

Big Bang

In a public-private partnership with Cordish Companies and their partners, the Texas Rangers, the City of Arlington continues to build on its economic momentum and leverage assets in its Entertainment District through the development of both a residential/mixed-use project and an office building. Cordish Companies previously developed Arlington's Texas Live! entertainment complex and the Live! by Loews hotel, both of which are operating successfully.

The residential/mixed-use project will be located at the southeast corner of East Randol Mill Road and Nolan Ryan Expressway and will contain approximately 280 residential units; 100,000 square feet of restaurant, retail, family-oriented uses, and small business incubator space; and a 1,900-space parking facility (1,500 spaces of which would be available to the public). The parking facility will be publicly owned, while the remaining components will be privately owned.

The 200,000 square-foot office building is expected to be located at the northeast corner of East Randol Mill Road and Nolan Ryan Expressway and is planned to be integrated into the southwest corner of the existing Globe Life Park structure. The office building is a market-driven project and will only proceed once an anchor tenant has been secured. In addition, associated public improvements including pedestrian amenities, lighting, streetscaping, and improvements to Johnson Creek Linear Park are contemplated as part of the project. The Johnson Creek Linear Park improvements were previously authorized.

The total cost of the residential/mixed use and office building projects, including the parking facility and associated public improvements, is estimated at nearly \$250 million. For the residential/mixed-use project and office building, the developer is projected to make a \$200 million investment and is requesting annual reimbursement from the available TIRZ Number Five City increment until the TIRZ expires in 2052. Additionally, the City will make a one-time initial grant of \$11 million towards the project. These reimbursements and the grant are authorized via Chapter 380 of the Texas Local Government Code and Chapter 311 of the Texas Tax Code.

These projects represent further achievement of public policy objectives of the City and align with the 2014 Economic Development Strategic Plan policy objective to implement public-private partnerships that catalyze development in the entertainment district and bring essential elements, such as residential options, office space, and dining and shopping destinations. In addition, these projects align with the objective to leverage district assets and encourage continued development in the 2015 Comprehensive Plan, and further the City Council's priority to invest in Arlington's economy.

To fund the public improvements the City issued bonds backed by Tax Increment Reinvestment Zone (TIRZ) Number Five. The TIRZ Number Five Board of Directors amended the Project and Finance Plan for TIRZ Number Five, which would allow for these residential/mixed-use and office building projects to receive the reimbursements contemplated above.

The residential/mixed-use project commenced at the end of 2020 and is scheduled to be completed in 2023. If an anchor tenant is secured, the office building project would commence at that time and be completed within thirty-six months.

The financial impact to TIRZ Number Five for the residential/mixed-use and office building projects, as well as potential future projects, is 100% of the available TIRZ increment that is solely contributed by the City over the life of the TIRZ. Additionally, the city will make a one-time initial grant of \$11 million. The financial impact to TIRZ Number Five for the parking facility and associated public improvements will total \$49.6 million in TIRZ increment backed bonds plus interest on the bonds.

Texas Live - Development Grants

Maximum Authorization	\$	50,000,000.00
Amount Paid to Date		<u>50,000,000.00</u>
Remaining Authorization	\$	-

CITY Tax Grants Paid to Date (thru FY23)

	City Sales Tax	City MB Tax	City HOT	City Property Tax	TOTAL
Texas Live	478,021.26	940,952.86	-	256,358.93	1,675,333.05
Live by Loews	375,829.00	195,629.79	4,819,759.63	221,735.10	5,612,953.52
TOTAL	\$ 853,850.26	\$ 1,136,582.65	\$ 4,819,759.63	\$ 478,094.03	\$ 7,288,286.57

STATE Tax Refunds Paid to Date*

	State Sales Tax	State HOT	TOTAL
Texas Live	3,048,182.61	-	3,048,182.61
Live by Loews	2,356,809.66	3,861,057.85	6,217,867.51
TOTAL	5,404,992.27	3,861,057.85	9,266,050.12

*State sends tax refunds to the City; we pass the payments through to TX Live and Live by Loews.

NOTE: City tax rebates and State tax refunds payments are sent to Arlington Live LLC and Arlington Stadium Hotel Owner, LLC. I am not sure how the funds are then allocated between Cordish, Rangers, and Loews.

Johnson Creek - Project Costs

Maximum Authorization	\$	10,800,000.00
Total Reimbursement Paid		<u>9,977,359.46</u>
Balance	\$	822,640.54

NOTE: Johnson Creek Project is complete. Cordish mentioned possibility of requesting another \$1M for additional improvements, but that would require a new agreement, project scope, etc.

Big Bang - Annual TIRZ ED Grant

City TIRZ Increment Paid to Date (FY20-FY23)	\$	12,808,131.03
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Big Bang - Phase 1 Project (Residential Building & Co-Working)

Maximum Authorization	\$	5,500,000.00
Amount Paid to Date (Residential)		922,400.10
Amount Paid to Date (Spark)		<u>4,577,599.90</u>
Total Paid to Date	\$	5,500,000.00
Remaining Authorization	\$	-

Big Bang - Phase 2 Project (Mixed-Use &/or Office Building)

Maximum Authorization	\$	5,500,000.00
Amount Paid to Date		-
Remaining Authorization	\$	<u>5,500,000.00</u>

Big Bang - Phase 1 Site Improvements

Maximum Authorization	\$	3,750,000.00
Amount Paid to Date		-
Remaining Authorization	\$	<u>3,750,000.00</u>

Big Bang - Parking Facility & Phase 2 Site Improvements

Maximum Authorization	\$	36,750,000.00
Amount Paid to Date		-
Remaining Authorization	\$	<u>36,750,000.00</u>

Big Bang - Phase I Project

Authorization 5,500,000

Draw	Wire Amount	Date	Notes	Resi	Spark
Draw 1 (Partial)	260,613.03	8/4/2021	Combined	227,637.17	32,975.86
Draw 1-2 (Partial)	199,985.72	8/30/2021	Combined	199,985.72	
Draw 3 (Resi Only)	494,777.21	9/28/2021	Resi Only	494,777.21	
Draw 3 (Spark Only)	9,659.45	9/28/2021	Spark Only		9,659.45
Draw 4	52,000.59	1/25/2022	Spark Only		52,000.59
Draw 5	46,761.90	4/25/2022	Spark Only		46,761.90
Draw 6	93,448.15	5/9/2022	Spark Only		93,448.15
Draw 7	251,377.09	6/14/2022	Spark Only		251,377.09
Draw 8	269,232.52	7/7/2022	Spark Only		269,232.52
Draw 9	180,552.98	8/5/2022	Spark Only		180,552.98
Draw 10	692,767.71	9/6/2022	Spark Only		692,767.71
Draw 11	814,061.80	10/6/2022	Spark Only		814,061.80
Draw 12	144,804.00	10/14/2022	Spark Only		144,804.00
Draw 13	617,580.28	11/7/2022	Spark Only		617,580.28
Draw 14	997,579.50	12/15/2022	Spark Only		997,579.50
Draw 15 (FINAL)	374,798.07	1/13/2023	Spark Only		374,798.07
Paid to Date	5,500,000.00			922,400.10	4,577,599.90
				17%	83%
Remaining Authorization	-				

Big Bang TIRZ 5 Economic Development & Reimbursement Agreement

Incentives Section	Type of Grant/Use of Funds	Source of Funds (Per Agreement)	Authorization	Reimbursement Schedule	Funding Source/Potential Funding Source	Paid to Date	Payment Date	Account(s) Charged	Remaining Authorization	
3(b)	Phase 1 Site Improvements	Available Funds: Available Bond Proceeds &/or Encumbered Funds (only if Available Bond Proceeds are insufficient)	3,750,000	Developer may request reimbursement after executing the limited liability company agreement for the Residential Building and providing documentation of Permitted Project Costs incurred.	TIRZ 5 Bond Proceeds	-			3,750,000	
4(b)	Phase 2 Site Improvements	Available Bond Proceeds (secured by Non-City Increment)	3,750,000	After Developer provides the Intention to Proceed Notice, the City/TIRZ shall make efforts to obtain Available Funds (on/before Funding Date totaling \$36,750,000.) Developer may request reimbursement after providing the City with a completion guaranty and documentation of Permitted Project Costs incurred.	TIRZ Debt, General Fund, Impact Fee Recoupment, CO Debt*	-			3,750,000	
	Parking Facility (Liner Garage)	Available Bond Proceeds (secured by Non-City Increment)	33,000,000		TIRZ Debt, General Fund, Impact Fee Recoupment, CO Debt*	-			33,000,000	
6(a)	Phase 1 Project - Residential Building & Co-Working Project	Lawfully available and committed funds (Water → IVCF contemplated)	5,500,000	Developer may request payment any time after providing City with the following (1) written notice that limited liability company agreements have been executed for the Residential Building and the Co-Working Project, and (2) a repayment guaranty for the full amount of the City ED Grant if the Phase 1 Project does not timely reach Substantial Completion.	Funds are committed in IVCF		260,613	8/4/2021	IVCF	-
							199,986	8/30/2021		
							494,777	9/28/2021		
							9,659	9/28/2021		
							52,001	1/25/2022		
							46,762	4/25/2022		
							93,448	5/9/2022		
							251,377	6/14/2022		
							269,233	7/7/2022		
							180,553	8/5/2022		
							692,768	9/6/2022		
							814,062	10/6/2022		
							144,804	10/14/2022		
							617,580	11/7/2022		
	997,580	12/15/2022								
	374,798	1/13/2023								
6(a)	Phase 2 Project - Mixed-Use Building &/or Office Building	Lawfully available and committed funds (Water → IVCF)	5,500,000	Developer may request payment any time after providing the City with a completion guaranty for the Mixed-Use Building and Parking Facility.	Funds are committed in IVCF	-			5,500,000	
6(b)	Annual TIRZ ED Grant	100% of Available City TIRZ Increment on deposit each year	N/A; 2020-2053	TIRZ ED Grants are due annually by September 30th, commencing in 2020 and continuing through 2053.	N/A		3,723,391	9/30/2020	TIRZ 5 - City Increment Only	N/A
							3,293,095	9/30/2021		
							2,470,921	9/30/2022		
							3,320,724	9/30/2023		

Calculation of TIRZ 5 Annual Increment Payment to Cordish Big Bang Agreement

Fiscal Year	Tax Year	Taxable Value Increment*	City Tax Rate*	City TIRZ Increment	Less Property Tax Grants		Available City TIRZ Increment
					Live by Loews	Texas Live	
		A	B	C = A * B / \$100	D	E	F = C + D + E
FY20	2019	596,697,325	0.624000	3,723,391	-	-	3,723,391.31
FY21	2020	529,011,296	0.622500	3,293,095	-	-	3,293,095.32
FY22**	2021	444,624,077	0.619800	2,755,780	(118,188.38)	(166,670.89)	2,470,920.76
FY23	2022	585,855,017	0.599800	3,513,958	(103,546.72)	(89,688.04)	3,320,723.62
				13,286,225	(221,735.10)	(256,358.93)	12,808,131.01

**** FY22 Property Tax Grants for Texas Live and Live by Loews includes FY21 and FY22.**

b. The TIRZ shall provide Developer an annual TIRZ Economic Development Grant, commencing in 2020 and continuing for the Term of this Agreement, in an amount equal to the amount of Available City TIRZ Increment on deposit for such year. The TIRZ shall make each annual TIRZ Economic Development Grant to Developer on or before September 30th of each year and shall provide Developer with an annual report on the projected amount of Available City TIRZ Increment for the following calendar year by no later than March 31st of each year. The TIRZ represents and warrant to Developer that the payment of the TIRZ Economic Development Grants are not subject to annual appropriation of the TIRZ or any other Governmental Authority, and the TIRZ has not and will not pledge or otherwise commit to pay any expenditure from the Available City TIRZ Increment for the Term of this Agreement. Nothing in this Agreement shall be construed to require the TIRZ or the City to provide the TIRZ Economic Development Grants from any other source of funds other than the Available City TIRZ Increment. The City shall not take any action that would shorten the term of the TIRZ, which currently is scheduled to expire on December 31, 2052 (with the last year of tax increment being deposited in calendar year 2053), nor take any action to reduce the boundary of the TIRZ.

**City of Arlington TIRZ 5
Economic Development and Reimbursement Agreement (aka "Big Bang")
Section 3(b) - Phase 1 Site Improvements**

Project and Finance Plan

Water, Sanitary Sewer, and Storm Water Facilities and Improvements	12,353,182	2.0%
Parking Improvements	135,885,005	22.0%
Street and Intersection Improvements	46,324,434	7.5%
Open Space, Park and Recreation Facilities and Improvements	46,324,434	7.5%
Public Facilities	253,240,237	41.0%
Economic Development Grants	111,178,640	18.0%
Administrative Costs	12,353,182	2.0%
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	617,659,114	100.0%

Official Statement (Use of Proceeds)

Water, Sanitary Sewer, and Storm Water Facilities and Improvements
Public Parking Improvements
Street and Intersection Improvements
Open Space and Park Improvements
Deposit to the Debt Service Reserve Fund
Paying Capitalized Interest
Paying the Costs of Issuance of the Bonds

Economic Development and Reimbursement Agreement

"Phase 1 Site Improvements"

Improvements to public streets, sidewalks, and intersections located in or adjacent to Ph. 1 Project
Including but not limited to landscape and streetlights
As well as Improvements to the public water, sanitary sewer, and storm water facilities
Located in or adjacent to any such site
and other public improvements identified as eligible project costs in the Amended Plan (PFP)

"Permitted Project Costs"

Cost to acquire, design, develop, and construct the Project,
including but not limited to:
acquisition and preparation costs of the land;
land planning, design, architectural and engineering costs;
costs to construct, equip, and furnish the project;
costs of water, sewer, drainage, and street improvements necessary to preserve the project;
permits, license, and inspection fees;
and fees and expenses of the architect, general contractor, subcontractors, consultants, and similar persons

"Phase 1 Project"

means the Residential Building and the Co-Working Project

TIRZ 5 ECONOMIC DEVELOPMENT AND REIMBURSEMENT AGREEMENT

THIS TIRZ 5 ECONOMIC DEVELOPMENT AND REIMBURSEMENT AGREEMENT (“Agreement”) is executed as of this 17th day of December, 2019, by and among **TAX INCREMENT REINVESTMENT ZONE NUMBER FIVE, CITY OF ARLINGTON, TEXAS – ENTERTAINMENT DISTRICT** (“TIRZ”), as established by the City of Arlington, the **CITY OF ARLINGTON, TEXAS** a home-rule city and municipal corporation of Tarrant County, Texas (the “City”), and **ARLINGTON BALLPARK DISTRICT DEVELOPER HOLDING COMPANY, LLC**, a Delaware limited liability company (“Developer”). TIRZ, City, and Developer may be referred to jointly herein as the “Parties” and individually as a “Party.”

WITNESSETH:

WHEREAS, on December 19, 2006, the Arlington City Council adopted Ordinance No. 06-117 establishing the TIRZ, in accordance with the Tax Increment Financing Act, as amended, (Texas Tax Code, Chapter 311), to promote development in the area through the use of tax increment financing; and

WHEREAS, on May 21, 2019, the Arlington City Council adopted Ordinance No. 19-028 approving the Amended Financing Plan and Project Plan (the “**Amended Plan**”) for Tax Increment Reinvestment Zone Number Five, City of Arlington, Texas – Entertainment District (the “**Entertainment District**”); and

WHEREAS, on December 17, 2019, the Arlington City Council adopted Ordinance No. 19-066 extending the term of the Entertainment District until 2052 and increasing the percentage of tax increment contributed by the City to one hundred percent (100%); and

WHEREAS, City and Developer desire to improve the Entertainment District through the construction of the Mixed-Use Building (defined herein), Office Building (defined herein), and related public improvements; and

WHEREAS, in accordance with the Amended Financing Plan and Project Plan for Tax Increment Reinvestment Zone Number Five, City of Arlington, Texas – Entertainment District, the Parking Facility (defined herein) (exclusive of the Residential Parking Areas (defined herein)) and the Site Improvements (defined herein) are eligible projects to be financed by the TIRZ; and

WHEREAS, Section 311.010(h) of the Tax Increment Financing Act provides that the TIRZ may establish and provide for the administration of one or more programs for the public purpose of developing and diversifying the economy of the zone, eliminating unemployment and underemployment in the zone, and developing or expanding transportation, business, and commercial activity in the zone, including programs to make grants and loans from tax increment of the zone; and

WHEREAS, the TIRZ has found that providing a program consisting of grants of funds to Developer in exchange for Developer's completion of the Mixed-Use Building (defined herein) and Office Building (defined herein) proposed by Developer will promote local economic development and stimulate business and commercial activity and create jobs within the zone (hereafter referred to as the "Program"); and

WHEREAS, the TIRZ has found that the Program will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the Program contain controls likely to ensure that the public purpose is accomplished;

WHEREAS, Chapter 380 of the Texas Local Government Code and Section 311.010 of the Texas Tax Code provide statutory authority for establishing and administering the Program of Grants (defined herein); and

WHEREAS, the City has found that use of the Parking Facility to provide public parking for the adjacent sports venues and other developments located in the Zoning District (defined herein) in the manner that the surface parking lots are currently utilized in the Zoning District and subject to an appropriate voucher or validation system, discounted or free parking for the adjacent entertainment venue, is a public purpose and that, therefore, TIRZ Increment (as defined below) may be used by the City and TIRZ to finance construction of the Parking Facility.

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

1. Definitions.

The following terms shall have the meaning set forth below in this Section 1 for all purposes hereof:

a. **"Affiliate"** means with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, controlled by, or is under common control with the specified Person. For the purpose of this definition, "control" means the ability to directly or indirectly, by voting securities, partnership or member interests, contract or otherwise, direct or cause the direction of the policies or management of the specified Person. Two persons may be Affiliates even if such Persons have different minority equity owners that each have the right to approve certain actions of such Person, such as the sale, financing or leasing of an asset of such Person.

b. **"Applicable Law"** means any law, statutes, ordinances, regulations, guidelines, or requirements, now in force or hereafter enacted by any applicable Governmental Authority.

c. **"Arbitration"** is defined in Section 13(l) of this Agreement.

- d. “**Arbitration Notice**” is defined in Section 13(l) of this Agreement.
- e. “**Arbitration Procedures**” is defined in Section 13(l) of this Agreement.
- f. “**Arbitrator**” is defined in Section D.1 of the Arbitration Procedures.
- g. “**Available Funds**” means Encumbered Funds and/or Available Proceeds.
- h. “**Available Proceeds**” means the aggregate proceeds of the TIRZ Bonds, net of financing costs, expenses, capitalized interest, if any, reserve funds or other deposits required by the indenture(s) or other instruments authorizing the TIRZ Bonds.
- i. “**Available City TIRZ Increment**” means the annual incremental ad valorem tax revenue contributed by the City of Arlington to the tax increment fund for Tax Increment Reinvestment Zone Number Five, City of Arlington, Texas- Entertainment District but excluding thirty percent (30%) of the annual incremental ad valorem revenue contributed by the City of Arlington with respect to Texas Live! and Live by Loews through 2036 and one hundred percent (100%) of the annual incremental ad valorem revenue contributed by the City of Arlington with respect to Texas Live! and Live by Loews through 2050.
- j. “**BPP Entity**” means Ballpark Parking Partners LLC, or its Affiliate.
- k. “**Business Day**” means any day except Saturday, Sunday, or any other day on which banking institutions are legally authorized to close in the City of New York or Tarrant County, Texas.
- l. “**City Economic Development Grant**” means the grant to be paid from City to Developer as provided for in Section 7(a) of this Agreement.
- m. “**City Representative**” is defined in Section 13(q) of this Agreement.
- n. “**City Manager**” means the City Manager of the City.
- o. “**Closing**” means the final execution of the real estate transactions provided for in Section 6 (e).
- p. “**Closing Date**” means the date the Closing occurs in connection with the Mixed-Use Building.
- q. “**Development and Reimbursement Agreement**” means that certain Development and Reimbursement Agreement by and among the City, TIRZ, and Arlington Stadium Hotel Creek Developer, LLC executed as of June 1, 2019.
- r. “**Dispute or Controversy**” is defined in Section 13(l) of this Agreement.
- s. “**Encumbered Funds**” is defined in Section 3(a) of this Agreement.

- t. **“Entertainment District”** is defined in the Recitals.
- u. **“Funding Date”** means November 1, 2020, as same may be extended pursuant to Section 6(e)(iv) of this Agreement.
- v. **“Governmental Authority”** means any Federal, State or local governmental entity (including any taxing authority) or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof).
- w. **“Governmental Authorization”** means all approvals, consents, decisions, authorizations, certificates, confirmations, exemptions, applications, notifications, concessions, acknowledgments, agreements, licenses, permits, import permits, employee visas, environmental permits, decisions, right-of-ways, and similar items from any Governmental Authority, including a liquor license from the Texas Alcohol and Beverage Commission.
- x. **“Grants”** means the City Economic Development Grant and the TIRZ Economic Development Grants.
- y. **“Live by Loews”** means the hotel and convention center annex located at 1600 E Randol Mill Road, Arlington, TX 76011.
- z. **“Mixed-Use Building”** means the improvements constructed on the Mixed-Use Building Site containing approximately 100,000 square feet of commercial space, including office space, a business incubator and retail space (intended to include a unique restaurant experience) and approximately 280 residential units. The Mixed-Use Building will initially be constructed substantially in accordance with the conceptual renderings attached hereto as Exhibit “A-1” and made a part hereof, unless alterations in the concept have been approved by the City Representative, whose approval shall not be unreasonably withheld, conditioned or delayed (and whose approval shall be deemed to have been granted if the City Representative does not approve or disapprove of such alterations within thirty (30) calendar days of their submission to the City Representative for review and approval.)
- aa. **“Mixed-Use Building Site”** means the land described in Exhibit “A-2” attached hereto and made a part hereof; provided that the property lines of the Mixed-Use Building Site will be adjusted to the extent reasonably necessary to accommodate construction and operation of the Mixed-Use Building, as configured or described in the “permit set” of plans and specifications for the Mixed-Use Building approved by the City.
- bb. **“Office Building”** means the improvements constructed on the Office Building Site at a height of at least twelve (12) floors (potentially including parking) and containing a minimum of 200,000 square feet of class A office space. It is currently contemplated by Developer that the aesthetics of the exterior of the Office Building, will

substantially conform with the renderings attached hereto as **Exhibit “B-1”** and made a part hereof, unless alterations in the concept have been approved by the City Representative, whose approval shall not be unreasonably withheld, conditioned or delayed (and whose approval shall be deemed to have been granted if the City Representative does not approve or disapprove of such alterations within thirty (30) calendar days of their submission to the City Representative for review and approval.)

cc. **“Office Building Site”** means the land described in **Exhibit “B-2”** attached hereto and made a part hereof, or such other site within the Zoning District as Developer may select.

dd. **“Parking Facility”** means a structured parking facility, to be owned by the City of Arlington and leased to the BPP Entity, constructed on the Parking Facility Site and containing approximately one thousand five hundred spaces (1,500), but not less than one thousand four hundred and fifty (1,450), parking spaces for use by members of the public. The Parking Facility will also contain the Residential Parking Area.

ee. **“Parking Facility Site”** means the land described in **Exhibit “C”** attached hereto and made a part hereof; provided that the property lines of the Parking Facility Site will be adjusted to the extent reasonably necessary to accommodate construction and operation of the Parking Facility, as configured or described in the “permit set” of plans and specifications for the Parking Facility approved by the City Representative.

ff. **“Permitted Project Costs”** means the actual cost to acquire, design, develop, and construct the Project, including but not limited to: acquisition and preparation costs of the land; land planning, design, architectural and engineering costs; costs to construct, equip, and furnish the project; costs of water, sewer, drainage, and street improvements necessary to serve the project; permits, license, and inspections fees; and fees and expenses of the architect, general contractor, subcontractors, consultants and similar persons.

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

hh. **“Project”** means the Parking Facility, Site Improvements, Mixed-Use Building or (if Developer elects to develop the Office Building) Office Building, as the context requires.

ii. **“Project Costs”** means the actual cost to acquire, design, develop, and construct a Project, including but not limited to: acquisition and preparation costs of the land; land planning, design, architectural and engineering costs; costs to construct, equip, and furnish a Project; costs of water, sewer, drainage, and street improvements necessary to serve a Project; permits, license, and inspections fees; and fees and expenses of the architect, general contractor, subcontractors, construction manager, consultants and

similar Persons incurred prior to or after the date of this Agreement by Developer or any Affiliate of Developer in connection with the planning, design, engineering, construction, equipping and furnishing of a Project, the cost and fees associated with the obtaining of all permits and approvals associated with the development and construction of that Project. Project Costs shall also include: (i) all broker commissions, leasing commissions, and amounts paid by Developer to any tenant of the Mixed-Use Building or the Office Building as a "tenant allowance" to pay for all or part of the costs incurred by such tenant in connection with the planning, design, engineering, construction, equipping and furnishing of such tenant's premises within that Project; (ii) tenant improvement costs incurred by Developer with respect to such tenant's premises, leasing and tenant procurement costs, hard and soft costs incurred by such tenant in connection with the build out, fixturing and equipping of its premises; (iii) costs associated with closing of the construction loan, including without limitation construction interest, environmental study costs and fees, surveyor costs and fees, civil engineering expenses, title insurance premiums, costs and expenses, legal fees and expenses; (iv) the salaries and cost of benefits of each employee of Developer and its Affiliates that is working on that Project, pro rata based on the amount of time or number of days such employee is working on a Project; (v) land and/or easement acquisition costs of Developer or its owners or Affiliates, public works and/or public improvement costs and expenses, utility infrastructure costs and expenses, geotechnical costs and fees, architectural, interior design, consulting and engineering costs, fees and expenses, general contractor and/or construction manager fees and expenses, general condition expenses, labor and material costs and expenses, subcontractor costs and expenses; and (vi) site work costs and expenses, landscape costs and expenses, hardscape costs and expenses, furniture, fixtures and equipment costs and expense, audio and visual equipment expenses and pre-opening costs and expenses.

jj. "**Reimbursement Payments**" means the reimbursement payments to be paid from TIRZ to Developer as provided for in Section 5 and/or to be paid by the City from Encumbered Funds as provided for in Section 5.

kk. "**Residential Parking Areas**" means the non-public portion of the Parking Facility anticipated to include approximately four hundred (400) non-public parking spaces for use by occupants of the residential units and their guests of the Mixed- Use Building, the cost of which is not a reimbursable Permitted Project Cost under Section 5.

ll. "**Site Improvements**" means improvements to the public streets, sidewalks, and intersections located in or adjacent to the Mixed-Use Building Site, Office Building Site or Parking Facility Site, including but not limited to landscape and streetlights, as well as improvements to the public water, sanitary sewer, and storm water facilities located in or adjacent to any such site and other public improvements identified as eligible project costs in the Amended Plan.

mm. "**Substantial Completion**" means, (i) with respect to the Mixed-Use Building, occupants of the residential portion of the Mixed-Use Building have begun to

move into the Mixed-Use Building, (ii) with respect to the Office Building, the core and shell of the Office Building is completed to such a degree that tenant improvement work for occupants of the Office Building, when the appropriate permits have been obtained for such work, can begin and (iii) with regard to the Parking Facility, the Parking Facility, exclusive of the Residential Parking Areas, with the exception of punch list items and landscaping, if any, is substantially complete in all material respects so that it is open and available for parking to the public.

nn. “**Term**” means the term of this Agreement as specified in Section 2.

oo. “**Texas Live**” means the restaurant and entertainment complex located at 1650 E Randol Mill Road, Arlington, TX 76011.

pp. “**TIRZ Bonds**” means the bonds, notes, or other obligations, whose terms, provisions and conditions are as determined by the City, to be issued by the City, in one or more series, and that are secured by and payable from a lien on (senior and/or subordinate, as applicable) and pledge of (senior and/or subordinate, as applicable) the TIRZ Increment (but not the Available City TIRZ Increment.)

qq. “**TIRZ Economic Development Grants**” means the grants to be paid from TIRZ to Developer as provided for in Section 7(b) of this Agreement.

rr. “**TIRZ Increment**” means the annual ad valorem increment deposited into the tax increment fund for Tax Increment Reinvestment Zone Number Five, Arlington, Texas by Tarrant County, Tarrant County College District, and Tarrant County Hospital District.

ss. “**Zoning District**” means the zoning district created pursuant to Ordinance No. 09-035, adopted by the City Council of the City on June 29, 2009.

2. **Term.**

This Agreement shall be effective as of the date of execution by all Parties hereto and shall remain in full force and effect until September 30, 2053 unless sooner terminated in accordance with the terms of this Agreement, provided, however, that the obligation of the TIRZ to pay TIRZ Economic Development Grants that accrue prior to such date that are unpaid shall survive the termination of the Term.

3. **Available Funds.**

a. Upon execution of this Agreement, the City shall commit a minimum of Thirty-Three Million 00/100 Dollars (\$33,000,000.00) of lawfully available and committed funds (the “**Encumbered Funds**”) to be used to provide reimbursement to Developer for Permitted Project Costs in accordance with Section 5 hereof and for no other purposes. Upon the issuance of TIRZ Bonds the City shall be permitted to unencumber any amount of Encumbered Funds in excess of the difference between Forty-Nine Million Six Hundred Thousand 00/100 Dollars (\$49,600,000.00) and the

amount of Available Proceeds. (For illustration purposes only, if the amount of Available Proceeds is \$40,000,000 the City is permitted to unencumber \$24,400,000.)

b. The City shall use its reasonable and best efforts to obtain funds, on or prior to the Funding Date, from the issuance, sale, and delivery of one or more series of TIRZ Bonds (on a taxable or tax-exempt basis) in an aggregate amount to produce a minimum of Forty Nine Million Six Hundred Thousand 00/100 Dollars (\$49,600,000.00) in Available Proceeds to fund the development of the Parking Facility (exclusive of the Residential Parking Areas), the Site Improvements, and the obligations to reimburse Arlington Stadium Hotel Creek Developer, LLC for the project costs to which it is entitled to be reimbursed under the Development and Reimbursement Agreement. Notwithstanding the above, the issuance of debt is a governmental function subject to the discretion of the City Council of the City. For the sake of clarity, the TIRZ Bonds shall not be secured by or payable from a lien on or pledge of the Available City TIRZ Increment.

4. Public Improvements.

Upon the issuance of TIRZ Bonds by the TIRZ prior to the Funding Date, which the decision to issue is in the sole and absolute discretion of the City Council, that produce a minimum of Sixteen Million Six Hundred Thousand 00/100 Dollars (\$16,600,000.00) in Available Proceeds to the end that Forty Nine Million Six Hundred Thousand 00/100 Dollars (\$49,600,000.00) in Available Funds are available to be drawn down by Developer for the development, construction and completion of the Parking Facility (exclusive of the Residential Parking Areas) and the Site Improvements and the satisfaction in full of the TIRZ's obligation to reimburse Arlington Stadium Hotel Creek Developer, LLC for the project costs to which it is entitled to be reimbursed under the Development and Reimbursement Agreement Developer agrees to do as follows:

a. Developer shall enter into one or more construction contracts for the construction of the Parking Facility and the Site Improvements in accordance with plans and specifications approved by the City Representative, whose approval shall not be unreasonably withheld, conditioned or delayed (and whose approval shall be deemed to have been granted if the City Representative does not approve or disapprove of the plans and specifications within fifteen (15) calendar days of their submission to the City Representative for review and approval.) Developer shall be solely responsible for the selection of its contractor(s) and shall enter into all agreements necessary for the construction of the Parking Facility and the Site Improvements. Developer shall cause its contractor(s) to construct the Parking Facility and the Site Improvements in substantial accordance with the approved plans and specifications. Prior to commencement of any construction work, Developer shall provide the City Representative with a construction schedule and shall invite the City Representative to all scheduled construction meetings. Developer shall provide the City with a quarterly written construction status report, including an updated construction schedule and a log of any change orders.

b. The plans and specifications and all work performed to complete the Parking Facility and the Site Improvements shall conform to all Applicable Law.

Developer, or its contractor(s), shall obtain all Governmental Authorizations necessary for construction of the Parking Facility and the Site Improvements. The City shall reasonably assist Developer with such effort. Execution of this Agreement by the TIRZ and the City shall not constitute or be deemed (1) to be a release by the TIRZ or the City of the responsibility or liability of Developer or any of its contractors, their officers, agents, employees, and subcontractors for the accuracy or the competency of the plans and specifications, including but not limited to, any related investigations, surveys, designs, working drawings, and other specifications or documents; (2) an assumption of any responsibility or liability by the TIRZ or the City for any negligent act, error, or omission in the conduct or preparation of any investigation, surveys, designs, working drawings, and other specifications or documents by Developer or any of its contractors, their officers, agents, employees, and subcontractors; or (3) to be a replacement or substitute for, or otherwise excuse Developer, or its Contractor, from any permitting process of the City applicable to the Parking Facility and the Site Improvements.

c. All Project Costs for the Parking Facility and the Site Improvements shall be advanced by Developer with Developer making all payments to its contractor(s), and any other third parties, for the design and construction of the Parking Facility and the Site Improvements from its own funds and obtaining reimbursement from the City and/or the TIRZ in accordance with the terms and provisions of Section 5 of this Agreement.

d. Developer shall use reasonable efforts to cause all work associated with the Parking Facility (exclusive of the Residential Parking Areas) to be Substantially Completed within twenty-four (24) months after the commencement of construction of the Parking Facility, as such date may be extended for delays caused by force majeure and delays in the issuance of necessary governmental permits and approvals and the City complying with its material obligations hereunder. Construction of the Parking Facility shall commence within forty-five (45) days after the later of (i) issuance of all governmental permits and approvals necessary for the commencement of construction of the Parking Facility, which Developer or its designee shall apply for no later than nine (9) months after the date that Forty Nine Million Six Hundred Thousand 00/100 Dollars (\$49,600,000.00) in Available Funds are first available, and (ii) issuance of the TIRZ Bonds that produce a minimum of Sixteen Million Six Hundred Thousand 00/100 Dollars (\$16,600,000.00) in Available Proceeds to the end that Forty Nine Million Six Hundred Thousand 00/100 Dollars (\$49,600,000.00) in Available Funds are available. The date by which Developer must cause Substantial Completion of the Parking Facility (exclusive of the Residential Parking Areas) to occur, may, at the request of Developer, be extended in writing by the City Representative, in the reasonable discretion of the City Representative, upon good and sufficient cause therefor being shown by Developer, for such period of time as Developer reasonably requests. After the Substantial Completion of the Parking Facility (exclusive of the Residential Parking Areas), Developer shall use due diligence to cause punch list items and landscaping that constitute a part of the Parking Facility (exclusive of the Residential Parking Areas) to be completed within a reasonable time.

e. Developer shall use reasonable efforts to cause all work associated with the Site Improvements to be Substantially Completed within thirty-six (36) months after the commencement of construction of the Site Improvements, as such date may be extended for delays caused by force majeure and delays in the issuance of necessary governmental permits and approvals and the City complying with its material obligations hereunder. Construction of the Site Improvements shall commence within forty-five (45) days after the later of (i) issuance of all governmental permits and approvals necessary for the commencement of construction of the Parking Facility, which Developer or its designee shall apply for no later than nine (9) months after the date that Forty Nine Million Six Hundred Thousand 00/100 Dollars (\$49,600,000.00) in Available Funds are first available, and (ii) issuance of the TIRZ Bonds that produce a minimum of Sixteen Million Six Hundred Thousand 00/100 Dollars (\$16,600,000.00) in Available Proceeds to the end that Forty Nine Million Six Hundred Thousand 00/100 Dollars (\$49,600,000.00) in Available Funds are available. The date by which Developer must cause Substantial Completion of the Site Improvements to occur, may, at the request of Developer, be extended in writing by the City Representative, in the reasonable discretion of the City Representative, upon good and sufficient cause therefor being shown by Developer, for such period of time as Developer reasonably requests. After the Substantial Completion of the Site Improvements, Developer shall use due diligence to cause punch list items and landscaping that constitute a part of the Site Improvements to be completed within a reasonable time.

f. Following acceptance of the Parking Facility and the Site Improvements, by the City, Developer shall (1) review all final payment applications and forward same to the TIRZ with such supporting documentation as the TIRZ may reasonably require for substantiation of the actual Permitted Project Costs to design and construct the Parking Facility (exclusive of the Residential Parking Areas), and the Site Improvements, including contractor's certificates and a final lien waiver following the completion of construction, (2) assign all warranties under the construction contract(s) for the Parking Facility and the Site Improvements, to the City, and (3) provide copies of all as-built drawings for any and all improvements constructed as part of the Parking Facility, and the Site Improvements to the City. The City shall accept the Parking Facility and Site Improvements promptly after the City confirms, in the exercise of the City's governmental function, that the Parking Facility and Site Improvements comply with all applicable building codes and ordinances and conform in all material respects to the plans and specifications approved by the City Representative; provided, that Developer shall have the right, from time to time, to make reasonable and non-material changes/field adjustments (collectively, "**Non-Material Field Adjustments**") in and to the plans and specifications approved by the City Representative to the extent that the same shall be necessary or desirable in order to adjust to actual field conditions (and are not materially inconsistent with the intent of the plans and specifications approved by the City Representative and do not result in the substitution of inferior materials or methods of construction) or to cause the work shown on such plans and specifications to comply with any applicable requirements of public authorities and/or requirements of insurance bodies. All Non-Material Field Adjustments (which may be made immediately but confirmed by written notice to the City) shall be noted on the applicable plans or

specifications. The City agrees to use its best efforts to expedite acceptance by the City of the Parking Facility and Site Improvements, and agrees not to withhold, condition or delay such acceptance for any reason other than as expressly provided above.

g Developer shall, or require Developer’s Contractors to, at its own expense, purchase, maintain, and keep in force until the Parking Facility and Site Improvements are accepted by the City, the insurance set forth below:

- i Developer shall not commence work, or allow Developer’s Contractor to commence work, under this Agreement until it has obtained all the insurance required under this Agreement and such insurance has been approved by the City, nor shall Developer or Developer’s Contractors allow any subcontractor to commence work on its subcontract until all similar insurance of the subcontractor has been obtained. All insurance policies provided under this Agreement shall be written on an “occurrence” basis. The policy limits stated below are at a minimum.

Liability Insurance

Commercial General Liability (No standard coverages are to be excluded by endorsement. XCU and contractual liability are not to be excluded)	\$1,000,000 Per Occurrence/ \$2,000,000 Aggregate
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Automobile Liability Insurance

Commercial Auto Liability Policy (Any Auto, including hired, and non-owned autos)	\$1,000,000 Combined Single Limit
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Umbrella Liability

(Following Form and Drop Down Provisions Included)	\$5,000,000 Each Occurrence
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Workers Compensation Insurance

Workers' Compensation	Statutory Limit
Employer's Liability	\$1,000,000 Each Occurrence \$1,000,000 Disease - Each Employee \$1,000,000 Disease – Policy Limit

- ii It is agreed by all Parties to this Agreement that the insurance policies required under this Agreement shall be endorsed to provide:

- a. The City and TIRZ as additional insureds on all policies except Workers Compensation;
 - b. Provide for thirty (30) days' notice of cancellation to the City and TIRZ, ten (10) days for nonpayment of premium;
 - c. Be written through companies duly authorized to transact that class of insurance in the State of Texas with an A.M. Best rating of A-VII or better; and,
 - d. Waive subrogation rights for loss or damage so that insurers have no right of recovery or subrogation against the City or TIRZ, it being the intention that the required insurance policies shall protect all Parties to this Agreement and be primary coverage for all losses covered by the policies.
- iii. Provide one copy of a Certificate of Insurance on an Acord form or other State-approved form evidencing the required coverages to:

Attention: Risk Manager
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

h. Prior to the commencement of any construction work on the Parking Facility and the Site Improvements, Developer shall ensure that its contractor(s) have purchased performance, payment, and maintenance bonds, each in an amount not less than the total cost of the Parking Facility and/or the Site Improvements, as applicable, and provide such to the City. Each bond shall be executed by a surety company listed in the Treasury Department Circular 570, authorized to do business in the State of Texas, and must maintain an office or agency for contact in Tarrant County, Texas. The period of the maintenance bond shall be two (2) years from the date of acceptance by the City.

i. During construction of the Parking Facility, and the Site Improvements, Developer agrees to use diligent efforts and to cause its contractors and subcontractors to use diligent efforts to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality, and price. Developer also agrees to develop a policy that establishes a goal of twenty-five percent (25%) use by Developer of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractors, subcontractors, or suppliers is vested in racial or ethnic minorities or women for construction of the Parking Facility, and the Site Improvements, which such policy shall contain reasonable exclusions. At the option of Developer, the Parking Facility, the Site Improvements, the Mixed-Use Building and Office Building may be treated as one project for purposes of satisfying the provisions of this subsection.

j. Upon Substantial Completion of the Parking Facility, the City and the BPP Entity shall enter into a lease of the Parking Facility pursuant to which the BPP Entity agrees to operate and maintain the Parking Facility for the City. The Parking Facility Lease shall provide for the payment of nominal rent and grant the BPP Entity the right to purchase the Parking Facility for nominal consideration upon the end of the term of the Parking Facility Lease. The City and the BPP Entity shall use commercially reasonable efforts to reach agreement on the Parking Facility Lease as soon as reasonably possible, and in any event before the Funding Date. The Parking Facility Lease shall be subject to Developer's approval, in its reasonable discretion.

k. Upon Substantial Completion of the Parking Facility, the BPP Entity and Developer shall enter into a sublease covering the Residential Parking Areas pursuant to which Developer agrees to operate and maintain the Residential Parking Areas for the BPP Entity (the "**Parking Facility Sublease**"). The Parking Facility Sublease is anticipated to cover the Residential Parking Areas for use by occupants of the residential units contained in the Multi-Family Building and their guests. The BPP Entity and Developer shall use commercially reasonable efforts to reach agreement on the Parking Facility Sublease as soon as reasonably possible, and in any event before the Funding Date. The Parking Facility Sublease shall be subject to the City's approval, in its reasonable discretion.

l. Upon Substantial Completion of the Parking Facility, the City, the BPP Entity and Developer shall enter into such declarations, condominium documents, reciprocal easement agreements, covenant agreements and parking easements affecting the Parking Facility as they may deem reasonably necessary for the shared use of the Parking Facility (i.e., exclusive use of the Residential Parking Areas by the occupants of the residential units within the Mixed-Use Building and their guests, and non-exclusive use of the public portion by customers and employees of the retail tenants within the Mixed-Use Building, customers of Texas Live! pursuant to a voucher or validation system acceptable to the BPP Entity and Developer for up to 300 parking spaces, and persons attending sporting, entertainment or other public events at Globe Life Field, Globe Life Park or other venues in the surrounding area). The Parties shall use commercially reasonable efforts to reach agreement on such additional documents as soon as reasonably possible, and in any event before the Funding Date.

