

**STATE OF TEXAS           §**  
**§                   TAX ABATEMENT AGREEMENT**  
**COUNTY OF DALLAS       §**

This Tax Abatement Agreement (the “Agreement”) is entered into by and between the City of Coppell, Texas (the “City”), and Arosh, LLC, a Texas limited liability company (the “Owner”) (collectively the “Parties,” or singularly as a “Party”), acting by and through their authorized representatives.

**W I T N E S S E T H:**

**WHEREAS**, the City Council of the City of Coppell, Texas (the “City Council”), passed an Ordinance (the “Ordinance”) establishing Tax Abatement Reinvestment Zone No. 72 (the “Zone”), for commercial/industrial tax abatement, as authorized by the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code, as amended (the “Tax Code”); and

**WHEREAS**, the City has adopted guidelines for tax abatement (the “Tax Abatement Guidelines”); and

**WHEREAS**, the Tax Abatement Guidelines contain appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by the Tax Code and were adopted within two (2) years of the date hereof; and

**WHEREAS**, the City has adopted a resolution stating that it elects to be eligible to participate in tax abatement; and

**WHEREAS**, in order to maintain and enhance the commercial and industrial economic and employment base of the Coppell area, it is in the best interests of the taxpayers for the City to enter into this Agreement in accordance with said Ordinance, the Tax Abatement Guidelines and the Tax Code; and

**WHEREAS**, Owner owns or is under contract to purchase land located at the intersection of Divided Drive and Point West Boulevard, Coppell, Texas, being further described in Exhibit “A” (“Land”), and intends to construct or cause to be constructed thereon a select service hotel consisting of a minimum of six (6) stories in height and containing at minimum of one hundred fifty (150) guest rooms (“Select Service Hotel”), with a conference center containing not less than ten thousand (10,000) gross square feet of conference space attached to the Select Service Hotel and serving the Select Service Hotel (“Conference Center”)(collectively, “Select Service Hotel” and “Conference Center”, referred to as the “Improvements”), , as generally depicted on the site plan attached as Exhibit “B”; and

**WHEREAS**, Owner’s development efforts described herein will create permanent new jobs in the City; and

**WHEREAS**, the City Council finds that the contemplated use of the Premises (hereinafter defined), and the contemplated Improvements are consistent with encouraging development of the Zone in accordance with the purposes for its creation and/or in compliance with the Tax Abatement Guidelines, the Ordinance adopted by the City, the Tax Code and all other applicable laws; and

**WHEREAS**, the City Council finds that the Improvements are feasible and practicable and would be of benefit to the Premises to be included in the Zone and to the City after expiration of this Agreement; and

**WHEREAS**, a copy of this Agreement has been furnished, in the manner prescribed by the Tax Code, to the presiding officers of the governing bodies of each of the taxing units in which the Premises is located; and

**NOW, THEREFORE**, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, including the expansion of primary employment, the attraction of major investment in the Zone, which contributes to the economic development of Coppell and the enhancement of the tax base in the City, the Parties agree as follows:

### **Article I Definitions**

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Approved Franchise” shall mean franchise agreements with Approved Franchisors whereby the Owner is permitted to operate the Improvements as a Select Service Hotel and Conference Center using the name and reservation system of the Approved Franchisor.

“Approved Franchisor” shall mean a national or international hotel franchisor, for a specific hotel product, approved by the City; provided, however, that the City shall not unreasonably withhold its consent to a franchisor of a Select Service Hotel and Conference Center, and which is one of the five (5) largest national or ten (10) largest international hotel chains as of such date. The City has approved Intercontinental Hotel Group, Hilton and Sheraton as the initial Approved Franchisor.

“Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of a Party’s property and such appointment is not terminated within one hundred eighty (180) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party, and such proceeding is not dismissed within one hundred eighty (180) days after the filing thereof.

“Base Year Taxable Value” shall mean the Taxable Value for the Land for the year in which the Tax Abatement Agreement is executed.

“Casualty” shall mean the Premises is wholly or partially destroyed by fire, tornado, hurricane, earthquake, flood or similar casualty that renders the Premises unfit for the intended purpose.

“City” shall mean the City of Coppell, Texas.

“Commencement of Construction” shall mean that: (i) the plans have been prepared and all approvals thereof and permits with respect thereto required by applicable governmental authorities have been obtained for construction of the Improvements; (ii) all necessary permits for the construction of the Improvements on the Land pursuant to the respective plans therefore having been issued by all applicable governmental authorities; and (iii) grading of the Land or the construction of the vertical elements of the Improvements has commenced.

“Completion of Construction” shall mean: (i) substantial completion of the Select Service Hotel and the Conference Center; and (ii) a final certificate of occupancy has been issued for Select Service Hotel and the Conference Center.

