

MASTER DEVELOPMENT AGREEMENT

among

**COLLABORATE SPECIAL PROJECTS LLC,
VILLAGE-CENTER RETAIL & OFFICE LLC,
VILLAGE CENTER MULTI-FAMILY LLC,
THE CITY OF JERSEY VILLAGE, TEXAS**

and

VILLAGE CENTER LOCAL GOVERNMENT CORPORATION

MASTER DEVELOPMENT AGREEMENT

THIS MASTER DEVELOPMENT AGREEMENT (“Agreement”), is made as of this 24th day of June, 2019 (the “Effective Date”), by and among **COLLABORATE SPECIAL PROJECTS, LLC**, a Texas limited liability company (“CSP”), **VILLAGE-CENTER RETAIL & OFFICE LLC**, a Texas limited liability company (the “Retail Owner”), **VILLAGE CENTER MULTI-FAMILY LLC**, a Texas limited liability company (the “Multifamily Owner”), the **CITY OF JERSEY VILLAGE, TEXAS**, a home rule city in the State of Texas (the “City”), and **VILLAGE CENTER LOCAL GOVERNMENT CORPORATION**, a Texas local government corporation (the “Hotel Owner”). The City, CSP, Retail Owner, Multifamily Owner, and the Hotel Owner may each be referred to herein as “Party” and collectively as the “Parties”.

RECITALS:

- A. The City is the owner of that certain real property containing approximately 23.34 acres and more particularly described in Exhibit A attached hereto and made part hereof (the “Property”) located in the City within the intended development known as the “Jersey Village Center Development.”
- B. The Parties have entered into that certain Agreement of Purchase and Sale of Real Property: Unimproved Property dated as of May 13, 2019 (the “Purchase Agreement”), attached as Exhibit B hereto, by which the City has agreed to sell to CSP, and CSP has agreed to purchase from the City, the Property.
- C. The City and Collaborate Development Group LLC (“CD”) have entered into that certain Second Amended and Restated Chapter 380 Economic Development Agreement between the City of Jersey Village, Texas and CD dated as of June 24, 2019 (the “380 Agreement”), attached as Exhibit C hereto, by which the City offers incentives to CD to induce CSP to develop the Project in a manner that will be of lasting and significant benefit to City.
- D. CSP, Hotel Owner, and the Hotel Operator contemplate entering into that certain Hotel Development Agreement in connection with the development of the Hotel (the “Hotel Agreement”).
- E. The Parties plan to develop a first class, mixed use project revolving around a central open community plaza surrounded by multi-family units, retail, restaurants, entertainment options, hotel, office space and open community green space with a pedestrian-friendly environment and as a destination for people to gather to live, work and play.
- F. The Parties intend that the development of the Project will proceed as follows: (i) CSP will purchase the Property pursuant to the Purchase Agreement; (ii) the Retail Owner, an affiliate of CSP, will purchase a portion of the Property from CSP and construct or cause to be constructed thereon a retail shopping center and commercial office space development as provided in this Agreement (the “Retail Development”); (iii) the Multifamily Owner, an affiliate of CSP, will purchase a portion of the Property from CSP and construct or cause to be constructed thereon a multifamily development as provided in this Agreement (the “Multifamily Development”); (iv) CSP will donate a portion of the Property to the City, and the City will construct or cause to be constructed thereon a city

hall (the “City Hall”); (v) CSP will lease a portion of the Property to the Hotel Owner, and the Hotel will be developed in accordance with the Hotel Agreement; and (vi) CSP will construct or cause to be constructed the Public Infrastructure (as defined in the 380 Agreement) on land retained by the City (“City Public Infrastructure Land”) and on the Property, and thereafter donate the City Public Infrastructure to the City and maintain the Public Infrastructure, and the City will grant to CSP, Retail Owner, Multifamily Owner, and Hotel Operator the Drainage and Detention Rights.

- G. The Parties have determined that it is in their best interests to enter into this Agreement and proceed with the Project as provided for herein.
- H. Preliminary designs indicate that the Retail Development, Multifamily Development, City Hall, Hotel, and Public Infrastructure, though intended to be separately owned, will constitute one, integrated project, thereby creating use and access complications, as well as requiring a coordinated design, development, and construction of the Project.

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

ARTICLE 1 DEFINITIONS

1.1 Definition of Terms. When used in this Agreement with an initial capital letter or letters, each of the following terms shall have the meaning given it below.

1.1.1 “380 Agreement” is defined in Recital C.

1.1.2 “Agreement” is defined in the Preamble.

1.1.3 “Business Day” means any day other than a Saturday, Sunday, federally-mandated bank holiday and the day after Thanksgiving; provided, however, that if the last day specified for performance of an act falls on a day that is not a Business Day, then the last day for such performance will automatically be extended until the next day other than a Saturday, Sunday, federally-mandated bank holiday and the day after Thanksgiving.

1.1.4 “CD” is defined in Recital C.

1.1.5 “CD Facilities” means the Retail Development and the Multifamily Development and the associated portions of the Public Infrastructure.

1.1.6 “City” means the City of Jersey Village, Texas, a home-rule city in the State of Texas.

1.1.7 “City Facilities” means the City Hall and related infrastructure not a part of the Hotel, CD Facilities, or Public Infrastructure.

1.1.8 “City Hall” is defined in Recital F.

1.1.9 “City Public Infrastructure” means the Public Infrastructure to be constructed on the City Public Infrastructure Land.

1.1.10 “City Public Infrastructure Land” is defined in Recital F.

1.1.11 “Contractors” means, collectively, each General Contractor and its subcontractors for construction of the Project.

1.1.12 “Delay” means: (i) any delay in commencement or completion of construction of the Project resulting from any act or delay of the City or Hotel Owner, or their consultants or agents, other than delays resulting from acts that the City or Hotel Owner, or their consultants or agents, are expressly permitted or obligated to perform pursuant to this Agreement; (ii) any delay in completion of construction of the Project resulting from the failure by the City to perform timely any of its obligations under this Agreement, including the failure to take any action or give any approval or disapproval within the time periods specified herein; or (iii) any delay in the timing obligations of the City related to the work to be performed hereunder.

1.1.13 “Design Professionals” means the planning, architectural, engineering, interior design, and other specialists and consultants engaged to provide design services with respect to the Project, including the applicable architects.

1.1.14 “Detention and Drainage Rights” means the easements for water detention and drainage purposes burdening the City Public Infrastructure Land, and other related rights, to be granted by the City to Retail Owner, Multifamily Owner, and Hotel Operator as necessary for the operation and maintenance of the applicable portions of the Project.

1.1.15 “Effective Date” is defined in the Preamble;

1.1.16 “FF&E” means those items of furnishings, fixtures, equipment, accessories, supplies, and materials for use in the operation of the CD Facilities.

1.1.17 “Final Completion” means, with respect to any portion of the Project, completion of all work and punch list items, delivery and installation of all remaining FF&E and obtaining all final permits required for the use and occupancy of such portion of the Project.

1.1.18 “Force Majeure” means war, acts of public enemies, riots, civil commotion, strikes or other industrial disturbances, labor disputes, embargoes, natural disasters, Acts of God, orders of any governmental body or any other civil or military authority, or fires, hurricanes, storms, floods, and other natural disasters; inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, or failure or unavailability of transportation generally; the discovery of subsurface, subsoil or concealed conditions at, as applicable, the Project site that differ materially from those ordinarily found to exist and generally recognized as inherent in the construction of projects comparable to the Project; unusual delays in receipt of necessary governmental permits,

licenses, approvals or inspections, provided that the Party claiming such delay, in good faith, was diligent in the application or request for and prosecution of such items; or other cause or contingency similarly beyond the control of the Party claiming Force Majeure. In no event shall “Force Majeure” include economic hardship or financial inability to perform specific to the Party.

1.1.19 “General Contractor” means the general contractor for each site within the Project with which the applicable Party contracts for construction thereof.

1.1.20 “Hotel” shall mean the select-service hotel to be designed and developed pursuant to the Hotel Agreement.

1.1.21 “Hotel Operator” means, initially, Village Center Hospitality LLC, a Texas limited liability company, and includes any subsequent operator of the Hotel engaged by Hotel Owner to operate and manage the Hotel.

1.1.22 “Hotel Owner” is defined in the Preamble.

1.1.23 “Mandatory Design Elements” means the design features, components or other elements of the Retail Development set forth on Exhibit D-1 attached hereto and made a part hereof, the Multifamily Development set forth on Exhibit D-2 attached hereto and made a part hereof, the Public Infrastructure set forth on Exhibit D-3 attached hereto and made a part hereof, the Hotel set forth on Exhibit D-4, and the Project set forth on Exhibit D-5 attached hereto.

1.1.24 “Multifamily Development” is defined in Recital F.

1.1.25 “Multifamily Owner” is defined in the Preamble.

1.1.26 “Ordinance” means Ordinance No. 2011-25 adopted by the City on May 23, 2011, as amended from time to time.

1.1.27 “Outside Completion Date” means [May 30, 2022], such date to be extended on a day-for-day basis by the number of days of delay in completion of the Project arising as a result of Force Majeure, any Delay, or the institution of litigation concerning the Project or any component thereof by a third party.

1.1.28 “Person” means an individual, corporation, partnership, limited liability company, unincorporated organization, association, joint stock company, joint venture, trust, estate, real estate investment trust, government, agency or political subdivision thereof or other entity.

1.1.29 “Project” means the first class, mixed use development described generally in Recital E and consisting collectively of the Retail Development, the Multifamily Development, the City Hall, the Hotel, and the Public Infrastructure, together with the FF&E.

1.1.30 “Property” means the real property described on Exhibit A.

1.1.31 “Public Infrastructure” shall have the meaning as defined in the 380 Agreement.

1.1.32 “Purchase Agreement” is defined in Recital B.

1.1.33 “Retail Development” is defined in Recital F.

1.1.34 “Retail Owner” is defined in the Preamble.

ARTICLE 2 THE PROJECT

2.1 Project Development.

2.1.1 Summary of Proposed Development. The Project is intended to be developed as a 48-acre mixed-use high-density development project on Jones Rd. south of Hwy. 290. As more particularly described in this Agreement, the Project will consist generally of a mix of multifamily units, retail uses, restaurants, entertainment options, a hotel development, office space and open community green space and public infrastructure located within a pedestrian-friendly environment. The foundation of the project revolves around the fact that the City of Jersey Village is ready for services found outside of the city limits. These services are intended to create an environment for Jersey Village to be a place to live, work and play. The Parties to this Agreement will endeavor to design experiences and create places that make a difference to the local community and to create a great place for people to gather.

2.1.2 Subject to the terms and conditions of this Agreement, the Parties intend the Project to be developed and constructed generally as follows:

(a) *Retail Development.* Retail Owner intends to develop and construct a retail and office development operated by (or on behalf of) Retail Owner and having the Mandatory Design Elements described in this Agreement, provided that Retail Owner or CSP may modify the Mandatory Design Elements for the Retail Development (other than those set forth on Exhibit D-5) without the consent of any other Party so long as the Retail Development continues to comply with the Ordinance.

(b) *Multifamily Development.* Multifamily Owner intends to develop and construct a residential multifamily apartment building operated by (or on behalf of) Multifamily Owner and having the Mandatory Design Elements described in this Agreement, provided that Multifamily Owner or CSP may modify the Mandatory Design Elements for the Multifamily Development (other than those set forth on Exhibit D-5) without the consent of any other Party so long as the Multifamily Development continues to comply with the Ordinance.

(c) *City Hall.* The City intends to develop and construct the City Hall.

(d) *Hotel.* As further detailed in the Hotel Agreement, Hotel Owner intends to develop and construct the Hotel, having the Mandatory Design Elements described in this Agreement, provided that CSP may modify the Mandatory Design Elements for the Hotel (other than those set forth on Exhibit D-5) without the consent of any other Party so long as the Hotel continues to comply with the Ordinance.

(e) *Public Infrastructure.* Pursuant to the 380 Agreement and as further detailed in this Agreement, CSP, Retail Owner, Multifamily Owner, and Hotel Operator intend to develop the Public Infrastructure on the City Public Infrastructure Land and on the Property to serve the Project. CSP, Retail Owner, Multifamily Owner, and Hotel Operator may modify the Mandatory Design Elements for the Public Infrastructure (other than those set forth on Exhibit D-5) without the consent of any other Party so long as the Public Infrastructure continues to comply with the Ordinance.

2.1.3 Coordinated Design Team. Because CSP will be managing development of the Retail Development and a portion of the Public Infrastructure on behalf of Retail Owner, the Multifamily Development and a portion of the Public Infrastructure on behalf of Multifamily Owner, a portion of the Public Infrastructure on behalf of the City, and the Hotel and a portion of the Public Infrastructure on behalf of Hotel Owner, CSP will aim to coordinate development of the CD Facilities with the Hotel and the Public Infrastructure, and CSP shall use diligent and commercially reasonable efforts to cause the Design Professionals and the General Contractors for the CD Facilities and Public Infrastructure to coordinate with those of the Hotel project. To the extent that development of the Project requires compliance with any deed restrictions encumbering the Property, CSP shall coordinate compliance with the requirements set forth therein, make any necessary submittals, and diligently seek all approvals to the extent necessary to complete the Project.

2.2 Term. The term of this Agreement shall commence on the Effective Date and shall expire on the date of Final Completion of the Project. The Parties shall use commercially reasonable efforts to achieve Final Completion for the Project on or before the Outside Completion Date.

ARTICLE 3 OBLIGATIONS OF THE CITY

3.1 Approvals. Whenever a matter requires the approval of the City under this Agreement, the City shall work closely and in good faith with CSP to review such matter and either approve or disapprove the same in a timely manner so as to avoid any delay in the development or construction of the Project.

3.2 Permits. The City shall execute and cooperate with CSP, Retail Owner, Multifamily Owner, Hotel Operator, and all Contractors in connection with the issuance of, all building permit applications, plans of development, utility permit applications, utility easements, requests for certificates of occupancy, and such other documents as may reasonably be required for the applicable party to obtain building permits, licenses, approvals, certificates, utility services,

and other permits and authorizations as may be necessary for the development, construction and operation of the Project. Retail Owner or Multifamily Owner, as applicable, shall secure all such licenses and permits required to be obtained with respect to construction, completion, and occupancy of the CD Facilities, including any necessary building, occupancy, sewer, and utility permits. CSP shall secure all such licenses and permits required to be obtained with respect to the construction, completion, and occupancy of the City Public Infrastructure, including any necessary building, occupancy, sewer, and utility permits.

3.3 Detention and Drainage Rights. The City shall grant to Retail Owner, Multifamily Owner, and Hotel Operator the Detention and Drainage Rights.

3.4 Zoning. The City (or Hotel Owner, as appropriate) shall cooperate with and assist CSP, Retail Owner, Multifamily Owner, and Hotel Operator as reasonably required in connection with obtaining the zoning approvals required for development of the Project.

3.5 Other Documentation. The City shall provide to CSP, Retail Owner, Multifamily Owner and/or Hotel Operator, as applicable, any other information or documentation, reasonably requested by any of the foregoing parties, that the City is permitted by the City's rules and regulations to provide, if and to the extent such information will reasonably assist such parties in the performance of any of their duties and obligations under this Agreement.

ARTICLE 4 SCOPE OF RESPONSIBILITIES

4.1 Standard of Care. In performing its services with respect to development and construction of the Project, CSP makes no representations or warranties, express or implied, regarding the sufficiency of any design, plans, or drawings prepared by others. Any responsibility of CSP hereunder for development and construction of the Project shall be for services directly performed by it; shall be limited solely to deficiencies that are directly attributable to CSP's failure to exercise the reasonable care usually exercised by individuals and firms providing similar services; and in no event shall CSP be liable for defects in materials or workmanship in the Project.

ARTICLE 5 ASSIGNMENT

5.1 Generally. CSP, Retail Owner, Multifamily Owner, and Hotel Owner each may assign its rights under this Agreement without prior consent from any other Party hereto.

ARTICLE 6 MISCELLANEOUS

6.1 Waiver. The failure of any Party to insist upon strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy contained in this Agreement shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy. No waiver by any Party of any term or provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by such Party.

6.2 Severability. If any clause or provision of this Agreement is or becomes illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, then the remaining parts of this Agreement shall not be affected.

6.3 Exhibits. Each exhibit referred to in this Agreement is attached to and incorporated by reference in this Agreement.

6.4 Other Documentation; Further Assurances. Each Party will as soon as practicable: (a) provide to the other Parties any other information or documentation, reasonably requested and consistent with the terms of this Agreement; and (b) execute such additional documents and instruments as may be reasonably necessary to provide for the coordinated development, financing and operation of the Project.

6.5 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas.

6.6 Interpretation. For the purpose of construing this Agreement, unless the context indicates otherwise, words in the singular number shall be deemed to include words in the plural number and vice versa, words in one gender shall be deemed to include words in other genders, and the word “person” shall be deemed to include a corporation, partnership or other legal entity. Headings of Articles and Sections are inserted only for convenience and are not, and shall not be deemed, a limitation on the scope of the particular Articles or Sections to which they refer.

6.7 “Including”. In this Agreement, whenever general words or terms are followed by the word “including” (or other forms of the word “include”) and words of particular and specific meaning, the phrase “including without limitation,” and the general words shall be construed in their widest extent, and shall not be limited to persons or things of the same general kind or class as those specifically mentioned in the words of particular and specific meaning.

6.8 Notices. All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be delivered by hand or by courier service, sent by registered or certified mail, return receipt requested, bearing adequate postage, or sent by nationally recognized overnight delivery service (such as Federal Express, or UPS), or sent by electronic mail, and properly addressed as provided below. Each notice given by mail shall be deemed to be given by the sender when received or refused by the Party intended to receive such notice; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the Party intended to receive such notice or when such Party refuses to accept delivery of such notice; each notice given by overnight delivery service shall be deemed to have been given and received on the next Business Day following deposit thereof with the overnight delivery company; and each notice given by electronic mail shall be deemed to have been given and received upon transmission, provided confirmation of receipt is received back by the sending electronic mail prior to 5:00 p.m. local time at the sending location, or on the next Business Day if after 5:00 p.m. local time at the sending location. Upon a change of address by either Party, such Party shall give written notice of such change to the other Parties in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the date such notice would otherwise have been received.

