

HOTEL OCCUPANCY TAX GRANT AND ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Hotel Occupancy Tax Grant and Economic Development Incentive Agreement ("Agreement") is made by and between the City of Carrollton, Texas (the "City"), and Lowen Holdings, Ltd., a Texas limited partnership ("Company"), acting by and through their respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Company is engaged in the hospitality business and intends to develop up to three (3) select service business class hotels and one (1) conference/meeting space located on three (3) parcels of land totaling approximately 12.50 acres (the "Property"), as further described in Exhibit "A"; and

WHEREAS, Company will develop the first two (2) hotels on two (2) parcels (Parcels A and B) of the Property previously acquired from the City with the third hotel to be developed on one (1) parcel (Parcel D), which has not been acquired from the City; and

WHEREAS, Company will develop one (1) conference/meeting space on one (1) parcel (Parcel A) in connection with the development of the first hotel on the Property, as described below; and

WHEREAS, the City and Company entered into an agreement on September 7, 2010, (the "Original Agreement") providing for a program of grants to promote economic development and stimulate business and commercial activity within the City; and

WHEREAS, the City and Company entered into a Contract for the Sale and Purchase of Real Property on February 15, 2011 (the "Purchase Agreement"), which provided for certain terms and conditions for the sale by the City and the purchase by the Company of the Property, which is attached hereto as Exhibit "B"; and

WHEREAS, the City and Company closed on the sale of Parcels A and B under the terms and conditions of the Purchase Agreement on July 11, 2011; and

WHEREAS, under the terms of the Purchase Agreement Company retains an option to purchase Parcel D until the dates Company set forth in the Purchase Agreement; and

WHEREAS, the Original Agreement has expired by its own terms; and

WHEREAS, City currently levies a local hotel occupancy tax pursuant to Chapter 351, Texas Tax Code (the "Hotel Occupancy Tax" or "HOT"); and

WHEREAS, the Company shall develop and occupy up to three (3) hotels and one (1) meeting/conference space on the Property which shall consist of guest rooms and meeting/conference space (including pre-function space), including various related meeting

rooms, recreational facilities, and other ancillary facilities (collectively, the "Hotel"), which Hotel will, when operating, be subject to the Hotel Occupancy Tax; and

WHEREAS, the Company shall offer services to market the Hotel in the city of Carrollton, Texas ("Carrollton"), and the surrounding area (collectively, the "Carrollton Area"), including promoting travel to Carrollton by residents outside of Carrollton for leisure, business, conventions and similar events. In addition to assisting the City in such promotional endeavors, the Company shall also provide promotional activities for the Hotel; and

WHEREAS, the Company's activities are compatible with the interests of the City, and the City desires to provide an incentive for such promotional activities; and

WHEREAS, the City is authorized by Texas Local Government Code § 380.001, *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City is authorized to use Hotel Occupancy Tax funds for advertising to promote tourism and the convention and hotel industry pursuant to Section 351.101(a)(3) of the Texas Tax Code and for transportation of hotel tourists pursuant to Section 351.110 of the Texas Tax Code; and

WHEREAS, the City Council of the City of Carrollton finds that it is in best interest of the City to grant Hotel Occupancy Tax funds and economic development to the Company as an economic development incentive to use for promotional and transportation activities as set out herein.

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Company, intending to be legally bound, hereby covenant and agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"Base Year Value" shall mean the assessed value of the Taxable Property, as defined below, on the Property effective January 1, 2014.

"Effective Date" shall mean the last date on which all of the parties hereto have executed this Agreement.

"Event of Force Majeure" shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or

floods, strikes, slowdowns or work stoppages any of which event(s) directly and significantly impact the Company's operations in the City. An economic downturn shall not constitute an Event of Force Majeure.

"Grant Year" shall mean, for purposes of the Hotel Occupancy Tax grant, a period beginning January 1 and ending December 31, of each year for the grant period, as applicable, for each hotel.

"Property" shall include the value of land and improvements on the Property as defined by the Texas Property Tax Code.

"Taxable Property" shall include the real and personal property located on the Property subject to City of Carrollton taxes for the term of this Agreement.

