



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. RI4-321  
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

Kristina Bohman  
Alderman Bohman, Ward 1

[Signature]  
Alderman Mesiacos, Ward 3

John A. Peters  
Alderman Peters, Ward 5

[Signature]  
Alderman Hart-Burns, Ward 7

[Signature]  
Alderman Bugg, Ward 9

[Signature]  
Alderman Irvin, At Large

[Signature]  
Alderman Garza, Ward 2

[Signature]  
Alderman Donnell, Ward 4

[Signature]  
Alderman Saville, Ward 6

[Signature]  
Alderman Mervine, Ward 8

[Signature]  
Alderman Johnson, Ward 10

[Signature]  
Alderman O'Connor, At Large

ATTEST: [Signature]  
City Clerk

[Signature]  
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

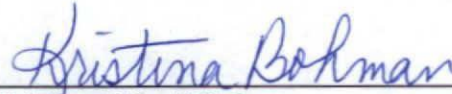
Submitted By



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 \_\_\_\_ day of \_\_\_\_\_, 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 wavier 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)



N Broadway

Spring St

N Lasalle St

Legend

 Subject Property

**GROUP EXHIBIT B**

**Description and Depiction of the Project**

**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 Surrounds - 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%
Total	\$ 1,634,000.00	100.00%

### 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%
Total	\$ 366,000.00	100.00%

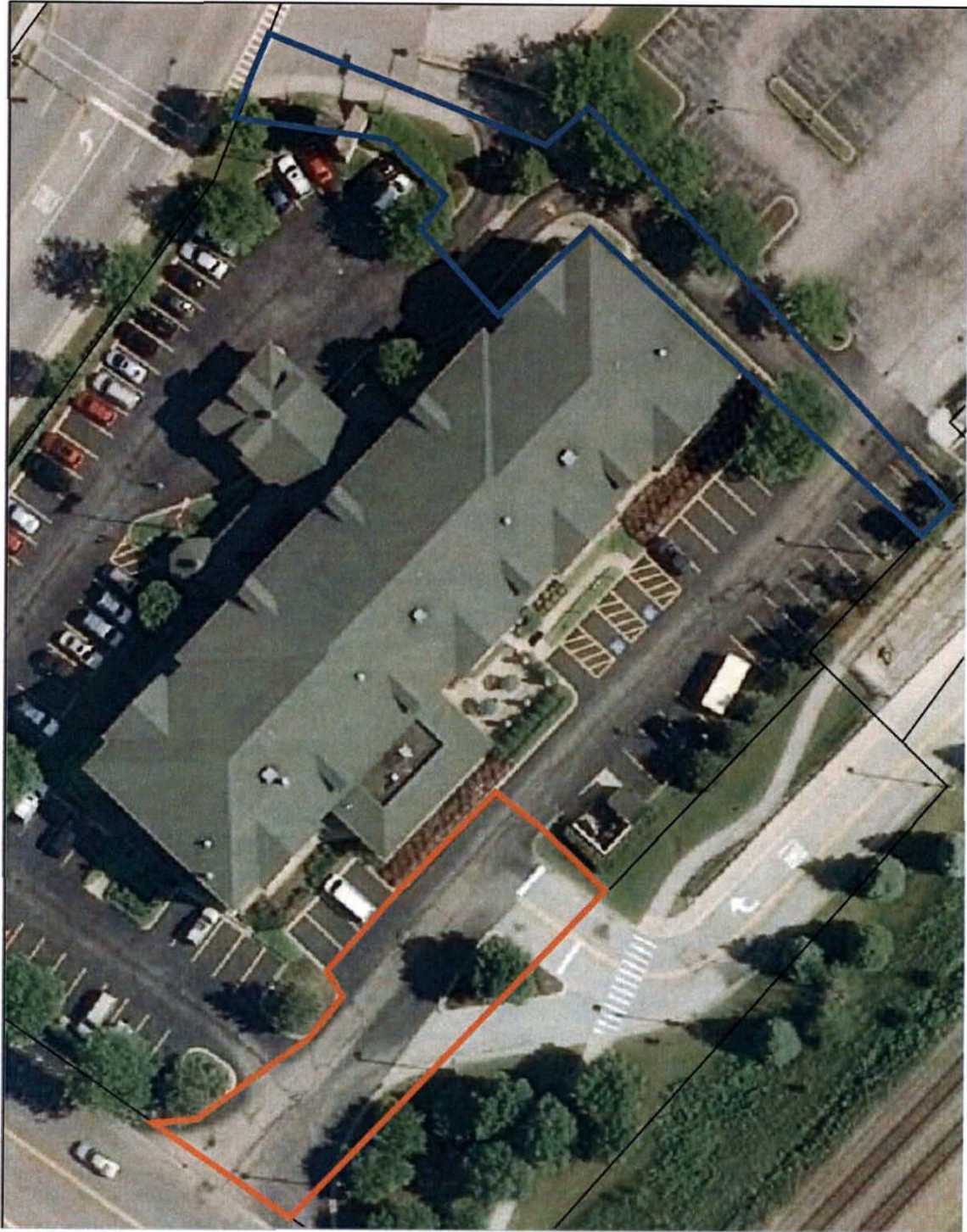
Total Hard Costs	\$ 1,634,000.00	76.10%
Total soft Costs	\$ 366,000.00	23.90%
Total	\$ 2,000,000.00	100.00%



**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**



CITY OF AURORA, ILLINOIS

RESOLUTION NO. R15-280  
DATE OF PASSAGE October 13, 2015

A Resolution Rescinding Resolution R14-321 and Authorizing the Execution of a Revised Hotel Occupancy Tax Rebate Agreement with Midwest Management II, Inc., for the Property Located 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 City of Aurora previously approved, as Resolution R14-321, a Hotel Occupancy Tax Rebate Agreement with Midwest Management II, Inc. for the remodeling of the existing Comfort Suites Hotel into a Holiday Inn Express and Suites, and

WHEREAS, project costs for the renovation has substantially increased due to unexpected costs since the approval of the previous agreement, and

WHEREAS, The City of Aurora finds that it is in the best interests of the City and its residents to revise the agreement to provide the incentive as outlined in the previous agreement as upfront funding rather than the previous pay as you go funding, 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).

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Aurora, Illinois, as follows: 1) That Resolution R14-321 be hereby rescinded in its entirety, and 2) that the revised Hotel Occupancy Tax Rebate Agreement with Midwest Management II, Inc., attached hereto as Exhibit A, be approved

RESOLUTION NO. R15-280  
DATE OF PASSAGE October 13, 2015

PASSED AND APPROVED ON October 13, 2015

AYES 12 NAYS 0 NOT VOTING 0 ABSENT 0

Kristina Bohman  
Alderman Bohman, Ward 1

[Signature]  
Alderman Mesiacos, Ward 3

Carl Franco  
Alderman Franco, Ward 5

[Signature]  
Alderman Hart-Burns, Ward 7

[Signature]  
Alderman Bugg, Ward 9

[Signature]  
Alderman Irvin, At Large

Juan Garza  
Alderman Garza, Ward 2

[Signature]  
Alderman Donnell, Ward 4

Michael Saville  
Alderman Saville, Ward 6

[Signature]  
Alderman Mervine, Ward 8

Lynne M. Johnson  
Alderman Johnson, Ward 10

[Signature]  
Alderman O'Connor, At Large

ATTEST:

Jara Townsend  
City Clerk

Thomas Weisner  
Mayor

15.00820

**RECOMMENDATION**

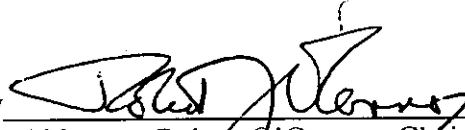
TO: THE COMMITTEE OF THE WHOLE

FROM: THE FINANCE COMMITTEE


The Finance Committee at the regular scheduled Finance Meeting on Tuesday, September 22, 2015 Recommended APPROVAL of A Resolution Rescinding Resolution R14-321 and Authorizing the Execution of a Revised Hotel Occupancy Tax Rebate Agreement with Midwest Management II, Inc., for the Property Located at 111 North Broadway

The Vote 3-0

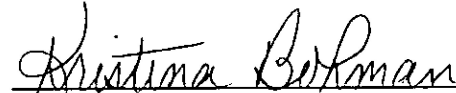
Submitted By



Alderman Robert O'Connor, Chairman



Alderman Rick Mervine



Alderman Kristina "Tina" Bohman

\_\_\_\_\_  
Alderman Ted Mesiacos, alternate

Dated this 22nd day of September, 2015

**HOTEL OCCUPANCY TAX  
ECONOMIC INCENTIVE AGREEMENT**

This Hotel Occupancy Tax Economic Incentive Agreement (the "Agreement") is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2015 (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 60505 (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 is the legal owner of record of the Hotel Property.
- E. Midwest intends to improve the Hotel exterior, by installing a new roof, upgrading the portico and the façade of the Hotel, and by installing sound abatement improvements, consisting of 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.