CSP: Collaborate Special Projects LLC
3302 Canal St, Suite #36
Houston, Texas 77003
Attn: Saul Valentin, Founding Principal
Phone: (832) 409-3050

with a copy to: Mark B. Arnold
Hunton Andrews Kurth LLP
600 Travis, Suite 4200
Houston, Texas 77002
Phone: (713) 220-3938

City: City of Jersey Village
16501 Jersey Drive
Jersey Village, Texas 77040
Attn: City Manager
Phone: (713) 466-2109

with a copy to: City of Jersey Village
City Attorney
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019-2133
Phone: (713) 533-3800

Hotel Owner: Village Center Local Government Corporation
16501 Jersey Drive
Jersey Village, Texas 77040
Attn: City Manager
Phone: (713) 466-2109

with a copy to: City of Jersey Village
City Attorney
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019-2133
Phone: (713) 533-3800

Retail Owner: Village-Center Retail & Office LLC
3302 Canal St, Suite #36
Houston, Texas 77003
Attn: Saul Valentin, Founding Principal
Phone: (832) 409-3050

with a copy to: Mark B. Arnold
Hunton Andrews Kurth LLP
600 Travis, Suite 4200

Houston, Texas 77002
Phone: (713) 220-3938

Multifamily Owner: Village-Center Multi-Family LLC
3302 Canal St, Suite #36
Houston, Texas 77003
Attn: Saul Valentin, Founding Principal
Phone: (832) 409-3050

with a copy to: Mark B. Arnold
Hunton Andrews Kurth LLP
600 Travis, Suite 4200
Houston, Texas 77002
Phone: (713) 220-3938

6.9 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

6.10 Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to the transactions contemplated herein, except as expressly provide herein. This Agreement may only be amended or modified only by a writing signed by the Parties.

6.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

[SIGNATURES PAGE FOLLOW]

WITNESS the following signatures:

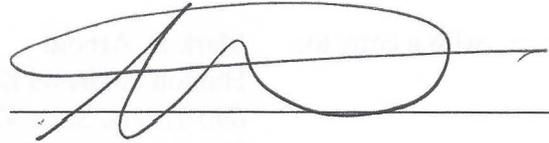
CSP:

COLLABORATE SPECIAL PROJECTS LLC

Date of Execution

July 16, 2019

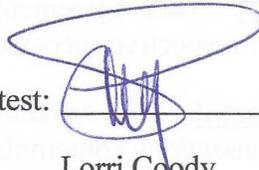
By: _____



Name: Saul Valentin

Title: Founding Principal

Attest: _____



Lorri Coody

City Secretary, City of Jersey Village

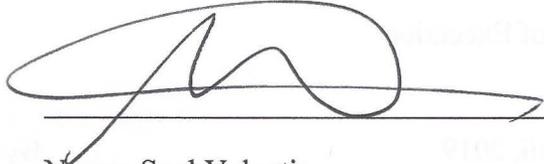
RETAIL OWNER:

VILLAGE-CENTER RETAIL & OFFICE LLC

Date of Execution

July 16, 2019

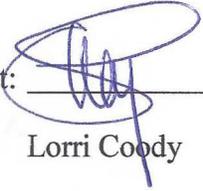
By: _____



Name: Saul Valentin

Title: Founding Principal

Attest: _____



Lorri Coody

City Secretary, City of Jersey Village

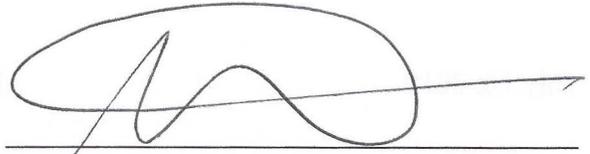
MULTIFAMILY OWNER:

VILLAGE CENTER MULTI-FAMILY LLC

Date of Execution

July 16, 2019

By: _____



Name: Saul Valentin

Title: Founding Principal

Attest: _____



Lorri Coody

City Secretary, City of Jersey Village

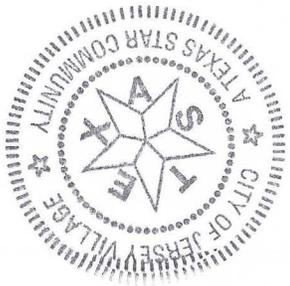
CITY:

June 26, 2019

CITY OF JERSEY VILLAGE, TEXAS

By: Austin Bless

Austin Bless, City Manager



ATTEST:

Lorri Coody

Lorri Coody, City Secretary

HOTEL OWNER:

**VILLAGE CENTER LOCAL GOVERNMENT
CORPORATION**

Date of Execution

July 15, 2019

By: 

Name: Andrew Mitcham

Title: Chairperson

ATTEST:



Lorri Coody, LGC Secretary

Exhibit A

Legal Description of the Property

Legal Description of the PropertyAll of Restricted "F" of JONES RD. 290 COMMERCIAL RESERVES, a subdivision in Harris County, Texas according to the map or plat thereof recorded in/under Film Code No. 631037 of the Map Records of Harris County, Texas and being the same 10.89 acre tract of land described as Tract I in Special Warranty Deed filed for record under Harris County Clerk's File No. 20080357006.

All of Restricted Reserve "B" of JONES RD. 290 COMMERCIAL RESERVES, a subdivision in Harris County, Texas according to the map or plat thereof recorded in/under Film Code No. 631037 of the Map Records of Harris County, Texas and being the same 2.593 acre tract of land described as Tract II and the same 6.543 acre tract of land described as Tract IV in Special Warranty Deed filed for record under Harris County Clerk's File No. 20080357006.

All of Restricted Reserve "G" of JONES RD. 290 COMMERCIAL RESERVES, a subdivision in Harris County, Texas according to the map or plat thereof recorded in/under Film Code No. 631037 of the Map Records of Harris County, Texas and being the same 3.321 acre tract of land described as Tract III in Special Warranty Deed filed for record under Harris County Clerk's File No. 20080357006

Exhibit B
Purchase Agreement

AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY:
UNIMPROVED PROPERTY

ARTICLE 1: PROPERTY/PURCHASE PRICE

1.1 Certain Basic Terms.

- (a) Seller: City of Jersey Village, Texas
- (b) Purchaser: Collaborate Special Projects, LLC
- (c) Effective Date: The latest date of execution by Seller or Purchaser, as indicated on the signature page.
- (d) Purchase Price: \$5,250,000.00
- (e) Earnest Money: \$100.00
- (f) Due Diligence Period: Thirty (30) days after the Effective Date.
- (g) Closing Date: August 31, 2019, or on such earlier date as Purchaser designates by written notice to Seller and the Title Company.
- (h) Title Company: AmTrust Title of Texas, One Allen Center, 500 Dallas Street, Suite 1360, Houston, TX 77002
Phone: _____
Email: _____
- (i) Brokers: None.

1.2 Property.

Subject to the terms and conditions of this Agreement of Purchase and Sale of Real Property for Unimproved Property (this "**Agreement**"), Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the following property (collectively, the "**Property**"):

- (a) The "**Real Property**" being that certain tract or parcel of land containing approximately 23.34 acres as more particularly described on **Exhibit A** attached hereto together with: (i) all and singular the rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances therein or in anywise appertaining to such real property; (ii) all right, title and interest to all minerals, oil, gas, and other hydrocarbon substances thereon or thereunder; (iii) all air, water, riparian, and solar rights related thereto; and, (iv) all right, title, and interest of Seller in and to all strips and gores and any land lying in the bed of any street, road, or alley, open or proposed, adjoining such real property. The Deed and all other documents to be delivered at Closing shall use the metes and bounds description or lot and block reflected in the final completed version of the Survey, as approved by Purchaser and Seller, such approval not to be unreasonably withheld or delayed. Seller and Purchaser acknowledge that the description of the Real Property set forth above and the depiction set forth in **Exhibit A** hereto may be legally insufficient for the purposes of supporting an action to enforce this Agreement. As such, Seller and Purchaser confirm unto one another that notwithstanding any insufficiency, the parties desire to be bound by their respective agreements to sell and

purchase the Property as described herein. Therefore, since the parties are desirous of executing this Agreement and to provide for the right of Seller or Purchaser to demand and successfully enforce the terms hereof and to ensure such right is not precluded due to the legal description of the Property, Seller and Purchaser agree that: (i) they are experienced in transactions of the nature provided for in this transaction; (ii) that, in fact, they specifically are familiar with the location of the Property; (iii) each party waives any and all claims of an insufficient legal description in a cause of action for enforcement hereof; and, (iv) upon approval by Seller and Purchaser of the Survey, the metes and bounds description of the Property prepared by the Surveyor shall become the legal description of the Property hereunder. Upon approval of the metes and bounds description of the Property prepared by the Surveyor or the current lot and block description of the Property as created per plat, as applicable, Seller and Purchaser agree that such metes and bounds description or lot and block description, as applicable, of the Property shall automatically, without the necessity of further action, be substituted for **Exhibit A** attached hereto; provided, however, that upon the request of either party hereto, Seller and Purchaser agree to amend this Agreement to evidence the substitution of such approved metes and bounds description or lot and block description, as applicable, for **Exhibit A** hereto.

- (b) Seller's interest in the "**Intangible Personal Property**" being all intangible personal property related to the Real Property, including, without limitation: (i) all trade names and trademarks associated with the Real Property including Seller's rights and interests in the name of the Real Property; (ii) warranties, contract rights related to the construction, operation, ownership, or management of the Real Property (but excluding Seller's obligations thereunder); (iii) governmental permits, approvals, and licenses (to the extent assignable); and, (iv) telephone exchange numbers (to the extent assignable).

1.3 **Earnest Money.**

- (a) Within three (3) business days after the Effective Date, Purchaser shall deposit the Earnest Money with the Title Company. The Title Company shall pay the Earnest Money to Seller at and upon the Closing (as hereinafter defined) or otherwise, to the party entitled to receive the Earnest Money in accordance with this Agreement. The Earnest Money shall be held and disbursed by the Title Company pursuant to this Agreement.
- (b) Seller and Purchaser agree and acknowledge that One Hundred Dollars (\$100.00) of the Earnest Money shall be paid to Seller if this Agreement is terminated for any reason pursuant to the terms of **Section 2.2** hereof (the "**Independent Contract Consideration**"). Moreover, Seller and Purchaser agree and acknowledge that the Independent Contract Consideration has been bargained for and agreed as additional consideration for Seller's execution and delivery of this Agreement. At Closing, the Independent Contract Consideration shall be applied to the Purchase Price.

ARTICLE 2: INSPECTION

2.1 **Seller's Delivery of Specified Documents.**

Within ten (10) days after the Effective Date, Seller shall provide to Purchaser the following documents (the "**Specified Documents**"):

- (a) Tax Statements. Copies or a summary of ad valorem tax statements relating to the Property for the current year, other current tax period, and for the thirty-six (36) months preceding the Effective Date and all information regarding special assessments for the Property;
- (b) Environmental Reports. Any environmental, soils, or geotechnical reports in Seller's possession or control related to the Property;
- (c) Existing Title and Survey Documents. Copy of Seller's existing title insurance policy and any existing surveys of the Property (including, without limitation, archaeological, boundary, topographic, and tree surveys);
- (d) Certificates/Permits. A copy of all governmental permits, approvals, licenses, and certificates for occupancy related to the Property (the "Permits");
- (e) Governmental Correspondence. Any written notices, reports, citations, orders, decisions, correspondence, or memoranda from any governmental authority addressed to Seller (including, but not limited to, copies of any zoning letters) and applications by Seller to any governmental authority;
- (f) Warranties. Any existing warranties currently in force with respect to the Property; and

Seller shall provide to Purchaser any documents described above and coming into Seller's possession or control or produced by Seller after the initial delivery above and to continue to provide same during the pendency of this Agreement.

2.2 Due Diligence

- (a) Purchaser shall have through the last day of the Due Diligence Period in which to examine, inspect, and investigate the Property and, in Purchaser's sole and absolute judgment and discretion, to determine whether the Property is acceptable to Purchaser and to obtain all necessary internal approvals. Notwithstanding anything to the contrary in this Agreement, Purchaser may terminate this Agreement for any reason whatsoever by giving notice of termination to Seller on or before the last day of the Due Diligence Period. If Purchaser does not give the notice of termination, this Agreement shall continue in full force and effect. If this Agreement terminates pursuant to this Section 2.2, the Earnest Money (less the Independent Contract Consideration) shall be refunded to Purchaser immediately upon request, and all further rights and obligations of the parties under this Agreement shall terminate except for all indemnity obligations of the parties hereto or other provisions of this Agreement that expressly survive the termination of this Agreement.
- (b) During the pendency of this Agreement, Purchaser shall have reasonable access to the Property for the purpose of conducting surveys, architectural, engineering, geotechnical, and environmental inspections and tests (including intrusive inspection and sampling) and any other inspections, studies, or tests reasonably required by Purchaser. Seller shall cooperate with Purchaser in connection with Purchaser's due diligence as reasonably requested by Purchaser. Prior to entry upon the Property, Purchaser and Purchaser's agents or representatives accessing the Property shall obtain and deliver to Seller a certificate of insurance naming Seller as an additional insured, evidencing commercial general liability insurance coverage with combined single limits of not less than two thousand dollars (\$2,000,000) from an underwriter reasonably acceptable to Seller. Purchaser agrees to

indemnify Seller and to hold harmless and defend Seller from and against any and all claims, demands, causes of action, damages, liabilities, costs, and expenses including, without limitation, reasonable attorneys' fees and court costs, which are asserted against, suffered, or incurred by Seller as a result of any inspection, testing, or examination of the Property by Purchaser or its agents or representatives; provided, however, that in no event shall such indemnity apply to either: (i) matters merely discovered by Purchaser or any of Purchaser's representatives or agents, but not originally caused or exacerbated by any of Purchaser or Purchaser's representatives or agents; or, (ii) to the extent caused by the gross negligence or willful misconduct of Seller or any of its representatives or agents. Purchaser further agrees that it shall be solely responsible for any and all costs associated with the inspections described in this Section 2.2 and agrees to promptly discharge or contest (after first depositing adequate security therefor with Seller) any liens that are filed against the Property as a result of such inspections. Promptly following each such inspection, Purchaser shall restore the Property to substantially the same condition as existed prior to such inspections. In the course of its inspections Purchaser may make inquiries to third parties including, without limitation, lenders, contractors, parties to Service Contracts, and municipal, local, and other government officials and representatives, and Seller consents to such inquiries. The terms of this Section 2.2 shall survive the Closing and any termination of this Agreement.

2.3 Due Diligence Period Extensions.

There shall be no option to extend the Due Diligence period.

2.4 Use Approvals.

Seller shall, at no cost to Seller, reasonably assist and cooperate with Purchaser in Purchaser's attempts to obtain all zoning and land use approvals, variances, amendments, or other changes required by all applicable governmental authorities or private parties under any applicable deed restrictions to allow the Property to be used for Purchaser's intended use, without any conditions or contingencies (collectively, the "Use Approvals"). Such assistance and cooperation includes, without limitation, timely execution by Seller of any documents in connection therewith, provided such documents do not impose any liability or obligation on Seller or the Property, and provided further that in no event shall the Use Approvals become binding on the Property or Seller prior to the Closing Date. Seller shall notify Purchaser promptly of the receipt of comments, notices, or requests from any governmental entities or private parties relating to the Use Approvals, and shall supply Purchaser with copies of all correspondence between Seller or any of its representatives and governmental entities with respect to the Use Approvals.

2.5 CCRs.

If the Property is subject to or encumbered by any Covenants, Conditions and Restrictions, or similar instrument ("CCRs") governing or affecting the use, operation, maintenance, management, or improvement of the Property, then Purchaser may request during the Due Diligence Period that Seller request from the association or other entity having governing or approval rights under the CCRs an estoppel certificate from such association or other entity, in form and substance satisfactory to Purchaser. To the extent allowable under law, Seller may either: (i) request that such entity sign such estoppel certificate; or, (ii) request that the Purchaser and such entity work together to produce exceptions or variations to the CCRs.

2.6 Plat.

If required by any governmental authority in order for Seller to convey the Property to Purchaser, then during the Due Diligence Period, Purchaser shall initiate the process for a subdivision plat of the Property, subdividing the Property as a separate legal parcel from the larger tract of which it is a part (the "**Subdivision Plat**"). Purchaser shall promptly provide Seller with copies of preliminary and final drafts of the Subdivision Plat as they become available for Seller's review and approval. The Subdivision Plat and all applications and submittals relative thereto shall be subject to the review and approval of Seller and Purchaser such approval not to be unreasonably withheld, conditioned, or delayed. Purchaser shall pay all fees, costs, and expenses related to the preparation, processing, and filing of the Subdivision Plat and all other expenses relating thereto. Neither Purchaser nor Seller shall unreasonably withhold or delay approval of the Subdivision Plat. The Subdivision Plat will be finalized and filed of public record prior to Closing, and Closing shall be automatically extended until such time as the Plat is approved by the applicable governmental authority and filed of record. To the extent that the Subdivision Plat contains any development or other obligation, Purchaser shall indemnify and hold harmless Seller from and against all such obligations. It shall be Purchaser's sole responsibility to obtain a Subdivision Plat; provided, however, that Seller shall cooperate with Purchaser in all aspects of the plat-approval process. If Purchaser is unable to finalize the Subdivision Plat due to any requirements of the applicable governmental authorities which relate to property outside of the Property which cannot be satisfied within thirty (30) days of Purchaser's initial submission of the Plat, then Purchaser shall have the right to terminate this Agreement upon written notice to Seller and be entitled to a return of the Earnest Money (less the Independent Contract Consideration) and all further rights and obligations of the parties under this Agreement shall terminate except for all indemnity obligations of the parties hereto or other provisions of this Agreement that expressly survive the termination of this Agreement.

