COURT ORDER
2018-0905

Tax Abatement Request for Knights of Pythias Temple

On a motion made by Commissioner John Wiley Price, District 3, and seconded by Commissioner Dr. Elba Garcia, District 4, the following order was passed and adopted by the Commissioners Court of Dallas County, State of Texas:

BRIEFING DATE: 8/7/2018
FUNDING SOURCE: n/a

Be it resolved and ordered that the Dallas County Commissioners Court does hereby authorize the provision of a ten-year, 90% tax abatement on real property for the preservation, renovation, and conversion of the historic Knights of Pythias Temple (2557 Elm Street) into a hotel, effective no later than January 1, 2021 and subject to the project increasing the real property's assessed valuation by at least $25 million by the same January 1, 2021 date.

It is further resolved and ordered that the County Judge is authorized to sign the related tax abatement agreement which shall govern the provision of this abatement.

Done in open court August 7, 2018, by the following vote:

IN FAVOR:	Honorable Clay Lewis Jenkins, County Judge
	Commissioner Dr. Theresa M. Daniel, District 1
	Commissioner Mike Cantrell, District 2
	Commissioner John Wiley Price, District 3
	Commissioner Dr. Elba Garcia, District 4
OPPOSED:	None
ABSTAINED:	None
ABSENT:	None

Recommended by: Rick Loessberg
Originating Department: Planning and Development

COMMISSIONERS COURT BRIEFING

DATE: 8/7/2018

SUBMITTING DEPARTMENT: Planning and Development

SUBJECT: Tax Abatement Request for Knights of Pythias Temple

BACKGROUND:
Westdale, which has previously redeveloped a number of historic buildings such as the Adam Hats Building and Deep Ellum Lofts, has announced plans to convert the Knights of Pythias Temple (2557 Elm Street) into part of a 160-room hotel. To help facilitate this conversion, the County has been asked to provide a ten-year 90% abatement on real property.

DESCRIPTION OF PROJECT:
The five-story Knights of Pythias Temple is historically very significant (it received City of Dallas Landmark Status in 1989) and is situated at a highly-visible location between both downtown and Deep Ellum. It was constructed in 1916 as the headquarters for a black fraternal order and was designed by William Sidney Pittman, who was the first African American architect to practice in Dallas. Reflective of the eclectic Beaux-arts architectural style, it served as a major social, professional, and cultural location for the city's black population until 1939 when the building went into receivership. Over the next twenty years, the building changed hands several times before being acquired by the Union Bankers Insurance Company in 1959. This firm owned the building until 1995; however, the building had become vacant at least a decade before this sale, and numerous efforts since then to renovate and re-occupy the building have been unsuccessful because of the financial challenges involved.

Westdale proposes spending approximately $50 million to restore and renovate the building and to construct a 96,000-square-foot structure that will connect with it (it is recognized that, without this connecting structure, the project will not be financially feasible and that the Temple would otherwise remain vacant and dilapidated). The $50 million that Westdale anticipates spending makes this one of the larger adaptive re-use projects undertaken in the city.

The Temple's visibility and proximity to the DART Deep Ellum station, downtown, and Deep Ellum should help facilitate additional economic activity in the area. Project construction is scheduled to begin this summer and to be completed Summer 2020.

OPERATIONAL IMPACT:
Under the County's abatement policy, projects involving historic structures are eligible for consideration if they increase the County's tax base by at least $2 million. The policy also allows for an initial abatement of up to 50% that can be increased to up to 90% if it possesses any of the additional characteristics:

- Produces housing;

RECOMMENDED BY:	Planning and Development	**PREPARED BY:**	Rick Loessberg
		APPROVED BY DEPT HEAD:	Rick Loessberg

- Utilizes a structure that is threatened by demolition;
- Generates substantial economic impact;
- Is located within a priority area; and/or
- Utilizes a structure with extraordinary historic significance.

As this project utilizes a building that is historically very noteworthy, that has been vacant for over thirty years, that is located at a key entry-point into downtown and Deep Ellum, and that will be part of one of the city's larger adaptive-reuse projects, it is proposed that a 90% abatement be provided.