"Taxable Value" shall be the same as the value of the Taxable Property as determined annually by the Dallas Central Appraisal District, or any other applicable taxing or valuation governmental authority, subject to the appeal procedures set forth in the V.T.C.A. Tax Code. Any decrease in Taxable Value after appeal is subject to recalculation of the appropriate amount of the grant from the City under this Agreement. If the City has issued the grant to the Company based on the greater value, refund of any overpayment by the City to Company of such difference shall be remitted to the City within 60 days to City after final determination of appeal

Article II Term

The term of this Agreement shall begin on the Effective Date and continue until December 31, 2050 (the "Term"), unless sooner terminated as provided herein.

Article III Obligations of Company

In consideration for the grant of public funds as set forth in Article IV and Article V below, the Company agrees to perform the following:

3.1 Occupancy and Operation.

On or before December 31, 2014, and throughout the remainder of the Term, occupy, operate, and be open to the public, one meeting conference space and up to three (3) hotels that are operated as select service hotels and consist of the following:

- (1) The first hotel shall have a minimum of 135 guest rooms and a minimum of 20,000 gross square feet of meeting/conference space ("Conference Facilities") on Parcel A of Property. The brand will be a Marriott Courtyard, hereafter referred to as the Hotel Franchisor.
- (2) The Conference Facilities will be named "Carrollton Conference Center" subject to approval from City and the Hotel Franchisor.

(3) A building permit must be applied for and issued, and construction of the first hotel and the conference facilities must commence on or before September 15, 2014. The first hotel must obtain a Certificate of Occupancy within twenty (20) months after a building permit is issued.

(4) The second hotel, to be located on Parcel B of the Property, shall be a select service brand of the Hotel Franchisor with a minimum of 110 rooms, as allowed by current zoning. A building permit must be applied for and issued, and construction shall commence on the second hotel within twelve (12) months of the date in which a feasibility study, prepared at Company's sole expense, determines that the economic or financial viability and market study or conditions, including without limitation, available hotel rooms, then-existing, warrant the construction of such second hotel. The second hotel must obtain a Certificate of Occupancy within twenty (20) months after a building permit is issued.

(5) The Company currently has an option to purchase Parcel D, to be used for the third hotel. Should Company exercise its option, the third hotel shall be a select service hotel with 90-110 rooms. Further, a building permit must be applied for and issued, and construction of the third hotel must commence within twelve (12) months after a feasibility study, prepared at Company's sole expense, determines that the economic or financial viability and market study or conditions, including without limitation, available hotel rooms, then-existing, warrant the construction of such third hotel. The third hotel must obtain a Certificate of Occupancy within twenty (20) months after a building permit is issued.

3.2 **Performance.** Company agrees and covenants that it will diligently and faithfully, in a good and workmanlike manner, make improvements to the Property, including, but not limited to, the construction and operation of one (1) meeting/conference center complex and up to three (3) hotels, in accordance with all applicable state and local laws and regulations; and

3.3 **Improvements.** Company shall, during the term of this Agreement, make real and personal property improvements in and on the Property in the amount of \$32 million on the Conference Facilities and first two (2) hotels and, if the option is exercised on third hotel, a total of \$50 million and continuously operate, occupy, and maintain the Property and all Taxable Property in furtherance of the services incident to the Hotel; and

3.4 **Roadway.** Company shall design and construct a north/south driveway across Parcel C, to be known as the Convention Drive, in accordance with all applicable City requirements and the City and Company shall provide the other party with all necessary easements to effectuate access to and from the Property.

Article IV Economic Development Grant

4.1 Grant.

(A) For the term of this Agreement, City agrees to provide the Company grants in an amount equal to 85% of the tax on the Taxable Value assessed and paid upon value of the Taxable Property for ten (10) years on each of the three (3) hotel properties, less the Base Year Value. The term of the grant for each hotel shall commence in the year in which the Taxable Value is assessed on the specific hotel after the Certificate of Occupancy is issued and will continue during the term of this Agreement as long as Company meets each of the obligations set forth in this Agreement and complies with the certification schedule and requirements set out in Section 4.2 below.

(B) The City shall reimburse Company an amount not to exceed \$85,000 for the construction costs of Convention Drive. The Company shall take all necessary actions to protect, indemnify, and name the City as an additional insured in any contract for construction work on Convention Drive. Should construction costs for Convention Drive exceed \$113,000, Company may seek pro rata reimbursement upon the sale by the City of the adjacent parcel.

4.2 Grant Payment Requirements and Schedule.

(A) Subject to compliance with Article III above, Company may submit itemized documents setting forth the Taxable Value of the Hotel and request grant funds in accordance with the terms of Section 4.1. Failure to comply with this Section 4.2 shall not subject the grant in Section 4.1(A) to forfeiture.

