

Notice of Study Session

For Abilene City Commission

4 p.m. Monday, January 6, 2019

Dwight D. Eisenhower Memorial Building
419 N. Broadway Avenue, Abilene, Kansas

PURPOSE

The City Commission's study sessions are for the purpose of providing the commission the opportunity to study items in more detail.

OPEN FORUM

This is an opportunity to bring up items to be informally addressed. The Mayor may impose a time limit on open forum.

STUDY ITEMS

1. Mayor/Vice-mayor election discussion – Tradition.
2. City Board appointments.
3. Holiday Inn Express development agreement.
4. Holiday Inn Express transient guest tax agreement.
5. FAA Non-Primary entitlement fund transfer.
6. 2020 GAAP Waiver resolution.



2020 Board Appointments

First	Last	Board	Start Date	End Date	Term notes
Rod	Boyd	Planning/Zoning	2020	2023	Three year terms, third
Tony	Whitehair	Tree Board	2020	2023	Three year term, first
Steven	Flynn	Tree Board	2020	2023	Three year term, first
Drew	Snitker	Tree Board	2020	2023	Three year term, second
Bob	Sims	Building Standards	2020	2021	1 year terms
John	Hultgren	Building Standards	2020	2021	1 year terms
Max	Linder	Building Standards	2020	2021	1 year terms
Barry	Griffis	Building Standards	2020	2021	1 year terms
Greg	Hottman	Building Standards	2020	2021	1 year terms
Sarah	Wilson	CVB Board	2019	2022	Filling unexpired term of Samantha Kenner, first
Mary Jane	Oard	CVB Board	2020	2023	Three year terms, third
Elizabeth	Weese	CVB Board	2020	2023	Three year terms, second
Mukul	Ghosh Hajra	CVB Board	2020	2023	Three year terms, sixth
Kimmy	Phillips	CVB Board	2020	2023	Three year terms, first
Allison	Blake	CVB Board	N/A	N/A	Chamber Rep
Duane	Schrag	Heritage Commission	2020	2023	Three year terms, third
Brenda	Bowers	Heritage Commission	2020	2023	Three Year Term, first
Andrew	Paneratzt	Heritage Commission	2020	2023	three year term, first
Audrey	Corbett	Sister City Board	2020	2023	Three year terms, third
Mary	Zey	Sister City Board	2020	2023	Three year terms, first
Andrea	Taylor	Sister City Board	2020	2023	Three year terms, third

Current Vacancies

Airport Advisory Board	2 openings
Library Board	1 openings
Planning Commission	2 openings



Gilmore & Bell, P.C.
12/13/2019

DEVELOPMENT AGREEMENT

between the

CITY OF ABILENE, KANSAS,

and

NARAYAN, INC.

Dated as of January 13, 2020

Relating to the Development of the Holiday Inn Express & Suites Project

DEVELOPMENT AGREEMENT

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”), is made and entered into as of January 13, 2020 (the “**Effective Date**”), by and between the **CITY OF ABILENE, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the “**City**”) and **NARAYAN, INC.**, a Kansas corporation or another entity created by Narayan, Inc. specifically for this development (the “**Developer**”) (the Developer and the City are collectively referred to as the “**Parties**” and each a “**Party**”).

RECITALS

A. The Developer intends to develop certain tracts of land located in the 100 block of East Lafayette Avenue within the City and more particularly described in *Exhibit A* attached hereto (the “**Property**”), including a hotel under a flag meeting or exceeding the City’s quality standards and consisting of a minimum 70 guest rooms and two meeting rooms.

B. So long as the Developer remains in full compliance with this Agreement, the City agrees to permit the Project to participate in certain City programs as more particularly set forth in this Agreement, including:

- the issuance of industrial revenue bonds for purposes of a property tax abatement and sales tax exemption;
- the creation of a community improvement district; and
- the rebate of a portion of the transient guest tax generated by the Developer’s new hotel to be constructed and operated on a portion of the Property, at the rate of 3.0% of the gross receipts subject to transient guest tax, for a period of 10 years.

C. The purpose and intent of the agreements of the Parties set forth in this Agreement is to provide for substantial and long-lasting improvement of the character of the Property that will contribute to the revitalization, growth and economic development of the City of Abilene.

D. The Parties now desire to enter into this Agreement to formalize the construction and financing of the improvements to the Property for the purposes described herein.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01. Definitions of Words and Terms. Capitalized words used in this Agreement have the meanings set forth in the Recitals to this Agreement or they have the following meanings:

“**Action**” means any suit, action, investigation, claim or proceeding.

“**Affiliate Entity**” means any entity wholly-owned by either the Developer or its Principals, or any entity under common control of or by the Developer or its Principals, or under common control by the shareholders or principals of the same.

“**Certificate of Substantial Completion**” means a certificate in substantially the form attached as *Exhibit C* hereto furnished by the Developer and approved by the City pursuant to this Agreement upon completion of the Project.

“**Certification of CID Expenditures**” is the form attached as *Exhibit G*.

“**CID Act**” means K.S.A. § 12-6a26 *et seq.*

“**CID Costs Cap**” means the maximum amount of CID Eligible Costs that may be reimbursed to Developer through the CID Sales Tax Fund, which shall be \$1,600,000.00, exclusive of the City’s Administrative Fee.

“**CID District**” means a community improvement district encompassing the Property and formed in accordance with the CID Ordinance and the CID Act.

“**CID Eligible Costs**” means, collectively, (i) the actual costs of the CID Improvements, (ii) City Expenses related to the CID District, and (iii) the CID Administrative Fee, all of which must be “costs” of a “project” as defined in the CID Act.

“**CID Improvements**” means that portion of the Project the costs of which will be reimbursed to the Developer from CID Sales Tax revenues as CID Eligible Costs.

“**CID Policy**” means the policy of the City governing the use of CID within the City, as most recently approved by the Governing Body on October 11, 2016, and as amended from time-to-time thereafter.

“**CID Ordinance**” means Ordinance No. [___] passed by the Governing Body of the City creating the CID District, after receipt of a sufficient Petition from Developer.

“**CID Sales Tax**” means an additional 2.0% sales tax on all taxable sales within the CID District authorized by the CID Act and the CID Ordinance.

“**CID Sales Tax Fund**” means the separate fund to be established by the City for deposit of the CID Sales Tax revenues received from the State and collected within the CID District, and that is used to finance or reimburse the CID Eligible Costs pursuant to the CID Act

“**CID Sales Tax Revenues**” means annual revenues generated from the CID Sales Tax.

“**CID Term**” means a term commencing on the date the Director of Taxation for the State of Kansas begins collecting the CID Sales Tax within the CID District and expiring on the earlier of (a) the 22nd anniversary of the date of commencement of CID Sales Tax collection; or (b) when all CID Eligible Costs have been paid; or (c) the expiration or earlier termination of this Agreement.

“**City**” means the City of Abilene, Kansas.

“**City Administrative Fee**” means an amount equal to five percent (5%) of the total annual CID Sales Tax Revenues received by the City.

“**City Attorney**” means Aaron O. Martin of the law firm of Clark, Mize & Linville, Chartered, Salina, Kansas.

“**City Building Code**” means the City building codes in effect in the City during construction of the Project.

“**City Engineer**” means the City Engineer of the City, or in the absence of the City Engineer any duly appointed Deputy, Assistant or Acting City Engineer.

“**City Expenses**” means only the actual costs incurred by the City, including all attorney fees and expenses, in creating the CID District and issuing IRBs [and refunding transient guest taxes to the Developer].

