



STATE OF ILLINOIS )  
COUNTIES OF KANE, DUPAGE, )  
KENDALL AND WILL )  
CITY OF AURORA )

## CERTIFICATE

I, Isabel M. García-Kodron, DO HEREBY CERTIFY THAT I am the City Clerk of the City of Aurora, Kane, DuPage, Kendall and Will Counties, Illinois and, as such officer, I have the lawful power and duty to keep a record of all proceedings of the City Council of said City, and of all Ordinances and Resolutions presented to or passed by said City Council.

I DO HEREBY FURTHER CERTIFY that the foregoing document is a true, correct and complete copy of:

RESOLUTION NO. R14-321  
A RESOLUTION AUTHORIZING THE EXECUTION OF A HOTEL OCCUPANCY TAX  
REBATE AGREEMENT WITH MIDWEST MANAGEMENT II, INC., FOR THE  
PROPERTY AT 111 NORTH BROADWAY

which was approved on December 9, 2014, is now on file in my office and that the proceedings of the City Council of said City at the meeting duly called and held on December 9, 2014 were in accordance with applicable laws, at which a quorum was present and acting throughout.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of the City of Aurora, in the State of Illinois this 13<sup>th</sup> day of February, 2015.

Isabel M. García-Kodron  
City Clerk  
City of Aurora, Illinois

(SEAL)



CITY OF AURORA, ILLINOIS

RESOLUTION NO. R14-321  
DATE OF PASSAGE December 9, 2014

A Resolution Authorizing the Execution of a Hotel Occupancy Tax Rebate Agreement with Midwest Management II, Inc., for the Property at 111 North Broadway.

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

WHEREAS, the Corporate Authorities of the City of Aurora, Kane, Kendall, Will and DuPage Counties, Illinois have considered a Hotel Occupancy Tax Rebate Agreement (the Agreement) for certain property within the City of Aurora, a true and correct copy of the Agreement being attached hereto and made part hereof as EXHIBIT "A"; and

WHEREAS, budgetary authority for this project has been requested in the 2015 City Budget in account no.101-1830-465.55-84 (General Fund); and

WHEREAS, the City Council has determined that it is in the best interests of the residents of the City of Aurora that this Agreement be entered into, and further, that the project would not be economically feasible but for the economic assistance promised by the City in this agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Aurora, Illinois, as follows:

Section 1: The preambles hereto are made a part thereof as fully as if completely repeated at length herein.

Section 2: That the Mayor and City Council hereby find that it is in the best interest of the City of Aurora and its residents that the aforesaid "Hotel Occupancy Tax Rebate Agreement " with Midwest Management II, for the property at 111 North Broadway be

RESOLUTION NO. R14-321  
DATE OF PASSAGE December 9, 2014

entered into by the City of Aurora, with said Agreement to be substantially in the form attached hereto and made a part thereof as EXHIBIT "A".

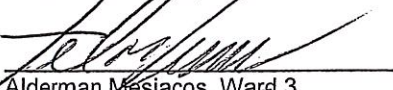
Section 3: That the Mayor and City Clerk are hereby authorized to execute for and on behalf of the City of Aurora, the aforesaid Agreement.


Section 4: That this Resolution shall take effect from and after its adoption and approved as required by law.

PASSED AND APPROVED on December 9, 2014


AYES 12 NAYS 0 NOT VOTING 0 ABSENT 0

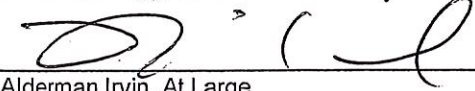
  
Alderman Bohman, Ward 1


  
Alderman Mesiacos, Ward 3


  
Alderman Peters, Ward 5

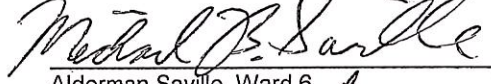
  
Alderman Hart-Burns, Ward 7

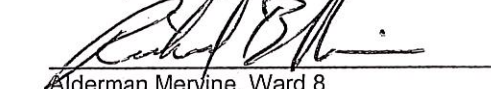
  
Alderman Bugg, Ward 9

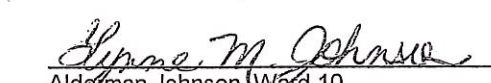
  
Alderman Irvin, At Large

  
Alderman Garza, Ward 2

  
Alderman Donnell, Ward 4

  
Alderman Saville, Ward 6

  
Alderman Mervine, Ward 8

  
Alderman Johnson, Ward 10

  
Alderman O'Connor, At Large

ATTEST:   
City Clerk


  
Mayor

Exhibit "A" Agreement

14.00988

**RECOMMENDATION**

TO: THE COMMITTEE OF THE WHOLE

FROM: THE FINANCE COMMITTEE

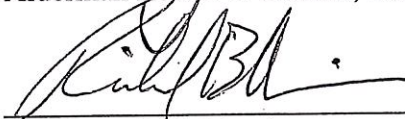
The Finance Committee at the regular scheduled Finance Meeting on Tuesday, November 25, 2014 Recommended **APPROVAL** of A Resolution Authorizing the Execution of a Hotel Occupancy Tax Rebate Agreement with Midwest Management II, Inc., for the Property at 111 North Broadway

