

**CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
BETWEEN
THE CITY OF BRYAN, TEXAS
AND
THE SALLE HOTEL MANAGEMENT ONE, LLC**

This Chapter 380 Economic Development Program Agreement (“Agreement”) is made and entered into by and between The Salle Hotel Management One, LLC, a Texas Limited Liability Company (“Developer”) and the City of Bryan, Texas, a home-rule municipal corporation organized under the laws of the State of Texas (“City”). City and Developer may be collectively referred to as “Parties” or individually as a “Party”.

RECITALS:

WHEREAS, the La Salle Hotel, located at 120 S. Main St., is locally designated as a landmark by the City of Bryan, is listed as a Texas Historic Landmark (RTHL#12883), and is on the National Registry of Historic Places (NR#00000555); and is of significant historical, architectural, and cultural importance to the City; and

WHEREAS, the La Salle Hotel has been and remains a key component of the revitalization of downtown Bryan; and

WHEREAS, Developer desires to acquire the La Salle Hotel, and invest approximately 2.5 million dollars into the revitalization of the La Salle, to transform it into a Four Star historic boutique hotel (the “Hotel Project”), and the adjacent City-owned Plaza (the “Plaza Project”); and

WHEREAS, to make the Hotel Project viable, the Developer is seeking assistance from the City to include permit fee waivers; assistance in obtaining staggered Bryan Texas Utilities SmartBUSINESS Program incentives not to exceed \$30,000 in year one (1) and not to exceed \$30,000 in year two (2); façade improvement and life safety reimbursement grants in the combined total of \$100,000; ten (10) exclusive, off-site parking spaces and 30 non-exclusive parking spaces; a grant in the amount of \$420,000.00 for improvements to be made by Developer to the “Plaza Project” and a Plaza Landscape and Maintenance Grant not to exceed \$36,000 annually for a period of three (3) years; and

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

WHEREAS, the City Council finds the revitalization of the La Salle Hotel will expand the ad

valorem and sales tax base, create jobs, bolster tourism, stimulate business and commercial activity, and spur economic development in the entire Downtown area; and

WHEREAS, the City Council hereby establishes a Chapter 380 economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Developer and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement; and

WHEREAS, the City Council has determined 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 public purpose is accomplished;

NOW THEREFORE, the City and Developer, for and in consideration of the mutual covenants and promises contained herein, do hereby agree, covenant and contract as set forth below:

Article 1.

DEFINITIONS.

1. Capitalized terms used in this Agreement which are not otherwise defined herein shall have the meanings set forth below:

“Affiliate Entity” means any person or entity which directly or indirectly controls, is controlled by or is under common control with Developer, during the term of such control. A person or entity will be deemed to be "controlled" by any other person or entity if such other person or entity (a) possesses, directly or indirectly, power to direct or cause the direction of the management of such person or entity whether by contract or otherwise, (b) has direct or indirect ownership of at least fifty percent (50%) of the voting power of all outstanding shares entitled to vote at a general election of directors of the person or entity or (c) has direct or indirect ownership of at least fifty percent (50%) of the equity interests in the entity.

“Assumption Agreement” shall have the meaning set forth in Section 3.01(K) of this Agreement.

“BCAD Value” means the appraised value of the real property, improvements and related personal property certified by the Brazos Central Appraisal District as of January 1st for a given tax year.

“Bryan Texas Utilities SmartBUSINESS Program” means a program to encourage customers to invest in energy efficient improvements for their businesses, focusing on reducing the current demand of any

measure by a minimum of 20%, as such program may be amended in the future.

“Closing” or “Close” means generally the execution and delivery of those documents and funds necessary to effect the sale and the transfer of the title of the Property from the seller to Developer.

“Closing Date” means the date on which the Closing occurs, which date shall be by or before 90 days from the Effective Date of this Agreement.

“Plaza Commencement Deadline” shall have the meaning set forth in Section 4.01(F) of this Agreement.

“Construction Budget” shall mean a budget projecting the cost of the Plaza Project in accordance with the Plans and Specifications and reflecting Final Completion of the Plaza Project by the Developer by the Plaza Completion Deadline.

“Construction Schedule” shall mean a schedule for construction of the Plaza Project in accordance with the Plans and Specifications, which schedule shall reflect Final Completion of the Plaza Project by the Developer by the Plaza Completion Deadline.

“Defective Work” means all work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not conform to the approved Plans and Specifications.

“Deliverables” means any and all reports, records, documents, documentation, information, supplies, plans, original drawings, specifications, computations, sketches, renderings, arrangements, videos, pamphlets, advertisements, statistics, and other data, computer tapes, computer software, and other tangible work product or materials prepared or developed by Developer or by any engineer, architect, landscape architect, designer or other consultant engaged by Developer pursuant to this Agreement. “Deliverables” includes the Plans and Specifications.

“Effective Date” means March 18, 2020.

“Eligible Expenditures” means the Improvement costs of the Plaza Project. All such costs must be costs generated by and attributable to third-party vendors. An Eligible Expenditure billed to an Affiliate Entity of Developer will be an Eligible Expenditure to the extent of the third-party cost and not include any mark-up or profit margin for the Developer’s Affiliate Entity.

“FF&E” means movable furniture, fixtures, equipment, machinery and other personal property to be installed or located by Developer within the Plaza.

“Final Completion” shall mean that the Plaza Project has been substantially completed consistent with the Plans and Specifications.

“Grant Funds” shall have the meaning set forth in Section 4.02 (B) of this Agreement.

“Hotel Project” means the construction, renovation, repair and improvement of the Property by Developer with physical features, finishes, furnishings, and amenities consistent with a Four Star, historic boutique hotel; and in compliance with the “Project Requirements, Hotel Standards and Description of Services” attached to this Agreement as Exhibit “B”, and all other terms and conditions of this Agreement.

“Hotel Project Completion Deadline” shall have the meaning set forth in Section 3.01 (B) of this Agreement.

“Improvements” means landscaping, hardscape, and real property improvements.

“Laws” shall mean all applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations, guidelines, standards, judgments, orders, and/or decrees.

“Maximum Reimbursement Amount” shall have the meaning set forth in Section 4.02 (E). of this Agreement.

“Notice of Default” shall have the meaning set forth in Section 9.01 of this Agreement.

“Parking Space License Agreement” shall have the meaning set forth in Section 3.02 (D) of this Agreement.

“Payment Request” shall have the meaning set forth in Section 4.02 (C).

“Periodic Payments” shall have the meaning set forth in Section 4.02 (E) of this Agreement.

“Plans and Specifications” means the plans and specifications for the Plaza Improvements approved by the City.

“Plaza” means the City-owned plaza adjacent to the Property, being all of 27th Street between Block 255

and 256 of the Bryan Original Townsite, as more particularly described in **Exhibit “D”**.

“Plaza Commencement Date” shall have the meaning set forth in Section 4.01(F) of this Agreement.

“Plaza Commencement Deadline” shall have the meaning set forth in Section 4.01(F) of this Agreement.

“Plaza Completion Date” shall have the meaning set forth in Section 4.01(F) of this Agreement.

“Plaza Completion Deadline” shall have the meaning set forth in Section 4.01(F) of this Agreement.

“Plaza License Agreement” shall have the meaning set forth in Section 4.02(A) of this Agreement.

“Plaza Improvements” means the Improvements to be installed and constructed within the Plaza by the Developer in accordance with the approved Plans and Specifications, as generally described in **Exhibit “E”**. The Plaza Improvements shall not include FF&E.

“Plaza Project” means the design, construction, and installation by Developer of the Plaza Improvements within the Plaza, in compliance with all applicable Laws, and all other terms and conditions of this Agreement.

“Pre-Construction Payment” shall have the meaning set forth in Section 4.02 (D) of this Agreement.

“Project Budget” means the budget the Parties have established for the Plaza Project.

“Project Schedule” means the schedule for completing the design, commencing construction, and completing construction of the Plaza Project.

“Property” means the real property and improvements located at 120 S Main St, Bryan, Texas, known as the LaSalle Hotel, and more particularly described in **Exhibit “A”**.

“Required Permits” shall mean all permits required by the Laws, for construction and use of the Project.

“Qualified Expenditures” shall have the meaning contained in Section 3.01(D) of this Agreement.

“Site Plan” means the overall site development plan for the Plaza site, depicting the positioning of all exterior improvements on the Plaza site as they are planned to exist after the Plaza Project is complete, and identifying new exterior improvements or renovations to be accomplished as part of the Plaza Project.

Article 2.

TERM

2.01 This term of this Agreement shall commence on the Effective Date and will continue for a period of ten (10) years (“Term”), unless sooner terminated in accordance with the terms of this Agreement.

Article 3.

HOTEL PROJECT

3.01 Developer’s Obligations.

A. Condition Precedent. Developer’s purchase of the Property is a condition precedent to the City’s obligations under this Agreement. Developer shall Close on the Property within 90 days of the Effective Date of this Agreement, and the failure of Developer to do so shall result in the automatic and immediate termination of this Agreement.

B. Renovations. Developer shall design, develop, construct, equip, furnish and fully complete the Hotel Project, at its sole cost, in compliance with all applicable Law, and obtain any required certificates of occupancy within twelve (12) months of the Closing Date (Hotel Project Completion Deadline).

C. Certificate of Appropriateness. It shall be the responsibility of Developer to apply for and obtain any necessary certificates of appropriateness from the City of Bryan Historic Landmark Commission prior to commencement of work on the Hotel Project.

D. Minimum Investment. Developer will cause to be invested at least Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) in expenditures for hard and soft costs for the Hotel Project and the Plaza Improvements, excluding Property acquisition costs, (the “Qualified Expenditures”) within eighteen (18) months of the Closing Date. Only such expenditures incurred after the Closing Date may be Qualified Expenditures. Within six (6) months of completion of the Hotel Project and Plaza Project, Developer shall submit paid invoices to the City for the Qualified Expenditures in a total minimum amount of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) as evidence of Developer’s satisfaction of the minimum investment requirement.

E. Taxable Value. The BCAD Value of the Property for the tax year 2021 (January 1, 2022), as shown on the Brazos Central Appraisal District appraisal rolls, shall be at least \$3,200,000.00, as of July 1, 2022; and the Property must maintain a minimum BCAD value of at least \$3,200,000.00 throughout the remainder of the Term of this Agreement.

F. Timely Payment of Ad Valorem Taxes. Developer shall not allow the ad valorem taxes owed to the City on the Property or any real property owned or possessed by the Developer and located in the City of Bryan to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal during the Term of this Agreement. Nor shall Developer fail to render for taxation any personal property owned by Developer and located on the Property during the Term of this

Agreement. In the event, that any ad valorem taxes are assessed on the business personal property of the Developer located within the Plaza, payment shall be the responsibility of Developer, and shall be paid when due, as such date may be extended to allow for any protest of valuation or appeal during the Term of this Agreement.

G. Hotel Operating Standards. Commencing no later than twelve (12) months after the completion of the Hotel Project and the issuance of all required certificates of occupancy, Developer shall at all times, for the remainder of the Term of this Agreement, operate or cause the Property to be operated consistent with the industry standards of quality and service to be expected in a Four Star historic boutique hotel, and in compliance with the "Project Requirements, Hotel Standards and Description of Services" attached to this Agreement as Exhibit "B". During the term of the Agreement, should the City believe the Developer is in non-compliance with this section, the City may request in writing to meet with Developer within a reasonable time, to discuss the non-compliance, and the Developer may need to take action to bring the Hotel into compliance with the requirements of this Agreement.

H. Hotel Occupancy Taxes. The Property must receive hotel occupancy revenues of at least Seventy Thousand Dollars (\$70,000.00) for the twelve (12) month period following the expiration of twenty-four (24) months from the Closing Date, and for each twelve (12) month period thereafter, commencing on the anniversary of the Closing Date, for the Term of this Agreement.

I. Hotel Occupancy Tax Returns. Developer shall timely file its hotel occupancy tax return(s) with City (in a form prescribed by City from time to time) and timely pay its applicable tax. Developer shall include therein a copy of the Hotel's tax report submitted to the State Comptroller's office for Hotel Occupancy Tax Revenue.

J. Taxable Sales. The Property must achieve at least One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) in gross taxable sales for the twelve (12) month period, following the expiration of twenty-four (24) months from the Closing Date, and for each twelve (12) month period thereafter, commencing on the anniversary of the Closing Date, for the Term of this Agreement. If due to market conditions, Developer is unable to meet the Taxable Sales benchmark of \$1,750,000.00 in gross taxable sales for any twelve (12) month period, Developer may avoid an event of default by paying to the City, the City's remaining proportionate share of the sales tax (1.5%) on the projected gross taxable sales amount of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00), within thirty (30) days of receipt of notice of deficiency by the City.

K. Restrictions Against Disposition of Property. With the exception of an Affiliate of the Developer, Developer shall not assign, sell, transfer, or convey the Property to any third party during the Term of this Agreement without the prior written consent of the City, until such time as the following events have occurred: (i) Completion of the Hotel Project and Plaza Project; (ii) Submittal by Developer to City of an Affidavit of all Bills Paid for the Plaza Project; (iii) submittal by Developer of paid invoices Developer's compliance with the Minimum Investment Requirements of Section of this Agreement; (iv) all Required Permits for the Plaza Project are issued and all necessary Certificates of Occupancy for the Hotel Project have been issued for the Hotel Project; and (v) Developer is currently in compliance with all terms and conditions of the Agreement. In connection with the assignment, sale, transfer or conveyance of the

Property by Developer, the counterparty to such disposition shall agree to assume all obligations of Developer under this Agreement, the Plaza License Agreement, and the Parking Space License Agreement, accruing from and after the execution date of such disposition by a written agreement executed at or before the closing of the conveyance, in a form reasonably acceptable to the City (the "Assumption Agreement"), and such approval shall not be reasonably withheld, to which the City is either a party or in which the City is specified to be a beneficiary, a copy of which Assumption Agreement shall be promptly provided to the City following the disposition to evidence the assignment and assumption in question. The provisions of this Section shall not apply to Mortgages.

L. Covenant Not to Employ 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 2265.052 of the Texas Government Code, if Developer is convicted of a violation under 8 U.S.D. Section 1324a(f), Developer shall repay to the City the fees waived as provided in Section 9.03 of this Agreement, plus 10% per annum from the date the reimbursement as made. Repayment shall be paid within 120 days after the date Developer is convicted of a violation under U.S.D. Section 1324a(f).

3.02 City's Obligations:

A. Waiver of Permit Fees. The City agrees to waive all fees for building, mechanical, plumbing, or electrical permits during the term of this Agreement, up to a combined total, not-to-exceed amount of Twenty Thousand Dollars (\$20,000.00), subject to the City's right of recapture contained in Section 9.03 of this Agreement. The City shall maintain a running list of the permit fees waived under this Agreement.

B. Bryan Texas Utilities SmartBUSINESS Program. The City agrees to assist in obtaining staggered BTU SmartBUSINESS program incentives not to exceed \$30,000 in year one (1) and not to exceed \$30,000 in year two (2).

C. Façade Improvements and Life Safety Grants. City agrees to grant Developer a combined total amount of up to One Hundred Thousand Dollars (\$100,000.00) in reimbursements for qualified façade and life safety improvements made by Developer to the Property under the terms and conditions of the Downtown Façade Improvement Program (Resolution No. 3582), as may be amended and the Downtown Life Safety Grant Program (Resolution No. 3725), as may be amended. Developer shall follow the application, approval and payment processes of the Downtown Façade Improvement and Life Safety Grant Programs, excluding additional City Council approval. Payment of these grants are contingent upon Developer being in compliance with the terms, conditions, and benchmarks set forth in this Agreement.

D. Parking. The City agrees to provide, at no cost to Developer, a license for ten (10) exclusive off-site parking spaces and thirty (30) non-exclusive parking spaces to serve the Property, in the form attached hereto as **Exhibit "C"**. The License shall be contingent upon the Developer being in compliance with the terms and conditions of the License; and at all times during the term of the Agreement, being in compliance with the terms, conditions, and benchmarks set forth in this Agreement. The parking spaces shall be located in the city-owned lot, located at 200 S. Main Street. The City shall retain the right to temporarily relocate the licensed parking spaces, if necessary, to a temporary new location within a reasonable distance from

the Property, but in no event further than 3 blocks from the Property. The City shall assist the Developer to secure up to forty-five (45) parking spaces located in the Downtown Parking garage. If for whatever reason any of these parking spaces are not available as the Developer needs them, the City agrees to make the parking spaces available in a different location within a reasonable distance from the property but in no event further than three blocks from the Property.

E. Plaza Landscape and Maintenance Grant. Subject to Developer's performance of its obligations as required by this Agreement, the City agrees to reimburse Developer up to Thirty-Six Thousand Dollars (\$36,000.00) annually for landscape and maintenance costs incurred by Developer for the Plaza (the "Plaza Landscape and Maintenance Grant") for a period of three (3) years; with the first Plaza Landscape and Maintenance Grant payment commencing twelve (12) months after the Closing Date. The City shall make the annual Plaza Landscape and Maintenance Grant payments within thirty (30) days of receipt of an invoice from the Developer. The Plaza Landscape and Maintenance Grant shall terminate upon assignment of this Agreement.

Article 4.

PLAZA PROJECT.

4.01 Developer's Obligations:

A. Design and Construction of Plaza Improvements. Developer agrees to design, construct, and furnish or cause to be designed, constructed, and furnished, the Plaza Improvements in accordance with the Plans and Specifications mutually approved by the Developer and City.

B. Consultants. Developer shall engage all engineers, architects, landscape architects, design professionals or other consultants, as needed, to design and prepare the Plans and Specifications for the Plaza Project. All Deliverables prepared for the Plaza Project pursuant to the foregoing engagement agreements, shall be the property of the Developer and the City of Bryan.

C. City Cooperation. Developer agrees to work together with the City's Development Services staff in the development of a design plan for the Plaza Project. The Developer acknowledges that this cooperative effort is in addition to, and not in lieu of, any plan review or Required Permits under applicable Laws, and it shall not be deemed a warranty or representation of any kind by the City that the Developer's proposed design plans comply with, or are approved under applicable Laws.

D. City Approval. Developer shall submit the Site Plan and the Plans and Specifications for the Plaza Project to the City for review and approval. The Developer agrees to comply with all applicable legal requirements of the City and any other agencies having jurisdiction. No material modifications to the Plans and Specifications for the Plaza Project may be made without review and approval of the City. The City shall expedite all review processes, and approvals shall not be unreasonably withheld or delayed.

E. Required Submittals. No construction may commence on the Plaza Project until: (i) the Developer has submitted to the City and the City has approved the Project Schedule, Project Budget and the Plans

and Specifications associated with the Plaza Project; (ii) all Required Permits for construction are obtained by Developer; and (iii) all requirements in regard to bonds and insurance have been satisfied. The City agrees to review and act on the submittals in an expedited manner. Approvals shall not be unreasonably delayed or withheld.

F. Commencement and Plaza Completion Dates and Deadlines. Developer shall commence construction on the Plaza Project within 180 days of the Closing Date ("Plaza Commencement Deadline") and shall complete construction no later than twelve (12) months after all Required Permits are issued (the "Plaza Completion Deadline"), subject to Force Majeure as defined in this Agreement. The date of commencement of construction (the "Plaza Commencement Date") shall be determined by the occurrence of the City's approval of the Site Plan for the Plaza and the City's receipt of correspondence from the general contractor for the Plaza Project certifying that construction has commenced. The date of completion of construction (the "Plaza Completion Date") shall be determined by the occurrence of all of the following events: (i) receipt by the City of written notice from Developer certifying that all Plaza Improvements are complete in accordance with the Plans and Specifications and are ready for final inspection; (ii) if the construction of any of the Plaza Improvements requires any engineering design services, receipt by the City of a certification letter from the design engineer, sealed with the engineer's professional seal, certifying that the Plaza Improvements were constructed according to the specifications required by the engineer's design; and (iii) Final inspections and approval of all Required Permits for the Plaza Improvements.

G. Payment and Performance Bonds. Prior to commencing any work on the Plaza Project, Developer will obtain and deliver to City, at no cost to City, payment and performance bonds on forms approved by the City Attorney and otherwise acceptable to City, as follows:

(1) A performance bond in a sum equal to one hundred percent (100%) of the anticipated amount be paid for the Plaza Project pursuant to the Project Budget and this Agreement. The performance bond must guarantee the full and faithful execution of the work and performance of Developer's obligations in this Agreement and must guarantee completion of the Plaza Improvements. The Performance Bond shall remain in full force and effect until the Plaza Completion Date of the Plaza Project.

(2) A payment bond with Developer's contractor or contractors as principal, in a sum equal to one hundred percent (100%) of the anticipated amount to be paid for the Plaza Project pursuant to the Project Budget and this Agreement. The Payment Bond shall remain in full force and effect until Final Completion to ensure that all claims for materials and labor are paid, except as otherwise provided by law or regulation.

(3) In order to reduce costs of every contractor and subcontractor of the Developer obtaining redundant bonds while maintaining the 100% protection the City requires, the City and Developer agree that the requirements of this Section can be met by Developer's primary general contractor obtaining bonds meeting the requirements of this Section, and naming the City and Developer as dual obligees. Bonds meeting these requirements will be on forms approved by the City Attorney, and issued by a corporate surety authorized and admitted to write surety bonds in Texas and secured through an authorized agent with an office in Texas, and have a minimum AM Best rating of "A-" to an amount not to exceed ten percent

(10%) of its capital and surplus.

(4) In the event, the Developer fails or refuses to complete the Plaza Improvements by the Plaza Completion Deadline, the City shall be entitled to exercise its rights as obligee under the Performance Bond and may complete the construction of the Plaza Improvements and charge the Payment Bond for the costs. Nothing herein shall be construed as a limitation on the City's right to exercise any and all legal and equitable remedies available to the City. The provisions of this Section shall survive termination of this Agreement.

H. Maintenance of Plaza Improvements. During the term of this Agreement and the Plaza License Agreement, Developer shall be solely responsible for the maintenance of the Plaza Improvements in accordance with the Plaza License Agreement.

4.02 City Obligations:

A. Plaza License. The City agrees to provide Developer an exclusive license for the use of the Plaza to serve the Property so long as the Property is utilized as a "Hotel", in the form attached hereto as **Exhibit "F"** (the "Plaza License Agreement"), and subject to the terms, limitations, conditions, definitions, and required fees contained therein.

