CITY OF AMARILLO
AND
HERRING HOTEL PARTNERS, LLC

CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (hereinafter referred to as the "Agreement") is entered into by and between the CITY OF AMARILLO, TEXAS, a Texas home rule municipal corporation (referred to as the "City"), and HERRING HOTEL PARTNERS, LLC (referred to as the "Developer"), a Texas limited liability company, along with its successors, assigns or Affiliates. The City and the Developer are collectively referred to as the "Parties," while each will be referred to individually as a "Party." This Agreement is established based on the following recitals, terms, and conditions.

RECITALS

The City and Developer hereby agree that the following statements are true and correct and constitute the basis upon which the City and Developer have entered into this Agreement:

WHEREAS, the Developer has applied to the City for financial assistance to renovate an existing, unoccupied building located in downtown Amarillo, known as the Herring Hotel, located at 311 SE 3rd Avenue, constructed in 1927 by Cornelius Herring. The 14-story, historic hotel is one of the last remaining examples of high-rise construction from the mid-1920s oil boom years of the City (the "Project"); and

WHEREAS, pursuant to Section 52-a of Article III of the Texas Constitution and Chapter 380, Texas Local Government Code, as amended (the "Economic Development Act"), the City may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, the City has taken all necessary legal action to adopt an economic development program in satisfaction of the Economic Development Act; and

WHEREAS, the City desires to provide, pursuant to Chapter 380, Incentive Payment(s) to the Developer and/or its Affiliates to construct and develop the Herring Hotel in this community; and

WHEREAS, the City has determined that the Project is also desirable for the redevelopment of a vacant and unused existing structure; and

WHEREAS, the City has also determined that a grant of funds to the Developer and/or its Affiliates will serve the public purpose of promoting local economic development, with the development and diversification of the economy of the State and City, and will reduce unemployment in the State and City, and will enhance business and commercial activity within the City of Amarillo, Texas; and

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The City Council has found, and the City and Developer hereby agree, that the recitals set forth above are true and correct and form the basis upon which the Parties have entered into this Agreement.

SECTION 2. PROGRAM APPROVED.

The City Council of the City hereby establishes a Chapter 380 economic development program (the "Program") to facilitate the construction and development of the Project and determines that this Agreement will effectuate the purposes of the Program, and that the Developer's performance of its obligations herein will promote local economic development, stimulate business and commercial activity in the City, and otherwise achieve the objectives of the Program.

SECTION 3. TERM.

This Agreement shall be effective as of the Effective Date and shall continue in effect through the Incentive Period (as defined in Section 4) and until all payment obligations and material covenants under this Agreement have been fulfilled by both Parties, whichever occurs later, unless terminated earlier pursuant to the terms of this Agreement.

SECTION 4. DEFINITIONS.

Whenever used in this Agreement, the following terms shall have the meaning ascribed to them:

Affiliate. means any entity that directly or indirectly controls, is controlled by, or is under common control with Developer for purposes of obligations under this Agreement.

Agreement. means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.

Capital Investment. means funds expended in good faith by Developer in furtherance of the Project, including but not limited to related acquisition fees, title policy, title curative and holding costs (including, but not limited to, costs to correct title defects), professional fees (engineer, land planner, architect, legal, mortgage banker, real estate broker, and other licensed professionals supporting the Project), development fees, financing costs, marketing costs, infrastructure, site work, construction costs, landscaping, signage, government fees, and allocable employees and overhead.

Certificate of Occupancy. means an approval issued by the City after final inspection reflecting that construction of the Improvements has been completed in conformance with all appropriate City codes and requirements.

City. means the City of Amarillo, Texas, a Texas home rule municipality, whose address for the purposes of this Agreement is 623 S. Johnson Street, Amarillo, Texas 79105.

City Council. means the City Council of the City of Amarillo, Texas, which is the governing body of the City.

Commencement Date of Hotel Operations. means the date on which the hotel opens for paying guests.

Commencement Date of Retail Operations. means the date on which any retail, restaurant, bar, or other sales tax-generating operations at the Project open for business to the public.

Developer. means Herring Hotel Partners, LLC, a Texas limited liability company, authorized to do business in Texas, whose address for the purposes of this Agreement is 2813 Parker Street, Amarillo, TX 79109, and/or any Affiliate of Developer required to facilitate the development of the Improvements, including but not limited to any loans and/or the Historic Tax Credits necessary for the development of the Improvements..

East Side Property. means the real property currently owned by Developer comprising the eastern portion of the Herring Hotel building and land, more particularly described in Exhibit A.

Effective Date. means the effective date of this Agreement, which shall be the date on which the Amarillo City Council approves this Agreement.

Full-Time Employment. means employment of at least one hundred (100) full-time equivalent employees "FTEs") at the Project, calculated as individuals working an average of at least thirty (30) hours per week over the course of a calendar year, with a minimum aggregate annual payroll of $4,000,000.00 as required in Section 5(a) and Exhibit B. Full-Time Employment shall be measured on an annual basis, and temporary fluctuations below the minimum threshold of fewer than ninety (90) days duration shall not constitute a failure to maintain Full-Time Employment, provided the annual average meets or exceeds the requirement.

Improvements. means the minimum improvements to the Herring Hotel, located at 311 SE 3rd Avenue, that are rehabilitated, redeveloped and/or constructed during the development, which shall have a minimum of 200 renovated guest rooms, and various amenities on site described in Exhibit B, with a minimum new investment of not less than $90,000,000.00 for construction of the Improvements.

Incentive Payment(s). "Incentive Payment(s)" or "Incentive" means financial assistance provided by the City to the Developer pursuant to this Agreement, including local hotel tax rebates, sales tax rebates, and state hotel tax rebates as described in Section 6.

Incentive Period. means the period beginning on the Commencement Date of Hotel Operations (for Hotel Occupancy Tax rebates) or Commencement Date of Retail Operations (for Sales Tax rebates) and continuing for ten (10) consecutive years thereafter, or until all Incentive Payment(s) have been paid in full, whichever occurs later, unless this Agreement is terminated earlier in accordance with its terms.

Option Property. means the City-owned property located south of the Project site, more particularly described in Exhibit A, for which Developer shall have an exclusive option to purchase or lease for future development.

Project. means the design, construction, and operation of the Improvements, as described herein and in Exhibits A & B, parcel A & B, collectively comprising the Project.

Real Property. Shall mean the land owned by the Developer, more specifically described in Exhibit A and Exhibit B of this Agreement.

Retail Operations. means any portion of Project generating sales tax.

Site. means the parcel A & B described in Exhibit A.

