CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Chapter 380 Economic Development Incentive Agreement (this "Agreement") is made by and between the City of San Marcos, a State of Texas home rule municipal corporation (the "City"), and Midway Development Group, LLC, a State of Texas limited liability company (the "Developer") (with the City and the Developer each being a "Party", and collectively the "Parties"), and is entered into by the Parties as of the latest date of signature by each Party's authorized representative below (the "Effective Date").

PART 1. RECITALS

Section 1.01. The City seeks to attract and retain a diverse range of businesses that provide well-paying jobs necessary for economic stability and growth.

Section 1.02. The Developer proposes to construct a hotel along with all other associated convention and conference space, parking, buildings, improvements, and other associated items of real and personal property (the "Hotel") on land owned by Texas State University (the "University") located at 429 North Guadalupe Street, and the Developer seeks an economic development incentive from the City for the construction of the Hotel.

Section 1.03. The City believes that the Hotel will be in furtherance of the City's job creation and economic development goals, is in conformance with the City's Downtown Area Plan, will generate sales and hotel use revenues, and add improvements to real and personal property subject to ad valorem tax assessment. Therefore, the City is willing to provide an incentive to the Developer for the Hotel.

Section 1.04. The City is authorized under Chapter 380 of the Texas Local Government Code ("Chapter 380") to offer certain economic development incentives for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity in the City. Providing an incentive to Developer under the terms and

conditions of this Agreement is consistent with the public purposes of Chapter 380 and the economic development objectives of the City.

Section 1.05. For the reasons stated in these Recitals and in consideration of the mutual benefits to and promises of the Parties set forth below, the Parties want to enter into this Agreement and agree to the terms and conditions set forth in this Agreement.

ARTICLE II
DEFINITIONS

Section 2.01. "Building Improvements" means the Hotel with a minimum of one hundred thirty (130) rooms/keys located on the Land (defined below) with a minimum capital investment of forty million dollars ($40,000,000.00), together with all associated site improvements occurring on the Land. The Building Improvements shall be constructed in substantial accordance with the conceptual rendering of the site plan and images shown in Exhibit "A," attached hereto and made a part hereof for all purposes. Notwithstanding the foregoing, the City Manager of the City, or her designee, may approve modifications to the specifications for the Building Improvements necessary for the Building Improvements to comply with applicable building codes and ordinances.

Section 2.02. "Land" means the tract(s) of real property and improvements thereon, as shown in the survey in Exhibit "B," attached hereto and made a part hereof, upon which the Building Improvements will be constructed.

Section 2.03. "Commencement Date" means the date Developer begins construction of the Building Improvements, including utility infrastructure to support the Hotel, by performing work on the Land (defined below), with such date not being later than December 31, 2026. The Developer's submittal of any plan or document required for the Building Improvements shall not be considered the beginning of construction.

Section 2.04. "Chapter 380 Payments" means the City's payments to the Developer in the form of annual rebates of, to begin with, ninety-five percent (95%) of Sales Tax Revenue and ninety-five percent (95%) of eligible Hotel Tax Revenue, both payments to decrease as the Hotel achieves RevPar performance over time as detailed below, attributable to the calendar year immediately preceding the year in which a Chapter 380 Payment is requested in accordance under Article IV herein. For the avoidance of doubt, all payments of Hotel Tax Revenue shall be in the form of rebates of a percentage of Hotel Tax Revenue, based on the RevPar performance of the Building Improvements, for expenditures that are reimbursable under State law according to the table in Section 4.02. The Chapter 380 Payments may also include sales tax reimbursements to the Developer for sales tax paid by the Developer on materials sourced to the Land prior to the implementation of the RevPar performance standards. The Chapter 380 Payments sourced from sales tax paid on materials for the site shall not be subject to the RevPar performance standards, but shall be made available from the City to the Developer through the Developer's submittal of the application attached hereto as Exhibit "D." In its approval of this Agreement, the City Council of the City hereby authorizes the City Manager or her designee to issue the Chapter 380 Payments without further approval by the City Council of the City.

Section 2.05. "Hotel Tax Revenue" means the amount Hotel Occupancy Taxes attributable to any business activity occurring on the Land during the Term collected by the Texas Comptroller of Public Accounts (or any similar successor tax collection entity of agency of the State) and remitted to the City. During the Term, the City shall not take any action that directly reduces the City's Hotel Occupancy Tax levy in effect on the Effective Date. Any Hotel Tax Revenue provided by the City to the Developer under this Agreement shall be used solely for the purposes authorized under Chapter 351 of the Texas Tax Code. Namely, as authorized under Sections 351.101 (a)(4)-(a)(5) and (a)(9) of the Texas Tax Code, the Hotel Tax Revenue may be used for the purposes of:

advertising and conducting solicitations and promotional programs to attract tourists to the City or its vicinity the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms; historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists to visit preserved historic sites or museums; and, signage directing the public to sights and attractions that are visited frequently by hotel guests in the City (the "Lawful HOT Uses").

Section 2.06. "RevPar" means the revenue per available room calculated as the average daily room rate multiplied by the occupancy of the Building Improvements.

Section 2.07. "Sales Tax Revenue" means the amount of sales and use tax revenues attributable to all business activities occurring on the Land during the Term collected by the Texas Comptroller of Public Accounts (or any similar successor tax collection entity of agency of the State) and that are remitted to and received by the City. For the avoidance of doubt, Sales Tax Revenue includes revenue generated by the Developer or any tenant or subtenant occupying all or any portion of the Land. The Developer agrees, and shall have any tenant or subsequent owner or lessee of the Building Improvements and Hotel, to provide the City or the Comptroller of Public Accounts with a waiver of the confidentiality of the Sales Tax Revenue reports sourced from the Land, with a copy of such waiver being attached hereto as Exhibit "E." Sales Tax Revenue also includes sales tax paid by the Developer on materials sourced to the Land for materials necessary for the construction of the Hotel. In its approval of this Agreement, the City Council of the City hereby authorizes the City Manager, or her designee, to issue Sales Tax Revenue reimbursements to the Developer, as contemplated herein, without further approval by the City Council of the City.

Section 2.08. "Tax Office" means the Hays County Tax Assessor-Collector.

Section 2.09. The "Term" of this Agreement shall commence on the Effective Date and end on the fifteenth (15^{th}) anniversary of the completion of construction as defined under Section 3.01, or such earlier date of termination as provided under this Agreement. The Developer shall have thirty (30) months from the Commencement Date to complete construction as set forth in Section 3.01. At the end of the Term, the Developer may sell all or a portion of its interest in the Hotel or the Land without recourse, including any "clawback" on Sales Tax Revenue or Hotel Tax Revenue provided to the Developer as an incentive under this Agreement.

ARTICLE III
DEVELOPER'S OBLIGATIONS

Section 3.01. Construction of Building Improvements. The Developer shall construct to completion the Building Improvements by not later than the thirty (30) month period described in Section 2.09, subject to any extensions approved by the City Manager of the City, or her designee (which approvals shall not be unreasonably withheld, delayed, or conditioned), or due to events of *force majeure* (the "Completion Date"). For purposes of this Agreement, the Completion Date shall be the date on which the Building Improvements have passed all required municipal inspections as evidenced by the City's issuance of a temporary or final Certificate of Occupancy, whichever is issued earlier.