B. Plaza Redevelopment Grant. City agrees to make payments to Developer in the form of an economic development grant, in a total not-to-exceed amount of Four Hundred Twenty Thousand Dollars (\$420,000.00) for Eligible Expenditures for the design, engineering, construction, and installation of the Plaza Improvements for the Plaza Project under the terms of this Agreement (the "Grant Funds"). Only expenditures for the Plaza Project incurred after the Closing Date shall be Eligible Expenditures. Developer agrees the payment of any costs or expenses of the Plaza Project not covered by, or which exceed the total amount of the Grant Funds shall be the sole responsibility of the Developer.

C. Payment of Eligible Expenditures. Each request for payment from the Developer (the "Payment Request") is subject to the reasonable review and approval of the City and must include a certified statement from the Developer that (i) the Eligible Expenditure was incurred for the redevelopment and revitalization of the Plaza; (ii) the amount requested to be paid for the Eligible Expenditure is the bid amount or if bidding was not required, it is believed reasonable for the goods and/or services provided; (iii) the goods or services referenced in the Payment Request have been received by the Developer; and (iv) that no part of the Payment Request was included in any prior Payment Request.

D. Pre-construction Grant Payment. Upon the review and final approval of the Design Plans and Specifications by the City, Developer shall submit a verified application for reimbursement of all Eligible Expenditures associated with the planning and design of the Plaza Project, along with invoices or other supporting documentation from the engineers, architects, landscape architect, design professionals or other consultants. The applications for payment shall be reviewed and approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed, and the City shall reimburse Developer for all approved pre-construction costs, (the "Pre-construction Payment"). The City shall make reasonable efforts to make the Pre-construction Grant Payment within thirty (30) days of the receipt of the application

for reimbursement.

E. Periodic Drawdown of Grant Funds. During the construction of the Plaza Improvements, City shall reimburse Developer not more frequently than monthly for all Eligible Expenditures based upon verified applications for payment submitted by the Developer along with invoices or other supporting documentation from the engineers, contractors, or other vendors (the "Periodic Payments"). The applications for payment shall be reviewed and approved by the City, which approval shall not be unreasonably withheld or delayed. The City shall make reasonable efforts to make Periodic Payments within thirty (30) days of the receipt of the applications for reimbursement. The City shall make Periodic Payments up to the total remaining grant funds, excluding retainage as may be provided for in the construction contract for the Plaza Project ("Maximum Reimbursement Amount").

F. Limit on Frequency of Periodic Payment Requests. Unless otherwise agreed to by the City, Payment Requests shall be reviewed and approved once a month in accordance with the City's normal monthly claims approval process.

G. Contract Payments. Developer shall make all payments to Developer contractors in a timely fashion. On a monthly basis, the Developer must provide the City with copies of invoices paid and an affidavit of payment by Developer.

H. Final Payment. The City shall make its final payment of Grant Funds to Developer upon the occurrence of all of the following events: (i) Upon final inspection and approval of all permits by the City and (ii) Submission by the Developer of all Deliverables and Warranties; and (iii) if Engineering services were required, receipt by the City of a certification letter from the design engineer, sealed with the engineer's professional seal, certifying that the Plaza Improvements were constructed according to the specifications required by the engineer's design; (iv) an affidavit(s) of all bills paid from the Contractor(s); submission of the Developer's verified applications for payment of all final Eligible Expenditures for Plaza Improvements with supporting invoices submitted by the contractor and Developer engineers, architect, landscape architects, design professionals, other consultants, contractors, or vendors, and approved by the City, which approval shall not be unreasonably delayed or withheld. Regardless of the actual Eligible Expenditures for the design and construction of the Plaza Improvements, City shall not be required to pay Developer an amount in excess of the Maximum Reimbursement Amount. Any costs for the design and the construction of the Plaza Improvements in excess of the Maximum Reimbursement Amount shall be the sole responsibility of the Developer.

Article 5.

INDEMNIFICATION

5.01 DEVELOPER DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, IN BOTH THE PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMAND OR CAUSE OF ACTION INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY

ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASSIONED BY THE ERROR, OMISSION, OR NEGLIGENT ACT OF IT, ITS OFFICERS, AGENTS OR EMPLOYEES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT, AND WILL AT ITS OWN COSTS AND EXPENSE DEFEND AND PROTECT THE CITY 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 THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT) OF THE CITY, 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 THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN ORDINARY NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT), WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF INJURY OR DEATH OR DAMAGE.

5.02 The Developer shall require that the construction contracts for all contractors engaged by Developer to construct the Plaza Improvements, including their subcontractors, contain the following indemnification provisions:

"INDEMNITY – GENERAL. TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING CHAPTER 151 OF THE TEXAS INSURANCE CODE, THE CONTRACTOR HEREBY PROTECTS, INDEMNIFIES AND HOLDS HARMLESS AND SHALL DEFEND THE DEVELOPER, THE DEVELOPER'S LENDER (IF ANY), THE CITY OF BRYAN, THEIR ELECTED OFFICIALS, DIRECTORS, OFFICERS, PARENTS, SUBSIDIARIES, AFFILIATES, JOINT VENTURERS, PARTNERS, EMPLOYEES, AGENTS AND REPRESENTATIVES (HEREINAFTER REFERRED TO INDIVIDUALLY AS AN "INDEMNITEE" AND COLLECTIVELY AS THE "INDEMNITEES") FROM AND AGAINST CLAIMS, ACTIONS, LIABILITIES, LOSSES, AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND COSTS AND EXPENSES OF LITIGATION OR ARBITRATION INCURRED BY AN INDEMNITEE, ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OR A FAILURE IN THE PERFORMANCE OF THE WORK OF THIS CONTRACT, BY OR THROUGH THE CONTRACTOR OR ANY OTHER NEGLIGENT OR WRONGFUL ACT OR OMISSION OF THE CONTRACTOR OR ONE OF ITS SUBCONTRACTORS OR SUPPLIERS (OF ANY TIER) OR ANYONE ELSE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE (HEREINAFTER REFERRED TO COLLECTIVELY AS THE "SUBCONTRACTOR PARTIES"), EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNITEES OR THEIR AGENTS OR EMPLOYEES, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE (OTHER THAN THE CONTRACTOR AND THE SUBCONTRACTOR PARTIES). SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION. EXPENSES RECOVERABLE BY AN INDEMNITEE

AS PART OF THE CONTRACTOR'S INDEMNITY OBLIGATIONS UNDER THIS SECTION SHALL INCLUDE, WITHOUT LIMITATION, ALL ATTORNEYS' FEES, EXPENSES, AND ANY COSTS INCURRED BY DEVELOPER IN ENFORCING THE PROVISIONS OF THE CONTRACTOR'S INDEMNITY OBLIGATIONS.

INDEMNITY-EMPLOYEE INJURY CLAIMS. IN ADDITION TO THE INDEMNIFICATION SET FORTH ABOVE, CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS DEVELOPER AND THE INDEMNITEES FROM AND AGAINST ANY CLAIM, DAMAGE, LOSS, OR EXPENSE (INCLUDING BUT NOT LIMITED TO ANY INDEMNITEE'S REASONABLE ATTORNEYS' FEES AND COSTS AND EXPENSES OF ANY DISPUTE RESOLUTION PROCEEDING) ARISING OUT OF, RESULTING FROM OR ATTRIBUTABLE TO ANY CLAIM OF BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE OF CONTRACTOR OR ANY SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM"), EVEN TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE SOLE OR CONCURRENT NEGLIGENCE (WHETHER ACTIVE OR PASSIVE OR BASED UPON STRICT LIABILITY) OF THE DEVELOPER OR ANY OF THE INDEMNITEES OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, IT BEING THE EXPRESSED INTENT OF THE PARTIES HEREUNDER THAT CONTRACTOR INDEMNIFY THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN AND SOLE NEGLIGENCE. CONTRACTOR SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS SECTION."

Article 6.
INSURANCE

6.01 The Developer agrees to maintain the minimum insurance coverage and comply with each condition set forth below during the duration of this Agreement with the City. All parties to this Agreement hereby agree that the Developer's coverage will be primary in the event of a loss, regardless of the application of any other insurance or self-insurance.

6.02 Developer must deliver to City a certificate(s) of insurance evidencing such policies are in full force and effect within ten (10) calendar days following the Closing Date. No Agreement shall be effective until the required certificate(s) have been received and approved by the City. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within ten (10) calendar days may cause the Agreement to be terminated.

6.03 The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent.

A. Workers' Compensation Insurance & Employers Liability Insurance. Developer shall maintain Workers' Compensation insurance for statutory limits and Employers Liability insurance with limits not

less than \$500,000 each accident for bodily injury by accident or \$500,000 each employee for bodily injury by disease. Developer shall provide Waiver of Subrogation in favor of the City and its agents, officers, officials, and employees.

B. Commercial General Liability Insurance. Developer shall maintain Commercial General Liability (CGL) with a limit of not less than \$1,000,000 per occurrence and an annual aggregate of at least \$2,000,000. CGL shall be written on a standard ISO "occurrence" form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent Developers, products-completed operations, personal and advertising injury, and liability assumed under an insured Contract including the tort liability of another assumed in a business Contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the City. The City of Bryan shall be listed as an additional insured.

C. Business Automobile Liability Insurance. Developer shall maintain Business Automobile Liability insurance with a limit of not less than \$1,000,000 each accident. Business Auto Liability shall be written on a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Developer shall provide Waiver of Subrogation in favor of the City of Bryan.

D. Policy Limits. Required limits may be satisfied by a combination of primary and umbrella or excess liability policies. Developer agrees to endorse and its agents, officers, officials, and employees as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure "True Follow Form" basis.

E. Deductibles, Coinsurance Penalties & Self-Insured Retention. Developer may maintain reasonable and customary deductibles, subject to approval by the City. Developer shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention.

F. Developer's Contractors and Subcontractors. If the Developer's insurance does not afford coverage on behalf of any Contractors and/or Subcontractor(s) hired by the Developer to perform work on the Plaza Project, the Contractors/Subcontractors(s) shall maintain insurance coverage equal to that required of the Developer during the term of its work on the Plaza Project. It is the responsibility of the Developer to assure compliance with this provision. The City accepts no responsibility arising from the conduct, or lack of conduct, of the Developer's Contractor or any Subcontractor.

G. Acceptability of Insurers. Insurance coverage shall be provided by companies admitted to do business in Texas and rated A-:VI or better by AM Best Insurance Rating.

H. Evidence of Insurance. A valid certificate of insurance verifying each of the coverages required shall be issued directly to the City within 10 business days by the successful Developer's insurance agent or insurance company after Agreement award. Endorsements must be submitted with the certificate. No Agreement shall be effective until the required certificates have been received and approved by the City. Renewal certificates shall be sent a minimum of 10 days prior to coverage expiration. Upon request,

Developer shall furnish the City with certified copies of all insurance policies.
The certificate of insurance and all notices shall be sent to:

City of Bryan
City Manager
PO Box 1000
Bryan, TX 77805
Email to: Executiveservices@bryantx.gov

Failure of the City to demand evidence of full compliance with these insurance requirements or failure of the City to identify a deficiency shall not be construed as a waiver of Developer's obligation to maintain such insurance.

I. Notice of Cancellation, Non-renewal, Material Change, Exhaustion of Limits. Developer must provide minimum 30 days prior written notice to the City of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage. If City is notified a required insurance coverage will cancel or non-renew during the Agreement period, the Developer shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City reserves the right to withhold payment to Developer until coverage is reinstated.

J. Developer's Failure to Maintain Insurance. If the Developer fails to maintain the required insurance, the City shall have the right, but not the obligation, to withhold payment to Developer until coverage is reinstated or to terminate the Agreement.

K. No Representation of Coverage Adequacy. The requirements as to types and limits, as well as the City's review or acceptance of insurance coverage to be maintained by Developer, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the Developer under the Agreement.

Article 7.

WARRANTIES

7.01 Warranties Required. Developer agrees to obtain from each contractor performing any aspect of the Plaza Project, a warranty in the City's favor for the repair or replacement of faulty work or materials for a period of one (1) year following completion of the Plaza Project.

7.02 Defective Work. Provided that Developer has received written notice of defective workmanship or materials within one (1) year of the Plaza Completion Date of the Plaza Project, Developer shall replace or repair any such Defective Work in a manner satisfactory to the City, after notice to do so from the City, and within the time specified in the notice.

Article 8

FORCE MAJEURE.

8.01 It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, inclement weather, pandemic, epidemic or other natural calamities; acts of God, governmental restrictions, regulations, order, actions, or interferences, national or regional emergency or quarantine, delays caused by the franchise utilities, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other Party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the Party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such Party was delayed.

Article 9.

DEFAULT, TERMINATION AND RECAPTURE.

9.01 A default shall exist under this Agreement if either Party fails to perform any of its obligations under this Agreement or comply with any material term or condition of this Agreement. The non-defaulting Party shall notify the defaulting Party in writing (the "Notice of Default") 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.

9.02 If a default shall occur and continue after sixty (60) days' notice of the same, the non-defaulting Party shall have the right to terminate this Agreement by delivering written notice on the defaulting Party ("Notice of Termination"), which termination shall be effective thirty (30) days following delivery of such notice unless the defaulting Party shall cure such default within such additional thirty (30) day period.

9.03 In the event, such default is uncured within such additional thirty (30) day period, this Agreement shall be terminated effective thirty (30) days following the delivery of the Notice of Termination. Developer shall be required to pay to City, within sixty (60) days from the date of termination of the Agreement, an amount equal to the total amount of permit fees waived by the City pursuant to this Agreement. The City's right of recapture and the Developer's obligation to repay the City as a result of an uncured default by Developer, as set forth in this Section, shall survive the termination of this Agreement.

Article 10.
BOOKS AND RECORDS

10.01 Right to Inspect. The Developer shall prepare and maintain, or cause to be prepared and maintained, in accordance with generally accepted accounting principles consistently applied, appropriate books and records, reflecting all capital reserves, money received and all money disbursed by the Developer in connection with and related to the Hotel Project, Plaza Project and this Agreement, for a period of five (5) years after the termination of this Agreement. Without limiting the requirements of this Section, Developer will keep detailed accounts of all its expenditures on design, construction and furnishing of the Plaza Project. City and its duly appointed representatives shall have the right to examine, audit, and copy such books and records during business hours on seven (7) calendar days' notice in Bryan, Texas.

10.2 Contracts. Promptly following a written request by the City, Developer will deliver to the City copies of any or all contracts executed by Developer or any Developer Contractor in connection with performance of any or all of the Plaza Project.

10.3 Survival. Developer's obligations under this Article 10 will survive the expiration or earlier termination of this Agreement.

Article 11.
MISCELLANEOUS.

11.01. Current Revenues. The payment obligations of the City made hereunder shall be paid solely from lawfully available funds, that have been annually appropriated by City. Under no circumstances shall the obligations of City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

11.02 Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. Except with respect to an Affiliate Entity of Developer, Developer shall not assign this Agreement without the written approval of the City, until such time as all of the following events have occurred: (i) subject to events of force majeure, the Developer completes the Hotel Project and the Plaza Project within the Plaza Completion Deadlines; (ii) Developer submits to City the required affidavit of all bills paid for the Plaza Project; (iii) and Developer submits paid invoices to the City evidencing Developer's a total, combined minimum investment of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) in the Hotel Project and Plaza Project; (iv) All Required Permits for the Plaza Project and Certificates of Occupancy for the Hotel Project have been issued, and (v) the Developer is in compliance with all terms and conditions of the Agreement.

11.02.1 Written approval of the City is not required if the assignee is an Affiliate Entity of Developer..

11.02.2 In connection with any assignment permitted under this Agreement, such assignee shall agree in writing to assume all of the Developer's obligations under this Agreement, the Parking Space License Agreement and the Plaza License Agreement, and such written agreement shall be in a form reasonably

acceptable to the City, but such City approval shall not be unreasonably withheld, conditioned, or delayed, and shall be executed prior to or at the closing of the conveyance. The Developer shall promptly provide the City with a copy of the assignment instrument and assignee's written agreement to assume Developer's obligations under this Agreement.

11.03. Notices. Any notices sent under this Agreement shall be deemed served when delivered via certified mail, return receipt requested to the addresses designated herein or as may be designated in writing by the parties. Notice shall be given to the following:

If to City: City Manager
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

If to Developer: The Salle Hotel Management One, LLC:
c/o Kim Sallinger
4455 Camp Bowie Blvd, Suite 114-102
Fort Worth, Texas 76107

11.04 Estoppel Certificates. Either Party shall—at no cost to the requesting Party, from time to time, upon fifteen (15) days prior written request by the requesting Party—execute, acknowledge, and deliver to the requesting Party a certificate signed by an officer of the certifying Party stating that this Agreement is unmodified and in full force and effect (unless there have been modifications, in which case the certifying Party will state that this Agreement is in full force and effect as modified, and will set forth such modifications); stating the dates through which payments have been made; and either stating that, based on the knowledge of the signer of such certificate, no default exists under this Agreement, or specifying every default to which the signer has knowledge.

11.05 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

11.06. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.

11.07. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement and supersedes any prior understandings or

written or oral agreements between the parties.

11.08. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

11.09 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

11.10 No Waiver. Parties' failure to take action to enforce this Agreement in the event of the other Party's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent either Party from taking action to enforce this Agreement on subsequent occasions.

11.11 Independent Contractor. Developer, any consultants, contractors, subcontractors, and any other individuals employed by Developer shall be independent contractors and not agents of the City.

11.12 Incorporation of Recitals. The recitals contained in the preambles to this Agreement are true and correct and are hereby incorporated herein as part of this Agreement.

11.13. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.

11.14 Exhibits. Each of the following Exhibits is attached hereto and incorporated herein by this reference:

- Exhibit A Legal Description of the Property
- Exhibit B Project Requirements, Hotel Standards and Description of Services
- Exhibit C Parking License Agreement
- Exhibit D Plaza Legal Description
- Exhibit E General Description of the Plaza Project
- Exhibit F Plaza License Agreement

[Signature page to follow]

THE UNDERSIGNED AUTHORIZED REPRESENTATIVES OF THE PARTIES have executed this Agreement to be effective as of the Effective Date:

CITY OF BRYAN, TEXAS

THE SALLE HOTEL MANAGEMENT ONE, LLC

Andrew Nelson

Andrew Nelson, Mayor

Kim Sallinger, President of Merit Commercial Realty Inc.,

Manager of The Salle Hotel Management One, LLC

ATTEST:

Mary L Stratta

Mary Lynne Stratta, City Secretary



APPROVED AS TO FORM:

Janis Hampton

Janis K. Hampton, City Attorney

ACKNOWLEDGMENT

STATE OF TEXAS }

}

COUNTY OF TARRANT }

This instrument was acknowledged before me on the 17 day of march, 2020 by Kim Sallinger, President of Merit Commercial Realty, Inc., Managing Member of The Salle Hotel Management One, LLC, a Texas limited liability company, on behalf of said limited liability company.

Amy Seidler

Notary Public, State of Texas

My Commission expires:

2-1-22

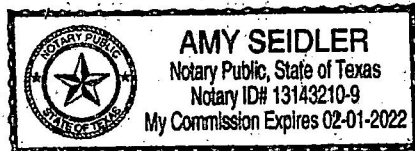


EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

HOTEL

Being all that certain tract or parcel of land lying and being situated in the Stephen F. Austin League, Abstract 62, Brazos County, Texas, and being the south 40.00 feet of Lot 1 and the adjoining 11.00 feet of the 27th right-of-way of Block 256 of the Original Townsite of the City of Bryan, Brazos County, Texas, according to a plat recorded in Volume "H", Page 721, Deed Records of Brazos County, Texas, and being described as follows:

BEGINNING at an "X" in concrete found at the most westerly common corner of this tract and the Elmo and Marvelyn Neal, Sr. 2200 S.E. tract (1895/102), same being in the east right-of-way line of Bryan Avenue;

THENCE S 85° 02'31" E - 100.22 feet across said Lot 1 along the wall on the common line between this tract and said Neal tract to a concrete nail found at the most easterly common corner of said tracts, same being in the west right-of-way line of S. Main Street;

THENCE S 4° 49'23" W - 51.00 feet along said Main Street line and into said 27th Street right-of-way line to a 60dp. nail found for the southeast corner of this tract;

THENCE N 85° 02'30" W - 100.15 feet thru said 27th Street line to an "X" in concrete found for the southwest corner of this tract;

THENCE N° 45'00" E - 51.00 feet thru said 27th Street right-of-way and along said Bryan Avenue line to the Place of Beginning, and containing 0.117 acres of land, more or less, according to a survey made on the ground under the supervision of Donald D. Garrett, Registered Professional Land Surveyor No. 2972 on March 23, 2000.

EXHIBIT "B"

Project Requirements, Hotel Standards and Description of Services

EXHIBIT "B"

Project Requirements, Hotel Standards and Description of Services

The Hotel Project shall include the rehabilitation, reconstruction, repair and remodeling of the hotel facility on the Property to include the following:

- Necessary renovation of the hotel and grounds located on the Property;
- Preservation of historic elements, as required.
- Renovations to exterior and landscaped grounds, 114 new windows (excluding the ground floor windows), electrical, and plumbing upgrades.
- Commercial activation of at least 54 hotel rooms, full-service kitchen, and a full service restaurant and bar that provides a destination experience that will attract hotel guests and outside patrons.
- Renovation of common areas, lobby, elevators, and guest/customer amenity spaces.
- Renovated guest rooms with new furniture and finishes, consistent with a Four Star, historic boutique hotel.
- All guestrooms shall feature plush bedding, a flat-panel high definition television, and complimentary Wi-Fi service.
- Hotel operations shall meet the level of quality for cleanliness and maintenance, and for the quality of physical facilities and standards of service, consistent with the prevailing, current industry standards of a Four Star, historic boutique hotel.
- Services shall include, but are not limited to, room service, valet parking, and concierge services.

EXHIBIT "C"

PARKING SPACE LICENSE AGREEMENT

EXHIBIT "C"

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

PARKING SPACE LICENSE AGREEMENT

THIS PARKING SPACE LICENSE AGREEMENT, ("License") is given and entered into this ___ day of _____, 2020, by and between the City of Bryan, a home-rule municipal corporation, organized and existing under the laws of the State of Texas ("Licensor") and The Salle Hotel Management One, LLC, a Texas limited liability company, ("Licensee"). Licensor and Licensee may be collectively referred to as "Parties" or individually as a "Party."