The Vote 3-0

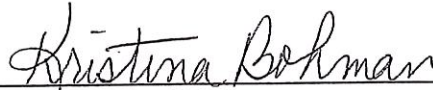
Submitted By



Alderman Robert O'Connor, Chairman



Alderman Rick Mervine



Kristina "Tina" Bohman

\_\_\_\_\_  
John "Whitey" Peters, alternate

Dated this 25th day of November, 2014

## HOTEL OCCUPANCY TAX REBATE AGREEMENT

This Hotel Occupancy Tax Rebate Agreement (the "Agreement") is entered into on this 9<sup>th</sup> day of December, 2014 (the "Effective Date") by and between the City of Aurora, Illinois, an Illinois home rule municipal corporation (the "City"), and Midwest Management II, Inc., an Illinois corporation ("Midwest"). (The City and Midwest are sometimes referred to herein collectively as the "Parties," and individually as a "Party.")

### RECITALS

- A. The City is a home rule Illinois municipality, and hereby enters into this Agreement pursuant to its home rule powers; and, pursuant to Section 6(a) of Article VII of the Constitution of the State of Illinois of 1970.
- B. The City deems it to be of significant importance to encourage development and redevelopment within the City, so as to maintain a viable real estate tax, sales tax and hotel occupancy tax base and employment opportunities.
- C. Midwest operates a Comfort Suites Hotel at 111 North Broadway Street, Aurora, Illinois 60504 (the "Hotel"), the location of which is legally described and depicted on Exhibit A-1 and Exhibit A-2, respectively, attached hereto and made a part hereof (the "Hotel Property").
- D. Midwest intends to improve the Hotel exterior, by installing a new roof, upgrading the portico and the façade of the building, and by installing sound abatement improvements, consisting of a sound wall, landscaping and improved sound barrier windows, all as more fully described and depicted on Group Exhibit B attached hereto and made part hereof (the "Project"); and, as a result of the Project, Midwest is rebranding the Hotel to become a Holiday Inn Express and Suites affiliate.
- E. The projected cost of the Project, in combination with the costs of other interior improvements to the Hotel which are not part of the Project, but will be done at the same

time as the Project (the "Interior Improvements"), is estimated to be Two Million and No/100 Dollars (\$2,000,000.00), as more fully set forth on Exhibit C attached hereto and made part hereof.

- F. The Parties anticipate that the Project will enhance the City's real estate, sales tax and hotel occupancy tax bases, by creating additional stays at the Hotel.
- G. Midwest and the City acknowledge that Midwest requires economic assistance from the City in order to complete the Project, and that the Project would not be economically feasible, but for the economic assistance promised by the City in this Agreement.
- H. Because the Project would not be economically feasible but for the economic assistance promised by the City in this Agreement, the City agrees, pursuant to the terms of this Agreement, to rebate to Midwest up to Five Hundred Thousand and No/100 Dollars (\$500,000.00), plus Midwest's actual documented interest expenses, at an interest rate not to exceed four and seventy-five hundredths percent (4.75%) per annum, in regard to any loan obtained by Midwest relative to constructing the Project, over up to a ten (10) year period, in Midwest Hotel Occupancy Taxes, (as defined in Article III below), generated by the Hotel, subject to the other terms and conditions of this Agreement.
- I. The City acknowledges that Midwest is seeking to fund the Project and the Interior Improvements by refinancing the Hotel Property with a loan that will be procured by Midwest through a Small Business Administration ("SBA") loan program (the "SBA Loan"), and a second private loan through Midwest's lender (the "Private Loan"). The SBA Loan and the Private Loan are collectively referred to herein as the "Loans."
- J. The City agrees to cooperate with Midwest, as may be necessary, to assist Midwest in complying with the requirements of the SBA for obtaining the SBA Loan and securing the remaining balance of the existing SBA debt/loan on the Hampton Inn & Suites – Chicago, located at 2423 Bushwood Drive, Aurora, Illinois (the "Hampton Loan") with the Hotel Property; provided, however, said cooperation by the City shall not include the City

guaranteeing any portion of the SBA Loan, or guaranteeing any portion of the Hampton Loan beyond the Two Hundred Thousand and No/100 Dollars (\$200,000.00) portion that the City previously agreed to guarantee.

**NOW, THEREFORE,** in consideration of the foregoing recitals, the mutual covenants and agreements herein made, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties hereto, the City and Midwest hereby agree as follows:

**ARTICLE I**  
**RECITALS AS PART OF AGREEMENT**

The Parties acknowledge that the statements and representations contained in the foregoing recitals are true and accurate, and incorporate such recitals into this Agreement as if fully set forth in this Article I.

**ARTICLE II**  
**OBLIGATIONS OF MIDWEST -**  
**CONDITIONS PRECEDENT TO CITY UNDERTAKINGS**

- 2.01 Conditions Precedent. Each of the obligations specified in this Article II shall be a condition precedent to the City's financial undertakings in this Agreement. The City shall have no financial obligation to Midwest under this Agreement until the satisfaction by Midwest of each and every condition of this Article II.
- 2.02 Construction of the Project.
- (A) As the Project consists of exterior improvements to the Hotel, Midwest shall be required to go through the City's final plan revision process (the "FPR Process"), relative to the façade and portico improvements portion of the Project, as well as any parking lot reconfiguration and signage changes that Midwest is proposing to go along with the Project, prior to commencing construction thereof, and shall be subject to the outcome of said process in proceeding with the Project.