- F. The projected cost of the Project is anticipated to be Eight Hundred Thirty-Two Thousand Five Hundred Fifty-Eight and No/100 Dollars (\$832,558.00), as more fully set forth on Exhibit C attached hereto and made part hereof, and in combination with the costs of other interior improvements to the Hotel which are not part of the Project, but which will be done at the same time as the Project, Midwest anticipates spending approximately Two Million and No/100 Dollars (\$2,000,000.00) on the remodeling and rehabilitation of the Hotel and Hotel Property.
- G. The Parties anticipate that the Project will enhance the City's real estate, sales tax and hotel occupancy tax bases, by creating additional overnight stays at the Hotel.
- H. 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.
- I. 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 reimburse Midwest up to Five Hundred Thousand and No/100 Dollars (\$500,000.00), from Hotel Occupancy Taxes, (as defined in Article III below), relative to the construction of the Project subject to the other terms and conditions of this Agreement.

**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**

2.01 Continuing Obligation. Each of the obligations specified in this Article II shall be fully complied with by Midwest during the term of this Agreement.

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) On or before September 16, 2015, Midwest shall have provided the City with evidence, in a form satisfactory to the City, that Midwest has obtained the financing necessary to complete the Project.
- (D) 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 have commenced on or before September 15, 2015. For purposes of this Section (D), compliance with the outcome of the FPR Process shall be deemed to be within the control of Midwest.

- (E) 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 January 10, 2016 (the "Completion Certification").
- (F) 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.
- (G) 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. 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 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. After the Effective Date, Midwest agrees to pay to the City a sum not to exceed Five Thousand and No/100 Dollars (\$5,000.00) for the costs of its outside legal counsel to draft and finalize this Agreement, and to create a Project completion checklist for the City, upon submittal to Midwest of a copy of the billing from the City's outside legal counsel.

- 2.04 Guaranteed Occupancy and Operation of the Hotel. It shall be the obligation of Midwest, during such time period as it owns the Hotel, as well as the obligation of any subsequent owners of the Hotel, during the Term of this Agreement (as defined in Section 5.18 below), to occupy and operate the Hotel in its present location for ten (10) years from the

date of the Completion Certification, or until such time as the principal amount of the City Mortgages (as defined in Article III below) has been fully forgiven and released, as provided for in Section 3.01(B)(4) below, whichever occurs last. Midwest agrees that, provided the Hotel is open and operational, 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 date of the Completion Certification. The payment of said Hotel Occupancy Taxes (as defined in Article III below) shall be in accordance with the applicable provisions of the Aurora City Code in relation thereto. Notwithstanding the foregoing, Midwest, or the then-owner of the Hotel Property and the Hotel, shall, subject to Section 5.02 below, have the right to sell and transfer the Hotel Property and the Hotel, provided that the assignee/purchaser shall assume all of the obligations of Midwest, or the then-owner of the Hotel Property and Hotel, under this Agreement, and agrees, in a written document provided to the City, to be bound by this Agreement. Upon such a sale and transfer of the Hotel Property and the Hotel, Midwest, or the subsequent owner of the Hotel Property and Hotel, as the case may be, shall then be released from all of its obligations under this Agreement, provided the assignee/purchaser assumes said obligations in writing as provided for herein.

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, 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 provision of this Agreement, at any time during the Term (as defined in Section 5.18 below) of this Agreement.

**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.
- (3) "Midwest Hotel Occupancy Taxes" shall be those Hotel Occupancy Taxes generated by the Hotel, which are actually received by the City after the Effective Date, and which are not rebated to Midwest by the City pursuant to any Hotel Occupancy Taxes grant program enacted by the City.

(B) Assistance.

- (1) Provided that Midwest has provided the City with the information/documentation required in Section 2.02(C) of this Agreement, the receipt of which the City acknowledges, and provided that Midwest is in receipt of all exterior Project building permits necessary for the Project,

the receipt of which Midwest and City acknowledges by Permit #15-0001826 issued by the City on August 10, 2015, the City will pay Midwest Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) towards the Maximum Reimbursement, from Hotel Occupancy Taxes, on the Effective Date. In the event said conditions have not been satisfied as of the Effective Date, the City shall make the aforementioned payment to Midwest as soon thereafter as the aforementioned conditions have been satisfied by Midwest.

- (2) Provided that Midwest has begun construction of the Project as provided for in Section 2.02(D) of this Agreement, and is actively pursuing construction of the Project so as to obtain the Completion Certification by the date referenced in Section 2.02(E) of this Agreement, the City will pay Midwest Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) towards the Maximum Reimbursement, from Hotel Occupancy Taxes, on January 11, 2016. In the event said conditions have not been satisfied as of January 11, 2016, the City shall make the aforementioned payment to Midwest as soon thereafter as the aforementioned conditions have been satisfied by Midwest.
- (3) Simultaneously with each payment referenced in Sections 3.01(B)(1) and (2) above, Midwest shall execute a mortgage and promissory note, and the City shall record said mortgage against the Hotel Property, in the amount of the payment made by the City to Midwest, which shall accrue interest at a rate of four and one-half percent (4.5%) annually, with said mortgages and promissory notes to be in substantially the forms attached hereto as EXHIBIT D and EXHIBIT E, respectively, and made part hereof, subject to such revisions as are necessary thereto to accurately reference

the payment and partial release provisions set forth in this subsection and Section 3.01(B)(4) below (the "City Mortgages"). Provided that Midwest is not in default under this Agreement, no payments of principal or interest under the City Mortgages shall be due and payable to the City by Midwest, although the same shall accrue. In no event, however, shall interest accrue on the unpaid interest. In the case of a default under this Agreement which is not timely cured by Midwest, or in the event that Midwest or the then owner of the Hotel Property fails to operate the Hotel as required by Section 2.04 of this Agreement, before the City Mortgages are fully released, as set forth in Section 3.01(B)(4) below, the entire principal amount of the City Mortgages, then remaining due, as well as all accrued interest thereon, shall become due and payable to the City. Upon the failure of Midwest or the then owner of the Hotel Property to pay all amounts of principal and interest due under said City Mortgages within thirty (30) days of a written demand by the City to pay same, the City shall be entitled to exercise any and all rights it may have at law to enforce this Agreement against Midwest or the then owner of the Hotel Property, and shall be entitled to foreclose on the City Mortgages.

- (4) A portion of the total combined principal amount of the City Mortgages, as well as any interest accrued on the entire remaining principal amount of the City Mortgages to date of the partial release, shall be forgiven and released by the City for each twelve (12) month period, after the issuance of the Completion Certification (as referenced in Section 2.02(E) above) for the Project, that Midwest or the then owner of the Hotel Property occupies the Hotel Property and operates the Hotel thereon. In this regard, the principal amount of the City Mortgages to be forgiven and

released by the City for each such twelve (12) month period shall be equal to the amount of Midwest Hotel Occupancy Taxes actually received by the City during said twelve (12) month period. The City agrees to deliver a written acknowledgment of the partial release of the City Mortgages, as provided in this subsection, to Midwest or the then owner of the Hotel Property, no later than thirty (30) days after each such twelve (12) month period.

- (5) In the event of a refinancing of the Hotel Property and/or the Hotel, the City agrees to subordinate the City Mortgages to the mortgage used for any such refinancing, provided that the appraisal of the Hotel Property and Hotel, used in relation to said refinancing, indicates a value for the Hotel Property and Hotel that is sufficient to cover both the amount of the refinancing mortgage and the then-remaining principal amount of the City Mortgages.
- (6) In the event that the documentation provided to the City by Midwest, pursuant to Section 2.06 above, reveals that Midwest spent less than Five Hundred Thousand and No/100 Dollars (\$500,000.00) on the Project, the difference between Five Hundred Thousand and No/100 Dollars (\$500,000.00) and the amount actually spent on the Project by Midwest shall be refunded by Midwest to the City, 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. Upon receipt of any such refund by the City, the second of the two City Mortgages, relative to the payment referenced in Section 3.01(B)(2) above, and the promissory note in relation thereto, shall be



reduced by the amount of said refund payment, and the Parties shall execute and record an appropriate amendment to said second of the two City Mortgages, and execute an appropriate amendment to the promissory note in relation thereto, as necessary to evidence said reduction in the principal amount thereof.

3.02 No Breach. The City shall not be in breach of any provision of this Agreement, at any time during the Term (as defined in Section 5.18 below) of this Agreement.

