

RESOLUTION NO. R25-014

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, APPROVING AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BETWEEN THE TOWN OF ADDISON AND FLIGHT CLUB REGENT SQUARE, LLC, PROVIDING FOR A REIMBURSEMENT GRANT FOR IMPROVEMENTS IN AN AMOUNT NOT TO EXCEED \$250,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND AN EFFECTIVE DATE

WHEREAS, Flight Club Regent Square, LLC (the “Company”) has committed to expanding its operations through relocation to a new commercial space located at 5100 Belt Line Road, Dallas, Texas 75254 (the "Premises"), and investing a minimum of \$6,000,000 to develop and occupy approximately 9,985 square feet of leasable area within the Premises (the “Project”); and

WHEREAS, the Company has advised the Town that a contributing factor that would induce the Company to expand its operations within the Town and undertake the Project would be an agreement by the Town to provide an economic development grant to offset a portion of the project costs; and

WHEREAS, the City Council has determined that the Project aligns with the objectives of the Town’s program for promoting economic development and will provide an economic benefit to the Town by stimulating commercial activity, enhancing the property tax base, and fostering economic vitality within Addison; and

WHEREAS, that the Town is authorized by Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code to provide economic development incentives to promote local economic development and stimulate business and commercial activity; and

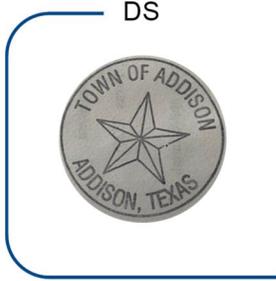
WHEREAS, the City Council finds that making an economic development grant to the Company in conformance herewith is in accordance with the Town’s programs for economic development and will (i) further the objectives of the Town, (ii) benefit the Town and its inhabitants, and (iii) promote local economic development and stimulate business and commercial activity in Addison.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. The City Council hereby approves the Economic Development Grant Agreement between the Town of Addison and Flight Club Regent Square, LLC, providing an incentive grant to the Company not exceeding \$250,000.00, a copy of which is attached to this Resolution as **Exhibit A**. The City Manager is hereby authorized to execute said agreement.

SECTION 2. This Resolution shall take effect from and after its date of adoption.

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the 25th day of February 2025.



TOWN OF ADDISON, TEXAS

Signed by:
Bruce Arfsten
2CF84DF886544EA...

Bruce Arfsten, Mayor

ATTEST:

DocuSigned by:
Valencia Garcia
BCE0B0E86484442...

Valencia Garcia, City Secretary

EXHIBIT A

This Economic Development Grant Agreement (“Agreement”) is made by and between the **Town of Addison, Texas** (“Town” or “Addison”) and **Flight Club Regent Square, LLC and/or SPH FC NA 13 LLC** (“Company”) (each a “party” and collectively the “parties”), acting by and through their respective authorized officers, for the purposes and considerations stated below:

RECITALS:

WHEREAS, the Company has committed to expanding its operations by opening a commercial space located at 5100 Belt Line Road, Dallas, Texas 75254 (hereinafter referred to as the "Premises"), including the lease of 9,985 square feet within the Premises; and

WHEREAS, the Company intends to spend a minimum of \$6,000,000.00 in total tenant improvements upon the Premises as part of the Project; and

WHEREAS, the Company has informed the Town that economic development incentives would cause the Company to construct and complete the Project that will benefit the Town by generating revenue from sales and use taxes and from ad valorem taxes due to the increased value resulting from the improvements to the Property; and

WHEREAS, the Town is authorized by Article III, Section 52-a of the Texas Constitution and Tex. Local Gov’t Code §380.001 et seq. to provide economic development grants for public purposes of promoting local economic development and incentivizing business and commercial activity in the Town; and

WHEREAS, the Company desires to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code (hereinafter referred to as "Chapter 380"); and

WHEREAS, the Town desires to provide, pursuant to Chapter 380, an incentive to the Company to develop and operate the Project within Addison, Texas; and

WHEREAS, the Town has concluded and hereby finds that this Agreement clearly promotes economic development in Addison, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution by promoting local economic development and stimulating business and commercial activity in the Town.