FINANCIAL IMPACT:
The abatement for this project, which assists in the project being financially viable, would begin no later than January 1, 2021. It is estimated that the $50 million that will be spent on this project will result in an increase of at least $25 million in the property's assessed valuation (it is currently only $1.3 million). Providing a 90% abatement would result in the County annually foregoing about $55,000 in taxes that do not presently exist while allowing the County to collect about $6100 in new revenue. It will also increase the projected total amount of property that will be abated in 2021 from approximately $444 million to $467 million. However, while the total amount of property that will be abated will increase due to this project, the percentage of the County's tax base that will be abated in 2021 will remain at the projected level of less than ⅕%.

LEGAL IMPACT:
The tax abatement agreement for this project has been submitted to the Civil Section for review and if needed, any legal opinion.

ADMINISTRATIVE PLAN COMPLIANCE:
As the County's administrative plan specifically recommends that the County undertake activities which will make the County the destination of choice for businesses and residences, providing a tax abatement so that a vacant historic building can be renovated and converted into a highly-visible hotel is consistent with this plan.

WORKFORCE COMPOSITION:
EEO-1 information pertaining to Westdale has previously been provided to the Court under separate cover.

RECOMMENDATION:
It is recommended that the County, effective no later than January 1, 2021, provide a 90% abatement for the preservation, renovation and conversion of the historic Knights of Pythias Temple into a hotel.

TAX ABATEMENT AGREEMENT

STATE OF TEXAS §

COUNTY OF DALLAS §

This Tax Abatement Agreement ("*Agreement*") is made and entered into as of the 7th day of August, 2018, by and between Dallas County, Texas ("*County*"), a political subdivision of the State of Texas duly acting by and through its Commissioners Court, and Epic Dallas Hotel, LP, a Texas limited partnership (*"Owner"*), duly acting by and through its authorized officers for the purposes and considerations stated below:

WITNESSETH:

WHEREAS, the County has adopted a Tax Abatement Policy ("*Policy*"), by the passage of Dallas County Commissioners Court Order 2017-0035 on the 3rd day of January, 2017, that contains the guidelines and criteria used to determine the provision of tax abatement assistance from the County under Chapter 312 and Section 11.24 of the Texas Tax Code and Chapter 381 of the Texas Local Government Code; and

WHEREAS, the Property's existing Improvements have been given "Landmark" status by the City of Dallas and are considered by the County to be historically significant and in need of tax relief to encourage its preservation and the additions to the existing building, are critical to the economic viability of the Improvements; and

WHEREAS, Owner anticipates undertaking certain Economic Activity on or about the Property (as hereinafter defined), including, without limitation, (i) preserving, restoring, and converting existing historically significant Improvements into a hotel; (ii) constructing new Improvements to the Property; and (iii) operating the Property as a hotel, and the County finds that the other terms hereof are consistent with encouraging development in accordance with Court Order 2017-0035 and 2018-0905 and all applicable laws; and

WHEREAS, the County finds that the Owner's contemplated use of the Property and the contemplated real property improvements and investments on or about the Property are feasible and practical and will be of significant benefit to the County and its citizens; and

WHEREAS, Court Orders 2017-0035 and 2018-0905 authorize the County to enter into this Agreement with Owner pursuant to Section 11.24 of the Texas Tax Code.

NOW THEREFORE, the County, for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, which consideration includes the preservation and renovation of a historically significant structure and the attraction of new investment that contributes to the economic development of the County and the enhancement of the County's tax base; and the Owner, for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, which consideration includes the tax abatement set forth herein below, as authorized by Court Orders 2017-0035 and 2018-0905 do hereby contract, covenant, and agree as follows:

SECTION I.
DEFINITIONS

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

1. "*Economic Activity*" shall mean the following acts undertaken by or on behalf of Owner: (i) preservation and restoration of existing historically significant Improvements on the Property; (ii) conversion of existing historically significant Improvements into a hotel, which along with construction of new Improvements will contain at least 150 rooms; (iii) construction of new Improvements on Property; (iv) investment of funds with regard to this restoration, preservation, conversion, and construction of existing and new Improvements; and (v) operation of Improvements and Property as a hotel (which may also include related retail uses).