RECITALS

WHEREAS, Licensor owns that certain real property and improvements located at 200 S. Main St., Bryan, Texas, as more particularly described in **Exhibit 1**, attached hereto and incorporated herein by reference (the "Parking Lot"); and

WHEREAS, as used herein, the term "License Area" means that portion of the Parking Lot consisting of ten (10) parking spaces together with a non-exclusive right to use an additional thirty (30) parking spaces in the Parking Lot for its invitees, licensees, agents, employees, and patrons for vehicular parking, as delineated in the drawing attached to **Exhibit "1"**, and incorporated therein; and

WHEREAS, Licensor desires to promote the redevelopment of the City of Bryan Downtown area;

WHEREAS, Licensee is the owner of certain real property and improvements located at 120 S. Main St., Bryan, Texas, known as the LaSalle Hotel, as more particularly described in **Exhibit 2** attached hereto and incorporated herein by reference (the "LaSalle Hotel Property");

WHEREAS, Licensee desires to promote the economic development and redevelopment of the City of Bryan's historic downtown area through the redevelopment of the LaSalle Hotel Property for hotel and commercial uses;

WHEREAS, Licensor previously entered into a Chapter 380 Economic Development Program Agreement with Licensee dated March 18, 2020, (the "Agreement"), for the redevelopment of the LaSalle Hotel Property (the "Hotel Project"); a copy of which is attached hereto as **Exhibit 3** and incorporated herein by reference; and

WHEREAS, Licensor desires to provide the License described in the Agreement to facilitate the redevelopment of the LaSalle Hotel Property and increase the business prospects of the City of Bryan;

WHEREAS, Licensee desires access to the License Area for the use set out below; and

WHEREAS, Licensor has agreed in the Agreement to give Licensee a license to the License Area, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions herein set forth and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

This License is executed upon the following terms and conditions:

1. **Revocable License.** Subject to the provisions of this License, Licensor grants to Licensee a revocable license (“the License”) for exclusive use of the License Area by Licensee and its invitees, licensees, agents, employees, and patrons for vehicular parking, together with a non-exclusive right to use an additional thirty (30) parking spaces in the Parking Lot for its invitees, licensees, agents, employees, and patrons for vehicular parking; together with a non-exclusive right to access same. The License shall run with the LaSalle Hotel Property as long as the LaSalle Hotel Property is operated as a “Hotel”, as that term is defined in Section 2 below, and subject to the terms and conditions of this License contained herein.
2. **Exception to Licensee’s Exclusive Use.** Licensee shall not interfere with the use of the public to enter the Parking Lot and use all portions of the Parking Lot not restricted by the License Area.
3. **No Interest In Land.** Licensee understands, acknowledges and agrees that no legal title or any other interest in real estate will be deemed or construed to have been created or vested in Licensee by anything contained in this License, instead this License merely serves to give the Licensee the exclusive right to perform the acts herein stated upon the Premises. Licensee shall not attempt to act in any way beyond the scope of this License, which is intended to merely create a revocable privilege, to the extent provided herein, for the use of the Premises.
2. **Term.** This License shall commence upon the execution of this License by all Parties (the “Commencement Date”) and shall exist and continue until the La Salle Hotel Property ceases to be operated as a Hotel, (the “Expiration Date”), unless sooner terminated as herein provided, For the purposes of this License, the term “Hotel” as it is used herein, means a temporary dwelling place for individuals where customary hotel services such as linen, maid service, telephone, and upkeep of furniture is provided. The term may also include accessory amenities such as a restaurant, bar, business center, or other amenity available for the use of guests of the hotel. For the purposes of this License agreement, the Licensee shall be deemed to be operating a hotel on the Property if more than 51% of the building space is being used for the operation of a hotel.

3. **Consideration.** Licensee's obligations under the Agreement is consideration of this License.

4. **Licensor's Obligations.** Licensor is allowing use of the License Area to Licensee in an "as is condition" and makes no representations, express or implied, that the License Area is suitable for the use permitted by this License, or any other use. Licensor, at Licensor's expense, shall maintain and repair the License Area for normal maintenance and upkeep. Licensee shall reimburse Licensor for any repairs made by Licensor as a result of damage caused to the License Area by Licensee, its invitees, licensees, agents, employees, patrons or contractors. If at any time Licensor fails to maintain or repair the License Area as part of the normal maintenance and upkeep of the License Area, Licensee may make repairs to the License Area after thirty (30) days written notice to Licensor. Licensor shall reimburse Licensee for such normal maintenance and repair costs Licensee incurs if Licensor fails to act after proper notice as required under this paragraph.

5. **Use of the License Area.** The License Area are to be used and occupied by Licensee, its invitees, vendors and licensees solely as hotel patron and commercial patron parking spaces for the use and enjoyment of the LaSalle patrons, vendors, invitees and employees and for no other purpose. Licensee shall at all times fully and properly comply with all laws, ordinances, and regulations governing the use of the License Area enacted or adopted by every lawful authority having jurisdiction over the same. This License is an exclusive license, granting rights and privileges to Licensee and Licensee's invitees and licensees to the exclusion of all others except that Licensor, its agents, employees or contractors may enter the License Area as necessary for maintenance and repairs. **Licensor shall not be responsible for enforcing Licensee's parking rights against any third parties.**

6. **Insurance.**

a. At all times during the term of this License, Licensee shall obtain and keep in force Commercial General Liability Insurance for property damage and personal injury relating to the use of the License Area license. Such insurance shall be carried by insurance companies, acceptable to Licensor, with an A.M. best rating of "A-VI" and shall be licensed to write insurance in Texas. The coverage for such insurance shall be not less than \$1,000,000.00 per occurrence and an annual aggregate of at least \$2,000,000.00. Licensor shall be named as an additional insured. The policy shall be written on a standard ISO "occurrence" form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the Licensor.

b. Licensor is further required to obtain and keep in force Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident.

c. Required policy limits may be satisfied by a combination of primary and umbrella or excess liability policies. Failure of the Licensor to demand evidence of full compliance with these insurance requirements or identify a deficiency shall not be construed as a waiver of such requirements.

d. Within ten (10) days of the effective date of this License, Licensee shall furnish Licensor with certificates of insurance for each of the policies required by this License. The Licensee must provide Licensor with a minimum thirty (30) days prior written notice of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage. Following each renewal, Licensee shall provide renewed certificates of insurance.

e. Licensor reserves the right throughout the term of this License to review and modify the insurance requirements with notice of Licensee.

7. **Temporary Relocation of Parking Spaces.** Licensor retains the right to temporarily relocate the location of the licensed parking spaces from the current License Area to a temporary new location within a reasonable distance from the La Salle Hotel but in any event no farther than three (3) blocks from the current License Area. Should relocation of the License Area become necessary, Licensor shall provide a minimum ninety (90) day notice to Licensee. Such notice shall contain the proposed temporary new location of the parking spaces and a date upon which the new location will become effective. Licensee shall retain the right to use of the same number of parking spaces in the new location as Licensee had in the License Area.

8. **Mechanic's Lien.** Licensee will not suffer or permit any mechanic's or materialman's lien to be placed upon the License Area; provided, however, that Licensee shall not be in default under this Section, if Licensee discharges such lien by bonding or otherwise within a reasonable period after imposition of such lien.

9. **Rules Governing the Use of the License Area.** The following rules and regulations shall govern the use of the License Area by Licensee:

a. Licensee may erect or post signage on the License Area reserving the use of the parking spaces for the residents and patrons of the Property. Before any such signage is posted or erected, a plan for the proposed signage, including dimensions, location and format, must be submitted to Licensor for written approval. Any such approval required of Licensor shall not be unreasonably withheld.

b. Licensee shall not build any fires or permit any burning on the License Area and shall not cause or permit any use that will in any way increase the possibility of fire or other casualty, nor shall Licensee allow or permit the use of any firearms or explosives on the License Area.

c. Licensee shall not cause or permit any improper noises on the License Area or allow any unpleasant odors to emanate from the License Area or otherwise annoy in any way other residents in the area.

d. Licensee shall not construct any buildings, physical structures or other appurtenances or improvements to the License Area, including, without limitation, the installation of water lines, electric lines, fences or other permanent boundaries, or any building or structure without written approval by Licensor.

e. No commercial operation or enterprise shall be conducted on or from the License Area except such commercial activities that are customary for the operation and enjoyment of a parking lot.

f. Licensee agrees that, whether by Default, Termination, or failure to Renew, or for any other reason, the License Area cease to be used as hotel parking space, Licensee shall have the sole responsibility of returning License Area to its original condition and shall bear any costs in connection therewith.

g. Licensee shall comply with all federal, state and city codes and ordinances related to its use of the Parking Lot and License Area.

10. **Assumption of the Risk.** Licensee acknowledges and agrees that Licensor makes no representation or warranties, express or implied as to the suitability for Licensee's use of any portion of the Parking Lot. Licensee has conducted all inspections of the Parking Lot to its satisfaction and agrees to enter the Parking Lot in its "as-is with all faults" condition thereon. Licensee assumes the risk that certain conditions may exist on the Parking Lot and hereby release the Licensor from all claims, actions, demand, right, damages, costs or expenses that might arise out of or in connection with any condition. Licensor, its elected officials, officers, agents and employees shall not be responsible or liable for loss or damage by reason of fire, theft, collision or any other cause to vehicles or their contents. By it use of the Parking Lot, Licensee assumes all risk of loss or damage to property and assumes all risk of injury.

11. **Release and Indemnity.** Licensee waives any claim it may have against Licensor arising out of the use of this license or the Premises, and releases and exculpates Licensor from any liability in connection with Licensee's use of the License or the Premises. **Licensee hereby agrees to indemnify, defend, and hold harmless Licensor, its elected officials, officer, agents and employees from any claim of damage to**

property or injury to any person arising from Licensee's use of this license, the Parking Lot or the License Area or a breach or default by Licensee in the performance of any of its obligations or agreements hereunder, unless caused solely by the willful misconduct or gross negligence of Licensor. The provisions of this Section shall survive the expiration or earlier termination of this License. Neither Licensor nor Licensee shall be liable for any consequential damages in connection with this License, except that Licensee may be liable for consequential damages in connection with Licensee's holding over in the License Area.

12. **Default.** Licensee's failure to (i) use the License Area as provided in the License, (ii) comply with any applicable state, federal law or city codes, ordinances, rules, and regulations governing the use of the License Area, or (iii) comply with any material term or condition of the License shall constitute an Event of Default. Upon the occurrence of an Event of Default, Licensor shall notify Licensee in writing of such default, and if the Event of Default has not been cured or corrected within thirty (30) days of the giving of such notice, this License shall automatically terminate. In the event, the Agreement is terminated for an uncured default, this License shall immediately terminate.

13. **Assignment.**

During the term of the Agreement, any assignment of this License must comply with the requirements of Sections 3.01(K) and 11.02 of the Agreement. Upon expiration or termination of the Agreement, the below named Licensee, and any subsequent licensee to whom this Licensee is assigned in accordance with the terms of this section, shall be permitted to assign its right, title and interest under this License to any subsequent owner of the LaSalle Property, provided that the Licensee is not currently in breach of any terms of the License Agreement, and the subsequent owner agrees in writing to be bound by the terms of this License Agreement. Upon such assignment, the below Licensee shall be relieved of any liability first accruing or arising after the date of such Assignment. Written notice of any such assignment shall be provided to Licensor following the expiration of any feasibility or due diligence period for the proposed sale. The written acceptance and assumption of the obligations of this License Agreement by the subsequent owner must be executed at or before the closing of the sale. Certificates of insurance from the assignee must be provided within thirty (30) calendar days of closing. Any attempt to assign or transfer this License in conflict with the above provisions, shall be null and void.

14. **Notices.** All notices given hereunder shall be made in writing. Such notices shall be deemed given when personally delivered or deposited in the United States mail, certified or registered mail, postage prepaid, addressed to the respective Party at the address shown below, unless a different address shall have been provided in writing.

If to Licensor: City of Bryan
Attention: City Manager
PO Box 1000
Bryan, Texas 77805

If to Licensee: The Salle Hotel Management One, LLC
c/o Kim Sallinger
4455 Camp Bowie Blvd Suite 114-102
Fort Worth, Texas 76107

15. **Miscellaneous Provisions.**

a. **Incorporation of Recitals.** The recitals contained in the preambles to this License are true and correct and are hereby incorporated herein as part of this Agreement.

b. **Exhibits.** All exhibits included herewith are incorporated by reference as if fully set forth herein.

c. **Entire Agreement.** This License set forth all the covenants, promises, agreements, conditions, and understandings between Licensor and Licensee concerning the License Area. Licensee shall make no claim on account of any alleged representations contained in prior discussions, correspondence, or other documents, not set forth in this License.

d. **Amendment.** No amendment, modification, or alteration of the terms herein shall be effective unless the same be in writing and duly executed by both parties.

e. **Governing Law.** This License shall be governed pursuant to the laws of the State of Texas. Venue for any dispute arising out of this License shall be in any court having jurisdiction in Brazos County, Texas.

f. **Legal Construction.** In case any one or more of the provisions contained herein shall for any reason be held invalid, illegal, or unenforceable by a Court of law, such invalidity, illegality, or unenforceability shall not affect any other provision of this License and it shall be construed as if such terms were not contained herein. The parties acknowledge that both are represented by counsel and both have had ample opportunity to review the provisions contained herein and therefore neither party shall have any ambiguities resolved in their favor.

g. **No Waiver.** Licensor's failure to enforce or delay in enforcing any of the provisions, rights, or remedies in this License shall not be a waiver nor in any way affect the validity of this License or any part hereof, or the right of Licensor to enforce each and every provision, right, or remedy contained herein. No waiver of any breach of any provision of this License shall be held to be a waiver of any other subsequent breach of the same or any other provision.

h. **Warranty of Authority.** Each Party represents and warrants that the person signing this Agreement is authorized to do so on behalf of the entity that this License so binds, and if it is a limited liability company or corporation, that the Party has full right and authority to enter into this License and to perform all obligations hereunder.

IN WITNESS WHEREOF, Licensor and Licensee have executed this License as of the day and year first written above.

LICENSOR:
CITY OF BRYAN, TEXAS

LICENSEE:
THE SALLE HOTEL MANAGEMENT ONE, LLC.

Andrew Nelson, Mayor

Kim Sallinger, President of Merit Commercial Realty, Inc.,
Managing Member of The Salle Hotel Management One,
LLC

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

ACKNOWLEDGMENT

STATE OF TEXAS }
 }
COUNTY OF TARRANT }

This instrument was acknowledged before me on the ___ day of _____, 2020 by Kim Sallinger, President of Merit Commercial Realty, Inc., Managing Member of The Salle Hotel Management One, LLC, a Texas limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

My Commission expires:



EXHIBIT 1

1 inch = 30 feet

S BRYAN AV

S MAIN ST

E 28TH St

EXHIBIT "2"

Legal Description of LaSalle Hotel Property

Being all that certain tract or parcel of land lying and being situated in the Stephen F. Austin League, Abstract 62, Brazos County, Texas, and being the south 40.00 feet of Lot 1 and the adjoining 11.00 feet of the 27th right-of-way of Block 256 of the Original Townsite of the City of Bryan, Brazos County, Texas, according to a plat recorded in Volume "H", Page 721, Dead Records of Brazos County, Texas, and being described as follows:

BEGINNING at an "X" in concrete found at the most westerly common corner of this tract and the Elmo and Marvelyn Neal, Sr. 2200 S.F. tract (1895/102), same being in the east right-of-way line of Bryan Avenue;

THENCE S 85° 02'31" E - 100.22 feet across said Lot 1 along the wall on the common line between this tract and said Neal tract to a concrete nail found at the most easterly common corner of said tracts, same being in the west right-of-way line of S. Main Street;

THENCE S 4° 49'23" W - 51.00 feet along said Main Street line and into said 27th Street right-of-way line to a 60dp. nail found for the southeast corner of this tract;

THENCE N 85° 02'30" W - 100.15 feet thru said 27th Street line to an "X" in concrete found for the southwest corner of this tract;

THENCE N° 45° 00" E - 51.00 feet thru said 27th Street right-of-way and along said Bryan Avenue line to the Place of Beginning, and containing 0.117 acres of land, more or less, according to a survey made on the ground under the supervision of Donald D. Garrett, Registered Professional Land Surveyor No. 2972 on March 23, 2000.

EXHIBIT 3

**CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
BETWEEN
THE CITY OF BRYAN, TEXAS
AND
THE SALLE HOTEL MANAGEMENT ONE, LLC**

This Chapter 380 Economic Development Program Agreement (“Agreement”) is made and entered into by and between The Salle Hotel Management One, LLC, a Texas Limited Liability Company (“Developer”) and the City of Bryan, Texas, a home-rule municipal corporation organized under the laws of the State of Texas (“City”). City and Developer may be collectively referred to as “Parties” or individually as a “Party”.

RECITALS:

WHEREAS, the La Salle Hotel, located at 120 S. Main St., is locally designated as a landmark by the City of Bryan, is listed as a Texas Historic Landmark (RTHL#12883), and is on the National Registry of Historic Places (NR#00000555); and is of significant historical, architectural, and cultural importance to the City; and

WHEREAS, the La Salle Hotel has been and remains a key component of the revitalization of downtown Bryan; and

WHEREAS, Developer desires to acquire the La Salle Hotel, and invest approximately 2.5 million dollars into the revitalization of the La Salle, to transform it into a Four Star historic boutique hotel (the “Hotel Project”), and the adjacent City-owned Plaza (the “Plaza Project”); and

WHEREAS, to make the Hotel Project viable, the Developer is seeking assistance from the City to include permit fee waivers; assistance in obtaining staggered Bryan Texas Utilities SmartBUSINESS Program incentives not to exceed \$30,000 in year one (1) and not to exceed \$30,000 in year two (2); façade improvement and life safety reimbursement grants in the combined total of \$100,000; ten (10) exclusive, off-site parking spaces and 30 non-exclusive parking spaces; a grant in the amount of \$420,000.00 for improvements to be made by Developer to the “Plaza Project” and a Plaza Landscape and Maintenance Grant not to exceed \$36,000 annually for a period of three (3) years; and

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

WHEREAS, the City Council finds the revitalization of the La Salle Hotel will expand the ad

EXHIBIT 3

valorem and sales tax base, create jobs, bolster tourism, stimulate business and commercial activity, and spur economic development in the entire Downtown area; and

WHEREAS, the City Council hereby establishes a Chapter 380 economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Developer and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement; and

WHEREAS, the City Council has determined 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 public purpose is accomplished;

NOW THEREFORE, the City and Developer, for and in consideration of the mutual covenants and promises contained herein, do hereby agree, covenant and contract as set forth below:

Article 1.

DEFINITIONS.

1. Capitalized terms used in this Agreement which are not otherwise defined herein shall have the meanings set forth below:

“Affiliate Entity” means any person or entity which directly or indirectly controls, is controlled by or is under common control with Developer, during the term of such control. A person or entity will be deemed to be "controlled" by any other person or entity if such other person or entity (a) possesses, directly or indirectly, power to direct or cause the direction of the management of such person or entity whether by contract or otherwise, (b) has direct or indirect ownership of at least fifty percent (50%) of the voting power of all outstanding shares entitled to vote at a general election of directors of the person or entity or (c) has direct or indirect ownership of at least fifty percent (50%) of the equity interests in the entity.

“Assumption Agreement” shall have the meaning set forth in Section 3.01(K) of this Agreement.

“BCAD Value” means the appraised value of the real property, improvements and related personal property certified by the Brazos Central Appraisal District as of January 1st for a given tax year.

“Bryan Texas Utilities SmartBUSINESS Program” means a program to encourage customers to invest in energy efficient improvements for their businesses, focusing on reducing the current demand of any

measure by a minimum of 20%, as such program may be amended in the future.

“Closing” or “Close” means generally the execution and delivery of those documents and funds necessary to effect the sale and the transfer of the title of the Property from the seller to Developer.

“Closing Date” means the date on which the Closing occurs, which date shall be by or before 90 days from the Effective Date of this Agreement.

“Plaza Commencement Deadline” shall have the meaning set forth in Section 4.01(F) of this Agreement.

“Construction Budget” shall mean a budget projecting the cost of the Plaza Project in accordance with the Plans and Specifications and reflecting Final Completion of the Plaza Project by the Developer by the Plaza Completion Deadline.

“Construction Schedule” shall mean a schedule for construction of the Plaza Project in accordance with the Plans and Specifications, which schedule shall reflect Final Completion of the Plaza Project by the Developer by the Plaza Completion Deadline.

“Defective Work” means all work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not conform to the approved Plans and Specifications.

“Deliverables” means any and all reports, records, documents, documentation, information, supplies, plans, original drawings, specifications, computations, sketches, renderings, arrangements, videos, pamphlets, advertisements, statistics, and other data, computer tapes, computer software, and other tangible work product or materials prepared or developed by Developer or by any engineer, architect, landscape architect, designer or other consultant engaged by Developer pursuant to this Agreement. “Deliverables” includes the Plans and Specifications.

“Effective Date” means March 18, 2020.

“Eligible Expenditures” means the Improvement costs of the Plaza Project. All such costs must be costs generated by and attributable to third-party vendors. An Eligible Expenditure billed to an Affiliate Entity of Developer will be an Eligible Expenditure to the extent of the third-party cost and not include any mark-up or profit margin for the Developer’s Affiliate Entity.

EXHIBIT 3

“FF&E” means movable furniture, fixtures, equipment, machinery and other personal property to be installed or located by Developer within the Plaza.

“Final Completion” shall mean that the Plaza Project has been substantially completed consistent with the Plans and Specifications.

“Grant Funds” shall have the meaning set forth in Section 4.02 (B) of this Agreement.

“Hotel Project” means the construction, renovation, repair and improvement of the Property by Developer with physical features, finishes, furnishings, and amenities consistent with a Four Star, historic boutique hotel; and in compliance with the “Project Requirements, Hotel Standards and Description of Services” attached to this Agreement as **Exhibit “B”**, and all other terms and conditions of this Agreement.

“Hotel Project Completion Deadline” shall have the meaning set forth in Section 3.01 (B) of this Agreement.

“Improvements” means landscaping, hardscape, and real property improvements.

“Laws” shall mean all applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations, guidelines, standards, judgments, orders, and/or decrees.

“Maximum Reimbursement Amount” shall have the meaning set forth in Section 4.02 (E). of this Agreement.

“Notice of Default” shall have the meaning set forth in Section 9.01 of this Agreement.

“Parking Space License Agreement” shall have the meaning set forth in Section 3.02 (D) of this Agreement.

“Payment Request” shall have the meaning set forth in Section 4.02 (C).

“Periodic Payments” shall have the meaning set forth in Section 4.02 (E) of this Agreement.