(B) City shall remit the grant funds under this Article IV to the Company within sixty (60) days of the receipt of its annual property tax payment from the Dallas Central Appraisal District, or other taxing entity.

Article V Hotel Occupancy Tax Grant

5.1 **Grant.** The City agrees to provide the Company a grant to be paid from Company's Hotel Occupancy Tax remittance (the "HOT Grant Funds") beginning on the date of the issuance of the certificate of occupancy for the hotel, and payable on a quarterly basis during each year thereafter for the Term subject to the Company complying with the obligations set forth in this Article and Article VI, below, and filing of the annual certification, as set out in Section 5.3 below, to be paid as follows:

- (1) 100% for Years 1-15;
- (2) 75% for Years 16-18; and,
- (3) 50% for Years 19-20.

5.2 **Funds Maintenance.** All HOT Grant Funds provided to the Company by the City pursuant to this Agreement shall be maintained by the Company in compliance with the requirements of Chapter 351 of the Texas Tax Code, and shall be used solely for purposes of this Agreement.

5.3 **Annual Certification.** Beginning December 1, 2015, the Company must submit an annual certification on the form attached hereto as Exhibit "C" and must submit the form not later than December 1 of each year for the duration of this Agreement certifying compliance with all of the obligations set out in Article VI below.

A FAILURE TO FILE THE ANNUAL CERTIFICATION BY THE DECEMBER 1 DEADLINE SHALL BE AN EVENT OF DEFAULT AND, IF NOT CURED AS SET FORTH IN SECTION 8.1(2) BELOW, SHALL RESULT IN THE COMPANY'S FORFEITURE OF ANY UNPAID HOT GRANT FUNDS AND INVOKE THE CITY'S RIGHT TO TERMINATE, AS SET OUT BELOW.

5.4 **Grant Payment Requirements and Schedule.**

(A) Subject to compliance with this Article, Company may submit itemized documents setting forth the HOT funds collected by Company during the previous quarter and remitted to the City. Company may request HOT Grant Funds in accordance with the terms of Section 4.2. Failure to comply with this Section 5.4 shall not subject the grant in Section 5.1 to forfeiture.

(B) City shall remit the HOT Grant Funds under this Article V to the Company within thirty (30) days of the receipt of Company's HOT payment, in compliance with Section 5.4(A).

Article VI Hotel Occupancy Tax Funds

6.1 **Use of Funds.** The Company's use of the HOT Grant Funds shall be limited to the following:

(1) Expenditure of the HOT Grant Funds shall be in conformance with (i) Section 351.101(a)(3) of the Texas Tax Code and as further amended by the legislature during the term of this Agreement, including advertising, solicitation, and marketing programs to promote tourism and the convention and hotel industry to attract tourists and convention delegates or registrants to Carrollton and/or the Hotel; and/or (ii) Section 351.110 of the Texas Tax Code and as further amended by the legislature during the term of this Agreement; other hotels in or near the Carrollton Area; and tourist attractions in or near the Carrollton Area; and

(2) Expenditure of the HOT Grant Funds shall be in conformance with the Annual Budget submitted by the Company to the City pursuant to Article VII herein.

6.2 **Hotel Tax Payment.**

(A) **FAILURE BY COMPANY TO REMIT THE MINIMUM HOT PAYMENT TO THE CITY REQUIRED BY THIS ARTICLE VI, 6.3 SHALL BE AN EVENT OF DEFAULT AND, IF NOT CURED AS SET FORTH IN SECTION 8.1(2) BELOW, SHALL RESULT IN THE COMPANY'S FORFEITURE OF ANY UNPAID HOT GRANT FUNDS AND INVOKE THE CITY'S RIGHT TO TERMINATE, AS SET OUT BELOW.**

(B) The Company shall timely remit all money owed to the City pursuant to the Company's responsibility to collect and make HOT payments as required by the City of Carrollton Code of Ordinances and as further amended by the City during the Term. The Company shall not become delinquent in its HOT payments to the City. **FAILURE BY COMPANY TO TIMELY MAKE HOT PAYMENTS TO THE CITY AS REQUIRED BY THIS ARTICLE VI SHALL BE AN EVENT OF DEFAULT AND, IF NOT CURED AS SET FORTH IN SECTION 8.1(2) BELOW, SHALL RESULT IN THE COMPANY'S FORFEITURE OF ANY UNPAID HOT GRANT FUNDS AND INVOKE THE CITY'S RIGHT TO TERMINATE, AS SET OUT BELOW.**