Historic Tax Credit(s). means the period of time necessary to structure, finance, and operate the Project in order for Developer to qualify for and receive federal and state historic rehabilitation tax credits, which period shall not exceed fifty (50) years but shall be no less than thirty-nine (39) years from the Effective Date. The Historic Tax Credit is separate and distinct from the Incentive Period. The Historic Tax Credit pertains solely to property ownership structures, lease arrangements, and compliance requirements necessary to qualify for and

claim historic rehabilitation tax credits and does not extend or expand the duration of Incentive Payments beyond the ten (10) year Incentive Period.

West Side Property. means the City-owned real property comprising the western half-block adjacent to the Herring Hotel, more particularly described in Exhibit A, which the City agrees to lease to Developer for Project development purposes.

SECTION 5. OBLIGATIONS OF DEVELOPER.

During the term of this Agreement, Developer shall comply with the following terms and conditions, which are prerequisites to being eligible for an Incentive Payment(s) from the City:

(a) **Development Specifications.** Within thirty (30) days following execution of this Agreement by all parties: The Developer shall designate the historically sensitive rehabilitation as a full-service, four-star (or higher) soft-brand boutique hotel, flagged under Marriott (Tribute Portfolio), Hilton (Curio), IHG (Kimpton), or another brand reasonably acceptable to the City (a "**Franchisor**"). At a minimum, the Project will create 200 guest rooms, create a minimum of 100 permanent jobs with a minimum annual payroll of $4,000,000.00, feature a rooftop bar and lounge, an outdoor pool and courtyard, an event meeting space, a full-service restaurant, public-facing amenities designed to support downtown vibrancy, and a design focused on maintaining historic décor. Any modifications to these specifications shall require prior written approval by both Parties.

(b) **Documentation.** Developer shall provide the City with a copy of each of the following as it becomes available and in accordance with the following timelines:

Within 120 days of execution of this Agreement:

i. Budget for Development;
ii. Financial pro forma for Development.

Within 270 days of execution of this Agreement or upon commencement of construction, whichever occurs first:

iii. Project timeline or development schedule, including Improvements or milestones and completion dates;
iv. Site plan and any applicable architectural renderings or elevations;

As they become available during construction and operation:

v. Construction contracts or contractor agreements, if applicable;
vi. Environmental assessments or reports;
vii. Traffic impact analysis or similar reports, if applicable;
viii. Appraisal report(s), if available or required for financing;
ix. Finance documents (loan commitments, equity agreements);
x. Insurance certificates or policies required by this Agreement;
xi. Entity formation documents and proof of authority to enter into the Agreement; and
xii. Annual or periodic progress reports, once construction commences, documenting compliance with this Agreement.

The City acknowledges that certain documents, particularly those related to design, construction, and financing, may not be available until Developer has progressed further in the development process, and agrees to accept such documents on a rolling basis as they become available, provided Developer is making reasonable progress toward Project completion.

(c) **Construction of Improvements.** Developer shall begin construction of the Improvements on or before 455 days following the City Council's approval of this executed Agreement, subject to any extensions due to the events of Force Majeure as described in Section 14(k), or mutually agreed upon by the Parties. For purposes of this Agreement, the date of the beginning of construction shall be the date on which the City issues a building permit for the Improvements. Developer may request extensions to construction deadlines by submitting a written request to the City no later than ten (10) business days prior to the applicable deadline. The request must include reasonable justification for the delay and supporting documentation demonstrating substantial progress toward achieving the Project milestones. Extensions of up to ninety (90) days may be approved by the City Manager or designee in their reasonable discretion, without requiring City Council action or amendment to this Agreement. Any extension beyond ninety (90) days, or any second or subsequent extension request regardless of duration, shall require City Council approval by resolution or formal amendment to this Agreement. No extension shall be deemed approved unless confirmed in writing by the City Manager (for initial extensions up to 90 days) or by City Council (for extensions over 90 days or subsequent extension requests). Notwithstanding the aforementioned, Developer and City mutually agree to one (1) additional extension period of not more than 180 days for convenience of both parties. Any approved extension shall automatically extend all related deadlines under this Agreement on a day-for-day basis, including but not limited to the substantial completion date and Certificate of Occupancy deadline. Substantial completion shall be no later than October 30, 2029. Developer shall complete construction of the Improvements no later than December 31, 2029. For purposes of this Agreement, the date of completion of construction shall be the date on which a final Certificate of Occupancy comprising the Improvements is issued by the City. Neither a conditional nor a temporary Certificate of Occupancy shall constitute a Certificate of Occupancy for purposes of this section.

(d) **Legal Compliance.** Throughout the term of the Agreement, all site activity shall conform in all material respects to building codes, zoning ordinances, and other state, federal, and local laws, ordinances, and regulations applicable to the ownership, development, construction and operation of the Project. In the event of any alleged noncompliance, the City shall provide written notice to Developer describing the issue in reasonable detail, and Developer shall have thirty (30) days to cure such noncompliance (or longer if cure cannot reasonably be completed within thirty (30) days and Developer is diligently pursuing cure). Developer shall apply for and obtain all necessary governmental permits and approvals for development and operation of the Project.

(e) **Local Business Utilization.** Developer agrees to use diligent efforts and to cause its contractors and subcontractors to use diligent efforts to purchase all goods and services from Amarillo businesses whenever such goods and services are comparable in availability, terms, quality, and price. Developer also agrees to develop a policy that establishes a goal of thirty percent (30%) use by Developer of qualified contractors, subcontractors, and suppliers.

(f) **Minimum Capital Investment.** Developer shall make a minimum Capital Investment of $90,000,000.00.

(g) **Marketing and Advertising.** Throughout the term, Developer shall refer to the Project in all marketing and advertising efforts that contain the location of the Project as being located in Amarillo, Texas, and shall not use any other proper geographic name or informal geographic name (i.e., Panhandle, Texas Panhandle, Yellow City, etc.) to describe the Project's location.

(h) **Performance.** Developer will perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the Developer and the City.

(i) **Employment of Undocumented Workers.** During the term of this Agreement, Developer agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), Developer shall repay the amount of the Incentive Payment(s) received by Developer from the City as of the date of such violation not later than one hundred twenty (120) days after the date Developer is notified by City of a violation of this section, plus interest from the date the Incentive Payment(s) was paid to Developer, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Incentive Payment(s) were paid to Developer until the date the reimbursement payments are repaid to City. City may also recover court costs and reasonable attorney's fees incurred in an action to recover Incentive Payment(s), subject to repayment under this section. Developer is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person with whom Developer contracts.

(j) **Taxes.** During the term of this Agreement, the Developer shall timely pay all ad valorem taxes (real and business property) and all other taxes and charges due by the Developer to the City or other governmental entity (to the extent such is not being contested in good faith). Failure or refusal to do so shall constitute a default of this Agreement by the Developer.

