund. The Construction Fund shall comply with the terms and conditions of the Indenture and shall be used for funding the payment of the Hotel Project Improvements Costs that are included in the Hotel Project Improvements Budget.

ARTICLE 8.1.1 Construction Fund. The Construction Fund shall be maintained by the Trustee in accordance with the Indenture. Interest earnings on the Construction Fund shall be used for purposes consistent with the terms of the Indenture.

ARTICLE 8.1.2 Remaining Funds. If funds remain in the Construction Fund after the completion of the Project and the payment of all Hotel Project Improvement Costs within the Hotel Project Improvement Budget pursuant to the terms hereof, then such funds shall thereafter be the exclusive property of the Owner and shall be used by the Owner for the purpose of paying amounts due pursuant to the terms and provisions of Section 14.6 of this Developer Agreement.

ARTICLE 8.2 Disbursements To Pay Hotel Project Improvements Costs. Funds shall be periodically disbursed from the Construction Fund by the Trustee in accordance with the terms of the Indenture, upon receipt by the Trustee of a Requisition Requesting Disbursement of Hotel Project Improvements Costs substantially in the form attached hereto as Exhibit 8.2.

ARTICLE 8.3 Other Disbursements. Funds shall be disbursed from the Construction Fund to the Developer, the Owner, the City and third parties in direct payment of pre-development expenses within the Hotel Project Improvement Budget that were paid or advanced by such payees upon documentation required by the Owner (as invoiced with appropriate backup and in form and detail meeting the City's standard payables policy).

ARTICLE 9
DEADLINES; EXCUSABLE DELAY

ARTICLE 9.1 Developer Deadlines. The Developer shall meet the following deadlines in connection with the following matters:

ARTICLE 9.1.1 Mobilization of Construction Equipment and Crew and Commencement of Construction. Upon notice to proceed from the Owner's Representative after the Financing Date, the Developer shall mobilize its (or cause the Hotel Project Improvements Contractor to mobilize its) construction equipment and crew at the Premises and commence construction of the Hotel Project Improvements.

ARTICLE 9.1.2 Hotel Project Improvements Drawings. On or before February 3, 2009, the Developer shall have provided the Hotel Project Improvements Drawings to the Owner Representative for review and Approval or confirmation, as applicable, pursuant to the terms of this Developer Agreement. Promptly upon receipt, the Owner shall provide same to

the Hotel Operator for review and Approval or confirmation, as applicable, pursuant to the terms of the Pre-Opening and Technical Services Agreement.

ARTICLE 9.1.3 Hotel Project Improvements Plans. Within five (5) calendar days of the completion of each segment of the Hotel Project Improvements Plans, the Developer shall have provided such segment of the Hotel Project Improvements Plans to the Owner Representative for review and Approval or confirmation, as applicable, pursuant to the terms of this Developer Agreement. Promptly upon receipt, the Owner shall provide same to the Hotel Operator for review and Approval or confirmation, as applicable, pursuant to the terms of the Pre-Opening and Technical Services Agreement.

ARTICLE 9.1.4 Hotel Project Improvements Budget. The Developer shall provide the Owner Representative with Notice that it seeks any change to the Hotel Project Improvements Budget within five (5) calendar days after determining that it believes such a change to be necessary and that it seeks such change.

ARTICLE 9.1.5 Hotel Project Improvements Construction Schedule. The Developer shall deliver to the Owner Representative an updated version of the Hotel Project Improvements Construction Schedule no less frequently than once every thirty (30) calendar days. Promptly upon receipt, the Owner shall provide same to the Hotel Operator for review and Approval or confirmation, as applicable.

ARTICLE 9.1.6 Project Construction Status Reports. The Developer shall provide written reports to the Owner Representative, signed by a Responsible Officer of the Developer and acceptable to the Owner, regarding the status of the Hotel Project Improvements Work not less frequently than once every thirty (30) calendar days, which reports shall include any new or additional facts discovered or any circumstances which would be reasonably likely (i) to materially change the Hotel Project Improvements Costs or to materially affect the Developer's ability to achieve Final Completion (including Commencement of Hotel Project Operations) on or before the Hotel Completion Deadline, including reasonable detail of such facts or circumstances and (ii) to cause any change to the Hotel Project Improvements Construction Schedule or the Hotel Project Improvements Budget. Promptly upon receipt, the Owner shall provide same to the Hotel Operator for review and Approval or confirmation, as applicable.

ARTICLE 9.1.7 Substantial Completion. On or before the Hotel Completion Deadline, the Developer shall (i) cause Substantial Completion (including availability of the Hotel for Commencement of Hotel Operations) to occur and (ii) deliver to the Owner Representative a written certification, which has been executed by a Responsible Officer of the Developer (the "**Substantial Completion Certificate**"), certifying (i) that Substantial Completion occurred on or before the Hotel Completion Deadline, along with such documentation as is necessary (or as the Owner Representative may reasonably require) to substantiate same, including an AIA Substantial Completion Certificate (on the G704-2000 Certificate of Substantial Completion form or such successor AIA form if such form is no longer available) from the Hotel Project Improvements Architect, and (ii) the date upon which Substantial Completion (including availability of the Hotel for Commencement of Hotel Project Operations) actually occurred. Promptly upon receipt, the Owner shall provide same to the Hotel Operator for review and Approval or confirmation, as applicable.

ARTICLE 9.1.8 Final Completion. On or before the date which is thirty (30) calendar days after Substantial Completion, the Developer shall (i) cause Final Completion to occur and (ii) deliver to the Owner Representative a written certification, which has been executed by a Responsible Officer of the Developer, certifying (i) that all aspects of Final Completion have been achieved, along with such documentation as is necessary (or as the Owner Representative may reasonably require) to substantiate same and the date of Final Completion and (ii) the date upon which Final Completion actually occurred. Promptly upon receipt, the Owner shall provide same to the Hotel Operator for review and Approval or confirmation, as applicable.

ARTICLE 9.2 Liquidated Damages. In the event that the Developer has not caused Substantial Completion (including availability of the Hotel for Commencement of Hotel Project Operations) to occur on or before the Hotel Completion Deadline, in accordance with the provisions of Section 9.1.7 above, except for delay which is caused by or attributable to (but only to the extent of) changes, if any, Approved and directed by the Owner over the written objection of the Developer and/or Force Majeure that cannot be accommodated within the Hotel Project Improvements Construction Schedule through reasonable adjustments, then the Developer shall be liable for, and shall be required to pay to the extent not previously paid to the Trustee by the Contractor as Contractor Daily Delay Damages, as liquidated damages and not as a penalty, to the Trustee on or before the conclusion of each calendar month thereafter until the requirements of Section 9.1.7 have been met, for deposit into the Senior Debt Service Fund, an amount (the “**Liquidated Damages**”) equal to (A) (i) the Daily Liquidated Damages multiplied by (ii) the number of calendar days between the Hotel Completion Deadline and the date of Substantial Completion, less (B) the sum of amounts previously so paid to the Trustee by Contractor as Contractor Daily Delay Damages. Likewise, in the event that Developer has not caused Final Completion to occur within 30 calendar days after Substantial Completion, then Developer shall be liable for, and shall be required to pay to the extent not previously paid by the Contractor as Contractor Daily Delay Damages, as liquidated damages and not as a penalty, to the Trustee an amount (the “**Additional Liquidated Damages**”) equal to \$5,000 per calendar day after such 30 calendar days until Final Completion occurs. The Owner and the Developer agree that because of the difficulty or impossibility of determining the Owner’s actual damages by way of loss of revenue as a result of such delay, the difficulties of proof of loss and the inconvenience or non-feasibility of the Owner otherwise having a remedy for such failure to achieve Substantial Completion by the then current Hotel Completion Deadline, or for such failure to achieve Final Completion within 30 calendar days following Substantial Completion, the Liquidated Damages or the Additional Liquidated Damages, as the case may be, are reasonable amounts to be paid for such failure.

ARTICLE 9.3 Implementation of the Developer Remedial Plan and Prosecution of Hotel Project Improvements Work.

ARTICLE 9.3.1 Diligently Prosecute. In the event the Developer or the Owner have reason to believe that there will be a delay in Substantial Completion, for any reason, the Developer shall continue to diligently prosecute the achievement of Substantial Completion in accordance with the terms of this Developer Agreement.

ARTICLE 9.3.2 Remedial Plan. In such event, either upon its own action or upon Notice from the Owner, Developer shall provide the Owner a written completion plan

detailing the measures (such as increasing workforce) that Developer will implement to achieve Substantial Completion as soon as practicable (the “**Developer Remedial Plan**”) and which Developer Remedial Plan shall (i) be adequate to provide the Owner with commercially reasonable assurance that, upon completion of such plan, Developer will achieve Substantial Completion within the time period required under this Developer Agreement and (ii) designate such reasonable major milestones as are reasonably appropriate in the circumstances as benchmarks for Developer’s progress in prosecuting the Developer Remedial Plan. If the Owner, in good faith, determines that any Developer Remedial Plan proposed by Developer fails to satisfy the foregoing requirements, the Owner shall deliver Notice to Developer, specifying the reasons for the Owner’s dissatisfaction with such Developer Remedial Plan, and Developer shall, in good faith, propose such revisions to the Developer Remedial Plan as soon as practical as necessary to conform such Developer Remedial Plan to the requirements of this Section 9.3.2. If the Owner so requests, Developer agrees to confer with the Owner regarding the Developer Remedial Plan prior to submission to the Owner. Notwithstanding the foregoing or anything herein to the contrary, in the event that the prosecution of the Hotel Project Improvements Work pursuant to such Developer Remedial Plan will not be undertaken by the Contractor or by a Qualified Contractor acting on behalf of the Qualified Surety under the then existing Hotel Project Improvements Construction Contract Bond, then the Owner Representative shall have the right to Approve the Developer Remedial Plan, such Approvals not to be unreasonably withheld.

ARTICLE 9.3.3 Implementation of Developer Remedial Plan and Prosecution of Hotel Project Improvements Work. After submittal of a Developer Remedial Plan to the Owner in accordance with Section 9.3.2 (and, to the extent Approval of the Owner Representative is required, Approval of the Owner Representative), Developer shall promptly commence the implementation of such Developer Remedial Plan and thereafter prosecute the Hotel Project Improvements Work in accordance with same.

ARTICLE 9.4 Delays and Effect of Delays.

ARTICLE 9.4.1 Excusable Developer Delay. Regardless of the existence or absence of references to Excusable Developer Delay elsewhere in this Developer Agreement, the deadlines and time periods within which the Developer must fulfill the obligations of the Developer in this Developer Agreement shall each be adjusted as appropriate to include Excusable Developer Delay Periods; *provided, however*, that (i) the obligation to pay any sums as and when due pursuant to the terms of this Developer Agreement is not subject to adjustment or extension due to Excusable Developer Delay, except that liquidated damages will not be payable until the expiration of any extension of time due to such Excusable Developer Delay, and the continuing failure of the Developer thereafter to fulfill the obligations of the Developer, and (ii) the Developer complies with the requirements of this Section 9.4.

With respect to each occurrence of Excusable Developer Delay, the Developer shall, within seven (7) calendar days after the occurrence of such event of Excusable Developer Delay, give Notice to the Owner Representative of the event constituting Excusable Developer Delay, the Developer’s good faith estimate of the Excusable Developer Delay Period resulting therefrom and the basis of the calculation thereof, the Developer’s good faith estimate of any adjustment resulting therefrom that is to be made to the Hotel Project Improvements Construction Schedule or the time for performance of the Developer’s obligations under this Developer Agreement, together with reasonable documentation supporting the adjustments

proposed. If the Owner Representative believes that the documentation supplied is not sufficient to justify the delay claimed or adjustments proposed, the Owner Representative shall give Notice to the Developer of the claimed deficiency and the Developer shall have a reasonable period of time to more fully document the delay and adjustments claimed. Only one (1) Notice from the Developer shall be required with respect to a continuing Excusable Developer Delay, except that the Developer shall promptly (and in no event less often than every seven (7) calendar days) give Notice to the Owner Representative of any further changes in the Hotel Project Improvements Construction Schedule or the additional time for performance of the Developer's obligations under this Developer Agreement claimed by reason of the continuing delay. The Owner Representative shall have the right to challenge the Developer's assertion of the occurrence of an Excusable Developer Delay, the Developer's good faith estimate of the Excusable Developer Delay Period, changes in the Hotel Project Improvements Construction Schedule or the additional time for performance of the Developer's obligations under this Developer Agreement claimed by reason of the Excusable Developer Delay if the Owner Representative gives Notice to the Developer within seven (7) calendar days after receipt by the Owner Representative of such claim of Excusable Developer Delay or Notice from the Developer of further changes to such dates as a result of such Excusable Developer Delay, as the case may be (which challenge shall be deemed to have been made if the Owner Representative gives Notice to the Developer of any claimed deficiency in documentation as provided for above in this Section 9.4.1). If the Owner so elects to challenge any such assertion or determination by the Developer hereunder, then the Owner and the Developer shall attempt in good faith for a period of ten (10) calendar days to resolve such dispute.

ARTICLE 9.4.2 Excusable Owner Delay. Regardless of the existence or absence of references to Excusable Owner Delay elsewhere in this Developer Agreement, any deadline or time period within which the Owner must fulfill the obligations of the Owner in this Developer Agreement shall each be adjusted as appropriate to include Excusable Owner Delay Periods; provided that (i) the obligation of the Owner to pay sums to the Developer as and when due pursuant to the terms of this Developer Agreement, if any, is not subject to adjustment or extension due to Excusable Owner Delay and (ii) the Owner complies with the requirements of this Section 9.4.

With respect to each occurrence of Excusable Owner Delay, the Owner Representative shall, within seven (7) calendar days after the occurrence of such event of Excusable Owner Delay give Notice to the Developer of the event constituting Excusable Owner Delay, the Owner Representative's good faith estimate of the Excusable Owner Delay Period resulting therefrom and the basis of the calculation thereof, and the Owner Representative's good faith estimate of any adjustment resulting therefrom that is to be made to the time for performance of the Owner's obligations under this Developer Agreement, together with reasonable documentation supporting the adjustments proposed. Only one Notice from the Owner Representative shall be required with respect to a continuing Excusable Owner Delay, except that the Owner Representative shall promptly (and in no event less often than every seven (7) calendar days) give Notice to the Developer of any further changes in the additional time for performance of the Owner's obligations under this Developer Agreement claimed by reason of the continuing delay.

ARTICLE 9.4.3 Continued Performance; Exceptions. Upon the occurrence of any Developer Delay or Owner Delay, the Parties shall endeavor to continue to perform their obligations under this Developer Agreement so far as reasonably practicable; provided, however,

that nothing herein shall require the Developer to accelerate the work or to expend any money to overcome any Owner Delay other than an Excusable Owner Delay, and in the case of Excusable Owner Delay, the Developer shall not be liable for the cost to accelerate the work nor the expenditure of any amounts, if in excess of the Hotel Project Improvement Budget. Toward that end, the Developer and the Owner each hereby agrees that it shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any Developer Delay or Owner Delay occasioned by an Excusable Developer Delay or Excusable Owner Delay, respectively.

ARTICLE 9.5 Early Completion Bonus. In the event that the Developer has caused Substantial Completion to occur on or before the Hotel Completion Deadline (without extension of such deadline as a result of Force Majeure), then the Developer shall be entitled to, and the Owner shall pay to the Developer, as an early completion bonus, an amount equal to two-thirds (2/3) of the product determined by (i) the number of days (not in excess of sixty (60)) that Substantial Completion occurs before the Hotel Completion Deadline, and (ii) the daily interest rate on the Series 2009 Bonds. Such Early Completion Bonus shall be paid within six months following the date of Final Completion.

ARTICLE 10 APPROVALS AND RELATED MATTERS

ARTICLE 10.1 Items and Matters to be Reviewed and Confirmed or Approved by the Owner. Without limiting any other matters to which the Owner has Approval, Consent or confirmation rights pursuant to the express terms of this Developer Agreement, the Developer shall deliver or make available to the Owner or the Owner Representative, as applicable, the items below for the Approval, Consent or confirmation purposes set forth therein and the Developer must obtain prior written confirmation or Approval or Consent of the Owner or the Owner Representative, as applicable, (and to permit Owner to obtain Hotel Operator's confirmation of compliance with Hotel Brand Standards as provided in the Pre-Opening and Technical Services Agreement) of the following:

ARTICLE 10.1.1 Hotel Project Specifications. The Developer shall submit to the Owner, any change to the Hotel Project Improvements Specifications for the Owner's prior Approval of same, such Approval to be within the Owner's sole and absolute discretion.

ARTICLE 10.1.2 Hotel Project Schematics. The Developer shall submit to the Owner any Material Change to the Hotel Project Improvements Schematics for the Owner's prior Approval of same, such approval to be within the Owner's sole and absolute discretion.

ARTICLE 10.1.3 Hotel Project Improvements Drawings. The Developer shall submit to the Owner Representative, the Hotel Project Improvements Drawings for (1) confirmation that the Hotel Project Improvements Drawings conform to the Hotel Project Improvements Specifications and the Hotel Project Improvements Schematics previously Approved by the Owner, and (2) prior Approval of any subsequent changes to the Hotel Project Improvements Drawings, such approval to be within the Owner Representative's sole and absolute discretion.

ARTICLE 10.1.4 Hotel Project Improvements Plans. The Developer shall submit to the Owner Representative the Hotel Project Improvements Plans for (1) confirmation that the Hotel Project Improvements Plans conform to the Hotel Project Improvements

Specifications, the Hotel Project Improvements Schematics and the Hotel Project Improvements Drawings previously Approved by the Owner, and (2) prior Approval of any subsequent changes to the Hotel Project Improvements Plans, such Approval to be within the Owner Representative's sole and absolute discretion.

ARTICLE 10.1.5 Hotel Project Improvements Construction Contract. Without limiting the Developer's requirements under Section 7.7.3, the Developer (i) shall, prior to entering into the Hotel Project Improvements Construction Contract, first obtain the Approval of the Owner Representative, such Approval not to be unreasonably withheld, to the Hotel Project Improvements Construction Contract and (ii) shall not amend, modify or alter the Hotel Project Improvements Construction Contract which has been Approved by the Owner Representative without obtaining the prior Approval of the Owner Representative as to any such amendment, modification or alteration, such Approval not to be unreasonably withheld.

ARTICLE 10.1.6 Hotel Project Improvements Contractor. Prior to entering into the Hotel Project Improvements Construction Contract, the Developer shall first obtain the Approval of the Owner Representative, such Approval not to be unreasonably withheld, of the Hotel Project Improvements Contractor.

ARTICLE 10.1.7 Hotel Project Improvements Architect and Design Contract. Prior to entering into the Hotel Project Improvements Design Contract, the Developer will submit to the Owner Representative (i) the name and qualifications of the proposed Hotel Project Improvements Architect and (ii) the proposed form of Hotel Project Improvements Design Contract, and shall first obtain the Approval of the Owner Representative, such Approval not to be unreasonably withheld, of the Hotel Project Improvements Architect and the Hotel Project Improvements Design Contract.

ARTICLE 10.1.8 Termination of Construction Documents. Prior to terminating, in whole or in part, any Construction Documents or any work thereunder which would result in a Material Change to the Hotel Project Improvements Plans, the Developer shall first obtain the prior Approval of the Owner Representative which shall not be unreasonably withheld.

Information that is submitted to the Owner or the Owner Representative for informational purposes only shall require no confirmation or Approval by the Owner; provided, however, such information may be used by the Owner for the purpose of confirming that the Developer has complied with its obligations under this Developer Agreement.

ARTICLE 10.2 Legal Requirements. Nothing contained herein shall relieve or release the Developer from any Legal Requirements relating to the design, development, construction, equipping, furnishing, full completion and opening of the Hotel Project Improvements (including Legal Requirements that are procedural, as well as or rather than, substantive in nature). The Developer acknowledges that the City is a municipal corporation operating pursuant to a home-rule charter and state law, exercising certain police powers, taxation powers and other Governmental Functions of general application which affect the Project. Before commencement of development, demolition of the Existing Improvements or construction of the Hotel Project Improvements, the Developer shall secure or cause to be secured any and all appropriate permits, licenses, approvals or Governmental Authorizations, which may be required by the City or other Governmental Authority having jurisdiction over such development, demolition or construction.

Notwithstanding the foregoing, and without compromising its Governmental Function, the City shall appoint (or the Owner shall cause the City to appoint) a single individual who is a key senior City employee as an “expediter” for all matters related to the development of the Hotel including, particularly, for all matters related to obtaining all appropriate permits, licenses, approvals or Governmental Authorizations which may be required by the City. The Approval or Consent by the Owner or the Owner Representative of any matter submitted to the Owner or the Owner Representative pursuant to this Developer Agreement, which matter is specifically provided herein to be Approved or Consented to by the Owner or the Owner Representative in its capacity as a Party to this Developer Agreement, shall not constitute a replacement or substitute for, or otherwise excuse the Developer from, such permitting, licensing, approval or other Governmental Authorization processes under the City Codes or any other Legal Requirements; and, conversely, no permit, license or Governmental Authorization so obtained shall constitute a replacement or substitute for, or otherwise excuse the Developer from, any requirement hereunder for the Approval or Consent of the Owner or the Owner Representative.

ARTICLE 10.3 Approvals and Consents; Standards for Review.

ARTICLE 10.3.1 Review and Approvals or Consent Rights. The provisions of this Section 10.3 shall be applicable with respect to all instances in which it is provided under this Developer Agreement that the Owner, the Owner Representative, the Developer or the Developer Representative exercises Review and Approval or Consent Rights; provided, however, that if the provisions of this Section 10.3 specifying time periods for exercise of Review and Approval or Consent Rights shall conflict with other express provisions of this Developer Agreement providing for time periods for exercise of designated Review and Approval or Consent Rights, then the provisions of such other provisions of this Developer Agreement shall control. As used herein, the term “**Review and Approval or Consent Rights**” shall include, without limiting the generality of that term, all instances in which one Party or its representative (the “**Submitting Party**”) is permitted or required to submit to the other Party or to the representative of that other Party any document, Notice or determination of the Submitting Party and with respect to which the other Party or its representative (the “**Reviewing Party**”) has a right or duty hereunder to review, comment, Consent, Approve, disapprove, dispute, confirm or challenge the submission or determination of the Submitting Party.

ARTICLE 10.3.2 Standard for Review. Unless this Developer Agreement specifically provides that a Party’s Review and Approval or Consent Rights shall be exercised in its reasonable discretion, all of such Review and Approval or Consent Rights under this Developer Agreement may be exercised in such Party’s sole and absolute discretion. The Submitting Party shall use reasonable efforts to cause any matter submitted to the Reviewing Party by the Submitting Party and with respect to which the Reviewing Party has Review and Approval or Consent Rights under this Developer Agreement to be submitted under cover of a request which (i) contains the heading or caption “TIME SENSITIVE - REQUEST FOR REVIEW/APPROVAL OR CONSENT” (or similar phrase), (ii) states the date of submission to the Reviewing Party by the Submitting Party (but which date shall ultimately be determined in accordance with Section 5 of Appendix B), (iii) states the date by which a response is required under the terms of this Developer Agreement (to the extent a specific response time is required pursuant to the terms hereof as opposed to the general requirements of this Section 10.3.2), (iv) identifies the provision of this Developer Agreement pursuant to which such Review and Approval or Consent is sought and (v) identifies (by document or drawing title, identifying

number and revision date, or other clear descriptor) all enclosures to such request with respect to which Review and Approval or Consent is then being sought. The Reviewing Party shall review the same and shall use its reasonable efforts to approve or inform the Submitting Party in writing of the need for additional review time and/or materials within seven (7) calendar days of receipt. Further, the Reviewing Party will make reasonable efforts to accommodate urgent or emergency requests during construction.

ARTICLE 10.3.3 Disputes. The Owner and the Developer agree to attempt in good faith to resolve expeditiously any disputes concerning the Approval of or Consent to any matter submitted to either Party for Approval or Consent hereunder.

ARTICLE 10.3.4 Duties, Obligations and Responsibilities Not Affected. Approval or Consent by the Reviewing Party of or to a matter submitted to such Party by the Submitting Party shall neither, unless specifically otherwise provided (i) relieve the Submitting Party of its duties, obligations or responsibilities under this Developer Agreement with respect to the matter so submitted, nor (ii) shift the duties, obligations or responsibilities of the Submitting Party with respect to the submitted matter to the Reviewing Party.

ARTICLE 11

SMALL BUSINESS ENTERPRISE AND MWBE POLICY COMPLIANCE

ARTICLE 11.1 Small Business Enterprise and MWBE Policy Compliance. The Developer is hereby advised that the City has adopted policies (the “**SBE and MWBE Policies**”) to provide small, minority and woman-owned business enterprises with the maximum practical opportunity in the performance of public contracts, as further described in Appendix E. The Developer hereby agrees that, in connection with the Premises and the Hotel Project Improvements Work and the Developer’s performance of its obligations hereunder, the Developer shall abide by all applicable terms and conditions of the SBE and MWBE Policies. The Developer shall, in turn, include the requirements of this Section 11.1 in its contracts, and the contracts to be entered into by the Contractor, in connection with the Premises and the Hotel Project Improvements Work

ARTICLE 12 INSURANCE

ARTICLE 12.1 Policies Required.

ARTICLE 12.1.1 Policies Required for Hotel Project Improvements Work. Prior to the commencement of any Hotel Project Improvements Work and at all times during the performance of such Hotel Project Improvements Work and until the Developer has satisfied the requirements of Section 9.1.7, the Developer shall obtain, keep and maintain or cause to be obtained, kept and maintained, the insurance policies, in the amounts and with the coverages described, listed in Schedule 12.1.1.

ARTICLE 12.1.2 Additional Insurance. Prior to the commencement of any Hotel Project Improvements Work and at all times during the performance of such Hotel Project Improvements Work and for so long after the completion thereof that any Person has any repair obligations with respect to such Hotel Project Improvements Work, the Developer shall, or shall cause the Hotel Project Improvements Contractor and the Developer’s other contractors and subcontractors to, obtain, keep, and maintain (i) such other and additional insurance as is, from

time to time, required by all applicable Legal Requirements and (ii) such other and additional insurance that a Reasonable and Prudent Developer or owner of Improvements comparable to the Hotel Project Improvements, as applicable, would reasonably be expected to obtain, keep and maintain, or require to be obtained, kept and maintained, in connection with similar activities such as, by way of example and not limitation, business automobile liability insurance policies. Such other and additional insurance policies shall, at the election of the Owner Insured, name the Owner Insured as loss payees and additional insureds in a manner consistent with their being named loss payees and additional insureds in the policies required above in this Section 12.1 and shall comply with all applicable requirements set forth in Section 12.3.

ARTICLE 12.2 Failure of the Developer to Maintain.

ARTICLE 12.2.1 Owner May Procure Insurance. If at any time and for any reason the Developer fails to provide, maintain, keep in force and effect, or deliver to Owner proof of, any of the insurance required under Section 12.1 and such failure continues for ten (10) calendar days after Notice thereof from the Owner to the Developer, the Owner may, but shall have no obligation to, procure single interest insurance for such risks covering the Owner Insured (or, if no more expensive, the insurance required by this Developer Agreement) and the Developer shall, within ten (10) calendar days following the Owner's demand and Notice, pay and reimburse the Owner therefor with interest at the Default Rate from the date of payment by the Owner until repayment of the Owner in full by the Developer.

ARTICLE 12.2.2 Work Stoppage. If any time prior to the commencement of, or during, the Hotel Project Improvements Work for any reason the Developer fails to provide, maintain, keep in force and effect any of the insurance required hereunder, the Owner shall have the right to order the Developer, the Hotel Project Improvements Construction Contractor and the Developer's other contractors and subcontractors to stop such Hotel Project Improvements Work until such time that the insurance policies required hereunder shall have been obtained and proof furnished to the Owner that such policies are in full force and effect.

ARTICLE 12.3 Additional Policy Requirements.

ARTICLE 12.3.1 Approval of Insurers; Certificate and Other Requirements.

(a) Insurers. Each and every insurance policy required to be carried hereunder shall be effected under valid policies issued by insurers which have been approved by the Owner Representative and which have, and which maintain through the Date of Final Completion, an Alfred M. Best Company, Inc. rating of "A-" or better and a financial size category of not less than "VIII" (or, if Alfred M. Best Company, Inc no longer uses such rating system, then the equivalent or most similar ratings under the rating system then in effect, or if Alfred M. Best Company, Inc. is no longer the most widely accepted rater of the financial stability of insurance companies providing coverage such as that required by this Developer Agreement, as determined in good faith by the Owner, then the equivalent or most similar rating under the rating system then in effect of the most widely accepted rater of the financial stability of such insurance companies at the time).

(b) Waiver of Subrogation. Each and every policy required to be carried hereunder shall provide for waivers of subrogation by endorsement or other means, which waivers of subrogation shall be effective as to any Person even though such Person may

otherwise have a duty of indemnification, contractual or otherwise, may not have paid any insurance premiums directly or indirectly and may or may not have an insurable interest in the insured Property damage.

(c) Loss Payee/Additional Insured. Each and every insurance policy required to be carried hereunder in which Owner is named as loss payee or Owner Insured as additional insured in accordance with the terms of this Developer Agreement shall (i) contain an endorsement to the effect that the “other insurance” clause which may appear therein is not applicable to Owner Insured, (ii) join Owner as loss payee and Owner Insured and as additional insured, as applicable, at the time of issuance thereof and (iii) duly note and be endorsed upon all slips, cover notes, policies or other instruments of insurance issued or to be issued in connection therewith the interest of each Owner Insured, as applicable.

(d) Notice of Cancellation. Each and every insurance policy required to be carried hereunder by or on behalf of the Developer shall provide (and any certificate evidencing the existence of each such insurance policy shall certify) that such insurance policy shall not be canceled unless the Owner shall have received written notice of cancellation, non-renewal or material reduction in coverage and that the Owner shall receive not less than thirty (30) calendar days written notice of such cancellation, non-renewal or material reduction in coverage, in each such case (except for notice of cancellation due to non-payment of premiums) such notice to be sent to Owner not less than thirty (30) calendar days (or the maximum period of days permitted under applicable Legal Requirements, if less than thirty (30) calendar days) prior to the effective date of such cancellation, non-renewal or material reduction in coverage, as applicable. In the event any insurance policy is to be canceled due to non-payment of premiums, the requirements of the preceding sentence shall apply except that the written notice shall be sent to Owner on the earliest possible date but in no event less than ten (10) Business Days prior to the effective date of such cancellation.

(e) Primary Insurance; No Offset. Except as otherwise provided for herein, each and every insurance policy required to be carried hereunder (other than the workers’ compensation policies required pursuant to Schedule 12.1.1) shall provide that the policy is primary and that any other insurance of any Insured or additional insured thereunder with respect to matters covered by such insurance policy shall be excess and noncontributing. Each of said insurance policies shall also provide that (i) any loss shall be payable in accordance with the terms of such policy notwithstanding any action, inaction or negligence (other than a criminal offense) of the insured or of any other Person (including the Developer, the Owner Insured, or any Insurance Trustee) which might otherwise result in a diminution or loss of coverage, including “breach of warranty”, and the interests of the Owner Insured shall be insured regardless of any breach or violation by the Developer, Owner Insured, any Insurance Trustee or any other Person of any warranty, declaration or condition contained in or with regard to such insurance policies and (ii) any right of the insurers to any offset or counterclaim or any other deduction, whether by attachment or otherwise (except with respect to the application of policy deductibles or unpaid premiums) shall be waived against the Owner Insured.

