

STATE OF TEXAS	§	AMENDED AND RESTATED
	§	ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
COUNTY OF COLLIN	§	AND CIVIC CENTER AGREEMENT

This Amended and Restated Economic Development Incentive Agreement and Civic Center Agreement (“Agreement”) is made by and between the City of Allen, Texas (“City”), and Altera AHCC LLC, a Texas limited liability company (“Company”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, City and Company, as successor-in-interest to TCH Altera AHCC LP, a Texas limited partnership, previously entered into that certain *Economic Development Incentive Agreement and Civic Center Agreement* dated and effective April 15, 2015 (the “Original Agreement”), as amended by that certain *First Amendment to Economic Development Incentive Agreement and Civic Center Agreement* dated November 11, 2015 (the “First Amendment”), that certain *Second Amendment to Economic Development Incentive Agreement* dated and effective June 16, 2016 (the “Second Amendment”), that certain *Third Amendment to Economic Development Incentive Agreement* dated and effective March 3, 2017 (the “Third Amendment”), and that certain *Fourth Amendment to Economic Development Incentive Agreement* dated and effective January 30, 2019 (the “Fourth Amendment”) (collectively, the Original Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment are referred to hereafter as the “Original Agreement”); and

WHEREAS, the Parties desire to amend and restate the Original Agreement as set forth herein; and

WHEREAS, Company has constructed and is operating the Hotel and Conference Center (hereinafter defined) on approximately 6.754 acres of land in Allen Central Park owned by the Allen Economic Development Corporation (“AEDC”) as described in Exhibit “A” (the “Land”); and

WHEREAS, Company has made a Capital Investment (hereinafter defined) in the Hotel and Conference Center in the amount of \$85 Million; and

WHEREAS, Company previously advised City that a contributing factor that would induce Company to develop, construct and operate the Hotel and Conference Center would be an agreement by the City, AEDC and the Allen Community Development Corporation (“ACDC”) to provide economic development incentives to Company to defray a portion of the costs of the development, construction and operation of the Hotel and Conference Center; and

WHEREAS, City, AEDC and ACDC have provided Company with economic development incentives in an aggregate amount not to exceed \$15.3 Million (exclusive of the AEDC sale of the Land to Company) for the development, construction and operation of the Hotel and Conference Center; and

WHEREAS, Chapter 351, Texas Tax Code, authorizes the City to expend hotel/motel occupancy tax revenue for the acquisition, lease, construction, improvement, enlarging, maintenance, equipping and operation of a convention center facility which includes civic centers, auditoriums, and parking areas, owned or managed by the City; and

WHEREAS, the Civic Center (hereinafter defined) located in the Hotel and Conference Center will enhance and promote tourism and the hotel and convention industry and will attract visitors from outside the City into the City or its vicinity; and

WHEREAS, Company purchased the Land from the AEDC for the development and construction of the Hotel and Conference Center pursuant to a purchase and sale agreement (hereinafter defined as the “Hotel Site Purchase Agreement”); and

WHEREAS, promoting the location of new business enterprises within the City will promote economic development, stimulate commercial activity, generate additional use tax and will enhance the property tax base and economic vitality of the City; and

WHEREAS, the City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has adopted programs for promoting economic development, and this Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

WHEREAS, the City has determined that making an economic development grant to Company in accordance with the City’s economic development program will (i) further the objectives of the City; (ii) benefit the City and the City’s inhabitants; and (iii) promote local economic development and stimulate business and commercial activity in the City; and

WHEREAS, the City Council does hereby approve this Agreement as a program for making an economic development grant to Company for the purpose of stimulating and maintaining its commercial activity within the City, and to promote the generation of use tax, the enhancement of the property tax base, and to maintain and increase the economic vitality of the City;

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article I

Findings and Determinations

The City Council hereby finds and determines that: (i) City is authorized to enter into this Agreement; (ii) Chapter 351, Tax Code, authorizes the expenditure of City hotel/motel occupancy tax revenue for the lease, operation and management of the Civic Center; (iii) the use and management of a portion of the Hotel and Conference Center as a municipal civic center is authorized by Chapter 351, Tax Code, and will enhance and promote tourism and the hotel and convention industry and will attract visitors from outside the City into the City or its vicinity; (iv) the City is authorized to contract for the management of the Conference Center for use as a civic center; and (v) the Recitals are true and correct.

Article II

Term

The term of this Agreement (“Term”) shall commence on the Effective Date and shall continue until the Expiration Date, unless sooner terminated.

Article III

Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“ACDC” shall mean Allen Community Development Corporation.

“ACDC Incentive Agreement” shall mean that certain economic development incentive agreement by and between the ACDC and Company relating to Company development and construction of the Hotel and Conference Center.

“AEDC” shall mean the Allen Economic Development Corporation.

“AEDC Incentive Agreement” shall mean that certain economic development incentive agreement by and between the AEDC and Company relating to Company development and construction of the Hotel and Conference Center.

“Airwalls” shall mean Hufcor brand airwall folding partition (or a make and model of similar quality) to divide the main 40,000-square foot conference center room into four individual soundproof spaces.

“ALDC” shall mean the Allen Land Development Code, as amended.

“Approved Franchise” means a franchise agreement with an Approved Franchisor whereby Company is permitted to operate the Hotel and Conference Center using the name and reservation system of the Approved Franchisor.

“Approved Franchisor” means a national hotel franchisor, and for a specific Four-Star Upscale hotel level product, approved by the City and which is one of the five (5) largest national hotel chains as of that date; provided, however, that the City shall not unreasonably withhold its consent to Four-Star Upscale Full-Service hotels such as Marriott. The City has approved Marriott as the Approved Franchisor.

“Available Room Night” shall mean the number of guest rooms in the Hotel, less the number of guest rooms which are not available on a given night to be occupied by guest because of renovations or repairs being made to the guest room or other condition of the guest room that prevents its occupancy.

“Bankruptcy or Insolvency” shall mean the dissolution or termination of the Party’s existence, insolvency, employment of a receiver for any part of Company’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors or the commencement of any proceedings under any bankruptcy or insolvency laws by or against the Party and such proceedings are not dismissed within ninety (90) days after the filing thereof.

“Capital Investment” shall mean the total capitalized cost to Company for the acquisition of the Land, development and construction of the Hotel and Conference Center, including a reasonable capital operating reserve, and the furniture and equipment installed therein.

“Casualty” shall mean the Hotel and Conference Center are wholly or partially destroyed by fire, earthquake, flood or similar casualty that renders the Hotel and Conference Center unfit for the intended purpose.

“City” shall mean the City of Allen, Texas, acting by and through its City Manager, or designee.

“Civic Center” shall mean the use of designated portions of the Conference Center by the City for use as a municipal civic center pursuant to Tax Code Chapter 351 as set forth in Section 5.3.

“Commencement Date” shall mean January 1, 2019.

“Commencement of Construction” shall mean that: (i) the plans have been prepared and all approvals thereof and permits with respect thereto required by applicable governmental authorities have been obtained for construction of the Hotel and Conference Center; (ii) all necessary permits for the construction of the Hotel and Conference Center on the Land, pursuant to the respective plans therefore having been issued by all applicable governmental authorities; and (iii) grading of the Land or the construction of the vertical elements of the Hotel and Conference Center has commenced.

