

---

**GROUND LEASE**

**by and between**

**CITY OF BROKEN ARROW, OKLAHOMA, an Oklahoma  
Municipal Corporation,  
AS CITY,**

**BROKEN ARROW ECONOMIC DEVELOPMENT  
AUTHORITY, an Oklahoma Public Trust of which the City is  
sole Beneficiary,  
as BAEDA,**

**and**

**STONEY CREEK HOSPITALITY CORPORATION,  
AS DEVELOPER**

**FOR A HOTEL AND  
CONFERENCE/CONVENTION CENTER  
TO BE CONSTRUCTED IN BROKEN ARROW,  
OKLAHOMA**

November 4, 2014

---

## GROUND LEASE

This GROUND LEASE (this "Lease") is made and entered into as of the 4<sup>th</sup> day of November, 2014 by and between **THE CITY OF BROKEN ARROW, OKLAHOMA** an Oklahoma Municipal Corporation (together with its successors and assigns, the "City," which term, when used in such context, shall also mean and refer to the areas within the territorial limits of the City), **BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY**, an Oklahoma Public Trust of which the City is sole Beneficiary (together with its successors and assigns "BAEDA"), and **STONEY CREEK HOSPITALITY CORPORATION**, an Iowa corporation (together, with its successors and assigns, the "Developer").

### RECITALS

WHEREAS, the City has frequently received requests for conference center facilities to host conventions and other events, and on May 11, 2004, the voters of the City duly approved, at a duly called election, Proposition No. 4, which authorized the construction, equipping and furnishing a new one-story conference/convention center to be located in the City and adjacent to the Broken Arrow Expressway; and

WHEREAS, the City has been approached by the Developer with a proposal for a phased community convention center complex development to be undertaken by the Developer, at its cost, the first phase of which calls for the Developer to establish a conference/convention center and accompanying hotel with accompanying parking and other appurtenances (collectively, the "Project's First Phase"), and the second phase of which, subject to the feasibility therefor, calls for the City and the Developer to establish an adjacent exposition center and additional parking and related facilities approximately three (3) years after completion of the Project's First Phase (collectively, the "Project's Second Phase" and, together with the Project's First Phase, collectively, the "Project"), all on lands to be acquired by the City or one of its public trusts and leased to the Developer; and

WHEREAS, the Project is reasonably expected to attract significant attendance from both within and without the City for a variety of conferences, conventions, expositions and other events; and

WHEREAS, attendance at such events is reasonably expected to indirectly encourage and facilitate economic development within and near the City through attracting new businesses and by promoting the economic health and expansion of existing industry and commercial businesses within and near the City; and

WHEREAS, Roland Investments, Ltd., ("Roland") currently owns approximately 14.97 acres of real property in an area known as Stonewood Hills which is located adjacent to the Broken Arrow Expressway in Tulsa County, and is well suited for location of a conference/convention center and an accompanying hotel; and

WHEREAS, Roland has agreed to sell, and the City has agreed to purchase, that certain 14.97 acres of real property located along West Albany Street across from Bass Pro Outdoor World and between North Elm Place and Lynn Lane which is set forth and described in **Exhibit A**, which is attached hereto and made a part hereof (the "Land"), as the site for the construction and establishment of the Project; and

WHEREAS, the City desires to lease the land to and the Developer desires to lease the Land from the City on the terms and conditions set forth in this Lease; and

WHEREAS, Roland has entered into an agreement with the City for the purchase and sale of the Land; and

WHEREAS, the Developer is willing to enter into an agreement for the construction, equipping, furnishing

and operation of a conference/convention center and accompanying hotel, to include sufficient parking and other appurtenances as the Project's First Phase, and further willing to enter into negotiations to construct, equip, furnish and operate an adjacent exposition center, to include sufficient parking and other appurtenances as the Project's Second Phase; and

WHEREAS, *except as hereinbelow expressly set forth and provided*, the Developer at its sole cost intends to construct, or cause to be constructed, on the Land a hotel and conference/convention center described on **Exhibit B** attached hereto and made a part hereof (the "Hotel"). The Hotel, together with all improvements to be constructed on the Land, in connection with the Hotel are sometimes collectively referred to herein as the "Improvements," and the Land and the Improvements are sometimes collectively referred to herein as the "Premises"; and

WHEREAS, in furtherance of the Project, it is anticipated that the Broken Arrow Economic Development Authority ("BAEDA") will construct and provide or fund certain infrastructure improvements and related items on the Land as generally set forth and described on **EXHIBIT C**, which is attached hereto and made a part hereof, in the amount of \$5,550,000.00 (the "Infrastructure"); and

WHEREAS, the City has determined that the Project's First and Second Phases and their operations are reasonably expected to provide direct economic benefits within and near the City through retaining and likely increasing City sales tax receipts; increasing *ad valorem tax* revenues derived by the City, Tulsa County, Oklahoma, Independent School District No. 3 of Tulsa County, Oklahoma, and other local and area governmental entities from time to time benefiting therefrom; generally enhancing property values, both residential and commercial, within City; and otherwise contributing significantly to the economic well-being of the citizens and residents within and near the City, and those of Tulsa County and the State of Oklahoma (the "State"); and

WHEREAS, the City has also determined that the Project's First and Second Phases and the subsequent operation of the Project facilities are reasonably expected to provide additional and indirect economic benefits within and near the City, in Tulsa County and in the State through, including without limitation, diversifying the local economy, providing economic stimulus for additional employment and other development, providing economic benefits to low and moderate income individuals through providing training opportunities in services, sales and management skills; and

WHEREAS, the City has further determined that the acquisition, construction, equipping and furnishing of the Project's First and Second Phases would otherwise be difficult or impossible without certain forms of public support and the involvement of the City, BAEDA and/or other of the City's public trusts; and

WHEREAS, the City has further determined that it is appropriate to approve the execution and delivery of this Lease and that such actions are in the best interests of the City and the health, safety and welfare of the City and residents within and near the City; and

WHEREAS, the terms in this Lease have been jointly negotiated and developed by the City and the Developer and are expressly intended to directly serve the public purpose of economic development, with each party directly and indirectly benefiting from the Project's First and Second Phases; and

WHEREAS, the City has further determined that the Project is in the public interest and serves a public purpose, as aforesaid, and that the terms in this Agreement are a material inducement to the Developer to implement the Project's First and Second Phases; and that subject to all further actions legally necessary under State law to implement the Project in a lawful manner, including the provision of all necessary funding or the accomplishment of all other necessary actions by the City, BAEDA or another City-beneficiary public trust, the parties have agreed as hereinbelow set forth in this Lease; and

WHEREAS, the parties desire to enter into this Lease, on the terms and conditions set forth below.

**NOW, THEREFORE**, in consideration of the monetary consideration, mutual covenants, conditions and promises and other good and valuable consideration herein set forth, the receipt and sufficiency of which are hereby acknowledged, the parties agree that the foregoing Recitals are true and correct and are incorporated herein by this reference, and further agree as follows:

#### **ARTICLE I – DEFINITIONS**

The following capitalized terms shall have the meanings indicated for each below or as defined elsewhere in this Lease:

"Alterations" shall mean any improvements, renovations, construction, demolition, or other changes to the Land or the Hotel, or both, after completion of the Project.

"BAEDA" shall mean Broken Arrow Economic Development Authority, an Oklahoma Public Trust of which the City is sole beneficiary.

"Base Rent" shall be as defined in **Section 4.1.2** hereof.

"Builder's Risk Insurance" shall be as defined in **Section 10.2** hereof.

"Certificate of Occupancy" shall mean a certificate of occupancy issued by the City upon completion of the Hotel.

"City Caused Liens" shall mean any liens, claims of liens or other claims against the Premises caused by the wrongful acts or omissions of the City.

"City and BAEDA Indemnified Parties" shall mean, collectively, the City and BAEDA and their respective officers, council members, employees, agents, contractors, affiliated entities and attorneys.

"Compensation" shall be as defined in **Section 8.1** hereof.

"Default" shall be as defined in **Section 12.1** hereof.

"Developer Indemnified Parties" shall mean, collectively, the Developer and its officers, directors, shareholders, members, managers, employees, agents, contractors, affiliated entities and attorneys.

"Development Agreement" shall be as defined in the definition of "Effective Date" in this Article I.

"Effective Date" shall mean the earlier of January 15, 2015 or the date the following conditions are satisfied: (a) issuance of a leasehold title insurance policy to the Developer for the Land showing good title in the City or BAEDA, as the case may be, subject to only the Permitted Exceptions, with a survey endorsement and other customary endorsements by a title insurer and in form and content satisfactory to the Developer in its sole discretion, (b) the absence of any matters of environmental concern based on a Phase I investigation and report and, if the Developer deems necessary, a Phase II investigation and report, for the Land conducted for the Developer in form and content satisfactory to the Developer in its sole discretion, (c) receipt of soil testing reports for the Land

conducted for the Developer in form and content satisfactory to the Developer in its sole discretion, and (d) the execution and effectiveness of a Development Agreement between BAEDA, the City and the Developer (the "Development Agreement"). In the event any of the conditions clauses (a), (b), and (c) and (d) are not satisfied on or before January 15, 2015, this Lease shall be void and of no further force or effect, and neither the City nor the Developer shall have any rights, obligations or liabilities under or by reason of this Lease.

"Exercise Date" shall be as defined in **Section 18.1** hereof.

"Extended Term" shall be as defined in **Section 3.2** hereof.

"Fair Market Value" shall be as defined in **Section 18.1** hereof.

"Force Majeure" shall mean any act or occurrence beyond the reasonable control of either party which reasonably causes a delay in the Project, including, without limitation, the following: fire or unavoidable casualties; windstorm, earthquake or unusually adverse weather conditions; unanticipated subsurface conditions; strikes, lockouts or other labor disputes; shortages of materials, equipment or labor; acts of vandalism or terrorism; or acts or omissions of governmental or political bodies.

"Hotel" shall mean a hotel and conference/convention center as set forth and described in **Exhibit B** hereto, together with any Alterations or repairs thereto.

"Improvements" shall mean the Hotel together with all improvements to be constructed on the Land.

"Infrastructure" shall mean the Improvements to be constructed or caused to be constructed by BAEDA on the Land as generally set forth and described on **Exhibit C** hereto.

"Insurance Proceeds" shall mean the insurance proceeds paid pursuant to the Required Insurance as a result of any insured loss or damage to the Improvements.

"Land" shall mean all such lands (approximately 14.97 acres) as set forth and described in **Exhibit A** hereto.

"Laws" shall mean means, collectively, any and all federal, state or local governmental laws, rules, regulations, codes and orders, including, without limitation, those relating to building and life safety, the environment, zoning, land use and land divisions from time to time applicable to the Premises, the Project and the operation thereof or the conduct of activities thereon.

"Lease" shall mean this Lease, and any and all supplements, modifications and/or amendments hereto.

"Leasehold Lender" shall mean any mortgage lender to the Developer for borrowed money under terms whereby such lender's mortgage collateral therefor is the Developer's leasehold interest under this Lease.

"Leasehold Mortgage" shall mean any mortgage, deed to secure debt or similar instrument granting a mortgage or lien against the Developer's leasehold interest under this Lease.

"Lease Term" shall mean the period commencing on the Lease Term Commencement Date and terminating on the Termination Date.

"Lease Term Commencement Date" shall mean the date on which the Hotel first becomes fully operational as certified in writing by the Developer to the City.

