

LOAN AGREEMENT

By and Between

THE CITY OF AUSTIN, TEXAS

by and through the Austin Convention Center Department,
a department and enterprise fund of the City of Austin, Texas

(Lender)

And

AUSTIN CONVENTION ENTERPRISES, INC.

a Texas nonprofit Public Facility Corporation

(Borrower)

Dated as of _____, 2023

MAXIMUM LOAN AMOUNT: \$5,000,000.00

LOAN AGREEMENT

THIS LOAN AGREEMENT (**Agreement**), is entered into as of the date set forth above by and between AUSTIN CONVENTION ENTERPRISES, INC., a Texas nonprofit Public Facility Corporation (**Borrower**), and THE CITY OF AUSTIN, TEXAS, by and for the benefit of the Austin Convention Center Department, a department and enterprise fund of the City of Austin, Texas (**Lender**).

RECITALS

Whereas, Section 52-a of Article III of the Texas Constitution authorizes the Texas Legislature to provide for the creation of programs and the making of loans and grants of public money for the public purposes of development and diversification of the economy of the state, the elimination of unemployment and underemployment in the state, the stimulation of agricultural innovation, the fostering of the growth of enterprises based on agriculture, or the development or expansion of transportation or commerce in the State; and

Whereas, Chapter 380 of the Texas Local Government Code provides that Lender may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of Lender to promote State or local economic development and to stimulate business and commercial activity in the City of Austin (**City**); and

Whereas, Lender has established programs to provide for economic development grants to promote and foster economic development in the City; and

Whereas, Borrower previously issued bonds to finance the costs of constructing the convention center headquarters hotel, garage, and supporting facilities operated as the “Hilton Austin Convention Center” (the **Hotel**), which is immediately adjacent to the Austin Convention Center, located at 500 East Cesar Chavez, Austin, Texas 78701 (the **Convention Center**); and

Whereas, Borrower operates, repairs, and maintains the Hotel for use by convention attendees, among others; and

Whereas, in 2017, Borrower issued its \$135,340,000 Convention Center Hotel First Tier Revenue Refunding Bonds, Series 2017A and its \$59,315,000 Convention Center Hotel Second Tier Revenue Refunding Bonds, Series 2017B (collectively, the **Outstanding Bonds**); and

Whereas, the City intends to expand the Convention Center, which the City currently anticipates will require the closure and demolition of all or a portion of the Convention Center (**Demolition**); and

Whereas, the City currently anticipates Demolition to commence in the second quarter of 2025 and the City currently anticipates the opening of the Expansion (defined below) in the first quarter of 2029 (the time between the commencement of Demolition and opening of the Expansion, the **Expansion Period**); and

Whereas, Section 5.09 of the Indenture of Trust (defined below) related to the Outstanding Bonds states that, pursuant to the Cash Management Agreement, the Trustee shall make

disbursements directed by a request of the Hotel Manager (defined below) of funds deposited in the Renewal and Replacement Fund for the purpose of paying for: (i) if funds are insufficient in the Renewal and Replacement Fund to make such payment, FF&E and Capital Expenses included in the Capital Budget; (ii) if funds are insufficient in the Renewal and Replacement Fund, the Operating Reserve Fund or the Cash Trap Fund to make such payment, amounts reasonably determined by the Hotel Manager to be required to be made to protect life, health or property from imminent danger or to comply with Legal Requirements; and (iii) if funds are insufficient in the Renewal and Replacement Fund, FF&E and Capital Expenses not included in the Capital Budget with the prior written consent of the Asset Manager and the Borrower; and

Whereas, Section 5.16 of the Indenture of Trust (defined below) related to the Outstanding Bonds states that, pursuant to the Cash Management Agreement, the Trustee shall make disbursements directed by a request of the Hotel Manager of funds deposited in the Renewal and Replacement Fund for the purpose of paying for: (i) FF&E and Capital Expenses included in the Capital Budget; (ii) if funds are insufficient in the Operating Reserve Fund, the Excess Revenues Fund or the Cash Trap Fund to make such payment, amounts reasonably determined by the Hotel Manager to be required to be made to protect life, health or property from imminent danger or to comply with Legal Requirements; and (iii) FF&E and Capital Expenses not included in the Capital Budget with the prior written consent of the Asset Manager and the Borrower; and

Whereas, Borrower desires to borrow up to an aggregate amount of \$13,750,000 from Lender for the funding of certain life, health, and safety projects based on the agreed-upon capital improvement plan during the Expansion Period (collectively, the **Life, Health and Safety Projects**), and the aggregate amount borrowed will be evidenced by two separate loan agreements, this Agreement and the Cap-X Loan Agreement, and secured by this Note and the Cap-X Promissory Note; and

Whereas, Borrower's ability to make payments to Lender is subject to and limited under the terms of the Indenture of Trust and as further set forth herein; and

Whereas, the Borrower has, subject to entering into this Agreement (among other conditions), obtained bondholder consent to amend the Indenture of Trust, to provide, among other things, for the scope of the Life, Health and Safety Projects, the mechanics for accessing such funds from the Trustee and for the repayment of such funds; and

Whereas, the purpose of this Agreement is to set forth the general terms and conditions of a Loan (defined below) to be made by Lender to Borrower in a total sum not to exceed \$5,000,000.00 as set forth herein.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree as follows:

1. DEFINITIONS AND GENERAL PROVISIONS.

1.1 Definitions. In this Agreement, the following terms have the following meanings. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Indenture of Trust.

“Advance” means each disbursement of loan proceeds under the Note pursuant to this Agreement.

“Advance Request” means a completed, written request for an Advance from Borrower to Lender in the form of Exhibit A.

“Agreement” means this Loan Agreement, as it may be amended, modified, extended, renewed, restated, or supplemented from time to time.

“Approvals and Permits” means each and all approvals, authorizations, bonds, consents, certificates, franchises, licenses, permits, registrations, qualifications, and other actions and rights granted by or filings with any Persons necessary, or appropriate, for the operation and management of the Hotel or for the conduct of the business and operations of Borrower.

“Bondholder Loan Agreement” means that certain Loan Agreement of even date herewith by and between Austin Convention Enterprises, Inc., as borrower, and the City of Austin, Texas, as lender.

“Bondholder Promissory Note” means that certain Promissory Note of even date herewith executed by Austin Convention Enterprises, Inc., and payable to the City of Austin, Texas, in the original principal amount of \$25,000,000.

“Business Day” means each day of the year other than Saturdays, Sundays, Holidays, and days on which banking institutions are generally authorized or obligated by law or executive order to close in Texas.

“Cap-X Loan Agreement” means that certain Loan Agreement of even date herewith, by and between Austin Convention Enterprises, Inc., as borrower, and the City of Austin, Texas, as lender.

“Cap-X Promissory Note” means that certain Promissory Note of even date herewith executed by Austin Convention Enterprises, Inc. and payable to the City of Austin, Texas, in the original principal amount of \$8,750,000.

“Closing Conditions” means those closing requirements set forth in Sections 2.1.2 and 3.1 below.

“Commitment” means the agreement by Lender in Section 2.1.1 to make Advances pursuant to the terms and conditions herein.

“Commitment Amount” means the sum of \$5,000,000.

“Convention Center Reopening Date” means the date that is sixty days after the issuance and delivery of the Expansion Certificate of Occupancy to the Borrower.

“County” means Travis County, Texas.

“Debt” means, as to any Person, all indebtedness for actually borrowed money (recourse only), but excluding non–recourse debt.

“Default Interest Rate” has the meaning given to such term in the Note.

“Draw Termination Date” means the date equal to twenty-four months following both (i) delivery by the Borrower to the Trustee of an Expansion Certificate of Occupancy; and (ii) the Convention Center Reopening Date.

“Event of Default” means all of the events described in Section 7.1.

“Expansion” means all work related solely to the demolition and expansion of the Austin Convention Center located at 500 East Cesar Chavez St., Austin, Texas as described in the Third Amendment (defined herein).