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

4.01 Common Driveway Realignment, Route 25 Access Improvements 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 (the "Common Driveway Realignment"), or for the Route 25 access improvements to the Hotel Property (the "Route 25 Improvements"), with the City covering all such costs, if any, on behalf of Midwest; however, upon full execution of this Agreement and payment by the City to Midwest of the Maximum Reimbursement, Midwest shall provide the City with the non-exclusive temporary construction easement and non-exclusive permanent ingress/egress easement over the Hotel Property, by executing a plat of easement in substantially the form attached hereto as Exhibit F and made part hereof (the "Plat of Easement"), to facilitate the Common Driveway Realignment and the Route 25 Improvements, with the final form of said Plat of Easement addressing the time frame for the construction of, the repair of any damage to the Hotel Property or Hotel as a result of, and indemnification of Midwest for liability and costs relating to, the Common Driveway Realignment and Route 25 Improvements, as well as such other terms and conditions as may be mutually agreed to by the Parties (the "Final Plat of Easement"). The Final Plat of Easement shall be in a form mutually acceptable to the Parties, with

said Final Plat of Easement to be attached hereto as Exhibit E, in lieu of the current Exhibit F, upon the recording of said Final Plat of Easement. Attached hereto as Exhibit G, and made part hereof, is a diagram of the proposed Common Driveway Realignment and the Route 25 Improvements. The City agrees to make every reasonable effort to provide, during the construction of the Common Driveway Realignment and the Route 25 Improvements, full and unrestricted access to and from the Hotel Property from both Route 25 and Spring Street.

#### **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, and by any subsequent owner of the Hotel Property and Hotel, to a bonafide purchaser of the Hotel Property and Hotel, provided:
- (A) at least thirty (30) days prior written notice of such assignment is given to the City; and

(B) that the assignee agrees, in a written document supplied by the City, to be bound by all of the terms, conditions and provisions of this Agreement, including, but not limited to, the City's default remedies.

Upon compliance with the foregoing, Midwest, and any subsequent owner of the Hotel Property and Hotel, shall then be released from any and all liability under this Agreement, and the City agrees to timely execute an amendment to this Agreement to reflect such release and assignment.

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. 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; provided, however, in the event such default cannot be cured within thirty (30) days, as long as the defaulting Party is exercising all due diligence to cure such default, the non-defaulting Party may not exercise any rights to enforce such default. In the event of an uncured default by Midwest, the City may exercise any and all rights and remedies it may have under law, exercise its right of foreclosure under Section 3.01(B)(3) above and/or terminate this Agreement. Notwithstanding any termination of this Agreement by the City, the City Mortgages shall remain in full force and effect until any amounts due thereunder have been paid to the City, or the City has foreclosed thereon. 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.

5.05 Mortgage Holder/City Agreements. In the event the City and the holder of any other mortgage on the Hotel Property enter into any subordination agreement or other inter-entity agreement relating to this Agreement or any of the City Mortgages, Midwest or the then owner of the Hotel Property shall have the right to approve any such agreement prior to its effective date.

5.06 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: The Law Offices of Thomas J. Hoffman  
870 Ryan Court  
Batavia, Illinois 60510  
Attn: Thomas J. Hoffman

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.

- 5.07 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.
- 5.08 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.
- 5.09 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 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 pursuant to this Agreement.
- 5.10 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 wavier 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.
- 5.11 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.
- 5.12 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.

- 5.13 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.
- 5.14 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which, taken together, shall constitute one and the same instrument.
- 5.15 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.
- 5.16 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.
- 5.17 Recording. This Agreement, and all amendments thereto, shall be recorded with the Kane County Recorder of Deeds at the expense of Midwest or of the then owner of the Hotel Property.
- 5.18 Term. This Agreement shall remain in full force and effect for a period of ten (10) years from the date of the Completion Certification, or until such time as the principal amount of the City Mortgages (as defined in Article III below) has been fully forgiven and released, as provided for in Section 3.01(B)(4) below, whichever occurs last.
- 5.19 Prior Agreement. The Parties agree that, as of the Effective Date, the prior Hotel Occupancy Tax Rebate Agreement, entered into by the Parties as of December 9, 2014, and approved pursuant to Resolution No. R-14-321, approved by the City on December 9, 2014, shall be terminated, and shall be of no further force or effect.

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

By: \_\_\_\_\_  
Thomas J. Weisner, Mayor

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Wendy McCambridge, City Clerk

Date: \_\_\_\_\_

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

By:   
Rocco W. Pintozzi, President

Date: 9/18/15

**ATTEST:**

By:   
Karen M. Pintozzi, Secretary

Date: 9/18/15

**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)

Aerial Photo (1:1,000):

N



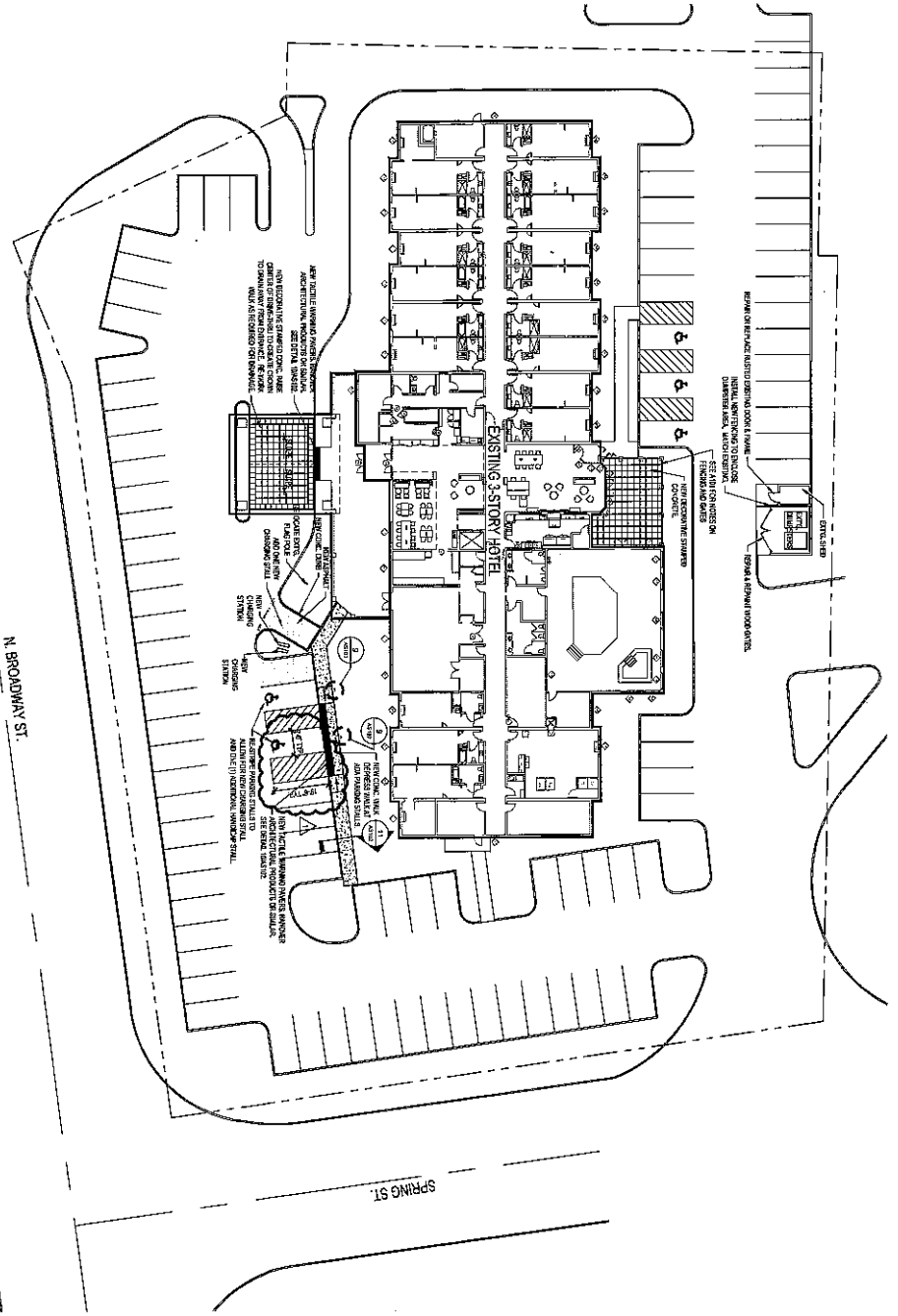
Legend  
□ Subject Property

## **GROUP EXHIBIT B**

### **Description and Depiction of the Project**

**Description:** The Project shall consist of the exterior improvements necessary to convert the current Comfort Suites Hotel on the Hotel Property to a Holiday Inn Express and Suites, consisting of eighty-three (83) suites. The exterior improvements consist of: replacing the roof and the windows on the Hotel; upgrading the portico on, and façade of, the Hotel; lighting improvements; signage improvements; and performing site improvement, including landscaping improvements.