"Lease Term Expiration Date" shall mean the date which shall be the first to occur of (i) the Development Agreement is terminated pursuant to **Sections 2.3, 3.3(vi)(b) or 5.7** thereof; (ii) seventy-five (75) years after the Lease Term Commencement Date, subject to extension pursuant to **Section 3.2** hereof; or (iii) or such earlier date as the Developer shall terminate this Lease by written notice to the City at any time on or after the thirtieth (30<sup>th</sup>) yearly anniversary of the Lease Term Commencement Date.

"Liability Insurance" shall be as defined in **Section 10.3** hereof.

"Memorandum" shall be as defined in **Section 19.14** hereof, and shall be in the form attached hereto as **Exhibit E**.

"Option to Purchase" shall be as defined in **Section 18.1** hereof.

"Permitted Exceptions" shall mean those exceptions listed on **Exhibit D**, attached hereto and made a part hereof, and any other exception which satisfies all of the following conditions: (i) the same is approved in writing in advance by the City and the Developer after the date hereof, and (ii) the same is recorded in the Real Estate Records.

"Person" shall mean an individual, proprietorship, trust, corporation, partnership, limited liability company, foundation or other entity or organization, whether for profit or otherwise.

"Premises" shall mean the Land, the Hotel, the Improvements and the Infrastructure.

"Prime Rate" shall mean means the prime rate reported in the "Money Rates" column or any successor column of *The Wall Street Journal*, currently defined therein as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks. If *The Wall Street Journal* ceases publication of the Prime Rate, the "Prime Rate" shall mean the 'prime rate' or "base rate" announced by Bank of America, N.A., or any successor thereto.

"Project" shall mean, collectively, the Project's First Phase and the Project's Second Phase.

"Project's First Phase" shall mean the construction of a conference/convention center and accompanying hotel with parking and other appurtenances.

"Project's Second Phase" shall mean the potential construction of an adjacent exposition center with parking and other appurtenant related facilities.

"Property Insurance" means Special Perils Insurance and Builder's Risk Insurance coverages.

"Real Estate Records" shall mean the official real estate records for Tulsa County, State of Oklahoma.

"Receiver" shall be as defined in **Section 17.1.10** hereof.

"Rent" shall mean all Base Rent together with all other amounts the Developer is required to pay under this Lease.

"Required Insurance" shall mean all insurance coverages that the Developer is obligated to maintain under this Lease, including, without limitation, the insurance coverages described and required under **Article X hereof**.

"Restoration Work" shall be as defined in **Section 11.1.1** hereof.

"Roland" means Roland Investments, Ltd., an Oklahoma corporation.

"Special Perils Insurance" shall be as is defined in **Section 10.1** hereof.

"State" shall mean the State of Oklahoma.

"Sublessee" shall mean any Person who leases all or any portion of the Premises from the Developer.

"Termination Date" shall mean the first to occur of (i) the Lease Term Expiration Date or (ii) such earlier date as this Lease terminates in accordance with the provisions hereof.

## **ARTICLE II - DEMISE AND GRANT**

2.1 Demise. The City does hereby lease to the Developer, and the Developer does hereby lease from the City, the Land; to have and to hold the Land, together with all rights, privileges, appurtenances, easements and other rights appertaining to the Land, unto the Developer, and its successors and assigns, for the Lease Term (as herein defined) upon the terms and conditions set forth in this Lease.

2.2 Title. The Land is leased to the Developer subject to the Permitted Exceptions. Neither the City nor the Developer shall create or permit the creation of any further easement, covenant, condition, lien, encumbrance or other exception to fee simple title to the Premises, or any part thereof, without the prior written consent of the other party hereto and all Leasehold Lenders. The City acknowledges and agrees that during the term of this Lease, and upon closing of the Developer's purchase of the Land pursuant to exercise of its Option to Purchase, the Developer shall be and is the sole owner of the Improvements.

2.3 Quiet Enjoyment. The City covenants and agrees that so long as this Lease is in full force and effect and so long as the Developer is not in default hereunder beyond any applicable notice and cure periods, the Developer, shall lawfully and quietly hold, occupy and enjoy the Land during the Lease Term without hindrance by the City or any person claiming by, through or under the City, except as otherwise specifically provided herein.

2.4 "As Is" Condition of Premises. The Developer acknowledges and agrees that, except as otherwise specifically set forth herein, the Land is being leased to the Developer in its "AS IS" condition, with all faults. The City hereby disclaims any and all express or implied warranties as to the condition of the Land. Without limiting the generality of the foregoing, the City hereby disclaims any and all express or implied warranties of merchantability or fitness for any particular purpose relative to the Land or any part thereof. The Developer acknowledges and agrees that, except as otherwise specifically set forth herein, no representations or warranties have been made by the City, or by any person, firm or agent acting or purporting to act on behalf of the City, as to (i) the presence or absence on or under the Land of any particular materials or substances (including, without limitation, asbestos, hydrocarbons or hazardous or toxic substances), (ii) the condition or repair of the Land or any portion thereof, (iii) the value, expense of

operation or income potential of the Land or the Premises, (iv) the accuracy or completeness of any title, survey or other third party information provided by the City to the Developer relative to the Land, the Project or the Premises, or (v) any other fact or condition which has or might affect the Land, the Project or the Premises. The Developer acknowledges and agrees that it is relying and will rely solely on its own inspections of the Land in entering into this Lease. The Developer represents and warrants to the City that by the Effective Date the Developer will have had full opportunity to carefully (A) inspect, measure and test the Land, (B) test the subsurface conditions and environmental conditions at or affecting the Land, (C) examine the public records relating to the Land, and (D) otherwise perform all due diligence with respect to the Land and the Project. Any such reasonably required and fully documented testing or inspection of the Land deemed necessary by the Developer will be included in the cost of the Infrastructure at the expense of the City.

**2.5 Obligation to Construct the Hotel.** The Developer, at its sole cost, shall cause construction of the Improvements substantially as described in **Exhibit B** attached hereto and made a part hereof

The City shall execute and deliver upon request of the Developer any instruments which reasonably may be required by any public or quasi-public authority for the purpose of obtaining any and all governmental licenses, permits, approvals and authorizations reasonably necessary for the construction, alteration, and installation of the Improvements and any equipment required in connection therewith.

**2.6 Funding of Infrastructure.** In furtherance of this Project, BAEDA at its sole cost, agrees to construct or fund the construction of the Infrastructure in an aggregate amount of Five Million Five Hundred and Fifty Thousand Dollars (\$5,550,000) as set forth described on **Exhibit C**, attached hereto and made a part hereof. The parties agree that all Infrastructure constructed with City or BAEDA funds shall be duly advertised, bid, bonded and contracted as directed by BAEDA and the City based on plans, specifications, terms and conditions approved in advance by the City and fully in accordance with the provisions of the Oklahoma Public Competitive Bidding Act (the "Oklahoma Act") with the Developer, in the event it shall elect to do so, acting as the sole general contractor to supervise, direct and control construction of the Infrastructure.

**2.7 Project's Second Phase.** It is anticipated that the City will desire to expand the Project to include the Project's Second Phase. The terms and conditions under which the Developer and the City will undertake the Project's Second Phase have neither been negotiated nor determined, and both parties understand and agree that additional investment, responsibility and documentation will be required for such undertaking. No definitive written agreement has been reached, and neither party has accepted any obligation or liability, with respect to any expansion of the Project via the Project's Second Phase.

### **ARTICLE III – LEASE TERM**

**3.1 Lease Term.** The Lease Term shall commence on the Lease Term Commencement Date and shall terminate on the Lease Term Expiration Date, unless otherwise terminated prior to such date in accordance with the provisions of this Lease.

**3.2 Extension of Lease Term.** The Developer may elect to extend the Lease Term for an additional term of twenty-four (24) years (the "Extended Term") upon the terms, covenants, conditions, conditional limitations and agreements herein contained, in accordance with and subject to the following conditions:

**3.2.1** the Extended Term shall commence on the date of termination of the original Lease Term;



3.2.2 the election to extend shall be exercised at least ninety (90) days prior to the date of commencement of the Extended Term; the election to extend shall be exercised only by written notice thereof to the City, which notice shall be executed and acknowledged by the Developer in recordable form;

3.2.3 provided the Developer is not then in Default under this Lease or the Developer or its Leasehold Lender has cured, or taken adequate actions to cure, such default(s) within the curative period provided hereunder, the notice of election to extend the Lease Term given in accordance with the provisions of this **Section 3.2** shall automatically extend the Lease Term for the Extended Term without further action;

3.2.4 all references in this Lease to the "Lease Term", or to the "term" hereof, shall be deemed to include the original Lease Term of seventy-five (75) years and, in the event of extension as provided in this **Section 3.2**, the Extended Term; and

3.2.5 a termination of this Lease pursuant to **Article XII** hereof, or any other provision hereof, or pursuant to any present or future law, shall automatically extinguish any Lease extension right under this **Section 3.2**.

3.3 Reversion. Except upon closing of the Developer's purchase pursuant to exercise of its Option to Purchase under **Article XVIII** hereof, effective as of the Termination Date, the parties agree that the following shall be deemed to have occurred without the necessity of any further action other than as expressly provided below:

3.3.1 the Premises shall become the sole property of the City, free and clear of all rights of the Developer and any person claiming by, through, or under the Developer, including any Leasehold Lender, and subject only to the Permitted Exceptions;

3.3.2 all rights of the Developer with respect to the Premises (including, without limitation, any right of possession) shall be deemed to have terminated, and, as the case may be, the City or BAEDA shall thereupon be entitled to immediate and full, unencumbered possession of the Premises; and

3.3.3 the parties shall apportion all taxes, utility charges, and other expenses of operating the Premises as of the Termination Date.

#### **ARTICLE IV - RENT, TAXES AND UTILITIES**

##### **4.1 Base Rent**

4.1.1 On or and at any time after the Lease Term Commencement Date, upon the written request of either party, and without any additional consideration, the parties shall execute, acknowledge and deliver duplicate original recordable form counterparts of a Rental Commencement Date declaration, specifying the Lease Term Commencement Date.

4.1.2 As used in this Lease, "Base Rent" means the sum of One Dollar (\$1.00) per annum for each year of the Lease Term, payable in advance in the amount of Seventy-Five Dollars (\$75.00) on the Effective Date and, in such event, in the amount of Twenty-four Dollars (\$24.00) upon the commencement of the Extended Term.

4.1.3 The term "Rent" means Base Rent and all other sums payable by the Developer to the City pursuant to the provisions of this Lease.

4.1.4 The Developer shall pay to the order of the City, at the address of the City set forth in **Section 19.3** hereof (or at such other address in as the City from time to time designates in writing to the Developer), in lawful currency of the United States of America, all Rent without demand, deduction, abatement or set-off.

#### 4.2 Taxes; Utilities; Net Lease.

4.2.1 From and after the Lease Term Commencement Date, the Developer shall pay or cause to be paid, without abatement, deduction or offset, all real and personal property taxes, general and special assessments, and all other charges, assessments, and taxes of every description (other than state and federal income, inheritance, estate succession, transfer or gift taxes of the City), levied on or assessed on the same basis as other taxpayers against the Premises or any part thereof, the Developer's personal property located on or in the Premises, and the Developer's leasehold estate in the Land. The Developer shall make all such payments directly to the appropriate charging or taxing authority before any fine, interest, or penalty shall become due or be imposed by operation of law for nonpayment; *provided, however,* that if the Laws expressly permit the payment of any or all of the above items in installments (whether or not interest accrues on the unpaid balance), the Developer may, at its election, utilize the permitted installment method, but shall pay each installment with any interest before delinquency and before any fine or penalty shall become due or be imposed by operation of law for nonpayment. All payments of taxes or assessments or both, including permitted installment payments, shall be prorated between the City and the Developer for the year in which the Lease Term Commencement Date occurs and for the year in which the Termination Date occurs.