(k) **Building Permit Fee.** Notwithstanding any other provision of the City's fee schedule or ordinances, the City agrees to cap the building permit fee for the Project at a maximum of Two Hundred Thousand Dollars ($200,000.00). This capped fee shall apply to all building permits required for the construction and renovation of the Improvements described in this Agreement. Developer shall pay the capped fee in accordance with the City's standard payment procedures for building permits. This provision shall survive any amendments to the City's fee schedule during the Term of this Agreement.

(l) **Property Transactions and Leases.** The Parties acknowledge and agree that successful implementation of the Project and Developer's eligibility for State incentive programs require certain property transactions and lease arrangements between the City and Developer. The Parties commit to negotiate and execute the following property transactions in good faith and in accordance with the terms and timelines set forth below:

(i) West Side Property Lease. The City agrees to lease to Developer the West Side Property, as described in Exhibit A, for purposes of Project development, construction, and operation. The Parties shall negotiate and execute a separate lease agreement for the West Side Property (the "West Side Lease") within one hundred eighty (180) days of execution of this Agreement. The West Side Lease shall include, at minimum:

(A) A lease term coterminous with the Incentive Period under this Agreement;

(B) Rent and other material terms negotiated in good faith and approved by City Council;

(C) Developer's right to construct Improvements on the West Side Property as part of the Project;

(D) Provisions for maintenance, insurance, and compliance with applicable laws; and

(E) Such other terms as the Parties mutually agree are necessary or appropriate for the Project.

(ii) **East Side Property Transfer and Leaseback.** To enable Developer to qualify for State Hotel Occupancy Tax and State Sales Tax rebates under applicable State economic development programs, Developer agrees to transfer fee simple title to the East Side Property to the City, and the City agrees to enter into a future lease of the East Side Property back to Developer (the "East Side Leaseback") for a period no less than fifty (50) years with the City having a put option and the Developer having a call option after eleven (11) years or such other term period as otherwise needed to facilitate the Historic Tax Credits necessary for the development of the Improvements. The Parties shall negotiate and execute the following documents no later than the earlier of: (A) six (6) months prior to Developer's good faith anticipated receipt of a Certificate of Occupancy for the Project, as communicated in writing to the City; or (B) October 1, 2029. The required documents are:

(1) A deed conveying fee simple title to the East Side Property from Developer to the City, subject to such encumbrances as are reasonably necessary to facilitate any loans and the Historic Tax Credits necessary for the development of the Improvements;

(2) A lease agreement (the "East Side Lease") pursuant to which the City leases the East Side Property back to Developer for a term period no less than fifty (50) years with the City having a put option and the Developer having a call option after eleven (11) years or such other term period as otherwise needed to facilitate the Historic Tax Credits necessary for the development of the Improvements, with rent set at Ten ($10.00) Dollars per annum and other material terms negotiated in good faith and approved by City Council; and

(3) Such other documents as may be reasonably necessary to effectuate the transfer and leaseback transaction, including title commitments, surveys, environmental reports, and closing documents.

The East Side Property transfer and leaseback transaction is a material term of this Agreement and a condition precedent to Developer's eligibility for State Hotel Occupancy Tax and State Sales Tax rebates under Section 6. The City commits to work diligently and in good faith with Developer to complete this transaction within the timeline specified above, recognizing that Developer's qualification for State incentives depends upon City ownership of the Project property.

(iii) **Option for South Property.** The City hereby grants to Developer an exclusive option (the "Option") to purchase or lease the Option Property, as described in Exhibit A, for future development. The Option shall be exercisable by Developer only during the first four (4) years from the Effective Date of this Agreement, and may be exercised by Developer or one or more of its Affiliates or permitted assigns pursuant to Section 14(c), subject to the following terms and conditions:

(A) The Option may be exercised for either purchase or lease of the Option Property, at Developer's election;

(B) If Developer elects to purchase, the purchase price shall be determined by independent appraisal, with each Party selecting an appraiser and, if necessary, the two appraisers selecting a third appraiser, with the average of the two closest appraisals being the purchase price. Developer shall have the right to extend the Option Term for up to two (2) additional six (6) month periods by providing written notice to the City prior to expiration of the then-current Option Term;

(C) If Developer elects to lease, the lease terms shall be negotiated in good faith by the Parties and approved by City Council, with rent based on fair market value and other terms customary for similar commercial ground leases in the Amarillo market;

(D) Developer's exercise of the Option shall be contingent upon Developer's full compliance with all terms of this Agreement and the West Side Lease and East Side Lease (if applicable) at the time of exercise, provided that temporary noncompliance that is cured within the applicable cure period shall not disqualify Developer from exercising the Option;

(E) The Option is personal to Developer and/or its Affiliates and its permitted assigns under Section 14(c) and may not be separately transferred or assigned except to an Affiliate or permitted assign in connection with the financing, development, or operation of the Project or the Option Property; and

(F) If Developer does not exercise the Option during the first four (4) years from the Effective Date of this Agreement (as may be extended pursuant to Section (B)), the Option shall expire without further obligation of either Party.

(iv) **Final Ownership Upon Completion of Incentive Period**. Upon the final payment of all Incentive Payment(s) under this Agreement and expiration of the Historic Tax Credits, provided Developer is not then in uncured default under this Agreement or any related lease agreements and has fulfilled all material obligations hereunder:

(A) The City shall convey fee simple title to the West Side Property to Developer (or Developer's designated successor or assign) by special warranty deed, subject only to such encumbrances as may have been placed on the property during the lease term with City's consent;

(B) The City shall convey fee simple title to the East Side Property back to Developer (or Developer's designated successor or assign) by special warranty deed, subject only to such encumbrances as may have been placed on the property during the lease term with City's consent, effectively reversing the transfer described in subsection (ii) above; and

(C) All lease agreements related to the West Side Property and East Side Property shall terminate, and Developer shall own the Project property in fee simple, free of any City leasehold interest.

The conveyances described in this subsection (iv) are material inducements for Developer's performance under this Agreement and represent the City's commitment to transfer full ownership of the Project property to Developer upon successful completion of the Project and fulfillment of all obligations under this Agreement.

(v) **City's Commitment.** The City acknowledges and agrees that the property transactions described in this Section 5(l) are material terms of this Agreement and essential to Developer's ability to qualify for State incentive programs and to complete the Project as contemplated. The City commits to work diligently and in good faith to negotiate, execute, and consummate all such property transactions within the timelines specified herein, subject to satisfactory title review, environmental assessment, and required City Council approvals, and acknowledges that failure to do so without reasonable justification would constitute a material breach of this Agreement and may entitle Developer to pursue remedies including specific performance or damages as provided by law and shall further entitle Developer to a day for day automatic extension to any of the Developer's time obligations hereunder.

(vi) **Developer's Commitment.** Developer acknowledges and agrees that the property transactions described in this Section 5(l) are contingent upon Developer's full compliance with all terms of this Agreement, including but not limited to construction timelines, investment requirements, operational standards, and payment of all taxes and fees. Any default by Developer under this Agreement may, at the City's option, suspend or terminate the City's obligations under this Section 5(l).