2.7 Property Condition.

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT AND IN THE DOCUMENTS TO BE DELIVERED AT CLOSING, THE PROPERTY IS BEING CONVEYED "AS IS, WHERE IS". EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT AND IN THE DOCUMENTS TO BE DELIVERED AT CLOSING, PURCHASER ACKNOWLEDGES THAT SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, OF, AS TO, CONCERNING, OR WITH RESPECT TO: (I) THE VALUE, NATURE, QUALITY, OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY; (II) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH MAY BE CONDUCTED THEREON; (III) THE COMPLIANCE OF OR BY THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (IV) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; OR, (V) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT AND

IN THE DOCUMENTS TO BE DELIVERED AT CLOSING, PURCHASER FURTHER ACKNOWLEDGES THAT SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES REGARDING COMPLIANCE OF THE PROPERTY WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION, OR LAND USE LAWS, RULES, REGULATIONS, ORDERS, OR REQUIREMENTS, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SOLID WASTE, AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OR EXISTENCE, IN OR ON THE PROPERTY, OF ANY HAZARDOUS SUBSTANCES, AS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, AND THE REGULATIONS PROMULGATED THEREUNDER. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT AND IN THE DOCUMENTS TO BE DELIVERED AT CLOSING, SELLER SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PROPERTY OR THE OPERATION THEREOF, FURNISHED BY ANY PARTY PURPORTING TO ACT ON BEHALF OF SELLER. THE PROVISIONS OF THIS SECTION 2.7 SHALL SURVIVE CLOSING.

ARTICLE 3: TITLE AND SURVEY REVIEW

3.1 Delivery of Title Commitment and Survey.

Seller shall cause to be prepared and delivered to Purchaser and its counsel within ten (10) days after the Effective Date: (i) a current, effective commitment for title insurance (the "Title Commitment") issued by the Title Company, in the amount of the Purchase Price with Purchaser as the proposed insured, and accompanied by true, complete, and legible copies of all documents referred to in the Title Commitment; and, (ii) Seller's existing survey of the Property (the "Survey"). Purchaser shall have the right, within thirty (30) days after receipt of the Title Commitment and all title exception documents, to obtain a new (dated on or after the Effective Date) on-the-ground Texas Category 1A, Condition II land title survey of the Property including a certification addressed to Purchaser, the Title Company and such other parties as Purchaser may specify (the "New Survey"). Should Purchaser obtain the New Survey: (i) the New Survey shall be considered the "Survey" for all purposes under this Agreement; and, (ii) upon completion of the New Survey the metes and bounds description of the Property prepared in connection with the New Survey will be used to describe the Property in all closing documents used to consummate the transaction contemplated by this Agreement.

3.2 Title Review and Cure.

Purchaser shall notify Seller in writing (the "Title Notice") within thirty (30) days after last to be received by Purchaser of the Title Commitment, including all documents referred to in the Title Commitment, and the Survey, which exceptions to title (including Survey matters), if any, will not be accepted by Purchaser (the "Title Review Period"). If Purchaser fails to notify Seller in writing of its disapproval of any exceptions to title prior to the expiration of the Title Review Period, then Purchaser shall be deemed to have approved the condition of title (including Survey matters) to the Property as then reflected in the Title Commitment and on the Survey, excluding Seller Cure Items (as hereinafter defined). Seller shall notify Purchaser in writing within fifteen (15) business days after its receipt of the Title Notice, indicating which objections to title (and

Survey) Seller will cure (the "**Cure Notice**"). If Seller fails to timely deliver the Cure Notice to Purchaser, then Seller shall be deemed to have elected not to cure any of the objections specified in the Title Notice at or prior to Closing. Seller shall have no obligation to cure title objections; provided, that notwithstanding any other provision of this Agreement to the contrary, Seller shall in all events be obligated at or prior to Closing, and regardless of whether Purchaser makes objection thereto, to obtain a release of any lien, mortgage or security interest encumbering the Property, to satisfy all items on Schedule C of the Title Commitment required to be satisfied by Seller and satisfy any matter placed against the Real Property on or after the Effective Date (collectively, the "**Seller Cure Items**"). Purchaser shall have until ten (10) days after delivery of the Cure Notice or the date by which Seller has been deemed to have elected not to cure any of the title objections (other than Seller Cure Items) to provide Seller with written notice indicating that either: (i) Purchaser waives the objections that Seller has not agreed to cure (whereby such exceptions shall be deemed Permitted Exceptions (as hereinafter defined)); or, (ii) Purchaser elects to terminate this Agreement in which event Purchaser shall receive a prompt refund of the Earnest Money (less the Independent Contract Consideration) and neither party hereto shall have any further obligations hereunder except for any indemnity provisions or other provisions of this Agreement that specifically survive the termination of this Agreement. If Seller does not receive such a notice from Purchaser then Purchaser shall be deemed to have elected option (i) above. Seller agrees to remove any exceptions or encumbrances to title which are created by, under, or through Seller after the date of this Agreement and which are not permitted by the terms of this Agreement. As used in this Agreement, the term "**Permitted Exceptions**" shall mean:

- (a) those matters that either are not objected to in writing within the time period provided in this Section 3.2, or if objected to in writing by Purchaser, are those which Seller has elected not to remove or cure, excluding all Seller Cure Items, and subject to which Purchaser has elected or is deemed to have elected to accept the conveyance of the Property; and
- (b) the lien of all ad valorem real estate taxes and assessments not yet due and payable as of the Closing, subject to adjustment as herein provided.

3.3 Amended Title Commitment.

In the event the Title Commitment is amended to include new exceptions that are not set forth in a prior Title Commitment, Purchaser shall have ten (10) days after Purchaser's receipt of the amended Title Commitment within which to notify Seller of any such exceptions to which it objects, provided such new exceptions have not been created by Purchaser or its contractors or agents. If Purchaser objects to any such exceptions, Seller shall have ten (10) days from receipt of Purchaser's objection(s) to remedy such exceptions by waiver or endorsement to the Title Commitment acceptable to Purchaser; provided, Seller shall have no obligation to cure any such new objections unless such are Seller Cure Items or otherwise are the result of the acts of omissions of Seller (which shall also be deemed to be Seller Cure Items under this Agreement). If Seller is unable or unwilling to cure any new objections that Seller is not otherwise under this Agreement obligated to cure within five (5) days after the date of Purchaser's notice of such new objections, then Purchaser may, as its sole and exclusive remedy: (i) not more than five (5) days after the expiration of Seller's 5-day cure period, terminate this Agreement and receive the Earnest Money (less the Independent Contract Consideration) immediately from the Title Company without the need for obtaining further consent or instruction from Seller, and thereafter all obligations hereunder shall terminate, except as otherwise provided herein; or, (ii) waive such objections to any uncured new matter and the transaction contemplated by this Agreement shall

close as scheduled. If written notice of objection under this Section 3.3 is not timely given by Purchaser to Seller, then Purchaser shall be deemed to have approved of the condition of the title of the Real Property as shown by the amended Title Commitment (other than as to Seller Cure Items) and such uncured new matters (other than Seller Cure Items) shall be part of the Permitted Exceptions.

3.4 Delivery of Title Policy at Closing.

At the Closing, as a condition to Purchaser's obligation to close, the Title Company shall deliver to Purchaser a Texas standard T-1 Owner Policy of Title Insurance ("**Title Policy**") issued by the Title Company containing the endorsements requested by Purchaser and that the Title Company has agreed to issue, dated the date and time of the recording of the Deed in the amount of the Purchase Price, insuring Purchaser as owner of good and indefeasible fee simple title to the Property, subject only to the Permitted Exceptions; provided, however, that: (i) the standard exception for discrepancies, conflicts, or shortages in area shall be deleted except for "shortages in area"; (ii) such Title Policy shall have "None of Record" endorsed regarding restrictions (except for those that are Permitted Exceptions); (iii) no exception shall be made for the rights of parties in possession; and, (iv) the standard exception for taxes shall be limited to the year in which the Closing occurs, marked "not yet due and payable" and subsequent years and subsequent assessments for prior years due to change in land usage or ownership. Seller shall execute at Closing an affidavit on the Title Company's standard form so that the Title Company can delete or modify the standard printed exceptions as to parties in possession, unrecorded liens, and similar matters. The Title Policy may be delivered after the Closing if at the Closing the Title Company issues a currently effective, duly-executed "marked-up" Title Commitment or Pro Forma Owner Policy of Title Insurance (the "**Pro Forma**") and irrevocably commits in writing to issue the Title Policy in the form of the "marked-up" Title Commitment or Pro Forma promptly after the Closing Date.

3.5 Title and Survey Costs.

At a reasonable time prior to Closing, if Purchaser anticipates obtaining a New Survey, then Purchaser shall submit to Seller written notice of Purchaser's intent to obtain the New Survey, with such written notice containing the estimated cost of the New Survey. If Seller agrees with the estimated cost contained in the written notice, or if Seller and Purchaser agree to another cost for the New Survey, then the Seller hereby covenants and agrees to reimburse Purchaser at Closing for the costs and expenses associated with Purchaser's obtaining the New Survey, but in an amount not to exceed the cost expressly provided in the written notice or otherwise agreed upon by the parties prior to Closing. The cost of the premium for the Title Policy, excluding the premium for the survey deletion and any endorsements thereto requested by Purchaser, shall be paid by Seller. Purchaser shall pay for the survey deletion and any endorsements requested by Purchaser.

ARTICLE 4: OPERATIONS AND RISK OF LOSS

4.1 Performance under Service Contracts.

During the pendency of this Agreement, Seller will perform its material obligations under Service Contracts and other agreements that may affect the Property.

4.2 New Contracts.

During the pendency of this Agreement, Seller will not enter into any contract that will be an obligation affecting the Property subsequent to the Closing except contracts entered into in the ordinary course of business that are terminable without cause and without penalty to Seller or Purchaser on thirty (30) days notice, and Seller will not amend or modify any Service Contracts.

4.3 Listings and Other Offers.

During the pendency of this Agreement, Seller will not solicit, make, or accept any offers to sell the Property, engage in any discussions or negotiations with any third party with respect to the sale or other disposition of the Property, or enter into any contracts or agreements (whether binding or not) regarding any disposition of the Property.

4.4 Damage.

Risk of loss up to and including the Closing Date shall be borne by Seller. Seller shall immediately notify Purchaser in writing of the extent of any damage to the Property. In the event of any material damage to or destruction of the Property or any portion thereof, Purchaser may, at its option, by notice to Seller given within ten (10) days after Purchaser is notified of such damage or destruction (and if necessary the Closing Date shall be extended to give Purchaser the full ten (10) day period to make such election): (i) terminate this Agreement and the Earnest Money (less the Independent Contract Consideration) shall be immediately returned to Purchaser; or, (ii) proceed under this Agreement, receive any insurance proceeds due Seller as a result of such damage or destruction and assume responsibility for such repair, and Purchaser shall receive a credit at Closing for any deductible, uninsured, or coinsured amount under said insurance policies. If Purchaser elects (ii) above, Seller will cooperate with Purchaser after the Closing to assist Purchaser in obtaining the insurance proceeds from Seller's insurers. If the Property is not materially damaged, then Purchaser shall not have the right to terminate this Agreement, but Seller shall at its cost repair the damage before the Closing in a manner reasonably satisfactory to Purchaser or if repairs cannot be completed before the Closing, credit Purchaser at Closing for the reasonable cost to complete the repair. "**Material damage**" and "**Materially damaged**" means damage reasonably exceeding two percent (2%) of the Purchase Price to repair. The terms of this Section 4.4 shall apply to the transaction set out in this Agreement in lieu of the terms of the Uniform Vendor and Buyer Risk Act, Texas Property Code, Section 5.007.

4.5 Condemnation.

Seller shall immediately notify Purchaser of any proceedings in eminent domain that are contemplated, threatened, or instituted by anybody having the power of eminent domain. Within ten (10) days after Purchaser receives written notice from Seller of proceedings in eminent domain that are contemplated, threatened, or instituted by anybody having the power of eminent domain (and if necessary the Closing Date shall be extended to give Purchaser the full ten (10) day period to make such election) Purchaser may: (i) terminate this Agreement and the Earnest Money (less the Independent Contract Consideration) shall be immediately returned to Purchaser; or, (ii) proceed under this Agreement, in which event Seller shall, at the Closing, assign to Purchaser its entire right, title and interest in and to any condemnation award, and Purchaser shall have the sole right during the pendency of this Agreement to negotiate and otherwise deal with the condemning authority in respect of such matter. The terms of this

Section 4.5 shall apply to the transaction set out in this Agreement in lieu of the terms of the Uniform Vendor and Buyer Risk Act, Texas Property Code, Section 5.007.

4.6 Operation.

Except as Purchaser may otherwise consent in writing, until the Closing Date, unless this Agreement is sooner terminated, Seller shall: (i) carry on the business of the Property in the ordinary course and in a manner consistent with Seller's prior practices; (ii) maintain the Property in its present condition and repair, ordinary wear and tear excepted, and subject to the terms of Article 4 hereof; (iii) maintain the existing insurance policies for the Property and the operation thereof (and any replacements thereof) in full force and effect; and, (iv) not grant to any third party any interest in the Property or any part thereof or further voluntarily encumber the Property.

4.7 Payment of Bills.

Seller agrees that between the Effective Date and the Closing or any earlier termination of this Agreement, it shall, at its sole cost and expense, except for: (i) any item to be prorated at the Closing in accordance with this Agreement; (ii) bills or invoices that are not received by Seller at least ten (10) days prior to the Closing Date; and, (iii) bills or invoices that are being contested in good faith, at or prior to the Closing Date, pay all bills or invoices arising out of or in connection with or resulting from Seller's use, ownership, or operation of the Property up to and on the day before the Closing Date. Notwithstanding the foregoing, Seller will remain obligated, after the Closing, for the payment of all bills and invoices arising out of or in connection with or resulting from Seller's use, ownership or operation of the Property prior to the Closing Date.

4.8 Zoning.

Seller agrees that between the Effective Date and the Closing or any earlier termination of this Agreement, it shall, at its sole cost and expense, without Purchaser's prior written consent, not restrict, rezone, file, or modify any development plan or zoning plan or establish or participate in the establishment of any improvement district with respect to all or any portion of the Property.

4.9 Litigation.

Following Seller's receipt of notice, Seller will advise Purchaser promptly of any litigation or any arbitration proceeding or any administrative hearing (including condemnation) before any governmental agency which concerns or affects the Property in any manner and which is instituted after the Effective Date.

ARTICLE 5: CLOSING

5.1 Closing.

The consummation of the transaction contemplated herein ("Closing") shall occur on the Closing Date at the offices of the Title Company or at such other location to which the parties may mutually agree.

5.2 Conditions to Parties' Obligations to Close.

In addition to all other conditions set forth herein, the obligation of Seller, on the one hand, and Purchaser, on the other hand, to consummate the transactions contemplated hereunder shall be contingent upon the following:

- (a) Each of the representations and warranties contained herein shall be true and correct as of the Effective Date and on the Closing Date. For purposes of this clause (a), a representation shall be false if the factual matter that is the subject of the representation is false notwithstanding any lack of knowledge or notice to the party making the representation;
- (b) As of the Closing Date, each party shall have performed in all material respects all of the obligations, covenants, and deliveries required of each party hereunder;
- (c) There shall exist no actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings, pending or threatened against either party that would materially and adversely affect the operation or value of the Property or either party's ability to perform its obligations under this Agreement; and
- (d) There shall exist no pending or threatened action, suit, or proceeding with respect to either party before or by any court or administrative agency which seeks to restrain or prohibit, or to obtain damages or a discovery order with respect to, this Agreement or the consummation of the transactions contemplated hereby.

So long as a party is not in default hereunder, if any condition to such party's obligation to proceed with the Closing hereunder has not been satisfied as of the Closing Date, such party may, in its sole discretion, terminate this Agreement by delivering written notice to the other party on or before the Closing Date, or elect to close, notwithstanding the non-satisfaction of such condition, in which event such party shall be deemed to have waived any such condition. In the event such party elects to close, notwithstanding the non-satisfaction of such condition, there shall be no liability on the part of any other party hereto for breaches of representations and warranties of which the party electing to close had actual knowledge at the Closing. Nothing in the foregoing shall relieve a party from any liability it would otherwise have if the failure of a party to satisfy a condition also constitutes a default by such party hereunder.

5.3 Conditions to Purchaser's Obligations to Close.

Purchaser shall not be obligated to close this transaction if as of the Closing Date, there is any condition applicable to the Property that materially differs from that which existed on the last day of the Due Diligence Period.

5.4 Seller's Deliveries in Escrow.

At least one (1) business day prior to the Closing Date, Seller shall deliver in escrow to the Title Company the following:

- (a) Deed. A special warranty deed in the form of **Exhibit B** attached hereto, executed and acknowledged by Seller, conveying to Purchaser good and indefeasible fee simple title to the Real Property, subject only to the Permitted Exceptions (the "Deed");

- (b) Assignment of Service Contracts and Personal Property. An Assignment of Service Contracts and Personal Property in the form of **Exhibit C** attached hereto, executed, and acknowledged by Seller, vesting in Purchaser good title to the property described therein free of any claims except for the Permitted Exceptions to the extent applicable;
- (c) State Law Disclosures. Such disclosures and reports, required by applicable State and local law in connection with the conveyance of real property;
- (d) FIRPTA. A Foreign Investment in Real Property Tax Act affidavit executed by Seller. If Seller fails to provide the necessary affidavit or documentation of exemption on the Closing Date, Purchaser may proceed with withholding provisions as provided by law;
- (e) Certificate Updating Representations and Warranties. A certificate updating those representations and warranties of Seller contained in Section 7.1 of this Agreement as of Closing, executed by Seller;
- (f) Authority. Evidence of existence, organization, and authority of Seller and the authority of the person executing documents on behalf of Seller reasonably satisfactory to Purchaser and the Title Company; and
- (g) Additional Documents. Any additional documents that Purchaser or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

5.5 Purchaser's Deliveries in Escrow.

Except as specified below, at or prior to the Closing, Purchaser shall deliver in escrow to the Title Company the following:

- (a) Purchase Price. On the Closing Date, the Purchase Price, less the Earnest Money that is applied to the Purchase Price, plus or minus applicable prorations, deposited by Purchaser with the Title Company in immediate, same-day federal funds wired for credit into the Title Company's escrow account;
- (b) Assignment of Service Contracts and Personal Property. Execution by Purchaser of the Assignment of Service Contracts and Personal Property;
- (c) State Law Disclosures. Such disclosures and reports required by applicable State and local law in connection with the conveyance of real property;
- (d) Authority. Evidence of existence, organization, and authority of Purchaser and the authority of the person executing documents on behalf of Purchaser reasonably satisfactory to Seller and the Title Company; and
- (e) Additional Documents. Any additional documents that Seller or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement.