4.2.2 The Developer shall furnish to the City, upon written request by the City, receipts or other appropriate documents evidencing timely payment of all taxes, assessments or charges for which the Developer is responsible hereunder.

4.2.3 The Developer shall have the right to contest or review by legal proceedings, as permitted under applicable Laws, any assessed valuation, real estate tax, or assessment with respect to the Premises. Nothing herein contained, however, shall be construed to allow any taxes to remain unpaid for such length of time as shall permit the Premises, or any part thereof, to be sold or advertised for sale by any governmental authority or shall permit a lien with respect thereto to be foreclosed. Any amount already paid by the Developer and subsequently recovered as the result of such contest or review shall belong to the Developer.

4.2.4 The Developer shall contract directly with the supplier of any utility services to the Premises, and from and after the Effective Date, shall pay or cause to be paid all charges for water, heat, steam, gas, electricity, cable, telephone, trash disposal, sanitary sewer, storm water and any and all other utilities used at and/or provided to the Premises throughout the Lease Term. No failure or interruption of any utility or other service being furnished to the Developer or to or at the Premises shall entitle the Developer to terminate this Lease or cause any offset against or abatement of Rent.

#### 4.3 Security Deposit. No security deposit is required hereunder.

4.4 Net Lease. All Rent payable hereunder shall be paid as "net" rent without deduction or offset. It is the intent of the parties, except as is otherwise expressly provided in this Lease, that from and after the Lease Term Commencement Date, the Developer shall pay all costs, charges, insurance premiums, taxes (other than state and federal income, inheritance, estate succession, transfer or gift taxes of the City), utilities, expenses and assessments of every kind and nature incurred for, against, or in connection with the Premises. The Developer acknowledges and agrees that the Land may consist of multiple parcels of property, each of which is a separate tax parcel. All such costs, charges, taxes, utilities, expenses and assessments covering the Premises shall be prorated between the City and the Developer as of the Lease Term Commencement Date and the Termination Date, except in the latter such event, for any expenses such as insurance premiums which are not being assumed by or transferred for the benefit of the City.

#### **ARTICLE V - USE OF PREMISES AND COMPLIANCE WITH LAWS AND AGREEMENTS**

5.1 Permitted and Prohibited Uses; Generally. Use of the Premises by the Developer shall be subject to all of the following restrictions on use: (a) the Premises may only be used for the construction and operation of the Project's First Phase and, in such event, the Project's Second Phase and (b) all use of the Premises shall comply with all applicable zoning, land use or other applicable Laws.

5.2 Compliance with Laws. During the Lease Term, the Developer shall comply with (i) all present and future Laws relating to the Project, the Premises, and/ or the construction, use or operation thereof, regardless of whether any such Law imposes the duty of compliance on the City or the Developer, and all other matters of record relating to the Project, the Premises or any part thereof or both. The Developer shall not use, occupy or knowingly permit the Premises to be used or occupied, nor do or knowingly permit anything to be done in, on or about the Premises which in any manner would (a) violate any certificate of occupancy or other governmental permit, license, approval or authorization affecting the Premises, (b) constitute a public or private nuisance or waste or (c) be contrary to the provision of any Required Insurance policies.

#### **ARTICLE VI - MAINTENANCE AND ALTERATIONS**

6.1 Maintenance of Premises. The Developer shall maintain, or cause to be maintained, the Premises in good order and repair, and, subject to **Section 6.2** hereof, the Developer shall be entitled to make such Alterations to the Premises as it reasonably deems necessary or desirable in its sole discretion without the consent of the City. The Developer shall cause all trash, refuse and garbage generated by construction or its operations of the Premises to be promptly removed from the Premises. In the event the Developer fails to maintain or keep and maintain the Premises as required herein and such failure continues for thirty (30) days after written notice with respect thereto from the City (which notice shall not be required in the event of an emergency), in addition to all other remedies it may have, then the City may, but shall not be required to, perform such required maintenance and repairs, and any sums expended by the City in performing such maintenance and repairs shall be repaid by the Developer to the City. The City shall not be obligated to maintain or make repairs of any kind upon the Premises, or upon any equipment, facilities or fixtures contained therein.

6.2 Alterations Generally.

6.2.1 The Developer shall cause all work in connection with any Alteration(s) to satisfy all of the following requirements: (a) such work shall be performed in a good and workmanlike manner with new materials; (b) the Developer shall pay, or cause to be paid, all costs of such Alteration(s) as and when due and in a manner to prevent the filing of any mechanic's liens or claims of liens with respect thereto; (c) such work shall be performed in compliance with all applicable Laws; and (d)

the contractor and each subcontractor providing labor, material or services with respect thereto shall provide insurance which satisfies the City's then-current insurance and bonding requirements for contractors, and shall furnish the Developer with appropriate and periodic lien releases upon receiving payment for such labor, material and/or services, copies of which shall be furnished to the City by the Developer.

6.2.2 The Developer shall pay, discharge and cause the release of any and all mechanic's, materialman's or other like liens against the Premises in accordance with **Article VII** of this Agreement.

6.2.3 Upon completion of any Alterations, the Developer, at its expense, shall obtain certificates of final approval of such Alterations required by any governmental or quasi-governmental authority, or, if not required, a completion certificate of the Developer, and shall furnish the City with copies thereof.

## **ARTICLE VII - MECHANICS' LIENS**

7.1 Developer Caused Liens Prohibited. Except for City Caused Liens, the Developer covenants that it will not cause or permit any lien to be filed, asserted or otherwise exist against the Premises or any part thereof as a result of (a) nonpayment for, or disputes with respect to, labor, material, services or equipment furnished to the Premises or the Project, or both, for or on behalf of the Developer, or any party acting by, through or under the Developer or (b) any judgment, lien or attachment against the Premises or any part thereof caused by the wrongful acts or omissions of the Developer or any party acting by, through or under the Developer.

*Notwithstanding anything to the contrary in this Agreement,* in no event shall the City or BAEDA be deemed to have agreed or consented to any mechanic's lien (or other lien for material, labor or services) against the City's interest in the Premises whether pursuant to the provisions of this Lease, by implication or otherwise; it being agreed that if any mechanic's liens (or other comparable liens) are claimed or arise out of the Project, or otherwise, the same shall attach only to the leasehold interest of the Developer in the Premises and not to the City's or BAEDA's fee simple interest therein.

7.2 Developer's Limited Cure Right. If (a) any lien of any nature, including but not limited to liens of the nature described in **Section 7.1** above, is filed against the Premises or any part thereof or is asserted against the City, and (b) the Developer in good faith disputes the claimant's right to such lien, then the Developer shall have the right to contest the filing of such lien without the same constituting a Default if the Developer causes all of the following conditions to be satisfied with respect to such lien at all times until the same is fully released and discharged as a lien or potential lien against the Premises, any part thereof or the City:

7.2.1 the Developer gives the City notice of the claim of such lien within ten (10) days after the Developer's receipt of any written claim or notice of filing of such lien together with the basis for the Developer's dispute thereof, and the Developer shall promptly furnish to the City such other information as the City may request from time to time with respect thereto;

7.2.2 the Developer causes such lien to be diligently contested in good faith by appropriate legal proceedings and promptly reimburses the City for any reasonable costs, charges, fees or expenses, including, without limitation, reasonable attorneys' fees, suffered or incurred by the City as a result thereof.

7.3 Developer's Indemnity. The Developer hereby agrees to indemnify, defend (by counsel reasonably acceptable to the City) and hold harmless the City and the Premises from and against, any and all claims, causes of action, liens, claims of liens, liabilities, losses, damages, judgments, settlements, demands, penalties and expenses (including reasonable attorneys' fees and expenses), suffered or incurred by the City or the Premises as a result of any lien or claim of lien of the nature described in **Section 7.1** hereof.

7.4 City Caused Liens Prohibited. The City covenants that it will not cause or permit any lien to be filed, asserted or otherwise exist against the Premises or any part thereof as a result of (a) nonpayment for, or disputes with respect to, labor, material, services or equipment otherwise furnished to, for or on behalf of the City, or (b) any judgment, lien or attachment against the Premises or any part thereof caused by the wrongful acts or omissions of the City.

7.5 Limited Cure Right. If (a) any City Caused Lien is filed, asserted or otherwise exists against the Premises or any part thereof or is asserted against the City or the Developer, and (b) the City in good faith disputes the claimant's right to such lien, then the City shall have the right to contest the filing of such lien if the City causes all of the following conditions to be satisfied with respect to such lien at all times until the same is fully released and discharged as a lien or potential lien against the Premises, any part thereof, the City or the Developer:

7.5.1 the City gives the Developer notice of the claim of such lien within thirty (30) days after City's receipt of any written claim or notice of filing of such lien together with the basis for the City's dispute thereof, and the City shall promptly furnish to the Developer such other information as the Developer may request from time to time with respect thereto; and

7.5.2 the City causes such lien to be diligently contested in good faith by appropriate legal proceedings and promptly reimburses the Developer for any reasonable costs, charges, fees or expenses, including, without limitation, reasonable attorneys' fees, suffered or incurred by the Developer, as a result thereof.

7.6 City Indemnity. The City hereby agrees to indemnify, defend (by counsel reasonably acceptable to the Developer) and hold harmless the Developer and the Premises from and against, any and all claims, causes of action, liens, claims of liens, liabilities, losses, damages, judgments, settlements, demands, penalties and expenses (including reasonable attorneys' fees and expenses) suffered or incurred by the Developer or the Premises as a result of any City Caused Lien or claim thereof.

## **ARTICLE VIII - CONDEMNATION**

8.1 Interests of Parties on Condemnation. If the Premises or any part thereof is taken by condemnation as a result of any action or proceeding in eminent domain, or is transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of the City and the Developer in the award or consideration for such transfer (the "Compensation"), and the allocation of the Compensation and the other effects of the taking or transfer upon this Agreement, shall be as provided by this **Article VIII**.

8.2 Total Taking - Termination. If the entire Premises is taken or so transferred, this Lease and all right, title and interest of the City and the Developer hereunder shall cease and terminate on the date title to the Premises vests in the condemning authority.

8.3 Partial Taking - Termination. In the event of the taking or transfer of only a part of the Premises, leaving the remainder of the Premises in such location, or in such form, shape or reduced size as to be not suitable, in the reasonable opinion of the Developer, for the continued feasible and economic operation thereon for use as a hotel and conference/convention center, and provided the Developer shall have given

the City written notice of such condemnation action within a reasonable time after the commencement thereof, the Developer may terminate this Lease, such termination to be effective as of the date title to the portion of the Premises being taken is transferred to the condemning authority.

8.4 Partial Taking - Continuation. In the event of such taking or transfer of only a part of the Premises and this Lease is not terminated pursuant to **Section 8.3** hereof, this Lease shall terminate only as to the portion of the Premises so taken or transferred as of the date title to such portion vests in the condemning authority or the date possession of such portion is taken by the condemning authority, whichever occurs first, and shall continue in force and effect as to the portion of the Premises not so taken or transferred, and the rent and other obligations of the Developer hereunder shall be equitably abated.