NOW, THEREFORE, for and in consideration of the mutual benefits and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Company agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration, and promises that bind the parties.

SECTION 2. DEFINITIONS.

(a) “*Bankruptcy or Insolvency*” means the dissolution or termination of the Company’s existence, insolvency, or employment of receiver for any part of the Company’s property, and such appointment is not terminated or stayed within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors or the commencement of any proceedings under any bankruptcy or insolvency laws by or against the Company and such proceedings are not dismissed within ninety (90) days after the filing thereof.

(b) “*Effective Date*” means the date of the latter to execute this Agreement by and between the Company and the Town.

(c) “*Force Majeure*” means any causes beyond the party’s respective control or because of applicable law, including, but not limited to, war, nuclear disaster, labor strikes, acts of God, fire, flood, riot, a government restriction, quarantine, or mandatory closure order enacted in response to a pandemic or other public health crises, or any other circumstance for which a party is not legally responsible or which is not reasonably within its power to control (each a “Force Majeure Event”). Except where expressly provided otherwise in this Agreement, any party asserting Force Majeure shall give prompt notice to the other parties of the prevention of performance as soon as the asserting party is reasonably aware of such prevention and has the burden of demonstrating (i) how and why their performance was so prevented, (ii) the period of time during which they were so prevented from performing (which under the facts may be equal to, or shorter or longer than, the duration of the Force Majeure Event itself), and (iii) that the party used reasonable efforts to mitigate and/or eliminate such prevention and resumed performance under this Agreement as soon as reasonably practicable. Notwithstanding any other provision of this Agreement, in no event shall the lack of sufficient financial resources be a basis for a claim of Force Majeure.

(d) “*Grant(s)*” or “*Grant Payment(s)*” means the monetary incentive grants to be paid by the Town to the Company in the form of reimbursement for qualifying capital improvements and sales tax performance, as further described in Section 4 of this Agreement.

(e) “*Grant Period*” means a given tax year, unless expressly provided otherwise in this Agreement. “Tax year” shall have the meaning assigned to such term in Section 1.04 of the Texas Tax Code (i.e., the calendar year).

(f) “*Leasable Area*” means and refers to all leasable area intended for the use and occupancy of the Company, but shall not include (i) parking areas, including surface parking areas and parking garage(s), (ii) interior or exterior sidewalks and landscaped areas, (iii) loading areas, loading docks and similar areas, and (iv) areas constituting “common areas” to which all tenants have the right to use and enjoy pursuant to the provisions of their respective leases (but excluding outdoor patio and open space areas).

(g) “*Mixed Beverage Gross Receipts Tax*” means the taxes paid by the Company (1) as the holder of any of the following permits issued by the Texas Alcoholic Beverage Commission including mixed beverage permit, private club registration permit, private club exemption certificate, mixed beverage or private club registration permit with a retailer late hours certificate,

mixed beverage or private club registration permit holding a food and beverage certificate, nonprofit entity temporary event permit, or distiller's and rectifier's permit and (2) based on the total amount received from (i) the sale, preparation or service of mixed beverages and (ii) ice and nonalcoholic beverages that are sold, prepared or served to be mixed with an alcoholic beverage and consumed on the Company's premises.

(g) "*Mixed Beverage Sales Tax*" means taxes paid by the Company's customers that are applied on (1) each mixed beverage that the Company sells, prepares, or serves and (2) ice and each nonalcoholic beverage that the Company sells, prepares or serves that is mixed with an alcoholic beverage and consumed on the Company's premises.

(h) "*Occupancy Date*" means the date on which the Company obtains a final Certificate of Occupancy (C.O.) from the Town for the Premises.

