

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

**CIVIC CENTER AGREEMENT**

This Civic Center Development Agreement (“Agreement”) is made by and among the City of Coppell, Texas (“City”), and Arosh, LLC a Texas limited liability company (the “Company”) (collectively the “Parties,” or singularly as a “Party”), acting by and through their respective authorized officers and representatives.

**WITNESSETH:**

**WHEREAS**, Chapter 351, Tax Code authorizes the City to expend hotel/motel occupancy tax revenue for the acquisition, lease, construction, improvement, enlarging, maintenance, equipping and operation of a convention center facility which includes civic centers, auditoriums, parking areas and auditoriums, owned or managed by the City; and

**WHEREAS**, a civic center located in a hotel and conference center located in the City, will enhance and promote tourism and the hotel and convention industry and will attract visitors from outside the City into the City or its vicinity; and

**WHEREAS**, Company owns or is under contract to purchase approximately 5 acres of land located at the intersection of Dividend Drive and Point West Boulevard, Coppell, Texas, being further described in Exhibit “A” (“Land”); and

**WHEREAS**, Company intends to construct or cause to be constructed on the Land a select service hotel consisting of a minimum of six (6) stories in height and containing a minimum 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**, Company intends to allow the City to use the Conference Center as a municipal civic center (the “Civic Center”); and

**WHEREAS**, City intends, as lessee of the Conference Center, to contract with the Company to manage and operate the Civic Center for the City; and

**WHEREAS**, City has found and determined that the expenditure of hotel/motel occupancy tax revenue for the lease, operation, and management of the Conference Center, as a civic center, is authorized by Chapter 351, Tax Code, and will benefit the City;

**NOW THEREFORE**, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**Article I**  
**Findings and Determinations**

The City Council hereby finds and determines that: (i) City is authorized to enter into this Agreement; (ii) Chapter 351, Tax Code authorizes the expenditure of City hotel/motel occupancy tax revenue for the lease, operation and management of the Conference Center; (iii) the use and management of the Conference Center as a municipal civic center is authorized by Chapter 351, Tax Code and will enhance and promote tourism and the hotel and convention industry and will attract visitors from outside the City into the City or its vicinity; and (iv) the City is authorized to contract for the management of the Conference Center for use as a civic center.

**Article II**  
**Term**

The term of this Agreement (“Term”) shall commence on the Effective Date and shall continue until the Expiration Date, unless sooner terminated.

**Article III**  
**Definitions**

Wherever used in this Agreement, the following terms shall have the meaning ascribed to them unless the context clearly indicates otherwise:

“Approved Franchise” shall mean franchise agreements with Approved Franchisors whereby the Company 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 national or international hotel franchisors, 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 or shall approved Intercontinental Hotel Group, Hilton and Sheraton as the initial Approved Franchisors.

“Bankruptcy or Insolvency” shall mean the dissolution or termination (other than a dissolution or termination by reason of a Party merging with an affiliate) 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) business 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 a Party and in the event such proceeding is not voluntarily commenced by the Party, such proceeding is not dismissed within one hundred eighty (180) business days after the filing thereof.

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

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

“Commencement Date” shall mean the date that is six (6) months following the date a final certificate of occupancy has been issued by the City for Company’s occupancy of both the Select Service Hotel and attached Conference Center.

“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.

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

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

“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.

“Effective Date” shall mean the last date of execution of this Agreement.

“Expiration Date” shall mean the tenth (10<sup>th</sup>) anniversary date of the Commencement Date.

“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.

“Hotel Occupancy Tax” shall mean the City’s receipt of tax imposed by the City pursuant to Chapter 351, Tax Code, as amended, on a person who, under a lease, concession, permit, right of access, license, contract or agreement pays for the use or possession or possession of a room in the Select Service Hotel if Commencement of Construction and Completion of Construction has timely occurred) for the calendar quarter immediately preceding each Rent payment date.

“Hotel Tax Report” shall have the same meaning assigned by Tax Code, Chapter 156.151, or if such report is not available then a written certificate or statement authenticated by an appropriate management official of the Company that contains the amount of Hotel Occupancy Tax collected by the Company and paid to the City and to the State Comptroller, or its successor, for the preceding calendar quarter.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Improvements, the then owner or operator of the Improvements, the Company or any property or any business owned by Company within the City.

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

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

“Lease Term” means the period beginning on the Commencement Date and ending on the Expiration Date.

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

“Rent” shall mean for years 1 and 2 of the Lease Term an amount equal to one hundred percent (100%) of the maximum amount allowed by law of the Hotel Occupancy Tax. For year 3 of the Lease Term, an amount equal to seventy-five percent (75%) of the maximum amount allowed by law of the Hotel Occupancy Tax. For years 4 through 6 of the Lease Term, an amount equal to sixty percent (60%) of the maximum amount allowed by law of the Hotel Occupancy Tax. For years 7 and 8 of the Lease Term, an amount equal to fifty percent (50%) of the maximum amount allowed by law of the Hotel Occupancy Tax. For year 9 and 10 of the Lease Term, Rent shall mean an amount equal to twenty-five percent (25%) of the maximum amount allowed by law of the Hotel Occupancy Tax.