8.5 Allocation of Award. Any Compensation awarded or payable because of the taking of all or any portion of the Premises by eminent domain shall be divided as follows in the following order of priority:

8.5.1 *first*, the City and the Developer shall be entitled to receive their respective reasonable costs and expenses, including, without limitation, reasonable attorney's fees, in connection with the taking; and

8.5.2 *next*, any remainder of the Compensation shall be allocated between the City and the Developer based upon the present values of their respective interests in the Premises, taking into account (i) the City's reversionary interest in the Premises and the number of years remaining until the Lease Term Expiration Date and (ii) the City's or BAEDA's interests in and costs of such of the Improvements and Infrastructure as comprise any portion or portions of the Project and shall have been paid for by or on behalf of, as the case may be, the City and/or BAEDA.

8.6 Voluntary Conveyance. A voluntary conveyance to a public or governmental utility, agency or authority under threat of a taking under the power of eminent domain in lieu of formal proceedings shall be deemed a taking within the meaning of this **Article VIII**.

8.7 Temporary Taking. In the event of a taking of all or any portion of the Premises for temporary use during the Lease Term, the foregoing provisions of this **Article VIII** shall be inapplicable thereto; this Lease shall continue in full force and effect without reduction or abatement of rent; and the Developer alone shall be entitled to make claim for, recover, and retain any Compensation recoverable in respect of such temporary use, whether in the form of rent or otherwise. If the award is made in a lump sum covering a period after the Lease Term Expiration Date, then the City also shall be entitled to make claim for and participate in the award proportionately.

## **ARTICLE IX - ASSIGNMENT AND SUBLETTING**

9.1 Assignment Prohibited Without Consent. Except as provided in this **Section 9.1**, the Developer shall not voluntarily or involuntarily assign, mortgage or encumber or otherwise transfer the Developer's right, title or interest under this Lease without the City's prior written consent in each instance, which consent shall not be unreasonably withheld, delayed or conditioned. If the Developer executes an instrument which purports to assign, mortgage or encumber or otherwise transfer the Developer's right, title or interest under this Lease without the requisite prior consent of the City, then (a) such instrument shall be null and void and without any force or effect, and (b) the execution of such instrument shall constitute a Default on the part of the Developer under this Lease.

*Notwithstanding the foregoing*, the Developer may assign, mortgage, encumber and/or otherwise transfer this Lease without the City's consent to (a) any entity, directly or indirectly, through one or more intermediaries, controlling, or controlled by or under common control with the Developer so long as the

Developer is the manager of the Hotel, and (b) any Leasehold Lender and any successor, assignee or designee of a Leasehold Lender, including by foreclosure, conveyance in lieu of foreclosure or otherwise, or the purchaser at a foreclosure sale or the assignee or designee of such purchaser; *provided, however,* that the Developer shall deliver to the City, at least ten (10) days prior to any such assignment, (i) written notice of such assignment and (ii) a copy of the instrument of assignment. *Further and notwithstanding the foregoing,* any Leasehold Lender or any successor or assignee of such Leasehold Lender may assign, mortgage, encumber or otherwise transfer its right, title or interest under this Lease to any person or entity without the City's consent. In the event of any assignment by the Developer, the Developer shall have no further liability or obligation under or by reason of this Lease except for liabilities and obligations accrued prior to the date of such assignment.

9.2 Subleases. The Developer shall not enter into any sublease of all or any part of the Premises without the prior written consent of the City, which consent shall not be unreasonably withheld, delayed or conditioned; *provided, however,* the Developer shall be entitled to sublease 2,000 square feet or less of the Hotel in any single transaction and any number of transactions of 2,000 square feet or less in its sole discretion without the prior written consent of the City. Any sublease entered into by the Developer shall be expressly subject to the terms and conditions of this Lease and shall obligate the Sublessee thereunder to observe and perform all of the covenants and obligations of the Developer hereunder. *Notwithstanding the provision of any such sublease,* the Developer shall remain fully and primarily liable to the City for of all of the covenants and obligations of the Developer under this Lease.

9.3 Enforcement of Subleases. If any Sublessee breaches any provision of this Lease, then, at the request of the City, the Developer shall terminate such Sublessee's right to possession of the Premises or portion thereof occupied by such Sublessee, and shall pursue all available remedies for the eviction of such Sublessee. Such remedies shall be pursued diligently and in good faith and shall further be conducted at the Developer's sole expense.

9.4 Subordination. Unless expressly agreed to in advance by the City in writing, the City's interest under this Lease shall in no event be subject to or subordinate to (a) any mortgage affecting the Developer's leasehold interest in the Land, or (b) any other liens or encumbrances hereafter affecting the Developer's interest in the Premises.

## ARTICLE X - INSURANCE

10.1 Special Perils Insurance. From and after the Lease Term Commencement Date, the Developer shall maintain property insurance against all risks of loss to the Premises customarily covered by so-called "All Risk" or "Special Perils Form" policies as available on commercially reasonable terms and conditions in the insurance market (collectively, the "Special Perils Insurance"). Each Special Perils Insurance policy shall cover: (a) additional expense of demolition and increased cost of construction, including increased costs that arise from any changes in Laws regulating any Restoration; and (b) at least 100% of the replacement cost value of the Improvements, adjusted annually. Any Special Perils Insurance policy shall contain an agreed amount endorsement or a coinsurance waiver and replacement cost value endorsement without reduction or depreciation.

10.2 Builder's Risk Insurance. During the construction of the Project and any other construction by or on behalf of the Developer, the Developer shall maintain, or cause to be maintained, builder's risk insurance for not less than the full completed project insurable value of the Improvements, covering the same risks and otherwise complying with the same requirements as Special Perils Insurance (the "Builder's Risk Insurance"), except to the extent included in the Developer's Special Perils Insurance. Any Builder's Risk Insurance shall be written on a "completed value" form (100% non-reporting) or its equivalent and shall include an endorsement granting permission to occupy. Builder's Risk Insurance shall cover: (a) the same

perils that Special Perils Insurance shall cover; (b) loss of materials, equipment, machinery; and supplies whether on-site, in transit, or stored off-site, or of any temporary structures, hoists, sidewalks, retaining walls, and underground property; (c) soft costs, plans, specifications, blueprints and models; and (d) demolition and increased cost of construction, including increased costs arising from changes in Laws at the time of Restoration Work and coverage for operation of building Laws, all subject to a sublimit satisfactory to the City.

10.3 Liability Insurance. The Developer shall maintain the following insurance for personal injury, bodily injury, death, accident and property damage (collectively, the "Liability Insurance"): (a) public liability insurance, including commercial general liability insurance, (b) owned (if any), hired, and non-owned automobile liability insurance; and (c) umbrella liability insurance. Liability Insurance shall provide coverage of at least One Million Dollars (\$1,000,000) per occurrence annual aggregate, per location. Liability Insurance shall include coverage for liability arising from premises and operations, elevators, escalators, independent contractors, contractual liability (including liability assumed under contracts and leases), and from and after the Lease Term Commencement Date products and completed operations.

10.4 Statutory Employees' Insurance. The Developer shall maintain workers' compensation and all other insurance as required by Laws.

10.5 Documentation. The Developer shall cause the City and all Leasehold Lenders to be named as Additional Insured Parties on all Property Insurance and Liability Insurance. The Developer shall cause to be delivered to the City certificates of insurance with respect to Required Insurance by the carrier or its authorized representative. At least 30 days before any Required Insurance coverage expires, the Developer shall furnish evidence of the renewal thereof to the City, and in the event the Developer fails to do so, then without limiting the City's remedies, the City may (but shall have no obligation to) procure such Required Insurance, and the Developer shall forthwith reimburse the City for the cost thereof on demand. The Developer's obligation to reimburse the City for the premium cost of such insurance coverage shall constitute additional rent due hereunder. In each insurance policy (or an endorsement thereto), the carrier shall agree not to cancel, terminate, or non-renew such policy without giving the City sixty (60) days prior written notice (10 days notice for nonpayment of premium).

10.6 Waiver of Subrogation. Each of the City and the Developer hereby waives any rights it may have against the other on account of any loss or damage occasioned to the City or the Developer, as the case may be, their respective property, the Premises or the contents of the Premises arising from any risk covered by casualty insurance carried or required to be carried in this **Article X**, when and to the extent, that such loss or damage is actually compensated pursuant to such insurance. The City and the Developer also agree that any insurance policies obtained by each of them pursuant to this Lease shall contain endorsements waiving any right of subrogation which the insurer may otherwise have against the noninsuring party. The foregoing release and the foregoing requirement for waivers of subrogation shall be operative only so long as the same shall neither preclude the obtaining of such insurance nor diminish, reduce or impair the liability of any insurer.

## **ARTICLE XI - DAMAGE AND DESTRUCTION**

11.1 Developer's Restoration. Subject to the provisions of **Section 11.2** below, if a loss by fire or other casualty occurs which causes destruction or damage to the Improvements, then the parties agree as follows:

11.1.1 the Developer shall diligently pursue the reconstruction, restoration and repair of the Premises (the "Restoration Work") in compliance with all applicable Laws and shall cause the Improvements to be completely restored to their condition immediately prior to such casualty as expeditiously as possible;



11.1.2 if no Default has occurred and is continuing, the Developer shall have the right to adjust, and shall pay the entire cost of adjusting, such loss with the Property Insurance provider, subject to the approval of the City as to amount (which approval shall not be unreasonably withheld, delayed or conditioned), and provided that the Insurance Proceeds are deposited with the City or title company or disbursing agent reasonably acceptable to the City;

11.1.3 to the extent any Insurance Proceeds are paid to the Developer, the same shall be held by the Developer in trust solely for the purpose of paying the cost of the Restoration Work until such time as the same are deposited into escrow as required herein;

11.1.4 the Developer shall cause the Improvements to be fully restored to that condition existing immediately prior to such casualty (or such other condition as the City may approve, which approval shall not be unreasonably withheld, delayed or conditioned), not later than one year following the date of damage;

11.1.5 the Developer shall pay all costs of the Restoration Work, regardless of whether the available Insurance Proceeds are sufficient to pay such costs; and

11.1.6 the Base Rent shall not be abated or be subjected to setoff.

11.2 Termination upon Casualty. *Notwithstanding the foregoing provisions of this Article XI*, if (a) a fire or other casualty occurs causing material destruction or damage to the Improvements and (b) no Default shall have occurred and be continuing as of the date such casualty occurred, then the Developer shall have the right to terminate this Lease by giving the City written notice of termination by reason thereof within sixty (60) days after the date such casualty occurred. If this Lease is terminated as aforesaid, then the parties agree as follows:

11.2.1 the Developer shall have no obligation to perform any Restoration Work, provided that Developer performs its other obligations hereunder; and

11.2.2 the Developer shall be entitled to retain the Insurance Proceeds.