(i) "*Payment Request*" means any written request from the Company to the Town for payment of the Grants in conformance with this Agreement, which request shall be made no more than often than annually as to each applicable Grant. With respect to Payment Requests for Grants providing for reimbursement of construction-related costs, such requests shall include (i) a true and correct copy of the applicable invoice(s) submitted by the Company's contractor(s) (together with all attachments, documents, and materials applicable thereto); (ii) certification from the Company that the work for which reimbursement has been requested has been completed by the Company and its contractor(s) in compliance with the applicable construction contract(s) and this Agreement; (iii) executed conditional partial or final lien waivers (as applicable) from all contractors (and subcontractors and material suppliers) establishing payment or satisfaction of payment to the same with respect to the work; and (iv) a certificate from the Company and the applicable contractor, architect, or engineer that the work for which reimbursement has been requested has been completed in accordance with the approved development plans. With respect to a Sales Tax Performance Grant, a written request to the Town to pay the Sales Tax Performance Grant in conformance with Section 4 of this Agreement, which shall, at a minimum, include copies of all Texas Mixed Beverage Sales Tax Reports (Form 67-103) and Texas Mixed Beverage Gross Receipts Tax Reports (Form 67-100), or other related reports, filed by the Company with the Texas Comptroller of Public Accounts for each Payment Request period.

(j) "*Project*" means the Company's finish out, occupancy, and use of the Premises for a commercial venue offering social darts, food, and beverage services to the public for the term of this Agreement, including the Company's (i) execution of a lease for a minimum of 9,985 square feet of retail and commercial space within the Premises; (ii) expenditure of a minimum of \$6,000,000.00 in total tenant improvements within the leased premises; and (iii) obtaining a final Certificate of Occupancy for the Premises upon the later of (1) 18 months after the Effective Date of this Agreement or (2) 18 months after signing of the Company's lease for the Premises.

(k) "*Sales and Use Tax*" means the Local Sales and Use Tax imposed by the Town pursuant to the authority of Chapter 321 of the Texas Tax Code, as amended, on the Company's sale of Taxable Items upon the Premises during the term of this Agreement.

(l) "*Sales Tax Receipts*" means the Town's receipts from the State of Texas from the collection of the Sales and Use Tax as a result of sales of Taxable Items for the term of this Agreement consummated by the Company at the Premises (it being the parties' understanding that

the Town's sales and use tax receipts are being used only as a measurement for its use of general funds to make a grant for economic development purposes).

(m) *"Sales Tax Report"* means one or more sales tax reports provided by the State of Texas to the Town in accordance with Section 321.3022, Texas Tax Code (or other applicable provision of the Texas Tax Code), which lists the amount of Sales and Use Tax collected (including any refunds, credits or adjustments) for the term of this Agreement by Company and received by the Town from the State of Texas from the sale of Taxable Items.

(n) *"Taxable Items"* means both "taxable items" and "taxable services" as those phrases are defined by Chapter 151 of the Texas Tax Code, as amended, and shall include the Mixed Beverage Sales Tax and Mixed Beverage Gross Receipts Tax (as defined in this Agreement).

SECTION 3. TERM.

This Agreement shall be effective as of the Effective Date of this Agreement, as defined herein, and shall expire upon the fifth (5th) anniversary date that the Company obtains a final Certificate of Occupancy (C.O.) from the Town for the Premises unless sooner terminated as provided herein (the "Expiration Date").

SECTION 4. THE GRANT.

(a) **Grant Payments.** Subject to the Company's satisfaction of and compliance with all of the terms and conditions of this Agreement, including without limitation the requirements set forth in Section 5, the Town agrees to pay to Company the Grant Payments in an amount not to exceed \$250,000.00 during the term of this Agreement as follows:

- (1) The Town will provide the Company a capital improvement reimbursement grant of up to \$150,000.00 for the Company's construction of tenant improvements on the Premises in support of the Project (the "Capital Improvement Grant"), which shall be paid within 30 days of Company providing the Town with a Payment Request.
- (2) Beginning on the Occupancy Date, the Town will provide the Company a performance-based reimbursement grant of fifty percent (50%) of annual Town sales tax, mixed beverage sales tax, and mixed beverage gross receipts tax generated by the Project, up to \$100,000.00 term (the "Sales Tax Performance Grant").