(f) Board of Fire Underwriters. The Developer shall comply in all material respects with all rules, orders, regulations and requirements of the Board of Fire Underwriters or any other similar body having jurisdiction, in the case of fire insurance policies.

ARTICLE 12.3.2 Delivery of Evidence of Insurance. With respect to each and every one of the insurance policies required to be obtained, kept or maintained under the terms of this Developer Agreement, on or before the date on which each such policy is required to be first obtained and at least thirty (30) calendar days before the expiration of any policy required hereunder previously obtained, the Developer shall deliver to Owner evidence reasonably acceptable to Owner showing that such insurance is in full force and effect. Such evidence shall include certificates of insurance (on the ACORD 28 form or such successor form thereto) 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, endorsements, term and termination provisions thereon and confirmation that the required premiums have been paid, along with a similar certificate executed by Responsible Officer of the Developer. By no later than fifteen (15) calendar days after the effective date of any insurance policy required under this Developer Agreement, the Developer shall provide Owner with a certified copy of such insurance policy.

ARTICLE 12.3.3 Special Developer Covenants with Respect to Insurance. The Developer hereby further agrees:

(a) Payment of Premiums. The Developer shall punctually pay or cause to be paid all premiums and other sums payable under each insurance policy required to be obtained, kept and maintained pursuant to this Developer Agreement.

(b) Proceeds. The Developer shall ensure that all Insurance Proceeds received by the Developer (other than in respect of any insurance proceeds to be paid out in settlement of claims and respect of third party liability) are delivered to the Insurance Trustee to the extent required under the terms of this Developer Agreement or the Indenture.

(c) Additional Information. Upon receipt of a Notice from Owner to such effect, the Developer shall deliver to Owner such information concerning the insurance policies obtained pursuant to the requirements of this Developer Agreement (or as to any matter which may be relevant to such insurance policies) as Owner may reasonably have requested in such Notice.

(d) No Adverse Action. The Developer shall not, at any time, take any action (or omit to take action) which action (or omission) would cause any insurance policies required to be obtained, kept and maintained under this Developer Agreement to become void, voidable, unenforceable, suspended or impaired in whole or in part or which would otherwise cause any sum paid out under any such insurance policy to become repayable in whole or in part.

(e) Notice. The Developer shall promptly notify the Owner of any facts or circumstances of which it is aware which, if not disclosed to the Developer's insurers or re-insurers, is likely to effect adversely the nature or extent of the coverage to be provided under any insurance policy required hereunder.

(f) Maintain Policies. The Developer shall maintain in full force and effect the policies required to be carried to the extent so required to be carried pursuant to the terms hereof.

ARTICLE 12.3.4 Waiver of Right of Recovery. TO THE EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS, AND WITHOUT AFFECTING THE INSURANCE COVERAGE REQUIRED TO BE MAINTAINED HEREUNDER, THE OWNER AND DEVELOPER EACH WAIVE ANY RIGHT TO RECOVER AGAINST THE OTHER (A) DAMAGE TO THE PREMISES, (B) DAMAGE TO THE HOTEL PROJECT IMPROVEMENTS, THE PERSONALTY, ANY OTHER PROPERTY OR ANY PART THEREOF OR (C) CLAIMS ARISING BY REASON OF ANY OF THE FOREGOING, TO THE EXTENT THAT SUCH DAMAGES OR CLAIMS (I) ARE COVERED (AND ONLY TO THE EXTENT OF SUCH COVERAGE) BY INSURANCE ACTUALLY CARRIED BY EITHER OWNER OR DEVELOPER OR (II) WOULD BE INSURED AGAINST UNDER THE TERMS OF ANY INSURANCE REQUIRED TO BE CARRIED UNDER THIS DEVELOPER AGREEMENT BY THE PARTY HOLDING OR ASSERTING SUCH CLAIM, WHETHER OR NOT SUCH INSURANCE IS ACTUALLY CARRIED. THIS PROVISION IS INTENDED TO RESTRICT EACH PARTY (IF AND TO THE EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS) TO RECOVERY AGAINST INSURANCE CARRIERS TO THE EXTENT OF SUCH COVERAGE AND TO WAIVE (TO THE EXTENT OF SUCH COVERAGE), FOR THE BENEFIT OF EACH PARTY, RIGHTS OR CLAIMS WHICH MIGHT GIVE RISE TO A RIGHT OF SUBROGATION IN ANY INSURANCE CARRIER. THE PROVISIONS OF THIS SECTION 12.3.4 ARE NOT INTENDED TO LIMIT THE CLAIMS OF THE OWNER OR DEVELOPER TO THE FACE AMOUNT OR COVERAGE OF THE INSURANCE POLICIES HEREIN PROVIDED FOR OR TO EVIDENCE THE WAIVER BY EITHER PARTY HERETO OF ANY CLAIM FOR DAMAGES IN EXCESS OF THE FACE AMOUNT OR COVERAGE OF ANY OF SUCH INSURANCE POLICIES OR THE DEDUCTIBLES THEREFOR. NEITHER THE ISSUANCE OF ANY INSURANCE POLICY REQUIRED HEREUNDER, OR THE MINIMUM LIMITS SPECIFIED HEREIN WITH RESPECT TO DEVELOPER'S INSURANCE COVERAGE SHALL BE DEEMED TO LIMIT OR RESTRICT IN ANY WAY DEVELOPER'S LIABILITY ARISING UNDER OR OUT OF THIS DEVELOPER AGREEMENT. DEVELOPER SHALL BE LIABLE FOR ANY LOSSES, DAMAGES OR LIABILITIES SUFFERED OR INCURRED BY THE OWNER INSURED AS A RESULT OF DEVELOPER'S FAILURE TO OBTAIN, KEEP AND MAINTAIN OR CAUSE TO BE OBTAINED, KEPT AND MAINTAINED, THE TYPES OR AMOUNTS OF INSURANCE REQUIRED UNDER THE TERMS OF THIS DEVELOPER AGREEMENT.

ARTICLE 13
DEFAULTS AND REMEDIES; INDEMNITY; TERMINATION

ARTICLE 13.1 Events of Default.

ARTICLE 13.1.1 Developer Default. The occurrence of any of the following shall be an “**Event of Default**” by the Developer or a “**Developer Default**”:

(a) The failure of the Developer to pay to the Owner any amounts when due and payable under this Developer Agreement, including the payment of the Liquidated Damages, if such failure continues for ten (10) calendar days after the Owner gives Notice to the Developer that such amount was not paid when due;

(b) The failure of the Developer to achieve Substantial Completion on or before the Hotel Completion Deadline;

(c) The failure of the Developer to perform any Insurance Covenant if such failure is not remedied within five (5) calendar days after the Owner gives Notice to the Developer of such failure;

(d) Any breach by the Developer of the terms or provisions of Section 6.1 if such breach continues for fifteen (15) calendar days after the Owner gives Notice to the Developer of such breach;

(e) The failure of the Developer to pay any of the Hotel Project Improvements Costs when due and payable under the Construction Documents if such failure continues for ten (10) calendar days after the Owner gives Notice to the Developer of such failure, subject to the Developer's right to contest the payment of any such costs in accordance with Section 7.8 hereof and subject also to the Developer having received the necessary funds for such payments;

(f) Any termination of the Hotel Project Improvements Construction Contract without the Consent of the Owner unless pursuant to a right of termination based upon the existence of any event of default under the Hotel Project Improvements Construction Contract;

(g) The failure of the Developer to keep, observe or perform any of the material terms, covenants or agreements contained in this Developer Agreement on the Developer's part to be kept, performed or observed (other than those referred to in Sections 13.1.1(a)-(f) above) if: (i) such failure is not remedied by the Developer within thirty (30) calendar days after Notice from the Owner of such default; or (ii) in the case of any such default which cannot with due diligence and good faith be cured within thirty (30) calendar days, the Developer fails to commence to cure such default within thirty (30) calendar days after such default, or the Developer fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that, in connection with any such default which is not susceptible of being cured with due diligence and in good faith within thirty (30) calendar days but is otherwise reasonably susceptible to cure, the time within which the Developer is required to cure such default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith;

(h) Any representation or warranty confirmed or made in this Developer Agreement or in any other Project Document by the Developer shall be found to have been incorrect in any material respect when made or deemed to have been made and the same is not corrected within thirty (30) calendar days after the Owner gives Notice to the Developer of the same;

(i) The occurrence of any one or more of the following: (1) filing by the Developer of a voluntary petition in bankruptcy; (2) adjudication of the Developer as a bankrupt; (3) approval as properly filed by a court of competent jurisdiction of any petition or other pleading in any action seeking reorganization, rearrangement, adjustment or composition of, or in respect of the Developer under the United States Bankruptcy Code or any other similar state or federal law dealing with creditors' rights generally; (4) any material portion of the Developer's assets are levied upon by virtue of a writ of court of competent jurisdiction involving a judgment in excess of One Million Dollars (\$1,000,000.00); (5) insolvency of the

Developer; (6) assignment by the Developer of all or substantially of its assets for the benefit of creditors; (7) initiation of procedures for involuntary dissolution of the Developer, unless within ninety (90) calendar days after such filing, the Developer causes such filing to be stayed or discharged; (8) the Developer ceases to do business as an ongoing enterprise; and (9) appointment of a receiver, trustee or other similar official for the Developer, or the Developer's Property, unless within ninety (90) calendar days after such appointment, the Developer causes such appointment to be stayed or discharged.

ARTICLE 13.1.2 Owner Default. The failure of the Owner to (i) pay to the Developer amounts due within ten (10) calendar days after Notice from the Developer of such failure, or (ii) perform or observe any of the obligations, covenants or agreements to be performed or observed by the Owner under this Developer Agreement in any material respect within thirty (30) calendar days after Notice from the Developer of such failure shall be an **"Event of Default"** by the Owner or an **"Owner Default"** hereunder; provided, however, that if such performance or observance described in subsection (ii) cannot reasonably be accomplished within such thirty (30) calendar day period, then no Event of Default shall occur unless the Owner fails to commence such performance or observance within such thirty (30) calendar day period and fails to diligently prosecute such performance or observance to conclusion thereafter; provided further, that if such performance or observance has not been accomplished within ninety (90) calendar days after Notice from the Developer to the Owner of such failure (notwithstanding the Owner's diligent prosecution of its curative efforts), then same shall constitute an Event of Default hereunder.

ARTICLE 13.2 Remedies of the Owner.

ARTICLE 13.2.1 Termination. Upon the occurrence of a Developer Default, the Owner, in addition to its other remedies at law or in equity, shall have the right to give the Developer notice (a **"Final Notice"**) of the Owner's intention to terminate this Developer Agreement after the expiration of a period of thirty (30) calendar days from the date such Final Notice is delivered (a **"Final Notice Cure Period"**) unless the Event of Default is cured, and upon expiration of the Final Notice Cure Period, if the Event of Default is not cured, this Developer Agreement and the other Project Documents shall terminate without liability to the Owner. If, however, within the Final Notice Cure Period the Developer cures such Event of Default, then this Developer Agreement and the other Project Documents shall not terminate by reason of such Final Notice. If this Developer Agreement is terminated as a result of a Developer Default, Developer shall not be entitled to any Developer Fees from the date of the Developer Default.

ARTICLE 13.2.2 Additional Remedies. Upon the occurrence of a Developer Default, the Owner shall be entitled to, in its sole and absolute discretion, pursue anyone or more of the following remedies:

(a) The Owner may exercise any and all remedies available to the Owner at law or in equity (to the extent not otherwise specified or listed in this Section 13.2.2), including enforcing specific performance of the Developer's obligations and the Owner's remedies under the Guaranty; and

(b) The Owner shall be entitled to the cost in excess of the Hotel Project Improvements Budget to cause Final Completion of the Hotel Project Improvements to

occur and any other sum of money or damages owed by the Developer to the Owner at law, in equity or hereunder; and

(c) The Owner shall be entitled to require the Developer to assign to the Owner the Hotel Project Improvements Construction Contract, as well as any or all other contracts and agreements relating to the Hotel Project Improvements Work as the Owner may elect.

ARTICLE 13.2.3 Cumulative Remedies of the Owner. Subject to the provisions of this Article 13, each right or remedy of the Owner provided for in this Developer Agreement or any other Project Document shall be cumulative of and shall be in addition to every other right or remedy of the Owner provided for in this Developer Agreement or any other Project Document, and the exercise or the beginning of the exercise by the Owner of any one or more of the rights or remedies provided for in this Developer Agreement or any other Project Document shall not preclude the simultaneous or later exercise by the Owner of any or all other rights or remedies provided for in this Developer Agreement or any other Project Document or hereafter existing at law or in equity, by statute or otherwise.

ARTICLE 13.3 Indemnification. The Developer (the “**Indemnitor**”) hereby agrees to indemnify, defend, and hold the Owner Insureds (the “**Indemnitees**”, which term includes their officers, agents, and employees) harmless against any and all claims, liabilities, damages, lawsuits, judgments, costs and expenses (including reasonable attorneys’ fees) for injuries (including death), property damage, or other harm for which recovery of damages is sought, suffered by any Person or Persons, that may arise out of or be occasioned by the Indemnitor’s breach of, or failure to perform, its obligations under this Developer Agreement (including any insurance obligation), or by any other negligent or strictly liable act or omission of the Indemnitor, its officers, agents, employees or separate contractors, in the performance of this Developer Agreement; except that the indemnity and obligation to defend provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the Indemnitees or their separate contractors, and in the event of joint and concurring negligence of the Indemnitor and the Indemnitees, responsibility and liability, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the Indemnitees under Texas law and without waiving any defenses of the Parties under Texas law. The provisions of this paragraph are solely for the benefit of the Parties, and not intended to create or grant any rights, contractual or otherwise, to any other Person, and shall survive termination or expiration of this Developer Agreement.

ARTICLE 13.4 Sole Remedy of the Developer. In the event the Developer alleges an Owner Default, as a result of any default or breach of any of the terms, covenants, conditions or limitations contained in this Developer Agreement on the Owner’s part to be kept, observed and performed, the Developer’s sole remedy shall be to follow the provisions of Section 2-86 of the City Code, including the notice provision attached hereto as Attachment B-25 of Appendix B, with the understanding that references therein to the City shall be deemed to be references to the Owner. Under no circumstances other than non-payment of amounts due the Developer that are not then subject to a good faith dispute by the Owner shall the Developer cease or delay performance of the Developer’s obligations under this Developer Agreement unless so directed by the Owner.

ARTICLE 13.5 Declaratory or Injunctive Relief. In addition to the remedies set forth in this Article 13, the Owner shall be entitled, in any circumstances it may deem appropriate, to seek injunctive relief prohibiting (rather than mandating) action by the Developer for any Event of Default or declaratory relief with respect to any matter under this Developer Agreement for which such remedy is available hereunder or at law or in equity.

ARTICLE 13.6 Termination for Convenience by Owner. Nothing in this Developer Agreement shall prohibit or restrict the Owner's absolute right, herein reserved, to terminate this Developer Agreement, in whole or in part, upon thirty (30) days' notice to the Developer. In such event, the Developer shall cease work to the extent required by such notice and follow the instructions of the Owner regarding assignment to the Owner of the Hotel Project Improvements Contract, as well as any or all other contracts and agreements relating to the Hotel Project Improvements Work as the Owner may elect. The Developer shall be entitled to a termination payment for all services completed hereunder to the date of termination, including the pro rata portion of the Developer Fee and less any amounts otherwise owed to the Owner, as determined in good faith by the Owner. The termination payment shall not include any amounts for the Developer's lost or anticipated profits.

ARTICLE 13.7 Effect of Termination If the Owner elects to terminate this Developer Agreement as provided in Section 13.2.1 or any other provision hereof, this Developer Agreement shall, on the effective date of such termination, terminate with respect to all future rights and obligations of performance hereunder by the Parties hereto (except for the rights and obligations herein that expressly are to survive termination hereof). Except as otherwise provided herein, termination of this Developer Agreement shall not alter the then existing claims, if any, of the Owner or the Developer for breaches of this Developer Agreement occurring prior to such termination and the obligations of the Parties hereto with respect thereto shall survive termination.

ARTICLE 14 MISCELLANEOUS TERMS AND CONDITIONS

ARTICLE 14.1 Certificates Regarding Developer Agreement. Each Party hereto agrees, at any time and from time to time upon not less than thirty (30) calendar days prior Notice from the other Party, to execute, acknowledge and deliver to such other Party, or to any Person designated by the other Party, a statement in writing certifying that this Developer Agreement and the other Project Documents are unmodified and in full force and effect (or, if there have been modifications, that the Developer Agreement and the other Project Documents are in full force and effect as modified and stating the modifications), and stating whether or not to the knowledge of the Party making the statement the other Party is in default hereunder or thereunder in keeping, observing or performing any of the terms, covenants or conditions contained in this Developer Agreement and the other Project Documents to be kept, observed or performed by the other Party hereto and, if in default, specifying each such default of which the Party making the statement is aware, it being intended that any such statement delivered pursuant to this Section 14.1 shall be relied upon by the other Party, the City or the Trustee.

ARTICLE 14.2 Representations Regarding Individual Capacity. Each individual executing and delivering this Developer Agreement on behalf of a Party hereto hereby represents to the other Party hereto that such individual has all requisite power and authority to execute and deliver the same and to bind such Party hereunder.

ARTICLE 14.3 Issuance of Series 2009 Bonds; City Council Approval. Notwithstanding anything to the contrary set forth in this Developer Agreement, the Developer recognizes and agrees that any contracts, agreements or amendments contemplated to be entered into by the Owner under the terms of this Developer Agreement which are entered into after the Effective Date of this Developer Agreement will be subject to (i) the issuance of the Series 2009 Bonds in an amount sufficient to fund the Hotel Project Improvements Budget and (ii) the prior Approval of the City Council of the City, other than any Approvals, Consents and confirmations expressly permitted in this Developer Agreement to be given by the Owner Representative.

ARTICLE 14.4 Employment of Consultants. As part of the Hotel Project Improvement Costs within the Hotel Project Improvements Budget, the Owner shall employ such consultants as the Owner may deem necessary to assist in the review of any and all plans, specifications, reports, agreements, applications, bonds, statements and other documents and information to be supplied to the Owner by the Developer under this Developer Agreement and to perform any inspection right on behalf of the Owner. The Developer covenants and agrees to cooperate with such consultants in the same manner as the Developer is required to cooperate with the Owner pursuant to the terms of this Developer Agreement.

ARTICLE 14.5 Provisions Regarding Owner's Consent and Use and Expenditure of Contingency Amounts.

(a) The Owner shall not have any approval rights with respect to the expenditure of contingency amounts included in the Hotel Project Improvements Budget.

(b) Upon the Owner's reasonable direction, with advice from the Developer, Developer shall seek savings in the Hotel Project Improvements Construction Contract. Any savings resulting from differences between the Hotel Project Improvements Construction Contract entered into by the Developer and the maximum price specified in Section 7.7.3(vi)(B) above shall be the sole property of the Owner. If the Developer's advice is not to seek savings, and there are no savings, the Developer shall be deemed to have met its obligation under Article 7.7.3(vi)(B).

(c) Upon Final Completion, if Substantial Completion has occurred by the Hotel Completion Deadline, as adjusted to account for Excusable Developer Delays, any amount of contingency funds remaining in the Hotel Project Improvements Budget up to the Originally-Budgeted Contingency Amount shall be paid to the Developer, to be shared by the Developer, equally, with the Contractor.

(d) If, prior to Final Completion, Substantial Completion has not occurred by the Hotel Completion Deadline, as adjusted to account for Excusable Developer Delays, contingency funds remaining in the Hotel Project Improvements Budget shall be paid to the Trustee on or before the conclusion of each calendar month from the Hotel Completion Deadline until Substantial Completion, for deposit into the Senior Debt Service Fund, in an amount equal to (A) (i) the daily interest payable on the Series 2009 Bonds multiplied by (ii) the number of calendar days between the Hotel Completion Deadline and the date of Substantial Completion, less (B) the sum of amounts previously so paid to the Trustee by Contractor as Contractor Daily Delay Damages and by the Developer as Liquidated Damages. Thereafter, upon Final Completion, any amount of contingency funds remaining in the Hotel Project Improvements Budget up to the

Originally-Budgeted Contingency Amount shall be paid to the Developer, to be shared by the Developer, equally, with the Contractor.

(e) Any amount of contingency funds above the Originally-Budgeted Contingency Amount shall remain the sole property of the Owner, as shall any remaining amounts resulting from Owner-requested reductions in the scope of the Hotel Project Improvements Work.

(f) The Hotel Project Improvements Budget includes provisions for sub-surface work, including environmental remediation, utility relocation and foundation piers. To the extent that there are sub-surface contingent costs beyond the amounts so budgeted, that would otherwise be Developer's Risks, those contingent costs shall be borne by the Owner. Any such costs shall be payable first from the "**Owner's Sub-Surface Contingency Account**", which account shall be funded from savings through adjustments and corrections in the proposed GMP Book prior to approval thereof by the Owner. Notwithstanding the provisions of Sections 14.5(c) and (d), any cost savings as to the budgeted sub-surface work in the Hotel Project Improvements Budget shall be the sole property of the Owner. Further, once the sub-surface work has been substantially completed, any amounts remaining in the Owner's Sub-Surface Contingency Account shall be the sole property of the Owner.

[Signature Page Follows]

DEVELOPER:

MATTHEWS HOLDINGS SOUTHWEST INC.

By: _____
John H. Matthews, President

OWNER:

DALLAS CONVENTION CENTER HOTEL DEVELOPMENT CORPORATION

By: _____
Ryan S. Evans, President

**APPENDIX A
TO
DEVELOPER AGREEMENT**

Rules of Usage and Glossary of Defined Terms

Rules of Usage

1. The terms defined below have the meanings set forth below for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.
2. “Include”, “includes” and “including” shall be deemed to be followed by “without limitation” whether or not they are in fact followed by such words or words of like import.
3. Any agreement, instrument or Legal Requirement defined or referred to below or in any agreement or instrument that is governed by this Appendix means such agreement or instrument or Legal Requirement as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Legal Requirements) by succession of comparable successor Legal Requirement and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.
4. References to a Person are also to its permitted successors and assigns.
5. “Hereof”, “herein”, “hereunder” and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References in an instrument to “Article”, “Section”, “Subsection” or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section, subsection or subdivision of or an attachment to such agreement or instrument. All references to schedules, exhibits or appendices in any agreement or instrument that is governed by this Appendix are to schedules, exhibits or appendices attached to such instrument or agreement.
6. Pronouns, whenever used in any agreement or instrument that is governed by this Appendix and of whatever gender, shall include natural persons, corporations, limited liability companies, partnerships, and associations of every kind and character.
7. References to any gender include, unless the context otherwise requires, references to all genders.
8. The word “or” will have the inclusive meaning represented by the phrase “and/or.”
9. The phrase “and/or”, when used in a conjunctive phrase, shall mean any one or more of the Persons specified in or the existence or occurrence of anyone or more of the events, conditions or circumstances set forth in that phrase; *provided, however*, that, when used to describe the obligation of one or more Persons to do any act, it shall mean that the obligation is

the obligation of each of the Persons but that it may be satisfied by performance by anyone or more of them.

10. “Shall” and “will” have equal force and effect.

11. Unless otherwise specified, all references to a specific time of day in any agreement or instrument that is governed by this Appendix shall be based upon Central Standard Time or Central Daylight Savings Time, as applicable on the date in question, in Dallas, Texas.

12. References to “\$” or to “dollars” shall mean the lawful currency of the United States of America.

13. “Not to be unreasonably withheld” when used herein with respect to any Consent or Approval shall be deemed to be followed by “conditioned or delayed” whether or not it is in fact followed by such words or words of like import.

14. References in this Developer Agreement to another document, instrument or agreement, the incorporation herein of another document, instrument or agreement or the incorporation herein of a provision or defined term from another document, instrument or agreement shall not be affected by the termination, expiration, amendment or modification of such document, instrument or agreement, unless expressly stated herein otherwise or as a result of an amendment to or modification of this Developer Agreement pursuant to the terms hereof. Additionally, any term defined below by reference to any Legal Requirement has such meaning whether or not such Legal Requirement is in effect.

Glossary of Defined Terms

“Actions or Proceedings” means any legal action, lawsuit, proceeding, arbitration or other alternative dispute resolution process, Governmental Authority investigation, hearing, audit, appeal, administrative proceeding or judicial proceeding.

“Additional Addressees” shall have the meaning given to such term in Section 5 of Appendix B hereof.

“Additional Liquidated Damages” shall have the meaning given to such term in Section 9.2.

“Affiliate” of any Person means any other Person directly or indirectly controlling, directly or indirectly controlled by or under direct or indirect common control with such Person. As used in this definition, the term “control”, “controlling” or “controlled by” shall mean the possession, directly or indirectly, of the power either to (a) vote more than fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (b) direct or cause the direction of management or policies of such Person, whether through the ownership of voting securities or interests by contract or otherwise, excluding in each case, any lender of such Person or any Affiliate of such lender.

“Approval,” “Approve” or “Approved” means (a) with respect to any item or matter for which the approval of the Owner or the Owner Representative is required under the terms of the Developer Agreement, the specific approval of such item or matter by the Owner or the Owner Representative, as applicable, pursuant to a written instrument executed by the Owner or the Owner Representative, as applicable, delivered to Developer, and shall not include any implied or imputed approval, and no approval by the Owner or the Owner Representative pursuant to the Developer Agreement shall be deemed to constitute or include any approval required under any City Code or in connection with any Governmental Functions of the City, unless such written approval shall so specifically state; (b) with respect to any item or matter for which the approval of Developer is required under the terms of the Developer Agreement, the specific approval of such item or matter by Developer pursuant to a written instrument executed by the Developer Representative and delivered to the Owner Representative, and shall not include any implied or imputed approval; and (c) with respect to any item or matter for which the approval of any other Person is required under the terms of this Developer Agreement, the specific approval of such item or matter by such Person pursuant to a written instrument executed by a duly authorized representative of such Person and delivered to the Owner or Developer, as applicable, and shall not include any implied or imputed approval.

“Business Day” shall have the meaning given to such term in the Indenture.

“Business Hours” means 9:00 a.m. through 5:00 p.m. Dallas time on Business Days.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq, as amended.

“Charter” means the City Charter of Dallas Texas, as amended from time to time.

“City” shall have the meaning given to such term in the Recitals.

“City Codes” means all ordinances and codes from time to time adopted by the City, including any building codes, fire or life safety codes, development codes and zoning ordinances, as same may be amended from time to time.

“Claims” shall mean and include any and all disputes, controversies, claims, debts, sums of money, losses, damages and demands of whatsoever nature.

“Commencement of Hotel Project Operations” means opening for business to the public and the actual commencement of operation of all elements of the Project Improvements in accordance with the Operator Four Star Hotel Standard and all other Project Documents, except such minor elements which do not prevent Operator from operating the Premises and the Project Improvements as a whole in accordance with the Operator Four Star Hotel Standard..

“Consent” or “Consented” means (a) with respect to any item or matter for which the consent of Owner or the Owner Representative is required under the terms of this Developer Agreement, the specific consent to such item or matter by the Owner or the Owner Representative, as applicable, pursuant to a written instrument executed by the Owner or the Owner Representative, as applicable, delivered to Developer, and shall not include any implied or imputed consent and

no consent by the Owner or the Owner Representative pursuant to this Developer Agreement shall be deemed to constitute or include any consent required under any City Code or in connection with any Governmental Functions of the City, unless such written consent shall so specifically state; (b) with respect to any item or matter for which the consent of Developer is required under the terms of this Developer Agreement, the specific consent to such item or matter by the Developer Representative pursuant to a written instrument executed by the Developer Representative and delivered to the Owner, and shall not include any implied or imputed consent; and (c) with respect to any item or matter for which the consent of any other Person is required under the terms of this Developer Agreement, the specific consent of such item or matter by such Person pursuant to a written instrument executed by a duly authorized representative of such Person and delivered to the Owner or the Developer, as applicable, and shall not include any implied or imputed consent.

“Construction Contract” means, collectively, (i) the contract or contracts between the Hotel Project Improvements Construction Contractor and its construction contractors for the Hotel Project Improvements Work and (ii) the Hotel Project Improvements Construction Contract.

“Construction Contract Requirements” shall have the meaning given to such term in Section 7.7.3 hereof.

“Construction Documents” means any and all contracts, documents or other instruments entered into by or on behalf of Developer, Contractor or any other respective Affiliates for the development, design, construction or furnishing of the Hotel Project Improvements including the Construction Contracts, the Hotel Project Improvements Construction Contract and the Hotel Project Improvements Design Contract.

“Construction Fund” shall have the meaning given to such term in the Indenture.

“Contaminated Materials” means (a) any petroleum or petroleum products, metals, gases, chemical compounds, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls, lead paint, putrescible and infectious materials, and radon gas; (b) any chemicals or substances defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pollutants”, “contaminants” or “pollutants”, or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law or Governmental Authority or which is regulated because of its adverse effect or potential adverse effect on health and the environment, including soil and construction debris that may contain any of the materials described in this definition.

“Contractor” means Balfour/Russell/Pegasus, a joint venture consisting of Balfour Beatty Construction, LLC, H.J. Russell & Company, and Pegasus Texas Construction, L.P.

“Contractor Daily Delay Damages” means, for each particular day, an amount as specified below, all for deposit to the Trustee:

(1) During the first thirty (30) days (or any part thereof) after the Scheduled Completion Date (as defined in the Hotel Project Improvements Construction Contract) that Substantial Completion is not achieved, liquidated damages shall be at the rate of \$5,000.00 per day.

(2) During the second thirty (30) days (or any part thereof) after the Scheduled Completion Date that Substantial Completion is not achieved, liquidated damages shall be at the rate of \$10,000.00 per day.

(3) During any period after the second thirty (30) days after the Scheduled Completion Date that Substantial Completion is not achieved, liquidated damages shall be at the rate of \$20,000.00 per day.

(4) An amount of \$5,000 per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date that is 30 days after the date of Substantial Completion.

“Convention Center” shall mean the Dallas Convention Center.

“Crane Swing Agreement” shall have the meaning given to such term in Section 7.7.4 hereof.

“Daily Liquidated Damages” means, for each particular day, an amount as specified below, all for deposit to the Trustee:

(1) During the first thirty (30) days (or any part thereof) that Liquidated Damages are payable, an amount equal to \$5,000.00 per day.

(2) During the second thirty (30) days (or any part thereof) that Liquidated Damages are payable, an amount equal to \$10,000.00 per day.

(3) During any period after the second thirty (30) days that Liquidated Damages are payable, an amount equal to \$20,000.00 per day.

“Date of Final Completion” means the actual date upon which the Final Completion occurs.

“Default Rate” means the Municipal Index Rate plus three percent (3%) per annum; provided that it shall not to exceed the Maximum Lawful Rate.

“Demolition Work” means the excavation and demolition of the Existing Improvements, as contemplated by the Hotel Project Improvements Plans and the Hotel Project Improvements Construction Contract.

“Developer” shall have the meaning given to such term in the opening paragraph hereof or any successor that is Approved by the Owner in accordance with the terms hereof.

“Developer’s Account” shall have the meaning given to such term in Appendix C hereof.

“Developer Agreement” shall have the meaning given to such term in the opening paragraph hereof.

“Developer Default” shall have the meaning given to such term in Section 13.1.1 hereof.

“Developer Delay” means any delay by Developer in achieving any deadline for performance of its obligations under this Developer Agreement.