“Plans and Specifications” means the plans and specifications for the Plaza Improvements approved by the City.

“Plaza” means the City-owned plaza adjacent to the Property, being all of 27th Street between Block 255

EXHIBIT 3

and 256 of the Bryan Original Townsite, as more particularly described in Exhibit "D".

"Plaza Commencement Date" shall have the meaning set forth in Section 4.01(F) of this Agreement.

"Plaza Commencement Deadline" shall have the meaning set forth in Section 4.01(F) of this Agreement.

"Plaza Completion Date" shall have the meaning set forth in Section 4.01(F) of this Agreement.

"Plaza Completion Deadline" shall have the meaning set forth in Section 4.01(F) of this Agreement.

"Plaza License Agreement" shall have the meaning set forth in Section 4.02(A) of this Agreement.

"Plaza Improvements" means the Improvements to be installed and constructed within the Plaza by the Developer in accordance with the approved Plans and Specifications, as generally described in Exhibit "E". The Plaza Improvements shall not include FF&E.

"Plaza Project" means the design, construction, and installation by Developer of the Plaza Improvements within the Plaza, in compliance with all applicable Laws, and all other terms and conditions of this Agreement.

"Pre-Construction Payment" shall have the meaning set forth in Section 4.02 (D) of this Agreement.

"Project Budget" means the budget the Parties have established for the Plaza Project.

"Project Schedule" means the schedule for completing the design, commencing construction, and completing construction of the Plaza Project.

"Property" means the real property and improvements located at 120 S Main St, Bryan, Texas, known as the LaSalle Hotel, and more particularly described in Exhibit "A".

"Required Permits" shall mean all permits required by the Laws, for construction and use of the Project.

"Qualified Expenditures" shall have the meaning contained in Section 3.01(D) of this Agreement.

"Site Plan" means the overall site development plan for the Plaza site, depicting the positioning of all exterior improvements on the Plaza site as they are planned to exist after the Plaza Project is complete, and identifying new exterior improvements or renovations to be accomplished as part of the Plaza Project.

EXHIBIT 3

Article 2.

TERM

2.01 This term of this Agreement shall commence on the Effective Date and will continue for a period of ten (10) years (“Term”), unless sooner terminated in accordance with the terms of this Agreement.

Article 3.

HOTEL PROJECT

3.01 Developer’s Obligations.

A. Condition Precedent. Developer’s purchase of the Property is a condition precedent to the City’s obligations under this Agreement. Developer shall Close on the Property within 90 days of the Effective Date of this Agreement, and the failure of Developer to do so shall result in the automatic and immediate termination of this Agreement.

B. Renovations. Developer shall design, develop, construct, equip, furnish and fully complete the Hotel Project, at its sole cost, in compliance with all applicable Law, and obtain any required certificates of occupancy within twelve (12) months of the Closing Date (Hotel Project Completion Deadline).

C. Certificate of Appropriateness. It shall be the responsibility of Developer to apply for and obtain any necessary certificates of appropriateness from the City of Bryan Historic Landmark Commission prior to commencement of work on the Hotel Project.

D. Minimum Investment. Developer will cause to be invested at least Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) in expenditures for hard and soft costs for the Hotel Project and the Plaza Improvements, excluding Property acquisition costs, (the “Qualified Expenditures”) within eighteen (18) months of the Closing Date. Only such expenditures incurred after the Closing Date may be Qualified Expenditures. Within six (6) months of completion of the Hotel Project and Plaza Project, Developer shall submit paid invoices to the City for the Qualified Expenditures in a total minimum amount of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) as evidence of Developer’s satisfaction of the minimum investment requirement.

E. Taxable Value. The BCAD Value of the Property for the tax year 2021 (January 1, 2022), as shown on the Brazos Central Appraisal District appraisal rolls, shall be at least \$3,200,000.00, as of July 1, 2022; and the Property must maintain a minimum BCAD value of at least \$3,200,000.00 throughout the remainder of the Term of this Agreement.

F. Timely Payment of Ad Valorem Taxes. Developer shall not allow the ad valorem taxes owed to the City on the Property or any real property owned or possessed by the Developer and located in the City of Bryan to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal during the Term of this Agreement. Nor shall Developer fail to render for taxation any personal property owned by Developer and located on the Property during the Term of this

EXHIBIT 3

Agreement. In the event, that any ad valorem taxes are assessed on the business personal property of the Developer located within the Plaza, payment shall be the responsibility of Developer, and shall be paid when due, as such date may be extended to allow for any protest of valuation or appeal during the Term of this Agreement.

G. Hotel Operating Standards. Commencing no later than twelve (12) months after the completion of the Hotel Project and the issuance of all required certificates of occupancy, Developer shall at all times, for the remainder of the Term of this Agreement, operate or cause the Property to be operated consistent with the industry standards of quality and service to be expected in a Four Star historic boutique hotel, and in compliance with the "Project Requirements, Hotel Standards and Description of Services" attached to this Agreement as Exhibit "B". During the term of the Agreement, should the City believe the Developer is in non-compliance with this section, the City may request in writing to meet with Developer within a reasonable time, to discuss the non-compliance, and the Developer may need to take action to bring the Hotel into compliance with the requirements of this Agreement.

H. Hotel Occupancy Taxes. The Property must receive hotel occupancy revenues of at least Seventy Thousand Dollars (\$70,000.00) for the twelve (12) month period following the expiration of twenty-four (24) months from the Closing Date, and for each twelve (12) month period thereafter, commencing on the anniversary of the Closing Date, for the Term of this Agreement.

I. Hotel Occupancy Tax Returns. Developer shall timely file its hotel occupancy tax return(s) with City (in a form prescribed by City from time to time) and timely pay its applicable tax. Developer shall include therein a copy of the Hotel's tax report submitted to the State Comptroller's office for Hotel Occupancy Tax Revenue.

J. Taxable Sales. The Property must achieve at least One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) in gross taxable sales for the twelve (12) month period, following the expiration of twenty-four (24) months from the Closing Date, and for each twelve (12) month period thereafter, commencing on the anniversary of the Closing Date, for the Term of this Agreement. If due to market conditions, Developer is unable to meet the Taxable Sales benchmark of \$1,750,000.00 in gross taxable sales for any twelve (12) month period, Developer may avoid an event of default by paying to the City, the City's remaining proportionate share of the sales tax (1.5%) on the projected gross taxable sales amount of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00), within thirty (30) days of receipt of notice of deficiency by the City.

K. Restrictions Against Disposition of Property. With the exception of an Affiliate of the Developer, Developer shall not assign, sell, transfer, or convey the Property to any third party during the Term of this Agreement without the prior written consent of the City, until such time as the following events have occurred: (i) Completion of the Hotel Project and Plaza Project; (ii) Submittal by Developer to City of an Affidavit of all Bills Paid for the Plaza Project; (iii) submittal by Developer of paid invoices Developer's compliance with the Minimum Investment Requirements of Section of this Agreement; (iv) all Required Permits for the Plaza Project are issued and all necessary Certificates of Occupancy for the Hotel Project have been issued for the Hotel Project; and (v) Developer is currently in compliance with all terms and conditions of the Agreement. In connection with the assignment, sale, transfer or conveyance of the

EXHIBIT 3

Property by Developer, the counterparty to such disposition shall agree to assume all obligations of Developer under this Agreement, the Plaza License Agreement, and the Parking Space License Agreement, accruing from and after the execution date of such disposition by a written agreement executed at or before the closing of the conveyance, in a form reasonably acceptable to the City (the "Assumption Agreement"), and such approval shall not be reasonably withheld, to which the City is either a party or in which the City is specified to be a beneficiary, a copy of which Assumption Agreement shall be promptly provided to the City following the disposition to evidence the assignment and assumption in question. The provisions of this Section shall not apply to Mortgages.

L. Covenant Not to Employ 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 2265.052 of the Texas Government Code, if Developer is convicted of a violation under 8 U.S.D. Section 1324a(f), Developer shall repay to the City the fees waived as provided in Section 4 of this Agreement, plus 10% per annum from the date the reimbursement as made. Repayment shall be paid within 120 days after the date Developer is convicted of a violation under U.S.D. Section 1324a(f).

3.02 City's Obligations:

A. Waiver of Permit Fees. The City agrees to waive all fees for building, mechanical, plumbing, or electrical permits during the term of this Agreement, up to a combined total, not-to-exceed amount of Twenty Thousand Dollars (\$20,000.00), subject to the City's right of recapture contained in Section 9.03 of this Agreement. The City shall maintain a running list of the permit fees waived under this Agreement.

B. Bryan Texas Utilities SmartBUSINESS Program. The City agrees to assist in obtaining staggered BTU SmartBUSINESS program incentives not to exceed \$30,000 in year one (1) and not to exceed \$30,000 in year two (2).

C. Façade Improvements and Life Safety Grants. City agrees to grant Developer a combined total amount of up to One Hundred Thousand Dollars (\$100,000.00) in reimbursements for qualified façade and life safety improvements made by Developer to the Property under the terms and conditions of the Downtown Façade Improvement Program (Resolution No. 3582), as may be amended and the Downtown Life Safety Grant Program (Resolution No. 3725), as may be amended. Developer shall follow the application, approval and payment processes of the Downtown Façade Improvement and Life Safety Grant Programs, excluding additional City Council approval. Payment of these grants are contingent upon Developer being in compliance with the terms, conditions, and benchmarks set forth in this Agreement.

D. Parking. The City agrees to provide, at no cost to Developer, a license for ten (10) exclusive off-site parking spaces and thirty (30) non-exclusive parking spaces to serve the Property, in the form attached hereto as **Exhibit "C"**. The License shall be contingent upon the Developer being in compliance with the terms and conditions of the License; and at all times during the term of the Agreement, being in compliance with the terms, conditions, and benchmarks set forth in this Agreement. The parking spaces shall be located in the city-owned lot, located at 200 S. Main Street. The City shall retain the right to temporarily relocate the licensed parking spaces, if necessary, to a temporary new location within a reasonable distance from

EXHIBIT 3

the Property, but in no event further than 3 blocks from the Property. The City shall assist the Developer to secure up to forty-five (45) parking spaces located in the Downtown Parking garage. If for whatever reason any of these parking spaces are not available as the Developer needs them, the City agrees to make the parking spaces available in a different location within a reasonable distance from the property but in no event further than three blocks from the Property.

E. Plaza Landscape and Maintenance Grant. Subject to Developer's performance of its obligations as required by this Agreement, the City agrees to reimburse Developer up to Thirty-Six Thousand Dollars (\$36,000.00) annually for landscape and maintenance costs incurred by Developer for the Plaza (the "Plaza Landscape and Maintenance Grant") for a period of three (3) years; with the first Plaza Landscape and Maintenance Grant payment commencing twelve (12) months after the Closing Date. The City shall make the annual Plaza Landscape and Maintenance Grant payments within thirty (30) days of receipt of an invoice from the Developer. The Plaza Landscape and Maintenance Grant shall terminate upon assignment of this Agreement.

Article 4.

PLAZA PROJECT.

4.01 Developer's Obligations:

A. Design and Construction of Plaza Improvements. Developer agrees to design, construct, and furnish or cause to be designed, constructed, and furnished, the Plaza Improvements in accordance with the Plans and Specifications mutually approved by the Developer and City.

B. Consultants. Developer shall engage all engineers, architects, landscape architects, design professionals or other consultants, as needed, to design and prepare the Plans and Specifications for the Plaza Project. All Deliverables prepared for the Plaza Project pursuant to the foregoing engagement agreements, shall be the property of the Developer and the City of Bryan.

C. City Cooperation. Developer agrees to work together with the City's Development Services staff in the development of a design plan for the Plaza Project. The Developer acknowledges that this cooperative effort is in addition to, and not in lieu of, any plan review or Required Permits under applicable Laws, and it shall not be deemed a warranty or representation of any kind by the City that the Developer's proposed design plans comply with, or are approved under applicable Laws.

D. City Approval. Developer shall submit the Site Plan and the Plans and Specifications for the Plaza Project to the City for review and approval. The Developer agrees to comply with all applicable legal requirements of the City and any other agencies having jurisdiction. No material modifications to the Plans and Specifications for the Plaza Project may be made without review and approval of the City. The City shall expedite all review processes, and approvals shall not be unreasonably withheld or delayed.

E. Required Submittals. No construction may commence on the Plaza Project until: (i) the Developer has submitted to the City and the City has approved the Project Schedule, Project Budget and the Plans

EXHIBIT 3

and Specifications associated with the Plaza Project; (ii) all Required Permits for construction are obtained by Developer; and (iii) all requirements in regard to bonds and insurance have been satisfied. The City agrees to review and act on the submittals in an expedited manner. Approvals shall not be unreasonably delayed or withheld.

F. Commencement and Plaza Completion Dates and Deadlines. Developer shall commence construction on the Plaza Project within 180 days of the Closing Date ("Plaza Commencement Deadline") and shall complete construction no later than twelve (12) months after all Required Permits are issued (the "Plaza Completion Deadline"), subject to Force Majeure as defined in this Agreement. The date of commencement of construction (the "Plaza Commencement Date") shall be determined by the occurrence of the City's approval of the Site Plan for the Plaza and the City's receipt of correspondence from the general contractor for the Plaza Project certifying that construction has commenced. The date of completion of construction (the "Plaza Completion Date") shall be determined by the occurrence of all of the following events: (i) receipt by the City of written notice from Developer certifying that all Plaza Improvements are complete in accordance with the Plans and Specifications and are ready for final inspection; (ii) if the construction of any of the Plaza Improvements requires any engineering design services, receipt by the City of a certification letter from the design engineer, sealed with the engineer's professional seal, certifying that the Plaza Improvements were constructed according to the specifications required by the engineer's design; and (iii) Final inspections and approval of all Required Permits for the Plaza Improvements.

G. Payment and Performance Bonds. Prior to commencing any work on the Plaza Project, Developer will obtain and deliver to City, at no cost to City, payment and performance bonds on forms approved by the City Attorney and otherwise acceptable to City, as follows:

(1) A performance bond in a sum equal to one hundred percent (100%) of the anticipated amount be paid for the Plaza Project pursuant to the Project Budget and this Agreement. The performance bond must guarantee the full and faithful execution of the work and performance of Developer's obligations in this Agreement and must guarantee completion of the Plaza Improvements. The Performance Bond shall remain in full force and effect until the Plaza Completion Date of the Plaza Project.

(2) A payment bond with Developer's contractor or contractors as principal, in a sum equal to one hundred percent (100%) of the anticipated amount to be paid for the Plaza Project pursuant to the Project Budget and this Agreement. The Payment Bond shall remain in full force and effect until Final Completion to ensure that all claims for materials and labor are paid, except as otherwise provided by law or regulation.

(3) In order to reduce costs of every contractor and subcontractor of the Developer obtaining redundant bonds while maintaining the 100% protection the City requires, the City and Developer agree that the requirements of this Section can be met by Developer's primary general contractor obtaining bonds meeting the requirements of this Section, and naming the City and Developer as dual obligees. Bonds meeting these requirements will be on forms approved by the City Attorney, and issued by a corporate surety authorized and admitted to write surety bonds in Texas and secured through an authorized agent with an office in Texas, and have a minimum AM Best rating of "A-" to an amount not to exceed ten percent

EXHIBIT 3

(10%) of its capital and surplus.

(4) In the event, the Developer fails or refuses to complete the Plaza Improvements by the Plaza Completion Deadline, the City shall be entitled to exercise its rights as obligee under the Performance Bond and may complete the construction of the Plaza Improvements and charge the Payment Bond for the costs. Nothing herein shall be construed as a limitation on the City's right to exercise any and all legal and equitable remedies available to the City. The provisions of this Section shall survive termination of this Agreement.

H. Maintenance of Plaza Improvements. During the term of this Agreement and the Plaza License Agreement, Developer shall be solely responsible for the maintenance of the Plaza Improvements in accordance with the Plaza License Agreement.

4.02 City Obligations:

A. Plaza License. The City agrees to provide Developer an exclusive license for the use of the Plaza to serve the Property so long as the Property is utilized as a "Hotel", in the form attached hereto as **Exhibit "F"** (the "Plaza License Agreement"), and subject to the terms, limitations, conditions, definitions, and required fees contained therein.

B. Plaza Redevelopment Grant. City agrees to make payments to Developer in the form of an economic development grant, in a total not-to-exceed amount of Four Hundred Twenty Thousand Dollars (\$420,000.00) for Eligible Expenditures for the design, engineering, construction, and installation of the Plaza Improvements for the Plaza Project under the terms of this Agreement (the "Grant Funds"). Only expenditures for the Plaza Project incurred after the Closing Date shall be Eligible Expenditures. Developer agrees the payment of any costs or expenses of the Plaza Project not covered by, or which exceed the total amount of the Grant Funds shall be the sole responsibility of the Developer.

C. Payment of Eligible Expenditures. Each request for payment from the Developer (the "Payment Request") is subject to the reasonable review and approval of the City and must include a certified statement from the Developer that (i) the Eligible Expenditure was incurred for the redevelopment and revitalization of the Plaza; (ii) the amount requested to be paid for the Eligible Expenditure is the bid amount or if bidding was not required, it is believed reasonable for the goods and/or services provided; (iii) the goods or services referenced in the Payment Request have been received by the Developer; and (iv) that no part of the Payment Request was included in any prior Payment Request.

D. Pre-construction Grant Payment. Upon the review and final approval of the Design Plans and Specifications by the City, Developer shall submit a verified application for reimbursement of all Eligible Expenditures associated with the planning and design of the Plaza Project, along with invoices or other supporting documentation from the engineers, architects, landscape architect, design professionals or other consultants. The applications for payment shall be reviewed and approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed, and the City shall reimburse Developer for all approved pre-construction costs, (the "Pre-construction Payment"). The City shall make reasonable efforts to make the Pre-construction Grant Payment within thirty (30) days of the receipt of the application

EXHIBIT 3

for reimbursement.

E. Periodic Drawdown of Grant Funds. During the construction of the Plaza Improvements, City shall reimburse Developer not more frequently than monthly for all Eligible Expenditures based upon verified applications for payment submitted by the Developer along with invoices or other supporting documentation from the engineers, contractors, or other vendors (the "Periodic Payments"). The applications for payment shall be reviewed and approved by the City, which approval shall not be unreasonably withheld or delayed. The City shall make reasonable efforts to make Periodic Payments within thirty (30) days of the receipt of the applications for reimbursement. The City shall make Periodic Payments up to the total remaining grant funds, excluding retainage as may be provided for in the construction contract for the Plaza Project ("Maximum Reimbursement Amount").

F. Limit on Frequency of Periodic Payment Requests. Unless otherwise agreed to by the City, Payment Requests shall be reviewed and approved once a month in accordance with the City's normal monthly claims approval process.

G. Contract Payments. Developer shall make all payments to Developer contractors in a timely fashion. On a monthly basis, the Developer must provide the City with copies of invoices paid and an affidavit of payment by Developer.

H. Final Payment. The City shall make its final payment of Grant Funds to Developer upon the occurrence of all of the following events: (i) Upon final inspection and approval of all permits by the City and (ii) Submission by the Developer of all Deliverables and Warranties; and (iii) if Engineering services were required, receipt by the City of a certification letter from the design engineer, sealed with the engineer's professional seal, certifying that the Plaza Improvements were constructed according to the specifications required by the engineer's design; (iv) an affidavit(s) of all bills paid from the Contractor(s); submission of the Developer's verified applications for payment of all final Eligible Expenditures for Plaza Improvements with supporting invoices submitted by the contractor and Developer engineers, architect, landscape architects, design professionals, other consultants, contractors, or vendors, and approved by the City, which approval shall not be unreasonably delayed or withheld. Regardless of the actual Eligible Expenditures for the design and construction of the Plaza Improvements, City shall not be required to pay Developer an amount in excess of the Maximum Reimbursement Amount. Any costs for the design and the construction of the Plaza Improvements in excess of the Maximum Reimbursement Amount shall be the sole responsibility of the Developer.

Article 5.

INDEMNIFICATION

5.01 DEVELOPER DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, IN BOTH THE PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMAND OR CAUSE OF ACTION INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY

EXHIBIT 3

ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASSIONED BY THE ERROR, OMISSION, OR NEGLIGENT ACT OF IT, ITS OFFICERS, AGENTS OR EMPLOYEES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT, AND WILL AT ITS OWN COSTS AND EXPENSE DEFEND AND PROTECT THE CITY 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 THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT) OF THE CITY, 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 THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN ORDINARY NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT), WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF INJURY OR DEATH OR DAMAGE.

5.02 The Developer shall require that the construction contracts for all contractors engaged by Developer to construct the Plaza Improvements, including their subcontractors, contain the following indemnification provisions:

"INDEMNITY – GENERAL. TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING CHAPTER 151 OF THE TEXAS INSURANCE CODE, THE CONTRACTOR HEREBY PROTECTS, INDEMNIFIES AND HOLDS HARMLESS AND SHALL DEFEND THE DEVELOPER, THE DEVELOPER'S LENDER (IF ANY), THE CITY OF BRYAN, THEIR ELECTED OFFICIALS, DIRECTORS, OFFICERS, PARENTS, SUBSIDIARIES, AFFILIATES, JOINT VENTURERS, PARTNERS, EMPLOYEES, AGENTS AND REPRESENTATIVES (HEREINAFTER REFERRED TO INDIVIDUALLY AS AN "INDEMNITEE" AND COLLECTIVELY AS THE "INDEMNITEES") FROM AND AGAINST CLAIMS, ACTIONS, LIABILITIES, LOSSES, AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND COSTS AND EXPENSES OF LITIGATION OR ARBITRATION INCURRED BY AN INDEMNITEE, ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OR A FAILURE IN THE PERFORMANCE OF THE WORK OF THIS CONTRACT, BY OR THROUGH THE CONTRACTOR OR ANY OTHER NEGLIGENT OR WRONGFUL ACT OR OMISSION OF THE CONTRACTOR OR ONE OF ITS SUBCONTRACTORS OR SUPPLIERS (OF ANY TIER) OR ANYONE ELSE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE (HEREINAFTER REFERRED TO COLLECTIVELY AS THE "SUBCONTRACTOR PARTIES"), EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNITEES OR THEIR AGENTS OR EMPLOYEES, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE (OTHER THAN THE CONTRACTOR AND THE SUBCONTRACTOR PARTIES). SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION. EXPENSES RECOVERABLE BY AN INDEMNITEE

EXHIBIT 3

AS PART OF THE CONTRACTOR'S INDEMNITY OBLIGATIONS UNDER THIS SECTION SHALL INCLUDE, WITHOUT LIMITATION, ALL ATTORNEYS' FEES, EXPENSES, AND ANY COSTS INCURRED BY DEVELOPER IN ENFORCING THE PROVISIONS OF THE CONTRACTOR'S INDEMNITY OBLIGATIONS.