## **ARTICLE XII - DEFAULTS AND REMEDIES**

12.1 Developer's Default. The occurrence of any one or more of the following events shall constitute a "Default" on the part of the Developer:

12.1.1 The failure by the Developer to observe, pay or perform any covenant or obligation under this Lease not covered by the other provisions of this **Article XII**, as and when required, and such failure is not cured within ninety (90) days after the City gives the Developer and, if appropriate, any Leasehold Lender written notice thereof, *provided, however*, that if the nature of such failure is such that more than ninety (90) days are reasonably required to cure the same, then a Default shall not be deemed to have occurred if (1) the Developer promptly commences such cure within the aforesaid ninety (90) day period, (2) the Developer diligently and in good faith pursues such cure until fully cured, and (3) the Developer completes such cure in any event within one hundred eighty (180) days after the City shall have given such notice; or

12.1.2 The Developer shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of itself for all or a substantial part of its assets, (ii) be unable, or admit in writing its inability, to pay its debts as they mature, (iii) make a general assignment for the

benefit of creditors, (iv) be adjudicated as bankrupt or insolvent, (v) file a voluntary petition in bankruptcy, or seek an arrangement with creditors, or take advantage of any insolvency law or file an answer admitting the material allegations of a petition filed against itself in any bankruptcy, reorganization or insolvency proceedings, (vi) take any action to effectuate any of the foregoing, or (vii) have filed against it a petition in bankruptcy which is not dismissed within sixty (60) days after the filing thereof.

12.2 Remedies. If a Default occurs, then the City may exercise any one or more of the following remedies, to the extent permitted by law, or any other legal or equitable remedy permitted under applicable Laws:

12.2.1 the City may terminate this Lease (and accelerate the Lease Term Expiration Date) upon the delivery of notice thereof to the Developer and, if applicable, any Leasehold Lender, and the City shall have the right to the immediate possession of the Premises and the Developer shall peacefully surrender possession of the Premises to the City, and in connection herewith the Developer hereby waives any and all rights it may have, at law or in equity, to the receipt of notice of default or demand for forfeiture, except as expressly provided herein, and in the event the Developer holds the Premises over beyond the termination of the Lease Term, the City shall have the right to recover the City's cost in recovering possession of the Premises (including, without limitation, reasonable attorneys' fees and litigation costs and expenses), such amounts as may be permitted under applicable law and any other amounts due and payable to the City hereunder (including, without limitation, past-due Rent). In addition to the foregoing, if the Lease is terminated, then the City shall also have the right to recover from the Developer all damages allowable to the City under applicable Laws as a result of a Default under this Lease;

12.2.2 the City, without terminating this Lease shall have the right to terminate the Developer's rights to occupy and possess the Premises and to recover possession thereof and the Developer shall peacefully surrender the Premises to the City and in connection herewith the Developer hereby waives any and all rights it may have, at law or in equity, to the receipt of notice of default or demand for forfeiture, except as expressly provided herein, and the City, at the City's option and without any obligation, may cause the Premises to be prepared for reletting, and may relet the Premises or any part thereof as agent of the Developer, for a term to expire prior to, at the same time as, or subsequent to the expiration of the Lease Term, at the City's option, and in the event of such reletting, the City shall receive the rents therefor, applying the same first, to the repayment of reasonable expenses as the City may have incurred in connection with said resumption of possession, preparing for reletting and reletting (including, without limitation, remodeling costs, brokerage and attorneys' fees), and, second, to the payment of damages and amounts equal to the Rent due hereunder and to the cost of performing the other obligations of the Developer as herein provided, and the Developer, regardless of whether the City has relet the Premises, shall pay to the City damages equal to the Rent herein agreed to be paid by the Developer less the proceeds of the reletting, if any, and such Rent shall be due and payable by the Developer on the days on which Rent is due hereunder;

12.2.3 the City may perform for the Developer any of the obligations the Developer has agreed to perform under this Lease if the Developer has defaulted in the performance of such obligations and upon demand, the Developer shall reimburse the City for the City's reasonable cost of performing such obligations of the Developer, with any amounts so expended by the City to be immediately due and payable and the failure of the Developer to pay such amounts shall entitle the City to all of the rights and remedies available to it as allowed by the Laws;

12.2.4 the City shall have the right at any time after a Default, and without demand or notice, to bring an action for forcible entry, forcible detainer or forcible entry and forcible detainer or other legal proceedings as the City may elect;

12.2.5 if the City elects to file suit to enforce this Lease or otherwise to protect its rights hereunder, in addition to the other remedies provided in this Lease and by Law, the City may have the appointment of a receiver of the Premises; and

12.2.6 all remedies of the City pursuant to this **Section 12.2** and all rights and remedies of the City at law or in equity are non-exclusive, cumulative and concurrent.

### **ARTICLE XIII - HOLDOVER, SURRENDER AND REMOVAL**

13.1 Holdover. The Developer shall not remain in possession of the Premises or any part thereof after the Termination Date. If the Developer fails to peacefully surrender possession of the Premises after the Developer's right to possession has terminated, then the Developer shall indemnify and hold harmless the City for any and all claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses or expenses (including, without limitation, attorneys' fees and consequential damages) resulting from the Developer's holdover of possession of the Premises.

13.2 Surrender of Possession. Except upon closing of the Developer's purchase upon exercise of its Option to Purchase, upon the Termination Date, the Developer shall surrender to the City possession of the Premises and all Alterations, Improvements, additions and utility installations which may be made on the Premises except furniture, equipment and other personal property, subject to the Permitted Exceptions, and all Alterations, Improvements, additions and utility installations on the Premises except furniture, equipment and other personal property shall thereupon become the property of the City and shall remain upon and be surrendered with the Premises. The Developer agrees to surrender the Hotel and the other Improvements in good condition.

13.3 Developer's Quitclaim. Except upon closing of the Developer's purchase of the Premises pursuant to exercise of its Option to Purchase pursuant to **Article XVIII** hereof, upon the expiration of the Lease Term, or any sooner termination of this Lease, the Developer shall be deemed to have conveyed, without the necessity of any further act or deed to the City all right, title and interest of the Developer in and to the Premises, excepting only furniture, equipment and other personal property, and, if requested by the City, the Developer agrees to execute, acknowledge and deliver to the City a proper instrument in writing, releasing and quitclaiming the Premises, excepting only furniture and other personal property, to the City and acknowledging the termination of this Lease (except for those rights and obligations hereunder intended to survive the termination hereof), but the failure of the Developer to take any such action shall not affect the rights of the City hereunder.

### **ARTICLE XIV - REPRESENTATIONS AND WARRANTIES**

14.1 Other Representations and Warranties by City. The City represents and warrants to the Developer that as of the Effective Date as follows:

14.1.1 the City is a municipal corporation, duly organized, validly existing, and in good standing under the Laws of the State;

14.1.2 the City has all requisite power and authority, has taken all actions required by its organizational documents and applicable Laws, and has obtained all necessary consents, to execute

and deliver this Lease and to perform the City's obligations pursuant to this Lease, including, but not limited to, the extension of this Lease by the Developer as provided in **Section 3.2 hereof** and the sale of Land upon exercise of the Option to Purchase by the Developer as provided in **Section 18.1 hereof**, without further action of the City Council or a vote of the people;

14.1.3 the City's execution of this Lease does not (a) conflict with, result in a breach of the terms, conditions, or provisions of, constitute a default under, or result in a termination of, any trust, agreement, or instrument to which the City is a party or by which the City is bound; (b) violate any restriction to which the City is subject; (c) constitute a violation of any code, resolution, Law, statute, regulation, ordinance, judgment, rule, decree, order, agreement, organizational document, or bylaw applicable to the City or any portion of the Premises; or (d) other than pursuant to this Lease, result in the creation of any lien, charge, or encumbrance upon any portion of the Premises;

14.1.4 this Lease is the legal, valid, and binding agreement of the City, enforceable against the City in accordance with its terms.

14.2 Representations and Warranties by Developer. The Developer represents and warrants to the City as of the Effective Date and throughout the Lease Term as follows:

14.2.1 the Developer is an Iowa corporation, duly organized and validly existing under the laws of the State of Iowa;

14.2.2 the Developer is duly qualified to do business in the State;

14.2.3 the Developer has all requisite power and authority, has taken all actions required by its organizational documents and applicable Laws, and has obtained all necessary consents, to execute and deliver this Agreement and to perform its obligations under and pursuant to this Lease;

14.2.4 the Developer's execution of this Lease does not (a) conflict with, result in a breach of the terms, conditions, or provisions of, constitute a default under, or result in a termination of, any trust, agreement, or instrument to which the Developer is a party or by which it is bound; (b) violate any restriction to which the Developer is subject; (c) constitute violation of any code, resolution, Law, statute, regulation, ordinance, judgment, rule, decree, order, agreement, organizational document, or bylaw applicable to the Developer or its undertakings under this Lease; or (d) other than the Developer leasehold estate in the Premises, result in the creation of any lien, charge, or encumbrance upon any portion of the Premises; and

14.2.5 this Lease is the legal, valid, and binding agreement of the Developer, enforceable against the Developer in accordance with its terms.

## **ARTICLE XV - PROJECT DEVELOPMENT**

15.1 Easements and Dedications. In order to facilitate the development of the Premises, the parties understand and agree that it may be necessary, desirable, or required that street, water, sewer, drainage, gas, power lines, and other utilities, easements, dedications, and similar rights be granted or dedicated to, over, or within portions of the Premises or other land owned by the City in the vicinity of the Premises. From time to time during the Lease Term, the City agrees to execute, acknowledge, and deliver such reasonable documents as the City and the Developer mutually determine are appropriate, necessary or required by any

governmental agencies, public utilities or private companies for the purpose of granting such easements, rights and dedications.

15.2 Zoning. In the event that it is necessary or appropriate to obtain use permits, zoning classifications, zoning variances, subdivision approval, plan approval, permits or the like with respect to the Premises or any Improvements, the City shall cooperate with the reasonable requests of the Developer to execute such documents, petitions, applications and authorizations as the Developer determines are reasonably appropriate or required with respect to the Premises, or any part of the Premises, for the purposes of obtaining such use permits, zoning classifications, rezoning, variances, tentative and/or final tract and/or plan approval.

15.3 Ownership of Hotel, Improvements, and Fixtures. The Project's First Phase shall be owned by the Developer during the Lease Term. Except upon closing of the Developer's purchase pursuant to exercise of its Option to Purchase the Premises pursuant to **Article XVIII** hereof, at the Termination Date the Hotel and all such Improvements (excluding the Developer's and any Sublessee's personal property) shall remain on and with the Premises and become the property of the City.

#### **ARTICLE XVI - INDEMNITY PROVISIONS**

16.1 Indemnity by Developer. The Developer hereby agrees to indemnify, defend (by counsel reasonably acceptable to the City and BAEDA) and hold harmless all City and BAEDA Indemnified Parties from and against, any and all liabilities, losses, damages, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature resulting from or arising out of any injury to or death of any person or damage to or loss of property to the extent caused by the negligence or willful misconduct of the Developer or any Developer Indemnified Party; *provided, however*, that the Developer shall have no obligation to indemnify, defend or hold harmless any City or BAEDA Indemnified Party to the extent that any liability, loss, damage, expense, suit, demand or judgment is attributable to the negligence or willful misconduct of any City or BAEDA Indemnified Party.

16.2 Indemnity by the City and BAEDA. To the full extent allowed by applicable law, the City and BAEDA hereby agree to indemnify, defend (by counsel reasonably acceptable to the Developer) and hold harmless all Developer Indemnified Parties from and against, any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature resulting from or arising out of any injury to or death of any person or damage to or loss of property to the extent caused by the negligence or willful misconduct of the City or BAEDA or any City or BAEDA Indemnified Party; *provided, however*, that the City and BAEDA shall have no obligation to indemnify, defend or hold harmless any Developer Indemnified Party to the extent that any liability, loss, damage, expense, suit, demand or judgment is attributable to the negligence or willful misconduct of any Developer Indemnified Party.