(vii) **Exhibits and Documentation.** The legal descriptions and additional details for the West Side Property, East Side Property, and Option Property shall be set forth in Exhibit A to this Agreement. The Parties

shall work diligently and in good faith to finalize and attach such exhibits within sixty (60) days of execution of this Agreement. If such exhibits are not attached within sixty (60) days, either Party may request an extension for good cause shown, but the absence of such exhibits shall not render this Agreement void or unenforceable, provided the Parties continue to work diligently toward their completion. The property transaction obligations set forth in this Section 5(l) shall remain binding regardless of whether such exhibits have been formally attached, based on the properties as generally described herein and as reasonably understood by the Parties.

(m) **Quarterly Compliance Reporting.** Beginning with the commencement of construction and continuing throughout the Incentive Period, and solely to confirm compliance with the investment, job creation, payroll, and other performance requirements set forth herein, Developer shall provide the City with quarterly written reports documenting: (i) construction progress and expenditures; (ii) employment levels and payroll; (iii) Hotel Occupancy Tax and Sales Tax revenues generated (once operations commence); (iv) ADR performance (once hotel operations commence); (v) compliance with local business utilization goals; and (vi) any material changes to the Project or anticipated delays. Such reports shall be due within thirty (30) days following the end of each calendar quarter and shall be provided in a form reasonably acceptable to the City. All information obtained by the City in connection with such audits or inspections shall be kept confidential to the fullest extent permitted by law and used solely for purposes of confirming compliance with this Agreement.

The City may provide Developer with a standard reporting template to facilitate compliance with this requirement. Developer's failure to provide quarterly reports for two (2) consecutive quarters without reasonable justification, following written notice and a thirty (30) day cure period, shall constitute a default under Section 8(e).

SECTION 6. INCENTIVE PAYMENT(S).

Upon the Developer's satisfactory completion of the Improvements, as determined by the City in its reasonable discretion and in accordance with the terms of this Agreement, including verification of all required documentation and compliance with Sections 4 and 5, the Developer shall be eligible to receive Incentive Payment(s) from the City, subject to verification of compliance with all applicable requirements and documentation, as follows:

(a) **Local Hotel Tax Rebate.** To the extent permitted by law, the City shall remit to the Developer an Incentive Payment equal to 100% of the City's share of Local Hotel Occupancy Taxes generated by the Project for the first five (5) consecutive years following the Commencement Date of Hotel Operations, as defined in this Agreement. Thereafter, the Developer shall receive 50% of the Local HOT revenues generated by the Project for the subsequent five (5) years, resulting in a total rebate period of ten (10) years. Such payments shall only be made if Developer is in full compliance with all material obligations under this Agreement at the time of calculation. The rebate shall be calculated based on actual Local HOT revenue received by the City attributable to the Project and shall be paid to Developer on an annual basis, subject to submission of certified documentation reasonably sufficient to verify tax revenues generated and Developer's compliance with all material Sections of this Agreement, including payment of ad valorem taxes.

(b) **State Sales Tax Rebate.** Subject to approval by the State of Texas under the Texas Economic Development Act (Chapter 2303, Texas Government Code) or other applicable State economic development program, and as authorized under applicable law, Developer shall be eligible to receive an Incentive Payment equal to 100% of the State's portion of Sales Tax revenues generated on-site by the Project for a period of ten (10) consecutive years, beginning on the Commencement Date of Retail Operations.

The State Sales Tax rebate shall be calculated based on eligible sales tax revenues collected by the State from retail operations, restaurant sales, bar sales, and other taxable transactions occurring on-site at the Project, as reported by the State Comptroller and remitted to the City. Eligible Sales Tax revenues shall include only those taxes collected and remitted by the State to the City in accordance with applicable state and local tax laws.

The City makes no representation or guarantee regarding the availability, amount, or timing of any State Sales Tax rebate, as such rebate is contingent upon State approval, Developer's qualification under State program requirements, and State funding. The City agrees to assist Developer in pursuing such rebate, including submitting all required documentation and applications to the State, and to remit any such funds received from the State to Developer in a timely manner.

Incentive Payment(s) under this subsection shall be made on a monthly basis, within thirty (30) days of the City's receipt of State Sales Tax revenues attributable to the Project, subject to verification through certified sales tax reports or other documentation reasonably required by the City and provided by the State Comptroller. Developer acknowledges that the availability and amount of the State Sales Tax rebate is contingent upon State approval and ongoing compliance with State program requirements, and that the City does not guarantee the payment, amount, or timing of any such rebate from the State.

(c) **State Hotel Tax Rebate.** Subject to availability and approval by the State of Texas and as authorized under applicable law, Developer shall be eligible to receive an Incentive Payment equal to 100% of the State's portion of Hotel Occupancy Taxes ("HOT") generated by the Project for a period of ten (10) years following the Commencement Date of Hotel Operations. The City makes no representation or guarantee regarding the availability, amount, or timing of any such State HOT rebate. The City agrees to assist Developer in pursuing such rebate, including submitting all required documentation and applications to the State, and to remit any such funds received from the State to Developer on a monthly basis, within thirty (30) days of the City's receipt of such State HOT revenues attributable to the Project. Developer acknowledges that the availability and amount of the State HOT Rebate is contingent upon State approval, ongoing compliance with State program requirements, and State funding, and that the City does not guarantee the payment, amount, or timing of any such rebate from the State.

(d) Payment Schedule and Timing. Notwithstanding any provision to the contrary:

(i) Local Hotel Occupancy Tax rebates under subsection (a) shall be paid annually, within sixty (60) days following the end of each fiscal year.

(ii) State Sales Tax rebates under subsection (b) and State Hotel Occupancy Tax rebates under subsection (c) shall be paid monthly, within thirty (30) days of the City's receipt of such revenues from the State, subject to the City's verification of Developer's compliance with all applicable requirements and the availability of such State funds.

(iii) All payments are subject to Developer's full compliance with all material obligations under this Agreement, including timely payment of all ad valorem taxes, and the City's verification of eligible revenues through documentation reasonably required by the City.

(iv) To the extent the City receives State Sales Tax revenues or State Hotel Occupancy Tax revenues that are attributable to the Project and eligible for rebate under subsections (b) and (c), the City shall hold such funds in trust for Developer and shall remit them to Developer in accordance with the payment schedule set forth above. The City's obligation to remit such funds, once received

from the State and verified as attributable to the Project, shall not be subject to offset or withholding based on disputes between the Parties concerning other provisions of this Agreement, except that the City may withhold payment if: (A) Developer is in uncured default under Section 8; (B) Developer has provided materially false information regarding the Project; or (C) the State directs the City to withhold such funds due to Developer's non-compliance with State program requirements.