“**City Indemnified Parties**” means City’s Governing Body members, employees, agents and independent contractors and consultants.

“**City Manager**” means the City Manager of the City, or in the absence of the City Manager any duly appointed Deputy, Assistant or Acting City Manager.

“**City Representative**” means the City Manager or his or her designee as evidenced by a written certificate furnished to the Developer containing the specimen signature of such person or persons and signed by the City Manager.

“**Claimant**” shall mean any Party claiming a default in accordance with **Article IV** of this Agreement.

“**Construction Permits**” means all governmental permits and licenses required by applicable law to construct the Project.

“**Developer**” means Narayan, Inc., a Kansas corporation.

“**Developer Minimum Investment**” means \$7,000,000.00.

“**Event of Default**” shall have the meaning set forth in **Article VI** of this Agreement.

“**Excusable Delays**” means any delay beyond the reasonable control of the Party affected, caused by damage or destruction by fire or other casualty, earthquake, power failure, strike, shortage of materials, unavailability of labor, delays in construction of nearby public streets, roads, right-of-way, interstate or highway, adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or abnormal duration, tornadoes, and any other events or conditions, which shall include but not be limited to any action or inaction of any Party to this Agreement or other governmental body (including any designees of the foregoing) and any litigation interfering with or delaying the construction of all or any portion of the Project in accordance with this Agreement, which in fact prevents the Party so affected from discharging its respective obligations hereunder.

“**Governing Body**” means the Mayor and City Commission of the City.

“**General Contractor**” means the general contractor(s) for the Project to be selected by the Developer.

“**Governmental Approvals**” means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, architectural review or other subdivision, zoning or similar approvals required for the implementation of the Project.

“**Hotel**” means a hotel that meets the Hotel Flag Requirement located on the Property, operated in accordance with this Agreement, and consisting of a minimum 70 transient guest rooms and two meeting rooms.

“**Hotel Flag Requirement**” means an “upper midscale” hotel, as determined by STR, Inc., aka Smith Travel Research, which publishes periodically its “STR Chain Scales-North America and Caribbean” hotel classifications, and including any hotel, such as an independent or small chain hotel, which has not been classified by STR, Inc., but which would be in the “upper midscale” classification if it were to be classified. In the event STR, Inc. no longer publishes the STR Chain Scales-North America and Caribbean scale, a comparable index shall be substituted, and if no comparable index exists, the Hotel Flag Requirement shall be determined by reference to those hotel chains which were formerly identified by STR, Inc. as upper midscale. Examples of franchisors which currently meet the Hotel Flag Requirement are set forth on *Exhibit D*.

“**IRB**” or “**IRBs**” means the industrial revenue bonds to be issued pursuant the IRB Act in accordance with the provisions of **Article 4.01** hereof.

“**IRB Act**” means K.S.A. 12-1740 *et seq.*, as amended and supplemented.

“**Pay-As-You-Go CID Financing**” means a method of financing pursuant to K.S.A. 12-6a34, in which the CID Eligible Costs reimbursed from CID Sales Tax are financed without notes or bonds, and the costs are reimbursed as CID Sales Tax is deposited in the CID Sales Tax Fund.

“**Petition**” means the petition for establishment of the CID District submitted by the owners of not less than fifty-five (55%) of the land area contained within the CID District and not less than fifty-five percent (55%) by assessed value of the land area contained within the CID District in accordance with the CID Act and attached hereto as *Exhibit F*.

“**Principals**” means Ashish Ghosh Hajra, Anjan Ghosh Hajra, Mukul Ghosh Hajra, and any other entities or persons having an ownership or equity position in the Developer or Affiliate Entity.

“**Project**” means the design, engineering, constructing, reconstructing, furnishing, and equipping of the Hotel and certain other improvements to the Property.

“**Project Approvals**” means all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to operate and maintain the Project.

“**Property**” means the real property described on *Exhibit A* hereto.

“**Resolution of Intent**” means the City’s Resolution to issue the IRB substantially in the form set forth on *Exhibit E* hereto.

“**Sales Tax Act**” means K.S.A. 79-3601 *et seq.*, as amended and supplemented.

“**State**” means the State of Kansas.

“**Term**” means the term of this Agreement commencing on the Effective Date and, unless terminated earlier as provided in this Agreement, expiring on the expiration of the CID Term.

Section 1.02. Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement:

- (a) The terms defined in this Article include the plural as well as the singular.
- (b) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles.
- (c) All references herein to “generally accepted accounting principles” refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.
- (d) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed.
- (e) The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.
- (f) The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations of the City. The City makes the following representations and warranties, which are true and correct on the date hereof, to the best of the City’s knowledge:

- (a) ***Due Authority.*** The City has full constitutional and lawful right, power and authority, under current applicable law, to execute, deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal valid and binding obligation of the City, enforceable in accordance with its terms.
- (b) ***No Defaults or Violation of Law.*** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.
- (c) ***No Litigation.*** There is no litigation, proceeding or investigation pending or, to the knowledge of the City, threatened against the City with respect to this Agreement. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the

execution, delivery, validity or performance by the City of the terms and provisions of this Agreement.

(d) ***Governmental or Corporate Consents.*** No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution and delivery by the City of this Agreement.

(e) ***No Default.*** No default or Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the City under this Agreement.

Section 2.02. Representations of the Developer. The Developer makes the following representations and warranties, which are true and correct on the date hereof, to the best of the Developer's knowledge:

(a) ***Due Authority.*** The Developer has all necessary power and authority to execute, deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Developer, enforceable in accordance with its terms.

(b) ***No Defaults or Violation of Law.*** The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

(c) ***No Litigation.*** No litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Project, the Developer or any officer, director, member or shareholder of the Developer. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer, of the terms and provisions of this Agreement.

(d) ***No Material Change.*** (1) The Developer has not incurred any material liabilities or entered into any material transactions other than in the ordinary course of business except for the transactions contemplated by this Agreement and (2) there has been no material adverse change in the business, financial position, prospects or results of operations of the Developer, which could affect the Developer's ability to perform its obligations pursuant to this Agreement from that shown in the financial information provided by the Developer to the City prior to the execution of this Agreement.

(e) ***Governmental or Corporate Consents.*** No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by the Developer of this Agreement.

(f) **No Default.** No default or Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument to which the Developer is a party or by which the Developer is or may be bound.

(g) **Approvals.** The Developer has received and is in good standing with respect to all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to conduct and to continue to conduct its business as heretofore conducted by it and to own or lease and operate its properties as now owned or leased by it. The Developer has obtained, or reasonably believes it will obtain in due course, all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to acquire, construct, equip, operate and maintain the Project; or reasonably believes that all such certificates, licenses, consents, permits, authorizations or approvals which have not yet been obtained will be obtained in due course.

(h) **Construction Permits.** All governmental permits and licenses required by applicable law to construct, occupy and operate the Project have been issued and are in full force and effect or, if the present stage of development does not allow such issuance, the Developer reasonably believes, after due inquiry of the appropriate governmental officials, that such permits and licenses will be issued in a timely manner in order to permit the Project to be constructed.

(i) **Compliance with Laws.** The Developer is in compliance with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, operations as contemplated by this Agreement.

(j) **Other Disclosures.** The information furnished to the City by the Developer in connection with the matters covered in this Agreement are true and correct and do not contain any untrue statement of any material fact and do not omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

(k) **Contractors.** All contracts with contractors shall warrant that the work performed or material supplied by that contractor to the Project will be free from any defects in materials and workmanship for a period of at least one (1) year from the date of completion, and that such warranty does not restrict or otherwise limit that contractor's obligation to construct the Project in a workmanlike manner and in accordance with this Agreement as it pertains to that contractor's work.