(b) **Current Revenue.** The Grant Payments made hereunder shall be paid solely from lawfully available funds. Under no circumstances shall the obligations of the Town hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The Grant Payments shall be paid from funds of the Town consistent with Article III, Section 52(a) of the Texas Constitution. During the term of this Agreement, the Town will take steps as necessary to appropriate funding for the Grant each fiscal year in an amount sufficient to satisfy the reasonably anticipated Grant Payment(s) due to Company during the ensuing fiscal year. Further, the Town shall not be obligated to pay any commercial bank, lender, or similar institution for any loan or credit agreement made by the Company. None of the obligations of the Town under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

Payment Request Procedures.

- (2) The Company shall submit a Payment Request for each Sales Tax Performance Grant to the Town not earlier than March 1st and not later than August 1st immediately following the end of the applicable Grant Period. The Town shall not be obligated to pay the Company the Sales Tax Performance Grant for the applicable Grant Period if the Company fails to timely deliver to the Town the Payment Request. The Town agrees to pay the Company the Sales Tax Performance Grant for the applicable Grant Period not later than thirty (30) days after receipt of the Payment Request and all necessary reports filed by the Company with the Texas Comptroller of Public Accounts, including any other related and supportive documentation related to the same and that may be otherwise reasonably requested by the Town, for the applicable Grant Period. The Company acknowledges and agrees that the Town shall have no duty to calculate the Sales Tax Receipts or determine the entitlement of the Company to any Sales Tax Performance Grant or pay any Sales Tax Performance Grant during the term of this Agreement until the Town receives the documentation required herein for the applicable Grant Period.
 - (3) The Company understands and agrees that the Town shall not be responsible for, nor be in default of, this Agreement based on the performance of the State of Texas with respect to the time taken by the State of Texas to prepare and deliver the Sales Tax Report for any Grant Period.
 - (4) It is not a default of this Agreement if the Company submits a Payment Request prior to March 1st immediately following the end of the applicable Grant Period; provided, however, the Town shall be under no obligation to pay the Sales Tax Performance Grant earlier than if the request was timely provided on or after March 1st.
 - (5) The Town and the Company agree if during the term of this Agreement, the laws, regulations, or policies of the State of Texas change in such a manner as to substantively alter the ability of the parties to obtain the Sales Tax Report as described in this Agreement, the parties will in good faith reasonably cooperate and, if necessary, amend this Agreement to conform to such changes in laws, regulations, or policies so that the parties' intent regarding the procedures for determining the amount of Sales Tax Performance Grants to be paid pursuant to this Agreement and the payment of the Sales Tax Performance Grants can be preserved.
- (e) **Adjustment Notification.** The Company shall promptly notify the Town in writing of any adjustment found, determined, or made by the State of Texas, or by an outside audit, upon the Company having notice of any such adjustment that results or will result, in either a refund or reallocation of Sales Tax Receipts or the payment of Sales and Use Tax or involving amounts reported by Company to the State of Texas subject to this Agreement. Such notification to the Town shall also include the amount of any such adjustment in Sales and Use Tax or Sales Tax Receipts. The Company shall notify the Town in writing not later than ninety (90) days after the Company's receipt of notice of the intent of the State of Texas to audit the Company with respect to this Agreement or any Grants herein. Such notification shall also include the period of such audit or investigation.