2. "*Eligible Real Property Value*" shall mean the value, as annually established by the Dallas Central Appraisal District ("*DCAD*"), of the Property and all Improvements within the Property (including existing and new Improvements) less the Property's Base Value, as defined herein and as established by DCAD.

3. "*Base Value*" shall mean the appraised value of the respective real Property as determined by DCAD as of January 1, 2018.

4. "*Property*" shall mean that parcel of land located at 2557 Elm Street in Dallas, Texas and more fully described in **Exhibit "A"**, attached hereto and incorporated by reference. The County relies on the attached Exhibit "A", provided by Owner to be a full, complete and accurate legal description of said parcel, and to the extent any portion(s) of the land are not included in the description on Exhibit "A", such portion(s) are excluded from any abatement provided for hereunder.

5. "*Improvements*" shall mean those certain real property improvements already existing and/or constructed or to be constructed on or about the Property, including new additions to the existing Improvements, which are planned to be developed into a hotel with at least 150-rooms. The Improvements shall be used in connection with the Economic Activity undertaken by Owner.

6. "*Owner*" shall mean and refer to the party or parties to this Agreement who are the respective owner(s) from time to time of the Property that is subject to tax abatement hereunder and to any Successor Entities.

7. "*Successor Entity*" shall mean (i) any entity which is a successor or assign to an Owner by merger, consolidation, assignment or reorganization; or (ii) a purchaser of all or substantially all of an Owner's assets.

8. *"Development Costs"* shall mean all actual site development and construction costs incurred by or on behalf of Owner relating to the restoration, preservation, conversion, and construction of existing and new Improvements and related infrastructure, including but not limited to costs such as buildings (foundation, interior, and exterior improvements), structures, utilities, paving, grading, demolition, environmental remediation, lighting, signage, landscaping, engineering costs, fees of consultants, designers, contractors and other professionals, the costs of equipment, supplies, materials and construction labor

associated with such site development and construction costs, and other costs and fees customarily incidental to construction of a commercial project.

9. *"M/WBE Company" (or "M/WBE Companies")* shall mean a minority or woman-owned business that (i) has received certification as either a minority business enterprise (MBE), a woman business enterprise (WBE) or a disadvantaged business enterprise (DBE) by either the North Central Texas Regional Certification Agency (NCTRCA), the Dallas/Ft. Worth Minority Supplier Development Council, or the Women's Business Council-Southwest; and (ii) that performs a function or provides a service useful or necessary for construction of the Improvements, including but not limited to Development Costs.

SECTION II.
GENERAL PROVISIONS

1. The County has adopted guidelines and criteria governing tax abatement agreements such that it is authorized to enter into this Agreement.

2. The Property is not located in an improvement project financed by tax increment bonds.

3. This Agreement is entered into subject to the rights of the holders of outstanding bonds of the County.

4. The Property is not owned or leased by any member of the Dallas County Commissioners Court.

5. Owner covenants and agrees that the preservation, restoration, and construction of the new and existing Improvements including the construction of the hotel and use of the Property subject to this Agreement will be in compliance with all applicable city, county, state, and federal laws, rules, regulations, statutes, ordinances, orders and codes, including but not limited to Title VI of the Civil Rights Act of 1964 as amended.

6. During the Tax Abatement Period (hereinafter defined), Owner shall be subject to all County taxation not specifically abated or exempted.

7. Owner shall have the right to protest and/or contest DCAD appraisals of the Property and the Improvements over and above the respective Base Value of the Property and the Improvements, as the case may be, under the procedures in place by the Tax Code of the State of Texas. The Tax Abatement (as hereinafter defined) shall be applied to the amount of taxes finally determined by DCAD to be due as a result of any such protest and/or contest by Owner.