“Expansion Certificate of Occupancy” means a certificate or certificates, as applicable, issued by the City that permits full, complete, permanent, unconditional, legal and beneficial occupancy, operation and use for the entirety of the Expansion for its intended purposes.

“First Tier Bonds” means the Borrower’s \$135,340,000 Convention Center Hotel First Tier Revenue Refunding Bonds, Series 2017A, dated May 1, 2017.

“Force Majeure Event” means acts of God or the elements, including fire, flood, windstorm, hailstorm, earthquake and lightning, acts of war, terrorism, riot or civil insurrection, strikes, pandemics, governmental delays, labor disputes, delays in delivery of materials and disruption of shipping (to the extent such strikes, labor disputes, delays in delivery of materials and disruption of shipping affect not only Borrower but also similarly situated hotel operators in the vicinity of the Convention Center, or are otherwise not the result of an intentional or grossly negligent act or failure to act by Borrower; provided, however, that inclement weather is considered a Force Majeure Event only to the extent it is significantly more severe than typical for the location and time of year in which such inclement weather occurred).

“GAAP” means generally accepted accounting principles consistently applied.

“Governmental Authority” means any government, any court, and any agency, authority, body, bureau, department, or instrumentality of any government, including the Austin Convention Center Department.

“Indenture of Trust” means the Amended and Restated Indenture of Trust between Borrower and U. S. Bank National Association relating to the \$135,340,000 Convention Center Hotel First Tier Revenue Refunding Bonds, Series 2017A and the \$59,315,000 Convention Center Hotel Second Tier Revenue Refunding Bonds, Series 2017B, dated May 1, 2017, as amended by the First Amendment to Amended and Restated Indenture of Trust dated April 15, 2021, as further amended by the Second Amendment to Amended and Restated Indenture of Trust dated April 15, 2021, and as further amended by the Third Amendment to Amended and Restated Indenture of Trust dated [_____] , 2023.

“Interest Rate” means the Applicable Rate set forth in the Note.

“Lender” means the City of Austin, Texas, by and for the benefit of the Austin Convention Center Department, a department and enterprise fund of the City of Austin, Texas, its successors and assigns.

“Loan” means the provision of funds from Lender to Borrower described in this Agreement.

“Loan Balance” has the meaning given to such term in the Note.

“Loan Document(s)” means this Agreement, the Note, and all of the other agreements, documents, or instruments signed by Borrower and evidencing, guarantying, securing or containing agreements with respect to any and all Advances made hereunder, as such agreements, documents, and instruments may be amended, modified, extended, renewed, or supplemented from time to time. For the avoidance of doubt, “Loan Document(s)” shall not include the Indenture of Trust and the Bond Documents thereunder.

“Loan Maturity Date” means (a) January 1, 2040 or (b) such earlier date upon the (i) prepayment of the Loan or (ii) acceleration of the repayment of the Loan as provided in the Loan Documents after the occurrence of an Event of Default.

“Material Adverse Change” means any change in the assets, business, financial condition, operations, or results of operations of Borrower or the Hotel or any other event or condition that (i) is reasonably likely to affect in a material adverse respect the likelihood of performance by Borrower of any of the obligations in the Loan Documents, or (ii) is reasonably likely to affect in a material adverse respect the legality, validity, or binding nature of any of the obligations in the Loan Documents.

“Note” means that certain promissory note of even date herewith executed by Borrower and payable to Lender, together with any and all additional promissory notes executed after the date hereof in favor Lender in accordance with the terms hereof, in each case, evidencing Borrower’s indebtedness hereunder, as amended, modified, extended, renewed or supplemented from time to time, and in the aggregate principal face amount of the Loan.

“Obligations” means the obligations of Borrower under the Loan Documents.

“Official Records” means the Official Records of Travis County, Texas.

“Organizational Documents” means all documents evidencing or relating to the formation of Borrower and its continued existence and good standing, and includes any amendments thereto, and any certificates required to be filed by Borrower with any Governmental Authority.

“Outstanding Bonds” means, collectively, the First Tier Bonds and the Second Tier Bonds.

“Person” means a natural person, a partnership, a joint venture, an unincorporated association, a limited liability company, a corporation, a trust, any other legal entity, or any Governmental Authority.

“Cap-X Loan Agreement” means that certain Loan Agreement of even date herewith, by and between Austin Convention Enterprises, Inc., as borrower, and the City of Austin, Texas, as lender.

“Cap-X Promissory Note” means that certain Promissory Note of even date herewith executed by Austin Convention Enterprises, Inc. and payable to the City of Austin, Texas, in the original principal amount of \$8,750,000.

“Principal and Interest Payment Dates” mean January 1, 2035 and each January 1st thereafter until and including the Loan Maturity Date.

“Quarterly End Date” means each March 31, June 30, September 30, and December 31 during the Expansion Period.

“Requirements” means any and all obligations, other terms and conditions, requirements, and restrictions in effect now or in the future by which Borrower and the Hotel are bound or which are otherwise applicable to any or all operations of the Borrower, or occupancy, business ownership, or use of the Hotel (including, without limitation, such obligations, other terms and conditions, restrictions, and requirements imposed by: (i) any law, ordinance, regulation, or rule (federal, state, or local); (ii) any Approvals and Permits; (iii) insurance policies; (iv) any other agreement, document, or instrument to which Borrower is a party or by which Borrower or any or all of the Hotel or the business or operations of Borrower is bound; or (v) any judgment, order, or decree of any arbitrator, other private adjudicator, or Governmental Authority to which Borrower is party or by which Borrower or any of the Hotel is bound).

“Second Tier Bonds” means the Borrower’s \$59,315,000 Convention Center Hotel Second Tier Revenue Refunding Bonds, Series 2017B, dated May 1, 2017.

“Taking” means the taking of any or all of the Hotel, any interest therein, or any right thereto for public or quasi-public use by the power of eminent domain, by condemnation (including, without limitation inverse condemnation), or any event in lieu thereof and any damage to the Hotel as the result of any taking of any other part of the Hotel or any property in the vicinity of the Hotel.

“Unmatured Event of Default” means any condition or event that with notice, passage of time, or both would, if not cured within the time periods (if any) permitted pursuant to the Loan Documents, be an Event of Default.

1.2 General Provisions.

1.2.1 Singular and Plural Terms. Any defined term used in the plural in any Loan Document refers to all members of the relevant class and any defined term used in the singular refers to any number of the members of the relevant class.

1.2.2 Accounting Principles. Any accounting term used and not specifically defined in any Loan Document must be construed, and all financial data required to be submitted under any Loan Document must be prepared, in conformity with GAAP applied on a consistent basis.

1.2.3 Exhibits Incorporated. All exhibits to this Agreement, as now existing and as the same may from time to time be supplemented, modified or amended, are incorporated herein by this reference.

1.2.4 References. Any reference to any Loan Document or other document includes such document both as originally executed and as it may from time to time be supplemented, modified, or amended. References herein to Articles, Sections, and Exhibits must be construed as references to this Agreement unless a different document is named. References to subparagraphs must be construed as references to the same section in which the reference appears unless a different section is named.

1.2.5 Other Terms. The term “document” is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms “including” and “include” mean “including (include) without limitation.” The term “or” is not exclusive. The requirement that any party “deliver” any item to another party must be construed to require that the first party “deliver or cause to be delivered” such item to the second party. The term “any,” as a modifier to any noun, must be construed to mean “any or all” preceding the same noun in the plural. The term “agreement” includes both written and oral agreements. The terms “law” and “laws,” unless otherwise modified, mean, collectively, all federal, state and local laws, rules, regulations, codes, and administrative and judicial precedents. The terms “herein,” “hereunder,” and other similar compounds of the word “here” refer to the entire document in which the term appears and not to any particular provision or section of the document. The use of the possessive pronoun “its” must be deemed to also refer to “his,” “hers,” “its,” or “theirs.” This Section 1.2.5 applies to all of the Loan Documents.