“Developer’s Remedial Work” shall have the meaning given to such term in Section 7.3 hereof.

“Developer’s Representations” shall have the meaning given to such term in Section 5.1 hereof.

“Developer Representative” shall have the meaning given to such term in Section 2.2 hereof.

“Developer’s Risks” shall mean (a) the accuracy or completeness of any information supplied by any Person other than the express representations and warranties contained in Article 4 hereof or the Owner’s or the City’s financial advisors; (b) the condition, suitability or fitness of the Premises for the purposes of the Hotel Project Improvements; (c) the compliance of the Premises with any applicable land use regulations or any Legal Requirements; (d) the feasibility (other than economic or financial) of the Project, the Hotel Project Improvements Work or any additional work; (e) the existence or absence of any contaminated materials or state archaeological landmarks (as such term is used in chapter 191 of the Texas Natural Resource Code) on the Premises or environmental claims with respect to the Premises or the Hotel Project Improvements; (f) the construction of any improvements on the Premises, including the Hotel Project Improvements; and (g) any other matter on the Site relating to any improvements currently on or to be constructed as part of the Project on the Premises.

“Effective Date” shall have the meaning given to such term in the opening paragraph hereof.

“Environmental Event” means the occurrence of any of the following: (i) any noncompliance with an Environmental Law; (ii) an environmental condition requiring responsive action, including an environmental condition caused by a third Person; (iii) any event on, at or from the Property in question or related to the operation thereof of such a nature as to require reporting to applicable Governmental Authorities under any Environmental Law; (iv) the existence or discovery of any spill, discharge, leakage, pumpage, drainage, pourage, interment, emission, emptying, injecting, escaping, dumping, disposing, migration or other release or any kind of Contaminated Materials on, at or from the Property in question which may cause a threat or actual injury to human health, the environment, plant or animal life; or (v) any threatened or actual Claim that any Person may now or hereafter have in connection with or as a result of the condition of any Property, any existing or past Environmental Release of any Contaminated Materials from any Property or into the ground, ground water or surface water of any Property, the existence of any Environmental Proceedings with respect to any Property or its operation or the violation of any Environmental Laws with respect to any Property or its operation.

“Environmental Law(s)” means any applicable Federal, state or local statute, law (including common law tort law, common law nuisance law and common law in general), rule, regulation, ordinance, code, permit, concession, grant, franchise, license, policy or rule of common law now in effect or adopted in the future, and in each case as may be amended or replaced, and any judicial or administrative interpretation thereof (including any judicial or administrative order, consent decree or judgment) relating to (i) the environment, health, safety or Contaminated

Materials, (ii) the storage, handling, emission, discharge, release and use of chemicals and other Contaminated Materials, (iii) the generation, processing, treatment, storage, transport, disposal, investigation, remediation or other management of waste materials of any kind. and (iv) the protection of environmentally sensitive areas, including CERCLA; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 5101 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Endangered Species Act, as amended, 16 U.S.C. § 1531 et seq.; the Texas Solid Waste Disposal Act, Tex. Health & Safety Code Ann. Ch. 361 (Vernon 1990); the Texas Clean Air Act, Tex. Health & Safety Code Ann. Ch. 382 (Vernon 1990); the Texas Water Code, Tex. Water Code Ann. (Vernon 1988 and Supp. 1990); the Texas Hazardous Substances Spill Prevention and Control Act, Tex. Water Code Ann. (Vernon 1988 and Supp. 1990); the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et. seq.; and the Emergency Preparedness and Response Community Right-to-Know Act, 42 U.S.C. § 11001.

“Environmental Proceeding” means:

(a) Any notice of any investigation, response action, spill, proceeding, whether executive, administrative or judicial, or litigation or litigation threatened in writing relating to Environmental Laws or other environmental matters concerning a Property insofar as such investigation, response action, spill, litigation, litigation threatened in writing or proceeding relates to such Property; or

(b) Receipt of any notice from any Person of: (i) any violation or alleged violation of any Environmental Law relating to a Property or any part thereof or any activity at the time conducted on any Property; (ii) the commencement of any clean-up, abatement or control pursuant to or in accordance with any Environmental Law of any Contaminated Materials on or about any such property or any part thereof; or (iii) any violation of any Legal Requirements or harm to Person or Property in each case with respect to worker safety at or in connection with such Property or any part thereof.

“Environmental Release” means a “release” as said term is defined under CERCLA.

“Ethics Code” means the Ethics Code of the City as amended from time to time.

“Event of Default” means Developer Default or Owner Default.

“Excusable Owner Delay” means any Owner Delay which is caused by or attributable to, but only to the extent of, Force Majeure.

“Excusable Owner Delay Period” means, with respect to any particular occurrence of Excusable Owner Delay, that number of days of delay in the performance by the Owner of its obligations under this Developer Agreement actually resulting from such occurrence of Excusable Owner Delay.

“Excusable Developer Delay” means any Developer Delay which is caused by or attributable to, but only to the extent of, Force Majeure.

“Excusable Developer Delay Period” means with respect to any particular occurrence of Excusable Developer Delay, that number of days of delay in the performance by Developer of its obligations under this Developer Agreement actually resulting from such occurrence of Excusable Developer Delay.

“Existing Improvements” means, collectively, (i) the existing parking garage and all other Improvements located on, within or above the Site, (ii) the paving and related improvements located on the Premises as of the Effective Date and (iii) any other Improvements located on the Premises, all as of the Effective Date.

“Existing Lines” shall have the meaning given to such term in Section 7.6 hereof.

“FF&E” means all furniture, fixtures, equipment, furnishings, machinery and other personal property located on or in the Hotel Project Improvements upon Commencement of Hotel Operations and all such other items of Personalty as are necessary for operation of the Hotel Project Improvements at the Operator Four Star Hotel Standard.

“Final Completion” when used with respect to the Hotel Project Improvements Work or any component of the Hotel Project Improvements Work, means (A) the final completion of the design, development, construction, furnishing and all other aspects of such work and Improvements substantially in accordance with the Hotel Project Improvements Specifications, Hotel Project Improvements Schematics, the Hotel Project Improvements Drawings and the Hotel Project Improvements Plans (all of which have been Approved by the Owner or the Owner Representative, as applicable, pursuant to the terms of this Developer Agreement, as and if required), the Operator Four Star Hotel Standard, all applicable Legal Requirements and all other requirements of this Developer Agreement, including the completion of the punch-list type items referred to in the definition of the term “Substantial Completion,” (B) the issuance of all Governmental Authorizations necessary to use, occupy and operate all aspects and areas of the Premises and the Hotel Project Improvements, including all Governmental Authorizations required to be issued to the Owner or the Operator or any of their Affiliates to fulfill Operator’s obligations under the Hotel Management Agreement and Developer’s obligations hereunder and (c) the availability of the Hotel for Commencement of Hotel Project Operations as to all elements of the Premises in accordance with the terms of this Developer Agreement, the Hotel Management Agreement, the Operator Four Star Hotel Standard and all applicable Legal Requirements. Notwithstanding anything herein to the contrary, Final Completion shall occur no later than thirty (30) days after Substantial Completion, subject to Excusable Developer Delay only.

“Final Notice” shall have the meaning given to such term in Section 13.2.1 hereof.

“Final Notice Cure Period” shall have the meaning given to such term in Section 13.2.1 hereof.

“Financing Date” means the date the proceeds from the issuance and sale of the Series 2009 Bonds are deposited in the Construction Fund held by the Trustee under the terms of the Indenture.

“Fiscal Year” means the twelve (12) month period from time to time established by the Owner as its fiscal year, which is currently the twelve (12) month period from October 1 through September 30.

“Force Majeure” means floods, tornadoes, earthquakes, wars, civil disturbances, revolts, insurrections, terrorism, and sabotage.

“GAAP” means generally accepted accounting principles, applied on a consistent basis, as set forth in Opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants or in statements of the Financial Accounting Standards Board or their respective successors and which are applicable in the circumstances as of the date in question. Accounting principles are applied on a “consistent basis” when the accounting principles observed in a current period are comparable in all material respects to those accounting principles applied in a preceding period.

“Governmental Authority” means any Federal, state or local governmental entity (including a local government corporation, whether formed under Section 431 of the Subchapter D of the Texas Transportation Code, or otherwise, but not the Owner unless the Owner is exercising a Governmental Function), authority (including a taxing authority) or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) and any arbitrator to whom a dispute has been presented under Legal Requirements, pursuant to the terms of this Developer Agreement or by agreement of the Parties.

“Governmental Authorizations” means all approvals, consents, decisions, authorizations, certificates, confirmations, exemptions, applications, notifications, concessions, acknowledgments, agreements, licenses, permits, import permits, employee visas, environmental permits, decisions, right-of-ways, and similar items from any Governmental Authority, but not including a liquor license from the Texas Alcoholic Beverage Commission.

“Governmental Function” means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which the City is authorized or required to perform in its capacity as a Governmental Authority in accordance with Legal Requirements. The entering into this Developer Agreement and the performance by the Owner of its obligations under this Developer Agreement shall not be considered a “Governmental Function.”

“Hotel” means the convention center headquarters hotel described in the Hotel Project Improvements Specifications to be constructed on the Site by Developer in accordance with the terms of this Developer Agreement, including all Personalty contained therein which at a minimum shall be such Personalty necessary to furnish and operate the Hotel Project Improvements in accordance with the Operator Four Star Hotel Standard.

“Hotel Completion Deadline” means the date that is twenty-eight (28) calendar months after the Financing Date.

“Hotel Management Agreement” means a binding operating agreement between the Owner and the Operator governing the management and operation of the Premises and the Hotel Project Improvements by the Operator in accordance with the Operator Four Star Hotel Standard.

“Hotel Project Improvements” means the Hotel and all other Improvements of any kind whatsoever appurtenant thereto or comprising a part of any of the same and all appurtenances and amenities relating to any of the same. Title to Hotel Project Improvements will pass immediately to the Owner, although the risk of loss prior to Final Completion remains with Developer.

“Hotel Project Improvements Architect” means BOKA Powell, LLC, or any other Qualified Design Professional who enters into the Hotel Project Improvements Design Contract.

“Hotel Project Improvements Budget” means the total budget for all Hotel Project Improvements Costs, broken down in reasonable detail by “hard” and “soft” cost categories, including separate line items for the amount of each of the Construction Documents and allowances and contingencies, as adopted by the Owner. The Owner has adopted the Hotel Project Improvements Budget attached hereto as Schedule 7.1.3a.

“Hotel Project Improvements Construction Contract” means the guaranteed maximum price contract to be entered into by Developer with the Hotel Project Improvements Contractor for the development, design, construction and furnishing of all of the Hotel Project Improvements, substantially in the form attached hereto as Exhibit A, with such changes as are acceptable to the Owner and the Developer.

“Hotel Project Improvements Construction Contract Bond” shall have the meaning given to such term in Section 7.7.3 hereof.

“Hotel Project Improvements Construction Schedule” means a schedule of critical dates relating to the Hotel Project Improvements Work and the Commencement of Hotel Project Operations (which dates may be described or set forth as intervals of time from or after the completion or occurrence of the preceding task or event), which schedule shall contain, but shall not be limited to, the estimated dates for (i) ordering and delivering of technical delivery items, such as construction components or Items requiring long lead time for purchase or manufacture, or items which by their nature affect the basic structure or systems of the Hotel Project Improvements, (ii) Completion of the Hotel Project Improvements Plans in detail sufficient for satisfaction of all Legal Requirements (including issuance of necessary Governmental Authorizations), (iii) issuance of all Governmental Authorizations and satisfaction of all Legal Requirements prerequisite to Commencement of the Hotel Project Improvements Work, (iv) commencement of the Demolition Work, and all other Hotel Project Improvements Work, (v) Substantial Completion and (vi) all material elements of pre-opening services. The Hotel Project Improvements Construction Schedule shall be adjusted as appropriate to reflect the delay in the Hotel Project Improvements Work by Developer resulting from each occurrence of Excusable

Developer Delay or each Hotel Completion Deadline Extension Period in accordance with the provisions of the Developer Agreement. The Owner has Approved the initial Hotel Project Improvements Construction Schedule attached hereto as Exhibit B.

“Hotel Project Improvements Contractor” means the Contractor or any other Qualified Contractor who enters into the Hotel Project Improvements Construction Contract.

“Hotel Project Improvements Costs” means all costs incurred or to be incurred by Developer in order for Developer to fulfill its obligations under this Developer Agreement, cause Final Completion to occur on or before the date required under this Developer Agreement, including: (a) all amounts payable under any of the Construction Documents; (b) costs to obtain necessary easements or rights of way; (c) all development costs and fees; (d) pre-opening expenses; (e) taxes and fees incurred by Developer in connection with the entering into or performing the Project Documents; (f) all other costs to design, develop, construct, equip, furnish and fully complete the Project, including fees and expenses of architects, engineers, accountants and attorneys to complete the design, development, and construction of the Hotel Project Improvements; and (g) insurance premiums.

“Hotel Project Improvements Design Contract” means the services contract to be executed by the Hotel Project Improvements Contractor with the Hotel Project Improvements Architect for the design of the Hotel Project Improvements and preparation of the Hotel Project Improvements Plans.

“Hotel Project Improvements Drawings” means the design development plans and drawings and site elevations for the Hotel Project Improvements delivered by Developer to the Owner Representative for Approval or confirmation, as applicable, in accordance with the terms of this Developer Agreement and which are sufficient in detail to allow the Owner Representative to determine whether the same conform to the Hotel Project Improvements Specifications and the Hotel Project Improvements Schematics.

“Hotel Project Improvements Plans” means the detailed working construction drawings for the Hotel Project Improvements prepared by the Hotel Project Improvements Architect and delivered by Developer to the Owner Representative for Approval or confirmation, as applicable, in accordance with the terms of this Developer Agreement, and which are sufficient in detail to allow the Owner Representative to determine whether the same conform to the Hotel Project Improvements Specifications and the Hotel Project Improvements Schematics.

“Hotel Project Improvements Schematics” means the concept drawings, schematic drawings and preliminary elevations which have been Approved by the Owner prior to the Effective Date and being more particularly described as the following plans and dated _____:
_____.

“Hotel Project Improvements Specifications” shall have the meaning given to such term in Section 7.1.2 hereof.

“Hotel Project Improvements Work” means the design, development, construction and furnishing of the Hotel Project Improvements in accordance with this Developer Agreement, including applicable Legal Requirements, the Hotel Project Improvements Plans, the Operator Four Star Hotel Standard and the Hotel Project Improvements Construction Contract, and all other work and preparations (including the Demolition Work) required to achieve Substantial Completion, including all furniture, fixtures, equipment, systems and landscape improvements contemplated by the Hotel Project Improvements Plans, or otherwise necessary in order to fully operate the Hotel Project Improvements, in accordance with the Operator Four Star Hotel Standard.

“Improvements” means all structures or other improvements of any kind whatsoever, whether above or below grade, whether now existing or hereafter constructed. and including buildings, the foundations and footings thereof, utility installations, storage, loading and parking facilities, walkways, driveways, landscaping signs, site lighting, site grading and earth movement and all fixtures, plants, apparatus, appliances, furnaces, boilers, machinery, engines, motors, compressors, dynamos, elevators, fittings, piping, connections, conduits, ducts and equipment of every kind and description now or hereafter affixed or attached to any of such buildings, structures or improvements and used or procured for use in connection with the heating, cooling, lighting, plumbing, ventilating or general operation of any of such buildings.

“Indemnitee” shall have the meaning given to such term in Section 13.3.

“Indemnitor” shall have the meaning given to such term in Section 13.3.

“Indenture” means that certain Indenture of Trust between the Owner and the Trustee relating to the issuance of the Series 2009 Bonds, and all exhibits thereto, as the same may be amended, supplemented, modified, renewed or extended from time to time in accordance with the terms thereof.

“Insurance Covenant” means all of the covenants and agreements of Developer with respect to insurance policies and coverages to be maintained by Developer pursuant to and in accordance with Article 12 hereof.

“Insurance Proceeds” means proceeds paid pursuant to insurance policies required under Article 12 hereof for loss or damage to the Hotel Project Improvements.

“Insurance Trustee” means an Institutional Lender having offices in the State of Texas, designated by the Owner, but only if, and for so long as, any such Institutional Lender satisfies all of the following requirements:

(a) such Person is not an Affiliate of the Owner; and

(b) such Person delivers a written notice to the Parties that such Person has agreed to act as the Insurance Trustee and agrees for the benefit of the Owner and Developer, that during all times such Person acts as the Insurance Trustee it will (x) receive and disburse Insurance Proceeds pursuant to the terms of the Project Documents and (x) will notify the Owner and Developer of

its removal or resignation as Insurance Trustee at least thirty (30) calendar days prior to the effective date of any such removal or resignation.

During such periods as there is no Institutional Lender qualified to serve and then serving as Insurance Trustee, then, in any such event, the Owner shall act as Insurance Trustee.

“Legal Requirements” means all laws, statutes, acts (including, without limitation, the Texas Open Records Act, as applicable, and prevailing wage requirements applicable to public works projects), ordinances, rules, regulations, permits, licenses, authorizations, directives, orders and requirements of all governments, quasi-governmental or regulatory authorities, that now or hereafter may be applicable to, as applicable, (i) the Hotel and the construction, maintenance and operation thereof, including those relating to employees, zoning, building, health, safety and environmental matters, and accessibility of public facilities, (ii) the Developer, the Operator and its business operations, and/or (iii) the Owner and the City.

“Lien” means, with respect to any Property, any mortgage, lien, pledge, charge or security interest, and with respect to the Premises, the term Lien shall also include any liens for taxes or assessments, builder, mechanic, warehouseman, materialman, contractor, workman, repairman or carrier lien or other similar liens, including Mechanics’ Liens and Claims.

“Liquidated Damages” shall have the meaning given to such term in Section 9.2.

“Material Change” means any change to the Hotel Project Improvements that (i) does not conform in any respect to the Hotel Project Improvements Specifications or the Hotel Project Improvements Schematics as previously Approved by the Owner or (ii) alters the nature, character, exterior appearance or primary use of the Hotel Project Improvements.

“Maximum Lawful Rate” means the maximum non-usurious interest rate, if any, that at any time, or from time to time, may be contracted for, taken, reserved, charged or received on any indebtedness or other sum becoming due and owing under this Developer Agreement, under Legal Requirements with respect to the Person entitled to collect such interest and such indebtedness or, to the extent permitted by Legal Requirements, under such Legal Requirements which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than Legal Requirements now allow.

“Mechanics’ Lien” shall have the meaning given to such term in Section 7.8 hereof

“Municipal Index Rate” means the weekly average municipal bond yield for the 11-Bond GO Index for the week preceding the week in question, as published for each week in *The Bond Buyer* under the table entitled Bond Buyer Indexes (but if, at any time, such weekly municipal bond yield for the 11-Bond GO Index is no longer published in such manner or is otherwise unavailable, the Parties shall agree on a substitute publication or methodology that is comparable or substantially similar to the manner in which such interest rate was determined).

“Notice” shall have the meaning given to such term in Section 5 of Appendix B.

“Operator” means _____, which will manage and operate the Hotel for an initial period set forth in the Hotel Management Agreement, together with any permitted successors and assigns.

“Operator Four Star Hotel Standard” refers to the standard of construction, furnishing and equipping of the Hotel. As respects construction, furnishing and equipping, the “Operator Four Star Hotel Standard” shall mean the standard thereof (i) applicable, as of the Effective Date, to both the _____ Hotel, _____ (but only with respect to the newest tower and related appurtenances of such hotel as of the Effective Date) and the _____ at _____ Convention Center, _____ (provided that in the event that there is a conflict between these two hotels, the _____ at _____ Convention Center, _____ shall control), both in terms of the quality of construction, furnishings and equipment, and the nature and extent of its amenities and facilities, such as a health club, restaurants, public space (including meeting and banquet space), back-of-the house, parking, exterior lighting and landscaping and (ii) without limiting the foregoing, that meets the minimum standards and specifications set forth in the _____ Standard Design Center dated _____ (except to the extent reflected otherwise on Appendix E hereto), as any of the foregoing maybe deviated from pursuant to the prior Consent of the Owner Representative.

“Originally-Budgeted Contingency Amount” means the amount originally budgeted for contingencies on Line 25 of the Hotel Project Improvements Budget (as adjusted upon execution of the Hotel Project Improvements Construction Contract).

“Owner Default” shall have the meaning given to such term in Section 13.1.2 hereof.

“Owner Insured” means the City and the Owner and their respective elected and appointed officials and employees, agents, auditors, advisors, consultants, servants, counsel, contractors, subcontractors (of any tier), lessees, sublessees (of any tier), licensees, sublicensees (of any tier), lenders, successors, assigns and legal representatives.

“Owner Representative” shall have the meaning given to such term in Section 2.1 hereof.

“Owner’s Account” shall have the meaning given to such term in Appendix C hereof.

“Owner’s Representations” shall have the meaning given to such term in Section 4.1 hereof.

“Owner’s Sub-Surface Contingency Account” shall have the meaning given to such term in Section 14.5(f) hereof.

“Parties” or “Party” shall have the meaning given to such term in the opening paragraph hereof.

“PD Agreement” means the pre-development agreement dated as of September 10, 2008 between the City, the Owner and the Developer, as amended on February 12, 2009.

“Person” shall mean any individual, public or private corporation, partnership, limited liability company, county, district, authority, municipality, political subdivision or other entity of the

State of Texas or the United States of America, and any partnership, association, firm, trust, estate or any other entity or organization whatsoever.

“Personalty” shall mean all equipment, fixtures, machinery, furniture, furnishings and other personal property erected, constructed, installed or placed in or affixed to the Hotel Project Improvements.

“Premises” means the Site and the Hotel Project Improvements thereon.

“Principals” means with respect to any Person, all other Persons that control, directly or indirectly, such Person.

“Project” means the undertaking of Developer to design, develop, construct and furnish the Hotel Project Improvements, all as required pursuant to the terms hereof and other Project Documents.

“Project Documents” means this Developer Agreement, and all other documents, instruments and agreements entered into between the Owner and the Developer during the term of this Developer Agreement pursuant to the express terms hereof, if any, as the same may be amended, supplemented, modified, renewed or extended from time to time in accordance with the terms hereof or thereof.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“Qualified Contractor” means a general contractor that, on the date its name and qualifications are submitted to the Owner, and if such general contractor thereafter becomes (or replaces the prior) the Hotel Project Improvements Contractor, at all times until Final Completion, satisfies all of the following criteria:

(a) licensed and otherwise in compliance with all applicable Legal Requirements to do business and act as a general contractor in the State of Texas and the City of Dallas for the type of work proposed to be performed by such contractor;

(b) possessed of the capacity to obtain payment and performance bonds in the full amount of the pertinent construction contract, including the Hotel Project Improvements Construction Contract Bond, from a Qualified Surety;

(c) well experienced as a general contractor in comparable work; and

(d) neither such general contractor nor its Affiliate is in default under any material obligation to the Owner or the City under any other contract between such general contractor or any of its Affiliates and the Owner or the City.

“Qualified Design Professional” means an architect that, on the date its name and qualifications are submitted to the Owner, and if such architect thereafter becomes Hotel Project Improvements Architect, at all times until Final Completion, satisfies all of the following criteria:

(i) licensed and otherwise in compliance with all applicable Legal Requirements to do business and act as an architect in the State of Texas and in the City of Dallas, Texas for the type of work proposed to be performed by such architect;

(ii) well experienced as an architect in comparable work; and

(iii) neither such architect nor any of its Affiliates is in default under any material obligation to the Owner or the City under any other contract between such architect or any of its Affiliates and the Owner or the City.

“Qualified Surety” means any surety which has been approved by the Owner and which has and maintains an Alfred M. Best Company, Inc. rating of “A” or better and a financial size category of not less than “VIII” (or, if Alfred M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar ratings under the rating system then in effect, or if Alfred M. Best Company, Inc. is no longer the most widely accepted rater of the financial stability of sureties providing coverage such as that required by this Developer Agreement, as determined in good faith by the Owner, then the equivalent or most similar rating under the rating system then in effect of the most widely accepted rater of the financial stability of such insurance companies at the time).

“Quiet Day” means, during the term of this Developer Agreement after the commencement of construction of the Hotel Project Improvements Work, each calendar day upon which Developer has been prohibited by the Owner from undertaking any construction activity on the Premises which creates unreasonable noise or an offsite life safety risk for at least four (4) hours pursuant to the protocol established in accordance with Section 7.7.5(a).

“Reasonable and Prudent Developer” means a developer of hotel projects similar in scope, size and complexity to the Hotel Project Improvements seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertakings, exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced developer of convention center hotels similar to the Hotel Project Improvements complying with all Legal Requirements and engaged in the same type of undertaking.

“Related Party” means with respect to any Person, such Person’s partners, directors, officers, shareholders, members, agents, employees, auditors, advisors, consultants, servants, counsel, contractors, subcontractors (of any tier), lenders, successors, assigns, legal representatives, elected and appointed officials, volunteers and Affiliates, and for each of the foregoing their respective partners, directors, officers, shareholders, members, agents, employees, auditors, advisors, counsel, consultants, contractors, subcontractors, licensees, sublicensees, lessees, and sublessees.

“Requisition Requesting Disbursement of Hotel Project Improvements Costs” shall have the meaning given to such term in the Indenture.

“Responsible Officer” means, with respect to the subject matter of any certificate, representation or warranty of any Person contained in this Developer Agreement or in any of the other Project

Documents, a vice president or higher corporate officer of such Person (or in the case of a partnership, an individual who is a general partner of such Person or such an officer of a general Partner of such Person) who, in the normal performance of his operational responsibility, would have knowledge of such matter and the requirements with respect thereto.

“Review and Approval or Consent Rights” shall have the meaning given to such term in Section 10.3.1 hereof.

“Reviewing Party” shall have the meaning given to such term in Section 10.3.1 hereof.

“SBE and MWBE Policies” shall have the meaning given to such term in Section 11.1 hereof.

“Senior Debt Service Fund” shall have the meaning given to such term in the Indenture.

“Senior Debt Service Reserve Fund” shall have the meaning given to such term in the Indenture.

“Series 2009 Bonds” shall have the meaning given to such term in the Indenture.

“Site” means the approximately __ acre site adjacent to and within 1,000 feet of the Convention Center on which the Hotel is to be located.

“Submitting Party” shall have the meaning given to such term in Section 10.3.1 hereof.

“Substantial Completion” means that stage in the progression of the Hotel Project Improvements Work, as approved by the Developer in writing, when the Project is sufficiently complete in accordance with the Hotel Project Improvements Construction Contract that the Owner and the Operator can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the Developer and the Owner of all necessary certificates of occupancy or other authorizations for the use and occupancy of the Project required by any governmental or regulatory authority. The City, the Owner or the Operator may occupy and use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion.

“Substantial Completion Certificate” shall have the meaning given to such term in Section 9.1.7 hereof.

“Trustee” shall have the meaning given to such term in the Indenture.

APPENDIX B
TO
DEVELOPER AGREEMENT

Governing Provisions

The following Governing Provisions shall apply to and govern this Developer Agreement for all purposes and shall apply to and govern each of the other Project Documents that expressly states that it is governed by these Governing Provisions,

Section 1. Accounting Terms and Determinations. Unless otherwise specified in this Developer Agreement, all accounting terms used in this Developer Agreement shall be interpreted, all determinations with respect to accounting matters thereunder shall be made and all financial statements and certificates and reports as to financial matters required to be furnished hereunder shall be prepared in accordance with GAAP.

Section 2. Definitions. Except as otherwise expressly provided in this Developer Agreement, capitalized terms used herein and all appendices, schedules and exhibits hereto shall have the respective meanings given in Appendix A to this Developer Agreement.

Section 3. Survival. The representations, warranties, covenants, obligations and agreements of the Parties contained or provided for herein shall survive the expiration or earlier termination of the term of this Developer Agreement and shall continue until the date which is two (2) years following (i) the expiration of the term of this Developer Agreement as provided herein or (ii) any such earlier date on which this Developer Agreement is terminated; provided, however, that it is understood and agreed that the representations, warranties, covenants and agreements of the Parties contained in this Developer Agreement shall continue in full force and effect with respect to all Claims made in writing by either Party on or before such date with respect to such provisions until such Claims are paid in full.

Section 4. Liabilities. No Party to this Developer Agreement shall have any obligation or duty to the other Party hereto or any other Person with respect to the transactions contemplated hereby except the obligations or duties expressly of such Party set forth in this Developer Agreement or in any other Project Document to which the Party in question is a signatory.

Section 5. Notices. Each provision of this Developer Agreement and other requirements with reference to the sending, mailing or delivery of any notice, Consent, direction, Approval, instructions, request, request, reply, advice, confirmation and other communications (hereinafter severally and collectively called "Notice"), or with reference to the making of any payment by Developer to the Owner, shall have been complied with when and if the procedures described in this Section 5 have been complied with by the Party giving such Notice. Subject to Section 14 below, all Notices must be in writing and given to a Party under this Developer Agreement, to such Party at the address set forth in Appendix C to this Developer Agreement or at such other

address as such Party shall designate by written Notice to the other Party, and in all cases shall be (i) sent by pre-paid, registered or certified U.S. Mail with return receipt requested, (ii) delivered personally with receipt of delivery, (iii) sent by nationally recognized overnight courier (such as Federal Express) with electronic tracking, (iv) sent by electronic mail with acknowledgment of receipt by the recipient, or (v) sent by facsimile (with confirmation of receipt by the sending machine and a copy to follow by U.S. Mail, first class postage prepaid) to the Party entitled thereto. Such Notices shall be deemed to be duly given or made (i) in the case of U.S. mail in the manner provided above, three (3) Business Days after posting, (ii) if delivered personally with receipt of delivery, when actually delivered by hand and receipted unless such day is not a Business Day, in which case such delivery shall be deemed to be made as of the next succeeding Business Day, (iii) if sent by nationally recognized overnight courier with electronic tracking service, the next Business Day after depositing same with such overnight courier before the overnight deadline. and if deposited with such overnight courier after such deadline, then the next succeeding Business Day, (iv) in the case of electronic mail with acknowledgment of receipt by the recipient, when sent so long as it was received during normal Business Hours of the receiving Party on a Business Day and otherwise such delivery shall be deemed to be made as of the next succeeding Business Day, or (v) in the case of facsimile (with confirmation of receipt by the sending machine and a copy to follow by U.S. Mail, first class postage prepaid), when sent so long as it was received during normal Business Hours of the receiving Party on a Business Day and otherwise such delivery shall be deemed to be made as of the next succeeding Business Day. Each Party hereto shall have the right at anytime and from time to time to specify additional parties (“Additional Addressees”) to whom notice thereunder must be given, by delivering to the other Party five (5) calendar days Notice thereof setting forth a single address for each such Additional Addressee; provided, however, that no Party shall have the right to designate more than two (2) such Additional Addressees.

Section 6. Severability. If any term or provision of this Developer Agreement, or the application thereof to any Person, shall to any extent be invalid or unenforceable in any jurisdiction. as to such jurisdiction, the remainder of this Developer Agreement, or the application of such term or provision to the Persons or circumstances other than those as to which such term or provision is held invalid or unenforceable in such jurisdiction, shall not be affected thereby, and each term and provision of this Developer Agreement shall be valid and enforceable to the fullest extent permitted by any Legal Requirements and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by any Legal Requirements, the Parties to this Developer Agreement hereby waive any provision of any Legal Requirements that render any provision thereof prohibited or unenforceable in any respect.