**Depiction:** (see attached)



1 ARCHITECTURAL SITE PLAN  
 N BROADWAY ST  
 SPRING ST

**GENERAL NOTES:**

1. All work shall be in accordance with the City of Aurora and State of Illinois codes and regulations.
2. The contractor shall be responsible for obtaining all necessary permits from the City of Aurora and State of Illinois.
3. The contractor shall be responsible for maintaining access to all adjacent properties at all times.
4. The contractor shall be responsible for protecting all existing utilities and structures on the site.
5. The contractor shall be responsible for maintaining the site in a safe and sanitary condition at all times.
6. The contractor shall be responsible for removing all debris and materials from the site upon completion.
7. The contractor shall be responsible for providing all necessary safety measures on the site.
8. The contractor shall be responsible for providing all necessary insurance coverage.
9. The contractor shall be responsible for providing all necessary bonding.
10. The contractor shall be responsible for providing all necessary permits.

DATE PLOTTED	7/2/2018
PROJECT NO.	14-14-369
DRAWN BY	JMK
CHECKED BY	JDC
SCALE	AS SHOWN
DATE	7-2-2018

**DIMENSIONS**  
 ARCHITECTURE • INTERIORS • CONSTRUCTION SERVICES

6441 N. WILSON AVE. AURORA, IL 60105  
 708.438.2244

**HOLIDAY INN EXPRESS & SUITES CONVERSION**  
 AURORA, IL

project no. 14-14-369

**ARCHITECTURAL SITE PLAN**

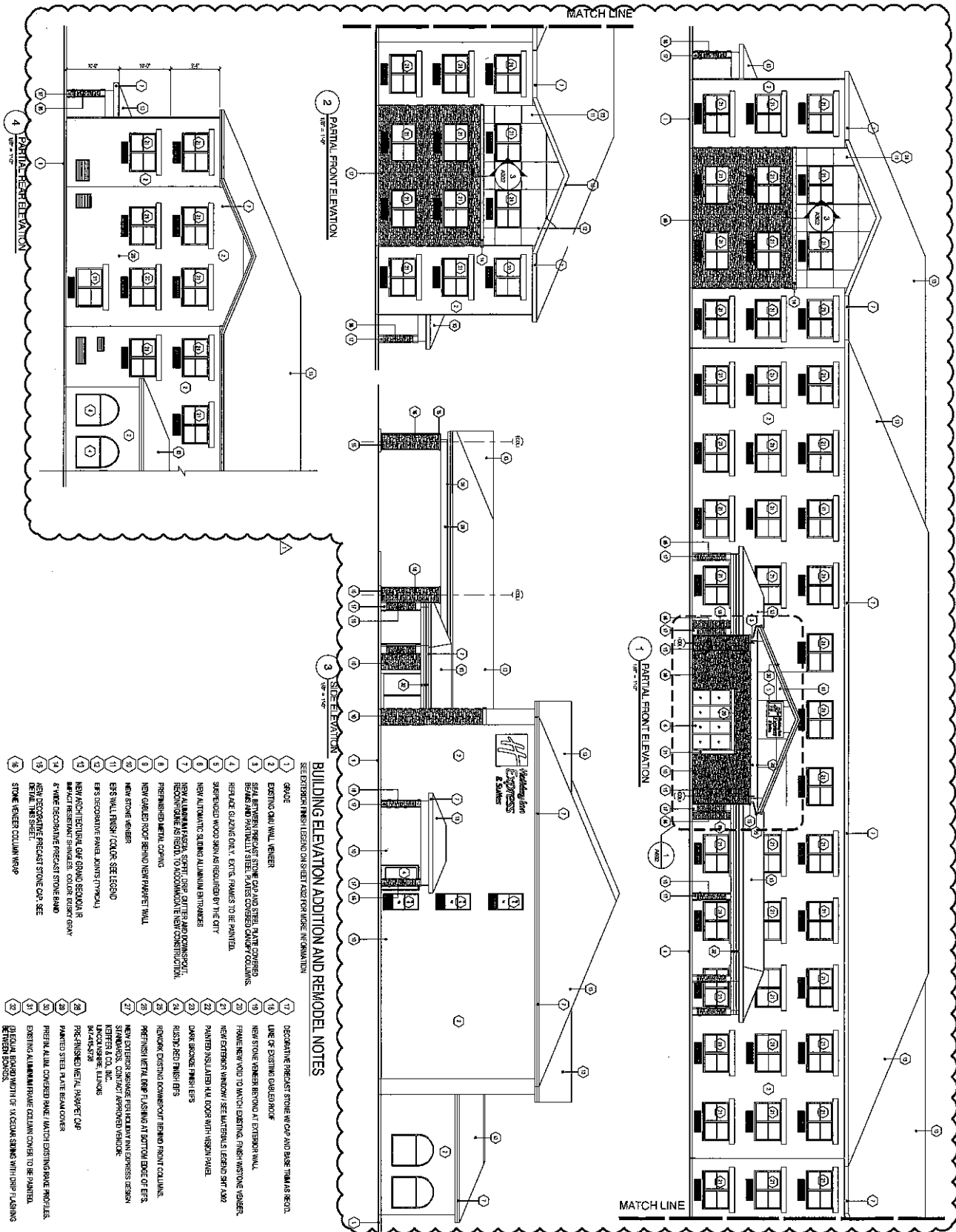
**JAMES DARIN CLAXTON**  
 PROJECT ARCHITECT  
 ILLINOIS #001-017669

100 WEST 10TH ST. AURORA, IL 60105  
 TEL: 708.438.2244 • FAX: 708.438.2244  
 EMAIL: ADDRESS@DIMENSIONS-ARCHITECTS.COM



revisions			
A-31-2018 REVISED PER CITY OF AURORA REVIEW			
DATE	SCALE	DRAWN BY	CHECKED BY
7-2-2018	AS SHOWN	JMK	JDC





**BUILDING ELEVATION ADDITION AND REMODEL NOTES**

- SEE EXTERIOR FINISH LEGEND ON SHEET A301 FOR MORE INFORMATION
- 1 GRADE
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**A301**