INDEMNITY-EMPLOYEE INJURY CLAIMS. IN ADDITION TO THE INDEMNIFICATION SET FORTH ABOVE, CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS DEVELOPER AND THE INDEMNITEES FROM AND AGAINST ANY CLAIM, DAMAGE, LOSS, OR EXPENSE (INCLUDING BUT NOT LIMITED TO ANY INDEMNITEE'S REASONABLE ATTORNEYS' FEES AND COSTS AND EXPENSES OF ANY DISPUTE RESOLUTION PROCEEDING) ARISING OUT OF, RESULTING FROM OR ATTRIBUTABLE TO ANY CLAIM OF BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE OF CONTRACTOR OR ANY SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM"), EVEN TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE SOLE OR CONCURRENT NEGLIGENCE (WHETHER ACTIVE OR PASSIVE OR BASED UPON STRICT LIABILITY) OF THE DEVELOPER OR ANY OF THE INDEMNITEES OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, IT BEING THE EXPRESSED INTENT OF THE PARTIES HEREUNDER THAT CONTRACTOR INDEMNIFY THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN AND SOLE NEGLIGENCE. CONTRACTOR SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS SECTION."

Article 6.

INSURANCE

6.01 The Developer agrees to maintain the minimum insurance coverage and comply with each condition set forth below during the duration of this Agreement with the City. All parties to this Agreement hereby agree that the Developer's coverage will be primary in the event of a loss, regardless of the application of any other insurance or self-insurance.

6.02 Developer must deliver to City a certificate(s) of insurance evidencing such policies are in full force and effect within ten (10) calendar days following the Closing Date. No Agreement shall be effective until the required certificate(s) have been received and approved by the City. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within ten (10) calendar days may cause the Agreement to be terminated.

6.03 The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent.

A. Workers' Compensation Insurance & Employers Liability Insurance. Developer shall maintain Workers' Compensation insurance for statutory limits and Employers Liability insurance with limits not

EXHIBIT 3

less than \$500,000 each accident for bodily injury by accident or \$500,000 each employee for bodily injury by disease. Developer shall provide Waiver of Subrogation in favor of the City and its agents, officers, officials, and employees.

B. Commercial General Liability Insurance. Developer shall maintain Commercial General Liability (CGL) with a limit of not less than \$1,000,000 per occurrence and an annual aggregate of at least \$2,000,000. CGL shall be written on a standard ISO "occurrence" form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent Developers, products-completed operations, personal and advertising injury, and liability assumed under an insured Contract including the tort liability of another assumed in a business Contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the City. The City of Bryan shall be listed as an additional insured.

C. Business Automobile Liability Insurance. Developer shall maintain Business Automobile Liability insurance with a limit of not less than \$1,000,000 each accident. Business Auto Liability shall be written on a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Developer shall provide Waiver of Subrogation in favor of the City of Bryan.

D. Policy Limits. Required limits may be satisfied by a combination of primary and umbrella or excess liability policies. Developer agrees to endorse and its agents, officers, officials, and employees as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure "True Follow Form" basis.

E. Deductibles, Coinsurance Penalties & Self-Insured Retention. Developer may maintain reasonable and customary deductibles, subject to approval by the City. Developer shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention.

F. Developer's Contractors and Subcontractors. If the Developer's insurance does not afford coverage on behalf of any Contractors and/or Subcontractor(s) hired by the Developer to perform work on the Plaza Project, the Contractors/Subcontractors(s) shall maintain insurance coverage equal to that required of the Developer during the term of its work on the Plaza Project. It is the responsibility of the Developer to assure compliance with this provision. The City accepts no responsibility arising from the conduct, or lack of conduct, of the Developer's Contractor or any Subcontractor.

G. Acceptability of Insurers. Insurance coverage shall be provided by companies admitted to do business in Texas and rated A-;VI or better by AM Best Insurance Rating.

H. Evidence of Insurance. A valid certificate of insurance verifying each of the coverages required shall be issued directly to the City within 10 business days by the successful Developer's insurance agent or insurance company after Agreement award. Endorsements must be submitted with the certificate. No Agreement shall be effective until the required certificates have been received and approved by the City. Renewal certificates shall be sent a minimum of 10 days prior to coverage expiration. Upon request,

EXHIBIT 3

Developer shall furnish the City with certified copies of all insurance policies. The certificate of insurance and all notices shall be sent to:

City of Bryan
City Manager
PO Box 1000
Bryan, TX 77805
Email to: Executiveservices@bryantx.gov

Failure of the City to demand evidence of full compliance with these insurance requirements or failure of the City to identify a deficiency shall not be construed as a waiver of Developer's obligation to maintain such insurance.

I. Notice of Cancellation, Non-renewal, Material Change, Exhaustion of Limits. Developer must provide minimum 30 days prior written notice to the City of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage. If City is notified a required insurance coverage will cancel or non-renew during the Agreement period, the Developer shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City reserves the right to withhold payment to Developer until coverage is reinstated.

J. Developer's Failure to Maintain Insurance. If the Developer fails to maintain the required insurance, the City shall have the right, but not the obligation, to withhold payment to Developer until coverage is reinstated or to terminate the Agreement.

K. No Representation of Coverage Adequacy. The requirements as to types and limits, as well as the City's review or acceptance of insurance coverage to be maintained by Developer, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the Developer under the Agreement.

Article 7.

WARRANTIES

7.01 Warranties Required. Developer agrees to obtain from each contractor performing any aspect of the Plaza Project, a warranty in the City's favor for the repair or replacement of faulty work or materials for a period of one (1) year following completion of the Plaza Project.

7.02 Defective Work. Provided that Developer has received written notice of defective workmanship or materials within one (1) year of the Plaza Completion Date of the Plaza Project, Developer shall replace or repair any such Defective Work in a manner satisfactory to the City, after notice to do so from the City, and within the time specified in the notice.

EXHIBIT 3

Article 8

FORCE MAJEURE.

8.01 It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, inclement weather, pandemic, epidemic or other natural calamities; acts of God, governmental restrictions, regulations, order, actions, or interferences, national or regional emergency or quarantine, delays caused by the franchise utilities, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other Party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the Party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such Party was delayed.

Article 9.

DEFAULT, TERMINATION AND RECAPTURE.

9.01 A default shall exist under this Agreement if either Party fails to perform any of its obligations under this Agreement or comply with any material term or condition of this Agreement. The non-defaulting Party shall notify the defaulting Party in writing (the "Notice of Default") 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.

9.02 If a default shall occur and continue after sixty (60) days' notice of the same, the non-defaulting Party shall have the right to terminate this Agreement by delivering written notice on the defaulting Party ("Notice of Termination"), which termination shall be effective thirty (30) days following delivery of such notice unless the defaulting Party shall cure such default within such additional thirty (30) day period.

9.03 In the event, such default is uncured within such additional thirty (30) day period, this Agreement shall be terminated effective thirty (30) days following the delivery of the Notice of Termination. Developer shall be required to pay to City, within sixty (60) days from the date of termination of the Agreement, an amount equal to the total amount of permit fees waived by the City pursuant to this Agreement. The City's right of recapture and the Developer's obligation to repay the City as a result of an uncured default by Developer, as set forth in this Section, shall survive the termination of this Agreement.

EXHIBIT 3

Article 10.

BOOKS AND RECORDS

10.01 Right to Inspect. The Developer shall prepare and maintain, or cause to be prepared and maintained, in accordance with generally accepted accounting principles consistently applied, appropriate books and records, reflecting all capital reserves, money received and all money disbursed by the Developer in connection with and related to the Hotel Project, Plaza Project and this Agreement, for a period of five (5) years after the termination of this Agreement. Without limiting the requirements of this Section, Developer will keep detailed accounts of all its expenditures on design, construction and furnishing of the Plaza Project. City and its duly appointed representatives shall have the right to examine, audit, and copy such books and records during business hours on seven (7) calendar days' notice in Bryan, Texas.

10.2 Contracts. Promptly following a written request by the City, Developer will deliver to the City copies of any or all contracts executed by Developer or any Developer Contractor in connection with performance of any or all of the Plaza Project.

10.3 Survival. Developer's obligations under this Article 10 will survive the expiration or earlier termination of this Agreement.

Article 11.

MISCELLANEOUS.

11.01. Current Revenues. The payment obligations of the City made hereunder shall be paid solely from lawfully available funds; that have been annually appropriated by City. Under no circumstances shall the obligations of City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

11.02 Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. Except with respect to an Affiliate Entity of Developer, Developer shall not assign this Agreement without the written approval of the City, until such time as all of the following events have occurred: (i) subject to events of force majeure, the Developer completes the Hotel Project and the Plaza Project within the Plaza Completion Deadlines; (ii) Developer submits to City the required affidavit of all bills paid for the Plaza Project; (iii) and Developer submits paid invoices to the City evidencing Developer's a total, combined minimum investment of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) in the Hotel Project and Plaza Project; (iv) All Required Permits for the Plaza Project and Certificates of Occupancy for the Hotel Project have been issued, and (v) the Developer is in compliance with all terms and conditions of the Agreement.

11.02.1 Written approval of the City is not required if the assignee is an Affiliate Entity of Developer..

11.02.2 In connection with any assignment permitted under this Agreement, such assignee shall agree in writing to assume all of the Developer's obligations under this Agreement, the Parking Space License Agreement and the Plaza License Agreement, and such written agreement shall be in a form reasonably

EXHIBIT 3

acceptable to the City, but such City approval shall not be unreasonably withheld, conditioned, or delayed, and shall be executed prior to or at the closing of the conveyance. The Developer shall promptly provide the City with a copy of the assignment instrument and assignee's written agreement to assume Developer's obligations under this Agreement.

11.03. Notices. Any notices sent under this Agreement shall be deemed served when delivered via certified mail, return receipt requested to the addresses designated herein or as may be designated in writing by the parties. Notice shall be given to the following:

If to City: City Manager
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

If to Developer: The Salle Hotel Management One, LLC:
c/o Kim Sallinger
4455 Camp Bowie Blvd, Suite 114-102
Fort Worth, Texas 76107

11.04 Estoppel Certificates. Either Party shall—at no cost to the requesting Party, from time to time, upon fifteen (15) days prior written request by the requesting Party—execute, acknowledge, and deliver to the requesting Party a certificate signed by an officer of the certifying Party stating that this Agreement is unmodified and in full force and effect (unless there have been modifications, in which case the certifying Party will state that this Agreement is in full force and effect as modified, and will set forth such modifications); stating the dates through which payments have been made; and either stating that, based on the knowledge of the signer of such certificate, no default exists under this Agreement, or specifying every default to which the signer has knowledge.

11.05 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

11.06. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.

11.07. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement and supersedes any prior understandings or

EXHIBIT 3

written or oral agreements between the parties.

11.08. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

11.09 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

11.10 No Waiver. Parties' failure to take action to enforce this Agreement in the event of the other Party's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent either Party from taking action to enforce this Agreement on subsequent occasions.

11.11 Independent Contractor. Developer, any consultants, contractors, subcontractors, and any other individuals employed by Developer shall be independent contractors and not agents of the City.

11.12 Incorporation of Recitals. The recitals contained in the preambles to this Agreement are true and correct and are hereby incorporated herein as part of this Agreement.

11.13. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.

11.14 Exhibits. Each of the following Exhibits is attached hereto and incorporated herein by this reference:

- Exhibit A Legal Description of the Property
- Exhibit B Project Requirements, Hotel Standards and Description of Services
- Exhibit C Parking License Agreement
- Exhibit D Plaza Legal Description
- Exhibit E General Description of the Plaza Project
- Exhibit F Plaza License Agreement

[Signature page to follow]

EXHIBIT 3

THE UNDERSIGNED AUTHORIZED REPRESENTATIVES OF THE PARTIES have executed this Agreement to be effective as of the Effective Date.

CITY OF BRYAN, TEXAS

THE SALLE HOTEL MANAGEMENT ONE, LLC

Andrew Nelson, Mayor

Kim Sallinger, President of Merit Realty Inc.,
Manager of The Salle Hotel Management One, LLC

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

ACKNOWLEDGMENT

STATE OF TEXAS }
 }
COUNTY OF TARRANT }

This instrument was acknowledged before me on the ___ day of _____, 2020 by Kim Sallinger, President of Merit Commercial Realty, Inc., Managing Member of The Salle Hotel Management One, LLC, a Texas limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

My Commission expires:

EXHIBIT "D"

LEGAL DESCRIPTION OF PLAZA

EXHIBIT "D"

LEGAL DESCRIPTION OF PLAZA

PLAZA

Portion of
27th Street Between
Main Street & Bryan Street
Old Townsite of Bryan
Volume H, Page 721
S. F. Austin Survey, A-62
Bryan, Brazos County, Texas

Field notes of a 100' x 88.9' tract or parcel of land, lying and being situated in the S. F. Austin Survey, Abstract No. 62, Bryan, Brazos County, Texas, and being that portion of 27th Street lying between Main Street and Bryan Street, according to the plat of the Original Townsite of Bryan, recorded in Volume H, Page 721, of the Deed Records of Brazos County, Texas, and being more particularly described as follows:

BEGINNING at the lead plug and tack found marking the northwest corner of Block 255;

THENCE N 08° 30' E across 27th Street for a distance of 88.9 feet to a lead plug and tack set;

THENCE S 81° 30' E adjacent to the south line of the La Salle Hotel, for a distance of 100.00 feet;

THENCE S 08° 30' W across 27th Street for a distance of 88.9 feet to the northeast corner of Block 255, a lead plug and tack found for reference bears S 81° 30' E - 1.5 feet;

THENCE N 81° 30' W along the north line of Block 255 for a distance of 100.00 feet to the **PLACE OF BEGINNING**.

Surveyed December 1999

By:



S. M. Kling
R.P.L.S. No. 2003



EXHIBIT "E"

GENERAL DESCRIPTION OF THE PLAZA PROJECT

**Exhibit "E".
General Description of the Plaza Project.**

General Description.

Plaza Project Plan needs to address the following programming:

Enhance the Hotel's Sense of Arrival with new signage and improve the ascetics of the archways entry's from Main Street and Bryan Street.

Add Plaza Exterior Lighting Package to Enhance Hotel Visibility and Ambiance.

Proportionately reduce the entry on both Main and Bryan Street by adding planters.

Landscape boxes, planters and beds for ground covers, seasonal color beds, lighted ornamental trees.

Fill in the current wrought iron fencing areas with solid structure to create privacy, wind block, water features and landscaping.

Reduce and designate a drive area to the south of the fountain for guest check in
Repair or replace the centerpiece fountain with a lighted water feature.

Designated walkways and paths directing patrons and guests to dining seating areas, front entry, and lounging areas.

Designate several areas of the Plaza for different dining areas programming should increase Seating Capacity 120+/-.

Designate parking area for the Food Truck/Trailer and designate Plaza Bar area.

EXHIBIT "F"
PLAZA LICENSE AGREEMENT

EXHIBIT "F"

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

PLAZA LICENSE AGREEMENT

THIS PLAZA LICENSE AGREEMENT, (the "License") is given and entered into this _____ day of _____, 2020, by and between the City of Bryan, a home-rule municipal corporation, organized and existing under the laws of the State of Texas ("Licensor") and The Salle Hotel Management One, LLC, a Texas limited liability company, ("Licensee"). Licensor and Licensee may be collectively referred to as "Parties" or individually as a "Party."

RECITALS

WHEREAS, Licensor owns the real property and improvements, being all of 27th Street between Block 255 and 256 of the Bryan Original Townsite, commonly referred to as the "Plaza", and more particularly described on Exhibit 1, attached hereto and incorporated herein by reference (the "Premises"), and which for the purposes of this License shall include the sub-surface, surface and air above the surface of the Premises; and shall exclude portions of 27th Street subject to the easement conveyed to the property on which the Howell Building is located, which is easement is more particularly described in Exhibit 2; and;

WHEREAS, Licensor desires to promote the redevelopment of the City of Bryan historic downtown area;

WHEREAS, Licensee is the owner of certain real property and improvements thereon located at 120 S. Main St., Bryan, Texas, known as the LaSalle Hotel, and more particularly described in Exhibit 3, attached hereto and incorporated herein by reference (the "LaSalle Hotel Property");

WHEREAS, the LaSalle Hotel is a historic property whose development has been critical to the redevelopment of the historic downtown business district; and

WHEREAS, Licensee desires to promote the economic development and redevelopment of the City of Bryan historic downtown area through the redevelopment of the LaSalle Hotel for hotel and commercial uses;

WHEREAS, Licensor previously entered into a Chapter 380 Economic Development Program Agreement with Licensee dated March 18, 2020 (the "Agreement"), for the redevelopment of the LaSalle Hotel (the "Hotel Project"), a true and correct copy of the Agreement is attached hereto and incorporated herein by reference as Exhibit 4; and

WHEREAS, the LaSalle Hotel is adjacent to the Premises, and Licensee desires access to the Premises for the use set out below; and

WHEREAS, in the Agreement, Licensor has agreed to give license to the Premises to Licensee subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions herein set forth and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. **Revocable License.** Licensor does hereby grant to Licensee a revocable license (the "License") to run with the LaSalle Hotel Property, as long as the LaSalle Property is operated as a "Hotel", as that term is defined in Section 3 below, to occupy and use the Premises solely for the purpose of conducting the Licensed Use, subject to the terms and conditions of this License. At all times, the Premises will be and remain owned by and titled in the Licensor. The License is only revocable upon termination of this License agreement in accordance with the provisions contained herein. During the Term of this License, Licensor agrees not to grant any other licenses, leases, easements, or similar grant of authority for the use or operation of the Premises that will interfere with Licensee's use and operation of the Premises.
2. **No Interest In Land.** Licensee understands, acknowledges and agrees that no legal title or any other interest in real estate will be deemed or construed to have been created or vested in Licensee by anything contained in this License, instead this License merely serves to give the Licensee the exclusive right to perform the acts herein stated upon the Premises. Licensee shall not attempt to act in any way beyond the scope of this License, which is intended to merely create a revocable privilege, to the extent provided herein, for the use of the Premises.
3. **Use of Premises.** This License is an exclusive license, granting rights and privileges to Licensee for the use and operation of the Premises as a Plaza which may include but is not limited to serving food and beverages, seating of guests, entertainment, or other outdoor function or benefit, to provide public access to the LaSalle Hotel Property in conjunction with the operation of a Hotel, as that term is defined herein, on the LaSalle Hotel Property ("Licensed Use"). For the purposes of this License, the term "Hotel" as it is used herein, means a temporary dwelling place for individuals where customary hotel services such as linen, maid service, telephone, and upkeep of furniture is provided. The term may also include accessory amenities such as a restaurant, bar, business center, or other amenity available for the use of guests of the hotel. For the purposes of this License agreement, the Licensee shall be deemed to be operating a hotel on the Property if more than 51% of the building space is being used for the operation of a hotel. The License is only revocable upon termination in accordance with the provisions contained herein. As long as this License remains in force, the City will not grant any other licenses, leases, easements, or similar grant of authority for the use or operation of the Premises or that will interfere with Licensee's use and operation of the Premises.
4. **Term and Termination.** This License shall commence upon the execution of this License by all Parties (the "Commencement Date") and unless sooner terminated as herein provided, shall exist and continue until such time as the LaSalle Hotel Property ceases to be operated as a Hotel, as that term is defined in Section 3 above, (the "Expiration Date"). Upon the Expiration Date, or in the event the License is terminated earlier, any improvements, structures, or fixtures thereon shall become the property of the Licensor without any obligation for reimbursement to Licensee.
5. **Consideration.** Licensee's performance of its obligations under the Agreement related to the Hotel Project and Plaza Improvements as defined in the Agreement, is consideration for this License.

6. **License Fee.** If the substantial completion of the Plaza Improvements and/or the Hotel Project (as defined in the Agreement) by Licensee has not occurred by the Plaza Completion Deadline and/or the Hotel Project Completion Deadline, respectively, as such deadline date(s) may be extended as a result of Force Majeure (as those terms are defined in the Agreement); Licensee shall pay a license fee (“License Fee”) to Licensor as consideration for this License in the amount of Three Thousand Five Hundred and NO/100 Dollars (\$3,500.00) per month. The License Fee shall commence on the earlier of the date of (i) the Plaza Completion Deadline, as may be extended for event(s) of Force Majeure, or (ii) the Hotel Project Completion Deadline, as may be extended for event(s) of Force Majeure. The License Fee shall continue until the Licensee has paid License Fees to Licensor in the total amount of Three Hundred Fifty Thousand and NO/100 Dollars (\$350,000.00), unless the License Fee is terminated sooner, as a result of the timely cure by Licensee of any breach of Licensee’s obligation to timely complete the Plaza Improvements and Hotel Project, in accordance with the terms set forth in the Agreement. Payments of the License Fee for any fractional calendar month shall be prorated.

7. **Holdover.** If Licensee remains in possession of the Premises after the termination of the License, Licensee shall become a tenant at sufferance upon the terms of this License and shall be required to pay a monthly fee equal to 150% of the License Fee. Licensee shall be responsible for all damages suffered by Licensor resulting from or occasioned by Licensee’s holding over, including consequential damages.

8. **Payments.** All payments required to be made to Licensor pursuant to this License shall be made without demand, abatement, deduction or set-off in lawful money of the United States of America and remitted to Licensor at the address set forth below (as the same may be changed by Licensor upon written notice from Licensor to Licensee):

City of Bryan
Fiscal Services Dept.
P.O. Box 1000
Bryan, Texas 77805

9. **Waiver of Liability and Indemnification.** Licensee warrants that it will reasonably attempt to prevent damage to property and limit injury to persons while on the Premises. Licensee waives any claim it may have against Licensor arising out of the use of this license or the Premises, and releases and exculpates Licensor from any liability in connection with Licensee’s use of the License or the Premises. **Licensee hereby agrees to indemnify, defend, and hold harmless Licensor, its elected officials, officers, agents, and employees from any claim of damage to property or injury to any person arising from Licensee’s use of this license or the Premises or a breach or default by Licensee in the performance of any of its obligations or agreements hereunder, unless caused solely by the willful misconduct or gross negligence of Licensor.** The provisions of this Section shall survive the expiration or earlier termination of this License.