Section 7. Entire Agreement; Amendment. This Developer Agreement, together with the other applicable Project Documents, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter. Neither this Developer Agreement nor any of the terms thereof may be terminated, amended, supplemented, waived or modified orally. but only by an

instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought, and, in the case of the Owner, Approved by action of the City Council of the City.

Section 8. No Waivers.

(a) General. Unless expressly agreed to by such Party in writing, the failure of a Party hereto to insist, in any one or more instances, upon the strict performance by the other Party of any of such other Party's covenants, obligations or agreements under this Developer Agreement, or to exercise any right or remedy given the first Party upon a default by the other Party, shall not be construed as a discharge or invalidation of such covenant, obligation or agreement or as a waiver or relinquishment thereof for the future, nor shall any single or partial exercise of any such right, power or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power or remedy. As such, the covenants, obligations and agreements of the other Party and the rights and remedies of the first Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

(b) No Accord and Satisfaction. Without limiting the generality of clause (a) above, the receipt by either Party of any payment of any money due to it hereunder with knowledge of a breach by the other Party of any covenant, obligation or agreement under this Developer Agreement shall not be deemed or construed to be a waiver of such breach (other than as such payment received). The payment by Developer to the Owner of any sum of money due hereunder with knowledge of a breach by the Owner of any covenant, obligation or agreement under this Developer Agreement shall not be deemed or construed to be a waiver of such breach. No acceptance by the Owner or Developer of a lesser sum than then due shall be deemed to be other than on account of the earliest installment of the amounts due under this Developer Agreement, nor shall any endorsement or statement on any check, or any letter accompanying any check, wire transfer or other payment, be deemed an accord and satisfaction. The Owner and Developer may accept a check, wire transfer or other payment without prejudice to its right to recover the balance of such installment or pursue any other remedy provided in this Developer Agreement.

(c) No Waiver of Termination Notice. Without limiting the generality of clause (a) above, the receipt by the Owner of any monies paid by Developer after the termination in any manner of the term of this Developer Agreement, or after the giving by the Owner of any Notice hereunder to effect such termination, shall not, except as otherwise expressly set forth in this Developer Agreement, reinstate, continue or extend the term of this Developer Agreement, or destroy, or in any manner impair the efficacy of, any such Notice of termination as may have been given hereunder by the Owner to Developer prior to the receipt of any such monies or other consideration, unless so agreed to in writing and executed by the Owner.

Section 9. Table of Contents; Headings; Exhibits. The table of contents, if any, and headings, if any, of the various articles, sections and other subdivisions of this Developer Agreement are for

convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof. All Appendices and Exhibits attached to this Developer Agreement are incorporated herein by reference in their entirety and made a part hereof for all purposes.

Section 10. Parties in Interest; Limitation on Rights of Others. The terms of this Developer Agreement shall be binding upon, and inure to the benefit of, the Parties, the City and their permitted successors and assigns. Nothing in this Developer Agreement, whether express or implied, shall be construed to give any Person (other than the Parties and their permitted successors and assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Developer Agreement or any covenants, conditions or provisions contained herein or any standing or authority to enforce the terms and provisions of this Developer Agreement.

Section 11. Method of Payment. All amounts required to be paid by any Party to the other Party under this Developer Agreement shall be paid in such freely transferable coin or currency of the United States as at the time of payment shall be legal tender for the payment of public and private debts, by wire transfer, or other acceptable method of payment, of immediately available federal funds to the account set forth in Appendix C to this Developer Agreement or to such other account located in the United States as such Party may specify by Notice to the other Parties. Notwithstanding the foregoing, all payments shall be deemed paid and received only when actually received by the other Party and, in the event of payment by check, other than a cashier's check or certified check, shall not be considered to have been actually received in the event of the failure of such check to clear the receiving Party's account.

Section 12. Counterparts. This Developer Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same Developer Agreement. All Signatures need not be on the same counterpart.

Section 13. Governing Law. THIS DEVELOPER AGREEMENT, AND THE ACTIONS OF THE PARTIES HEREUNDER, SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (EXCLUDING PRINCIPLES OF CONFLICT OF LAWS).

Section 14. Court Proceedings. Any Action or Proceeding against any Party arising out of or relating to this Developer Agreement, any transaction contemplated thereby or any Judgment entered by any court in respect of any thereof may be brought in any Federal or state court located in the City of Dallas, Texas. Each Party irrevocably agrees not to assert any objection that it may ever have to the laying of venue of any such Action or Proceeding in any Federal or state court located in the City of Dallas, Texas. Each Party agrees not to bring any Action or Proceeding against the other Party arising out of or relating to this Developer Agreement or any transaction contemplated thereby except in a Federal or state court located in the City of Dallas, Texas.

Section 15. Limitation to Capacity. The Parties acknowledge that all references to the “Owner” herein (which, for the purposes of this provision, shall be deemed to include any references in this Developer Agreement to the Owner as the owner of the Hotel Project Improvements) shall refer only to Owner in its capacity under this Developer Agreement. The term “City” and the duties and rights assigned to it under this Developer Agreement exclude any action, omission or duty of the City when performing its Governmental Functions. Any action, omission or circumstance arising out of the performance of the City of its Governmental Functions may prevent the Owner from performing its obligations under this Developer Agreement and shall not cause or constitute a default by the Owner under this Developer Agreement or give rise to any rights or Claims against the Owner in its capacity hereunder, it being acknowledged that Developer’s remedies for any injury, damage or other Claim resulting from any such action, omission or circumstances arising out of the Governmental Functions of the City shall be governed by the laws and regulations concerning Claims against the City as a charter city and a Governmental Authority. In addition, no setoff, reduction, withholding, deduction or recoupment shall be made in or against any payment due by Developer to the Owner under this Developer Agreement as a result of any action or omission of the City when performing its Governmental Function.

Section 16. Capacity of Persons Acting on Behalf of the Owner. Notwithstanding anything to the contrary in this Developer Agreement, all references in this Developer Agreement to employees, agents, representatives, contractors and the like of the Owner shall refer only to Persons acting in the Owner’s capacity as the “Owner” hereunder and thus all such references specifically exclude any employees, agents, representatives, contractors and the like acting in connection with the performance of the Governmental Functions of the City. Without limiting the foregoing, all police, fire, permitting, regulatory, utility, health and safety and sanitation employees of the City shall be deemed to be acting in connection with the performance of the Governmental Functions of the City.

Section 17. No Limitation on City’s Governmental Functions. The Parties acknowledge that the City is a municipal corporation operating pursuant to its Charter, in addition to being the controlling entity of the Owner, and that no representation, warranty, Consent, Approval or agreement in this Developer Agreement by the Owner shall be binding upon, constitute a waiver by or estop the City from exercising any of its rights, powers or duties in connection with its Governmental Functions nor will any portion of this Developer Agreement be deemed to waive any immunities granted to the City when performing its Governmental Functions, which are provided under Legal Requirements, including Section 101.0215(a) of the Texas Civil Practice and Remedies Code, as may be amended or replaced. For example, Approval by the “Owner” of the Hotel Project Improvements Plans shall not constitute satisfaction of any requirements of, or the need to obtain any approval by, Dallas Water Utilities, the City’s Fire Department, Building Inspections Department, Public Works Department, Planning Department and Economic Development Department acting in connection with the performance of the Governmental Functions of the City. Further, any Consent to jurisdiction by the Owner is only with respect to matters arising in its capacity as a Party to this Developer Agreement and expressly does not

constitute a waiver of the City's legal immunity or a Consent to jurisdiction for any actions, omissions or circumstances, in each case solely arising out of the performance of the Governmental Functions of the City.

Section 18. Nonliability of City Officials. No member of any legislative, executive, or administrative body of, or affiliated with, the City or its Related Parties, and no official, agent, employee or representative of the Owner or the City or such body or any of their Related Parties (whether acting in the performance of a Governmental Function of the City or otherwise) shall be personally liable to Developer or any Person holding by, through or under Developer, for any actions taken in his or her capacity as an official, agent, employee or representative of such Person in the event of any default or breach by the Owner hereunder, or for any amount which may become due to Developer or any Person holding by, through or under Developer, or for any other obligation, under or by reason of this Developer Agreement.

Section 19. Payment on Business Days. If any payment under this Developer 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.

Section 20. Time. Times set forth in this Developer Agreement for the performance of obligations shall be strictly construed, time being of the essence of this Developer Agreement. All provisions in such instrument which specify or provide a method to compute a number of days for the performance, delivery, completion or observance by a Party hereto of any action, covenant, agreement, obligation, Consent or Notice hereunder shall mean and refer to calendar days, unless otherwise expressly provided. However, in the event the date specified or computed under such instrument for the performance, delivery, completion or observance of a covenant, agreement, obligation, Consent or Notice by either Party, or for the occurrence of any event provided for herein, shall be a day other than a Business Day, then the date for such performance, delivery, completion, observance or occurrence shall automatically be extended to the next calendar day that is a Business Day. All references in this Developer Agreement to times or hours of the day shall refer to Central Standard Time or Central Daylight Savings Time, as applicable.

Section 21. Interpretation and Reliance. No presumption will apply in favor of any Party in the interpretation of this Developer Agreement or in the resolution of any ambiguity of any provision thereof.

Section 22. Right to Audit. The City and the Owner shall each have the right to audit, upon reasonable notice, all expenditures and financial records related to the Hotel Project. Upon written request by the City or the Owner, the Developer shall give the City or the Owner access to all records controlled by, or in the possession of the Developer or any of its Affiliates relating to the Hotel Project or the Developer Agreement, to permit the City and the Owner to review such records in connection with conducting a reasonable audit. The Developer shall retain and maintain all such records for at least three (3) years from the date of completion of the Hotel Project.

Section 23. Joint and Several Liability. As of the Effective Date, the Developer is one Person. If Developer at any time comprises more than one Person (and at all times a corporation, a limited partnership and a limited liability company shall each be deemed to be only one Person, though the equity interests in such entities may be owned by one or more Persons), all such Persons shall be jointly and severally liable for payment of all sums and for the performance of every obligation of Developer under this Developer Agreement.

Section 24. Relationship of the Parties; No Partnership. The relationship of the Owner and Developer under this Developer Agreement is that of independent parties, and notwithstanding anything in this Developer Agreement to the contrary, no aspect of this Developer Agreement shall create or evidence, nor is it intended to create or evidence, a partnership, joint venture or other business relationship or enterprise between the Owner and Developer. As such, the Owner shall have no direct supervision of or obligation to the employees of Developer and any communication of employee matters shall be through the Developer Representative.

Section 25. Ethics Code; Conflicts; Notices. Developer agrees to comply with the Ethics Code, state law regarding conflicts and gifts and the provisions of Attachment B-25 to this Appendix B, attached hereto and made a part of this Developer Agreement, concerning conflicts of interest, gifts to public servants and notices of contract claims.

ATTACHMENT B-25

Conflict Of Interest, Gift to Public Servant and Notice o Contract Claim

The following provisions shall be a part of this Developer Agreement:

1. CONFLICT OF INTEREST OF CITY EMPLOYEES

The following section of the Charter of the City of Dallas shall be one of the conditions, and a part of, the consideration of this Developer Agreement, to wit :

“CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED

(a) No officer or employee of the City shall have any financial interest, direct or indirect, in any contract with the City or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the City guilty thereof shall thereby forfeit the officer’s or employee’s office or position with the City. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City Manager or the City Council.

(b) The alleged violations of this section shall be matters to be determined either by the Trial Board in the case of employees of the City who have the right to appeal to the Trial Board, and by the City Council in the case of other employees of the City.

(c) The prohibitions of this section shall not apply to the participation by City employees in federally-funded housing programs, to the extent permitted by applicable federal or state law.”

2. GIFT TO PUBLIC SERVANT

Developer shall not, and shall use commercially reasonable efforts to cause its contractors and agents to not, offer, or agree to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.

For purposes of this section, “benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

Notwithstanding any other legal remedies, the City may require Developer to remove any employee or contractor of Developer from performance responsibilities under this Developer Agreement who has violated the restrictions of this section or any similar state or federal law.

3. NOTICE OF CONTRACT CLAIM

This Developer Agreement is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against the City. Section 2-86 of the Dallas City Code, is expressly incorporated by reference and made a part of this Developer Agreement as if written word for word in this Developer Agreement. Notwithstanding, and in addition to, all other requirements in this Developer Agreement related to notices, claims and notice of claims, Developer shall fully comply with the requirements of Section 2-86, including filing a notice of claim with the City Manager in writing, in the form prescribed in Section 2-86, as a condition precedent and a jurisdictional prerequisite to the filing of a lawsuit to recover damages for any alleged City breach of this Developer Agreement.

**APPENDIX C
TO
DEVELOPER AGREEMENT**

Addresses for Payments and Notices/Description of Accounts

A. OWNER:

(1) Owner's Account. All payments to the Owner shall be made by wire transfer of immediately available federal funds to the following account (the "Owner's Account"):

_____ Bank
Dallas, Texas
Account of: DALLAS CONVENTION CENTER HOTEL DEVELOPMENT
CORPORATION
Account Number: _____ ABA Number: _____
Attention: _____

with sufficient information to identify the source and application of such funds and with written confirmation as provided herein.

(2) Confirmations: All written confirmations of such wire transfer shall be sent to:

City of Dallas
Department of Finance
Attention: _____
Facsimile Number: _____

(3) Notices:

All Notices to the Owner shall be sent to:

City Manager's Office
City of Dallas
City Hall, 4CN
1500 Marilla
Dallas, Texas 75201
Attention: AC Gonzalez
Facsimile Number: _____

with copies of all Notices to the Owner being sent to:

Dallas City Attorney
Dallas City Hall, 7DN

1500 Marilla
Dallas, Texas 75201
Attention: _____
Facsimile Number: _____

B. DEVELOPER:

(1) Developer's Account. All payments to Developer shall be made by wire transfer of immediately available federal funds to an account (the "Developer's Account") to be designated by Developer in a Notice to the Owner with sufficient information to identify the source and application of such funds and with written confirmation as provided herein.

(2) Confirmations. All written confirmations of such wire transfer shall be sent to an address to be designated by Developer in Notice to the Owner.

(3) Notices. All Notices to Developer shall be sent to:

1660 South Stemmons Fwy
Suite 100
Lewisville, Texas 75067
Attention: Kristian Teleki
Facsimile Number: (_____)

with copies to:

and

**APPENDIX D
TO
DEVELOPER AGREEMENT**

Immunity, Indemnity, Audit and Ownership Provisions

The Construction Documents will contain an acknowledgment by the parties thereto that, in addition to controlling the Owner, the City exercises Governmental Functions which affect the Project and that the Construction Documents shall not in any way affect the exercise of such Governmental Functions. In addition, the City shall not be required to waive, and the Construction Documents shall expressly state that the City is not waiving, any immunity under the Construction Documents.

The Construction Documents will contain an indemnification, defend, and hold harmless provision pursuant to which the parties thereto (the "Indemnitors") agree to defend, indemnify and hold the City and the Owner (the "Indemnitees", which term includes their officers, agents, and employees) harmless against any and all claims, liabilities, damages, lawsuits, judgments, costs and expenses (including reasonable attorneys' fees) for injuries (including death), property damage, or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by the Indemnitors' breach of, or failure to perform, their obligations under the Construction Documents (including any insurance obligation), or by any other negligent or strictly liable act or omission of the Indemnitors, their officers, agents, employees or separate contractors or sub-contractors, in the performance of the Construction Documents; except that the indemnity and obligation to defend provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the Indemnitees or their separate contractors (other than Developer), and in the event of joint and concurring negligence of the Indemnitors and the Indemnitees, responsibility and liability, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the Indemnitees under Texas law and without waiving any defenses of the Indemnitors or the Indemnitees under Texas law. The provisions of this paragraph are solely for the benefit of the Indemnitors or the Indemnitees, and not intended to create or grant any rights, contractual or otherwise, to any other person or entity, and shall survive termination or expiration of the Construction Documents.

The Construction Documents shall contain provisions providing that the Owner and the Developer shall each have the right to audit, upon reasonable notice, all expenditures and financial records related to the Hotel Project and access to all records controlled by, or in the direct or indirect possession of the party thereto relating to the Hotel Project or the particular Agreement, to permit the Owner and the Developer to review such records in connection with conducting a reasonable audit of such accounts and requiring the party thereto to retain and maintain all such records for at least three (3) years from the date of completion of the Hotel Project.

The Construction Documents shall contain provisions providing that all designs, documents, deliverables, and work product developed, including, but not limited to, tracings, drawings, estimates, plans, specifications, investigations, studies and other documents, completed or partially completed, shall be the property of the City and the Owner, to be used as City and the Owner desire, without restriction on future use (other than the City's standard allowable restrictions) upon full payment therefor; and in consideration of the full payment of the compensation for services to be paid under each Construction Document, the other party thereto conveys, transfers and assigns jointly to the City and the Owner all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights and all other intellectual property rights acknowledged by law in the Project designs, documents, deliverables and work product developed under such Construction Document. Copies may be retained by Developer or such other party; provided, however, that in no event shall Developer, such other party or their design consultants use, or permit to be used, any portion or all of such documents on other projects without City's or the Owner's prior written authorization.

EXHIBIT E
LOCAL SBE JOINT VENTURES AND
BUSINESS INCLUSION & DEVELOPMENT PLAN

Background:

Matthews Southwest (MSW) recognizes the tremendous opportunity that the Dallas Convention Center Headquarters Hotel (DCCCH) provides for the local M/WBE and SBE marketplace. We are committed to working with the City of Dallas to make this project the key to moving local M/WBEs to the next level and creating a model for future public projects.

MSW is forming a great team, with major diversity participation at the top levels of the project, and is developing a comprehensive M/WBE & SBE Participation Plan to maximize opportunities for M/WBEs and SBEs at every phase and level of the project.

For the construction of the project, a joint venture including Balfour Beatty Construction, Pegasus Texas, and H.J. Russell Company (Balfour/Russell/Pegasus) has been formed to manage the construction of the project. This partnership is a strong statement of our commitment: two M/WBE firms working with a major contractor will assure meaningful participation and increased capacity. It is important to note that this one joint venture exceeds the requirements of the original RFP.

Both MSW and Balfour Beatty will designate senior leadership to actively participate in the M/WBE and SBE efforts.

Additionally, MSW is committed to creating mentoring arrangements in the development of the Dallas Convention Center Hotel to increase capacity of local M/WBE and SBE firms. For example, BOKA Powell, the Architect of Record, is collaborating with 5G Studio Collaborative (M/WBE), the Design Architect, for the design and architecture services for the Hotel.

MSW acknowledges that the City has goals for participation by Minority and Women-owned Business Enterprises (M/WBE) as established on May 14, 1997, by the City Council in Council Resolution #97-1605. These goals were adopted without consideration for ethnicity or gender:

1. Construction: 25.00%
2. Architectural & Engineering: 25.66%
3. Other Professional: 36.30%
4. Other Services: 23.80%
5. Goods: 18.00%

For purposes of establishing goals the following areas are excluded: bonding costs, utilities costs, building permits, and insurance costs. **The overall goal for the project is 30% M/WBE participation for Prime and 1st Tier Subcontractors.**

Certified M/WBE firms that are in the 8 county area identified by the DFW Airport Availability Study shall be considered "Local" in achieving goals.

Overall our goals the M/WBE program includes:

- Integration of local M/WBE participation throughout all phases of the project.
- Meaningful M/WBE and SBE joint ventures and partnerships.
- Exceed the City's goals for M/WBE and SBE participation.
- Develop and increase opportunities for M/WBE and SBE 2nd and 3rd tier subcontractors.
- Work with the City to implement strategies to grow the capacity of local M/WBE firms.

Reporting:

MSW agrees to submit quarterly SBE and M/WBE utilization reports to City as well as attend meetings to discuss the contents of these reports with City staff at dates, times and places mutually agreeable. MSW will provide information as requested and be available for presentation of utilization reports to the appropriate City Council Committee.

Specifically we will:

- Provide a monitoring system to track and report M/WBE and SBE participation.
- Create and submit regular quarterly detailed M/WBE and SBE utilization reports.
- Participate in quarterly meetings and presentation to City staff to report M/WBE and SBE utilization and our assessed plan for additional utilization.
- Regular meetings with M/WBE firms individually to verify contract work, payment and to mitigate possible issues.
- Project site-visits to confirm M/WBE contractors are performing contracted work.
- Require M/WBE reports from all 1st tier consultants and contractors.
- Assess and outline specific categories of services and work anticipated for M/WBE firms.
- Develop bid packages tailored to the capacity of M/WBE firms to maximize utilization.
- Provide bid package plans to ethnic chambers of commerce and contractor associations.
- Advertise project and contract opportunities in M/WBE related news publications.
- Email, fax and telephone notifications of contract opportunities to targets M/WBE firms.
- Establish 2nd Tier Subcontractor Plan to encourage Prime consultants and contractors to utilize M/WBE firms for 2nd and 3rd tier opportunities.

Capacity Building:

As MSW builds their team, we are committed to assisting our SBEs and M/WBEs in securing bonding and insurance. We will work closely with the City and our partners as appropriate to pursue providing senior venturers' extension of bonding and insurance coverage to the SBEs and M/WBEs. MSW will work with the City to implement initiatives to ensure prompt payment and verify payments to M/WBE firms; develop initiatives to alleviate bonding and insurance barriers through such tools as an CCIP program, sub-guard program, extension of bonding and insurance coverage, breaking contracts into bondable sizes, and working with surety companies.



MSW recognizes that sub-contractors required prompt payment to assure their viability. We are committed to mitigating these concerns and to prompt payment of subcontractors. MSW will coordinate with the Balfour/Russell/Pegasus joint venture to establish a “quick pay program” to pay M/WBE firms involved in the project. This program will be modeled on a similar structure used by Dallas/Fort Worth Airport.

The M/WBE and SBE program will create opportunities for many local M/WBE and SBE firms in an array of trades and services. This program will also consist of strategies and resource to grow the capacity of M/WBE firms and build relationships and reputations for future contracts between M/WBE firms and Prime consultants and contractors.

The MSW team is working with Prime bidders to match them with M/WBEs for teaming opportunities and subcontractor/supplier opportunities. We have also created and provided many details subcontractor/supplier trade specific M/WBE lists to Prime bidders for RFQ submissions on the hotel project.

To assist in growing the capacity of M/WBE firms in the Dallas community, the MSW team will develop a mentor protégé program for the hotel project. This program will bring in a few selected M/WBE firms to be mentored by the team and expose these protégé firms to resources, experiences and support to grow the capacity of their businesses. The team is already in the process of interviewing firms for the mentor protégé program and intends to start this program in March 2009.

The major components of the M/WBE program consist of the following initiatives:

- Develop mentor protégé relationships for SBE and MBE firms.
- Create MBE Capacity Building Education Seminar Series, including: expert speakers to present training in cash flow management, contract negotiations, estimating and bidding, project management, accounting methods, business management and tax issues.

- Develop initiatives to alleviate bonding and insurance barriers through such tools as a CCIP program, sub-guard program, extension of bonding and insurance coverage, breaking contracts into bondable sizes, and working with surety companies.
- Provide M/WBE certification, resources and support assistance.
- Collaborate with the ethnic chambers of commerce, contractor association and business related organizations and assistance centers to grow M/WBE capacity.
- M/WBE participation recognition program to advertise the success of M/WBE firms and market their capacity and capabilities.

Outreach:

Upon execution of the Developer Agreement, MSW will conduct the following outreach initiatives to engage M/WBE participation:

- Development of website with project information,
- Contract opportunities and requirements;
- Public meetings and presentations to provide information on the project,
- Project schedule,
- Upcoming contract opportunities,
- Bid process and contract requirements;
- Newsletters, and
- Marketing collateral regarding M/WBE opportunities.



Upon execution of the Developer Agreement, MSW will finalize a construction M/WBE plan outlining specific scopes for utilizing M/WBE firms in construction trades and advertise project/contract opportunities in M/WBE related news publications.

Further, MSW will contract with the Design Builder who will contract with Prime and 1st Tier Subcontractors.

While not credited to achievement of the participation goals, MSW will also establish a 2nd Tier Subcontractor Plan to create additional opportunities to utilize M/WBE firms for 2nd and 3rd tier subcontracting and supplier work.



Outreach is the initial key to building relationships and interest in the project with the M/WBE community. We will work closely with the City's ResourceLINK Team and the ethnic chambers of commerce and contractor association to outreach to M/WBE firms and get them engage in the project.

Our outreach efforts will include:

- **Website** - to provide 24/7 public access to project information, contract opportunities and requirements, information on project networking events and capacity building resources and Prime contractor contact information.
- **Project Information Meetings** – meetings to provide information on the project, project schedule, upcoming contract opportunities, bid process and contract requirements.
- **M/WBE Networkers** – to build relationships between MSW and major consultants and contractors for contract opportunities.
- **Project Presentations** – project presentations to ethnic chambers of commerce, contractor associations and business organizations to market project opportunities.
- **Tradeshows** – participation in major M/WBE related tradeshow and conferences.
- **Newsletter** – project newsletter to market project information, contract opportunities and M/WBE success stories.
- **Marketing Collateral** – create marketing collateral to distribute for outreach effort to M/WBE firms.

Accomplishments to Date:

The MSW team initially partnered with over 15 M/WBE firms to demonstrate our strong commitment for inclusion of minority and women business enterprises (M/WBEs) on the hotel project. Our team includes an M/WBE firm as the design architect and a 30% M/WBE joint venture to direct the design build services for the project. We are finalizing the development of our M/WBE program to be implemented upon execution of the Developer Agreement.

In the meantime, we are conducting M/WBE community outreach and efforts to increase M/WBE participation on the project. MSW has hosted or participated in a range of events to network, provide project information and increase opportunities for the local M/WBE community. To insure M/WBE firms were aware and invite to the following events, we send email invitation fliers to the chambers of commerce, individual M/WBE firms and made personal calls to individual M/WBE firms.



To date, the Guaranteed Maximum Price process has been scrupulous in reaching out to M/WBE contractors and suppliers to assure full compliance with our goals. The entire process is “open book” and we are documenting each RFP, the distribution of RFPs and responses. We will continue to assure a fair and open process that will be a model for future public projects.

Events to date include:

- **Dallas Convention Center Hotel Project Open House**, October 12, 2008
- **Dallas Convention Center Hotel Project Information Meeting and M/WBE Networker**, November 6, 2008
- **Project and team presentation at the organization luncheon of the African Chamber of Commerce DFW**, November 12, 2008
- **“Current Special Projects” Workshop Presentation for City of Dallas Business Development & Procurement**, Thursday, February 5, 2009
- **Community Career Day Sponsorship and Participation**, on February 5, 2009

M/WBE **outreach activities** the Mathews Southwest team has participated in to outreach and provide project information to the M/WBE community.

- **Dallas/Fort Worth Minority Business Council’s Construction Quarterly Networker**, October 21, 2008
- **National Minority Supplier Diversity Convention**, October 26-30, 2008
- **Women’s Business Council – Southwest’s “Power to Potential” Business Conference**, November 13, 2009
- **Greater Dallas Hispanic Chamber of Commerce Cima Latina Awards Luncheon**, November 14, 2008
- **Hispanic Contractors Association’s DFW Top Entrepreneurs “Best of the Best” 4th Annual Reception**, November 19, 2008
- **Dallas/Fort Worth Minority Business Council’s E Awards Gala**, November 21, 2008
- **Black Contractors Association Annual Awards Banquet**, January 16, 2009
- **Annual Parade of Stars Awards Gala, Women’s Business Council – SW**, January 20, 2009
- **American Indian Chamber of Commerce of Texas Annual Installation of Officers Luncheon**, January 29, 2009
- **Dallas/Fort Worth Minority Business Council’s Board of Directors Installation**, February 3, 2009
- **Dallas Black Chamber of Commerce Annual “Quest for Success” Awards Luncheon**, February 6, 2009
- **Tri-Ethnic Chambers Procurement Roundtable with the City of Dallas**, February 12, 2009

The MSW team is hosting and co-sponsoring the **Dallas Fort Worth Minority Business Council Hard Hat Trade Fair** event on **March 10, 2009** at Gilley’s. The Hard Hat Trade Fair is the largest construction M/WBE community event in the North Texas Region.

MSW has met with many M/WBE firms to discuss their company’s services and capacity. We are keeping a list of all interested M/WBE firms to contact for future opportunities and to communicate project information. We have met with many M/WBE firms to assist with the process of becoming M/WBE certified.



EXHIBIT E – Page 6

MSW has created and provided many details subcontractor/supplier trade specific M/WBE lists to Prime bidders for RFQ submissions on the hotel project.

We have sent email notices to the following organizations to advertise the project, RFQs and available subcontracting opportunities to the local M/WBE community.

American Indian Chamber of Commerce of Texas
Black Contractors Association
Dallas Black Chamber of Commerce
Dallas/Fort Worth Minority Business Council
Greater Dallas Asian American Chamber of Commerce
Greater Dallas Hispanic Chamber of Commerce
Hispanic Contractors Association Dallas/Fort Worth
National Association of Women in Construction
Oak Cliff Chamber of Commerce
Women's Business Council – Southwest



We will also be seeking other organizations and groups to include in our outreach activities to assure that we are reaching the broadest range possible of interested participants.

Summary

The MSW team is strongly committed to maximizing opportunities for minority and women business enterprises and helping the City of Dallas grow the capacity of local M/WBE firms.

MATTHEWS SOUTHWEST

DALLAS CONVENTION CENTER HOTEL

Join Matthews Southwest for an Open House to learn about the Dallas Convention Center Hotel project and upcoming opportunities

Thursday, October 23, 2008
4:00 p.m. – 6:00 p.m.
South Side on Lamar
1401 S. Lamar
Dallas, TX 75215

Please RSVP at info@kstrategies.com or 214-599-9766

Mark your calendar for Thursday, November 6 to attend the first Project Information Meeting and M/WBE Networker for the Hotel project. Additional information will follow.

MATTHEWS SOUTHWEST

DALLAS CONVENTION CENTER HOTEL

Project Information Meeting and M/WBE Networker

Meet project representatives and learn about current contract opportunities

Thursday, November 6, 2008
4:00 p.m. – 6:00 p.m.
South Side on Lamar
1401 S. Lamar
Dallas, TX 75215

Please RSVP at info@kstrategies.com

Prime construction bid opportunities have been issued and bids are due November 12, 2008.

For a complete list of bid packages or additional information on bid packages, please call Balfour/Russell/Pegasus at 214-451-1212 or K Strategies at 214-599-9766

EXHIBIT E – Page 8

MSW sponsored open houses and networking events for the DCCH project.