Section 2.03. Conditions to the Effectiveness of this Agreement. Contemporaneously with the execution of this Agreement, and as a precondition to the effectiveness of this Agreement, to the extent they have not already done so, the Developer will submit the following documents to the City:

(a) a copy of the Developer's Articles of Incorporation and a good standing certificate dated within one week of the date of this Agreement, each certified by the Secretary of State of the State of Kansas;

(b) a certified copy of the Bylaws of the Developer;

(c) a list of each member of the Developer and the associated percentage ownership, and if such member is not an individual, the individual owners and percentage ownership of such member;

(d) the Site Plan attached hereto as *Exhibit B*; and

(e) a legal opinion from counsel to the Developer in form and substance acceptable to the City covering: (i) the due organization of the Developer and the power and authority of the Developer to execute this Agreement, and (ii) the enforceability of this Agreement against the Developer.

Section 2.04. Maintenance of Existence. During the term of this Agreement, the Developer will maintain its legal existence, will continue to be in good standing under the laws of its state of organization, will continue to be qualified to do business in the State of Kansas, and, except as permitted by **Section 7.02** hereof, will not dissolve consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it.

ARTICLE III

DEVELOPMENT OF THE PROJECT

Section 3.01. Cost of the Project. The Developer shall be solely responsible for and will pay the costs of the Project, subject to the terms of this Agreement governing reimbursement for expenditures of CID Eligible Costs. The Developer will invest at least the Developer Minimum Investment in the Project.

Section 3.02. Design of the Project. The Developer has designed the Project in accordance with all applicable building codes, laws, and regulations (including the Americans With Disabilities Act, the Kansas Act Against Discrimination, and all environmental laws).

Section 3.03. Construction of the Project. The Developer will cause the Project to be engineered and constructed in accordance with the Petition, the Site Plan, the CID Ordinance, this Agreement and all applicable laws and building codes. The Developer will obtain all Governmental Approvals for the Project and the Project will conform to all approved plans for such improvements as provided in this Agreement, applicable building codes, City Ordinances, the CID Policy and all other applicable rules and regulations.

Section 3.04. Construction Permits and Approvals. Before commencement of construction or development of any buildings, structures or other work or improvements, the Developer shall, at its own expense, secure or cause to be secured any and all permits and approvals which may be required by the City and any other governmental agency having jurisdiction as to such construction, development or work. Such permits and approvals may be obtained by Developer in phases corresponding to particular stages of construction. The City shall cooperate with and provide all usual assistance to the Developer in securing these permits and approvals, and shall diligently process, review and consider all such permits and approvals as may be required by law; except provided that the City shall not be required to issue any such permits or approval for any portion of the Project not in conformance with this Agreement.

Section 3.05. No Waiver. Nothing in this Agreement shall constitute a waiver of the City's right to consider and approve or deny Governmental Approvals pursuant to the City's regulatory authority as

provided by City Building Code and applicable State law. The Developer acknowledges that satisfaction of certain conditions contained in this Agreement require the reasonable exercise of the City's discretionary zoning authority by the City's Planning Commission and Governing Body in accordance with the City's zoning, the City Building Code and applicable State law.

Section 3.06. Certificate of Substantial Completion. Promptly after completion of the Project in accordance with the provisions of this Agreement, the Developer will submit a Certificate of Substantial Completion to the City. Substantial Completion means that the Developer or its successor or assigns have been granted a Temporary Certificate of Occupancy by the City for each structure built on the Property and have completed all work with respect to the Project. The Certificate of Substantial Completion will be in substantially the form attached as *Exhibit C*. The City will, within thirty (30) days following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be deemed accepted by the City unless, prior to the end of such 30-day period after delivery, the City furnishes the Developer with specific written objections, describing such objections and the measures required to correct such objections in reasonable detail. The City's execution of the Certificate of Substantial Completion will constitute evidence of the satisfaction of the Developer's agreements and covenants to construct the Project.

Section 3.07. Certificate of Substantial Completion.

A. Certificate of Expenditures. After the date of the City's approval of the submitted Certificate of Substantial Completion, the Developer shall submit to the City a Certification of CID Expenditures, in the form attached as Exhibit G, for purposes of (i) certifying the amount of Eligible CID Costs for which reimbursement is sought, and (ii) verifying that such costs were actually incurred by the Developer for purposes of completing the Project. The City reserves the right to require that the Certification of CID Expenditures be accompanied by such bills, contracts, invoices, lien waivers, and other documentation as the City shall reasonably require for purposes of reviewing and approving the Certificate of CID Expenditures, and also reserves the right to have its agents or employees inspect all work and records for which the Certificate of CID Expenditures is submitted.

B. Review and Approval. The City Manager shall have thirty (30) calendar days after receipt of the Certification of CID Expenditures and all supporting documentation to review and respond by written notice to the Developer. If the submitted Certification of CID Expenditures and supporting documentation demonstrates that: (1) the request relates to eligible "costs," as defined in the Act, not in excess of the CID Costs Cap; (2) the work for which payment was made and reimbursement is sought has been completed in accordance with this Agreement; (3) the Developer is not in default under this Agreement; and (4) there is no fraud on the part of the Developer, then the City Manager shall approve the Certification of CID Expenditures and all CID Eligible Costs contained therein shall be eligible for reimbursement from the CID Sales Tax Fund, pursuant to this Agreement. If the City Manager determines that a portion of the expenditures listed within the submitted Certification of CID Expenditures and supporting documentation for said expenditures should not be approved, the City Manager may deny the Certification of CID Expenditures, in part, and shall notify the Developer of such determination in writing, setting forth in detail the basis for the denial for each such expenditure. In the event of a partial denial of the Certification of CID Expenditures, that portion of the submitted expenditures that the City Manager approves shall be immediately eligible for reimbursement from the CID Sales Tax Fund pursuant to the terms of this Agreement. As to that portion of the submitted expenditures the City Manager determines are not eligible for reimbursement, the Developer may appeal such denial to the Governing Body by filing a written request to be heard with the City Clerk within fourteen (14) business days of the receipt of the written denial. The Governing Body shall conduct a hearing within thirty (30) days of receipt of such request and render a decision immediately upon the conclusion of such hearing.

Section 3.07. Operation of Project. The Project shall comply with all applicable building and zoning, health, environmental and safety codes and laws and all other applicable laws, rules and regulations. The Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City and any other governmental agency having jurisdiction for the construction and operation of the Project, including but not limited to obtaining all necessary rental licenses and paying any necessary fees to obtain required permits and licenses. Until such time as construction is commenced, the Developer shall maintain the Property in a good and safe condition, including the boarding of vacant buildings and regular maintenance and removal of vegetation.

Section 3.08. Hotel Provisions.

(a) **Opening.** Within 60 days after acceptance by the City of a Certificate of Substantial Completion, the Hotel will be opened and operated on the Property for the remainder of the Term of this Agreement.

(b) **Hotel Flag.** The Hotel will at all times during the Term meet the Hotel Flag Requirement. Examples of franchisors which currently meet the Hotel Flag Requirement are set forth on *Exhibit D*.

Section 3.09. Payment of Taxes. The Developer represents and warrant to the City that they will pay or cause to be paid, at the times prescribed by State law, all ad valorem property taxes properly levied against the Developer's properties located within the City, including the Project and Property.

ARTICLE IV

CITY PROGRAMS

Section 4.01. Industrial Revenue Bonds.

