

AGREEMENT

This Agreement (the "Agreement") is entered into by and between and ATLAS HOTEL, LP, a Texas limited partnership ("**Hotel Owner**") and the CITY of BRYAN, TEXAS, a Texas home rule municipal corporation ("**City**"). Hotel Owner and the City are jointly referred to herein as the "**Parties**" and individually as a "**Party**."

RECITALS:

WHEREAS, the City lacks sufficient business class hotel, meeting, conference and convention facilities in the City; and

WHEREAS, the City has made it a priority to promote economic development through tourism, including efforts to attract to the community out of town visitors, travelers, businesses, organizations and groups whether for purposes of business or pleasure; and

WHEREAS, tourism and tourism related industries and the money spent by tourists and visitors to the community are essential components of a diverse local economy aiding in the creation of jobs for local residents, increased revenues for local businesses and increased local sales tax revenue; and

WHEREAS, Hotel Owner is the owner or is under contract to own, and the Developer of a tract or tracts of land that contain a total of 2.79 acres of land, more or less, located at the northeast corner of South Traditions Drive. and Health Science Center Pkwy Parkway in the proposed Atlas Town Center Development in Bryan, Brazos County, Texas, and more generally described in Exhibit "A" (hereinafter referred to as the "**Property**") which it plans to develop in the future, as a 177-room four-star boutique hotel (the "**Hotel**"), with a 10,000 square foot conference center (hereinafter referred to as the "**Hotel and Conference Center**" or the "**Project**").

WHEREAS, the proposed Atlas Town Center Development is a mixed use master planned community to be located in the developing Research Valley BioCorridor (the "**BioCorridor**") and is designed to attract pharmaceutical and biotechnology companies to relocate to the Biocorridor area of Bryan and College Station.

WHEREAS, the lack of sufficient hotel, meeting, conference and convention facilities in the City and in particular, the Biocorridor area, has prevented the City from attracting tourists, visitors, meetings and conventions and has further resulted in tourists and visitors staying in hotels outside the City even when their travel is related to or in connection with an event, point of interest or activity occurring or located in the City; and

WHEREAS, hotels and conference center space accessible to the public is currently lacking in the Biocorridor area and such hotel and conference center space is believed to be essential to the success of the BioCorridor in attracting pharmaceutical and biotechnology companies to relocate there; and

WHEREAS, the City currently levies a local Hotel Occupancy Tax pursuant to Chapter 351, Texas Tax Code. Such tax, or any similar levy hereafter imposed upon the Hotel by the City, is herein referred to as the "**Hotel Occupancy Tax**" or "**HOT**"; and

WHEREAS, the Project, as proposed by Hotel Owner, would be the first hotel and conference center facility in the City with conference center space of this size and four star accommodations and amenities enabling the City to attract the number and types of tourists, visitors and conventions critical to the City's goals and promotional efforts described above; and

WHEREAS, the Hotel Owner or agents with which it contracts possess expertise in marketing and promotional activities and will be actively engaged in promoting the Hotel and tourism in the City, including promoting travel to the City by residents of other areas for conventions and similar events; and

WHEREAS, the Hotel's promotional activities are directly compatible with the interests of the City, and City desires to provide an incentive for such promotional activities and the City, therefore, wants to make available to Hotel Owner certain portions of the HOT generated solely by the Hotel ("**Hotel HOT**"), for a limited time, for use by Hotel Owner in specifically promoting tourism and conventions in the City; and

WHEREAS, the Parties concur that inasmuch as Hotel Owner is a private organization to which the governing body of the City is delegating the management and/or supervision of only those programs approved in advance by the City, this Agreement is authorized by Section 351.101(c) of the Texas Tax Code.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and the mutual obligations of the parties below, the Parties do mutually agree as follows

ARTICLE 1
CONSTRUCTION OF HOTEL AND CONFERENCE CENTER

Hotel Owner shall construct the Hotel and Conference Center using commercially reasonable diligence. Construction of the Project shall commence on or before July 1, 2015.

ARTICLE 2
HOT ADMINISTRATIVE COSTS

Pursuant to Section 351.005 of the Texas Tax Code, City agrees that Hotel Owner shall be permitted to retain, out of amounts collected by Hotel Owner pursuant to Hotel Owner's responsibility to collect Hotel Occupancy Tax, the maximum amount permitted from time to time by applicable law to be retained by Hotel Owner as reimbursement for costs associated with the collection of the Hotel Occupancy Tax ("**Tax Collection Expenses**"). The parties acknowledge that, at the time of entering into this Agreement, the maximum permitted Tax Collection Expenses amount is one percent (1%) of the amount of the Hotel Occupancy Tax Revenue collected by Hotel Owner, as provided in Texas Tax Code Section 351.005. Reimbursement provided under Article 3 of this Agreement shall be forfeited by Hotel Owner for failure of Hotel Owner to pay Hotel HOT.