- (B) Upon completion of the FPR Process, Midwest shall submit building permit applications for the Project to the City and, provided said building permit applications are for construction that is in compliance with the outcome of the FPR Process, and are otherwise in compliance with all applicable City codes, rules, regulations and ordinances, the City shall not unreasonably withhold the issuance of the building permits relative to the Project.
- (C) Unless delayed by matters not within the control of Midwest, and subject to the *force majeure* provisions of Section 5.01 hereof, construction of the Project shall commence on or before February 1, 2015. For purposes of this subsection (C), compliance with the outcome of the FPR Process shall be deemed to be within the control of Midwest.
- (D) Midwest shall pass all final City inspections relative to the substantial completion of the Project, as determined by the City's chief building official in his/her reasonable discretion, on or before June 1, 2015.
- (E) The Project shall be built in accordance with all applicable ordinances, rules and regulations of the City. Midwest shall not knowingly cause or permit the existence of any violation of City ordinances, rules or regulations, including, but not limited to, the Building Code, the Zoning Ordinance, the Fire Code, and all rules and regulations thereunder applicable to the Hotel, the Hotel Property and the Project.
- (F) Midwest shall require its contractors and subcontractors to pay the prevailing rate of wages (as established under 820 ILCS 130/0.01 *et seq.* – the "Prevailing Wage Act") to all of their workers involved with the Project, and shall comply with the Prevailing Wage Act, regardless of whether such prevailing wages are required to be paid under Illinois law, or whether the Prevailing Wage Act is required to be followed relative to the Project. The Parties acknowledge that this



provision shall apply to the Project only, and not to the Interior Improvements, which are not being funded in any way by the City, and are not subject to this Agreement.

2.03 City Hotel Occupancy Tax Information.

- (A) Midwest shall comply in all respects with the City's Hotel Occupancy Tax regulations, as set forth in Sections 44-191 through 44-202 of Chapter 44 of the Aurora City Code of Ordinances, relative to the operation of the Hotel, including, but not limited to, the filing of all required tax returns and the remittance of all required tax payments. Midwest represents and warrants that all such information produced to the City pursuant to this provision is, and will be at all times in the future, true and accurate, and agrees and acknowledges that the City relies on the truth and accuracy of said information as a basis for its entering into this Agreement.
- (B) Upon request, the City shall have the right to audit Midwest's records of Project costs and sales, and Midwest Hotel Occupancy Taxes (as defined in Article III below) returns, from time-to-time. The City hereby represents and warrants that any and all information regarding Midwest Hotel Occupancy Taxes (as defined in Article III below) shall be confidential and used only for the purpose of calculating any amounts due and owing to Midwest pursuant to this Agreement. The City and Midwest acknowledge that Midwest's sales and Midwest Hotel Occupancy Taxes (as defined in Article III below) information is financial information obtained from a business that is proprietary, privileged and/or confidential, and that disclosure of the sales and Midwest Hotel Occupancy Taxes (as defined in Article III below) information would cause competitive harm to Midwest, and, therefore, would not be subject to disclosure pursuant to a request under the Illinois Freedom of Information Act, 5 ILCS 140/1, *et seq.*, as amended (the

"FOIA"). Midwest agrees to reimburse the City for the reasonable attorneys' fees and costs incurred by the City in responding to any requests for information under FOIA, subpoena or otherwise relating to this Agreement or Midwest's sales and Midwest Hotel Occupancy Taxes (as defined in Article III below) information supplied under this Agreement. Midwest agrees that the City's compliance with any court order to produce information shall not subject the City to any liability hereunder for said information release.

- 2.04 Guaranteed Occupancy and Operation of the Hotel. Midwest agrees that it shall occupy and operate the Hotel in its present location for a minimum of ten (10) years from the Commencement Date (as defined in Article III below). Midwest further agrees that the City shall receive Hotel Occupancy Taxes (as defined in Article III below) from the Hotel for a minimum of ten (10) years from the Commencement Date (as defined in Article III below).
- 2.05 Real Estate Taxes and Other Charges. Midwest hereby covenants and agrees to promptly pay or cause to be paid before becoming delinquent, subject to any appeal rights, any and all real estate taxes and governmental charges of general applicability that may at any time be lawfully finally assessed with respect to the Project, the Hotel or the Hotel Property.
- 2.06 Certification of Project Costs. Midwest shall supply the City with a statement of the costs of the Project certified as true by an officer of Midwest, along with all contractor's statements and lien waivers in relation thereto, copies of the loan documents relative to the SBA Loan obtained by Midwest relative to the Project, copies of all statements relative to any SBA Loan, which set forth the amount of interest actually paid by Midwest relative to any SBA Loan, and such other information reasonably requested by the City's Engineer or Chief Financial Officer/City Treasurer. Midwest represents and warrants that all such information produced to the City pursuant to this provision is, and will be at all

times in the future, true and accurate, and agrees and acknowledges that the City may, and does, rely on the truth and accuracy of said information as a basis for its entering into this Agreement.

2.07 No Breach. Midwest shall not be in breach of any term of this Agreement, at any time during the term hereof.

**ARTICLE III**  
**CITY OBLIGATIONS AND UNDERTAKINGS**

3.01 Economic Assistance.

(A) Definitions.