(f) **Adjustments.** In the event the Company files an amended sales and use tax return or report with the State of Texas, or if additional Sales and Use Tax is due and owing by the Company to the State of Texas, as determined or approved by the State of Texas, affecting Sales Tax Receipts for a previous Grant Period, then the Sales Tax Performance Grant payment for the Grant Period immediately following such the State of Texas approved amendment shall be adjusted accordingly (i.e., up or down, depending on the facts), provided, in the case of an upward adjustment, only to the extent the Town has received Sales Tax Receipts attributed to such adjustment. As a condition precedent to payment of such adjustment, the Company shall provide the Town with a copy of any such amended sales and use tax report or return or other evidence substantiating the applicable change in Sales and Use Tax or Sales Tax Receipts and the approval thereof by the State of Texas, provided the Company receives notice of same from the State of Texas or the Town. Copies of any amended sales and use tax return or report or notification from the State of Texas affecting Sales Tax Receipts for a previous Grant Period shall be provided to the Town with the Payment Request for the next Grant Period after such amended sales and use tax return, report or notification is received by the Company from the State of Texas via the Town. The provisions of this subsection shall survive past the Expiration Date of this Agreement.

(g) **Refunds and Underpayments of Grant Payments.** In the event the State of Texas determines that the Town received in error Sales Tax Receipts for any Grant Period, or that the amount of Sales Tax Receipts collected from the Company exceeds (or is less than) the correct amount of Sales and Use Tax for a previous Grant Period for which the Company has received a Sales Tax Performance Grant, the Company shall not later than sixty (60) days after receipt of notification thereof from the Town specifying the amount by which such Sales Tax Performance Grant varied from the amount to which the Company was entitled pursuant to such the State of Texas determination, adjust (up or down, depending on the facts) the amount of Sales Tax Performance Grant claimed on the next Payment Request submitted by the Company to the Town following such determination by the State of Texas. If the Company does not adjust the amount claimed due for the Sales Tax Performance Grant payment on the next Payment Request submitted by the Company to the Town, then the Town may, at its option, adjust the Sales Tax Performance Grant payment on such Payment Request. If the adjustment results in funds to be paid back to the Town and the Sales Tax Performance Grant payment on the next Payment Request submitted by the Company to the Town is not adjusted as provided above, then the Company shall repay such amount to the Town upon demand by the Town. In connection with any notification to the Company of a Sales Tax Performance Grant variation, the Town shall provide the Company with a copy of any such determination by the State of Texas contemplated herein to the extent allowed by law. The provisions of this subsection shall survive past the Expiration Date of this Agreement.

(h) **Receipt of Sale Tax Receipts Required.** The Town shall not be required to pay any Sales Tax Performance Grant until such time as the Town has received the Sales Tax Receipts from the State of Texas relating to the applicable Grant Period for which such payment of the Sales Tax Grant is due; provided, however, that if such Sales Tax Receipts are received after the expiration of the term and the Company has timely submitted its request for payment, the Town shall pay such Sales Tax Performance Grant to Company within the payment timeframe specified in this Agreement. Under no circumstances shall any Sales Tax Performance Grant be based on any receipts from the Town's imposition and collection of sales and use tax from any source other than the sale of Taxable Items by the Company consummated at the Premises.

(i) **Sales Tax Reports.** The parties designate this Agreement as a "revenue sharing agreement," thereby entitling the Town to request annual sales and use tax information from the State of Texas pursuant to Section 321.3022 or other sections of the Texas Tax Code, as amended.

The Company is to provide a release or waiver to the Town to allow the State of Texas to disclose the Sales and Use Tax information pertaining to the sale of Taxable Items on the Premises during the term of this Agreement in a form as may be required by the State of Texas.

SECTION 5. OBLIGATIONS OF COMPANY.

The Company covenants and agrees that, during the term of this Agreement, it shall at all times perform and comply with the following terms and conditions:

(a) **Continued Operation of the Project.** The Premises shall not be used for any purpose other than the Project during the term of this Agreement. Upon issuance of a Certificate of Occupancy, the Company covenants and agrees to use reasonable efforts to maintain operations, subject to the terms of its Lease Agreement, within the Premises with valid Certificates of Occupancy during the Term of this Agreement.