Section 3.02. Compliance with Laws. The Developer will comply with all applicable ordinances, statutes, laws, and regulations in connection with the Building Improvements and related Hotel improvements. Specifically, the Developer will comply with all applicable development codes for the Land in effect on the Effective Date. If the Land is exempt from any City ordinance, statute, law, or regulation due to the Land being owned by a State entity, and if such exemption would cause the development of the Land to be at odds with the legislative purpose

of the exempted ordinance, statute, law, or regulation, then the Developer shall use its best commercially reasonable efforts to bring the Land into effective conformance with such exempted ordinance, statute, law, or regulation.

Section 3.03. Living Wages. The Developer will ensure that any operator of the Hotel shall, upon the opening of the Hotel for business, provide a minimum wage of $18.00 per hour for its employees in positions not receiving tips. This hourly rate shall be increased annually to account for adjustments in the Consumer Price Index (CPI) published by the Bureau of Labor Statistics, with the change in the CPI rounded to the nearest half percent. The Developer shall supply documentation to the City demonstrating compliance with this Section 3.03 when a request for Chapter 380 Payment is made. This requirement shall remain in place for the full term of this Agreement.

ARTICLE IV
CHAPTER 380 PAYMENTS FROM THE CITY

Section 4.01. Chapter 380 Payments. Subject to the requirements and limitations of this Article, other terms and conditions of this Agreement, and the Developer's compliance with its obligations under this Agreement, the City shall provide to the Developer at least ten (10) Chapter 380 Payments (not including any subsequent request in connection with a Chapter 380 Payment to secure previously withheld Chapter 380 Payments or incorrectly calculated Chapter 380 Payments). A Chapter 380 Payment shall be paid as a reimbursement for the Developer's costs associated with the Building Improvements and the Hotel. In order to receive a Chapter 380 Payment, the Developer shall submit to the City a request for a Chapter 380 Payment on a form substantially similar to the form attached hereto as Exhibit "C." In addition to the ten (10) Chapter 380 Payments contemplated in this Section, the City may also reimburse the Developer for sales tax paid by the Developer on materials sourced to the Land prior to the opening of the Hotel. In

order to receive a reimbursement for sales tax on materials sourced to the Land prior to the opening of the Hotel, the Developer shall submit to the City a request for such reimbursement on a form substantially similar to the form attached hereto as Exhibit "D."

Section 4.02. Percentage Rebate for Chapter 380 Payments.

(a) The Chapter 380 Payments shall begin at ninety-five percent (95%) of Sales Tax Revenue and ninety-five percent (95%) of Hotel Tax Revenue. The Chapter 380 Payments shall decrease over time as the Hotel portion of the Building Improvements achieves performance thresholds based on the Hotel's previous year's performance according to the following:

Revenue Per Available Room (RevPar) calculated as the average daily rate (ADR) X occupancy
Ex: RevPar ($225) = ADR ($300) X Occupancy (75%).

HOT/Sales Tax Rebate %	95%	75%	50%	25%
RevPar	<$225	$225-$250	$250-$275	>$275

(b) If the City makes a payment to the Developer as a reimbursement for sales tax paid on materials on the Land prior to the opening of the Hotel, then the Parties shall use a form substantially similar to the reimbursement form attached hereto as Exhibit "D." The period for the reimbursements made under this provision shall be between the Commencement Date and the opening of the Hotel, which is the date on which the Hotel becomes operational and is able to accommodate overnight guests.

Section 4.03. Process for Payment. Beginning in the year 2029, and for each year thereafter, until and including the year 2045, the Developer may request a Chapter 380 Payment by written application submitted to the City Manager of the City. The City shall not be required to make a Chapter 380 Payment for any applicable calendar year until:

a. The Developer submits to the City a compliance certificate in a form substantially similar to the form attached hereto as Exhibit "C" (the "Compliance

Certificate"), together with all information required under the Compliance Certificate necessary to verify the Developer's material compliance with its obligations under this Agreement for the preceding year, including a report of the financial performance of the Hotel portion of the Building Improvements (showing the RevPar) for the applicable rebate period as well as a line item of eligible Hotel Tax Revenue and the associated spending category provided by State law, with the completeness and validity of such annual Compliance Certificate being mutually agreed upon by the Parties within thirty (30) days of the submittal of such Compliance Certificate by the Developer to the City;

b. the City has received Sales Tax Revenues and Hotel Tax Revenues for the preceding year from the Texas Comptroller of Public Accounts; and

c. funds are appropriated by the City Council of the City (the "Council") for the specific purpose of making a Chapter 380 Payment under this Agreement as part of the City's ordinary budget and appropriations approval process or through any subsequent appropriation. This requirement is necessary to comply with the Texas Attorney General's opinions and Texas case law on public debt.

Provided the foregoing conditions have been satisfied and the Developer is, otherwise, in compliance with this Agreement, the City shall pay to the Developer any Chapter 380 Payments due within thirty (30) days after the last to occur of the events in subsections (a) through (c).

Section 4.04. No Tax-Exempt Uses, Clawback, and Termination. The Parties hereby acknowledge that the Land is owned by the University and is tax exempt. However, the Developer agrees to not engage in any action that would render tax exempt any portion of the Building Improvements, the Hotel, or any associated personal or real property on the Land or in the Building Improvements that is subject to ad valorem taxation (a "Tax Status Change"). If the Developer takes action to cause a Tax Status Change, then this Agreement shall automatically terminate, the

Parties shall have no obligation to perform under this Agreement after the date of such automatic termination, and the contingent City Note (defined in Section 4.05 below) shall become effective. If the Developer causes a Tax Status Change, then it will repay to the City the Chapter 380 Payments provided to the Developer up to the date of termination and use all commercially reasonable efforts to require a subsequent purchaser or interest holder to reimburse the City for other outstanding obligations related to the incentives contemplated herein.

Section 4.05. Designation as Enterprise Zone. The City will use its best efforts to support and approve the Land and the Project as a part of, and eligible for incentives related to, an Enterprise Zone as defined in Chapter 2303 of the Texas Government Code.

Section 4.06. Loan and Security. To secure the clawback obligations contemplated in Section 4.04 that are brought about solely through a Tax Status Change caused by the Developer, the applicable 380 Payments, with the exception of any reimbursement of sales tax paid on materials on the Land prior to the opening of the Hotel, shall be additionally secured by a contingent, springing loan which comes into effect and becomes due and payable only if Developer causes a Tax Status Change. If Developer complies with the terms of Section 4.04 such that no Tax Status Change occurs, then the loan is not effective. The loan shall be evidenced by a promissory note (the "City Note") from Developer to the City as described below. The Developer shall submit the original City Note to the City for the City to hold in the event of a Tax Status Change. If no Tax Status Change occurs, then the Note shall not become effective. The parties do not intend to create a note with an obligation to be forgiven, but to create a note which will become effective, if ever, only upon the Tax Status Change.

a. The City Note. Within 30 days after the effective date of this Agreement, Developer shall execute and deliver the original City Note to the City in substantially the form as shown in Exhibit "F," attached hereto and made a part hereof for all purposes.