5.6 Closing Statements/Escrow Fees.

At least one (1) business day prior to the Closing Date, Seller and Purchaser shall deposit with the Title Company executed closing statements consistent with this Agreement in form required by the Title Company. The Title Company's escrow fee shall be paid one-half (1/2) by Seller and one-half (1/2) by Purchaser.

5.7 Title Policy.

The Title Company shall deliver to Purchaser the Title Policy pursuant to Section 3.4.

5.8 Possession.

Seller shall deliver possession of the Property to Purchaser at the Closing subject only to the Permitted Exceptions.

5.9 Obligations under Service Contracts.

On or prior to the expiration of the Due Diligence Period, Purchaser shall notify Seller in writing of which of the Service Contracts Purchaser does not wish to assume at Closing (the "**Rejected Contracts**") and Seller shall, at or before Closing, terminate all Rejected Contracts; provided that Seller shall only be obligated to terminate those Rejected Contracts that Seller may terminate at or prior to Closing without the payment of any penalty or fee in connection with such termination, unless Purchaser agrees to pay in full and assume responsibility for any such penalty or fee. Seller warrants that it shall have performed, and shall indemnify Purchaser from and against any liability for nonperformance and nonpayment of, its obligations and liabilities under the Service Contracts that are assumed by Purchaser up to and including the Closing Date, and Purchaser agrees to perform Seller's obligations under such Service Contracts accruing after the Closing Date. This obligation shall survive the Closing Date.

5.10 Delivery of Books and Records.

Immediately after the Closing, Seller shall deliver to Purchaser the following: (i) original Permits in Seller's possession or control; and, (ii) copies or originals of all books and records of account, contracts, copies of correspondence with suppliers, receipts for deposits, unpaid bills, and other papers or documents which pertain to the Property together with all advertising materials, booklets, keys, and other items, if any, used in the operation of the Property.

5.11 Close of Escrow.

Upon satisfaction or completion of the applicable foregoing conditions and deliveries, the parties shall direct the Title Company to immediately record and deliver the documents described above to the appropriate parties and make disbursements according to the closing statements executed by Seller and Purchaser.

ARTICLE 6: PRORATIONS

6.1 Prorations.

The items in this Section 6.1 shall be prorated between Seller and Purchaser as of the Closing Date (unless otherwise provided herein), with Purchaser being responsible for such items beginning on the Closing Date:

- (a) Taxes and Assessments. General real estate taxes and assessments imposed by governmental authority (“**Taxes**”) and any assessments by private covenant constituting a lien or charge on the Property for the then-current calendar year or other current tax period not yet due and payable. If the Closing occurs prior to the receipt by Seller of the tax bill for the calendar year or other applicable tax period in which the Closing occurs, Purchaser and Seller shall prorate Taxes for such calendar year or other applicable tax period based upon the most recent ascertainable assessed values and tax rates. If the Property has not been assessed on a completed basis but will be for the current year or other applicable tax period, the parties shall complete the proration based upon an assessed value equal to the Purchase Price. All taxes and interest that become due as a penalty, whether retroactive or not, imposed due to the transfer of the Property or a change in the use of the Property after Closing, from the use prior to the Closing, shall be paid by Seller.
- (b) Utility Charges. Electric, water, sewer, gas, fuel, waste collection and removal, and other utility and operating expenses relating to the Property shall be prorated as of the day preceding the Closing Date. It shall be assumed that the utility charges were incurred uniformly during the billing period in which the Closing occurs. If bills for the applicable period are unavailable, the amounts of such charges will be estimated based upon the latest known bills. Notwithstanding the foregoing, to the extent possible, Seller and Purchaser shall request the utility companies to read the meters as of the date preceding the Closing Date, and Seller shall be responsible for all charges incurred through the day preceding the Closing Date. All prepaid deposits for utilities shall be refunded to Seller at the time of closing by the utility companies, and it shall be Purchaser’s responsibility to make any utility deposits required for service. Notwithstanding the foregoing, Purchaser shall be solely responsible for ensuring that utility services including water, gas, electrical, telephone, storm water drainage, storm water detention (if necessary), and sanitary sewer will be available in capacities sufficient to serve Purchaser’s intended use of the Property as developed at no expense to Seller.
- (c) Proration Adjustment. After receipt of final Taxes and other bills, Purchaser shall prepare and present to Seller a calculation of the proration of such Taxes and other items, based upon the actual amount of such items charged to or received by the parties for the year or other applicable fiscal period. The parties shall make the appropriate adjusting payment between them within thirty (30) days after presentment to Seller of Purchaser’s calculation. Seller may inspect Purchaser’s books and records related to the Property to confirm the calculation.

6.2 Sales, Transfer, and Documentary Taxes.

Seller shall pay all sales, gross receipts, compensating, stamp, excise, documentary, transfer, deed or similar taxes and fees imposed in connection with this transaction under applicable local or state law.

6.3 Commissions.

Seller and Purchaser hereby represent and warrant to each other that they have not dealt with any real estate broker, sales person, or finder in connection with this transaction. As such, there will be no broker’s commission. To the extent permitted by applicable law, Seller will indemnify, defend (with counsel reasonably acceptable to Purchaser), and save Purchaser harmless from and against any commissions or fees alleged to be payable by any broker, finder, or sales person engaged, or alleged to be engaged by, through or under Seller. Purchaser will indemnify, defend

(with counsel reasonably acceptable to Seller), and save Seller harmless from and against any commissions or fees alleged to be payable to any broker, finder, or sales person engaged, or alleged to be engaged by, through or under Purchaser.

6.4 Survival.

The provisions of this Article 6 shall survive the Closing.

ARTICLE 7: REPRESENTATIONS AND WARRANTIES

7.1 Seller's Representations and Warranties.

As a material inducement to Purchaser to execute this Agreement and consummate this transaction, Seller represents and warrants to Purchaser that:

- (a) Authority. Seller is a duly organized, validly existing, in good standing, and is qualified to do business in the State of Texas. Seller has the full right and authority and has obtained any and all consents required therefor to enter into this Agreement, consummate or cause to be consummated the sale. This Agreement and all of the documents to be delivered by Seller at the Closing have been and will be authorized and properly executed and will constitute the valid and binding obligations of Seller, enforceable in accordance with their terms.
- (b) Conflicts and Pending Actions or Proceedings. There is no agreement to which Seller is a party or, to Seller's knowledge, binding on Seller which is in conflict with this Agreement. There is no action or proceeding pending or, to Seller's knowledge, threatened against the Property, including, without limitation, any condemnation or re-zoning proceedings, or which challenges or impairs Seller's ability to execute or perform its obligations under this Agreement. Seller has not received written notice of any suits or claims pending or threatened with respect to or in any manner adversely affecting the Property, nor has Seller received written notice of any circumstances which should or could reasonably form the basis for any such suits or claims which have not otherwise been disclosed in writing to Purchaser by Seller.
- (c) Contractors and Suppliers. All contractors, subcontractors, suppliers, architects, engineers, and others who have performed services, labor, or supplied material in connection with Seller's acquisition, development, ownership, and management of the Property have been paid in full and all liens arising therefrom (or claims which with the passage of time or notice or both, could mature into liens) have been satisfied and released. There are no unrecorded liens which could affect the Property.
- (d) Service Contracts and Specified Documents. The Specified Documents provided pursuant to Article 2, including, without limitation, the list of Service Contracts, and all other information provided by Seller, are true, correct, and complete. Other than the Service Contracts delivered as part of the Specified Documents and the Permitted Exceptions, there are no contracts, agreements, or other documents that will affect the Property from and after the Closing. Neither Seller nor, to Seller's knowledge, any other party is in default under any Service Contract or in default or violation of any Permit.
- (e) Notice of Violations or Defects. Seller has received no written notice: (i) that the Property or the use thereof violates any governmental law or regulation or any covenants or restrictions encumbering the Property; (ii) of any material physical defect in the Property; or, (iii) from

any insurance company or underwriter of any defect that would materially adversely affect the insurability of the Property or cause an increase in insurance premiums.

- (f) Environmental. Seller has no knowledge of: (i) the presence of any Hazardous Materials (as hereinafter defined) in, on, or under the Real Property; (ii) any noncompliance or violation of Environmental Laws (as hereinafter defined) related to the Real Property; or, (iii) any environmental lien, charge, assessment, or threatened inclusion of the Real Property into any Super Fund designated cleanup area, or inclusion of the Real Property into any designated environmental area by any governmental body, entity, or agency. The term "Environmental Laws" shall include, without limitation, those laws commonly known as the Clean Air Act, the Clean Water Act, and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"); the Marine Protection, Research, and Sanctuaries Act; the National Environmental Policy Act; the Noise Control Act; the Occupational Safety and Health Act; the Resource Conservation and Recovery Act ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act, and the Emergency Planning and Community Right-to-Know Act; the Toxic Substance Control Act ("TSCA"); and the Atomic Energy Act; as each of the same may be amended, with implementing regulations and guidelines. Environmental Laws shall also include all state, regional, county, municipal and other local laws, regulations, and ordinances that are equivalent or similar to the federal laws recited above or purport to regulate Hazardous Materials. The term "Hazardous Materials" shall include, without limitation, any hazardous substance, pollutant, or contaminant regulated under CERCLA; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel; pesticides regulated under FIFRA; asbestos, polychlorinated biphenyls, and other substances regulated under TSCA; source material, special nuclear material, and by-product materials regulated under the Atomic Energy Act; and, industrial process and pollution control wastes to the extent regulated under applicable Environmental Laws.
- (g) Withholding Obligation. Seller's sale of the Property is not subject to any Federal, State, or local withholding obligation of Purchaser under the tax laws applicable to Seller or the Property.
- (h) ERISA. Seller is not and is not acting on behalf of an "employee benefit plan" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, a "plan" within the meaning of Section 4975 of the Internal Revenue Code of 1986, as amended or an entity deemed to hold "plan assets" within the meaning of 29 C.P.R. § 2510.3101 of any such employee benefit plan or plans.
- (i) Consent. No consent of any third party is required in order for Seller to enter into this Agreement and perform Seller's obligations hereunder or thereunder.
- (j) Third Party Possession. Except for parties with possessory rights pursuant to the Service Contracts and the Permitted Exceptions, there are no parties in possession of any part of the Property, and there are no written leases or other rental agreements, licenses, or subleases affecting any part of the Property.

- (k) Zoning. Seller has not taken any action, the object of which would be to change the present zoning of or other land-use limitations upon the Property, or any portion thereof, or its potential use, and Seller has not received written notice of any pending proceedings, the object of which would be to change the present zoning or other land-use limitations applicable to the Property.
- (l) Purchase Rights. No party (other than Purchaser) has a purchase option, right of first refusal, or other right to purchase the Property.
- (m) OFAC. Neither Seller nor any owner of an interest in Seller appears on the Specially Designated Nationals and Blocked Persons list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, or is a person or entity with whom Purchaser is otherwise restricted from doing business under applicable laws relating to national security (such as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, commonly known as the "USA Patriot Act") and executive orders and regulations relating to such applicable laws.

7.2 Purchaser's Representations and Warranties.

Purchaser represents and warrants to Seller that:

- (a) Organization and Authority. Purchaser is duly organized, validly existing, in good standing, and qualified to do business in the State of Texas. Purchaser has the full right and authority and has obtained any and all consents required therefor to enter into this Agreement, consummate or cause to be consummated the purchase of the Property. This Agreement and all of the documents to be delivered by Purchaser at the Closing have been and will be authorized and properly executed and will constitute the valid and binding obligations of Purchaser, enforceable in accordance with their terms.
- (b) Conflicts and Pending Action. There is no agreement to which Purchaser is a party or to which Purchaser's knowledge binding on Purchaser which is in conflict with this Agreement. There is no action or proceeding pending, or to which Purchaser's knowledge, threatened against Purchaser or which challenges or impairs Purchaser's ability to execute or perform its obligations under this Agreement.
- (c) OFAC. Neither Purchaser, any owner of an interest in Purchaser, Purchaser's lender, nor the source of any of Purchaser's equity for the consummation of the transactions contemplated by this Agreement appears on the Specially Designated Nationals and Blocked Persons list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, or is a person or entity with whom Seller is otherwise restricted from doing business under applicable laws relating to national security (such as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, commonly known as the "USA Patriot Act") and executive orders and regulations relating to such applicable laws.

7.3 Survival of Representations and Warranties.

The representations and warranties set forth in this Article 7 are made as of the Effective Date and are remade as of the Closing Date and shall not be deemed to be merged into or waived by the instruments of Closing. Each party agrees to defend and indemnify the other against any

claim, liability, damage, or expense asserted against or suffered by such other party arising out of the breach or inaccuracy of any such representation or warranty. Notwithstanding the foregoing or anything herein to the contrary, the indemnity set forth herein shall survive until the expiration of any applicable statute of limitations affecting the matters set forth therein.

ARTICLE 8: DEFAULT AND REMEDIES

8.1 Seller's Default.

If this transaction fails to close as a result of Seller's default, Purchaser shall be entitled, as its sole and exclusive remedy, to: (i) terminate this Agreement, receive the Earnest Money (less the Independent Contract Consideration), and recover from Seller all of Purchaser's out-of-pocket costs and expenses incurred in connection with this Agreement; or, (ii) enforce specific performance of Seller's obligations hereunder. Notwithstanding anything to the contrary contained in the foregoing, in the event the equitable remedy of specific performance is not available due to the Seller no longer owning title to the Property at Closing, Purchaser may seek aggregate actual damages in an amount not to exceed ten percent (10%) of the Purchase Price. Seller shall not refuse to consent to the release of the Earnest Money to Purchaser if required to do so by the terms of this Agreement. In the event of a breach of this Section 8.1, Purchaser shall be entitled to all fees, costs, and expenses (including reasonable attorneys' fees), and the amount of any such fees, costs, and expenses awarded to Purchaser shall be in addition to any amounts that Purchaser is provided hereunder. This Section 8.1 shall survive the termination of this Agreement.

8.2 Purchaser's Default.

If this transaction fails to close due to the default of Purchaser, then Seller's sole and exclusive remedy shall be to terminate this Agreement and retain the Earnest Money as agreed liquidated damages, Seller waiving all other rights or remedies in the event of such default by Purchaser. The parties acknowledge that Seller's actual damages in the event of such default by Purchaser under this Agreement will be difficult to ascertain, and that such liquidated damages represent the parties' best estimate of such damages. Purchaser shall not refuse to consent to the release of the Earnest Money to Seller if required to do so by the terms of this Agreement.

ARTICLE 9: MISCELLANEOUS

9.1 Parties Bound.

(a) Neither party may assign this Agreement without the prior written consent of the other, and any such prohibited assignment shall be void; provided that Purchaser may assign this Agreement without Seller's consent to an Affiliate (as hereinafter defined) or to effect a Section 1031 exchange pursuant to Section 9.17. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties. For the purposes of this Article, the term "Affiliate" means: (i) an entity that directly or indirectly controls, is controlled by or is under common control with the Purchaser; or, (ii) an entity at least a majority of whose economic interest is owned by Purchaser; and the term "control" means the power to direct the management of such entity through voting rights, ownership, or contractual obligations.

- (b) Each party represents and warrants that it has full constitutional and lawful right, power, and authority, under currently applicable law, to execute, deliver, and perform the terms and obligations of this Agreement. Accordingly, the Agreement constitutes the legal valid and binding obligation of the parties, is enforceable in accordance with its terms and provisions, and does not require the consent of any other entity.
- (c) The parties acknowledge and affirm that no department of the Seller has the legal authority to enter into any contract of any type or nature in the name of the department or to accept any legal notice on behalf of the Seller.

9.2 Headings.

The article and paragraph headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

9.3 Invalidity and Waiver.

If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision.

9.4 Survival.

The provisions of this Agreement that contemplate performance after the Closing and the obligations of the parties not fully performed at the Closing shall survive the Closing and shall not be deemed to be merged into or waived by the instruments of Closing.

9.5 Entirety and Amendments.

This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

9.6 Time.

Time is of the essence of this Agreement. However, if this Agreement requires any act to be done or action to be taken on a date which is a Saturday, Sunday, legal holiday, the Friday after Thanksgiving, or Christmas Eve, such act or action shall be deemed to have been validly done or taken if done or taken on the next succeeding day which is not a Saturday, Sunday, legal holiday, the Friday after Thanksgiving, or Christmas Eve, and the successive periods shall be deemed extended accordingly. The term "**business day**" excludes Saturdays, Sundays, legal holidays, the Friday after Thanksgiving, and Christmas Eve.

9.7 Confidentiality.

- (a) Only to the extent allowable under law, Purchaser shall, to the best of its ability, keep confidential the existence and the terms of this Agreement, except as to its employees, consultants, attorneys, accountants, lenders, and other agents (collectively, the "**Purchaser Parties**") who may be involved in conducting the due diligence related to the transactions

contemplated by this Agreement. Purchaser and Purchaser Parties who receive such confidential information shall hold in strictest confidence all data and information obtained with respect to the Property or Seller or its business, whether obtained before or after the execution and delivery of this Agreement, and shall not disclose the same to others; provided, however, that it is understood and agreed that: (i) Purchaser may disclose such data and information to the Purchaser Parties provided that Purchaser advises such persons of the confidential nature of such information and in all events Purchaser shall be responsible for each such person's obligation to keep confidential the data and information provided to them pursuant to this Agreement; and, (ii) Purchaser's and the Purchaser Parties' obligation to keep such information confidential shall terminate as of the earlier to occur of the Closing or the expiration of twelve (12) months after termination of this Agreement. Purchaser and the Purchaser Parties shall use Seller's confidential information only for purposes of evaluating whether to consummate the transactions contemplated by this Agreement, and for no other purposes. Notwithstanding the foregoing, each party consents to any disclosure of this Agreement which the other party reasonably believes is required by law, by the public disclosure obligations required by the U.S. Securities and Exchange Commission or which is recommended in good faith by counsel to such other party. In the event of a breach or threatened breach by Purchaser or the Purchaser Parties of this Section, Seller shall be entitled to an injunction restraining Purchaser or the Purchaser Parties from disclosing, in whole or in part, such confidential information. The provisions of this Section shall survive the termination of this Agreement, but shall not survive Closing.