(a) The City declares an intent to issue, pursuant to the IRB Act, industrial revenue bonds, in one or more series, in an aggregate principal amount not to exceed \$7,500,000 (or such other not-to-exceed amount mutually agreed upon by the City and the Developer) to finance the Project, subject to satisfaction of the conditions set forth in this **Section 4.01**.

(b) Pursuant to the provisions of the Sales Tax Act, particularly 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Project and financed with proceeds of the IRB's are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefore. The City will apply to the State Department of Revenue for a sales tax exemption certificate after adoption of the Resolution of Intent. Prior to obtaining the sales tax exemption certificate, the Developer and the City will sign a Revenue Bond Agreement as required by the State Department of Revenue.

(c) The issuance of the IRB is subject to the satisfaction of the following:

(i) the Developer's substantial compliance with the terms of this Agreement;

(ii) the successful negotiation and sale of the IRBs to a purchaser, which shall be either Developer or a financial institution determined by the Developer and acceptable to the City (the "Purchaser"), which sale shall be the responsibility of the Developer and not the City;

(iii) the receipt of the approving legal opinion of Gilmore & Bell, P.C., as Bond Counsel, in form acceptable to the City, the Developer and the Purchaser;

(iv) the obtaining of all necessary Governmental Approvals to the issuance of the IRBs; and

(v) the commitment to and payment by the Developer or Purchaser of all expenses relating to the issuance of the IRBs, including, but not limited to: (1) expenses of the City and the City Attorney; (2) any placement fees and expenses; (3) all legal fees and expenses of Bond Counsel; and (4) all recording, filing fees and other expenses required by the IRB Act.

Section 4.02. CID.

(a) The City agrees that the CID Eligible Costs shall be reimbursed to the Developer, up to the amount of the CID Costs Cap, pursuant to the terms and conditions of this Agreement, with revenues received from the imposition of a CID Sales Tax of two percent (2%) on the sale of tangible personal property at retail or rendering or furnishing services which are taxable pursuant to the Kansas Retailers' Sales Tax Act (K.S.A. 79-3601, *et seq.*, as amended) within the CID District.

(b) On _____, the City shall notify the state director of taxation to commence the collection and reporting of the CID Sales Tax within the CID District at the same time and in the same manner as provided for the collection of the state retailers' sales tax. Funds collected from the CID Sales Tax prior to the approval of the Certificate of Expenditures shall be held by the City in the CID Sales Tax Fund until such funds are eligible for distribution pursuant to the terms of this Agreement.

(c) During the existence of the CID District, all CID Sales Taxes generated within the District shall be deposited into the CID Sales Tax Fund, which shall be established and administered by the City in compliance with the Act and this Agreement. Interest earnings shall remain in the CID Sales Tax Fund and shall be treated in the same manner as CID Sales Tax Revenues for purposes of this Agreement.

(d) The proceeds from the CID Sales Tax shall be disbursed by the City to the Developer on a monthly basis, and within thirty (30) days of the City's receipt of the CID Sales Tax Revenues from the state treasurer, to reimburse Developer for CID Eligible Costs, if and to the extent that: (i) the term of the CID Sales Tax collection period has not yet expired; (ii) there are CID Sales Tax Revenues in the CID Sales Tax Fund; (iii) the Developer is not in default under this Agreement and/or this Agreement has not been terminated; and (iv) the Developer has not already been reimbursed for CID Eligible Costs in an amount equal to the CID Costs Cap.

(e) The Developer understands and agrees that all reimbursements to the Developer hereunder shall be made only from Pay-As-You-Go CID Financing, and nothing in this Agreement shall in any way obligate the City to issue bonds or other obligations to reimburse the Developer for the CID Eligible Costs or any other costs of the Project.

(f) The City shall be entitled to withdraw and receive from the CID Sales Tax Fund the CID Administrative Fee. The CID Administrative Fee shall be used to cover the administration and other City costs during the Term. The CID Administrative Fee may be paid monthly from the CID Sales Tax Revenues deposited in the CID Sales Tax Fund and shall have first priority to available funds in the CID Sales Tax Fund.

Section 4.03. Transient Guest Tax Rebate.

(a) Pursuant to K.S.A. 12-1696, *et seq.*, the City may impose a transient guest tax (the “Guest Tax”) on the gross rental receipts on hotel, motel or tourist court facilities located in the City. The City has heretofore determined that the availability of the new Hotel within the City of Abilene, and the two meeting rooms within the Hotel, will promote conventions and tourism.

(b) As an additional incentive to the Company to construct and operate the Project, the City agrees to rebate to Developer a portion of the Guest Tax generated by Developer’s new Hotel equal to three percent (3%) of the gross receipts collected by Developer for the Hotel to which the Guest Tax applies, for a period of 10 years, subject to the terms and conditions as set forth in a Transient Guest Tax Rebate Agreement in substantially the form set forth in *Exhibit H* hereto.

ARTICLE V

INDEMNITY; INSURANCE

Section 5.01. Indemnification of City.

(a) Developer agrees to indemnify and hold the City and the City Indemnified Parties harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and reasonable attorneys’ fees, resulting from, arising out of, or in any way connected with:

(i) the Developer’s actions and undertaking in implementation of the Project or this Agreement;

(ii) the negligence or willful misconduct of Developer, their employees, agents or independent contractors and consultants engaged or employed by the Developer in connection with the management, design, development, Development and construction of the Project; and

(iii) any delay or expense resulting from any litigation filed against the Developer by any member or shareholder of the Developer, any joint venture partner, lender, architect, contractor, consultant or other vendor.

It is understood that the duty of the Developer to indemnify or hold harmless includes the duty to defend. This indemnification and hold harmless clause shall apply whether or not insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

This **Section 5.01** will not apply to willful misconduct or negligence of the City or its officers, agents, or employees. This **Section 5.01** includes, but is not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in (i) the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”; 42 U.S.C. Section 9601, *et seq.*), (ii) the Resource Conservation and Recovery Act (“RCRA”; 42 U.S.C. Section 6901 *et seq.*) and (iii) Article 34, Chapter 65, K.S.A. and all amendments thereto, at any place where Developer owns or has control of real property pursuant to any of Developer’s activities under this Agreement. The foregoing indemnity is intended to

operate as an agreement pursuant to Section 107(e) of CERCLA to assure, protect, hold harmless and indemnify the City and the City Indemnified Parties from liability.

(b) In the event any Action is begun or made as a result of which the Developer or City may become obligated to one or more of the City Indemnified Parties hereunder, any one of the City Indemnified Parties will give prompt notice to the Developer of the occurrence of such event.

(c) The rights to indemnification set forth in this Agreement will survive the expiration or earlier termination of this Agreement.

Section 5.02. Insurance.

(a) Developer will carry, or cause the General Contractor to carry, the following insurance coverage insuring Developer, General Contractor, and City as specified below through final completion (as defined in the construction contracts):

(i) Special or builder's "all risk" insurance (including theft, vandalism, boiler, and pressure vessel coverage), in an amount reasonably acceptable to the Developer, insuring Developer's interests in the Project and any and all furniture, equipment, supplies and other property owned, leased, held or possessed by Developer for the Project (insurance shall also insure against loss from collapse of any part of the building or other structural failure during construction);

(ii) Comprehensive general liability insurance insuring Developer and City against all liability for injury to or death of a person or persons and for damage to property in any way occasioned by or arising out of the activities of Developer, City, and their respective agents, contractors, or employees, in connection with the design and construction of the Project, in the amount of not less than \$500,000 or in such other amounts as may be reasonably acceptable to Developer and the City, provided, however, such policies will not name the City, or insure the City, for an amount of coverage in excess of the City's maximum liability pursuant to the Kansas Tort Claims Act and amendments (and any similar law limiting the liability of the City);

(iii) Workers' compensation insurance;

(iv) Automobile insurance (if applicable) with per occurrence limits of not less than \$500,000, or comparable Hired and Non-owned coverage included in General Liability; and

(v) All other insurance required by law.