“Company” shall mean Altera AHCC LLC, a Texas limited liability company.

“Company Affiliate” shall mean an entity related to Company by direct or indirect common or overlapping majority ownership or control.

“Competitive Set” shall mean, from time to time during the Term of this Agreement, at least four (4) convention centers in the Conference Center’s immediate market area that are most comparable to the Conference Center in quality, price and market (with due consideration given to age, quality, size, amenities, square footage of meeting space, and business mix). All determinations as to which convention center are to be included in the Competitive Set shall be made by the mutual agreement of Company, the Hotel Operator, and the City Manager and, if possible, shall all be first class convention oriented Four Star Hotels, or, if Company, the Hotel Operator, and the City Manager are unable to reach agreement, as determined by an independent nationally recognized hospitality industry consultant that is mutually acceptable to Company, the Hotel Operator, and the City Manager and otherwise qualified to be a Hotel Consultant. As of December 1, 2020, the Competitive Set shall be made up of the Hilton Dallas Plano Granite Park, Marriott Dallas Plano at Legacy Town Center, Embassy Suites by Hilton Dallas Frisco Convention Center, Omni Hotel Frisco, The Westin Stonebriar Hotel & Golf Club, and the Hyatt Regency North Dallas Richardson.

“Completion of Construction” shall mean: (i) substantial completion of all components of the Hotel and Conference Center; and (ii) a final permanent certificate of occupancy has been issued for occupancy of the Hotel and Conference Center.

“Conference Center” shall mean that portion of the Hotel and Conference Center containing at least forty thousand (40,000) gross square feet of conference facilities, a ballroom containing at least twelve thousand (12,000) gross square feet of space, and at least eight thousand (8,000) gross square feet of separate meeting rooms. For purposes of this definition, “gross square feet” shall mean net of “back of the house space” for the respective portion of the Conference Center.

“Construction Plans” shall mean the plans and specifications for the construction of the Hotel and Conference Center (including civil, architectural, grading and site plans) in accordance with the Zoning and any design plans approved by the City.

“Effective Date” shall mean the last date of execution hereof.

“Expiration Date” shall mean January 1, 2036.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, government or de facto governmental action or inaction (unless caused by acts of omissions of the Party), fires, explosions or floods, strikes, slowdowns or work stoppages, but may not impact any payments to be made hereunder.

Four Star” shall mean four-star rated hotel and convention center as may be defined by the Approved Franchisor, as amended and adopted from time to time, the minimum standards shall always include at least the following or better: spacious rooms and suites; pillow top bedding; choice of pillows; flat-screen HD TV; in room convenience floor lighting; USB charging ports; desktop work space; in room upscale coffee maker; fully tiled shower with glass door; full service three meal restaurant; secondary fine dining with featured bar and grill for lunch and dinner; room service available; food service features locally sourced and themed cuisine and craft drinks; concierge services available; hi speed fiber internet in guest rooms and public spaces including Wi-Fi; business center; outdoor pool; state of the art fitness facility, fully equipped with name brand equipment and open 24/7; LED lighting; access to a worldwide reservation system; frequent stay rewards program; and valet parking as appropriate.

“Hotel and Conference Center” shall mean a Four-Star, Upscale, full service (and not as a so-called “budget” or “limited service” or “select service” hotel or motel) convention center headquarters hotel containing at least 290 guest rooms, including a restaurant, with food and beverage service suitable for both guest and groups, at which food and beverages are prepared on site for at least three meals per day, lounge facilities, bell service, room service, concierge service, exercise facilities and swimming pool, at least forty thousand (40,000) gross square feet of conference facilities, a ballroom containing at least twelve thousand (12,000) gross square feet of space, at least eight thousand (8,000) gross square feet of separate meeting rooms, structured parking to accommodate at least 1,000 parking spaces and to be operated pursuant to an Approved Franchise. For purposes of this definition, “gross square feet” shall mean net of “back of the house space” for the respective portion of the Conference Center.

“Hotel Debt Service Coverage Ratio” shall mean

“Hotel Occupancy Tax” or “HOT” shall mean the City’s receipt of tax imposed by the City pursuant to Chapter 2 of the Code of Ordinances of the City and Chapter 351, Texas Tax Code, as amended, on a person who, under a lease, concession, permit, right of access, license, contract or agreement pays for the use or possession of a room for sleeping in the Hotel and Conference Center during the Operating Year immediately preceding each Rent payment date.

“Hotel Operator” shall mean Benchmark or other entity or company contracted pursuant to a hotel management agreement by Company to manage and operate the Hotel and Conference Center.

“Hotel Site Purchase Agreement” shall mean that certain purchase and sale agreement by and between Company and AEDC for the purchase of the Land for the development and construction of the Hotel and Conference Center subject to the Restriction Agreement.

“Hotel Tax Report” shall have the same meaning assigned by Chapter 2 of the Code of Ordinances of the City and Tax Code, Chapter 156.151, or if such report is not available, then a written certificate or statement authenticated by an appropriate management official of Company that contains the amount of Hotel Occupancy Tax collected by Company and paid to the City and to the State Comptroller of the State of Texas, or its successor, for the preceding calendar quarter. Such report shall include the total amount of the payments made for rooms at the Hotel and Conference Center during the preceding reporting period; and the amount of the HOT collected by the Hotel and Conference Center during the preceding reporting period.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company and/or Company Affiliates with respect to the Hotel and Conference Center, or any property or any business owned by Company and/or Company Affiliates within the City.

“Infrastructure” shall have the meaning assigned by Section 501.103, Texas Local Government Code, as amended, including the Conference Center and the structured parking containing at least 1,000 parking spaces for the Hotel and Conference Center and such other infrastructure necessary for the development and construction of the Hotel and Conference Center (not including the acquisition of the Land).

“Infrastructure Costs” shall mean the actual costs incurred and paid by Company for the design and construction of Infrastructure as verified by City. Infrastructure Costs shall include design and engineering for Infrastructure but shall not include interest or management fees for the design and construction of the Infrastructure.

“Infrastructure Grant” shall mean an economic development grant to reimburse the Company for Infrastructure Costs, not to exceed \$4.1 Million, to be paid as set forth herein. Infrastructure Grant shall not include any Infrastructure Costs included in any Payment Requests (as that term is defined in the AEDC Incentive Agreement and ACDC Incentive Agreement) under the AEDC Incentive Agreement and the ACDC Incentive Agreement.

“Land” shall mean the real property described in **Exhibit “A”**.

“Lease Term” shall mean the period beginning on the Commencement Date and ending on the Expiration Date.

“Maximum Rent Amount” shall mean cumulative payment of Rent in the amount of Ten Million Dollars (\$10,000,000.00).

“Net Operating Profits” shall mean all revenue and income generated by the Hotel and Conference Center after taking into account all income collected from operations of

the Hotel and Conference Center and after deducting reasonable and customary department expenses for rooms, food and beverages, spa, administration, sales and marketing, franchise fee, property operations and maintenance, utilities, base management fee, incentive management fee, property taxes, insurance, furniture, and fixture and equipment reserve, based on a NOP Report (and not a pro-forma).