- (b) Notwithstanding any other provision herein, this Agreement is public information. To the extent, if any, that any provision of this Agreement is in conflict with the Texas Public Information Act, then the Texas Public Information Act shall prevail.

9.8 Attorneys' Fees.

Should either party employ attorneys to enforce any of the provisions hereof, the party losing in any final judgment agrees to pay the prevailing party all reasonable costs, charges and expenses, including attorneys' fees, expended or incurred in connection therewith.

9.9 Notices.

- (a) Any such notices shall be either: (i) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid, in the U.S. Mail; (ii) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such courier; (iii) sent by personal delivery, in which case notice shall be deemed delivered on the date personally delivered as evidenced by a written receipt therefor; or, (iv) sent by email, in which case notice shall be deemed delivered upon confirmation of transmission. The above addresses may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

- (b) All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following address:

For Seller:
City of Jersey Village
16501 Jersey Drive
Jersey Village, Texas 77040
Attn: City Manager
Phone: (713) 466-2109
Email: ableess@ci.jersey-village.tx.us

With a copy to:
City of Jersey Village
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019-2133
Attn: City Attorney
Phone: (713) 533-3800
Email: jpruitt@olsonllp.com

For Purchaser:
Collaborate Special Projects LLC
3302 Canal Street, Suite #36
Houston, Texas 77003
Attn: Saul Valentin, Founding Principal
Phone: (832) 409-3050
Email: svalentin@collaborate-llc.com

With a copy to:
Hunton Andrews Kurth LLP

600 Travis Street, Suite 4200
Houston, TX 77002
Attn: Mark B. Arnold
Phone: (713) 220-3938
Email: markarnold@HuntonAK.com

9.10 Construction.

The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

9.11 Calculation of Time Periods.

Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designed period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 11:59 PM Central Standard Time.

9.12 Information and Audit Cooperation.

At Purchaser's request, at any time after the Closing, Seller agrees to provide to the Purchaser's designated independent auditor access to the books and records of the Property and all related information regarding the period for which Purchaser is required to have the Property audited under the regulations of the Securities and Exchange Commission, and a representation letter in such form as may be reasonably required by Purchaser or its auditor regarding the books and records of the Property in connection with the normal course of auditing the Property in accordance with generally accepted auditing standards. The terms of this Section 9.12 shall survive Closing.

9.13 Procedure for Indemnity.

Promptly after receipt by an indemnitee of notice of any claim, such indemnitee will, if a claim in respect thereof is to be made against the indemnitor, deliver to the indemnitor written notice thereof and the indemnitor shall have the right to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnitor, if the indemnitee reasonably believes that representation of such indemnitee by the counsel retained by the indemnitor would be inappropriate due to actual or potential differing interests between such

indemnitee and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnitor within a reasonable time of notice of any such claim shall relieve such indemnitor of any liability to the indemnitee under this indemnity only if and to the extent that such failure is prejudicial to its ability to defend such action, and the omission so to deliver written notice to the indemnitor will not relieve it of any liability that it may have to any indemnitee other than under this indemnity. The terms of this Section 9.13 shall survive Closing.

9.14 Execution in Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one (1) Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile, PDF, or other electronic imaging technology counterparts of the signature pages.

9.15 Section 1031 Exchange.

Upon Seller's request to Purchaser, Purchaser agrees to reasonably cooperate with Seller so that Seller's transfer of the Property to Purchaser shall, at Seller's election, be accomplished in a manner enabling the transfer to qualify as part of a like-kind exchange of property by Seller within the meaning of Section 1031 of the Internal Revenue Code (a "**Like-Kind Exchange**"). If Seller so elects, Purchaser shall reasonably cooperate with Seller to effect such Like-Kind Exchange, which cooperation shall include, without limitation, taking such actions as Seller reasonably requests to enable such transfer to qualify as part of a Like-Kind Exchange. Upon Purchaser's request to Seller, Seller agrees to reasonably cooperate with Purchaser so that Seller's transfer of the Property to Purchaser shall, at Purchaser's election, be accomplished in a manner enabling the transfer to qualify as part of a Like-Kind Exchange of property by Purchaser. If Purchaser so elects, Seller shall reasonably cooperate with Purchaser to effect such Like-Kind Exchange, which cooperation shall include, without limitation, taking such actions as Purchaser reasonably requests to enable such transfer to qualify as part of a Like-Kind Exchange. Neither party's obligations hereunder shall be increased as a result of the agreements provided in this subsection, and each party shall bear all costs and expenses associated with any Like-Kind Exchange initiated for such party's benefit.

9.16 Further Assurances.

In addition to the acts and deeds recited herein and contemplated to be performed, executed, and delivered by Seller to Purchaser at Closing, Seller agrees to perform, execute, and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby or to further perfect the conveyance, transfer, and assignment of the Property to Purchaser. The terms of this Section 9.16 shall survive Closing.

9.17 Exculpation of the Seller and Purchaser.

Notwithstanding anything to the contrary contained herein, the partners or members of the Seller or Purchaser, as applicable, and the members and partners of such members and the trustees, officers, directors, employees, agents, and security holders of Seller or Purchaser, as applicable, assume no personal liability for any obligations entered into on behalf of Seller or Purchaser, as applicable, and his, her, or its individual assets shall not be subject to any claims of any person relating to such obligations. The foregoing shall govern any direct and indirect obligations of

Seller or Purchaser under this Agreement. The provisions of this Section 9.17 shall survive the Closing and any termination of this Agreement.

9.18 Funding.

The parties understand and acknowledge that the funding of this Agreement is contained in the Seller's annual budget and is subject to the approval of the Seller in each fiscal year. The parties further agree that should the governing body of the Seller fail to approve a budget which includes sufficient funds for the continuance of this Agreement, or should the governing body of the Seller fail to certify funds for any reason, then and upon the occurrence of such event, the Agreement shall terminate as to the Seller and the Seller shall then have no further obligation to the any other party. When the funds budgeted or certified during any fiscal year by the Seller to discharge its obligations under this Agreement are expended, the Purchaser's *sole and exclusive remedy* shall be to terminate the Agreement.

9.19 Venue and Applicable Law.

This Agreement is subject to all present and future valid laws, orders, rules, ordinances, and regulations of the United States of America, the State of Texas, the parties, and any other regulatory body having jurisdiction over this Agreement. This Agreement shall be construed and governed according to the laws of the State of Texas. The sole and exclusive venue for any action, controversy, dispute, or claim arising under this Agreement shall be in a court of appropriate jurisdiction in Harris County, Texas.

9.20 Rights and Remedies Reserved.

The Seller reserves the cumulative and non-exclusive right to concurrently exercise any right or remedy available to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the Seller shall not be subject to any arbitration process prior to exercising its right to seek judicial remedy.

9.21 No Third-Party Beneficiaries; No Joint Enterprise.

This Agreement is entered into solely by and between, and may be enforced only by and among the parties. Except as set forth above, this Agreement shall not be deemed to create any rights in or obligations to any third parties. Nothing in this Agreement is intended to, or shall be construed to, create any joint enterprise between or among the Parties.

9.22 No Personal Liability.

Nothing in this Agreement shall be construed as creating any personal liability on the part of any employee, officer, or agent of any public body that may be a party to this Agreement.

9.23 Attorney's Fees.

The parties expressly agree that in the event of any litigation arising between the parties that each party shall be solely responsible for payment of its own attorneys and that neither party shall be responsible for the other party's attorney fees, regardless of the outcome of the litigation.

9.24 Indemnity.

- (a) **SELLER'S INDEMNITY.** IN ADDITION TO ANY OTHER APPLICABLE RIGHTS UNDER THIS AGREEMENT, THE SELLER AGREES TO INDEMNIFY, DEFEND, AND HOLD PURCHASER AND ITS OFFICERS, DIRECTORS, PARTNERS, MEMBERS, AGENTS, EMPLOYEES, AFFILIATES, ATTORNEYS, HEIRS, SUCCESSORS, AND ASSIGNS (THE "PURCHASER'S INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, LIENS, CLAIMS, DAMAGES, COSTS, EXPENSES, SUITS, OR JUDGMENTS PAID OR INCURRED BY ANY OF PURCHASER'S INDEMNIFIED PARTIES AND ALL EXPENSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, COURT COSTS AND REASONABLE ATTORNEYS' FEES ARISING OUT OF OR IN ANY WAY CONNECTED OR RELATED TO: (I) THE OWNERSHIP, MAINTENANCE, OR OPERATION OF THE PROPERTY PRIOR TO THE CLOSING; (II) ANY BREACH OR NONPERFORMANCE BY THE SELLER OF ANY PROVISION OR COVENANT CONTAINED IN THIS AGREEMENT; (III) ANY LIABILITY ARISING BECAUSE OF A BREACH OF LEASE, BREACH OF CONTRACT, OR OTHER MATTER RELATED TO THE PROPERTY WHICH OCCURRED OR AROSE OR IS ALLEGED TO HAVE OCCURRED OR ARISEN PRIOR TO THE CLOSING AND WHICH IS DUE TO ACTIONS TAKEN BY THE SELLER; OR, (IV) THE BREACH OF ANY REPRESENTATION OR WARRANTY OF THE SELLER CONTAINED IN THIS AGREEMENT. THE INDEMNITIES SET FORTH IN THIS SECTION SHALL SURVIVE CLOSING WITHOUT LIMITATION. PROVIDED, HOWEVER, THAT THE INDEMNITIES SET FORTH IN THIS SECTION SHALL NOT APPLY TO THE EXTENT OF ANY ITEM THAT BY THIS AGREEMENT SPECIFICALLY BECOMES THE OBLIGATION OF THE PURCHASER AFTER THE CLOSING PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.
- (b) **BUYER'S INDEMNITY.** IN ADDITION TO ANY OTHER APPLICABLE RIGHTS UNDER THIS AGREEMENT, THE PURCHASER AGREES TO INDEMNIFY, DEFEND AND HOLD THE SELLER AND ITS OFFICERS, DIRECTORS, PARTNERS, MEMBERS, AGENTS, EMPLOYEES, AFFILIATES, ATTORNEYS, HEIRS, SUCCESSORS AND ASSIGNS (THE "SELLER'S INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, LIENS, CLAIMS, DAMAGES, COSTS, EXPENSES, SUITS, OR JUDGMENTS PAID OR INCURRED BY ANY OF THE SELLER'S INDEMNIFIED PARTIES AND ALL EXPENSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, COURT COSTS AND REASONABLE ATTORNEYS' FEES ARISING OUT OF OR IN ANY WAY CONNECTED OR RELATED TO: (I) THE OWNERSHIP, MAINTENANCE, OR OPERATION OF THE PROPERTY AND ARISING FROM EVENTS OR CONDITIONS THAT OCCUR ENTIRELY AFTER THE CLOSING; (II) ANY BREACH OR NONPERFORMANCE BY THE PURCHASER OF ANY PROVISION OR COVENANT CONTAINED IN THIS AGREEMENT OR IN ANY CERTIFICATE OR OTHER INSTRUMENT OR DOCUMENT FURNISHED BY THE PURCHASER WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREUNDER; (III) ANY LIABILITY ARISING BECAUSE OF A BREACH OF LEASE, BREACH OF CONTRACT, OR OTHER MATTER RELATED TO THE PROPERTY WHICH OCCURRED OR IS ALLEGED TO HAVE OCCURRED AFTER THE CLOSING AND WHICH IS DUE TO ACTIONS TAKEN BY THE PURCHASER; OR, (IV) THE BREACH OF ANY REPRESENTATION, WARRANTY OR COVENANT OF THE PURCHASER.
- (c) **THE INDEMNITY AND RELEASE PROVIDED HEREIN SHALL SURVIVE THE TERMINATION OR VOIDANCE OF THIS AGREEMENT.**
- (d) **THE PARTIES EXPRESSLY ACKNOWLEDGE THAT THE SELLER'S AUTHORITY TO INDEMNIFY AND HOLD HARMLESS ANY THIRD PARTY IS GOVERNED BY ARTICLE XI, SECTION 7 OF THE**

TEXAS CONSTITUTION AND ANY PROVISION WHICH PURPORTS TO REQUIRE INDEMNIFICATION BY THE SELLER IS INVALID.

9.25 Insurance Requirements.

If and when this Agreement requires insurance coverage, then the Purchaser shall obtain and to cause all of its agents to obtain comprehensive liability insurance coverage, including workers' compensation or a self-insurance plan in lieu thereof, at all times during the term of this Agreement in the amounts acceptable to the Seller, with the Seller to be named as additional insured on certain coverages on a primary and non-contributory basis due to any damage, injury, or death attributed to the Purchaser or its agents while performing this Agreement, and with the Purchaser providing waivers of subrogation in favor of the Seller on all coverages. The Purchaser shall submit copies of the endorsements required in this provision with its certificate of insurance.

9.26 Sovereign Immunity Acknowledged and Retained.

THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY EITHER PARTY OF ANY IMMUNITIES FROM SUIT OR LIABILITY THAT EITHER PARTY MAY HAVE BY OPERATION OF LAW, BUT THE SELLER HEREBY EXPRESSLY RETAINS ALL OF ITS GOVERNMENTAL IMMUNITIES.

9.27 International Warranties.

The parties warrant that each complies with Chapter 2270, Subtitle F, Title 10 of the Texas Government Code by verifying that: (1) neither party boycotts Israel; and, that (2) neither party will boycott Israel during the term of the Agreement. Additionally, the parties recognize that Texas Senate Bill 252 prohibits the Seller from entering into a contract with an entity that is identified by the Texas Comptroller as a company known to have contracts with or provide supplies or service with Iran, Sudan, or a foreign terrorist organization.

ARTICLE 10: EARNEST MONEY PROVISIONS

10.1 Investment and Use of Funds.

The Title Company shall invest the Earnest Money in government insured interest-bearing accounts satisfactory to Purchaser, shall not commingle the Earnest Money with any funds of the Title Company or others, and shall promptly provide Purchaser and Seller with confirmation of the investments made. If the Closing under this Agreement occurs, the Title Company shall deliver the Earnest Money to, or upon the instructions of, Purchaser on the Closing Date. Provided such supplemental escrow instructions are not in conflict with this Agreement as it may be amended in writing from time to time, Seller and Purchaser agree to execute such supplemental escrow instructions as may be appropriate to enable Title Company to comply with the terms of this Agreement. Seller and Purchaser designate the Title Company as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the United States Internal Revenue Code 1986, as amended.

10.2 Termination.

If Purchaser elects to terminate the Agreement, Title Company shall pay the entire Earnest Money (minus the Independent Contract Consideration) to Purchaser one business day following

receipt of purchaser's termination notice, as applicable (as long as the current investment can be liquidated in one day) and this Agreement shall thereupon terminate. No notice to Title Company from Seller shall be required for the release of the Earnest Money to Purchaser by Title Company. The Earnest Money shall be released and delivered to Purchaser from Title Company upon Title Company's receipt of the purchaser's termination notice, as applicable, despite any objection or potential objection by Seller. Seller agrees it shall have no right to bring any action against Title Company which would have the effect of delaying, preventing, or in any way interrupting Title Company's delivery of the Earnest Money to Purchaser pursuant to this Article, any remedy of Seller being against Purchaser, not Title Company.

10.3 Other Terminations.

Upon a termination of this Agreement (other than pursuant to Article 2 of this Agreement or a default under this Agreement), either party to this Agreement (the "**Terminating Party**") may give written notice to the Title Company and the other party (the "**Non-Terminating Party**") of such termination and the reason for such termination. Such request shall also constitute a request for the release of the Earnest Money to the Terminating Party. The Non-Terminating Party shall then have five business days in which to object in writing to the release of the Earnest Money to the Terminating Party. If the Non-Terminating Party provides such an objection, then the Title Company shall retain the Earnest Money until it receives written instructions executed by both Seller and Purchaser as to the disposition and disbursement of the Earnest Money, or until ordered by final court order, decree, or judgment, which is not subject to appeal, to deliver the Earnest Money to a particular party, in which event the Earnest Money shall be delivered in accordance with such notice, instruction, order, decree, or judgment.

10.4 Interpleader.

Seller and Purchaser mutually agree that in the event of any controversy regarding the Earnest Money, other than termination of this Agreement by Purchaser pursuant to Article 2 of this Agreement, unless mutual written instructions are received by the Title Company directing the Earnest Money's disposition, the Title Company shall not take any action, but instead shall await the disposition of any proceeding relating to the Earnest Money or, at the Title Company's option, the Title Company may interplead all parties and deposit the Earnest Money with a court of competent jurisdiction in which event the Title Company may recover all of its court costs and reasonable attorneys' fees. Seller or Purchaser, whichever loses in any such interpleader action, shall be solely obligated to pay such costs and fees of the Title Company, as well as the reasonable attorneys' fees of the prevailing party in accordance with the other provisions of this Agreement.

10.5 Liability of Title Company.

The parties acknowledge that the Title Company is acting solely as a stakeholder at their request and for their convenience, that the Title Company shall not be deemed to be the agent of either of the parties, and that the Title Company shall not be liable to either of the parties for any action or omission on its part taken or made in good faith, and not in disregard of this Agreement, but shall be liable for its negligent acts and for any loss, cost, or expense incurred by Seller or Purchaser resulting from the Title Company's mistake of law respecting the Title Company's scope or nature of its duties. Seller and Purchaser shall jointly and severally indemnify and hold the Title Company harmless from and against all costs, claims, and expenses, including reasonable attorneys' fees, incurred in connection with the performance of the Title Company's duties

hereunder, except with respect to actions or omissions taken or made by the Title Company in bad faith, in disregard of this Agreement or involving negligence on the part of the Title Company.

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

FOR SELLER:

Austin Bleess
Austin Bleess, City Manager

Dated: 5-29-19

FOR PURCHASER:

[Signature]
Name [Signature]
Saul Valentin
Name [Printed]

Dated: 5-29-19

TITLE COMPANY'S AGREEMENT AND RECEIPT

Title Company has executed this Agreement in order to agree that Title Company shall act as escrow agent with respect to and hold in escrow the Earnest Money and the interest earned thereon, and shall disburse the Earnest Money and the interest earned thereon, pursuant to this Agreement.