(b) **Reporting.** The Company shall deliver to the Town quarterly compliance verification signed by a duly authorized representative of the Company that certifies the following:

- (1) the sales and use tax revenues generated by the Project, including the reports filed by the Company with the Texas Comptroller of Public Accounts; and
- (2) all Texas Mixed Beverage Sales Tax Reports (Form 67-103) and Texas Mixed Beverage Gross Receipts Tax Reports (Form 67-100), or other related reports, filed by the Company with the Texas Comptroller of Public Accounts as generated by the Project.

(c) **Records Retention.** The Company shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. The Company shall retain such records for the greater of (i) three (3) years from the end of the term of this Agreement or (ii) the period required by other applicable laws or regulations.

(d) **Accessibility of Records.** The Company agrees that the Town will have the right to review the business records of the Company that relate solely and specifically to the total amount of tenant improvements within the Premises and to the Company's material compliance with the requirement to expend at least \$6,000,000.00 in total tenant improvements. Such review shall occur at any reasonable time and upon at least seven (7) days prior written notice to the Company. To the extent that is reasonably possible, the Company shall make all such records available in electronic form or otherwise available to be accessed through the Internet. Notwithstanding the foregoing or any other provision of this Agreement, the Company shall not be required to disclose, permit the inspection of or examination of, or discuss, any document, information, or other matter that is not necessary to verify the Company's material compliance with this Agreement and (i) constitutes trade secrets or proprietary information; (ii) in respect of which disclosure is prohibited by law or any binding agreement; or (iii) is subject to attorney-client or similar privilege, employee privacy or constitutes attorney work product. The rights to access the business records shall terminate three (3) years after the Expiration Date. Failure to provide reasonable access to the Company's business records

to authorized Town representatives shall give the Town the right to suspend or terminate this Agreement as provided for in Sections 6 and 7 below, or any portion thereof, for reason of default.

(e) **Marketing and Promotional Efforts.** The Company agrees to reasonably cooperate with the Town in its marketing efforts, including but not limited to:

- (1) Listing Addison as its address on all official marketing materials; and
- (2) Reasonably assist the Town with promotional efforts such as joint press releases, granting permission to use the Company's name and logo in Town marketing materials, and participating in video and print testimonials as mutually agreed upon by the parties.

A sample list of the Town's regular marketing participation activities is enclosed with this Agreement as **Exhibit A**. The Company may select those activities in which it is willing to participate during the term of the Agreement.

(f) **Performance.** The Company agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and all other instruments and agreements by and between the Company and the Town.

SECTION 6. EVENTS OF DEFAULT.

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

(a) **General Event of Default.** Failure of a party to comply with or to perform any other term, obligation, covenant, or condition contained in this Agreement, or failure of the Company to comply with or to perform any other term, obligation, covenant, or condition contained in any other agreement by and between the Company and the Town, and such failure continues for thirty (30) days after written notice thereof; provided, however, that if such failure cannot reasonably be cured within such thirty (30) day period, no Event of Default shall occur if the defaulting party commences to cure such failure within such thirty (30) day period and thereafter diligently pursues such cure in good faith.

(b) **False Statements.** Any warranty, representation, or statement made or furnished to the Town by the Chief Executive Officer or Chief Financial Officer of the Company under this Agreement that is knowingly false or misleading with the intent to defraud, at the time made or furnished.

(c) **Bankruptcy or Insolvency.** The Company's insolvency, the appointment of a receiver for any part of the Company's property, any assignment for the benefit of creditors of the Company, any type of creditor workout for the Company, or the commencement of any proceeding under any Bankruptcy or Insolvency laws by or against the Company; provided, however, that in the case of any bankruptcy or insolvency proceeding, such proceeding is not dismissed within ninety (90) days after the filing thereof.

(d) **Ad Valorem Taxes.** The Company allows its ad valorem taxes

owed to the Town to become delinquent for a period exceeding thirty (30) days after written notice from the Town; provided, however, that no default shall occur for so long as (i) such taxes are being contested or protested by the Company in good faith and in accordance with applicable law.

