

NONRECOURSE UNSECURED PROMISSORY NOTE

\$8,750,000.00

_____, 2023

Borrower:

AUSTIN CONVENTION ENTERPRISES, INC.,
a Texas nonprofit corporation organized and
existing under Chapter 303 of the Texas
Local Government Code

Borrower's Address for Notice:

Austin Convention Enterprises, Inc.
President
500 East Cesar Chavez Street
Austin, Texas 78701

Lender:

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's Address for Payment:

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

Promise to Pay:

For value received, the undersigned Borrower promises to pay to the order of Lender the sum of \$8,750,000.00, to the extent advanced by Lender, together with interest on the unpaid balance of such amount, in lawful money of the United States of America, in accordance with all the terms conditions and covenants set forth below.

Definitions: Capitalized terms used in this Note and not defined herein have the meanings assigned to such terms in the Loan Agreement (defined below). In addition, the following terms have the meanings set forth below:

Advance – Each disbursement of Loan proceeds under this Note pursuant to the Loan Agreement.

Applicable Rate – 2% per annum (simple interest).

Default Interest Rate – The Maximum Lawful Rate, or if no such Maximum Lawful Rate is established by applicable law, then the Applicable Rate plus 3% per annum.

Event of Default – means all of the events described in Section 7.1 of the Loan Agreement.

Loan Agreement – Loan Agreement dated as of even date herewith between Borrower and Lender. This Note is issued pursuant to the terms of the Loan Agreement.

Loan Balance - The amount, at any point in time, equal to the sum of all outstanding Advances disbursed under the Loan, after giving effect to any borrowings and prepayments or repayments of Advances occurring prior thereto.

Loan Maturity Date – (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.

Maximum Lawful Amount – The maximum, nonusurious and lawful contractual amount of interest that may be collected or received by Lender under applicable state or federal law.

Maximum Lawful Rate – The maximum, nonusurious and lawful contractual rate of interest that may be charged by Lender under applicable state or federal law.

Principal – The amount of the Loan Balance on the Draw Termination Date.

Principal and Interest Payment Dates – On January 1, 2035 and on each January 1st thereafter until and including the Loan Maturity Date.

TERMS OF THE NOTE

1. Interest and Principal Provisions:

(a) *Interest Accrual:* The Loan Balance of this Note advanced but remaining unpaid prior to the Loan Maturity Date bears interest at the Applicable Rate, but never greater than the Maximum Lawful Rate. The (i) past due installments of Principal and Interest on this Note, and (ii) entire Loan Balance after acceleration of the Principal Balance, bear interest at a per annum rate equal to the Default Interest Rate.

(b) *Payment Terms:* From the date hereof to and including the Loan Maturity Date, this Note is due and payable as follows:

(i) *Principal and Interest* – Interest accrues on the unpaid Loan Balance at the Applicable Rate. Principal and interest installments amortized from January 1, 2035 through January 1, 2040 are due on the Principal and Interest Payment Dates. On the Loan Maturity Date, all accrued and unpaid interest and unpaid principal is due and payable.

(ii) *Loan Maturity Date* – On the Loan Maturity Date, a final installment, which includes all unpaid amounts of the Loan Balance and interest accrued thereon, and any and all other payments due under this Note and Loan Agreement, are due and payable.

(iii) *Subject to Indenture of Trust* – For so long as the Bonds are Outstanding, the Borrower's payments under this Note and the Loan Agreement are subject and limited solely to the funds available to Borrower from the Corporation Account of the Excess Revenue Fund as set forth in Section 5.15 of the Indenture of Trust related to the Bonds, and such payments may only commence after the Draw Termination Date. To the extent no funds or insufficient funds are available to Borrower under the Corporation Account of the Excess Revenue Fund to make a payment under this Note, the Loan Balance and accrued and unpaid

interest shall be re-amortized over the remaining term of this Note. When the Bonds are no longer Outstanding and after the Draw Termination Date has occurred, the Borrower's payments of Principal and Interest shall be made from any lawfully available funds of the Borrower.

Each payment is applied first to accrued but unpaid interest and the balance to the reduction of the Loan Balance.

2. Advances and Prepayments:

(a) *Note.* This Note evidences Borrower's indebtedness for Advances from time to time made pursuant to the Loan Agreement. Interest on any Advance accrues only from the date that Advance is made pursuant to the Loan Agreement, and the liability of the undersigned is limited to the Loan Balance actually disbursed pursuant to the Loan Agreement, plus unpaid interest actually accrued on such principal, plus any expenses or other charges as more fully provided in this Note, the Loan Agreement, and any other Loan Documents. This Note evidences all such indebtedness and this Note remains in effect until this Note is formally terminated in writing. Lender may, and is hereby authorized by Borrower to, endorse on ***Schedule A***, attached hereto and made a part hereof (or on a continuation of such schedule), an appropriate notation evidencing the date and amount of each Advance and any payments made thereon; provided, however, that the failure of Lender to make such a notation on this Note does not affect any obligation of Borrower under this Note. Any such notation is prima facie evidence as to the date, amount, and monthly payment of such Advance or payment.