10. **Insurance.**

(a) At all times during the term of this License, Licensee shall purchase and keep in force insurance policies as described in the Agreement, set forth in **Exhibit “2,”** which is attached hereto and made a part of this License Agreement by this reference.

(b) In addition, at all times during the Term, Licensee shall keep the Premises, including any structures, improvements or fixtures thereon, insured against any and all loss or damage, with extended coverage endorsement or its equivalent. Such insurance shall be carried by insurance companies, acceptable to Licensor, with an A.M. best rating of "A-VI" and shall be licensed to write insurance in Texas. Such insurance shall be for the full replacement cost of all property and improvements installed or placed in the Premises by Licensee, including structures, improvements, or fixtures thereon; and shall name Licensor as an additional insured. In the event of casualty or other covered loss, insurance proceeds shall first be used for the repair or replacement of any damaged portions of the Premises.

(c) Licensee shall, at least 10 days prior to the expiration of such policies, furnish Licensor with renewal certificates, Licensee shall furnish Licensor with certificates of insurance for each of the policies required by this License. The Licensee must provide Licensor with a minimum thirty (30) days prior written notice of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage. Following each renewal, Licensee shall provide renewed certificates of insurance.

11. **Maintenance and Repairs.** At all times while the License is in effect, Licensee shall keep and maintain, or cause to be kept and maintained, the Premises, and the Plaza Improvements which may be erected on the Premises (as defined in the Agreement), in a good state of appearance and repair, reasonable wear and tear excepted, at Licensee's sole expense. At all times while the License is in effect, Licensee shall cause the Premises to be properly operated and maintained. Licensee is responsible for providing all janitorial services for the Premises.

12. **Improvements and Alterations.**

(a) Licensee shall be responsible at its sole cost and expense for acquiring, delivering, constructing, and/or installing all improvements and alterations to the Premises that it deems necessary for its occupancy and use of the Premises for its intended purpose, except for any cost or expense of the City as specified in the Agreement during the term of the Agreement.

(b) Ownership of all improvements and alterations to the Premises constructed or installed by Licensee pursuant to this Section shall remain with Licensee until termination of this License at which time title and possession of those improvements and alterations shall transfer to Licensor without compensation to Licensee unless demand for their removal is given to Licensee by Licensor at least 90 days prior to the date of termination of this License. Should Licensee fail to remove said improvements, and/or equipment, the same may be sold, removed or demolished.

(c) Licensee may construct or install only those alterations and improvements to the Premises that Licensor has approved in advance in writing.

(d) Prior to the commencement of any such construction work, including any and all modifications to improvements or alterations already constructed or installed, and at all times thereafter, Licensee will procure, maintain and comply with applicable laws, rules and regulations and shall obtain all required permits, licenses, variances, authorizations and approvals.

(e) All such construction or installation work will be performed by licensed contractors. Licensee's contractors shall furnish all tools, equipment, labor and material necessary to perform and complete the work, and shall complete it in a good and workmanlike manner and with high quality material. Licensee will permit Licensor, its employees, agents, or contractors to inspect the Licensed Premises during the course of construction to conduct inspections, testing, and approvals of the work. If the construction work requires a permit such construction work shall remain accessible and exposed for inspection purposes until approved. No construction materials or debris may be stored in or on the Premises without express prior written consent of Licensor.

(f) Each of Licensee's contractors that performs work on or to the Premises must obtain and maintain insurance of the type and with coverage amounts set forth in **Exhibit "2"**, which is attached to and made a part of this License by this reference. All such contractors must indemnify, defend, and hold harmless the Licensor, its elected officials, officers, agents and employees against all claims, demands, liabilities, damages, attorney fees, costs, expenses, and losses arising from the performance by the contractors under their contracts including all costs to repair any damage to any part of the Premises.

(g) Licensee shall pay, or cause to be paid, all costs for work to be done by it, on the Premises, and for all materials furnished for or in connection with any such work, except for any work performed by the City. If any lien is filed against the Premises, Licensee shall begin the process of discharging the lien of record within thirty (30) days after Licensee receives written notice that such a lien has been filed. Licensee shall indemnify, defend and hold Licensor harmless from any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of liens or laborers or materialmen or others for work performed or materials or supplies furnished for Licensee or persons claiming under Licensee.

13. **Equipment and Other Personal Property.** Licensee shall provide all equipment, trade fixtures and other personal property required for the Licensed Use. Licensee shall repair, maintain and replace said equipment, trade fixtures and other personal property as is reasonably necessary, at its sole cost and expense. Without waving any lien rights it may have, statutory or otherwise, ownership of all equipment, trade fixtures and other personal property brought onto the Licensed Premises by Licensee shall at all times be by and remain with Licensee.

14. **Restoration.** In the event any Improvements on the Premises are damaged by fire or any other casualty. Licensee shall within six (6) months from the date of such damage or destruction or the distribution of the insurance proceeds insuring such property, whichever occurs first, begin to repair, reconstruct, or replace the damaged or destroyed improvement, and pursue the same with reasonable diligence so that the Plaza Improvements, to the extent originally constructed, shall be restored to substantially the condition it was in prior to the happening of the casualty; provided however, that if the commencement, construction, or completion of said repair, reconstruction, or replacement work shall be prevented or delayed by reason of war, civil commotion, acts of God, strikes, governmental restrictions, regulations, or interference, fire or other casualty, or any other reason beyond the control of Licensee, whether similar to any of those enumerated or not, the time for commencing or completing, or both, of the repair, reconstruction or replacement of such improvement, as the case may be, shall automatically be extended for the period of each such delay.

15. **Sanitation and Hazardous Materials.**

(a) No offensive matter or refuse or substance containing an unnecessary, unreasonable or unlawful fire hazard or material detrimental to the public health, shall be permitted or remain on the Premises, and Licensee shall prevent any accumulation thereof from occurring.

(b) Licensee shall not cause or permit any Hazardous Materials (as hereinafter defined) to be brought upon, kept, used, stored, handled, treated, generated in or about, or released or disposed of from, the Premises or the Property in violation of applicable legal requirements. The term "Hazardous Materials" shall mean any flammable material, explosives, radioactive materials, petroleum products, hazardous or toxic substances, or any waste or related materials, including without limitation anything included in the definition of "hazardous substances", "hazardous materials", "hazardous wastes", or "toxic substances" under any applicable federal, state or local law or regulation. If Licensee in any way causes, suffers or permits contamination of the Premises with Hazardous Materials, Licensor may terminate the License immediately.

16. **Default.** If Licensee breaches any material term of this License, such breach shall constitute an Event of Default. Upon the occurrence of an Event of Default, Licensor shall immediately notify Licensee in writing (the "Notice of Default") upon learning of the event of default. If the default is not cured within sixty (60) days of the Notice of Default, the Licensor shall have the right to terminate this License by delivering written notice of termination to the Licensee ("Notice of Termination"), which termination shall be effective thirty (30) days following delivery of such notice unless the Licensee shall cure such default within such additional thirty (30) day period. In the event, such default is uncured within such additional thirty (30) day period, this License shall be terminated effective thirty (30) days following the delivery of the Notice of Termination.

17. **Assignment.** Any assignment of this License must comply with the requirements as set forth in Sections 11.02 of the Agreement. Upon such assignment, the below Licensee shall be relieved of any liability first accruing or arising after the date of such Assignment. Written notice of any such assignment shall be provided to Licensor following the expiration of any feasibility or due diligence period for the proposed sale. The written acceptance and assumption of the obligations of this License Agreement by the subsequent owner must be executed at or before the closing of the sale. Certificates of insurance from the assignee must be provided within thirty (30) calendar days of closing. Any attempt to assign or transfer this License in conflict with the above provisions, shall be null and void.

18. **Notice.** No notice or demand required by this License shall be effective unless it is in writing and delivered personally or by certified mail return receipt requested to the address below:

Licensor:
City of Bryan
Attn: City Manager
P. O. Box 1000
Bryan, Texas 77805-1000

Licensee:
The Salle Hotel Management One, LLC
c/o Kim Sallinger
4455 Camp Bowie Blvd Suite 114-102
Fort Worth, Texas 76107

19. **Miscellaneous Provisions.**

(a) **Incorporation of Recitals.** The recitals contained in the preambles to this License are true and correct and are hereby incorporated herein as part of this Agreement.

- (b) **Exhibits.** All exhibits included herewith are incorporated by reference as if fully set forth herein.
- (c) **Entire Agreement.** This License set forth all the covenants, promises, agreements, conditions, and understandings between Licensor and Licensee concerning the License Area. Licensee shall make no claim on account of any alleged representations contained in prior discussions, correspondence, or other documents, not set forth in this License.
- (d) **Amendment.** This License shall not be altered, amended, or changed except by a written document executed by Licensor and Licensee.
- (e) **No Waiver.** Either Party's failure to enforce or delay in enforcing any of the provisions, rights, or remedies in this License shall not be a waiver nor in any way affect the validity of this License or any part hereof, or the right of the other Party to enforce each and every provision, right, or remedy contained herein. No waiver of any breach of any provision of this License shall be held to be a waiver of any other subsequent breach of the same or any other provision.
- (f) **Governing Law.** This License shall be governed pursuant to the laws of the State of Texas. Venue for any dispute arising out of this License shall be in any court having jurisdiction in Brazos County, Texas.
- (g) **Legal Construction.** In case any one or more of the provisions contained herein shall for any reason be held invalid, illegal, or unenforceable by a court of law, such invalidity, illegality, or unenforceability shall not affect any other provision of this License and it shall be construed as if such terms were not contained herein. The Parties acknowledge that both are represented by counsel and both have had ample opportunity to review the provisions contained herein and therefore neither Party shall have any ambiguities resolved in their favor.
- (h) **Warranty of Authority.** Each Party represents and warrants that the person signing this Agreement is authorized to do so on behalf of the entity that this License so binds, and if it is a limited liability company or corporation, that the Party has full right and authority to enter into this License and to perform all obligations hereunder.
- (i) **No Other Licenses.** This License replaces that certain Plaza License Agreement with LS HOTEL MANAGEMENT, LLC, dated July 10, 2013 which License expired effective October 13, 2015, under the terms of Article XI (g) of that License Agreement, and said License is now null and void.
- (j) **Time is of the Essence.** The dates and deadlines contained herein are material and time is considered of the essence.

[Signature Page to Follow]

THE UNDERSIGNED AUTHORIZED REPRESENTATIVES OF THE PARTIES have executed this Agreement to be effective as of the Effective Date.

CITY OF BRYAN, TEXAS

THE SALLE HOTEL MANAGEMENT ONE, LLC.

Andrew Nelson, Mayor

Kim Sallinger, President of Merit Commercial Realty, Inc.,
Managing Member of The Salle Hotel Management One,
LLC

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

ACKNOWLEDGMENT

STATE OF TEXAS }
 }
COUNTY OF BRAZOS }

This instrument was acknowledged before me on the ___ day of _____, 2020 by Kim Sallinger, President of Merit Commercial Realty, Inc., Managing Member of The Salle Hotel Management One, LLC, a Texas limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

My Commission expires:

EXHIBIT 1

LEGAL DESCRIPTION OF THE PREMISES

PLAZA

Portion of
27th Street Between
Main Street & Bryan Street
Old Townsite of Bryan
Volume H, Page 721
S. F. Austin Survey, A-62
Bryan, Brazos County, Texas

Field notes of a 100' x 88.9' tract or parcel of land, lying and being situated in the S. F. Austin Survey, Abstract No. 62, Bryan, Brazos County, Texas, and being that portion of 27th Street lying between Main Street and Bryan Street, according to the plat of the Original Townsite of Bryan, recorded in Volume H, Page 721, of the Deed Records of Brazos County, Texas, and being more particularly described as follows:

BEGINNING at the lead plug and tack found marking the northwest corner of Block 255;

THENCE N 08° 30' E across 27th Street for a distance of 88.9 feet to a lead plug and tack set;

THENCE S 81° 30' E adjacent to the south line of the La Salle Hotel, for a distance of 100.00 feet;

THENCE S 08° 30' W across 27th Street for a distance of 88.9 feet to the northeast corner of Block 255, a lead plug and tack found for reference bears S 81° 30' E - 1.5 feet;

THENCE N 81° 30' W along the north line of Block 255 for a distance of 100.00 feet to the **PLACE OF BEGINNING**.

Surveyed December 1999



By:

S. M. Kling
R.P.L.S. No. 2003

EXHIBIT 2
Page 1 of 3 Pages

METES AND BOUNDS DESCRIPTION
OF A
1988 SQUARE FOOT TRACT
CITY OF BRYAN
BRYAN, BRAZOS COUNTY, TEXAS

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OF LAND LYING AND BEING SITUATED IN BRYAN, BRAZOS COUNTY, TEXAS, SAID TRACT BEING A PORTION OF LOT 4, BLOCK 255, A PORTION OF THE RIGHT-OF-WAY OF BRYAN AVENUE, A PORTION OF THE RIGHT-OF-WAY OF MAIN STREET AND A PORTION OF THE CLOSED RIGHT-OF-WAY OF 27TH STREET, CITY OF BRYAN, ACCORDING TO THE PLAT RECORDED IN VOLUME H, PAGE 721 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS.

SAID TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A POINT MARKING THE NORTHWEST CORNER OF LOT 5, BLOCK 255, SAID POINT MARKING THE INTERSECTION OF THE EAST LINE OF BRYAN AVENUE AND THE SOUTH LINE OF 27TH STREET;

THENCE: N 40° 14' 09" W THROUGH THE CLOSED RIGHT-OF-WAY OF 27TH STREET FOR A DISTANCE OF 6.44 FEET TO A POINT MARKING THE POINT OF BEGINNING OF THIS HEREIN DESCRIBED TRACT;

THENCE: THROUGH THE CLOSED RIGHT-OF-WAY OF 27TH STREET FOR THE FOLLOWING CALLS:

S 85° 17' 00" E FOR A DISTANCE OF 19.50 FEET TO A POINT;

N 04° 43' 00" E FOR A DISTANCE OF 6.00 FEET TO A POINT;

S 85° 17' 00" E FOR A DISTANCE OF 41.50 FEET TO A POINT;

S 04° 43' 00" W FOR A DISTANCE OF 7.50 FEET TO A POINT;

S 85° 17' 00" E FOR A DISTANCE OF 23.00 FEET TO A POINT;

N 04° 43' 00" E FOR A DISTANCE OF 1.50 FEET TO A POINT;

S 85° 17' 00" E FOR A DISTANCE OF 26.00 FEET TO A POINT IN THE RIGHT-OF-WAY OF MAIN STREET;

THENCE: THROUGH THE RIGHT-OF-WAY OF MAIN STREET FOR THE FOLLOWING CALLS;

S 04° 43' 00" W FOR A DISTANCE OF 4.20 FEET TO A POINT;

S 85° 17' 00" E FOR A DISTANCE OF 5.80 FEET TO A POINT;

S 04° 43' 00" W FOR A DISTANCE OF 52.28 FEET TO A POINT;

N 85° 10' 19" W FOR A DISTANCE OF 5.80 FEET TO A POINT;

S 04° 43' 00" W FOR A DISTANCE OF 3.50 FEET TO A POINT;

THENCE: CONTINUING THROUGH THE RIGHT-OF-WAY OF MAIN STREET AND THROUGH SAID LOT 4 FOR THE FOLLOWING CALLS:

N 85° 10' 19" W FOR A DISTANCE OF 26.00 FEET TO A POINT;

EXHIBIT 2
Page 2 of 3 Pages

N 04° 43' 00" E FOR A DISTANCE OF 1.50 FEET TO A POINT;

N 85° 10' 19" W FOR A DISTANCE OF 58.00 FEET TO A POINT;

S 04° 43' 00" W FOR A DISTANCE OF 1.50 FEET TO A POINT;

N 85° 10' 19" W FOR A DISTANCE OF 26.00 FEET TO A POINT IN THE RIGHT-OF-WAY OF BRYAN AVENUE;

THENCE: THROUGH THE RIGHT-OF-WAY OF BRYAN AVENUE FOR THE FOLLOWING CALLS:

N 04° 43' 00" E FOR A DISTANCE OF 26.00 FEET TO A POINT;

S 85° 10' 19" E FOR A DISTANCE OF 3.50 FEET TO A POINT;

N 04° 43' 00" E FOR A DISTANCE OF 7.76 FEET TO A POINT;

N 85° 17' 00" W FOR A DISTANCE OF 3.50 FEET TO A POINT;

N 04° 43' 00" E FOR A DISTANCE OF 26.00 FEET TO THE POINT OF BEGINNING CONTAINING 6988 SQUARE FEET OF LAND, SAVE AND EXCEPT 5000 SQUARE FEET, BEING ALL OF LOT 5, BLOCK 255, LEAVING A TOTAL OF 1988 SQUARE FEET OF LAND. BEARING SYSTEM SHOWN HEREIN IS BASED ON GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION.

BRAD KERR
REGISTERED PROFESSIONAL
LAND SURVEYOR No. 4502

D:\WORK\MAB\04-0004A.MAB

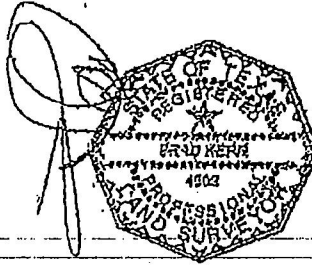
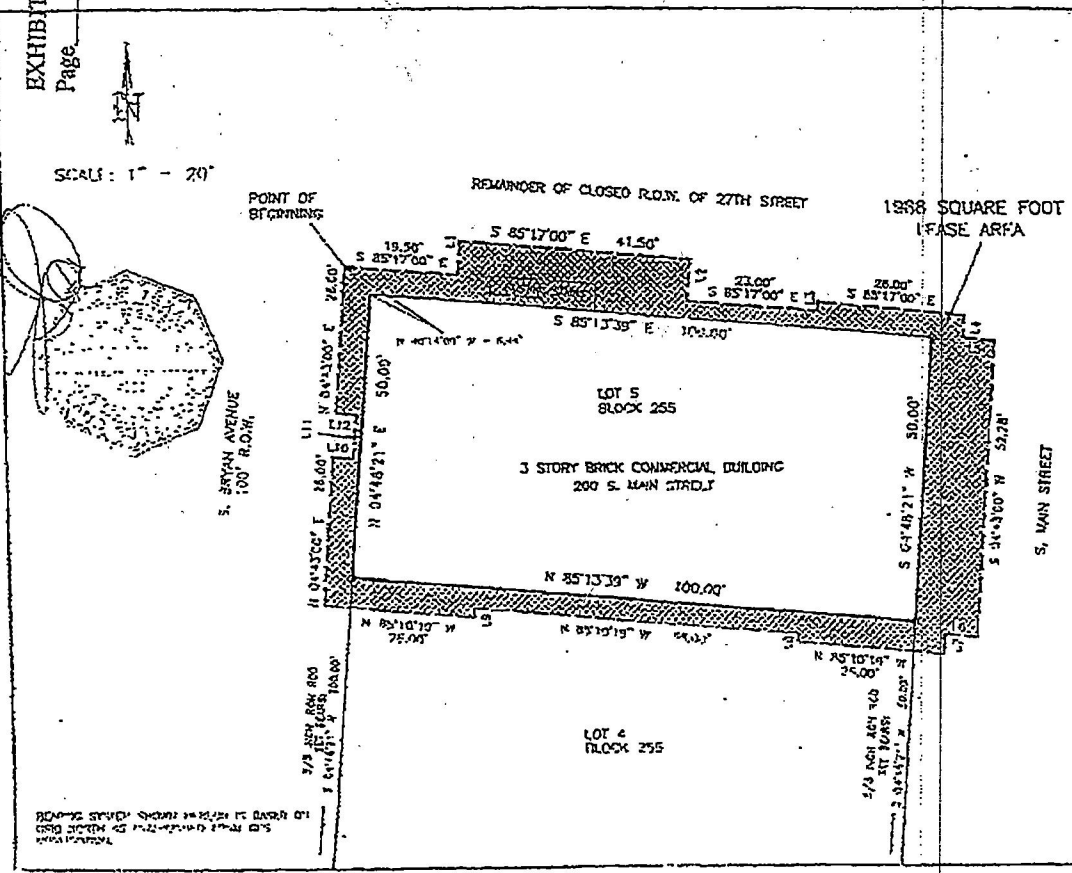


EXHIBIT
 Page 3 of 3 Pages



LINE	DISTANCE	BEARING
L1	6.00'	N 04°43'00" E
L2	7.50'	S 04°43'00" W
L3	1.50'	N 04°43'00" E
L4	4.00'	S 04°43'00" W
L5	5.80'	S 85°17'00" E
L6	5.80'	N 85°10'19" W
L7	3.50'	S 04°43'00" W
L8	1.50'	N 04°43'00" E
L9	1.50'	S 04°43'00" W
L10	3.50'	S 85°10'19" E
L11	7.76'	N 04°43'00" E
L12	3.50'	N 85°17'00" W

LAND BOUNDARY SURVEY PLAT
 OF A
 1988 SQUARE FOOT LEASE AREA
 SURROUNDING LOT 5, BLOCK 255
 CITY OF BRYAN
 VOLUME H, PAGE 721
 BRYAN, BRAZOS COUNTY, TEXAS

SCALE: 1" = 20 FEET
 SURVEY DATES: 01-07-04
 PLAT DATE: 02-08-04
 JOB NUMBER: 04-2004
 CIP NUMBER: 04-0004A

PREPARED BY: KERR SURVEYING, LLC
 505 ECHOLS STREET, P.O. BOX 279
 COLLEGE STATION, TEXAS 77841
 PHONE: (979) 268-3115

EXHIBIT 3

Legal Description of LaSalle Hotel Property

Being all that certain tract or parcel of land lying and being situated in the Stephen F. Austin League, Abstract 62, Brazos County, Texas, and being the south 40.00 feet of Lot 1 and the adjoining 11.00 feet of the 27th right-of-way of Block 256 of the Original Townsite of the City of Bryan, Brazos County, Texas, according to a plat recorded in Volume "H", Page 721, Deed Records of Brazos County, Texas, and being described as follows:

BEGINNING at an "X" in concrete found at the most westerly common corner of this tract and the Blmo and Marvelyn Neal, Sr. 2200 S.F. tract (1895/102), same being in the east right-of-way line of Bryan Avenue;

THENCE S 85° 02'31" E - 100.22 feet across said Lot 1 along the wall on the common line between this tract and said Neal tract to a concrete nail found at the most easterly common corner of said tracts, same being in the west right-of-way line of S. Main Street;

THENCE S 4° 49'23" W - 51.00 feet along said Main Street line and into said 27th Street right-of-way line to a 60dp. nail found for the southeast corner of this tract;

THENCE N 85° 02'30" W - 100.15 feet thru said 27th Street line to an "X" in concrete found for the southwest corner of this tract;

THENCE N° 45° 00" E - 51.00 feet thru said 27th Street right-of-way and along said Bryan Avenue line to the Place of Beginning, and containing 0.117 acres of land, more or less, according to a survey made on the ground under the supervision of Donald D. Garrett, Registered Professional Land Surveyor No. 2972 on March 23, 2000.