(1) "Hotel Occupancy Taxes" shall be those taxes received by the City pursuant to the City's Hotel Occupancy Tax, as provided for by Sections 44-191 through 44-202 of Chapter 44 of the Aurora City Code of Ordinances.

(2) "Maximum Reimbursement" shall be Five Hundred Thousand and No/100 Dollars (\$500,000.00), or the actual costs incurred by Midwest relative to the Project, whichever is less, plus Midwest's actual interest costs, at a rate not to exceed four and seventy-five hundredths percent (4.75%) per annum, relative to that portion of the Loans procured by Midwest, that is necessary to finance the costs of the Project (the "Interest Cost Reimbursement"). The Parties acknowledge that Midwest will be financing the cost of the Project and the Interior Improvements with the proceeds of the Loans. As such, the Interest Cost Reimbursement shall be calculated using the following formula:

$$\frac{\text{Actual Costs of the Project}}{\text{Total Principal Amount of the Loans}} \times \text{Interest Paid on the Loans} = \text{Interest Cost Reimbursement}$$

In the event that the interest rate on the SBA Loan and/or the Private Loan exceeds four and seventy-five hundredths percent (4.75%) per annum, the "Interest Paid on the Loans" amount, for purposes of the foregoing formula, shall be reduced to an amount which only takes into account that portion of the interest paid on the SBA Loan and/or the Private Loan applicable to an interest rate of four and seventy-five hundredths percent (4.75%) per annum. For example, if the interest rate paid on the Private Loan is nine and fifty hundredths percent (9.50%) per annum, only half of the interest paid on the Private Loan shall be used for determining the "Interest Paid on the Loans" amount in the foregoing formula.

- (3) "Midwest Hotel Occupancy Taxes" shall be those Hotel Occupancy Taxes generated by the Hotel, which are actually received by the City after the Commencement Date, up to the Maximum Reimbursement, during the term of this Agreement.

(B) Assistance.

Upon satisfaction by Midwest of all of the conditions stated in Article II of this Agreement, the City shall rebate to Midwest the Midwest Hotel Occupancy Taxes. Said payments shall be made by the City to Midwest for a period of ten (10) years from the Commencement Date, as defined in Paragraph 3.02 below (the "Revenue Sharing Term"), or until the amount of the Maximum Reimbursement has been paid to Midwest, whichever occurs first.

3.02 Commencement Date. Midwest shall give the City written notice that it has satisfied all of the conditions of Article II of this Agreement, and that it is electing to commence the Revenue Sharing Term. The City shall thereafter confirm whether Midwest has satisfied all of the conditions of Article II of this Agreement and determine whether Midwest is

entitled to receive the Midwest Hotel Occupancy Taxes under this Agreement. Upon verification by the City that Midwest has satisfied all of the conditions of Article II of this Agreement, the City shall notify Midwest of said verification, and the date on which the Revenue Sharing Term shall commence, which shall be the first day of the month following the month in which said verification notice is sent to Midwest by the City (the "Commencement Date").

- 3.03 Payment Procedure. After the Commencement Date, so long as the City has confirmed that Midwest has satisfied and continues to satisfy all the conditions of Article II of this Agreement, during the Revenue Sharing Term, the City shall pay to Midwest the Midwest Hotel Occupancy Taxes within forty five (45) days of receipt of Midwest Hotel Occupancy Taxes.

#### **ARTICLE IV** **SPECIAL CONDITIONS**

- 4.01 Common Driveway Realignment and Easements. Midwest shall not be responsible for any costs associated with any realignment of the common driveway serving Two Brothers, the Bus Pulse Point and the Hotel, with the City covering any such costs, if any, on behalf of Midwest; however, Midwest shall grant the easements over the Hotel Property as referenced on Exhibit D attached hereto and made part hereof, and shall grant any and all easements over the Hotel Property that are necessary to facilitate the realignment of the common driveway, at no cost to the City or any other person or entity. Attached hereto as Exhibit E, and made part hereof, is a diagram of the proposed realignment of the common driveway, with those areas, in relation to which Midwest shall not be responsible for the costs thereof, highlighted.

#### **ARTICLE V** **GENERAL PROVISIONS**

- 5.01 Delay and Force Majeure. For the purposes of any of the provisions of this Agreement, neither the City nor Midwest, as the case may be, nor any successor in interest, shall be

considered in breach of, or default in, its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, shortage of material or labor, delay in the delivery of materials, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain or storms or below freezing temperatures of abnormal degree or quantity for an abnormal duration, tornados and other events or conditions beyond the reasonable control of the Party affected, which in fact interfere with the ability of such Party to discharge its respective obligations hereunder.

5.02 Assignment of Agreement. This Agreement may be assigned by Midwest to a bonafide purchaser of its business, with the prior written consent of the Village, not to be unreasonably withheld, provided:

- (A) at least thirty (30) days prior written notice of such assignment is given to the City; and
- (B) that the assignee agrees to be bound by all of the terms, conditions and provisions of this Agreement, including, but not limited to, the City's default remedies.

5.03 Midwest Authority. Midwest hereby represents and warrants that it is a corporation authorized to do business in, and in good standing with, the State of Illinois. Midwest further represents and warrants that all corporate action necessary to make Midwest's obligations hereunder enforceable against Midwest have been taken, and that no further approvals or actions are required.