Name [Signature]

Name [Printed]

Title

Date

EXHIBITS: AGREEMENT OF PURCHASE AND SALE

| <u>Exhibit</u> | <u>Title</u> | <u>Page</u> |
|-----------------------|--|--------------------|
| A | Real Property | 30 |
| B | Special Warranty Deed | 31 |
| C | Assignment of Service Contracts and Personal Property | 33 |

EXHIBIT A – LEGAL DESCRIPTION OF THE REAL PROPERTY

TRACT 1:

All of Restricted Reserve "F" of JONES RD. 290 COMMERCIAL RESERVES, a subdivision in Harris County, Texas according to the map or plat thereof recorded in/under Film Code No. 631037 of the Map Records of Harris County, Texas and being the same 10.89 acre tract of land described as Tract I in Special Warranty Deed filed for record under Harris County Clerk's File No. 20080357006.

TRACT 2:

All of Restricted Reserve "B" of JONES RD. 290 COMMERCIAL RESERVES, a subdivision in Harris County, Texas according to the map or plat thereof recorded in/under Film Code No. 631037 of the Map Records of Harris County, Texas and being the same 2.593 acre tract of land described as Tract II and the same 6.543 acre tract of land described as Tract IV in Special Warranty Deed filed for record under Harris County Clerk's File No. 20080357006.

TRACT 3:

All of Restricted Reserve "G" of JONES RD. 290 COMMERCIAL RESERVES, a subdivision in Harris County, Texas according to the map or plat thereof recorded in/under Film Code No. 631037 of the Map Records of Harris County, Texas and being the same 3.321 acre tract of land described as Tract III in Special Warranty Deed filed for record under Harris County Clerk's File No. 20080357006.

EXHIBIT B – THE DEED

YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER’S LICENSE NUMBER.

SPECIAL WARRANTY DEED

STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS THAT:**
COUNTY OF HARRIS §

THAT the City of Jersey Village, Texas a State of Texas home rule municipal corporation (the “**Grantor**”), for and in consideration of the sum of TEN AND NO/100 Dollars (\$10.00) and other good and valuable consideration in hand paid by Collaborate Special Projects, LLC, a State of Texas limited liability company, whose mailing address is 3302 Canal Street #36, Houston, Texas, 77003 (the “**Grantee**”), the receipt and sufficiency of which are hereby acknowledged, has **GRANTED, SOLD, AND CONVEYED** and by these presents does hereby **GRANT, SELL, AND CONVEY** unto Grantee that certain real property situated in Harris County, Texas and more particularly described on **Exhibit A** attached hereto and made a part hereof for all purposes (the “**Land**”), together with: (i) all and singular the rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances therein or in anywise appertaining to the Land; (ii) all right, title, and interest to all minerals, oil, gas, and other hydrocarbon substances thereon or thereunder; (iii) all air, water, riparian, and solar rights related thereto; and, (iv) all right, title, and interest of Seller in and to all strips and gores and any land lying in the bed of any street, road, or alley, open or proposed, adjoining the Land (the Land, together with any and all of the related improvements, appurtenances, rights and interests referenced in items (i) through (iv) above are herein collectively referred to as the “**Property**”).

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, unto Grantee, its successors and assigns forever, subject to the matters described on **Exhibit B** attached hereto (collectively, the “**Permitted Exceptions**”) and Grantor does hereby bind itself, its successors and assigns, to **WARRANT AND FOREVER DEFEND** all and singular the Property, subject to the Permitted Exceptions, unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through, or under Grantor, but not otherwise.

All ad valorem taxes and assessments for the Property for the year in which this Deed is executed have been prorated by the parties hereto and Grantee hereby expressly assumes liability for the payment thereof. If such proration was based upon an estimate of such taxes and assessments for such year, then upon demand the parties hereto shall promptly and equitably adjust all such taxes and assessments as soon as actual figures for the Property for such year are available.

[Signature and Acknowledgement Page Follows]

EXECUTED to be effective for all purposes as of the ____ day of _____, 2019.

Name [Signature]

Name [Printed]

Title

Date

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this ____ day of _____, 2019,
by _____, as _____ of _____, on behalf of
said _____.

[S E A L]

Notary Public, State of Texas

Printed Name of Notary

My Commission Expires: _____

EXHIBIT C

ASSIGNMENT OF SERVICE CONTRACTS AND PERSONAL PROPERTY

This Assignment of Service Contracts and Personal Property (this “**Assignment**”) is executed to be effective as of _____, 2019 (the “**Effective Date**”) and delivered pursuant to that certain Agreement of Purchase and Sale (the “**Agreement**”) dated _____, 2019 by and between the City of Jersey Village, Texas (“**Seller**”) and Collaborate Special Projects, LLC (the “**Purchaser**”) covering the real property described in **Exhibit A** attached hereto (the “**Real Property**”).

1. **Assignment and Assumption.** For good and valuable consideration Seller hereby assigns, transfers, sets over, and conveys to Purchaser, and Purchaser hereby accepts the following (collectively, the “**Assigned Property**”):

(a) **Intangible Property.** All intangible personal property related to the Real Property, including, without limitation: (i) all trade names and trademarks associated with the Real Property including Seller’s rights and interests in the name of the Real Property; (ii) warranties, contract rights related to the construction, operation, ownership, or management of the Real Property (but excluding Seller’s obligations thereunder); (iii) governmental permits, approvals and licenses (to the extent assignable); and, (iv) telephone exchange numbers (to the extent assignable); and

(b) **Service Contracts.** The management, service, supply, equipment rental, and other contracts related to the Real Property (the “**Service Contracts**”) described in **Exhibit B** attached hereto.

2. **Indemnification.** Seller warrants that it shall have performed, and shall indemnify Purchaser from and against any liability for nonperformance and nonpayment of, its obligations and liabilities under the Service Contracts that are assumed by Purchaser up to and including the Effective Date, and Purchaser agrees to perform Seller’s obligations under such Service Contracts accruing after the Effective Date.

3. **Warranty.** Seller hereby represents and warrants to Purchaser that it is the owner of the Assigned Property, that the Assigned Property is free and clear of all liens, charges, and encumbrances other than the Permitted Exceptions (as defined in the Agreement), and Seller warrants and defends title to the Assigned Property unto Purchaser, its successors and assigns, against any person or entity claiming, or to claim, the same or any part thereof, subject only to the Permitted Exceptions.

4. **Counterparts.** This Assignment may be executed in multiple counterparts, each of which shall constitute an original and all of which when taken together shall constitute one (1) instrument.

5. **Further Assurances.** On or after the Effective Date, Seller and Purchaser will each take all appropriate and commercially reasonable actions and execute (or cause to be executed) all documents, instruments, or conveyances of any kind which are reasonably necessary to carry out any of the provisions hereof.

IN WITNESS WHEREOF, the undersigned have caused this Assignment to be executed as of the Effective Date.

FOR SELLER:

FOR PURCHASER:

Austin Bless, City Manager

Name [Signature]

Name [Printed]

Dated: _____

Dated: _____

Exhibit C

380 Agreement

**SECOND AMENDED AND RESTATED
CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF JERSEY VILLAGE, TEXAS
AND
COLLABORATE DEVELOPMENT GROUP LLC**

This Chapter 380 Economic Development Agreement (this “Agreement”) is entered into between **COLLABORATE DEVELOPMENT GROUP LLC**, a Texas limited liability company (the “Owner”), and **CITY OF JERSEY VILLAGE, TEXAS**, a home rule city (“City”).

RECITALS

WHEREAS, the City and the Owner have previously entered into that certain Chapter 380 Economic Development Agreement dated as of March 18, 2019 (the “Prior Agreement”); and

WHEREAS, the City and the Owner desire to change the Owner’s entity name herein from “Collaborate Special Projects LLC” or “Collaborate Development LLC” to “Collaborate Development Group LLC” and to amend and restate the Prior Agreement to read as follows:

WHEREAS, City Council of City is authorized to make certain economic development grants to Owner in recognition of, conditioned upon and derived from the positive economic benefits which will accrue to City through Owner’s efforts to develop a commercial retail, hotel and restaurant project together with certain public improvements for the benefit of City, all as more particularly described herein, on approximately 43 acres of land, as more particularly described and depicted on the attached Exhibits B and C (the “Property”); and

WHEREAS, Owner estimates the total Capital Investment in the Project (as defined herein) will be approximately one hundred and forty-five million Dollars (\$145,000,000.00); and

WHEREAS, City recognizes that development of the Project in City represents an opportunity to provide significant economic benefit and opportunities for its citizens; and

WHEREAS, City finds that development of the Project will add significant new revenues to City’s tax base and will result in the creation of a minimum of Two Thousand (2,000) hours of paid time averaged over a twelve (12) month period, which will promote state and local economic development and stimulate business and commercial activity in City thereby enhancing the economic stability and growth of City; and

WHEREAS, City desires to offer incentives to Owner over a period of time to induce Owner to contribute its professional development services, skills and acumen to develop the Project in City and to enable Owner to develop the Project successfully in a manner that will be of lasting and significant benefit to City.

NOW, THEREFORE, in consideration of the mutual benefits described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Owner agree as follows:

1.
Authority

City's execution of this Agreement is authorized by Chapter 380, Texas Local Government Code, as amended, and by the Resolution and constitutes a valid and binding obligation of City in accordance with the terms and conditions hereof. Owner's execution and performance of this Agreement constitutes a valid and binding obligation of Owner in accordance with the terms and conditions hereof. City acknowledges that Owner will act in reliance upon City's performance of its obligations under this Agreement in deciding whether to commit substantial resources and money to develop the Property. Owner acknowledges that City is acting in reliance upon Owner's performance of its obligations under this Agreement in agreeing to commit substantial resources to the Project on the terms described herein.

2.
Definitions

As used in this Agreement, the following words or phrases shall have the following meanings:

2.1 "Act of Default" or "Default" means failure to timely, fully, and completely comply with one or more requirements, obligations, performance criteria, duties, terms, conditions or warranties, as stated in this Agreement.

2.2 "Ad Valorem Tax Effective Date" means March 31st of the year immediately following the first full calendar year following Completion of Project. For example, if Completion of Project occurs on September 1, 2020, then the Ad Valorem Tax Effective Date for Project would be March 31, 2022.

2.3 "Ad Valorem Tax Revenues" means the amount of ad valorem tax revenues collected by City with respect to the Assessed Taxable Value.

2.4 "Assessed Taxable Value" means the taxable assessed ad valorem tax values set annually by the Harris County Central Appraisal District with respect to the Property, improvements, and tangible personal property (with a depreciation schedule of seven (7) years or greater) included in the Project, including all improvements now or hereafter included therein, but excluding any assessed value attributable to the Property as of January 1, 2019 and excluding any assessed value attributable to inventory.

2.5 "Capital Investment" means the investment in the Project made by or on behalf of Owner (including for tenant improvements, whether expended by Owner or tenant) to construct and equip the Project.

2.6 "Certificate of Occupancy" shall mean that document entitled "Certificate of Occupancy" (or other similar title) issued by City upon substantial completion of certain

portions of the Project in accordance with all applicable codes, regulations, and ordinances of City. A Certificate of Occupancy shall not include a certificate issued in error, mistake or misrepresentation of facts, but shall include any temporary certificate of occupancy or other document authorizing temporary or conditional occupancy.

2.7 “Chapter 380 Payment(s)” means the amount(s) paid by City to Owner under Sections 5.2, 5.3 and 5.4 of this Agreement, which amounts may be paid from any lawful source other than Ad Valorem Tax Revenue and other than Hotel Occupancy Tax except as to payments made under Section 5.4.; provided that the aggregate of such Chapter 380 Payments paid to Owner shall not exceed twenty-nine million, two hundred fifty thousand Dollars (\$29,250,000) over the life of the transaction; provided further that this aggregate cap on payments shall not apply to any Chapter 380 Payments made to the Village Center Local Government Corporation, which payments shall not be capped.

2.8 “City of Jersey Village” or “City” means the governing municipal corporation, the area that is within the city limits of City of Jersey Village and which is located within Harris County, Texas.

2.9 “City Owned Property” means the property currently owned by the City in the Village Center, as more particularly described and provided in the Master Development Agreement, to be entered into by City and Owner at a later date.

2.10 “Commence Construction” means (i) plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained; (ii) all necessary permits for construction pursuant to the plans therefor have been issued by all applicable governmental authorities; (iii) a notice to proceed has been issued to the contractor; and (iv) construction on substantial portions of the site development components (such as drainage, extensive grading or utilities) has commenced.

2.11 “Completion” means, with respect to the Project, (i) substantial completion of construction of the applicable improvements in accordance with the terms of this Agreement and the Development Agreement and the plans and specifications therefor, (ii) issuance of Certificates of Occupancy for the improvements for which Certificates of Occupancy may be issued, (iii) acceptance by City for maintenance of any related City-owned Public Infrastructure, (iv) either (A) Open for Business, with respect to portions of the Project or applicable elements thereof that are operated by or on behalf of Owner, or (B) Leased and Open for Business, with respect to portions of the Project leased from Owner and operated by a tenant and (v) actual expenditure by Owner on the Project of at least the amount of Capital Investment for the Project estimated herein.

2.12 “Compliance” means timely, fully and completely performing or meeting each and every term, requirement, obligation, performance criteria, duty, condition or warranty as stated in this Agreement. Compliance shall not mean Substantial Compliance or anything less than full Compliance.

2.13 “Construction Sales Tax Revenues” means the One Cent Sales Tax Revenues paid by Owner in connection with the construction of the Project.

2.14 “Continuously Operate” means (i) operation of the designated element of the Project continuously in accordance with the standards of operation of comparable facilities, without interruption for any reason other than Down Times and (ii) possession of all personal property and inventory necessary for the operation of the designated element in accordance with the standard of operation of comparable facilities.

2.15 “Development Fees” means any and all fees imposed by City upon Owner (including but not limited to Owner’s affiliates, assigns, successors, related parties, contractors and subcontractors) in any way related to Owner’s platting, zoning, permitting, designing, building, constructing or developing the Project. Development Fees shall include but not be limited to impact fees, permitting/approval fees, inspection fees and supervision fees.

2.16 “Down Times” means temporary cessation of operation of areas or all or substantially all of a facility for, and only for, limited periods of time for the limited purpose of, and only for the limited purpose of, one or more of the following circumstances for the applicable period specified below:

(a) during the period following any fire or other casualty or condemnation or other exercise by a governmental authority of the power of eminent domain, to the extent, and only to the extent, necessary to adjust the claim and take other actions related to the repair and restoration of the facility;

(b) as a result of such commercially reasonable interruptions for repairs or remodeling as are incidental to the normal operation of the facility after notice to the City with regard thereto;

(c) during any period required by applicable law, to the extent, and only to the extent, that the necessity of compliance is not the result of Owner’s failure to timely fulfill its obligations under this Agreement;

(d) in keeping with the standard hours of operation of comparable facilities taking into account the seasonal nature of the Project, the fact that operation of portions of the Project are subject to weather conditions and that the Conference Center is not intended for continuous operation, but is booked for events and meetings from time to time; or

(e) during any period of Force Majeure or during any period Owner, Operator or any other operator of any element of the Project reasonably deems it is socially irresponsible to operate all or part of the facilities due to circumstances which are not Force Majeure but under which a socially responsible operator would temporarily curtail or cease operations, such as if a pervasive flu or other communicable illness were present or threatened;

provided, however, that during the Down Times described in clauses (a) through (e) above, Owner shall (i) use its commercially reasonable efforts to minimize the disruption of such Down Time and (ii) use its commercially reasonable efforts to minimize the disruption to the areas of

the facility which remain open to the public, if any, and the services, aesthetic appearances and public and guest access to and in such portions of the facility.

2.17 “**Economic Development Grant**” means the Chapter 380 Payments.

2.18 “**Effective Date**” means the date this Agreement has been signed by all of the parties hereto.

2.19 “**Federal Bankruptcy Code**” means Title 11, United States Code, as amended, and any successor statute.

2.20 “**Force Majeure**” means any act that (a) materially and adversely affects the affected Party’s ability to perform the relevant obligations under this Agreement or delays such affected Party’s ability to do so, (b) is beyond the reasonable control of the affected Party, (c) is not due to the affected Party’s fault, negligence or willful misconduct and (d) could not be avoided by the Party who suffers it by the exercise of commercially reasonable efforts (provided that such commercially reasonable efforts shall not require such Party to expend a material amount of money to avoid the act giving rise to a Force Majeure). Subject to the satisfaction of the conditions set forth in (a) through (d) above, Force Majeure shall include but not be limited to: (i) natural phenomena, such as storms, floods, lightning and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (iii) transportation disruption, whether by ocean, rail, land or air; (iv) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (v) fires; (vi) the unavailability of necessary and essential equipment and supplies; (vii) a breach by the City of this Agreement or any other actions, omissions of or delays by a Governmental Authority (including the actions of City in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach or noncompliance by the affected Party of its obligations under this Agreement or any applicable law; and (viii) failure of the other Party to perform any of its obligations under this Agreement within the time or by the date required pursuant to the terms of this Agreement for the performance thereof; provided, however, that under no circumstances shall Force Majeure include any of the following events: (A) economic hardship; (B) changes in market condition; or (C) weather conditions which could reasonably be anticipated by experienced contractors operating at the relevant location.

2.21 “**Gross Leasable Space**” means (i) that interior space under roof and air conditioned and heated and ready for finish-out work for a selected tenant, and (ii) as applicable, the exterior patio space connected to an interior space, in each case that is ready for finish-out work for a selected tenant.

2.22 “**Hotel**” means one hotel having at least one hundred ten (110) sleeping rooms rated by Smith Travel Research in a category at or above “Midscale with Food & Beverage”; provided, however, that if Smith Travel Research shall no longer publish United States hotel ratings, a rating publication mutually agreeable to City and Owner shall be substituted.