EXHIBIT 4

**CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
BETWEEN
THE CITY OF BRYAN, TEXAS
AND
THE SALLE HOTEL MANAGEMENT ONE, LLC**

This Chapter 380 Economic Development Program Agreement (“Agreement”) is made and entered into by and between The Salle Hotel Management One, LLC, a Texas Limited Liability Company (“Developer”) and the City of Bryan, Texas, a home-rule municipal corporation organized under the laws of the State of Texas (“City”). City and Developer may be collectively referred to as “Parties” or individually as a “Party”.

RECITALS:

WHEREAS, the La Salle Hotel, located at 120 S. Main St., is locally designated as a landmark by the City of Bryan, is listed as a Texas Historic Landmark (RTHL#12883), and is on the National Registry of Historic Places (NR#00000555); and is of significant historical, architectural, and cultural importance to the City; and

WHEREAS, the La Salle Hotel has been and remains a key component of the revitalization of downtown Bryan; and

WHEREAS, Developer desires to acquire the La Salle Hotel, and invest approximately 2.5 million dollars into the revitalization of the La Salle, to transform it into a Four Star historic boutique hotel (the “Hotel Project”), and the adjacent City-owned Plaza (the “Plaza Project”); and

WHEREAS, to make the Hotel Project viable, the Developer is seeking assistance from the City to include permit fee waivers; assistance in obtaining staggered Bryan Texas Utilities SmartBUSINESS Program incentives not to exceed \$30,000 in year one (1) and not to exceed \$30,000 in year two (2); façade improvement and life safety reimbursement grants in the combined total of \$100,000; ten (10) exclusive, off-site parking spaces and 30 non-exclusive parking spaces; a grant in the amount of \$420,000.00 for improvements to be made by Developer to the “Plaza Project” and a Plaza Landscape and Maintenance Grant not to exceed \$36,000 annually for a period of three (3) years; and

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

WHEREAS, the City Council finds the revitalization of the La Salle Hotel will expand the ad

EXHIBIT 4.

valorem and sales tax base, create jobs, bolster tourism, stimulate business and commercial activity, and spur economic development in the entire Downtown area; and

WHEREAS, the City Council hereby establishes a Chapter 380 economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Developer and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement; and

WHEREAS, the City Council has determined 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 public purpose is accomplished;

NOW THEREFORE, the City and Developer, for and in consideration of the mutual covenants and promises contained herein, do hereby agree, covenant and contract as set forth below:

Article 1.

DEFINITIONS.

1. Capitalized terms used in this Agreement which are not otherwise defined herein shall have the meanings set forth below:

“Affiliate Entity” means any person or entity which directly or indirectly controls, is controlled by or is under common control with Developer, during the term of such control. A person or entity will be deemed to be "controlled" by any other person or entity if such other person or entity (a) possesses, directly or indirectly, power to direct or cause the direction of the management of such person or entity whether by contract or otherwise, (b) has direct or indirect ownership of at least fifty percent (50%) of the voting power of all outstanding shares entitled to vote at a general election of directors of the person or entity or (c) has direct or indirect ownership of at least fifty percent (50%) of the equity interests in the entity.

“Assumption Agreement” shall have the meaning set forth in Section 3.01(K) of this Agreement.

“BCAD Value” means the appraised value of the real property, improvements and related personal property certified by the Brazos Central Appraisal District as of January 1st for a given tax year.

“Bryan Texas Utilities SmartBUSINESS Program” means a program to encourage customers to invest in energy efficient improvements for their businesses, focusing on reducing the current demand of any

measure by a minimum of 20%, as such program may be amended in the future.

“Closing” or “Close” means generally the execution and delivery of those documents and funds necessary to effect the sale and the transfer of the title of the Property from the seller to Developer.

“Closing Date” means the date on which the Closing occurs, which date shall be by or before 90 days from the Effective Date of this Agreement.

“Plaza Commencement Deadline” shall have the meaning set forth in Section 4.01(F) of this Agreement.

“Construction Budget” shall mean a budget projecting the cost of the Plaza Project in accordance with the Plans and Specifications and reflecting Final Completion of the Plaza Project by the Developer by the Plaza Completion Deadline.

“Construction Schedule” shall mean a schedule for construction of the Plaza Project in accordance with the Plans and Specifications, which schedule shall reflect Final Completion of the Plaza Project by the Developer by the Plaza Completion Deadline.

“Defective Work” means all work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not conform to the approved Plans and Specifications.

“Deliverables” means any and all reports, records, documents, documentation, information, supplies, plans, original drawings, specifications, computations, sketches, renderings, arrangements, videos, pamphlets, advertisements, statistics, and other data, computer tapes, computer software, and other tangible work product or materials prepared or developed by Developer or by any engineer, architect, landscape architect, designer or other consultant engaged by Developer pursuant to this Agreement. “Deliverables” includes the Plans and Specifications.

“Effective Date” means March 18, 2020.

“Eligible Expenditures” means the Improvement costs of the Plaza Project. All such costs must be costs generated by and attributable to third-party vendors. An Eligible Expenditure billed to an Affiliate Entity of Developer will be an Eligible Expenditure to the extent of the third-party cost and not include any mark-up or profit margin for the Developer’s Affiliate Entity.

EXHIBIT 4.

“FF&E” means movable furniture, fixtures, equipment, machinery and other personal property to be installed or located by Developer within the Plaza.

“Final Completion” shall mean that the Plaza Project has been substantially completed consistent with the Plans and Specifications.

“Grant Funds” shall have the meaning set forth in Section 4.02 (B) of this Agreement.

“Hotel Project” means the construction, renovation, repair and improvement of the Property by Developer with physical features, finishes, furnishings, and amenities consistent with a Four Star, historic boutique hotel; and in compliance with the “Project Requirements, Hotel Standards and Description of Services” attached to this Agreement as Exhibit “B”, and all other terms and conditions of this Agreement.

“Hotel Project Completion Deadline” shall have the meaning set forth in Section 3.01 (B) of this Agreement.

“Improvements” means landscaping, hardscape, and real property improvements.

“Laws” shall mean all applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations, guidelines, standards, judgments, orders, and/or decrees.

“Maximum Reimbursement Amount” shall have the meaning set forth in Section 4.02 (E). of this Agreement.

“Notice of Default” shall have the meaning set forth in Section 9.01 of this Agreement.

“Parking Space License Agreement” shall have the meaning set forth in Section 3.02 (D) of this Agreement.

“Payment Request” shall have the meaning set forth in Section 4.02 (C).

“Periodic Payments” shall have the meaning set forth in Section 4.02 (E) of this Agreement.

“Plans and Specifications” means the plans and specifications for the Plaza Improvements approved by the City.

“Plaza” means the City-owned plaza adjacent to the Property, being all of 27th Street between Block 255

EXHIBIT 4

and 256 of the Bryan Original Townsite, as more particularly described in **Exhibit "D"**.

"Plaza Commencement Date" shall have the meaning set forth in Section 4.01(F) of this Agreement.

"Plaza Commencement Deadline" shall have the meaning set forth in Section 4.01(F) of this Agreement.

"Plaza Completion Date" shall have the meaning set forth in Section 4.01(F) of this Agreement.

"Plaza Completion Deadline" shall have the meaning set forth in Section 4.01(F) of this Agreement.

"Plaza License Agreement" shall have the meaning set forth in Section 4.02(A) of this Agreement.

"Plaza Improvements" means the Improvements to be installed and constructed within the Plaza by the Developer in accordance with the approved Plans and Specifications, as generally described in **Exhibit "E"**. The Plaza Improvements shall not include FF&E.

"Plaza Project" means the design, construction, and installation by Developer of the Plaza Improvements within the Plaza, in compliance with all applicable Laws, and all other terms and conditions of this Agreement.

"Pre-Construction Payment" shall have the meaning set forth in Section 4.02 (D) of this Agreement.

"Project Budget" means the budget the Parties have established for the Plaza Project.

"Project Schedule" means the schedule for completing the design, commencing construction, and completing construction of the Plaza Project.

"Property" means the real property and improvements located at 120 S Main St, Bryan, Texas, known as the LaSalle Hotel, and more particularly described in **Exhibit "A"**.

"Required Permits" shall mean all permits required by the Laws, for construction and use of the Project.

"Qualified Expenditures" shall have the meaning contained in Section 3.01(D) of this Agreement.

"Site Plan" means the overall site development plan for the Plaza site, depicting the positioning of all exterior improvements on the Plaza site as they are planned to exist after the Plaza Project is complete, and identifying new exterior improvements or renovations to be accomplished as part of the Plaza Project.

EXHIBIT 4.

Article 2.

TERM

2.01 This term of this Agreement shall commence on the Effective Date and will continue for a period of ten (10) years (“Term”), unless sooner terminated in accordance with the terms of this Agreement.

Article 3.

HOTEL PROJECT

3.01 Developer’s Obligations.

- A. Condition Precedent. Developer’s purchase of the Property is a condition precedent to the City’s obligations under this Agreement. Developer shall Close on the Property within 90 days of the Effective Date of this Agreement, and the failure of Developer to do so shall result in the automatic and immediate termination of this Agreement.
- B. Renovations. Developer shall design, develop, construct, equip, furnish and fully complete the Hotel Project, at its sole cost, in compliance with all applicable Law, and obtain any required certificates of occupancy within twelve (12) months of the Closing Date (Hotel Project Completion Deadline).
- C. Certificate of Appropriateness. It shall be the responsibility of Developer to apply for and obtain any necessary certificates of appropriateness from the City of Bryan Historic Landmark Commission prior to commencement of work on the Hotel Project.
- D. Minimum Investment. Developer will cause to be invested at least Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) in expenditures for hard and soft costs for the Hotel Project and the Plaza Improvements, excluding Property acquisition costs, (the “Qualified Expenditures”) within eighteen (18) months of the Closing Date. Only such expenditures incurred after the Closing Date may be Qualified Expenditures. Within six (6) months of completion of the Hotel Project and Plaza Project, Developer shall submit paid invoices to the City for the Qualified Expenditures in a total minimum amount of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) as evidence of Developer’s satisfaction of the minimum investment requirement.
- E. Taxable Value. The BCAD Value of the Property for the tax year 2021 (January 1, 2022), as shown on the Brazos Central Appraisal District appraisal rolls, shall be at least \$3,200,000.00, as of July 1, 2022; and the Property must maintain a minimum BCAD value of at least \$3,200,000.00 throughout the remainder of the Term of this Agreement.
- F. Timely Payment of Ad Valorem Taxes. Developer shall not allow the ad valorem taxes owed to the City on the Property or any real property owned or possessed by the Developer and located in the City of Bryan to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal during the Term of this Agreement. Nor shall Developer fail to render for taxation any personal property owned by Developer and located on the Property during the Term of this

EXHIBIT 4.

Agreement. In the event, that any ad valorem taxes are assessed on the business personal property of the Developer located within the Plaza, payment shall be the responsibility of Developer, and shall be paid when due, as such date may be extended to allow for any protest of valuation or appeal during the Term of this Agreement.

G. Hotel Operating Standards. Commencing no later than twelve (12) months after the completion of the Hotel Project and the issuance of all required certificates of occupancy, Developer shall at all times, for the remainder of the Term of this Agreement, operate or cause the Property to be operated consistent with the industry standards of quality and service to be expected in a Four Star historic boutique hotel, and in compliance with the "Project Requirements, Hotel Standards and Description of Services" attached to this Agreement as Exhibit "B". During the term of the Agreement, should the City believe the Developer is in non-compliance with this section, the City may request in writing to meet with Developer within a reasonable time, to discuss the non-compliance, and the Developer may need to take action to bring the Hotel into compliance with the requirements of this Agreement.

H. Hotel Occupancy Taxes. The Property must receive hotel occupancy revenues of at least Seventy Thousand Dollars (\$70,000.00) for the twelve (12) month period following the expiration of twenty-four (24) months from the Closing Date, and for each twelve (12) month period thereafter, commencing on the anniversary of the Closing Date, for the Term of this Agreement.

I. Hotel Occupancy Tax Returns. Developer shall timely file its hotel occupancy tax return(s) with City (in a form prescribed by City from time to time) and timely pay its applicable tax. Developer shall include therein a copy of the Hotel's tax report submitted to the State Comptroller's office for Hotel Occupancy Tax Revenue.

J. Taxable Sales. The Property must achieve at least One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) in gross taxable sales for the twelve (12) month period, following the expiration of twenty-four (24) months from the Closing Date, and for each twelve (12) month period thereafter, commencing on the anniversary of the Closing Date, for the Term of this Agreement. If due to market conditions, Developer is unable to meet the Taxable Sales benchmark of \$1,750,000.00 in gross taxable sales for any twelve (12) month period, Developer may avoid an event of default by paying to the City, the City's remaining proportionate share of the sales tax (1.5%) on the projected gross taxable sales amount of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00), within thirty (30) days of receipt of notice of deficiency by the City.

K. Restrictions Against Disposition of Property. With the exception of an Affiliate of the Developer, Developer shall not assign, sell, transfer, or convey the Property to any third party during the Term of this Agreement without the prior written consent of the City, until such time as the following events have occurred: (i) Completion of the Hotel Project and Plaza Project; (ii) Submittal by Developer to City of an Affidavit of all Bills Paid for the Plaza Project; (iii) submittal by Developer of paid invoices Developer's compliance with the Minimum Investment Requirements of Section of this Agreement; (iv) all Required Permits for the Plaza Project are issued and all necessary Certificates of Occupancy for the Hotel Project have been issued for the Hotel Project; and (v) Developer is currently in compliance with all terms and conditions of the Agreement. In connection with the assignment, sale, transfer or conveyance of the

Exhibit 4

Property by Developer, the counterparty to such disposition shall agree to assume all obligations of Developer under this Agreement, the Plaza License Agreement, and the Parking Space License Agreement, accruing from and after the execution date of such disposition by a written agreement executed at or before the closing of the conveyance, in a form reasonably acceptable to the City (the "Assumption Agreement"), and such approval shall not be reasonably withheld, to which the City is either a party or in which the City is specified to be a beneficiary, a copy of which Assumption Agreement shall be promptly provided to the City following the disposition to evidence the assignment and assumption in question. The provisions of this Section shall not apply to Mortgages.

L. Covenant Not to Employ 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 2265.052 of the Texas Government Code, if Developer is convicted of a violation under 8 U.S.D. Section 1324a(f), Developer shall repay to the City the fees waived as provided in Section 9.03 of this Agreement, plus 10% per annum from the date the reimbursement as made. Repayment shall be paid within 120 days after the date Developer is convicted of a violation under U.S.D. Section 1324a(f).

3.02 City's Obligations:

A. Waiver of Permit Fees. The City agrees to waive all fees for building, mechanical, plumbing, or electrical permits during the term of this Agreement, up to a combined total, not-to-exceed amount of Twenty Thousand Dollars (\$20,000.00), subject to the City's right of recapture contained in Section 9.03 of this Agreement. The City shall maintain a running list of the permit fees waived under this Agreement.

B. Bryan Texas Utilities SmartBUSINESS Program. The City agrees to assist in obtaining staggered BTU SmartBUSINESS program incentives not to exceed \$30,000 in year one (1) and not to exceed \$30,000 in year two (2).

C. Façade Improvements and Life Safety Grants. City agrees to grant Developer a combined total amount of up to One Hundred Thousand Dollars (\$100,000.00) in reimbursements for qualified façade and life safety improvements made by Developer to the Property under the terms and conditions of the Downtown Façade Improvement Program (Resolution No. 3582), as may be amended and the Downtown Life Safety Grant Program (Resolution No. 3725), as may be amended. Developer shall follow the application, approval and payment processes of the Downtown Façade Improvement and Life Safety Grant Programs, excluding additional City Council approval. Payment of these grants are contingent upon Developer being in compliance with the terms, conditions, and benchmarks set forth in this Agreement.

D. Parking. The City agrees to provide, at no cost to Developer, a license for ten (10) exclusive off-site parking spaces and thirty (30) non-exclusive parking spaces to serve the Property, in the form attached hereto as **Exhibit "C"**. The License shall be contingent upon the Developer being in compliance with the terms and conditions of the License; and at all times during the term of the Agreement, being in compliance with the terms, conditions, and benchmarks set forth in this Agreement. The parking spaces shall be located in the city-owned lot, located at 200 S. Main Street. The City shall retain the right to temporarily relocate the licensed parking spaces, if necessary, to a temporary new location within a reasonable distance from

EXHIBIT 4.

the Property, but in no event further than 3 blocks from the Property. The City shall assist the Developer to secure up to forty-five (45) parking spaces located in the Downtown Parking garage. If for whatever reason any of these parking spaces are not available as the Developer needs them, the City agrees to make the parking spaces available in a different location within a reasonable distance from the property but in no event further than three blocks from the Property.

E. Plaza Landscape and Maintenance Grant. Subject to Developer's performance of its obligations as required by this Agreement, the City agrees to reimburse Developer up to Thirty-Six Thousand Dollars (\$36,000.00) annually for landscape and maintenance costs incurred by Developer for the Plaza (the "Plaza Landscape and Maintenance Grant) for a period of three (3) years; with the first Plaza Landscape and Maintenance Grant payment commencing twelve (12) months after the Closing Date. The City shall make the annual Plaza Landscape and Maintenance Grant payments within thirty (30) days of receipt of an invoice from the Developer. The Plaza Landscape and Maintenance Grant shall terminate upon assignment of this Agreement.

Article 4.

PLAZA PROJECT.

4.01 Developer's Obligations:

A. Design and Construction of Plaza Improvements. Developer agrees to design, construct, and furnish or cause to be designed, constructed, and furnished, the Plaza Improvements in accordance with the Plans and Specifications mutually approved by the Developer and City.

B. Consultants. Developer shall engage all engineers, architects, landscape architects, design professionals or other consultants, as needed, to design and prepare the Plans and Specifications for the Plaza Project. All Deliverables prepared for the Plaza Project pursuant to the foregoing engagement agreements, shall be the property of the Developer and the City of Bryan.

C. City Cooperation. Developer agrees to work together with the City's Development Services staff in the development of a design plan for the Plaza Project. The Developer acknowledges that this cooperative effort is in addition to, and not in lieu of, any plan review or Required Permits under applicable Laws, and it shall not be deemed a warranty or representation of any kind by the City that the Developer's proposed design plans comply with, or are approved under applicable Laws.

D. City Approval. Developer shall submit the Site Plan and the Plans and Specifications for the Plaza Project to the City for review and approval. The Developer agrees to comply with all applicable legal requirements of the City and any other agencies having jurisdiction. No material modifications to the Plans and Specifications for the Plaza Project may be made without review and approval of the City. The City shall expedite all review processes, and approvals shall not be unreasonably withheld or delayed.

E. Required Submittals. No construction may commence on the Plaza Project until: (i) the Developer has submitted to the City and the City has approved the Project Schedule, Project Budget and the Plans

EXHIBIT 4.

and Specifications associated with the Plaza Project; (ii) all Required Permits for construction are obtained by Developer; and (iii) all requirements in regard to bonds and insurance have been satisfied. The City agrees to review and act on the submittals in an expedited manner. Approvals shall not be unreasonably delayed or withheld.

F. Commencement and Plaza Completion Dates and Deadlines. Developer shall commence construction on the Plaza Project within 180 days of the Closing Date ("Plaza Commencement Deadline") and shall complete construction no later than twelve (12) months after all Required Permits are issued (the "Plaza Completion Deadline"), subject to Force Majeure as defined in this Agreement. The date of commencement of construction (the "Plaza Commencement Date") shall be determined by the occurrence of the City's approval of the Site Plan for the Plaza and the City's receipt of correspondence from the general contractor for the Plaza Project certifying that construction has commenced. The date of completion of construction (the "Plaza Completion Date") shall be determined by the occurrence of all of the following events: (i) receipt by the City of written notice from Developer certifying that all Plaza Improvements are complete in accordance with the Plans and Specifications and are ready for final inspection; (ii) if the construction of any of the Plaza Improvements requires any engineering design services, receipt by the City of a certification letter from the design engineer, sealed with the engineer's professional seal, certifying that the Plaza Improvements were constructed according to the specifications required by the engineer's design; and (iii) Final inspections and approval of all Required Permits for the Plaza Improvements.

G. Payment and Performance Bonds. Prior to commencing any work on the Plaza Project, Developer will obtain and deliver to City, at no cost to City, payment and performance bonds on forms approved by the City Attorney and otherwise acceptable to City, as follows:

(1) A performance bond in a sum equal to one hundred percent (100%) of the anticipated amount be paid for the Plaza Project pursuant to the Project Budget and this Agreement. The performance bond must guarantee the full and faithful execution of the work and performance of Developer's obligations in this Agreement and must guarantee completion of the Plaza Improvements. The Performance Bond shall remain in full force and effect until the Plaza Completion Date of the Plaza Project.

(2) A payment bond with Developer's contractor or contractors as principal, in a sum equal to one hundred percent (100%) of the anticipated amount to be paid for the Plaza Project pursuant to the Project Budget and this Agreement. The Payment Bond shall remain in full force and effect until Final Completion to ensure that all claims for materials and labor are paid, except as otherwise provided by law or regulation.

(3) In order to reduce costs of every contractor and subcontractor of the Developer obtaining redundant bonds while maintaining the 100% protection the City requires, the City and Developer agree that the requirements of this Section can be met by Developer's primary general contractor obtaining bonds meeting the requirements of this Section, and naming the City and Developer as dual obligees. Bonds meeting these requirements will be on forms approved by the City Attorney, and issued by a corporate surety authorized and admitted to write surety bonds in Texas and secured through an authorized agent with an office in Texas, and have a minimum AM Best rating of "A-" to an amount not to exceed ten percent

EXHIBIT 4.

(10%) of its capital and surplus.

(4) In the event, the Developer fails or refuses to complete the Plaza Improvements by the Plaza Completion Deadline, the City shall be entitled to exercise its rights as obligee under the Performance Bond and may complete the construction of the Plaza Improvements and charge the Payment Bond for the costs. Nothing herein shall be construed as a limitation on the City's right to exercise any and all legal and equitable remedies available to the City. The provisions of this Section shall survive termination of this Agreement.