“NOP Report” shall mean an audited financial statement of the Net Operating Profits on an Operating Year basis, together with any records, receipts or other information as may be reasonably requested by City to be delivered as set forth in Section 5.8.

“Occupancy Stabilization” shall mean that point in time when the average of the percentage of Available Room Nights sold in the Hotel during each calendar month for a period of twelve (12) consecutive months is fifty-five percent (55%).

“Operating Year” shall mean the twelve month periods occurring during the Term of this Agreement, the first such period beginning on the Commencement Date and ending the day before the first (1st) anniversary of the Commencement Date, and each subsequent twelve month period starting on each anniversary the Commencement Date.

“Payment Request” shall mean a written request from Company to City for payment of the Infrastructure Grant accompanied by copies of invoices, bills, receipts and such other information, as may be reasonably requested by City, reflecting the actual costs incurred and paid by Company for Infrastructure necessary for the Hotel and Conference Center.

“Project Commencement Date” shall mean the date that is ten (10) business days after the date that the conditions precedent set forth in Section 8.14 of this Agreement have been fully satisfied.

“Related Agreements” shall mean any agreement (other than this Agreement) by and between or among the City, AEDC, ACDC and Company and/or any Company Affiliate, including the ACDC Incentive Agreement, and the AEDC Incentive Agreement.

“Rent” shall mean annual rent to be paid as set forth in Section 5.2 of this Agreement, which shall be for each of Operating Years 2020 through 2025, inclusive, an amount equal to the greater of (i) \$750,000.00, and (ii) one hundred percent (100%) of the maximum amount allowed by law of the HOT collected by City during the same Operating Year. In the event the total HOT collected by the City during an Operating Year between Operating Years 2020 through 2025 is less than \$750,000.00 for that Operating Year, the City will shall pay the difference between the amount of HOT collected for that Operating Year and \$750,000.00 (the “Rent Subsidy”); provided, however, the maximum cumulative payment of the Rent Subsidy for all of Operating Years 2020 through 2025, inclusive, shall not exceed \$2.2 Million (the “Maximum Rent Subsidy”). Once the Maximum Rent Subsidy has been paid, the Rent for the remainder of

Operating Years following the Operating Year in which the Maximum Rent Subsidy is paid up to the 2025 Operating Year shall be one hundred percent (100%) of the maximum amount allowed by law of the HOT collected by City during the applicable Operating Year, or portion thereof. The Rent for each of the Operating Years 2026 through 2030, inclusive, shall be one hundred percent (100%) of the maximum amount allowed by law of the HOT collected by City during the applicable Operating Year less \$200,000.00 each Operating Year. The rent for Operating Years 2031 through 2036, inclusive, shall be fifty percent (50%) of the maximum amount allowed by law of the HOT collected by City during the applicable Operating Year. In no case shall the cumulative payment of Rent during the term of this Agreement exceed the Maximum Rent Amount. Rent shall be prorated for any partial Operating Year, in which case the amount of HOT collected and applied to Rent, if any is due, shall be based on the HOT collected during the same prorated period.

“Required Use” shall mean the continuous operation and management of the Hotel and Conference Center as a Four-Star, Upscale full service hotel and convention center headquarters together with the related amenities open to the public and serving the adjacent business community and the citizens of the City, under and in accordance with the standards of an Approved Franchise.

“Restriction Agreement” shall mean that certain restriction agreement by and between AEDC and Company which shall restrict the development and use of the Land for the Hotel and Conference Center. The Restriction Agreement shall require Company to cause Commencement of Construction and Completion of Construction of the Hotel and Conference Center in accordance with this Agreement and the Zoning, grant AEDC a right of first refusal (to repurchase the Land from Company for One Hundred Dollars) in the event the Company receives a bona fide offer to purchase the Land from a third party prior to Commencement of Construction, and grant AEDC an option to repurchase the Land in the event Commencement of Construction has not timely occurred as set forth in the Restriction Agreement.

“Room Night” shall mean one hotel room occupied for one night.

“Upscale” shall mean managed and operated, as a revenue producing, full-service, first-class “upscale” (as categorized by J.D. Powers and Associates in its annual study of upscale hotel chains) convention hotel affiliated with a national hotel chain with experience in managing such hotels to be operated: (a) in accordance with standards, policies, and programs which are prevailing in effect from time to time and applicable to the operation of other Marriott Hotels, including standards and policies applicable to all phases of operation and programs such as purchasing programs, sales promotion programs, and quality improvement programs; (b) as a full service, first class, hotel and convention center in a manner reasonably expected to earn the Hotel and Convention Center at least an Upscale Rating, which is at least comparable to other first class convention hotels, taking into account the character, size and location of the facility; and (d) to the extent consistent with (a) and (b), in a manner reasonably calculated to: (i) protect and preserve the assets that comprise the Hotel and Convention Center; (ii)

maximize over the operating term the financial return for the operation of the Hotel and Conference Center as a first class, convention center headquarters and hotel.

“Zoning” means the rezoning of the Land by a planned development ordinance or other ordinance approved by the City subject to certain conditions consistent with the terms of this Agreement and which shall include but shall not be limited to development and area regulations, conceptual plan, permitted and prohibited uses, architectural design of buildings and structures, signage, building elevations, landscape plan and other submittals and approvals required by the ALDC and other City applicable ordinances and regulations.

Article IV Hotel and Conference Center

4.1 Land Acquisition. Pursuant to the Hotel Site Agreement, AEDC intends to sell and convey, or cause to sell and convey, the Land to the Company subject to the Restriction Agreement. The purchase price for sale and transfer of the Land shall be Thirteen Dollars (\$13.00) per square foot, less an economic development grant provided by AEDC to Company to offset the purchase price, and shall be subject to the requirement that the Land be sold and conveyed to Company for One Hundred Dollars (\$100.00).

4.2 Zoning. The Company shall submit an application for the Zoning in furtherance and implementation of this Agreement on or before September 30, 2015. Company shall use good faith efforts to obtain City approval of the Zoning on or before December 15, 2015. Notwithstanding anything to the contrary, nothing in this Agreement shall be deemed to be a commitment of the City to zone the Land in a certain way or to approve the Zoning but is only a statement of the current intent of the Parties.

4.3 Construction Plans. Company shall cause all necessary permits and approvals required by City and any applicable governmental authorities to be issued for the construction of the Hotel and Conference Center. Prior to Commencement of Construction of the Hotel and Conference Center, Company shall submit the Construction Plans for approval by City. Company shall, subject to events of Force Majeure, cause the Construction Plans to be submitted to the City for approval within ten (10) business days following the Project Commencement Date.

4.4 Construction of Hotel and Conference Center. Subject to the terms and conditions of this Agreement, Company agrees to design and construct, or cause to be designed and constructed, the Hotel and Conference Center in accordance with the Zoning and the approved Construction Plans. Company shall, subject to events of Force Majeure, cause Commencement of Construction of the Hotel and Conference Center to occur on or before thirty (30) days following City approval of the Construction Plans; and subject to events of Force Majeure, cause Completion of Construction of Hotel and Conference Center to occur within twenty-four (24) months after the date of Commencement of Construction.