2.23 “**Hotel Occupancy Tax**” means the tax authorized by Chapter 351, Texas Tax Code, as amended (including any successor statute) which a municipality may elect to impose on the price paid for use or possession of rooms in a hotel or other transient lodging accommodations.

2.24 “**Hotel Occupancy Tax Revenues**” means Hotel Occupancy Tax revenues received by City and attributable to the Project Hotel.

2.25 “**Village Center Local Government Corporation**” means the local government corporation that owns the Hotel, as more particularly described in the Master Development Agreement between the City, Village Center Local Government Corporation, and Owner.

2.26 “**Incentive Period**” means the period beginning upon the Sales Tax Effective Date and concluding at the end of the Term.

2.27 “**Insolvent**” means failure to timely pay debts in the ordinary course of business or failure to pay all debts when and as they become due, or insolvent within the meaning of the Federal Bankruptcy Code.

2.28 “**Village Center**” means the Jersey Village Center Development.

2.29 “**Leased and Open For Business**” means Gross Leasable Space which has been leased for a term of one (1) year or more and for which a tenant is open for full-time business operations with products and/or services that are necessary for the operation of the business in accordance with its business plan for full-time operations taking into account the nature of its business.

2.30 “**Management Agreement**” has the meaning assigned to such term in Section 6.1.

2.31 “**Master Development Agreement**” means a separate but related document to this Agreement that will, among other things, provide for the overall design and construction of Village Center. The Master Development Agreement shall be executed by the City, Village Center Local Government Corporation, and the Owner or the Owner’s designee.

2.32 “**Notice**” has the meaning assigned to such term in Section 13.10.

2.33 “**Open for Business**” means open for full-time business operations with products and/or services that are necessary for the operation of the business in accordance with its business plan for full-time operations taking into account the nature of its business.

2.34 “**Owner**” means Collaborate Development Group, a Texas LLC whose principal place of business is in Houston, Texas.

2.35 “**Owner’s Designee**” means Village-Center Retail & Office LLC, Collaborate Special Projects LLC, or another designee of Owner who will execute the

assignment and close on the purchase of certain property, as more particularly described in Section 6.2.1 of this Agreement.

2.36 “**Program**” means the economic development program established by City under the Resolution, as authorized by Chapter 380, Texas Local Government Code, as amended, to promote local economic development and stimulate business and commercial activity within City.

2.37 “**Project**” means Owner’s planned development of the Property, all of which shall meet or exceed City Standards set forth in Section 4.1.2 herein; provided that the Project shall not include any improvements or Public Infrastructure directly funded or financed by the City.

2.38 “**Property**” means approximately forty-three (43) acres of land associated with the Project, and which is more particularly described and depicted on the attached Exhibits B and C.

2.39 “**Property Under Option**” means the property currently under option by the City, as more particularly described in Exhibit C, to be assigned to the Owner’s Designee and purchased by Owner’s Designee as set out in Section 6.2.1 herein.

2.40 “**Public Infrastructure**” means the public infrastructure improvements serving the Project as more particularly described in Exhibit A hereto. The quantities and dimensions listed on Exhibit A are approximate, with the actual quantities and dimensions of the Public Infrastructure to be as set out in the final plans and specifications therefor submitted by Owner and approved by the City and all applicable agencies with jurisdiction prior to the construction of such Public Infrastructure.

2.41 “**Sales Tax Effective Date**” means the date commencing as of the date that the Village Center first has Sales Tax or Hotel Occupancy Tax allocable to the City and ends with the Term of this Agreement.

2.42 “**Sales Tax Revenues**” means sales tax revenues of the City and the amount of money equivalent to the City’s municipal sales and use tax, at the rate of one and one-half percent (1.5%), pursuant to Section 321.103 of the Texas Tax Code, as amended and actually received from the Texas State Comptroller.

2.43 “**Sales and Use Tax for Property Tax Reduction**” means the sales and use tax revenue, at the rate of one-half of one percent (0.50%) percent, generated for use by the City.

2.44 “**Substantial Compliance**” pertains solely to acts of Owner under the performance criteria described in Section 4, being less than full and complete Compliance and being ninety percent (90%) or more of full Compliance.

2.45 “**Term**” means the period defined in Section 3 of this Agreement.

3.
Term

The term of this Agreement (the “Term”) will be for thirty (30) years from the Effective Date of the Agreement.

4.
Owner’s Performance Criteria

4.1 Owner’s Performance. In consideration of City’s agreements hereunder, Owner agrees that, if Owner proceeds with the Project, the following performance requirements must be met in order to qualify for the Chapter 380 Payments related to such Project:

4.1.1 Construction of Project. Unless Owner terminates this Agreement pursuant to Section 13.9 hereof, Owner contracts and agrees that it will Commence Construction, subject to extension for Force Majeure, of Project on or before the second anniversary of the Effective Date and will diligently pursue such construction until Completion thereof on or before May 30, 2022, subject to extension for Force Majeure.

| Schedule A: Construction of Project | |
|--|--|
| Owner’s Performance Requirements | Owner’s Time of Performance |
| Commence Construction. | On or before second anniversary of the Effective Date, subject to extension for Force Majeure. |
| Cause Completion. | On or before May 30, 2022, subject to extension for Force Majeure. |

4.1.2 Compliance with City Standards. Owner agrees that development of the Project will comply with all applicable City codes and ordinances. For any development requirements not covered in this Section or in the remainder of the Agreement, the applicable City code and ordinance provisions shall control.

5.
City’s Performance Criteria

5.1 Economic Development Grant

5.1.1 Economic Development Grant Calculation and Funding. City is obligated to pay to Owner or Village Center Local Government Corporation one or more payments in the amounts indicated by applying the calculations referenced in Sections 5.2, 5.3 and 5.4 hereof, from any lawful source other than Ad Valorem Tax Revenues or Hotel Occupancy Tax Revenues (except as provided in Section 5.4 hereof) as described in Sections 5.2 and 5.3.1 hereof during the Term, subject to the satisfaction of Owner’s Performance Criteria and Owner’s timely and full compliance with all applicable terms and conditions contained in this Agreement. The portion of the Economic Development

Grant to be paid to Owner shall not exceed twenty-nine million, two hundred fifty thousand Dollars (\$29,250,000) over the life of the transaction. This aggregate cap on the Economic Development Grant payments shall not apply to any Hotel Occupancy Tax Payments made to Village Center Local Government Corporation, which payments shall not be capped.

In recognition of the fact that a portion of the Economic Development Grant will be, by necessity, calculated and paid after taxes have been levied by and paid to City and, therefore, will always be paid in arrears, City's obligation to pay installments of the Economic Development Grant to Owner shall cease when all Economic Development Grant payments accruing to Owner with respect to the period from the Effective Date through the conclusion of the Term have been paid in full by City to Owner.

5.1.2 Timing of Payments. Notwithstanding anything herein to the contrary, while City may pay the Economic Development Grant from any lawful source other than Ad Valorem Tax Revenues or Hotel Occupancy Tax Revenues (except as specified in Section 5.4 hereof), City must pay the Chapter 380 Payments to Owner at the times and in the amounts set forth in this Agreement, provided Owner is in compliance with its obligations under this Agreement at the time such payments are due.

5.2 No Ad Valorem Tax Based Grant. The City expressly reserves one hundred percent (100%) of the Ad Valorem Tax Revenues, and nothing in this Agreement obligates the City to pay any such amounts to the Owner.

5.3 Sales Tax Based Grant

5.3.1 Payments. Commencing on the Sales Tax Effective Date and continuing on the 60th day after receipt by City from the Comptroller of the Sales Tax Revenue for each calendar quarter thereafter, City shall pay Owner an amount equal to the percentage for the applicable year of the Term described below of the Sales Tax Revenue received by City from sales generated on the Project, subject to the limitations set forth in Section 5.1.2 hereof. The payments to be made under this Section shall commence on the start of the Incentive Period and conclude at the end of the Term; provided, that the initial payment after the start of the Incentive Period shall include the applicable percentage of Construction Sales Tax Revenues attributable to the construction of the Project subject to the limitations of Section 5.1.2 hereof. Sales Tax Revenues are presumed to include the amounts of City sales and use tax reported on the monthly sales tax area reports provided by the Comptroller to City. Sales Tax Revenues will include the revenues received by the City from any taxes or other impositions imposed by the City in the future which replace the Sales Tax Revenues received by the City.

The applicable percentages are as follows:

- Years 1 through 30 of the Term = 100% of City 1% Sales Tax Revenues.
- Years 1 through 30 of the Term = 100% of City 1/2% Sales and Use Tax for Property Tax Reduction. Any City 1/2% Sales and Use Tax for

Property Tax Reduction collected in excess of \$175,000 per year will be retained by the City.

- Construction Sales Tax Revenues = 100%; provided, however, that to the extent such Construction Sales Tax Revenues have already been rebated to another business in the City, such duplicate rebate will not be included in Owner's Construction Sales Tax Revenue percentage.

5.3.2 Use of Any Source. The payments made pursuant to this Section 5.3 are measured by reference to Sales Tax Revenue but may be made from any lawful source available to City, other than Ad Valorem Tax Revenues or Hotel Occupancy Tax Revenues, except as provided by Section 5.4.

5.4 Hotel Occupancy Tax Payments. The City shall make Hotel Occupancy Tax Payments as follows:

- Commencing on the Sales Tax Effective Date for the Project and continuing on each anniversary thereof during the Term, City shall pay to Village Center Local Government Corporation 50% of all Hotel Occupancy Tax Revenues.
- Commencing on the Sales Tax Effective Date for the Project and continuing on each anniversary thereof during the Term, City shall pay to Owner 50% of all Hotel Occupancy Tax Revenues subject to the limitations set forth in Section 5.1.2 hereof; provided, however, that Owner must comply with the terms of Section 351 of the Texas Tax Code applicable to the Hotel Occupancy Tax Revenues including, but not limited to, Sections 351.101 (a) through (g), Section 351.103 and Section 351.108 thereof. Further Owner shall deliver to City, upon the City's request, such information and reports which City reasonably requests in order for City to verify that Owner is in compliance with such statutes. Any Hotel Occupancy Tax Revenues remaining unspent by Owner at the expiration or earlier termination of this Agreement shall be paid by Owner to City, which obligation shall survive the expiration or earlier termination of this Agreement. By this Agreement, City is delegating, pursuant to Section 351.101(c) of the Texas Tax Code, the management or supervision of certain programs and activities to be funded by Hotel Occupancy Tax Revenues.

5.5 Development Fees. City shall pay to Owner (as part of the Economic Development Grant) an amount equal to all Development Fees paid by Owner pertaining to the Project. Owner shall be paid for Development Fees attributable to the Project within thirty (30) days after Completion of the Project.

5.6 Amendments or Adjustments to the Economic Development Grant. Nothing in this Agreement prevents the Parties from agreeing in writing to adjust or amend all or a portion of the Economic Development Grant payment schedule or percentages provided in this Section 5.

6.

Property Transfers

6.1 City Owned Property. Owner, or any designee of Owner as may be designated from time to time, agrees to close on the purchase of all City Owned Property, as more particularly described in Exhibit B, prior to August 31, 2019.

6.2 Property Under Option.

6.2.1 Property Under Option. Pursuant to an Assignment Agreement to be entered into following the approval of this Agreement, Owner's Designee agrees to accept the assignment of certain Property Under Option, as more fully described in Exhibit C, from City, and Owner's Designee agrees to execute such option on Property Under Option prior to June 30, 2019. Owner's Designee further agrees to close on the purchase of such Property Under Option prior to August 31, 2019. If Owner's Designee executes such option on Property Under Option, but Owner's Designee fails to close on the purchase of such Property Under Option prior to August 31, 2019, then Owner's Designee agrees to assign the Property Under Option back to City.

6.3 Property to be Leased. City will agree to lease to Owner certain City property, to be more particularly described in the Master Development Agreement, and Owner will agree to make operational lease payments as more particularly described and provided in a lease agreement, to be entered into by City and Owner at a later date.

7.

Owner's Covenants, Warranties, Obligations and Duties

7.1 Covenants and Duties. Owner makes the following covenants and warranties to City, and agrees to timely and fully perform the following obligations and duties. Any false or substantially misleading statement contained herein or failure to timely and fully perform as required in this Agreement shall be an Act of Default by Owner. Failure to comply with any one covenant or warranty shall constitute an Act of Default by Owner.

7.1.1 Authorized to do Business. Owner is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.

7.1.2 Execution. The execution of this Agreement has been duly authorized by Owner and Owner's representative signing this Agreement is empowered to execute such Agreement and bind Owner, said authorization, signing and binding effect is not in contravention of any law, rule or regulation, or of the provisions of Owner's partnership agreement or instrument to which Owner is a party or by which it may be bound.

7.1.3 Enforceability. Owner has the full right, power and authority to execute, deliver and perform the terms and obligations of this Agreement and this Agreement constitutes the legal, valid and binding obligation of Owner, is enforceable in accordance with its terms and does not require the consent of any other party to be so enforceable.

7.1.4 Litigation. No litigation or governmental proceeding is pending or, to the knowledge of Owner or Owner's officers, threatened against or affecting Owner or the Property that may result in any material adverse change in Owner's business, properties or operation.

7.1.5 Untrue Statements. To the best of its knowledge, no certificate or statement delivered by Owner to City in connection herewith, or in connection with any transaction contemplated hereby, contains any untrue statement or fails to state any fact necessary to keep the statements contained therein from being misleading.

7.1.6 Bankruptcy. There are no bankruptcy proceedings or other proceedings currently pending or contemplated, and Owner has not been informed of any potential involuntary bankruptcy proceedings.

7.1.7 Licenses and Authority. To the best of its knowledge, Owner or Operator has acquired and maintained all necessary rights, licenses, permits and authority to carry on its business in Jersey Village, Texas, and will continue to use its best efforts to maintain all necessary rights, licenses, permits and authority.

7.1.8 Payment of Taxes. Owner shall timely pay all taxes due and owing by it to all taxing authorities having jurisdiction. In addition, Owner shall timely pay all employment, income, franchise, and all other taxes due and owing by it to all local, state, and federal entities.

7.1.9 Timely Commencement. Owner shall timely begin and complete the Project in accordance with the requirements of this Agreement.

7.1.10 Timely Compliance. Owner shall timely and fully comply with all of the terms and conditions of this Agreement.

7.1.11 Management Changes. Owner shall notify City in writing of substantial changes in management within seven (7) days. Substantial changes mean changes in Chairman of the Board, President, or C.E.O.

7.1.12 Civil Rights Acts. Owner agrees that, as to all of the programs and activities arising out of this Agreement, it shall comply fully with all Civil Rights Acts and specifically will not discriminate against any person on the basis of race, color, national origin, sex, or by reason of being disabled.

7.1.13 Tenant Lists. Owner shall provide to City in writing lists of all Project tenants or other persons making sales or purchases of taxable items in the Project (the "Project Tenant List"). Owner will periodically and timely notify City of changes to the Project Tenant Lists. Owner is responsible for supplying to City such identifying information for each person on the Tenant Lists as is required by the Comptroller to issue the sales tax area reports described in Section 8.4 herein.

7.1.14 Sales Tax Reports. If the sales tax area reports described in Section 7.1.13 herein are unavailable or otherwise inadequate to allow computation of the Sales Tax

Revenue, Owner shall timely acquire from each tenant a waiver of confidentiality or other document required or approved by the Texas Comptroller that allows City to review individual tenants' reported sales tax information on a quarterly basis throughout the Term of this Agreement as necessary to compute the Sales Tax Revenue

7.1.15 Documentation. Owner will provide to City documentation establishing the amounts of the Construction Sales Tax Revenues.

7.1.16 Payment of Ad Valorem Taxes. All Ad Valorem Taxes shall be paid by January 31 of each tax year for the Village Center, unless being protested in accordance with Texas law. For clarity, Ad Valorem Taxes which are not being protested shall still be paid by January 31. Payment will not be required only for the portion of Ad Valorem Taxes which are being protested in accordance with Texas law.

7.1.17 Reporting of Audits. The Owner shall notify the City of any audit conducted or being conducted regarding the Village Center by the Office of the Texas State Comptroller if such audit changes or affects, or could change or affect, the amounts set forth in the schedule filed with the City. Such notification shall be made as soon as practicable, but in no event later than sixty (60) days after the audit.

8.

City's Covenants, Warranties, Obligations and Duties

8.1 Covenants and Duties. City hereby represents and warrants to Owner that City has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of City, is enforceable in accordance with its terms and provisions and does not require the consent of any other governmental authority.

8.2 Facilitation of Development. City covenants and agrees with Owner that it will take the following actions:

8.2.1 Transportation Improvements. City and Owner agree to use their respective reasonable efforts to obtain the necessary approvals from the Texas Department of Transportation, Harris County and any other governmental authority with respect to the final alignment and design of transportation improvements necessary to serve the Project; provided that receipt of such approvals shall not constitute a condition to any rights or obligations of either party under this Agreement.

8.3 Village Center Hotel Incentives. City agrees that it will use reasonable efforts to assist the Owner in making the Village Center Hotel reach its projected stabilized occupancy level within the Hotel's first three (3) years of operations.

8.4 Comptroller Reports. City will request from the Comptroller monthly sales tax area reports identifying the aggregate Sales Tax Revenues remitted by persons on the Project

Tenant Lists and attributable to outlets located within the Project area. City will request that the Comptroller provide Owner copies of the sales tax area reports for purposes of enabling Owner to verify the accuracy of City's calculations and to enable the purposes enumerated in this Agreement to be fulfilled. City and Owner will cooperate in drafting and updating the request to the Comptroller for the sales tax area report. In order to facilitate the requests required of City in this Section, Owner shall provide City such waivers and other documentation signed by it and its tenants as required by City or the Comptroller including those items required by Sections 7.1.13 and 7.1.14 hereof.

9.

Suspensions/Termination

9.1 Suspension and Termination. Under the following circumstances, and at its sole discretion, may temporarily cease making payments under this Agreement and/or terminate this Agreement, without liability to Owner, and all future payment obligations shall automatically cease upon any one of the following events, each of which are an Act of Default.