b. Secured Collateral. Developer will encumber certain personal property, including after-acquired property, to include all furniture fixtures and equipment, accounts receivable, goodwill, intellectual property, patents and copyrights, as well as all proceeds, products, additions to, substitutions, and replacements of such property (collectively, the "Secured Collateral") as collateral for repayment of the City Note pursuant to the terms of and as described in a security agreement (the "Security Agreement") in substantially the form as shown in Exhibit "G," attached hereto and made a part hereof for all purposes. The Security Agreement shall be executed by Developer and the original delivered to the City concurrently with the City Note. Upon issuance of the certificate of occupancy for the Hotel on the Land, the City may record a form UCC-1 in Hays County, Texas evidencing the City Note and Security Agreement and any modifications, amendments, extensions or continuations of such instruments, as applicable. Before the City makes any Chapter 380 Payments to Developer, Developer will provide evidence to the City that each lender having a lien or other security interest in the Collateral (as defined in the Security Agreement) consents to the terms of this Agreement, the Security Agreement and the recording of a UCC-1 by the City. The City and the lender(s) for the Project shall enter into a multi-party lender agreement to address, among other issues, i) the contingent nature of the City Note, ii) the ability of any other lenders to pay the City Note and insure that the collateral for the Security Agreement will not be foreclosed by the City without notice and opportunity to cure to the lenders, iii) that the same collateral which is pledged under the Security Agreement may be pledged to the lenders, subject to the rights of the City, and iv) that the lenders shall have first and prior liens on the collateral. If there is no Tax Status Change by the expiration of the Term, then the City Note and Security Agreement and any UCC-1 will be released by the City.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF DEVELOPER

As of the Effective Date, the Developer represents and warrants to the City, as follows:

Section 5.01. Organization. The Developer is a limited partnership, duly organized, validly existing and in good standing under the laws of the State of Texas and authorized to conduct business in the State of Texas. The obligations of the Developer under this Agreement may lawfully be conducted by the Developer.

Section 5.02. Authority. The execution, delivery, and performance by the Developer of this Agreement are within the Developer's powers and have been duly authorized by all necessary action of the Developer.

Section 5.03. No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein contemplated, nor compliance with the terms and provisions hereof will contravene the organizational documents of the Developer or, to the Developer's actual knowledge, any provision of law, statute, rule, or regulation to which the Developer is subject or any judgment, decree, license, order or permit applicable to the Developer, or will conflict or be inconsistent with, or will result in a material breach of any of the material terms of the covenants, conditions, or provisions of, or constitute a delay under, or result in the creation or imposition of a lien upon any of the Land or assets of the Developer pursuant to the terms of any indenture, mortgage, deed of trust, agreement, or other instrument to which the Developer is a party or, to the knowledge of the Developer, by which the Developer is bound, or to which the Developer is subject.

Section 5.04. No Consents. No consent, authorization, approval, order, or other action by, and no notice to or filing with, any court, governmental authority, regulatory body, or third party

is required for the due execution, delivery, and performance by the delivery of this Agreement or the consummation of the transactions contemplated hereby or thereby.

Section 5.05. Valid and Binding Obligation. This Agreement is the legal, valid, and binding obligation of the Developer, enforceable against the Developer in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization, or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

Section 5.06. No Pending Litigation. There is no action, proceeding, inquiry, or investigation, at law or in equity, before any court, arbitrator, governmental, or other board or official, pending or, to the current actual knowledge of the Developer, threatened against or affecting the Developer or any subsidiaries of the Developer, questioning the validity or any action taken or to be taken by the Developer in connection with the execution, delivery, and performance by the Developer of this Agreement or seeking to prohibit, restrain, or enjoin the execution, delivery, or performance by the Developer hereof, wherein an unfavorable decision, ruling, or finding: (i) would adversely affect the validity or enforceability of, or the authority or ability of the Developer to perform, its obligations under this Agreement; or, (ii) would have a material adverse effect on the consolidated financial condition or results of operations of the Developer or on the ability of the Developer to conduct its business as presently conducted or as proposed or contemplated to be conducted.

Section 5.07. No Defaults. The Developer is current in its obligation to pay taxes to the City, and is not in default in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument to which the Developer is a party or by which Developer or any of its Land is bound that would have any material adverse effect on the Developer's ability to perform under this Agreement.

Section 5.08. Full Disclosure. Neither this Agreement nor any schedule or exhibit attached hereto in connection with the negotiation of this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to keep the statements contained herein or therein, in the light of the circumstances in which they were made, from being misleading.

ARTICLE VI
PERSONAL LIABILITY OF PUBLIC OFFICIALS; LIMITATIONS ON CITY OBLIGATIONS

Section 6.01. Personal Liability of Public Officials. Subject to applicable law, no employee or elected official of the City shall be personally responsible for any liability arising under or growing out of this Agreement.

Section 6.02. Limitations on City Obligations. The Chapter 380 Payments made and any other financial obligation of the City hereunder shall be paid solely from lawfully available funds that have been budgeted and appropriated each year during the Term by the City as provided in this Agreement. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Chapter 380 Payments or other payments unless the City budgets and appropriates funds to make such payments during the City's fiscal year in which such Chapter 380 Payment(s) or other payments are payable under this Agreement; provided, however, that Developer, in its sole discretion, shall have the right but not the obligation to terminate this Agreement and shall have no obligation under this Agreement for the year in respect to which said unappropriated funds relate.

ARTICLE VII
INFORMATION

Section 7.01. Information. The Developer shall, at such times and in such form as the City may reasonably request from the Developer, provide information concerning the performance of the Developer's obligations under this Agreement.

Section 7.02. Certification. Upon completion of the Building Improvements and before the City shall make the first Chapter 380 Payment due under this Agreement, the Developer shall submit to the City a certified statement in a form reasonably acceptable to the City, signed by an authorized officer or employee of the Developer, providing the following information:

a. a description of the completed Building Improvements, together with reasonable evidence that the Building Improvements have passed all required municipal inspections, or equivalent approval, if the Land is exempt from the City's zoning and land use regulations, for the completion of construction as evidenced by a Certificate of Occupancy issued by the City;

b. invoices and related documentation verifying the capital investment made by the Developer to acquire and develop the Land and construct the Building Improvements;

c. copies of paid invoices from the Tax Office showing the amount of Real Property Taxes paid for the preceding tax year; and,

d. a statement that the Developer is in full compliance with its obligations under this Agreement.

Upon receipt of any such form, the City may notify the Developer in writing of any questions that the City may have with any of the information provided by the Developer, and the Developer shall diligently work in good faith to respond to such questions to the City's reasonable satisfaction. The requirements of this Section do not prohibit the City from providing a reimbursement to the Developer for sales tax on materials sourced to the Land prior to the opening of the Hotel, if the Developer submits such request for reimbursement on a form substantially similar to the form attached hereto as Exhibit "D."

Section 7.03. Review of Developer Records. The Developer agrees that the City will have the right to review the business records of the Developer, as reasonably necessary, that relate to the Developer's compliance with the terms of this Agreement at any reasonable time and upon at least seven (7) days' prior notice to Developer in order to determine compliance with this Agreement. To the extent reasonably possible, the Developer shall make all such records available in electronic form or otherwise available to be accessed through the internet. The business records contemplated in this provision do not include any records of the Developer that are entirely unrelated to the calculation of the Chapter 380 Payments.