4.5 Inspection/Access. The City, its agents and employees, shall have the right of reasonable access to the Hotel and Conference Center during construction to inspect the Hotel and Conference Center, at reasonable times during normal business hours and with reasonable notice to Company and in accordance with their visitor access and security policies, in order to insure that the construction is in accordance with this Agreement and all applicable state and local laws and regulations (or valid waiver thereof).

4.6 Casualty and Condemnation. (a) If the Hotel and Conference Center are damaged partially or destroyed by Casualty, regardless of the extent of the damage or destruction, Company shall, subject to events of Force Majeure and the availability of adequate insurance proceeds, within two hundred seventy (270) days from the date of such Casualty commence to repair, reconstruct or replace the damaged or destroyed portion of the Hotel and/or Conference Center, as applicable, and pursue the repair, reconstruction, or replacement with reasonable diligence so as to restore the Hotel and Conference Center to substantially the condition it was in before the Casualty. In the event, Company fails to timely repair, restore or reconstruct the Hotel and Conference Center and complete the same within eighteen (18) months from the date Company commences the restoration work, this Agreement and the City's obligation to pay any Rent shall terminate. The City shall not be obligated to pay Rent during any period for the repair, restoration or reconstruction of the Hotel and Conference Center.

(b) If the Hotel and Conference Center or any material portion thereof is taken for public or quasi-public purposes by condemnation as a result of any action or proceeding in eminent domain, or transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, this Agreement and the City's obligation to pay any Rent shall terminate.

4.7 Capital Investment. The Capital Investment shall, as of the Commencement Date, be at least Eighty-Five Million Dollars (\$85,000,000.00).

4.8 Required Use. Beginning on the Effective Date, and continuing thereafter until the Expiration Date, or earlier termination, the Hotel and Conference Center shall not be used for any purpose other than the Required Use and the Company shall not allow the operation of the Hotel and Conference Center in conformance with the Required Use to cease for more than thirty (30) days, except: (i) in connection with and to the extent of an event of Casualty or Force Majeure, and (ii) except in connection with any cessation of not more than ninety (90) days that is due to a change in the Approved Franchisor.

4.9 Parking Fees. During the Term of this Agreement Company shall not charge any fees for the parking of motor vehicles in the parking garage at the Hotel and Conference Center by the City, its Council, officers, employees and members of City Boards and Commissions, and any company or nonprofit organization located or based in the City, unless otherwise approved in writing by the City Manager.

4.10 Hotel Operator.

(a) Company shall contract for a hotel and conference center management agreement for a Hotel Operator to manage and operate the Hotel and Conference Center.

(b) Company shall terminate Benchmark as the current Hotel Operator and shall contract with Crescent Hotels & Resorts as the Hotel Operator on or before December 31, 2020.

(c) Company shall cause the Hotel Operator to cause the Hotel and Conference Center to be operated: (a) in accordance with Approved Franchise, the standards, policies, and programs which are prevailing in effect from time to time and applicable to the operation of other Marriott Hotels, including standards and policies applicable to all phases of operation and programs such as purchasing programs, sales promotion programs, and quality improvement programs; (b) as Four-Star, Upscale full service, first class, convention hotel and convention space in a manner reasonably expected to earn the Hotel and Conference Center at least an Upscale Rating, which is at least comparable to other first class convention hotels and convention centers, taking into account the character, size and location of the facility; and (d) to the extent consistent with (a) and (b), in a manner reasonably calculated to: (i) protect and preserve the assets that comprise the Hotel and Conference Center; (ii) maximize over the operating term the financial return from the operation of the Hotel and Conference Center as a Four-Star, Upscale full service first class, convention center headquarters hotel and convention center.

(d) The City may contract with a hotel consultant to make written recommendations as to the operation, management, marketing, improvement, condition, or use of the Hotel and Conference Center ("Hotel Consultant"). The City will deliver the Hotel Consultant's reports and findings to the Company within five (5) business days after receipt thereof by the City ("Consultant Reports"). Company will (and will cause the Hotel Operator to) study and review such Consultant Reports and any written recommendations made by the Hotel Consultant. The Company (and the Hotel Operator) will reasonably cooperate with the Hotel Consultant in order to assist the Hotel Consultant in creating such reports and findings. Company (and the Hotel Operator) shall upon written request of the City, meet with the Hotel Consultant to discuss the Consultant Reports, findings and written recommendations. Company will act in good faith in the review and implementation of the Hotel Consultant's written recommendations. In the event the Company reasonably believes that it is not in the best interest of the Hotel and Conference Center to implement any of the Hotel Consultant's written recommendations, the Company will nonetheless be required to follow such written recommendations unless the Hotel Manager provides a reasonable written explanation to City as to why the Hotel Consultant's recommendations are not to be implemented.

4.11 Financial and Operational Records and Reports. In addition to such other records and reports required by Company to be kept and/or provided to City pursuant to this Agreement, Company shall maintain and provide to City the following records and reports:

(a) Company and/or Hotel Operator shall maintain books of account and other records relating to and reflecting the revenue received and expenses incurred (including debt service) relating to the operation of the Hotel and Convention Center, which records shall be kept in accordance with Generally Accepted Accounting Principles and, to the extent applicable, with the Uniform System of Accounts and the Marriott Classification of Accounts. All books and records must be reported in the format that Marriott uses for all other Marriott Hotels unless otherwise agreed in writing by City. Company shall make the foregoing records available for inspection and copying by City and its authorized representatives in Company's or Hotel

Operator's offices at the Hotel and Conference Center during regular business hours upon written request from City, which notice shall be delivered not later than five (5) business days prior to the date City requests to conduct such inspection.

(b) Company shall prepare monthly reports ("Monthly Reports") and quarterly operating reports ("Quarterly Reports") reflecting the operational results of the Hotel and Conference Center for each calendar month and calendar quarter, respectively, of the Operating Year. The Monthly Reports and Quarterly Reports (collectively "the Reports") shall include as least the following for the respective periods covered by the Reports:

(1) All revenues received from all sales and services at the Hotel and Conference, identified by source and category as set forth in the Marriott Classification of Accounts;

(2) All expenses incurred in the operation of the Hotel and Conference, identified by source and category as set forth in the Marriott Classification of Accounts;

(3) The number of room nights sold;

(4) The number of complimentary room nights provided to guests;

(5) The number of room nights for which Hotel Occupancy Taxes were not collected because of an applicable exemption;

(6) The percentage of Available Room Nights sold for the period of the Report and the average of the percentage of Available Room Nights sold for the prior twelve (12) months, including the month(s) covered by the Report;

(7) For Monthly Reports only, a report identifying meeting rooms booked, a calendar of the dates for which the meeting rooms have been reserved, and whether the booking was for a rental fee or was complimentary;

(8) For Monthly Reports only, a listing of group and special events for which contracts have been signed or cancelled during the period of the Report with the calendar of the event dated, a summary of the minimum room nights and meeting room rentals contracted, the contracted rental rates for such bookings, and, if canceled, the reason for the cancelation, if known;

(9) For Quarterly Reports only, the then-current Hotel Debt Service Coverage Ratio; and

(10) Comparison of year to date actual revenues and expenses relating to operation of the Hotel and Conference Center compared to the budget prepared for the Operating Year.