“Conference Center” shall mean a full service, upscale, conference center containing not less than ten thousand (10,000) gross square feet of conference space, including at least four (4) separate meeting rooms attached to, and serving the Select Service Hotel and operated pursuant to an Approved Franchise.

“Effective Date” shall mean the last date of execution of this Agreement, unless the context indicates otherwise.

“First Year of Abatement” shall mean January 1 of the calendar year immediately following the first anniversary date of Completion of Construction of the Improvements, unless the Owner elects to delay the First Year of Abatement until January 1 of the calendar year following the second anniversary date of the Completion of Construction of the Improvements by delivery of written notice of such election to the both the City and the Dallas Central Appraisal District on or before January 1 of the calendar year immediately following the first anniversary date of Completion of Construction of the Improvements..

“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, adverse weather, government or de facto governmental action (unless caused by acts or omissions of such Party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Freeport Goods” shall have the same meaning as assigned by Section 11.251 of the Tax Code and Article VIII, Section 1-j of the Texas Constitution and located on the Property. Freeport Goods does not include “Goods in Transit” as defined by Tax Code, Section 11.253.

“Goods in Transit” shall have the same meaning assigned by Tax Code, Section 11.253.

“Improvements” shall mean collectively, the Select Service Hotel and attached Conference Center.

“Land” means the real property described in Exhibit “A”.

“Owner” shall mean Arosh, LLC, a Texas limited liability company.

“Premises” shall mean collectively, the Land and Improvements following construction thereof.

“Required Use” shall mean the operation of the Select Service Hotel and Conference Center and related amenities open to the public and serving the adjacent business community and the citizens of the City, under and in accordance with the standards of an Approved Franchise.

“Related Agreement” shall mean that certain Civic Center Agreement by and between the Parties dated approximate date herewith, and any other agreement by and between the City and the Owner, its parent company, and any affiliated or related entity owned or controlled by the Owner or its parent company.

“Select Service Hotel” shall mean the construction of a first class select service hotel consisting of a minimum of six (6) stories in height and containing at least a minimum of one hundred fifty (150) guest rooms, and restaurant facilities at which food and beverages are prepared on site for at least two (2) meals per day (including breakfast) operated pursuant to an Approved Franchise on the Land (and other ancillary facilities such as reasonably required parking and landscaping more fully described in the submittals filed by Owner with the City from time to time in order to obtain a building permit).

“Tangible Personal Property” shall mean tangible personal property, equipment and fixtures, other than inventory or supplies owned or leased by the Owner and located at the Improvements subsequent to the execution of this Agreement.

“Taxable Value” means the appraised value as certified by the Appraisal District as of January 1 of a given year.

## **Article II**

### **General Provisions**

2.1 Owner is the owner of the Land, or is under contract to purchase the Land, which Land is located within the city limits of the City and within the Zone. Owner intends to construct the Select Service Hotel and attached Conference Center on the Land.

2.2 The Premises are not in an improvement project financed by tax increment bonds.

2.3 This Agreement is entered into subject to the rights of the holders of outstanding bonds of the City.

2.4 The Premises are not owned or leased by any member of the Coppell City Council or any member of the Coppell Planning and Zoning Commission, or any member of the governing body of any taxing units joining in or adopting this Agreement.

2.5 Owner shall, before May 1 of each calendar year that the Agreement is in effect, certify in writing to the City that it is in compliance with each term of the Agreement.

2.6 The Land and the Improvements constructed thereon at all times shall be used in the manner (i) that is consistent with the City's Comprehensive Zoning Ordinance, as amended, and (ii) that, during the period taxes are abated hereunder, is consistent with the general purposes of encouraging development or redevelopment within the Zone.

**Article III**  
**Tax Abatement Authorized**

3.1 This Agreement is authorized by the Tax Code and in accordance with the City Tax Abatement Guidelines, and approved by resolution of the City Council.

3.2 Subject to the terms and conditions of this Agreement, and provided the Taxable Value of the Improvements, excluding the Land, is at least \$5.5 Million as of the First Year of Abatement and as of January 1 of each calendar year thereafter for a total period of ten (10) consecutive years, the City hereby grants Owner an abatement of the Taxable Value of the Select Service Hotel and Conference Center (excluding the Land), and an abatement of the Taxable Value of the Tangible Personal Property located therein for a period of ten (10) consecutive years beginning with the First Year of Abatement in accordance with the schedule set forth below. The actual percentage of Taxable Value of the Select Service Hotel and Conference Center subject to abatement will apply only to the portion of the Taxable Value of the Select Service Hotel and Conference Center that exceeds the Base Year Taxable Value. The actual percentage of Taxable Value of the Tangible Personal Property located within the Select Service Hotel and Conference Center subject to abatement will apply only to Tangible Personal Property added to the Select Service Hotel and Conference Center after this Agreement is executed.