5. Public Improvement Reimbursement.

a. In exchange for Developer's compliance with all the terms and provisions of this Agreement concerning the construction of the Parking Facility (exclusive of the Residential Parking Areas), and the Site Improvements, the City and TIRZ agree, subject to the conditions contained herein, to reimburse Developer, from Available Funds, documented Permitted Project Costs in an amount not to exceed Thirty Three Million and 00/100 Dollars (\$33,000,000.00) for the Parking Facility (exclusive of the Residential Parking Areas), and documented Permitted Project Costs in an amount not to exceed Seven Million Five Hundred Thousand and 00/100 Dollars (\$7,500,000.00) for the Site Improvements. Nothing in this Agreement shall be construed to require the TIRZ or City to provide reimbursements from any source of funds other than Available Funds.

b. City or TIRZ shall make reimbursement to Developer for documented Permitted Project Costs by payment to Developer of one (1) or more Reimbursement Payments from Available Funds. No more frequently than once every thirty (30) days Developer may request a Reimbursement Payment for documented Permitted Project Costs incurred and not previously reimbursed until such time as all Permitted Project Costs have been reimbursed or the cumulative total of all Reimbursement Payments equals Thirty Three Million and 00/100 Dollars (\$33,000,000.00) for the Parking Facility (exclusive of the Residential Parking Areas) and Seven Million Five Hundred Thousand and 00/100 Dollars (\$7,500,000.00) for the Site Improvements.

c. The City or TIRZ shall provide Developer with each Reimbursement Payment within thirty (30) days of receiving documentation substantiating Permitted Project Costs incurred. After the first Reimbursement Payment is made each subsequent request for a Reimbursement Payment must include documentation demonstrating that the previous Reimbursement Payment was utilized to pay documented Permitted Project Costs.

d. The City and TIRZ represent and warrant to Developer that the payment of Reimbursement Payments from Available Funds are not subject to annual appropriation of the City, TIRZ or any other Governmental Authority, and the payment of the Reimbursement Payments shall take priority over any other contractual commitment to pay an expenditure from the Available Funds until such time as Developer has been fully reimbursed in accordance with Section 5(a). Nothing in this Agreement shall be construed to require the City or TIRZ to provide Reimbursement Payments from any source of funds other than the Available Funds.

6. Private Improvements.

a. Estimated Cost. Developer estimates that the Mixed-Use Building and Office Building will cost approximately Two Hundred Million and 00/100 Dollars (\$200,000,000.00) of Project Costs to construct.

b. Mixed-Use Building. Payment of the Grants provided for in Section 7 is subject to Developer's satisfaction of the following conditions and requirements:

- i. Developer shall design and construct or cause to be designed and constructed the Mixed-Use Building on the Mixed-Use Building Site and cause Substantial Completion of the Mixed-Use Building to occur within thirty-six (36) months after construction of the Parking Facility has commenced, as such date may be extended for delays caused by force majeure and delays in the issuance of necessary governmental permits and approvals and the City complying with its material obligations hereunder. On and after the Funding Date, Developer shall diligently pursue the issuance of all necessary permits and approvals for the construction of the Mixed-Use Building. Subject to the terms

hereof, the date by which Developer must cause Substantial Completion of the Mixed-Use Building to occur, may, at the request of Developer, be extended in writing by the City Representative, in the reasonable discretion of City Representative, upon good and sufficient cause therefor being shown by Developer, for such period of time as Developer reasonably requests. After the Substantial Completion of the Mixed-Use Building, Developer shall use due diligence to cause punch list items and landscaping that constitute a part of the construction of the Mixed-Use Building to be completed within a reasonable time.

- ii. Developer, with commercial occupants of the Mixed-Use Building, shall spend a minimum of One Hundred million and 00/100 Dollars (\$100,000,000.00) on Project Costs to design and construct the Mixed-Use Building. Within one hundred eighty (180) days of Substantial Completion of the Mixed-Use Building, Developer shall provide, at Developer's expense, a statement to the City from an independent certified public accountant confirming or denying that Developer has spent a minimum of One Hundred Million and 00/100 Dollars (\$100,000,000.00) on Project Costs to design and construct the Mixed-Use Building. When preparing such statement, the certified public accountant shall have the right: (i) to utilize reasonable accounting procedures to confirm such expenditures and shall not have to account for every expenditure; and (ii) to rely on written statements made by third-party tenants of the Mixed-Use Building with respect to Project Costs incurred by such third-party tenants. In the event that such statement establishes that less than One Hundred Million Dollars (\$100,000,000) has been expended on Project Costs, Developer shall reserve the shortfall amount and utilize same in connection with the Mixed-Use Building during the Term of this Agreement. As long as such reserved funds have not been expended, each year of the Term Developer shall provide, at Developer's expense, a statement to the City from an independent certified public accountant certifying the unexpended amount of such reserved funds and the amount of such reserved funds that has been expended over the previous year in connection with the Mixed-Use Building. If any such reserved funds remain unexpended at the end of the Term, Developer shall cause such amount to be paid to the City.
- iii. During construction of the Mixed-Use Building Developer agrees to use diligent efforts and to cause its contractors and subcontractors to use diligent efforts to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality, and price. Developer also agrees to develop a policy that establishes a goal of twenty-five percent (25%) use by Developer of qualified contractors, subcontractors, and

suppliers where at least fifty-one percent (51%) of the ownership of such contractors, subcontractors, or suppliers is vested in racial or ethnic minorities or women for construction of the Mixed-Use Building, which such policy shall contain reasonable exclusions. Community Benefits plan. At the option of Developer, the Parking Facility, the Site Improvements, the Mixed-Use Building and Office Building may be treated as one project for purposes of satisfying the provisions of this subsection.

- iv. During the Term of this Agreement, Developer shall not allow the ad valorem taxes owed to the City for the Mixed-Use Building to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal. Nor shall Developer fail to render for taxation any taxable personal property owned by Developer and located within the Mixed-Use Building.
- v. In the event of damage or destruction of the Mixed-Use Building after Substantial Completion of same, during the Term of this Agreement, Developer shall cause the full repair or restoration of the Mixed-Use Building, as same existed at the time of such damage or destruction (as same may be modified by Developer at the time of such repair or restoration, provided that such modification is of equivalent or greater value), whether done by application of insurance proceeds or other financial means. On or after expiration of such period, in the event of damage or destruction of the Mixed-Use Building, Developer shall have the right to determine whether, and to what extent the Mixed-Use Building should be restored or replaced. Notwithstanding the above, a Mortgagee and any person that acquires title to the Mixed-Use Building as a result of foreclosure sale, deed in lieu of foreclosure or other similar transaction, and their respective successors and assigns, shall not be obligated to comply with the provisions of this Section 6 (b)(v).
- vi. During the Term, Developer shall refer to the Mixed-Use Building in all marketing and advertising efforts that contain the location of the Mixed-Use Building as being located in Arlington, Texas and shall not use any other proper geographic name (i.e. Dallas, Fort Worth, etc.) or informal geographic name (i.e. Metroplex, North Texas, etc.) to describe the Mixed-Use Building's location, except that Developer may reference the distance of the Mixed-Use Building from other locations.
- vii. The design, construction, and operation of the Mixed-Use Building shall comply with all Applicable Law. In addition, Developer shall obtain, at its expense, all Governmental Authorizations for the design, construction, and operation of the Mixed-Use Building. The City shall

reasonably assist Developer in its efforts to obtain such Governmental Authorizations.

- viii. It is the intent of Developer to operate the Mixed-Use Building in a manner similar to the operation of other similar first-class mixed-use buildings in North Texas commencing on the date the Mixed-Use Building initially opens for business to the public and continuing for the remainder of the Term.

c. Office Building. Developer intends to develop the Office Building if, as and when Developer obtains a suitable anchor tenant for the Office Building. Developer shall work diligently to market the proposed Office Building to potential tenants and shall provide the City with periodic updates on such efforts. Until Developer elects to develop the Office Building, which election Developer may make in its sole and absolute discretion, Developer shall not be obligated to develop the Office Building. If Developer elects to develop the Office Building payment of the Grants provided for in Section 7 shall be subject to Developer's satisfaction of the following conditions and requirements:

- i. Developer shall design and construct or cause to be designed and constructed the Office Building on the Office Building Site and cause Substantial Completion of the Office Building to occur within thirty- six (36) months after issuance of a final building permit (as opposed to the grading permit or foundation permit) for construction of the Office Building, as such date may be extended for delays caused by force majeure and delays in the issuance of necessary governmental permits and approvals and the City complying with its material obligations hereunder. If Developer elects to develop the Office Building, Developer shall diligently pursue the issuance of all necessary permits and approvals for the construction of the Office Building. Subject to the terms hereof, the date by which Developer must cause Substantial Completion of the Office Building to occur (if Developer elects to develop the Office Building), may, at the request of Developer, be extended in writing by the City Representative, in the reasonable discretion of City Representative, upon good and sufficient cause therefor being shown by Developer, for such period of time as Developer reasonably requests. After the Substantial Completion of the Office Building, Developer shall use due diligence to cause punch list items and landscaping that constitute a part of the construction of the Office Building to be completed within a reasonable time.
- ii. Developer and the occupants of the Office Building shall spend a minimum of One Hundred million and 00/100 Dollars (\$100,000,000.00) on Project Costs to design and construct the Office Building. Within one hundred eighty (180) days of Substantial Completion of the Office Building, Developer shall provide, at

Developer's expense, a statement to the City from an independent certified public accountant confirming or denying that Developer has spent a minimum of One Hundred Million and 00/100 Dollars (\$100,000,000.00) on Project Costs to design and construct the Building. When preparing such statement, the certified public accountant shall have the right: (i) to utilize reasonable accounting procedures to confirm such expenditures; and (ii) to rely on written statements made by third-party tenants of the Office Building with respect to Project Costs incurred by such third-party tenants. In the event that such statement establishes that less than One Hundred Million Dollars (\$100,000,000) has been expended on Project Costs, Developer shall reserve the shortfall amount and utilize same in connection with the Office Building during the Term of this Agreement. As long as such reserved funds have not been expended, each year of the Term Developer shall provide, at Developer's expense, a statement to the City from an independent certified public accountant certifying the unexpended amount of such reserved funds and the amount of such reserved funds that has been expended over the previous year in connection with the Office Building. If any such reserved funds remain unexpended at the end of the Term, Developer shall cause such amount to be paid to the City.

- iii. During construction of the Office Building Developer agrees to use diligent efforts and to cause its contractors and subcontractors to use diligent efforts to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality, and price. Developer also agrees to develop a policy that establishes a goal of twenty-five percent (25%) use by Developer of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractors, subcontractors, or suppliers is vested in racial or ethnic minorities or women for construction of the Office Building, which such policy shall contain reasonable exclusions. At the option of Developer, the Parking Facility, Site Improvements, Office Building and Mixed-Use Building may be treated as one project for purposes of satisfying the provisions of this subsection.
- iv. During the Term of this Agreement, Developer shall not allow the ad valorem taxes owed to the City for the Office Building to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal. Nor shall Developer fail to render for taxation any taxable personal property owned by Developer and located within the Office Building.
- v. In the event of damage or destruction of the Office Building after Substantial Completion of same, during the Term of this Agreement, Developer shall cause the full repair or restoration of the Office

Building, as same existed at the time of such damage or destruction (as same may be modified by Developer at the time of such repair or restoration, provided that such modification is of equivalent or greater value), whether done by application of insurance proceeds or other financial means. On or after expiration of such period, in the event of damage or destruction of the Office Building, Developer shall have the right to determine whether, and to what extent the Office Building should be restored or replaced. Notwithstanding the above, a Mortgagee and any person that acquires title to the Office Building as a result of foreclosure sale, deed in lieu of foreclosure or other similar transaction, and their respective successors and assigns, shall not be obligated to comply with the provisions of this Section 6 (c)(v).

- vi. During the Term, Developer shall refer to the Office Building in all marketing and advertising efforts that contain the location of the Office Building as being located in Arlington, Texas and shall not use any other proper geographic name (i.e. Dallas, Fort Worth, etc.) or informal geographic name (i.e. Metroplex, North Texas, etc.) to describe the Office Building's location, except that Developer may reference the distance of the Office Building from other locations.
- vii. The design, construction, and operation of the Office Building shall comply with all Applicable Law. In addition, Developer shall obtain, at its expense, all Governmental Authorizations for the design, construction, and operation of the Office Building. The City shall reasonably assist Developer in its efforts to obtain such Governmental Authorizations.
- viii. It is the intent of Developer, if Developer elects to develop the Office Building, to operate the Office Building in a manner similar to the operation of other class A office buildings in North Texas commencing on the date the Office Building initially opens for business to the public and continuing for the remainder of the Term.

d. Undocumented Workers. Developer covenants and certifies that Developer does not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.01(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if Developer is convicted of a violation under 8 U.S.C. Section 1324a(f), Developer shall repay to the TIRZ the full amount of the Grants made under Section 7 of this Agreement, plus ten percent (10%) interest per annum from the date the Grant(s) was made. Repayment shall be paid within one hundred twenty (120) days after the date Developer receives notice of violation of this provision from the TIRZ, which notice shall not be given by the TIRZ until after such conviction has become final and non-appealable. Notwithstanding any contrary provision, Developer shall not be in breach of this subsection and shall not be obligated to make such repayment if a subsidiary or Affiliate of Developer, or a tenant

or property manager that is an Affiliate or subsidiary of Developer, or a direct or indirect equity owner of Developer, or a person with whom Developer contracts, such as a general contractor, or a third-party tenant, is convicted of a violation under 8 U.S.C. Section 1324a(f).

e. Real Estate Matters.

- i. Upon execution of an amendment removing the Mixed-Use Building Site from the premises leased under that Amended and Restated Development Property Lease Agreement dated July 3, 2017, between the City and Ballpark Parking Partners LLC, the City will immediately convey the Mixed-Use Building Site to Developer or its designee by special warranty deed or ground lease same to Developer or its designee as provided in Section 6(e)(iii) of this Agreement. Such warranty deed or ground lease shall be executed by the relevant parties at Closing.
- ii. Upon execution of an amendment removing the Office Building Site from the premises leased under that Amended and Restated Ballpark Lease Agreement dated December , 2019 between the City and Rangers Baseball Real Estate LLC, the City will immediately convey the Office Building Site to Developer or its designee by special warranty deed or ground lease same to Developer or its designee as provided in Section 6(e)(iii) of this Agreement. Such warranty deed or ground lease shall be executed by the relevant parties at Closing.
- iii. Closing shall occur on a date, time and place located in the City selected by Developer, and approved by the City Representative. Neither the City, the TIRZ nor Developer shall have any obligation to proceed with the Closing unless the following conditions have been satisfied on or before the Funding Date: (A) the City and Ballpark Parking Partners LLC shall have executed an amendment to the Amended and Restated Development Property Lease Agreement removing the Parking Facility Site and Mixed-Use Building Site from the premises leased thereunder, (B) if Developer has theretofore elected to develop the Office Building, the City and Rangers Baseball Real Estate LLC shall have executed an amendment to the Amended and Restated Ballpark Lease Agreement removing the Office Building Site from the premises leased thereunder, (C) the City shall have conveyed by special warranty deed or ground leased as provided below the Mixed-Use Building Site to Developer or its designee, (D) the City and the BPP Entity shall have entered into the Parking Facility Lease, and the BPP Entity and Developer or its designee shall have entered into the Parking Facility Sublease, (E) Developer has provided the City with a project budget for the Mixed-Use Building, and Office Building (if Developer elects on or before the Funding Date to develop the Office Building) that is acceptable to Developer, (F) all necessary

declarations, condominium documents, reciprocal easement agreements, covenant agreements and parking easements affecting the Parking Facility have been approved by the City, the BPP Entity and Developer, and (G) neither the City, the TIRZ nor Developer shall be in default of any of its material obligations (beyond applicable notice and cure periods) of this Agreement. Notwithstanding anything to the contrary contained in this Section 6(e), at the election of Developer and City, the City, in lieu of conveying the Mixed-Use Site and/or the Office Building Site to Developer or its designee(s) as provided herein, shall ground lease such site or sites to Developer or its designee(s) pursuant to a ground lease or ground leases prepared by Developer that is reasonably acceptable to the City.

- iv. If all the actions and agreements and instruments described in Section 6(e)(iii) above with regard to the Mixed-Use Building and/or the Parking Facility have not been taken, with regard to actions, and finalized and signed, with regard to agreements and instruments by all the parties thereto by the initial Funding Date, Developer shall have the right, by notice to the City and the TIRZ, to extend, from time to time, the initial Funding Date for up to twelve (12) months in the aggregate to allow the parties additional time to take such actions and finalize and execute such agreements and instruments.
- v. At the Closing for the Mixed-Use Building and the Parking Facility, Developer shall provide a completion guaranty to the City guaranteeing Substantial Completion of the Mixed-Use Building and the Parking Facility from the Person or Persons that has provided the completion guaranty to the Mortgagee that has provided Developer with a construction loan to finance the development and construction of the Mixed-Use Building. Such completion guaranty shall be conditioned upon the City complying with its material obligations hereunder, including the timely disbursement of the Available Funds and the Grants in accordance with the terms hereof.

7. Grants.

As an incentive and in exchange for Developer's compliance with the terms and provisions of this Agreement concerning the construction of the Mixed-Use Building (and the Office Building if Developer elects to develop the Office Building), the City and TIRZ agree, subject to the conditions contained herein, to provide the following Grants:

- a. The City shall provide Developer with the City Economic Development Grant in the amount of Eleven Million and 00/100 Dollars (\$11,000,000.00) to be used by Developer on Permitted Project Costs. Upon execution of this Agreement, the City shall commit Eleven Million and 00/100 Dollars (\$11,000,000.000) of lawfully available and committed funds to be used to pay the City Economic Development Grant and for no other purposes. The City Economic Development Grant shall be paid to Developer in

one or more installments at the request of Developer any time after the execution of this Agreement, provided that prior to Closing Developer may not seek installment(s) in excess of the amount of Permitted Project Costs incurred by Developer for the Mixed- Use Building (and Office Building if Developer has elected to develop the Office Building prior to Closing). Developer shall provide the city with substantiation of Project Costs incurred for any installments sought prior to Closing. Under no circumstances shall the cumulative total of all installments exceed Eleven Million and 00/100 Dollars (\$11,000,000.00).

b. The TIRZ shall provide Developer an annual TIRZ Economic Development Grant, commencing in 2020 and continuing for the Term of this Agreement, in an amount equal to the amount of Available City TIRZ Increment on deposit for such year. The TIRZ shall make each annual Economic Development Grant to Developer on or before September 30th of each year and shall provide Developer with an annual report on the projected amount of Available City TIRZ Increment for the following calendar year by no later than March 31st of each year. The TIRZ represents and warrant to Developer that the payment of the TIRZ Economic Development Grants are not subject to annual appropriation of the TIRZ or any other Governmental Authority, and the TIRZ has not and will not pledge or otherwise commit to pay any expenditure from the Available City TIRZ Increment for the Term of this Agreement. Nothing in this Agreement shall be construed to require the TIRZ or the City to provide the TIRZ Economic Development Grants from any other source of funds other than the Available City TIRZ Increment. The City shall not take any action that would shorten the term of the TIRZ, which currently is scheduled to expire on December 31, 2052 (with the last year of tax increment being deposited in calendar year 2053), nor take any action to reduce the boundary of the TIRZ.

c. Developer shall have the right, at any time, and from time to time, to transfer and/or assign all or part of its rights to receive all or a portion of the TIRZ Economic Development Grants to a third party. Developer shall notify the TIRZ of any such transfer and/or assignment and if requested by Developer, the TIRZ shall provide Developer and its designee an acknowledgement of such transfer and/or assignment and an agreement to honor such transfer and/or assignment to make distributions of the TIRZ Economic Development Grants in accordance with the terms of this Agreement and such transfer and/or assignment.

d. If all or part of the activity addressed in Chapter 47 of the Texas Penal Code becomes legal in the City of Arlington, and Developer or an Affiliate of Developer makes operational a location for such activity inside the boundaries of the Tax Increment Reinvestment Zone Number Five, then effective as of January 1st of the year following the date such location is open to the general public the TIRZ shall have no further obligation to provide Developer with TIRZ Economic Development Grants under this Agreement.

8. Indemnification.

DEVELOPER DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS CITY AND THE TIRZ, AND ALL OF THEIR OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS, OR CAUSES OF ACTION, INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS, AND REASONABLE ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY THE ERROR, OMISSION, OR NEGLIGENT ACT OF DEVELOPER, ITS OFFICERS, AGENTS, OR EMPLOYEES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT, AND DEVELOPER WILL AT ITS OWN COST AND EXPENSE DEFEND AND PROTECT CITY AND TIRZ FROM ANY AND ALL SUCH CLAIMS AND DEMANDS, OTHER THAN SUCH CLAIMS OR DEMANDS CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE CITY OR TIRZ.

DEVELOPER SHALL CAUSE DEVELOPER'S CONTRACTOR TO AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS CITY AND THE TIRZ, AND ALL OF THEIR OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS, OR CAUSES OF ACTION, INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS, AND REASONABLE ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY THE ERRORS, OMISSIONS, OR NEGLIGENT ACTS OF DEVELOPER'S CONTRACTOR, THEIR OFFICERS, AGENTS, OR EMPLOYEES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE WORK TO COMPLETE THE PROJECT, AND DEVELOPER'S CONTRACTOR WILL AT THEIR OWN COST AND EXPENSE DEFEND AND PROTECT CITY AND TIRZ FROM ANY AND ALL SUCH CLAIMS AND DEMANDS.

SUCH INDEMNITIES SHALL APPLY WHETHER THE CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS, OR CAUSES OF ACTION ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT) OF CITY OR TIRZ, ITS OFFICERS, OFFICIALS, AGENTS, OR EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY DEVELOPER TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS CITY AND TIRZ FROM THE CONSEQUENCES OF CITY'S OR

TIRZ'S OWN ORDINARY NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT), WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. IT IS ALSO THE EXPRESS INTENTION OF THE PARTIES HERETO THAT DEVELOPER SHALL CAUSE DEVELOPER'S CONTRACTOR TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS CITY AND TIRZ FROM THE CONSEQUENCES OF CITY'S OR TIRZ'S OWN NEGLIGENCE, WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE.

THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR DEVELOPER OR ANY CONTRACTOR OR SUBCONTRACTOR UNDER WORKMAN'S COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.

The four (4) preceding paragraphs will be required to be in all construction contracts of Developer for the Parking Facility and the Site Improvements.

9. Default and Termination.

a. A default shall exist under this Agreement if any Party fails to perform or observe any material covenant contained in this Agreement. Any non-defaulting Party shall immediately notify the defaulting Party in writing upon becoming aware of any condition or event constituting a default. Such notice shall specify the nature and the period of existence thereof and what action, if any, the non-defaulting Party requires or proposes to require with respect to curing the default.

b. If a default shall occur and continue after notice of such default has been given and such default has not been cured during the Notice Period (as defined below), any non-defaulting Party may, at its option, except as otherwise expressly provided below in Section 9(d) or 10, pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Applicable Law, including enforcing specific performance of the defaulting Party's obligations hereunder, without the necessity of further notice to or demand upon the defaulting Party. The non-defaulting Party shall not, however, pursue remedies for as long as the defaulting Party proceeds in good faith and with due diligence to remedy and correct the default, provided that the defaulting Party has commenced to cure such default following notice during the Notice Period, and provided further, that in no event shall failure to make monetary payments required under the terms of this Agreement be deemed reasonable justification to extend such opportunity to cure beyond the initial period. The term "Notice Period" means forty-five (45) days after delivery of written notice of default, or if such default is not reasonably susceptible of being cured within such 45-day period, then so long as the defaulting Party commences to cure the default within such 45-day period, the "Notice Period" shall extend for such longer period as the defaulting Party thereafter continues diligently to prosecute the cure of such default. Notwithstanding anything to the contrary contained herein, if the defaulting party is the TIRZ or the City, and such default concerns the failure of the TIRZ or the

City to pay any amount due under this Agreement, the Notice Period for such monetary default shall be ten (10) days after delivery of written notice of default.

c. Without limiting the forgoing, (1) if the City or TIRZ fails to cure a default on its part within the applicable Notice Period provided for in Section 9(b) above, then Developer shall have the right to terminate this Agreement by delivering written notice to the defaulting Party, which termination shall be effective thirty (30) days following delivery of such notice unless the defaulting Party shall cure such default within such 30-day period, (2) if Developer fails to cure a default on its part within the applicable Notice Period provided for in Section 9(b) above with respect to Sections 6(b)(i), 6(b)(iv), 6(b)(v), 6(c)(iv), 6(c)(v), or 6(d) of this Agreement City or TIRZ shall have the right to terminate this Agreement and cease payment of the TIRZ Economic Development Grants by delivering written notice to Developer, which termination shall be effective thirty (30) days following delivery of such notice unless Developer shall cure such default within such 30-day period. A termination of this Agreement by either City, TIRZ, or Developer shall not relieve the other parties of any of their respective obligations theretofore accrued prior to and through the effective date of such termination, including the obligation of the City and TIRZ to reimburse Developer for Permitted Project Costs incurred with respect to the Parking Facility or Site Improvements that achieves Substantial Completion before, on or after the effective date of such termination.

10. Limitation on Remedies.

a. Except as provided for in Section 9(c), the failure of Developer to fulfill its obligations hereunder with respect to the Mixed-Use Building (and Office Building if Developer elects to develop the Office Building) shall not entitle the City or TIRZ to terminate this Agreement, suspend payment of the Reimbursement Payments, suspend disbursement of the Grants or seek repayment of the Reimbursement Payments or the Grants, even if Developer fails to cure a default within the applicable Notice Period provided for in Section 9(b). Except as provided for in Section 9(c), the sole remedies of the City and TIRZ in any such event shall be a suit for damages or specific performance of the terms of this Agreement. Except as provided for in Section 9(c), under no circumstances may the TIRZ or City terminate or disavow its obligation hereunder to pay the Grants.

b. Notwithstanding any contrary provision, (i) after Substantial Completion of the Parking Facility (exclusive of the Residential Parking Areas), neither the City nor the TIRZ shall be entitled to terminate, suspend or seek repayment of the Reimbursement Payments paid or payable under this Agreement to Developer with respect to the Parking Facility (exclusive of the Residential Parking Areas), even if Developer fails to cure a default within the applicable Notice Period provided for in Section 9(b), and (ii) after Substantial Completion of the Site Improvements, neither the City nor the TIRZ shall be entitled to terminate, suspend or seek repayment of the Reimbursement Payments paid or payable under this Agreement to Developer with respect to the Site Improvements, even if Developer fails to cure a default within the applicable Notice Period provided for in Section 9(b). The sole remedies of the City and TIRZ in any such event shall be a suit for

damages or specific performance of the terms of this Agreement. Under no circumstances may the TIRZ or City terminate or disavow its obligation hereunder to pay all the Reimbursement Payments relating to the Parking Facility (exclusive of the Residential Parking Areas), or the Site Improvements, once the applicable Project achieves Substantial Completion.

11. Employment of MWBE Prime Contractor.

In addition to the obligations of Developer, provided for in Section 4(i) and Section 6, to establish a goal of twenty-five percent (25%) use by Developer of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractors, subcontractors, and suppliers is vested in racial or ethnic minorities or women, Developer shall use best efforts to select a qualified contractor where at least fifty-one percent (51%) of the ownership of such is vested in racial or ethnic minorities or women as the prime contractor on one or more of the following Projects: the Parking Facility, the Mixed-Use Building, and the Office Building.

12. Mortgagee Rights.

(a) Right to Mortgage. Notwithstanding any other provisions of this Agreement, Developer shall at all times have the right to encumber, pledge, grant, or convey its rights, title and interest in and to the Mixed-Use Building Site and Office Building Site, or any portions thereof, the and/or this Agreement by way of a mortgage, pledge, assignment or other security agreement (a "**Mortgage**") to secure the payment of any loan or loans obtained by Developer to finance or refinance any portion or portions of the Mixed-Use Building or Office Building. The beneficiary of or mortgagee under any such Mortgage is hereby referred to herein as a "**Mortgagee**". The City recognizes and acknowledges that the Mixed-Use Building and Office Building may be separately financed by Developer (or its Affiliate) and may be encumbered by separate Mortgages. The Mortgagee of the Mixed-Use Building and the Mortgagee of the Office Building shall have the benefit of the provisions of this Section 12(a) with regard to its Mortgage and the property and project its Mortgage encumbers.

(b) Notice of Breaches to Mortgagees. If the City gives notice to Developer of a breach of its obligations under this Agreement, the City shall forthwith furnish a copy of the notice to the Mortgagees that have been identified to the City by Developer. To facilitate the operation of this subsection, Developer shall at all times keep the City with an up-to-date list of Mortgages.

(c) Mortgagee May Cure Breach of Developer.

(i) If Developer receives notice from the City of a breach by Developer of any of its obligations under this Agreement and such breach is not cured by Developer pursuant to the provisions of this Agreement, the City shall, in addition to the notice provided in Section 9 hereof, give notice of the failure to cure on the part of Developer to the Mortgagees at the expiration of the period within which Developer may cure as set forth in this Agreement. Any one of the Mortgagees may elect to cure such

default by giving the City written notice of its intention so to cure within thirty (30) days after the receipt of the additional notice herein set forth. In the event that any Mortgagee elects to proceed to cure any such default, such Mortgagee shall do so within the applicable cure period contained in this Agreement; provided, however, that the commencement of the cure period for the Mortgagee shall commence on the date the Mortgagee notifies the City of the Mortgagee's election to cure such default and each applicable cure period shall be deemed doubled in length for Mortgagee.

(ii) If any Mortgagee elects to exercise its rights of foreclosure under a Mortgage (or appoint a receiver or accept a deed and/or assignment-in-lieu of foreclosure), after foreclosure of Developer's interest in and to the Mixed-Use Building or Office Building or any portion thereof (or after the appointment of a receiver or the obtaining of Developer's interest in and to the Mixed-Use Building or Office Building or any portion thereof, via deed and/or assignment-in-lieu of foreclosure), such Mortgagee may at its option:

(A) elect to assume the position of Developer hereunder in which case, if the City has terminated this Agreement or suspended the distribution of any funds, including the Grants that the City is obligated to provide to Developer pursuant to this Agreement, the City agrees that this Agreement shall be deemed reinstated and the City shall commence the distribution of such funds, including the Grants, in accordance with the provisions of this Agreement and, in which case, such Mortgagee shall cure any default by Developer hereunder that the Mortgagee had received notice of in accordance with the provisions of Section 12(b) hereof within the timeframes contained in this Agreement and shall cause Substantial Completion to occur; or

(B) elect not to assume the provisions of this Agreement.

The Mortgagee shall have the right so to elect (A) above of this Section 12(c)(ii) only if it shall exercise such right within six (6) months after the receipt of the additional notice herein set forth. For purposes of this Section 12(c), the term "**Mortgagee**" shall include not only the "**Mortgagee**", as that term is defined in this Section 12 hereof, but shall also include any Person that obtains Developer's interest in and to all or any portion of Mixed-Use Building or Office Building as a result of a Mortgagee's exercise of its foreclosure rights or the transfer of Developer's interest in and to all or any part of the Mixed-Use Building or Office Building at the direction of the Mortgagee by Developer to a Person by deed and/or assignment-in-lieu of foreclosure.

(d) Rights and Duties of Mortgagee. In no event shall any Mortgagee be obliged to perform or observe any of the covenants, terms or conditions of this Agreement on the part of Developer to be performed or observed, or be in any way

obligated to complete the improvements to be constructed in accordance with this Agreement, nor shall it guarantee the completion of improvements as hereinbefore required of Developer, whether as a result of (i) its having become a Mortgagee, (ii) the exercise of any of its rights under the instrument or instruments whereby it became a Mortgagee (including without limitation, foreclosure or the exercise of any rights in lieu of foreclosure), (iii) the performance of any of the covenants, terms or conditions on the part of Developer to be performed or observed under this Agreement, or (iii) otherwise, unless such Mortgagee shall either make the election set forth in Section 12(c)(ii)(A) of this Agreement or shall specifically elect under this Section 12(d) to assume the obligations of Developer by written notice to the City whereupon such Mortgagee, upon making such election as aforesaid, shall then and thereafter for all purposes of this Agreement be deemed to have assumed all of the obligations of Developer hereunder.

(e) Mortgagee's Rights Agreements. The City, acting by and through the City Representative, shall, at the request of Developer made from time to time and at any time, enter into a lender's rights agreement with any Mortgagee (or potential Mortgagee) identified by Developer, which lender's rights agreement shall be consistent with the terms and provisions contained in this Section 12 that apply to Mortgagees and Mortgages. Within twenty (20) days of Developer's request for a lender's rights agreement pursuant to the provisions of this Section 12(e), time being of the essence, the City, acting through the City Representative, shall execute and deliver to Developer such a lender's rights agreement benefiting the identified Mortgagee (or potential Mortgagee) and such Mortgagee's Mortgage (or potential Mortgagee's potential Mortgage), which executed lender's rights agreement shall be in a form and substance that are reasonably acceptable to such Mortgagee (or potential Mortgagee) and that is consistent with, and at the option of such Mortgagee (or potential Mortgagee) incorporates, the terms and provisions of this Section 12 that apply to Mortgagees and Mortgages.

13. General Provisions.

a. Successors and Assigns. Neither the City nor TIRZ may assign or transfer any interest in this Agreement without the prior written consent of Developer. Developer may assign or transfer an interest in this Agreement to one or more Mortgagees. This Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and permitted assigns.

b. Headings. The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

c. Remedies. No right or remedy granted herein or reserved to the Parties is exclusive of any other right or remedy herein by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Agreement may be waived without consent of the Parties. Forbearance or indulgence by either Party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Agreement.

d. Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable. Notwithstanding the above, Developer shall have the right to terminate this Agreement in the event that it determines that the obligation of the City and/or TIRZ to timely pay Developer the Reimbursement Payments or Grants in accordance with the terms of this Agreement has been declared invalid or unenforceable. In the event any provision of this Agreement is illegal, invalid or unenforceable under present or future laws, each Party reserves the right to pursue any and all remedies available to them at law or equity. In the event that any of the provisions of this Agreement concerning the Reimbursement Payments or Grants are challenged by any other Person as "illegal, invalid, or unenforceable under present or future laws", the parties shall reasonably cooperate with each other to defend the validity and enforceability of such provisions. The provisions of this subsection shall survive the termination of this Agreement

e. Entire Agreement. This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporaneous agreements between the Parties relating to the Projects, and, except as otherwise provided herein, cannot be modified without written agreement of the Parties.

f. Applicable Law. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas without regard to any conflict of law rules and venue shall lie in Tarrant County, Texas. Nothing in this Agreement shall be construed to (i) limit or prevent Developer from challenging at law or in equity the applicability of any Applicable Law and/or pursuing its rights in furtherance thereof through appropriate judicial proceedings or (ii) constitute a waiver of due process. Notwithstanding anything to the contrary contained in this Agreement, no provision of this Agreement shall be construed to require Developer to comply with any Applicable Law during the period that Developer may be pursuing a bona fide challenge of the applicability, lawfulness, and/or enforceability of such Applicable Law (unless such law requires compliance during any such challenge). If Developer's challenge is successful, Developer shall not be required by the provisions of this Agreement to comply with such Applicable Law.

g. Venue. The Parties to this Agreement agree and covenant that this Agreement will be enforceable in Arlington, Texas; and that if legal action is necessary to enforce this Agreement, exclusive venue will lie in Tarrant County, Texas.

h. Third Party Beneficiary. For purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the Parties to this Agreement, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity (other than Mortgagees) notwithstanding the fact that such third person or entity may be

in contractual relationship with City, the TIRZ, or Developer or any combination thereof; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to City, the TIRZ, or Developer.

i. Force Majeure. Neither City, the TIRZ, nor Developer, nor any successor in interest or assignee thereof, shall be considered in breach or default of their respective obligations under this Agreement, and time for performance of obligations hereunder shall be extended, in the event of any delay caused by force majeure, including damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, governmental action or inaction for an unreasonable period (unless caused by negligence or omissions by the non-performing Party), acts of God, or similar events.

j. Counterparts. This Agreement may be executed in any number of counterparts, each of which may be executed by any one or more of the Parties, but all of which shall constitute one instrument, and shall be binding and effective when all of the Parties have executed at least one counterpart.

k. Modification. This Agreement, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged, or terminated orally or by any act on the part of any Party, but only by an agreement in writing signed by the Party against whom enforcement of any modification, amendment, waiver, extension, change, discharge, or termination is sought.

l. Dispute Resolution. In the event any dispute, controversy or claim between or among the parties hereto arises under this Agreement (a “**Dispute or Controversy**”), including a claim that a Party is in default of this Agreement, the parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement. In the event a Dispute or Controversy arises, any Party shall have the right to notify the other Party hereto that the notifying Party has elected to implement the procedures set forth in this Section 13(l). Within fifteen (15) days after delivery of any such notice by one Party to the other Party regarding a Dispute or Controversy, a representative of each of the parties shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained within fifteen (15) days after the meeting of the parties representatives for such purpose, or such longer period as the parties may agree upon, then either Party may by notice to the other Party (the “**Arbitration Notice**”) submit the Dispute or Controversy to arbitration in accordance with the provisions of this Section 13(l) and Exhibit "D" attached hereto (the “**Arbitration Procedures**”). The Arbitration Notice must comply with the Arbitration Procedures. Upon receipt of the Arbitration Notice, all parties shall be compelled to arbitrate the Dispute or Controversy in accordance with the terms of this Section 13(l) and Exhibit “D” without regard to the justifiable character or executor nature of such Dispute or Controversy. Each Party hereto agrees that any Dispute or Controversy which is not resolved pursuant to this Section shall be submitted to binding arbitration hereunder and shall be resolved exclusively and finally through such binding arbitration in accordance with the Arbitration Procedures (the “**Arbitration**”). This Section 13(l)

and **Exhibit “D”** hereto are and hereby constitute a written agreement by the parties hereto to submit to arbitration any such Dispute or Controversy arising after the Execution Date of this Agreement within the meaning of Section 171.001 of the Texas Civil Practice and Remedies Code. Notwithstanding any provision of this Agreement to the contrary, any Party may seek injunctive relief or other form of ancillary relief at any time from any court of competent jurisdiction in Tarrant County, Texas. In the event that a Dispute or Controversy requires emergency relief before the matter may be resolved under the Arbitration Procedures, notwithstanding that any court of competent jurisdiction may enter an order providing for injunctive or other form of ancillary relief, the parties hereto expressly agree that the Arbitration Procedures will still govern the ultimate resolution of that portion of the Dispute or Controversy not resolved pursuant to said court order.

m. Exculpation of Personal Liability. Notwithstanding anything to the contrary contained in this Agreement, neither any present or future constituent person or entity in Developer nor any present or future shareholder, officer, director, employee, trustee, beneficiary, advisor, partner, member, principal, participant, or agent of or in Developer or of or in any person or entity that is or becomes a constituent person or entity in Developer shall have any personal liability, directly or indirectly, under or in connection with this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and each of the City and TIRZ, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability.

n. Notices. All notices, communications, and reports required or permitted under this Agreement shall be personally delivered or mailed to the respective Parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until the other Parties are otherwise notified in writing by the Party, at the following addresses. Mailed notices shall be deemed delivered five (5) days after mailing regular mail. Notices sent by overnight delivery service shall be deemed delivered on the first Business Day following the date that the notice is deposited with the overnight delivery service.