ARTICLE 3
DISTRIBUTION OF HOTEL HOT

3.1 Promotional Services. Pursuant to Section 351.101(c) of Texas Tax Code, City hereby engages Hotel Owner, on the terms and conditions provided in this Agreement, for the management and supervision of certain promotional services, programs and activities that are eligible to be funded with revenue derived by City from Hotel HOT (collectively "**Statutorily Authorized Promotional Programs**" or "**SAPP(s)**") specifically permitted under the Texas Tax Code Section 351.101(a) (1-5) and as amended by the legislature during the term of this Agreement, including, by way of example, advertising,

solicitation, and promotional programs promoting visitor attractions, points of interest, entertainment opportunities, recreational facilities, and historical sites to attract tourists and convention delegates or registrants to the City. All Hotel HOT expended by the Hotel Owner pursuant to this Agreement shall directly enhance and promote tourism and convention attendance in the City.

- (a) Hotel Owner recognizes the intent and desire of the City to establish and enhance a “brand identity” for the BioCorridor and to promote the City. Hotel Owner shall ensure that SAPPs are compatible with and enhance the “branding” efforts of the City and shall assist the City in developing strategies for coordinating the City’s marketing efforts with the Hotel Owner’s marketing programs, so that the City’s marketing efforts may be enhanced and maximized, to the extent reasonably possible.
- (b) Hotel Owner will make appropriate introductions of the management and marketing personnel of the Hotel to appropriate personnel at the City, as well as any local chamber of commerce, convention and visitors’ bureau, or other such entities that may be engaged in the marketing of the City with the intention of facilitating cooperative marketing efforts and activities beyond the matters specifically covered by this Agreement.

3.2 Amount. Subject to the terms and conditions hereinafter stated, and contingent upon issuance by the City of a certificate of occupancy for the Project, City agrees to reserve or make available each year to Hotel Owner from the Hotel HOT paid to the City during the term of this agreement, an amount not to exceed fifty percent (50%) of the Hotel HOT paid to the City in any given year, with a total not to exceed amount of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00) to be remitted to Hotel Owner during the term of this Agreement, to be utilized by Hotel Owner solely for payment of costs and expenses associated with SAPPs. The City shall not be required to remit such Hotel HOT funds to Hotel Owner until such time as the costs and expenses associated with SAPPs are incurred. The City shall remit such payments to hotel owner within 30 days of submission by Hotel Owner of a written request for payment. To the extent permitted by law, and subject to the City’s approval of the SAPP as provided in this Agreement, Hotel Owner may be eligible to receive payment from Hotel HOT for costs and expenses related to a SAPP incurred before the date that Hotel HOT is generated.

ARTICLE 4 MARKETING PLAN

4.1 Preparation of Proposed Marketing Plan. Annually, and no later than thirty (30) days prior to the beginning of the City’s applicable fiscal year, the Hotel Owner shall prepare and submit to City a proposed marketing plan or plans (“**Marketing Plan(s)**”), as applicable, through the term of this Agreement before the expenditure of funds for any SAPP, which Marketing Plan or Plans shall include:

- (a) A narrative description of the various programs and activities which Hotel Owner proposes to carry out, which description shall include, without limitation, an explanation of the basis on which each such proposed program or activity qualifies as a SAPP for purposes of this Agreement and the basis on which such programs and activities are compatible with and enhance the “branding” efforts of the City;
- (b) A marketing budget indicating how much of the Hotel HOT available to the Hotel Owner hereunder that Hotel Owner proposes to spend on each particular SAPP; and
- (c) A statement of the amount of Hotel HOT that Hotel Owner expects to generate during the City’s fiscal year in question, based on Hotel Owner’s understanding of Hotel Owner’s anticipated operations during such fiscal year;

4.2 Approval of Marketing Plan. The City shall have and maintain the right in its reasonable discretion to approve, or disapprove and request modifications to any Marketing Plan submitted by Hotel Owner, including specifically the right to participate in decisions related to the SAPPs' content as it relates to the City. The City's approval, however, shall not be unreasonably withheld or delayed. Parties agree and acknowledge that they have a duty to act in good faith to work diligently toward developing an acceptable Marketing Plan.

4.3 Marketing Plan Amendments. Should the approved Marketing Plan be determined by Hotel Owner to provide insufficient flexibility to address applicable facts and circumstances as they develop, it may, at any time, propose and request City's approval of an amendment thereto. No such amendment shall be effective until approved by the City, which approval by the City shall not be unreasonably withheld.