SECTION III.
RATE AND CONDITIONS OF TAX ABATEMENT

1. Owner shall receive a Tax Abatement (hereinafter defined) upon satisfaction of the conditions set forth in Section III(1)(a)-(f) below. Owner shall receive a ninety percent (90%) abatement of the taxes assessed on the Eligible Real Property Value from the County for each qualifying year during the Tax Abatement Period subject to the terms of this Agreement *("Tax Abatement")*.

(a) City of Dallas provides, by September 1, 2018, a tax abatement and/or other financial assistance at least equivalent to the value of the County's Tax Abatement.

(b) Owner shall preserve, restore and construct the Improvements on or about the Property for the purpose of operating a hotel with at least 150 rooms. Said Improvements must be undertaken and maintained in such a manner so that the Property continues to retain its designation as a City of Dallas Landmark, and remains eligible for any City of Dallas historic preservation incentives and Federal Historic Preservation Tax Credits that might be utilized.

(c) Owner shall expend or cause the expenditure of a minimum of twenty percent (20%) of Twenty-Five-Million-Dollars, which represents the Eligible Real Property Value Condition, in Development Costs with M/WBE Companies ("*M/WBE Threshold*").

(d) Beginning on September 1, 2018 and continuing until the earlier to occur of (1) the M/WBE Threshold has been met, or (2) ninety (90) days after the date the hotel is completed and open for business, Owner shall provide County with monthly reports documenting the progress made towards meeting the M/WBE Threshold. The first report shall reflect the progress made during the period prior to the Effective Date of this Agreement. Subsequent reports shall reflect the progress during the previous month. All reports shall be provided within ten (10) days of the first day of each month and shall certify the amount of M/WBE Company participation pursuant to Section III(1)(c) and include copies of accompanying invoices evidencing the completed work and copies of the M/WBE certification for any M/WBE Companies that Owner includes in this reporting that have not been previously provided to the County. Reports shall show the value of the M/WBE Company participation for that month as well as the accumulative total to date.

(e) The Eligible Real Property by January 1 of each year during the Tax Abatement Period, as determined by DCAD, shall be at least equal to Twenty-Five-Million-Dollars ($25 million) (*"Eligible Real Property Value Condition")*.

(f) During the Tax Abatement Period, Owner shall file the annual exemption application (the "*Exemption Application*") forms with DCAD for the Tax Abatement that it believes it is eligible to receive under this Agreement.

SECTION IV.
ABATEMENT PERIODS

The Tax Abatement provided under this Agreement is for a period of ten (10) years and will begin no later than January 1, 2021 (the "*Tax Abatement Period*"). Owner and the County shall have no further obligations under this Agreement upon expiration of the Tax Abatement Period, except as otherwise provided herein.

SECTION V.
RECORDS AND AUDITS

1. At all times throughout the Tax Abatement Period, the County shall have reasonable access during normal business hours to the Property by County employees (upon delivering one-week prior written notice to Owner) for the purpose of inspecting same to ensure that the Property is being used for the required Economic Activity in accordance with the specifications and conditions of this Agreement; provided that Owner or a representative of Owner shall have the right to accompany County employees on any such inspection. In no event shall such inspections interfere with Owner's ownership and operation of the Property nor any guests or patrons of the hotel located on the Property.

2. The Property at all times during the Tax Abatement Period shall be used in a manner consistent with Court Orders 2017-0035 and 2018-0905 and shall be consistent with the general purpose of encouraging historic preservation and economic development within the County.