“Required Use” shall mean the operation of a Select Service Hotel and attached 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.

“Select Service Hotel” shall mean the construction of a first class select service hotel consisting of at least six (6) stories in height and containing at least a minimum of one hundred (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 Company with the City from time to time in order to obtain a building permit).

“Select Service Hotel Tax Abatement Agreement” shall mean that certain tax abatement agreement by and between the City and Company dated of approximate date herewith.

“Term” shall mean the initial term as set forth herein and any renewal thereof.

**Article IV**  
**Select Service Hotel, Extended Stay Hotel and Conference Center**

4.1 Select Service Hotel and Conference Center Construction. Company intends but is not obligated to, cause Commencement or Completion of Construction of the Select Service Hotel and Conference Center however Commencement of Construction of the Select Service Hotel and Conference Center to occur within eighteen (18) months after the Effective Date, and to cause Completion of Construction of Select Service Hotel and Conference Center to occur within forty-eight months after the Effective Date, are conditions precedent to this Agreement.

4.2 Required Use. During the term of this Agreement beginning on the Commencement Date, and continuing thereafter until the Expiration Date, or earlier termination, the Premises shall not be used for any purpose other than the Required Use and that the Company 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.

4.3 Inspection/Access. The City, its agents and employees, shall have the right of reasonable access to the Premises during construction to inspect the Improvements at reasonable times during normal business hours and with reasonable notice to the Company, and in accordance with their visitor access and security policies, in order to insure that the construction is in accordance with this Agreement and all applicable state and local laws and regulations (or valid waiver thereof).

4.4 Hotel Tax Report. The Company shall provide the City with the Hotel Report within thirty (30) days after the end of each calendar quarter beginning with the 30<sup>th</sup> day after the end of the first calendar quarter immediately following the Commencement Date and continuing during thereafter during the term of this Agreement.

4.5 Hotel Tax Records. The Company shall keep and maintain accurate records of the Hotel Occupancy Tax collected by the Company and paid to the City, and to the State Comptroller, or successor agency, during the term of this Agreement that is paid by the occupant of each sleeping room in the Improvements. Such records shall include, but not be limited to, at a minimum, guest folios, tax exemption certificates, and any original documents such as posting ledgers and rate and stay adjustment reports. These records may be retained in any retrievable format, including but not limited to micro form; shall be maintained for a period of not less than five (5) years; and shall be available for inspection upon request by any employee, agent, officer or representative of the City at all reasonable times. Any adjustments or allowances made or granted shall be reported to the City on a form prescribed by the City.

**Article V**  
**Civic Center**

5.1 Lease. In consideration of the covenants, agreements and conditions set forth herein the Company does hereby lease, let, demise and rent, for the Lease Term and City does

hereby rent and lease from the Company, the portions of the Conference Center set forth herein for purposes of a municipal civic center.

5.2 Rent. Subject to the continued satisfaction of the terms and conditions of this Agreement by the Company and provided the Company has caused Commencement of Construction of the Select Service Hotel and attached Conference Center to occur within eighteen (18) months after the Effective Date, and has caused Completion of Construction of Select Service Hotel and Conference Center to occur within forty-eight months after the Effective Date, the City shall during the Lease Term pay to the Company or to such person or entity as the Company shall designate in writing, Rent, for the use and occupancy of the Conference Center, and as consideration for the Company's management of the Conference Center for the City. Any payment made by the City hereunder is limited to the extent of the lawfully available funds from the City's receipts from the collection of the Hotel Occupancy Tax revenue imposed pursuant to Chapter 351, Tax Code attributable to the occupancy of sleeping rooms at the Select Service Hotel and, if applicable, the Extended Stay Hotel.

5.3 Rent Payment. Subject to the provisions of Section 5.2, and the continued satisfaction of the terms and conditions of this Agreement by the Company and provided the Company has caused Commencement of Construction of the Select Service Hotel and attached Conference Center to occur within eighteen (18) months after the Effective Date, and has caused Completion of Construction of Select Service Hotel and Conference Center to occur within forty-eight months after the Effective Date, the City shall pay the Rent in quarterly installments within sixty (60) days after the end of each calendar quarter (with the calendar quarters ending March 31, June 30, September 30 and December 31 respectively), beginning on the 60th day after the end of the first calendar quarter immediately following the Commencement Date. As a condition to the payment of Rent, the City shall have received the Hotel Tax Report for the respective calendar quarter; and shall have received Hotel Occupancy Tax for such period. If the Company fails to submit the Hotel Report for any calendar quarter within one (1) year after the end of the applicable calendar quarter the Company shall forfeit payment of Rent by the City for such calendar quarter period. The City shall not be required to pay any Rent for any calendar quarter during the term of this Agreement for so long as the City has not received Hotel Occupancy Tax in full for such period, or if the Company is in breach or default of this Agreement, or in the event of a breach or default of the Select Service Hotel Tax Abatement Agreement.