ARTICLE VIII
DEFAULT, TERMINATION AND REMEDIES

Section 8.01. Default and Termination. If the Developer is not in compliance with this Agreement, and such non-compliance continues without cure for a period of sixty (60) days after the City's written notice thereof to the Developer, then the City may, in its sole discretion, as its sole remedy under this Agreement therefor, except as modified by other agreement terms, withhold the Chapter 380 Payments that would otherwise be due to the Developer for the year during which the noncompliance occurred. If the City elects to withhold the Chapter 380 Payments for any such non-compliance, then the City shall nevertheless continue the Chapter 380 Payments for any

subsequent years during the Term in which the Developer is complying with this Agreement; however, any Chapter 380 Payments withheld by the City for any years during which the Developer is not complying shall be deemed forfeited by the Developer and the City shall not be liable for later payment of such Chapter 380 Payments, unless the Developer cures the default that caused the forfeiture. The sixty (60) day cure period contemplated herein shall be extended by the City upon the request of the Developer if sixty (60) days is not a reasonable time to cure the issue creating such non-compliance. Notwithstanding the foregoing, the City retains all rights available at law or in equity to enforce the clawback provisions of sections 4.04 through 4.06, including suit for injunctive relief or breach of contract, each in addition to remedies available under the Security Agreement and City Note.

Section 8.02. Developer's Option to Terminate. If the City fails to budget and appropriate funds for the Chapter 380 Payments under this Agreement during any fiscal year of the City during the Term for reasons other than the Developer's non-compliance with this Agreement, then the Developer, at its option, may terminate this Agreement by providing written notice thereof to the City. If the Developer elects to terminate the Agreement under this Section, the Parties shall each be released of all further obligations under this Agreement, except that the City shall pay to the Developer any outstanding and unpaid Chapter 380 Payments properly due to the Developer prior to the date of termination for which the City has budgeted and appropriated funds during any previous fiscal year.

Section 8.03. Remedies. Upon breach of any obligation or misrepresentation of facts under this Agreement, the aggrieved Party shall have, as its sole and exclusive remedy hereunder, such remedies as are set forth in this Article VIII; it being agreed that no Party shall be liable to any other Party for incidental or consequential damages. Notwithstanding the foregoing, the City, in entering into this Agreement does not waive its immunity from suit or any other limitations on

its liability, contractual or otherwise, as granted by the Texas Constitution or applicable laws of the State of Texas. If any Chapter 380 Payments are made by the City before the City determines that Developer has breached the terms of this Agreement or misrepresented any facts relied upon by the City, Developer acknowledges and agrees that among the remedies available to the City hereunder is the right to recover any sums paid to Developer and Developer agrees that, in such event, it shall be liable to the City for reimbursement of any such sums.

Section 8.04. Offset. Only after thirty (30) days' prior written notice to the Developer, the City may deduct from any Chapter 380 Payments, as an offset, any delinquent and unpaid fees, sums of money, or ad valorem, sales, or other taxes assessed and owed to or for the benefit of the City.

Section 8.05. Force Majeure. As used in this Agreement, the term "*force majeure*" means an event beyond the reasonable control of a Party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, pandemic, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms, or utility disruption, strikes, lockouts, major equipment failure, epidemic, mass casualty event, any limitation on travel, or the failure of any major supplier to perform its obligations. If a force majeure clause in a contract between the Developer and any other party engaged by the Developer to perform work associated with the Building Improvements or the Hotel contains language broader than what is included in this Section, such broader force majeure language shall apply as to the Developer.

Section 8.06. Indemnification. Developer hereby agrees to indemnify and hold the City, and the City's elected officials and employees, harmless from and against any indebtedness, loss, claim, demand, liability or lawsuit arising from any obligation of

Developer under this Agreement or breach of any representation, warranty, covenant or agreement of Developer contained in this Agreement, without regard to any notice or cure provisions. Developer's indemnification obligation hereunder shall include payment of the City's reasonable attorneys' fees, costs and expenses with respect thereto.

ARTICLE IX
MISCELLANEOUS

Section 9.01. Entire Agreement. This Agreement, including any exhibits hereto, contains the entire agreement between the Parties with respect to the transactions contemplated herein.

Section 9.02. Further Actions. The City and Developer will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions, provided that the City shall not be required to spend any money or have further obligations other than to reimburse Developer pursuant to the terms of this Agreement.

Section 9.03. Amendments. This Agreement may only be amended, altered, or terminated by written instrument signed by all Parties.

Section 9.04. Assignment. Developer may not assign any of its rights, or delegate or subcontract any of its duties under this Agreement, in whole or in part, without the prior written consent of the City.

Section 9.05. Waiver. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel.

Section 9.06. Notices. Any notice, statement, and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, messenger, reputable overnight carrier, or email, and shall

be deemed delivered when received at the addresses of the Parties set forth below, or at such other address furnished in writing to the other Party:

Developer: Midway Development Group, LLC
990 Post Oak Blvd suite 1900,
Houston, TX 77056
Telephone: (713) 629-5200
E-mail: *cfreels@midway.team*

With Copy to: Wilson Cribbs + Goren
1233 W. Loop South, #800
Houston, Texas 77027
Telephone: (713) 222.9000

City: City of San Marcos
630 E. Hopkins
San Marcos, Texas 78666
Attn: City Manager
Telephone: (512) 393.8101
E-mail: *citymanagerinfo@sanmarcostx.gov*

Section 9.07. Applicable Law; Venue for Disputes; Attorney Fees. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any dispute or legal proceedings arising under this Agreement shall lie in a State court having jurisdiction located in Hays County, Texas. Venue for any matters in federal court will be in the United States District Court for the Western District of Texas, Austin Division.

Section 9.08. Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceable under applicable present or future laws, then, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties that such provision is removed entirely from this Agreement and the remainder of the Agreement remains intact and enforceable on the Parties.

Section 9.09. Third Parties. The Parties intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the Parties or permitted assignees of the Parties, except that the indemnification

and hold harmless obligations by the Developer provided for in this Agreement shall inure to the benefit of the indemnitees named therein.

Section 9.10. No Joint Venture. Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

Section 9.11. Prohibition on Contracts with Companies Boycotting Israel. Pursuant to Chapters 2270 and 808 of the Texas Government Code, the Developer certifies that is not ineligible to receive the award of or payments under the Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Section 9.12. Section 2252 Compliance. Section 2252 of the Texas Government Code restricts the City from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. The Developer hereby certifies that is not ineligible to receive the award of or payments under this Agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Section 9.13. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument. PDF signed copies and digitally signed copies of this Agreement shall also be deemed to be originals for all purposes.

[SIGNATURE PAGE FOLLOWS]

SIGNATURES

EXECUTED in duplicate originals to be effective as of the Effective Date.