If intended for the City, to:

The City of Arlington
ATTN: City Manager
P.O. Box 90231
Arlington, Texas 76004-3231

Copy to:

Office of the City Attorney
The City of Arlington
MS #63-0300
P.O. Box 90231
Arlington, Texas 76004-3231

If intended for the TIRZ, to:

Board of Directors
Tax Increment Reinvestment Zone Number Five,
City of Arlington, Texas – Entertainment District
c/o City of Arlington
ATTN: Economic Development Manager
P.O. Box 90231
Arlington, Texas 76004-3231

Copy to:

Office of the City Attorney
The City of Arlington
MS #63-0300
P.O. Box 90231
Arlington, Texas 76004-3231

If intended for Developer, to:

Arlington Ballpark District Developer
Holding Company, LLC
c/o The Cordish Companies
601 East Pratt Street, Sixth Floor
Baltimore, Maryland 21202
Attention: President

Copy to:

Ballpark Parking Partners LLC
Attention: Neil Liebman
5847 San Felipe Street #3700
Houston, Texas 77057

Copy to:

McGuire, Craddock & Strother, P.C.
Attention: Philip Danze
500 N. Akard Street, Suite 2200
Dallas, Texas 75201

o. Attorneys' Fees. If any legal action or process is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its necessary and reasonable attorneys' fees and expenses incurred by reason of such action, in accordance with Section 271.153 of Texas Local Government Code.

p. Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.

q. Approval by City of Arlington, Texas. This Agreement was approved by the City Council of the City of Arlington, Texas at its meeting on December 17, 2019.

r. City Representative. From and after the date hereof, the City shall designate a representative (a "City Representative") who shall be authorized to give all directions, consents, approvals, waivers or other acknowledgements under this Agreement on the part of the City and to receive any and all submissions from Developer under this Agreement. Developer shall be entitled to rely on, and Developer and City agree to be bound by, any direction, consent, approval, waiver or other acknowledgement given by the City Representative, unless prior to the time such direction, consent, approval, waiver or other acknowledgement is given, the City Manager (or his designee) gives written notice to Developer that the City Representative has been changed. For the purpose of this Agreement, Developer shall not be required to rely on and may refuse to accept directions, consents, approvals, waivers or other acknowledgements from any other Person, even if such Person has apparent or actual authority for the City. The City Manager, and only the City Manager, shall be entitled to change the City Representative at any time upon five (5) days written notice to Developer, provided that the City Manager shall appoint a replacement City Representative upon such removal of the prior City Representative or promptly in the event of death or disability of such City Representative. The initial City Representative shall be the City Manager.

s. Confidentiality. The City acknowledges and agrees that any information provided by Developer to the City concerning the cost of developing the Projects, the terms of any financing of any of the Projects, the identity of any potential tenant or the terms of any lease of a tenant is considered by Developer to be "confidential financial information" and may contain "trade secrets" and "confidential information". The City shall notify Developer within five (5) Business Days after receiving any Public Information Act request that seeks disclosure of information provided by or concerning Developer, and the parties shall reasonably cooperate to determine whether or to what extent the requested information may be released without objection and without seeking a written opinion of the Texas Attorney General. If Developer takes the positions that responsive information provided by or concerning Developer is information not subject to release to the public pursuant to section 552.110 of Texas Government Code, or other Applicable Law, then the City shall seek a written opinion from the Texas Attorney General; however, Developer must submit written comments to the Attorney General to establish reasons why the information should be withheld. The burden of establishing the

applicability of exceptions to disclosure for such information resides with Developer. Should the Texas Attorney General issue an opinion that the requested information, or any part thereof, should be released, the City may release said information without penalty or liability. This section shall survive termination of this Agreement for any reason whatsoever.

t. City and TIRZ Representations and Warranties. The City represents and warrants to Developer that the City (i) is a constitutionally chartered city validly existing under the laws of the State of Texas; (ii) has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder; (iii) by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers. The TIRZ represents and warrants to Developer that the TIRZ (i) is validly existing under the laws of the State of Texas; (ii) has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder; (iii) by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

u. Estoppel Certificates. The City, TIRZ and Developer, at any time and from time to time, upon not less than thirty (30) days prior written notice from a Party hereto, or to a person designated by such Party, such as a Mortgagee, shall execute, acknowledge, and deliver to the Party requesting such statement, a statement in reasonably acceptable form to the requested Party certifying, among other matters, (i) that this Agreement 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 and stating the modifications), (ii) stating whether or not, to the best knowledge of the signer of such certificate, the City, TIRZ or Developer is in breach and/or default in performance of any covenant, agreement, or condition contained in this Agreement and, if so, specifying each such breach and/or default of which the signer may have knowledge, and (iii) any other factual matters reasonably requested in such estoppel certificate concerning this Agreement, it being intended that any such statement delivered hereunder may be relied upon by the Party requesting such statement and/or any person not a Party to this Agreement (if such other person is identified at the time such certificate was requested). The City Representative is hereby authorized to execute, acknowledge, and deliver such certificates on behalf of the City.

v. Waiver of Immunity. The City hereby waives its governmental immunity from suit and immunity from liability as to any arbitration proceeding and/or legal action brought by Developer resulting from an uncured default by the City. To effectuate such waiver, the Parties hereby agree that this Agreement is a contract subject to Subchapter I, Chapter 271, Texas Local Government Code, as amended.

w. Separate Agreements. If Developer elects to develop the Office Building, at the request of Developer, made at any time after such election, the City, acting by and through the City Representative, and the TIRZ shall, within thirty (30) Business Days of such request, enter into an amendment to this Agreement (the "Amendment") with Developer (or, at the election of Developer, with a subsidiary or Affiliate of Developer) that deletes all references to the Office Building and shall enter into a separate economic


development incentive agreement for the Office Building with Developer (or, at the election of Developer, an Affiliate or subsidiary of Developer, or a permitted transferee or assignee of Developer) for the Office Building (the “**Office Building Agreement**”). The Office Building Agreement shall contain all of the provisions of this Agreement that concern the Office Building (but none of the provisions that concern the Parking Facility, Site Improvements or Mixed-Use Building). Developer shall prepare the Amendment and the Office Building Agreement. The Amendment may consist of an amendment and restatement of this Agreement in lieu of an amendment to this Agreement. The purpose of the Amendment and the Office Building Agreement is to satisfy a future lender’s requirement that the owner of the Office Building and the owner of the Mixed-Use Building are each single purpose bankruptcy remote entities. To that end this Agreement, as amended by the Amendment, and the Office Building Agreement, shall not be cross defaulted. If Developer elects not to develop the Office Building, at the request of Developer, made at any time after such election, the City, acting by and through the City Representative, and the TIRZ, shall, within thirty (30) Business Days of such request, enter into an amendment to this Agreement (the “**Mixed-Use Building Amendment**”) with Developer that deletes all references to the Office Building, and all references to the Economic Development Grants relating to the Office Building. Developer shall prepare the Single Project Amendment. The Single Project Amendment may consist of an amendment and restatement of this Agreement in lieu of an amendment to this Agreement.

SIGNATURE PAGES TO FOLLOW

EXECUTED THIS 17th day of December, 2019.

CITY:

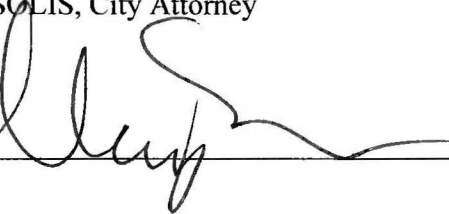
CITY OF ARLINGTON, TEXAS

BY 
City Manager

ATTEST:



ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY 

TIRZ:

TAX INCREMENT REINVESTMENT
ZONE NUMBER FIVE,
CITY OF ARLINGTON, TEXAS –
ENTERTAINMENT DISTRICT

By: 
Chair

WITNESS

By: 

DEVELOPER:

**ARLINGTON BALLPARK DISTRICT
DEVELOPER HOLDING COMPANY,
LLC, a Delaware limited liability company,**

By: Arlington Ballpark District Developer
Holding Company Investors, LLC, its
managing member

BY _____

Name: *Charles Jacobs*

Title: *Authorized Person*

WITNESS:

By: _____

Alyssamang

EXHIBIT "A-1"

Mixed-Use Building Conceptual Plan



EXHIBIT "A-2"

Mixed-Use Building Site

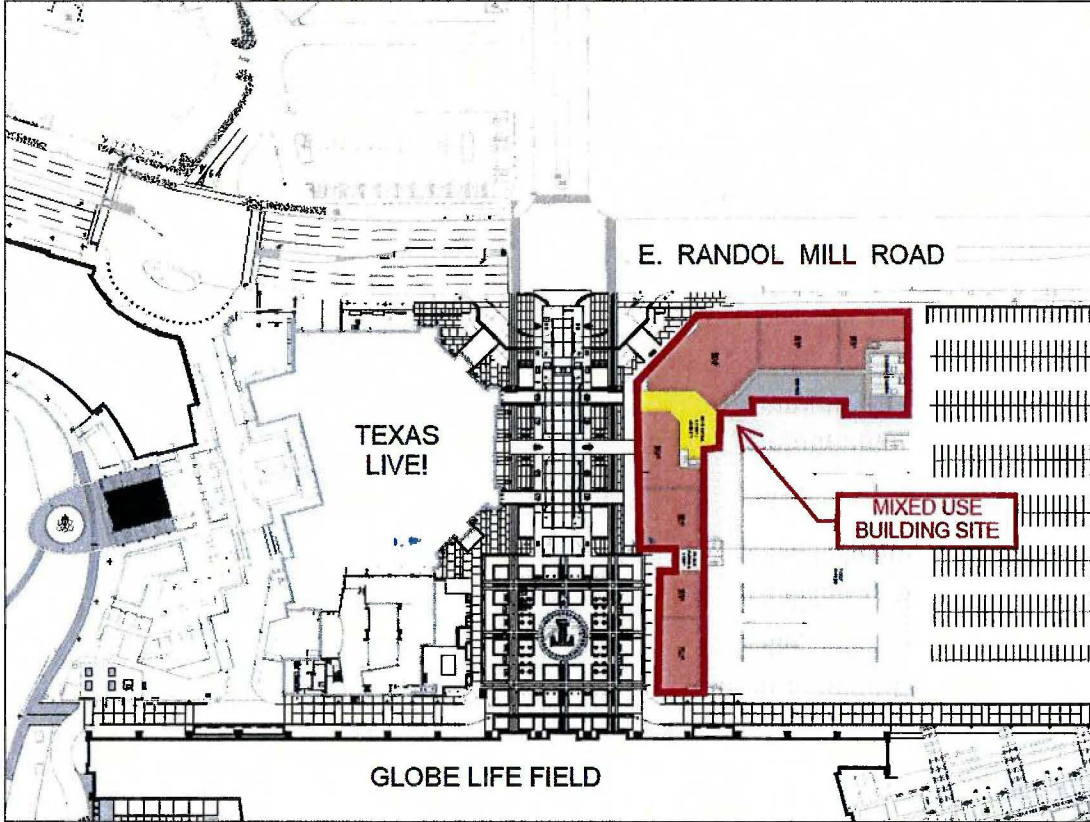


EXHIBIT "B-1"

Office Building Conceptual Plan



EXHIBIT "B-2"

Office Building Site

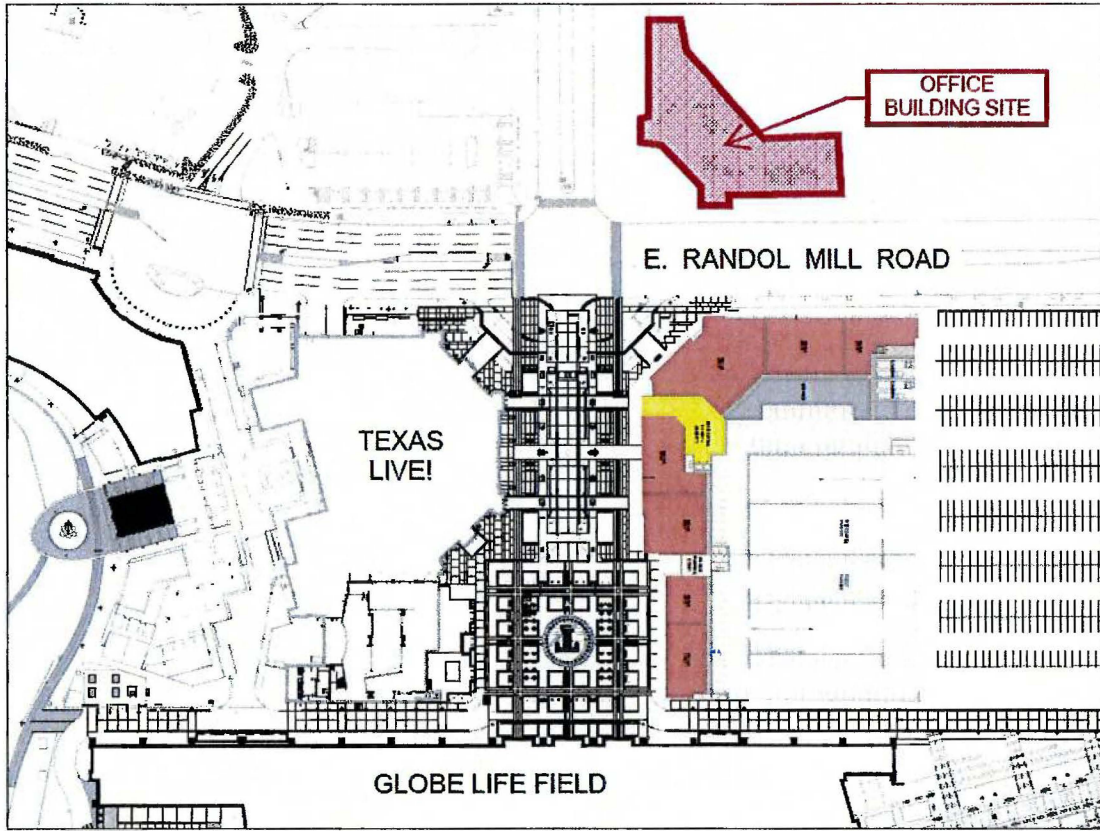


EXHIBIT "C"

Parking Facility Site

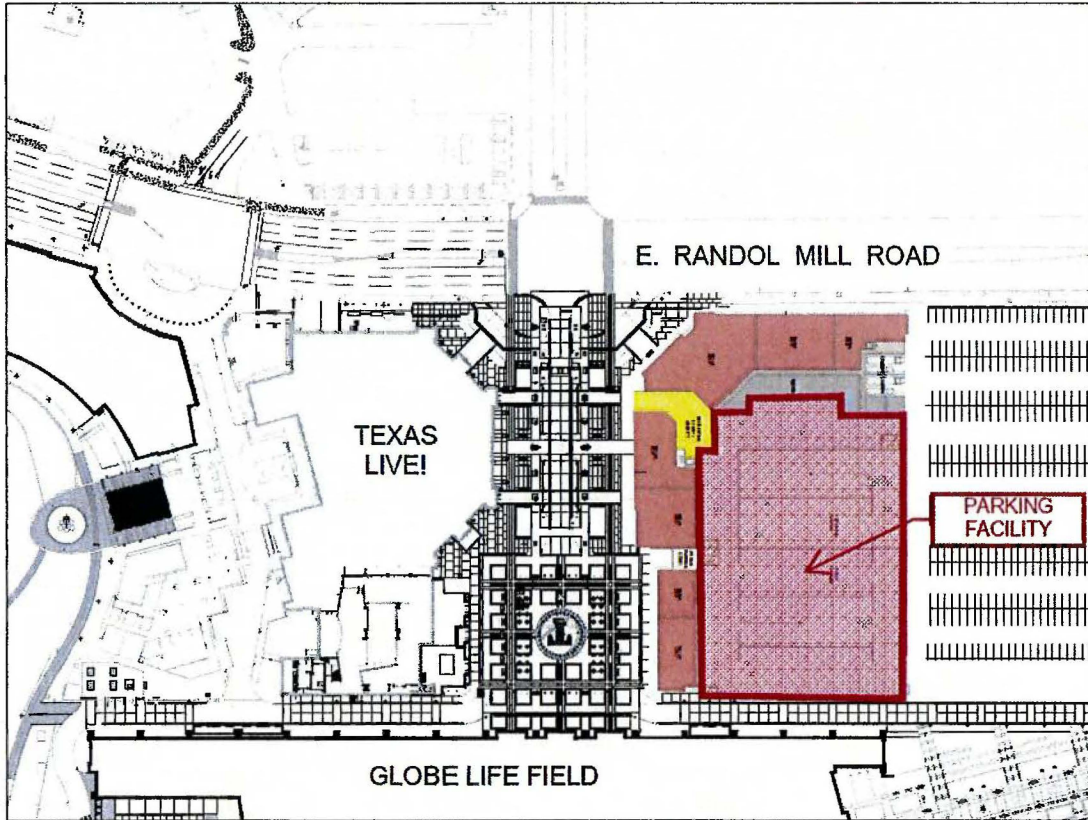


EXHIBIT "D"

Arbitration Procedures

D1 In the event a Party, pursuant to the provisions of Section 13(l), has elected to provide the other Party with an Arbitration Notice, such Arbitration Notice shall include such Party's determinations of the applicable issues of the Dispute and Controversy subject to such Arbitration. In the event that the Arbitration Notice has been sent in accordance with the provisions hereof and the Agreement, the Parties shall mutually agree, within fifteen (15) Business Days of the deemed delivery date of the Arbitration Notice to the appointment of a single arbitrator (the "Arbitrator") to handle the Arbitration. If the Parties are unable to mutually agree upon the Arbitrator within the fifteen (15) Business Days described above, any Party may request the American Arbitration Association to independently select, within thirty (30) Business Days after such Arbitration Notice, an Arbitrator who has the qualifications to serve as the single Arbitrator to resolve this Arbitration. The Arbitration must take place in Tarrant County and be conducted by an Arbitrator that has no conflict of interest.

D2 Within fifteen (15) Business Days after the appointment of the Arbitrator, each Party shall supply the Arbitrator with such documents, materials or other evidence or written arguments as it or the Arbitrator desires, including such Party's proposed determinations of the applicable issues subject to such Arbitration. Each Party shall thereafter have an additional period of ten (10) Business Days to supply any rebuttal or other information it desires. The Arbitrator, in his/her sole discretion, may also request in writing, specific information and/or a hearing and shall alone otherwise determine the conduct of the Arbitration. Any information delivered or communicated during Arbitration by a Party shall be simultaneously delivered or communicated to (i) the other Party and (ii) the Arbitrator. The Arbitration shall be confidential, and the Parties shall maintain the confidential nature of the arbitration proceeding, arbitration hearing and award, except to the extent disclosure is required to regulators, to insurers, pursuant to an enforcement proceeding, or as otherwise required by Applicable Law.

D3 The Arbitrator shall determine all matters necessary to resolve the dispute, including matters beyond the expertise of the Arbitrator. The Arbitrator shall be permitted to employ other professional advisors or experts as the Arbitrator deems reasonably necessary, at the expense of the Parties.

D4 All costs and expenses of the Arbitrator or of any professional advisors or experts engaged by the Arbitrator in connection with an Arbitration shall be borne equally by the Parties, subject to reimbursement as set forth herein. Within forty-five (45) Business Days after the selection of an Arbitrator, the Arbitrator shall select one of the proposed determinations submitted by one of the Parties (and the Arbitrator shall not have the power to add to, modify, or change any of proposed determinations of the Parties). For purposes of this provision, the Party whose position is adopted by the Arbitrator will be deemed the prevailing Party. While each Party shall advance ½ of the costs and expenses of the Arbitrator or of any professional advisors or experts engaged by the Arbitrator in

connection with the Arbitration, the prevailing Party will be reimbursed by the non-prevailing party the ½ of the costs and expenses referenced herein within 30 days of the Arbitrator's final decision. All other costs and expenses incurred by the Parties shall be borne by the Party incurring same.

D5 The Parties agree to act in good faith with respect to any communication with the Arbitrator and the Arbitration process.

D6 Time shall be of the essence with respect to these Arbitration Procedures, and the Parties shall take all reasonable actions necessary to cause any necessary Arbitration hearing to occur promptly, and the Arbitrator shall be directed to arbitrate the dispute and issue its decision as soon as reasonably practicable, but in no event later than forty-five (45) Business Days after the appointment of the Arbitrator.

D7 The Arbitration shall not relieve any Party from any of its respective obligations under this Agreement during the term of any such Arbitration (other than in respect of the subject matter of the dispute that is being arbitrated).

D8 For all purposes of the Arbitration Procedures the City and the TIRZ (or their respective successors and assigns of their respective interests in this Agreement) shall be referred to as a Party, Developer (or its successors and assigns of its interests in this Agreement) shall be referred to as a Party, the City and the TIRZ (or their respective successors and assigns of their respective interests in this Agreement) and, Developer (or its successors and assigns) shall be referred to as Parties. For all purposes of the Arbitration Procedures, Developer (or its successors and assigns) shall be considered one Party and shall act through Developer (or its successor and assign). For all purposes of the Arbitration Procedures, the City and the TIRZ (or such respective successors and assigns) shall be considered one Party and shall act through the City (or such respective successor and assign).

FIRST AMENDED AND RESTATED TIRZ 5 ECONOMIC DEVELOPMENT AND REIMBURSEMENT AGREEMENT

THIS FIRST AMENDED AND RESTATED TIRZ 5 ECONOMIC DEVELOPMENT AND REIMBURSEMENT AGREEMENT (this “**Agreement**”) is executed as of this 2nd day of June, 2021 (the “**Effective Date**”), by and among **TAX INCREMENT REINVESTMENT ZONE NUMBER FIVE, CITY OF ARLINGTON, TEXAS – ENTERTAINMENT DISTRICT (“TIRZ”)**, as established by the City of Arlington, the **CITY OF ARLINGTON, TEXAS** a home-rule city and municipal corporation of Tarrant County, Texas (the “**City**”), and **ARLINGTON BALLPARK DISTRICT DEVELOPER HOLDING COMPANY, LLC**, a Delaware limited liability company (“**Developer**”). TIRZ, City, and Developer may be referred to jointly herein as the “**Parties**” and individually as a “**Party**.”

WITNESSETH:

WHEREAS, on December 19, 2006, the Arlington City Council adopted Ordinance No. 06-117 establishing the TIRZ, in accordance with the Tax Increment Financing Act, as amended, (Texas Tax Code, Chapter 311), to promote development in the area through the use of tax increment financing; and

WHEREAS, on May 21, 2019, the Arlington City Council adopted Ordinance No. 19-028 approving the Amended Financing Plan and Project Plan (the “**Amended Plan**”) for Tax Increment Reinvestment Zone Number Five, City of Arlington, Texas – Entertainment District (the “**Entertainment District**”); and

WHEREAS, on December 17, 2019, the Arlington City Council adopted Ordinance No. 19-066 extending the term of the Entertainment District until 2052 and increasing the percentage of tax increment contributed by the City to one hundred percent (100%); and

WHEREAS, City and Developer desire to improve the Entertainment District through the construction of the Mixed-Use Building (defined herein), Office Building (defined herein), and related public improvements; and

WHEREAS, in accordance with the Amended Financing Plan and Project Plan for Tax Increment Reinvestment Zone Number Five, City of Arlington, Texas – Entertainment District, the Parking Facility (defined herein) (exclusive of the Residential Parking Areas (defined herein)), the Phase 1 Site Improvements (defined herein) and the Phase 2 Site Improvements (defined herein) are eligible projects to be financed by the TIRZ; and

WHEREAS, Section 311.010(h) of the Tax Increment Financing Act provides that the TIRZ may establish and provide for the administration of one or more programs for the public purpose of developing and diversifying the economy of the zone, eliminating unemployment and underemployment in the zone, and developing or expanding transportation, business, and commercial activity in the zone, including programs to make grants and loans from tax increment of the zone; and

WHEREAS, on December 17, 2019 the Parties executed the TIRZ 5 Economic Development and Reimbursement Agreement (the “**Original Agreement**”); and

WHEREAS, on May 26, 2020 the Parties executed a First Amendment to the TIRZ 5 Economic Development and Reimbursement Agreement (the “**First Amendment**”), amending various provisions of the Original Agreement pertaining to the Funding Date (as defined therein), timing of reimbursement for certain Permitted Project Costs, and payment of Grants; and

WHEREAS, City and Developer desire to expand the Project (as that term was defined in the Original Agreement) to include the construction of the Residential Building (defined herein), the Co-Working Project (defined herein), and related public improvements; and

WHEREAS, the TIRZ has found that providing a program consisting of grants of funds to Developer in exchange for Developer’s agreements contained herein concerning the Residential Building, the Co-Working Project, the Mixed-Use Building and the Office Building proposed by Developer will promote local economic development and stimulate business and commercial activity and create jobs within the zone (hereafter referred to as the “**Program**”); and

WHEREAS, the TIRZ has found that the Program will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the Program contain controls likely to ensure that the public purpose is accomplished;

WHEREAS, Chapter 380 of the Texas Local Government Code and Section 311.010 of the Texas Tax Code provide statutory authority for establishing and administering the Program of Grants (defined herein); and

WHEREAS, the City has found that use of the Parking Facility to provide public parking for the adjacent sports venues and other developments located in the Zoning District (defined herein) in the manner that the surface parking lots are currently utilized in the Zoning District and subject to an appropriate voucher or validation system, discounted or free parking for the adjacent entertainment venue, is a public purpose and that, therefore, TIRZ Increment (as defined below) may be used by the City and TIRZ to finance construction of the Parking Facility; and

WHEREAS, the Parties now desire to amend certain provisions and restate in its entirety the Original Agreement and the First Amendment in order to, among other things, provide for the development of the Residential Building and the Co-Working Project.

NOW THEREFORE, in consideration of the foregoing and the mutual agreements, covenants and payments authorized herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties

agree, and the Original Agreement, as amended by the First Amendment, is amended and restated in its entirety, as follows:

1. Definitions.

The following terms shall have the meaning set forth below in this Section 1 for all purposes hereof:

a. “**Affiliate**” means with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, controlled by, or is under common control with the specified Person. For the purpose of this definition, “control” means the ability to directly or indirectly, by voting securities, partnership or member interests, contract or otherwise, direct or cause the direction of the policies or management of the specified Person. Two persons may be Affiliates even if such Persons have different minority equity owners that each have the right to approve certain actions of such Person, such as the sale, financing or leasing of an asset of such Person.

b. “**Applicable Law**” means any law, statutes, ordinances, regulations, guidelines, or requirements, now in force or hereafter enacted by any applicable Governmental Authority.

c. “**Arbitration**” is defined in Section 12(l) of this Agreement.

d. “**Arbitration Notice**” is defined in Section 12(l) of this Agreement.

e. “**Arbitration Procedures**” is defined in Section 12(l) of this Agreement.

f. “**Arbitrator**” is defined in Section D.1 of the Arbitration Procedures.

g. “**Available Funds**” means Available Proceeds and/or Encumbered Funds.

h. “**Available Proceeds**” means the aggregate proceeds of the TIRZ Bonds, net of financing costs, expenses, capitalized interest, if any, reserve funds or other deposits required by the indenture(s) or other instruments authorizing the TIRZ Bonds.

i. “**Available City TIRZ Increment**” means the annual incremental ad valorem tax revenue contributed by the City of Arlington to the tax increment fund for Tax Increment Reinvestment Zone Number Five, City of Arlington, Texas- Entertainment District but excluding thirty percent (30%) of the annual incremental ad valorem revenue contributed by the City of Arlington with respect to Texas Live! and Live by Loews through 2036 and one hundred percent (100%) of the annual incremental ad valorem revenue contributed by the City of Arlington with respect to Texas Live! and Live by Loews through 2050.

j. “**BPP Entity**” means Ballpark Parking Partners LLC, or its Affiliate.

k. **“Business Day”** means any day except Saturday, Sunday, or any other day on which banking institutions are legally authorized to close in the City of New York or Tarrant County, Texas.

l. **“City Economic Development Grants”** means the grants to be paid from City to Developer as provided for in Section 6(a) of this Agreement.

m. **“City Representative”** is defined in Section 12(q) of this Agreement.

n. **“City Manager”** means the City Manager of the City.

o. **“Closing”** means the final execution of the real estate transactions provided for in Section 5 (f).

p. **“Co-Working Project”** means a co-working business containing a minimum of 29,000 square feet of leased space in the Center Field Office Building at Globe Life Park. The Co-Working Project will be similar in design and aesthetics as Spark Baltimore and Spark Kansas City, and the improvements to the leased space will be constructed substantially in accordance with the conceptual renderings attached here to as **“Exhibit F”** and made a part hereof.

q. **“Development and Reimbursement Agreement”** means that certain Development and Reimbursement Agreement by and among the City, TIRZ, and Arlington Stadium Hotel Creek Developer, LLC executed as of June 1, 2019.

r. **“Developer JV Execution Notice”** is defined in Section 6(a)(i) of this Agreement.

s. **“Dispute or Controversy”** is defined in Section 13(l) of this Agreement.

t. **“Encumbered Funds”** means a minimum of Three Million Seven Hundred and Fifty Thousand 00/100 Dollars (\$3,750,000.00) of lawfully available and committed funds to be used by City to provide reimbursement to Developer for Permitted Project Costs for Phase 1 Site Improvements if, and only if, Available Proceeds are insufficient. Upon satisfaction of the reimbursement requirements in Section 3(b) City is permitted to unencumber the balance of Encumbered Funds not needed to reimburse Developer for Phase 1 Site Improvements.

u. **“Entertainment District”** is defined in the Recitals.

v. **“Funding Date”** shall mean the date that is 365 days after City and TIRZ have received the Intention to Proceed Notice.

w. **“Funding Obligation”** is defined in Section 4(b) of this Agreement.

x. **“Governmental Authority”** means any Federal, State, or local governmental entity (including any taxing authority) or agency, court, tribunal, regulatory

commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof).

y. **“Governmental Authorization”** means all approvals, consents, decisions, authorizations, certificates, confirmations, exemptions, applications, notifications, concessions, acknowledgments, agreements, licenses, permits, import permits, employee visas, environmental permits, decisions, right-of-ways, and similar items from any Governmental Authority, including a liquor license from the Texas Alcohol and Beverage Commission.

z. **“Grants”** means the City Economic Development Grant and the TIRZ Economic Development Grants.

aa. **“Intention to Proceed Notice”** is defined in Section 4 (b) hereof.

bb. **“Live by Loews”** means the hotel and convention center annex located at 1600 E Randol Mill Road, Arlington, TX 76011.

cc. **“Mixed-Use Building”** means the improvements constructed on the Mixed-Use Building Site containing approximately 70,000 square feet of commercial space, including office space and retail space (intended to include a unique restaurant experience) and approximately 280 residential units. The Mixed-Use Building will initially be constructed substantially in accordance with the conceptual renderings attached hereto as Exhibit “A-1” and made a part hereof, unless alterations in the concept, including alternations to the location(s) of the various components of the Mixed-Use Building, have been approved by the City Representative in writing, whose approval shall not be unreasonably withheld, conditioned or delayed (and whose approval shall be deemed to have been granted if the City Representative does not approve or disapprove of such alterations within ninety (90) calendar days of their submission in writing to the City Representative for review and approval.); provided, that 1- such alternative improvements are located within the area depicted on Exhibit “G” hereto and 2- such location and all improvements constructed thereon will be taxable.

dd. **“Mixed-Use Building Site”** means the land described in Exhibit “A-2” attached hereto and made a part hereof; provided that the property lines of the Mixed-Use Building Site will be adjusted to the extent reasonably necessary to accommodate construction and operation of the Mixed-Use Building, as configured or described in the “permit set” of plans and specifications for the Mixed-Use Building approved by the City. In the event the City Representative has approved the relocation of one or more components of the Mixed-Use Building to another area in accordance with the definition of Mixed-Use Building, such approved area or areas shall be the Mixed-Use Building Site.

ee. **“Office Building”** means the improvements constructed on the Office Building Site at a height of at least twelve (12) floors (potentially including parking) and containing a minimum of 200,000 square feet of class A office space. It is currently contemplated by Developer that the aesthetics of the exterior of the Office Building, will substantially conform with the renderings attached hereto as Exhibit “B-1” and made a part hereof, unless alterations in the concept have been approved by the City

Representative, whose approval shall not be unreasonably withheld, conditioned or delayed (and whose approval shall be deemed to have been granted if the City Representative does not approve or disapprove of such alterations within thirty (30) calendar days of their submission to the City Representative for review and approval.)

ff. “**Office Building Site**” means the land described in **Exhibit “B-2”** attached hereto and made a part hereof, or such other site within the Zoning District as Developer may select.

gg. “**Parking Facility**” means a structured parking facility, to be owned by the City of Arlington and leased to the BPP Entity, constructed on the Parking Facility Site and containing approximately one thousand five hundred spaces (1,500), but not less than one thousand four hundred and fifty (1,450), parking spaces for use by members of the public. The Parking Facility will also contain the Residential Parking Area.

hh. “**Parking Facility Site**” means the land described in **Exhibit “C”** attached hereto and made a part hereof; provided that the property lines of the Parking Facility Site will be adjusted to the extent reasonably necessary to accommodate construction and operation of the Parking Facility, as configured or described in the “permit set” of plans and specifications for the Parking Facility approved by the City Representative.

ii. “**Permitted Project Costs**” means the actual cost to acquire, design, develop, and construct the Project, including but not limited to: acquisition and preparation costs of the land; land planning, design, architectural and engineering costs; costs to construct, equip, and furnish the project; costs of water, sewer, drainage, and street improvements necessary to serve the project; permits, license, and inspections fees; and fees and expenses of the architect, general contractor, subcontractors, consultants and similar persons.

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

kk. “**Phase 1 Project**” means the Residential Building and the Co-Working Project.

ll. “**Phase 2 Project**” means the Mixed-Use Building and/or the Office Building.

mm. “**Phase 1 Site Improvements**” means improvements to the public streets, sidewalks, and intersections located in or adjacent to the Phase 1 Project, including but not limited to landscape and streetlights, as well as improvements to the public water, sanitary sewer, and storm water facilities located in or adjacent to any such site and other public improvements identified as eligible project costs in the Amended Plan.

m. “**Phase 2 Site Improvements**” means improvements to the public streets,

sidewalks, and intersections located in or adjacent to the Phase 2 Project, including but not limited to landscape and streetlights, as well as improvements to the public water, sanitary sewer, and storm water facilities located in or adjacent to any such site and other public improvements identified as eligible project costs in the Amended Plan.

oo. **“Project”** means the Phase 1 Site Improvements, the Residential Building, the Co-Working Project, (if Developer elects to develop the Mixed-Use Building) the Mixed-Use Building and the applicable Phase 2 Site Improvements (if Developer elects to develop the Parking Facility) the Parking Facility and the applicable Phase 2 Site Improvements or (if Developer elects to develop the Office Building) Office Building and the applicable Phase 2 Site Improvements, as the context requires.

pp. **“Project Costs”** means the actual cost to acquire, design, develop, and construct a Project, including but not limited to: acquisition and preparation costs of the land; land planning, design, architectural and engineering costs; costs to construct, equip, and furnish a Project; costs of water, sewer, drainage, and street improvements necessary to serve a Project; permits, license, and inspections fees; and fees and expenses of the architect, general contractor, subcontractors, construction manager, consultants and similar Persons incurred prior to or after the date of this Agreement by Developer or any Affiliate of Developer in connection with the planning, design, engineering, construction, equipping and furnishing of a Project, the cost and fees associated with the obtaining of all permits and approvals associated with the development and construction of that Project. Project Costs shall also include: (i) all broker commissions, leasing commissions, and amounts paid by Developer to any tenant of the Mixed-Use Building or the Office Building as a "tenant allowance" to pay for all or part of the costs incurred by such tenant in connection with the planning, design, engineering, construction, equipping and furnishing of such tenant's premises within that Project; (ii) tenant improvement costs incurred by Developer with respect to such tenant's premises, leasing and tenant procurement costs, hard and soft costs incurred by such tenant in connection with the build out, fixturing and equipping of its premises; (iii) costs associated with closing of the construction loan, including without limitation construction interest, environmental study costs and fees, surveyor costs and fees, civil engineering expenses, title insurance premiums, costs and expenses, legal fees and expenses; (iv) the salaries and cost of benefits of each employee of Developer and its Affiliates that is working on that Project, pro rata based on the amount of time or number of days such employee is working on a Project; (v) land, premises and/or easement acquisition costs of Developer or its owners or Affiliates, public works and/or public improvement costs and expenses, utility infrastructure costs and expenses, geotechnical costs and fees, architectural, interior design, consulting and engineering costs, fees and expenses, general contractor and/or construction manager fees and expenses, general condition expenses, labor and material costs and expenses, subcontractor costs and expenses; and (vi) site work costs and expenses, landscape costs and expenses, hardscape costs and expenses, furniture, fixtures and equipment costs and expense, audio and visual equipment expenses and pre-opening costs and expenses.

qq. **“Reimbursement Payments”** means the reimbursement payments to be paid from TIRZ to Developer as provided for in Section 3 for Phase 1 Site Improvements and Section 4 for Phase 2 Site Improvements and the Parking Facility (exclusive of the Residential Parking Area.)

ii. **“Residential Building”** means the improvements constructed on the Residential Building Site containing a minimum of approximately 280 residential units and a minimum of 350 parking spaces. The Residential Building will initially be constructed substantially in accordance with the conceptual renderings attached hereto as **Exhibit “E-1”** and made a part hereof, unless alterations in the concept have been approved by the City Representative, whose approval shall not be unreasonably withheld, conditioned or delayed (and whose approval shall be deemed to have been granted if the City Representative does not approve or disapprove of such alterations within thirty (30) calendar days of their submission to the City Representative for review and approval).

ss. **“Residential Building Site”** means the land described in **Exhibit “E-2”** attached hereto and made a part hereof; provided that the property lines of the Residential Building Site will be adjusted to the extent reasonably necessary to accommodate construction and operation of the Residential Building Site, as configured or described in the “permit set” of plans and specifications for the Residential Building Site approved by the City.

tt. **“Residential Parking Areas”** means the non-public portion of the Parking Facility anticipated to include approximately four hundred (400) non-public parking spaces for use by occupants of the residential units and their guests of the Mixed-Use Building, the cost of which is not a reimbursable Permitted Project Cost under Section

uu. **“Substantial Completion”** means, (i) with respect to the Residential Building, residential occupants have begun moving into the Residential Building, (ii) with respect to the Co-Working Space, all tenant improvements for occupants of the Co-Working Space have been substantially completed and the Co-Working Space has begun operations, (iii) with respect to the Mixed-Use Building, occupants of the residential portion of the Mixed-Use Building have begun to move into the Mixed-Use Building, (iv) with respect to the Office Building, the core and shell of the Office Building is completed to such a degree that tenant improvement work for occupants of the Office Building, when the appropriate permits have been obtained for such work, can begin and (v) with regard to the Parking Facility, the Parking Facility, exclusive of the Residential Parking Areas, with the exception of punch list items and landscaping, if any, is substantially complete in all material respects so that it is open and available for parking to the public.

w. **“Term”** means the term of this Agreement as specified in Section 2.

ww. **“Texas Live”** means the restaurant and entertainment complex located at 1650 E Randol Mill Road, Arlington, TX 76011.

xx. **“TIRZ Bonds”** means the bonds, notes, or other obligations, whose terms, provisions and conditions are as determined by the City, to be issued by the City, in one or more series, and that are secured by and payable from a lien on (senior and/or subordinate, as applicable) and pledge of (senior and/or subordinate, as applicable) the TIRZ Increment (but not the Available City TIRZ Increment.)

yy. **“TIRZ Economic Development Grants”** means the grants to be paid

from TIRZ to Developer as provided for in Section 6(b) of this Agreement.

zz. “**TIRZ Increment**” means the annual ad valorem increment deposited into the tax increment fund for Tax Increment Reinvestment Zone Number Five, Arlington, Texas by Tarrant County, Tarrant County College District, and Tarrant County Hospital District.

aaa. “**Zoning District**” means the zoning district created pursuant to Ordinance No. 09-035, adopted by the City Council of the City on June 29, 2009.

2. **Term.**

This Agreement shall be effective as of the date of execution by all Parties hereto and shall remain in full force and effect until September 30, 2053 unless sooner terminated in accordance with the terms of this Agreement, provided, however, that the obligation of the TIRZ to pay TIRZ Economic Development Grants that accrue prior to such date that are unpaid shall survive the termination of the Term.

3. **Phase 1 Site Improvements.**

a. Developer’s Obligations:

i. Developer shall enter into one or more construction contracts for the construction of the Phase 1 Site Improvements in accordance with plans and specifications approved by the City Representative, whose approval shall not be unreasonably withheld, conditioned or delayed (and whose approval shall be deemed to have been granted if the City Representative does not approve or disapprove of the plans and specifications within fifteen (15) calendar days of their submission to the City Representative for review and approval.) Developer shall be solely responsible for the selection of its contractor(s) and shall enter into all agreements necessary for the construction of the Phase 1 Site Improvements. Developer shall cause its contractor(s) to construct the Phase 1 Site Improvements in substantial accordance with the approved plans and specifications. Prior to commencement of any construction work, Developer shall provide the City Representative with a construction schedule and shall invite the City Representative to all scheduled construction meetings. Developer shall provide the City with a quarterly written construction status report, including an updated construction schedule and a log of any change orders.

ii. The plans and specifications and all work performed to complete the Phase 1 Site Improvements shall conform to all Applicable Law. Developer, or its contractor(s), shall obtain all Governmental Authorizations necessary for construction of the Phase 1 Site

Improvements. The City shall reasonably assist Developer with such effort. Execution of this Agreement by the TIRZ and the City shall not constitute or be deemed (1) to be a release by the TIRZ or the City of the responsibility or liability of Developer or any of its contractors, their officers, agents, employees, and subcontractors for the accuracy or the competency of the plans and specifications, including but not limited to, any related investigations, surveys, designs, working drawings, and other specifications or documents; (2) an assumption of any responsibility or liability by the TIRZ or the City for any negligent act, error, or omission in the conduct or preparation of any investigation, surveys, designs, working drawings, and other specifications or documents by Developer or any of its contractors, their officers, agents, employees, and subcontractors; or (3) to be a replacement or substitute for, or otherwise excuse Developer, or its Contractor, from any permitting process of the City applicable to the Phase 1 Site Improvements.