1.2.6 Title, Sections, and Headings. Title, sections, and headings are included in the Loan Documents for convenience of reference only and are not part of the Loan Documents for any other purpose.

1.2.7 Other Documents. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, this Agreement prevails.

1.2.8 Intention. The provisions of this Section 1.2 do not apply in any instance where a different meaning, construction, or reference is clearly intended.

2. LOAN.

2.1 Loan Requirements.

2.1.1 Loan Commitment.

(a) Amount of Commitment. Subject to the terms and conditions of this Agreement, Lender agrees to make Advances up to the maximum amount of \$5,000,000.

(b) Duration of Commitment. Subject to the terms and conditions of this Agreement, Lender agrees to make Advances from time to time in accordance with the provisions of Section 5.09(d) of the Indenture of Trust until the Draw Termination Date or Suspension or Termination of Commitment in subsection (d) of this section.

(c) Annual Appropriation. No later than October 1 of each year during the Expansion Period, the Lender shall appropriate from lawfully available funds in an amount equal to

the maximum amount of the Loan, less any prior Advances already made by the Lender under this Agreement.

(d) Suspension or Termination of Commitment. Upon the occurrence of an Event of Default and so long as such Event of Default continues, Lender may, after 10 days prior written notice to the Borrower and Trustee identifying the continuing Events of Default and in accordance with the terms of Section 7.2.1 of this Agreement, suspend or terminate the commitment to make Advances.

(e) Evidence of Loan Advances. Amounts outstanding under the Loan are evidenced by the Note, and all Loan Advances must be charged and funded under the Note. The obligation of Borrower to repay Advances is evidenced by the Note. In the event of any inconsistency between the Note and this Agreement, the provisions of the Note prevail.

2.1.2 Loan Closing. Subject to the terms and conditions of this Agreement, Lender agrees to close this Loan upon Borrower's satisfaction of the requirements set forth in this Section 2.1.2 and Section 3.1 below (collectively, **Closing Conditions**):

(a) Third Amendment. Execution of the Third Amendment to Amended and Restated Indenture of Trust (City Loan Agreement), dated [_____] , 2023 (the **Third Amendment**) in a form that is satisfactory to the Lender.

(b) Bondholder Consent. Written evidence of requisite Bondholder consent to the Third Amendment.

(c) Operator Consent. Written evidence of consent to the Third Amendment by Hilton Management, LLC (the **Hotel Manager**) as required by Section 12.33 of the Amended and Restated Hotel Operating Agreement between the Borrower and the Hotel Manager, dated as of October 1, 2020, as amended (the **Management Agreement**).

(d) Opinion of Counsel. Opinion of Bond Counsel (defined in the Indenture of Trust), in the form and substance satisfactory to the Lender, stating that the Third Amendment has been duly and lawfully entered into by the Borrower in accordance with the provisions of the Indenture of Trust, is authorized and permitted by the Indenture of Trust, is valid and binding upon the Borrower, and at neither its execution nor any terms thereof (including, without limitation, the execution of this Agreement) will adversely affect the exclusion from gross income for federal income tax purposes of interest on the Outstanding Bonds.

2.1.3 Interest on the Loan.

(a) Accrual of Interest. Interest accrues in accordance with the terms of the Note and this Agreement.

(b) Rate After Default. Upon and after the occurrence of an Event of Default hereunder or under any of the Loan Documents, and continuing until such Event of Default is cured, at the option of Lender, the outstanding principal balance of the Loan bears interest, payable on demand, at the Default Interest Rate. The application of the Default Interest Rate may not be interpreted or considered to extend any cure period set forth in this Agreement or otherwise to limit any of Lender's remedies under this Agreement or any of the other Loan Documents.

(c) Computation of Interest. Interest is calculated on a 360-day year for all Advances, but, in any case, is computed for the actual number of days in the period for which interest is charged, which period consists of 365 days on an annual basis. If any payment of interest under the Note would otherwise be due on a day which is not a Business Day, the payment instead is due on the next succeeding Business Day and such extension of time is included in computing the interest due in respect of said payment.

2.1.4 Payments of Principal and Interest.

(a) Payments of Principal and Interest to Balance the Loan. Principal and interest are payable in accordance with the terms of the Note and this Agreement.

(b) No Deductions. All payments of principal or interest under the Note must be made without deduction of any present and future taxes, levies, deductions, charges or withholding, which amounts must be paid by Borrower. Borrower must pay the amounts necessary such that the gross amount of the principal and interest received by Lender is not less than that required by the Note.

(c) Order of Application. Any payments received by Lender will be applied as set forth in the Note and this Agreement.

(d) Payments. All amounts payable by Borrower on or with respect to the Loan must be paid in lawful money of the United States of America to Lender in same day funds, not later than 1:00 p.m. (CST) on the date due in accordance with payment instructions to be provided by the Lender.

(e) Advances Exceed Commitment Amount. Lender has no commitment to Advance Loan funds that exceed the Commitment Amount.

(f) Payment of Loan is subject to terms of Indenture of Trust related to the Outstanding Bonds. Lender acknowledges that Borrower must adhere to the terms in the Indenture of Trust related to the Bonds and that for so long as the Bonds remain Outstanding, Borrower may repay this Loan solely from funds available in the Corporation Account of the Excess Revenue Fund as set forth in Section 5.15 of the Indenture of Trust, which repayment may not occur until after the Draw Termination Date.

(g) Schedule of Loan Payments. On November 15th prior to the first Principal and Interest Payment Date and each November 15th thereafter, Lender will provide to Borrower a Schedule of Loan Payments over the applicable amortization period. The Schedule of Loan Payments will include accrued, unpaid interest, outstanding principal, and any fees owed Lender.

2.1.5 Prepayment.

(a) Prepayment permitted. Borrower has the right to prepay the Loan, in whole or in part, without premium or penalty, provided that Borrower must pay, together with any such prepayment, all accrued but unpaid interest upon the principal so prepaid. Amounts prepaid cannot be reborrowed.

2.1.6 Loan Maturity Date. Subject to Section 2.1.4 hereof, all sums due and owing under the Loan must be paid in full on or before the Loan Maturity Date.

2.2 Specific Limitations. Lender has no commitment to Advance Loan funds that exceed the Commitment Amount.

2.3. Advances.

2.3.1 Advance of Available Commitment. . Prior to the Hotel Manager sending a request in substantially the form attached to the Indenture of Trust as Exhibit G to the Trustee for accessing funds in the Renewal and Replacement Fund, in accordance with the provisions of Section 5.09(c) of the Indenture of Trust, Borrower shall provide Lender with an Advance Request, together with such information or documentation that is reasonably necessary for Lender to confirm that the Advance Request complies with the provisions of Section 5.09(c) of the Indenture of Trust and this Agreement. If the Advance Request complies with the provisions of Section 5.09(c) of the Indenture of Trust and the additional documentation proves up the eligibility of the Life, Health, and Safety Projects and Borrower's ability to make an Advance Request, then within 8 Business Days of the Lender's receipt of an Advance Request and any such necessary information or documentation, Lender shall disburse such funds in the Advance Request in accordance with Section 5.09(c) of the Indenture of Trust. If, upon Lender's receipt of an Advance Request and/or such necessary information or documentation, Lender determines that the Advance Request does not comply with the provisions of Section 5.09(c) of the Indenture of Trust or the additional documents does not prove up the eligibility of the Advance Request, then Lender shall have the right to disapprove such Advance Request and/or request additional supporting information or documentation, and shall not be required to disburse such funds in such Advance Request unless and until Lender determines that such Advance Request complies with the provisions of Section 5.09(c) of the Indenture of Trust and this Agreement Lender shall approve or disapprove of such Advance Request. If Lender does not provide approval or disapprove within 8 Business Days of Lender's receipt of Advance Request, such Advance Request shall be deemed to be approved. Within 3 Business Days of a request of the Hotel Manager in substantially the form attached to the Indenture of Trust as Exhibit G (as approved by the Lender), Lender shall make disbursements to the Trustee as provided in the Indenture of Trust.

