

**PERFORMANCE AGREEMENT
CITY OF FREDERICKSBURG, VIRGINIA
FREDERICKSBURG EXPO AND CONFERENCE CENTER**

This is a Performance Agreement entered into this ___ day of January, 2008, by and between the Economic Development Authority of the City of Fredericksburg, a political subdivision of the Commonwealth of Virginia (“EDA”); the Fredericksburg Expo Center LLC, a Virginia limited liability company (“Expo Center”); CVA Expo Center LLC, a Virginia limited liability company (“CVA”) and the City of Fredericksburg, a Virginia municipal corporation (“City”).

RECITALS

- A. The City Council of the City of Fredericksburg, Virginia (“the City Council”) adopted Ordinance 07-31 on July 10, 2007, creating the Celebrate Virginia South Tourism District. The purpose of the District is to make economic development incentives available to businesses – including existing businesses -- that make a substantial investment, create new jobs, and attract customers from the Fredericksburg region and beyond.
- B. CVA is the record owner of real estate located in Celebrate Virginia South, in the City of Fredericksburg, known as 2371 Carl D. Silver Parkway, consisting of 18.814 acres of land, more particularly described in Attachment A, and improvements thereon.
- C. Expo Center leases such land and improvements thereon from CVA, upon which it opened the Fredericksburg Expo and Conference Center (“the Facility”) in January, 2006. The Facility contains 116,000 square feet, including 80,000 square feet of exhibition space, a 15,000 square foot conference center with 11 meeting rooms, and a 10,000 square foot ballroom. The Facility was constructed at a cost of \$9,500,000, and Expo Center and its affiliates employ 30 full time and 100 part time employees at the Facility. The Facility attracts events and visitors from throughout the Mid-Atlantic region.
- D. Boston Culinary Group, Incorporated, is a Massachusetts corporation, authorized to do business in Virginia. It manages all food and beverage sales at the Facility, and reports its gross receipts to the City annually, in its tax return for business, professional or occupational license. Food and beverage sales at the Facility are related to its expo center and conference business.
- E. Three hotels – the Hilton Garden Inn, Homewood Suites, and Hampton Inn – have opened in Celebrate Virginia South since the opening of the Facility. The presence of the Facility was critical to the decision to construct the hotels in Fredericksburg. A fourth hotel – the Holiday Inn Select (now, “Hospitality House”) – is located nearby in Central Park, and regularly hosts guests who

attend events at the Facility. Together, these four hotels (regardless of the identity of the operator or the name by which they do business) are referred to herein as “the Hotels.”

- F. The City Council has adopted incentive guidelines for determining the amount of incentives available to an eligible business in the Celebrate Virginia South Tourism District. Expo Center is eligible for the incentives set forth herein, according to the guidelines.
- G. The EDA has determined that the continued and long-term success of the Facility is important to the economic health of the City and to the viability of the Celebrate Virginia South Tourism District. The Facility makes a significant contribution to retail sales, restaurant sales, hotel reservations, and tourism investment in the City.
- H. The EDA has agreed to offer, and Expo Center has agreed to accept, the economic incentives contained herein, in exchange for the performance promised herein.
- I. The EDA authorized its Chairman or Vice Chairman to execute this Agreement at its regular meeting on January 14, 2008.
- J. The City Council of the City of Fredericksburg authorized the City Manager to execute this Agreement at its regular meeting January 22, 2008.
- K. R. Thomas Ballantine, Managing Member, is authorized to enter into this Agreement on behalf of Expo Center.
- L. B. Judson Honaker, Jr., Manager, Silver CP II, LLC, is authorized to execute this Agreement on behalf of CVA Expo Center LLC.

AGREEMENT

IN CONSIDERATION of mutual covenants, benefits and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

Performance

1. In order to receive an annual Grant, as defined below, the following benchmarks must be achieved with respect to the year for which the Grant is being made:
 - a. the annual benchmark for an increase in room-night bookings in Hotels;