(b) The following general requirements apply to all insurance coverage carried by Developer and General Contractor pursuant to **Section 5.02(a)**:

(i) To the extent available, each policy will contain a clause whereby the insurer waives all rights of subrogation against General Contractor, Developer, and City, as the case may be;

(ii) Subject to the limitations on builder's risk coverage in **Section 5.02(a)(i)** and on general liability insurance in **Section 5.02(a)(ii)**, the City will be named as its interests appear in all policies obtained by Developer and General Contractor;

(iii) Such policies will be with reputable insurance companies reasonably acceptable to Developer, City, and General Contractor and licensed to do business in Kansas;

(iv) Developer will provide the City Representative with policies or certificates of insurance evidencing such coverage prior to the start of construction;

(v) Within thirty (30) days prior to expiration of coverage, or as soon as practicable, renewal policies or certificates of insurance evidencing renewal and payment of premium will be provided by Developer to the City Representative; and

(vi) The policies must be non-cancelable unless the carrier provides to the City Representative thirty (30) days' prior written notice of cancellation.

ARTICLE VI

DEFAULTS AND REMEDIES

Section 6.01. Defaults – General. Subject to the extensions of time set forth in **Section 6.07** below, failure or delay by any Party to perform any material term or provision of this Agreement, after receiving written notice thereof and failing to cure, as set forth in **Section 6.02** below, constitutes an “**Event of Default**” under this Agreement. The Claimant will give written notice of default to the defaulting Party, specifying the nature of the default.

Section 6.02. Default Proceedings. The Claimant will not institute proceedings against a defaulting Party, nor be entitled to damages if the defaulting Party within fifteen (15) days from receipt of the written notice of default set forth in **Section 6.01**, commences with due diligence to cure, correct or remedy such failure or delay and completes such cure, correction or remedy within thirty (30) days from the date of receipt of such notice; or if such cure, correction or remedy by its nature cannot be effected within such thirty (30) day period, such cure, correction or remedy is diligently and continuously prosecuted until completion thereof.

Section 6.03. Remedies on Default.

(a) Whenever any Event of Default by the City occurs and is continuing, the only remedy that may be sought from the City is strictly limited to specific performance of the City's obligations set forth under the defaulted section, or if applicable, the remedies set forth in the ancillary documents referenced by the defaulted section.

(b) Whenever any Event of Default by the Developer occurs and is continuing, subject to applicable cure periods, the City may (1) pursue any remedy at law and in equity, except as provided below, including specific performance of the Agreement and/or (2) refuse to approve any further Certificates of CID Expenditures or make any disbursements until such Event of Default is cured by the Developer and withhold any CID Sales Tax Revenues and/or (3) terminate the CID District and/or (4) terminate this Agreement.

(c) Notwithstanding any other provision of this Agreement to the contrary, in no event will the Developer or the City ever be liable for any punitive, special, incidental, or consequential damages in connection with this Agreement, or otherwise. For the purposes of this *Section 6.03(d)*, consequential damages include, but are not limited to, lost profits, lost tax revenue, or other similar losses which are not direct out-of-pocket costs incurred by any non-defaulting Party.

(d) If a Party has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Party seeking to enforce the right or remedy, then and in every case the Parties will, subject to any determination in such proceeding, be restored to their former positions and rights hereunder, and thereafter all rights and remedies of the Parties will continue as though no such proceeding had been instituted.

Section 6.04. Legal Actions.

(a) *Institution of Legal Actions.* Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Dickinson County, Kansas or, if federal jurisdiction exists, in the Federal District Court in the District of Kansas.

(b) *Applicable Law.* The laws of the State of Kansas govern the interpretation and enforcement of this Agreement.

(c) *Acceptance of Service of Process.*

(i) In the event that any legal action is commenced by the Developer against the City, service of process on the City will be made by personal service upon the City Clerk or in such other manner as may be provided by law.

(ii) In the event that any legal action is commenced by the City against the Developer, service of process on the Developer will be made by personal service upon an officer or agent of the Developer and will be valid whether made within or without the State or in such other manner as may be provided by law. In the event the Developer no longer has an officer or registered agent to serve, the Secretary of State is hereby irrevocably appointed to accept service for the Developer.

Section 6.05. Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies will not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

Section 6.06. Inaction Not a Waiver of Default. Any failures or delays by a Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such Party of its right to institute and maintain any action or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. No waiver made by a Party will apply to obligations beyond those expressly waived.

Section 6.07. Enforced Delay; Extension of Times of Performance.

(a) In addition to specific provisions of this Agreement, performance by a Party hereunder will not be deemed to be in default, and all performance and other dates specified in this

Agreement will be extended, where the Party seeking the extension has acted diligently and delays or defaults are due to default of the other Party or Excusable Delays.

(b) Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and the Developer.

ARTICLE VII

GENERAL PROVISIONS

Section 7.01. Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the Parties, and by the execution of said amendment by the Parties or their successors in interest. Except for amendments to extension of performance times, which may be approved and executed on behalf of the City by the City Representative, each amendment must be approved by resolution adopted by the Governing Body. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, the Parties will take such reasonable measures including, but not limited to, reasonable amendment of this Agreement to cure such invalidity where the invalidity contradicts the clear intent of the Parties in entering into this Agreement.

Section 7.02. Assignment. The Developer may at any time, with prior written notice to the City but without the need for approval from the City: (a) assign, transfer and convey all or substantially all of the Developer's rights and duties under this Agreement to an Affiliate Entity; and (b) make a collateral assignment of its rights under this Agreement to a single financial institution as security for a financing of the Project. After the delivery and acceptance by the City of a Certificate of Substantial Completion for the Project, the Developer may, with prior written notice to the City but without the need for approval of the City: (x) assign, transfer and convey all or substantially all of Developer's rights and duties under this Agreement to a third party; and/or (y) sell, transfer and convey all or any portion of the Project, and the underlying real property. Any decision to consent or refuse consent to an assignment pursuant to this **Section 7.02** requiring City consent will be solely at the discretion of the City Representative or the Governing Body, as the case may be. Nothing herein will be construed to delegate rights or responsibilities of the City under this Agreement, including without limitation the determination of eligible project costs for reimbursement. Any assignment of the Developer's rights under this Agreement may include the right to reimbursement from CID Sales Tax Revenues. With respect to any assignments which occur after the delivery and acceptance by the City of a Certificate of Substantial Completion, the City hereby agrees to waive the requirements of the CID Policy that any assignment of the right to receive CID Revenues shall require the consent of the City. Notwithstanding the foregoing or anything in this Agreement to the contrary, there shall be no restriction on, and City approval shall not be required for: (1) the leasing of the Project (or any portion thereof) to tenants, or (2) the forming by Developer of additional development or ownership entities to replace or joint venture with Developer for the purpose of business and/or income tax planning.

Section 7.03. Right to Inspect. The Developer agrees that the City, with reasonable advance notice and during normal business hours, will have the right and authority to review, inspect, audit, and copy, from time to time, all of the Developer's books and records relating to the CID Eligible Costs as pertinent to the purposes of this Agreement.

Section 7.04. Right of Access. For the purposes of assuring compliance with this Agreement, the City Representative will have the right of access to the Project, without charges or fees, during normal business hours for purposes related to this Agreement, including, but not limited to, the inspection of the work being performed in constructing or reconstructing of the Project.