(b) *Prepayment.* Borrower may prepay the Principal Balance in whole, or in part, at any time, upon payment of interest accrued on the Loan Balance outstanding through the day of prepayment and all other charges due hereunder, without premium. All payments and prepayments received by Lender prior to an Event of Default will be applied first to accrued, unpaid interest on the Loan Balance at the Applicable Rate, and then to reduction of the Loan Balance.

All prepayments must be noted on ***Schedule B***, attached hereto and made a part hereof. Lender must, and is authorized by Borrower, to endorse on ***Schedule B*** an appropriate notation evidencing the date and amount of each prepayment.

(c) *Limitations on Advances.* This Note and the Loan Agreement contain limitations on the amount of the Advances which may be made hereunder.

(d) *Advance Expiration Date.* No Advances may be made after the Draw Termination Date.

3. Default and Waiver Provisions:

(a) *Events of Default and Acceleration of Maturity.* Lender may, subject to any notice requirements in the Loan Agreement, declare the entire unpaid Loan Balance and all accrued and earned but unpaid interest at once due and payable upon the occurrence of an Event of Default.

(b) *Waiver by Borrower.* Except as expressly set forth in the Loan Agreement, Borrower and all other parties liable for this Note waive demand, notice of presentment, presentment for payment, notice of nonpayment, protest, notice of protest, grace, notice of dishonor, notice of intent to accelerate, notice of acceleration, and diligence in collection.

(c) *Non-Waiver by Lender.* Any previous extension of time, forbearance, failure to pursue some remedy, or acceptance of partial payment by Lender, before or after maturity, does not

constitute a waiver by Lender of the existence of any event of default nor of its right to strictly enforce the collection of this Note according to its terms. Lender is not deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by Lender and, then, only to the extent specifically set forth in the writing. A waiver with reference to one event may not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

(d) *Other Remedies Not Required:* Lender is not required to first file suit, exhaust all remedies, or enforce its rights against any security in order to enforce payment of this Note.

(e) *Attorney's Fees:* If Lender requires the services of an attorney to enforce the payment of this Note or the performance of the other Loan Documents, or if this Note is collected through any lawsuit, probate, bankruptcy, or other judicial proceeding, Borrower agrees to pay Lender an amount equal to its reasonable, documented and necessary attorney's fees and other collection costs. This provision is limited by any applicable statutory restrictions relating to the collection of attorney's fees.

4. Loan Agreement:

The Loan Agreement contains additional terms to this Note.

5. Miscellaneous Provisions:

(a) *Usury Disclaimer:* All agreements between Lender and Borrower, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of demand for payment or acceleration of the maturity hereof or any other circumstance whatsoever, does the interest contracted for, charged or received by Lender exceed the Maximum Lawful Amount. If, from any circumstance whatsoever, interest would otherwise be payable to Lender in excess of the Maximum Lawful Amount, the interest payable to Lender must be reduced to the Maximum Lawful Amount; and if from any circumstance Lender ever receives any interest in excess of the Maximum Lawful Amount, an amount equal to any excessive interest must be applied to the reduction of the Principal Amount and not to the payment of interest, or if such excessive interest exceeds the unpaid Principal Amount such excess must be refunded to Borrower. All interest paid or agreed to be paid to Lender must, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full period until payment in full of the Loan Amount (including the period of any renewal or extension hereof) so that the interest hereon for such full period does not exceed the Maximum Lawful Amount. For purposes of this paragraph, the term interest includes all considerations and amounts that constitute interest under applicable usury law. This paragraph controls all agreements between Borrower and Lender.

(b) *Subsequent Holder:* All references to Lender in this Note also refer to any subsequent owner or holder of this Note by transfer, assignment, endorsement or otherwise.

(c) *Successors and Assigns:* The provisions of this Note are binding upon and for the benefit of the successors, assigns, heirs, executors and administrators of Lender and Borrower.

(d) *Borrower's Address for Notice:* All notices required to be sent by Lender to Borrower must be sent by United States Mail, postage prepaid, to Borrower's Address for Notice stated on the first page of this Note, until Lender receives written notification from Borrower of a new address for notice.

(e) *Lender's Address for Payment:* All sums payable by Borrower to Lender must be paid at Lender's Address for Payment stated on the first page of this Note, until Lender notifies Borrower of a new address for payment.

(f) *Applicable Law:* This Note has been executed and delivered, and must be construed, in accordance with the applicable laws of the State of Texas.

(g) *Time of Essence:* Time is of the essence in Borrower's performance of all duties and obligations imposed by this Note.

(h) *Partial Invalidity:* In the event any one or more of the provisions hereof is determined to be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions hereof are in no way affected, prejudiced, or disturbed thereby.

(i). *Nonrecourse Loan.* This is a nonrecourse Loan.

(j). *Unsecured Loan.* There is no collateral securing the payments under this Note.

[Signature Page Follows]

BORROWER:

AUSTIN CONVENTION ENTERPRISES, INC.

a Texas nonprofit corporation

By: _____
Jimmy Flannagan, President

Schedule A

Advances

Date

Advance Amount

Loan Balance

Schedule B

Prepayments

Date

Prepayment Amount

Loan Balance