H. Maintenance of Plaza Improvements. During the term of this Agreement and the Plaza License Agreement, Developer shall be solely responsible for the maintenance of the Plaza Improvements in accordance with the Plaza License Agreement.

4.02 City Obligations:

A. Plaza License. The City agrees to provide Developer an exclusive license for the use of the Plaza to serve the Property so long as the Property is utilized as a "Hotel", in the form attached hereto as **Exhibit "F"** (the "Plaza License Agreement"), and subject to the terms, limitations, conditions, definitions, and required fees contained therein.

B. Plaza Redevelopment Grant. City agrees to make payments to Developer in the form of an economic development grant, in a total not-to-exceed amount of Four Hundred Twenty Thousand Dollars (\$420,000.00) for Eligible Expenditures for the design, engineering, construction, and installation of the Plaza Improvements for the Plaza Project under the terms of this Agreement (the "Grant Funds"). Only expenditures for the Plaza Project incurred after the Closing Date shall be Eligible Expenditures. Developer agrees the payment of any costs or expenses of the Plaza Project not covered by, or which exceed the total amount of the Grant Funds shall be the sole responsibility of the Developer.

C. Payment of Eligible Expenditures. Each request for payment from the Developer (the "Payment Request") is subject to the reasonable review and approval of the City and must include a certified statement from the Developer that (i) the Eligible Expenditure was incurred for the redevelopment and revitalization of the Plaza; (ii) the amount requested to be paid for the Eligible Expenditure is the bid amount or if bidding was not required, it is believed reasonable for the goods and/or services provided; (iii) the goods or services referenced in the Payment Request have been received by the Developer; and (iv) that no part of the Payment Request was included in any prior Payment Request.

D. Pre-construction Grant Payment. Upon the review and final approval of the Design Plans and Specifications by the City, Developer shall submit a verified application for reimbursement of all Eligible Expenditures associated with the planning and design of the Plaza Project, along with invoices or other supporting documentation from the engineers, architects, landscape architect, design professionals or other consultants. The applications for payment shall be reviewed and approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed, and the City shall reimburse Developer for all approved pre-construction costs, (the "Pre-construction Payment"). The City shall make reasonable efforts to make the Pre-construction Grant Payment within thirty (30) days of the receipt of the application

EXHIBIT 4.

for reimbursement.

E. Periodic Drawdown of Grant Funds. During the construction of the Plaza Improvements, City shall reimburse Developer not more frequently than monthly for all Eligible Expenditures based upon verified applications for payment submitted by the Developer along with invoices or other supporting documentation from the engineers, contractors, or other vendors (the "Periodic Payments"). The applications for payment shall be reviewed and approved by the City, which approval shall not be unreasonably withheld or delayed. The City shall make reasonable efforts to make Periodic Payments within thirty (30) days of the receipt of the applications for reimbursement. The City shall make Periodic Payments up to the total remaining grant funds, excluding retainage as may be provided for in the construction contract for the Plaza Project ("Maximum Reimbursement Amount").

F. Limit on Frequency of Periodic Payment Requests. Unless otherwise agreed to by the City, Payment Requests shall be reviewed and approved once a month in accordance with the City's normal monthly claims approval process.

G. Contract Payments. Developer shall make all payments to Developer contractors in a timely fashion. On a monthly basis, the Developer must provide the City with copies of invoices paid and an affidavit of payment by Developer.

H. Final Payment. The City shall make its final payment of Grant Funds to Developer upon the occurrence of all of the following events: (i) Upon final inspection and approval of all permits by the City and (ii) Submission by the Developer of all Deliverables and Warranties; and (iii) if Engineering services were required, receipt by the City of a certification letter from the design engineer, sealed with the engineer's professional seal, certifying that the Plaza Improvements were constructed according to the specifications required by the engineer's design; (iv) an affidavit(s) of all bills paid from the Contractor(s); submission of the Developer's verified applications for payment of all final Eligible Expenditures for Plaza Improvements with supporting invoices submitted by the contractor and Developer engineers, architect, landscape architects, design professionals, other consultants, contractors, or vendors, and approved by the City, which approval shall not be unreasonably delayed or withheld. Regardless of the actual Eligible Expenditures for the design and construction of the Plaza Improvements, City shall not be required to pay Developer an amount in excess of the Maximum Reimbursement Amount. Any costs for the design and the construction of the Plaza Improvements in excess of the Maximum Reimbursement Amount shall be the sole responsibility of the Developer.

Article 5.

INDEMNIFICATION

5.01 DEVELOPER DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, IN BOTH THE PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMAND OR CAUSE OF ACTION INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY

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ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASSIONED BY THE ERROR, OMISSION, OR NEGLIGENT ACT OF IT, ITS OFFICERS, AGENTS OR EMPLOYEES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT, AND WILL AT ITS OWN COSTS AND EXPENSE DEFEND AND PROTECT THE CITY 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 THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT) OF THE CITY, 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 THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN ORDINARY NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT), WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF INJURY OR DEATH OR DAMAGE.

5.02 The Developer shall require that the construction contracts for all contractors engaged by Developer to construct the Plaza Improvements, including their subcontractors, contain the following indemnification provisions:

"INDEMNITY – GENERAL. TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING CHAPTER 151 OF THE TEXAS INSURANCE CODE, THE CONTRACTOR HEREBY PROTECTS, INDEMNIFIES AND HOLDS HARMLESS AND SHALL DEFEND THE DEVELOPER, THE DEVELOPER'S LENDER (IF ANY), THE CITY OF BRYAN, THEIR ELECTED OFFICIALS, DIRECTORS, OFFICERS, PARENTS, SUBSIDIARIES, AFFILIATES, JOINT VENTURERS, PARTNERS, EMPLOYEES, AGENTS AND REPRESENTATIVES (HEREINAFTER REFERRED TO INDIVIDUALLY AS AN "INDEMNITEE" AND COLLECTIVELY AS THE "INDEMNITEES") FROM AND AGAINST CLAIMS, ACTIONS, LIABILITIES, LOSSES, AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND COSTS AND EXPENSES OF LITIGATION OR ARBITRATION INCURRED BY AN INDEMNITEE, ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OR A FAILURE IN THE PERFORMANCE OF THE WORK OF THIS CONTRACT, BY OR THROUGH THE CONTRACTOR OR ANY OTHER NEGLIGENT OR WRONGFUL ACT OR OMISSION OF THE CONTRACTOR OR ONE OF ITS SUBCONTRACTORS OR SUPPLIERS (OF ANY TIER) OR ANYONE ELSE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE (HEREINAFTER REFERRED TO COLLECTIVELY AS THE "SUBCONTRACTOR PARTIES"), EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNITEES OR THEIR AGENTS OR EMPLOYEES, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE (OTHER THAN THE CONTRACTOR AND THE SUBCONTRACTOR PARTIES). SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION. EXPENSES RECOVERABLE BY AN INDEMNITEE

EXHIBIT 4.

AS PART OF THE CONTRACTOR'S INDEMNITY OBLIGATIONS UNDER THIS SECTION SHALL INCLUDE, WITHOUT LIMITATION, ALL ATTORNEYS' FEES, EXPENSES, AND ANY COSTS INCURRED BY DEVELOPER IN ENFORCING THE PROVISIONS OF THE CONTRACTOR'S INDEMNITY OBLIGATIONS.

INDEMNITY-EMPLOYEE INJURY CLAIMS. IN ADDITION TO THE INDEMNIFICATION SET FORTH ABOVE, CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS DEVELOPER AND THE INDEMNITEES FROM AND AGAINST ANY CLAIM, DAMAGE, LOSS, OR EXPENSE (INCLUDING BUT NOT LIMITED TO ANY INDEMNITEE'S REASONABLE ATTORNEYS' FEES AND COSTS AND EXPENSES OF ANY DISPUTE RESOLUTION PROCEEDING) ARISING OUT OF, RESULTING FROM OR ATTRIBUTABLE TO ANY CLAIM OF BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE OF CONTRACTOR OR ANY SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM"), EVEN TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE SOLE OR CONCURRENT NEGLIGENCE (WHETHER ACTIVE OR PASSIVE OR BASED UPON STRICT LIABILITY) OF THE DEVELOPER OR ANY OF THE INDEMNITEES OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, IT BEING THE EXPRESSED INTENT OF THE PARTIES HEREUNDER THAT CONTRACTOR INDEMNIFY THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN AND SOLE NEGLIGENCE. CONTRACTOR SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS SECTION."

Article 6.

INSURANCE

6.01 The Developer agrees to maintain the minimum insurance coverage and comply with each condition set forth below during the duration of this Agreement with the City. All parties to this Agreement hereby agree that the Developer's coverage will be primary in the event of a loss, regardless of the application of any other insurance or self-insurance.

6.02 Developer must deliver to City a certificate(s) of insurance evidencing such policies are in full force and effect within ten (10) calendar days following the Closing Date. No Agreement shall be effective until the required certificate(s) have been received and approved by the City. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within ten (10) calendar days may cause the Agreement to be terminated.

6.03 The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent.

A. Workers' Compensation Insurance & Employers Liability Insurance. Developer shall maintain Workers' Compensation insurance for statutory limits and Employers Liability insurance with limits not

EXHIBIT 4.

less than \$500,000 each accident for bodily injury by accident or \$500,000 each employee for bodily injury by disease. Developer shall provide Waiver of Subrogation in favor of the City and its agents, officers, officials, and employees.

B. Commercial General Liability Insurance. Developer shall maintain Commercial General Liability (CGL) with a limit of not less than \$1,000,000 per occurrence and an annual aggregate of at least \$2,000,000. CGL shall be written on a standard ISO "occurrence" form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent Developers, products-completed operations, personal and advertising injury, and liability assumed under an insured Contract including the tort liability of another assumed in a business Contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the City. The City of Bryan shall be listed as an additional insured.

C. Business Automobile Liability Insurance. Developer shall maintain Business Automobile Liability insurance with a limit of not less than \$1,000,000 each accident. Business Auto Liability shall be written on a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Developer shall provide Waiver of Subrogation in favor of the City of Bryan.

D. Policy Limits. Required limits may be satisfied by a combination of primary and umbrella or excess liability policies. Developer agrees to endorse and its agents, officers, officials, and employees as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure "True Follow Form" basis.

E. Deductibles, Coinsurance Penalties & Self-Insured Retention. Developer may maintain reasonable and customary deductibles, subject to approval by the City. Developer shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention.

F. Developer's Contractors and Subcontractors. If the Developer's insurance does not afford coverage on behalf of any Contractors and/or Subcontractor(s) hired by the Developer to perform work on the Plaza Project, the Contractors/Subcontractors(s) shall maintain insurance coverage equal to that required of the Developer during the term of its work on the Plaza Project. It is the responsibility of the Developer to assure compliance with this provision. The City accepts no responsibility arising from the conduct, or lack of conduct, of the Developer's Contractor or any Subcontractor.

G. Acceptability of Insurers. Insurance coverage shall be provided by companies admitted to do business in Texas and rated A-:VI or better by AM Best Insurance Rating.

H. Evidence of Insurance. A valid certificate of insurance verifying each of the coverages required shall be issued directly to the City within 10 business days by the successful Developer's insurance agent or insurance company after Agreement award. Endorsements must be submitted with the certificate. No Agreement shall be effective until the required certificates have been received and approved by the City. Renewal certificates shall be sent a minimum of 10 days prior to coverage expiration. Upon request,

EXHIBIT 4.

Developer shall furnish the City with certified copies of all insurance policies. The certificate of insurance and all notices shall be sent to:

City of Bryan
City Manager
PO Box 1000
Bryan, TX 77805
Email to: Executiveservices@bryantx.gov

Failure of the City to demand evidence of full compliance with these insurance requirements or failure of the City to identify a deficiency shall not be construed as a waiver of Developer's obligation to maintain such insurance.

I. Notice of Cancellation, Non-renewal, Material Change, Exhaustion of Limits. Developer must provide minimum 30 days prior written notice to the City of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage. If City is notified a required insurance coverage will cancel or non-renew during the Agreement period, the Developer shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City reserves the right to withhold payment to Developer until coverage is reinstated.

J. Developer's Failure to Maintain Insurance. If the Developer fails to maintain the required insurance, the City shall have the right, but not the obligation, to withhold payment to Developer until coverage is reinstated or to terminate the Agreement.

K. No Representation of Coverage Adequacy: The requirements as to types and limits, as well as the City's review or acceptance of insurance coverage to be maintained by Developer, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the Developer under the Agreement.

Article 7.

WARRANTIES

7.01 Warranties Required. Developer agrees to obtain from each contractor performing any aspect of the Plaza Project, a warranty in the City's favor for the repair or replacement of faulty work or materials for a period of one (1) year following completion of the Plaza Project.

7.02 Defective Work. Provided that Developer has received written notice of defective workmanship or materials within one (1) year of the Plaza Completion Date of the Plaza Project, Developer shall replace or repair any such Defective Work in a manner satisfactory to the City, after notice to do so from the City, and within the time specified in the notice.

EXHIBIT 4.

Article 8

FORCE MAJEURE.

8.01 It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, inclement weather, pandemic, epidemic or other natural calamities; acts of God, governmental restrictions, regulations, order, actions, or interferences, national or regional emergency or quarantine, delays caused by the franchise utilities, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other Party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the Party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such Party was delayed.

Article 9.

DEFAULT, TERMINATION AND RECAPTURE.

9.01 A default shall exist under this Agreement if either Party fails to perform any of its obligations under this Agreement or comply with any material term or condition of this Agreement. The non-defaulting Party shall notify the defaulting Party in writing (the "Notice of Default") 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.

9.02 If a default shall occur and continue after sixty (60) days' notice of the same, the non-defaulting Party shall have the right to terminate this Agreement by delivering written notice on the defaulting Party ("Notice of Termination"), which termination shall be effective thirty (30) days following delivery of such notice unless the defaulting Party shall cure such default within such additional thirty (30) day period.

9.03 In the event, such default is uncured within such additional thirty (30) day period, this Agreement shall be terminated effective thirty (30) days following the delivery of the Notice of Termination. Developer shall be required to pay to City, within sixty (60) days from the date of termination of the Agreement, an amount equal to the total amount of permit fees waived by the City pursuant to this Agreement. The City's right of recapture and the Developer's obligation to repay the City as a result of an uncured default by Developer, as set forth in this Section, shall survive the termination of this Agreement.

EXHIBIT 4

Article 10.

BOOKS AND RECORDS

10.01 Right to Inspect. The Developer shall prepare and maintain, or cause to be prepared and maintained, in accordance with generally accepted accounting principles consistently applied, appropriate books and records, reflecting all capital reserves, money received and all money disbursed by the Developer in connection with and related to the Hotel Project, Plaza Project and this Agreement, for a period of five (5) years after the termination of this Agreement. Without limiting the requirements of this Section, Developer will keep detailed accounts of all its expenditures on design, construction and furnishing of the Plaza Project. City and its duly appointed representatives shall have the right to examine, audit, and copy such books and records during business hours on seven (7) calendar days' notice in Bryan, Texas.

10.2 Contracts. Promptly following a written request by the City, Developer will deliver to the City copies of any or all contracts executed by Developer or any Developer Contractor in connection with performance of any or all of the Plaza Project.

10.3 Survival. Developer's obligations under this Article 10 will survive the expiration or earlier termination of this Agreement.

Article 11.

MISCELLANEOUS.

11.01. Current Revenues. The payment obligations of the City made hereunder shall be paid solely from lawfully available funds, that have been annually appropriated by City. Under no circumstances shall the obligations of City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

11.02 Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. Except with respect to an Affiliate Entity of Developer, Developer shall not assign this Agreement without the written approval of the City, until such time as all of the following events have occurred: (i) subject to events of force majeure, the Developer completes the Hotel Project and the Plaza Project within the Plaza Completion Deadlines; (ii) Developer submits to City the required affidavit of all bills paid for the Plaza Project; (iii) and Developer submits paid invoices to the City evidencing Developer's a total, combined minimum investment of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) in the Hotel Project and Plaza Project; (iv) All Required Permits for the Plaza Project and Certificates of Occupancy for the Hotel Project have been issued, and (v) the Developer is in compliance with all terms and conditions of the Agreement.

11.02.1 Written approval of the City is not required if the assignee is an Affiliate Entity of Developer..

11.02.2 In connection with any assignment permitted under this Agreement, such assignee shall agree in writing to assume all of the Developer's obligations under this Agreement, the Parking Space License Agreement and the Plaza License Agreement, and such written agreement shall be in a form reasonably

EXHIBIT 4.

acceptable to the City, but such City approval shall not be unreasonably withheld, conditioned, or delayed, and shall be executed prior to or at the closing of the conveyance. The Developer shall promptly provide the City with a copy of the assignment instrument and assignee's written agreement to assume Developer's obligations under this Agreement.

11.03. Notices. Any notices sent under this Agreement shall be deemed served when delivered via certified mail, return receipt requested to the addresses designated herein or as may be designated in writing by the parties. Notice shall be given to the following:

If to City: City Manager
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

If to Developer: The Salle Hotel Management One, LLC:
c/o Kim Sallinger
4455 Camp Bowie Blvd, Suite 114-102
Fort Worth, Texas 76107

11.04 Estoppel Certificates. Either Party shall—at no cost to the requesting Party, from time to time, upon fifteen (15) days prior written request by the requesting Party—execute, acknowledge, and deliver to the requesting Party a certificate signed by an officer of the certifying Party stating that this Agreement is unmodified and in full force and effect (unless there have been modifications, in which case the certifying Party will state that this Agreement is in full force and effect as modified, and will set forth such modifications); stating the dates through which payments have been made; and either stating that, based on the knowledge of the signer of such certificate, no default exists under this Agreement, or specifying every default to which the signer has knowledge.

11.05 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

11.06. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.

11.07. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement and supersedes any prior understandings or

EXHIBIT 4.

written or oral agreements between the parties.

11.08. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

11.09 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

11.10 No Waiver. Parties' failure to take action to enforce this Agreement in the event of the other Party's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent either Party from taking action to enforce this Agreement on subsequent occasions.

11.11 Independent Contractor. Developer, any consultants, contractors, subcontractors, and any other individuals employed by Developer shall be independent contractors and not agents of the City.

11.12 Incorporation of Recitals. The recitals contained in the preambles to this Agreement are true and correct and are hereby incorporated herein as part of this Agreement.

11.13. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.

11.14 Exhibits. Each of the following Exhibits is attached hereto and incorporated herein by this reference:

- Exhibit A Legal Description of the Property
- Exhibit B Project Requirements, Hotel Standards and Description of Services
- Exhibit C Parking License Agreement
- Exhibit D Plaza Legal Description
- Exhibit E General Description of the Plaza Project
- Exhibit F Plaza License Agreement

[Signature page to follow]

EXHIBIT 4.

THE UNDERSIGNED AUTHORIZED REPRESENTATIVES OF THE PARTIES have executed this Agreement to be effective as of the Effective Date.

CITY OF BRYAN, TEXAS

THE SALLE HOTEL MANAGEMENT ONE, LLC

Andrew Nelson, Mayor

Kim Sallinger, President of Merit Realty Inc.,
Manager of The Salle Hotel Management One, LLC

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

ACKNOWLEDGMENT

STATE OF TEXAS }
 }
COUNTY OF TARRANT }

This instrument was acknowledged before me on the ___ day of _____, 2020 by Kim Sallinger, President of Merit Commercial Realty, Inc., Managing Member of The Salle Hotel Management One, LLC, a Texas limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

My Commission expires:

Certificate Of Completion

Envelope Id: 2B7FC424F05B4C0AB818E7E9D1BB3774	Status: Completed
Subject: Please DocuSign: THE SALLE HOTEL MGMT ONE_CHAPTER 380.pdf	
Source Envelope:	
Document Pages: 97	Signatures: 3
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Stamps: 1
Envelopeld Stamping: Enabled	Envelope Originator:
Time Zone: (UTC-06:00) Central Time (US & Canada)	Christina Cabrera
	PO BOX 1000
	PO BOX 1000
	Bryan, TX 77805
	ccabrera@bryantx.gov
	IP Address: 198.183.241.123

Record Tracking

Status: Original 4/14/2020 4:09:25 PM	Holder: Christina Cabrera ccabrera@bryantx.gov	Location: DocuSign
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Signer Events

Janis Hampton
jhampton@bryantx.gov
Security Level: Email, Account Authentication (None)

Signature

Janis Hampton

Signature Adoption: Pre-selected Style
Using IP Address: 198.183.241.123

Timestamp

Sent: 4/14/2020 4:25:31 PM
Viewed: 4/14/2020 5:00:10 PM
Signed: 4/14/2020 5:02:12 PM

Electronic Record and Signature Disclosure:

Accepted: 4/14/2020 5:00:10 PM
ID: f93e95a2-ff88-47f4-a032-aa705b1b1747

Andrew Nelson
anelson@bryantx.gov
Security Level: Email, Account Authentication (None)

Andrew Nelson

Signature Adoption: Pre-selected Style
Using IP Address: 193.56.117.154

Sent: 4/14/2020 5:02:14 PM
Viewed: 4/19/2020 11:46:34 AM
Signed: 4/19/2020 11:46:50 AM

Electronic Record and Signature Disclosure:

Accepted: 4/19/2020 11:46:34 AM
ID: a1451981-4113-4853-ad59-15d3b885c9cd

Mary L Stratta
mstratta@bryantx.gov
Security Level: Email, Account Authentication (None)

Mary L Stratta



Signature Adoption: Pre-selected Style
Using IP Address: 69.5.213.79

Sent: 4/19/2020 11:46:52 AM
Viewed: 4/20/2020 8:17:04 AM
Signed: 4/20/2020 8:17:26 AM

Electronic Record and Signature Disclosure:

Accepted: 4/20/2020 8:17:04 AM
ID: d3fb47b1-b3fb-4376-8636-68fc5f41cd7c

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	4/19/2020 11:46:52 AM
Certified Delivered	Security Checked	4/20/2020 8:17:05 AM
Signing Complete	Security Checked	4/20/2020 8:17:26 AM
Completed	Security Checked	4/20/2020 8:17:26 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Bryan (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Bryan:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: citysecretaryweb@bryantx.gov

To advise City of Bryan of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at citysecretaryweb@bryantx.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from City of Bryan

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to citysecretaryweb@bryantx.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Bryan

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to citysecretaryweb@bryantx.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify City of Bryan as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by City of Bryan during the course of your relationship with City of Bryan.