<u>Year</u>	<u>Percentage of Abatement</u>
1	100%
2	100%
3	75%
4	75%
5	75%
6	75%
7	75%
8	75%

9	50%
10	50%

3.3 The tax abatement herein authorized shall be for a period of ten (10) consecutive years.

3.4 During the period of tax abatement herein authorized, Owner shall be subject to all taxation not abated, including but not limited to, sales tax and ad valorem taxation on land.

3.5 During the term of this Agreement beginning on the date of Completion of Construction of the Improvements and continuing thereafter until the expiration of the term, or earlier termination, the Premises shall not be used for any purpose other than the Required Use and the Owner shall not allow the operation of the Premises in conformance with the Required Use to cease for more than thirty (30) days, except in connection with and to the extent of an event of Force Majeure.

3.6 The term of this Agreement shall begin on the Effective Date and shall continue until March 1 of the calendar year following the eleventh (11<sup>th</sup>) anniversary date of the First Year of Abatement, unless sooner terminated as provided herein.

#### **Article IV Improvements**

4.1 Owner owns or is under contract to purchase the Land and intends to construct or cause to be constructed thereon the Improvements. Nothing in this Agreement shall obligate Owner to construct the Improvements on the Land, but said actions are conditions precedent to tax abatement pursuant to this Agreement.

4.2 As a condition precedent to the initiation of the Owner's tax abatement pursuant to this Agreement for the Select Service Hotel and Conference Center and the Tangible Personal Property located therein, Owner agrees, subject to events of Force Majeure, to cause Commencement of Construction of the Select Service Hotel and Conference Center to occur within eighteen (18) months after the Effective Date and subject to events of Force Majeure to cause Completion of Construction of the Select Service Hotel and Conference Center to occur within forty-eight (48) months after the Effective Date, as good and valuable consideration for this Agreement, and that all construction of the Select Service Hotel and Conference Center will be in accordance with all applicable state and local laws, codes, and regulations (or valid waiver thereof).

4.3 Construction plans for the Select Service Hotel and Conference Center constructed on the Land will be filed with the City, which shall be deemed to be incorporated by reference herein and made a part hereof for all purposes.

4.4 Owner agrees to maintain the Select Service Hotel and Conference Center during the term of this Agreement in accordance with all applicable state and local laws, codes, and regulations.

4.5 The City, its agents and employees shall have the right of access to the Premises during construction and following construction to inspect the Select Service Hotel and Conference Center at reasonable times and with reasonable notice to Owner, and in accordance with visitor access and security policies of the Owner, in order to insure that the construction and operation of the Select Service Hotel and Conference is in accordance with this Agreement and all applicable state and local laws and regulations (or valid waiver thereof).

## **Article V**

### **Default: Recapture of Tax Revenue**

5.1 In the event Owner: (i) fails to cause Commencement and/or Completion of Construction of the Select Service Hotel and Conference Center in accordance with this Agreement or in accordance with applicable State or local laws, codes or regulations; (i) has delinquent ad valorem or sales taxes owed to the City (provided Owner retains its right to timely and properly protest such taxes or assessment); (iii) has an event of Bankruptcy or Insolvency; or (iv) breaches any of the terms and conditions of this Agreement, or a Related Agreement, then Owner, after the expiration of the notice and cure periods described below, shall be in default of this Agreement. As liquidated damages in the event of such default, the Owner shall, within thirty (30) days after demand, pay to the City all taxes which otherwise would have been paid by the Owner to the City without benefit of a tax abatement for the property (the Select Service Hotel, Conference Center and Tangible Personal Property located therein) the subject of this Agreement at the statutory rate for delinquent taxes as determined by Section 33.01 of the Tax Code, as amended, but without penalty. The Parties acknowledge that actual damages in the event of default termination would be speculative and difficult to determine. The Parties further agree that any abated tax, including interest, as a result of this Agreement, shall be recoverable against the Owner, its successors and assigns and shall constitute a tax lien against the Premises, and shall become due, owing and shall be paid to the City within thirty (30) days after notice of termination.

5.2 Upon breach by Owner of any of the obligations under this Agreement, the City shall notify Owner in writing, which shall have thirty (30) days from receipt of the notice in which to cure any such default. If the default cannot reasonably be cured within a thirty (30) day period, and the Owner has diligently pursued such remedies as shall be reasonably necessary to cure such default, then the City may extend the period in which the default must be cured.

5.3 If the Owner fails to cure the default within the time provided as specified above or, as such time period may be extended, then the City, at its sole option, shall have the right to terminate this Agreement by providing written notice to the Owner.