MSW co-sponsored and participated in the Community Career Day on February 5, 2009

EXHIBIT E – Page 9

**SCHEDULE 7.1.2
TO
DEVELOPER AGREEMENT**

Hotel Project Building Program/Specifications

Guestrooms: approximately 1,000

Meeting Space, Ballroom, Prefunction Space: approximately 149,440 square feet

Food & Beverage: approximately 21,365 square feet

Retail/Amenities: approximately 25,525 square feet

Support/Back of House: approximately 142,735 square feet

Garage: 720 spaces, approximately 220,000 square feet

Total Building Square Footage: approximately 1,137,805 square feet

All in accordance with Operator's Brand Standards to Operator's satisfaction

**SCHEDULE 7.1.3a
TO
DEVELOPER AGREEMENT**

Hotel Project Improvements Budget

**Dallas Convention Center Hotel
Construction Cost Projections**

Pre-Construction

1	Design Fees, including reimbursables	\$25,832,773
2	Permits/Fees	\$484,731
3	PreConstruction Services	\$1,003,083
Sub-Total		\$27,320,587

Construction

4	Demolition	\$719,270
5	Soil Abatement	\$1,000,965
6	Oncor Duct Bank Relocation	\$1,800,000
7	Site Development	\$5,955,989
8	Substructure	\$581,744
9	Structure	\$36,480,698
10	Exterior Envelope	\$25,845,875
11	Interiors Partitions and Doors	\$13,544,175
12	Vertical Movement	\$9,801,562
13	Interiors	\$20,827,542
14	Mechanical	\$46,185,566
15	Electrical	\$34,187,379
16	Equipment	\$6,475,551
17	Project Support Costs	\$6,992,054
18	FF & E	\$27,277,417
19	OS&E	\$8,437,526
Sub-Total		\$246,113,313

20	General Conditions/Design Builder Fees	\$30,602,959
21	CCIP	\$8,753,000
22	Builders Risk Insurance	\$754,569
23	Subguard	\$3,076,416
24	Performance Bond	\$5,030,460
25	Contingency	\$13,712,682
Sub-Total		\$61,930,086

Total Estimated Design Build Costs		\$335,363,986
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Development

26	Legal and Accounting	\$1,987,500
27	Developer's Fee	\$8,703,668
Sub-Total		\$10,691,168

Total Estimated Development Costs		\$346,055,154
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**SCHEDULE 7.1.3b
TO
DEVELOPER AGREEMENT**

Drawdown Schedule

0	\$ 12,966,993.00	Financial Close - Pre-Dev. Catch-up
1	\$ 7,127,926.00	
2	\$ 7,232,595.00	
3	\$ 4,172,601.00	
4	\$ 5,416,327.00	
5	\$ 4,970,651.00	
6	\$ 5,596,641.00	
7	\$ 8,278,916.00	
8	\$ 9,544,300.00	
9	\$ 8,854,040.00	
10	\$ 11,694,178.00	
11	\$ 12,958,743.00	
12	\$ 11,837,328.00	
13	\$ 14,752,881.00	
14	\$ 19,642,660.00	
15	\$ 18,670,805.00	
16	\$ 15,023,192.00	
17	\$ 20,060,524.00	
18	\$ 19,633,120.00	
19	\$ 25,581,548.00	
20	\$ 15,730,448.00	
21	\$ 17,485,998.00	
22	\$ 19,577,260.00	
23	\$ 12,331,620.00	
24	\$ 12,596,219.00	
25	\$ 9,812,954.00	
26	\$ 6,190,134.00	
27	\$ 4,363,471.00	
28	\$ 3,951,081.00	

\$ 346,055,154.00

**SCHEDULE 7.1.4
TO
DEVELOPER AGREEMENT**

Terms of Ancillary Development Agreement

Ancillary development fee up to \$5 million, payable, subject to funding, out of the revenues or proceeds generated incident to such ancillary development, in a manner and schedule to be structured by the City and or the Owner and reasonably acceptable to the Developer, and, subject to the \$5 million maximum, will be the greater of (i) 5% of revenues or proceeds received by the City or the Owner from the ancillary development over the City's cost for the land, or (ii) 3.5% of construction costs of the ancillary development.

The development plan will be developed in coordination with the City.

**SCHEDULE 7.6
TO
DEVELOPER AGREEMENT**

Existing Lines

Relocated Lines:

Oncor Duct Bank. This line traverses the site, north to south and is located within the abandoned Austin Street right-of-way. This line will be relocated to the west, parallel to Jefferson Avenue, approximately 10' within the property boundary.

An existing curb inlet (storm) in Lamar Street to accommodate a driveway opening.

New Lines:

Add a new 12" public water line that will connect two existing water systems together to form a looped system around the site. This line will commence at the intersection of the south property line of the site and the abandoned Austin Street right-of-way. This line will travel west and connect to an existing 16" water line located along the south property line at Jefferson Avenue.

Add a new 12" wastewater line that will provide service to the new hotel. This line will travel from the south to the north, parallel to Jefferson Avenue, approximately 20' east of the western property line.

Abandon Lines:

Abandon an existing 8" water line that traverses the site, north to south and is located within the abandoned Austin Street right-of-way. This line will be killed at the north and south property lines of the site.

Abandon an existing 8" wastewater line traverses the site, north to south and is located within the abandoned Austin Street right-of-way. This line will be plugged to the south and removed or abandoned in place within the site.

Abandon existing storm sewer and storm sewer inlets within the property boundary and within the abandoned Austin Street right-of-way. We intend to use the existing connection points into the existing 84" storm sewer to the south of the property.

**SCHEDULE 7.10
TO
DEVELOPER AGREEMENT**

Developer Services

- A. Developer shall formulate a strategic plan for the development of the Hotel and Project, for consideration by and Approval of the Owner and, following such approval, implement such plans (in accordance with the approved budget and schedule and with the input of the Owner);
- B. Developer shall provide the overall strategic guidance and direction with respect to the design, development and construction of the Project and shall supervise the day-to-day management, administration and accounting of all aspects relating to the Project, including all construction and operating activities related to the development, in a manner which will maximize the value and potential profit of, and to be realized from, the Project while minimizing the risks associated therewith and at all times complying with the decisions of the Owner; Owner and Developer acknowledge potential conflict between the Hotel Project Improvements Construction Contract and the Owner's desire to maximize value and potential profit of Hotel;
- C. Developer will act for the benefit of the Owner and the City as exclusive developer in respect of the Site, the Hotel and the Project and perform the following services for the Owner:
1. Co-ordinate applications for zoning permissions, site plans, elevations, and landscaping plans, including, without limitation, obtaining approvals for the foregoing;
 2. Identify infrastructure needs for the Site, Hotel and the Project and negotiate the provision thereof;
 3. Develop the design program in concert with the Owner and the Operator, and subject to the approval of the Owner in accordance with the Hotel Project Improvements Specifications and mutually agreed upon performance specifications for the Hotel, consisting of:
 - a. space and planning requirements;
 - b. food and beverage program;
 - c. guest room mix; and
 - d. building and architectural design;
 4. Develop overall project schedules, including any amendments to the Hotel Project Improvements Budget and development schedule, in each case subject to the approval of the Owner;
 5. Prepare an overall development and construction strategy, including logistics and contracting means and methods;
 6. Formulate cost control, accounting, audit and reporting systems;

SCHEDULE 7.6 TO DEVELOPER AGREEMENT

7. Update and keep current cost estimates as and when directed by the Owner;
8. Select, in consultation with (and the Approval of) the Owner, additional consultants not already selected or proposed for the Hotel team which may include architects, engineers, interior designers, food facilities planners, parking, transportation and other consultants and the delineation of their respective design responsibilities;
9. Oversee and manage engineering working/shop/as-built drawings and documentation relating to the Project;
10. Supervise and direct the design development process and the preparation of the plans and specifications for the Project, including setting functional requirements for the organization of the principal public and service areas and the relationship of the Hotel to the other components of the Project and the Convention Center;
11. Advise and assist the Owner in the selection of a Hotel operator and negotiation of definitive agreements with the Operator, including entering into agreements with the Operator as appropriate;
12. Negotiate and coordinate arrangements with appropriate utility authorities and other persons to ensure supply and continuity and availability of services to the Hotel property, including sewers, water mains, roadways and electrical, gas, telephone and any other utilities required for the Hotel;
13. Negotiate, prepare and execute forms of contracts to be executed by consultants, contractors, suppliers and service providers for the Hotel with insurance and indemnification terms generally consistent with the Developer Agreement (subject to Owner Approval of forms of contracts);
14. Retain all consultants, contractors and suppliers providing services in relation to the Hotel in accordance with the Hotel Project Improvements Budget in accordance with the Hotel Project Improvements Specifications;
15. Direct the architectural/engineering consultants in consultation with the Owner on defining the operational requirements for the Hotel with respect to HVAC systems, plumbing, sewage and water treatment, electrical power supply and distribution, including lighting, alarm, television, etc., systems, telephone, public address, and internal communications systems, and other special hotel systems;
16. Direct the interior designer and food facilities consultant on the technical and functional requirements of the Hotel's program in consultation with the Owner and the Operator;
17. Review the conceptual plans of the architect to determine whether they conform to the requirements of the program and to assess the appropriateness of the design in the context of the Project and its goals and the Hotel Project Improvements Budget;

18. Review the conceptual design of the consulting engineer, interior designer, kitchen consultant, and others with respect to the suitability of the plans for the Project's program within the Hotel Project Improvements Budget;

19. Review the outline specifications for interior and exterior materials for their aesthetic and operational requirements within the Hotel Project Improvements Budget;

20. Supervise and coordinate the preparation of contractual documentation for the construction of the Hotel (it is acknowledged that the Owner requires that the Hotel Project Improvements Construction Contract to be a "guaranteed maximum price" type contract, which may include value engineering provisions) and issue a notice to proceed to the general contractor or design builder engaged by Developer when Developer deems it prudent to do so, and thereafter supervise the performance by the general contractor or design build contractor;

21. Coordinate and supervise activities of all consultants, contractors and suppliers providing services in relation to the Hotel and, without limiting the foregoing, take appropriate steps to ensure that all applicable laws are complied with, including Environmental Laws, in connection therewith, and coordinate the technical advisory services and pre-opening activities provided by the Operator under the Pre-opening and Technical Services Agreement with those of other members of the design team;

22. Arrange and attend regular progress meetings among the appropriate consultants, contractors and suppliers and representatives of the Owner and develop reporting programs to keep the Owner properly informed of the status and needs of the Hotel;

23. Report to the Owner from time to time, but not less frequently than monthly, in writing (on or about the last Business Day of each month) as to the progress of design, construction, compliance with the "Plans and Specifications" and "FF&E Specifications," as developed; and the Hotel Project Improvements Budget and schedule, and other major aspects of the design, construction and development of the Hotel including, without limitation, quality control testing reports;

24. Report to the Owner from time to time, but not less frequently than monthly, in writing (on or about the last Business Day of each month) as to the progress of design, construction, compliance with the Hotel Project Improvements Budget, including, without limitation, (1) a cash disbursement record, (2) a cash receipts record, (3) a trial balance of all accounts, and (4) a summary of development expenses paid to date and a comparison of same versus the Hotel Project Improvements Budget;

25. Provide full-time, on-site construction administration and supervise and coordinate the overall process of construction of the Hotel; in that regard monitor, observe and inspect, or cause to be monitored, observed or inspected, the construction of the Hotel to prevent delays, resolve disputes and otherwise cause the timely completion of the Hotel in conformity with the Plans and Specifications, FF&E Specifications, the Hotel Project Improvements Budget, applicable governmental (federal, state or local) permits and approvals, laws, rules, regulations or ordinances and the Hotel Schedule pertaining thereto (all as the same may be

revised in accordance with the provisions of the Developer Agreement), timely notify the Owner of the occurrence of any material delays or disputes and take actions deemed by Developer to be appropriate to protect the interests and position of the Hotel in the event of any disputes or claims arising from or relating to the Hotel, without involvement by the Owner;

26. Supervise and manage all other Project matters required in connection with the Hotel;

27. Recommend appropriate insurance coverage against liability and property damage and other commercially reasonable insurance coverage in amounts, deductibles and exclusions that are commercially reasonable with respect to the Project lands and the Project to the Owner, including seeking insurance coverage of Force Majeure events, and secure and maintain such insurance program as may be approved by the Owner, acting reasonably;

28. Verify, approve or disapprove (based on conformity with the applicable Hotel Project Improvements Construction Contract), and, when approved, process all legitimate and verified requests for payment made by the general contractors and/or other direct contractor, payments to design team members and other design professionals, and payments of insurance premiums, and utility charges, and all other development expenses required to be paid in connection with the development of the Hotel, including the preparation of all draw requests and the disbursement of funds advanced pursuant to such draw requests, and to report to the Owner the amount of development expenses incurred through the preceding month and the amounts due under such contracts and the amounts to be withheld, if any;

29. Cause to be purchased, for and on behalf of the Owner, all FF&E for the Hotel in accordance with the Hotel Project Improvements Budget, the FF&E Specifications, and the Operator's standards, as mutually agreed upon by Developer and the Owner, utilizing a procurement process developed in consultation with the Owner. In that regard, Developer:

a. shall diligently seek to obtain the most favorable prices and terms available in connection with the purchase of the FF&E. All discounts, freight allowances, special considerations and the like extended by any supplier of the FF&E and available to Developer (it being acknowledged that, in certain cases otherwise available discounts will not be obtainable by reason of the timing of funds) shall be for the benefit of the Project;

b. shall diligently endeavor to cause the production and timely delivery of the FF&E at the Project in accordance with the Hotel Project Improvements Budget, the FF&E Specifications, and the Project Schedule, including using alternate suppliers where deemed reasonably necessary by Developer;

c. shall monitor, arrange and supervise the installation of FF&E and shall oversee inventory controls, oversee the handling of freight claims, and endeavor to cause such installation to be performed in a professional and timely manner. In this regard Developer shall coordinate its activities with the activities of the Operator

(which will have certain duties relating to the review, inspection, and installation of FF&E under the Hotel Management Agreement);

d. shall maintain, or cause to be maintained, proper, accurate and complete accounting records, including purchase orders, purchasing receipts and disbursements made on account of the FF&E. Developer shall make these records available for inspection by the Owner immediately upon request. Upon "Final Completion" (as defined) or earlier termination of the Developer Agreement, original copies of such accounting records shall be delivered to the Owner as part of the final development report;

e. shall prepare, coordinate and deliver to the Owner in writing, or cause to be prepared and coordinated and delivered to the Owner in writing, quantity counts of FF&E delivered to the Project on a monthly basis, with a final count of such goods and materials to be furnished to the Owner within thirty (30) days after the delivery of the last item of FF&E. In the event Developer receives more frequent quantity counts from the Operator, Developer shall promptly furnish copies of the same to the Owner;

f. shall substantiate to the Owner's reasonable satisfaction purchases with copies of all suppliers' invoices and/or verifications of goods shipped. To the extent not exempt, Developer shall compute state and local sales and use taxes on FF&E and remit same to the proper authorities on behalf of the Owner out of funds in the Project development account;

g. shall obtain, for the benefit of the Owner, such warranties and/or guarantees as are made available to Developer by the manufacturer of any FF&E. Claims made against such guarantees as may be offered by the manufacturer or vendors are to be settled by Developer with the manufacturers or vendors through Final Completion. Where Developer has not previously paid for FF&E which have been received by the Owner or Developer and either Developer determines that the goods are defective or otherwise do not conform to the applicable contract or purchase order therefor (Developer hereby agreeing to cause prompt inspections of FF&E to be made at the time of delivery and thereafter from time to time) or the Owner notifies Developer, in writing, that the goods are defective or otherwise do not conform to the applicable contract or purchase order therefor, Developer shall not pay for the FF&E beyond appropriate restocking charges, if any, and Developer shall make necessary provisions for return of such FF&E to the supplier, or pursue any other remedies as the Owner may reasonably request. After Final Completion, any further warranty claims shall be handled by the Owner (or the Operator on the Owner's behalf, if so provided for in the Hotel Management Agreement); and

h. shall make provisions for receipt, inspection and storage of FF&E, make any damage claims against carriers, and provide for the reasonable and necessary security of same in storage. Developer shall obtain, or cause to be obtained,

reasonable and necessary insurance upon the FF&E on behalf of the Owner during shipment and upon receipt;

30. With respect to the Project, keep separate books and records in respect of the Project with full access to the books and records by the Owner;

31. Maintain throughout the construction of the Hotel an office in Dallas, Texas, within reasonable proximity to the Site, and maintain at this office complete, correct and proper books of account and records as are necessary to reflect the assets, liabilities, revenues and expenses and all transactions relating to the Project and make all such materials available to the City and the Owner at all times;

32. Monitor and coordinate on behalf of the Owner pre-opening activities with the Operator and exercise the rights and duties of the Owner with respect to the pre-opening duties of the Owner set out in the Management Agreement;

33. Cause the applicable contractor, consultants or other appropriate person to provide appropriate training and instruction to the Operator's technical personnel regarding the operation of the various mechanical and other systems in the Project prior to turnover of the Project to the Operator for operation and thereafter confirm that those systems are operating at peak performance;

34. Coordinate with, and provide assistance to the Owner's financial advisors and underwriters concerning the bond issuance;

35. In consultation with the Owner, direct the Operator with respect to operational requirements of the Hotel;

36. Provide the Owner, within sixty (60) days following Substantial Completion and Final Completion, respectively, an accounting showing all draws incurred for the Hotel and a comparison of the same versus the Hotel Project Improvements Budget;

37. Furnish to the Owner, as soon as reasonably practicable after Substantial Completion is achieved, a preliminary Hotel project report describing all material aspects of the project. Included in such report shall be copies of the following:

a. such documents, instruments and certifications as are reasonably required by the Owner to evidence the achievement of Substantial Completion;

b. a certificate from Developer stating that all invoices, payrolls, bills for materials, equipment and supplies and all other Development Expenses in connection with the Hotel that are due and payable through the date of Substantial Completion have been paid or fully satisfied, subject to any applicable retainage not yet payable, amounts to be incurred in respect of punchlist items or other work not yet completed, and matters as to which bona-fide disputes exist (in which case a full explanation of the status of such matters shall be provided by Developer);

- c. a certificate from Developer confirming that a sufficient amount of FF&E, as necessary to meet the requirements of Substantial Completion, has been installed in the Hotel in substantial accordance with the agreed upon FF&E Specifications; and
- d. all fire and safety and occupancy related certificates and all other permits, licenses and approvals required for operation and use of the Project (some of which may be temporary in nature).

38. Furnish to the Owner, within sixty (60) days after Final Completion is achieved, a completed Hotel report. Included in such report (to the extent not previously furnished to the Owner in the preliminary report issued upon Substantial Completion) shall be the following:

- a. such documents, instruments and certifications as are reasonably required to evidence the achievement of Final Completion;
- b. a certificate from Developer stating that all invoices, payrolls, bills for materials, equipment and supplies and all other Development Expenses in connection with the Project have been paid or fully satisfied (subject to matters of retainage not yet payable and matters as to which bona-fide disputes exist, in each case with a full explanation of the status of such matters);
- c. copies of all quality control testing reports;
- d. final testing, balancing and commissioning reports with respect to HVAC, electrical, plumbing, vertical transport and other systems;
- e. final record drawings, specifications, equipment manuals, warranties and guarantees;
- f. a certificate from Developer stating that all FF&E has been installed in the Hotel in substantial accordance with the agreed upon FF&E Specifications; and
- g. all permanent fire and safety and occupancy related certificates and all other permits, licenses and approvals required for the operation and use of the Project.

39. Within ninety (90) days after Final Completion, deliver to the Owner a report evidencing the payment of all Development Expenses (including retainages) other than matters as to which a bona-fide dispute continues to exist. In the case of any ongoing disputes, the report shall advise the Owner of the status of such matters, and Developer shall continue to work to resolve such matters and take actions deemed by Developer to be appropriate to protect the interests and position of the Hotel, without involvement by the Owner, and with continuing periodic reports. Upon final resolution of such matters, Developer shall deliver to the Owner its final report as to those matters. The report shall be accompanied by a payment to the Owner of any funds in the Project development account then being held in respect of such items; and

40. Engage in any other activities which are necessary and required to carry out the development and construction of the Hotel.

**EXHIBIT 8.2
TO
DEVELOPER AGREEMENT**

Requisition Requesting Disbursement of Hotel Project Improvement Costs

As provided in the Indenture

EXHIBIT 8.2 TO DEVELOPER AGREEMENT

Requisition Requesting Disbursement of Hotel Project Improvement Costs
City 02-15-09

**SCHEDULE 12.1.1
TO
DEVELOPER AGREEMENT**

Insurance Policies

EXHIBIT 8.2 TO DEVELOPER AGREEMENT

*Requisition Requesting Disbursement of Hotel Project Improvement Costs
City 02-15-09*

**EXHIBIT A
TO
DEVELOPER AGREEMENT**

Hotel Project Improvements Construction Contract

DESIGN/BUILD GUARANTEED MAXIMUM PRICE CONTRACT

This DESIGN/BUILD GUARANTEED MAXIMUM PRICE CONTRACT (the "Contract") is made and entered into by and between Matthews Holdings Southwest, Inc. ("MSW") and Balfour/Russell/Pegasus, a joint venture, consisting of _____, _____ and _____ (the "Design/Builder").

The City of Dallas (the "City"), and MSW entered into a Memorandum of Understanding on August 20, 2008 (the "MOU"). The City, the Dallas Convention Center Hotel Development Corporation (the "LGC") and MSW entered into a Pre-Development Agreement on September 11, 2008. The LGC and MSW intend to enter into a Developer Agreement incorporating this Contract on or before _____, 2009.

The City has selected and engaged MSW as its Developer for a convention center hotel adjacent to the Dallas Convention Center on a portion of the site commonly known as the Chavez site.

The program for the hotel provides for a four-star, full service convention center headquarters hotel, having approximately 1,000 guestrooms and which will include approximately 80,000 square feet of meeting space, including a 33,500 square foot senior ballroom, a 16,500 square foot junior ballroom, as well as structured parking for 720 vehicles and an all weather connection to the Dallas Convention Center, and meeting OMNI Brand Standards (the "Project").

Prior to the execution hereof and pursuant to the Preconstruction Services Agreement dated _____, 2008 (the "PCS Agreement"), Design/Builder has undertaken and commenced to perform certain of the pre-construction and design services required under this Contract (the "Prior Services"). The Guaranteed Maximum Price and Substantial Completion Date hereunder (as hereinafter defined) include the Prior Services, and upon execution of this Contract, all of Design/Builder's obligations under the PCS Agreement shall be merged into this Contract. All sums, if any, heretofore paid to Design/Builder pursuant to the PCS Agreement shall be credited against sums due Design/Builder hereunder and any sums which would otherwise become due Design/Builder under the PCS Agreement shall be paid as part of the Design/Build Guaranteed Maximum Price pursuant to Applications of Payment hereunder. Design/Builder acknowledges that the Prior Services were performed in contemplation of this Contract and agrees that it shall be responsible to MSW for the performance, quality, and integrity of the Prior Services to the same extent as the other Work to be performed by Design/Builder hereunder. The first Application for Payment hereunder shall reflect the sums paid and to be paid to the Design/Builder pursuant to the PCS Agreement. The payment and performance bonds provided by or on behalf of Design/Builder pursuant hereto shall be deemed to extend to the Prior Services performed pursuant to the PCS Agreement.

EXHIBIT A TO DEVELOPER AGREEMENT

*Hotel Project Improvements Construction Contract
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On _____, 2009, the City and the LGC selected Omni Hotels Management Corporation to perform the services of manager and operator of the hotel under a qualified management agreement with the LGC.

This Contract is for the design and construction of the Project.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, MSW and Design/Builder agree as follows:

ARTICLE 1
THE CONTRACT AND THE CONTRACT DOCUMENTS

(A) The Contract: The Contract between Design/Builder and MSW consists of this document and the other Contract Documents described in Paragraph 1(B). The Contract shall be effective as of _____, 2009, the date of its approval, and that date shall also be considered the execution date of this Contract.

(B) The Contract Documents: The Contract Documents consist of this document, the GMP Book dated _____, 2009, approved by MSW in accordance with this Contract, all Design Documents hereafter prepared by Design/Builder and approved by MSW in accordance with this Contract, the City of Dallas General Conditions for Building Construction (June 25, 2007 Edition; Rev. August 28, 2008), modified for this Project (hereinafter called the "General Conditions"), along with any special provisions added thereto with the consent of the parties. The General Conditions are deemed to be a part of this Contract by reference. The General Conditions shall govern all Construction Work on the Project, for which Construction Work Design/Builder is fully responsible to MSW. The General Conditions shall be included as general provisions for use with Design Documents prepared by Design/Builder, Change Orders and Field Orders issued hereafter, along with any other written amendments executed by MSW and Design/Builder. The Contract Documents further include the following documents:

- (1) Project Requirements of the City described in Exhibit __ hereto
- (2) Design Scope Specification, dated _____, 2009, attached as Exhibit ___ hereto
- (3) Operator Design Standards, dated _____, 2009, attached as Exhibit ___ hereto
- (4) The [Project Specific](#) M/WBE [Good Faith Effort](#) Plan, attached as Exhibit __ hereto
- (5) Preconstruction Services Agreement, dated _____, 2008, between MSW and Design/Builder

all of which are hereby incorporated herein by reference and made a part of this Contract. The Contract Documents must be approved by LGC and the Hotel Operator in accordance with the Pre-Opening and Technical Services Agreement.

(C) Enumerated Documents Form Entire Contract: Documents not specifically enumerated in Paragraph 1(B) of this Contract are not Contract Documents.

(D) Contract Interpreted As A Whole: This Contract is intended to be an integral whole and shall be interpreted as internally consistent. Work required by any page, part, or portion of the Contract shall be deemed to be required Contract Work as if called for in the whole Contract and no claim for extra work shall be based upon the fact that the description of the Work in question is incomplete.

(E) Provision Of All Things Required: Anything that may be required, implied or inferred by the Contract Documents which make up this Contract, or any one or more of them, shall be provided by Design/Builder for the Contract Price.

(F) Privity Only With Design/Builder: Nothing contained in this Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between MSW and any person except Design/Builder.

(G) Agreed Interpretation Of Contract Terms: When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage. Headings are used herein solely for convenience.

(H) Term "Include" Intended To Be Encompassing: "Include", "includes", or "including", as used in the Contract, shall be deemed in all cases to be followed by the phrase, "without limitation."

(I) Use Of Singular And Plural: Words or terms used as nouns in the Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

(J) Definition Of Material Breaches Not Exhaustive: The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of the Contract shall not imply that any other, nonspecified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of the Contract.

(K) Order Of Precedence: Unless otherwise provided in this document, in the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents which make up this Contract, the following shall control:

EXHIBIT A TO DEVELOPER AGREEMENT

*Hotel Project Improvements Construction Contract
City 02-15-09*

- (1) As between the GMP Book and the plans or specifications, the GMP Book shall govern.
 - (2) As between this document and the GMP Book, this document shall govern.
 - (3) As between this document and the General Conditions, this document shall govern.
- (L) Term "Days" Means Calendar Days: Unless otherwise stated in the context of its use, "days" means "calendar days."

ARTICLE 2

DESIGN/BUILDER'S REPRESENTATIONS

(A) Specific Representations: In order to induce MSW to execute this Contract and recognizing that MSW is relying thereon, Design/Builder, by executing this Contract, and without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in the Contract Documents, or implied by operation of law, makes the following express representations to MSW:

- (1) Design/Builder is fully qualified to act as the general contractor for the Project and will subcontract the design to professional designers who are, and will remain, licensed to practice engineering and architecture by all public entities having jurisdiction over Design/Builder or the Project;
- (2) Design/Builder will maintain all necessary licenses, permits or other authorizations necessary to act as Design/Builder for the Project until Design/Builder's duties under this Contract have been fully satisfied;
- (3) Design/Builder has the expertise, experience, and knowledge as well as the necessary plant, personnel and financial capability to perform the Design Services and the Work in accordance with the terms of this Contract;
- (4) Prior to the execution of this Contract, Design/Builder has visited and inspected the Project site and the local conditions under which the Project is to be designed, constructed and operated, and has performed such tests, if any, as are necessary to determine the conditions under which the Work will be performed, and Design/Builder accepts the conditions of the Work site and has taken those conditions into account in entering into this Contract;
- (5) Design/Builder assumes full responsibility to MSW for the improper acts and omissions of its Subcontractors or others employed or retained by Design/Builder in connection with the Project.

ARTICLE 3
REGULATORY GUIDELINES, REQUIREMENTS AND STANDARDS

(A) Generally: Design/Builder shall perform all Design Services described in, contemplated by, inferable from, or necessary or desirable to achieve the objectives stated in the Design Scope Specification and the Contract, including all Design Services necessary for the Project to be properly constructed by Design/Builder and used, operated and maintained in accordance with all applicable guidelines, requirements and standards. "Design Services" means any and all architectural, engineering and design services required to be performed by Design/Builder pursuant to the Contract and all labor, materials, supervision, equipment, computers, documents, and all other things necessary for the performance of such services. The "Design Scope Specification" specifies the general scope of the Design Services to be performed by Design/Builder under the Contract. The Design Services and MSW's review of Design Services shall be performed within the time provided by the Design Schedule for the performance of Design/Builder's Design Services as provided in Paragraph 3(H) of this Contract.

(B) MSW's Review Of Detail Design: Subject to Paragraph 13(G) of this Contract, Design/Builder shall submit all Detail Design Documents produced as part of the Design Services to MSW for approval, who in turn will submit the documents, with MSW's recommendations, to the LGC and the Hotel Operator for review and approval in accordance with the terms of their separate Developer Agreement and Pre-Opening and Technical Services Agreement, as applicable. Changes in such documents shall be subject to the further review and approval of the Hotel Operator and the LGC. However, any review or approval by MSW, the LGC or Hotel Operator shall not relieve Design/Builder of or otherwise diminish its obligations under the Contract. MSW may direct Design/Builder to make changes to any design documents in order to conform the documents to the LGC's objectives. Any changes by Design/Builder ordered by MSW shall not relieve Design/Builder of its obligations under this Contract unless, and only to the extent that, Design/Builder notifies MSW in writing, within five (5) days after receipt of MSW's directive to make changes, concerning any adverse impact on schedules, budgets, satisfaction of Applicable Laws, or other adverse impact on Design/Builder's obligations under this Contract that may result from the directed changes. Failure of Design/Builder to submit its notice within the five (5) day period constitutes a waiver by Design/Builder of any claim for an adjustment to the Design Schedule or the Contract Time.

(C) Preparation Of Site Information: Design/Builder shall prepare, as necessary, surveys and topographic information including aerial photographs needed to establish line and grade of sewers, location of property lines and easements. Sewer easements, both construction and permanent, shall be referenced to property lines by field surveys, and plans shall include the location of any improvement as it relates to property lines. **MSW, City and LGC expressly do not warrant any information that may have been provided by each in connection with preparation of the above-mentioned information;** Design/Builder, however, may reasonably rely on information provided by MSW to the extent the information has been prepared by MSW or an independent consultant hired by MSW to prepare the information specifically for this Project, without absolving Design/Builder from its responsibility to independently verify or

EXHIBIT A TO DEVELOPER AGREEMENT

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investigate information that a reasonable, prudent professional architect or engineer should or would inquire about.

(D) Retention Of Geotechnical Consultants: The City has separately retained an experienced, qualified geotechnical consultant to evaluate all geotechnical considerations relating to the design and construction of the Project. Design/Builder shall be responsible for designing the Project in accordance with the analysis and recommendations of the geotechnical consultant. Nothing in this paragraph, however, prevents Design/Builder from retaining its own geotechnical consultant to review design work, raise issues for mutual discussion, and obtain further information in connection with the geotechnical nature of the Project. **MSW, City and LGC expressly do not warrant any geotechnical information that may have been provided by each for use in connection with preparation of the design documents**; Design/Builder, however, may reasonably rely on geotechnical information provided by MSW to the extent the information has been prepared by MSW or an independent consultant hired by MSW to prepare the information specifically for this Project, without absolving Design/Builder from its responsibility to independently verify or investigate information that a reasonable, prudent professional architect or engineer should or would inquire about.