SECTION VI.
DEFAULT

1. Subject to the cure provisions of this Section VI, a default under this Agreement occurs in the event that the Owner: (i) allows its ad valorem real property taxes and/or tangible business personal property taxes owed to the County from the Property associated with this Agreement as well as from other property the Owner may own within the County to become delinquent during the Tax Abatement Period and fail to timely and properly follow the legal procedures for protest and/or contest of any such taxes; (ii) fails to file an annual Exemption Application pursuant to Section III(1)(d); (iii) fails to meet the Eligible Real Property Value Condition for each relevant year pursuant to Section III(1)(c); (iv) is convicted of a violation under 8 USC Section 1324a(f); or (v) fails to materially comply with any of the terms or conditions set forth in this Agreement. In the event that Owner defaults in its performance as set forth in any of (i), (ii), or (v) above, the County or DCAD shall give Owner written notice of such default. If Owner has not cured a default under (i), (ii), or (v) within ninety (90) calendar days of said written notice or if a default under (iii) occurs, an event of default (an "*Event of Default*") shall exist and this Agreement shall terminate (and Owner shall not receive any Tax Abatements for years after such Event of Default, it being understood that, an Event of Default shall not entitle County to reclaim or receive a repayment right with respect to any Tax Abatement for any year before the Event of Default occurs, and that the sole remedy by the County for an Event of Default which results from a failure by the Owner to meet a condition is the termination of this Agreement and not damages or specific performance or any other remedy). In the event that Owner cures any such default within the applicable cure period or prior to termination of this Agreement, no Event of Default shall exist and this Agreement shall continue in full force and effect, without penalty to Owner.

2. Upon the occurrence of a court finding a violation of Section VI (1)(iv), all taxes which otherwise would have been paid to the County without the benefit of the Tax Abatement, including interest and penalties thereon ("Recapture Liability"), will become a debt to the County and shall be due, owing, and paid to the County within one hundred twenty (120) calendar days of a final determination by a court of competent jurisdiction that Owner has violated 8 USC 1324a(f) as the sole remedy of the County, subject to any and all lawful offsets, settlements, deductions, or credits to which Owners may be entitled, and subject

to the rights of the Owner under applicable law to contest an assertion that a violation of Section VI(1)(iv) has occurred. The Recapture Liability interest and penalties shall be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas.

3. This Agreement inures to the benefit of the County and the Owner and is enforceable by the County. The County has the right to prosecute or take appropriate action, at law or in equity, against the Owner to enforce any covenant or provision (but not a condition) contained within this Agreement. If the County prevails in a legal proceeding to enforce this Agreement against the Owner, the County is further entitled to recover damages (except as limited by Section VI(1)), reasonable attorney's fees, and court costs from the Owner. Any payment due to the County under this Agreement is a lien which attaches to the Property on January 1 of each year to enforce the payment of all taxes, penalties, and interest ultimately imposed for the year on the Property.

SECTION VII.
EFFECT OF SALE, ASSIGNMENT, OR LEASE OF PROPERTY

The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. Owner, including but not limited to any Successor Entity, may assign its rights and responsibilities under this Agreement including the right to receive the Tax Abatement to any corporation, partnership, joint venture, limited liability company or other entity acquiring title to the Property, without prior approval of the Commissioners Court. Should Owner or any Successor Entity assign such rights and responsibilities under this Agreement, the County must be notified of such assignment within sixty (60) calendar days of its occurrence.

SECTION VIII.
NOTICE

All notices called for or required by this Agreement shall be reduced to writing and addressed to the person shown at the respective addresses set forth below , or such other party or address as either party designates in writing, and shall be deemed properly given by (i) on the third (3rd) business day after being deposited in the U.S. mail postage prepaid, by certified or registered mail, return receipt requested; (ii) on the first (1st) business day after being deposited into the custody of a nationally recognized overnight delivery service; or (iii) on the date personally delivered, with signed acceptance thereof by the person designated below:

OWNER:

Epic Dallas Hotel, LP
3100 Monticello Avenue
Suite 100
Dallas, Texas 75205

with copies to:
Vinetower Deep Ellum, LLC
2711 N. Haskell Avenue, Suite 2800
Dallas, Texas 75204
Attn: Jeff Cohen

Winstead PC
2728 N. Harwood Street
Dallas, Texas 75201
Attn: Laura Hoffmann

COUNTY:

Director of Planning & Development
Dallas County Commissioners Court
411 Elm Street, 3rd Floor
Dallas, Texas 75202

With copies to:
Chief, Civil Division
Dallas County Criminal District Attorney's Office--Civil Division
411 Elm Street, 5th Floor
Dallas, Texas 75202

SECTION IX.
COUNTY AUTHORIZATION

This Agreement is authorized by Court Orders 2017-0035 and 2018-0905 approved at the Commissioners Court meetings of the 3rd day of January, 2017 and the 7th day of August, 2018, respectively.