ARTICLE 5 HOTEL OWNER DUTY TO CITY

Hotel Owner acknowledges that, pursuant to the terms of this Agreement and Section 351.101 (c) of the Texas Tax Code, it has a fiduciary duty to the City with respect to its handling and use of the Hotel HOT provided under this Agreement. Further, Hotel Owner acknowledges and agrees that under no circumstances shall Hotel Owner have any right to receive or utilize any HOT revenue not generated directly by the Hotel.

ARTICLE 6 RECORDS

Hotel Owner shall maintain (or cause to be maintained) current and complete books and records reflecting expenditures of funds from the Hotel HOT in accordance with applicable law and prudent accounting procedures. Further, such book and records shall be made available to the City for inspection during normal business hours upon reasonable advance notice. All such records to the extent considered public records which fall within the provisions of the Texas Government Code, Section 572.001, *et seq.*, may be subject to disclosure and Hotel Owner shall cooperate fully with City in timely producing all such records in response to any public request for same.

ARTICLE 7 CITY'S RIGHT TO AUDIT

City reserves the right for City's internal audit department personnel, or an independent certified public accounting firm selected by City, to conduct examinations, during normal business hours, of the books and records maintained by Hotel Owner with respect to the Hotel HOT funds, which books and records shall be made available to City at the Hotel upon reasonable notice of City's inspection and audit.

ARTICLE 8 TERMINATION

8.1 Hotel Owner Default. City may terminate this Agreement by furnishing written notice to Hotel Owner if at any time during the term of this Agreement Hotel Owner fails to perform any of its obligations hereunder and such failure to perform such covenant continues for thirty (30) days after written notice given by City to Hotel Owner, provided that if such failure cannot reasonably be cured within such thirty (30) day period then Hotel Owner shall not be in default hereunder and City shall not

2100 Traditions Blvd
Bryan, Texas 77807

With a copy to:
West, Webb, Allbritton & Gentry, P.C.
Attention: Mike Gentry
1515 Emerald Plaza
College Station, Texas 77845

The Parties shall have the right, at any time, to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days' written notice to the other Party. Each Party shall have the right from time to time to specify additional parties to whom notice hereunder must be given by delivering to the other Party fifteen (15) days' written notice thereof setting forth the address of such additional party or parties; provided, however, that neither Party shall have the right to designate more than two (2) such additional parties. Notice required to be delivered hereunder to either Party shall not be deemed to be effective until the additional parties, if any, designated by such Party have been given notice in a manner deemed effective pursuant to the terms of this Article.

ARTICLE 11 RELATIONSHIP

Hotel Owner shall at all times be the independent contractor of City and not the employee or agent of City, with respect to the matters provided for herein. Hotel Owner shall have no right or power to contract with third parties for, on behalf of, or in the name of City or to otherwise bind or obligate the City.

ARTICLE 12 SUCCESSORS AND ASSIGNS; ASSIGNABILITY

12.1 Binding Effect. This Agreement shall be binding upon and inure to the benefit of Parties and their respective heirs, representatives, successors and permitted assigns.

12.2 Assignment by Hotel Owner. Hotel Owner shall not be permitted to assign this Agreement, in whole or in part, without the prior written consent of City.

ARTICLE 13 TERM

The term of this Agreement shall commence on the date that the first hotel room in the Hotel is rented by Hotel Owner so that Hotel HOT is generated pursuant to Texas Tax Code, Chapter 351 and shall continue until such time as the Hotel HOT remitted by the City to Hotel Owner for costs and expenses related to SAPPs equals Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00) or until December 31, 2025, whichever event occurs first, unless earlier terminated under the terms of this Agreement.

ARTICLE 14 MISCELLANEOUS

14.1 Amendments. This Agreement may be amended only by a written instrument so stating which is executed by the Parties hereto.

14.2 Severability. If any provision of this Agreement shall be invalid or unenforceable for any reason and to any extent, the remainder of this Agreement shall not be affected thereby, but shall be enforced to the greatest extent permitted by law.

14.3 Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

14.4 Waivers. No failure or delay of a Party in the exercise of any right given to such Party hereunder or by law shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other further exercise thereof or of any other right. The waiver by a Party of any breach of any provision hereof shall not be deemed to be a waiver of any subsequent breach thereof or of any breach of any other provision hereof.

14.5 Governing Law and Venue. This Agreement shall be construed, interpreted and applied in accordance with and shall be governed by, the laws applicable to the State of Texas. Venue for any disputes arising under this Agreement shall be in Brazos County, Texas.

14.6 Authority. The person executing this Agreement on behalf of Hotel Owner and City each represents that he/she has the power and authority to do so and to bind his/her principal to the terms of this Agreement.