**DIMENSIONS**  
ARCHITECTURE • INTERIORS • CONSTRUCTION SERVICES

1481 W. 116th Street, Aurora, IL 60504  
TEL: 708.485.4700 FAX: 708.485.4701  
WWW.DIMENSIONS-ARCH.COM

**HOLIDAY INN EXPRESS & SUITES CONVERSION**  
AURORA, IL

project no. 16-14-388

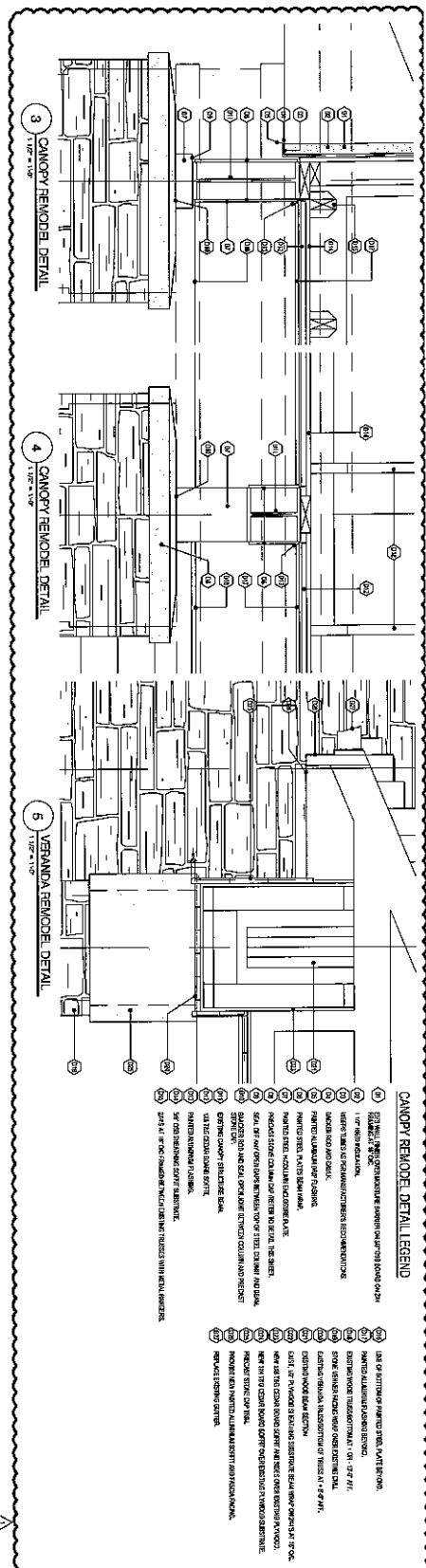
**EXTERIOR ELEVATIONS**

**JAMES DARIN CLAXTON**  
PROJECT ARCHITECT  
ILLINOIS #001-017669

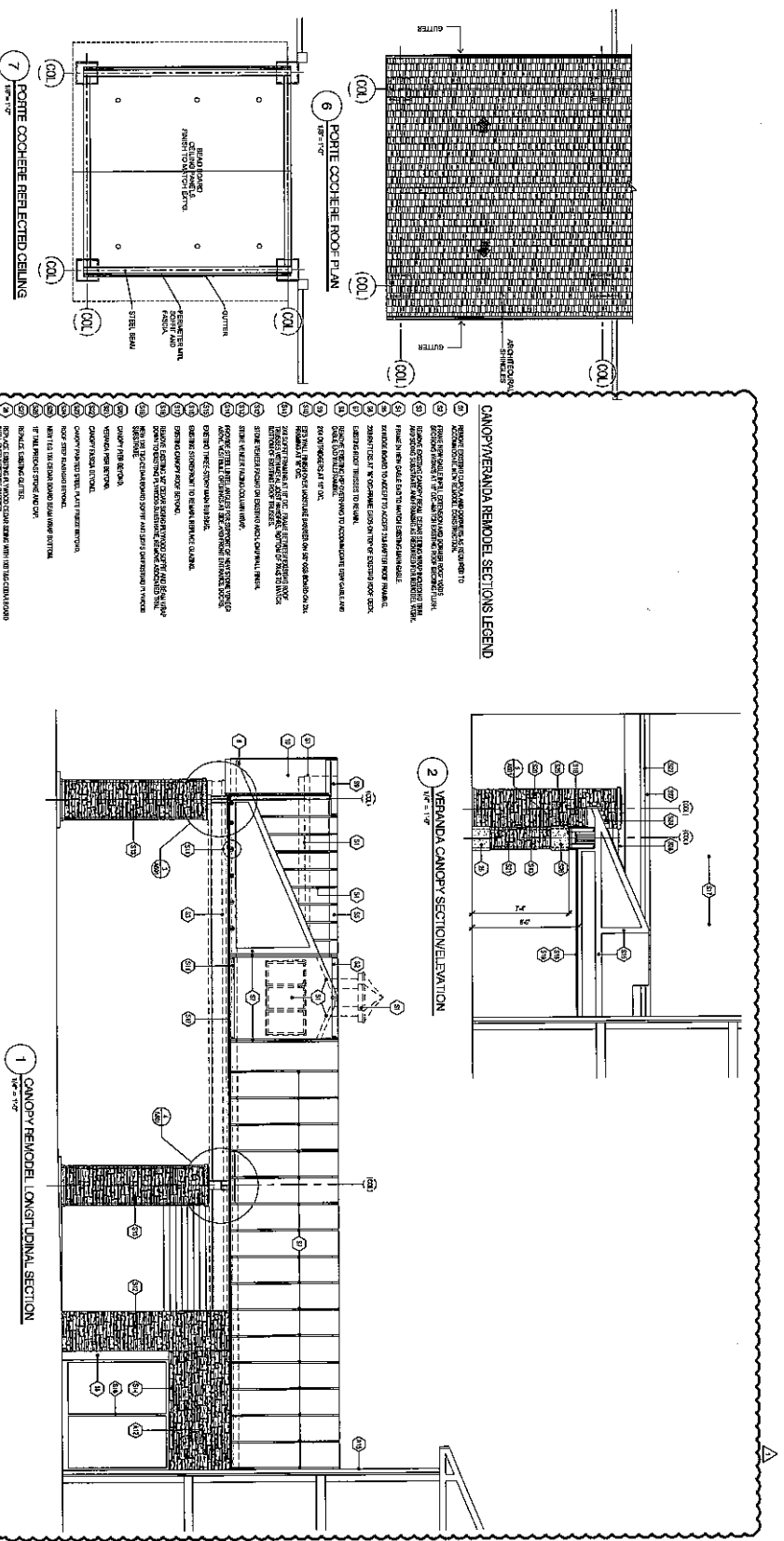
504 224th St E, Aurora, IL 60504, IL 60504-2207  
PHONE: 708-631-2888 FAX: 708-631-2887  
EMAIL ADDRESS: dclaxton@dimensions-architects.com



revisions			
A-8-31-2016 REVISED PER NEW EXTERIOR SCOPE			
date	scale	drawn by	checked by
7-2-2016	AS SHOWN	JKM/J.L.	JDC



- CANOPY REMODEL DETAIL LEGEND**
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- CANOPY/VERANDA REMODEL SECTIONS LEGEND**
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<p><b>A602</b></p>	<p><b>DIMENSIONS</b> ARCHITECTURE • INTERIORS • CONSTRUCTION SERVICES</p> <p>1440 S. WILSON AVENUE, SUITE 100 AURORA, IL 60105 TEL: 630-595-1234 FAX: 630-595-1235 WWW.DIMENSIONS-ARCH.COM</p>	<p><b>HOLIDAY INN EXPRESS &amp; SUITES CONVERSION</b> AURORA, IL</p> <p>project no. H-14-389</p>	<p><b>JAMES DARIN CLAXTON</b> PROJECT ARCHITECT ILLINOIS #001-017669</p> <p>504 S. 203<sup>RD</sup> • 112 E. ALTO RD. • WOOD Dale, IL 60191-2202 PHONE: 630-581-0244 • FAX: 630-581-2470 EMAIL ADDRESS: dclaxton@dimensions-arch.com</p>		<p><b>revisions</b></p> <p>8-31-2015 REVISED PER CITY OF AURORA REVIEW</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>date</th> <th>scale</th> <th>drawn by</th> <th>checked by</th> </tr> <tr> <td>7-2-2015</td> <td>AS SHOWN</td> <td>JDM</td> <td>JDC</td> </tr> </table>	date	scale	drawn by	checked by	7-2-2015	AS SHOWN	JDM	JDC
date	scale	drawn by	checked by										
7-2-2015	AS SHOWN	JDM	JDC										

**EXHIBIT C**

**Estimated Project Costs**

Roof, Façade and Site Improvements	\$627,674.00
New Windows	\$134,900.00
Lighting Improvements	\$ 12,000.00
Signage Improvements	\$ 57,984.00
	<hr/>
<b>TOTAL ESTIMATED COST</b>	<b>\$832,558.00</b>



**EXHIBIT D**

**Mortgage**

(attached)

**THIS DOCUMENT WAS PREPARED BY:**

Klein, Thorpe and Jenkins, Ltd.  
20 North Wacker Drive, Suite 1660  
Chicago, IL 60606

**AFTER RECORDING MAIL TO:**

**MORTGAGE**

THIS MORTGAGE (the "**Mortgage**") is made as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ by and between Midwest Management II, Inc., an Illinois corporation, whose address is 111 N. Broadway St., Aurora, IL 60505 (the "**BORROWER**") and the City of Aurora, Illinois, an Illinois home rule municipal corporation, whose principal place of business is located at 44 E. Downer Place, Aurora, IL 60507 (the "**LENDER**").

WITNESSETH.

**WHEREAS**, the BORROWER is indebted to LENDER in principal sum of Two Hundred Fifty Thousand and NO/100THS DOLLARS (\$250,000.00) (the "**Principal**") which Principal is evidenced by a certain promissory note dated even date with this Mortgage (the "**Note**"), which Note provided for payments of the Principal as set forth in the Note.

**NOW THEREFORE**, the BORROWER, to secure the payment of the Principal under the Note together with interest thereon, if any, the payment of all other sums with interest thereon advanced in accordance therewith to protect the security of this Mortgage (collectively, the "**Indebtedness**"), and the performance of the covenants and agreements of the BORROWER herein contained, does hereby Mortgage, grant and convey to LENDER the following described real estate located in the City of Aurora, County of Kane, State of Illinois (the "**Property**"), to wit:

SEE **EXHIBIT A** ATTACHED HERETO AND MADE A PART HEREOF.

ADDRESS: 111 N. Broadway Street, Aurora, IL 60505  
P.I.N.: 15-22-409-001

TOGETHER with all improvements, tenements, easements, fixtures and appurtenances thereon belonging, and all rents, issues and profits thereof for so long and during all such times as BORROWER may be entitled thereto (which are pledged primarily and on a parity with the Property and not secondarily), and all

fixtures, apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration (whether single units or centrally controlled) and ventilation, including (without restricting the foregoing): all fixtures, apparatus, equipment and articles, other than such as constitute trade fixtures used in the operation of any business conducted upon the Property as distinguished from fixtures which relate to the use, occupancy and enjoyment of the Property, it being understood that enumeration of any specific articles of property shall in no way exclude or be held to exclude any items of property not specifically mentioned. All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and hereby mortgage are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate and to be appropriated to the use of the Property, and shall be for the purposes of this Mortgage to be deemed to be real state and conveyed and mortgaged hereby. The foregoing and the Property are collectively referred to as the "**Premises**").

BORROWER covenants that BORROWER is lawfully seized of the Premises hereby conveyed and has the right to Mortgage, grant and convey the Premises; that the Premises is not subject to homestead rights of any person, that the Premises is unencumbered and that BORROWER will warrant and defend generally the title to the Premises against all claims and demands, subject to those matters listed in **EXHIBIT B**, attached hereto and made a part hereof.