Except as otherwise specifically provided in subsections (a) through (d) above, all Incentive payments to Developer under this Agreement are subject to the City's verification of Developer's compliance with all material prerequisites stated in this Agreement and Developer's full and timely payment of all taxes and fees owed by Developer to the City or other governmental entities; provided, however, that if Developer cures any such noncompliance within the applicable cure period set forth in Section 8, Developer shall remain eligible to receive the Incentive Payment attributable to the applicable period, and such payment shall be remitted within thirty (30) days following the cure. All information and documentation required to be provided by Developer under this Agreement shall be limited to that which is reasonably necessary to verify compliance with the express terms of this Agreement and to administer the Incentive Payments, and shall not require disclosure of Developer's proprietary or confidential business information except as required by applicable law.

SECTION 7. RECORDS AUDITS AND INSPECTIONS.

(a) **Records and Information.** Throughout the Term of this Agreement and for a period of three (3) years following its expiration or earlier termination, the Developer shall maintain and, upon reasonable request by the City, furnish access to all books, records, reports, and other documents that are reasonably necessary to verify the Developer's compliance with its obligations under this Agreement, including those described in Section 5 ("Developer Obligations"). Such records shall include, but not be limited to, financial statements, tax filings, sales reports, construction contracts, permits, occupancy data, and hotel occupancy and sales tax records related to the Project ("Project Records").

The Developer shall provide such records in a timely manner, in a form reasonably acceptable to the City, and shall allow the City to copy such records at the City's expense, provided that confidential information shall be protected in accordance with applicable law.

(b) **Audit Rights.** The City shall have the right to perform, or cause to be performed, an audit of the Developer's Project Records at any time during the Term of this Agreement and for three (3) years thereafter. The purpose of such audit shall be to confirm the Developer's compliance with the terms of this Agreement, including but not limited to performance metrics, tax revenue generation, and eligibility for Incentive Payment(s).

The City shall provide the Developer with no less than ten (10) business days' advance written notice of its intent to conduct an audit, and the Developer shall make the requested records available for inspection during normal business hours at the Developer's place of business or another mutually agreed-upon location. All audits shall be conducted at the City's sole cost and expense, unless such audit reveals a material discrepancy or default by the Developer, in which case the Developer shall reimburse the City for its reasonable costs.

(c) **Inspection.** Throughout the Term of this Agreement, the City shall have the right to access the Site at reasonable times and upon reasonable prior notice for the purpose of inspecting the Project and verifying

the Developer's compliance with the terms and conditions of this Agreement. Such inspections may include, but are not limited to, a review of construction progress, completed improvements, operational conditions, and documentation required under this Agreement.

All inspections conducted by the City shall be performed in a manner designed to minimize disruption to the ongoing construction activities or business operations occurring at the Site. The City shall provide the Developer with at least 48 hours' advance written notice of any intended inspection, and such inspection shall take place during normal business hours unless otherwise agreed by the Developer.

Nothing in this section shall be construed to limit the City's right to conduct inspections as otherwise authorized by law, regulation, or ordinance. The Developer shall cooperate in good faith with the City to facilitate timely access and shall not unreasonably withhold or delay such access.

Notwithstanding anything to the contrary, all information obtained by the City in connection with this Section 7 and such audits or inspections shall be kept confidential to the fullest extent permitted by law and used solely for purposes of confirming compliance with this Agreement.

SECTION 8. EVENT OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

(a) **Failure to Operate and Maintain Development and Job Requirements.** Developer's failure or refusal to operate the development and maintain required Full-Time Employment pursuant to this Agreement through the Incentive Period, and Developer's failure or refusal to cure within sixty (60) days after written notice from the City describing such failure, shall be deemed an Event of Default. Notwithstanding the foregoing, no Event of Default shall be deemed to occur if:

(1) such failure cannot reasonably be cured within such sixty (60) day period in the exercise of all due diligence, but the Developer has commenced such cure within such sixty (60) day period and thereafter diligently prosecutes the cure to completion; or

(2) the shortfall results from seasonality, business fluctuations, or a Force Majeure Event, and Developer cures the shortfall within a reasonable period, not to exceed six (6) months, or otherwise demonstrates to the City's reasonable satisfaction a good-faith stabilization plan.

For purposes of this Section, compliance with employment obligations shall be measured based on annual average FTEs over each applicable measurement year, such that temporary fluctuations below required levels shall not in themselves constitute a default so long as the annual average requirement is satisfied or a permitted cure is timely effected.(b) **False Statements**. In the event Developer provides any written warranty, representation, or statement under this Agreement or any related documents that is false or misleading in any material respect, either at the time made or furnished or thereafter, and Developer fails to cure within thirty (30) days after written notice from the City, such failure shall constitute an Event of Default. If such violation cannot be cured within the thirty (30)-day period, but Developer commences the cure and diligently prosecutes it thereafter, it shall not constitute a default. Further, if Developer obtains actual knowledge that any previously provided warranty, representation, or statement has become materially false or misleading, and fails to provide written notice to the City within thirty (30) days of learning such, it shall be deemed an Event of Default but subject to the same reasonable cure efforts described above.

(c) **Insolvency.** Dissolution or termination of Developer's existence as a going concern, insolvency, appointment of a receiver for any part of Developer's portion of the Property, assignment of substantially all assets for the benefit of creditors, or commencement of bankruptcy or insolvency proceedings by or against Developer shall constitute an Event of Default. In involuntary proceedings, if discharged within one hundred eighty (180 days of filing, no Event of Default shall be deemed to have occurred.

(d) **Property Taxes.** If Developer allows any Property Taxes owed to the City to become delinquent and fails to properly follow legal procedures to contest or protest such taxes and to cure such failure or post a satisfactory bond within thirty (30) days after written notice, such actions or omissions shall constitute an Event of Default. Developer retains the right to contest the appraised value of the Development.

(e) **Other Defaults.** Failure of Developer or City to comply with or to perform any other material term, obligation, covenant or condition contained in this Agreement or in any related documents, and Developer's or City's failure to cure such failure within sixty (60) days after written notice from the other party describing such failure, shall be deemed an event of default. If such failure cannot be cured within sixty (60) days but diligent efforts to cure are commenced, it shall not constitute a default.

(f) **Failure to Cure**. If any Event of Default occurs and is not cured within the specified period, the non-defaulting party may terminate this Agreement without further action. The non-defaulting party retains all rights and remedies under law or equity.

(g) **Liability.** Neither party shall be liable to the other for indirect, special, punitive, exemplary, incidental, or consequential damages, nor shall any member, shareholder, officer or employee of a party be in any way liable for the obligations of a party hereunder. Liability shall not exceed the value of Incentive Payment(s) issued hereunder, regardless of notice of potential damages.

SECTION 9. RECAPTURE OF INCENTIVE PAYMENTS.