14.7 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original of this Agreement but all of which, taken together, shall constitute one and the same agreement.

Remainder of this page intentionally left blank. Signatures follow on the next page.

CITY OF BRYAN, TEXAS

Jason P. Bienski, Mayor

Date: _____

ATTEST:

Mary Lynn Stratta, City Secretary

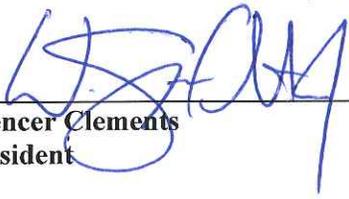
APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

DEVELOPER

ATLAS HOTEL, LP

By: ATLAS HOTEL GP, LLC, its sole general partner



Spencer Clements
President

Legal Description

**METES AND BOUNDS DESCRIPTION
OF A
2.79 ACRE TRACT
J. H. JONES SURVEY, A-26
BRYAN, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OF LAND LYING AND BEING SITUATED IN THE J. H. JONES SURVEY, ABSTRACT NO. 26, BRYAN, BRAZOS COUNTY, TEXAS. SAID TRACT BEING A PORTION OF THE REMAINDER OF A CALLED 324.83 ACRE TRACT AS DESCRIBED BY A DEED TO BRYAN COMMERCE AND DEVELOPMENT, INC. RECORDED IN VOLUME 4023, PAGE 91 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS. SAID TRACT BEING THE FUTURE LOT 1, THE TRADITIONS SUBDIVISION, PHASE 27, NOT YET FILED OF RECORD.

SAID TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A 1/2 INCH IRON ROD FOUND ON THE NORTHERLY LINE OF SOUTH TRADITIONS DRIVE (100' R.O.W.) MARKING THE SOUTHEAST CORNER OF A CALLED 8.47 ACRE TRACT AS DESCRIBED BY A DEED TO TEXAS A&M UNIVERSITY SYSTEM RECORDED IN VOLUME 11936, PAGE 198 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, FOR REFERENCE ANOTHER 1/2 INCH IRON ROD FOUND ON THE COMMON LINE OF SAID REMAINDER OF 324.83 ACRE TRACT AND SAID 8.47 ACRE TRACT BEARS: N 46° 23' 49" W FOR A DISTANCE OF 61.96 FEET;

THENCE: N 37° 23' 59" E THROUGH SAID REMAINDER OF 324.83 ACRE TRACT FOR A DISTANCE OF 393.53 FEET TO A POINT ON THE NORTHWESTERLY LINE OF AN EXISTING 40.00 FOOT WIDE PUBLIC UTILITY AND ACCESS EASEMENT AS DESCRIBED IN VOLUME 9257, PAGE 154 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, MARKING THE POINT OF BEGINNING OF THIS HEREBIN DESCRIBED TRACT;

THENCE: THROUGH SAID REMAINDER OF 324.83 ACRE TRACT FOR THE FOLLOWING CALLS:

N 42° 18' 48" W FOR A DISTANCE OF 63.09 FEET;

N 12° 25' 46" W FOR A DISTANCE OF 193.19 FEET;

N 17° 34' 14" E FOR A DISTANCE OF 236.09 FEET;

S 72° 25' 46" E FOR A DISTANCE OF 73.42 FEET;

N 17° 38' 08" E FOR A DISTANCE OF 121.25 FEET;

S 64° 59' 57" E FOR A DISTANCE OF 54.42 FEET;

S 25° 00' 03" W FOR A DISTANCE OF 22.61 FEET;

S 21° 05' 35" E FOR A DISTANCE OF 59.68 FEET;

S 64° 59' 57" E FOR A DISTANCE OF 156.00 FEET;

S 25° 00' 03" W FOR A DISTANCE OF 170.32 FEET;

S 31° 29' 58" W FOR A DISTANCE OF 31.50 FEET;

S 02° 11' 18" E FOR A DISTANCE OF 109.92 FEET TO A POINT ON THE NORTHWESTERLY LINE OF SAID EXISTING EASEMENT BEING IN A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 520.00 FEET;

ALONG SAID CURVE, 40.00 FEET FROM AND PARALLEL TO THE NORTHWEST LINE OF SOUTH TRADITIONS DRIVE, THROUGH A CENTRAL ANGLE OF 25° 58' 15" FOR AN ARC DISTANCE OF 235.70 FEET (CHORD BEARS: S 65° 18' 39" W - 233.69 FEET) TO THE POINT OF BEGINNING CONTAINING 2.79 ACRES OF LAND, MORE OR LESS. BEARING SYSTEM SHOWN HEREIN IS BASED ON GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION.

BRAD KERR
REGISTERED PROFESSIONAL
LAND SURVEYOR No. 4502

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