The Reports shall be delivered to City not later than the twentieth (20th) day of the months following the end of the period covered by the respective Reports. The Monthly Report for the third (3rd) month of each quarter may be combined and be part of the Quarterly Report as long as the monthly information is separately identified.

(c) Not later than the 150th day after the end of each Operating Year, Company shall deliver to City a copy of a Certified Financial Statement for the preceding Operating Year. For purposes of this Section 4.11(c), a “Certified Financial Statements” means audited financial statements consisting of a balance sheet, a statement of earnings and retained earnings, and a statement of cash flows together with a certificate of an Independent Certified Public Accountant to the effect that, subject to any qualifications contained therein, the financial statements fairly present, in conformity with Generally Accepted Accounting Principles, the financial position, results of operations, and cash flows of the Hotel and Conference Center for the Operating Year then ended.

4.12 Operating Year Budget. Not later than sixty (60) days before the end of each Operating Year, Company or Hotel Operator shall deliver to City a budget of anticipated revenues and expenses relating to operation of the Hotel and Conference Center for the next Operating Year. Such budget shall also include (i) anticipated capital expenditures for renovations and remodels of the Hotel and Conference Center, (ii) purchases exceeding \$10,000 of new or replacement equipment or systems, and (iii) Company’s debt service payments on the Hotel and Conference Center for the Operating Year.

4.13 Operational Policy Changes. Company and/or the Hotel Operator shall notify City of any proposed changes in operational policies, procedures, and rates relating to the marketing of the Hotel and Conference Center for group reservations and events, food and beverage service, meeting room reservations, and other major operational areas of the Hotel and Conference Center where such changes may reasonably impact either revenues or expenses generated by operation of the Hotel and Conference Center, which notice shall be delivered not later than sixty (60) days prior to the proposed effective date of such changes.

4.14 Operations Committee. Not later than December 1, 2020, a committee consisting of a representative of Company, a representative of the Hotel Operator, and two (2) or three (3) employees or officials of the City appointed by the City Manager (who may appoint himself), one of whom shall be an employee assigned to the City of Allen Convention and Visitors Bureau (“CVB”), shall be formed (the “Operations Committee”). The members of the Operations Committee shall meet in person or through teleconference or videoconference not less than once per month unless the members of the Operations Committee unanimously agree to meet less frequently. The Operations Committee shall review the Reports, proposed changes in the policies described in Section 4.13, the status of operations of the Hotel and Conference Center generally, and issue impacting operations but positively and negatively. In discussing proposed operational changes, the Company and Hotel Operator representatives shall take into consideration the comments and recommendations of the City and CVB representatives relating to operation of the Conference Center.

4.15 CVB and Hotel Operator Cooperation. Company shall require representatives of the Hotel Operator, and City shall require representatives of the CVB, to regularly meet and consult with each other regarding marketing of the Hotel and Conference Center and opportunities to recruit bookings for groups and special events at the Hotel and Conference Center.

4.16 Equipment Inventory and Assessment. Company shall cause Hotel Operator to prepare and deliver to Company and City a report not later than January 31, 2021, consisting of at least:

(a) A complete an inventory of all equipment, supplies, and furnishings presently owned by Company and available on-site to Hotel Operator to provide meeting services, including food and beverage service, for groups using the meeting spaces within the Conference Center including, but not limited to, tables (identified by shapes and sizes), chairs (identified by whether stackable or folding and padded or not padded), dinnerware, food service utensils, table linens, table decorations, risers, portable flooring, podiums, audio-visual equipment, food preparation and/or warming equipment, and temporary draperies, partitions, or other screening elements (collectively the “Conference Center Inventory”); and

(b) Hotel Operator’s recommendation regarding equipment, supplies, and furnishings that should be added by purchase to the Conference Center Inventory in order to adequately provide meeting service, including food and beverage service (both sit down catered meals and meeting break service) within the Conference Center (the “New Inventory”), assuming capacity to serve three (3) hot meals (breakfast, lunch and dinner) during full day utilization of all meeting space within the Conference Center. Such recommendation shall be based on standard industry practices and procedures regarding the management and operation of conference centers of similar size and meeting capacity of the Conference Center. Such recommendation shall also identify types of equipment, supplies, and furniture should not, for financial and storage reasons, be purchased but instead rented on an event-by-event basis.

Not later than one (1) year after the Hotel reaches Occupancy Stabilization, Company will purchase the New Inventory to be stored and available on-site at the Hotel and Conference Center.

4.17 Purchase and Installation of Airwalls. Not later than six (6) months after the Hotel reaches Occupancy Stabilization, Company, at Company’s sole cost, shall purchase and install retractable wall partitions (i.e. “airwalls”) in the main ballroom of the Conference Center that will allow the main ballroom to be separated into not less than four (4) separate meeting spaces.

4.18 Additional Equity Requirement. Not later than December 31, 2020, Company shall secure \$1,000,000.00 in cash equity to be held in reserve and available for call in the event such funds are necessary to cover any deficits in operational costs of the Hotel and Conference Center. In addition to the foregoing amounts, not later than June 25, 2025, Company shall secure \$2,000,000.00 in cash equity to be held in reserve and available for call in the event such funds

are necessary to cover any deficits in operational or capital costs incurred in the operation of the Hotel and Conference Center.

4.19 Hotel Brand. Not later than December 31, 2021, Company shall cause the Approved Franchise of the Hotel to be changed from Delta Hotel by Marriott to a Marriott Hotel.

4.20 Competitive Analysis. Company or Hotel Operator shall undertake a competitive analysis of the Competitive Set of convention centers not later than sixty (60) days prior to the end of each Operating Year and provide that report to City not later sixty (60) days after the end of the Operating Year. At a minimum, the competitive analysis will measure the meeting and conference room rental rates and hotel room rates in the Competitive Set. Company shall set meeting and conference space rental rates in general conformance with the average rates specified in the competitive analysis, unless otherwise agreed by the Parties.

Article V Civic Center

5.1 Lease. In consideration of the covenants, agreements and conditions set forth herein, Company does hereby lease, let, demise and rent, for the Lease Term and City does hereby rent and lease from Company for the Lease Term, the Civic Center for the Civic Center Use (as defined in Section 5.3 (b) of this Agreement).

5.2 Rent.

(a) Subject to the continued satisfaction of the terms and conditions of this Agreement by Company, the City shall, during the Lease Term, pay to Company or to such person or entity as Company shall designate in writing, Rent, for the use and occupancy of the Civic Center, and as consideration for Company's management of the Civic Center for the City. Rent shall be paid on an annual basis within thirty (30) days after the end of each Operating Year following City's receipt of the NOP Report. Any payment made by the City hereunder is limited to the extent of the lawfully available funds from the City's receipts from the collection of the Hotel Occupancy Tax.