Section 7.05. No Other Agreement. The Parties agree that the Project will be implemented as agreed in this Agreement and as set forth in the CID Policy. This Agreement specifies the rights, duties and obligations of the City and Developer with respect to constructing or reconstructing the Project and the payment of CID Eligible Costs. Nothing in this Agreement will be deemed an amendment of the CID Policy unless specifically exempted herein or by subsequent action by the Governing Body. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.

Section 7.06. Severability. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid or unenforceable in whole or in part, this Agreement will be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable. In no such event will the validity or enforceability of the remaining valid portions hereof be affected.

Section 7.07. Notice. All notices and requests required or desired to be given pursuant to this Agreement will be in writing and will be sent as follows:

To the Developer: Narayan, Inc.
Attn: Ashish K. Ghosh Hajra
2369 Georgetown Road
Salina, KS 67401
Email: ashish.ghosh@i3dplus.com

with a copy to: Polsinelli PC
Attn: Robert C. Johnson
6201 College Boulevard, Suite 500
Overland Park, KS 66211
Email: rjohnson@polsinelli.com

To the City: City of Abilene
Attn: City Manager
419 N. Broadway
Abilene, Kansas 67410
Email: jane@abilenecityhall.com

With a copy to the City Attorney:
Clark, Mize & Linville, Chartered
Attn: Aaron O. Martin
129 S. Eighth
P. O. Box 380
Salina, KS 67402-0380
Email: aomartin@cml-law.com

or at such other addresses as the Parties may indicate in writing to the other either by email, personal delivery, national overnight courier service, or by certified or registered mail, postage prepaid, return receipt requested, with proof of delivery thereof. Emailed notices will be deemed effective: (a) when sent, if followed by transmittal by national overnight courier or hand delivery on the next business day; or (b) upon recipient's acknowledgment of receipt. Mailed notices sent via certified or registered mail, postage prepaid, return receipt requested, with proof of delivery thereof, will be deemed effective on the third day after

mailing; mailed notices sent via national overnight courier service will be deemed effective on the next business day after they are sent; all other notices will be effective when delivered.

Section 7.08. Counterparts. This Agreement may be executed in several counterparts, each of which will be an original and all of which will constitute but one and the same agreement. Hand signatures transmitted via portable document format (PDF) or similar format are also permitted as binding signatures to this Agreement.

Section 7.09. Consent or Approval. Except as otherwise provided in this Agreement, whenever consent or approval of either Party is required, such consent or approval will not be unreasonably withheld.

Section 7.10. Survival of Indemnity. Notwithstanding the termination of this Agreement, the Developer's obligations set out in **Article V** will survive the expiration or earlier termination of this Agreement to the extent that any incident giving rise to a claim, suit, judgment or demand occurred during the Term hereof.

Section 7.11. Incorporation of Exhibits. The exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein.

Section 7.12. Mutual Assistance. The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be reasonably necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to reasonably aid and assist each other in carrying out said terms, provisions and intent.

Section 7.13. No Partnership. Nothing contained herein will be construed as creating a partnership between the Parties.

Section 7.14. Time of Essence. Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 7.15. Conflicts of Interest.

(a) No member of the Governing Body or of any branch of the City's government that has any power of review or approval of any of the Developer's undertakings will participate in any decisions relating thereto which affect such person's personal interest or the interests of any corporation or partnership in which such person is directly or indirectly interested. Any person having such interest will immediately, upon knowledge of such possible conflict, disclose, in writing, to the City the nature of such interest and seek a determination with respect to such interest by the City and, in the meantime, will not participate in any actions or discussions relating to the activities herein proscribed.

(b) The Developer warrants that it has not paid or given and will not pay or give any officer, employee or agent of the City any money or other consideration for obtaining this Agreement. The Developer further represents that, to its best knowledge and belief, no officer, employee or agent of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision making process or gain insider information with regard to the Project, has or will have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

Section 7.16. Required Disclosures. The Developer will immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developer in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

Section 7.17. Tax Implications. The Developer acknowledges and represents that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or State income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Developer is relying solely upon its own tax advisors in this regard.

Section 7.18. Authorized Parties. Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval, notice or consent of the Parties are required, or the Parties are required to agree or to take some action at the request of the other Party, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the City Representative and for the Developer by any officer of Developer so authorized; and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither Party shall have any complaint against the other as a result of any such action taken. The City Representative may seek the advice, consent or approval of the Governing Body before providing any supplemental agreement, request, demand, approval, notice or consent for the City pursuant to this **Section 7.18**.

Section 7.19. Electronic Transactions. The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 7.20. Cash Basis and Budget Laws. The Parties acknowledge and agree that the ability of the City to enter into and perform certain financial obligations pursuant to this Agreement are subject to the K.S.A. 10-1101 *et seq.* and K.S.A. 79-2935 *et seq.*

Section 7.21. Effective Date. This Agreement is effective upon execution and compliance with the requirements of **Section 2.03** hereof (the "Effective Date").

[Balance of page intentionally left blank]

IN WITNESS WHEREOF, the City and the Developer has duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF ABILENE, KANSAS

By: _____
_____, Mayor

(SEAL)

ATTEST:

Penny Soukup, CMC, City Clerk

STATE OF KANSAS)
) ss.
COUNTY OF DICKINSON)

On this ____ day of January, 2020, before me personally appeared _____, personally known, who being by me duly sworn did say that he is the Mayor of the City of Abilene, Kansas, and that said instrument was signed and delivered on behalf of said municipal corporation and acknowledged to me that he executed the same as the free act and deed of said municipal corporation.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public

[SEAL]

EXHIBIT A

LEGAL DESCRIPTION AND MAP OF PROPERTY

PARCEL A:

LOT TWO (2) AND LOT FOUR (4), BLOCK ONE (1), FINAL PLAT OF MARTIN ADDITION, A REPLAT OF LOTS ONE (1) AND TWO (2), BLOCK ONE (1), FITZSIMONS ADDITION TO THE CITY OF ABILENE, DICKINSON COUNTY, KANSAS.

PARCEL B:

A PARCEL OF LAND LOCATED IN LOT 2, BLOCK 2, FITZSIMONS ADDITION TO THE CITY OF ABILENE, DICKINSON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 2; THENCE ON AN ASSUMED BEARING OF S 89 DEGREES 51'12" W ALONG THE NORTH LINE OF SAID LOT 2 A DISTANCE OF 227.85 FEET TO THE POINT OF BEGINNING OF THE PARCEL TO BE DESCRIBED; THENCE S 00 DEGREES 08'48" E A DISTANCE OF 403.72 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 2; THENCE S 89 DEGREES 24'55" W ALONG SAID SOUTH LINE A DISTANCE OF 287.18 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2; THENCE N 00 DEGREES 07'23" W ALONG THE WEST LINE OF SAID LOT 2 A DISTANCE OF 449.12 FEET TO THE NORTHWEST CORNER OF SAID LOT 2; THENCE ALONG THE NORTH LINE OF SAID LOT 2 ON A CURVE TO THE RIGHT WITH A RADIUS OF 270.00 FEET, A CHORD LENGTH OF 24.90 FEET, A CHORD BEARING OF S 69 DEGREES 37'48" E AND AN ARC LENGTH OF 24.91 FEET; THENCE S 67 DEGREES 33'07" E ALONG SAID NORTH LINE A DISTANCE OF 24.40 FEET; THENCE ALONG SAID NORTH LINE ON A CURVE TO THE LEFT WITH A RADIUS OF 330.00 FEET, A CHORD LENGTH OF 128.68 FEET, A CHORD BEARING OF S 78 DEGREES 53'44" E AND AN ARC LENGTH OF 129.51 FEET; THENCE N 89 DEGREES 51'12" E ALONG SAID NORTH LINE A DISTANCE OF 114.93 FEET TO THE POINT OF BEGINNING.