- iii. All Project Costs for the Phase 1 Site Improvements shall be advanced by Developer with Developer making all payments to its contractor(s), and any other third parties, for the design and construction of the Phase 1 Site Improvements from its own funds and obtaining reimbursement from the City and/or the TIRZ in accordance with the terms and provisions of Section 3(b) of this Agreement.
- iv. Developer shall use reasonable efforts to cause all work associated with the Phase 1 Site Improvements to be Substantially Completed within thirty-six (36) months after construction has commenced, as such date may be extended for delays caused by force majeure and delays in the issuance of necessary governmental permits and approvals and the City complying with its material obligations hereunder. Construction of the Phase 1 Site Improvements shall commence within forty-five (45) days after the issuance of all governmental permits and approvals necessary for the commencement of construction of the Phase 1 Site Improvements, which Developer or its designee shall apply for no later than eighteen (18) months after the date this Agreement is executed. The date by which Developer must cause Substantial Completion of the Phase 1 Site Improvements to occur, may, at the request of Developer, be extended in writing by the City Representative, in the reasonable discretion of the City Representative, upon good and sufficient cause therefor being shown by Developer, for such period of time as Developer reasonably requests. After the Substantial Completion of the Phase 1 Site Improvements, Developer shall use due diligence to cause punch list items and landscaping that constitute a part of the Phase 1 Site Improvements to be completed within a reasonable time.

- v. Following acceptance of the Phase 1 Site Improvements, by the City, Developer shall (1) review all final payment applications and forward same to the TIRZ with such supporting documentation as the TIRZ may reasonably require for substantiation of the actual Permitted Project Costs to design and construct the Phase 1 Site Improvements, including contractor's certificates and a final lien waiver following the completion of construction, (2) assign all warranties under the construction contract(s) for the Phase 1 Site Improvements, to the City, and (3) provide copies of all as-built drawings for any and all improvements constructed as part of the Phase 1 Site Improvements to the City. The City shall accept the Phase 1 Site Improvements promptly after the City confirms, in the exercise of the City's governmental function, that the Phase 1 Site Improvements comply with all applicable building codes and ordinances and conform in all material respects to the plans and specifications approved by the City Representative; provided, that Developer shall have the right, from time to time, to make reasonable and non-material changes/field adjustments (collectively, "**Non-Material Field Adjustments**") in and to the plans and specifications approved by the City Representative to the extent that the same shall be necessary or desirable in order to adjust to actual field conditions (and are not materially inconsistent with the intent of the plans and specifications approved by the City Representative and do not result in the substitution of inferior materials or methods of construction) or to cause the work shown on such plans and specifications to comply with any applicable requirements of public authorities and/or requirements of insurance bodies. All Non-Material Field Adjustments (which may be made immediately but confirmed by written notice to the City) shall be noted on the applicable plans or specifications. The City agrees to use its best efforts to expedite acceptance by the City of the Phase 1 Site Improvements, and agrees not to withhold, condition or delay such acceptance for any reason other than as expressly provided above.

- vi. Developer shall, or require Developer's Contractors to, at its own expense, purchase, maintain, and keep in force until the Phase 1 Site Improvements are accepted by the City, the insurance set forth below:
 - a. Developer shall not commence work, or allow Developer's Contractor to commence work, on the Phase 1 Site Improvements under this Agreement until it has obtained the following insurance required under this Agreement and such insurance has been approved by the City, nor shall Developer or Developer's Contractors allow any subcontractor to commence work on its subcontract until all

similar insurance of the subcontractor has been obtained. All insurance policies provided under this Agreement shall be written on an "occurrence" basis. The policy limits stated below are at a minimum.

Liability Insurance

Commercial General Liability (No standard coverages are to be excluded by endorsement. XCU and contractual liability are not to be excluded)	\$1,000,000 Per Occurrence/ \$2,000,000 Aggregate
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Automobile Liability Insurance

Commercial Auto Liability Policy (Any Auto, including hired, and non-owned autos)	\$1,000,000 Combined Single Limit
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Umbrella Liability

(Following Form and Drop Down Provisions Included)	\$5,000,000 Each Occurrence
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Workers Compensation Insurance

Workers' Compensation Employer's Liability	Statutory Limit \$1,000,000 Each Occurrence \$1,000,000 Disease - Each Employee \$1,000,000 Disease – Policy Limit
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- vii. It is agreed by all Parties to this Agreement that the insurance policies required under this Agreement shall be endorsed to provide:
 - a. The City and TIRZ as additional insureds on all policies except Workers Compensation;
 - b. Provide for thirty (30) days' notice of cancellation to the City and TIRZ, ten (10) days for nonpayment of premium;
 - c. Be written through companies duly authorized to transact that class of insurance in the State of Texas with an A.M. Best rating of A-VII or better; and,
 - d. Waive subrogation rights for loss or damage so that insurers have no right of recovery or subrogation against the City or TIRZ, it being the intention that the required insurance policies shall protect all Parties to this Agreement and be primary coverage for all losses covered by the policies.

- e. Provide one copy of a Certificate of Insurance on an Acord form or other State-approved form evidencing the required coverages to:

Attention: Risk Manager
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

- viii. Prior to the commencement of any construction work on the Phase 1 Site Improvements, Developer shall ensure that its contractor(s) have purchased performance, payment, and maintenance bonds, each in an amount not less than the total cost of the Phase 1 Site Improvements, as applicable, and provide such to the City. Each bond shall be executed by a surety company listed in the Treasury Department Circular 570, authorized to do business in the State of Texas, and must maintain an office or agency for contact in Tarrant County, Texas. The period of the maintenance bond shall be two (2) years from the date of acceptance by the City.
- ix. During construction of the Phase 1 Site Improvements, Developer agrees to use diligent efforts and to cause its contractors and subcontractors to use diligent efforts to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality, and price. Developer also agrees to develop a policy that establishes a goal of thirty percent (30%) use by Developer of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractors, subcontractors, or suppliers is vested in racial or ethnic minorities or women for construction of the Phase 1 Site Improvements, which such policy shall contain reasonable exclusions. At the option of Developer, the Phase 1 Site Improvements, Residential Building, and Co-Working Project may be treated as one project for purposes of satisfying the provisions of this subsection.

b. **Reimbursement Payments.** In exchange for Developer's compliance with all the terms and provisions of this Agreement concerning the construction of the Phase 1 Site Improvements, the City and TIRZ agree, subject to the conditions contained herein, to reimburse Developer, from Available Funds, documented Permitted Project Costs in an amount not to exceed Three Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$3,750,000.00) for the Phase 1 Site Improvements. Nothing in this Agreement shall be construed to require the TIRZ or City to provide reimbursements from any source of funds other than Available Funds.

- i. From and after the date that Developer has provided City with notice that BPP Properties Developer LLC, or an Affiliate thereof, and Arlington Ballpark District Developer Holding Company Investors,

LLC, or an Affiliate thereof, have executed the limited liability company agreement for the Residential Building, City or TIRZ shall make reimbursement to Developer for documented Permitted Project Costs for the Phase 1 Site Improvements by payment to Developer of one (1) or more Reimbursement Payments from Available Funds. No more frequently than once every thirty (30) days Developer may request a Reimbursement Payment for documented Permitted Project Costs for the Phase 1 Site Improvements incurred and not previously reimbursed until such time as all Permitted Project Costs for the Phase 1 Site Improvements have been reimbursed or the cumulative total of all Reimbursement Payments equals Three Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$3,750,000.00) for the Phase 1 Site Improvements.

- ii. The City or TIRZ shall provide Developer with each Reimbursement Payment within thirty (30) days of receiving documentation substantiating Permitted Project Costs for the Phase 1 Site Improvements incurred. After the first Reimbursement Payment is made each subsequent request for a Reimbursement Payment must include documentation demonstrating that the previous Reimbursement Payment was utilized to pay documented Permitted Project Costs for the Phase 1 Site Improvements.
- iii. The City and TIRZ represent and warrant to Developer that the payment of Reimbursement Payments from Available Funds are not subject to annual appropriation of the City, TIRZ or any other Governmental Authority, and other than the TIRZ obligation to reimburse Arlington Stadium Hotel Creek Developer, LLC under the terms of the Development and Reimbursement Agreement, payment of the Reimbursement Payments shall take priority over any other contractual commitment to pay an expenditure from the Available Funds until such time as Developer has been fully reimbursed in accordance with this Section 3(b). Nothing in this Agreement shall be construed to require the City or TIRZ to provide Reimbursement Payments from any source of funds other than the Available Funds.

4. **Parking Facility and the Phase 2 Site Improvements.**

a. **Developer's Obligations.** Subject to the City and/or TIRZ satisfying the Funding Obligation, as specified in Section 4(b) below, Developer agrees to do as follows:

- i. Developer shall enter into one or more construction contracts for the construction of the Parking Facility and the Phase 2 Site Improvements in accordance with plans and specifications approved by the City Representative, whose approval shall not be unreasonably withheld, conditioned or delayed (and whose approval shall be deemed to have been granted if the City Representative does not approve or disapprove of the plans and specifications within fifteen (15) calendar days of their submission to the City Representative for review and approval.) Developer shall be solely responsible for the selection of its contractor(s) and shall enter into all agreements necessary for the construction of the Parking Facility and the Phase 2 Site Improvements. Developer shall cause its contractor(s) to construct the Parking Facility and the Phase 2 Site Improvements in substantial accordance with the approved plans and specifications. Prior to commencement of any construction work, Developer shall provide the City Representative with a construction schedule and shall invite the City Representative to all scheduled construction meetings. Developer shall provide the City with a quarterly written construction status report, including an updated construction schedule and a log of any change orders.
- ii. The plans and specifications and all work performed to complete the Parking Facility and the Phase 2 Site Improvements shall conform to all Applicable Law. Developer, or its contractor(s), shall obtain all Governmental Authorizations necessary for construction of the Parking Facility and the Phase 2 Site Improvements. The City shall reasonably assist Developer with such effort. Execution of this Agreement by the TIRZ and the City shall not constitute or be deemed (1) to be a release by the TIRZ or the City of the responsibility or liability of Developer or any of its contractors, their officers, agents, employees, and subcontractors for the accuracy or the competency of the plans and specifications, including but not limited to, any related investigations, surveys, designs, working drawings, and other specifications or documents; (2) an assumption of any responsibility or liability by the TIRZ or the City for any negligent act, error, or omission in the conduct or preparation of any investigation, surveys, designs, working drawings, and other specifications or documents by Developer or any of its contractors, their officers, agents, employees, and subcontractors; or (3) to be a replacement or substitute for, or otherwise excuse Developer, or its

Contractor, from any permitting process of the City applicable to the Parking Facility and the Phase 2 Site Improvements.

- iii. All Project Costs for the Parking Facility and the Phase 2 Site Improvements shall be advanced by Developer with Developer making all payments to its contractor(s), and any other third parties, for the design and construction of the Parking Facility and the Phase 2 Site Improvements from its own funds and obtaining reimbursement from the City and/or the TIRZ in accordance with the terms and provisions of Section 4 of this Agreement.
- iv. Developer shall use reasonable efforts to cause all work associated with the Parking Facility to be Substantially Completed within thirty-six (36) months after the commencement of construction of the Parking Facility, as such date may be extended for delays caused by force majeure and delays in the issuance of necessary governmental permits and approvals and the City complying with its material obligations hereunder. Construction of the Parking Facility shall commence within forty-five (45) days after issuance of all governmental permits and approvals necessary for the commencement of construction of the Parking Facility, which Developer or its designee shall apply for no later than nine (9) months after the date the City notifies Developer that the Funding Obligation has been satisfied, which notice shall not be given by the City until after the Developer has provided the City with the Intention to Proceed Notice, or Developer notifies City that despite a Funding Shortfall Developer has elected to proceed with the development of the Mixed-Use Building and the Parking Facility. The date by which Developer must cause Substantial Completion of the Parking Facility to occur, may, at the request of Developer, be extended in writing by the City Representative, in the reasonable discretion of the City Representative, upon good and sufficient cause therefor being shown by Developer, for such period of time as Developer reasonably requests. After the Substantial Completion of the Parking Facility, Developer shall use due diligence to cause punch list items and landscaping that constitute a part of the Parking Facility to be completed within a reasonable time. Notwithstanding the above, to qualify for the reimbursement payments provided for in Section 4(b) for Permitted Project Costs incurred on the Parking Facility Developer shall cause Substantial Completion of the Parking Facility to occur no later than the tenth (10th) anniversary of the Effective Date, subject to delays caused by force majeure, unless a later date is approved in writing by the City Representative.
- v. Developer shall use reasonable efforts to cause all work associated with the Phase 2 Site Improvements to be Substantially Completed within thirty-six (36) months after the commencement of construction of the Parking Facility, as such date may be extended for delays caused by force majeure and delays in the issuance of necessary governmental permits and approvals and the City

complying with its material obligations hereunder. Construction of the Phase 2 Site Improvements shall commence within forty-five (45) days after the issuance of all governmental permits and approvals necessary for the commencement of construction of the Phase 2 Site Improvements, which Developer or its designee shall apply for no later than nine (9) months after the date the City notifies Developer that the Funding Obligation has been satisfied, which notice shall not be given by the City until after the Developer has provided the City with the Intention to Proceed Notice, or Developer notifies City that despite a Funding Shortfall Developer has elected to proceed with the development of the Mixed-Use Building and the Parking Facility. The date by which Developer must cause Substantial Completion of the Phase 2 Site Improvements to occur, may, at the request of Developer, be extended in writing by the City Representative, in the reasonable discretion of the City Representative, upon good and sufficient cause therefor being shown by Developer, for such period of time as Developer reasonably requests. After the Substantial Completion of the Phase 2 Site Improvements, Developer shall use due diligence to cause punch list items and landscaping that constitute a part of the Phase 2 Site Improvements to be completed within a reasonable time. Notwithstanding the above, to qualify for the reimbursement payments provided for in Section 4(b) for Permitted Project Costs incurred on the Phase 2 Site Improvements Developer shall cause Substantial Completion of the Parking Facility to occur no later than the tenth (10th) anniversary of the Effective Date, subject to delays caused by force majeure, unless a later date is approved in writing by the City Representative.

- vi. Following acceptance of the Parking Facility and the Phase 2 Site Improvements, by the City, Developer shall (1) review all final payment applications and forward same to the TIRZ with such supporting documentation as the TIRZ may reasonably require for substantiation of the actual Permitted Project Costs to design and construct the Parking Facility, and the Phase 2 Site Improvements, including contractor's certificates and a final lien waiver following the completion of construction, (2) assign all warranties under the construction contract(s) for the Parking Facility and the Phase 2 Site Improvements, to the City, and (3) provide copies of all as-built drawings for any and all improvements constructed as part of the Parking Facility, and the Phase 2 Site Improvements to the City. The City shall accept the Parking Facility and Phase 2 Site Improvements promptly after the City confirms, in the exercise of the City's governmental function, that the Parking Facility and Phase 2 Site Improvements comply with all applicable building codes and ordinances and conform in all material respects to the plans and specifications approved by the City Representative; provided, that Developer shall have the right, from time to time, to

make reasonable and non-material changes/field adjustments (collectively, “**Non-Material Field Adjustments**”) in and to the plans and specifications approved by the City Representative to the extent that the same shall be necessary or desirable in order to adjust to actual field conditions (and are not materially inconsistent with the intent of the plans and specifications approved by the City Representative and do not result in the substitution of inferior materials or methods of construction) or to cause the work shown on such plans and specifications to comply with any applicable requirements of public authorities and/or requirements of insurance bodies. All Non-Material Field Adjustments (which may be made immediately but confirmed by written notice to the City) shall be noted on the applicable plans or specifications. The City agrees to use its best efforts to expedite acceptance by the City of the Parking Facility and Phase 2 Site Improvements, and agrees not to withhold, condition or delay such acceptance for any reason other than as expressly provided above.

- vii. Developer shall, or require Developer’s Contractors to, at its own expense, purchase, maintain, and keep in force until the Parking Facility and Phase 2 Site Improvements are accepted by the City, the insurance set forth below:
 - a. Developer shall not commence work, or allow Developer’s Contractor to commence work, on the Parking Facility and Phase 2 Site Improvements under this Agreement until it has obtained all the insurance required under this Agreement and such insurance has been approved by the City, nor shall Developer or Developer’s Contractors allow any subcontractor to commence work on its subcontract until all similar insurance of the subcontractor has been obtained. All insurance policies provided under this Agreement shall be written on an “occurrence” basis. The policy limits stated below are at a minimum.

Liability Insurance

Commercial General Liability	\$1,000,000 Per Occurrence/
(No standard coverages are to be excluded by endorsement. XCU and contractual liability are not to be excluded)	\$2,000,000 Aggregate

Automobile Liability Insurance

Commercial Auto Liability Policy	\$1,000,000 Combined Single
(Any Auto, including hired, and non-owned autos)	Limit

Umbrella Liability
(Following Form and Drop Down Provisions Included) \$5,000,000 Each Occurrence

Workers Compensation Insurance
Workers' Compensation Statutory Limit
Employer's Liability \$1,000,000 Each Occurrence
\$1,000,000 Disease - Each Employee
\$1,000,000 Disease – Policy Limit

- viii. It is agreed by all Parties to this Agreement that the insurance policies required under this Agreement shall be endorsed to provide:
- a. The City and TIRZ as additional insureds on all policies except Workers Compensation;
 - b. Provide for thirty (30) days' notice of cancellation to the City and TIRZ, ten (10) days for nonpayment of premium;
 - c. Be written through companies duly authorized to transact that class of insurance in the State of Texas with an A.M. Best rating of A-VII or better; and,
 - d. Waive subrogation rights for loss or damage so that insurers have no right of recovery or subrogation against the City or TIRZ, it being the intention that the required insurance policies shall protect all Parties to this Agreement and be primary coverage for all losses covered by the policies.
 - e. Provide one copy of a Certificate of Insurance on an Acord form or other State-approved form evidencing the required coverages to:

Attention: Risk Manager
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

- ix. Prior to the commencement of any construction work on the Parking Facility and the Phase 2 Site Improvements, Developer shall ensure that its contractor(s) have purchased performance, payment, and maintenance bonds, each in an amount not less than the total cost of the Parking Facility and/or the Phase 2 Site Improvements, as applicable, and provide such to the City. Each bond shall be executed by a surety company listed in the Treasury Department Circular 570, authorized to do business in the State of Texas, and must maintain an office or agency for contact in Tarrant County,

Texas. The period of the maintenance bond shall be two (2) years from the date of acceptance by the City.

- x. During construction of the Parking Facility, and the Phase 2 Site Improvements, Developer agrees to use diligent efforts and to cause its contractors and subcontractors to use diligent efforts to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality, and price. Developer also agrees to develop a policy that establishes a goal of twenty-five percent (25%) use by Developer of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractors, subcontractors, or suppliers is vested in racial or ethnic minorities or women for construction of the Parking Facility, and the Phase 2 Site Improvements, which such policy shall contain reasonable exclusions. At the option of Developer, the Parking Facility, the Phase 2 Site Improvements, the Mixed-Use Building and Office Building may be treated as one project for purposes of satisfying the provisions of this subsection.

- xi. Upon Substantial Completion of the Parking Facility, the City and the BPP Entity shall enter into a lease of the Parking Facility pursuant to which the BPP Entity agrees to operate and maintain the Parking Facility for the City. The Parking Facility Lease shall provide for the payment of nominal rent and grant the BPP Entity the right to purchase the Parking Facility for nominal consideration upon the end of the term of the Parking Facility Lease. The City and the BPP Entity shall use commercially reasonable efforts to reach agreement on the Parking Facility Lease as soon as reasonably possible, and in any event before construction of the Parking Facility commences. The Parking Facility Lease shall be subject to Developer's approval, in its reasonable discretion.

- xii. Upon Substantial Completion of the Parking Facility, the BPP Entity and Developer shall enter into a sublease covering the Residential Parking Areas pursuant to which Developer agrees to operate and maintain the Residential Parking Areas for the BPP Entity (the "**Parking Facility Sublease**"). The Parking Facility Sublease is anticipated to cover the Residential Parking Areas for use by occupants of the residential units contained in the Mixed-Use Building and their guests. The BPP Entity and Developer shall use commercially reasonable efforts to reach agreement on the Parking Facility Sublease as soon as reasonably possible, and in any event before construction of the Parking Facility commences. The Parking Facility Sublease shall be subject to the City's approval, in its reasonable discretion.

xiii. Upon Substantial Completion of the Parking Facility, the City, the BPP Entity and Developer shall enter into such declarations, condominium documents, reciprocal easement agreements, covenant agreements and parking easements affecting the Parking Facility as they may deem reasonably necessary for the shared use of the Parking Facility (i.e., exclusive use of the Residential Parking Areas by the occupants of the residential units within the Mixed-Use Building and their guests, and non-exclusive use of the public portion by customers and employees of the retail tenants within the Mixed-Use Building, customers of Texas Live! pursuant to a voucher or validation system acceptable to the BPP Entity and Developer for up to 300 parking spaces, and persons attending sporting, entertainment or other public events at Globe Life Field, Globe Life Park or other venues in the surrounding area). The Parties shall use commercially reasonable efforts to reach agreement on such additional documents as soon as reasonably possible, and in any event before the Funding Date.

b. **Reimbursement Payments.** Upon receipt of written notice from the Developer that it intends to proceed with the development of the Mixed-Use Building, Phase 2 Site Improvements, and the Parking Facility (the “**Intention to Proceed Notice**”), the City and/or TIRZ shall use its reasonable and best efforts to obtain Available Funds, on or prior to the Funding Date, in the amount of Thirty Six Million Seven Hundred and Fifty Thousand 00/100 Dollars (\$36,750,000.00) to fund the development of the Parking Facility (exclusive of the Residential Parking Areas), and the Phase 2 Site Improvements (the “**Funding Obligation**”). Notwithstanding the above, the issuance of debt is a governmental function subject to the discretion of the City Council of the City. For the sake of clarity, the TIRZ Bonds shall not be secured by or payable from a lien on or pledge of the Available City TIRZ Increment. If the City and/or TIRZ are unable to satisfy the Funding Obligation by the Funding Date, Developer may elect to proceed with the Mixed-Use Building, Phase 2 Site Improvements, and the Parking Facility and the City and/or TIRZ shall use reasonable and best efforts to identify available funding to provide future reimbursement to the Developer for the difference between Thirty Six Million Seven Hundred and Fifty Thousand 00/100 Dollars (\$36,750,000.00) and the amount of Available Funds (the “**Funding Shortfall**”). If Developer proceeds with the Mixed-Use Building, Phase 2 Site Improvements, and the Parking Facility and causes Substantial Completion to occur by the tenth (10th) anniversary of the Effective Date, subject to delays caused by force majeure, unless a later date is approved in writing by the City Representative, in exchange for Developer’s compliance with all the terms and provisions of this Agreement concerning the construction of the Parking Facility (exclusive of the Residential Parking Areas) and the Phase 2 Site Improvements, the City and TIRZ agree, subject to the conditions contained herein, to reimburse Developer, from Available Funds, documented Permitted Project Costs in an amount not to exceed Thirty Three Million and 00/100 Dollars (\$33,000,000.00) for the Parking Facility (exclusive of the Residential Parking Areas), and documented Permitted Project Costs in an amount not to exceed Three Million Seven Hundred and Fifty Thousand and 00/100 Dollars (\$3,750,000.00) for the Phase 2 Site Improvements. Nothing in this Agreement shall be construed to require the TIRZ or City to provide reimbursements from any source of funds other than Available Funds.

- i From and after the date that the Developer has provided the City with a completion guaranty, guaranteeing Substantial Completion of the Mixed-Use Building and the Parking Facility, City or TIRZ shall make reimbursement to Developer for documented Permitted Project Costs for the Parking Facility (exclusive of the Residential Parking Areas) and Phase 2 Site Improvements by payment to Developer of one (1) or more Reimbursement Payments from Available Funds. No more frequently than once every thirty (30) days Developer may request a Reimbursement Payment for documented Permitted Project Costs incurred and not previously reimbursed until such time as all Permitted Project Costs have been reimbursed or the cumulative total of all Reimbursement Payments equals Thirty Three Million and 00/100 Dollars (\$33,000,000.00) for the Parking Facility (exclusive of the Residential Parking Areas) and Three Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$3,750,000.00) for the Phase 2 Site Improvements.
- ii The City or TIRZ shall provide Developer with each Reimbursement Payment within thirty (30) days of receiving documentation substantiating Permitted Project Costs for the Parking Facility (exclusive of the Residential Parking Areas) and Phase 2 Site Improvements incurred. After the first Reimbursement Payment is made each subsequent request for a Reimbursement Payment must include documentation demonstrating that the previous Reimbursement Payment was utilized to pay documented Permitted Project Costs for the Parking Facility (exclusive of the Residential Parking Areas) and Phase 2 Site Improvements.
- iii The City and TIRZ represent and warrant to Developer that the payment of Reimbursement Payments from Available Funds are not subject to annual appropriation of the City, TIRZ or any other Governmental Authority, and other than the TIRZ obligation to reimburse Arlington Stadium Hotel Creek Developer, LLC under the terms of the Development and Reimbursement Agreement and the TIRZ obligation to make Reimbursement Payments for the Phase 1 Site Improvements in accordance with Section 3(b) hereof, the TIRZ obligation to make Reimbursement Payments for the Parking Facility (exclusive of the Residential Parking Areas) and Phase 2 Site Improvements shall take priority over any other contractual commitment to pay an expenditure from the Available Funds until such time as Developer has been fully reimbursed in accordance with Section 4(b). Nothing in this Agreement shall be construed to require the City or TIRZ to provide Reimbursement Payments from any source of funds other than the Available Funds.

5. **Private Improvements.**

a. **Estimated Cost.** Developer estimates that the Phase 1 Project will cost approximately Ninety Million and 00/100 Dollars (\$90,000,000.00) of Project Costs to construct. Developer estimates that the Phase 2 Project will cost approximately Two Hundred Million and 00/100 Dollars (\$200,000,000.00) of Project Costs to construct.

b. **Residential Building.** Payment of the TIRZ Economic Development Grant and the City Economic Development Grant for the Phase 1 Project provided for in Section 6 is subject to Developer or its Affiliate's satisfaction of the following conditions and requirements:

i. Developer or its Affiliate shall design and construct or cause to be designed and constructed the Residential Building on the Residential Building Site and cause Substantial Completion of the Residential Building to occur within thirty- six (36) months after issuance of a final building permit (as opposed to the grading permit or foundation permit) for construction of the Residential Building, as such date may be extended for delays caused by force majeure and delays in the issuance of necessary governmental permits and approvals and the City complying with its material obligations hereunder. Construction of the Residential Building shall commence within forty-five (45) days after the issuance of all governmental permits and approvals necessary for the commencement of construction of the Residential Building, which Developer or its designee shall apply for no later than eighteen (18) months after the date this Agreement is executed. Developer or its Affiliate shall diligently pursue the issuance of all necessary permits and approvals for the construction of the Residential Building. Subject to the terms hereof, the date by which Developer must cause Substantial Completion of the Residential Building to occur, may, at the request of Developer, be extended in writing by the City Representative, in the reasonable discretion of City Representative, upon good and sufficient cause therefor being shown by Developer, for such period of time as Developer reasonably requests. After the Substantial Completion of the Residential Building, Developer shall use due diligence to cause punch

list items and landscaping that constitute a part of the construction of the Residential Building to be completed within a reasonable time.

ii. Developer or its Affiliate shall spend a minimum of Eighty-Five Million and 00/100 Dollars (\$85,000,000.00) on Project Costs to design and construct the Residential Building. Within one hundred eighty (180) days of Substantial Completion of the Residential Building, Developer or its Affiliate shall provide, at its expense, a statement to the City from an independent certified public accountant confirming or denying that Developer or its Affiliate has spent a minimum of Eighty-Five Million and 00/100 Dollars (\$85,000,000.00) on Project Costs to design and construct the Residential Building. When preparing such statement, the certified public accountant shall have the right: (i) to utilize reasonable

accounting procedures to confirm such expenditures; and (ii) to rely on written statements made by third-party tenants of the Residential Building with respect to Project Costs incurred by such third-party tenants. In the event that such statement establishes that less than Eighty-Five Million and 00/100 Dollars (\$85,000,000.00) has been expended on Project Costs, Developer or its Affiliate shall reserve the shortfall amount and utilize same in connection with the Residential Building during the Term of this Agreement. As long as such reserved funds have not been expended, each year of the Term Developer or its Affiliate shall provide, at its expense, a statement to the City from an independent certified public accountant certifying the unexpended amount of such reserved funds and the amount of such reserved funds that has been expended over the previous year in connection with the Residential Building. If any such reserved funds remain unexpended at the end of the Term, Developer or its Affiliate shall cause such amount to be paid to the City. In the event that the Project Costs incurred in connection with the Co-Working Project exceeds Five Million and 00/100 Dollars (\$5,000,000.00), up to One Million and 00/100 Dollars (\$1,000,000.00) of such excess amount, at the election of the Developer, shall, upon the Substantial Completion of the Residential Building, be deemed Project Costs incurred in connection with the Residential Building for purposes of this Section 5 (b) (ii).

- iii. During construction of the Residential Building Developer agrees to use diligent efforts and to cause its contractors and subcontractors to use diligent efforts to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality, and price. Developer also agrees to develop a policy that establishes a goal of thirty percent (30%) use by Developer of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractors, subcontractors, or suppliers is vested in racial or ethnic minorities or women for construction of the Residential Building, which such policy shall contain reasonable exclusions. At the option of Developer, the Phase 1 Site Improvements, Residential Building and Co-Working Project may be treated as one project for purposes of satisfying the provisions of this subsection.
- iv. During the Term of this Agreement, Developer shall not allow the ad valorem taxes owed to the City for the Residential Building to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal. Nor shall Developer fail to render for taxation any taxable personal property owned by Developer and located within the Residential Building.
- v. In the event of damage or destruction of the Residential Building after Substantial Completion of same, during the Term of this Agreement, Developer shall cause the full repair or restoration of the Residential

Building, as same existed at the time of such damage or destruction (as same may be modified by Developer at the time of such repair or restoration, provided that such modification is of equivalent or greater value), whether done by application of insurance proceeds or other financial means. On or after expiration of such period, in the event of damage or destruction of the Residential Building, Developer shall have the right to determine whether, and to what extent the Residential Building should be restored or replaced. Notwithstanding the above, a Mortgagee and any person that acquires title to the Residential Building as a result of foreclosure sale, deed in lieu of foreclosure or other similar transaction, and their respective successors and assigns, shall not be obligated to comply with the provisions of this Section 5 (b)(v).

- vi. During the Term, Developer shall refer to the Residential Building in all marketing and advertising efforts that contain the location of the Residential Building as being located in Arlington, Texas and shall not use any other proper geographic name (i.e. Dallas, Fort Worth, etc.) or informal geographic name (i.e. Metroplex, North Texas, etc.) to describe the Residential Building's location, except that Developer may reference the distance of Residential Building from other locations.
- vii. The design, construction, and operation of the Residential Building shall comply with all Applicable Law. In addition, Developer shall obtain, at its expense, all Governmental Authorizations for the design, construction, and operation of the Residential Building. The City shall reasonably assist Developer in its efforts to obtain such Governmental Authorizations.
- viii. It is the intent of Developer to operate the Residential Building in a manner similar to the operation of other market rate multi-family developments in North Texas commencing on the date the Residential Building initially opens for business to the public and continuing for the remainder of the Term.
- ix. Developer covenants and certifies that Developer does not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.01(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if Developer is convicted of a violation under 8 U.S.C. Section 1324a(f) in connection with the Residential Building, Developer shall repay to the TIRZ and City the full amount of the Grants made under Section 6 of this Agreement for the Residential Building, plus ten percent (10%) interest per annum from the date the Grant(s) was made. Repayment shall be paid within one hundred twenty (120) days after the date Developer receives notice of violation of this provision from the TIRZ and/or City, which notice shall not be given by the TIRZ and/or City until after such conviction has become final and non-appealable. Notwithstanding any

contrary provision, Developer shall not be in breach of this subsection and shall not be obligated to make such repayment if a subsidiary or Affiliate of Developer, or a tenant or property manager that is an Affiliate or subsidiary of Developer, or a direct or indirect equity owner of Developer, or a person with whom Developer contracts, such as a general contractor, or a third-party tenant, is convicted of a violation under 8 U.S.C. Section 1324a(f).

c. **Co-Working Project.** Payment of the City Economic Development Grant for the Phase 1 Project provided for in Section 6 is subject to Developer or its Affiliate's satisfaction of the following conditions and requirements:

- i. Developer or its Affiliate shall design and construct or cause to be designed and constructed the Co-Working Project in the Center Field Office Building in Globe Life Park and cause Substantial Completion of the Co-Working Project to occur prior to the Substantial Completion of the Residential Building, as such date may be extended for delays caused by force majeure and delays in the issuance of necessary governmental permits and approvals and the City complying with its material obligations hereunder. Construction of the Co-Working Project shall commence within forty-five (45) days after the issuance of all governmental permits and approvals necessary for the commencement of construction of the Co-Working Project, which Developer or its designee shall apply for no later than eighteen (18) months after the date this Agreement is executed. Developer or its Affiliate shall diligently pursue the issuance of all necessary permits and approvals for the construction of the Co-Working Project. Subject to the terms hereof, the date by which Developer or its Affiliate must cause Substantial Completion of the Co-Working Project to occur, may, at the request of Developer or its Affiliate, be extended in writing by the City Representative, in the reasonable discretion of City Representative, upon good and sufficient cause therefor being shown by Developer or its Affiliate, for such period of time as Developer reasonably requests. After the Substantial Completion of the Co-Working Project, Developer or its Affiliate shall use due diligence to cause punch list items and landscaping that constitute a part of the construction of the Co-Working Project to be completed within a reasonable time.
- ii. Developer or its Affiliates shall spend a minimum of Five Million and 00/100 Dollars (\$5,000,000.00) on Project Costs to design and construct the Co-Working Project. Within one hundred eighty (180) days of Substantial Completion of the Co-Working Project, Developer or its Affiliate shall provide, at its expense, a statement to the City from an independent certified public accountant confirming or denying that Developer or its Affiliate has spent a minimum of Five Million and 00/100 Dollars (\$5,000,000.00) on Project Costs to design and construct the Co-Working Project. When preparing such statement, the certified

public accountant shall have the right: (i) to utilize reasonable accounting procedures to confirm such expenditures; and (ii) to rely on written statements made by third-party tenants or occupants of the Co-Working Project with respect to Project Costs incurred by such third-party tenants or occupants. In the event that such statement establishes that less than Five Million and 00/100 Dollars (\$5,000,000.00) has been expended on Project Costs, Developer or its Affiliate shall reserve the shortfall amount and utilize same in connection with the Co-Working Project during the Term of this Agreement. As long as such reserved funds have not been expended, each year of the Term Developer or its Affiliate shall provide, at its expense, a statement to the City from an independent certified public accountant certifying the unexpended amount of such reserved funds and the amount of such reserved funds that has been expended over the previous year in connection with the Co-Working Project. If any such reserved funds remain unexpended at the end of the Term, Developer or its Affiliate shall cause such amount to be paid to the City.

- iii. During construction of the Co-Working Project Developer agrees to use diligent efforts and to cause its contractors and subcontractors to use diligent efforts to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality, and price. Developer also agrees to develop a policy that establishes a goal of twenty-five percent (25%) use by Developer of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractors, subcontractors, or suppliers is vested in racial or ethnic minorities or women for construction of the Co-Working Project, which such policy shall contain reasonable exclusions. At the option of Developer, the Phase 1 Site Improvements, Residential Building and Co-Working Project may be treated as one project for purposes of satisfying the provisions of this subsection.
- iv. During the Term of this Agreement, Developer shall not allow the ad valorem taxes owed to the City for the Co-Working Project to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal. Nor shall Developer fail to render for taxation any taxable personal property owned by Developer and located within the Co-Working Project.
- v. In the event of damage or destruction of the Co-Working Project after Substantial Completion of same, during the Term of this Agreement, Developer shall cause the full repair or restoration of the Co-Working Project, as same existed at the time of such damage or destruction (as same may be modified by Developer at the time of such repair or restoration, provided that such modification is of equivalent or greater value), whether done by application of insurance proceeds or other financial means. On or after expiration of such period, in the event of

damage or destruction of the Co-Working Project, Developer shall have the right to determine whether, and to what extent the Co-Working Project should be restored or replaced. Notwithstanding the above, a Mortgagee and any person that acquires title to the Co-Working Project as a result of foreclosure sale, deed in lieu of foreclosure or other similar transaction, and their respective successors and assigns, shall not be obligated to comply with the provisions of this Section 5 (c)(v).