(b) The obligation of the City to pay Rent shall be conditioned upon the compliance and satisfaction of the terms and conditions of this Agreement and each of the following:

- (i) Good Standing. Company shall not have an uncured breach or default of this Agreement or a Related Agreement.
- (ii) NOP Report. Company shall have timely delivered the NOP Report to the City for the applicable Operating Year or portion thereof as provided by Section 5.8.
- (iii) Required Use. During the Lease Term of this Agreement following the Commencement Date and continuing thereafter until the Expiration Date, or earlier termination, the Land and Hotel and Conference Center shall not be used for any purpose other than the Required Use, and that Company shall not allow the use and

operation of the Land and Hotel and Conference Center in conformance with the Required Use to cease for more than thirty (30) days, except (i) in connection with, and to the extent of an event of Force Majeure, or (ii) in connection with any cessation of not more than ninety (90) days that is due to a change in the Approved Franchisor.

- (iv) Capital Investment. Capital Investment shall, as of the Commencement Date, be at least Eighty-Five Million Dollars (\$85,000,000.00).
- (v) Hotel Tax Reports. Company shall have timely delivered the Hotel Tax Reports to the City for the applicable Operating Year as provided by Section 5.5.
- (vi) Receipt of HOT. City shall have received HOT for the applicable Operating Year.

5.3 Conditions of Use.

(a) Company Exclusive Use. Company shall have exclusive use of the Hotel and Conference Center, except the City may use the Civic Center portion of the Conference Center for Civic Center Use as set forth in this Section 5.3.

(b) Civic Center Use. As consideration for the Rent, City shall, without charge or expense, be entitled to the use of the main ballroom and the meeting rooms at least four (4) times (each such use not to exceed two (2) consecutive days unless otherwise agreed by the Parties) each Operating Year upon ninety (90) days prior written notice, and at additional times as may be agreed by the Parties when available ("Civic Center Use"). All other uses, if any, of the Conference Center by the City shall be at times mutually approved by Company and the City. Any food and beverage, set up, cleaning or other agreed services shall be charged to the City at Company's direct cost to provide the same. Civic Center Use must conform to the Approved Franchise uses, except that the City is not required to use the food and beverage services of the Hotel and Conference Center during Civic Center Use and may cater food and beverages during periods of Civic Center Use.

(c) Civic Center Standards. Company shall equip and furnish the Civic Center portion of the Conference Center in such manner that it is readily useable by the City as a municipal civic center for the booking of business conventions, meetings, and similar activities. Company shall keep and maintain the Conference Center in a good state of appearance and repair (except for reasonable wear and tear) at Company's own expense. City shall be responsible for, and pay for any damages to, the Civic Center and/or the Conference Center, or promptly repair any such damages that occur during the City's use of the Conference Center.

5.4 Management Duties. Company shall maintain, manage and operate the Civic Center on behalf of the City. Company will cause the Civic Center to be operated and maintained according to this Agreement. Company agrees to provide management services at least equal to those provided for comparable facilities in the DFW Metroplex.

5.5 Hotel Tax Report. Company shall provide, or cause the Hotel Operator to provide, the City with a Hotel Tax Report within thirty (30) days after the end of each calendar month beginning with the thirtieth (30th) day immediately following the last day of the month in

which the Commencement Date occurs and continuing thereafter on the thirtieth (30th) day after each calendar month during the Lease Term. The Hotel Tax Report shall be accompanied by a copy of the Hotel and Conference Center report required to be submitted to the Comptroller of the State of Texas, or its successor, pursuant to Texas Tax Code Section 156.151. For purposes of payment of Rent pursuant to this Agreement only and for no other purpose, if the Hotel Tax Report is not submitted within one hundred eighty (180) days after the date the respective report is due, then Company is deemed to have forfeited payment of Rent by the City for the period to which the undelivered report relates. The City shall not be required to pay any Rent for any Operating Year during the Lease Term for so long as the City has not received Hotel Occupancy Tax in full for such period.

5.6 Hotel Tax Records. Company shall (and shall cause the Hotel Operator) to keep and maintain accurate records of the Hotel Occupancy Tax collected by Company and paid to the City, and to the Comptroller of the State of Texas, or any successor agency, during the term of this Agreement that is paid by the occupant of each sleeping room in the Hotel and Conference Center. Such records shall include, but not be limited to, at a minimum, guest folios, tax exemption certificates, and any original documents such as posting ledgers and rate and stay adjustment reports. These records may be retained in any retrievable format, including but not limited to micro form; shall be maintained for a period of not less than five (5) years; and shall be available for inspection upon request by any employee, agent, officer or representative of the City at all reasonable times. Any adjustments or allowances made or granted shall be reported to the City on a form prescribed by the City.

5.7 Hotel Records Inspection; Annual Audit. The City shall have the right to audit the books and records of Company pertaining to the operation of the Hotel and Conference Center and any operator thereof during normal business hours upon prior written notice thereof to determine the correctness of the Hotel Tax Reports or the amount of taxes due City and/or State of Texas under Texas Tax Code Chapter 351 and/or 156. Company agrees to pay the cost of an annual audit of the Hotel Tax Records to be performed by an independent party selected by the City. Company shall cause the Hotel Operator to cooperate with the City with any such audit.

5.8 NOP Report. Company shall deliver a NOP Report to the City for each Operating Year during the Lease Term within ninety (90) days after the end of each Operating Year during the Lease Term. If any NOP Report is not submitted within 180 days after the date the report is due, then Company is deemed to have forfeited payment of Rent by the City for the period to which the undelivered report relates.

5.9 Hotel Management Agreement. Company shall include in the hotel management agreement for the Hotel and Conference Center provisions for reasonable marketing support, including, but not limited to, a minimum of ten (ten) free rooms in the Hotel for City promotion of events and/or for hosting customers, and discounted food and beverages at the Hotel and Conference Center for City events and City sponsored or promoted events.

Article VI

Infrastructure Grant

6.1 Infrastructure Grant Payment. Subject to the continued satisfaction of all of the terms and conditions of this Agreement by Company, and the obligation of Company to repay the Infrastructure Grant and Rent pursuant to Article VII hereof, the City agrees to provide the Infrastructure Grant to Company to be paid within thirty (30) days after receipt of a Payment Request following the Commencement Date.

6.2 Grant Limitations. Under no circumstances shall the obligations of the City to provide the Infrastructure Grant or Rent hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision, and this Agreement shall in no way be construed as being secured by ad valorem taxes or financed by debt. Further, the City shall not be obligated to pay the Infrastructure Grant or Rent to any commercial bank, lender or similar institution for any loan or credit agreement made by Company.

6.3 Current Revenue. The Infrastructure Grant and Rent made hereunder shall be paid solely from lawfully available funds. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Infrastructure Grant or Rent except as allowed by law.

6.4 Conditions to Infrastructure. The obligation of City to provide the Infrastructure Grant to Company, or any installment thereof, shall be conditioned upon the compliance and satisfaction by Company of the terms and conditions of this Agreement and each of the following conditions.