CITY:

By: _____
Stephanie Reyes, City Manager

DEVELOPER:

Midway Development Group, LP,
a Texas limited partnership

By: Midway Development Group, LLC, a Texas limited liability company, its general partner

By: _____
Clayton Freels, Executive Vice President

EXHIBIT "A"
Conceptual Rendering of Site Plan and Elevations

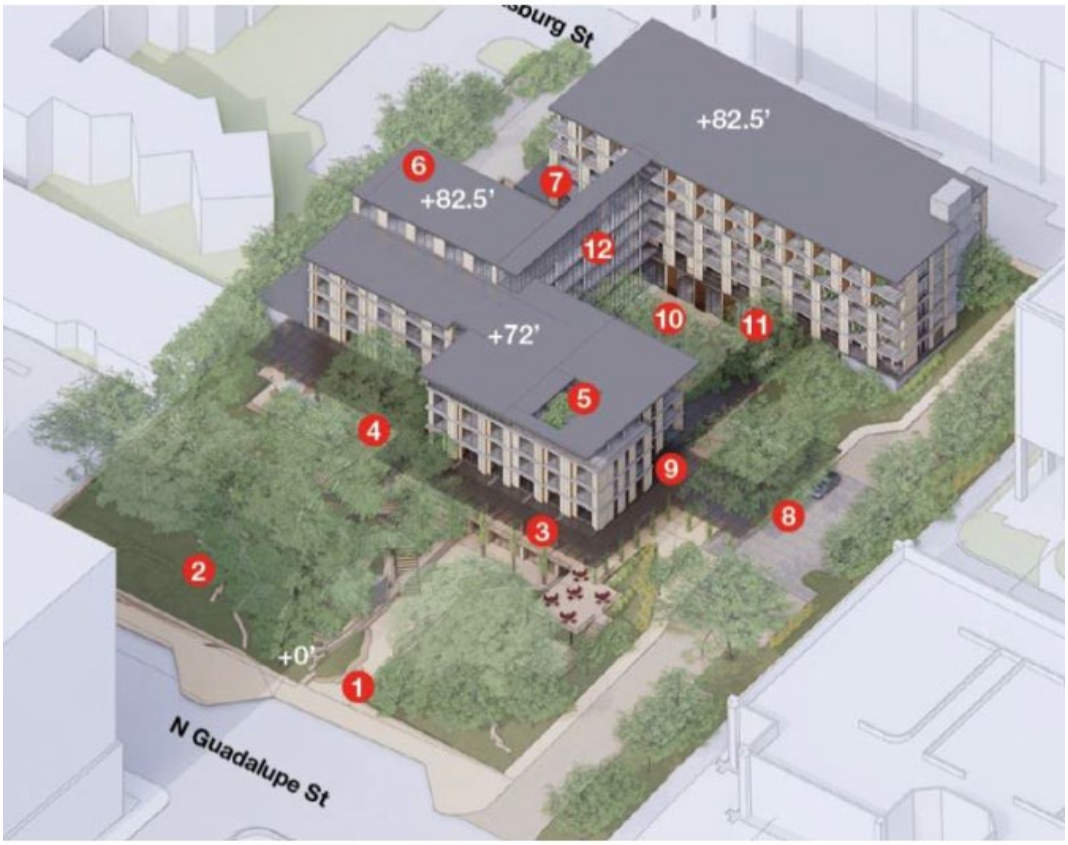

EXHIBIT "B"

Location Map, Plat, or Survey of the Land

EXHIBIT "C" – ANNUAL COMPLIANCE CERTIFICATE

ANNUAL ECONOMIC DEVELOPMENT PERFORMANCE & PAYMENT CERTIFICATION: THE CITY OF SAN MARCOS, TEXAS AND MIDWAY DEVELOPMENT GROUP, LLC

This Annual Economic Development Performance & Payment Certification (this "Certification") is being delivered by Midway Development Group, LLC (the "Developer") in connection with that certain Economic Development Agreement made by and among the City of San Marcos, Texas (the "City"), and the Developer effective as of _____, 2025 (the "Agreement"). All terms used herein have the meanings ascribed to them in the Agreement unless otherwise defined herein.

The City's payment under the Agreement is being made towards a Chapter 380 Grant Payment under Sec. 4.02(a) of the Agreement.

I. IN ACCORDANCE WITH SECTION 4.03(a) OF THE AGREEMENT, THE DEVELOPER HEREBY CERTIFIES TO THE CITY THAT:

(a) The Developer has constructed and is currently operating, or causing to be operated, a Hotel with a minimum of one hundred thirty (130) rooms/keys located on the Land and has expended a minimum capital investment of forty million dollars ($40,000,000.00), together with all associated site improvements occurring on the Land;

(b) The Hotel and the Building Improvements are constructed in substantial accordance with the Site Plan attached as Exhibit A to the Agreement;

(c) Unless the City and Developer extended the time for construction of the Hotel, the construction of the Hotel was commenced by December 31, 2026 and that such construction was completed by July 1, 2029;

(d) Every sales tax producing entity on the Land has been presented with, and requested to fill out and submit to the Texas Comptroller, a waiver of confidentiality of sales tax information in a form substantially similar to the form attached to the Agreement as Exhibit "E";

(e) The Hotel and the Building Improvements are in compliance with all applicable ordinances, statutes, laws, and regulations regarding the development of the Land that were in effect on the Effective Date; and,

(f) The Developer satisfies all warranties under Article V of the Agreement.

II. IN ACCORDANCE WITH SECTION 4.03 OF THE AGREEMENT, THE CITY HEREBY CERTIFIES TO THE DEVELOPER THAT:

(a) The City has received Sales Tax Revenues and Hotel Tax Revenues for the preceding year from the Texas Comptroller of Public Accounts related to the Land, the Hotel, and the Building Improvements;

(b) The funds contemplated as the Chapter 380 Payments in this Certification are appropriated by the City Council of the City (the "Council") as part of the City's ordinary budget and appropriations approval process or through any subsequent appropriation; and,

(c) The City shall pay to the Developer the Chapter 380 Payments contemplated in this Certification within thirty (30) days.

CHAPTER 380 PAYMENT CALCULATION

Revenue Per Available Room (the "RevPar") is the Average Daily Rate (ADR) x Occupancy
Ex: RevPar ($225) = ADR ($300) X Occupancy (75%)

HOT/Sales Tax Rebate %	95%	75%	50%	25%
RevPar	<$225	$225-$250	$250-$275	>$275

The City hereby certifies that Developer has provided evidence that for the preceding year its average daily rate (the "ADR") at the Hotel is _____ dollars ($_____) and that its occupancy is _____ percent (_____%) (the "Occupancy"). Therefore, based on the "RevPar" calculation provided above and in Sec. 4.02(a) of the Agreement ***[ADR x Occupancy]***, the City hereby commits to providing a Chapter 380 Grant Payment to the Developer of _____dollars ($_____). The Developer may use the Chapter 380 Payment for any lawful purpose under State law. The City hereby expressly authorizes the use of Hotel Tax Revenue that may be a part of the Chapter 380 Payment for the Lawful HOT Uses and hereby finds that the evidence presented by the Developer shows its compliance with Chapter 351 of the Texas Tax Code and that it may receive the Hotel Tax Revenue. In support of the City's certification and authorization of the Chapter 380 Payment made in this Certification, the Developer has attached to this Certification: a report of the financial performance of the Hotel portion of the Building Improvements (showing the RevPar) for the applicable rebate period as well as a line item of eligible Hotel Tax Revenue and the associated spending category provided by State law. In its approval of the Agreement, the City Council of the City authorized the City Manager or her designee to issue the Chapter 380 Payments contemplated herein and such payments do not need further approval by the City Council of the City.

This is Chapter 380 Payment number _____ (__) of ten (10) authorized under the Agreement.

EXECUTED in duplicate originals to be effective as of the date provided below.