IT IS FURTHER UNDERSTOOD THAT:

- 1) BORROWER shall promptly pay when due the Indebtedness evidenced by the Note, and the interest on any future advances allowed under and secured by this Mortgage.
- 2) In addition, the BORROWER shall:
  - a) Promptly repair, restore or rebuild any improvement now or hereafter on the Premises which may become damaged or destroyed.
  - b) Pay immediately when due and payable all general real estate taxes, special taxes, special assessments, water charges, sewer service charges, and other assessments and other taxes and charges against the Premises including those heretofore due, and to furnish the LENDER, upon request, with the original or duplicate receipts therefore, and all such items extended against the Premises shall be conclusively deemed valid for the purpose of this requirement.
  - c) Keep the improvements now existing or hereafter erected on the Premises insured against loss or damage by fire, lightning, wind storm or such other hazards, as the LENDER may reasonably require to be insured against under a policy or policies providing for payment by the insurance companies of monies sufficient either (i) to pay the cost of replacement or the repairing of same or (ii) to pay in full the indebtedness secured hereby, in such companies through such agents or brokers and in such form as shall be satisfactory to the LENDER, until said indebtedness is fully paid, or in the case of foreclosure, until expiration of the period of redemption. All policies shall provide further that LENDER shall receive ten (10) days notice prior to cancellation.

- d) Complete within a reasonable time any buildings or improvements now or at any time in process of erection upon the Premises.
- e) Subject to the provisions hereof, restore and rebuild any buildings or improvements now or at any time upon the Premises and destroyed by fire or other casualty so as to be of at least equal value or substantially the same character as prior to such damage or destruction.
- f) Keep the Premises in good condition and repair without waste and free from any mechanics or other lien claims of lien not expressly subordinated to the lien of this Mortgage.
- g) Not to suffer or permit any unlawful use of or any nuisance to exist on the Premises nor to diminish nor impair its value by any act or omission to act.
- h) Comply with all requirements of law or municipal ordinances with respect to the Premises and the use thereof.

3) Any sale by conveyance or transfer of any right, title or interest in the Premises or any portion thereof or any sale, transfer or assignment of all or any part of the beneficial interest in any trust holding title to the Premises without the prior written approval of the LENDER shall, at the option of the LENDER, constitute a default hereunder on account of which the holder of the Note secured hereby may declare the entire Indebtedness evidenced by the Note to be immediately due and payable and foreclose this Mortgage immediately or at any time such default occurs.

4) In the case of a failure to perform any of the covenants herein, or if any action or proceeding is commenced which materially affects LENDER's interest in the Premises, including but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankruptcy or decedent, the LENDER may do on the BORROWER's behalf everything so covenanted; the LENDER may also do any act it may deem necessary to protect the lien hereof; and the BORROWER will repay upon demand any monies paid or disbursed, including reasonable attorneys fees and expenses, by the LENDER, for any of the above purposes and such monies together with interest thereon at the rate set forth in the Note secured hereby shall become so much additional Indebtedness hereby secured and may be included in any decree foreclosing this Mortgage and be paid out of the rents or proceeds of sale of the Premises if not otherwise paid. It shall not be obligatory upon the LENDER to inquire into the validity of any lien, encumbrance or claim in advancing monies as above authorized, but nothing herein contained shall be construed as requiring the LENDER to advance any monies for any purpose nor to any act hereunder; and the LENDER shall not incur any personal liability because of anything it may do or to do hereunder nor shall any acts of LENDER act as a waiver of LENDER's right to accelerate the maturity of the Indebtedness secured by this Mortgage or to proceed to foreclose this Mortgage.

5) It is the intent hereof to secure payment of the Note whether the entire amount of the Indebtedness shall have been advanced to the BORROWER at the date hereof or at a later date, or having been advanced, shall have been repaid in part and further advances made at a later date, which advances shall in no event operate to make the principal sum of the Indebtedness greater than the original principal

amount plus any amount or amounts that may be added to the Mortgage Indebtedness under the terms of this Mortgage for the purpose of protecting the Premises.

6) Time is of the essence hereof, and if default be made in performance of any covenant herein contained in the Note or obligation or any extension or renewal thereof, or if proceedings be instituted to enforce any other lien or charge upon any of the Premises, or upon the filing of a proceeding in bankruptcy by or against the BORROWER, or if the BORROWER shall make an assignment for the benefit of its creditors or if its Premises be placed under control of or in custody of any court or officer of the government or if the BORROWER abandons the Premises, or fails to pay when due any share or assessment (whether for insurance premiums, maintenance, taxes, capital improvement), than and in any of said events, the LENDER is hereby created or the priority of said lien or any right of the LENDER hereunder, to declare, without notice all sums secured hereby immediately proceed to foreclose this Mortgage, and in any foreclosure a sale may be made of the Premises as a single parcel without the offering of the several parts separately. BORROWER shall not be in default of any payment specified herein or in the Note unless at least thirty (30) days shall have passed from the due date of said payment.

7) Upon the commencement of any foreclosure proceeding hereunder, the court in which such bill is filed may at any time, subject to the prior approval of the lender in relation to any mortgage against the Premises that is primary to this Mortgage, which may be withheld in their sole and absolute discretion, appoint either the LENDER as "LENDER-in-Possession" or a receiver, with power to manage and rent and to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and the statutory period of redemption and such rents, issues and profits, when collected, may be applied before as well as after the foreclosure sale, towards the payment of the indebtedness, costs, axes, insurance and other items including the expenses of such receivership or on any deficiency decree whether there be a decree therefore *in personam* or not, and if a receiver shall be appointed he shall remain in possession until the expiration of the full period allowed by statute for redemption, whether there be redemption or not, and until the issuance of a deed in case of sale, but if no deed be issued, until the expiration of the statutory period during which it may be issued and no lease of the Premises shall be nullified by the appointment or entry in possession of a receiver but he may elect to terminate any lease junior to the lien hereof; and upon foreclosure of the Premises, there shall be allowed and included as an additional indebtedness in the decree of sale all expenditures and expenses together with in interest thereon at the rate of ten percent (10%) above the Interest Rate as defined in the Note, which may be paid or incurred by or in behalf of the LENDER for reasonable attorney's fees, LENDER's fees, appraiser's fees, court costs and costs (which may be estimated as to and include items to be expended after the entry of the decree) and of procuring all such data with respect to title as LENDER may reasonable deem necessary either to prosecute such suit or to evidence to bidders at any sale held pursuant to such de decree the true title to or value of the Premises; all of which aforesaid amounts together with interest as herein provided shall be immediately due and payable by the BORROWER in connection with (a) any proceeding, including probate or bankruptcy proceedings to which either party hereto shall be a party by reason of this Mortgage or the Note hereby secured; or (b) preparations for the accrual of the right to foreclosure, whether or not actually commenced; or (c) preparations for the defense of or intervention in any suit or proceeding which might affect the Premises or the security hereof. In the event of a foreclosure sale of the Premises there shall first be paid out of the proceeds thereof all of the aforesaid items, then the entire Indebtedness whether due and payable by the terms hereof or not and the interest due thereon up to the time of such sale, and the overplus, if any shall be paid to the BORROWER, and the purchaser shall not be obliged to see to the application of the purchase money.

8) Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by LENDER to any successor in interest of BORROWER shall not operate to release in any manner the liability of the original BORROWER and BORROWER's successor in interest. LENDER shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sum secured by this MORTGAGE by reason of any demand made by the original BORROWER and BORROWER's successors in interest.

9) Any forbearance by LENDER in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxed or other liens or charges by LENDER shall not be a waiver of LENDER's right to accelerate the Indebtedness secured by this Mortgage.

10) All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity and may be exercised concurrently, independently or successively.

11) The covenants contained herein shall bind and the rights hereunder shall inure to, the respective successors and assigns of LENDER and BORROWER subject to the provisions of Paragraph 3 hereof. All covenants and agreements of BORROWER shall be binding upon the beneficiaries of BORROWER and any other party claiming any interest in the Premises under BORROWER.

12) Except to the extent any notice shall be required under applicable law to be given in another manner, any notice to BORROWER shall be given by mailing such notice by certified mail addressed to BORROWER at or at such other address as BORROWER may designate by notice to LENDER as provided herein and any notice to LENDER shall be given by certified mail, return receipt requested, to LENDER's address stated herein or to such other address as LENDER may designate by notice to BORROWER as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to LENDER when given in the manner designated herein.

13) Upon payment of all sums secured by this Mortgage, LENDER shall release this Mortgage without charge to BORROWER. BORROWER shall pay all costs or recordation of any documentation necessary to release this Mortgage.

14) LENDER shall have the right to inspect the Premises at all reasonable times and assess thereto shall be permitted for that purpose.