- vi. During the Term, Developer shall refer to the Co-Working Project in all marketing and advertising efforts that contain the location of the Co-Working Project as being located in Arlington, Texas and shall not use any other proper geographic name (i.e. Dallas, Fort Worth, etc.) or informal geographic name (i.e. Metroplex, North Texas, etc.) to describe the Co-Working Project's location, except that Developer may reference the distance of Co-Working Project from other locations.
- vii. The design, construction, and operation of the Co-Working Project shall comply with all Applicable Law. In addition, Developer shall obtain, at its expense, all Governmental Authorizations for the design, construction, and operation of the Co-Working Project. The City shall reasonably assist Developer in its efforts to obtain such Governmental Authorizations.
- viii. It is the intent of Developer to operate the Co-Working Project in a manner similar to the operation of other Class-A co-working office space in North Texas commencing on the date the Co-Working Project initially opens for business to the public and continuing for a minimum term of ten (10) years.
- ix. Developer covenants and certifies that Developer does not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.01(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if Developer is convicted of a violation under 8 U.S.C. Section 1324a(f) in connection with the Co-Working Project, Developer shall repay to the TIRZ and City the full amount of the Grants made under Section 6 of this Agreement for the Co-Working Project, plus ten percent (10%) interest per annum from the date the Grant(s) was made. Repayment shall be paid within one hundred twenty (120) days after the date Developer receives notice of violation of this provision from the TIRZ and/or City, which notice shall not be given by the TIRZ and/or City until after such conviction has become final and non-appealable. Notwithstanding any contrary provision, Developer shall not be in breach of this subsection and shall not be obligated to make such repayment if a subsidiary or Affiliate of Developer, or a tenant or property manager that is an Affiliate or subsidiary of Developer, or a direct or indirect equity owner of Developer, or a person with whom Developer contracts, such as a general contractor, or a third-party tenant, is convicted of a violation

under 8 U.S.C. Section 1324a(f).

d. **Mixed-Use Building.** Developer intends to develop the Mixed-Use Building if, as and when Developer determines that a suitable market exists for such project. Until Developer elects to develop the Mixed-Use Building, which election Developer may make in its sole and absolute discretion, Developer shall not be obligated to develop the Mixed-Use Building. If Developer elects to develop the Mixed-Use Building, payment of the City Economic Development Grant for the Phase 2 Project provided for in Section 6 shall be subject to Developer's satisfaction of the following conditions and requirements:

i. Developer shall design and construct or cause to be designed and constructed the Mixed-Use Building on the Mixed-Use Building Site and cause Substantial Completion of the Mixed-Use Building to occur within thirty-six (36) months after construction of the Parking Facility has commenced, as such date may be extended for delays caused by force majeure and delays in the issuance of necessary governmental permits and approvals and the City complying with its material obligations hereunder. On and after the Funding Date, Developer shall diligently pursue the issuance of all necessary permits and approvals for the construction of the Mixed-Use Building. Subject to the terms hereof, the date by which Developer must cause Substantial Completion of the Mixed-Use Building to occur, may, at the request of Developer, be extended in writing by the City Representative, in the reasonable discretion of City Representative, upon good and sufficient cause therefor being shown by Developer, for such period of time as Developer reasonably requests. After the Substantial Completion of the Mixed-Use Building, Developer shall use due diligence to cause punch list items and landscaping that constitute a part of the construction of the Mixed-Use Building to be completed within a reasonable time. Notwithstanding the above or anything else in this agreement to the contrary, to qualify for the City Economic Development Grant for the Phase 2 Project, provided for in Section 6(a), Developer shall cause Substantial Completion of the Mixed-Use Building to occur no later than the tenth (10th) anniversary of the Effective Date, subject to delays caused by force majeure, unless a later date is approved in writing by the City Representative.

ii. Developer, with commercial occupants of the Mixed-Use Building, shall spend a minimum of One Hundred million and 00/100 Dollars (\$100,000,000.00) on Project Costs to design and construct the Mixed- Use Building. Within one hundred eighty (180) days of Substantial Completion of the Mixed-Use Building, Developer shall provide, at Developer's expense, a statement to the City from an independent certified public accountant confirming or denying that Developer has spent a minimum of One Hundred Million and 00/100 Dollars (\$100,000,000.00) on Project Costs to design and construct the Mixed-Use Building. When preparing such statement, the certified public accountant shall have the right: (i) to utilize reasonable accounting procedures to confirm such expenditures and shall not have to

account for every expenditure; and (ii) to rely on written statements made by third-party tenants of the Mixed-Use Building with respect to Project Costs incurred by such third-party tenants. In the event that such statement establishes that less than One Hundred Million Dollars (\$100,000,000) has been expended on Project Costs, Developer shall reserve the shortfall amount and utilize same in connection with the Mixed-Use Building during the Term of this Agreement. As long as such reserved funds have not been expended, each year of the Term Developer shall provide, at Developer's expense, a statement to the City from an independent certified public accountant certifying the unexpended amount of such reserved funds and the amount of such reserved funds that has been expended over the previous year in connection with the Mixed-Use Building. If any such reserved funds remain unexpended at the end of the Term, Developer shall cause such amount to be paid to the City.

iii. During construction of the Mixed-Use Building Developer agrees to use diligent efforts and to cause its contractors and subcontractors to use diligent efforts to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality, and price. Developer also agrees to develop a policy that establishes a goal of twenty-five percent (25%) use by Developer of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractors, subcontractors, or suppliers is vested in racial or ethnic minorities or women for construction of the Mixed-Use Building, which such policy shall contain reasonable exclusions. Community Benefits plan. At the option of Developer, the Parking Facility, the Phase 2 Site Improvements, the Mixed-Use Building and Office Building may be treated as one project for purposes of satisfying the provisions of this subsection.

iv. During the Term of this Agreement, Developer shall not allow the ad valorem taxes owed to the City for the Mixed-Use Building to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal. Nor shall Developer fail to render for taxation any taxable personal property owned by Developer and located within the Mixed-Use Building.

v. In the event of damage or destruction of the Mixed-Use Building after Substantial Completion of same, during the Term of this Agreement, Developer shall cause the full repair or restoration of the Mixed-Use Building, as same existed at the time of such damage or destruction (as same may be modified by Developer at the time of such repair or restoration, provided that such modification is of equivalent or greater value), whether done by application of insurance proceeds or other financial means. On or after expiration of such period, in the event of damage or destruction of the Mixed-Use Building, Developer shall have the right to determine whether,

and to what extent the Mixed-Use Building should be restored or replaced. Notwithstanding the above, a Mortgagee and any person that acquires title to the Mixed-Use Building as a result of foreclosure sale, deed in lieu of foreclosure or other similar transaction, and their respective successors and assigns, shall not be obligated to comply with the provisions of this Section 5 (b)(v).

vi. During the Term, Developer shall refer to the Mixed-Use Building in all marketing and advertising efforts that contain the location of the Mixed-Use Building as being located in Arlington, Texas and shall not use any other proper geographic name (i.e. Dallas, Fort Worth, etc.) or informal geographic name (i.e. Metroplex, North Texas, etc.) to describe the Mixed-Use Building's location, except that Developer may reference the distance of the Mixed-Use Building from other locations.

vii. The design, construction, and operation of the Mixed-Use Building shall comply with all Applicable Law. In addition, Developer shall obtain, at its expense, all Governmental Authorizations for the design, construction, and operation of the Mixed-Use Building. The City shall reasonably assist Developer in its efforts to obtain such Governmental Authorizations.

viii. It is the intent of Developer to operate the Mixed-Use Building in a manner similar to the operation of other similar first-class mixed-use buildings in North Texas commencing on the date the Mixed-Use Building initially opens for business to the public and continuing for the remainder of the Term.

ix. Developer covenants and certifies that Developer does not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.01(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if Developer is convicted of a violation under 8 U.S.C. Section 1324a(f) in connection with the Mixed-Use Building, Developer shall repay to the TIRZ and City the full amount of the Grants made under Section 6 of this Agreement for the Mixed-Use Building, plus ten percent (10%) interest per annum from the date the Grant(s) was made. Repayment shall be paid within one hundred twenty (120) days after the date Developer receives notice of violation of this provision from the TIRZ and/or City, which notice shall not be given by the TIRZ and/or City until after such conviction has become final and non-appealable. Notwithstanding any contrary provision, Developer shall not be in breach of this subsection and shall not be obligated to make such repayment if a subsidiary or Affiliate of Developer, or a tenant or property manager that is an Affiliate or subsidiary of Developer, or a direct or indirect equity owner of Developer, or a person with whom Developer contracts, such as a general contractor, or a third-party tenant, is convicted of a violation under 8 U.S.C. Section 1324a(f).

e. **Office Building.** Developer intends to develop the Office Building if, as and when Developer obtains a suitable anchor tenant for the Office Building. Developer shall work diligently to market the proposed Office Building to potential tenants and shall provide the City with periodic updates on such efforts. Until Developer elects to develop the Office Building, which election Developer may make in its sole and absolute discretion, Developer shall not be obligated to develop the Office Building. If Developer elects to develop the Office Building, Developer shall comply with the following conditions and requirements:

i. Developer shall design and construct or cause to be designed and constructed the Office Building on the Office Building Site and cause Substantial Completion of the Office Building to occur within thirty-six (36) months after issuance of a final building permit (as opposed to the grading permit or foundation permit) for construction of the Office Building, as such date may be extended for delays caused by force majeure and delays in the issuance of necessary governmental permits and approvals and the City complying with its material obligations hereunder. If Developer elects to develop the Office Building, Developer shall diligently pursue the issuance of all necessary permits and approvals for the construction of the Office Building. Subject to the terms hereof, the date by which Developer must cause Substantial Completion of the Office Building to occur (if Developer elects to develop the Office Building), may, at the request of Developer, be extended in writing by the City Representative, in the reasonable discretion of City Representative, upon good and sufficient cause therefor being shown by Developer, for such period of time as Developer reasonably requests. After the Substantial Completion of the Office Building, Developer shall use due diligence to cause punch list items and landscaping that constitute a part of the construction of the Office Building to be completed within a reasonable time.

ii. Developer and the occupants of the Office Building shall spend a minimum of One Hundred million and 00/100 Dollars (\$100,000,000.00) on Project Costs to design and construct the Office Building. Within one hundred eighty (180) days of Substantial Completion of the Office Building, Developer shall provide, at Developer's expense, a statement to the City from an independent certified public accountant confirming or denying that Developer has spent a minimum of One Hundred Million and 00/100 Dollars (\$100,000,000.00) on Project Costs to design and construct the Building. When preparing such statement, the certified public accountant shall have the right: (i) to utilize reasonable accounting procedures to confirm such expenditures; and (ii) to rely on written statements made by third-party tenants of the Office Building with respect to Project Costs incurred by such third-party tenants. In the event that such statement establishes that less than One Hundred Million Dollars (\$100,000,000) has been expended on

Project Costs, Developer shall reserve the shortfall amount and utilize same in connection with the Office Building during the Term of this Agreement. As long as such reserved funds have not been expended, each year of the Term Developer shall provide, at Developer's expense, a statement to the City from an independent certified public accountant certifying the unexpended amount of such reserved funds and the amount of such reserved funds that has been expended over the previous year in connection with the Office Building. If any such reserved funds remain unexpended at the end of the Term, Developer shall cause such amount to be paid to the City.

- iii. During construction of the Office Building Developer agrees to use diligent efforts and to cause its contractors and subcontractors to use diligent efforts to purchase all goods and services from Arlington businesses whenever such goods and services are comparable in availability, terms, quality, and price. Developer also agrees to develop a policy that establishes a goal of twenty-five percent (25%) use by Developer of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractors, subcontractors, or suppliers is vested in racial or ethnic minorities or women for construction of the Office Building, which such policy shall contain reasonable exclusions. At the option of Developer, the Parking Facility, Phase 2 Site Improvements, Office Building and Mixed-Use Building may be treated as one project for purposes of satisfying the provisions of this subsection.
- iv. During the Term of this Agreement, Developer shall not allow the ad valorem taxes owed to the City for the Office Building to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal. Nor shall Developer fail to render for taxation any taxable personal property owned by Developer and located within the Office Building.
- v. In the event of damage or destruction of the Office Building after Substantial Completion of same, during the Term of this Agreement, Developer shall cause the full repair or restoration of the Office Building, as same existed at the time of such damage or destruction (as same may be modified by Developer at the time of such repair or restoration, provided that such modification is of equivalent or greater value), whether done by application of insurance proceeds or other financial means. On or after expiration of such period, in the event of damage or destruction of the Office Building, Developer shall have the right to determine whether, and to what extent the Office Building should be restored or replaced. Notwithstanding the above, a Mortgagee and any person that acquires title to the Office Building as a result of foreclosure sale, deed in lieu of foreclosure or other similar transaction, and their respective successors and

assigns, shall not be obligated to comply with the provisions of this Section 6 (c)(v).

- vi. During the Term, Developer shall refer to the Office Building in all marketing and advertising efforts that contain the location of the Office Building as being located in Arlington, Texas and shall not use any other proper geographic name (i.e. Dallas, Fort Worth, etc.) or informal geographic name (i.e. Metroplex, North Texas, etc.) to describe the Office Building's location, except that Developer may reference the distance of the Office Building from other locations.
- vii. The design, construction, and operation of the Office Building shall comply with all Applicable Law. In addition, Developer shall obtain, at its expense, all Governmental Authorizations for the design, construction, and operation of the Office Building. The City shall reasonably assist Developer in its efforts to obtain such Governmental Authorizations.
- viii. It is the intent of Developer, if Developer elects to develop the Office Building, to operate the Office Building in a manner similar to the operation of other class A office buildings in North Texas commencing on the date the Office Building initially opens for business to the public and continuing for the remainder of the Term.
- ix. Developer covenants and certifies that Developer does not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.01(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if Developer is convicted of a violation under 8 U.S.C. Section 1324a(f) in connection with the Office Building, Developer shall repay to the TIRZ and City the full amount of the Grants made under Section 6 of this Agreement for the Office Building, if any, plus ten percent (10%) interest per annum from the date the Grant(s) was made. Repayment shall be paid within one hundred twenty (120) days after the date Developer receives notice of violation of this provision from the TIRZ and/or City, which notice shall not be given by the TIRZ and/or City until after such conviction has become final and non-appealable. Notwithstanding any contrary provision, Developer shall not be in breach of this subsection and shall not be obligated to make such repayment if a subsidiary or Affiliate of Developer, or a tenant or property manager that is an Affiliate or subsidiary of Developer, or a direct or indirect equity owner of Developer, or a person with whom Developer contracts, such as a general contractor, or a third-party tenant, is convicted of a violation under 8 U.S.C. Section 1324a(f).

f. **Real Estate Matters.**

- i. Upon execution of an amendment removing the Mixed-Use Building Site from the premises leased under that Amended and Restated Development Property Lease Agreement dated July 3, 2017, between the City and Ballpark Parking Partners LLC, the City will immediately convey the Mixed-Use Building Site to Developer or its designee by special warranty deed or ground lease same to Developer or its designee as provided in Section 6(e)(iii) of this Agreement. Such warranty deed or ground lease shall be executed by the relevant parties at Closing.

- ii. Upon execution of an amendment removing the Office Building Site from the premises leased under that Amended and Restated Ballpark Lease Agreement dated December 13, 2019 between the City and Rangers Baseball Real Estate LLC, the City will immediately convey the Office Building Site to Developer or its designee by special warranty deed or ground lease same to Developer or its designee as provided in Section 6(e)(iii) of this Agreement. Such warranty deed or ground lease shall be executed by the relevant parties at Closing.

- iii. Closing shall occur on a date, time and place located in the City selected by Developer, and approved by the City Representative. Neither the City, the TIRZ nor Developer shall have any obligation to proceed with the Closing unless the following conditions have been satisfied on or before the Funding Date: (A) the City and Ballpark Parking Partners LLC shall have executed an amendment to the Amended and Restated Development Property Lease Agreement removing the Parking Facility Site and Mixed-Use Building Site from the premises leased thereunder, (B) if Developer has theretofore elected to develop the Office Building, the City and Rangers Baseball Real Estate LLC shall have executed an amendment to the Amended and Restated Ballpark Lease Agreement removing the Office Building Site from the premises leased thereunder, (C) the City shall have conveyed by special warranty deed or ground lease as provided below the Mixed-Use Building Site to Developer or its designee, (D) the City and the BPP Entity shall have entered into the Parking Facility Lease, and the BPP Entity and Developer or its designee shall have entered into the Parking Facility Sublease, (E) Developer has provided the City with a project budget for the Mixed-Use Building, and Office Building (if Developer elects on or before the Funding Date to develop the Office Building) that is acceptable to Developer, (F) all necessary declarations, condominium documents, reciprocal easement agreements, covenant agreements and parking easements affecting the Parking Facility have been approved by the City, the BPP Entity and Developer, and (G) neither the City, the TIRZ nor Developer shall be in default of any of its material obligations (beyond applicable notice and cure periods) of this Agreement. Notwithstanding anything to the contrary contained in this Section 6(g),

at the election of Developer and City, the City, in lieu of conveying the Mixed-Use Site and/or the Office Building Site to Developer or its designee(s) as provided herein, shall ground lease such site or sites to Developer or its designee(s) pursuant to a ground lease or ground leases prepared by Developer that is reasonably acceptable to the City.

- iv. If all the actions and agreements and instruments described in Section 6(e)(iii) above with regard to the Mixed-Use Building and/or the Parking Facility have not been taken, with regard to actions, and finalized and signed, with regard to agreements and instruments by all the parties thereto within one year of the date Developer has provided the City with the Intention to Proceed Notice, Developer shall have the right, by notice to the City and the TIRZ, to extend, from time to time, the initial Funding Date for up to twelve (12) months in the aggregate to allow the parties additional time to take such actions and finalize and execute such agreements and instruments.
- v. At the Closing for the Mixed-Use Building and the Parking Facility, Developer shall provide a completion guaranty to the City guaranteeing Substantial Completion of the Mixed-Use Building and the Parking Facility from the Person or Persons that has provided the completion guaranty to the Mortgagee that has provided Developer with a construction loan to finance the development and construction of the Mixed-Use Building. Such completion guaranty shall be conditioned upon the City complying with its material obligations hereunder, including the timely disbursement of the Available Funds and the Grants in accordance with the terms hereof.
- vi. Upon exercise of the option by Ballpark Parking Partners LLC under the terms of the Amended and Restated Development Property Option Agreement dated July 3, 2017, between the City and Ballpark Parking Partners LLC, removing the Residential Site from the Amended and Restated Development Property Lease Agreement dated July 3, 2017, between the City and Ballpark Parking Partners LLC, the Residential Site will be conveyed to Developer or its designee by special warranty deed.
- vii. No later than the commencement of construction of the Residential Building, Developer shall provide a completion guaranty to the City guaranteeing Substantial Completion of the Residential Building from the Person or Persons that has provided the completion guaranty to the Mortgagee that has provided Developer with a construction loan to finance the development and construction of the Residential Building or such other Person or Persons as may be approved by the City Representative. Such completion guaranty shall be conditioned upon the City complying with its material obligations hereunder, including the

timely disbursement of the Available Funds and the Grants in accordance with the terms hereof.

6. **Grants.**

As an incentive and in exchange for Developer's compliance with the terms and provisions of this Agreement concerning the construction of the Residential Building, the Co-Working Project (and, but only to the extent such incentives are provided and utilized in connection with the Mixed-Use Building and/or the Office Building, the Mixed-Use Building and/or Office Building if Developer elects to develop the Mixed-Use Building and/or Office Building), the City and TIRZ agree, subject to the conditions contained herein, to provide the following Grants:

a. The City shall provide Developer with a City Economic Development Grant in the amount of Five Million Five Hundred Thousand and 00/100 Dollars (\$5,500,000.00) to be used by Developer on Permitted Project Costs for the Phase 1 Project, and a City Economic Development Grant in the amount of Five Million Five Hundred Thousand and 00/100 Dollars (\$5,500,000.00) to be used by Developer on Permitted Project Costs for the Phase 2 Project. Upon execution of this Agreement, the City shall commit Eleven Million and 00/100 Dollars (\$11,000,000.000) of lawfully available and committed funds to be used to pay the City Economic Development Grants and for no other purposes. The City Economic Development Grant for the Phase I Project shall be paid to Developer in one or more installments at the request of Developer any time after the date that the Developer has provided the City with the following:

- 1- written notice that BPP Properties Developer LLC and Arlington Ballpark District Developer Holding Company Investors, LLC have executed the limited liability company agreement for development of the Residential Building and Spark Arlington JV Investors, LLC and an Affiliate of BPP Properties Develop LLC have executed the limited liability company agreement for the development of the Co-Working Project (the "**Developer JV Execution Notice**"); and
- 2- a repayment guaranty from the Person or Persons that will provide the completion guaranty to the Mortgagee that will provide Developer with a construction loan to finance the development and construction of the Residential Building or such other Person or Persons as may be approved by the City Representative guarantying repayment of the full amount of the City Economic Development Grant for the Phase I Project paid to Developer, in accordance with Section 8(e), if the Phase 1 Project does not timely reach Substantial Completion in accordance with the terms of this Agreement.

The City Economic Development Grant for the Phase 2 Project shall be paid to Developer in one or more installments at the request of Developer any time after the date that the Developer has provided the City with a completion guaranty for the Mixed-Use Building and the Parking Facility in accordance with Section 5(f)(v). Developer shall provide the City with substantiation of Permitted Project Costs incurred for any installments sought prior to construction commencing. Under no circumstances shall the cumulative total of all

installments for the Phase 1 Project exceed Five Million Five Hundred Thousand and 00/100 Dollars (\$5,500,000.00). Under no circumstances shall the cumulative total of all installments for the Phase 2 Project exceed Five Million Five Hundred Thousand and 00/100 Dollars (\$5,500,000.00).

b. The TIRZ shall provide Developer an annual TIRZ Economic Development Grant, commencing in 2020 and continuing for the Term of this Agreement, in an amount equal to the amount of Available City TIRZ Increment on deposit for such year. The TIRZ shall make each annual TIRZ Economic Development Grant to Developer on or before September 30th of each year and shall provide Developer with an annual report on the projected amount of Available City TIRZ Increment for the following calendar year by no later than March 31st of each year. The TIRZ represents and warrant to Developer that the payment of the TIRZ Economic Development Grants are not subject to annual appropriation of the TIRZ or any other Governmental Authority, and the TIRZ has not and will not pledge or otherwise commit to pay any expenditure from the Available City TIRZ Increment for the Term of this Agreement. Nothing in this Agreement shall be construed to require the TIRZ or the City to provide the TIRZ Economic Development Grants from any other source of funds other than the Available City TIRZ Increment. The City shall not take any action that would shorten the term of the TIRZ, which currently is scheduled to expire on December 31, 2052 (with the last year of tax increment being deposited in calendar year 2053), nor take any action to reduce the boundary of the TIRZ.

c. Developer shall have the right, at any time, and from time to time, to transfer and/or assign all or part of its rights to receive all or a portion of the TIRZ Economic Development Grants to a third party. Developer shall notify the TIRZ of any such transfer and/or assignment and if requested by Developer, the TIRZ shall provide Developer and its designee an acknowledgement of such transfer and/or assignment and an agreement to honor such transfer and/or assignment to make distributions of the TIRZ Economic Development Grants in accordance with the terms of this Agreement and such transfer and/or assignment.

d. If all or part of the activity addressed by Chapter 47 of the Texas Penal Code becomes legal in the City of Arlington, and Developer or an Affiliate of Developer makes operational a location for such activity inside the boundaries of the Tax Increment Reinvestment Zone Number Five, then effective as of January 1st of the year following the date such location is open to the general public the TIRZ shall have no further obligation to provide Developer with TIRZ Economic Development Grants under this Agreement.

7. **Indemnification.**

DEVELOPER DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS CITY AND THE TIRZ, AND ALL OF THEIR OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS, OR CAUSES OF ACTION, INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS, AND REASONABLE

ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY THE ERROR, OMISSION, OR NEGLIGENT ACT OF DEVELOPER, ITS OFFICERS, AGENTS, OR EMPLOYEES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT, AND DEVELOPER WILL AT ITS OWN COST AND EXPENSE DEFEND AND PROTECT CITY AND TIRZ FROM ANY AND ALL SUCH CLAIMS AND DEMANDS, OTHER THAN SUCH CLAIMS OR DEMANDS CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE CITY OR TIRZ.

DEVELOPER SHALL CAUSE DEVELOPER'S CONTRACTOR TO AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS CITY AND THE TIRZ, AND ALL OF THEIR OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS, OR CAUSES OF ACTION, INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS, AND REASONABLE ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY THE ERRORS, OMISSIONS, OR NEGLIGENT ACTS OF DEVELOPER'S CONTRACTOR, THEIR OFFICERS, AGENTS, OR EMPLOYEES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE WORK TO COMPLETE THE PROJECT, AND DEVELOPER'S CONTRACTOR WILL AT

THEIR OWN COST AND EXPENSE DEFEND AND PROTECT CITY AND TIRZ FROM ANY AND ALL SUCH CLAIMS AND DEMANDS.

SUCH INDEMNITIES SHALL APPLY WHETHER THE CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS, OR CAUSES OF ACTION ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT) OF CITY OR TIRZ, ITS OFFICERS, OFFICIALS, AGENTS, OR EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY DEVELOPER TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS CITY AND TIRZ FROM THE CONSEQUENCES OF CITY'S OR TIRZ'S OWN ORDINARY NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT), WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. IT IS ALSO THE EXPRESS INTENTION OF THE PARTIES HERETO THAT DEVELOPER SHALL CAUSE DEVELOPER'S CONTRACTOR TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS CITY AND TIRZ FROM THE CONSEQUENCES OF CITY'S OR TIRZ'S OWN NEGLIGENCE, WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE.

THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR DEVELOPER OR ANY CONTRACTOR OR SUBCONTRACTOR UNDER WORKMAN'S COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.

The four (4) preceding paragraphs will be required to be in all construction contracts of Developer for the Parking Facility, Phase 1 Site Improvements, and the Phase 2 Site Improvements.

8. Default and Termination.

a. A default shall exist under this Agreement if any Party fails to perform or observe any material covenant contained in this Agreement. Any non-defaulting Party shall immediately notify the defaulting Party in writing upon becoming aware of any condition or event constituting a default. Such notice shall specify the nature and the period of existence thereof and what action, if any, the non-defaulting Party requires or proposes to require with respect to curing the default.

b. If a default shall occur and continue after notice of such default has been given and such default has not been cured during the Notice Period (as defined below), any non-defaulting Party may, at its option, except as otherwise expressly provided below in Section 9(d) or 10, pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Applicable Law, including enforcing specific performance of the defaulting Party's obligations hereunder, without the necessity of further notice to or demand upon the defaulting Party. The non-defaulting Party shall not, however, pursue remedies for as long as the defaulting Party proceeds in good faith and with due diligence to remedy and correct the default, provided that the defaulting Party has commenced to cure such default following notice during the Notice Period, and provided further, that in no event shall failure to make monetary payments required under the terms of this Agreement be deemed reasonable justification to extend such opportunity to cure beyond the initial period. The term "Notice Period" means forty-five (45) days after delivery of written notice of default, or if such default is not reasonably susceptible of being cured within such 45-day period, then so long as the defaulting Party commences to cure the default within such 45-day period, the "Notice Period" shall extend for such longer period as the defaulting Party thereafter continues diligently to prosecute the cure of such default. Notwithstanding anything to the contrary contained herein, if the defaulting party is the TIRZ or the City, and such default concerns the failure of the TIRZ or the City to pay any amount due under this Agreement, the Notice Period for such monetary default shall be ten (10) days after delivery of written notice of default.

c. Without limiting the forgoing, (1) if the City or TIRZ fails to cure a default on its part within the applicable Notice Period provided for in Section 9(b) above, then Developer shall have the right to terminate this Agreement by delivering written notice to the defaulting Party, which termination shall be effective thirty (30) days following delivery of such notice unless the defaulting Party shall cure such default within such 30-

day period, (2) if Developer fails to cure a default on its part within the applicable Notice Period provided for in Section 9(b) above with respect to Sections 5(b)(i), 5(b)(iv), 5(b)(v), 5(b)(ix), 5(c)(i), 5(c)(iv), 5(c)(v) or 5(c)(ix) of this Agreement in connection with the Phase 1 Project, City or TIRZ shall have the right to terminate this Agreement and cease payment of the TIRZ Economic Development Grants and City Economic Development Grant for Phase 1 Project by delivering written notice to Developer, which termination shall be effective thirty (30) days following delivery of such notice unless Developer shall cure such default within such 30-day period, or (3) if Developer fails to cure a default on its part within the applicable Notice Period provided for in Section 9(b) above with respect to Sections 5(d)(i), 5(d)(iv), 5(d)(v), 5(d)(ix) of this Agreement in connection with the Mixed-Use Building, City or TIRZ shall have the right to terminate this Agreement as to the Mixed-Use Building and cease payment of any portion of the the City Economic Development Grant for the Phase 2 Project attributable to Permitted Project Costs for the Mixed-Use Building by delivering written notice to Developer, which termination shall be effective thirty (30) days following delivery of such notice unless Developer shall cure such default within such 30-day period, or (4) if Developer fails to cure a default on its part within the applicable Notice Period provided for in Section 9(b) above with respect to Sections 5(e)(iv), 5(e)(v), or 5(e)(ix) of this Agreement in connection with the Office Building, City or TIRZ shall have the right to terminate this Agreement as to the Office Building and cease payment of any portion of the City Economic Development Grant for the Phase 2 Project attributable to Permitted Project Costs for the Office Building by delivering written notice to Developer, which termination shall be effective thirty (30) days following delivery of such notice unless Developer shall cure such default within such 30-day period.

d. A termination of this Agreement by either City, TIRZ, or Developer shall not relieve the other parties of any of their respective obligations theretofore accrued prior to and through the effective date of such termination, including the obligation of the City and TIRZ to reimburse Developer for Permitted Project Costs incurred with respect to the Parking Facility, Phase 1 Site Improvements, or Phase 2 Site Improvements that achieves Substantial Completion before, on or after the effective date of such termination.

e. Should the Developer fail to cure a default on its part within the applicable Notice Period provided for in Section 9(b) above with respect to Sections 5(b)(i) of this Agreement, Developer shall repay the City any and all installments made on the City Economic Development Grant for the Phase I Project within sixty (60) days of receiving demand for repayment from the City.

9. Limitation on Remedies.

a. Except as provided for in Section 8(c) and 8(e), the failure of Developer to fulfill its obligations hereunder with respect to the Phase 1 Project or Phase 2 Project (if Developer elects to develop the Phase 2 Project) shall not entitle the City or TIRZ to terminate this Agreement, suspend payment of the Reimbursement Payments, suspend disbursement of the Grants or seek repayment of the Reimbursement Payments or the Grants, even if Developer fails to cure a default within the applicable Notice Period provided for in Section 8(b). Except as provided for in Section 8(c) and 8(e), the sole remedies of the City and TIRZ in any such event shall be a suit for damages or specific

performance of the terms of this Agreement. Except as provided for in Section 8(c) and 8(e), under no circumstances may the TIRZ or City terminate or disavow its obligation hereunder to pay the Grants.

b. Notwithstanding any contrary provision, (i) after Substantial Completion of the Parking Facility (exclusive of the Residential Parking Areas), neither the City nor the TIRZ shall be entitled to terminate, suspend or seek repayment of the Reimbursement Payments paid or payable under this Agreement to Developer with respect to the Parking Facility (exclusive of the Residential Parking Areas), even if Developer fails to cure a default within the applicable Notice Period provided for in Section 8(b), and (ii) after Substantial Completion of the Phase 1 Site Improvements or Phase 2 Site Improvements, neither the City nor the TIRZ shall be entitled to terminate, suspend or seek repayment of the Reimbursement Payments paid or payable under this Agreement to Developer with respect to the Phase 1 Site Improvements or Phase 2 Site Improvements, as applicable, even if Developer fails to cure a default within the applicable Notice Period provided for in Section 8(b). The sole remedies of the City and TIRZ in any such event shall be a suit for damages or specific performance of the terms of this Agreement. Under no circumstances may the TIRZ or City terminate or disavow its obligation hereunder to pay all the Reimbursement Payments relating to the Parking Facility (exclusive of the Residential Parking Areas), Phase 1 Site Improvements, or Phase 2 Site Improvements, once the applicable Project achieves Substantial Completion.

10. Employment of MWBE Prime Contractor.

In addition to the obligations of Developer, provided for herein, to establish a goal of twenty-five percent (25%) use by Developer of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractors, subcontractors, and suppliers is vested in racial or ethnic minorities or women, Developer shall use best efforts to select a qualified contractor where at least fifty-one percent (51%) of the ownership of such is vested in racial or ethnic minorities or women as the prime contractor on one or more of the following Projects: the Residential Building, the Co-Working Project, the Parking Facility, the Mixed-Use Building, and the Office Building.

11. Mortgagee Rights.

a. **Right to Mortgage.** Notwithstanding any other provisions of this Agreement, Developer shall at all times have the right to encumber, pledge, grant, or convey its rights, title and interest in and to the Residential Building Site, Co-Working Project, Mixed-Use Building Site and Office Building Site, or any portions thereof, the and/or this Agreement by way of a mortgage, pledge, assignment or other security agreement (a "**Mortgage**") to secure the payment of any loan or loans obtained by Developer to finance or refinance any portion or portions of the Residential Building Site, Co-Working Project, Mixed-Use Building or Office Building. The beneficiary of or mortgagee under any such Mortgage is hereby referred to herein as a "**Mortgagee**". The City recognizes and acknowledges that the Residential Building Site, Co-Working Project, Mixed-Use Building and Office Building may be separately financed by Developer (or its Affiliate) and may be encumbered by separate Mortgages. The Mortgagee(s) of the

Residential Building Site, Co-Working Project, Mixed-Use Building and the Office Building shall have the benefit of the provisions of this Section 11(a) with regard to its Mortgage and the property and project its Mortgage encumbers.

b. **Notice of Breaches to Mortgagees.** If the City gives notice to Developer of a breach of its obligations under this Agreement, the City shall forthwith furnish a copy of the notice to the Mortgagees that have been identified to the City by Developer. To facilitate the operation of this subsection, Developer shall at all times keep the City with an up-to-date list of Mortgagees.

c. **Mortgagee May Cure Breach of Developer.**

i. If Developer receives notice from the City of a breach by Developer of any of its obligations under this Agreement and such breach is not cured by Developer pursuant to the provisions of this Agreement, the City shall, in addition to the notice provided in Section 8 hereof, give notice of the failure to cure on the part of Developer to the Mortgagees at the expiration of the period within which Developer may cure as set forth in this Agreement. Any one of the Mortgagees may elect to cure such default by giving the City written notice of its intention so to cure within thirty (30) days after the receipt of the additional notice herein set forth. In the event that any Mortgagee elects to proceed to cure any such default, such Mortgagee shall do so within the applicable cure period contained in this Agreement; provided, however, that the commencement of the cure period for the Mortgagee shall commence on the date the Mortgagee notifies the City of the Mortgagee's election to cure such default and each applicable cure period shall be deemed doubled in length for Mortgagee.

ii. If any Mortgagee elects to exercise its rights of foreclosure under a Mortgage (or appoint a receiver or accept a deed and/or assignment-in-lieu of foreclosure), after foreclosure of Developer's interest in and to the Residential Building Site, Co-Working Project, Mixed-Use Building, or Office Building or any portion thereof (or after the appointment of a receiver or the obtaining of Developer's interest in and to the Residential Building Site, Co-Working Project, Mixed-Use Building, or Office Building or any portion thereof, via deed and/or assignment-in-lieu of foreclosure), such Mortgagee may at its option:

(a) elect to assume the position of Developer hereunder in which case, if the City has terminated this Agreement or suspended the distribution of any funds, including the Grants that the City is obligated to provide to Developer pursuant to this Agreement, the City agrees that this Agreement shall be deemed reinstated and the City shall commence the distribution of such funds, including the Grants, in accordance with the provisions of this Agreement and,

in which case, such Mortgagee shall cure any default by Developer hereunder that the Mortgagee had received notice of in accordance with the provisions of Section 12(b) hereof within the timeframes contained in this Agreement and shall cause Substantial Completion to occur; or

(b) elect not to assume the provisions of this Agreement.

The Mortgagee shall have the right so to elect (a) above of this Section 11(c)(ii) only if it shall exercise such right within six (6) months after the receipt of the additional notice herein set forth. For purposes of this Section 11(c), the term “**Mortgagee**” shall include not only the “**Mortgagee**”, as that term is defined in this Section 11 hereof, but shall also include any Person that obtains Developer’s interest in and to all or any portion of Residential Building Site, Co-Working Project, Mixed-Use Building, or Office Building as a result of a Mortgagee’s exercise of its foreclosure rights or the transfer of Developer’s interest in and to all or any part of the Residential Building Site, Co-Working Project, Mixed-Use Building, or Office Building at the direction of the Mortgagee by Developer to a Person by deed and/or assignment-in-lieu of foreclosure.

d. **Rights and Duties of Mortgagee.** In no event shall any Mortgagee be obliged to perform or observe any of the covenants, terms or conditions of this Agreement on the part of Developer to be performed or observed, or be in any way obligated to complete the improvements to be constructed in accordance with this Agreement, nor shall it guarantee the completion of improvements as hereinbefore required of Developer, whether as a result of (i) its having become a Mortgagee, (ii) the exercise of any of its rights under the instrument or instruments whereby it became a Mortgagee (including without limitation, foreclosure or the exercise of any rights in lieu of foreclosure), (iii) the performance of any of the covenants, terms or conditions on the part of Developer to be performed or observed under this Agreement, or (iii) otherwise, unless such Mortgagee shall either make the election set forth in Section 11(c)(ii)(A) of this Agreement or shall specifically elect under this Section 11(d) to assume the obligations of Developer by written notice to the City whereupon such Mortgagee, upon making such election as aforesaid, shall then and thereafter for all purposes of this Agreement be deemed to have assumed all of the obligations of Developer hereunder.

e. **Mortgagee's Rights Agreements.** The City, acting by and through the City Representative, shall, at the request of Developer made from time to time and at any time, enter into a lender's rights agreement with any Mortgagee (or potential Mortgagee) identified by Developer, which lender's rights agreement shall be consistent with the terms and provisions contained in this Section 11 that apply to Mortgagees and Mortgages. Within twenty (20) days of Developer's request for a lender's rights agreement pursuant to the provisions of this Section 11(e), time being of the essence, the City, acting through the City Representative, shall execute and deliver to Developer such a lender's rights agreement benefiting the identified Mortgagee (or potential Mortgagee) and such Mortgagee's Mortgage (or potential Mortgagee's potential Mortgage), which executed

lender's rights agreement shall be in a form and substance that are reasonably acceptable to such Mortgagee (or potential Mortgagee) and that is consistent with, and at the option of such Mortgagee (or potential Mortgagee) incorporates, the terms and provisions of this Section 11 that apply to Mortgagees and Mortgages.

12. General Provisions.

a. Successors and Assigns. Neither the City nor TIRZ may assign or transfer any interest in this Agreement without the prior written consent of Developer. Developer may assign or transfer an interest in this Agreement to one or more Mortgagees. This Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and permitted assigns.

b. Headings. The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

c. Remedies. No right or remedy granted herein or reserved to the Parties is exclusive of any other right or remedy herein by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Agreement may be waived without consent of the Parties. Forbearance or indulgence by either Party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Agreement.

d. Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable. Notwithstanding the above, Developer shall have the right to terminate this Agreement in the event that it determines that the obligation of the City and/or TIRZ to timely pay Developer the Reimbursement Payments or Grants in accordance with the terms of this Agreement has been declared invalid or unenforceable. In the event any provision of this Agreement is illegal, invalid or unenforceable under present or future laws, each Party reserves the right to pursue any and all remedies available to them at law or equity. In the event that any of the provisions of this Agreement concerning the Reimbursement Payments or Grants are challenged by any other Person as "illegal, invalid, or unenforceable under present or future laws", the parties shall reasonably cooperate with each other to defend the validity and enforceability of such provisions. The provisions of this subsection shall survive the termination of this Agreement

e. Entire Agreement. This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporaneous agreements between the Parties relating to the Projects, and, except as otherwise provided herein, cannot be modified without written agreement of the Parties.

f. Applicable Law. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas without regard to any conflict of law rules and venue shall lie in Tarrant County, Texas. Nothing in this Agreement shall be construed to (i) limit or prevent Developer from challenging at law or in equity the applicability of any Applicable Law and/or pursuing its rights in furtherance thereof through appropriate judicial proceedings or (ii) constitute a waiver of due process. Notwithstanding anything to the contrary contained in this Agreement, no provision of this Agreement shall be construed to require Developer to comply with any Applicable Law during the period that Developer may be pursuing a bona fide challenge of the applicability, lawfulness, and/or enforceability of such Applicable Law (unless such law requires compliance during any such challenge). If Developer's challenge is successful, Developer shall not be required by the provisions of this Agreement to comply with such Applicable Law.

g. Venue. The Parties to this Agreement agree and covenant that this Agreement will be enforceable in Arlington, Texas; and that if legal action is necessary to enforce this Agreement, exclusive venue will lie in Tarrant County, Texas.

h. Third Party Beneficiary. For purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the Parties to this Agreement, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity (other than Mortgagees) notwithstanding the fact that such third person or entity may be in contractual relationship with City, the TIRZ, or Developer or any combination thereof; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to City, the TIRZ, or Developer.

i. Force Majeure. Neither City, the TIRZ, nor Developer, nor any successor in interest or assignee thereof, shall be considered in breach or default of their respective obligations under this Agreement, and deadlines contained herein and time for performance of obligations hereunder shall be extended, in the event of any delay caused by force majeure, including damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, governmental action or inaction for an unreasonable period (unless caused by negligence or omissions by the non-performing Party), global communicable disease pandemic (specifically excluding the COVID-19 global pandemic), acts of God, or similar events.

j. Counterparts. This Agreement may be executed in any number of counterparts, each of which may be executed by any one or more of the Parties, but all of which shall constitute one instrument, and shall be binding and effective when all of the Parties have executed at least one counterpart.

k. Modification. This Agreement, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged, or terminated orally or by any act on the part of any Party, but only by an agreement in writing signed by the Party against whom enforcement of any modification, amendment, waiver, extension, change, discharge, or termination is sought.

l. Dispute Resolution. In the event any dispute, controversy or claim between or among the parties hereto arises under this Agreement (a “**Dispute or Controversy**”), including a claim that a Party is in default of this Agreement, the parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement. In the event a Dispute or Controversy arises, any Party shall have the right to notify the other Party hereto that the notifying Party has elected to implement the procedures set forth in this Section 12(l). Within fifteen (15) days after delivery of any such notice by one Party to the other Party regarding a Dispute or Controversy, a representative of each of the parties shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained within fifteen (15) days after the meeting of the parties representatives for such purpose, or such longer period as the parties may agree upon, then either Party may by notice to the other Party (the “**Arbitration Notice**”) submit the Dispute or Controversy to arbitration in accordance with the provisions of this Section 12(l) and Exhibit “D” attached hereto (the “**Arbitration Procedures**”). The Arbitration Notice must comply with the Arbitration Procedures. Upon receipt of the Arbitration Notice, all parties shall be compelled to arbitrate the Dispute or Controversy in accordance with the terms of this Section 12(l) and Exhibit “D” without regard to the justifiable character or executor nature of such Dispute or Controversy. Each Party hereto agrees that any Dispute or Controversy which is not resolved pursuant to this Section shall be submitted to binding arbitration hereunder and shall be resolved exclusively and finally through such binding arbitration in accordance with the Arbitration Procedures (the “**Arbitration**”). This Section 12(l) and Exhibit “D” hereto are and hereby constitute a written agreement by the parties hereto to submit to arbitration any such Dispute or Controversy arising after the Execution Date of this Agreement within the meaning of Section 171.001 of the Texas Civil Practice and Remedies Code. Notwithstanding any provision of this Agreement to the contrary, any Party may seek injunctive relief or other form of ancillary relief at any time from any court of competent jurisdiction in Tarrant County, Texas. In the event that a Dispute or Controversy requires emergency relief before the matter may be resolved under the Arbitration Procedures, notwithstanding that any court of competent jurisdiction may enter an order providing for injunctive or other form of ancillary relief, the parties hereto expressly agree that the Arbitration Procedures will still govern the ultimate resolution of that portion of the Dispute or Controversy not resolved pursuant to said court order.

m. Exculpation of Personal Liability. Notwithstanding anything to the contrary contained in this Agreement, neither any present or future constituent person or entity in Developer nor any present or future shareholder, officer, director, employee, trustee, beneficiary, advisor, partner, member, principal, participant, or agent of or in Developer or of or in any person or entity that is or becomes a constituent person or entity in Developer shall have any personal liability, directly or indirectly, under or in connection with this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and each of the City and TIRZ, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability.

n. Notices. All notices, communications, and reports required or permitted under this Agreement shall be personally delivered or mailed to the respective Parties by depositing same in the United States mail, postage prepaid, at the addresses shown below,

unless and until the other Parties are otherwise notified in writing by the Party, at the following addresses. Mailed notices shall be deemed delivered five (5) days after mailing regular mail. Notices sent by overnight delivery service shall be deemed delivered on the first Business Day following the date that the notice is deposited with the overnight delivery service.