(E) Quality Of Design Services: Design/Builder shall be responsible for the professional quality, completeness, accuracy, and coordination of all Design Documents, including Preliminary Design and Detail Design Documents, with the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project ("Designer Standard of Care"). Design/Builder shall provide Design Services that will result in an operationally cost efficient and economical facility that meets all environmental and regulatory requirements as of the date of this Contract, uses the most appropriate available technology, and meets the requirements of the Contract Documents in accordance with the Designer Standard of Care. Design/Builder shall provide for all quality control reviews required by sound professional architectural and engineering practices and by governmental authorities having jurisdiction over the Project provided they are performed within the Design Schedule to the extent such reviews are not within Design/Builder's control.

(F) Compliance With Laws And Regulatory Requirements: In providing Design Services, Design/Builder shall comply with the lawful requirements of all federal, state, and local authorities having lawful jurisdiction over the Project. Design/Builder shall design the Project in accordance with the Designer Standard of Care to meet all applicable requirements of building control laws and regulations in relation to the design, construction, occupation, and operation of the Project, including, without limitation, environmental standards, fire and safety regulations, and other applicable standards and codes ("Applicable Laws"). Any change in Applicable Laws after the date of this Agreement that results in additional cost or time shall be addressed in a Change Order as set forth in Articles 16 and 17 of this Contract.

(G) Duty To Correct Errors: Design/Builder shall, without additional compensation, immediately correct any errors, omissions or deficiencies that do not meet the Designer Standard of Care in its Design Services and Detail Design documents.

(H) Schedule Of Design Services: Design/Builder has included in the GMP Book the Design Schedule for the performance of Design/Builder's Design Services, which includes allowance for reasonable time required for MSW's review of submissions and for approvals of authorities having jurisdiction over the Project. The Design Schedule, shall not, except for good cause, be exceeded by Design/Builder. Should Design/Builder at any time during the course of performing the Contract, have reason to believe that it will be unable to meet any completion date in accordance with the Design Schedule, it shall immediately notify MSW in writing. Design/Builder shall state the reason for the delay in the notice, including the party responsible, if any, and the steps being taken to remedy or minimize the impact of the delay. **Failure of Design/Builder to submit such notice shall constitute a waiver by Design/Builder of any claim for an adjustment to the Contract Price, the Design Schedule, or the Contract Time.** All extensions of time shall be governed by Articles 16 and 17 of this Contract.

(I) Requirement to Design Within the Project Budget: The total fixed Project Construction Budget which has been established by the City and the LGC for this Project is \$_____. **This amount is established as a condition of this Contract, and shall provide the basis for Design/Builder's design decisions.** Design/Builder, in consultation with MSW, shall determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents, and will make reasonable adjustments in the scope of the Project to bring it within the Project Construction Budget. With MSW's approval, Design/Builder may also include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit. MSW may, in its sole discretion and only if circumstances require it, approve a higher fixed limit for the Project Construction Budget, without any increase in the fee for Design Services under this Contract, subject to review and approval by City and LGC. **Any redesign or additional design services required to bring the Project within the fixed Project Construction Budget shall be at Design/Builder's sole expense.**

ARTICLE 4 PRELIMINARY CONSULTATION AND PROJECT ANALYSIS

(A) Determining The Project Objectives: Design/Builder has consulted in detail with MSW, and carefully analyzed the information furnished by MSW concerning requirements of the Project, including but not limited to, any design, construction, scheduling, budgetary or operational requirements, limitations, and objectives, as well as the Design Scope Specification.

(B) Report On Project Requirements And Objectives: Based on its study and analysis, Design/Builder has prepared and submitted to MSW the GMP Book detailing Design/Builder's understanding and analysis of the Project requirements and identifying any design, construction, scheduling, budgetary, operational, or other problems which may result from said requirements. The GMP Book includes proposed solutions, including design alternatives, addressing each of the identified problems. The GMP Book represents the implementation of such changes as MSW required.

(C) Scheduling: The GMP Book and the schedule included therein includes sufficient budget allowances in anticipation of currently unknown refinements of budgets that may become necessary and in order to control Project costs.

ARTICLE 5 PRELIMINARY DESIGN

(A) Time For Preliminary Design: The GMP Book contains the approved Preliminary Design for the Project.

(B) Contents Of Preliminary Design: The Preliminary Design addresses all requirements of the Project and shall include, without limitation, the following:

- (1) preliminary drawings which illustrate each of the basic components of the Project including the size, scale, location, dimensions, and character of each building structure;
- (2) preliminary drawings which illustrate each exterior view of the Project;
- (3) preliminary drawings which illustrate a floor plan for each room, office, and functional area of the Project and the dimensions thereof;
- (4) preliminary drawings and specifications illustrating and describing the architectural, electrical, mechanical, structural, and manufacturing systems of the Project;
- (5) a written description of the materials and equipment to be incorporated into the Project and the location of same; and
- (6) any other documents or things required to illustrate, describe or depict the Preliminary Design and the conformity of same with the requirements of the Design Scope Specification and this Contract.

(C) To Be Reviewed With MSW: The GMP Book incorporates all changes ordered by MSW, Hotel Operator, and LGC in regard to the Preliminary Design or the requirements of the Project.

(D) Authorization To Proceed With Detailed Design: By execution of this Contract, Design/Builder is authorized to commence preparing the Detailed Design, or such part thereof as directed by MSW.

ARTICLE 6 DETAILED DESIGN

(A) Time For Preparation: To accomplish the fast-track nature of this Project, Design/Builder shall prepare and submit the complete Detailed Design for each phase of the Project not later than the milestone dates called for in the Design Schedule.

(B) The Detailed Design: The Detailed Design shall include all Detailed Design Documents which shall describe with specificity all elements, details, components, materials, and other information necessary for the complete construction of the Project and the rendering of the Project fully operational for its intended purposes, including satisfaction of all testing, permitting, qualifications, certifications, validations, and obtaining regulatory approvals by all applicable regulatory authorities required to render the Project and all its components operational and functionally and legally usable for their intended purpose. Subject to the provisions of Paragraph 13(G) of this Contract, MSW shall review and approve, where appropriate, the Detailed Design, or any portion thereof.

(C) Detailed Design Documents: Detailed Design Documents means all the design documents provided by Design/Builder pursuant to the Preliminary Design and approved by MSW, Hotel Operator and the LGC pursuant to the Contract including, without limitation, those for use in constructing the Project, performing the Work, and the rendering of the Project fully operational, and shall include, without limitation, detailed plans, drawings, specifications, manuals, and related materials prepared by or on behalf of Design/Builder.

(D) Design/Build Guaranteed Maximum Price Includes Detailed Design: The Design/Build Guaranteed Maximum Price, as set forth in Article 10 below, shall include the cost of constructing the Project in strict accordance with the requirements of the Detailed Design.

ARTICLE 7 CONSTRUCTION SERVICES

(A) General Intent: Design/Builder shall perform all Construction Work necessary to construct the Project in accordance with this Contract, and to render the Project and all its components operational and functionally and legally usable for their intended purpose.

(B) Construction Work Defined: The term "Construction Work" shall mean whatever is done by or required of Design/Builder to perform and complete its duties relating to the construction of the Project under the Contract, including, without limitation, the following:

- (1) construction of the whole and all parts of the Project in full and strict conformity with this Contract;
- (2) the provision and furnishing, and prompt payment therefor, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of the Project;
- (3) the procurement and furnishing of all necessary building permits and other permits required for the construction of the Project;
- (4) the creation and submission to MSW of detailed as-built drawings depicting all as-built construction;

- (5) the furnishing of any required surety bonds and insurance as required by the Contract;
- (6) the furnishing of all equipment and product warranties, manuals, test results and user guides required by the Contract or otherwise reasonably available to Design/Builder; and
- (7) the furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 9 below.

ARTICLE 8
TIME FOR CONSTRUCTION: THE CONTRACT TIME

(A) Notice Of Commencement: After MSW, the Hotel Operator and the LGC have approved the Detailed Design Documents of the Detailed Design for the sitework and foundations phase of the Construction Work, and following receipt by the LGC of the proceeds from the sale of its hotel revenue bonds in the amount necessary to finance the Project, MSW shall issue a notice to commence the Construction Work directing Design/Builder to proceed with the Construction Work on the date indicated in the notice (the "Commencement Date"). The notice to commence Construction Work shall be issued at least ten (10) days prior to the Commencement Date.

(B) Time For Completion: Design/Builder shall commence the Construction Work on the Commencement Date, and the Construction Work shall be carried out regularly and without interruption. Design/Builder shall substantially complete the Construction Work not later than twenty-eight (28) months from the Commencement Date, or such other date as may by Change Order, subject to LGC approval, be later designated (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time." Design/Builder shall achieve Final Completion of the Construction Work no later than thirty (30) calendar days after achieving Substantial Completion.

(C) Liquidated Damages For Delay In Substantial Completion: Design/Builder shall pay MSW, for the use and benefit of the LGC, the sums set forth below for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the Scheduled Completion Date.

- (1) During the first thirty (30) days (or any part thereof) after the Scheduled Completion Date that Substantial Completion is not achieved, liquidated damages shall be at the rate of \$5,000.00 per day.
- (2) During the second thirty (30) days (or any part thereof) after the Scheduled Completion Date that Substantial Completion is not achieved, liquidated damages shall be at the rate of \$10,000.00 per day.

- (3) During any period after the second thirty (30) days after the Scheduled Completion Date that Substantial Completion is not achieved, liquidated damages shall be at the rate of \$20,000.00 per day.

Any sums due and payable hereunder by Design/Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by MSW and the LGC, estimated at the time of executing this Contract. Such liquidated damages shall apply regardless of whether Design/Builder has been terminated by MSW prior to Substantial Completion so long as Design/Builder's actions or inactions contributed to the delay. Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual direct damages resulting from other defects in Design/Builder's performance hereunder for matters other than delays in Substantial Completion. When MSW reasonably believes that Substantial Completion will be inexcusably delayed, MSW shall be entitled, but not required, to withhold from any amounts otherwise due to Design/Builder an amount then believed by MSW to be adequate to recover liquidated damages applicable to such delays. If and when Design/Builder overcomes the delay in achieving Substantial Completion, or any part thereof, for which MSW has withheld payment, MSW shall promptly release to Design/Builder those funds withheld, but no longer applicable as liquidated damages.

(D) Liquidated Damages For Delay In Final Completion: If Design/Builder fails to achieve Final Completion within thirty (30) calendar days after the date of Substantial Completion, Design/Builder shall pay MSW, for the use and benefit of the LGC, the sum of Five Thousand and 00/100 Dollars (\$5,000) per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date set forth herein for Final Completion of the Work. Any sums due and payable hereunder by Design/Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by MSW and the LGC, estimated at the time of executing this Contract. Liquidated damages shall apply regardless of whether Design/Builder has been terminated by MSW prior to Final Completion so long as Design/Builder's actions or inactions contributed to the delay. Such liquidated damages shall be in addition to and not in preclusion of the recovery of direct actual damages resulting from other defects in Design/Builder's performance hereunder for matters other than delays in Final Completion. When MSW reasonably believes that Final Completion will be inexcusably delayed, MSW shall be entitled, but not required, to withhold from any amounts otherwise due to Design/Builder an amount then believed by MSW to be adequate to recover liquidated damages applicable to such delays. If and when Design/Builder overcomes the delay in achieving Final Completion, or any part thereof, for which MSW has withheld payment, MSW shall promptly release to Design/Builder those funds withheld, but no longer applicable as liquidated damages.

(E) Time Is Of The Essence: All limitations of time set forth in this Contract are material and time is of the essence of the Contract.

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ARTICLE 9
ADDITIONAL DUTIES AND RESPONSIBILITIES OF DESIGN/BUILDER

- (A) Design/Builder To Perform All Work Required By The Contract: The intent of this Contract is to require complete, correct and timely execution of the Design Services and the Construction Work. Any and all Design Services that may be required, reasonably implied, or reasonably inferred by the Contract, or any part of it, as necessary to produce the intended results set forth in the GMP Book shall be provided by Design/Builder for the not-to-exceed Design Services Fee as provided in Article 10 of this Contract. In addition, any and all Construction Work that may be required, reasonably implied, or reasonably inferred by the Contract, or any part of it, as necessary to produce the intended results set forth in the GMP Book shall be provided by Design/Builder within the not-to-exceed Design/Build Guaranteed Maximum Price, including the Design Services Fee and Management Fee as provided in Article 10 of this Contract.
- (B) Strict Compliance With The Contract Documents: All Construction Work performed by Design/Builder shall be in strict compliance with this Contract. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with the Contract is defective.
- (C) Supervision Of The Construction Work: The Construction Work shall be strictly supervised and directed using Design/Builder's best and highest skill and effort. Design/Builder shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of Design/Builder.
- (D) Warranty Of Construction Workmanship And Materials: Design/Builder warrants and guarantees to MSW, City and LGC that all labor furnished to perform the Construction Work under the Contract will be competent to perform the tasks undertaken and is the best quality obtainable in or near Dallas, Texas, that the product of such labor will yield only first-class results in strict compliance with the Contract, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Contract, and that the Construction Work will be of high quality, free from faults and defects and in strict conformance with the Contract. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Design/Builder's warranty.
- (E) Commencement Of Guarantee And Warranty: Special or specific guarantees and warranties which are required by the Contract to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work.
- (F) Design/Builder's Schedule Of Construction: Design/Builder shall comply with, Design/Builder's Schedule of Construction for completing the Construction Work as set forth in the GMP Book by the Scheduled Completion Date. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path management ("CPM") schedule in a form acceptable to MSW, City and LGC. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire

Project. Each such revision shall be furnished to MSW, Hotel Operator and LGC. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Design/Builder, and failure to strictly comply with said requirements shall constitute a material breach of the Contract. No claim for an increase in the Guaranteed Maximum Price ("GMP") shall be allowed as a result of Design/Builder basing the GMP upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

(G) Record Copy Of Contract Documents: Design/Builder shall continuously maintain at the site, for the benefit of MSW, City and LGC, an updated copy of this Contract, including one record copy of the Contract Documents and Detailed Design Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Design/Builder shall maintain at the site, for the benefit of MSW, City and LGC, a copy of all Shop Drawings, Product Data, Samples, and other Submittals. Upon Final Completion of the Construction Work, or upon MSW's request, all of the documents described in this Paragraph shall be finally updated and delivered to MSW and shall become the property of **the LGC**.

(H) Review And Approval Of Submittals: Design/Builder shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that the Project will be constructed in a timely fashion in strict compliance with the Contract. No deviation from, substitution for, or other modification from the Contract Documents shall be allowed by Design/Builder in a shop drawing or submittal without written approval, in the form of a Change Order, from MSW. Design/Builder shall engage in prompt and adequate review of Shop Drawings and other Submittals to maintain the Construction Schedule; Design/Builder also warrants it will use its best independent professional judgment in its review to determine compliance with the Contract Documents.

(I) MSW's Option To Review Submittals: MSW shall also, in its discretion, have the right to review and approve Submittals, and if MSW so elects, Design/Builder shall not perform any portion of the Construction Work as to which MSW has required submittal and review until such Submittal has been approved by MSW. Approval by MSW, however, shall not be evidence that Construction Work installed pursuant to MSW's approval conforms to the requirements of the Contract, nor shall such approvals relieve Design/Builder of any of its responsibilities or warranties under the Contract. If MSW elects to review Submittals, Design/Builder shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Design/Builder shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to MSW. Shop Drawings and other Submittals from Design/Builder do not constitute a part of this Contract.

(J) Procurement And Review Of Warranties: Design/Builder shall procure from all Subcontractors and Suppliers and shall transmit to MSW, all warranties required by the Contract. Design/Builder shall review all such warranties and shall certify to MSW that the warranties are in strict compliance with the requirements of the Contract.

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(K) Procurement Of Operations And Maintenance Documentation: Design/Builder shall prepare or procure and shall transmit to MSW all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

(L) As-Built Drawings: Design/Builder shall prepare and provide to MSW, for the use and benefit of LGC, a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

(M) Compliance With Labor Laws: Design/Builder shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws. In accordance with Chapter 2258, Texas Government Code, as amended, Design/Builder and any subcontractor or sub-subcontractor shall pay not less than the general prevailing rate of per diem wage and the general prevailing rate for overtime work based upon the Prevailing Wage Rate Schedules approved by the Dallas City Council, by City Council Resolution 04-2239 dated August 11, 2004.

(N) Testing, Inspections, And Approvals: Design/Builder shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Design/Builder shall submit certified results of such tests to MSW. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Design/Builder shall assume full responsibility therefore, pay all costs in connection therewith and furnish to MSW and LGC the required certificates of inspection, testing or approval.

(O) Compliance With Regulations And Applicable Laws: Design/Builder shall, during the course of the Construction Work, comply with the lawful requirements of all federal, state, and local authorities having lawful jurisdiction over the Project. Design/Builder warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Design/Builder in connection with the Construction Work to be performed under the Contract, including Prevailing Wage Rate requirements set forth in Article 9(M) above.

(P) Compliance With Construction Regulations: Design/Builder shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Design/Builder, and Design/Builder shall fully indemnify and hold MSW, the City and the LGC harmless from all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, REGARDLESS OF A CONCURRENT CONTRIBUTION BY MSW, THE CITY AND/OR THE LGC, THROUGH

NEGLIGENCE OR OTHER WRONGFUL ACT, TO SUCH LOSS, DAMAGE, OR EXPENSE, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of MSW or their respective officers, agents, or employees.

(Q) Permits, Licenses And Notices: All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Design/Builder. Design/Builder shall notify MSW when it has received said permits, licenses, and authorizations, and upon receipt shall supply MSW with copies of same. The originals of permits and authorizations shall be delivered to MSW upon completion of the Construction Work, and receipt of these documents by MSW shall be a condition precedent to final payment. Design/Builder shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

(R) Conditions To Site Access: While on the situs of the Project or on other City property, all Design/Builder's employees and Subcontractors shall confine themselves to areas designated by MSW and will be subject to MSW's and the City's badge and pass requirements, if any, in effect at the site of the Construction Work.

(S) Site Safety And Security: Design/Builder shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Design/Builder shall at all times safeguard MSW's and the City's and the LGC's property and employees from injury or loss in connection with the performance of the Contract. Design/Builder shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Design/Builder shall protect MSW's, City's and LGC's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

(T) Repair Of Collateral Damage: Unless otherwise instructed by MSW, Design/Builder shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Design/Builder's performance of the Construction Work.

(U) Cleaning The Site: Design/Builder shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Design/Builder shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Design/Builder's property therefrom.

(V) MSW's Access To Construction Work: At all times relevant to the Contract, Design/Builder shall provide access to the Construction Work to MSW and the City and the LGC and their respective designees without formality or other procedure.

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(W) Decisions Regarding Aesthetic Effect: MSW's decisions in matters relating to aesthetic effect shall be final, subject only to the LGC's concurrence.

(X) Design/Builder To Remain An Independent Contractor: In performing both Design Services and Construction Work under this Contract, the relationship between MSW and Design/Builder is that of independent contractor, and the execution of this Contract does not change the independent status of Design/Builder. Design/Builder shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Design/Builder in the performance of this Contract shall be construed as making Design/Builder the agent, servant or employee of MSW, or making Design/Builder or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which MSW provides its employees.

ARTICLE 10 CONTRACT PRICE

(A) Contract Price, Design Services Fee And Design/Build Guaranteed Maximum Price:

- (1) MSW shall pay to Design/Builder a contract price (the "Contract Price"), not to exceed \$_____, equal to (i) the Design Services Fee not to exceed \$_____, (ii) the Cost of Construction Work (as defined in Article 10(C) hereof), plus (iii) the Design/Builder's Management Fee set forth below. The Contract Price is subject to and shall not exceed the Design/Build Guaranteed Maximum Price ("GMP") of \$_____. The Management Fee shall be in an amount equal to [five percent (5%)] of the Cost of Construction Work (excluding costs under paragraph 10(C)(9) below), as adjusted for Changes in the Work.
- (2) The Design/Build GMP includes a Contingency in the amount of _____ Dollars (\$_____) which, subject to MSW and LGC approval, is available for Design/Builder's use for Project costs that are reasonably incurred in performing the Work that are not included in a specific line item under the Contract Documents. By way of example, and not as a limitation, such costs may include trade buy out differentials, overtime and acceleration; and unrecoverable costs in correcting defective, damaged or nonconforming Work, design errors or omissions and Subcontractor defaults. The Contingency is not available to MSW for any reason, including changes in scope or any other item which would enable Design/Builder to increase the Design/Build GMP under the Contract Documents. Design/Builder shall provide MSW and LGC with notice of all anticipated charges against the Contingency and must receive MSW's prior written approval for use of the Contingency, evidenced by signed change order.
- (3) If the sum of the actual Cost of Construction Work and the Design Services Fee and Management Fee are less than the Design/Build GMP, the difference

("Savings"), in an amount not to exceed \$_____, shall be shared as follows but only if Substantial Completion is achieved by the Scheduled Completion Date, without exception:

Fifty percent (50%) to Design/Builder and Fifty percent (50%) to MSW. Any Savings in excess of \$_____ shall belong to the LGC. Savings shall be calculated and paid as part of Final payment hereunder. The LGC's determination of the entitlement to, and portion of, the Savings authorized to be paid Design/Builder and MSW shall be final and binding upon Design/Builder and MSW with the understanding that to the extent Design/Builder incurs costs after Final Completion which would have been payable to Design/Builder as a Cost of Construction Work, Design/Builder shall be entitled to payment from MSW for that portion of such costs that were distributed to MSW as Savings. [Subject to ARTICLE 14.5 of Hotel Developer Agreement.]

- (4) The Design/Build GMP represents the absolute limit of obligation or liability that MSW may ever have to Design/Builder for (1) the full and final completion of the Project and this Contract by Design/Builder, and (2) the total of all payments to Design/Builder. Should additional amounts be required to be expended, over and above the Design/Build GMP, to achieve completion of this Contract, including all Project Design Services, fees, and Construction Work in accordance with this Contract, liability for and payment of such additional amounts shall be the sole responsibility of Design/Builder and its Performance and Payment Bond Sureties herein, and MSW shall never be liable for same. Subject to subparagraph 10(A)(3) above, should the final Contract Price total less than the Design/Build GMP, the difference shall inure to the benefit of the LGC and no claim for all or any portion of said difference shall be valid against or payable by MSW or the LGC. MSW's limitation of obligation or liability set out in this Paragraph shall be incontrovertible and unequivocal; and no term or provision of this Contract, the Exhibits, attachments, or provisions incorporated by reference in or to this Contract, the General Conditions, or of any Subcontract executed in furtherance of the anticipated Construction Work under this Contract shall be construed or deemed to alter or waive this absolute MSW limitation of obligation or liability. Likewise, Design/Builder's absolute responsibility for the completion of the Project in accordance with the Contract Documents, including the Detailed Design Documents approved by MSW and the City and the LGC, within the agreed cost constraints, as well as Design/Builder's agreement to bear all costs in excess of the Design/Build GMP without recourse to MSW, if such excess costs are necessary for the completion of this Contract, the Project and all Construction Work, are hereby confirmed by Design/Builder, and shall be incontrovertible and undisputable, and shall take precedence over all other terms and provisions of this Contract and the Exhibits, attachments, General Conditions, Construction Work

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subcontracts, and other documents related hereto, no part of which shall be deemed to alter, diminish or waive such absolute obligations of Design/Builder.

(B) Management of Construction Work: In addition to the Construction Work Design/Builder will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Management Fee described in Paragraph (A) is paid. The services required are not intended in any manner to diminish the overall responsibility of Design/Builder for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

(C) Cost Of Construction Work: MSW agrees to pay Design/Builder for the Cost of the Construction Work as defined below, subject to submission by Design/Builder of all backup substantiation as may be reasonably required by MSW or LGC. Such payment shall be in addition to the Design/Builder's Management Fee and Design Services Fee specified above. However, in no event shall the sum of payments for the Design Services Fee, the Cost of the Construction Work, Design/Builder's Management Fee and any other Design/Builder compensation exceed the Design/Build Guaranteed Maximum Price. The term "Cost of the Construction Work" shall mean reasonable costs necessarily incurred in the performance of the Construction Work during the Construction Phase, and paid or payable by the Design/Builder, and not included in the Management Fee as set forth above. The following items are considered to be part of the Cost of the Construction Work:

- (1) Wages paid for labor in the direct employ of the Design/Builder in the performance of the Work under any applicable collective bargaining agreement, or under a salary or wage schedule agreed upon by MSW and Design/Builder, and including reasonable and customary benefits, if any, as may be payable with respect thereto. Such costs shall be at rates not higher than the standard pay in the locality of the Construction Work except with prior consent of MSW, and shall include the items set forth below in this Article. The reasonable cost of drug testing for all of Design/Builder's employees utilized on or hired for the Project, whether management or labor, shall also be a Cost of the Construction Work.
- (2) Salaries of Design/Builder's employees at or below the level of Operations Director, when engaged on the Construction Work and stationed at the Field Office, in whatever capacity employed. Employees engaged, at shops or on the road, in expediting the production or transportation of materials or equipment, shall be considered as stationed at the field office and their salaries paid for that portion of their time spent on this Construction Work.
- (3) Cost of reasonable and customary employee benefits, hospitalization insurance, medical insurance, training, assessments or taxes for such items as unemployment compensation and social security, insofar as such cost is reasonably based on wages, salaries, or other remuneration paid to employees of the Design/Builder

and included in the Cost of the Construction Work under Subparagraphs (C)(1), (C)(2), (C)(24), and (C)(25) herein.

- (4) With prior MSW approval, the portion of reasonable travel and hotel expenses incurred outside of the Dallas/Fort Worth metropolitan area by the Design/Builder's officers or employees in discharge of duties directly connected with the Construction Work, at rates not greater than the City reimburses its own employees.
- (5) Cost of all materials, supplies and equipment incorporated in the Construction Work, including costs of transportation thereof.
- (6) Payments made by the Design/Builder to Subcontractors for Construction Work performed pursuant to Subcontract, entered into in the performance of this Contract.
- (7) Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the Construction Work, and cost less salvage value of such items used but not consumed which remain the property of the Design/Builder.
- (8) In connection with the Construction Work and management services and with prior MSW approval, rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Construction Work, whether rented from the Design/Builder or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, at rental charges consistent with those shown in the then current AED Manual. Provided further, that with respect to equipment and machinery rented from the Design/Builder, the rental rate shall not exceed 75% of the current AED Manual rental charges, and shall in no event cumulatively exceed the value of such equipment or machinery at the commencement of the rental period. Should rental charges reach such value for equipment and machinery rented from the Design/Builder, same shall thereafter belong to MSW, for the use and benefit of the LGC, to be disposed of in accordance with Paragraph 10(E) below. Design/Builder shall furnish MSW with a list, to be updated monthly, of all equipment furnished for the Project for which MSW reimburses Design/Builder as a part of the Cost of the Construction Work. Equipment and machinery rented which becomes property of MSW, for the use and benefit of the LGC pursuant to this paragraph shall be delivered to MSW upon final completion and acceptance by MSW of all Construction Work under the Project.
- (9) Cost of the premiums for all bonds and insurance coverage required by this Contract, or deemed necessary by the Design/Builder, in the normal pursuit of the

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Construction Work. Premiums for company-wide coverage will be pro-rated on the basis of value of Construction Work completed during the premium period. The cost of (or payment of) all deductible amounts, not otherwise recoverable from third parties or not the result of a claim based upon Design/Builder's negligence, under any insurance furnished by MSW, or under insurance policies required by this Contract or deemed necessary by the Design/Builder in the normal pursuit of the Construction Work. SubGuard subcontractor default insurance shall be charged at cost, not to exceed the fixed rate of 1.25% of the included subcontract and purchase order amounts. Contractor's Controlled Insurance Program as set forth in Exhibit ___ shall be charged at cost, not to exceed the fixed rate of 3% of the Contract Price.

- (10) Taxes, if any, related to the Work. However, as the City and LGC qualify for exemption under Section 151.309 of the Texas Limited Sales, Excise and Use Tax Act, Design/Builder shall alert all Subcontractors to prevent erroneous payment of taxes covered by this exemption. City or LGC will provide exemption certificates as needed to confirm this exemption.
- (11) Permit fees, licenses, tests, royalties; deposits lost for causes other than the Design/Builder's negligence.
- (12) Minor expenses such as telegrams, long-distance telephone calls, telephone service at the site, expressage, and similar petty cash items in connection with and for the benefit of the Construction Work.
- (13) Cost of removal of debris. Removal of debris left by other contractors hired by MSW is not a part of this Contract.
- (14) Cost incurred due to an emergency affecting the safety of persons and property.
- (15) Other costs incurred in the performance of the Construction Work, if and to the extent approved in advance in writing by MSW.
- (16) The reasonable, actual direct cost of data processing services as required for the Project. Such costs shall be specifically documented as having been done for the Project.
- (17) Reasonable legal costs growing out of prosecution of the Construction Work for MSW will only be reimbursable if such were incurred for the direct benefit of MSW, City and LGC, and with prior written approval of MSW, City and LGC.
- (18) Cost or rental of temporary portable buildings and toilets as required; cost of utilities, ice, water, containers, cups, fire extinguishers, first-aid supplies, safety equipment, off-site storage space or facilities, progress photographs, or video tape records.

- (19) All reasonable costs and expenditures necessary for the operation of the field office, such as stationery, supplies, blueprinting, furniture, fixtures, office equipment, etc.
 - (20) Costs incurred by the Design/Builder in preparing and maintaining progress schedules, budgets, and reports required hereby.
 - (21) Service fees assessed by Associated General Contractors of America and the Associated Building Contractors, but only as they relate to the Construction Work.
 - (22) The reasonable, actual direct cost of computer services, including jobsite and main office terminal, for purposes of field payroll preparation and control. Such costs shall be specifically documented as having been done for the Project.
 - (23) Design/Builder shall be responsible for enforcing warranties and for obtaining correction and/or replacement of all defective Construction Work not constructed or installed in accordance with the Contract Documents. All such corrective or remedial Construction Work required by the Contract Documents shall be performed by the responsible Subcontractors under the terms of their Subcontracts, without additional cost to MSW. Costs incurred by Design/Builder to correct or remedy Construction Work performed by Design/Builder's own forces, or where the responsible Subcontractor fails to perform, shall NOT be a Cost of the Construction Work, and shall be Design/Builder's sole responsibility, at no additional cost to MSW; provided, however, Design/Builder shall be entitled to the proceeds of any Subcontractor maintenance bond, where such Subcontractor has defaulted in this regard.
 - (24) Salaries of Design/Builder's Preconstruction Director, Loss Prevention Director, QC Director and Scheduling Manager earned after the date of approval and funding of the Design/Build GMP, whether stationed at the Field Office or at the Main Office of the Design/Builder, for that portion of their time spent on this Construction Work.
 - (25) Where not otherwise included in the Cost of the Construction Work under Subparagraphs (C)(16), (C)(20), and (C)(22), cost of central accounting services in connection with the Construction Work, such as payment of invoices, maintaining material cost records, computer services, preparation of W-2 Reports, payroll tax reporting and preparation of other reports.
- (D) Reconstruction Due to Casualty Loss: If, after a substantial loss from fire, flood, or similar cause not due to the default or neglect of the Design/Builder, the Design/Builder is put in charge of reconstruction, the Design/Builder shall be paid a management fee for its services proportionate to the Management Fee specified in this Contract. Any reconstruction work shall be considered part of the Scope of the Work, except that the Design/Builder's Management Fee

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under the Contract Price shall be adjusted accordingly, unless otherwise reimbursed by the proceeds of insurance, or through utilization of the Contingency or the Change Order procedure set out in this Contract.