- (a) Payment Request. Company shall, as a condition precedent to the payment of the Infrastructure Grant, provide City with the Payment Request.
- (b) Good Standing. Company shall not have an uncured breach or default of this Agreement or a Related Agreement.
- (c) Capital Investment. Capital Investment shall, as of the Commencement Date, be at least Eighty-Five Million Dollars (\$85,000,000.00).

Article VII

Termination; Repayment

7.1 Termination. This Agreement shall terminate upon any one of the following:

- (a) by written agreement of the Parties;
- (b) at 11:59 pm Dallas, Texas, time on the Expiration Date;
- (c) upon written notice by either Party in the event the other Party breaches any of the terms or conditions of this Agreement or a Related Agreement and such breach is not cured within sixty (60) days after written notice thereof in accordance with this Agreement;
- (d) upon written notice by the City, if Company suffers an event of Bankruptcy or Insolvency;

- (e) upon written notice by the City, if any Impositions owed to the City or the State of Texas by Company shall become delinquent after thirty (30) days written notice is delivered pursuant to this Agreement (provided, however, Company retains the right to timely and properly protest and contest any such Impositions);
- (f) upon written notice by either Party, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement in whole, but not in part, invalid, illegal or unenforceable; or
- (g) upon written notice by either Party, if any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

Notwithstanding the foregoing, City shall notify the Company's lender (provided that Company has previously provided City with such lender's notice address) in writing concurrently with any notice given to Company of any breach of or default by Company under this Agreement or any Related Agreement. City agrees that Company's lender shall have the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth above in this Section 7.1, and City shall not declare a default of this Agreement if such lender cures the breach or default within the time period provided for above for the cure thereof by Company.

7.2 Repayment. In the event this Agreement is terminated by City pursuant to Section 7.1(c), (d), (e), or (g), Company shall immediately pay to City an amount equal to the Infrastructure Grant and Rent previously paid by City to Company as of the date of termination, plus interest at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank reasonably selected by City) as its prime or base commercial lending rate, which shall accrue from the dates of the payment of Rent and the Infrastructure Grant, as the case may be, until paid.

7.3 Right of Offset. City may, at its option and upon written notice to Company, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully thirty (30) days past due to City, AEDC and/or ACDC from Company and/or any Company Affiliate, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement, or otherwise, and regardless of whether or not the debt due City, AEDC and/or ACDC has been reduced to judgment by a court.

Article VIII Miscellaneous

8.1 Binding Agreement; Assignment. This Agreement shall be binding upon and inure to the benefit of the successors, affiliates, executors, and permitted assigns of the respective Parties. This Agreement may not be assigned without the prior written consent of City, which shall not be unreasonably withheld, if the assignee is an Approved Franchise of an Approved

Franchisor for the Hotel and Conference Center. Company shall have the right to grant a security interest in this Agreement by collaterally assigning all of Company's (or permitted assignee's) rights under this Agreement to any lender which provides financing to Company or its permitted assignee for the design and construction of the Hotel and Conference Center, and City agrees to execute and deliver any documents reasonably requested by any such lender in order to evidence and/or perfect its rights under this Agreement. Notwithstanding any assignment of this Agreement, except as provided below in connection with a collateral assignment, City shall not be required to make any payments under this Agreement to any Party other than Company or a Party to whom this Agreement has been fully assigned and has agreed in writing to assume all liabilities and obligations of Company set forth in this Agreement in a form approved by the City. City acknowledges that Company may collaterally assign to Company's lender(s) the right to receive the Infrastructure Grant and Rent from City under this Agreement as security for Company's debt financing for the Hotel and Conference Center. City agrees that upon receipt of a written notice from Company's lender of a default by Company under such debt financing, City will thereafter, if requested by such lender and provided no default by Company exists under this Agreement, pay all amounts payable by City hereunder to such lender in accordance with the lender's instructions.

8.2 Limitation on Liability. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties. It is understood and agreed between the Parties that Company, in satisfying the conditions of this Agreement, has acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions. Notwithstanding any provision of this Agreement appearing to the contrary: (i) Company shall not be liable to the City, AEDC, ACDC or to any other Party under any circumstances relating to this Agreement for special, consequential, speculative, punitive or other damages, other than the repayment obligation under Section 7.2 of this Agreement, and (ii) there shall be no personal recourse against any officer, director, partner, manager, member, employee or agent of Company, or against any person or party having any ownership interest in Company, whether direct or indirect, for any obligations or liabilities of Company under this Agreement (except in the event that Company is a limited partnership, in which case Company's liability shall also extend to, but only to, its general partner).

8.3 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

8.4 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received: (a) three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or (b) on the day actually received if sent by courier or otherwise hand delivered.

If intended for City, to:

Attn: Eric Ellwanger
City Manager
City of Allen, Texas
3rd Floor, Allen City Hall
305 Century Parkway
Allen, Texas 75013

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

If intended for Company, to:

Attn: Terry Quinn and
Tom Hendrick
Altera AHCC LLC
5910 North Central Expressway
Suite 650
Dallas, Texas 75206

With a copy to:

Kane Russell Coleman & Logan PC
Attn: John M. Inabnett
1601 Elm Street, Suite 3700
Dallas, Texas 75201

8.5 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

8.6 Governing Law. This Agreement shall be governed by the laws of the State of Texas, and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said Court.

8.7 Amendment. This Agreement may be amended by the mutual written agreement of the Parties. The City Manager is authorized on behalf of the City to execute any amendments hereto and any instruments or other agreements related hereto.

8.8 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

8.9 Recitals. The recitals to this Agreement are incorporated herein.

8.10 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

8.11 Exhibits. Any exhibits to this Agreement are incorporated herein by reference for the purposes wherever reference is made to the same.

8.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

8.13 Employment of Undocumented Workers. During the term of this Agreement Company agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), Company shall repay the amount of the Infrastructure Grant and Rent and any other funds received by Company from City as of the date of such violation within one hundred twenty (120) days after the date Company is notified by City of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid. Company is not liable for a violation of this Section 8.13 by a subsidiary, affiliate, or franchisee of Company or by a person with whom Company contracts.

8.14 Conditions Precedent. Notwithstanding anything to the contrary herein, this Agreement shall not become effective, and is expressly conditioned on:

- (a) Company, AEDC, and International Bank of Commerce (“IBC”) entering into that certain *Guaranty Release and Termination Agreement* (the “Guaranty Termination”), negotiated by the parties thereto, to which a copy of this Agreement is attached as an exhibit; and which requires execution of this Agreement between City and Company as consideration by Company to IBC in exchange for certain consideration to be conveyed to Company by IBC; and
- (b) The execution by Company and IBC of certain documents amending certain promissory notes and loan agreements between Company and IBC as contemplated by the Guaranty Termination;
- (c) The payment of \$2,800,000.00 to IBC by City on behalf of AEDC, as contemplated in the Guaranty Termination, in exchange for certain agreements and consideration conveyed to Company and AEDC by IBC; and
- (d) IBC irrevocably terminating and releasing AEDC from that certain *Guaranty* dated and effective March 15, 2017, made by AEDC for the benefit of IBC unconditionally guarantying repayment of a promissory note in the original principal amount of \$5,000,000 executed by Company and payable to IBC pursuant to that certain Loan Agreement of even date to said Guaranty between IBC and Company.