If intended for the City, to:

The City of Arlington
ATTN: City Manager
P.O. Box 90231
Arlington, Texas 76004-3231

Copy to:

Office of the City Attorney
The City of Arlington
MS #63-0300
P.O. Box 90231
Arlington, Texas 76004-3231

If intended for the TIRZ, to:

Board of Directors
Tax Increment Reinvestment Zone Number Five,
City of Arlington, Texas – Entertainment District
c/o City of Arlington
ATTN: Economic Development Manager
P.O. Box 90231
Arlington, Texas 76004-3231

Copy to:

Office of the City Attorney
The City of Arlington
MS #63-0300
P.O. Box 90231
Arlington, Texas 76004-3231

If intended for Developer, to:

Arlington Ballpark District Developer

Holding Company, LLC
c/o The Cordish Companies
601 East Pratt Street, Sixth Floor
Baltimore, Maryland 21202
Attention: President

Copy to:

Ballpark Parking Partners LLC
Attention: Neil Liebman
5847 San Felipe Street #3700
Houston, Texas 77057

Copy to:

McGuire, Craddock & Strother, P.C.
Attention: Philip Danze
500 N. Akard Street, Suite 2200
Dallas, Texas 75201

o. Attorneys' Fees. If any legal action or process is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its necessary and reasonable attorneys' fees and expenses incurred by reason of such action, in accordance with Section 271.153 of Texas Local Government Code.

p. Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.

q. Approval by City of Arlington, Texas. This Agreement was approved by the City Council of the City of Arlington, Texas at its meeting on _____, 2021.

r. City Representative. From and after the date hereof, the City shall designate a representative (a "**City Representative**") who shall be authorized to give all directions, consents, approvals, waivers or other acknowledgements under this Agreement on the part of the City and to receive any and all submissions from Developer under this Agreement. Developer shall be entitled to rely on, and Developer and City agree to be bound by, any direction, consent, approval, waiver or other acknowledgement given by the City Representative, unless prior to the time such direction, consent, approval, waiver or other acknowledgement is given, the City Manager (or his designee) gives written notice to Developer that the City Representative has been changed. For the purpose of this Agreement, Developer shall not be required to rely on and may refuse to accept directions,

consents, approvals, waivers or other acknowledgements from any other Person, even if such Person has apparent or actual authority for the City. The City Manager, and only the City Manager, shall be entitled to change the City Representative at any time upon five (5) days written notice to Developer, provided that the City Manager shall appoint a replacement City Representative upon such removal of the prior City Representative or promptly in the event of death or disability of such City Representative. The initial City Representative shall be the City Manager.

s. Confidentiality. The City acknowledges and agrees that any information provided by Developer to the City concerning the cost of developing the Projects, the terms of any financing of any of the Projects, the identity of any potential tenant or the terms of any lease of a tenant is considered by Developer to be "confidential financial information" and may contain "trade secrets" and "confidential information". The City shall notify Developer within five (5) Business Days after receiving any Public Information Act request that seeks disclosure of information provided by or concerning Developer, and the parties shall reasonably cooperate to determine whether or to what extent the requested information may be released without objection and without seeking a written opinion of the Texas Attorney General. If Developer takes the positions that responsive information provided by or concerning Developer is information not subject to release to the public pursuant to section 552.110 of Texas Government Code, or other Applicable Law, then the City shall seek a written opinion from the Texas Attorney General; however, Developer must submit written comments to the Attorney General to establish reasons why the information should be withheld. The burden of establishing the applicability of exceptions to disclosure for such information resides with Developer. Should the Texas Attorney General issue an opinion that the requested information, or any part thereof, should be released, the City may release said information without penalty or liability. This section shall survive termination of this Agreement for any reason whatsoever.

t. City and TIRZ Representations and Warranties. The City represents and warrants to Developer that the City (i) is a constitutionally chartered city validly existing under the laws of the State of Texas; (ii) has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder; (iii) by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers. The TIRZ represents and warrants to Developer that the TIRZ (i) is validly existing under the laws of the State of Texas; (ii) has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder; (iii) by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

u. Estoppel Certificates. The City, TIRZ and Developer, at any time and from time to time, upon not less than thirty (30) days prior written notice from a Party hereto, or to a person designated by such Party, such as a Mortgagee, shall execute, acknowledge, and deliver to the Party requesting such statement, a statement in reasonably acceptable form to the requested Party certifying, among other matters, (i) that this Agreement 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 and stating the modifications), (ii) stating whether or not, to the best knowledge of the signer of such certificate, the City, TIRZ or Developer is

in breach and/or default in performance of any covenant, agreement, or condition contained in this Agreement and, if so, specifying each such breach and/or default of which the signer may have knowledge, and (iii) any other factual matters reasonably requested in such estoppel certificate concerning this Agreement, it being intended that any such statement delivered hereunder may be relied upon by the Party requesting such statement and/or any person not a Party to this Agreement (if such other person is identified at the time such certificate was requested). The City Representative is hereby authorized to execute, acknowledge, and deliver such certificates on behalf of the City.

v. Waiver of Immunity. The City hereby waives its governmental immunity from suit and immunity from liability as to any arbitration proceeding and/or legal action brought by Developer resulting from an uncured default by the City. To effectuate such waiver, the Parties hereby agree that this Agreement is a contract subject to Subchapter I, Chapter 271, Texas Local Government Code, as amended.

w. Separate Agreements. If Developer elects to develop the Office Building, at the request of Developer, made at any time after such election, the City, acting by and through the City Representative, and the TIRZ shall, within thirty (30) Business Days of such request, enter into an amendment to this Agreement (the "Amendment") with Developer (or, at the election of Developer, with a subsidiary or Affiliate of Developer) that deletes all references to the Office Building and shall enter into a separate economic development incentive agreement for the Office Building with Developer (or, at the election of Developer, an Affiliate or subsidiary of Developer, or a permitted transferee or assignee of Developer) for the Office Building (the "**Office Building Agreement**"). The Office Building Agreement shall contain all of the provisions of this Agreement that concern the Office Building (but none of the provisions that concern the Phase 1 Project, Parking Facility, Phase 1 Site Improvements, Phase 2 Site Improvements, or Mixed-Use Building). Developer shall prepare the Amendment and the Office Building Agreement. The Amendment may consist of an amendment and restatement of this Agreement in lieu of an amendment to this Agreement. The purpose of the Amendment and the Office Building Agreement is to satisfy a future lender's requirement that the owner of the Office Building and the owner of the other Projects are each single purpose bankruptcy remote entities. To that end this Agreement, as amended by the Amendment, and the Office Building Agreement, shall not be cross defaulted. If Developer elects not to develop the Office Building, at the request of Developer, made at any time after such election, the City, acting by and through the City Representative, and the TIRZ, shall, within thirty (30) Business Days of such request, enter into an amendment to this Agreement (the "**Office-Building Amendment**") with Developer that deletes all references to the Office Building, and all references to the Economic Development Grants relating to the Office Building. Developer shall prepare the Office-Building Amendment. The Office-Building Amendment may consist of an amendment and restatement of this Agreement in lieu of an amendment to this Agreement. If Developer elects to develop the Mixed-Use Building, at the request of Developer, made at any time after such election, the City, acting by and through the City Representative, and the TIRZ shall, within thirty (30) Business Days of such request, enter into an amendment to this Agreement (the "Amendment") with Developer (or, at the election of Developer, with a subsidiary or Affiliate of Developer) that deletes all references to the Mixed-Use Building and shall enter into a separate economic development incentive agreement for the Mixed-Use Building with Developer


(or, at the election of Developer, an Affiliate or subsidiary of Developer, or a permitted transferee or assignee of Developer) for the Mixed-Use Building (the “**Mixed-Use Building Agreement**”). The Mixed-Use Building Agreement shall contain all of the provisions of this Agreement that concern the Mixed-Use Building, Parking Facility, and Phase 2 Site Improvements (but none of the provisions that concern the Phase 1 Project, Office Building, or Phase 1 Site Improvements). Developer shall prepare the Amendment and the Mixed-Use Building Agreement. The Amendment may consist of an amendment and restatement of this Agreement in lieu of an amendment to this Agreement. The purpose of the Amendment and the Mixed-Use Building Agreement is to satisfy a future lender’s requirement that the owner of the Mixed-Use Building and the owner of the other Projects are each single purpose bankruptcy remote entities. To that end this Agreement, as amended by the Amendment, and the Mixed-Use Building Agreement, shall not be cross defaulted. If Developer elects not to develop the Mixed-Use Building, at the request of Developer, made at any time after such election, the City, acting by and through the City Representative, and the TIRZ, shall, within thirty (30) Business Days of such request, enter into an amendment to this Agreement (the “**Mixed-Use Building Amendment**”) with Developer that deletes all references to the Mixed-Use Building, and all references to the Economic Development Grants relating to the Mixed-Use Building. Developer shall prepare the Mixed-Use Building Amendment. The Mixed-Use Building Amendment may consist of an amendment and restatement of this Agreement in lieu of an amendment to this Agreement.

SIGNATURE PAGES TO FOLLOW

EXECUTED THIS 2nd day of June, 2021.

CITY:

CITY OF ARLINGTON, TEXAS

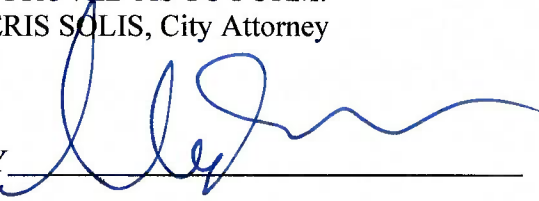
BY 
City Manager

ATTEST:



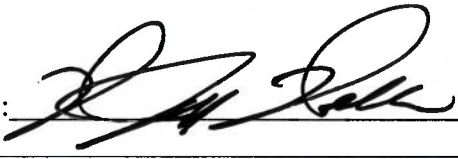
ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY 

TIRZ:

TAX INCREMENT REINVESTMENT
ZONE NUMBER FIVE,
CITY OF ARLINGTON, TEXAS –
ENTERTAINMENT DISTRICT

By: 

Chair

WITNESS

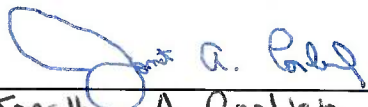
By: 

DEVELOPER:

**ARLINGTON BALLPARK
DISTRICT DEVELOPER HOLDING
COMPANY,
LLC, a Delaware limited liability company,**

By: Arlington Ballpark District Developer
Holding Company Investors, LLC, its
managing member

BY


Name: Jonathan A. Cordish
Title Authorized Person

:

WITNESS:

By:



EXHIBIT "A-1"

Mixed-Use Building Conceptual Plan

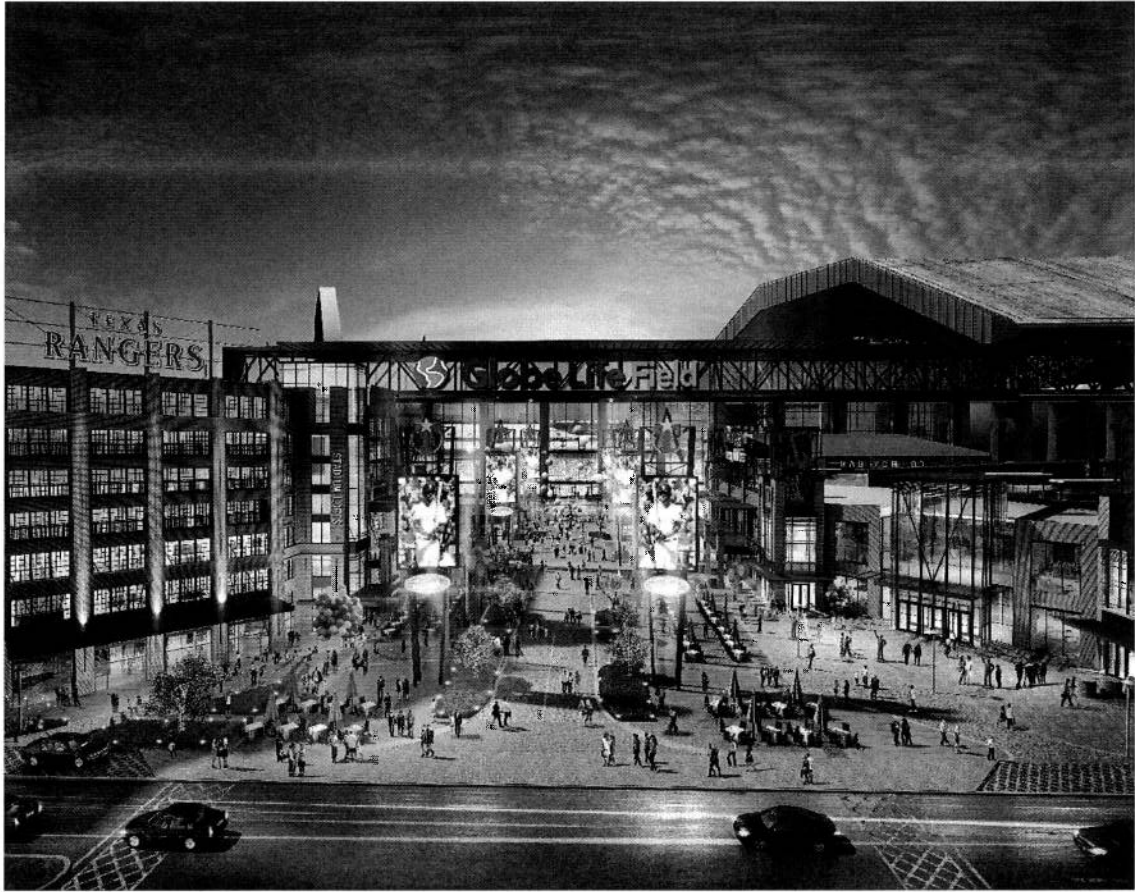


EXHIBIT "A-2"

Mixed-Use Building Site

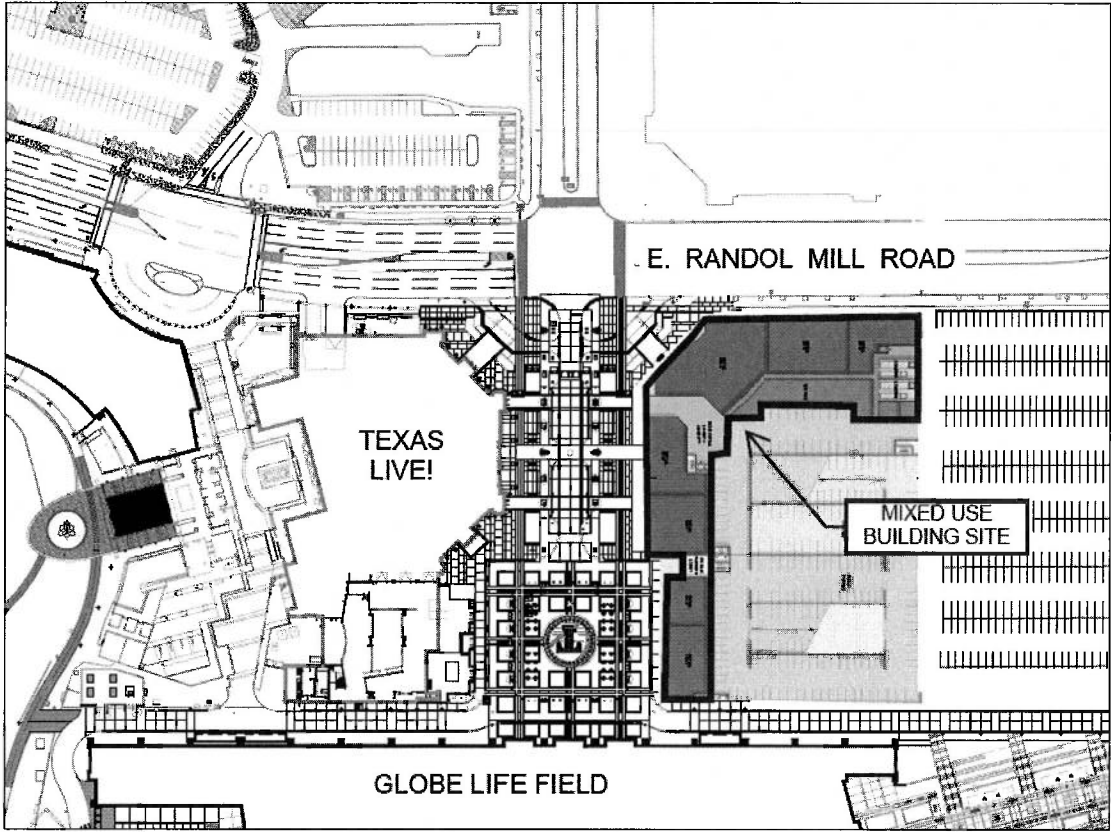


EXHIBIT "B-1"

Office Building Conceptual Plan



EXHIBIT "B-2"

Office Building Site

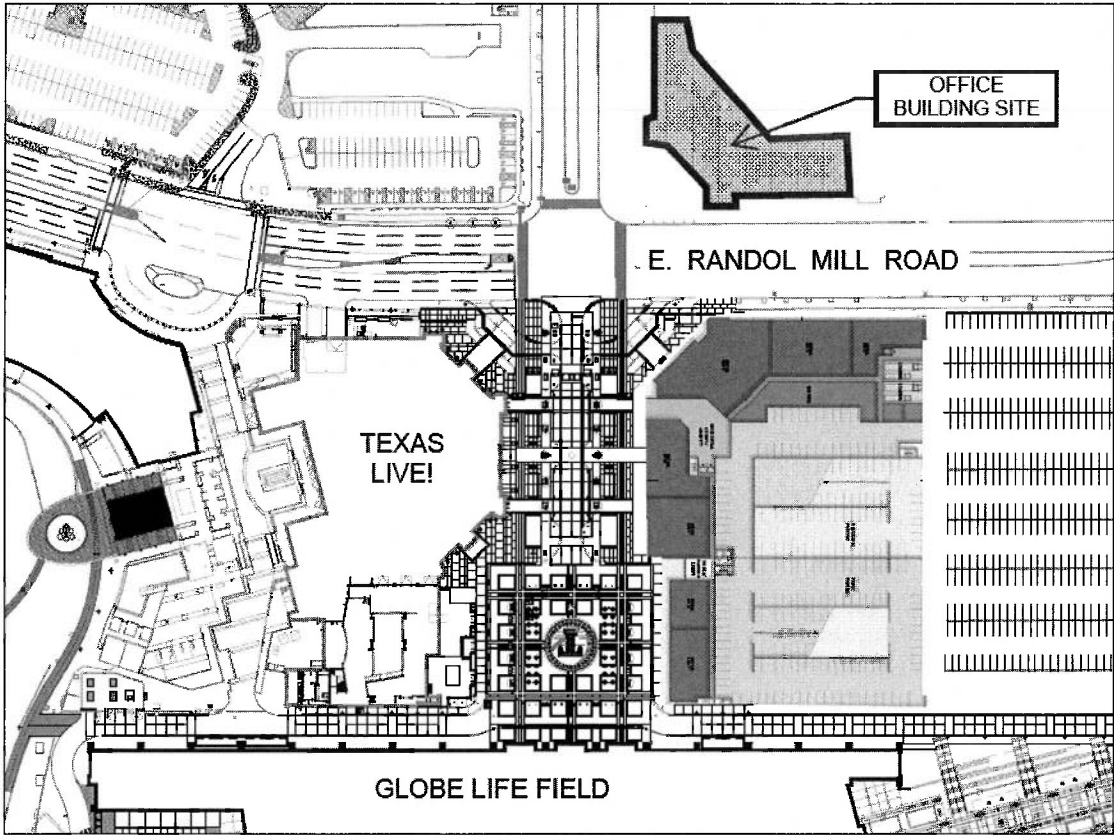


EXHIBIT "C"

Parking Facility Site

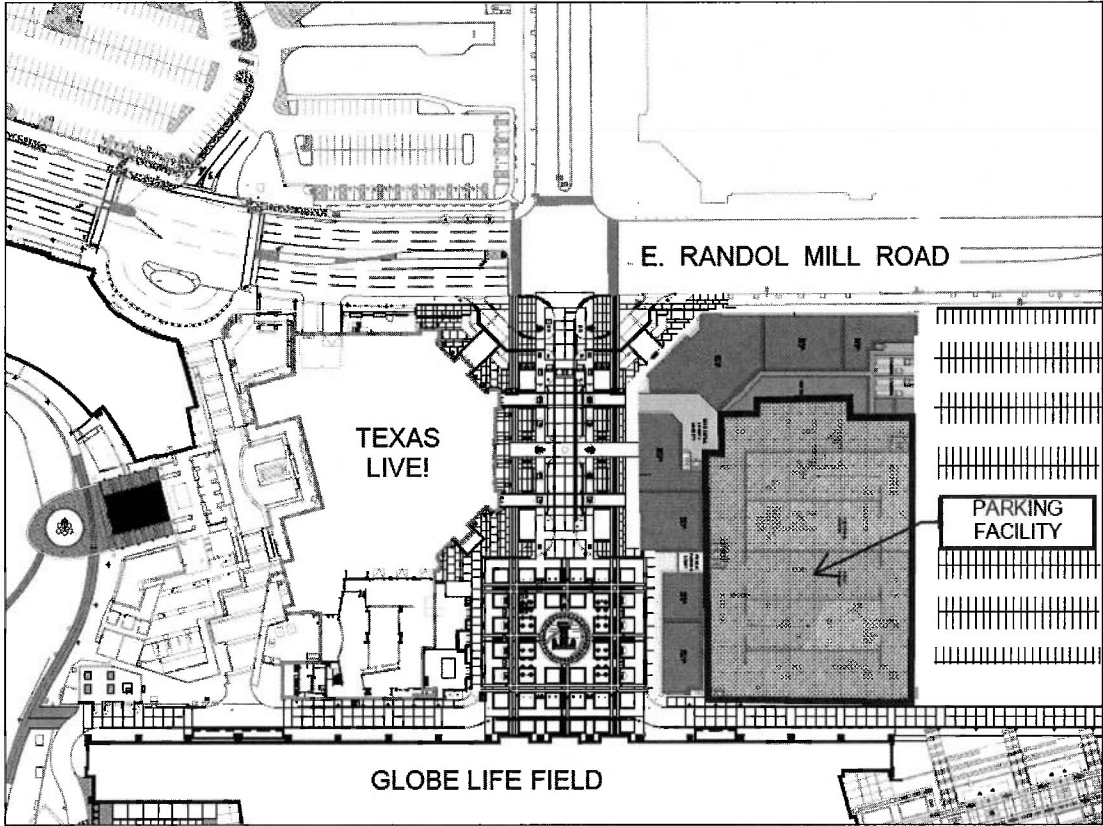


EXHIBIT "D"

Arbitration Procedures

D1 In the event a Party, pursuant to the provisions of Section 13(l), has elected to provide the other Party with an Arbitration Notice, such Arbitration Notice shall include such Party's determinations of the applicable issues of the Dispute and Controversy subject to such Arbitration. In the event that the Arbitration Notice has been sent in accordance with the provisions hereof and the Agreement, the Parties shall mutually agree, within fifteen (15) Business Days of the deemed delivery date of the Arbitration Notice to the appointment of a single arbitrator (the "**Arbitrator**") to handle the Arbitration. If the Parties are unable to mutually agree upon the Arbitrator within the fifteen (15) Business Days described above, any Party may request the American Arbitration Association to independently select, within thirty (30) Business Days after such Arbitration Notice, an Arbitrator who has the qualifications to serve as the single Arbitrator to resolve this Arbitration. The Arbitration must take place in Tarrant County and be conducted by an Arbitrator that has no conflict of interest.

D2 Within fifteen (15) Business Days after the appointment of the Arbitrator, each Party shall supply the Arbitrator with such documents, materials or other evidence or written arguments as it or the Arbitrator desires, including such Party's proposed determinations of the applicable issues subject to such Arbitration. Each Party shall thereafter have an additional period of ten (10) Business Days to supply any rebuttal or other information it desires. The Arbitrator, in his/her sole discretion, may also request in writing, specific information and/or a hearing and shall alone otherwise determine the conduct of the Arbitration. Any information delivered or communicated during Arbitration by a Party shall be simultaneously delivered or communicated to (i) the other Party and (ii) the Arbitrator. The Arbitration shall be confidential, and the Parties shall maintain the confidential nature of the arbitration proceeding, arbitration hearing and award, except to the extent disclosure is required to regulators, to insurers, pursuant to an enforcement proceeding, or as otherwise required by Applicable Law.

D3 The Arbitrator shall determine all matters necessary to resolve the dispute, including matters beyond the expertise of the Arbitrator. The Arbitrator shall be permitted to employ other professional advisors or experts as the Arbitrator deems reasonably necessary, at the expense of the Parties.

D4 All costs and expenses of the Arbitrator or of any professional advisors or experts engaged by the Arbitrator in connection with an Arbitration shall be borne equally by the Parties, subject to reimbursement as set forth herein. Within forty-five (45) Business Days after the selection of an Arbitrator, the Arbitrator shall select one of the proposed determinations submitted by one of the Parties (and the Arbitrator shall not have the power to add to, modify, or change any of proposed determinations of the Parties). For purposes of this provision, the Party whose position is adopted by the Arbitrator will be deemed the prevailing Party. While each Party shall advance $\frac{1}{2}$ of the costs and expenses of the Arbitrator or of any professional advisors or experts engaged by the Arbitrator in

connection with the Arbitration, the prevailing Party will be reimbursed by the non-prevailing party the ½ of the costs and expenses referenced herein within 30 days of the Arbitrator's final decision. All other costs and expenses incurred by the Parties shall be borne by the Party incurring same.

D5 The Parties agree to act in good faith with respect to any communication with the Arbitrator and the Arbitration process.

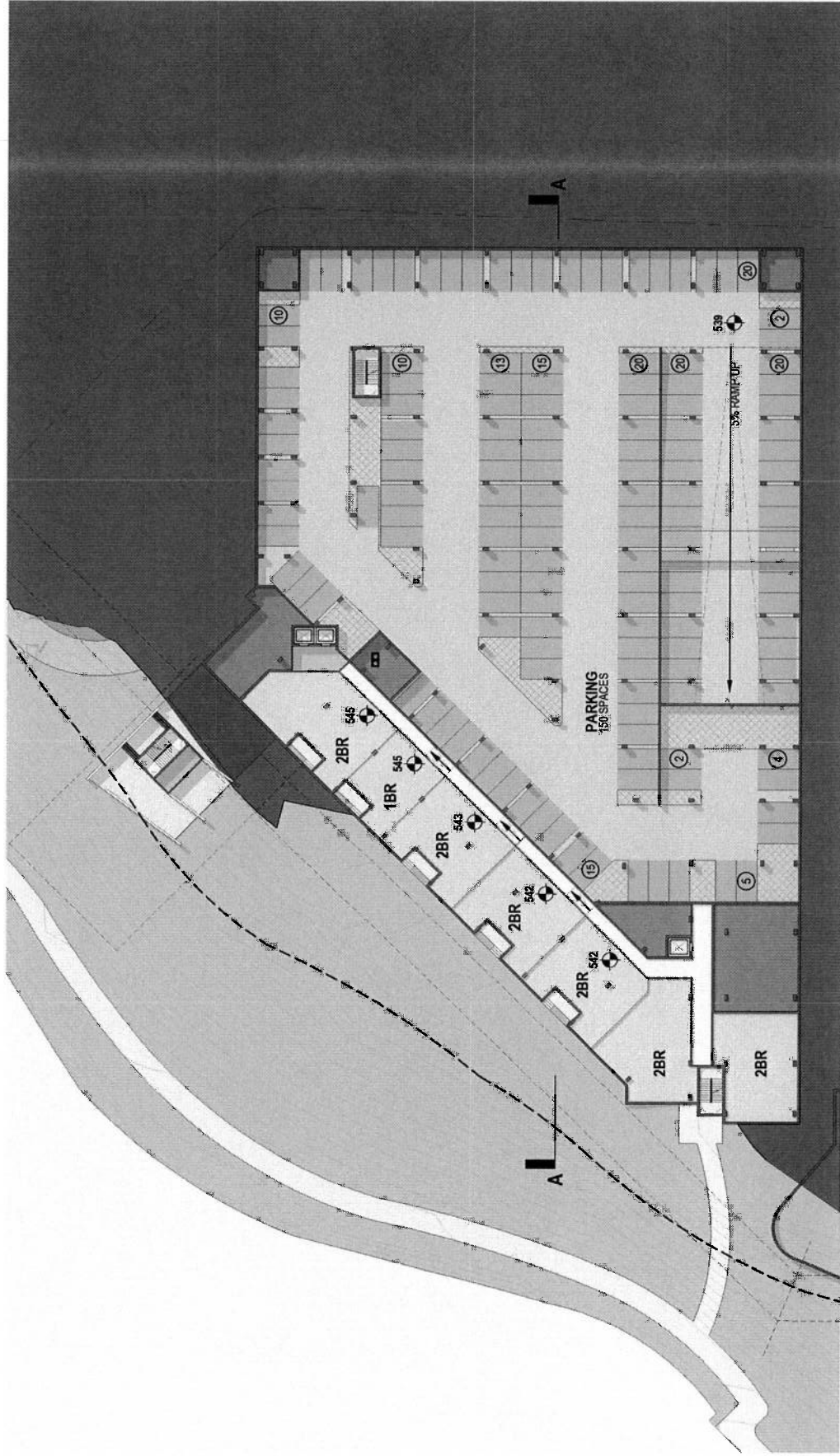
D6 Time shall be of the essence with respect to these Arbitration Procedures, and the Parties shall take all reasonable actions necessary to cause any necessary Arbitration hearing to occur promptly, and the Arbitrator shall be directed to arbitrate the dispute and issue its decision as soon as reasonably practicable, but in no event later than forty-five (45) Business Days after the appointment of the Arbitrator.

D7 The Arbitration shall not relieve any Party from any of its respective obligations under this Agreement during the term of any such Arbitration (other than in respect of the subject matter of the dispute that is being arbitrated).

D8 For all purposes of the Arbitration Procedures the City and the TIRZ (or their respective successors and assigns of their respective interests in this Agreement) shall be referred to as a Party, Developer (or its successors and assigns of its interests in this Agreement) shall be referred to as a Party, the City and the TIRZ (or their respective successors and assigns of their respective interests in this Agreement) and, Developer (or its successors and assigns) shall be referred to as Parties. For all purposes of the Arbitration Procedures, Developer (or its successors and assigns) shall be considered one Party and shall act through Developer (or its successor and assign). For all purposes of the Arbitration Procedures, the City and the TIRZ (or such respective successors and assigns) shall be considered one Party and shall act through the City (or such respective successor and assign).

Exhibit "E-1"
Residential Building Conceptual Plan

Exhibit "E-1"
Residential Building Conceptual Plan

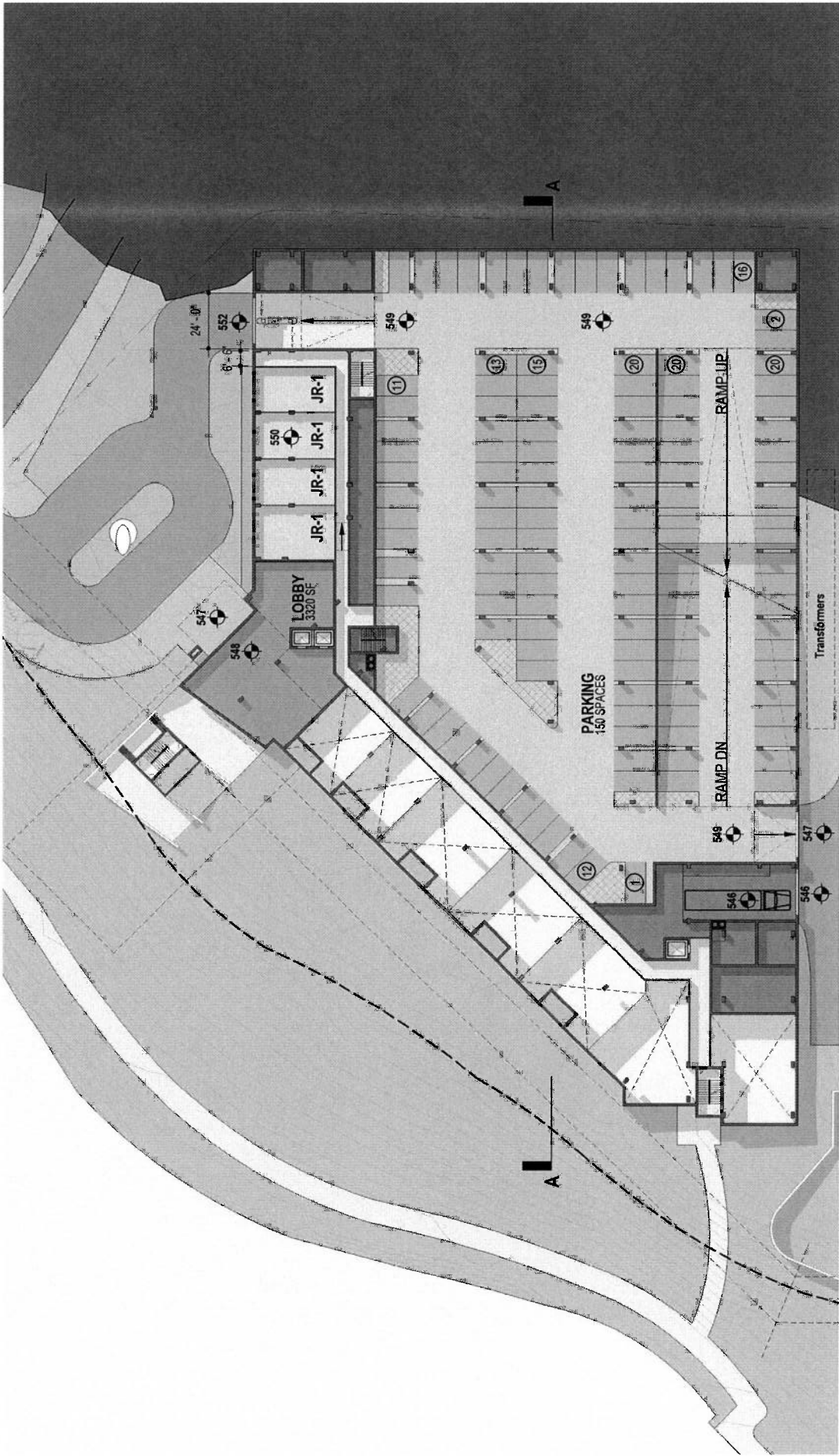


LEVEL 01

Attingham Lulu J | Design Progress - 04.10.2021

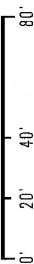


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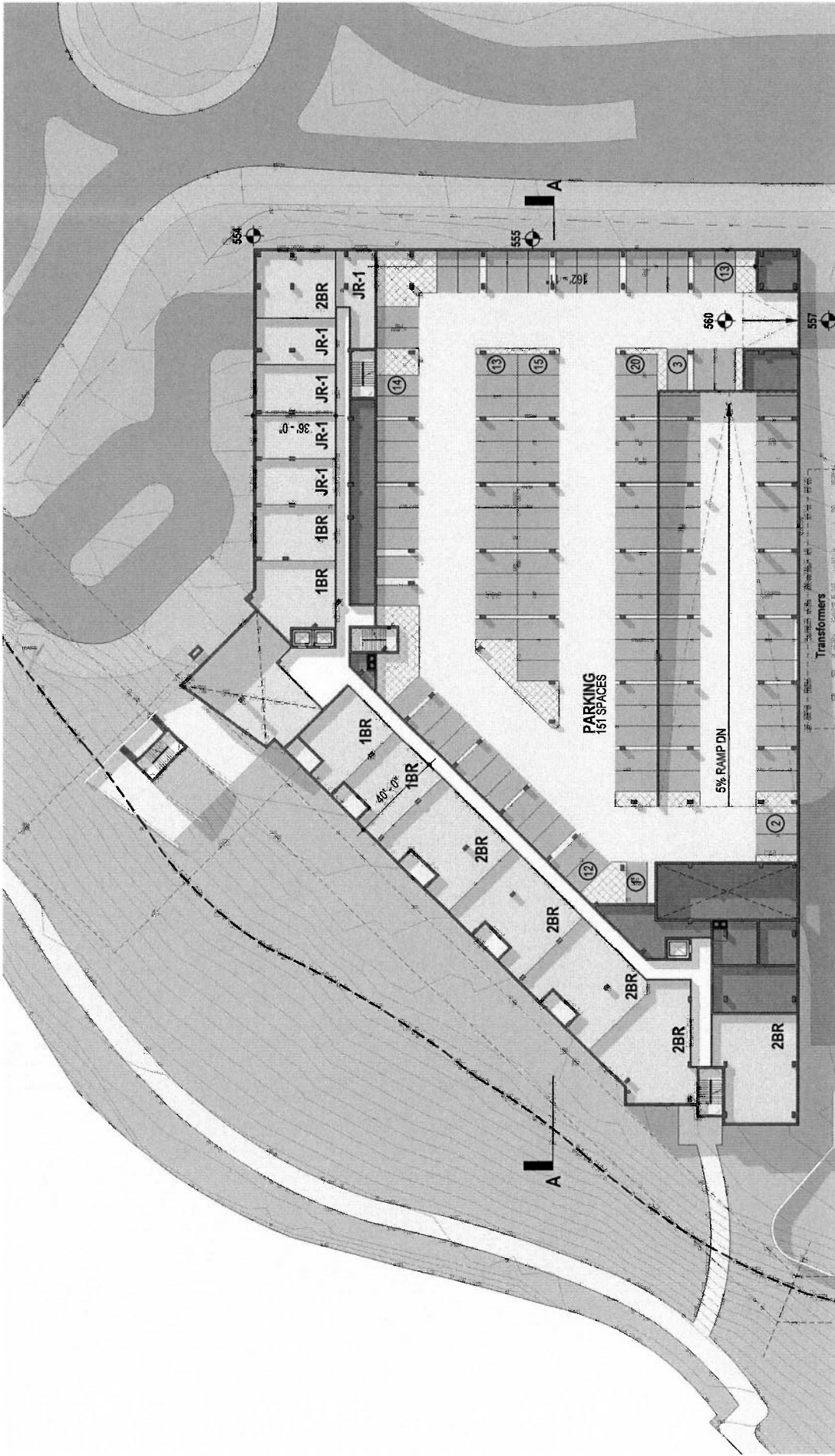


LEVEL 02

Adlington, Lot 1 | Design Progress - 04.10.2021

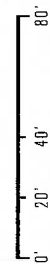


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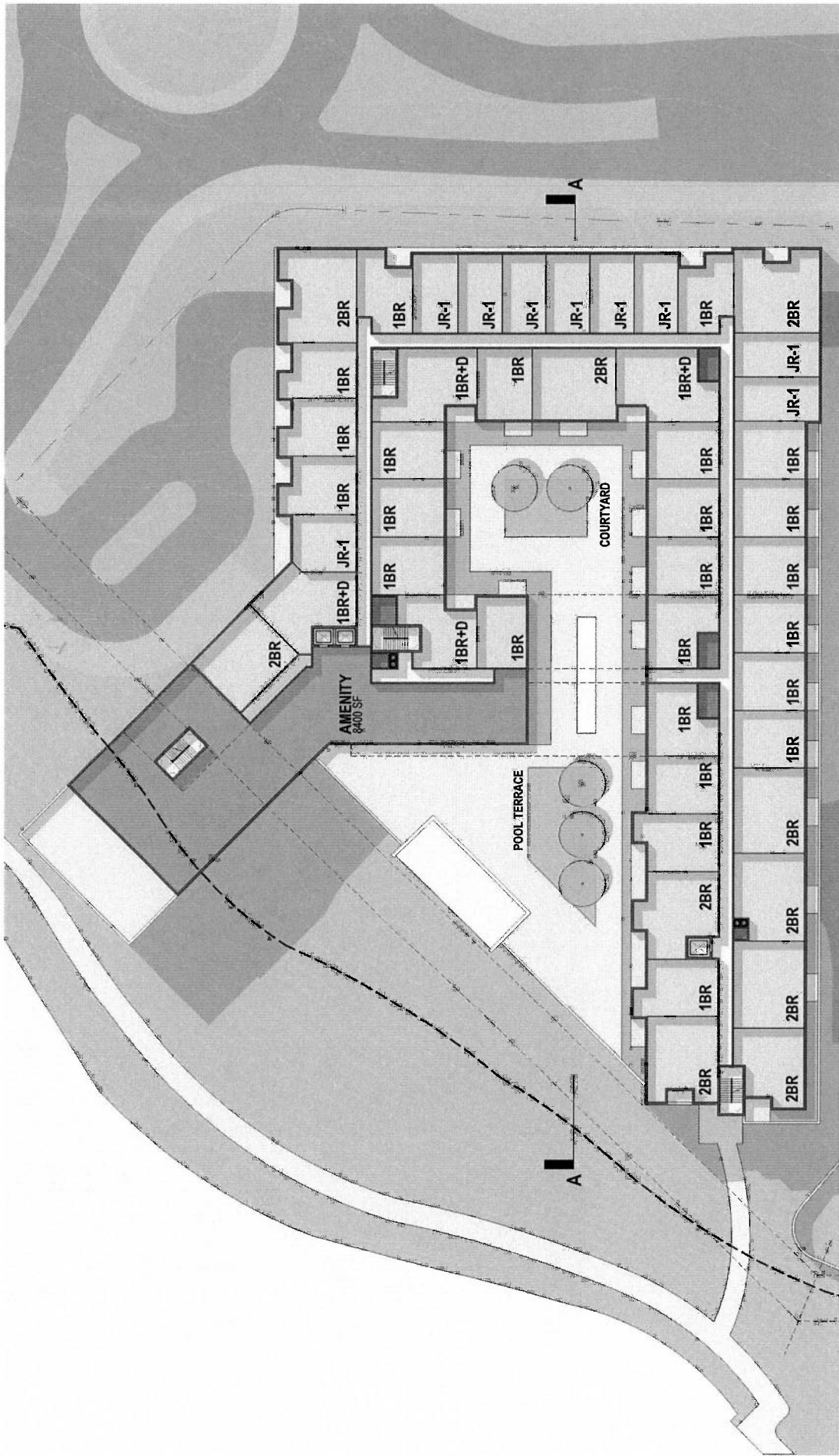