(E) Discounts, Refunds, Sales of Surplus Materials: All discounts, if realized, for prompt payment shall be accounted for in the applicable Construction Work line item, as well as trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment; and Design/Builder and MSW shall make provisions so that they can be secured, the amounts thereof to be accounted for in the applicable line item.

(F) Costs Not Included As Part Of The Construction Work And Services: The following items of cost and expense are not included as part of the Cost of the Construction Work to be paid by MSW to Design/Builder:

- (1) Except as specifically provided above, salaries, wages, and other compensation of Design/Builder personnel stationed at Design/Builder's principal office or offices.
- (2) Design/Builder's home office overhead, including, but not limited to, any and all expenses associated with Design/Builder's principal office and offices other than at the Project site.
- (3) Design/Builder's capital costs and expenses, including interest on capital utilized in the performance of this Contract.
- (4) Rental cost for machinery or equipment except as expressly provided above.
- (5) Cost and expense incurred by Design/Builder, its Subcontractors, consultants, or suppliers, or anyone directly or indirectly employed by any of them, when such costs or expenses are the result of their negligence or failure to perform any required contractual duty.
- (6) Any and all cost or expense not specifically allowed pursuant to Paragraph 10(C) above.

(G) MSW may offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to MSW, City or LGC from Design/Builder, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to MSW, City or LGC has been reduced to judgment by a court.

ARTICLE 11 PAYMENT OF THE CONTRACT PRICE

(A) Payment Procedure: MSW shall pay the Contract Price to Design/Builder in accordance with the procedures set forth in this Article 11 and, for purposes of the Construction Work, the

applicable provisions of Article 9 of the General Conditions to the extent they do not conflict with this Article.

(B) Request for Payment for Design Services: As the Design Services progress, Design/Builder shall submit monthly statements for Design Services rendered, based upon a percentage of completion of the Design Services. If special services or reimbursable expenses are included as part of the Design Services Fee, such services shall be paid on the basis of the hourly rates or actual cost, as applicable, for those items as needed or required by MSW. MSW shall make monthly payments for Design Services in the amount shown by the Design/Builder's approved monthly statements and other required documentation submitted within thirty (30) days after receipt by MSW of a properly prepared and certified request for payment for Design Services. Nothing contained in this Subparagraph shall require MSW to pay for any Design Services which are unsatisfactory as determined by MSW, or which are not submitted in compliance with the terms of this Contract, and payment may be withheld until the Design Services at issue are corrected or compliance is achieved. Progress payments for Design Services under this Contract shall be up to but shall not exceed 95% of the total Design Services Fee; upon final completion and acceptance of the Construction Work, the balance of the Design Services Fee will be paid along with any final payment for the Construction Work.

(C) Request For Payment for Construction Work: On or before the twenty-fifth day of each month, Design/Builder shall submit to MSW its request for payment in such form, and with supporting documentation, as MSW may require. Each request shall seek payment for the Cost of the Construction Work, as defined and allowed by Paragraph 10(C) hereinabove, performed during the current month. Payment for the Cost of the Construction Work shall also include such portion of Design/Builder's Management Fee as is allowed by Paragraph 11(E) below. The supporting documentation for each request for payment shall include, but not be limited to, certified payrolls, petty cash accounts, receipted invoices, and invoices with check vouchers attached. Similar documentation shall be included from each of Design/Builder's Subcontractors and consultants. The request for payment shall be verified under oath by an officer of Design/Builder.

(D) Time For Payment: Within thirty (30) days after receipt by MSW of a properly prepared and certified request for payment, MSW shall make payment to Design/Builder in an amount equal to the total of the Cost of the Construction Work and related services properly performed or furnished as of the date covered by such request for payment, less retainage in the amount of five percent (5%), and less any payments previously made by MSW to Design/Builder.

(E) Payment Of The Management Fee: In addition to the payment of the Cost of the Construction Work and related services as set forth above, MSW will pay Design/Builder its Management Fee monthly during performance of Construction Work, based upon the percentage of Construction Work completed in accordance with the Contract. From each scheduled Management Fee payment, MSW shall further withhold retainage in the amount of five percent (5%).

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(F) Right To Audit: MSW shall be entitled to rely upon the accuracy and completeness of the information furnished by Design/Builder in connection with any request for payment under this Contract. MSW reserves the right to audit, at MSW's election, or upon direction received by MSW from the City or the LGC, all of Design/Builder's records and billings relating to the performance of Design Services or Construction Work under this Contract. Design/Builder agrees to retain its Project records for a minimum of four (4) years following completion of all Services under this Contract. MSW agrees that it will exercise the right to audit only at reasonable hours. MSW may review any and all of the services performed by Contractor under this Contract. MSW is granted the right to audit, and to permit City and LGC to audit, at their election, all of Contractor's records and billings relating to the performance of this Contract. Contractor agrees to retain such records for a minimum of four (4) years following completion of this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to the City's and the LGC's rights as may be disclosed by an audit under this subsection. Any such audit shall be in Dallas, Texas at a location specified by MSW. In the event MSW determines that Design/Builder has been paid any sums not due Design/Builder, same shall be reimbursed by Design/Builder to MSW, for the use and benefit of the Project, within forty-eight (48) hours of demand by MSW.

(G) Condition Precedent To Final Payment: Notwithstanding any other provision in the Contract Documents, final payment shall not be made to Design/Builder until Design/Builder has fully performed all of its obligations under the Contract and the Design Services and the Construction Work are fully complete. USGBC certification of LEED Silver Level rating of the Project shall be a condition of final payment, unless the USGBC's failure to issue the certification is for reasons unrelated to Design/Builder's performance of the Design Services and the Construction Work under the Contract.

(H) MSW's Review Of Pay Requests: MSW shall have the right to review all pay requests for the Design Services and the Construction Work to determine whether the quantity and quality of the Design Services and the Construction Work is as represented in the pay request and as required by the Contract.

(I) Conditions Precedent To Payment: In addition to all other conditions precedent contained in this Contract, including but not limited to the provisions of Subparagraphs 11(G) and 12(G), it shall be a condition precedent to payment of any pay request under this Contract that Design/Builder has submitted properly updated or revised schedules for the performance of its Design Services and Construction Work as required by this Contract.

(J) Passage of Title to Construction Work: Notwithstanding progress payments made by MSW under this Contract, title to all Construction Work is deemed to pass immediately to the LGC. The risk of loss regarding completed Construction Work that is paid for by MSW prior to final completion and acceptance remains with Design/Builder.

(K) Design/Builder's Use Of Progress Payments: Upon receipt of any payment from MSW, Design/Builder shall promptly pay all Subcontractors, materialmen, laborers, and Suppliers such amounts as they are entitled for the Construction Work covered by such payment.

Design/Builder shall also comply with the requirements of the General Conditions relating to payments to Subcontractors.

(L) Use Of Joint Checks: If MSW becomes informed that Design/Builder has not paid a Subcontractor, materialman, laborer, or supplier as provided herein, MSW shall have the right, but not the duty, to issue checks and payment then or thereafter otherwise due to Design/Builder naming Design/Builder and any such Subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by MSW, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit MSW to repeat the procedure in the future nor to create any contractual or other relationship of any kind between MSW and such person or entity.

(M) Payment Not A Waiver Or Acceptance: No payment to Design/Builder, nor any use or occupancy of the Project by the LGC, shall be interpreted or construed to constitute acceptance of any Construction Work not in strict compliance with the Contract, and Design/Builder expressly accepts the risk that defective Construction Work may not be detected (1) during any inspection by MSW, (2) prior to making of any payment to Design/Builder, or (3) before LGC's occupancy of the Project.

(N) Withholding Of Payment: MSW shall have the right to refuse to make payment for Construction Work and, if necessary, may demand the return of a portion or the entire amount previously paid to Design/Builder in an amount then believed by MSW to be adequate to cover the penalties, damages, and potential losses resulting or likely to result from:

- (1) the quality of a portion, or all, of Design/Builder's Construction Work not being in accordance with the requirements of this Contract;
- (2) the quantity of Design/Builder's Construction Work not being as represented in Design/Builder's pay request, or otherwise;
- (3) Design/Builder's rate of progress being such that, in MSW's opinion, Substantial Completion, Final Completion, or both, may be inexcusably delayed;
- (4) Design/Builder's failure to use Contract funds, previously paid Design/Builder by MSW, to pay Design/Builder's Project-related obligations including, but not limited to, Subcontractors, laborers and material and equipment suppliers;
- (5) evidence that the balance of the Construction Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- (6) claims made, or likely to be made, against MSW, the City or LGC, or their respective property;
- (7) loss or damage caused by Design/Builder;

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- (8) Design/Builder's failure or refusal to perform any of its obligations to MSW; or
- (9) any other basis for withholding of payment specified in the General Conditions.

In the event that MSW makes written demand upon Design/Builder for amounts previously paid by MSW as contemplated in this Paragraph 11(N), Design/Builder shall promptly comply with such demand.

(O) Limitation On Duty To Pay: In addition to the grounds for withholding payment as set forth in Paragraph 11(N) hereinabove, MSW and Design/Builder further agree as follows:

- (1) Prior to submitting its initial Application for Payment hereunder, Design/Builder shall submit to MSW a Schedule of Values allocating the portion of the Contract Price, not related to the payment of Design Services, to the various portions of the Construction Work. Such Schedule of Values shall be prepared in such form, with such detail, and supported by such data as MSW and the LGC may require to substantiate its accuracy. Design/Builder shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by Design/Builder shall constitute a material breach of this Contract. The Schedule of Values shall only be utilized as a basis for evaluating Design/Builder's request(s) for payment and shall only constitute such basis after it has been acknowledged in writing by MSW.
- (2) Each request for payment for Construction Work shall include a certification by Design/Builder of the percentage of completion, as of the date of such request for payment, of those portions of the Construction Work as identified in the Schedule of Values. Design/Builder shall furnish to MSW such documentation or other supporting data as MSW and the LGC may request in order to verify the percentage of completion certified by Design/Builder.
- (3) MSW shall have no obligation to make payment to Design/Builder for any Design Services or Construction Work where the amount for which such payment is requested is in excess of the amount allocated in the Schedule of Values for Construction Work based upon the percentage of completion as of the date of the request for payment.

(P) Unexcused Failure To Pay: If MSW, without cause or basis, fails to pay Design/Builder any amounts due and payable under this Contract to Design/Builder within thirty (30) days after the date established in this Contract for payment of such amounts, then the payment shall bear interest as provided under the Texas Prompt Payment Act, Chapter 2251, Texas Government Code, as amended, pursuant to Paragraph 14.5 of the General Conditions. Provided, however, that MSW shall not be liable for interest due on any late or delayed progress payment or final payment caused by any good faith claim or dispute, any discrepancy in quantities, any failure to provide supporting documentation or other information required with the request for payment or

as a precondition to payment under the Contract Documents, or due to any payment MSW has a right to withhold or not certify under the Contract Documents.

ARTICLE 12 SUBSTANTIAL AND FINAL COMPLETION

(A) Substantial Completion: "Substantial Completion" means that stage in the progression of the Construction Work, as approved by MSW in writing, when the Project is sufficiently complete in accordance with the Contract that the LGC and its Hotel Operator can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by MSW, the City, or the LGC of all necessary certificates of occupancy or other authorizations for the use and occupancy of the Project required by any governmental or regulatory authority. MSW reserves the right for the City, or the LGC and its Hotel Operator, to occupy and use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion.

(B) Determination Of Substantial Completion: When Design/Builder believes that the Construction Work is substantially complete, Design/Builder shall notify MSW and the LGC, in writing and shall submit to MSW a list of items remaining to be completed or corrected. MSW (or an independent consultant hired by MSW) will perform an inspection. If the Construction Work is substantially complete, in the opinion of MSW, the City and the LGC, MSW will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of MSW and Design/Builder for Project security, maintenance, heat, utilities, damage to the Construction Work, and insurance, and shall fix the date, not longer than thirty (30) days after the established date of Substantial Completion, within which Design/Builder shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Design/Builder for its written acceptance of the responsibilities assigned to it in such certificate.

(C) Payment Upon Substantial Completion: Upon Substantial Completion of the Construction Work, and upon execution by both MSW and Design/Builder of the Certificate of Substantial Completion, MSW shall pay Design/Builder, within thirty (30) days, all sums due Design/Builder, including such amount of retainage as MSW and the LGC in their sole discretion wish to pay based upon the value of remaining performance, less the reasonable costs, as determined by MSW and LGC in their sole discretion, for completing all incomplete Construction Work and Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and handling all outstanding or threatened claims.

(D) Final Completion: "Final Completion" means the completion of all Design Services and all Construction Work required by, and in strict compliance with, the Contract, including

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Design/Builder's provision to MSW of all documents and things required to be provided by the Contract.

(E) Determination Of Final Completion: When Design/Builder believes that all of the Construction Work is finally complete, and Design/Builder is ready for a final inspection, Design/Builder shall so notify MSW, the City and the LGC, in writing. MSW (or an independent consultant hired by MSW) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, as determined by MSW and the LGC, then MSW will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

(F) Payment After Final Completion: MSW shall make final payment of all remaining sums due to Design/Builder within thirty (30) days after Final Completion as reflected by MSW's Certificate for Final Payment, provided that all documents and things required to be delivered to MSW under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

(G) Conditions Precedent To Final Payment: Prior to being entitled to receive final payment and as a condition precedent thereto, Design/Builder shall furnish MSW, in the form and manner required by MSW, the following:

- (1) Affidavit of Final Payment and Release, in form and substance satisfactory to MSW, the City and the LGC, and certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing MSW, the City and the LGC, from all claims that Design/Builder had or might have asserted during the performance of this Contract;
- (2) separate releases of lien, lien waivers, or affidavits of payment from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against MSW, the City or LGC, or their respective property;
- (3) consent of surety to final payment;
- (4) a complete set of the as-built drawings and the record set of Contract Documents; and
- (5) all product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a contractor, or expressly required herein, as a part of or prior to Project closeout.

(H) Acceptance Of Final Payment A Waiver: Acceptance by Design/Builder of final payment shall constitute a waiver and release of all claims against MSW, the City, the LGC and/or the Project by Design/Builder.

ARTICLE 13
MSW'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, MSW shall undertake to perform the following:

- (A) Provide Project Information: MSW shall provide Design/Builder with information regarding MSW's requirements for the Project including any desired or required design or construction schedule.
- (B) Review Of Documents: MSW shall review any documents submitted by Design/Builder requiring MSW's decision, and shall render any required decisions pertaining thereto.
- (C) Provide Notice Of Defects: In the event MSW knows of any material fault or defect in the Construction Work, nonconformance with the Contract, or of any errors, omissions or inconsistencies in the Design Documents, then MSW shall give prompt notice thereof in writing to Design/Builder, with a copy to the LGC.
- (D) Access To The Site And The Construction Work: MSW shall provide Design/Builder access to the site and to the Construction Work, and shall provide Design/Builder with such information, existing and reasonably available, necessary to Design/Builder's performance of the Contract as Design/Builder may reasonably request.
- (E) Cooperation To Secure Permits, Licenses, Approvals, And Authorizations: MSW shall cooperate with Design/Builder in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.
- (F) Timely Performance: MSW shall perform the duties set forth in this Article 13 in a reasonably expeditious fashion so as to permit the orderly and timely progress of Design/Builder's Design Services and of the Construction Work.
- (G) MSW's Reviews, Inspections, Approvals, And Payments Not A Waiver: MSW's review, inspection, or approval of any Construction Work, Detail Design, Submittals, or pay requests by Design/Builder shall be solely for the purpose of determining whether such Design Services or Construction Work and such documents are generally consistent with MSW's and the City's and the LGC's construction program and requirements. No review, inspection, or approval by MSW of the Construction Work or documents shall relieve Design/Builder of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or Contract Documents shall not relieve Design/Builder of responsibility for the strict performance of its obligations under the Contract. Payment by MSW pursuant to the Contract shall not constitute a waiver of any of MSW's rights under the Contract or at law, and Design/Builder expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by MSW.

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(H) Delay Or Forbearance Not Waiver: MSW's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Design/Builder under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

(I) Documents Requested By Design/Builder: MSW shall furnish to Design/Builder, prior to the execution of this Contract, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Design/Builder only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, MSW does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefor. If Design/Builder requests it in writing, MSW shall also furnish surveys, legal limitations, utility locations (if known), and a legal description of the Project site.

(J) Approvals And Easements: MSW shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Design/Builder shall render such assistance as MSW may request in obtaining such easements, certificates of occupancy, and the like.

(K) Right To Stop Construction Work: In the event Design/Builder fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, MSW may, at its option, instruct Design/Builder to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from MSW in writing, Design/Builder shall immediately cease and desist as instructed by MSW and shall not proceed further until the cause for MSW's instructions has been corrected, no longer exists, or MSW instructs that the Construction Work may resume.

(L) MSW's Right To Perform Construction Work: In the event MSW issues such instructions to stop Construction Work, and in the further event that Design/Builder fails and refuses within seven (7) days of receipt of same to provide adequate assurance to MSW that the cause of such instructions will be eliminated or corrected, then MSW shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Design/Builder shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Paragraph 13(K) and this Paragraph 13(L) are in addition to, and without prejudice to, any other rights or remedies MSW may have against Design/Builder, including the rights to terminate or withhold payment as provided herein.

ARTICLE 14 PROJECT DOCUMENTATION

(A) Maintenance Of Project-Related Records: Design/Builder shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

(B) Availability Of Project-Related Records To MSW: All Project Records which are in the possession of Design/Builder or Design/Builders Subcontractors shall be made available to MSW, the City and the LGC for inspection and copying upon their request at any time. Additionally, such records shall be made available upon request by MSW to any state, federal or other regulatory authorities, and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, tape or videotape recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Design/Builder.

ARTICLE 15 PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

(A) Subcontractor Defined: A "Subcontractor" means an entity which has a direct contract with Design/Builder to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing specially fabricated equipment and materials for the Project.

(B) Supplier Defined: A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

(C) Objections To Subcontractors: Upon execution of this Contract, and at such later times as may be applicable, Design/Builder shall furnish MSW, in writing, the names of persons or entities proposed by Design/Builder to act as Subcontractors on the Project. Design/Builder shall provide such information regarding such proposed Subcontractors as MSW deems necessary. MSW shall promptly reply to Design/Builder, in writing, stating any objections MSW may have to such proposed Subcontractors. Design/Builder shall not enter into a subcontract with an intended Subcontractor with reference to whom MSW objects; provided that any additional cost associated with another subcontractor approved by MSW may result in a Change Order under Articles 16 and 17. Any consent or failure to reject by MSW shall in no way relieve Design/Builder of any of its duties or warranties under the Contract.

(D) Terms Of Subcontracts: All subcontracts and purchase orders with Subcontractors shall afford Design/Builder rights against the Subcontractor which correspond to those rights afforded to MSW against Design/Builder under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between MSW and any Subcontractor of Design/Builder, and a provision to this effect shall be inserted into all agreements between Design/Builder and its Subcontractors.

(E) Design/Builder Responsible For Acts Of Its Subcontractors: Should Design/Builder subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Design/Builder from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Design/Builder shall be responsible for all and any acts, defaults, omissions or negligence of its Subcontractors, Suppliers, and consultants.

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(F) Personnel: In accordance with Article 2 above, Design/Builder shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Design/Builder shall designate one such person as the Project Director. Absent written instruction from Design/Builder to the contrary, the Project Director shall be deemed to be Design/Builder's authorized representative and shall be authorized to receive and accept any and all communications from MSW. Key design and supervisory personnel assigned by Design/Builder to this Project are as follows:

NAME	FUNCTION
_____	_____
_____	_____
_____	_____
_____	_____

Evidence of the above-named personnel's competence, such as a resume, shall be provided to MSW prior to the personnel beginning performance of the function indicated. So long as the individuals named above remain actively employed or retained by Design/Builder, or any related entity or affiliate thereof, they shall perform the functions indicated next to their names unless MSW agrees to the contrary in writing or unless MSW requests removal of any such individual from the Project. In the event MSW requests the removal of any of the individuals named above, Design/Builder shall immediately comply and shall immediately replace such individual with a qualified substitute to whom MSW makes no objection. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, Design/Builder shall be bound by the provisions of this Paragraph 15(F) as though such individuals had been listed above.

(G) Removal Of Subcontractors And Personnel: If, at any time during the course of the Project, MSW reasonably determines that the performance of any Subcontractor or any member of Design/Builder's staff construction Working on the Project is unsatisfactory, MSW's Representative may require Design/Builder to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to MSW for delays or inefficiencies the change may cause.

**ARTICLE 16
CHANGES AND EXTENSIONS OF TIME**

(A) MSW's Right To Order Changes: Changes in the Design Services or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by MSW, subject to consent of LGC, without invalidating the Contract. Such changes shall be communicated by Change Order, Field Order or supplemental agreement, as applicable. Design/Builder shall proceed diligently with any

changes, and same shall be accomplished in strict accordance with the following terms and conditions as set forth in this Article 16.

(B) Changes And Extensions of Time: All change orders, changes requested by Design/Builder, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by Articles 7 and 8 of the General Conditions. All changes to the scope of Design Services or extensions of the agreed upon Design Schedule during the design process shall be made by mutual agreement of MSW and Design/Builder, subject to LGC and Hotel Operator approval, and claims for an increase in design compensation due to a change in the scope of Design Services or for an extension of time to the Design Schedule (or the Schedule for Construction to the extent it is impacted by the Design Schedule) shall be made in writing within seven (7) calendar days after occurrence of the event that gives rise to the claim. All requests for additional compensation due to a change in the scope of Design Services, and all requests for an extension of time to the Design Schedule, shall include sufficient backup documentation for MSW and LGC to reasonably understand the request and the amount of time or compensation requested and to determine the merits of the request.

(C) Adjustments To Contract Price Or Contract Time: Upon the occurrence of a change order for Construction Work as set forth in Paragraph 16(A) hereinabove which increases the Cost of the Construction Work, the Contract Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed by Paragraph 10(A)4 hereinabove; provided, however, the Contract Price shall not exceed the Design/Build Guaranteed Maximum Price. The failure of Design/Builder to provide notice in writing to MSW in accordance with Paragraph 16(B) of any request for an increase in the Contract Price or for an extension of the Contract Time shall constitute a waiver by Design/Builder of any entitlement thereto.

(D) Continuing Duty To Perform Construction Work And Make Payment: In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Design/Builder shall continue to diligently perform the Design Services and the Construction Work, including any change directed by MSW, with LGC consent, by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement, subject to and in accordance with the provisions of Subparagraph 7.1(e) of the General Conditions.

(E) Relationship: Design/Builder recognizes and accepts a relationship of trust and confidence hereby established between Design/Builder and MSW and agrees that it shall at all times in good faith use its best efforts to advance MSW's, the City's and the LGC's interests and agrees to perform the Design Services and the Construction Work in the highest professional manner.

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ARTICLE 17
CLAIMS BY DESIGN/BUILDER

- (A) Terms And Conditions Of Claims: Claims by Design/Builder against MSW are subject to the terms and conditions of this Article 17, and strict compliance with this Article shall be a condition precedent to any liability of MSW in regard to a claim.
- (B) Claim Procedures: All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the procedures set forth in Paragraph 4.3 of the General Conditions and this Contract, with this Contract controlling in the event of a conflict.
- (C) Continuous Duty To Provide Documentation: Design/Builder shall provide, and continue to provide, to MSW all such documentation, including cost and time records, as and when MSW may request so that MSW may evaluate Design/Builder's claim.
- (D) Duty To Continue Performance: Design/Builder shall continue its performance under this Contract regardless of the existence of any claims submitted by Design/Builder against MSW.
- (E) Claims For Increase In Compensation: In the event Design/Builder seeks to make a claim for an increase in Design Services compensation or in the Contract Price, as a condition precedent to any liability of MSW for any claim, Design/Builder shall strictly comply with the requirements of Paragraph 17(B) above and such notice shall be given by Design/Builder before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Design/Builder of any claim.
- (F) Limit Of MSW's Liability For Increased Compensation: In connection with any claim by Design/Builder against MSW for compensation in excess of the Contract Price or the not-to-exceed limit of the Design Services compensation, any liability of MSW shall be strictly limited to the Cost of the Construction Work and Design Services and Management Fee as defined and allowed in Paragraph 10(C) above and shall in no event ever exceed the Design/Build Guaranteed Maximum Price, or include indirect or consequential, impact or other costs, expenses or damages of Design/Builder or its Subcontractors. MSW's liability for additional direct costs, expenses, or damages of Design/Builder or its Subcontractors under this Contract is limited to contingencies and other funds available to MSW; provided, however, that the Contract Price, as amended by Change Order, shall not exceed the Design/Build Guaranteed Maximum Price. MSW shall not be liable to Design/Builder for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which MSW would not be liable to Design/Builder under the terms of the Contract. As a condition precedent to MSW's liability to Design/Builder for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Design/Builder and such claims must have been submitted to MSW by Design/Builder in strict compliance with all the requirements of this Article 17. MSW shall not be liable to Design/Builder for claims of third parties including Subcontractors, unless and until the liability of Design/Builder has been established in a court of competent jurisdiction.

(G) MSW's Right to Order Acceleration And To Deny Claimed And Appropriate Time Extensions, In Whole Or In Part: Design/Builder acknowledges and agrees that Substantial Completion of the Construction Work by or before the Scheduled Completion Date is of substantial importance to MSW. The following provisions, therefore, will apply:

- (1) If Design/Builder falls behind the approved construction schedule for whatever reason, MSW shall have the right, in MSW's sole discretion, to order Design/Builder to develop a recovery schedule as described in Paragraph 3.10 of the General Conditions or to accelerate its progress in such a manner as to achieve Substantial Completion on or before the Contract Time completion date or such other date as MSW may reasonably direct and, upon receipt, Design/Builder shall take all action necessary to comply with the order. In such event, any possible right, if any, of Design/Builder to additional compensation for any acceleration shall be subject to the terms of this Subparagraph (G).
- (2) In the event that Design/Builder is otherwise entitled to an extension of Contract Time and has properly initiated a Claim for a time extension in accordance with Subparagraph 4.3(a) of the General Conditions, MSW shall have the right, in MSW's sole discretion, to deny all, or any part, of the Claim for extension of Contract Time by giving written notice to Design/Builder provided within fourteen (14) days after receipt of Design/Builder's Claim. If MSW denies Design/Builder's claim for an extension of Contract Time under this Clause (G)(2), either in whole or in part, Design/Builder shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date.
- (3) If Design/Builder would have been entitled to a time extension for a reason specifically allowed under the Contract Documents, for an amount of time that would have justified approval by MSW if not for the need and right to accelerate, Design/Builder may initiate a claim for acceleration costs pursuant to Subparagraph 4.3(a) of the General Conditions. Any resulting claim for acceleration costs properly initiated by Design/Builder under Subparagraph 4.3(a) of the General Conditions shall be limited to those reasonable and documented direct costs of labor, materials, equipment, and supervision solely and directly attributable to the actual acceleration activity necessary to bring the Construction Work back within the then existing approved construction schedule. These direct costs include the premium portion of overtime pay, additional crew, shift, or equipment costs if requested in advance by Design/Builder and approved in writing by MSW. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and required insurance and Management Fee, not to exceed the fixed percentages in the Contract, will be allowed on the claimed acceleration costs. NO MARKUP FOR MANAGEMENT FEE (INCLUDING BUT NOT LIMITED TO HOME OFFICE OVERHEAD) OR ANY OTHER COSTS WILL BE ALLOWED ON ANY ACCELERATION

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CLAIM. MSW shall not be liable for any costs related to an acceleration claim other than those described in this Clause (G)(3).

(H) Claims Resolved By Change Order: The resolution of any claim under this Article 17 shall be reflected by a Change Order or Supplemental Agreement executed by MSW and Design/Builder, subject to the approval of the LGC. Notwithstanding any provision of the Contract Documents, no Change Order or Supplemental Agreement shall increase the Contract Price beyond the Design/Build Guaranteed Maximum Price; and all Project Costs beyond the Design/Build Guaranteed Maximum Price shall be the sole liability and responsibility of Design/Builder.

ARTICLE 18 UNCOVERING AND CORRECTING CONSTRUCTION WORK

(A) Design/Builder Not To Cover Construction Work Contrary To Requirements: If any of the Construction Work is covered, concealed or obscured contrary to the written request of MSW, or contrary to any provision of the Contract, said Construction Work shall, if required by MSW, promptly be uncovered for inspection and shall be properly replaced at Design/Builder's expense without change in the Contract Time.

(B) MSW's Right To Order Uncovering Of Any Construction Work: If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 18(A) above, it shall, if required by MSW, be uncovered for inspection. If such Construction Work conforms strictly with the Contract, the cost of uncovering and proper replacement shall be charged to MSW. If such Construction Work does not strictly conform with the Contract, Design/Builder shall pay the cost of uncovering and proper replacement.

(C) Duty To Correct Rejected Construction Work: Design/Builder shall immediately proceed to correct Construction Work rejected by MSW as defective or failing to conform to the Contract. Design/Builder shall pay all costs and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

(D) Duty To Correct Defective Construction Work Discovered After Completion: In addition to its warranty obligations set forth elsewhere in the Contract Documents, including but not limited to the General Conditions, Design/Builder shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from MSW. This obligation shall survive final payment by MSW and termination of the Contract.

(E) No Period Of Limitation Established: Nothing contained in Paragraph 18(D) shall establish any period of limitation with respect to other obligations which Design/Builder has under the Contract Documents. Establishment of the one-year time period in Paragraph 18(D) above relates only to the duty to Design/Builder to specifically correct the Construction Work.

(F) MSW's Option To Accept Defective Construction Work: MSW may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. MSW shall be entitled to a reduction in the GMP regardless of whether MSW has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the GMP, if any, is insufficient to compensate MSW for the acceptance of defective or nonconforming Construction Work, Design/Builder shall, upon written demand from MSW, pay MSW, for the exclusive use and benefit of the LGC, such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 19 SUSPENSION AND TERMINATION

(A) Suspension Of Performance: MSW may for any reason whatsoever suspend performance under the Contract. MSW shall give written notice of such suspension to Design/Builder specifying when such suspension is to become effective.

(B) Ceasing Performance Upon Suspension: From and upon the effective date of any suspension ordered by MSW, Design/Builder shall incur no further avoidable expense or obligations in connection with this Contract, and Design/Builder shall cease its performance. Design/Builder shall also, at MSW's direction, either suspend or assign to MSW any of its open or outstanding subcontracts or purchase orders.

(C) Claim For Costs Of Suspension: In the event MSW directs a suspension of performance under this Article 19, through no fault of Design/Builder, and provided Design/Builder submits a proper claim as provided in this Contract, MSW shall pay Design/Builder as full compensation for such suspension Design/Builder's reasonable costs, actually incurred and paid, of:

- (1) demobilization and remobilization, including such costs paid to Subcontractors;
- (2) preserving and protecting Construction Work in place;
- (3) storage of materials or equipment purchased for the Project, including insurance thereon; and
- (4) performing in a later, or during a longer, time frame than that contemplated by this Contract.

(D) Resumption Of Construction Work After Suspension: If MSW lifts the suspension it shall do so in writing, and Design/Builder shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Design/Builder has exercised its right of termination as provided herein.