8.15 Waiver of Immunity. Notwithstanding anything to the contrary herein, the City and the Company acknowledge and agree that this Agreement is subject to the provisions of Subchapter I of Chapter 271, Texas Local Government Code, as amended. The City agrees that its immunity from suit is waived for the purpose of adjudicating a claim for breach of this Agreement, which is subject to the terms and conditions of Subchapter I of Chapter 271, Texas Local Government Code, as amended.

(Signature page to follow)

EXECUTED on this _____ day of _____, 2020.

CITY OF ALLEN, TEXAS

By: _____
Eric Ellwanger, City Manager

ATTEST:

By: _____
Shelley B. George, City Secretary

APPROVED AS TO FORM:

By: _____
Peter G. Smith, City Attorney

EXECUTED on this _____ day of _____, 2020.

ALTERA AHCC LLC

By: _____
Name: _____
Title: _____

PAGE 1

EXHIBIT "A" TO AMENDED AND RESTATED ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT AND CIVIC CENTER AGREEMENT CITY OF ALLEN AND ALTERA AHCC LLC (TM 118620)

EXHIBIT “A”

• TITLE COMMITMENT NOTE •

[illegible][illegible][illegible][illegible][illegible][illegible][illegible][illegible][illegible]

12. DISPOSITION AGREEMENT:
THE PROPERTY DESCRIBED IN PARAGRAPH 1.1 OF THE INSTRUMENTS
HEREIN, LESS WITHIN OF A BLOCK 14.5 AC. SHOWN
HEREIN, ARE HEREBY BY SELLER AGREEMENT
TO BE TRANSFERRED TO BUYER AGREEMENT
CLERKS FILE NO. 20060714000460000, O.P.A.C.T.
THE PROPERTY DESCRIBED IN THE RETURNED INSTRUMENT DOES NOT LIE WITHIN THE BLOCK
HEREIN.

[illegible]

* GENERAL NOTES *

1. BEARINGS SHOWN HEREIN ARE BASED ON THE NORTH SOUTHERN RAILROAD TRAIL AND BLACK HILLS. THE SAME AS RECORDED IN VOLUME 2086 PAGE 426 OFFICE RECORDS, COLLIER COUNTY, TEXAS.

THE SUBJECT TRACT OF LAND SHOWN HEREIN LIES WITHIN ZONE "X" UNINCORPORATED, DEDICATED AS

N 04°09'37" W
111.62'
F08
111.62'
S 89°05'00" E
111.62'

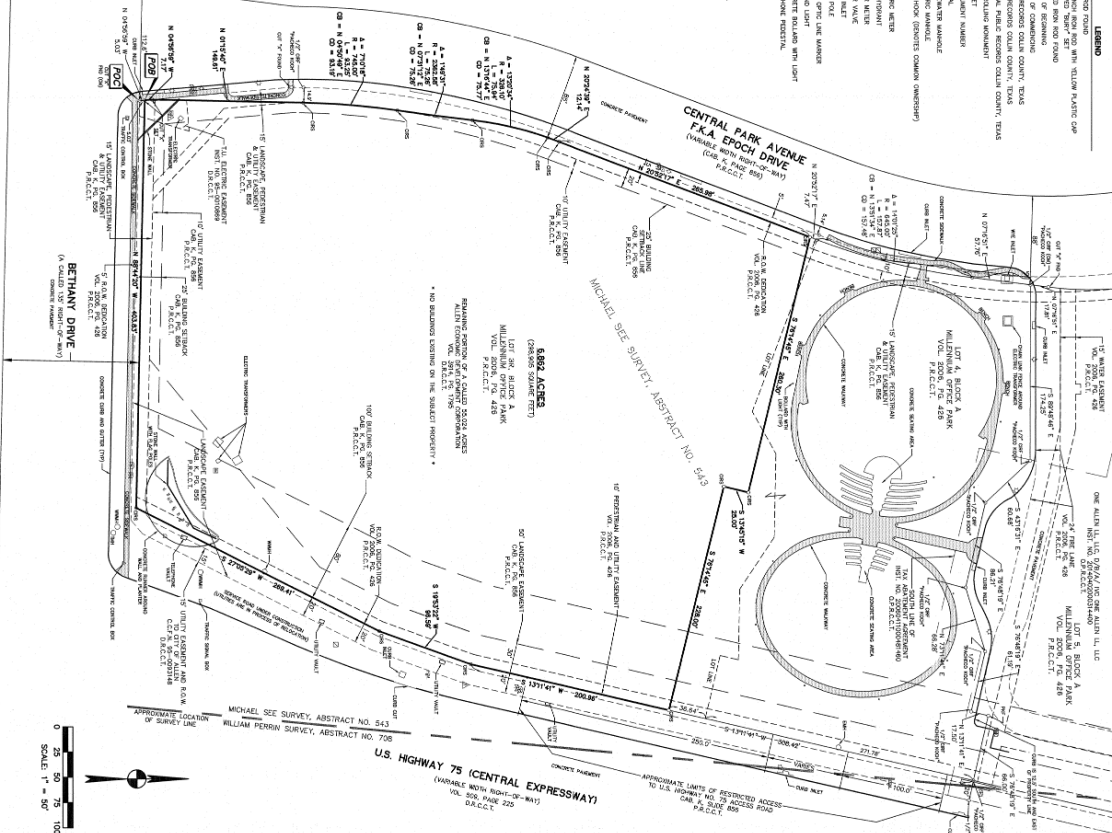
DRAWN BY: [Signature]
DATE: 10-1-77
BY: [Signature]

[illegible]

• GENERAL NOTES •

[illegible]

LEGEND

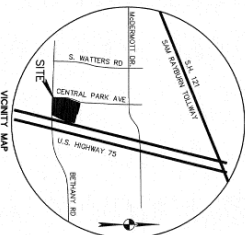
[illegible]

• SURVEYED PROPERTY DESCRIPTION •

THREE, LAND AND CLIMATE, HAD THE FOLLOWING:

NORTH: LONGEST, AT A REMOTE OF 103 YRS, TO A GUT YR, END THE POINT OF

• SURVEYOR'S CERTIFICATE

[illegible]

MAPSCO 569 L

5G STUDIO

NORTHWEST CORNER BETHANY DR. AND U.S. 75

ALTA/ACSM LAND TITLE SURVEY

BEING A 6.862 ACRE TRACT OF LAND SITUATED IN THE
MICHAEL SEE SURVEY, ABSTRACT NO. 543,
CITY OF ALLEN, COLLIN COUNTY, TEXAS

BURY

5310 Harvest Hill Road, Suite 100
Dallas, Texas 75230
Tel. (972) 991-0011 Fax (972) 991-0275
TEPE # F-1048 TEPLS # F-10107502

OF

Scale: 1"=50'	Date: 4-10-15
Reference No. N/A	
Drawn By: JWH/RDR	
Checked By:	
062403Ti - REV.dwg	