15) BORROWER will at all times deliver to the LENDER duplicate originals or certified copies of all leases, agreements and documents relating to the Premises and shall permit access by the LENDER to its books and records, insurance policies and other papers for examination and making copies and extracts thereof. The LENDER, its agents and designees shall have the right to inspect the Premises at all reasonable time and access thereto shall be permitted for that purpose.

16) LENDER in making any payment hereby authorized: (a) relating to taxes and assessments, may do so accordingly to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim therefore; or (b) for the purchase, discharge,

compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount for any claim for lien which may be asserted.

17) The BORROWER will pay all utility charges incurred in connection with the Premises and all improvements thereon and maintain all utility services now or hereafter available for use at the Premises.

18) If the Premises are now or hereafter located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (the Act), the BORROWER will keep the Premises up to the maximum limit of coverage available under the Act.

19) This Mortgage shall be governed by the laws of the State of Illinois. In the event one or more of the provisions contained in this Mortgage shall be prohibited or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage.

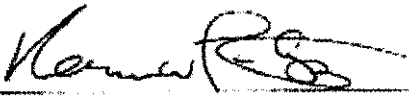
20) In the event of a deficiency upon a sale of the Premises pledged hereunder by BORROWER, then the BORROWER shall forthwith pay such deficiency including all expenses and fees which may be incurred by the holder of the Note secured by this Mortgage in enforcing any of the terms and provisions of this Mortgage.

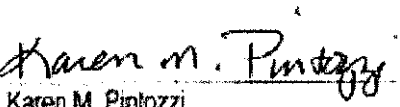
21) If all or any part of the Property or any interest in the Property is sold or transferred (or if a beneficial interest of the BORROWER is sold or transferred and the BORROWER is not a natural person), without Note Holder's prior written consent, Note Holder may, at its option, require immediate payment in full of all sums due and payable under this Note and secured by this Mortgage. This option shall not be exercised by LENDER if exercise is prohibited by federal law as of the date of the Note and Mortgage. If LENDER exercises this option, LENDER shall give BORROWER written notice of acceleration of the outstanding Principal balance together with Interest accrued thereon. This notice shall provide a period of not less than thirty (30) days from the date the notice is delivered or mailed within which BORROWER must pay all sums due under the Note and the Mortgage. If BORROWER fails to pay these sums prior to the expiration of this period, LENDER may invoke any remedies permitted by the Mortgage without further notice or demand on the BORROWER.

22) All provisions hereof shall inure to and bind the respective heirs, executors, administrators, successors, vendees and assigns of the parties hereto, and the word "BORROWER" shall include all persons claiming under or through BORROWER and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have excluded this Note or this Mortgage. Whenever used, the singular number shall include the plural, the singular and the use of any gender shall be applicable to all genders.

23) This Mortgage shall be subject to the terms and conditions of the Hotel Occupancy Tax Economic Incentive Agreement entered into between the LENDER and the BORROWER, dated \_\_\_\_\_, 2015, and recorded with the Kane County Recorder's Office as document number \_\_\_\_\_, on \_\_\_\_\_, 2015 (the "Redevelopment Agreement"), and, to the extent of any conflict between the terms of this Mortgage and said Redevelopment Agreement, the terms of the Redevelopment Agreement shall be controlling.

IN WITNESS WHEREOF, this Mortgage is executed as of the day and year first above written.

By:   
Name: Rocco W. Pintozzi  
Title: President  
Midwest Management II, Inc., an Illinois corporation

Attest:   
Name: Karen M. Pintozzi  
Title: Secretary  
Midwest Management II, Inc., an Illinois corporation



ACKNOWLEDGMENT

STATE OF ILLINOIS )  
                                  )SS  
COUNTY OF KANE   )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Rocco W. Pintozzi and Karen M. Pintozzi are personally known to me be the President and Secretary of Midwest Management II, Inc., an Illinois corporation (the "Corporation"), and are the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, respectively, of the Corporation, they signed and delivered the said instrument and caused the seal of the Corporation to be affixed thereto, pursuant to authority given by the Board of Directors of the Corporation, and as their free and voluntary act, and as the free and voluntary act and deed of the Corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 18<sup>th</sup> day of September 2015

Linda L August  
Notary Public



**EXHIBIT E**

**Promissory Note**

(attached)

**PROMISSORY NOTE**  
(the "Note")

**Amount: \$250,000.00**

**Dated: \_\_\_\_\_, 20\_\_**

1) **BORROWER'S PROMISE TO PAY.** The undersigned (the "**Borrower**"), promise(s) to pay to the order of the City of Aurora, an Illinois home rule Municipal corporation, with its principal place of business located at 44 E. Downer Place, Aurora, IL 60507, (the "**Lender**") or at such other place as the Mortgagee, may from time to time designate in writing to Mortgagor, the principal sum of Two Hundred Fifty Thousand and No/100 DOLLARS (\$250,000.00) (the "**Principal**") or so much thereof as may be advanced on the terms and conditions hereinafter set forth. The Lender or anyone who takes this Note by transfer and who is entitled to receive payment under this Note is sometimes called the "**Note Holder**" herein. This Note is secured by Mortgage dated even date with this Note (the "**Mortgage**") covering the real property commonly known as 111 N. Broadway Street, Aurora, IL 60505 (the "**Property**").

2) **INTEREST.** Subject to the forgiveness and release provisions of Section 3.01(B)(4) of the Redevelopment Agreement, as defined in this Note, interest will be charged on unpaid Principal, until the full amount of Principal has been paid, or has been forgiven and released pursuant to Section 3.01(B)(4) of the Redevelopment Agreement, as defined in this Note. Subject to the forgiveness and release provisions of Section 3.01(B)(4) of the Redevelopment Agreement, as defined in this Note, Borrower will pay interest on the Principal balance (the "Interest") at an annual rate of four and one-half percent (4.5%) (the "Interest Rate"). The Interest Rate required by this Paragraph 2 is the rate the Borrower will pay both before and after any default described in Paragraph 5(B) of this Note.

3) **PAYMENTS.**

A) Time and place of payments. Borrower will pay the Principal and Interest by making payments as set forth in the Redevelopment Agreement, as defined in this Note.

4) **BORROWER'S RIGHT TO PREPAY.** The Borrower shall have the right to make payments of Principal at any time before such payments are due. A payment of Principal only is known as a "**Prepayment**". When the Borrower shall make a Prepayment, the Borrower shall advise the Note Holder in writing that Borrower has elected to make a Prepayment. The Borrower may make a full Prepayment or a partial Prepayment without paying any prepayment penalty or charge. The Note Holder will use all of Borrower's Prepayments to reduce the amount of Principal that Borrower owes under this Note. If Borrower makes a partial Prepayment, there will be no changes in the Maturity Date or in the amount of the monthly payment unless the Note Holder agrees in writing to those changes.

5) **BORROWER'S FAILURE TO PAY AS REQUIRED.**

A) Late charge for overdue payments. If the Note Holder has not received the full amount of any payment required by the Redevelopment Agreement, as defined in this Note, when due, I will pay a late charge to the Note Holder. The amount of the charge will be ten percent (10%) of my overdue payment of Principal and Interest. Borrower will pay the late charge promptly, but only once on each late payment.

- B) Default. If Borrower does not pay the full amount of the payment required by the Redevelopment Agreement, as defined in this Note, on the date it is due, the Borrower will be in default.
- C) Notice of Default. If the Borrower is in default, the Note Holder may send written notice (the “**Default Notice**”) to Borrower that if the Borrower does not pay the overdue amount by a certain date (the “**Default Cure Date**”), the Note Holder may require me to pay immediately, the full amount of outstanding Principal which has not been paid and all Interest accrued thereon. The Default Cure Date will be at least thirty (30) days after the date on which the Notice of Default is delivered or mailed to Borrower.
- D) No Waiver by Note Holder. Even if, at the time when the Borrower is in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I the Borrower is in default at a later time.
- E) Payment of Note Holder’s Costs and Expenses. If the Note Holder has required the Borrower to pay immediately in full as described above, the Note Holder will have the right to be paid back by the Borrower for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorney’s fees.

6) **OBLIGATIONS OF PERSONS UNDER THIS NOTE.** If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorsers of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be requested to pay all of the amounts owed under this Note.

7) **WAIVERS.** The Borrower and any other person or persons who has/have obligations under this Note waives the rights of presentment of this Note for payment, or any requirements for notice of dishonor or notice of protest regarding the terms hereof. The term “presentment” means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

8) **UNIFORM SECURED NOTE.** This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protection given to the Note Holder under this Note, that certain Mortgage dated the same date as of this Note which is security for this Note, from possible losses which might result if the Borrower does not keep the promises which Borrower makes under this Note.