5.04 Defaults; Remedies.

- (A) In the event of any default under or violation of this Agreement, the Party not in default or violation shall serve notice upon the Party in default or violation, which notice shall be in writing and shall specify the particular violation or default. Each Party shall have the right to cure any violation of this Agreement or default within

thirty (30) days from written notice of such default. In the event of an uncured default by Midwest, the City may terminate this Agreement. In the event of default by the City of its obligations to Midwest provided for in Article III, Midwest's sole and exclusive remedy shall be to seek specific performance from a court of competent jurisdiction. Midwest will not be entitled to any monetary damages from the City, and hereby expressly waives any claim for monetary damages.

(B) In the event that Midwest fails to meet its obligations as set forth in Paragraph 2.04 above, the City shall have the following additional remedies, after giving Midwest the notice required by Paragraph 5.04(A) above:

- (1) In the first (1st) year after the Commencement Date, the City shall be repaid one-hundred percent (100%) of any sums paid or rebated to Midwest pursuant to this Agreement.
- (2) In the second (2nd) year after the Commencement Date, the City shall be repaid ninety percent (90%) of any sums paid or rebated to Midwest pursuant to this Agreement.
- (3) In the third (3rd) year after the Commencement Date, the City shall be repaid eighty percent (80%) of any sums paid or rebated to Midwest pursuant to this Agreement.
- (4) In the fourth (4th) year after the Commencement Date, the City shall be repaid seventy percent (70%) of any sums paid or rebated to Midwest pursuant to this Agreement.
- (5) In the fifth (5th) year after the Commencement Date, the City shall be repaid sixty percent (60%) of any sums paid or rebated to Midwest pursuant to this Agreement.
- (6) In the sixth (6th) year after the Commencement Date, the City shall be repaid fifty percent (50%) of any sums paid or rebated to Midwest pursuant to this Agreement.
- (7) In the seventh (7th) year after the Commencement Date, the City shall be repaid forty percent (40%) of any sums paid or rebated to Midwest pursuant to this Agreement.
- (8) In the eighth (8th) year after the Commencement Date, the City shall be repaid thirty percent (30%) of any sums paid or rebated to Midwest pursuant to this Agreement.

- (9) In the ninth (9th) year after the Commencement Date, the City shall be repaid twenty percent (20%) of any sums paid or rebated to Midwest pursuant to this Agreement.
- (10) In the tenth (10th) year after the Commencement Date, the City shall be repaid ten percent (10%) of any sums paid or rebated to Midwest pursuant to this Agreement.
- (11) In addition to the foregoing, the City shall be entitled to cease any further payments under this Agreement to Midwest, and this Agreement shall be null and void.

(C) Midwest shall make any repayment owed to the City under this Agreement within thirty (30) days of a written demand from the City. Any amounts not repaid within said thirty (30) day period shall accrue interest at the rate of two percent (2%) per month, with the minimum interest payment being for a one (1) month period.

5.05 Notices. All notices and requests required pursuant to this Agreement shall be sent by certified mail, return receipt requested, postage prepaid, or by personal or overnight delivery, as follows:

If to Midwest: Midwest Management II, Inc.  
111 North Broadway Street  
Aurora, Illinois 60505  
Attn: Rocco W. Pintozzi

with a copy to: Kinnally, Flaherty, Krentz, Loran, Hodge & Masur, P.C.  
2114 Deerpath Road  
Aurora, Illinois 60506  
Attn: Patrick M. Kinnally / Gerald K. Hodge

If to the City: City Clerk  
City of Aurora  
44 East Downer Place  
Aurora, Illinois 60507

with copies to: Corporation Counsel  
City of Aurora  
44 East Downer Place  
Aurora, Illinois 60507

and: Klein, Thorpe and Jenkins, Ltd.  
20 N. Wacker Drive, Suite 1660  
Chicago, Illinois 60606  
Attn: Thomas P. Bayer / Gregory T. Smith



or at such other addresses as either Party may indicate in writing to the other Party. Service by personal or overnight delivery shall be deemed to occur at the time of the delivery, and service by certified mail, return receipt requested, shall be deemed to occur on the third day after mailing.

- 5.06 Law Governing. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. Venue for any legal action brought by either Party as a result of entering into the Agreement shall be in the Circuit Court of Kane County, Illinois.
- 5.07 Time. Subject to Section 5.01 hereof, time is of the essence under this Agreement and all time limits set forth herein are mandatory, and cannot be waived except by a lawfully authorized and executed written waiver by the Party excusing such timely performance.
- 5.08 Limitation of Liability. Notwithstanding anything herein contained to the contrary by implication or otherwise, any obligations of the City created by or arising out of this Agreement shall not be a general debt of the City on, or a charge against, the City's general credit or taxing powers, but shall be a limited obligation payable solely out of the Midwest Hotel Occupancy Taxes as set forth in Article III, and shall further be limited to the actual sum of money paid to Midwest by the City.
- 5.09 No Waiver or Relinquishment of Right to Enforce Agreement. Failure of either Party to this Agreement to insist upon the strict and prompt performance of the terms covenants, agreements, and conditions herein contained, or any of them, upon the other Party imposed, shall not constitute or be construed as a waiver or relinquishment of the Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.
- 5.10 Article and Paragraph Headings. All Article and Paragraph headings or other headings in this Agreement are for the general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.

