

AGREEMENT REGARDING UTILITIES INVOICING

THIS AGREEMENT REGARDING UTILITIES INVOICING is made this 5th day of February, 2015, among **LANCASTER COUNTY CONVENTION CENTER AUTHORITY**, a body politic and a public instrumentality of the Commonwealth of Pennsylvania, (hereinafter referred to as "LCCCA"); **PENN SQUARE PARTNERS**, a Pennsylvania limited partnership, (hereinafter referred to as "PSP"); and **THE PENN SQUARE CONDOMINIUM ASSOCIATION**, a Pennsylvania unincorporated association, (hereinafter referred to as "Condominium Association").

BACKGROUND:

LCCCA and PSP are owners of units in a condominium located in the City of Lancaster, Pennsylvania. LCCCA and PSP are the sole members of the Condominium Association. LCCCA is a tax-exempt entity; however, neither PSP nor the Condominium Association is tax-exempt. Utilities used by the parties (hereinafter referred to as the "Utilities") are invoiced in the name of the Condominium Association. LCCCA's request for a refund of state sales tax paid by LCCCA in connection the Utilities was rejected because the entity invoiced was not a tax-exempt entity. LCCCA has proposed that it become the invoiced entity and has represented that such a change will have no economic effect on PSP or the billing terms offered by the Utilities providers. As a result, the parties agree to, as of the date of this Agreement, have LCCCA be the specific entity invoiced subject to the conditions described herein.

NOW THEREFORE, in consideration of the above recited Background, promises, representations, warranties, covenants, payments and actions herein provided, the parties hereto, each intending to be legally bound hereby, agree as follows:

1. **Agreement.** The parties to this Agreement agree that, effective immediately:
 - A. **Invoicing.** LCCCA will be the specific party invoiced for purchases of Utilities. In lieu of a Pennsylvania sales tax, PSP will pay a use tax for its portion of what would have been the sales tax had the Condominium Association been the party invoiced.
 - B. **Use Tax.** If during the term of this Agreement the use tax paid by PSP for its portion of an invoice for one or more of the Utilities is a higher amount than the sales tax that would have been charged on that invoice had the Condominium Association been the party invoice, LCCCA shall reimburse PSP for the additional use tax until this Agreement is terminated. LCCCA shall be liable for, and reimburse PSP, the tax differential for the period when first levied to the date the Condominium Association again becomes the invoiced party for Utilities and LCCCA shall pay any cost associated with changing the party invoiced.
 - C. **Notice.** A notice provision will be added to the purchase agreement with the suppliers of Utilities that PSP and LCCCA shall be notified in writing directly by said

suppliers should an invoice become more than thirty (30) days overdue. LCCCA shall be solely responsible for any late fees, penalties and interest charges.

D. Rates and Invoice Terms. If, during the term of this Agreement, the rates charged for Utilities increases above what would be charged if the Condominium Association were the invoiced party, LCCCA shall reimburse PSP for its portion of such additional expense and PSP shall have the right to terminate this Agreement on fifteen (15) days advanced written notice to LCCCA.

E. Responsible Parties. Nothing in this Agreement shall make PSP responsible for LCCCA's portion of any invoice for Utilities, nor shall anything in this Agreement make LCCCA responsible for PSP's portion of any invoice for or taxes related to Utilities.

F. Management of Payments. The current operators of the integrated facility, Interstate Hotels and Resorts, will be in charge of managing and forwarding all payments for the Utilities as well as continuing to manage the allocations in the same manner as is currently described in the IHR Operational Expense Guidelines.

G. No Allocation Changes. There shall be no allocation changes with regard to the Utilities.

H. Choice of Provider. Selection of the providers of the Utilities will be carried out jointly by both LCCCA and PSP. If the parties are unable to agree the selection of the provider, this Agreement will be terminated.

2. Term. This Agreement shall be effective as of the day and year first written above and shall continue in effect through the duration of each Purchase Agreement with the respective utility providers until terminated by either party as provided herein. Upon sixty (60) days advance written notice, this Agreement may be terminated by any party as to a particular utility provider Purchase Agreement contemporaneously with the termination of each Purchase Agreement. Unless otherwise agreed by the parties, upon termination the Condominium Association shall again be the invoiced entity for Utilities.

3. Amendments. This Agreement shall not be amended, modified or altered in any way without the express, written agreement of all parties.

4. Successors and Assigns. The terms and conditions of this Agreement shall be binding upon all parties as well as their heirs, representatives, successors, transferees and assigns (whether by merger, reorganization, recapitalization or similar event).

5. Severability. If any provision of this Agreement is determined to be illegal or unenforceable for any reason, in whole or in part, the remaining provisions shall not be affected thereby.

6. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

7. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to the subject matter herein and supersedes all prior understandings and agreements which, upon execution of this Agreement, shall no longer be effective.

8. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same Agreement.

WITNESS the dual execution and delivery of this Agreement as a document to take effect as an instrument under seal.

**LANCASTER COUNTY CONVENTION CENTER
AUTHORITY**

Attest/Witness:

[Handwritten signature]

By: Sharon V. Nelson

Name: Sharon V. Nelson

Title: Chair

**PENN SQUARE PARTNERS,
a Pennsylvania limited partnership**

By: Penn Square General, L.P. (general partner)

By: Penn Square General Corporation
(general partner)

Attest/Witness:

Kelly Rader

By: _____

[Handwritten signature]
Mark C. Fitzgerald
Executive VP and COO

Attest/Witness: *Kelly Rader*
**THE PENN SQUARE CONDOMINIUM
ASSOCIATION**

By: _____

Name: Mark C. Fitzgerald

Title: President