Article VII HOT Annual Plan and Budget

7.1 **Preparation of Proposed Annual Plan and Budget.** On an annual basis, no later than December 1, the Company shall prepare and submit to the City a proposed Annual Plan and Budget itemizing the use of HOT Grant Funds for the forthcoming January 1st until December 31st period (the "Grant Year"), prior to HOT Grant Funds being distributed. The proposed Annual Plan and Budget shall be submitted to the City immediately prior to commencement of each Grant Year, with the initial proposed Annual Plan and Budget submitted on or before December 1, 2015, for the forthcoming Grant Year beginning on January 1, 2016, until December 31, 2016, and on December 1 of each year thereafter during the Term. The proposed Annual Plan and Budget shall include, at a minimum, a line item budget detailing the use of the HOT Grant Funds for the upcoming Grant Year, the amount of expenditure for each item and a description of the item indicating how it complies with the requirements in Section 351.101(a)(3) and Section 351.110 of the Texas Tax Code and as further amended by the legislature during the term of this Agreement. **FAILURE TO SUBMIT THE PROPOSED ANNUAL PLAN AND BUDGET BY THE DECEMBER 1 DEADLINE SHALL BE AN EVENT OF DEFAULT AND, IF NOT CURED AS SET FORTH IN SECTION 8.1(2) BELOW, SHALL RESULT IN THE COMPANY'S FORFEITURE OF ANY UNPAID HOT GRANT FUNDS AND INVOKE THE CITY'S RIGHT TO TERMINATE, AS SET OUT BELOW.**

7.2 **Annual Plan and Budget.** The Company shall submit an Annual Plan and Budget to the City Manager or his designee prior to disbursement of HOT Grant Funds for the upcoming Grant Year. The City shall have the right to request reasonable modifications to the Annual Plan and Budget.

7.3 **Alternatives.** The Company may submit one or more alternative programs in the overall Annual Plan and Budget for a particular Grant Year, so long as all applicable alternatives are in conformance with the authorized uses pursuant to Section 351.101(a)(3) and Section 351.110 of the Texas Tax Code and as further amended by the legislature during the term of this Agreement.

7.4 **Effect of Submission.** Submission to the City of the Annual Plan and Budget does not alleviate the Company's responsibility to spend the HOT Grant Funds within the limitations of Section 351.101(a)(3) and Section 351.110 of the Texas Tax Code and as further amended by the legislature during the Term of this Agreement. The Company acknowledges that, pursuant to the terms of this Agreement and Section 351.101(a)(3) and Section 351.110 of the Texas Tax Code and as further amended by the legislature during the Term of this Agreement, the Company has a fiduciary duty to the City with respect to its handling and use of the HOT Grant Funds provided to the Company under this Agreement.

7.5 **Permitted Limited Reallocations.** The City recognizes that the tourism and hotel industry is a dynamic one, and that prudence dictates that the Company retain the ability to make certain minimal adjustments from time to time within the confines of the Annual Plan and Budget. Accordingly, the City agrees that the Company may, in its professional judgment and mindful of its fiduciary responsibility to the City: (i) reduce expenditures below the level approved in the Annual Plan and Budget for all or any particular categories as the Company deems appropriate subject to Section 7.7 below, (ii) reallocate an amount in any category in the Annual Plan and Budget to another category, so as to allow a reasonable shift in emphasis as the Grant Year develops, and (iii) allocate any amount included in an "alternative" category in the Annual Plan and Budget to any other approved category. However, the Company acknowledges and agrees that HOT Grant Funds may not be allocated or used for any activity or program that is not within the permitted activities of Section 351.101(a)(3) and Section 351.110 of the Texas Tax Code and as further amended by the legislature during the Term of this Agreement. The Company shall notify the City in writing of any material changes made to the Annual Plan and Budget pursuant to this Section 7.5 within thirty (30) days of making a change.

7.6 **Annual Plan and Budget Amendments.** Should the provisions of Section 7.5 above be determined by the Company to provide insufficient flexibility to address applicable facts and circumstances as they develop during a Grant Year, the Company may, at any time, submit to the City an amendment to the Annual Plan and Budget for the Grant Year in question. No such amendment shall be effective until received by the City Manager.