2.3.2 Reserved.

2.3.3 Use of Advances. . Subject to the provisions of Section 4.1.10 of this Agreement, Advances may be used only for the purpose of paying Life, Health, and Safety Projects undertaken (i) after the start of the Expansion Period and (ii) pursuant to the terms of the Indenture of Trust and this Agreement.

2.3.4 Limitations on Borrower's Rights to Advances. Borrower is entitled to disbursements of Loan proceeds only in accordance with the terms and conditions of this Agreement (unless waived or modified by Lender); and, in addition, Borrower certifies in connection with any Advances requested hereunder that:

(a) The representations and warranties of Borrower contained in all of the Loan Documents are correct in all material respects on and as of the date of the disbursement as though made on and as of that date, and no Event of Default has occurred and continuing as of the date of the disbursement; and

(b) Subject to the provisions of Section 4.1.10 of this Agreement, the requested Loan proceeds may be applied by Borrower only to pay Life, Health, and Safety Projects

undertaken after the start of the Expansion Period and for which invoices come due and are payable during a time when the Borrower is eligible to submit an Advance Request.

3. CONDITIONS PRECEDENT

3.1 Conditions Precedent to Loans. The obligation of Lender to make the Loans under this Agreement shall be subject to the Closing Conditions set forth in Section 2.1.2 and each of the following conditions precedent:

3.1.1 Representations and Warranties Accurate. The representations and warranties by Borrower as set forth in Section 4.1 are correct in all material respects.

3.1.2 Defaults. No Event of Default has occurred and is continuing.

3.1.3 Reserved.

3.1.4 Documents. Lender has received the following agreements, documents, and instruments, each duly executed by the parties thereto:

(a) Loan Documents. The Loan Documents, which include all agreements documents, and instruments specified by Lender.

(b) Organization. Certified copies of (i) resolutions of Borrower authorizing the execution, delivery, and performance, for and on behalf of Borrower, of the Loan Documents and certifying the names and signature of the directors or representatives of Borrower authorized to execute the Loan Documents and, in the case of Borrower, to request Advances on behalf of Borrower, (ii) the Organizational Documents of Borrower, and all amendments thereto, and (iii) a certificate of good standing as a nonprofit corporation from the State of Texas.

(c) Insurance Policies. A certificate of insurance for all insurance required under the Outstanding Bonds, and certificates of insurance with respect to professional liability coverage to the extent maintained by Borrower's legal counsel, accountants, and consultants.

(d) Financial Statements for Hotel Operations. Borrower's most recent financial statements in the form previously reviewed and approved by Lender for Hotel, including without limitation a balance sheet and profit and loss statement for Borrower.

3.1.5 Closing Conditions. Lender has received evidence that Borrower has satisfied all of the other Closing Conditions set forth in Section 2.1.2.

3.1.6 Other Items or Actions by Borrower. Lender has received such other agreements, documents, and instruments, and Borrower has performed such other actions as Lender may reasonably require.

3.2 Waiver of Conditions Precedent. Borrower hereby authorizes Lender, and Lender reserves the right, to verify any documents and information submitted to Lender in connection with this Agreement. Lender may elect to waive any of the foregoing conditions precedent. Any such waiver is limited to the conditions precedent therein and the requirements therein. Delay or failure by Lender to insist on satisfaction of any condition precedent is not a waiver of such condition precedent or any other condition precedent. The making of an Advance by Lender is not a waiver by Lender of the occurrence of an Event of Default or an Unmatured Event of Default.

4. BORROWER'S REPRESENTATIONS AND WARRANTIES.

4.1 Closing Representations and Warranties. Borrower represents and warrants to Lender as of the date of this Agreement:

4.1.1 Existence and Authorization. Borrower is a nonprofit corporation, validly organized and lawfully existing under the laws of Texas, and qualified to do business and in good standing under the laws of the State of Texas. Borrower has the requisite power and authority to execute, deliver, and perform the Loan Documents. The execution, delivery, and performance by Borrower of the Loan Documents have been duly authorized by all requisite corporate action by or on behalf of Borrower and will not conflict with, or result in a violation of or a default under, the Organizational Documents of Borrower.

4.1.2 No Approvals, etc. No approval, authorization, bond, consent, certificate, franchise, license, permit, registration, qualification, or other action or grant by or filing with any Person is required in connection with the execution or delivery by Borrower of the Loan Documents.

4.1.3 No Conflicts. The execution, delivery, and performance by Borrower of the Loan Documents will not conflict with, or result in a violation of or a default under: (i) any applicable law, ordinance, regulation, or rule (federal, state, or local); (ii) any judgment, order, or decree of any arbitrator, other private adjudicator, or Governmental Authority to which Borrower is a party or by which Borrower or any of the assets or property of Borrower is bound; (iii) any Approvals and Permits; or (iv) any agreement, document, or instrument to which Borrower is a party or by which Borrower or any of the assets or property of Borrower is bound.

4.1.4 Execution and Delivery and Binding Nature of Loan Documents. The Loan Documents have been duly executed and delivered by or on behalf of Borrower. The Loan Documents are legal, valid, and binding obligations of Borrower, enforceable in all material respects in accordance with their terms against Borrower, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization, or similar laws and by equitable principles of general application.

4.1.5 Legal Proceedings; Hearings, Inquiries, and Investigations. Except as previously disclosed to and approved by Lender, (i) no legal proceeding is pending or, to best knowledge of Borrower, threatened before any arbitrator, other private adjudicator, or Governmental Authority to which Borrower is a party or by which Borrower or any assets or property of Borrower may be bound or affected that if resolved adversely to Borrower would likely result in a Material Adverse Change, and (ii) no hearing, inquiry, or investigation relating to Borrower or any assets or property of Borrower is pending or, to the best knowledge of Borrower, threatened by any Governmental Authority that if resolved adversely to Borrower would likely result in a Material Adverse Change.

4.1.6 No Event of Default. No Event of Default has occurred and is continuing.

4.1.7 Approvals and Permits. Except as disclosed to Lender in writing prior to the date hereof, to the best knowledge of Borrower, there are no facts or circumstances known to Borrower that would materially impair the ability of Borrower to obtain Approvals and Permits necessary for the continued operation and management of the Hotel.

4.1.8 Compliance with Law. Borrower has not received any notice of any material violations of any applicable laws, rules, or regulations of any Governmental Authority with

respect to the Hotel or the development of the Hotel, and Borrower is not aware of any facts or circumstances which would constitute or cause any such violation.

4.1.9 Full Disclosure. All information in the financial statement, certificate, or other document (other than any budget or financial forecast or projection) and all information (other than any budget or financial forecast or projection) prepared and delivered by Borrower to Lender in obtaining the Commitment is correct and complete in all material respects, and there are no omissions therefrom that result in such information being incomplete, incorrect, or misleading in any material adverse respect as of the date thereof. To Borrower's knowledge, all information in any financial statement, certificate or other document (other than any budget or financial forecast or projection) prepared and delivered to Lender on behalf of Borrower by Persons other than Borrower, and all other information (other than any budget or financial forecast or projection) prepared and delivered to Lender on behalf of Borrower or by Persons other than Borrower in obtaining the Commitment are correct and complete in all material respects, and there are no omissions therefrom that result in any such information being incomplete, incorrect, or misleading in any material adverse respect as of the date thereof. All information in the Borrower's more recent budget or financial forecast or projection prepared and delivered by or on behalf of Borrower to Lender in obtaining the Commitment represent Borrower's best estimates of the same. Lender acknowledges that Borrower's actual financial results may vary for reasons beyond the control of Borrower, including but not limited to volume of business and levels of hotel occupancy in the area, the mix of businesses, prevailing wage rates, inflation, utility rates, insurance premiums, extraordinary repair and maintenance expenses, and change in market conditions. Lender acknowledges and agrees that Borrower's failure to achieve the results estimated in Borrower's 2023 budget or other budget or financial forecast or projection does not constitute an Event of Default under this Agreement. There has been no Material Adverse Change as to Borrower or the Hotel since the date of such information. All financial statements heretofore delivered to Lender by Borrower were prepared in accordance with GAAP, except as noted therein, and accurately represent the financial conditions and results of operation of the subjects thereof as of the dates thereof and for the period covered thereby.