PARCEL C:

LOT 1, BLOCK 2, FITZSIMONS ADDITION TO THE CITY OF ABILENE, DICKINSON COUNTY, KANSAS.

AND ADJACENT PUBLIC RIGHT-OF-WAY.



EXHIBIT B
SITE PLAN AND ELEVATIONS

EXHIBIT C

CERTIFICATE OF SUBSTANTIAL COMPLETION

The undersigned, Narayan, Inc. (the “**Developer**”), pursuant to that certain Development Agreement dated as of [_____], between the City of Abilene, Kansas (the “**City**”) and the Developer (the “**Agreement**”), hereby certifies to the City as follows:

1. That as of _____, 20____, the construction, renovation, repairing, and equipping of the Project (as such term is defined in the Agreement) has been substantially completed in accordance with the Agreement, including but not limited to the completion of a minimum of [70] hotel rooms and a flag meeting the requirements of the City and all milestones and deadlines contained in the Project Schedule have been met.

2. The Project has been completed in a good and workmanlike manner and contains all components of the Project required by or described in the Agreement. A Temporary Certificate of Occupancy has been obtained for the Project.

3. This Certificate of Substantial Completion is accompanied by the project architect’s certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), a copy of which is attached hereto as **Appendix A** and by this reference incorporated herein, certifying that the Project has been substantially completed in accordance with the Agreement.

4. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Agreement to evidence the Developer’s satisfaction of all obligations and covenants with respect to the Project.

5. The City’s acceptance (below) or the City’s failure to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate to the City (which written objection, if any, must be delivered to the Developer prior to the end of such 30-day period) shall evidence the satisfaction of the Developer’s agreements and covenants to construct the Project.

This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this _____ day of _____, _____.

NARAYAN, INC.

By: _____

Name: _____

Title: _____

ACCEPTED:

CITY OF ABILENE, KANSAS

By: _____

Name: _____

Title: _____

EXHIBIT D

**HOTEL FLAG REQUIREMENT
EXAMPLES AS OF EFFECTIVE DATE**

STR Upper Midscale Brands

Best Western Plus
Clarion
Comfort Inn & Suites
Country Inn & Suites
Drury Inn & Suites
Fairfield Inn
Hampton Inn
Holiday Inn
Holiday Inn Express
Home2Suites
Towneplace Suites
Wyndham Garden

EXHIBIT E

FORM OF IRB RESOLUTION OF INTENT

EXHIBIT F

**CID PETITION AND CID DISTRICT
LEGAL DESCRIPTION AND BOUNDARY MAP**

EXHIBIT G

CID CERTIFICATION OF EXPENDITURES

CERTIFICATION OF CID EXPENDITURES

Request No. _____

Date: _____

Pursuant to the Development Agreement (the “**Agreement**”) for the Holiday Inn Express Project between the City of Abilene, Kansas and the undersigned (the “**Developer**”), the Developer requests reimbursement and hereby states and certifies as follows:

1. The date and number of this request are as set forth above.
2. All terms in this request shall have and are used with the meanings specified in the Agreement.
3. The names of the persons, firms or corporations to whom the payments have been made and reimbursement is hereby requested, the amounts to be reimbursed and the general classification and description of the costs for which each obligation requested to be reimbursed hereby was incurred are as set forth on **Attachment I** hereto.
4. These costs have been incurred and are reasonable costs that are reimbursable under the Agreement.
5. Each item listed above has not been previously reimbursed from the CID Sales Tax Fund and no part thereof has been included in any other Certification of CID Expenditures, [or other disbursement request previously filed with the City.

NARAYAN, INC.

By: _____
Title: _____

Approved this ____ day of _____, 20__

CITY OF ABILENE

By: _____
City Representative

**ATTACHMENT I
TO CERTIFICATION OF CID EXPENDITURES**

REQUEST NO. _____

DATED _____

SCHEDULE OF PAYMENTS REQUESTED

Person, firm or corporation to whom payment was made	Amount to be reimbursed	General classification and description of the costs of issuance for which the Obligation to be reimbursed was incurred
---------------------------------------------------------------	----------------------------	---------------------------------------------------------------------------------------------------------------------------------

[supporting documents attached]

EXHIBIT H

FORM OF TRANSIENT GUEST TAX REBATE AGREEMENT

TRANSIENT GUEST TAX AGREEMENT

THIS AGREEMENT, entered into as of January 13, 2020, between the **City of Abilene, Kansas** (the "City") and **Narayan, Inc.**, a Kansas corporation (the "Company");

RECITALS:

1. Project. The Company has proposed to construct a new hotel within the City, which hotel shall be under a flag meeting or exceeding the City's quality standards and consisting of a minimum 70 guest rooms and two meeting rooms (the "**Project**").

2. Development Agreement. The City and the Company have executed an agreement for the construction of the Project within the City (the "Development Agreement"). Subject to the terms of the Development Agreement, the City agrees to permit the Company to participate in certain City programs, including:

- the issuance of industrial revenue bonds for purposes of a property tax abatement and sales tax exemption;
- the creation of a community improvement district; and
- the rebate of a portion of the transient guest taxes collected from the Project, for a period of 10 years.

2. Transient Guest Tax. Pursuant to K.S.A. 12-1696, *et seq.*, the City may impose a transient guest tax (the "Guest Tax") on the gross rental receipts on hotel, motel or tourist court facilities located in the City. The City has heretofore determined that the availability of the new hotel within the City, and the two meeting rooms within the hotel, will promote conventions and tourism.

3. Guest Tax Rebate. As an additional incentive to the Company to construct and operate the Project, the City agrees to rebate a portion of the Guest Tax collected from the Company's new hotel to be constructed as part of the Project, subject to the terms and conditions and in the manner provided for in this Agreement.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

Section. 1 The Project. The Company agrees to construct, complete, and operate the Project in accordance with the Development Agreement.

Section 2. Reporting and Remitting Guest Taxes. The Company is obligated to report and remit the Guest Tax collected on the hotels located in the City pursuant to the provisions of K.S.A. 12-1698, as amended. The Company shall also convey to the City a copy of each report submitted to the Kansas Department of Revenue ("**DOR**"). In the event the Company fails to report and remit the Guest Tax, penalties and/or interest will be assessed against the Company in accordance with applicable state laws relating to late tax payments. In addition, if the Company fails to remit any Guest Tax and such failure shall continue for one year, this Agreement shall be deemed terminated effective as of December 31 in the year such Guest Tax was originally due to be remitted and was unpaid, and Company agrees that from and after such termination date, it shall not be entitled to any further rebates of the Guest Tax.

Section 3. Amount of Rebate. Subject to the terms of this Agreement, the City agrees to rebate to the Company a portion of the Guest Tax actually collected and paid to DOR on the Project. The rebate shall be in an amount equal to three percent (3%) of the gross receipts to which the Guest Tax applies, to the extent such gross receipts are generated from the new hotel included in the Project, less any administrative fees, interest or penalties charged by DOR. The rebate shall commence with the first quarterly distribution of Guest Tax received by the City from the DOR after the Project becomes operational and will cease 10 years from commencement of the rebate.