7.7 **Unexpended and Unencumbered Funds.** Unexpended and unencumbered HOT Grant Funds that remain with the Company after December 31 of each Grant Year will revert to the City and the Company must return said HOT Grant Funds to the City on or before January 31 of the immediately following year. Encumbered HOT Grant Funds are those funds which the Company has received and obligated for payment by written agreement or contract to expend on approved projects listed in the Annual Plan and Budget. Requests to encumber HOT Grant Funds for projects, as approved in the Annual Plan and Budget completed after December 31 of a Grant Year, shall be submitted to the City for review and approval by December 1 of that same Grant Year. If approved by the City, the encumbered HOT Grant Fund expenditure for specific projects must be completed by December 31 of the year of the request and authorization for

encumbrance. An additional annual compliance certification, in accordance with the form set forth in Section 5.3 herein, must be submitted to the City no later than April 30 in the year immediately following the year of the authorized encumbrance. HOT Grant Funds may only be encumbered for projects that have commenced prior to December 1 of the Grant Year for which the HOT Grant Funds were issued.

Article VIII Default; Termination

8.1 **Events of Termination.** This Agreement terminates upon any one or more of the following:

- (1) By expiration of the Term and where no defaults have occurred; or
- (2) If a party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof by the non-defaulting party unless a longer period is provided. Any default under this provision and right to recover any claims, refunds, damages and/or expenses shall survive the termination of the Agreement.

The City Manager is authorized on behalf of the City to send notice of default and to terminate this Agreement for any default that is not cured.

8.2 **Effect of Termination/Survival of Obligations.** The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations or default(s) that existed prior to such termination or as otherwise provided herein and those liabilities and obligations shall survive the termination of this Agreement, including the refund provision, maintenance of records, and access thereto.

8.3 **Refund/Default.**

(A) Subject to an Event of Force Majeure, if the Company fails to occupy the Property at any time during the term of the Agreement, Company shall refund to the City an amount equal to the total grant money paid to Company by City for Taxable Property pursuant to Section 4.1(A) and (B) above. A failure to make the refund payment promptly upon notification of such refund becoming due shall constitute an event of default.

(B) If the Company defaults under any provision of this Agreement, and fails to remedy such default within ten (10) days of the date of written notice of such default, the City will not make a grant to Company under Articles IV or V, for the calendar year during which the default occurred or any years thereafter, but there shall be no recapture of grants that were issued to Company in prior years.

(C) If City defaults under the provisions of Article V, Company shall be entitled to a credit of the HOT Grant Funds on future HOT due to the City, if the provisions of Section 5.4 are complied with.

8.4 **Cross-Default.** In the event that one or more of the hotels or the Conference Facilities are now or hereafter owned by separate persons or entities, any of the events of default described in this Article VIII will be applied individually and independently to each such person or entity, as applicable, and will not be a “cross default” of the separate, unrelated person or entity, which would otherwise qualify as an assigned under Article X of this Agreement. Such default shall only apply to the defaulting party and not to the other portions or owners of the Property merely by reason of such persons or entities owning the other hotel(s) or Conference Facilities on the Property, and all non-defaulting persons or entities shall continue to be bound by the obligations set forth in this Agreement.

Article IX

Retention and Accessibility of Records

9.1 **Records.** Company shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. Company shall retain such records, and any supporting documentation for the greater of:

- (1) Five (5) years from the end of the Agreement period; or
- (2) The period required by other applicable laws and regulations.

9.2 **Accessibility.** Company gives City, its designee, or any of their duly authorized representatives, access to and the right to examine relevant books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or personal and Real Property belonging to or in use by Company pertaining to the Economic Development Program Grant (the “Records”) upon receipt of ten (10) business days written notice from the City. The City’s access to Company’s books and records will be limited to information needed to verify that Company is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by City. In no event shall City’s access to Company’s Records include any access to any personal and/or medical data of any employees of Company except to confirm payroll information compliance for Full-Time Job Equivalents. Company shall not be required to disclose to the City any information that by law Company is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the City reserves the right to require Company to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of Company. The rights to access the Records shall terminate five (5) years after the termination or expiration of this Agreement. Failure to provide reasonable access to the Records to authorized City representatives shall give the City the right to suspend or terminate this Agreement as provided for in Section 8.1 above, or any portion thereof, for reason of default. All Records shall be retained by Company for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters

including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. Company agrees to maintain the Records in an accessible location.