FOR THE CITY:

By: _____
Stephanie Reyes, City Manager

Date: _____

FOR THE DEVELOPER:

Midway Development Group, LP,
a Texas limited partnership

By: Midway Development Group, LLC, a Texas limited liability company, its general partner

By: _____
Clayton Freels, Executive Vice President

Date: _____

Attachments: Developer's preceding year Hotel financial performance report; and Hotel Tax Revenue spending category report

EXHIBIT D: PRE-OPERATIONAL SALES TAX REIMBURSEMENT FORM

This Pre-operational Sales Tax Reimbursement Form (this "Form") is being delivered by Midway Development Group, LLC (the "Developer") in connection with that certain Economic Development Agreement made by and among the City of San Marcos, Texas (the "City"), and the Developer effective as of _____, 2025 (the "Agreement"). All terms used herein have the meanings ascribed to them in the Agreement unless otherwise defined herein.

RECITALS

WHEREAS, the reimbursement contemplated in this Form is authorized under Sec. 4.02(b) of the Agreement for sales tax paid by the Developer on materials used to construct the Hotel and the Building Improvements on the Land;

WHEREAS, the City is authorized under Chapter 380 of the Texas Local Government Code ("Chapter 380") to offer certain economic development incentives for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity in the City;

WHEREAS, the City believes that the Hotel and the Building Improvements will be in furtherance of the City's job creation and economic development goals, is in conformance with the City's Downtown Area Plan, will generate sales and hotel use revenues, and add improvements to real and personal property subject to ad valorem tax assessment; and,

WHEREAS, the City wishes to provide an incentive to the Developer for the Hotel.

NOW, THEREFORE, THE CITY WISHES TO PROVIDE AN INCENTIVE IN THE FORM OF A SALES TAX REIMBURSEMENT TO DEVELOPER UNDER THE TERMS AND CONDITIONS OF THIS FORM AND THE PUBLIC PURPOSES OF CHAPTER 380 AND THE ECONOMIC DEVELOPMENT OBJECTIVES OF THE CITY.

REIMBURSEMENT

The City hereby certifies that the Developer has shown that it has paid _____ dollars ($_____) in sales tax on materials and other items associated with the construction of the Hotel. Attached to this Form is the Developer's documentation showing its payment of such sales tax. The City has received such sales tax and has budgeted and allocated such sales tax, and hereby reimburses the Developer _____ dollars ($_____) for such sales tax. In its approval of the Agreement, the City Council of the City authorized the City Manager or her designee to issue the reimbursement contemplated herein and such reimbursement does not need further approval by the City Council of the City.

EXECUTED in duplicate originals to be effective as of the date provided below.

FOR THE CITY:

By: _____
Stephanie Reyes, City Manager

Date: _____

FOR THE DEVELOPER:

Midway Development Group, LP,
a Texas limited partnership

By: Midway Development Group, LLC, a Texas limited liability company, its general partner

By: _____
Clayton Freels, Executive Vice President

Date: _____

Attachments: Developer's sales tax payment documentation.

EXHIBIT E – DISCLOSURE OF CONFIDENTIAL TAX INFORMATION
AGREEMENT FOR DISCLOSURE OF CONFIDENTIAL TAX INFORMATION

This Agreement for Disclosure of Confidential Tax Information (this "Agreement") is entered into by and among the City of San Marcos, Texas (the "City"), and _____ (the "Taxpayer") for the purposes indicated herein.

The undersigned Taxpayer hereby authorizes the Texas Comptroller's Office to release and disclose to the City any and all sales and use tax information pertaining to Taxpayer's business in the approximately eleven (11) acres of primarily undeveloped land generally located at _____ (the "Property").

The undersigned Taxpayer understands and agrees that this release will be made by the Texas Comptroller's Office to the City on an ongoing monthly basis beginning on the date this Agreement is executed. Taxpayer waives any and all rights of confidentiality of tax information under Sections 111.006, 151.027 of the Texas Tax Code to the extent, and only to the extent, necessary to permit the Texas Comptroller's Office to release and disclose Taxpayer's sales and use tax information as provided in this Agreement.

The City agrees that it will use the sales and use tax information disclosed by the Texas Comptroller pursuant to this Agreement solely and exclusively for the purposes under that certain Economic Development Agreement by and among the City and Midway Development Group, LP dated _____, 2025, and subject to the terms thereof.

This Agreement is entered into in the State of Texas, and Texas law will apply to its **interpretation and enforcement.**

SIGNED AND AGREED TO on this ____ day of _____, 202__

Name of Taxpayer Listed on Texas Sales Tax Permit

Name Under Which Taxpayer is Doing Business (d/b/a or Outlet Name)

Taxpayer Mailing Address

Physical Location of Business Permitted for Sales Tax

[SIGNATURE PAGE TO FOLLOW]

SIGNATURE PAGE TO DISCLOSURE OF CONFIDENTIAL TAX INFORMATION AGREEMENT FOR DISCLOSURE OF CONFIDENTIAL TAX INFORMATION

THE TAXPAYER	THE CITY
_____	_____
Name [Signature]	**Name [Signature]**
_____	_____
Name [Printed]	**Name [Printed]**
_____	_____
Title	**Title**
_____	_____
Date	**Date**

EXHIBIT "F" – FORM OF CONTINGENT PROMISSORY NOTE

Date: _____, 2025

Borrower: Midway Development Group, LLC

Borrower's Mailing Address:

Lender: City of San Marcos, Texas, 630 East Hopkins, San Marcos, Hays County, Texas 78666

Chapter 380 Loan: This promissory note is the promissory note required under that certain Chapter 380 Economic Development Incentive Agreement (the "380 Agreement") between Borrower and Lender related to Borrower's construction of a new hotel in downtown San Marcos on property owned by Texas State University (the "Loan").

Place for Payment: 630 East Hopkins, San Marcos, Texas 78666

Principal Amount: The Principal Amount shall be the cumulative total of all Chapter 380 Payments disbursed to Borrower by Lender up to the date of termination of the 380 Agreement due to a "Tax Status Change"(as that term is defined in the 380 Agreement) caused by the Borrower, with such Chapter 380 Payments excluding sales tax paid on materials on the Land prior to the opening of the Hotel (as defined in the 380 Agreement), pursuant to the terms and schedule in the 380 Agreement.

Annual Interest Rate: Zero (0%) percent.

Contingency Date: The date, if ever, of termination of the 380 Agreement due to a Tax Status Change caused by the Borrower as defined in Section 4.04 of the 380 Agreement. This note is not effective until the Contingency Date.

Maturity Date: The Contingency Date

Security for Payment: This note is secured by a security interest created in a security agreement of even date herewith that covers certain personal property of Borrower on the Land (as defined in the 380 Agreement) and that is executed by Borrower as the debtor in favor of Lender as the secured party.

1. Borrower's Promise to Pay

If the Contingency Date occurs, then Borrower promises to pay to the order of Lender the Principal Amount plus interest at the Annual Interest Rate. This note is payable at the Place for Payment by the Maturity Date.

2. Default

If Borrower defaults in the payment of this note or in the performance of any obligation in any instrument securing or collateral to this note, Lender may declare the unpaid principal balance,

earned interest, and any other amounts owed on the note immediately due. Borrower waives all demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest, and notice of protest, to the extent permitted by law.

Borrower also promises to pay reasonable attorney's fees and court and other costs if this note is placed in the hands of an attorney to collect or enforce the note. These expenses will become part of the debt evidenced by the note and will be secured by any security for payment.