SECTION X.
OWNER AUTHORIZATION

The execution and performance of this Agreement by Owner has been duly authorized by its governing authority and does not require the consent or approval of any other person, which has not been obtained. Additionally, the person or persons executing this Agreement on behalf of Epic Dallas Hotel, LP represents, warrants, assures and guarantees that he, she or they have full legal authority to execute this Agreement on behalf of Epic Dallas Hotel, LP and to bind Epic Dallas Hotel, LP to all terms, performances, and provisions herein contained.

SECTION XI.
SEVERABILITY

In the event any section, subsection, paragraph, sentence, phrase, or word 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.

SECTION XII.
ESTOPPEL CERTIFICATE

Any party hereto may request an estoppel certificate from the other party hereto so long as the certificate is reasonably requested in connection with a bona fide business purpose. The certificate, which, if requested, will be addressed to a subsequent purchaser or assignee of Owner, and shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default (or if default exists, the nature of default and curative action which should be undertaken to cure same), the remaining term of this Agreement, the levels of tax abatement in effect, and such other matters reasonably requested by the party to receive the certificate.

SECTION XIII.
APPLICABLE LAW AND VENUE

The validity and interpretation of this Agreement, and the rights and obligations of the parties hereunder, shall be governed by and construed in accordance with the laws of the State of Texas. This Agreement is performable and enforceable in Dallas County, Texas where the principal office of County is located and the federal and state courts physically located in Dallas, Texas shall be the sole and exclusive venue for any litigation, special proceeding, or other proceeding as between the parties that may be brought, or arise out of, in connection with, or by reason of this Agreement.

SECTION XIV.
SOVEREIGN IMMUNITY

This Agreement is expressly made subject to the County's Sovereign Immunity, Title 5 of the Texas Civil Practices and Remedies Code, and all applicable federal and State law. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver or any immunities from suit or from liability that the County has by operation of law. Nothing in this Agreement is intended to benefit any third party beneficiary.

SECTION XV.
AMENDMENTS AND CHANGES IN THE LAW

No modification, amendment, novation, renewal or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the parties hereto and approved by the Dallas County Commissioners Court. Any alteration, addition, or deletion to the terms of this Agreement which are required by changes in federal or State law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law.

SECTION XVI.
INDEMNIFICATION

OWNER, INCLUDING ITS ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBCONTRACTORS, INVITEES AND REPRESENTATIVES (COLLECTIVELY "OWNER") AGREES TO DEFEND, INDEMNIFY, AND HOLD THE COUNTY, INCLUDINGS ITS

COMMISSIONERS, ELECTED OFFICIALS, OFFICERS, DIRECTORS, AGENTS, ASSIGNS, EMPLOYEES AND REPRESENTATIVES (COLLECTIVELY "COUNTY") HARMLESS AGAINST AND FROM ANY AND ALL CLAIMS, LOSSES, COSTS, DAMAGES, JUDGMENTS, OR EXPENSES, INCLUDING ATTORNEY'S FEES, ARISING OUT OF OWNER'S BREACH OF ANY OF THE REQUIREMENTS AND PROVISIONS OF THIS AGREEMENT OR ANY FAILURE OF THE OWNER, IN ANY RESPECT TO COMPLY WITH AND PERFORM ALL OF THE REQUIREMENTS AND PROVISIONS HEREOF. THIS PROVISION SHALL SURVIVE THE TERMINATION, EXPIRATION OR CANCELLATION OF THIS AGREEMENT.

SECTION XVII.
CONTRA PROFERENTUM

The doctrine of contra proferentum shall not apply to this Agreement. If an ambiguity exists in this Agreement, this Agreement shall not be construed against the party who drafted this Agreement, and such party shall not be responsible for the language used.

SECTION XVIII.
ENTIRE AGREEMENT

This Agreement, including all Exhibits, Attachments, and Addendums, constitutes the entire final agreement between the parties hereto and supersedes any other agreement concerning the subject matter of this transaction, whether oral or written, by and between Owner and the County.