#### **ARTICLE XVII- FINANCING**

17.1 Developer's Financing. The Developer shall have the right, at any time and from time to time, in addition to any other rights herein granted and without any requirement to obtain the City's consent, to encumber the Project's First Phase and the Developer's leasehold interest hereunder. The Developer and the City acknowledge and agree that so long as any Leasehold Mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the Leasehold Lender to the City, the following provisions

shall apply in respect of such Leasehold Lender *notwithstanding any other provisions of this Lease to the contrary*:

17.1.1 there shall be no cancellation, termination, surrender, acceptance of surrender, amendment or modification of this Lease by joint action of the City and the Developer, nor shall the City recognize any such action by the Developer alone, without in each case the prior consent in writing of the Leasehold Lender, no merger shall result from the acquisition by, or devolution upon, any person or entity of both the fee estate in the Land and the leasehold estate created by this Lease, and any such attempted cancellation, termination, surrender, amendment, modification or merger of this Agreement without the prior written consent of the Leasehold Lender shall be of no force or effect;

17.1.2 the Leasehold Lender shall be given notice of any default, arbitration or action, suit or other proceeding or dispute between the parties and shall have the right to intervene therein and be made a party thereto if the Developer fails to do so and in any event the Leasehold Lender shall receive notice, and a copy, of any award, decision or judgment rendered in such arbitration, action, suit or other proceeding;

17.1.3 if there is a condemnation or taking by eminent domain in respect of the Premises, any award or payment which is to be paid to the Developer shall be paid instead to the Leasehold Lender, and if a condemnation or taking by eminent domain results in a termination of this Lease, the Developer's portion of the award or payment shall be paid to the Leasehold Lender;

17.1.4 no payment made to the City by the Leasehold Lender shall constitute an agreement that such payment was, in fact, due under the terms of this Lease; and the Leasehold Lender having made any payment or portion thereof to the City pursuant to its wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof;

17.1.5 the Leasehold Lender shall have the right to cure the Developer's defaults under this Lease and to protect its security, and the City, BAEDA and the Developer hereby expressly grant to the Leasehold Lender, and agree that the Leasehold Lender shall have the absolute and immediate right, but shall have no obligation to exercise the same, to enter in and upon the Premises or any part thereof to such extent and as often as the Leasehold Lender, in its sole discretion, deems necessary or desirable in order to prevent or to cure any such default by the Developer;

17.1.6 in the event the Leasehold Lender or its designee (by foreclosure, conveyance in lieu of foreclosure or otherwise), or the purchaser at a foreclosure sale or the assignee or designee of such purchaser, acquires the Developer's interest in this Lease, the Leasehold Lender or its designee shall not be bound by any modification or amendment to this Lease occurring after the granting of such Leasehold Mortgage unless the same shall have been approved by the Leasehold Lender in writing;

17.1.7 in the event the Leasehold Lender or its designee (by foreclosure, conveyance in lieu of foreclosure or otherwise), or the purchaser at a foreclosure sale or the assignee or designee of such purchaser or the Leasehold Lender, acquires the Developer's interest herein, such party shall thereupon become the Developer under this Lease and hereby agrees to perform each and all of the Developer's obligations and covenants hereunder; *provided, however,* that any Defaults by the Developer under this Lease which do not involve the payment of money and which cannot, due to the nature thereof, be satisfied or cured by such party shall be deemed waived;

17.1.8 nothing in this **Section 17.1** shall be deemed or construed to create or impose any obligation, covenant or liability, whatsoever, upon the Leasehold Lender: (a) for the payment

of any Rent or any additional monetary sums due under this Lease; (b) for the performance of any of the Developer's covenants and agreements hereunder; or (c) to cure any default by the Developer under this Agreement, and neither the Developer nor the City shall have any claims against the Leasehold Lender for its failure to make any payment or take any action which it is entitled to take under this **Section 17.1** until such time as the Leasehold Lender or its designee (by foreclosure, conveyance in lieu of foreclosure or otherwise), or the purchaser at a foreclosure sale or the assignee or designee of such purchaser or the Leasehold Lender assumes possession of the Premises or acquires the Developer's interest under this Lease, and then, *provided* any subsequent transferor, assignee or other successor in interest to such leasehold estate in recordable form writing expressly assumes and agrees to its full payment and performance of the Developer's obligations under this Lease, for only as long as it remains in possession or becomes and remains the owner of the leasehold estate created under this Lease;

17.1.9 the liability of the Leasehold Lender, its successors and assigns, shall be limited in all respects to its interest in this Lease and the leasehold estate created hereby and the Leasehold Lender shall have no personal liability hereunder and no judgment or decree shall be enforceable beyond the interest of the Leasehold Lender in the leasehold estate created under this Lease or shall be sought or entered in any action or proceeding brought in connection with this Lease;

17.1.10 subject to the terms of its Leasehold Mortgage and to the extent permitted therein, should the Leasehold Lender be entitled to the appointment of a receiver for all or any part of the Premises (a "Receiver"), without regard to whether the Leasehold Lender has commenced an action to foreclose the lien of its Leasehold Mortgage and without regard to the nature of the action in which the appointment of a receiver is sought, the City agrees that it will not oppose any such appointment, whether or not entitled by the terms of this Lease to do so. *Notwithstanding anything to the contrary contained in this Lease*, the appointment of a Receiver for the Premises or any part thereof by any court at the request of Leasehold Lender or by agreement between the Developer and the Leasehold Lender, or the entering into possession thereof by such Receiver, shall not be deemed to make the Leasehold Lender a "mortgagee-in-possession" or otherwise liable in any manner with respect to the Premises and shall not, in and of itself, constitute a Default under this Lease; and

17.1.11 the Developer and the City agree that the provisions of this **Section 17.1** are for the benefit of and shall be enforceable by the Leasehold Lender and its respective successors and assigns who in recordable form writing expressly assume and comply with all the provisions of this **Section 17.1**.

17.2 Developer Bankruptcy. If the Developer becomes the subject of a bankruptcy or insolvency proceeding, then the parties agree as follows (subject to the provisions of applicable bankruptcy law):

17.2.1 the Developer shall immediately notify the Leasehold Lender thereof;

17.2.2 if this Lease is rejected in such a proceeding, then, within thirty (30) days after a written demand from the Leasehold Lender, the City shall enter into a new lease with the Leasehold Lender on the same terms as this Lease for the balance of the term of this Lease, effective upon such termination of this Lease; subject to the obligation of the Leasehold Lender to cure any outstanding and reasonably curable defaults on the part of the Developer under this Agreement; and

17.2. the Leasehold Lender will have the right to apply for an extension of such 30-day period under Bankruptcy Code Section 365(d) or any successor provision.

## ARTICLE XVIII – OPTION TO PURCHASE BY DEVELOPER

18.1 At any time on or after the thirtieth (30<sup>th</sup>) annual anniversary of the Lease Term Commencement Date, and (i) if the Developer is not then in Default under this Agreement and (ii) if the General Obligation Bond indebtedness incurred by the City in connection with the Project has been legally defeased, the City shall declare the Land surplus and, in accordance with Oklahoma Law shall transfer the Land to BAEDA, and the Developer shall have the right and option to purchase the Land (the "Option to Purchase") at the then Fair Market Value thereof, which option shall be exercisable by written notice of exercise given by the Developer to BAEDA. The date the notice of such option exercise is deemed effective shall be the "Exercise Date." The purchase price shall be payable by the Developer to BAEDA by wire transfer to an account designated by BAEDA in exchange for a warranty deed conveying BAEDA's interest with respect to the Land and quit claim deed with respect to the Improvements from BAEDA, subject to the Permitted Exceptions, within thirty (30) days after the determination of the Fair Market Value of the Land. "Fair Market Value" of the Land shall be determined as follows:

BAEDA and the Developer shall each engage a qualified independent appraiser at their respective expense to appraise the fair market value of the Land. Such appraisal shall be completed within ninety (90) days of the Exercise Date and the average of the two appraised values shall be the fair market value of the Land; *provided, however*, in the event one of the two appraised values as so determined is ten percent (10%) or more greater than the other such appraised value, (A) the two previously selected appraisers shall select a third qualified independent appraiser within fifteen (15) days after the determination of such disparity; (B) the third appraiser so selected shall within ninety (90) days after the deadline for the selection of the third appraiser, make an independent determination of the fair market value of the Land; and (C) the average of the two closest appraisals from among the three appraisals shall be the fair market value of the Land. If a third appraiser is selected, BAEDA and the Developer shall share equally the fees and expenses of the third appraiser. In the event an appraisal is not received by BAEDA and the Developer within the applicable ninety (90) day deadline, such appraisal shall be disregarded in determining the fair market value of the Land and the fair market value of the Land shall be determined based on the one appraisal or the average of the two appraisals, as the case may be, that have been obtained within the applicable time period.

## ARTICLE XIX - GENERAL PROVISIONS

19.1 Survival. All representations, warranties and indemnities of the Developer and the City under this Lease shall survive the expiration or sooner termination of this Lease.

19.2 No Waiver of Breach. No failure by either the City or the Developer to insist upon the strict performance by the other of any covenant, agreement, term or condition of this Lease, or to exercise any right or remedy consequent upon a breach or default thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Lease, but each and every covenant, condition, agreement and term of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

19.3 Notices. Unless otherwise specifically provided in this Lease or by applicable Law, any and all notices or other communications required or permitted by this Lease or by applicable Law to be served on, given to or delivered to or from any party to this Lease shall be in writing and shall be effective for all purposes if the same is sent by mailing the same by postage prepaid registered or certified mail, return receipt requested, or by overnight courier service (provided that a receipt is required at the notice address set forth below). The date of the delivery of the notice or demand shall be deemed the date of the addressee's receipt



thereof (unless the notice or demand is not accepted, in which case the date of refusal of delivery shall be deemed the date of receipt thereof).

CITY: City of Broken Arrow  
220 S 1st St  
Broken Arrow, OK  
74012 Attn: City Manager

BAEDA: Broken Arrow Economic Development Authority  
P. O. Box 610  
Broken Arrow, Oklahoma 74013  
Attn: Chairman

DEVELOPER: Stoney Creek Hospitality Corporation  
10 North Washington, Ste. 301  
Mason City, Iowa 50401 Attn: James H. Thompson, Chairman and  
CEO

Any party may change its address for the purpose of this Lease by giving written notice of such change to the other party in the manner provided in this Section.

19.4 Gender. The use herein of any gender includes all others, and the singular number includes the plural and vice-versa, whenever the context so requires.

19.5 Captions. Captions in this Lease are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Lease or any of the terms hereof.

19.6 Entire Agreement. This Lease and any other agreements referred to herein (including, but not limited to, the Development Agreement) contain the entire agreement between the parties regarding the subject matter hereof. Any prior or contemporaneous oral representations, agreements, understandings and/or statements are superseded by the terms and provisions of this Lease and shall be of no force or effect.

19.7 Waiver; Amendment. No modification, waiver, amendment, discharge or change of this Lease shall be valid unless the same is in writing and duly executed by the party against whom the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

19.8 Time. Time is of the essence of each obligation of each party hereunder.

19.9 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State, without regard to its rules relating to conflicts of laws.