- 5.11 City's Authorization to Execute. The Mayor and City Clerk of the City hereby warrant that they have been lawfully authorized by the City Council to execute this Agreement.
- 5.12 Amendment. This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between Midwest and the City relative to the subject matter thereof. There are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than as herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties hereto unless authorized in accordance with law and reduced to writing and signed by them.
- 5.13 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which, taken together, shall constitute one and the same instrument.
- 5.14 Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein.
- 5.15 Effective Date. The date on which the last of the Parties executes this Agreement shall be deemed to be the Effective Date of this Agreement, and shall be filled in as the Effective Date on page one (1) of this Agreement.

**THE REMAINDER OF THIS PAGE  
HAS INTENTIONALLY BEEN LEFT BLANK**

**City of Aurora,**  
an Illinois home rule municipal corporation

By:   
Thomas Weisner, Mayor

Date: December 22, 2014

**Midwest Management II, Inc.,**  
an Illinois corporation

By:   
Rocco W. Pintozzi, President

Date: 12/9/14

**ATTEST:**

By:   
Isabel Kodron, City Clerk

Date: December 22, 2014

**ATTEST:**

By:   
Karen Pintozzi, Secretary

Date: 12/9/14

**EXHIBIT A-1**

**Legal Description of the Hotel Property**

PARCEL ONE:

LOT 2 IN ROUNDHOUSE SUBDIVISION, AURORA, KANE COUNTY, ILLINOIS IN THE CITY OF AURORA, KANE COUNTY ILLINOIS.

PARCEL TWO:

NON-EXCLUSIVE EASEMENTS FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL ONE, AS CREATED BY DECLARATION OF EASEMENTS RECORDED SEPTEMBER 14, 1994 AS DOCUMENT 94K071180 RE-RECORDED JULY 31, 1996 AS DOCUMENT 96K054780 OVER, UPON AND ACROSS EASEMENT AREA TWO, AS THEREIN DESCRIBED, IN KANE COUNTY, ILLINOIS.