- b. the annual benchmark for an increase in Facility gross receipts.
2. "Room-night bookings" shall be measured by the aggregate occupancy tax revenues received by the City from the Hotels for the year in question, as determined from their occupancy tax returns. City shall use its best efforts to collect such sums when due.
 3. The term "gross receipts" shall have the same meaning as in City Code §70-301, which defines the term for purposes of calculating the annual business license tax. "Facility gross receipts" are the aggregate gross receipts reported by Expo Center and Boston Culinary Group, Inc., and/or its or their successors and assigns, which are directly attributable to business at the Facility. Notwithstanding the foregoing, the EDA and City agree that Expo Center may at any time or from time to time change the manager of food and beverage sales at the Facility, in which event the Facility gross receipts shall include gross receipts for food and beverage sales at the Facility from the party designated by Expo Center to manage such sales, which may include self-management by Expo Center.
 4. A "year" is the period of January 1 to December 31.
 5. The annual benchmarks for an increase in Facility gross receipts shall be calculated as follows: Expo Center has delivered to EDA pursuant to the terms of Section 11 hereof a statement of the Facility gross receipts for year 2006 ("Baseline Benchmark"). For year 2007, the annual benchmark for an increase in Facility gross receipts shall equal the Baseline Benchmark multiplied by 110% ("2007 Benchmark"); for year 2008, the annual benchmark for an increase in Facility gross receipts shall equal the 2007 Benchmark multiplied by 110% ("2008 Benchmark"); and for year 2009, the annual benchmark for an increase in Facility gross receipts shall equal the 2008 Benchmark multiplied by 110%. Expo Center has submitted the exact benchmark numbers for each such year to the EDA pursuant to Section 11 hereof; and the EDA concurs with such annual benchmark numbers, and such numbers shall be used in establishing the annual benchmark for an increase in Facility gross receipts hereunder.
 6. The annual benchmark for an increase in room-night bookings in Hotels are follows:
 - a. Baseline Benchmark: \$339,694
 - b. 2007 Benchmark: \$373,663
 - c. 2008 Benchmark: \$411,029
 - d. 2009 Benchmark: \$452,132
 7. In addition, as a condition of Grant eligibility, provided the EDA has timely paid the Grants required herein, then during the period commencing upon the execution of this Agreement by all parties and ending on December 31, 2009, Expo Center agrees to make the Facility available to the City or the EDA for a

City- or EDA-sponsored or co-sponsored event, subject to availability and to Expo Center's standard Facility rental terms and conditions, and City and EDA, as applicable, shall execute Expo Center's standard Facility rental agreement with respect to each such usage. Expo Center agrees to credit City and EDA jointly an annual amount of \$10,000 for normal Facility rental charges ("Credit") in connection with the usage referred to above; provided, however that no Credit shall be available for any year for which Expo Center does not receive a Grant. City and EDA shall pay any Facility rental charges incurred (subject to application of any available annual Credit) per Expo Center's standard Facility rental terms and conditions. In exercising its rights hereunder, the City and EDA shall cooperate with Expo Center in minimizing any impact on the operation of the Facility. The parties acknowledge that the City and the Expo Center are negotiating a memorandum of understanding ("MOU") between the City and the Expo Center for back up alternate work site facilities. In the event the City and the Expo Center are able to reach agreement on the MOU, then the City may also apply the Credit to charges incurred by the City in connection with use of the Facility as back up alternate work site facilities. Notwithstanding anything herein to the contrary, in no event shall the amount of the Credit provided to the EDA and the City pursuant to this Agreement and (if applicable) the MOU exceed \$10,000 in the aggregate for any year. The current normal Facility rental charges are listed on Exhibit B and are subject to change by Expo Center from time to time, in its sole discretion.

8. As a condition of Grant eligibility, provided the EDA has timely paid the Grants required herein, then during the period commencing upon the execution of this Agreement by all parties and ending on December 31, 2009, Expo Center agrees to permit the EDA, at its expense (but Expo Center shall not charge rent therefor), to locate a brochure rack in the Facility in a mutually agreeable location for display of promotional literature for City tourism attractions; provided, however, that within the Facility only hotels within Celebrate Virginia will be identified and/or advertised, as required by the terms of the Lease between CVA and Expo Center. The EDA shall be responsible for stocking and maintaining the brochure rack in a clean and orderly manner and to remove the brochure rack in the event of a violation of the terms of this Section 8 or if a Grant is not timely paid.
9. Expo Center will file an annual performance report (each, a "Performance Report") with the Director of Economic Development and Tourism ("Director") of the EDA beginning on or before March 1, 2008 and continuing for the next two years, for a total of three Performance Reports. Each Performance Report shall document the Facility gross receipts for the previous year.
10. City shall provide the aggregate occupancy tax information for the Hotels to the Director by no later than January 31 of each year (or as soon thereafter as the information is made available by the Commissioner of Revenue) for the prior year (i.e., January 31, 2008, January 31, 2009 and January 31, 2010). Expo Center and its consultants shall have access to the Commissioner of Revenue's annual report

for the purposes of confirming or verifying the aggregate occupancy tax information for the Hotels. City agrees to make the annual report available to the Expo Center upon reasonable notice and during regular business hours.

11. Contemporaneously with its execution of this Agreement, Expo Center shall provide to the EDA its "Baseline Report" setting forth the Baseline Benchmark and calculating the 2007 Benchmark, 2008 Benchmark, and 2009 Benchmark with respect to Facility gross receipts. This information shall be marked "CONFIDENTIAL PROPRIETARY INFORMATION SUBMITTED PURSUANT TO A PROMISE OF CONFIDENTIALITY". Expo Center shall prominently mark the gross receipts information in each Performance Report "CONFIDENTIAL PROPRIETARY INFORMATION SUBMITTED PURSUANT TO A PROMISE OF CONFIDENTIALITY." The information regarding annual Facility gross receipts (whether contained in the Baseline Report or in the Performance Reports) shall be considered confidential proprietary records, voluntarily provided by Expo Center to the EDA pursuant to a promise of confidentiality. The parties acknowledge that Virginia Code §2.2-3705.6(3) exempts this information from mandatory public disclosure and the EDA agrees not to disclose this confidential proprietary information to any person or entity at any time. The EDA's obligations under this Section 11 shall survive any termination of this Agreement for any reason. Under no circumstance shall the EDA, City, or their agents or employees be liable for the release of Facility gross receipts information.