Should the Developer default under Section 8 of this Agreement and provided that the cure period for such default has expired and Developer failed to timely cure such default, all Incentive Payment(s) previously provided by the City pursuant to this Agreement shall be recaptured and repaid by Developer within sixty (60) days from the date of such termination.

The City's right to pursue recapture and repayment shall survive termination or expiration of this Agreement. The City shall have the right to pursue any and all legal and equitable remedies available under law, including the right to initiate litigation to recover Incentive Payment(s) subject to recapture under this Section. The Developer shall be liable for all reasonable costs and expenses, including attorneys' fees, incurred by the City in enforcing its recapture rights under this Agreement.

SECTION 10. ADDITIONAL PROPERTY TAX PROVISIONS.

The following Property Tax provisions are a part of this Agreement:

(a) **Legislative or Judicial Changes.** In the event of any legislative or judicial interpretation that limits or restricts the City's ability to pay the Property Tax rebates or other Incentive herein provided otherwise extracts or imposes any penalty or other restriction upon the calculation or payment of same, such rebate will be modified or cease as of the effective date of such limitation or restriction and be of no further force, effect or consequence in which event the City shall be under no further obligation to the Developer as of the effective date of such limitation or restriction. However, the City and the Developer agree to modify

the rebate provided for herein to the extent permitted by such legislative or judicial action to the fullest extent then authorized without penalty or other restriction upon the City for the payment of same.

(b) **Erroneously Paid Property Taxes.** In the event the City Council or a court of competent jurisdiction determines that any property taxes were erroneously overpaid or underpaid by the Developer to the City, an appropriate credit or offset shall be applied against the next Incentive Payment remaining under this Agreement, then Developer and City respectively promise to issue to the other any and all such payments or repayments as indicated in order to balance the books for erroneously paid property tax. Notification of any such required adjustment will be provided to the Developer at the earliest practical date.

SECTION 11. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT OF DEVELOPER.

The City may terminate this Agreement for its convenience and without the requirement of an event of default by Developer which shall become effective immediately if and only if any state or federal statute, regulation, case law, or other law renders this Agreement void or illegal, including any case law holding that a Chapter 380 Economic Development Agreement such as this Agreement is an unconstitutional debt.

SECTION 12. EFFECT OF SALE OR LEASE OF SITE OR PROJECT.

The Incentive Payment program authorized by this Agreement shall not be assignable to any new owner or lessee of all or a portion of the Site or Project unless such assignment is approved in writing by the City with approval of the City Council, which consent shall not be unreasonably withheld, conditioned, or delayed. Any attempts to assign without the prior written consent of the City are void and shall be considered an event of default and may, at the option of the City, result in termination of this Agreement.

SECTION 13. NOTICE.

All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, certified first class, postage prepaid, addressed to the Party to whom the notice is to be given at the addresses shown above. Any Party may change its address for notices under this Agreement by giving formal written notice to the other Party, specifying that the purpose of the notice is to change the Party's address. For notice purposes, each Party agrees to keep the other informed at all times of its current address.

If to Developer:
Herring Hotel Partners, LLC
2813 Parker Street
Amarillo, TX 79109
ATTN: Todd Harmon

With a copy to:
Ashley Hamilton Walker
Mullin Hoard & Brown, LLP
500 S. Taylor, Suite 800
Amarillo, TX 79101

Gary S. Gunn
Hughes Watters Askanase, LLP
1201 Louisiana Street, 28th Floor
Houston, TX 77002

David C. Clement, Sr.
Clement & Associates, LLC
650 Poydras Street, Suite 2828
New Orleans, LA 70130

If to the City:

City of Amarillo
623 S. Johnson St.
Amarillo, Texas 79105
ATTN: City Manager

Any Party may change its address by written notice.

SECTION 14. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

(a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the Party or Parties sought to be charged or bound by the alteration or amendment. Notwithstanding anything to the contrary contained herein, this Agreement may be amended only by written instrument signed by both Parties. Except as otherwise provided in Section 5(c) regarding construction deadline extensions, no modification, extension, or waiver shall be effective unless executed in accordance with this section and, where required, approved by City Council.

(b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. All obligations of the Parties created hereunder are performable in Potter County, Texas. Venue for any action arising under this Agreement shall lie in the state courts of appropriate jurisdiction in Potter County, Texas.

(c) **Assignment.** Developer understands and agrees that the City expressly prohibits Developer from selling, transferring, assigning, or conveying, in any way, any rights associated with this Agreement to anyone, other than an Affiliate of Developer, without the City's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Any attempts to assign without the prior written consent of the City are void and shall be considered an event of default and may, at the option of the City, result in termination of this Agreement.

(d) **Attorney Fees.** In the event that either Party hereto bring an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the prevailing Party in that action or proceeding shall be entitled to have and recover from the non-prevailing Party all such fees, costs, and expense (including, without limitation

all court costs, and reasonable attorneys' fees) as the prevailing Party may suffer or incur in the pursuit or defense of such action or proceeding.

(e) **Dispute Resolution.** Prior to initiating any litigation arising out of or relating to this Agreement, the Parties agree to the following escalation procedure: (i) the disputing Party shall provide written notice to the other Party describing the dispute in reasonable detail; (ii) within ten (10) business days, senior representatives of both Parties (City Manager and Developer's authorized representative) shall meet and attempt in good faith to resolve the dispute; (iii) if unresolved after thirty (30) days, the Parties may pursue mediation with a mutually agreed mediator, with costs split equally; and (iv) if mediation is unsuccessful or either Party declines to mediate, either Party may pursue litigation. This provision does not apply to disputes requiring immediate injunctive relief or to the City's right to withhold Incentive Payments during a claimed default.

(f) **Binding Obligation.** This Agreement shall become a binding obligation on the Parties upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. Developer warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.

(g) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define provisions of this Agreement.

(h) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute the same document.

(i) **Confidentiality Obligations.** The confidentiality of records related to the City's economic development considerations and Incentives provided herein will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code ("TPIA"). To the extent permitted by state or federal law, the City shall maintain the confidentiality of any proprietary information and shall not copy any such information except as necessary for dissemination to the City's agents and employees and agrees that, as required by the Public Information Act, it will promptly notify Developer if a request relating to such proprietary information is received (and in no event later than five (5) business days after receipt of the request). City represents that it understands that the Public Information Act excepts disclosure of trade secret and confidential commercial information and that it will need to assert the proprietary interest of Developer as a basis for nondisclosure and shall reasonably cooperate with Developer, at Developer's expense, in asserting any applicable exemptions from disclosure under the TPIA or other applicable law. Nothing in this Section shall prohibit the City from disclosing aggregate or summary information that does not identify or reveal Developer's proprietary or commercially sensitive information.