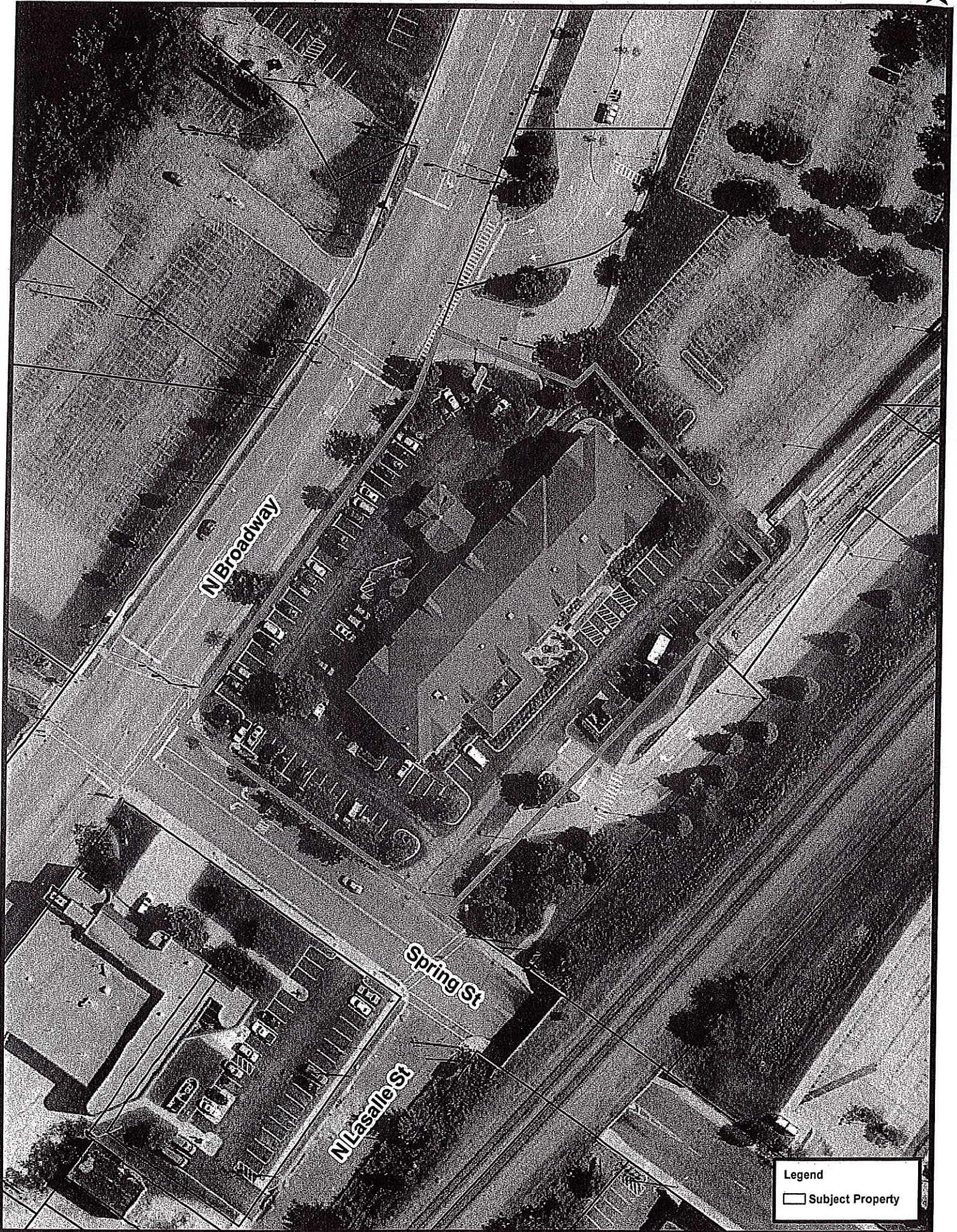
PIN: 15-22-409-001-0000

COMMONLY KNOWN AS: 111 NORTH BROADWAY STREET, AURORA ILLINOIS 60505

**EXHIBIT A-2**

**Depiction of the Location of the Hotel Property**

(attached)



**GROUP EXHIBIT B**

**Description and Depiction of the Project**

Midwest Plans on Remodeling and Rebranding 111 N. Broadway with a total renovation from top to bottom.

Extensive Remodeling to the Exterior Facade, adding Natural Stone Finishes. Removing the false dormers, and replacing the existing roof, with one more complimentary with the Roundhouse.

In addition, changing the Porte-cochere to one that is a standard for the brand. Adding a more utilitarian finish that compliments the Roundhouse look and feel.

Replace the up lighting with brand specific up lighting, signifying to guests of their arrival at a Holiday Inn Express and Suites.

Green practices:

Replace remaining Exterior lighting with LED.

Re-lamp or replace interior lighting with LED.

Replacing the Commercial Washer with a water saving, energy efficient, polymer bead washer. Replacing this washer converts the existing hot water requirement from 140 gallon up to 20 times per day to a mere 40 gallons (Cold) 20 times per day. Saving over 2000 gallons per day and reducing the overall hotel carbon footprint.

The public areas will also receive a refreshed look and feel with new wood look flooring. Utilizing eco green tiles made from recycled products.

Replace all legacy lighting with new LED lighting

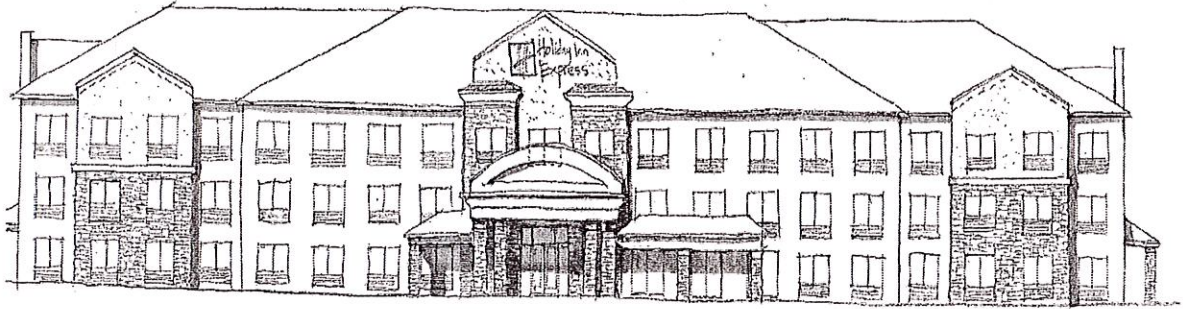
Each guest room suite will be refreshed with new soft goods and new paint. Beds, phones, Carpets and furniture and lighting. All meeting the new scheme of the Holiday Inn Express and Suites brand. Replacing Hallway Carpeting, new Wallpaper and Furniture throughout. All meeting the new modern scheme of the brand.

Overall the look and feel of the hotel will be a dramatic change, with none of the old design kept behind. The only constant will be the great customer service, ranking the Comfort Suites number #1 for social media overall for Aurora, and number #2 on Trip Advisor Second only to the Hampton Inn and Suites (Owned by Midwest)

Our plan is to start as soon as possible with drawings being prepared soon after approval of the necessary agencies and Holiday Inn Corporate. Completion in Late May 2015 or almost 20 years after the hotel originally opened in downtown Aurora in 1995 under the same ownership group.

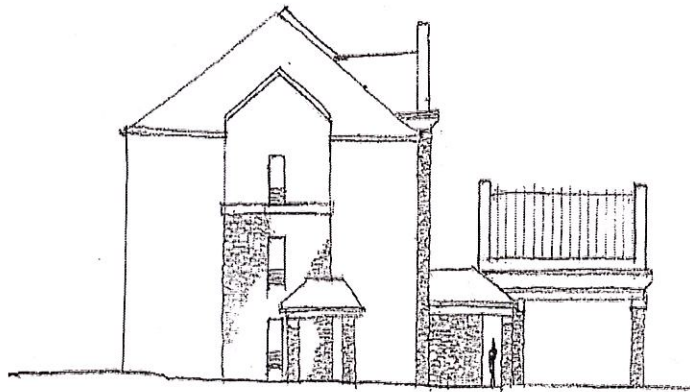
Our \$2Million re investment in 111 N. Broadway, shows Midwest's commitment to the redevelopment plan for Aurora's Downtown. "We believe in the downtown, and its resurgence. We feel that the Downtown is at a Tipping Point period of breakout Redevelopment. Transit Oriented Development like 111 N. Broadway is key to this redevelopment and we look forward to this reinvestment in our hotel here in Aurora." Gretchen Timm, General Manager