4.1.10 Use of Proceeds. The proceeds of the Advances will be used by Borrower solely for the purposes specified in this Agreement. The proceeds will not be used for any other purpose, including the repayment or reimbursement of costs associated with (i) any Fire, Life and Safety Projects undertaken prior to the start of the Expansion Period or (ii) previously paid from other funds of the Borrower, including amounts held under the Indenture of Trust.

4.1.11 Payment of Taxes, Fees, Charges. All tax returns and reports of Borrower required to be filed by Borrower have been timely filed, and all taxes, assessments, fees and other governmental charges upon Borrower and upon its properties, assets, income and franchises which are due and payable have been paid prior to delinquency. Borrower knows of no proposed tax assessment against Borrower or the Hotel that would be material to the condition (financial or otherwise) of Borrower or the Hotel, and Borrower has not contracted with any Governmental Authority in connection with any such taxes.

4.1.12 No Condemnation. No condemnation proceedings or moratorium is pending, or to the best of Borrower's knowledge, threatened against the Hotel or any portion thereof

which would impair the use, occupancy, or full operation of the Hotel in any manner whatsoever.

4.2 Representations and Warranties Upon Requests for Advances. Each Advance Request is a representation and warranty by Borrower to Lender that the representations and warranties in this Section 4 are correct and complete in all material respects as of the date the Advance Request except as otherwise disclosed by Borrower to Lender in writing prior to the date of such Advance Request.

4.3 Representations and Warranties Upon Delivery of Financial Statements, Documents, and Other Information. Each delivery by Borrower to Lender of financial statements, other documents (other than any budget or financial forecast or projection), or information (other than any budget or financial forecast or projection) after the date of this Agreement (including, without limitation, documents and information delivered in obtaining an Advance) is a representation and warranty that such financial statements, other documents, and information are correct and complete (in accordance with GAAP, except as noted therein) in all material respects, that there are no material omissions therefrom that result in such financial statements, other documents, or information being materially incomplete, incorrect, or misleading in any material respect as of the date thereof, and that such financial statements accurately present the financial condition and results of operations of Borrower as at the dates thereof in all material respects and for the periods covered thereby. Each delivery by Borrower to Lender of any budget or financial forecast or projection after the date of this Agreement represents Borrower's best estimates of the same. Lender acknowledges that Borrower's actual financial results may vary for reasons beyond the control of Borrower, including but not limited to volume of business and levels of hotel occupancy in the area, the mix of businesses, prevailing wage rates, inflation, utility rates, insurance premiums, extraordinary repair and maintenance expenses and change in market conditions. Lender acknowledges and agrees that Borrower's failure to achieve the results estimated in such budget or financial forecast or projection does not constitute an Event of Default under this Agreement.

5. BORROWER AFFIRMATIVE COVENANTS.

Until the Commitment terminates in full and the Obligations are paid and performed in full, Borrower agrees that:

5.1 Existence. Borrower continues to be a nonprofit corporation, validly existing, in good standing and qualified to do business under the laws of the State of Texas.

5.2 Books and Records; Access by Lender. Borrower maintains a single, complete, and accurate set of books and records of its assets, business, financial condition, operations, property, prospects, and results of operations in accordance with GAAP, except as noted therein. Borrower must also maintain complete and accurate records regarding the Hotel and Borrower Administrative Expenses.

5.3 Special Covenants.

5.3.1 Hotel Marketing during Expansion Period.

(a) Borrower must use commercially reasonable efforts to market (or cause the marketing of) the Hotel to the travelling public.

(b) Borrower must use commercially reasonable efforts to mitigate (or cause the mitigation of) the impact of the Demolition to Hotel operations and occupancy for the health and safety of Hotel employees, visitors, contractors, vendors, and guests.

Borrower agrees to maintain satisfactory mitigation efforts throughout the term of this Agreement to the reasonable satisfaction of Lender.

5.4 Information and Statements.

5.4.1 Annual Financial Statements. Borrower must provide audited annual financial statements within 180 days of Borrower's fiscal year end.

5.4.2 Compliance Certificates. Borrower must provide, together with each of the financial statements required pursuant to Sections 5.4.1, a statement in the form attached as **Exhibit B**, certified by Borrower that Borrower is in compliance with all covenants, terms, and conditions applicable to Borrower under or pursuant to the Loan Documents and any other Debt owing to any Person, and disclosing any noncompliance therewith and describing the status of Borrower's actions to correct such noncompliance, if applicable.

5.4.3 Other Items and Information.

(a) Within 30 days of each Quarterly End Date, Borrower must provide the Lender with a summary report of any and all actions taken by the Borrower and Hotel Manager to ensure compliance with Section 5.3.1 of this Agreement.

(b) Borrower must provide such other information concerning Borrower, the Hotel, and the assets, business, financial condition, operations, property, prospects, and results of operations of Borrower, as well as the financial statements, as Lender reasonably requests from time to time.

5.5 Law; Judgments; Material Agreements; Approvals and Permits. Borrower must comply with all laws, ordinances, regulations, and rules (federal, state, and local) and all judgments, orders, and decrees of any arbitrator, other private adjudicator, or Governmental Authority relating to Borrower, the Hotel, or the other assets, business, operations, or property of Borrower. Borrower must comply with all material agreements, documents, and instruments to which Borrower is a party or by which Borrower, the Hotel, or any of the other assets or property of Borrower are bound or affected. Borrower may not cancel or terminate any such agreements, documents or instruments if to do so would likely result in a Material Adverse Change. Borrower must comply with all Requirements (including, without limitation, as applicable, requirements of the Federal Aviation Administration and all conditions and requirements of all Approvals and Permits). Borrower must obtain and maintain in effect from time to time all Approvals and Permits required for the operation and management of the Hotel and the business activities and operations then being conducted by Borrower. Borrower must immediately provide Lender with written notice and explanation of any litigation involving Borrower in which the amount in dispute exceeds \$250,000.00. In the event of any dispute that, in the good faith opinion of Lender, is likely to result in a Material Adverse Change or the failure of any condition precedent or covenant herein, Lender may agree to make Advances for the account of Borrower without prejudice to Borrower's rights, if any, to recover such funds from the party to whom paid. Such agreement or agreements may take any form that Lender considers proper. All sums paid or agreed to be paid pursuant to such agreement must be for the account of Borrower and must be charged as an Advance.

5.6 Taxes and Other Debt. Borrower must pay and discharge (a) before delinquency all taxes, assessments, and governmental charges or levies imposed upon it, upon its income or profits, or upon any property belonging to it, (b) when due all lawful claims (including, without

limitation, claims for labor, materials, and supplies), which, if unpaid, might become a lien or encumbrance upon any of its assets or property, and (c) all its other Debt, when due.

5.7 Assets and Property. Borrower must maintain, keep, and preserve all of its assets and property (tangible and intangible) necessary or useful in the proper conduct of its business and operations in good working order and condition, ordinary wear and tear excepted. Borrower must promptly obtain and maintain, from time to time at its own expense, all Approvals and Permits as may be required to enable it to comply with its obligations hereunder and under the other Loan Documents.

5.8 Insurance. Borrower must obtain and maintain insurance and pay all premiums in accordance with the Outstanding Bonds.