5.4 Conditions of Use. (a) The Company shall have exclusive use of the Conference Center except the City may use the Conference Center for the purpose of a municipal civic center as follows: City shall be entitled to use of the main ballroom four (4) days per year upon sixty (60) days prior written notice, and at additional times when available and to the use of the other meeting rooms four (4) days per year and at additional times when available. All other use of the main ballroom and the meeting rooms shall be at times mutually approved by the Company and the City. The City's use of the Conference Center, shall, with the exception of Rent and the cost of food and beverage, set up charges, cleaning charges or other agreed services provided by the Company, if any, be cost free. Uses must conform with the Approved Franchise uses, except that the City is not required to use the food and beverage services of the Select Service Hotel and Conference center during the permitted periods of City use; and the City may bring (or cause to

be brought) food and beverages on the premises of the Conference Center during permitted periods of City use.

(b) The Company shall equip and furnish the Conference Center in such manner that it is readily useable by the City as a municipal civic center for the booking of business conventions, meetings, and similar activities. The Company shall keep and maintain the Conference Center in a good state of appearance and repair (except for reasonable wear and tear) at the Company's own expense. City shall be responsible for, and pay for any damages to, the Conference Center, or promptly repair any such damages that occur during the City's use of the Conference Center.

(c) If the Select Service Hotel and/or Conference Center are damaged or destroyed by Casualty, regardless of the extent of the damage or destruction, the Company must, subject to the availability of adequate insurance proceeds, within one hundred eighty (180) days from the date of such Casualty commence to repair, reconstruct or replace the damaged or destroyed Select Service Hotel and/or Conference Center, as applicable and pursue the repair, reconstruction, or replacement with reasonable diligence so as to restore the Select Service Hotel and/or Conference Center to substantially the condition it was in before the Casualty. In the event, the Company fails to timely repair, restore or reconstruct the Select Service Hotel and/or Conference Center and complete the same, this Agreement and the City's obligation to pay any Rent shall terminate. The City shall not be obligated to pay Rent during any period for the repair, restoration or reconstruction of the Select Service Hotel and/or Conference Center.

(d) If the Select Service Hotel and/or Conference Center or any portion of one or more of them are taken for public or quasi public purposes by condemnation as a result of any action or proceeding in eminent domain, or transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, this Agreement and the City's obligation to pay any Rent shall terminate.

5.5 Management Duties. The Company shall maintain, manage and operate the Civic Center on behalf of the City. The Company will cause the Civic Center to be operated and maintained according to this Agreement. The Company agrees to provide management services at least equal to those provided for comparable facilities in the DFW Metroplex.

## **Article VI Termination; Repayment**

6.1 Termination. This Agreement terminates upon any one or more of the following:

- (a) by mutual written agreement of all of the Parties;
- (b) on Expiration Date;
- (c) by the City if Company defaults or breaches any of the terms or conditions of this Agreement, or in the event of a breach or default of the Select Service Hotel Tax Abatement Agreement, and such default or breach is not cured within thirty (30) days after written notice thereof;

- (d) by Company if the City 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;
- (e) by the City, if any Impositions owed to the City or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions);
- (f) by the City, if Company suffers an event of Bankruptcy or Insolvency; and
- (g) by either Party if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

6.2 In the event this Agreement is terminated by the City pursuant to Section 6.1 (c), (e), (f), or (g), the City shall be relieved of any further obligation to pay any Rent to the Company.

**Article VII  
Miscellaneous**

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

7.2 Limitation on Liability. It is understood and agreed between the Parties that the Company 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.

7.3 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.

7.4 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:

With a copy to:

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

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

If intended for Company:

With a copy to:

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

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

7.5 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.

7.6 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.

7.7 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.

7.8 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.

7.9 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.

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

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

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

7.13 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.

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

7.15 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 Company, 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.

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

7.17 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.

7.18 Annual Audit. The City shall have the right to audit the books and records of the Company and any operator of the Select Service Hotel and attached Conference Center and the Extended Stay Hotel. The Company agrees to pay the cost of an annual audit of the Hotel Tax Records to be performed by an independent party selected by the City not to exceed the sum of Eighteen Hundred Dollars and No/100 (\$1800.00) each year.

*(Signature page to follow)*

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**CITY OF COPPELL, TEXAS**

By: \_\_\_\_\_  
Clay Phillips, City Manager

**ATTEST:**

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

**Approved as to Form:**

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

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**AROSH, LLC**  
**A TEXAS LIMITED LIABILITY COMPANY.**

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 of the Select Service Hotel and Conference Center – to be attached)**