(E) Termination By MSW For Convenience: MSW reserves the right, for any reason whatsoever (including, but not limited to, nonappropriation of funding), or without reason,

terminate performance under the Contract by Design/Builder for convenience. MSW shall give thirty (30) calendar days advance written notice of termination for convenience to Design/Builder. Design/Builder shall incur no further obligations in connection with the Contract and Design/Builder shall stop Design Services and the Construction Work when such termination becomes effective. Design/Builder shall also, at MSW's direction, either terminate or assign to MSW outstanding orders and subcontracts. Design/Builder shall settle the liabilities and claims arising out of any terminated subcontracts and orders. MSW may direct Design/Builder to assign Design/Builder's right, title and interest under terminated orders or subcontracts to MSW or its designee. Design/Builder shall transfer title to the LGC (to the extent title is not already in the LGC) of all completed or partially completed Design Documents, Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Design/Builder has, and deliver possession to MSW.

(F) Submission Of Termination Claim And Compensation For Termination For Convenience: When terminated for convenience, Design/Builder shall be compensated as follows:

- (1) Design/Builder shall submit a termination claim to MSW specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by MSW. If Design/Builder fails to file a termination claim within three (3) months from the effective date of termination, MSW shall pay Design/Builder an amount derived in accordance with Subparagraph (3) below.
- (2) MSW and Design/Builder may agree to the compensation, if any, due to Design/Builder under this paragraph.
- (3) Absent agreement to the amount due to Design/Builder, MSW shall pay Design/Builder, as full compensation for termination for convenience, the following amounts:
 - (a) the Cost of the Construction Work and Services, as defined and allowed by Paragraph 10(B) above, to the extent incurred or paid prior to receipt by Design/Builder of the notice of termination;
 - (b) such portion of Design/Builder's Fee which is earned and unpaid as of the date of receipt by Design/Builder of the notice of termination; and
 - (c) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph 19(E) hereinabove and Management Fee thereon. These costs shall not include amounts paid in accordance with other provisions of this Contract.

In no event shall Design/Builder be entitled to recover lost profits or other incidental or consequential damages from MSW on account of a termination for convenience, or an erroneous termination for cause as described below.

(G) Termination By MSW For Cause: If Design/Builder does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then MSW may by written notice to Design/Builder, without prejudice to any other right or remedy against Design/Builder or others, terminate the performance of Design/Builder and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Design/Builder shall not be entitled to receive any further payment until the Construction Work is finished.

(H) Erroneous Termination For Cause: In the event the employment of Design/Builder is terminated by MSW for cause pursuant to Paragraph 19(G) and it is subsequently determined by a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Paragraph 19(E) and the provisions of Paragraph 19(F) regarding compensation shall apply.

ARTICLE 20 OWNERSHIP OF DOCUMENTS

(A) Documents Considered City's and LGC's Property: All designs, documents, deliverables, and work product developed under this Contract including, but not limited to, Tracings, Drawings, Estimates, Plans, Specifications, Investigations, Studies and other documents, completed or partially completed, shall be the property of the City and the LGC, to be used as City and LGC desire, without restriction on future use upon full payment therefor. By execution of this Contract and in consideration of the compensation for services to be paid under this Contract, Design/Builder hereby conveys, transfers and assigns jointly to the City and the LGC all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights and all other intellectual property rights acknowledged by law in the Project designs, documents, deliverables and work product developed under this Contract. Copies may be retained by Design/Builder; provided, however, that in no event shall Design/Builder or its design consultants use, or permit to be used, any portion or all of such documents on other projects without City's or LGC's prior written authorization. Design/Builder shall be liable to MSW, City and LGC for any loss or damage to any such documents while they are in the possession of or while being worked upon by Design/Builder or anyone connected with Design/Builder, including agents, employees, consultants or subcontractors. All documents so lost or damaged shall be replaced or restored by Design/Builder without cost to MSW, City or LGC.

(B) Ownership of Documents under Design/Builder's Design Services Contracts: The provisions of Subparagraph (A) shall be included in all of Design/Builder's contracts for Design Services in connection with the Project..

ARTICLE 21 INDEMNITY

GENERAL INDEMNITY: DESIGN/BUILDER (THE "INDEMNITOR") AGREES TO DEFEND, INDEMNIFY AND HOLD MSW, THE CITY AND THE LGC (THE "INDEMNITEES," WHICH TERM INCLUDES THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES), HARMLESS AGAINST ANY AND ALL CLAIMS, LIABILITIES, DAMAGES, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY INDEMNITOR'S BREACH OF, OR FAILURE TO PERFORM, ITS OBLIGATIONS UNDER THIS CONTRACT (INCLUDING ANY INSURANCE OBLIGATION), OR BY ANY OTHER NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF INDEMNITOR, ITS OFFICERS, AGENTS, EMPLOYEES, OR SEPARATE CONTRACTORS, IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY AND OBLIGATION TO DEFEND PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE INDEMNITEES, OR THEIR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF INDEMNITOR AND THE INDEMNITEES, RESPONSIBILITY AND LIABILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE INDEMNITEES UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE INDEMNITOR OR THE INDEMNITEES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE INDEMNITOR AND THE INDEMNITEES AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY, AND SHALL SURVIVE TERMINATION OR EXPIRATION OF THE CONTRACT. WHERE DESIGN/BUILDER PERFORMS WORK WITH ITS OWN FORCES, THE INDEMNITY PROVISIONS CONTAINED IN THE GENERAL CONDITIONS SHALL APPLY AND SHALL CONTROL IN THE EVENT OF ANY CONFLICT WITH THIS INDEMNITY PROVISION.

**ARTICLE 22
INSURANCE**

(A) General Insurance Requirements: Design/Builder shall procure, pay for, and maintain during the term of this Contract, with a company authorized to do business in the State of Texas and otherwise acceptable to MSW, the City and the LGC, the minimum insurance coverage contained in Article 11 of the General Conditions and in Exhibit B, attached to and made a part of this Contract. MSW, the City and the LGC shall be included as additional insureds as provided therein, and certificates evidencing coverage shall be provided to MSW, the City and the LGC.

(B) Liability Notwithstanding Insurance: Approval, disapproval or failure to act by MSW, the City or the LGC regarding any insurance supplied by Design/Builder or its Subcontractors shall not relieve Design/Builder of full responsibility or liability for damages, errors, omissions or accidents as set forth in this Contract. The bankruptcy or insolvency of Design/Builder's insurer or any denial of liability by Design/Builder's insurer shall NOT exonerate Design/Builder from the liability or responsibility of Design/Builder as set forth in this Contract.

**ARTICLE 23
SURETY BONDS**

(A) Performance Bond And Payment Bond: Upon execution of this Contract, Design/Builder shall furnish to MSW separate performance and payment bonds in the penal sum of 100% of the GMP. The bonds shall be written by a corporate surety or sureties authorized to conduct an insurance business in the State of Texas and licensed to issue surety bonds in the State of Texas, and otherwise acceptable to MSW, the City and the LGC. The bonds shall conform to the requirements of Chapter 2253, Texas Government Code, as amended, and Section 3503.003, Texas Insurance Code, as amended. The bonds shall be written on forms approved for the Project, a copy of which bond forms are attached to and made a part of this Contract as Exhibit C.

(B) Subcontractor Bonds: Each Subcontractor (including material suppliers) whose Subcontract is greater than \$100,000, similar Performance and Payment Bonds or SubGuard default insurance, in Design/Builder's discretion, will be required in the full amount of each Subcontract, naming Design/Builder, City, LGC and MSW as joint obligees (or in the case of SubGuard, a financial interest endorsement).

**ARTICLE 24
CONFLICT OF INTEREST OF CITY EMPLOYEES**

INTENTIONALLY OMITTED

ARTICLE 25
GIFT TO PUBLIC SERVANT
INTENTIONALLY OMITTED

ARTICLE 26
NONDISCRIMINATION AND
CITY OF DALLAS M/WBE GOOD FAITH EFFORT PLAN

(A) General: As a condition of this Contract, Design/Builder covenants that Design/Builder will take all necessary actions to insure that, in connection with any work under this Contract, Design/Builder, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Design/Builder shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Design/Builder shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of four (4) years from final Contract completion, with full access allowed to authorized representatives of MSW, City and LGC, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

(B) M/WBE: As a condition of this Contract, Design/Builder agrees to comply with the terms of the Project Specific M/WBE Good Faith Effort Plan attached hereto as Exhibit , and to the degree reasonably possible, utilize subcontractors with offices located in the City of Dallas. Design/Builder shall fully cooperate with MSW in implementing MSW's obligations to the LGC under the Developer Agreement with the LGC, dated _____, 2009, with respect to M/WBE goals, reporting and utilization.

ARTICLE 27
DISPUTES

INTENTIONALLY OMITTED

ARTICLE 28
MISCELLANEOUS PROVISIONS

(A) Governing Law; Venue: This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state. This Contract is performed in Dallas County, Texas, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Dallas County, Texas.

(B) Successors And Assigns: This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

(C) Non-Assignment: Design/Builder shall not assign this Contract, or any part of this Contract, without the prior written consent of MSW and LGC.

(D) Notices: Any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If intended for MSW, to:

Matthews Holdings Southwest, Inc.
1660 S. Stemmons Freeway, Suite 100
Lewisville, TX 75067-6315
Attention: Jack Matthews or Kristian Teleki

With a copy to:

Dallas Convention Center Hotel Development Corporation
c/o Ryan S. Evans, President
Dallas City Hall, Rm 4 EN
1500 Marilla Street
Dallas, TX 75201

With a copy to:

Hunton & Williams LLP
1445 Ross Avenue, Suite 3700
Dallas, TX 75202
Attention: John Stenger, Esq.

If intended for Design/Builder, to:

Balfour/Russell/Pegasus, a joint venture
3100 McKinnon, 7th Floor
Dallas, TX 75201
Attention: Doug Jones and Jeff Parsons

With a copy to:

Dallas Convention Center Hotel Development Corporation
c/o Ryan S. Evans, President
Dallas City Hall, Rm 4 EN
1500 Marilla Street
Dallas, TX 75201

(E) Publicity: No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Design/Builder, either before or after completion of the Project, for publication, advertising or any commercial purposes without MSW's and LGC's prior written consent.

(F) Severability: In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

(G) Counterparts: This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Contract is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Contract to be executed.

(H) Captions: The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

(I) Arbitration Provisions Prohibited: No arbitration provisions shall be included in any of the contracts to be entered into by Design/Builder or its consultants or subcontractors in connection with the design or construction of the Project.

(J) Entire Agreement; No Oral Modifications: This Contract (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Contract. Except as otherwise provided elsewhere in this Contract, this Contract cannot be modified without written supplemental agreement executed by both parties.

[SIGNATURE PAGE FOLLOWS]

EXECUTED as of the ___ day of _____, 2009, by MSW and by Design/Builder, acting through their duly authorized officials.

MATTHEWS HOLDINGS SOUTHWEST, INC.

By: _____
John H. Matthews, President

**BALFOUR/RUSSELL/PEGASUS,
a joint venture**

By: _____
Douglas H. Jones,
Balfour Beatty Construction Division
President, as managing partner

Design/Build GMP Contract—Preliminary City Insurance Provisions For Exhibit B

INSURANCE
[ref: ARTICLE 22]

The following minimum requirements shall be included in the preparation and implementation of Design/Builder's CCIP, to be approved by MSW, the City and the LGC, with such modifications as may be appropriate to accomplish the intended purposes of the CCIP:

1. Design/Builder shall purchase and maintain the following minimum insurance for the term of the Contract:

LIABILITY INSURANCE

- (1) Workers' Compensation, with statutory limits, with the policy endorsed to provide a waiver of subrogation as to MSW, the City, and the LGC; and Employer's Liability Insurance at a limit of not less than \$1,000,000 for

each accident, \$1,000,000 disease for each employee and \$5,000,000 disease policy limit.

- (2) Commercial General Liability Insurance. Coverage shall insure Design/Builder for Work performed under the Contract against claims for bodily injury, including death, of any person other than Design/Builder's employees, and property damage for injury to or destruction of tangible property other than the Work itself (the broad form property damage coverage must be extended to apply to completed operations). The policy shall be endorsed to remove any property damage liability exclusions pertaining to loss by explosion, collapse or underground hazards, and shall include coverage extended to apply to asbestos hazards, if the Project involves work with asbestos. The policy shall include:
- (A) Products/Completed Operations Liability, to be maintained for a minimum of five (5) years after final completion and acceptance of the Work, with evidence of same filed with MSW.
 - (B) Independent Contractor's Liability to cover Design/Builder's liability arising out of work performed by the Subcontractors or lower tier subcontractors.
 - (C) Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions contained in this Contract and in the General Conditions.
 - (D) Personal Injury Liability, with the employee exclusion deleted.
 - (E) Limits of liability shall be not less than a combined bodily injury (including death) and property damage minimum limit of \$5,000,000 per occurrence, \$5,000,000 annual aggregate. If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than 60 months following completion of the Project and acceptance of work by MSW. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. **MSW, THE CITY, AND THE LGC SHALL ALSO BE NAMED AS ADDITIONAL INSURED'S USING THE BROADEST FORM OF ENDORSEMENT AVAILABLE, WITH SUCH STATUS EXTENDED TO INCLUDE THE EXTENSION OF THE COMPLETED OPERATIONS COVERAGE AS DESCRIBED ABOVE.** The policy shall include endorsement CG2503 amendment of limits

(designated project or premises), in order to extend the policy's limits specifically to the Project.

- (3) Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000 per occurrence, and \$1,000,000 annual aggregate. Such insurance shall include coverage for loading and unloading hazards. **MSW, THE CITY, AND THE LGC SHALL BE NAMED AS ADDITIONAL INSUREDS.**
- (4) "Umbrella" Liability Insurance. The policy shall insure Design/Builder for an amount of not less than \$100,000,000 per occurrence, \$100,000,000 annual aggregated, combined single limit for bodily injury (including death) and property damage, that follows form and is in excess of the primary liability insurance coverage required above. **MSW, THE CITY, AND THE LGC SHALL BE NAMED AS ADDITIONAL INSUREDS USING THE BROADEST FORM OF ENDORSEMENT AVAILABLE, WITH SUCH STATUS EXTENDED TO INCLUDE THE EXTENSION OF THE COMPLETED OPERATIONS COVERAGE AS DESCRIBED ABOVE.**

PROFESSIONAL LIABILITY INSURANCE

- (5) Design/Builder shall purchase and maintain Professional Liability Insurance to provide coverage against any claim for damages arising out of performance of professional services by Design/Builder and its architects, engineers, consultants and other design contractors, caused by any negligent error, omission or act, with minimum limits of \$25,000,000 per claim, \$25,000,000 annual aggregate, and with a seven-year discovery period commencing from the date of Substantial Completion of the Project. If Design/Builder has higher limits available, then such higher limits shall also inure to the benefit of MSW, the City and the LGC.

BOILER AND MACHINERY INSURANCE

- (6) Design/Builder shall purchase and maintain such Boiler and Machinery Insurance as may be required by the Contract Documents or by law, at such time as the exposure commences. This insurance shall include the interests of MSW, the City, the LGC, the Architects and Engineers, Design/Builder, the Subcontractors and lower tier subcontractors in the Work; and MSW, the City, and the LGC shall be named insureds.

PROPERTY INSURANCE—ALL RISK BUILDER'S RISK INSURANCE

EXHIBIT A TO DEVELOPER AGREEMENT

*Hotel Project Improvements Construction Contract
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- (7) Design/Builder shall purchase and maintain throughout the duration of the Project, All-Risk Builder's Risk Insurance, as described in Section 11.2 of the General Conditions, in an amount equal to 100% of the replacement value of the Project, written on a Completed Value Form, including materials delivered and labor performed for the Project, and including Delay in Opening coverage, and written jointly in the names of MSW, the City, the LGC, the Design/Builder, Subcontractors, and Sub-Subcontractors as their interests may appear.

CERTIFICATES OF INSURANCE

- (8) Certificates of insurance acceptable to MSW, the City, and the LGC evidencing the insurance coverages required shall be filed with MSW, the City, and the LGC prior to commencement of the Work. **MSW SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THE CONTRACT UNTIL THE REQUIRED CERTIFICATES OF INSURANCE HAVE BEEN DELIVERED TO MSW, THE CITY, AND THE LGC, AND NO OFFICER OR EMPLOYEE OF EACH SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT.** These certificates shall contain a provision that coverages afforded under the policies will not be materially changed, cancelled or non-renewed until at least thirty (30) days prior written notice has been given to the Certificate Holder. When requested by MSW, the City, or the LGC, certified copies of any of the policies, plus any endorsements, will be furnished to each at no cost. Certificates of insurance for insurance required of Subcontractors under the General Conditions shall be furnished to Design/Builder and MSW.
- (9) Design/Builder agrees that in regard to the above-required insurance coverage, all insurance contracts and certificates of insurance will contain and state, in writing, the following required provisions:
- (A) Companies issuing the insurance policies shall have no recourse against MSW, the City, or the LGC for payment of any premiums or assessments for any deductibles which all are at the sole responsibility and risk of Design/Builder.
- (B) The term "City" or "City of Dallas" shall include all authorities, Boards, Bureaus, Commissions, Divisions, Departments, and officers of City and the individual Councilmembers, employees, attorneys, and agents thereof in their official capacities, and/or while acting on behalf of the City of Dallas. The term "LGC" shall include its individual directors, agents, and attorneys in their official capacities, and/or while acting on behalf of the LGC.

- (C) The policy clause “Other Insurance” shall not apply to any insurance coverage currently held by MSW, the City, or the LGC, to any such future coverage, or to each entity’s Self-Insured retentions of whatever nature.
 - (D) All provisions of the Contract concerning liability, duty and standard of care, together with the indemnification provisions, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- 2. Any insurance policies required above may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby. If Design/Builder has higher limits available, then such higher limits shall also inure to the benefit of MSW, the City and the LGC, and no additional insured endorsement to the contrary that would limit the limits of insurance provided in the policy to the minimum limits of insurance required by the written contract will be allowed.
- 3. Where negligence liability is not covered by insurance, the Design/Builder, Subcontractors, and MSW shall each be responsible for their own negligent or strictly liable acts or omissions, subject to the applicable indemnity provisions of this Contract, Design/Builder’s Subcontract form and the General Conditions. This provision shall never be held to have been made or entered into for the benefit of third persons, but shall be strictly construed for the benefit of the parties hereto exclusively. Also, this provision shall not be deemed to alter the General Conditions, or be construed as a waiver by the City or the LGC of their legal defenses, including governmental immunity.
 - 4. MSW (for itself, the City, and the LGC) reserve the right to review the insurance requirements of this section during the effective period of the Contract and to modify insurance coverages and their limits when deemed necessary and prudent by MSW and the City’s Risk Management Division of the Human Resources Department, based upon economic conditions, the recommendation of professional insurance advisors, changes in statutory law, court decisions, or other relevant factors. Design/Builder agrees to make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either party to this Contract or upon the underwriter of any such policy provisions). Upon request by MSW, Design/Builder shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.
 - 5. Approval, disapproval or failure to act by MSW, the City, or the LGC regarding any insurance supplied by Design/Builder or the Subcontractors shall

not relieve Design/Builder of full responsibility or liability for damages, errors, omissions or accidents as set forth in this Contract. Neither the bankruptcy or insolvency of Design/Builder's insurer nor any denial of liability by Design/Builder's insurer shall exonerate Design/Builder from the liability or responsibility of Design/Builder set forth in this Contract.

6. Design/Builder and MSW mutually waive subrogation rights each may have against the other for loss or damage, to the extent same is covered by the proceeds of insurance. The waiver of subrogation of Design/Builder shall be noted on the certificate of insurance furnished by Design/Builder.

PERFORMANCE BOND

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Bond No.

KNOW ALL MEN BY THESE PRESENTS: That Balfour/Russell/Pegasus, a joint venture, consisting of _____, whose address is _____, hereinafter called Principal, and _____, a _____ corporation, and _____, a _____ corporation, both corporations fully authorized to transact business in the State of Texas, and hereinafter collectively called Surety, are held and firmly bound unto the City of Dallas, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter called City, the Dallas Convention Center Hotel Development Corporation, a Local Government Corporation created under the laws of the State of Texas, hereinafter called LGC, and Matthews Holdings Southwest, Inc., a Texas corporation, hereinafter called MSW (hereinafter City, LGC and MSW are jointly called "Obligees"), in the penal sum of _____ (\$ _____) DOLLARS, plus 10 percent of the stated penal sum as an additional sum of money representing additional court expenses, attorneys' fees, and liquidated damages arising out of or connected with the below identified Contract, in lawful money of the United States, to be paid in Dallas County, Texas, for the payment of which sum well and truly to be made, we hereby bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. This Bond shall automatically be increased by the amount of any Change Order or modification which increases the Contract Price, but in no event shall a Change Order or modification which reduces the Contract Price decrease the penal sum of this Bond.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal was awarded, and entered into a certain Contract, identified as the DESIGN/BUILD GMP CONTRACT, dated _____, 2009, which Contract was entered into by MSW, as of the same date, a copy of which Contract is hereto attached and made a part hereof, as fully and to the same extent as if copied at length herein (including, but not limited to all provisions in the Contract with respect to obligations to correct defective work, obligations in connection with defaults under the Contract, indemnification obligations, obligations to provide reimbursement and repayment, and obligations to pay liquidated damages) for the design, development, construction, equipping furnishing, full completion, and opening of the Convention Center Headquarters Hotel, in the City and County of Dallas, Texas.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform and fulfill all of the undertakings, covenants, terms, conditions and agreements of said Contract in accordance with the plans, specifications and Contract Documents during the original term thereof and any extension thereof which may be granted, with or without notice to the Surety, and during the life of any guaranty or warranty required under this Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of

any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; and, if the Principal shall repair and/or replace all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of final completion and final acceptance of the Work by Obligees; and, if the Principal shall fully indemnify and save harmless Obligees from all costs and damages which Obligees may suffer by reason of failure to so perform herein and shall fully reimburse and repay Obligees all outlay and expense which Obligees may incur in making good any default or deficiency, then this obligation shall be void; otherwise, it shall remain in full force and effect.

PROVIDED FURTHER, that if any legal action be filed upon this Bond, exclusive venue shall lie in Dallas County, State of Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the Specifications or Drawings accompanying the same shall in anywise affect its obligation on this Bond, and Surety does hereby waive (i) notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work, or to the Specifications or Drawings accompanying the same, and (ii) notice of any subcontracts, purchase orders or other obligations related to the Contract.

This Bond is given pursuant to the provisions of Chapter 2253 of the Texas Government Code, as amended, and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Dallas County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by Section 3503.003 of the Insurance Code, Vernon's Texas Codes Annotated.

THE ADDRESS OF THE SURETY TO WHICH ANY NOTICE OF CLAIM SHOULD BE SENT MAY BE OBTAINED FROM THE TEXAS DEPARTMENT OF INSURANCE IN AUSTIN, TEXAS BY CALLING THE FOLLOWING TOLL-FREE TELEPHONE NUMBER: 1-800-252-3439.

IN WITNESS WHEREOF, this instrument is executed in four (4) copies, each one of which shall be deemed an original, this ___ day of _____, 2009.

ATTEST:

PRINCIPAL:

Balfour/Russell/Pegasus, a joint venture.

BY _____
Secretary

BY _____
President

SURETY:

BY _____

BY _____

Attorney-in-Fact

BY _____

BY _____

Attorney-in-Fact

The Resident Agent of the Surety in Dallas County, Texas, for delivery of notice and service of the process is:

NAME: _____

STREET ADDRESS: _____

(NOTE: Date of Performance Bond must be date of the Contract. If the Resident Agent is not a corporation, give a **person's** name.)

PAYMENT BOND

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Bond No.

KNOW ALL MEN BY THESE PRESENTS: That Balfour/Russell/Pegasus, a joint venture, consisting of _____, whose address is _____, hereinafter called Principal, and _____, a _____ corporation, and _____, a _____ corporation, both corporations fully authorized to transact business in the State of Texas, and hereinafter collectively called Surety, are held and firmly bound unto the City of Dallas, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter called City, the Dallas Convention Center Hotel Development Corporation, a Local Government Corporation created under the laws of the State of Texas, hereinafter called LGC, and Matthews Holdings Southwest, Inc., hereinafter called MSW (hereinafter City, LGC and MSW are jointly called "Obligees"), and unto all persons, firms, and corporations who may furnish materials for, or perform labor upon the building or improvements hereinafter referred to, in of penal sum of _____ (\$_____) DOLLARS in lawful money of the United States, to be paid in Dallas County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors jointly and severally, firmly by these presents. This Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Contract Price, but in no event shall a Change Order or Supplemental Agreement which reduces the Contract Price decrease the penal sum of this Bond.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal was awarded, and entered into a certain Contract, identified as the DESIGN/BUILD GMP CONTRACT, dated _____, 2009, which Contract was entered into by MSW, as of the same date, a copy of which Contract is hereto attached and made a part hereof, as fully and to the same extent as if copied at length herein (including, but not limited to all provisions in the Contract with respect to obligations to correct defective work, obligations in connection with defaults under the Contract, indemnification obligations, obligations to provide reimbursement and repayment, and obligations to pay liquidated damages) for the design, development, construction, equipping furnishing, full completion, and opening of the Convention Center Headquarters Hotel, in the City and County of Dallas, Texas.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties and make prompt payment to all persons, firms, subcontractors, corporations and claimants supplying labor and/or material in the prosecution of the Work provided for in said Contract and any and all duly authorized modifications or subcontracts of said Contract that may hereafter be

made, notice of which modification or subcontract to the Surety is hereby expressly waived, then this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED FURTHER, that if any legal action be filed on this Bond, exclusive venue shall lie in Dallas County, Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the Contract, or to the Work performed thereunder, or the Plans, Specifications, Drawings, etc., accompanying the same, shall in anywise affect its obligation on this Bond, and Surety does hereby waive (i) notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work, or to the Specifications or Drawings accompanying the same, and (ii) notice of any subcontracts, purchase orders or other obligations related to the Contract.

This Bond is given pursuant to the provisions of Chapter 2253 of the Texas Government Code, as amended, and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Dallas County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by Section 3503.003 of the Insurance Code, Vernon's Texas Codes Annotated.

THE ADDRESS OF THE SURETY TO WHICH ANY NOTICE OF CLAIM SHOULD BE SENT MAY BE OBTAINED FROM THE TEXAS DEPARTMENT OF INSURANCE IN AUSTIN, TEXAS BY CALLING THE FOLLOWING TOLL-FREE TELEPHONE NUMBER: 1-800-252-3439.

IN WITNESS WHEREOF, this instrument is executed in four (4) copies, each one of which shall be deemed an original, this ___ day of _____, 2009.

ATTEST:

PRINCIPAL:

Balfour/Russell/Pegasus, a joint venture

BY _____

Secretary

BY _____

President

SURETY:

BY _____

BY _____

Attorney-in-Fact

EXHIBIT A TO DEVELOPER AGREEMENT

*Hotel Project Improvements Construction Contract
City 02-15-09*

BY _____

BY _____

Attorney-in-Fact

The Resident Agent of the Surety in Dallas County, Texas, for delivery of notice and service of the process is:

NAME: _____

STREET ADDRESS: _____

(NOTE: Date of Payment Bond must be the date of Contract. If Resident Agent is not a corporation, give a **person's** name.)

**EXHIBIT B
TO
DEVELOPER AGREEMENT**
Initial Hotel Project Improvements Construction Schedule

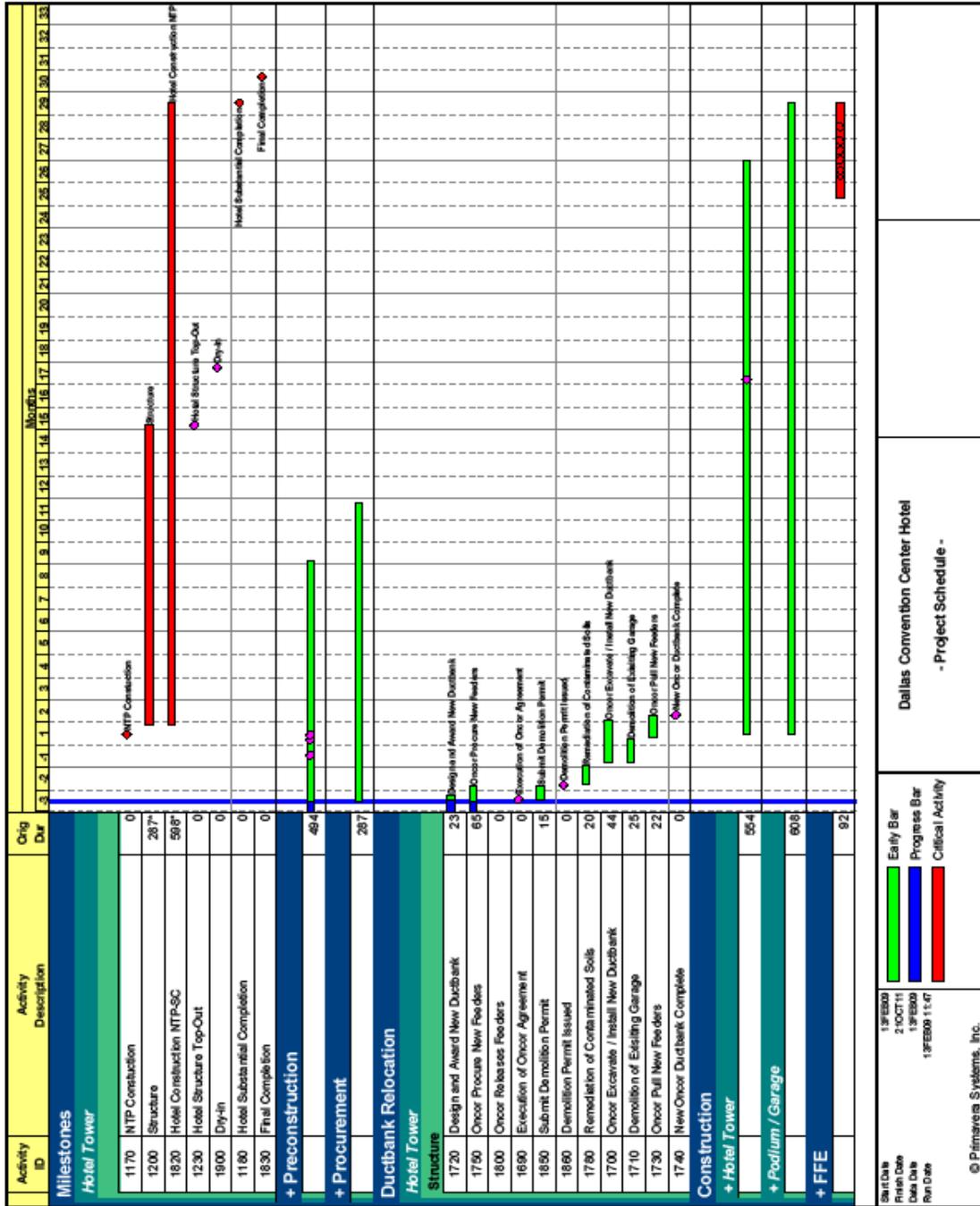


EXHIBIT A TO DEVELOPER AGREEMENT
Hotel Project Improvements Construction Contract
City 02-15-09

Start Date: 13FEB00
 Finish Date: 21OCT11
 Draw Date: 13FEB00
 Rev Date: 13FEB00 11:47

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Dallas Convention Center Hotel
 - Project Schedule -

Legend:
 Early Bar (Green)
 Progress Bar (Blue)
 Critical Activity (Red)