5.9 Rights of Inspection; Agency.

5.9.1 Generally. Lender and its respective agents, employees, and representatives has the right, at the sole cost and expense of Borrower, at any time and from time to time, but no less frequently than once per Month, to enter upon the Hotel in order to inspect it and all aspects thereof, including, without limitation, in order to determine if the Hotel is properly operated and managed. All inspections by Lender are for the sole purpose ensure the Loan proceeds are being used for Permitted Expenses and are not to be construed as a representation by Lender that there has been compliance with the Loan Documents, applicable Budgets, or the applicable Requirements. Borrower may make or cause to be made such other independent inspections as Borrower may desire for its own protection.

5.9.2 Inspector(s). Without limiting the rights of Lender pursuant to Section 5.9, Lender may employ outside inspectors or consultants to perform some or all of the monthly inspections described in Section 5.9 and may also elect to have Lender's own employees perform some or all of such inspection duties and review the reports of outside inspectors.

5.10 Verification of Costs. Lender has the right at any time and from time to time to review and verify all costs incurred by Borrower.

5.11 Costs and Expenses of Borrower's Performance of Covenants and Satisfaction of Conditions. Borrower must perform all of its obligations and satisfy all conditions under the Loan Documents at its sole cost and expense.

5.12 Notification. Borrower must promptly disclose to Lender the occurrence of, in each case to the extent Borrower has knowledge of: (a) any default by Borrower under or pursuant to the terms and conditions of any material Debt owed by Borrower to any Person, whether now existing or hereafter arising; (b) the occurrence of any event or other circumstance of which Borrower has knowledge and that with the giving of notice or the passage of time would constitute a default referred to in clause (a) above; (c) any Material Adverse Change; (d) any change in the Requirements of any Governmental Authority that would materially and adversely affect Borrower's ability to operate the Hotel; (e) any action or proceeding which is instituted by or against Borrower or the Hotel in any Federal or state court or before any Governmental Authority, federal, state or local, foreign or domestic, or any such actions or proceedings are threatened against Borrower or the Hotel which, in any such case, if adversely determined, would cause a Material Adverse Change; and (f) the occurrence of any Event of Default or Unmatured Event of Default.

5.13 No Other Debt.

5.13.1 No Other Debt. To the extent there is any third-party Debt on or related to the Hotel, except for (i) the Outstanding Bonds or bonds issued to refund the Outstanding Bonds and (ii) Debt incurred under the Bondholder Loan Agreement and the Bondholder Promissory Note, and the Cap-X Loan Agreement and the Cap-X Promissory Note (collectively **Other Debt**), the Lender has the right, but not the obligation, to declare a default under the Loan if there are any material uncured monetary or non-monetary defaults on any and all Other Debt of Borrower (excluding the Outstanding Bonds and bonds issued to refund the Outstanding Bonds), which in Lender's reasonable judgment will materially impair the ability of Borrower to perform under the terms of this Agreement or the Note.

5.14 Books and Records; Names; Place of Business. Borrower must give Lender 30 days prior written notice of any change in the location of its books and records or its sole place of business.

6. BORROWER NEGATIVE COVENANTS.

Until the Commitment terminates in full and the Obligations are paid and performed in full, Borrower agrees that, unless Lender otherwise agrees in writing:

6.1 Restrictions. Except as otherwise expressly provided in the Loan Documents, Borrower may not be dissolved or liquidated. Borrower may not amend, modify, restate, supplement, or terminate any of its Organizational Documents if such amendment, modification, restatement, supplement or termination will result in a default under the Loan Documents or impair Lender's rights and remedies under the Loan Documents.

6.2 Name, Fiscal Year, Accounting Method, and Lines of Business. Borrower may not change its name, fiscal year, or method of accounting without the consent of Lender (which may not be unreasonably withheld, conditioned or delayed). Borrower may not directly engage in any business other than the lines of business in which Borrower is engaged on the date of this Agreement, discontinue any existing lines of business that are material to the business or operations of Borrower, or substantially alter its method of doing business.

6.3 Indebtedness. Borrower may not assume, create, incur, or permit to exist any Debt other than the Other Debt. Borrower may not assume, create, incur, or permit to exist any contingent liabilities.

6.4 Acquisition of Assets. Borrower may not acquire by purchase, lease, or otherwise all or substantially all the assets of any other person, if to do so would materially affect its business or operations.

7. EVENTS OF DEFAULT AND REMEDIES.

7.1 Events of Default. The occurrence of any 1 or more of the following constitutes an Event of Default under this Agreement:

7.1.1 Failure by Borrower to pay any payment of principal or interest when due under the Note or this Agreement and the expiration of 10 days prior written notice of such failure by Lender to Borrower and Trustee.

7.1.2 Failure by Borrower to perform obligation not involving the payment of money, or to comply with any other term or condition applicable to Borrower under any Loan

Document, and after the expiration of 30 days written notice of such failure by Lender to Borrower and Trustee, provided that if Borrower cannot reasonably cure such failure within such 30 day period, such 30 day period may be extended for a reasonable period not in excess of 90 days from the date of Lender's notice to cure such failure provided that Borrower has commenced such cure within such 30 day period and diligently thereafter proceeds to effect such cure.

7.1.3 Any representation or warranty by Borrower in any Loan Document is materially false, incorrect, or misleading as of the date made.

7.1.4 Commencement of any case under the Bankruptcy Code, Title 11 of the United States Code or commencement of any other bankruptcy arrangement, reorganization, receivership, custodianship or similar proceeding under any federal, state or foreign law by or against Borrower, and such case is not dismissed or discharged within 120 days of filing.

7.1.5 Borrower fails to pay when due (after the expiration of any applicable notice and cure period) any monetary obligation (excluding the failure to make payments on the Outstanding Bonds and this Loan and the failure to timely pay (and in any event within 3 Business Days) any monetary obligation as a result of an administrative error, computer system malfunction, or the like), whether such obligation be direct or contingent, to any person in excess of \$100,000.00, provided that Borrower may in good faith contest any such monetary obligation by appropriate administrative or judicial proceedings as long as (i) Borrower has, in Lender's commercially reasonable judgment, a reasonable basis for such contest, (ii) Borrower pays when due any material portion of such monetary obligation that Borrower does not contest, (iii) Borrower's contest will not result in or pose any material risk of the seizure, sale or imposition of the Hotel or any portion thereof, or Borrower has posted or caused to be posted appropriate lien release bonds as permitted by applicable law in order to cause any such lien to be released from the Hotel, (iv) Borrower delivers or causes to be delivered to Lender such bond or other security as Lender may reasonably require in connection with such contest within 10 days after written notice by Lender or any other party to Borrower of the existence of a lien; provided that Borrower is permitted to deliver such bond or other security under the Bond Documents and such delivery would not result in an Event of Default as defined and identified under the Bond Documents, (v) Borrower at all times prosecutes such contest with due diligence, and (vi) Borrower pays promptly following a determination of the amount of such monetary obligation due and owing by Borrower.

7.1.6 Any litigation or proceeding that, in Lender's reasonable judgment if determined adversely to Borrower, would constitute a Material Adverse Change on Borrower or the Hotel, is commenced before any Governmental Authority against or affecting Borrower, or the property of Borrower or any part thereof, and such litigation or proceeding is not defended diligently and in good faith by Borrower or is not dismissed or discharged within 120 days of filing.

7.1.7 A final judgment or decree for monetary damages or a monetary fine or penalty (not subject to appeal or as to which the time for appeal has expired) is entered against Borrower by any Governmental Authority, which together with the aggregate amount of all other such judgments, decrees, fines and penalties against Borrower that remain unpaid or that have not been discharged or stayed, exceeds \$100,000.00 or would otherwise in Lender's reasonable judgment constitute a Material Adverse Change on Borrower or the

Hotel, and such judgment, decree, fine or penalty is not paid, discharged or stayed within 90 days after the entry thereof.

7.1.8 Commencement of any action or proceeding which seeks as one of its remedies the dissolution of Borrower, and such action or proceeding is not defended diligently and in good faith by Borrower or is not dismissed or discharged within 120 days of filing.