19.10 Binding Effect. Subject to any provision of this Lease that may prohibit or curtail assignment of any rights hereunder, this Lease shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

19.11 Severability. If any term, provision, covenant or condition of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

19.12 Counterparts. This Lease is executed in multiple counterparts, each of which shall be deemed an original and when taken together will constitute one instrument, and may be executed and delivered by facsimile signature, which shall be considered an original.

19.13 Estoppel Certificates. Each party shall execute, acknowledge and deliver to the other party, within twenty (20) days after being so requested by the other party, a statement in writing certifying, if such is the case, that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified); the Effective Date and Lease Term Commencement Date; the dates for which the Rent and other charges have been paid; and, in such event, any alleged defaults and claims against the other party and providing such other factual information as shall be reasonably requested.

19.14 Memorandum of Agreement. Contemporaneously with the execution of this Lease, the City and the Developer shall execute and acknowledge a Memorandum of Lease (the "Memorandum") for purpose of recordation. The Memorandum shall be in the form attached hereto and made a part hereof as **Exhibit E**. Either party may record the Memorandum in the appropriate public records. Upon termination of this Lease, the Developer agrees, upon demand, to execute a recordable form release of the Memorandum.


19.15 Waiver of Jury Trial. **EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS LEASE.**

[SIGNATURE PAGE FOLLOWS]

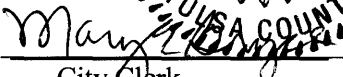
IN WITNESS WHEREOF, this Agreement has been executed by the City and the Developer, through their respective duly authorized representatives, on the dates set forth below.

The City:

THE CITY OF BROKEN ARROW, OKLAHOMA

By:   
Craig Thurmond, Mayor

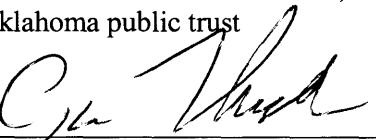
ATTEST:

By:   
City Clerk




BAEDA:

BROKEN ARROW ECONOMIC  
DEVELOPMENT AUTHORITY,  
an Oklahoma public trust

By:   
Chairman


ATTEST:

By:   
Secretary



The Developer:

STONE CREEK HOSPITALITY CORPORATION

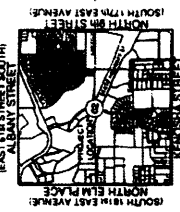
By:   
James H. Thompson, Chairman and CEO

Schedule of Exhibits

- A Legal Description of Land
- B Description of the Hotel
- C Description of the Infrastructure
- D Permitted Exceptions
- E Form of Memorandum of Ground Lease

**EXHIBIT A**

**LEGAL DESCRIPTION OF LAND**



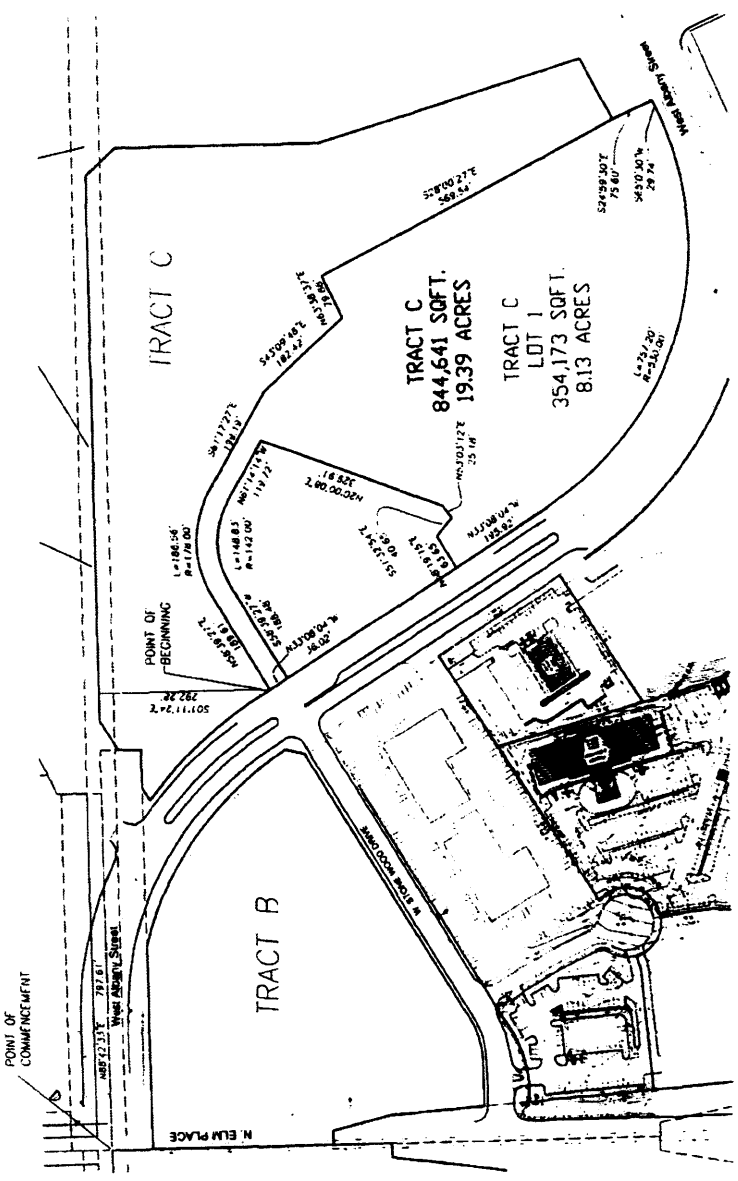
**LEGAL DESCRIPTION**  
**LOT 1 TRACT C**

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER (NW/4) OF SECTION TWO (2), TOWNSHIP EIGHTEEN (18) NORTH, RANGE FOURTEEN (14) EAST OF THE INDIAN BASE AND MERIDIAN, TULSA COUNTY, STATE OF OKLAHOMA, MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: COMMENCING AT A BRASS CAP FOUND AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER (NW/4), THENCE N63°38'37"E A DISTANCE OF 130.00 FEET TO THE POINT OF BEGINNING; THENCE S81°11'24"E A DISTANCE OF 282.38 FEET TO THE POINT OF BEGINNING; THENCE N58°39'27"E A DISTANCE OF 189.61 FEET; THENCE ALONG A CURVE TO THE RIGHT WITH A CHORD BEARING OF N84°41'00"E, CHORD DISTANCE OF 178.16 FEET, A RADIUS OF 178.00 FEET FOR 186.58 FEET; THENCE S61°17'27"E A DISTANCE OF 399.19 FEET; THENCE S43°09'48"E A DISTANCE OF 182.42 FEET; THENCE N63°38'37"E A DISTANCE OF 79.88 FEET; THENCE S28°00'77"E A DISTANCE OF 569.54 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF ALBANY STREET; THENCE S34°59'30"E A DISTANCE OF 75.60 FEET ALONG SAID NORTH RIGHT OF WAY LINE OF ALBANY STREET; THENCE S55°00'30"W CONTINUING ALONG SAID RIGHT OF WAY ALONG A CURVE TO THE LEFT WITH A CHORD BEARING OF S61°17'27"E, CHORD DISTANCE OF 68.44 FEET, A RADIUS OF 530.00 FEET FOR 752.20 FEET; THENCE S68°44'11"E A DISTANCE OF 530.00 FEET; THENCE S81°11'24"E A DISTANCE OF 282.38 FEET; THENCE ALONG SAID NORTH RIGHT OF WAY N63°38'37"E A DISTANCE OF 130.00 FEET; THENCE N58°39'27"E A DISTANCE OF 40.65 FEET; THENCE N63°03'12"E A DISTANCE OF 25.18 FEET; THENCE N20°00'00"E A DISTANCE OF 329.91 FEET; THENCE N61°14'14"W A DISTANCE OF 119.72 FEET; THENCE ALONG A CURVE TO THE LEFT WITH A CHORD BEARING OF S88°41'00"W, CHORD DISTANCE OF 142.11 FEET, A RADIUS OF 142.00 FEET FOR 148.83 FEET; THENCE S58°39'27"W A DISTANCE OF 188.48 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF ALBANY STREET; THENCE ALONG SAID RIGHT OF WAY N63°03'12"W A DISTANCE OF 36.02 FEET TO THE POINT OF BEGINNING, SAYING AN AREA OF 394.173 SQUARE FEET OR 8.13 ACRES MORE OR LESS.

Witness my hand and seal this date

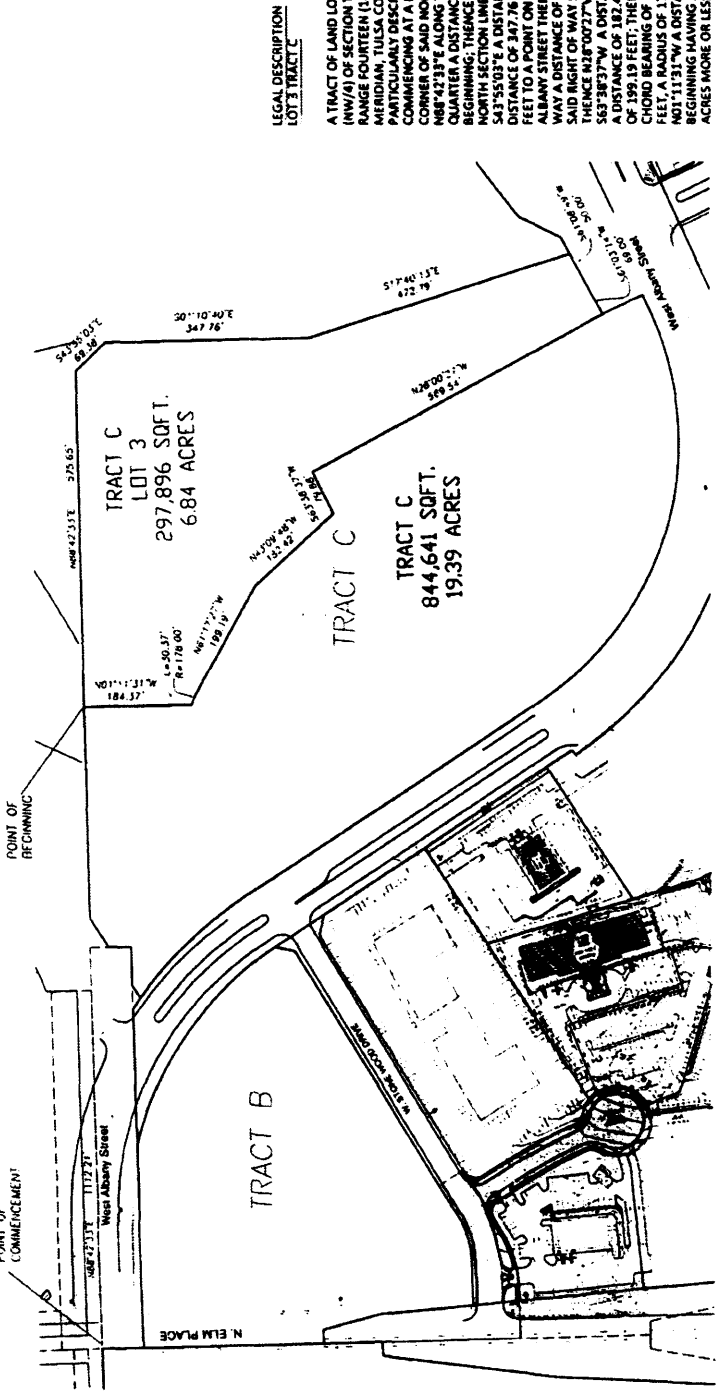
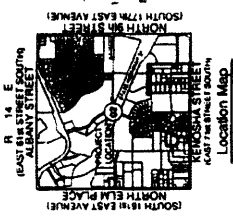