SECTION 7. EFFECT OF AN EVENT OF DEFAULT.

(a) **Termination for Default.** Upon the occurrence of an Event of Default and subject to the defaulting party's right to cure in Section 6(a), the non-defaulting party shall have the right to terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default.

(b) **Repayment.** In the event of an uncured default by the Company, the Company shall immediately repay to the Town an amount equal to the total Grant Payments previously paid by the Town to the Company, plus interest at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank reasonably selected by the Town) as its prime or base commercial lending rate, which shall accrue from the date the Grant Payment was initially paid to the Company.

SECTION 8. INDEMNIFICATION.

THE COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE TOWN, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY FOR THE PURPOSE OF THIS SECTION, "TOWN") HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, REASONABLE ATTORNEY FEES, COSTS, EXPENSES, AND DEMANDS BY THE STATE OF TEXAS THAT THE TOWN HAS BEEN PAID ERRONEOUSLY, OVER-PAID OR INCORRECTLY ALLOCATED SALES AND USE TAX ATTRIBUTED TO THE SALE OF TAXABLE ITEMS BY THE COMPANY CONSUMMATED AT THE PROJECT FOR ANY GRANT PERIOD DURING THE TERM OF THIS AGREEMENT (COLLECTIVELY, A "CLAIM"). IT IS THE INTENTION OF THE PARTIES THAT THE DEVELOPER SHALL BE RESPONSIBLE FOR THE REPAYMENT OF ANY GRANT PAYMENTS PAID TO THE DEVELOPER HEREIN BY THE TOWN TO THE EXTENT OF SALES AND USE TAX RECEIPTS PAID TO THE STATE OF TEXAS OR THE TOWN THAT UPON A FINAL DETERMINATION WERE FOUND TO HAVE BEEN PAID ERRONEOUSLY, COLLECTED, DISTRIBUTED, OR ALLOCATED TO THE TOWN. THE INDEMNIFICATION SHALL NOT APPLY TO ANY LIABILITY RESULTING SOLELY FROM THE ERRORS OR OMISSIONS OF THE TOWN. THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES AND DO NOT CREATE ANY OBLIGATIONS FROM OR GRANT ANY CONTRACTUAL OR OTHER RIGHTS TO ANY OTHER PERSON OR ENTITY, OTHER THAN OBLIGATIONS, IF ANY, THAT ARISE FROM THE DEVELOPER TO THE TOWN TO PERFORM OBLIGATION

SECTION 9. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

(a) **Binding Agreement; Assignment.** This Agreement shall be binding upon and insure to the benefit of the heirs, successors, affiliates, administrators, executors, and permitted assigns of the respective parties. This Agreement may not be assigned by the Company without the prior written consent of the Town; provided, however, This prohibition does not apply to, and the Town shall have no right to disapprove or prevent, (i) the assignment of this Agreement at any time to any partnership, limited liability company or joint venture entity in which Flight Club Regent Square, LLC, SPH FC NA 13 LLC, or an Affiliate of either of them is the sole general partner, sole member or managing member. For the purposes of this section the term “Affiliate” means, with regard to an entity, (i) a corporation, partnership, limited liability company, joint venture, or other entity that owns, directly or indirectly through subsidiaries, more than fifty percent (50%) of the outstanding voting interests of the entity, (ii) a corporation, partnership, limited liability company, joint venture, or other entity more than fifty percent (50%) of the outstanding voting interests of which are owned, directly or indirectly through subsidiaries, by that entity, or (iii) a corporation, partnership, limited liability company, joint venture, or other entity that has the same ultimate parent as the entity.

(b) **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

(c) **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. The Company represents and warrants to the Town that the Company is a duly formed, validly existing legal entity in good standing under the laws of the State of Delaware and is authorized to transact business in the State of Texas.