7.1.9 All or any material portion of the property of Borrower is attached, levied upon or otherwise seized by legal process, and such attachment, levy or seizure is not quashed, stayed or released within 120 days of the date thereof.

7.1.10 The occurrence and continuance of any Event of Default, as such term is defined in any other Loan Document.

7.1.11 If Borrower, at any time, ceases to manage and operate the Hotel.

7.2 Rights and Remedies of Lender.

7.2.1 Notwithstanding any provision to the contrary herein or any Loan Document (except with respect to Sections 2.1.1(d) and 2.1.4(f) of this Agreement), during the continuance of any Event of Default under this Agreement, or during the continuance of an Event of Default under any Loan Document: (i) Lender's obligations to make further disbursements of the Loan abate; and (ii) if the Event of Default is not cured within the applicable notice and cure periods set forth in this Agreement (which include, for the avoidance of doubt, Sections 2.1.1(d) and 7.1), then Lender, at its option, has the remedies provided in the Loan Document breached by Borrower, including, without limitation, the option to declare all outstanding indebtedness to be immediately due and payable without presentment, demand, protest or notice of any kind, and the following remedies: Lender's obligation to make further disbursements to Borrower terminate; Lender may, at its option, apply any of Borrower's funds in its possession to the outstanding indebtedness under the Note whether or not such indebtedness is then due; and Lender may exercise all rights and remedies available to it under any or all of the Loan Documents.

7.2.2 Upon the occurrence and continuance of any Event of Default, Borrower hereby constitutes and appoints Lender, or an independent contractor selected by Lender, as its true and lawful attorney-in-fact with full power of substitution from and after the occurrence of an Event of Default under the Loan Documents, unless and until Borrower reinstates the Loan pursuant to applicable law and otherwise cures any and all outstanding Events of Default, to do any or all of the following upon the occurrence of an Event of Default (it being understood and agreed that said power of attorney is deemed to be a power coupled with an interest which cannot be revoked until repayment of the Loan):

- (a)** To use any balance of the Loan and any funds which may be held by Lender for Borrower for the purpose of operating and managing the Hotel in accordance with the Outstanding Bonds, Indenture of Trust and Management Agreement.

8. LENDER'S OBLIGATIONS TO BORROWER ONLY AND DISCLAIMER BY LENDER.

8.1 No Third-Party Beneficiaries. No Person, other than Borrower and Lender, has any rights hereunder or be a third-party beneficiary hereof. Lender is not a joint venture or a partner with Borrower. Prior to an Event of Default and thereafter until Lender elects in writing to assume specific obligations of Borrower, Lender is not obligated to any Person

providing labor, management, or services for the Hotel and payment of funds from Advances directly to any such Persons does not give or a recognition of any third-party beneficiary status.

8.2 Disclaimer by Lender. Lender is not be liable to any contractor, subcontractor, supplier, laborer, vendor, or any other party for services performed or materials supplied in connection with the Hotel (except to the extent resulting from Lender's own gross negligence or willful misconduct). Lender is not liable for any debts or claims accruing in favor of any such parties against Borrower or others or against the Hotel (except to the extent such debts or claims accrued as a result of Lender's own gross negligence or willful misconduct). Lender is not a joint venture partner with Borrower in any manner whatsoever. Prior to default by Borrower under this Agreement and the exercise of remedies granted herein, Lender may not be deemed to be in privity of contract with any contractor or provider of services to the Hotel, nor does any payment of funds directly to a contractor, subcontractor, or provider of services be deemed to create any third party beneficiary status or recognition of same by Lender. Approvals granted by Lender for any matters covered under this Agreement must be narrowly construed to cover only the parties and facts identified in any written approval or, if not in writing, such approvals are solely for the benefit of Borrower.

9. NO BROKERS.

Borrower and Lender represent and warrant to the other that it knows of no broker's or finder's fee due in respect of the transaction described in this Agreement and that it has not used the services of a broker or a finder in connection with this transaction. Borrower and Lender must indemnify and hold harmless the other party from and against any and all loss, damage, liability and expense, including costs and reasonable attorneys' fees, which such other party may incur or sustain by reason of or in connection with any misrepresentation by the indemnifying party with respect to the foregoing.

10. PROVISIONS IN THE NOTE GOVERN THIS AGREEMENT.

This Agreement is subject to certain terms and provisions in the Note, to which reference is made for a statement of such terms and provisions.

11. COUNTERPART EXECUTION.

This Agreement may be executed in one or more counterparts, each of which is deemed an original and all of which together constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

12. MISCELLANEOUS.

12.1 Assignment. Neither party hereto may assign this Agreement or any interest it may have in the monies due hereunder, without the prior written consent of the other party.

Notwithstanding the foregoing, in the event of any such assignment, Lender may nevertheless at its option continue to make disbursements under this Agreement to Borrower or to those who succeed to Borrower's title, and all sums are deemed to be disbursements under this Agreement, and not to be modifications hereof.

12.2 Notices. All notices, requests, demands and consents to be made hereunder to the parties hereto must be in writing and must be delivered by hand courier, overnight service or sent by

registered mail or certified mail, postage prepaid, return receipt requested, through the United States Postal Service to the addresses shown below or such other address which the parties may provide to one another in accordance herewith. Such notices, requests, demands and consents, if sent by mail, are deemed given 2 Business Days after deposit in the United States mail, and if delivered by hand, are deemed given when delivered, and if delivered by courier or overnight service, then 1 Business Day following delivery to said courier or overnight service.

If to Borrower: Austin Convention Enterprises, Inc.
President
500 East Cesar Chavez Street
Austin, Texas 78701

If to Lender: City of Austin Convention Center Department
Director
500 E. Cesar Chavez, Street
Austin, Texas 78701

With a copy to: City of Austin
Law Department
P.O. Box 1088
Austin, Texas 78767-1088

If to Trustee: U.S. Bank Trust Company, National Association
Corporate Trust Services
Portland Main Complex
PD-OR-P7TD
555 SW Oak St
Portland, Oregon 97204
Attn. Diana L. Jacobs
Email: diana.jacobs@usbank.com

12.3 Authority to File Notices. Upon the occurrence and continuance of any Event of Default, Borrower irrevocably appoints Lender as its attorney-in-fact, with full power of substitution, to file or record, at Borrower's cost and expense and in Borrower's name, any notices that Lender considers necessary or desirable.

12.4 Reserved.

12.5 No Waiver. No disbursement of proceeds of the Loan constitute a waiver of any conditions to Lender's obligation to make further disbursements nor, in the event Borrower is unable to satisfy any such conditions, does any such waiver have the effect of precluding Lender from thereafter declaring such inability to constitute an Event of Default under this Agreement (if such inability otherwise constitutes an Event of Default).

12.6 Lender Approval of Instruments and Parties. All proceedings taken in accordance with transactions provided for herein, and the persons responsible for the execution and preparation thereof, must be reasonably satisfactory to and subject to approval by Lender. Lender's counsel must be provided with copies of all documents which they may reasonably request in connection with the Agreement.

12.7 Lender Determination of Facts. Lender is at all times free to establish independently, to its reasonable satisfaction, the existence or nonexistence of any fact or facts, the existence or nonexistence of which is a condition of this Agreement.

12.8 Incorporation of Preamble: Recitals and Exhibits. The preamble, recitals and exhibits hereto are hereby incorporated into this Agreement.

12.9 Payment of Expenses. Borrower must pay all taxes and assessments and all reasonable and documented expenses, charges, costs and fees provided for in this Agreement or relating to the Loan or the Hotel, including any reasonable and documented fees incurred for recording or filing any of the Loan Documents, if necessary. Borrower hereby authorizes Lender to disburse the proceeds of the Loan to pay such reasonable and documented expenses, charges, costs, and fees notwithstanding that Borrower may not have requested a disbursement of such amount. Such disbursement will be added to the outstanding principal balance of the Note. The authorization hereby granted is irrevocable, and no further direction or authorization from Borrower is necessary for Lender to make such disbursements. However, the provision of this Section 12.9 does not prevent Borrower from paying such reasonable and documented expenses, charges, costs and fees from its own funds. All such reasonable and documented expenses, charges, costs and fees are Borrower's obligation regardless of whether Borrower has requested and met the conditions for a disbursement of the Loan. The obligations on the part of Borrower under this Section 12.9 survive the closing of the Loan and the repayment thereof.