Annual Grant

12. For a period of three years (calendar year 2007, 2008 and 2009), for each year that Expo Center meets the performance criteria set forth above for such year, and subject to appropriation as set forth below, the EDA will provide Expo Center a Grant in an amount equal to \$150,000 per year.
13. Expo Center's eligibility for the Grant shall be determined on an annual basis, through the Performance Report and information provided by the Commissioner of Revenue. Expo Center's failure to meet eligibility standards for one year of this Agreement does not terminate the Agreement with respect to other years and the EDA will determine Expo Center's eligibility for the next year pursuant to the terms of this Agreement, but only through the third year.
14. The EDA will disburse the Grant to Expo Center within 30 days of receiving its Performance Report (if sufficiently complete for EDA to judge) and the aggregate occupancy tax revenue information from the Commissioner of Revenue, by check or electronic funds transfer as directed by Expo Center. If EDA does not accept a Performance Report as sufficiently complete, then EDA shall provide Expo Center with a detailed written notice of any objections to the Performance Report within ten (10) days after the EDA's receipt of such Performance Report, otherwise such Performance Report shall be deemed acceptable.

15. CVA agrees to grant Expo Center an annual grant of \$75,000. CVA will inform the EDA each year when it makes this payment.

Grant Funding

16. As a grant to the EDA to enhance the economic development of the City, the City will appropriate to the EDA an amount equal to the annual Grant. The City's obligation to provide this funding is subject to annual appropriation.
17. The obligations of the EDA are subject to lawful appropriations by the City; provided however, that the EDA has sufficient funds for the 2007 annual Grant.

Miscellaneous

18. Subject to Section 11 hereof, the EDA shall have access to Expo Center's records for the purposes of confirming or verifying the Performance Report. Subject to Section 11 hereof, Expo Center agrees to make its records available to the EDA upon reasonable notice and during regular business hours.
19. Provided the EDA has timely paid the Grants required herein, Expo Center and CVA agree that during the period beginning with the execution of this Agreement by all parties and ending on March 1, 2010, the Facility shall operate as an exposition, convention center and conference facility with normal and customary incidental retail, office, entertainment and restaurant uses, other than temporary cessation of operations for casualty restoration, renovation, or reasons beyond the control of Expo Center and CVA.
20. All notices, reports, and invoices required by this Agreement shall be in writing and delivered in person or mailed, postage prepaid, via certified mail, return receipt requested or nationally recognized overnight delivery service (such as UPS or FedEx) to:

Expo Center

c/o The Ballantine Companies
Attn: R. Thomas Ballantine
President / CEO
2371 Carl D. Silver Parkway
Fredericksburg, VA 22401
Phone: (540) 548-5555 ext. 101
Fax: (540) 548-0552

Economic Development Authority

Kevin Gullette
Director of Economic Development and Tourism
P.O. Box 7447
Fredericksburg, Virginia 22404
Phone: (540) 372-1216
Facsimile:(540) 372-6587

City of Fredericksburg

c/o City Manager
715 Princess Anne Street
P.O. Box 7447
Fredericksburg, Virginia 22401
Phone: (540) 372-1010
Facsimile: (540) 372-1201

CVA

c/o Silver Companies
Attn: B. Judson Honaker, Jr.
1201 Central Park Blvd
Fredericksburg, VA 22401
Phone: (540) 786-1447
Facsimile: (540) 786-1406

21. This Agreement shall be administered and interpreted in accordance with the laws of the Commonwealth of Virginia. Any actions arising out of this Agreement shall be filed and maintained in the Circuit Court of the City of Fredericksburg, Virginia.
22. This Agreement may be signed in one or more counterparts (or with counterpart signature pages) which, taken together, shall constitute a fully executed Agreement and shall be considered a single document.
23. This Agreement shall not be assigned without the consent of the EDA and the City.

Witness the following signatures and seals as of the date first above written:

FREDERICKSBURG EXPO CENTER, LLC

By: _____(SEAL)
R. Thomas Ballantine, Managing Member

ECONOMIC DEVELOPMENT AUTHORITY OF THE FREDERICKSBURG

By: _____(SEAL)
H. Conrad Warlick, Chair

Attest:

Secretary

CITY OF FREDERICKSBURG

By _____(SEAL)
Phillip L. Rodenberg, City Manager

Attest:

Deputy Clerk

Approved as to form:

City Attorney

CVA EXPO CENTER, L.L.C.,

a Virginia limited liability company

By: Celebrate Virginia South, LLC

A Virginia limited liability company, sole member

By: Silver CP II, LLC

A Virginia limited liability company, Manager

By: _____

B. Judson Honaker, Jr., Manager

Exhibit A

Property Description

Exhibit B

Current Normal Facility Rental Charges