FRONT ELEVATION

111 N. BROADWAY II



SIDE ELEVATION

111 N. BROADWAY II

111 N. Broadway

**EXHIBIT C**

**Estimated Project Costs and Interior Improvements Costs  
(Separated to Indicate  
the Costs Applicable to the Project and  
the Costs Applicable to the Interior Improvements)**

## Renovation Costs

### Hard costs

|  |                        |                |
|--|------------------------|----------------|
| FF&E                                   | \$ 575,000.00          | 35.20%         |
| New Windows & additional insulation    | \$ 215,000.00          | 13.20%         |
| New Architectural roof                 | \$ 127,000.00          | 7.80%          |
| Millwork                               | \$ 85,000.00           | 5.20%          |
| Framing & Drywall - Suites & Lobby     | \$ 84,000.00           | 5.20%          |
| Foundation, framing, exterior & façade | \$ 54,000.00           | 3.30%          |
| Portico construction & finishes        | \$ 47,000.00           | 2.90%          |
| Exterior drainage-new portico          | \$ 10,000.00           | 0.60%          |
| Interior painting, wallpaper & install | \$ 55,000.00           | 3.40%          |
| Tile - install and materials           | \$ 47,500.00           | 2.90%          |
| Steel and Masonry Exterior             | \$ 42,000.00           | 2.60%          |
| Tub Surrouonds - install and materials | \$ 35,000.00           | 2.20%          |
| Parking lot seal/stripe                | \$ 30,000.00           | 1.80%          |
| Exterior Signs                         | \$ 30,000.00           | 1.80%          |
| Carpet - install                       | \$ 23,000.00           | 1.40%          |
| Labor for cleanup                      | \$ 21,000.00           | 1.30%          |
| Vanities - install and materials       | \$ 20,000.00           | 1.20%          |
| FF&E install                           | \$ 15,000.00           | 0.90%          |
| Public Space Granite                   | \$ 15,000.00           | 0.90%          |
| Exterior painting and powerwash        | \$ 12,000.00           | 0.70%          |
| Interior Signage                       | \$ 12,000.00           | 0.70%          |
| Tubs                                   | \$ 12,000.00           | 0.70%          |
| Lighting                               | \$ 11,000.00           | 0.70%          |
| Door handles/covers                    | \$ 11,000.00           | 0.70%          |
| Accessories - Bathrooms                | \$ 10,000.00           | 0.60%          |
| Linen                                  | \$ 8,000.00            | 0.50%          |
| HVAC                                   | \$ 6,000.00            | 0.40%          |
| Landscaping                            | \$ 5,500.00            | 0.30%          |
| Corner Guards                          | \$ 5,000.00            | 0.30%          |
| Site Lighting                          | \$ 4,000.00            | 0.20%          |
| Accoustical Tile                       | \$ 4,000.00            | 0.20%          |
| PTACS w/remote thermostat              | \$ 3,000.00            | 0.20%          |
| <b>Total</b>                           | <b>\$ 1,634,000.00</b> | <b>100.00%</b> |

### Soft Costs

|                               |                      |                |
|-------------------------------|----------------------|----------------|
| Holiday Inn Application Fee   | \$ 55,000.00         | 11.50%         |
| Architect                     | \$ 55,000.00         | 11.50%         |
| Contingency                   | \$ 120,000.00        | 48.40%         |
| Life Safety                   | \$ 37,000.00         | 7.80%          |
| Construction Consultant       | \$ 25,000.00         | 5.30%          |
| Marketing                     | \$ 15,000.00         | 3.20%          |
| Holiday Inn Training Academy  | \$ 12,000.00         | 2.50%          |
| Legal Fees                    | \$ 12,000.00         | 2.50%          |
| Bank Fees                     | \$ 11,000.00         | 2.30%          |
| Choice Hotel Termination Fees | \$ 8,000.00          | 1.70%          |
| Appraisal                     | \$ 6,000.00          | 1.30%          |
| Uniforms                      | \$ 5,000.00          | 1.00%          |
| Printing & supplies           | \$ 5,000.00          | 1.00%          |
| <b>Total</b>                  | <b>\$ 366,000.00</b> | <b>100.00%</b> |

|                         |                        |                |
|-------------------------|------------------------|----------------|
| <b>Total Hard Costs</b> | <b>\$ 1,634,000.00</b> | <b>76.10%</b>  |
| <b>Total soft Costs</b> | <b>\$ 366,000.00</b>   | <b>23.90%</b>  |
| <b>Total</b>            | <b>\$ 2,000,000.00</b> | <b>100.00%</b> |

**EXHIBIT D**

**Temporary Construction Easement and  
Permanent Ingress/Egress Easement**

# Exhibit "D" Easements



-  Temporary Construction Easement
-  Permanent Ingress/Egress Easement

**EXHIBIT E**

**Depiction of the Common Driveway Realignment,  
and those Portions Thereof in Relation to Which  
Midwest Will Not Be Responsible for the Costs Thereof**

Preliminary Depiction