12.10 Indemnification.

12.10.1 Indemnification Provisions. Borrower hereby agrees to indemnify Lender against, and hold it harmless from, all losses, damages, liabilities, claims, causes of action, judgments, court costs, reasonable attorneys' fees and other legal expenses (except for those which arise out of Lender's own gross negligence or willful misconduct), which it may suffer or incur:

- (a) By reason of this Agreement (excluding any regulatory or other administrative losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses arising out of claims against Lender in connection with its lending activities); or
- (b) By reason of the execution of the Loan Documents by Borrower or in performance of any act by Borrower which is required or permitted hereunder or by law; or
- (c) As a result of any failure of Borrower to perform Borrower's obligations under the Loan Documents; or
- (d) By reason of any alleged obligation or undertaking on Lender's part to perform or discharge any of the representations, warranties, conditions, covenants, or other obligations of Borrower contained in any other Loan Document related to the Hotel, the Loan, or Borrower.

12.10.2 No Liability of Borrower. Notwithstanding the foregoing, Borrower is not liable under Section 12.10.1 to the extent that Borrower establishes that such liability is attributable to the gross negligence or willful misconduct of Lender.

12.10.3 Payment of Indebtedness. Borrower must pay all indebtedness arising under this Section 12.10 immediately upon demand by Lender, together with interest thereon from

the date the indebtedness arises at the Default Interest Rate of interest set forth in the Note (after giving effect to any notice and cure periods). Borrower's duty to indemnify Lender survive the release and cancellation of the Loan obligations.

12.11 Change, Discharge, Termination or Waiver. No provision of this Agreement may be changed, discharged, terminated, or waived except in writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought, and to the extent such change, discharge, termination, or waiver could adversely affect the rights of Bondholders, signed by the Trustee or with the consent of a majority of the Bondholders. No failure on the part of Lender to exercise and no delay by Lender in exercising any right or remedy under the Loan Documents or under the law operate as a waiver thereof.

12.12 Choice of Law. This Agreement and the transaction contemplated hereunder are governed by and must construed in accordance with the laws of the State of Texas, without giving effect to conflict of laws principles.

12.13 Attorneys' Fees. Borrower must promptly pay to Lender from Borrower's own funds or from the proceeds of the Loan, upon demand, with interest thereon from the date of demand at the Default Interest Rate, if not paid within 5 Business Days after written demand by Lender, reasonable attorneys' fees, expert witness fees and all costs and other expenses paid or reasonably incurred by Lender in enforcing or exercising its rights or remedies created by, connected with or provided for in this Agreement or any of the other Loan Documents. If at any time Borrower fails, refuses, or neglects to do any of the things herein provided to be done by Borrower, Lender has the right, but not the obligation, to do the same but at the expense and for the account of Borrower. The amount of any moneys so expended or obligations so incurred by Lender, together with interest thereon at the Default Interest Rate, must be repaid to Lender forthwith upon written demand therefor.

13. NONRECOURSE; EXCULPATION.

The Loan is nonrecourse. Notwithstanding any other term or provision of this Agreement to the contrary, Borrower's liability hereunder and under the Loan Documents is solely that of Borrower, and no personal or direct liability may at any time be asserted or enforceable against its board of directors, any director, officers, employees, or agents on account of or arising out of any obligations arising out of or related to this Agreement or any other Loan Document (collectively, the **Non-Recourse Parties**). Neither Lender nor any of its successors, assigns, participants or transferees has any recourse to any assets of Borrower or a Non-Recourse Party.

14. EXHIBITS. The following Exhibits are attached to this Agreement and incorporated herein by this reference:

Exhibit A	Form of Advance Request
Exhibit B	Form of Compliance Certificate

{Signature pages follow}

IN WITNESS WHEREOF, the parties hereto cause this Loan Agreement to be executed by their duly authorized representative.

BORROWER:

AUSTIN CONVENTION ENTERPRISES, INC.

By: _____
Jimmy Flannigan, President

{signature follows}

DRAFT

LENDER:

CITY OF AUSTIN, TEXAS
Convention Center Department

By: _____
Trisha Tatro
Director

Approved as to form:

Sean Creegan
Assistant City Attorney

EXHIBIT A

Form of Advance Request

Austin Convention Enterprises, Inc., a Texas nonprofit Public Facility Corporation (**Borrower**) acting on behalf of the City of Austin, Texas hereby requests a disbursement in the amount, and on the date, set forth below, pursuant to that certain Nonrecourse Unsecured Promissory Note dated as of _____, 2023 (as the same has been amended from time to time, **Note**), between Borrower and the City of Austin, acting by and through the Convention Center Department, a department and enterprise fund of the City of Austin, Texas (**Lender**). Capitalized terms used herein and not otherwise defined have the same meanings as set forth in that certain Loan Agreement originally dated as of _____, 2023 (as the same has been amended from time to time, **Loan Agreement**).

REQUESTED AMOUNT: \$ _____

REQUESTED DATE: _____

ACCOUNT NO. TO BE CREDITED: _____

Borrower hereby represents and warrants to Lender as follows:

1. The requested Advance will be deposited with the Trustee to pay Life, Health, and Safety Projects.
2. All representations and warranties contained in the Loan Agreement (a) are true, correct, complete and accurate in all material respects as of the date of this request as if made on this date and (b) will be true, correct, complete and accurate in all material respects as of the requested date of this Advance Request as if made on said date.
3. No **Event of Default** under the **Loan Documents** (both as defined in the Loan Agreement) has occurred that remains uncured.

BORROWER: **AUSTIN CONVENTION ENTERPRISES, INC.**

By: _____

Name: _____

Title: _____

EXHIBIT B
Form of Compliance Certificate

CITY OF AUSTIN
Convention Center Department
Attn: Director
500 East Cesar Chavez Street
Austin, Texas 78701

Dear Director:

Reference is made to the Loan Agreement dated as of _____, 2023 (**Agreement**) between AUSTIN CONVENTION ENTERPRISES, INC., a Texas nonprofit Public Facility Corporation (**Borrower**), acting on behalf of the City of Austin, Texas, and the CITY OF AUSTIN, TEXAS, by and through the Convention Center Department, a department and enterprise fund of the City of Austin, Texas (**Lender**). Terms defined in the Agreement and not otherwise defined herein are used herein as defined in the Agreement.

Pursuant to the Agreement, Borrower is furnishing to you herewith the _____ (Annual Audited Financial Statement) for the period _____ to _____, which has been prepared in accordance with sound accounting principles and sound accounting practices. Borrower, by execution of this Compliance Certificate, certifies that the _____ (Annual Audited Financial Statement) of Borrower presents fairly the financial position of Borrower at the date thereof and the results of its operations for the periods covered thereby, subject in the case of interim statements only to normal year-end audit adjustments.

This certificate is submitted in compliance with the requirements of Section 5.4 of the Agreement.

The undersigned are providing the following information to demonstrate compliance as of the date herewith the following covenants:

NO OTHER DEBT

There may be no third-party Debt on the Hotel, other than Other Debt expressly permitted under the Agreement. Lender has the right, but not the obligation, to declare an Event of Default under the Loan if there are any material uncured monetary or non-monetary defaults on any and all debt obligations (excluding Other Debt), which in Lender's reasonable judgment will materially impair the ability of Borrower to perform under the terms of this Agreement, the Note, or the Loan Documents.

{Signature on the following page.}

DRAFT

EXECUTED AND DELIVERED this on _____ (date).

BORROWER: **AUSTIN CONVENTION ENTERPRISES, INC.**

By: _____

Name: _____

Title: _____