9) **TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN THE BORROWER.** If all or any part of the Property or any interest in the Property is sold or transferred (or if a beneficial interest of the Borrower is sold or transferred and the Borrower is not a natural person), without compliance with Section 5.02 of the Redevelopment Agreement,


as defined in this Note. Note Holder may, at its option, require immediate payment in full of all sums due and payable under this Note and secured by this Mortgage. This option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of the Note and Mortgage. If Lender exercises this option, Lender shall give Borrower written notice of acceleration of the outstanding Principal balance together with interest accrued thereon. This notice shall provide a period of not less than thirty (30) days from the date the notice is delivered or mailed within which Borrower must pay all sums due under this Note and the Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by the Mortgage without further notice or demand on the Borrower.


10) This Note is executed by Rocco W. Pintozzi and Karen M. Pintozzi, as President and Secretary, respectively, of Midwest Management II, Inc., and is payable only out of the Property specifically described in the Mortgage securing the payment hereof, by the enforcement of the provisions contained in the Mortgage. No personal liability shall be enforceable against the Borrower or any person interested, beneficiary or otherwise, in the Property legally described in the Mortgage given to secure the payment hereof, or in the Property or funds at any time subject to the trust agreement (if the Mortgagor is a land trust), because or in respect of this Note, or the making, issue or transfer thereof, all such liability, if any, being expressly waived by each taker and holder thereof, but nothing contained shall modify or discharge the personal liability expressly assumed by the guarantor hereof, if any, and each original and successive holder of this Note accepts the same upon the express condition that no duty shall rest upon the undersigned to sequester the rents, issues and profits arising from the Property described in the Mortgage, or the proceeds arising from the sale or other disposition thereof, but that in case of default in the payment of this Note or of any installment hereof, the sole remedy of the Note Holder shall be by foreclosure of the Mortgage given to secure the indebtedness evidenced by this Note, in accordance with the terms and provisions of the Mortgage set forth or by action to enforce the personal liability of the guarantor, if any, of the payment hereof, or both.

If this Note is signed by more than one person, all obligations and authorizations hereunder shall be joint and several, and the term "Borrower" herein shall include therein all persons signing this Note.

This Note shall be subject to the terms and conditions of the Hotel Occupancy Tax Economic Incentive entered into between the Lender and the Borrower, dated \_\_\_\_\_, 2015, and recorded with the Kane County Recorder's Office as document number \_\_\_\_\_, on \_\_\_\_\_, 2015 (the "Redevelopment Agreement"), and, to the extent of any conflict between the terms of this Note and said Redevelopment Agreement, the term of the Redevelopment Agreement shall be controlling.

IN WITNESS WHEREOF, this Promissory Note is executed as of the day and year first above written.

By:   
Name: Rocco W. Pintozzi  
Title: President  
Midwest Management II, Inc., an Illinois corporation

Attest:   
Name: Karen M. Pintozzi  
Title: Secretary  
Midwest Management II, Inc., an Illinois corporation

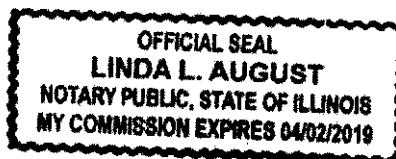
ACKNOWLEDGMENT

State of Illinois        )  
                                  ) SS  
County of Kane         )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Rocco W. Pintozi, personally known to me to be the President of Midwest Management II, Inc., and Karen M. Pintozi, personally known to me to be the Secretary of Midwest Management II, Inc., and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, they signed and delivered the said instrument and caused the corporate seal of said Corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said Corporation, as their free and voluntary act, and as the free and voluntary act and deed of said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 18<sup>th</sup> day of September, 2015.

Linda L August  
Notary Public



**EXHIBIT F**

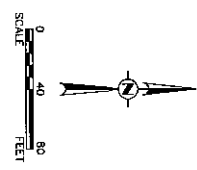
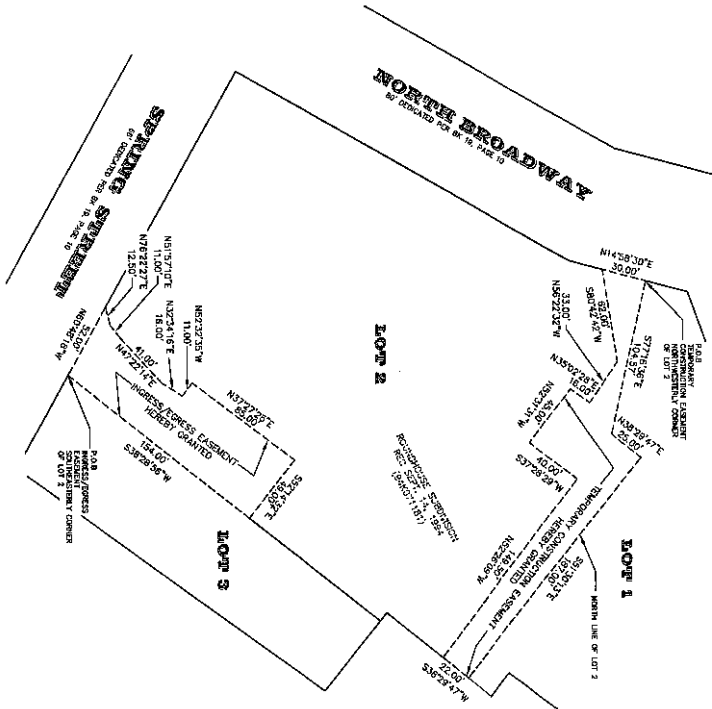
**Plat of Easement Format**

**(Note: Pursuant to Section 4.01 of this Agreement, upon the recording of the Final Plat of Easement, a copy of the recorded Final Plat of Easement shall be substituted for the Plat of Easement format attached hereto as Exhibit F as of the Effective Date.)**

(attached)

# PLAT OF EASEMENT

TO THE  
**CITY OF AURORA**  
KANE COUNTY, ILLINOIS  
THAT PART OF SECTION 29, TOWNSHIP 38 NORTH, RANGE 8 EAST OF  
THE THIRD PRINCIPAL MERIDIAN



**WITNESSETH** that the undersigned, as an authorized agent under the provisions of a recorded amendment dated and recorded on \_\_\_\_\_ in \_\_\_\_\_ county in the State of Illinois, do hereby certify that the foregoing plat of subdivision, bearing \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_, Kane County, Illinois, and that I have in good faith, lawfully and honestly acquired the proceeds of the same and that the same are now being distributed to the persons named in the instrument.

STATE OF ILLINOIS \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

DATE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014.

PLATE THE/PART THE AUTHORIZED SIGNATURES, THE CORPORATION/COMMITTEE NAME, AND ADDRESS  
\_\_\_\_\_

ANY COMMENT SET FORTH APPROPRIATE  
\_\_\_\_\_

STATE OF ILLINOIS \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

THE UNDERSIGNED, A NOTARY PUBLIC, IN AND FOR THE SAID COUNTY, IN THE STATE OF ILLINOIS, DO HEREBY CERTIFY that the foregoing plat of subdivision is a true and correct copy of the original plat as recorded in the office of the Recorder of Deeds, Kane County, Illinois, and that the same has been duly recorded and that the same are now being distributed to the persons named in the instrument. I have examined the plat of subdivision and the same is correct and true. I have also examined the records of the Recorder of Deeds, Kane County, Illinois, and the same are correct and true. I have also examined the records of the Recorder of Deeds, Kane County, Illinois, and the same are correct and true.

DATE OF EXPIRATION OF MY COMMISSION \_\_\_\_\_

NOTARY PUBLIC  
STATE OF ILLINOIS

MY COMMISSION EXPIRES \_\_\_\_\_

**OWNER'S CERTIFICATE - EASEMENT**  
STATE OF ILLINOIS \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

THIS IS TO CERTIFY THAT \_\_\_\_\_ CORPORATION, IS THE RECORD OWNER OF THE PROPERTY DESCRIBED IN THE INSTRUMENT OF \_\_\_\_\_ DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 2014.

SIGNATURE \_\_\_\_\_  
PLEASE TYPE/PART THE AUTHORIZED INDIVIDUAL'S NAME, TITLE, CORPORATION/COMMITTEE NAME, AND ADDRESS  
\_\_\_\_\_

DATE OF THIS INSTRUMENT \_\_\_\_\_

**ADDITIONAL COMMENTS**  
STATE OF ILLINOIS \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

DATE OF THIS INSTRUMENT \_\_\_\_\_

STATE OF ILLINOIS \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

DATE OF THIS INSTRUMENT \_\_\_\_\_

CITY CLERK \_\_\_\_\_

**40 YEARS** Engineering Enterprises, Inc.  
CONSULTING ENGINEERS  
52 Weber Road  
Aurora, Illinois 60504  
(630) 231-1100 / www.eeinc.com

**CITY OF AURORA**  
44 E. DOWNER PL.  
AURORA, IL 60506

**BROADWAY HOTELS, L.L.C.**  
111 N. BROADWAY,  
AURORA, IL 60505

## PLAT OF EASEMENT



**EXHIBIT G**

**Depiction of the Common Driveway Realignment  
and the Route 25 Improvements**

(attached)

Preliminary Depiction