The occurrence of any one of the following events shall constitute a default by Borrower (referred to as a "Default"):

(a) Borrower fails to comply with Section 4.04 of the 380 Agreement causing a Tax Status Change; and

(b) Borrower fails to pay the note on the Maturity Date.

Even if, at a time when Borrower is in Default, the Lender does not require Borrower to pay immediately in full as described above, the Lender will still have the right to do so if Borrower is in Default at a later time.

3. Miscellaneous

(a) Excess Interest. Interest on the debt evidenced by this note will not exceed the maximum rate or amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the Principal Amount or, if the Principal Amount has been paid, refunded. On any acceleration or required or permitted prepayment, any excess interest will be canceled automatically as of the acceleration or prepayment or, if the excess interest has already been paid, credited on the Principal Amount or, if the Principal Amount has been paid, refunded. This provision overrides any conflicting provisions in this note and all other instruments concerning the debt.

(b) Notice. Unless applicable law requires a different method, any notice that must or may be given to Borrower under this Note will be given by hand delivery or by mailing same by first class mail, postage prepaid, return receipt requested, to Borrower at Borrower's address above or at a different address if Borrower gives the Lender a notice of Borrower's different address.

(c) Assignment. Borrower understands that the Lender may transfer or assign this note, put only as part of the assignment of the 380 Agreement. The Lender or anyone who takes this note by transfer or assignment and that is entitled to receive payments under this Note is called the "Lender".

(d) Applicable Law and Venue. This note will be construed under the laws of the State of Texas. This note is performable in Hays County, Texas. Mandatory venue for any action under this Agreement will be in the state court of appropriate jurisdiction for the action in Hays County, Texas. Mandatory venue for any matters in federal court will be in the

United States District Court for the Western District of Texas.

(e) Successors and Assigns. The terms "Borrower" and "Lender" also include their respective heirs, personal representatives, successors and assigns.

(f) Each Borrower is responsible for all obligations represented by this note.

(g) When the context requires, singular nouns and pronouns include the plural.

BORROWER:
Midway Development Group, LLC

By: _____

Name: _____

Title: _____

EXHIBIT "G" – FORM OF SECURITY AGREEMENT

Date: _____, 2025

Debtor: Midway Development Group, LLC

Debtor's Mailing Address:

Secured Party: The City of San Marcos, Texas, a home rule municipal corporation

Secured Party's Mailing Address: 630 East Hopkins Street, San Marcos, Hays County, Texas 78666

Classification of Collateral: Fixtures and goods.

Collateral: [Insert FFE, other personal property associated with the hotel on the Land, including such things as good will, accounts receivable, etc.]

Obligation:

Note

Date:

Original principal amount: As stated therein

Borrower (Obligor): Midway Development Group, LLC

Lender (Secured Party): The City of San Marcos, Texas, a home rule municipal corporation

Maturity date: As stated therein.

Project: _____

In connection with that certain Chapter 380 Economic Development Incentive Agreement between Debtor and Secured Party, Debtor grants to Secured Party a security interest in the Collateral and all its proceeds to secure the Obligation and all renewals, modifications, and extensions of the Obligation. Debtor authorizes Secured Party to file a financing statement describing the Collateral.

Superior Lien(s): Any lien, certificate of title or security agreement concerning the financing, purchase, construction, renovation or refinancing of the Collateral. This Security Agreement shall remain subordinate to any Superior Lien(s) and any renewals, modification or amendments to, or extensions of such Prior Lien(s). The City will execute documents reasonably requested by lenders for the Project confirming the superior lien priority.

A. Debtor represents and warrants the following:

1. Debtor owns the Collateral and has the authority to grant this security interest, free from any setoff, claim, restriction, security interest, or encumbrance except liens for taxes not yet due.

2. No person, other than Debtor or Secured Party, has actual or constructive possession of any Collateral, except as authorized agents or representatives of Debtor or Secured Party.

B. Debtor agrees to—

1. Defend the Collateral against all claims adverse to Secured Party's interest; pay all taxes imposed on the Collateral; keep the Collateral free from liens, except for liens in favor of Secured Party or for taxes not yet due or liens to other lenders for the Project; and keep the Collateral in Debtor's possession and ownership except as otherwise provided in this agreement.

2. Pay all Secured Party's expenses, including reasonable attorney's fees and legal expenses, incurred or assessed by a court to (a) obtain, preserve, perfect, defend, and enforce this agreement; (b) retake, hold, prepare for disposition, dispose, collect, or enforce the Collateral; and (c) collect or enforce the Obligation. These expenses will bear interest from the date of advance at the rate stated in the Note for matured, unpaid amounts and are payable on demand at the place where the Obligation is payable. These expenses and interest are part of the Obligation and are secured by this agreement.

3. Sign and deliver to Secured Party any documents or instruments necessary to obtain, maintain, and perfect this security interest in the Collateral

4. Take any action requested by Secured Party for Secured Party to obtain control of the Collateral.

5. Notify Secured Party immediately of any event of default and of any material change (a) in the Collateral, (b) in Debtor's Mailing Address, (c) in the location of any Collateral, (d) in any other representation or warranty in this agreement, and (e) that may affect this security interest, and of any change (f) in Debtor's name and (g) of any location set forth above to another state.

6. Maintain accurate records of the Collateral at the address set forth above; furnish Secured Party any requested information related to the Collateral; and permit (or authorize third parties to permit) Secured Party to inspect the Collateral and copy all records relating to the Collateral, whether or not in the possession and control of the Debtor or any third party.

7. Preserve the liability of all obligors on the Collateral and preserve the priority of all security for the Collateral.

8. On Secured Party's demand, hold payments, including instruments, items, and money received as proceeds of the Collateral, separate and in an express trust for Secured Party

and deposit all such payments received as proceeds of the Collateral in a special bank account designated by Secured Party, who alone will have power of withdrawal.

9. Cause all obligors on the Collateral to pay and perform all their obligations and inform Secured Party immediately of the default in the payment or performance of any Collateral.

C. Debtor agrees not to—

1. Sell, transfer, or encumber any of the Collateral, without the consent of Secured Part, provided that Debtor may pledge the Collateral to other lenders on the Project, subject to Secured Party's rights

2. Modify any agreement related to the Collateral, except in relation to a Prior Lien.

D. Insurance and Risk of Loss

1. Debtor will insure the Collateral in accordance with Hospitality Industry standards and the requirements of other lender to the Project. Policies must be written in favor of Debtor, be endorsed to name Secured Party as an additional insured or as otherwise directed in writing by Secured Party, and provide that Secured Party will receive at least 30days' notice before cancellation. Debtor must provide copies of the policies or evidence of insurance to Secured Party.

2. Debtor assumes all risk of loss to the Collateral.

3. Debtor appoints Secured Party as attorney-in-fact to collect any returned unearned premiums and proceeds of any insurance on the Collateral and to endorse and deliver to Secured Party any payment from such insurance made payable to Debtor. Debtor's appointment of Secured Party as Debtor's agent is coupled with an interest and if Debtor is an individual will survive any disability of Debtor.