(j) **Divestment Statute Lists.** The Developer represents that neither it, nor any of its parent companies, wholly- or majority-owned subsidiaries, or other affiliates, is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Tex. Gov't Code §§ 2252.153 or 2270.0201, as posted on the Comptroller's official website.

(1) Divestment Statute Lists

The foregoing representation is made solely to comply with Tex. Gov't Code § 2252.152 and only to the extent that such section does not contravene applicable federal law. The representation expressly excludes the Developer, and each of its parent companies, wholly- or majority-owned subsidiaries, and affiliates, if any,

that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan, Iran, or any federal sanctions regime relating to a foreign terrorist organization. For the purposes of this representation, "affiliate" means any entity that controls, is controlled by, or is under common control with the Developer, and exists to make a profit.

(k) **Force Majeure.** It is expressly understood and agreed by the Parties that, if the performance of any obligations hereunder is delayed by reason of war, terrorism or the imminent threat thereof, insurrection, civil commotion, riots, labor disputes, strikes, lockouts, embargoes, hurricanes or named windstorms, unusual weather, fire, casualty, disruption to local, national or international transport services or exceptional or abnormal lack of availability of construction materials/supplies, epidemics, quarantine, any other public health restrictions, or public health advisories of a Party hereto, 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 obligation or requirement shall be extended for a period of time equal to the period such Party was delayed.

(l) **Further Acts and Releases.** The City and the Developer each agrees to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder.

(m) **Governmental Powers; Waiver of Immunity.** By execution of this Agreement, the City does not waive or surrender any of its governmental powers, immunities or rights.

(n) **No Third Party Beneficiaries.** The performance of the respective obligations of the City and the Developer under this Agreement are not intended to benefit any Party other than the City or the Developer, except as expressly provided otherwise herein. No person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement, except as expressly provided otherwise herein.

(o) **Ordinance Applicability.** The signatories hereto shall be subject to all ordinances of the City, in effect on the Effective Date; provided, however, that no ordinance shall reduce or diminish the contractual rights, duties, and obligations contained herein or prevent Developer from taking advantage of any revisions to the ordinance after the Effective Date, at its sole option.

(p) **Revenue Sharing Agreement.** The City designates this Agreement as a revenue-sharing agreement, thereby entitling the City to request Sales and Use Tax information from the State Comptroller, pursuant to section 321.3022 of the Texas Tax Code, as amended.

(q) **Right of Offset.** Notwithstanding the provisions of Section 10(b), the City may, at its option, after prior written notice and a 30-day period to cure, offset any amounts due and payable under this Agreement against any debt lawfully due and owing to the City from Developer, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgement by a court.

(r) **Relationship of Parties.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees, and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the Development or design, construction, or operation of the Development, or any portion thereof.

(s) **Sale or Transfer.** Upon any sale or other transfer of ownership rights in Real Property, Improvements, Developer shall notify the City in writing of such sale or transfer within sixty (60) days after such sale or transfer. Such notice is a material term of this Agreement, and the failure to notify the City of such sale or transfer within the applicable period shall constitute a default. This provision shall not apply to any sublease by Developer of the Real Property, to effectuate the Development as contemplated and described in this Agreement.

(t) **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

(u) **Standing.** As a party to this Agreement, Developer shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions, or actions authorizing same, and Developer shall be entitled to intervene in said litigation.

(v) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

(w) **Cooperation.** The City agrees to reasonably cooperate with Developer and its Affiliates, at no material cost to the City, in connection with Developer's or its Affiliates' pursuit of public or private financing and economic development incentives, including, without limitation, federal and/or state historic rehabilitation tax credit transactions, qualified opportunity fund (QOF) and qualified opportunity zone business (QOZB) investment structures, and other local, state, or federal incentive programs. Such cooperation shall include, without limitation, executing commercially reasonable consents, estoppels, lease modifications, subordination agreements, nondisturbance agreements, certifications, and other similar customary instruments or confirmations required to facilitate such financing or incentive programs, provided that the City shall not be required to assume any additional material obligations or liabilities thereby. Developer may assign its rights under this Section to one or more Affiliates formed or designated for financing, ownership, leasing, or investment purposes in connection with the Project.

CITY OF AMARILLO, TEXAS

By: _____
Grayson Path, City Manager

Date: _____

APPROVED AS TO FORM

By: _____
Bryan S. McWilliams, City Attorney

Date: _____

Herring Hotel Partners, LLC
a Texas Limited Liability Company

By: _____
Owner

Date: 11/3/25

CITY OF AMARILLO, TEXAS

By: _____
Grayson Path, City Manager

Date: 11/7/2025

APPROVED AS TO FORM

By: _____
Bryan S. McWilliams, City Attorney

Date: 11/7/25

Herring Hotel Partners, LLC
a Texas Limited Liability Company

By: _____
Owner

Date: _____

Exhibit A

LEGAL PROPERTY DESCRIPTION

Parcel A (East Side Property):

All of Lots 1, 2, 3, 4 and 5, in Block 26, of GLIDDEN & SANBORN ADDITION, an addition to the City of Amarillo, Potter County, Texas, according to map or plat thereof recorded in Volume 65, Page 12, of the Deed Records, Potter County, Texas.

Parcel B (West Side Property):

All of Lots 6, 7, 8, 9 and 10, in Block 26, of GLIDDEN & SANBORN ADDITION, an addition to the City of Amarillo, Potter County, Texas.

Parcel C (Option Property):

All of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, in Block 31, of GLIDDEN & SANBORN ADDITION, an addition to the City of Amarillo, Potter County, Texas.