LEVEL 03

Arington Lot 1 | Design Progress - 04.10.2021

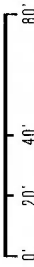


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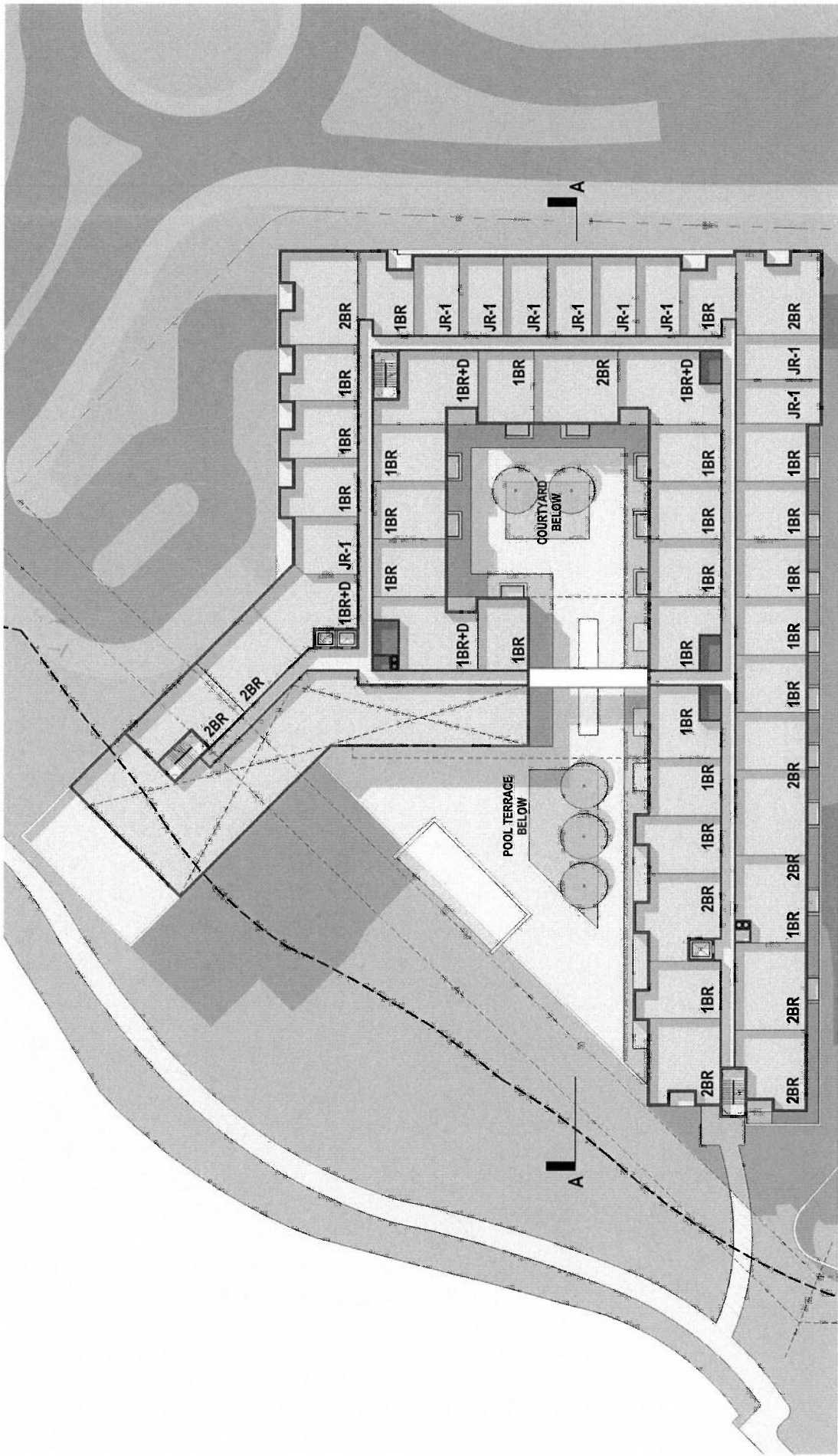


LEVEL 04

Ardenwood, Lot J | Design Progress - 04.19.2021



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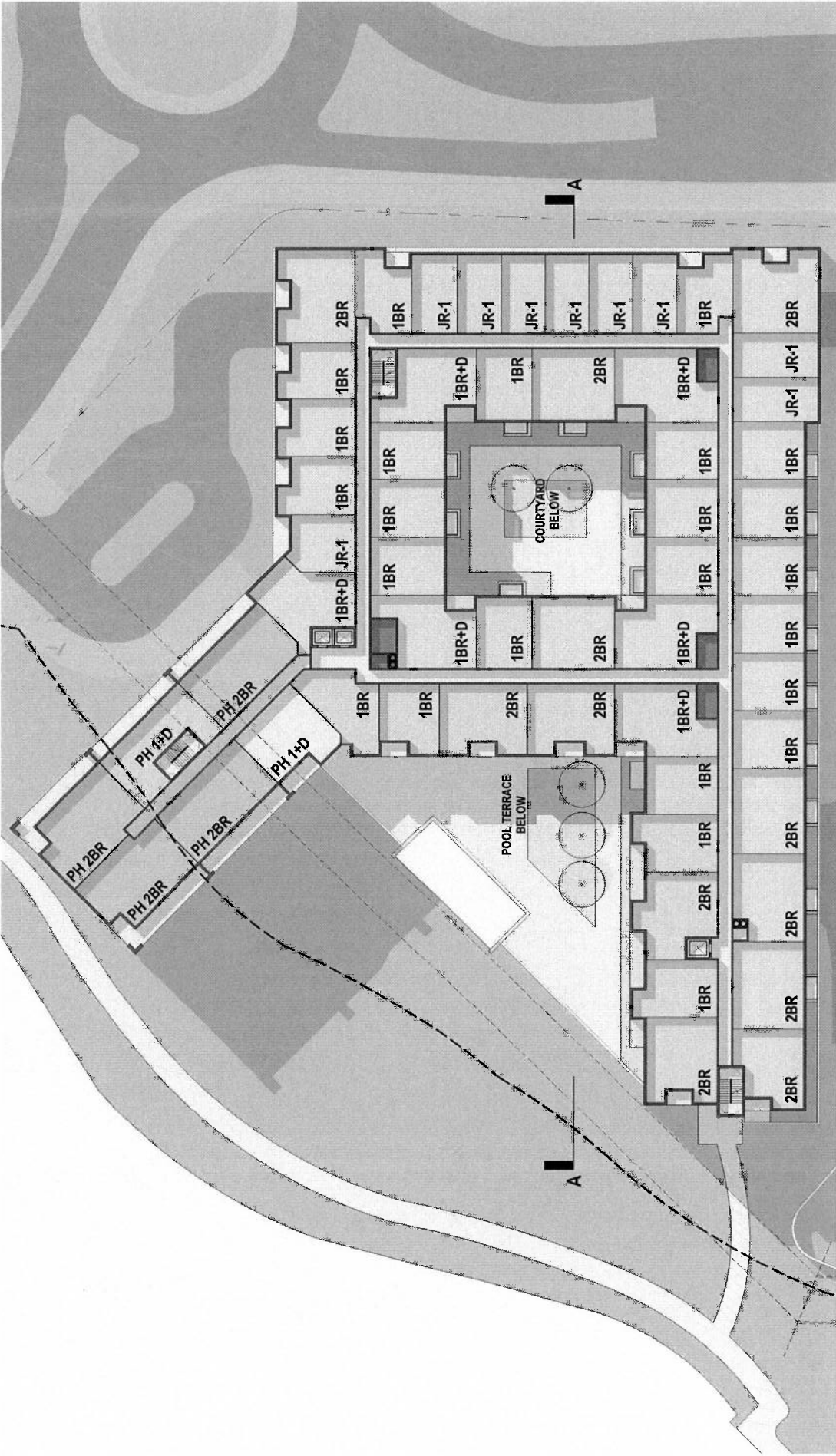
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LEVEL 05

Arlington Lot J | Design Progress - 04.19.2021

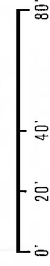
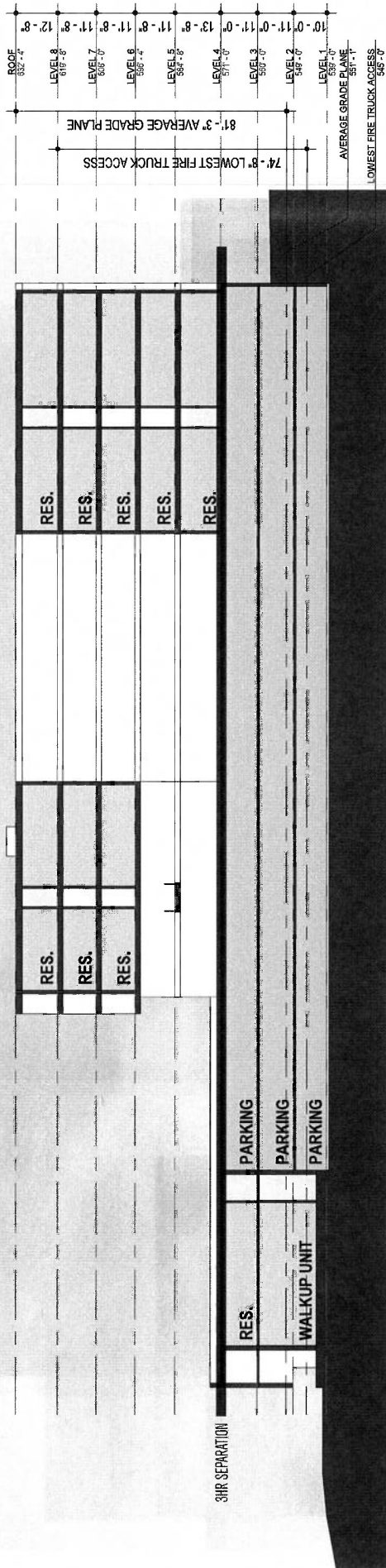


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LEVEL 06-08

Arbington, Lot C | Design Progress - 04.19.2021

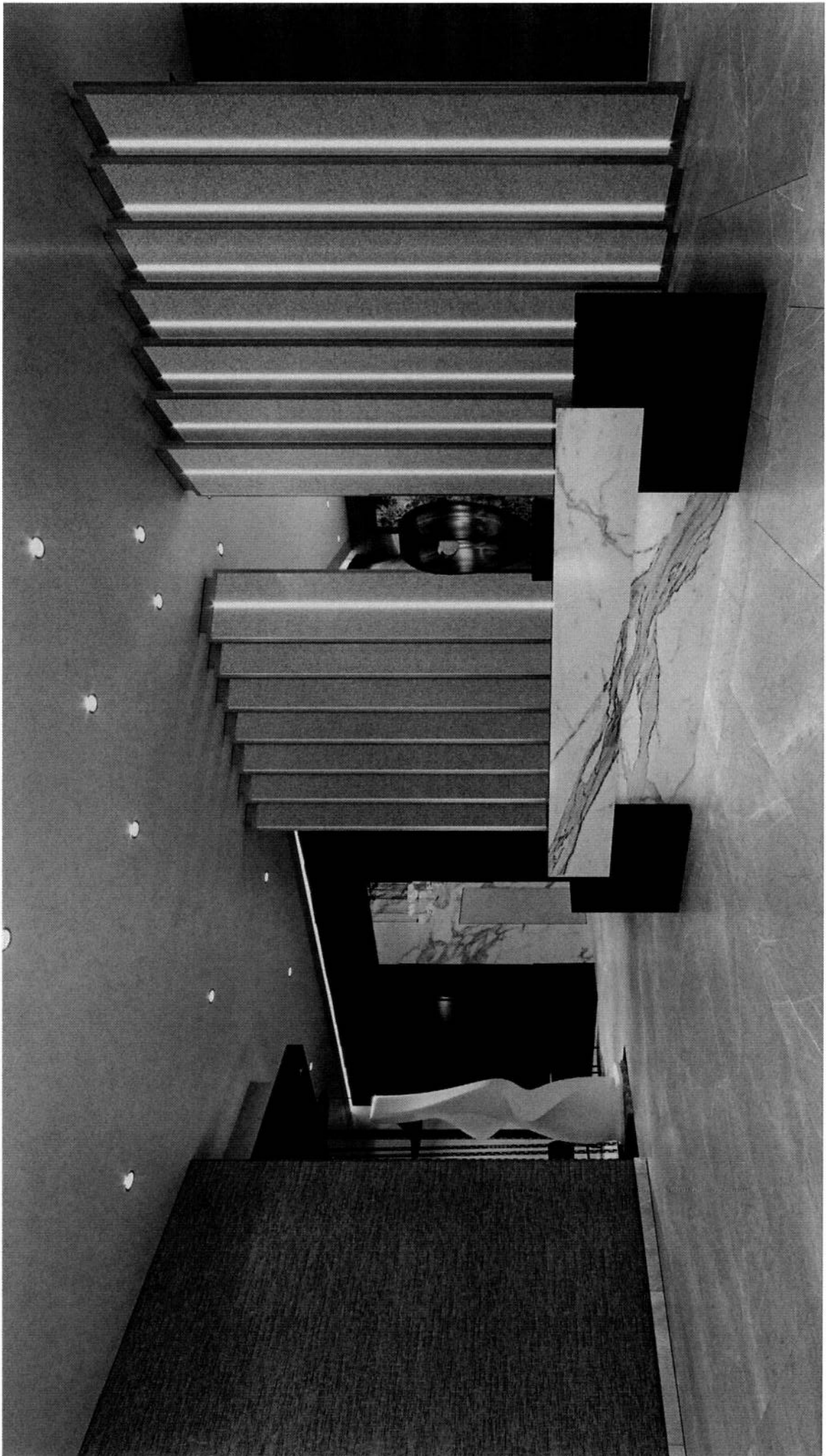


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SECTION AA

Adington, Lot J | Design Progress - 04.10.2021

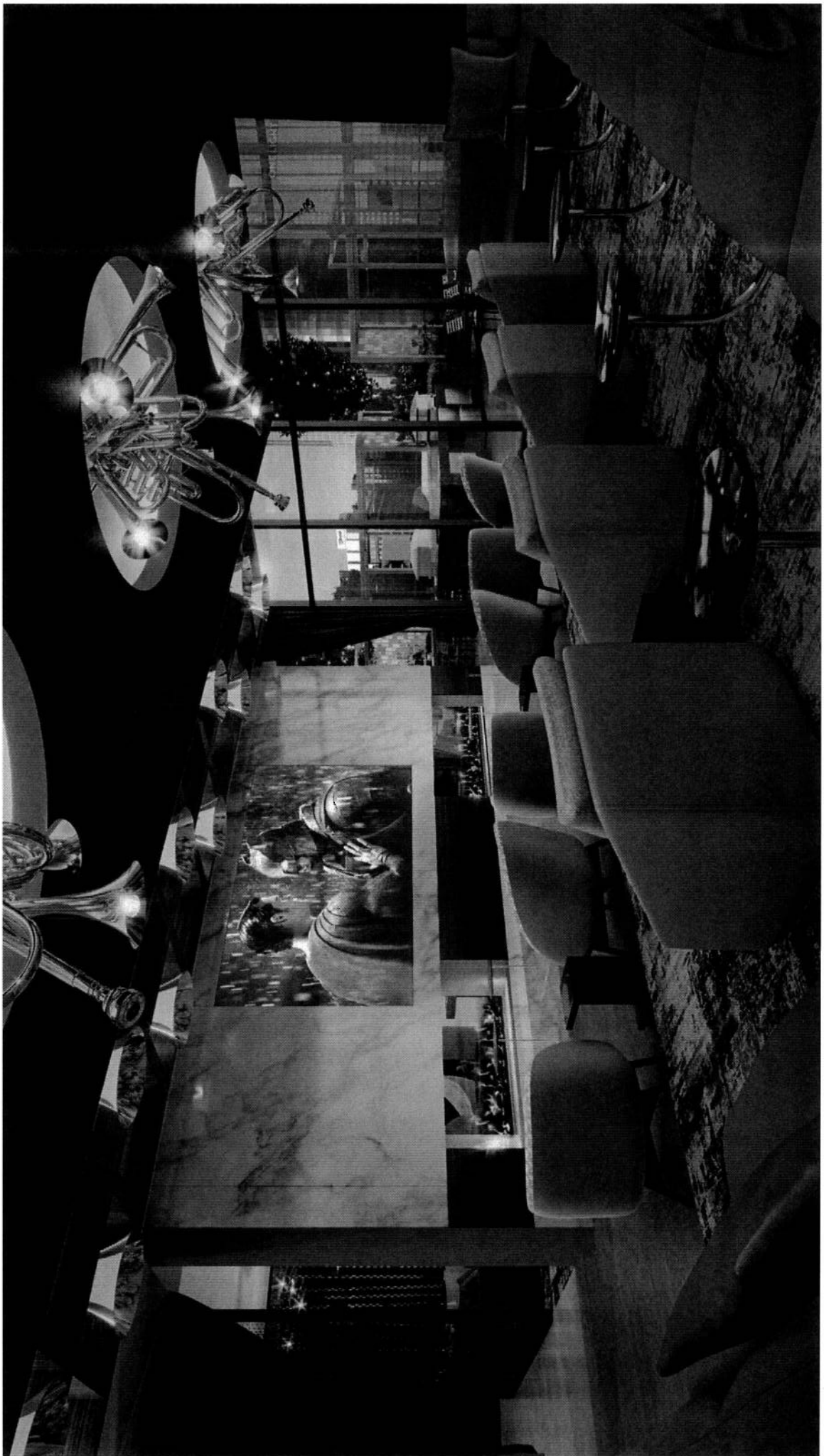
THREE LIGHT



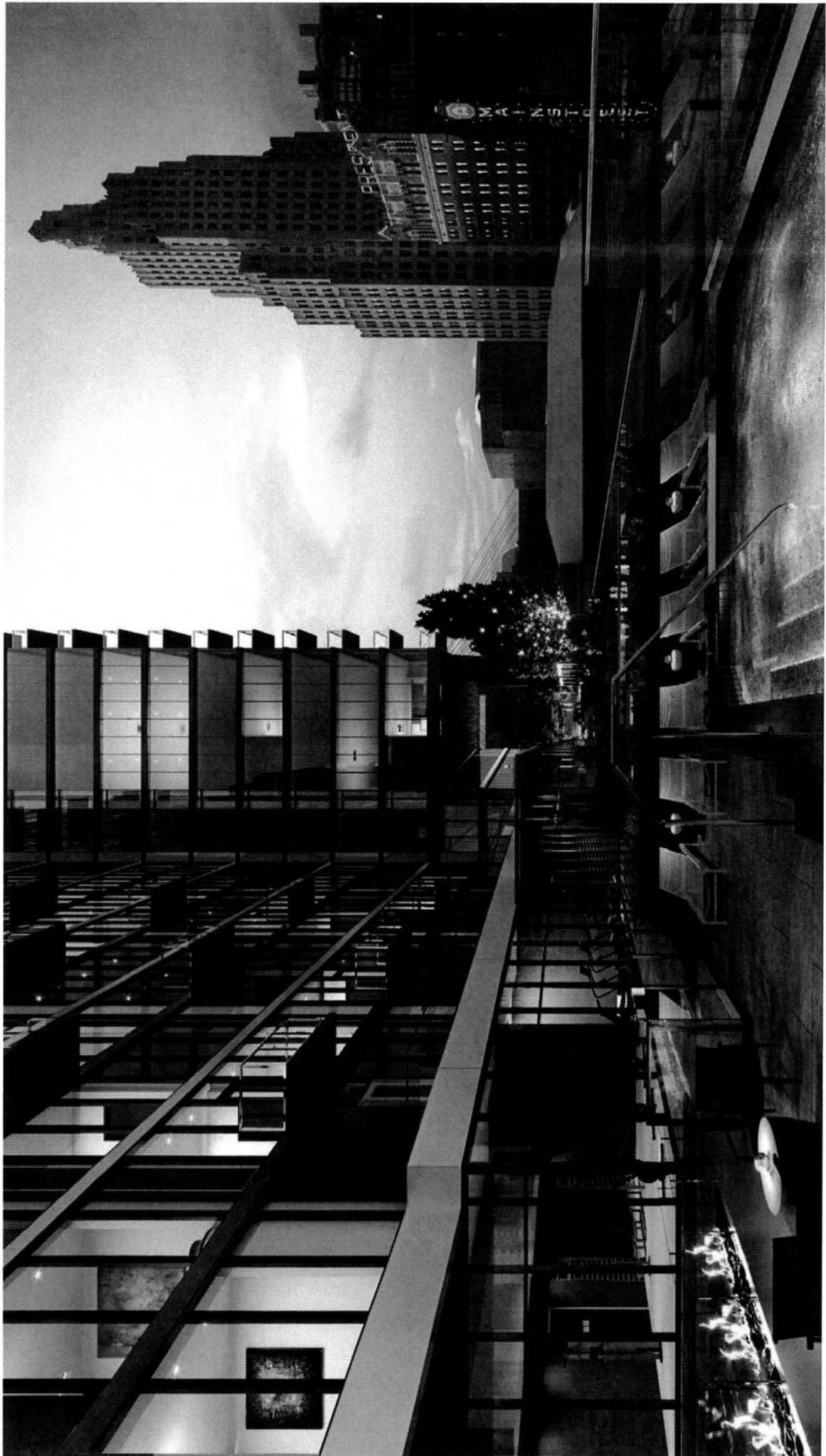




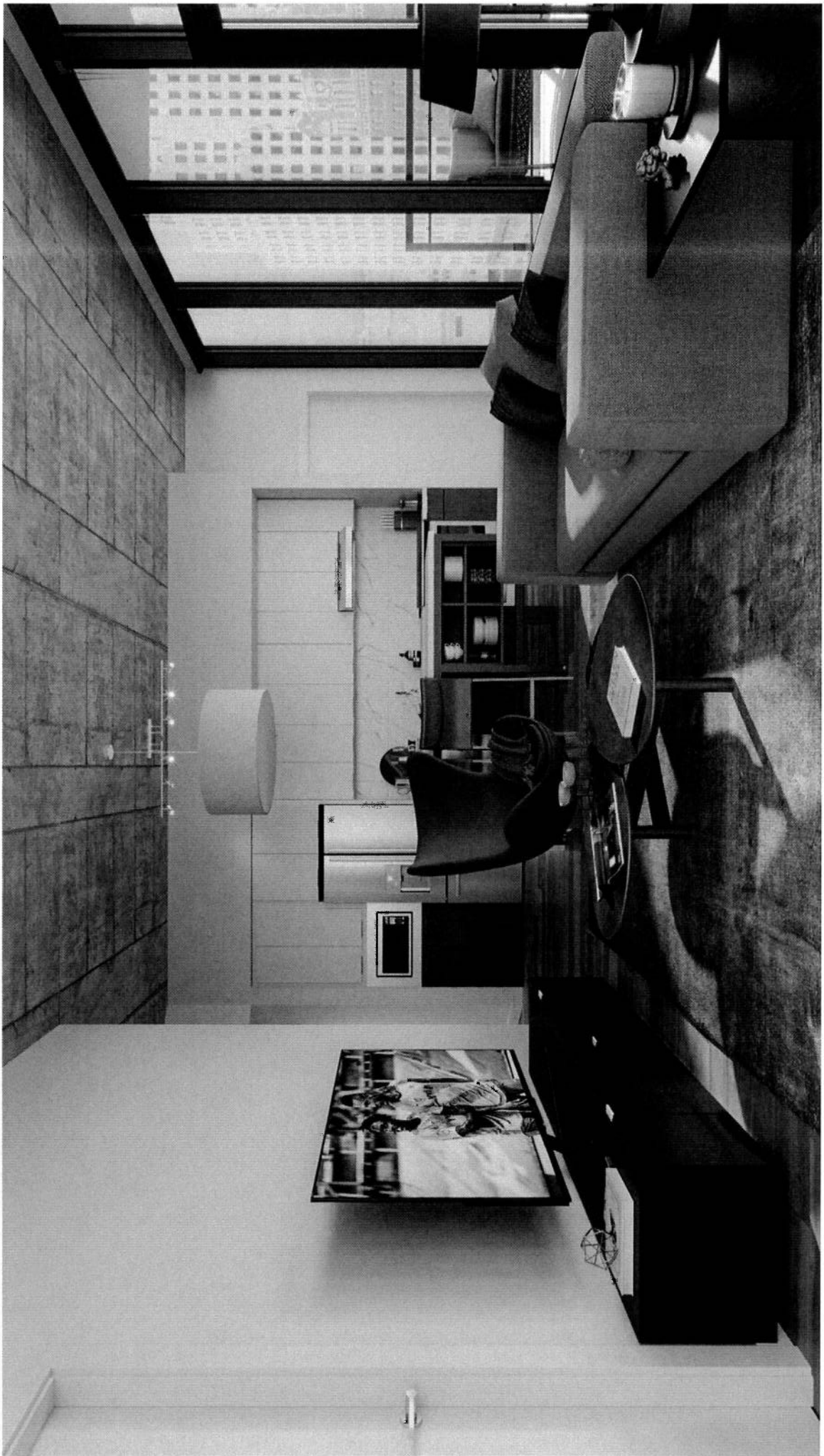
















TWO LIGHT

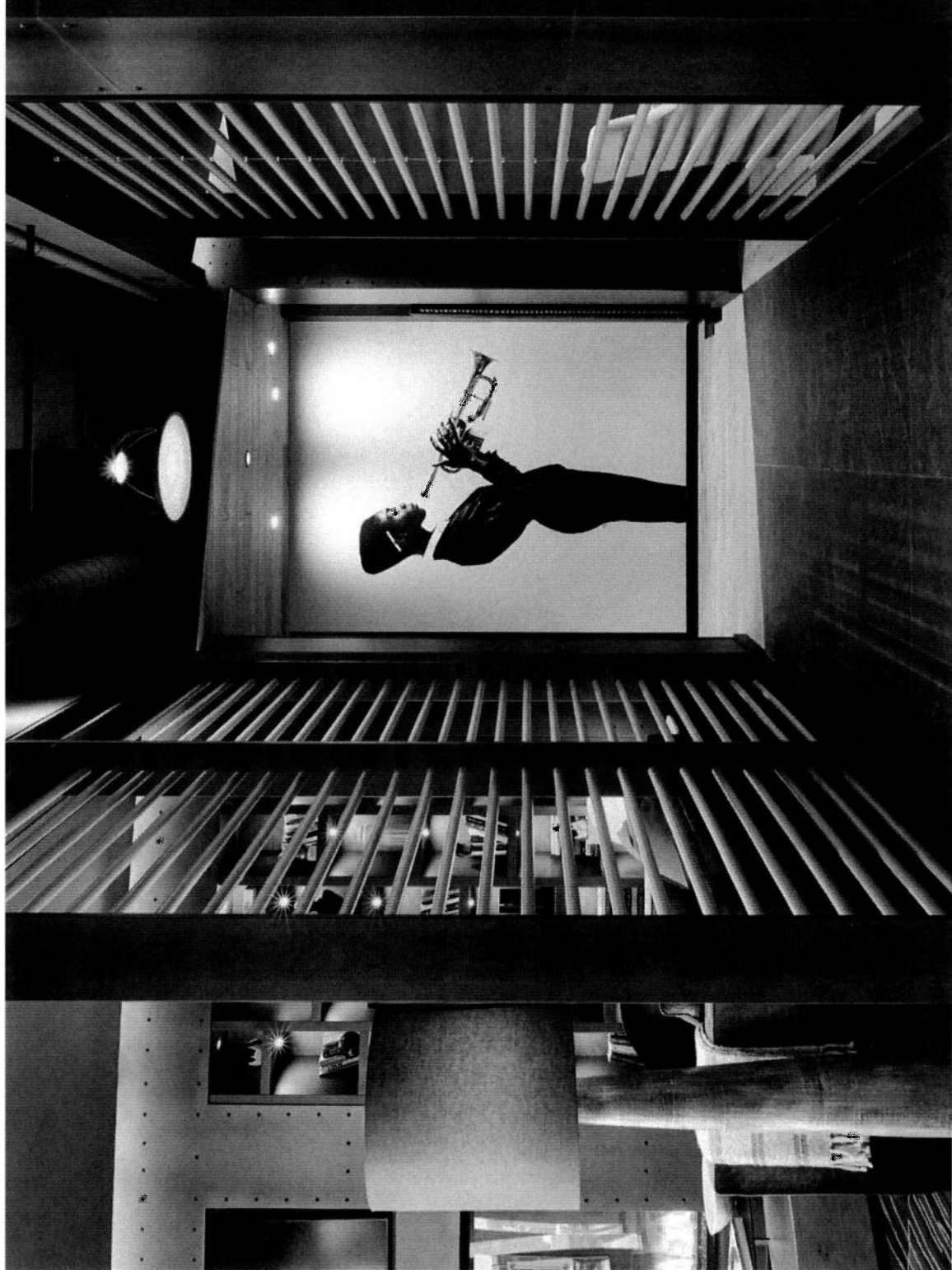
LUXURY APARTMENTS

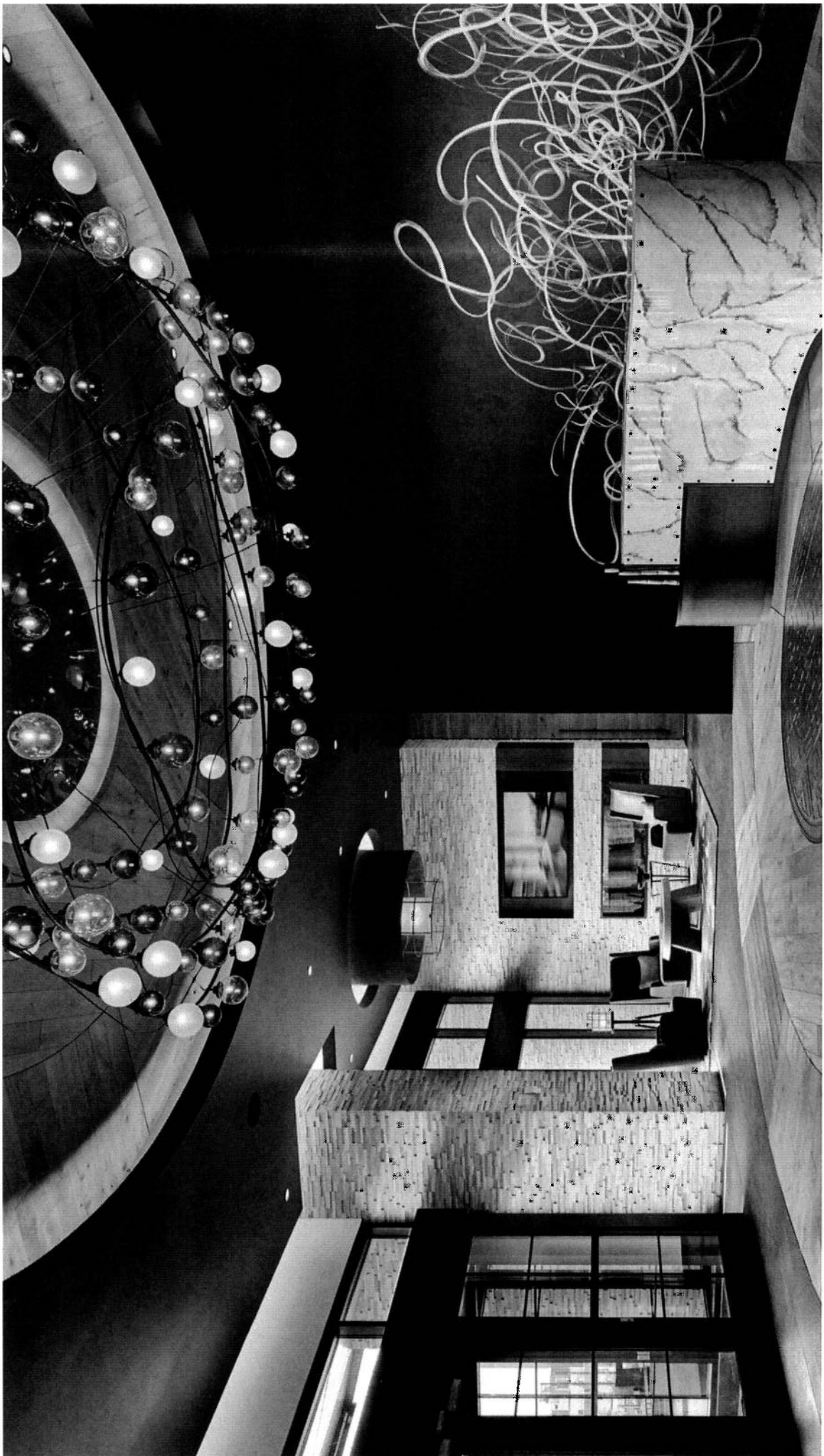
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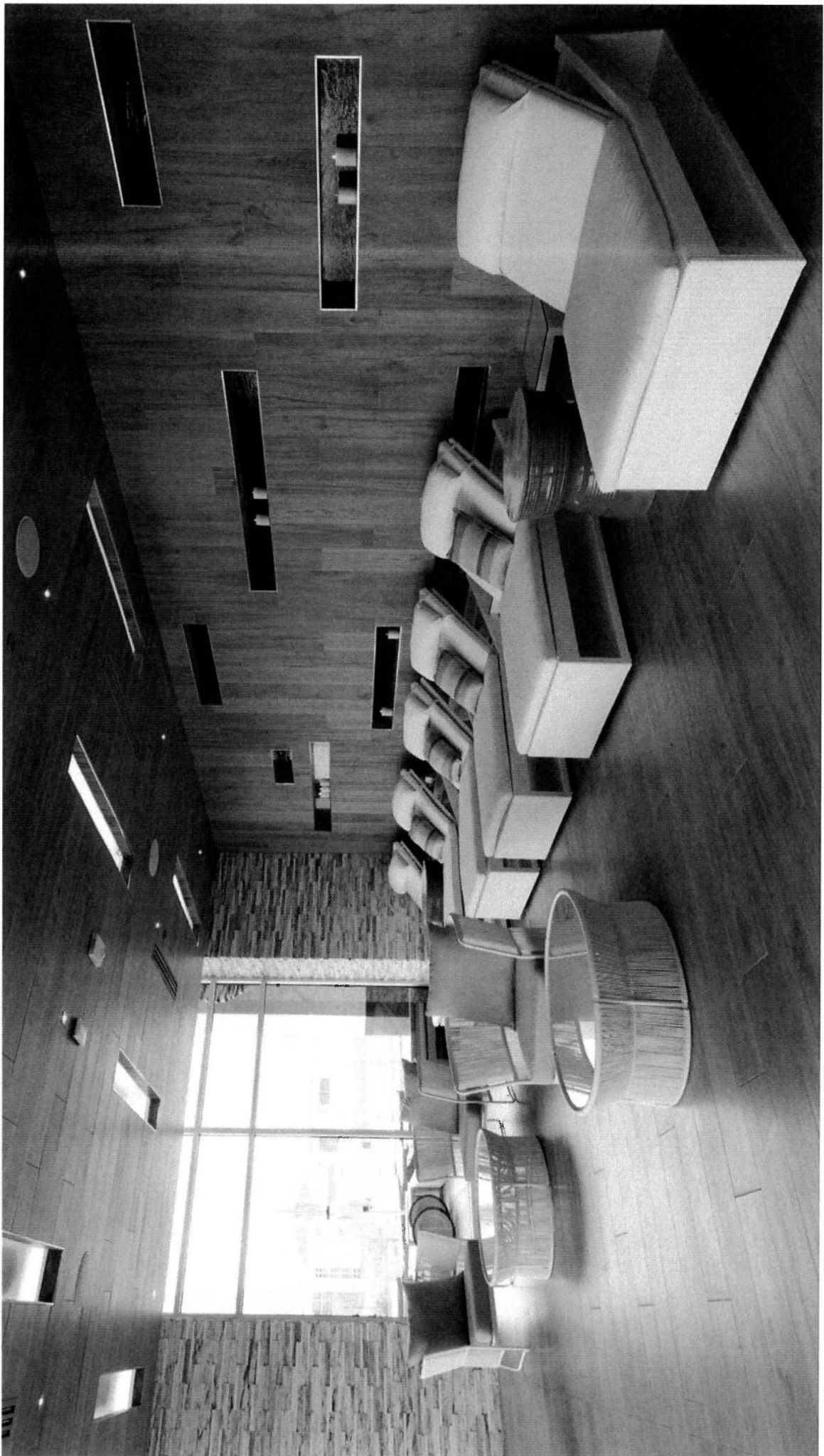