E. Default and Remedies

1. A default exists if—

   a. Debtor, Obligor, or any secondary obligor fails to timely pay or perform any obligation or covenant in any written agreement between Secured Party and any of Debtor, Obligor, or secondary obligor;

   b. any warranty, covenant, or representation in this agreement or in any other written agreement between Secured Party and any of Debtor, Obligor, or secondary obligor is materially false when made;

   c. a receiver is appointed for Debtor, Obligor, any secondary obligor, or any Collateral;

   d. any Collateral is assigned for the benefit of creditors;

e. a bankruptcy or insolvency proceeding is commenced by Debtor, a partnership in which Debtor is a general partner, Obligor, or any secondary obligor;

f. a bankruptcy or insolvency proceeding is commenced against Debtor, a partnership in which Debtor is a general partner, Obligor, or any secondary obligor, and the proceeding continues without dismissal for sixty days, the party against whom the proceeding is commenced admits the material allegations of the petition against it, or an order for relief is entered;

g. any of the following parties is dissolved, begins to wind up its affairs, is authorized to dissolve or wind up its affairs by its governing body or persons, or any event occurs or condition exists that permits the dissolution or winding up of the affairs of any of the following parties: Debtor; a partnership of which Debtor is a general partner; Obligor; or any secondary obligor; or

h. any Collateral is impaired by loss, theft, damage, levy and execution, issuance of an official writ or order of seizure, or destruction, unless it is promptly replaced with collateral of like kind and quality or restored to its former condition.

2. If a default exists, Secured Party may—

a. demand, collect, convert, redeem, settle, compromise, receipt for, realize on, sue for, and adjust the Collateral either in Secured Party's or Debtor's name, as Secured Party desires, or take control of any proceeds of the Collateral and apply the proceeds against the Obligation;

b. take possession of the Collateral not already in Secured Party's possession, without demand or legal process, and for that purpose Debtor grants Secured Party the right to enter any premises where the Collateral may be located;

c. without taking possession, sell, lease, or otherwise dispose of the Collateral at any public or private sale in accordance with law;

d. exercise any rights and remedies granted by law or this agreement;

e. notify obligors on the Collateral to pay Secured Party directly and enforce Debtor's rights against such obligors; and

f. as Debtor's agent, make any endorsements in Debtor's name and on Debtor's behalf.

3. Foreclosure of this security interest by suit does not limit Secured Party's remedies, including the right to sell the Collateral under the terms of this agreement. Secured Party may exercise all remedies at the same or different times, and no remedy is a defense to any other.

Secured Party's rights and remedies include all those granted by law and those specified in this agreement.

4. Secured Party's delay in exercising, partial exercise of, or failure to exercise any of its remedies or rights does not waive Secured Party's rights to subsequently exercise those remedies or rights. Secured Party's waiver of any default does not waive any other default by Debtor. Secured Party's waiver of any right in this agreement or of any default is binding only if it is in writing. Secured Party may remedy any default without waiving it.

5. Secured Party has no obligation to clean or otherwise prepare the Collateral for sale.

6. At any time Secured Party may contact obligors on the Collateral directly to verify information furnished by Debtor.

7. Other than exercising reasonable care to assure safe custody of the Collateral in its possession, Secured Party has no responsibility for the Collateral. Secured Party has no obligation to collect any of the Collateral and is not liable for failure to collect any of the Collateral, for failure to preserve any rights pertaining to the Collateral, or for any act or omission on the part of Secured Party or Secured Party's officers, agents, or employees, except willful misconduct.

8. Secured Party has no obligation to satisfy the Obligation by attempting to collect the Obligation from any other person liable for it. Secured Party may release, modify, or waive any collateral provided by any other person to secure any of the Obligation. If Secured Party attempts to collect the Obligation from any other person liable for it or releases, modifies, or waives any collateral provided by any other person, that will not affect Secured Party's rights against Debtor. Debtor waives any right Debtor may have to require Secured Party to pursue any third person for any of the Obligation.

9. If Secured Party must comply with any applicable state or federal law requirements in connection with a disposition of the Collateral, such compliance will not be considered to adversely affect the commercial reasonableness of a sale of the Collateral.

10. Secured Party may sell the Collateral without giving any warranties as to the Collateral. Secured Party may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of a sale of the Collateral.

11. If Secured Party sells any of the Collateral on credit, Debtor will be credited only with payments actually made by the purchaser and received by Secured Party for application to the indebtedness of the purchaser. If the purchaser fails to pay for the Collateral, Secured Party may resell the Collateral and Debtor will be credited with the proceeds of the sale.

12. If Secured Party purchases any of the Collateral being sold, Secured Party may pay for the Collateral by crediting the purchase price against the Obligation.

13. Secured Party has no obligation to marshal any assets in favor of Debtor or against or in payment of the Note, any of the Other Obligation[s], or any other obligation owed to Secured Party by Debtor or any other person.

14. If the Collateral is sold after default, recitals in the bill of sale or transfer will be prima facie evidence of their truth and all prerequisites to the sale specified by this agreement and by law will be presumed satisfied.

F. General

1. Secured Party may at any time—

   a. take control of proceeds of insurance on the Collateral and reduce any part of the Obligation accordingly or permit Debtor to use the funds to repair or replace the Collateral and

   b. purchase single-interest insurance coverage that will protect only Secured Party if Debtor fails to maintain insurance, and premiums for the insurance will become part of the Obligation.

2. Notice is reasonable if it is mailed, postage prepaid, to Debtor at Debtor's Mailing Address at least ten days before any public sale or ten days before the time when the Collateral may be otherwise disposed of without further notice to Debtor.

3. This security interest will attach to an after-acquired commercial tort claim only to the extent permitted by law.

4. This security interest will neither affect nor be affected by any other security for any of the Obligation. Neither extensions of any of the Obligation nor releases of any of the Collateral will affect the priority or validity of this security interest.

5. This agreement binds, benefits, and may be enforced by the successors in interest of Secured Party and will bind all persons who become bound as debtors to this agreement. Assignment of any part of the Obligation and Secured Party's delivery of any part of the Collateral will fully discharge Secured Party from responsibility for that part of the Collateral. If such an assignment is made, Debtor will render performance under this agreement to the assignee. Debtor waives and will not assert against any assignee any claims, defenses, or setoffs that Debtor could assert against Secured Party except defenses that cannot be waived. All representations, warranties, and obligations are joint and several as to each Debtor.

6. This agreement may be amended only by an instrument in writing signed by Secured Party and Debtor.

7. The unenforceability of any provision of this agreement will not affect the enforceability or validity of any other provision.

8. This agreement will be construed according to Texas law, without regard to choice-of-law rules of any jurisdiction. This agreement is to be performed in Hays County, Texas, and has been signed by Debtor in said Hays County. Mandatory venue for any action under this Agreement will be in the state court of appropriate jurisdiction for the action in Hays County, Texas. Mandatory venue for any matters in federal court will be in the United States District Court for the Western District of Texas, Austin Division.

9. Interest on the Obligation secured by this agreement will not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the principal of the Obligation or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess will be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the Obligation or, if the principal of the Obligation has been paid, refunded. This provision overrides any conflicting provisions in this and all other instruments concerning the Obligation.

10. In no event may this agreement secure payment of any debt that may not lawfully be secured by a lien on real estate or create a lien otherwise prohibited by law.

11. When the context requires, singular nouns and pronouns include the plural.

12. Any term defined in sections 1.101 to 11.108 of the Texas Business and Commerce Code and not defined in this agreement has the meaning given to the term in the Code.

DEBTOR:
Midway Development Group, LLC

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2025, by _____, _____ of _____.

_____
Notary Public, State of Texas