9.1.1 Receiver. The appointment of a receiver of Owner, or of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.

9.1.2 Bankruptcy. The adjudication of Owner as a bankrupt.

9.1.3 Bankruptcy Petition. The filing by Owner of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

9.1.4 State or Federal Law Changes. Either Party may terminate this Agreement without an event of default effective immediately if (i) any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including case law holding that a Chapter 380 Economic Development Agreement rebating Sales and Use Taxes such as this Agreement is an unconstitutional debt; or (ii) the federal government implements the streamlined Sales Tax Revenue or similar legislation in such a manner as to change the consummation of a Sales Tax Revenue event to a tax situs outside of the City, thereby eliminating the City's rights in Sales Tax Revenue paid by the operator of the Village Center. Termination of this Agreement under this subsection of the Agreement shall render this Agreement null and void from that point forward with each Party having no further rights against each other under this Agreement or at law; provided, however, save and except those rights and obligations accruing on the part of either Party prior to such termination including entitlement for receipt of Chapter 380 Payments from City to Owner, and including the obligation for repayment of Chapter 380 Payments by Owner to City. In the event that any act of the Legislature or any law, order, rule or regulation of any state or federal administration or judicial entity, shall nullify the terms of this Agreement, or otherwise preclude the performance of this Agreement by either party, or if this Agreement is frustrated by reasons other than the breach of the Agreement by a party, then the City shall require the

Owner to refund, reimburse or repay to the City any portion of the Chapter 380 Payments that the City may be ordered to refund, reimburse or repay to the State or that may be ordered offset or withheld from future City revenues.

9.1.5 Either Party may terminate this Agreement effective immediately or at any future date if the third party operating the Village Center Development elects to cease operation or otherwise changes its operations for any reason whatsoever whereby no local Sales and Use Taxes are thereafter generated. Termination of this Agreement under this subsection of the Agreement shall render this Agreement null and void from that point forward with each Party having no further rights against each other under this Agreement or at law provided, however, save and except those rights and obligations accruing on the part of either Party prior to such termination including entitlement for receipt of Chapter 380 Payments from City to Owner, and including the obligation for repayment of Chapter 380 Payments by Owner to City.

9.1.6 Act of Default. Any other Act of Default hereunder

9.2 Effect of Termination. This Agreement will terminate in its entirety if Owner does not fulfill the requirements of Section 4.1.1 hereto.

9.3 Contingent on Master Development Agreement. This Agreement is contingent upon the subsequent approval and execution of a Master Development Agreement by and between the City and the Owner or the Owner's designee for Village Center. The Owner shall present a proposed Master Development Agreement to the City for approval, and the City shall not unreasonably withhold such approval. If no Master Development Agreement is presented to the City by the Owner following the execution of this Agreement by the Parties, or if the City reasonably withholds its approval of the Master Development Agreement, then this Agreement shall terminate and the City and the Owner shall have no obligations under this Agreement.

10.

Reporting and Monitoring

10.1 Reporting. Owner agrees to the following reporting and monitoring provisions, and failure to fully and timely comply with any one requirement shall constitute an Act of Default:

10.1.1 Annual Report. Owner shall provide an annual report on each anniversary date of the Effective Date certifying the status of compliance through the Term of this Agreement of all performance requirements.

10.1.2 Access to Records. Owner, during normal business hours shall allow City reasonable access to its records and books and all other relevant records related to each of the economic development considerations and incentives and performance requirements, as stated in this Agreement, but the confidentiality of such records and information shall be maintained by City unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, or at the direction of the Office of the Texas Attorney General.

11.
Owner's Liability

11.1 Default. Subject to Force Majeure and any consent given under Section 11.2, should Owner fail to timely, fully and completely comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this Agreement, such failure shall be an Act of Default by Owner and, if not cured and corrected within sixty (60) days after written notice to do so, City may terminate this Agreement and cease making any further Chapter 380 Payments subject to the terms of Section 9.2 hereof. Owner shall not be required to repay to City any money grants and consideration previously paid to it by City prior to such termination except as provided in Section 5.4 hereof. Owner shall not be liable to City for any alleged damages as a result of an Act of Default by Owner under this Agreement.

11.2 Consent and Excuse. In the event of unforeseeable third party delays which are not Force Majeure and upon a reasonable showing by Owner that it has immediately and in good faith commenced and is diligently and continuously pursuing the correction, removal or abatement of such delays by using its best efforts, City may consent to and excuse any such delays, which consent and excuse shall not be unreasonably withheld.

11.3 City Delay. Any delay for any amount of time by City in providing notice of default to Owner shall in no event be deemed or constitute a waiver of such default by City of any of its rights and remedies available in law or in equity.

11.4 City Waiver. Any waiver granted by City to Owner of an Act of Default shall not be deemed or constitute a waiver of any other existing or future Act of Default by Owner or of a subsequent Act of Default of the same act or event by Owner.

12.
City's Liability Limitations

Should City fail to timely, fully and completely comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this Agreement, such failure shall be an Act of Default by City and City shall have sixty (60) days to cure and remove the Default upon receipt of written notice to do so from Owner. Payments to be made to Owner shall also require a written request from Owner to be accompanied by all reasonable supporting documentation from Owner that it has fully complied with its performance requirements. City shall have thirty (30) days to make payment after receipt of such payment request with supporting documentation.

13.
Miscellaneous Provisions

13.1 Sign Permitting. Prior to submitting any building permit applications for any sign, Owner shall obtain approval from City's Planning and Building Inspection Department's Director for plans for signs.

13.2 Changes in Law. If, during the Term of this Agreement, State law applicable to Sales Tax Revenues, Ad Valorem Tax Revenues or Hotel Occupancy Tax Revenues changes and, as a result, the Chapter 380 Payments differ from the amount which would have been paid to Owner under the laws in effect as of the Effective Date, then City will still be liable to pay to Owner the Chapter 380 Payments from other available sources to achieve the same economic benefits to both Parties, which would have resulted if the law had not changed.

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

13.4 Permitting. Subject to Owner's complying with all applicable laws, City agrees to cooperate with Owner to expeditiously process permits, including plat applications required for the Project.

13.5 Representations and Warranties.

13.5.1 City's Representations and Warranties to Owner. City represents and warrants to Owner that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. City represents that it is a home rule municipality exercising governmental functions and powers and is organized and existing under the State of Texas. City further represents that it is not aware of any pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of City's obligations under this Agreement. Owner represents and warrants to City that it has the requisite authority to enter into this Agreement.

13.5.2 Owner's Representations and Warranties to City. The Owner is not relying upon any representation or warranty of the City regarding the City's power or authority to enter into this Agreement under the provisions of the Act and Chapter 380, Texas Local Government Code, or the appropriate determination of the tax situs of transactions contemplated by this Agreement. The Owner knows of no litigation, proceedings, initiative, referendum, investigation or the threat of any of the same, contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed in writing to the City. Owner represents and warrants that it is a Limited Liability Company organized and existing under and by virtue of the laws of the State of Texas and is qualified to conduct business and enter into this Agreement pursuant and by virtue of the laws of the State of Texas, and has the power and authority to carry on the business as presently conducted and as represented in this Agreement. Likewise, Owner agrees that it shall ensure that the Village Center is an entity legally existing and operating by virtue and in accordance with the laws of the State of Texas, and has the power and authority to carry out this project in the manner presented herein.

13.5.3 Master Development Agreement. City and Owner will make all reasonable efforts to enter into a Master Development Agreement relating to Village Center on or before June 17, 2019. Further, City agrees that it will not unreasonably withhold its consent to a Master Development Agreement with Owner.

13.6 Attorney's Fees. If any legal action or proceeding is commenced between City and Owner to enforce the provisions of this Agreement or to recover damages for its breach, the prevailing party in the legal action will be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

13.7 Binding Effect. This Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns.

13.8 Assignment. Except as provided below, Owner may not assign all or part of its rights and obligations under this Agreement to a third party without prior written approval of City, which approval will not be unreasonably withheld or delayed. The City agrees, however, that the Owner may assign all or part of its rights and obligations under this Agreement to any entity affiliated with the Owner by reason of controlling, being controlled by, or being under common control with the Owner; to a subsequent owner of all or any part of the Project; to a tenant in the Project or to a third party lender advancing funds for the acquisition of all or any part of the Property or for the construction or operation of the Project. The City expressly consents to any assignment described in the preceding sentence, and agrees that no further consent of City to such an assignment will be required. The Owner agrees to provide City with written notice of any such assignment.

13.9 Termination. If Owner elects not to proceed with the development of the Project as contemplated by this Agreement, Owner will notify City in writing, and this Agreement and the obligations of both parties will be deemed terminated and of no further force or effect as of the date of such notice.

13.10 Notice. Any notice or other communication ("Notice") given under this Agreement must be in writing, and may be given: (i) by depositing the Notice in the United States Mail, postage paid, certified, and addressed to the party to be notified with return receipt requested; (ii) by personal delivery of the Notice to the party, or an agent of the party; or (iii) by confirmed facsimile, provided that a copy of the Notice is also given in one of the manners specified in (i) or (ii). Notice deposited in the mail in the manner specified will be effective two (2) days after deposit. Notice given in any other manner will be effective only if and when received by the party to be notified. For the purposes of Notice, the addresses of the parties will, until changed as provided below, be as follows:

Owner: Collaborate Development Group LLC
3302 Canal St, Suite #36
Houston, Texas 77003
Attn: Saul Valentin, Founding Principal
Phone: (832) 409-3050

with a copy to: Thomas A. Sage
Hunton Andrews Kurth LLP
600 Travis, Suite 4200
Houston, Texas 77002
Phone: (713) 220-3833

City: City of Jersey Village
16501 Jersey Drive
Jersey Village, Texas 77040
Attn: City Manager
Phone: (713) 466-2109

with a copy to: City of Jersey Village
City Attorney
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019-2133
Phone: (713) 533-3800

Either party may designate a different address at any time by giving Notice to the other party.

13.11 Interpretation. Each of the parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against any party based on draftsmanship.

13.12 Relationship of the Parties. This Agreement will not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship between the parties. Neither City, nor its past, present or future officers, elected officials, employees or agents, assume any responsibility or liability to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

13.13 Applicable Law. This Agreement is made, and will be construed and interpreted, under the laws of the State of Texas and venue will lie in Harris County, Texas.

13.14 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected and it is also the intention of the parties 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 or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

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

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

13.17 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. A facsimile signature will be deemed to be an original signature for all purposes.

13.18 Exhibits. The following exhibits are attached to and incorporated into this Agreement for all purposes:

- Exhibit A: Public Infrastructure Improvements
- Exhibit B: City Owned Property
- Exhibit C: Property Under Option to be Purchased by Owner

13.19 Variances. The City Council of City, in its sole discretion, may grant and approve variances to Owner or Operator from the Performance Criteria and Development Standards described herein upon application in writing therefor by Owner on behalf of itself or the Operator.

13.20 Waiver of Immunity. City and Owner hereby agree that this Agreement constitutes an agreement for providing professional development services to City, which is subject to the provisions of Subchapter I of Chapter 271, Texas Local Government Code, as amended. City agrees that, in accordance with and by operation of such Subchapter I, it has waived sovereign immunity to suit for the purpose of adjudicating a claim for breach of this Agreement, subject to the terms and conditions of Subchapter I of Chapter 271, Texas Local Government Code, as amended.

13.20.1 Balance Owed Under the Agreement. The total amount of money awarded in an adjudication brought against City for breach of this Agreement is limited to the following: (i) the balance then due and owed by City under the Agreement plus any balance which may become due by City during the remaining term of the Agreement, including any amendments thereto; and (ii) interest as allowed by law.

13.20.2 Damages not Included. Damages awarded in an adjudication brought against City arising under the Agreement, including any amendments thereto, may not include: (i) consequential damages, except as expressly allowed under Section 13.20.1(i) above; (ii) exemplary damages; or (iii) damages for unabsorbed home office overhead.

14. **General Terms**

14.1 Entire Agreement. This Agreement embodies the complete Agreement of the parties hereto, superseding all oral or written, previous and contemporary, agreements

between the parties relating to matters in this agreement; and, except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the parties.

14.2 **Law.** This Agreement is subject to all legal requirements in City Charter and Code of Ordinances of City of Jersey Village, Texas and all other applicable County, State and Federal laws, and Owner agrees that it will promptly comply with all such applicable laws, regulations, orders and rules of the State, City and other applicable governmental agencies. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

14.3 **Confidential.** City, its officers and employees, and its agents or contractors retained to perform economic development services for City, shall treat as confidential the financial statements and information together with any proprietary information shared by Owner, Operator or their respective representatives with City or any representatives thereof and shall not release such information to the public, unless required by law or court order. City shall immediately notify Owner of requests or court orders to release such information.

14.4 **Exhibits.** Exhibits A through C attached hereto are made a part of this Agreement for all purposes as if they were set forth herein in their entirety.

[Remainder of page intentionally left blank]

EXECUTED to be effective as of the 27 day of June , 2019.

**COLLABORATE DEVELOPMENT, a Texas
limited liability corporation**

By: 
Printed Name: Saul Valentin
Title: Manager

Date: 6/27/2019

**CITY OF JERSEY VILLAGE, TEXAS,
a home-rule municipal corporation**


Austin Bleess, City Manager

APPROVED AS TO FORM AND CONTENT:

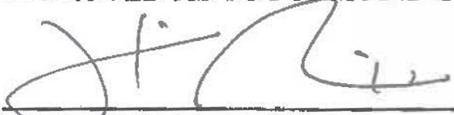

Justin Penning, City Attorney

Exhibit A

PUBLIC INFRASTRUCTURE IMPROVEMENTS

- Streets;
- Sidewalks;
- Drainage;
- Water and sewer systems;
- Wastewater collection lines;
- Green space, including parks, landscaping and irrigation;
- Street signage;
- Traffic lights;
- And any other public improvement allowable under applicable law.

Exhibit B

CITY OWNED PROPERTY

TRACT 1:

All of Restricted "F" of JONES RD. 290 COMMERCIAL RESERVES, a subdivision in Harris County, Texas according to the map or plat thereof recorded in/under Film Code No. 631037 of the Map Records of Harris County, Texas and being the same 10.89 acre tract of land described as Tract I in Special Warranty Deed filed for record under Harris County Clerk's File No. 20080357006.

TRACT 2:

All of Restricted Reserve "B" of JONES RD. 290 COMMERCIAL RESERVES, a subdivision in Harris County, Texas according to the map or plat thereof recorded in/under Film Code No. 631037 of the Map Records of Harris County, Texas and being the same 2.593 acre tract of land described as Tract II and the same 6.543 acre tract of land described as Tract IV in Special Warranty Deed filed for record under Harris County Clerk's File No. 20080357006.

TRACT 3:

All of Restricted Reserve "G" of JONES RD. 290 COMMERCIAL RESERVES, a subdivision in Harris County, Texas according to the map or plat thereof recorded in/under Film Code No. 631037 of the Map Records of Harris County, Texas and being the same 3.321 acre tract of land described as Tract III in Special Warranty Deed filed for record under Harris County Clerk's File No. 20080357006.



Exhibit B

Exhibit C

PROPERTY UNDER OPTION

All of Restricted Reserve "D" of JONES RD. 290 COMMERCIAL RESERVES, a subdivision in Harris County, Texas according to the map or plat recorded in/under Volume 631037 of the Map Records of Harris County, Texas and being the same 5.58 acre tract of land described therein.

All of Restricted Reserve "E" of JONES RD. 290 COMMERCIAL RESERVES, a subdivision in Harris County, Texas according to the map or plat recorded in/under Volume 631037 of the Map Records of Harris County, Texas and being the same 4.98 acre tract of land described therein.



Exhibit D-1

Mandatory Design Elements for the Retail Development

The Retail Development will include walkable, pedestrian-friendly spaces and gathering environments and will be composed of:

1. Approximately 150,000 square feet of rentable space for restaurant and other retail uses among 8 buildings; and
2. Approximately 140,000 square feet of rentable space for office use among 3 buildings.

Exhibit D-2

Mandatory Design Elements for the Multifamily Development

The Multifamily Development will include walkable, pedestrian-friendly spaces and be composed of approximately 350 units between two different mid-rise buildings of upscale apartments with amenities such as, for illustration purposes only: pools, club house, exercise rooms, security features, smart building amenities, internet capabilities, walkable retail and service retail. The Multifamily Development is intended to be located among a central pedestrian-friendly space intended to create a “live and play” environment.

Exhibit D-3

Mandatory Design Elements for the Public Infrastructure

The Public Infrastructure will include a central open community plaza surrounded by the Multifamily Development, Retail Development (including restaurants, office space, and entertainment options), and the Hotel, together with street improvements, utilities, pedestrian sidewalks, lighting, water features, drainage improvements, pedestrian access, green spaces, park spaces, running track and pedestrian trails.

Exhibit D-4

Mandatory Design Elements for the Hotel

The Hotel will consist of a hospitality development for a select-service flag with approximately 110 rooms located adjacent to the main plaza of the Project and the portion of the Retail Development by the City Hall, as more particularly described in (and subject to) the Hotel Agreement.

Exhibit D-5

Mandatory Design Elements for the Project

The Project shall be constructed in compliance with the following standards:

1. At least 80% of each building's façade (excluding doors and windows) fronting along any Type "A" Street (as defined in the Ordinance), Jones Road, and US 290/Hempstead Managed Lanes shall be finished in one of the following materials:
 - Masonry (brick, stone, stucco utilizing a three-step process, curtain glass, or glass block)
2. No more than 20% of each façade along any Type "A" Street (as defined in the Ordinance), Jones Road, and US 290/Hempstead Managed Lanes shall use accent materials such as wood, architectural metal panel, splitface concrete block, tile, or pre-cast concrete panels. Exterior Insulating Finishing Systems ("EIFS"), is not permitted on building frontages along any Type "A" Street or Jones Road or US 290.
3. All façades along Type "B" Streets (as defined in the Ordinance) or alleys shall be of a similar finished quality and color that blend with the front of the building. Building materials for these façades may be any of the primary and accent façade materials listed above. EIFS shall not be permitted along any ground floor façades along Type "B" Streets and ground floor façades of alleys. Cementitious-fiber clapboard (not sheet) with at least a 50-year warranty may only be used on the upper floors only.
4. Roofing materials visible from any public right-of-way shall be copper, factory finished standing seam metal, slate, synthetic slate, or similar materials.