(d) **Notice.** All notices required by this Agreement shall be in writing and addressed to the parties at the addresses set forth on the signature page(s) of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this section). All notices shall be delivered by (1) personal delivery, (2) certified or registered mail (in each case, return receipt requested, postage prepaid), (3) nationally recognized overnight courier (with all fees prepaid), or (4) email of a PDF document containing the required notice. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (a) when received if delivered or given in person, (b) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, (c) on the next business day after the day the notice or document is provided to a nationally recognized carrier to be delivered as set forth above, or (d) if sent by email, the next business day. A confirmation of delivery report that reflects the time that the email was delivered to the recipient’s last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the recipient.

(e) **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided in any exhibits attached hereto.

(f) **Governing Law.** This Agreement shall be governed by the laws of the State of Texas; and the venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said Court.

(g) **Amendment.** This Agreement may be amended solely by mutual written agreement of the parties.

(h) **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

(i) **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

(j) **Exhibits.** Any exhibits to this Agreement are incorporated herein by reference for the purposes wherever reference is made to the same.

(k) **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the Expiration Date, shall survive termination.

(l) **Employment of Undocumented Workers.** During the term of this Agreement, the Company agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), the Company shall repay the amount of the Grant Payments and any other funds received by the Company from the Town as of the date of such violation within one hundred twenty (120) days after the date the Company is notified by the Town of such violation, plus interest at the rate of four (4%) compounded annually from the date of violation until paid. The Company is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of the Company or by a person with whom the Company contracts.

(m) **Statutory Verifications.** The Company's execution of this Agreement shall serve as its verification that:

- (1) The Company (i) does not Boycott Israel and agrees that during the term of the Agreement will not Boycott Israel as that term is defined in the Texas Government Code Section 808.001, as amended; (ii) does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in the Texas Government Code Section 809.001, as amended; and (iii) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association as those terms are defined in the Texas Government Code Section 2274.001, as amended, and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association; or
- (2) The Company is exempt from the foregoing verification because it (i) is a sole proprietor, (ii) a nonprofit entity, (iii) a governmental entity, or (iv) has fewer than ten (10) full-time employees.

trade association; or

- (2) The Company is exempt from the foregoing verification because it (i) is a sole proprietor, (ii) a nonprofit entity, (iii) a governmental entity, or (iv) has fewer than ten (10) full-time employees.

(n) **Public Information Act Requirements.** The Company acknowledges that any and all records of the Company, including but not limited to documents that describe, relate to, convey, and/or illustrate the obligations, terms, and conditions set forth in this Agreement may be subject to the Texas Public Information Act (the "Act"), Texas Government Code Chapter 552, as amended. The Company agrees to fully and promptly cooperate with the Town in responding to requests for information received by the Town for the foregoing information pursuant to the Act. In the event the Company determines that any of its information responsive to a request under the Act is confidential and/or exempt from disclosure to the public under the provisions of the Act, the Company shall, at its cost, be solely responsible for asserting arguments to the Office of the Attorney General pursuant to §552.305(b) of the Act, and for filing any and all subsequent appeals relating to an opinion of the Texas Attorney General that requires disclosure of the Company's confidential information. Notwithstanding the foregoing, the Company agrees that the Town may, but shall be under no obligation to, submit arguments to the Attorney General relating to reasons the Company's confidential information is exempt from disclosure to the public under the Act, regardless of whether the Company has asserted its arguments to the Attorney General.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

FOR TOWN:

FOR COMPANY:

Town of Addison, Texas

Flight Club Regent Square, LLC
SPH FC NA 13 LLC

By: 
4E64B34AC161412...
 David Gaines
 City Manager

By: 
 Toby Harris
 CEO

Date: 3/3/2025

Date: 20-02-2025

Notice Address:
 Town of Addison, Texas
 Attn: David Gaines, City Manager
 5300 Belt Line Road
 Dallas, Texas 75254

Notice Address:
 State of Play Hospitality
 Attn: Brett Neu
 300 S. Wacker Drive, Suite 1650
 Chicago, IL 60606
 With a copy to: realestate@stateofplay.com