Article X Assignment

This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its wholly owned or controlled affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than ninety (90) percent of the assets of the Company as long as the Company gives sixty (60) days prior written notice to the City and the assignee executes an agreement with the City to be bound to all the terms and conditions of this Agreement and be responsible for any default(s) that occurred prior to or after the assignment.

For any assignment not covered by (a) or (b) in the preceding paragraph, the Company must obtain the prior approval of the City through its City Manager, which will not be unreasonably withheld or delayed, and the assignee must agree to be bound to all the terms and conditions of this Agreement and to accept all liability for any default that occurred prior to and/or after the assignment.

Any assignment agreement must be furnished in a form acceptable to the City and be provided at least thirty (30) days prior to the effective assignment date. City agrees to notify the potential assignee of any known default, but such notification shall not excuse defaults that are not yet known to the City.

Article XI Miscellaneous

11.1 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

11.2 **Notice of Bankruptcy.** In the event Company files for bankruptcy, whether involuntarily or voluntary, Company shall provide written notice to the City within three (3) business days of such event.

11.3 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

11.4 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Carrollton, Texas
Attention: City Manager
P.O. Box 110535
Carrollton, TX 75011

With a copy to:
City of Carrollton, Texas
Attention: City Attorney
P.O. Box 110535
Carrollton, TX 75011
If intended for the Company:
Lowen Holdings, Ltd.
Sanjay Naik, Manager
5605 N. MacArthur Boulevard, Suite 850
Irving, Texas 75038

11.5 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

11.6 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Dallas County, Texas.

11.7 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

11.8 **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

11.9 **Recitals.** The recitals to this Agreement are incorporated herein.

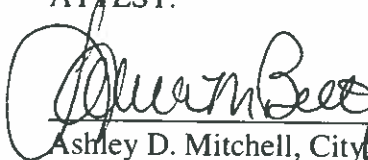
11.10 **Authorized to Bind.** The persons who execute their signatures to this Agreement and any certifications related to this Agreement represent and agree that they are authorized to sign and bind their respective parties to all of the terms and conditions contained herein.

11.11 **Compliance.** Under Chapter 2264 of the Texas Local Government Code, Company has submitted the required certification that the business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker. An undocumented worker means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under the law to be employed in that manner in the United States. If after receiving this public subsidy/grant from the City, the Company, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. Section 1324a(f), the Company shall repay the amount of the grant from the City with interest, at the rate of 5% according to the terms provided by this Agreement under Section 2264.053, but not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies the Company of the violation. City may exercise all rights to enforce this recovery as allowed by Subchapter C of Chapter 2264 or any other laws.

11.12 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

EXECUTED the _____ day of _____, 2014.

ATTEST:


Ashley D. Mitchell, City Secretary



CITY OF CARROLLTON, TEXAS


Leonard Martin, City Manager

APPROVED AS TO FORM:


Meredith Ladd, City Attorney

APPROVED AS TO CONTENT:


Thomas Latchem, Director
Economic Development

COMPANY

LOWEN HOLDINGS, LTD., a Texas limited
Partnership

By: 
Name: Sanjay Naik
Title: Manager



STATE OF TEXAS

COUNTY OF DALLAS

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BEFORE ME, the undersigned authority, on this day personally appeared Sanjay Naik, Manager, Lowen Holdings, LTD, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed, in the capacity therein stated and as the act and deed of said limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 10th day of JUNE, 2014.

(seal)



Vicki Gomez

ANNUAL CERTIFICATE OF COMPLIANCE

Please select one of the options below before signing and returning the certification:

a. I hereby certify that Lowen Holdings, Ltd., is in compliance with each applicable term as set forth in the Agreement and has received grant payments in accordance with the terms and conditions set out forth in Articles IV and V.

b. I hereby certify that Lowen Holdings, Ltd., is not in compliance with each applicable term as set forth in the Agreement and has received grant payments.

ATTEST:

LOWEN HOLDINGS, LTD, a Texas
limited liability company

By: _____
Name: Sanjay Naik
Title: Manager
Date

NOTE: This form is due by December 1 of each year as set forth in the Agreement, and as long as this Agreement is in effect.

This Certificate of Compliance should be mailed to:
City of Carrollton
Economic Development Department
P.O. Box 110535
Carrollton, Texas 75011-0535