5.4 Upon termination of this Agreement by City for reasons of default by Owner, all tax abated as a result of this Agreement, shall become a debt to the City as liquidated damages, and shall become due and payable not later than thirty (30) days after a notice of termination is provided. The City shall have all remedies for the collection of the abated tax provided generally in the Tax Code for the collection of delinquent property tax. The City at its sole discretion has

the option to provide a repayment schedule. The computation of the abated tax for the purposes of the Agreement shall be based upon the full Taxable Value of the Select Service Hotel and Conference Center and Tangible Personal Property without tax abatement for the years in which tax abatement hereunder was received by the Owner, as determined by the Appraisal District, multiplied by the tax rate of the years in question, as calculated by the City Tax Assessor-Collector. The liquidated damages shall incur penalties as provided for delinquent taxes and shall commence to accrue after expiration of the thirty (30) day payment period.

## **Article VI Annual Application for Tax Exemption**

It shall be the responsibility of the Owner, pursuant to the Tax Code, to file an annual exemption application form for the Select Service Hotel and Conference Center and the Tangible Personal Property with the Chief Appraiser for each Appraisal District, or successor, in which the eligible taxable property has situs. A copy of the respective exemption application shall be submitted to the City upon request.

## **Article VII Annual Rendition**

The Owner shall annually render the value of the Select Service Hotel and Conference Center and the Tangible Personal Property to the applicable Appraisal District, or successor, and shall provide a copy of the same to the City upon written request.

## **Article VIII Miscellaneous**

8.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto.

8.2 Limitation on Liability. It is understood and agreed between the Parties that the Owner and City, in satisfying the conditions of this Agreement, have acted independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions. The Owner agrees to indemnify and hold harmless the City from all such claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever by a third Party arising out of the Company's performance of the conditions under this Agreement.

8.3 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture between the Parties.

8.4 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 on the day actually received if sent by courier or otherwise hand delivered:

If intended for City, to:

Attn: City Manager  
City of Coppell, Texas  
P. O. Box 478  
Coppell, Texas 75019

With a copy to:

Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 N. Akard  
Dallas, Texas 75201

If intended for Owner, to:

Attn: Suhas Naik  
Arosh, LLC  
2311 Texas Drive, Suite 105  
Irving, Texas 75062

With a copy to:

Leonard I. Margolis  
1518 Legacy Drive, Suite 270  
Frisco, Texas 75034

8.5 Authorization. This Agreement was authorized by resolution of the City Council approved by its Council meeting authorizing the Mayor to execute this Agreement on behalf of the City.

8.6 Severability. In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the Parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

8.7 Governing Law. This Agreement shall be governed by the laws of the State of Texas without regard to any conflict of law rules. Exclusive venue for any action under this Agreement shall be the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

8.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

8.9 Entire Agreement. This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the Parties to be attached to and made a part of this Agreement.

8.10 Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

8.11 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

8.12 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

8.13 Legal Construction. 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.

8.14 Assignment. This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. This Agreement may not be assigned by the Owner without the prior written consent of City's City Manager, which consent shall not be unreasonably withheld, conditioned or delayed.

8.15 Right of Offset. The City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to the City from the Owner, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise and regardless of whether or not the debt due the City has been reduced to judgment by a court.

8.16 Employment of Undocumented Workers. During the term of this Agreement, the Owner agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), the Owner shall repay the taxes abated herein, and any other funds received by the Owner from the City as of the date of such violation within 120 days after the date the Owner is notified by the City of such violation, plus interest at the rate of 6% compounded annually from the date of violation until paid.

8.17 Approval of Parties. Whenever this Agreement requires or permits the approval or consent to be given by a Party, the Parties agree that such approval or consent shall not be unreasonably withheld, conditioned or delayed.

*(Signature page to follow)*

**EXECUTED** in duplicate originals the \_\_\_\_ day of \_\_\_\_\_, 2013.

**CITY OF COPPELL, TEXAS**

By: \_\_\_\_\_  
Karen Selbo Hunt, Mayor

**Attest:**

By: \_\_\_\_\_  
Christel Pettinos, City Secretary

**Agreed as to Form:**

By: \_\_\_\_\_  
City Attorney

**EXECUTED** in duplicate originals the \_\_\_\_ day of \_\_\_\_\_, 2013.

**AROSH, LLC**

By: \_\_\_\_\_  
Suhas Naik, Manager

**Exhibit "A"**  
**(Legal Description of the Land)**

**Lot 2R, Block C of the Duke Lesley Addition (5.005 acres).**

**Exhibit “B”**  
**(Site Plan for Select service Hotel and Conference Center – to be attached)**