Section 4. Conditions to Rebate. In order to continue to qualify for the rebate of the Guest Tax during the term of this Agreement: (a) the Project must be constructed in substantial compliance with the specifications set forth in the Development Agreement; (b) the Project must be continuously maintained as a hotel that meets or exceeds the flag requirements established by the Development Agreement; (c) the Company shall not be in default in its obligations with respect to the Development Agreement and this Agreement, and any obligations to the City set forth therein or herein; and (d) the Company shall apply all rebate payments to the promotion of convention and tourism as required by K.S.A. 12-1698, as amended, including, without limitation, the payment of marketing fees, marketing expenses and commission fees to derive room revenues. In the event the Company fails to comply with any of the conditions set forth in this *Section 4* and such failure shall continue for 90 days after written notice of such default has been provided by the City to the Company, this Agreement shall be deemed terminated effective as of the end of the calendar quarter in which such default occurred, and Company agrees that from and after such termination date, it shall not be entitled to any further rebates of the Guest Tax on the Project. The Parties acknowledge and agree that the ability of the City to enter into and perform certain financial obligations pursuant to this Agreement are subject to the K.S.A. 10-1101 *et seq.* and K.S.A. 79-2935 *et seq.*

Section 5. Timing of Rebate. The amount to be paid pursuant to *Section 3* above shall be paid within sixty (60) days after receipt by the City of Guest Tax payments from DOR.

Section 6. Cooperation with Abilene CVB. The Company shall at all times collaborate and cooperate with the Abilene Convention and Visitors Bureau (CVB) in developing programs, projects, and joint efforts with an aim toward promoting the City of Abilene's tourism, attractions, and events, consistent with the Company's letter to the Abilene City Manager, dated September 20, 2019.

Section 7. Maintenance of Books and Records. The Company agrees to separately account for the collection of rebate amounts and disbursements therefrom in order to facilitate the examination of books and records. The City shall have the right (but shall not be required) at any reasonable time and upon reasonable notice to the Company to have access to the Project and to the Company's books and records on the Project, including the rebate amounts paid to Company under this Agreement.

Section 8. Counterparts. This Agreement may be executed simultaneously and several counterparts, each of which shall be deemed to be an original and all of which shall constitute the same instrument.

Section 9. Transferability. The benefits of this Agreement may be transferred to any assignee of the Project; provided, however, such assignment shall be made only with the prior consent of the governing body of the City, which consent will not be unreasonably withheld provided the assignee agrees to all of the terms and conditions herein.

[balance of this page intentionally left blank]

IN WITNESS WHEREOF, the City has caused this Agreement to be signed by a duly authorized official, such signature to be attested by a duly authorized officer and its official seal to be applied, and the Company has caused this Agreement to be signed on its behalf by a duly authorized, as of the day and year first above written.

CITY OF ABILENE, KANSAS

By: _____
Mayor

[SEAL]

ATTEST:

Penny Soukup, CMC, City Clerk

NARAYAN, INC.

By: _____
Name: _____
Title: _____

Mr. Rothchild:

As I believe you know, the Abilene Municipal Airport is listed by the FAA as a non-primary airport in their National Plan of Integrated Airport Systems (NPIAS). As such, it is authorized by FAA to receive an annual \$150,000 grant authorization called non-primary entitlement (NPE) funds. These NPE funds are eligible for use each year or can be "banked" for up to 3 years at which time the oldest authorization expires and the funding authorization returns to the FAA. To use the funds, the airport must work with the FAA within their Airport Improvement Program, to confirm projects they wish to use the funds on.

Currently FAA has identified a balance of \$150,000 in the FY2017 NPE funds for your airport as expiring at the end of this federal fiscal year with no projects planned to use that year's funds. To keep those funds within KS for airport projects, the FAA has asked KDOT Aviation to reach out to you regarding the potential of transferring your FY2017 NPE funds to the Tri-City / Parsons, KS airport (PPF).

The FAA has identified the Tri-City / Parsons airport as needing a new connecting taxiway between the apron and runway project but has not identified enough FAA AIP funding to get the work completed. Thus, the request to see if you all there in Abilene would be willing to transfer the funding authorization to them.

The transfer is a simple process involving a two page form. I have taken the liberty of completing portions of the form for you and attached it to this email. All it needs is information and signatures of a City of Abilene representative and of your legal representative in the appropriate locations on the last page.

As always, if you have questions about this email or anything related to aviation in Kansas, feel free to reach out to us here at KDOT Aviation.

=====

Greg Chenoweth, AAE, CAE
Federal Aviation Programs Planner
Division of Aviation
Kansas Department of Transportation
700 SW Harrison St., 9th Floor
Topeka, KS 66603-3745
Office 785-296-2553
Direct 785-296-7499
gregory.chenoweth@ks.gov





U.S. Department
of Transportation
**Federal Aviation
Administration**

FAA Form 5100-110, Request for FAA Approval of Agreement for Transfer of Entitlements

Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120-0569. Public reporting for this collection of information is estimated to be approximately 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are required under 49 U.S.C. Section 47105 to retain a benefit and to meet the reporting requirements of 2 CFR 200. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Federal Aviation Administration at: 800 Independence Ave. SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, ASP-110.



Request for FAA Approval of Agreement for Transfer of Entitlements

In accordance with 49 USC § 47117(c)(2),

Name of Transferring Sponsor:

hereby waives receipt of the following amount of funds apportioned to it under 49 USC § 47117(c) for the:

Name of Transferring Airport (and LOCID): ()

for each fiscal year listed below:

Entitlement Type (Passenger, Cargo or Nonprimary)	Fiscal Year	Amount
Total		

The Federal Aviation Administration has determined that the waived amount will be made available to:

Name of Airport (and LOCID) Receiving Transferred Entitlements: ()

Name of Receiving Airport's Sponsor:

a public use airport in the same state or geographical areas as the transferring airport for eligible projects under 49 USC § 47104(a).

The waiver expires on the earlier of (date) or when the availability of apportioned funds lapses under 49 USC § 47117(b).

For the United States of America, Federal Aviation Administration:

Signature: _____

Name:

Title:

Date:

RESOLUTION NO. 011319 -1

A RESOLUTION AUTHORIZING THE CITY OF ABILENE'S FINANCIAL STATEMENTS FOR FISCAL YEAR 2020 TO BE PREPARED IN COMPLIANCE WITH THE CASH BASIS AND BUDGETARY LAWS OF THE STATE OF KANSAS

WHEREAS, the city of Abilene, Kansas, has determined that the financial statements and financial reports for the year ended December 31, 2020, to be prepared in conformity with the requirements of K.S.A. 75-1120a(a) are not relevant to the requirements of the cash basis and budget laws of this state and are of no significant value to the Abilene City Commissioners or the members of the general public of the City of Abilene, Kansas, and

WHEREAS, there are no revenue bond ordinances or other ordinances or resolutions of the municipality which require financial statements and financial reports to be prepared in conformity with K.S.A 75-1120a(a) for the year ended December 31, 2020.

NOW, THEREFORE BE IT RESOLVED, by the City Commissioners of the City of Abilene, Kansas in regular meeting duly assembled this 13th day of January 2020, that the City Commission of Abilene, Kansas, waives the requirements of K.S.A. 75-1120a(a) as they apply to the City of Abilene, Kansas, for the year ended December 31, 2020.

BE IT FURTHER RESOLVED that the City Commission of the City of Abilene, Kansas, shall cause the financial statements and financial reports of the City of Abilene, to be prepared on the basis of cash receipts and disbursements as adjusted to show compliance with the cash basis and budget laws of this State.

Passed this 13th day of January 2020.

(SEAL)

Mayor

ATTEST:

Penny L. Soukup, CMC
City Clerk