SECTION XIX.
NUMBER/GENDER AND HEADINGS

Words of any gender used in this Agreement shall be held and construed to include any other gender and any words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION XX.
EFFECTIVE DATE OF AGREEMENT

This Agreement shall become effective on the date it is executed by both the County and the Owner (the "*Effective Date*"). This Agreement may be signed and executed in multiple counterparts, each of which shall be deemed an original.

SECTION XXI.
FORCE MAJEURE

It is expressly understood and agreed by the parties to this Agreement that if a party's ability to satisfy any obligation under this Agreement including, but not limited to the substantial completion of the Improvements is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by franchised utilities or their contractors, fire or other casualty, court injunction, condemnation proceedings, or any

circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstances are similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such performance shall be extended for a period of time equal to the period such party was delayed.

SECTION XXII.
OWNER CERTIFICATION

TEXAS GOVERNMENT CODE CHAPTER 2264 CERTIFICATION. Owner, by execution of this Agreement and in accordance with Chapter 2264 of the Texas Government Code, certifies that they do not and will not knowingly employ any undocumented workers at the Property during the Term of this Agreement and that if the Owner is convicted of a violation under 8 U.S.C. Section 1324a(f), Owner shall repay all taxes which otherwise would have been paid to the County without the benefit of the tax abatement, including interest and penalties thereon within the time period set forth in Section VI (2) of this Agreement. Owner is not liable for a violation of this section by a subsidiary, affiliate, or franchisee, or by a person with whom Owner contracts.

SECTION XXIII.
NON-WAIVER OF DEFAULT

Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach. It is not a waiver of default if the non-defaulting party fails to immediately declare a default or delays in taking any action. The rights and remedies provided by this Agreement are cumulative, and either party's use of any right or remedy will not preclude or waive its right to use any other remedy at law or in equity. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance or otherwise. The parties have a duty to mitigate damages.

[Signatures on Following Page]

EXECUTED this the 7th day of August, 2018.

DALLAS COUNTY:

By: _____
Clay Lewis Jenkins
County Judge

OWNER:

EPIC DALLAS HOTEL, LP
a Texas limited partnership

By: EPIC DALLAS HOTEL GP, LLC

A Texas corporation – General Partner

By: _____
Joseph G. Beard
President

RECOMMENDED BY:

_____
Rick Loessberg
Director of Planning & Development

APPROVED AS TO FORM:*

FAITH JOHNSON
DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY

RUSSELL RODEN
CHIEF, CIVIL DIVISION

By: _____
Russell Roden
Chief, Civil Division

*BY LAW, THE DISTRICT ATTORNEY'S OFFICE MAY ONLY ADVISE OR APPROVE CONTRACTS OR LEGAL DOCUMENTS ON BEHALF OF ITS CLIENTS. IT MAY NOT ADVISE OR APPROVE A LEASE, CONTRACT, OR LEGAL DOCUMENT ON BEHALF OF OTHER PARTIES. OUR REVIEW OF THIS DOCUMENT WAS CONDUCTED SOLELY FROM THE LEGAL PERSPECTIVE OF OUR CLIENT. OUR APPROVAL OF THIS DOCUMENT WAS OFFERED SOLELY FOR THE BENEFIT OF OUR CLIENT. OTHER PARTIES SHOULD NOT RELY ON THIS APPROVAL, AND SHOULD SEEK REVIEW AND APPROVAL BY THEIR OWN RESPECTIVE ATTORNEY(S).

EXECUTED this the 7th day of August, 2018.

DALLAS COUNTY:

By: _____
Clay Lewis Jenkins
County Judge

OWNER:

EPIC DALLAS HOTEL, LP
a Texas limited partnership

By: EPIC DALLAS HOTEL GP, LLC

A Texas corporation – General Partner

By: _____
Joseph G. Beard
President

RECOMMENDED BY:

_____
Rick Loessberg
Director of Planning & Development

APPROVED AS TO FORM:*

FAITH JOHNSON
DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY

RUSSELL RODEN
CHIEF, CIVIL DIVISION

By: _____
Russell Roden
Chief, Civil Division

*BY LAW, THE DISTRICT ATTORNEY'S OFFICE MAY ONLY ADVISE OR APPROVE CONTRACTS OR LEGAL DOCUMENTS ON BEHALF OF ITS CLIENTS. IT MAY NOT ADVISE OR APPROVE A LEASE, CONTRACT, OR LEGAL DOCUMENT ON BEHALF OF OTHER PARTIES. OUR REVIEW OF THIS DOCUMENT WAS CONDUCTED SOLELY FROM THE LEGAL PERSPECTIVE OF OUR CLIENT. OUR APPROVAL OF THIS DOCUMENT WAS OFFERED SOLELY FOR THE BENEFIT OF OUR CLIENT. OTHER PARTIES SHOULD NOT RELY ON THIS APPROVAL, AND SHOULD SEEK REVIEW AND APPROVAL BY THEIR OWN RESPECTIVE ATTORNEY(S).

EXHIBIT A

PROPERTY DESCRIPTION

1.137 ACRES

BEING a tract of land situated in the John Grisby Survey, Abstract No. 495, City of Dallas, Dallas County, Texas and being part of City of Dallas Block Nos. 280 and G3/280 and being part of the variable width alley across said Blocks 280 and G3/280 shown on the unrecorded Goods Addition shown in Block Book 280 of the Murphy & Bolanz Block and Addition Book Records of Dallas County, Texas and abandoned by Ordinance No. 30525, recorded in Instrument No. 20170026140, Official Public Records of Dallas County, Texas and being part of a tract of land described in Special Warranty Deed to Epic Dallas Hotel, LP, recorded in Instrument No. 201700027379 of said Official Public Records and part of a tract of land described in Corrected Quitclaim Deed to Epic Dallas Hotel, LP, recorded in Instrument No. 201700321863 of said Official Public Records and being more particularly described as follows:

BEGINNING at a "X" cut in concrete found for corner in the west end of a right-of-way corner clip located at the intersection of the west right-of-way line of Good-Latimer Expressway (a variable width right-of-way) and the north right-of-way line of Elm Street (a 60-foot wide right-of-way);

THENCE with said north right-of-way line of Elm Street, South 75°24'25" West, a distance of 132.31 feet to a "X" cut in concrete found for the southeast corner of a called 1.260 acre tract of land described in Special Warranty Deed to Gaston & Good Latimer, LP, recorded in Instrument No. 201800014281 of said Official Public Records;

THENCE departing said north right-of-way line of Elm Street and with the east line of said Gaston & Good Latimer tract, North 14°35'35" West, a distance of 175.75 feet to a mag nail found for the northeast corner of said 1.260 acre tract and being in a south line of a tract of land described in Special Warranty Deed to Epic Dallas Office, LP, recorded in Instrument No. 201700027376 of said Official Public Records;

THENCE with said south line of said Epic Dallas Office tract, North 75°24'25" East, a distance of 13.68 feet to a point for a southeast corner of said Epic Dallas Office tract;

THENCE with an east line of said Epic Dallas Office tract, the following courses and distances:

> North 31°24'30" West, a distance of 188.40 feet to a point for corner;
> North 28°47'05" East, a distance of 50.70 feet to a point for corner in said west right-of-way line of Good-Latimer Expressway;

THENCE with said west right-of-way line of Good-Latimer Expressway, the following courses and distances:

> South 53°38'33" East, a distance of 127.92 feet to a 5/8" iron rod with plastic cap stamped "KHA" found for corner;

South 44°51'03" East, a distance of 144.68 feet to a 1-inch iron pipe found at the beginning of a tangent curve to the right having a central angle of 23°46'46", a radius of 337.04 feet, a chord bearing and distance of South 32°57'40" East, 138.88 feet;
In a southeasterly direction, with said curve to the right, an arc distance of 139.88 feet to a 1/2-inch iron rod found for corner at the east end of said right-of-way corner clip;

THENCE with said right-of-way corner clip, South 43°24'55" West, a distance of 69.50 feet to the **POINT OF BEGINNING** and containing 1.137 acres or 49,545 square feet of land.

Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.