DAVID L. CANTRELL  
 LICENSED PROFESSIONAL LAND  
 SURVEYOR  
 OKLAHOMA NO. 351  
 5/07/2014



**BASIS OF BEARINGS**  
 BEARINGS BASED ON A BEARING OF S01°11'17"E ALONG THE WEST LINE OF THE NW/4 OF SECTION 2, T-18-N, R-14-E, TULSA COUNTY, STATE OF OKLAHOMA

|   |           |             |      |   |      |         |      |          |  |      |  |
|---|-----------|-------------|------|---|------|---------|------|----------|--|------|--|
| DATE  | REVISIONS | DATE        |      |   |      | DATE    | DATE |          |  |      |  |
|   |           | BY          | DATE | BY  | DATE | DATE    |      |          |  |      |  |
|   |           | DATE        | DATE | DATE                                      | DATE | DATE    |      |          |  |      |  |
|   |           |             |      |   |      |         |      |          |  |      |  |
|   |           | PROJECT NO. |      | SHEET                                     |      | PROJECT |      |          |  |      |  |
| <b>STONE WOOD HILLS</b><br>Sec. 2, T18N, R14E<br>Broken Arrow, Oklahoma   |           |             |      | <b>TRACT C</b><br>LOT 1 LEGAL DESCRIPTION |      |         |      | DATE     |  |      |  |
|   |           |             |      |   |      |         |      | DRAWN    |  | DATE |  |
|   |           |             |      |   |      |         |      | APPROVED |  | DATE |  |
| <b>COOK &amp; ASSOCIATES ENGINEERING INC.</b><br>Engineering & Surveying<br>3110 N. A. Street<br>Broken Arrow, OK 74012<br>Phone: 918-259-1100<br>Fax: 918-259-1101<br>Website: www.cookandassociates.com<br>Equal Opportunity Employer |           |             |      |   |      |         |      |          |  |      |  |



**LEGAL DESCRIPTION  
LOT 3 TRACT C**

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER (NW/4) OF SECTION TWO (2), TOWNSHIP EIGHTEEN (18) NORTH, RANGE FOURTEEN (14) EAST OF THE INDIAN BASE AND MERIDIAN, TULSA COUNTY, STATE OF OKLAHOMA, MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: COMMENCING AT A BRASS CAP FOUND AT THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER (NW/4); THENCE N84°42'33"E ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER A DISTANCE OF 1113.21 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N84°42'33"E ALONG SAID NORTH SECTION LINE A DISTANCE OF 575.65 FEET; THENCE S43°55'03"E A DISTANCE OF 69.38 FEET; THENCE S01°10'40"E A DISTANCE OF 347.76 FEET; THENCE S17°40'15"E A DISTANCE OF 472.79 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WEST LINE A DISTANCE OF 581.70 FEET; THENCE CONTINUING ALONG SAID WEST LINE A DISTANCE OF 50.00 FEET; THENCE CONTINUING ALONG SAID WEST LINE A DISTANCE OF 69.00 FEET; THENCE N21°00'27"W A DISTANCE OF 569.54 FEET; THENCE S63°38'37"W A DISTANCE OF 79.88 FEET; THENCE N43°09'48"W A DISTANCE OF 182.42 FEET; THENCE ALONG A CURVE TO THE LEFT WITH A CHORD BEARING OF N66°10'44"W, CHORD LENGTH OF 30.33 FEET, A RADIUS OF 178.00 FEET FOR 30.37 FEET; THENCE N01°11'31"W A DISTANCE OF 164.37 FEET TO THE POINT OF BEGINNING HAVING AN AREA OF 297,896 SQUARE FEET OR 6.84 ACRES MORE OR LESS.

Witness my hand and seal this date



DAVID L. CANTRELL  
LICENSED PROFESSIONAL LAND SURVEYOR  
OKLAHOMA NO. 351  
5/07/2014

**BASIS OF BEARINGS**  
BEARINGS BASED ON A BEARING OF S01°11'17"E ALONG THE WEST LINE OF THE NW/4 OF SECTION 2, 1--18--N, R--14--E, TULSA COUNTY, STATE OF OKLAHOMA

|      |            |  |  |  |   |  |  |                             |
|------|------------|--|--|--|---|--|--|-----------------------------|
| DATE | NO. RECORD |  | COOK & ASSOCIATES ENGINEERING INC.<br>Engineering • Surveying • Construction Management<br>1000 West 10th Street<br>Tulsa, Oklahoma 74103<br>Telephone: (918) 438-2800<br>Fax: (918) 438-2801<br>Copyright © 2014 Cook & Associates Engineering Inc. |  | <b>STONE WOOD HILLS</b><br>Sec. 2, T18N, R14E<br>Broken Arrow, Oklahoma | <b>TRACT C</b><br><b>LOT 3 LEGAL DESCRIPTION</b> | NAME<br>TITLE<br>COMPANY NAME<br>ADDRESS<br>CITY<br>STATE<br>ZIP | DATE<br>TIME<br>PROJECT NO. |
| DATE | NO. RECORD |  |  |  |   |  | NAME<br>TITLE<br>COMPANY NAME<br>ADDRESS<br>CITY<br>STATE<br>ZIP | DATE<br>TIME<br>PROJECT NO. |

## **EXHIBIT B**

### **DESCRIPTION OF HOTEL**

The Hotel will consist of approximately one hundred and fifty thousand (150,000) square feet, containing approximately one hundred and seventy (170) guestrooms and incorporating a thirty five thousand to forty thousand (35,000-40,000) square foot conference facility. The Hotel will offer food service, bar and lounge services, state-of-the-art business technology, and an indoor-outdoor pool facility based upon an "urban lodge" design. The total Hotel cost, including furniture, fixtures, equipment and leaseholder improvements, is projected to be approximately twenty three million five hundred and fifty thousand dollars (\$23,550,000).

## EXHIBIT C

### DESCRIPTION OF INFRASTRUCTURE

BAEDA will provide funding in the amount of Five Million Five Hundred and Fifty Thousand dollars (\$5,550,000) for the costs of Infrastructure improvements on the Land. Infrastructure and the costs thereof to be borne by BAEDA may include all expenses of testing and inspection of the Land, grading on the Land to render it suitable for construction of the Hotel and any Improvements, hook up to water, sanitary sewer, and storm water mains necessary to serve the Land, the Hotel, and the Improvements, access to roads for ingress and egress to the Land, the Hotel, and the Improvements (whether before, during, or after construction of the Hotel and the Improvements), construction of paved parking lot improvements on the Land for the Hotel and the Improvements, parking lot lighting on the Land for the Hotel and the Improvements, landscaping and landscape features on the Land for the Hotel and the Improvements, retaining walls and outdoor patios and sidewalks on the Land for the Hotel and the Improvements, exterior signage required for the Hotel and the Improvements, monument features for the Hotel and the Improvements, technology infrastructure and equipment to serve the Hotel and the Improvements, and architectural and engineering services for the Hotel and the Improvements.



**EXHIBIT D**  
**PERMITTED EXCEPTIONS**

**TO BE SUPPLEMENTED PRIOR TO THE  
EFFECTIVE DATE UPON MUTUAL  
AGREEMENT OF THE PARTIES**

**EXHIBIT E**

FORM OF MEMORANDUM OF GROUND LEASE

STATE OF OKLAHOMA   §  
  §  
COUNTY OF TULSA     §

This is a memorandum of that certain unrecorded Ground Lease (as the same may be amended or restated from time to time, the "Lease") dated as of November 4, 2014 by \_\_\_\_\_ and \_\_\_\_\_ between **THE CITY OF BROKEN ARROW, OKLAHOMA** (the "City"), **BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY** ("BAEDA") and **STONEY CREEK HOSPITALITY CORPORATION** (the "Developer"), concerning the land described in **Exhibit A** attached hereto and made a part hereof (the "Land").

Under the Lease, the City leases the Land to the Developer, and the Developer leases the same from the City, for the term and under the provisions contained in the Lease. Reference is made to the Lease for a complete statement of the terms, conditions and provisions thereof. The purpose of this Memorandum is to provide notice of the Lease and certain provisions thereof. In the event of any conflict between this Memorandum and the Lease, the Lease shall govern.

The term of the Lease is to commence on the date the Hotel (as defined in the Lease) first becomes fully operational and will continue for a term of seventy-five (75) years thereafter, and is subject to extension by the Developer for one (1) additional term of twenty-four (24) years.

The Developer has the option to purchase the Land and improvements thereon on the terms and conditions set forth in the Lease.

This Memorandum is not a complete summary of the Lease. Provisions in this Memorandum shall not be used in interpreting the Lease.

**IN WITNESS WHEREOF**, the parties hereto have caused this Memorandum of Agreement to be executed by their respective duly authorized officers, effective as of the 4<sup>th</sup> day of November, 2014.

DEVELOPER:  
STONEY CREEK HOSPITALITY CORPORATION

By: [Signature]  
James H. Thompson, Chairman and CEO



CITY:  
THE CITY OF BROKEN ARROW, OKLAHOMA

By: [Signature]  
Craig Thurmond, Mayor

BAEDA:  
BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY,  
an Oklahoma public trust

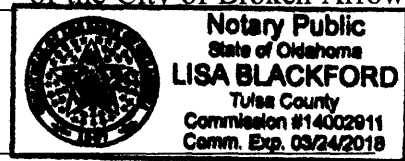
By *Craig Thurmond*  
Chairman

STATE OF OKLAHOMA )

COUNTY OF TULSA )

ACKNOWLEDGMENT

The forgoing instrument was acknowledged before me this 5<sup>th</sup> day of November, 2014  
by Craig Thurmond, the Mayor of the City of Broken Arrow,  
Oklahoma.



Notary Public *Lisa Blackford* (SEAL)

My Commission No. is 14002911 and expires 3/24/2018.

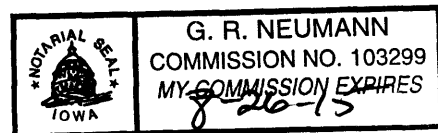
STATE OF IOWA )

COUNTY OF POLK )

ACKNOWLEDGMENT

The forgoing instrument was acknowledged before me this 15<sup>th</sup> day of November, 2014  
by James H. Thompson, the Chairman and CEO of Stoney Creek Hospitality Corporation, an Iowa  
corporation.

Notary Public *G. R. Neumann* (SEAL)



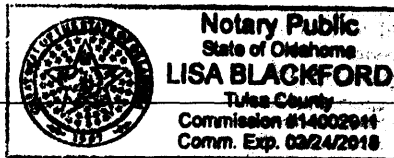
STATE OF OKLAHOMA )

COUNTY OF TULSA )

ACKNOWLEDGMENT

The forgoing instrument was acknowledged before me this 5<sup>th</sup> day of November, 2014  
By Craig Thurmond, the Chairman of the Broken Arrow Economic Development Authority.

Notary Public Lisa Blackford (SEAL)



My Commission No. is 14002911 and expires 3/24/2018.