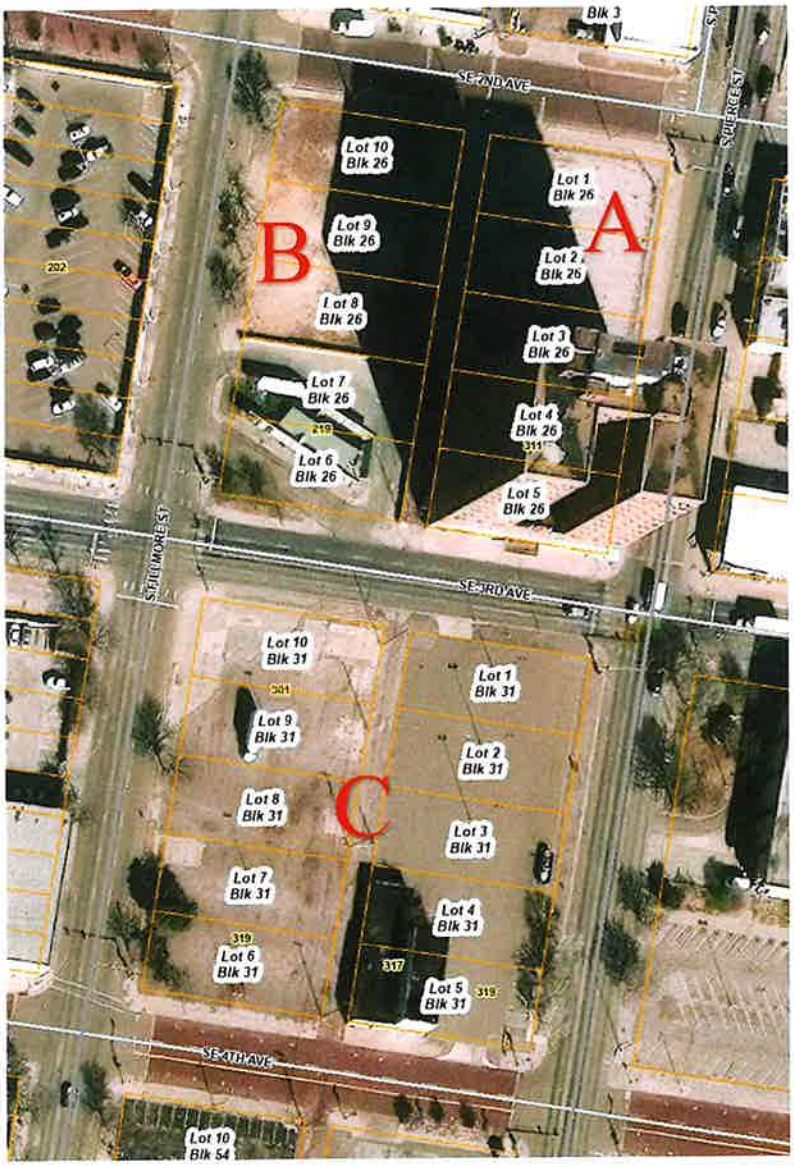


Exhibit B

HOTEL DESCRIPTION PROJECT REQUIREMENTS AND IMPROVEMENTS

The Developer shall operate the Herring Hotel diligently and continuously as a full-service, four-star (or higher) soft-brand boutique hotel flagged under Marriott (Tribute Portfolio), Hilton (Curio), IHG (Kimpton), or another nationally recognized full-service brand of equal or higher quality, expressly approved by the City. The Project shall involve the historically sensitive rehabilitation of the existing 14-story building at 311 SE 3rd Avenue and shall include a minimum new capital investment of $90,000,000.00.

Employment and Economic Development:

The Developer shall maintain a minimum of 100 full-time equivalent jobs with a minimum average annual payroll of $4,000,000.00, verified through annual employment audits. The Project shall support local economic development by utilizing Amarillo-based contractors, subcontractors, and suppliers whenever goods and services are available on comparable terms, and shall aim to achieve a 30% utilization goal of qualified local vendors in the construction and operation of the Project.

Atmosphere:

The hotel shall provide a welcoming, comfortable, and exceptional guest experience while respecting the surrounding historic and urban environment. The historic character of the building shall be preserved and highlighted in all aspects of design and operation.

Interior Finishes and Standards:

All interior finishes shall be reflective of an upper upscale property, designed to endure high usage while exhibiting an elegant and sophisticated aesthetic. Materials and finishes shall comply with all applicable building codes, safety regulations, and ADA standards.

Guestrooms:

The hotel shall offer a minimum of 200 guestrooms. Each room shall provide, at a minimum:

- Adequate space to accommodate a king or two double-sized beds and a work area;
- A desk with sufficient workspace, lighting, and an ergonomic chair;
- One wireless telephone with speakerphone, voicemail, and data port access;
- High-speed internet access and Wi-Fi service;
- Television with cable and on-demand movies;
- Comfortable seating;
- An iron and an ironing board;
- Bath/dressing area with a hand-held hair dryer and amenity tray;
- An in-room safe, and
- Upscale branded toiletries, including soaps, shampoo, and conditioner.

Concierge Services:

The hotel shall provide concierge services sufficient to support high-end corporate, convention, and leisure guests, as well as event attendees.

Food and Beverage:

The Project shall include a full-service restaurant serving breakfast, lunch, and dinner with room service available 6 a.m. to midnight, 7 days per week, with overnight service preferred but not required. A bar/lounge

shall be provided. The restaurant shall include a separate exterior entrance accessible to the general public, supporting downtown vibrancy.

Other Facilities and Amenities:

The hotel shall provide:

- Event and meeting space capable of hosting a wide range of group types (corporate, religious, sports, and convention);
- A fitness center and business center;
- A courtesy gift shop;
- Wi-Fi service in all public areas.
- Valet parking; and
- Compliance with all applicable ADA standards and other legal requirements.

Marketing and Branding:

The Developer shall ensure all marketing and advertising identify the hotel as being located in Amarillo, Texas, and shall not use alternative geographic references. Marketing efforts shall support both the brand and the City's economic development objectives.

Legal Compliance:

The Developer shall comply with all materially applicable federal, state, and local laws, ordinances, and regulations throughout the construction and operation phases, including, without limitation, employment laws that prohibit the employment of undocumented workers. The Developer shall obtain all necessary permits, approvals, and inspections before commencing operations.

Construction and Timeline Requirements:

The Developer shall commence construction in accordance with Section 5(c) of the Agreement and achieve substantial completion, as well as issuance of a Certificate of Occupancy, by the specified deadlines. Any modifications to the Project shall require prior written approval by the City.

Performance Standards - Average Daily Rate (ADR):

The Developer shall operate the hotel to achieve and maintain the following minimum Average Daily Rate (ADR) performance standards, subject to customary market fluctuations, industry conditions, and Force Majeure Events:

Years 1-4: Minimum ADR of $225.00
Years 5-10: Minimum ADR of $255.00

For purposes of this requirement, "Average Daily Rate" (ADR) shall be calculated as total room revenue divided by total rooms sold during each calendar year, as reported in Developer's annual compliance reports submitted to the City. ADR performance shall be measured on an annual basis.
The City acknowledges that ADR performance is subject to market conditions, economic factors, competitive dynamics, seasonal variations, and events beyond Developer's reasonable control. Developer shall not be deemed in default of this requirement if ADR performance falls below the stated minimums due to:

i. Force Majeure Events as defined in Section 14(k);
ii. Economic recession or downturn affecting the hospitality industry generally;
iii. Natural disasters, pandemics, or public health emergencies;
iv. Temporary closures required for maintenance, renovation, or compliance with governmental orders; or
v. Other circumstances beyond Developer's reasonable control.

Developer shall provide annual documentation of ADR performance as part of its compliance reporting obligations under this Agreement. If ADR performance falls below the stated minimums for reasons other than those listed above, the City may request a written explanation and corrective action plan from Developer, but such shortfall shall not constitute an Event of Default unless Developer fails to implement reasonable corrective measures or the shortfall persists for more than two (2) consecutive years without justification.