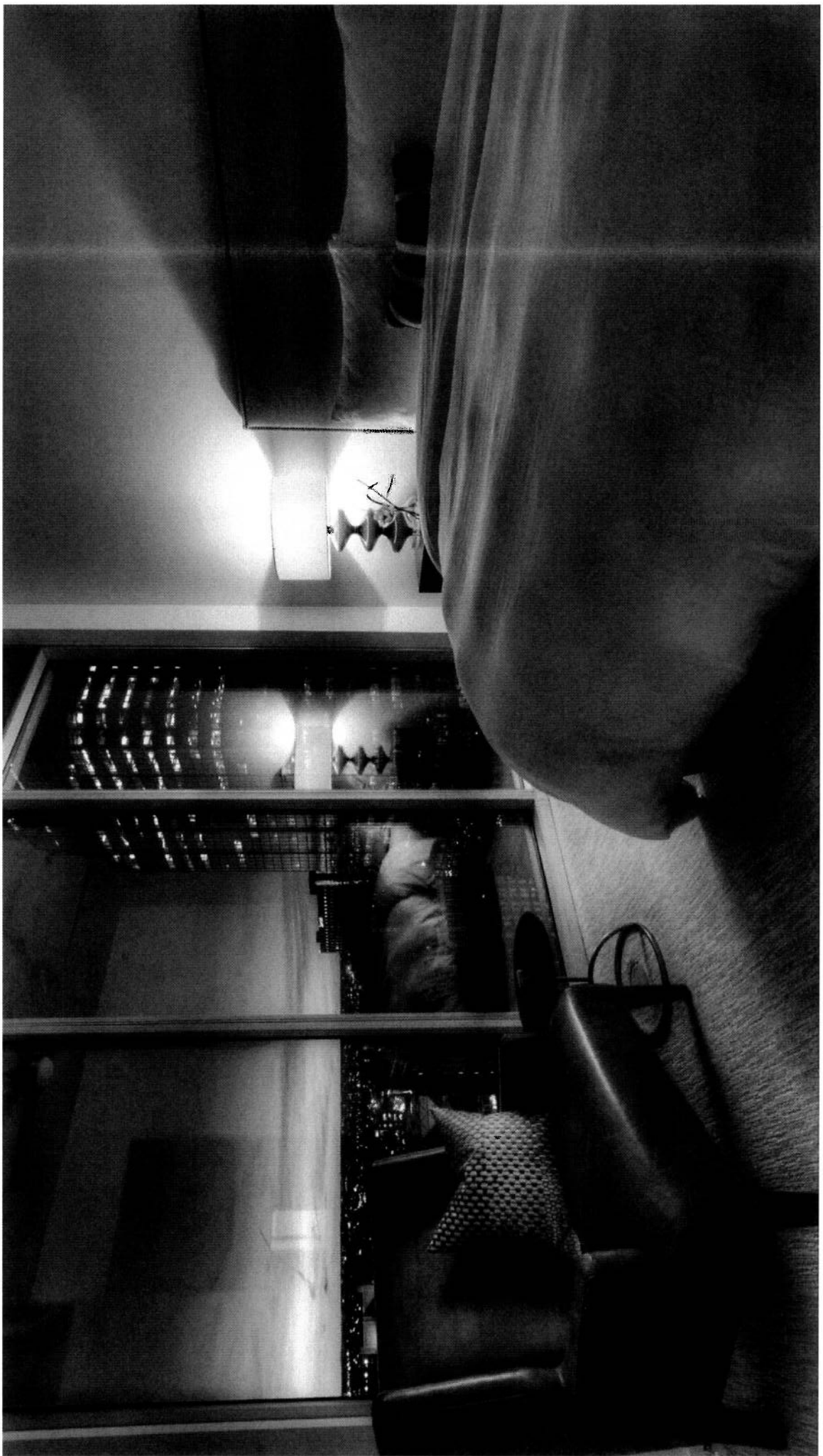
ONE LIGHT

LUXURY APARTMENTS









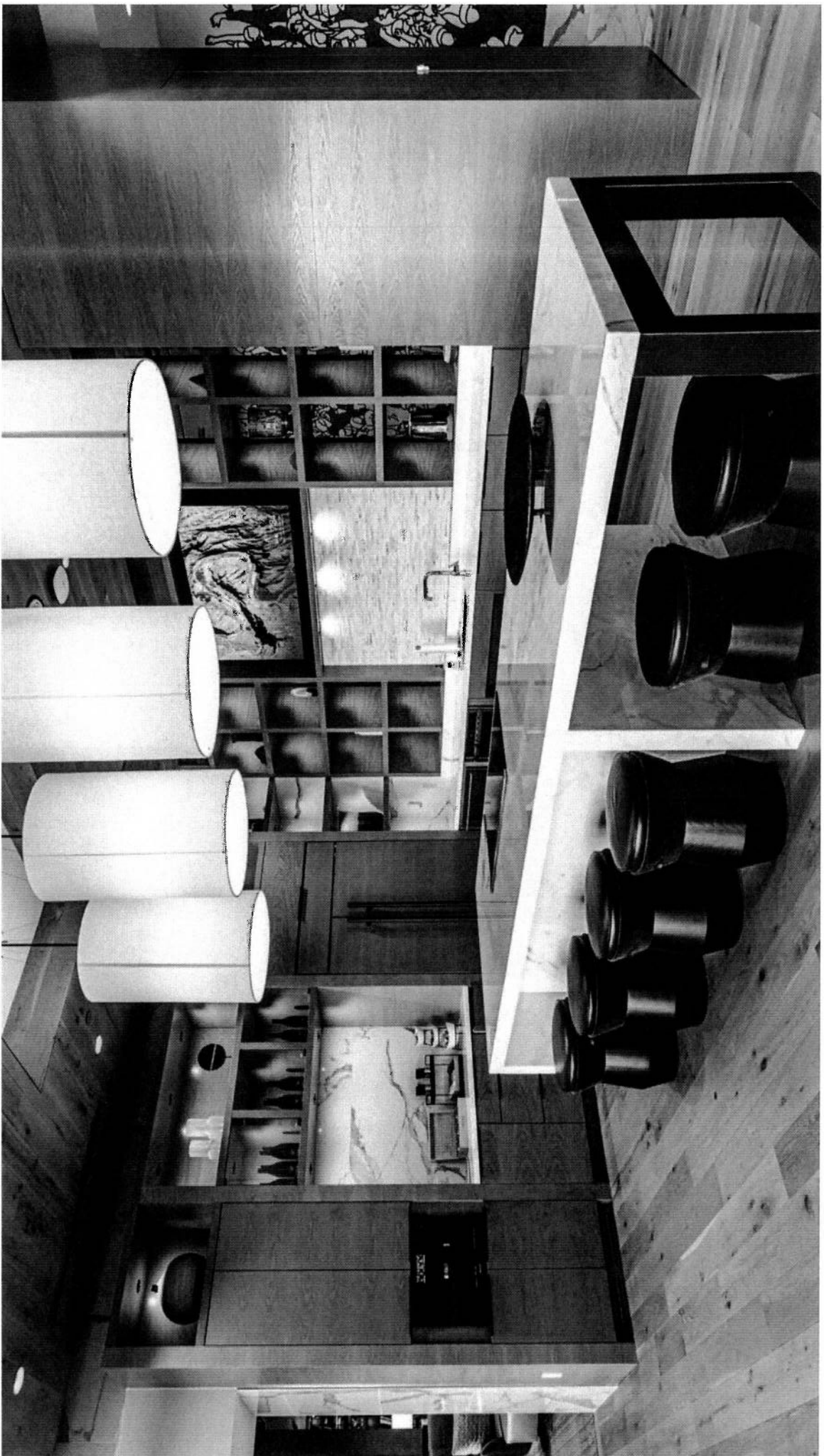
ONE CARDINAL

Prayer

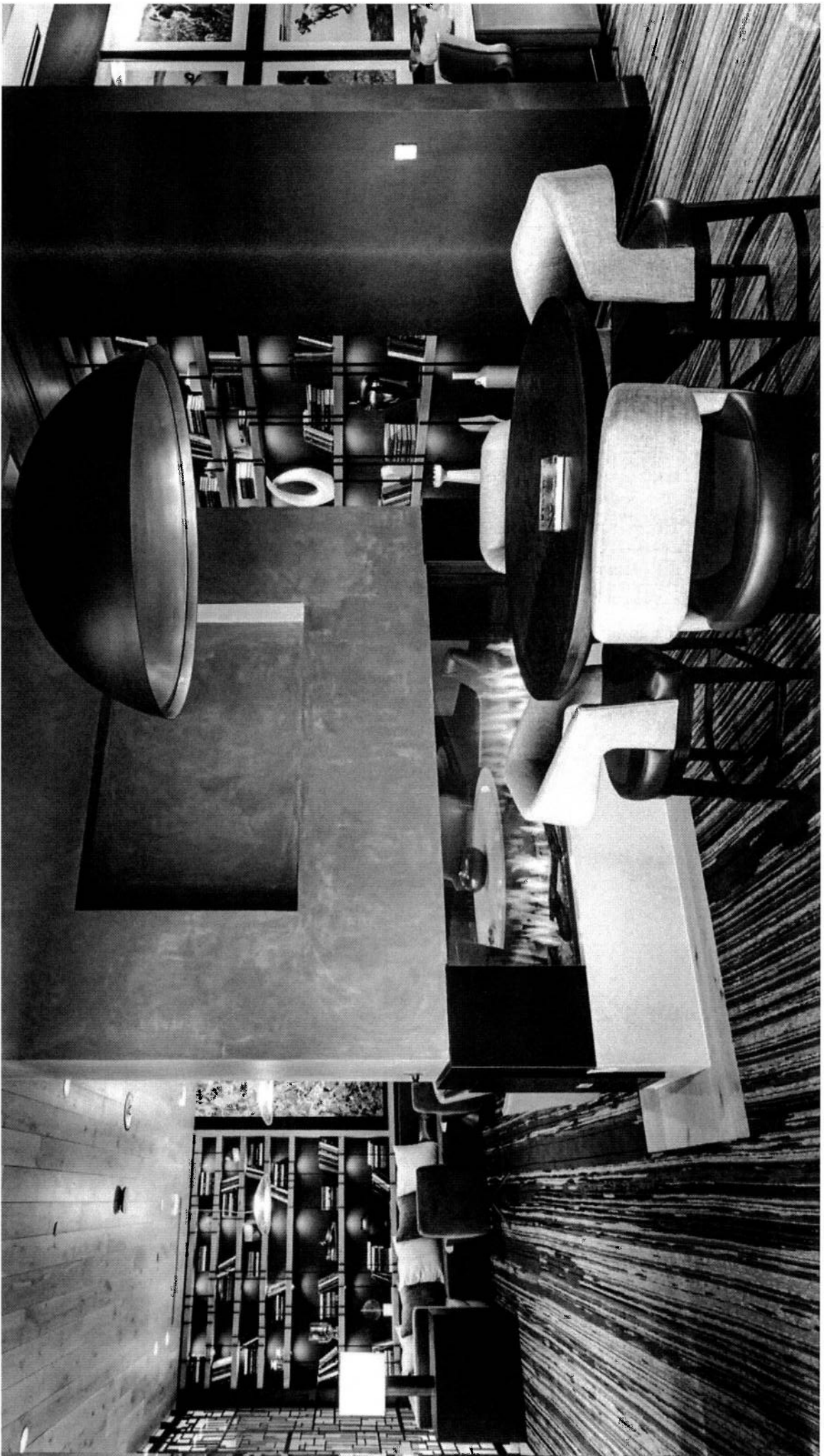


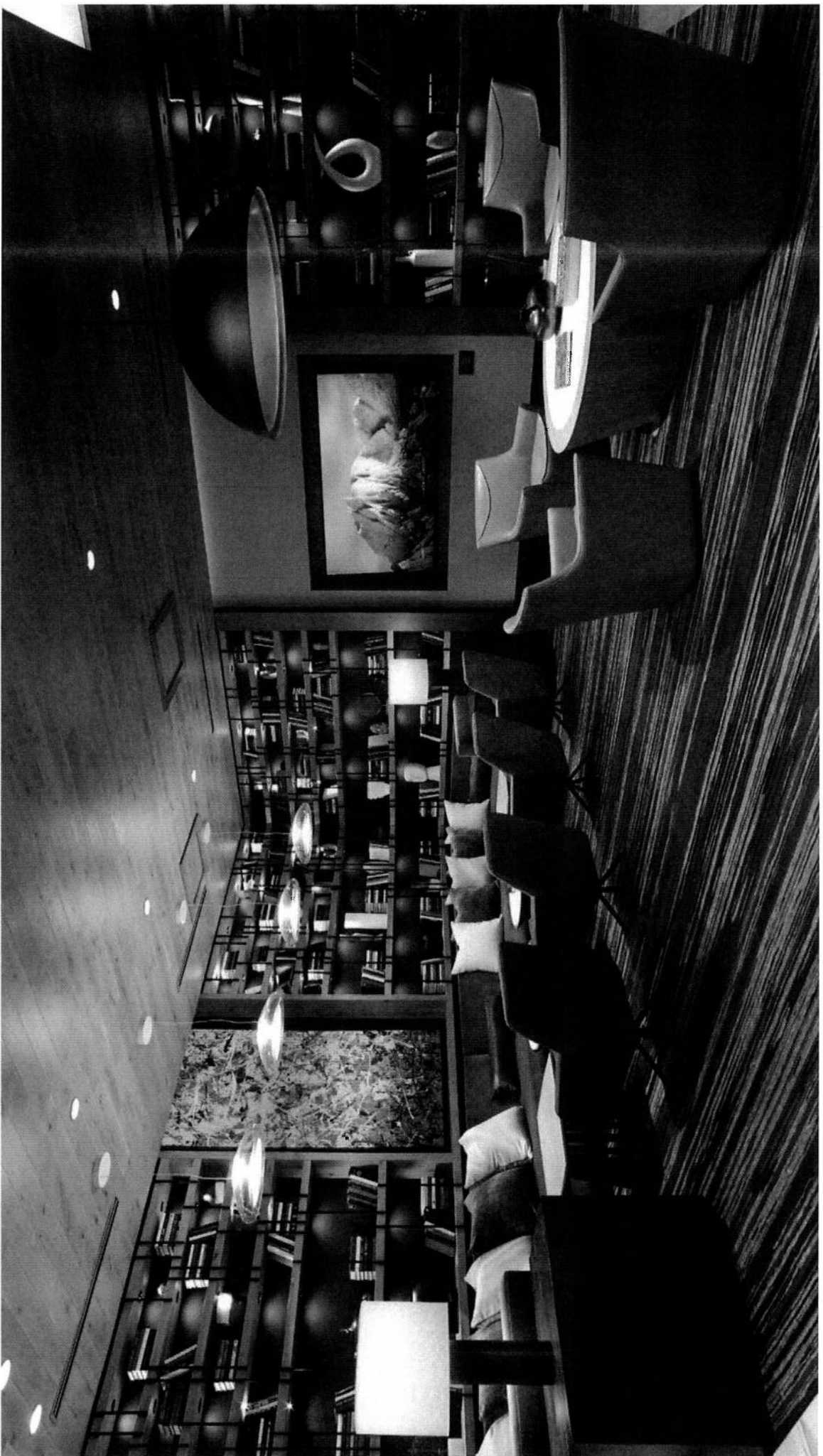


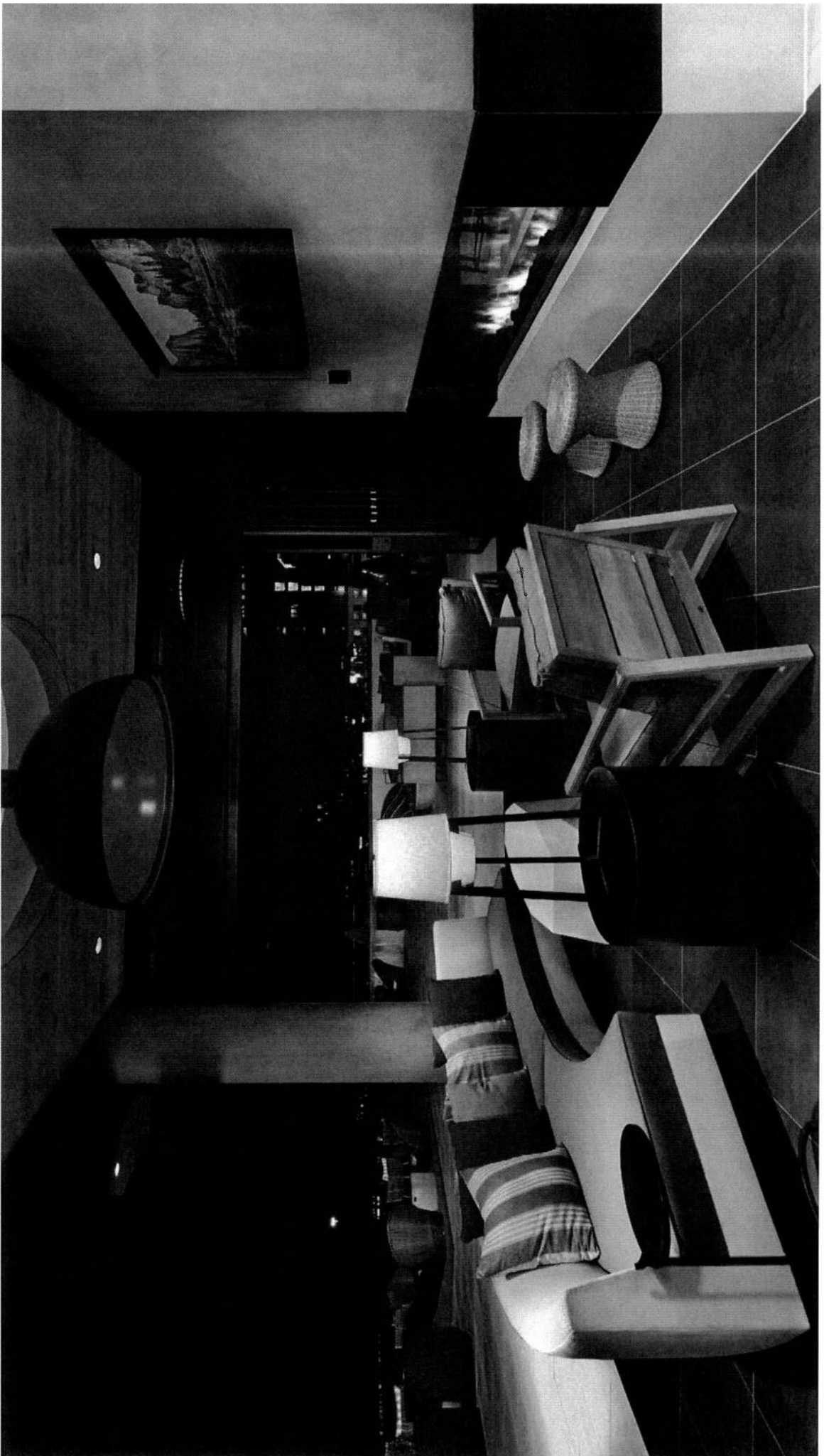




















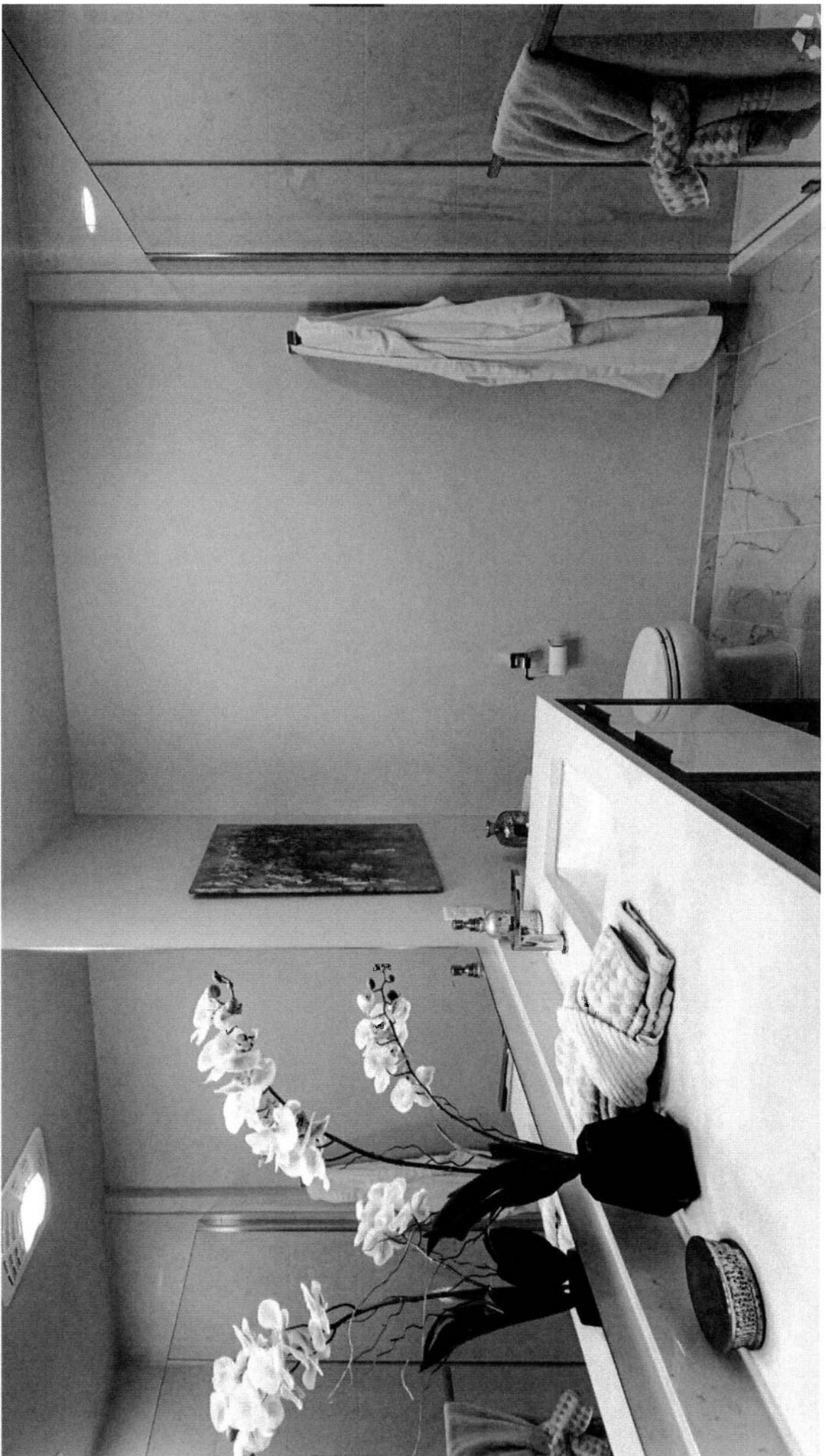


Exhibit "E-2"
Residential Building Site

**Exhibit "E-2"
Residential Building Site**

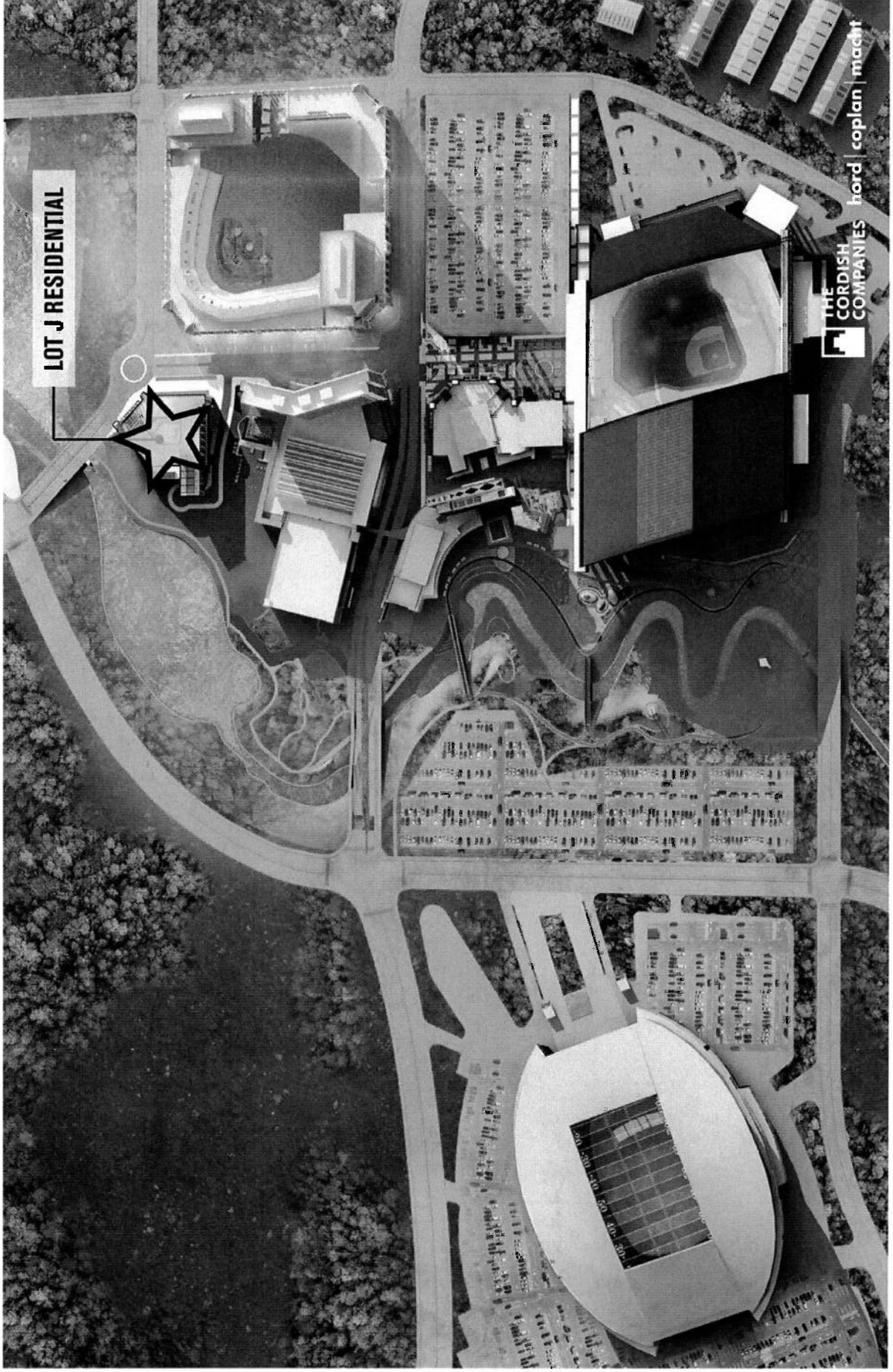


EXHIBIT A

PROPOSED LOT 1B BLOCK B PARKING LOT

Being a 3.900 acre tract of land situated in the William O'Neal Survey, Abstract No. 1190, Tarrant County, Texas and being part of Lot 1, Block B, The Ballpark Addition, an addition to the City of Arlington, Tarrant County, Texas, as shown on the plat recorded in County Clerk's File No. D218180462 of the Official Public Records, Tarrant County, Texas (O.P.R.T.C.T.), and more particularly described by metes and bounds as follows:

BEGINNING at a 5/8" iron rod set with yellow plastic cap stamped "MMA 817-469-1671" for the northernmost north corner of said Lot 1 and being in the southwest right-of-way line of East Road to Six Flags Drive (formerly Nolan Ryan Expressway) a variable width right-of-way described in Easement as recorded in Volume 11203, Page 178 of the Deed Records of Tarrant County, Texas (D.R.T.C.T.). Said point having grid coordinates based on the "Texas Coordinate System of 1983, North Central Zone" of N=6,959,837.9 and E=2,403,493.6 based on GPS observations. Bearings shown are grid and distances shown are surface. The convergence angle is 0°46'18.3" and the average combined scale factor is 1.00012.

THENCE, with the common north boundary line of said Lot 1 and said southwest right-of-way line the following three (3) courses and distances:

South 45°20'36" East, a distance of 58.72 feet to a 1/2" plastic capped iron rod found stamped "GRAHAM" for a re-entrant corner of said Lot 1 and south corner of said East Road to Six Flags Drive,

North 44°13'27" East, a distance of 15.05 feet to an "X" cut found in concrete for an angle point in said common line, and

North 45°54'47" East, a distance of 0.32 feet to an "X" cut found in concrete for a north corner of said Lot 1 and a west corner of E. Road to Six Flags Drive described in right-of-way as recorded in County Clerk's File No. D209218849, O.P.R.T.C.T.;

THENCE, South 45°46'01" East, with the common northeast boundary line of said Lot 1 and the southwest right-of-way line of said East Road to Six Flags Drive, a distance of 239.17 feet to an "X" cut found in concrete for the northeast corner of said Lot 1 at the intersection of the said southwest right-of-way and the west right-of-way line of Nolan Ryan Expressway a variable width right-of-way described in Easement as recorded in Volume 11203, Page 178, D.R.T.C.T. and being the beginning of a non-tangent curve to the right having a radius of 20.00 feet, a delta angle of 32°56'12", and a long chord bearing and distance of South 15°33'22" East, 11.34 feet.

THENCE, with the common east boundary line of said Lot 1 and said west right-of-way line the following of Nolan Ryan Expressway the following five (5) courses and distances:

With said non-tangent curve to the right, an arc length of 11.50 feet to an "X" cut found in concrete for the beginning of a non-tangent curve to the right having a radius of 77.00 feet, a delta angle of 04°10'30", and a long chord bearing and distance of South 02°34'29" West, 5.61 feet,

With said non-tangent curve to the right, an arc length of 5.61 feet to an "X" cut found in concrete,

South 04°29'06" West, a distance of 31.41 feet to a 1/2" plastic capped iron rod found stamped "GRAHAM",

South 02°01'25" West, a distance of 189.26 feet to an "X" cut found in concrete, and

South 00°22'39" East, a distance of 47.69 feet to a point for the southeast corner of said proposed 3.900 acre tract, from which an "X" cut found in concrete bears South 00°22'39" East, a distance of 250.47 feet;

THENCE, over and across said Lot 1 the following seven (7) courses and distances:

South 89°37'24" West, a distance of 305.03 feet to a point,

North 00°22'36" West, a distance of 7.36 feet to a point,

North 56°02'48" West, a distance of 18.86 feet to a point,

South 89°37'24" West, a distance of 32.30 feet to a point,

North 00°22'51" West, a distance of 14.46 feet to a point,

South 89°37'09" West, a distance of 16.39 feet to a point, and

North 49°07'56" West, a distance of 144.71 feet to a point for the southwest corner of said 3.900 acre tract in the northwest boundary line of said Lot 1 and being the beginning of a non-tangent curve to the left having a radius of 125.00 feet, a delta angle of 15°13'12", and a long chord bearing and distance of North 21°31'25" East, 33.11 feet.

THENCE, with said northwest boundary line the following six (6) courses and distances:

With said non-tangent curve to the left, an arc length of 33.21 feet to a 1/2" plastic capped iron rod found stamped "GRAHAM",

North 14°59'46" East, a distance of 104.95 feet to a 1/2" plastic capped iron rod found stamped "GRAHAM" for the beginning of a non-tangent curve to the right having a radius of 200.00 feet, a delta angle of 44°58'53", and a long chord bearing and distance of North 37°32'56" East, 153.01 feet,

With said non-tangent curve to the right, an arc length of 157.01 feet to a 1/2" iron rod found,

North 59°59'40" East, a distance of 44.10 feet to a 1/2" iron rod found (disturbed) for the beginning of a non-tangent curve to the left having a radius of 200.00 feet, a delta angle of 15°22'59", and a long chord bearing and distance of North 52°11'39" East, 53.54 feet,

With said non-tangent curve to the left, an arc length of 53.70 feet to a 5/8" yellow plastic capped iron rod set stamped "MMA 817-469-1671", and

North 44°37'24" East, a distance of 68.43 feet to the POINT OF BEGINNING and having a calculated area of 3.900 acres or 169,878 square feet of land.

Notes: Exhibit A to accompany Exhibit B.

REVISED 11-3-2020 - TAN

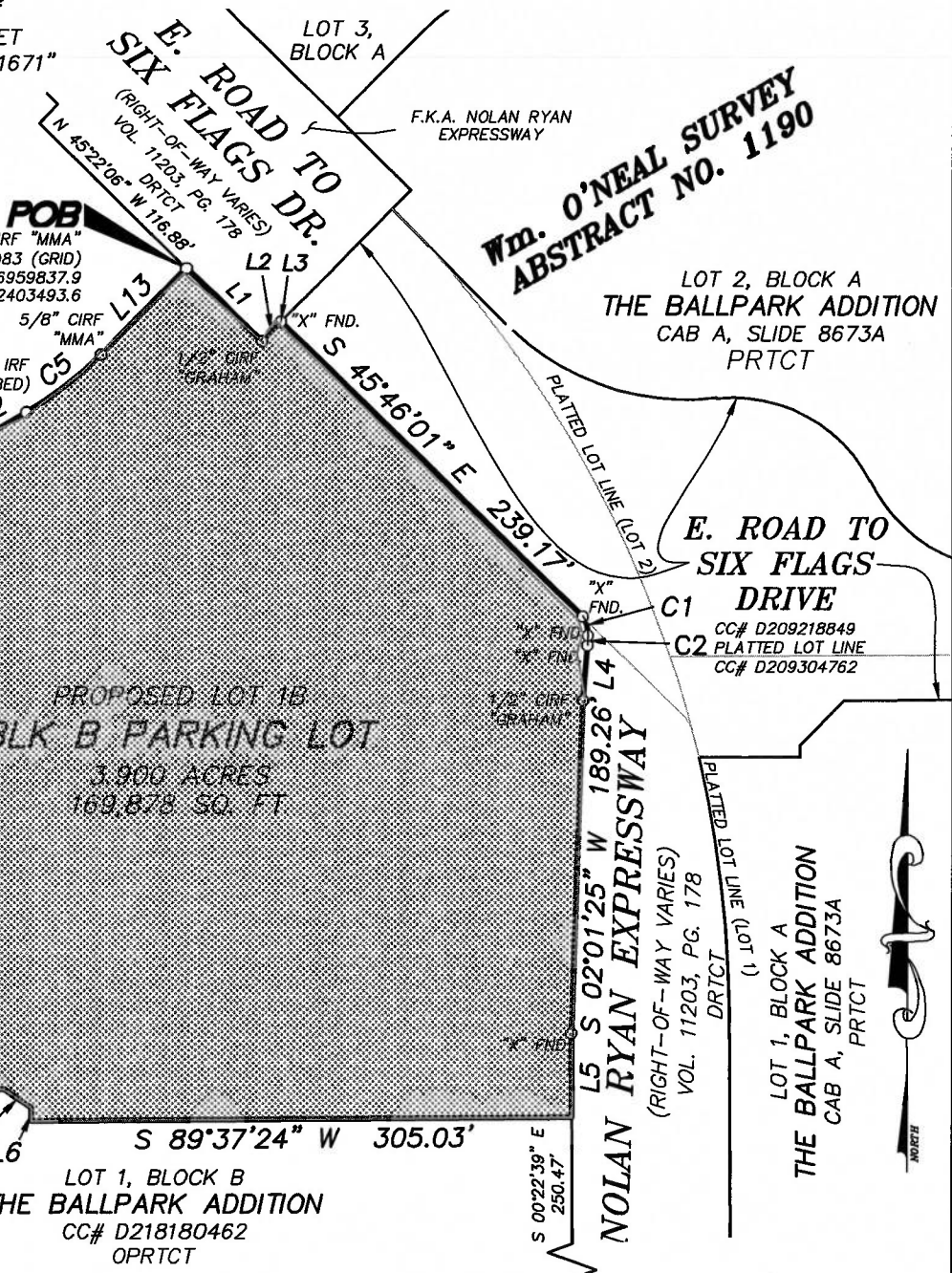
EXHIBIT "B"

PROPOSED LOT 1B BLOCK B PARKING LOT

LOCATED IN A PORTION OF LOT 1, BLOCK B, THE BALLPARK ADDITION,
IN THE W. O'NEAL SURVEY, ABSTRACT NO. 1190, IN THE
CITY OF ARLINGTON, TARRANT COUNTY, TEXAS

LEGEND/ABBREVIATIONS

- CIRS 5/8" CAPPED IRON ROD SET
STAMPED "MMA 817-469-1671"
- CIRF CAPPED IRON ROD FOUND
- DRTCT DEED RECORDS,
TARRANT COUNTY, TEXAS
- OPRTCT OFFICIAL PUBLIC RECORDS,
TARRANT COUNTY, TEXAS
- VOL. VOLUME
- PG. PAGE
- POC POINT OF COMMENCING
N: 6959837.9
E: 2403493.6
- POB POINT OF BEGINNING
- CC# COUNTY CLERK'S
FILE NUMBER
- CAB CABINET
- IRF IRON ROD FOUND



P: \2814-02-02\500 Land Surveying\551 Lease Agreement Exhibits\Exhibit B - Prop Lot 1B Blk B Parking Lot.dwg

REVISED NOV. 3, 2020 - TAN.

NOTE:
THE BASIS OF BEARINGS IS THE "TEXAS COORDINATE SYSTEM OF 1983,
NORTH CENTRAL ZONE". THE CONVERGENCE ANGLE AT THE POINT OF
BEGINNING IS 0°46'18.3". THE COORDINATE VALUES SHOWN ARE GRID AND
DISTANCES ARE SURFACE. TO CONVERT COORDINATES TO SURFACE, APPLY
THE COMBINED SCALE FACTOR OF 1.00012, BASE POINT OF 0,0,0.

DATE: 01/21/2020 SCALE: 1" = 100' DRAWN BY: JMS CHECKED BY: SHR JOB. NO.: 2814-02-02



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 tbpe registration number: f - 2759
 tbpls registration/license number: 10088000
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 817-469-1671
 fax: 817-274-8757
 www.mmatexas.com

EXHIBIT "B"

PROPOSED LOT 1B BLOCK B PARKING LOT

LOCATED IN A PORTION OF LOT 1, BLOCK B, THE BALLPARK ADDITION,
IN THE W. O'NEAL SURVEY, ABSTRACT NO. 1190, IN THE
CITY OF ARLINGTON, TARRANT COUNTY, TEXAS

CURVE TABLE

CURVE	RADIUS	DELTA ANGLE	ARC LENGTH	CHORD BEARING	CHORD LENGTH
C1	20.00'	32°56'12"	11.50'	S 15°33'22" E	11.34'
C2	77.00'	4°10'30"	5.61'	S 02°34'29" W	5.61'
C3	125.00'	15°13'12"	33.21'	N 21°31'25" E	33.11'
C4	200.00'	44°58'53"	157.01'	N 37°32'56" E	153.01'
C5	200.00'	15°22'59"	53.70'	N 52°11'39" E	53.54'
C6	125.00'	15°53'13"	34.66'	S 37°04'38" W	34.55'

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 45°20'36" E	58.72'
L2	N 44°13'27" E	15.05'
L3	N 45°54'47" E	0.32'
L4	S 04°29'06" W	31.41'
L5	S 00°22'39" E	47.69'
L6	N 00°22'36" W	7.36'
L7	N 56°02'48" W	18.86'
L8	S 89°37'24" W	32.30'
L9	N 00°22'51" W	14.46'
L10	S 89°37'09" W	16.39'
L11	N 14°59'46" E	104.95'
L12	N 59°59'40" E	44.10'
L13	N 44°37'24" E	68.43'

P:\2814-02-02\500 Land Surveying\551 Lease Agreement Exhibits\Exhibit B -- Prop Lot 1B Blk B Parking Lot.dwg



civil engineering surveying landscape architecture planning

tbpe registration number: f - 2759
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REVISED NOV. 3, 2020 - TAN.

DATE: 01/21/2020 SCALE: 1" = 100' DRAWN BY: JMS CHECKED BY: SHR JOB. NO.: 2814-02-02

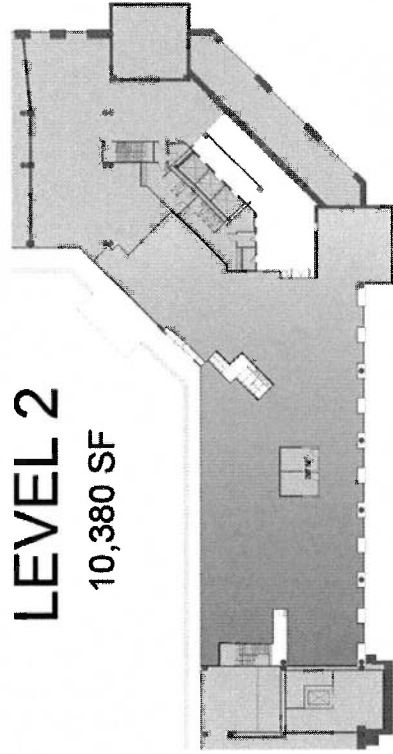
PAGE 4 OF 4

Exhibit "F"
Co-Working Project Conceptual Plan

**Exhibit F
Coworking Project Conceptual Plan**

LEVEL 2
10,380 SF

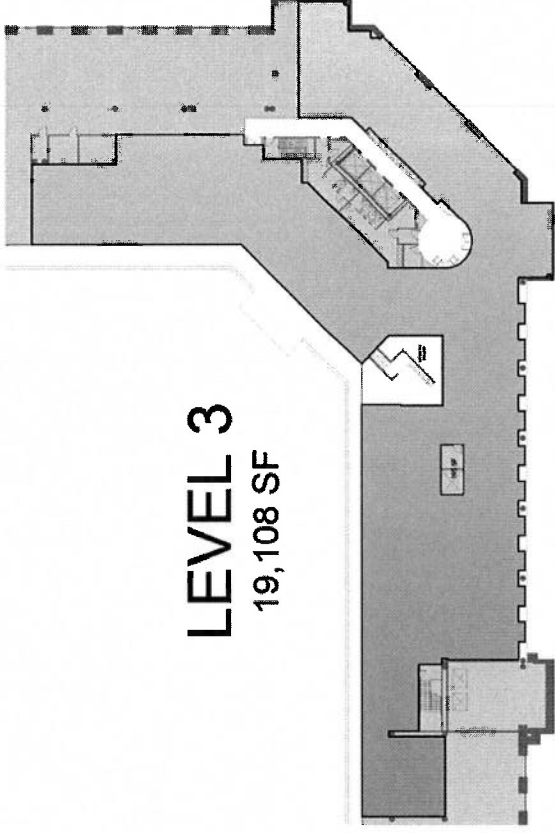
BALLPARK WAY



E. RANDOL MILL ROAD

LEVEL 3
19,108 SF

BALLPARK WAY



E. RANDOL MILL ROAD

TOTAL 29,488 SF

GRAPHIC SCALE



SPARK

ARLINGTON, TEXAS

SPARK COWORKING

Spark is a collaborative coworking space, featuring private offices, office suites, dedicated mailboxes and shared workspace for entrepreneurs, creatives, and innovators. Currently, Spark is a community of over 150 companies made of 500+ individual members. Spark supports and builds a community for local entrepreneurs, startups and like-minded corporations, while also providing economic development at a city and state level.

The logo for Spark Coworking, featuring the word "spark" in a lowercase, serif font. The letter 's' has a small apostrophe-like mark above it, and the letter 'a' has a small horizontal bar below it.

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OPENED 2016**

SPARK

BALTIMORE
PORT DISCOVERY
LEADING THE WAY
TO A NEW FUTURE
FOR THE CITY



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PROJECT MANAGEMENT

SHIPS AT SEA



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**SPARK BALTIMORE
EXPANSION 2020**



**CREATIVE SPACE
IGNITING IDEAS**

**EDA
2AE**

**SPARK BALTIMORE
EXPANSION 2020**



SPARK BALTIMORE EXPANSION 2020



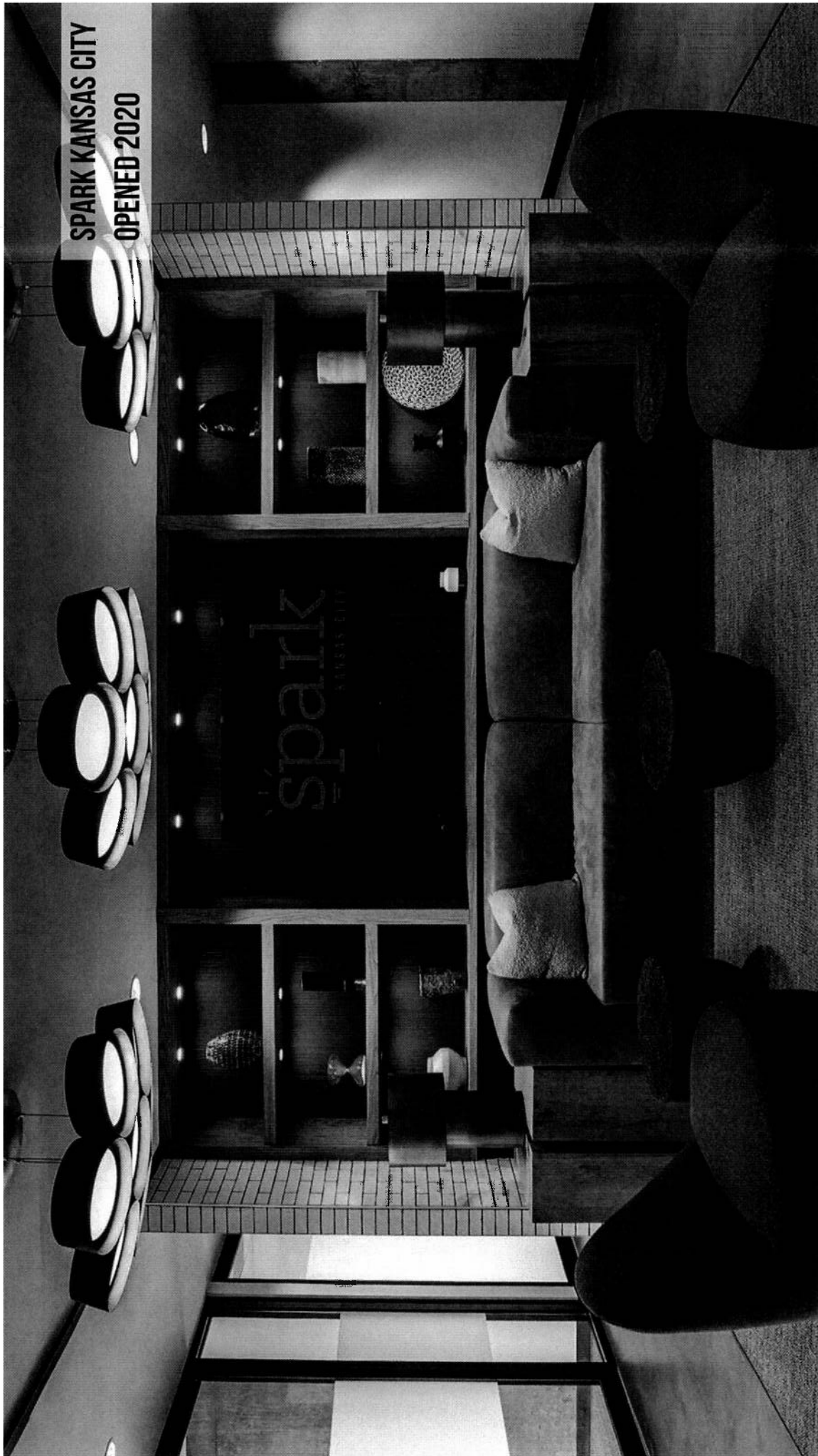
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Bal
Baltimore

Coffee

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Exhibit "G"
Permitted Area for Mixed Use Building Components

