

**CHAPTER 380 GRANT AGREEMENT BETWEEN  
THE CITY OF FORNEY, TEXAS AND FORNEY HOTEL, LP**

This Chapter 380 Grant Agreement (“Agreement”) is made by and between The City of Forney, Texas, a home rule municipality in the State of Texas, (the “City”), and Forney Hotel, LP, a Texas limited partnership (“Developer”), acting by and through their respective authorized officers and representatives, effective as of the hereinafter defined Effective Date.

**RECITALS:**

**WHEREAS**, the City Council of the City of Forney, Texas (“City Council”) has investigated and determined that it is in the best interest of the City and its citizens to encourage programs, including programs for making loans and grants of public money to promote local economic development and stimulate business and commercial activity in the City pursuant to Chapter 380, Texas Local Government Code, as amended (“Chapter 380”); and

**WHEREAS**, the City and Developer, desire to enter into this Agreement concerning the development, construction and use of a development to include an upscale select service hotel, with meeting space, dining area, plus public improvements and parking lots, on an approximately 2.104-acre tract of land located in the City of Forney, Kaufman County Texas, as more fully described on the attached Exhibit A; and

**WHEREAS**, the goal of this Agreement is to attract visitors to the City of Forney, thus directly enhancing and promoting tourism as outlined in Chapter 351 of the State of Texas Tax Code; and

**WHEREAS**, the City Council desires to provide a rebate of Hotel Occupancy Tax revenues to Developer, for the purpose of assisting in the development of a TownePlace Suites by Marriott Hotel; and

**WHEREAS**, the City Council has investigated and determined that Developer meets the criteria for providing the grants (hereinafter defined), pursuant to Chapter 380, based on, among other things, Developer: (i) acquiring properties for development, and constructing improvements; (ii) adding taxable improvements to real property in the City; and (iii) creating employment opportunities for the citizens of Forney (collectively, the “Approved Project”); and

**WHEREAS**, Article III, Section 52-a of the Texas Constitution gives the Texas Legislature and political subdivisions of the state the authority to provide for loans and grants of public money for the development and diversification of the State's economy; and

**WHEREAS**, the City has concluded that the Approved Project qualifies for a Grant under Chapter 380; and

**WHEREAS**, with the approval of this Agreement, the City hereby establishes a program authorized by Chapter 380 to encourage and induce the generation of local use tax; and

**WHEREAS**, the City has determined that making an economic development grant to Developer in accordance with this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City; and

**WHEREAS**, this Agreement shall describe the obligations and remedies of the parties from the effective date of this Agreement through the term hereof;

**NOW, THEREFORE**, in consideration of the foregoing and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. Definitions. The following words shall have the following meanings when used in this Agreement.
  - a. Agreement. The word "Agreement" means this Development Agreement, together with all exhibits attached to this Agreement from time to time, if any.
  - b. City. The word "City" means the City of Forney, Texas. For purposes of this Agreement, City's address is P.O. Box 826, 101 E. Main Street, Forney, Texas 75126.
  - c. Event of Default. The words "Event of Default" mean and include any of the Events of Default set forth below.
  - d. Hotel. The word "Hotel" means an upscale select service TownePlace Suites by Marriott hotel containing a minimum of 89 rooms.
  - e. Hotel Occupancy Tax. The words "Hotel Occupancy Tax" mean City's receipt of tax imposed by City pursuant to Chapter 351 of the Texas Tax Code, as amended, on a person who, under a lease, concession, permit, right of access, license, contract or agreement pays for the use or possession of a room in the Hotel during the calendar quarter immediately preceding each Quarterly Rent payment date.
  - f. Meeting/Conference space. The word "Meeting and/or Conference space" means a combined minimum of 3,500 square feet of meeting/conference space, prefunction and courtyard located on the first floor of the Hotel.
- 1 Owner. The word "Owner" means Developer and its successors and assigns.

- g. Property. The word "Property" means the land of approximately 2.104-acre tract of land, in the City of Forney, Kaufman County Texas, specifically described in Exhibit "A" attached hereto and incorporated herein for all purposes, together with all improvements thereon. Upon execution of this Agreement, Developer shall follow City procedures to Plat the property into one lot, including obtaining City Council approval.
  
- 2. City's Authority. The City represents to Developer that as of the date hereof the City is a home rule municipality located in Kaufman County, Texas, and has authority to carry out the obligations contemplated by this Agreement
  
- 3. Developer's Authority and Ability to Perform. Developer represents to the City that Developer is authorized to enter into this Agreement and to perform the requirements of this Agreement; that Developer's performance under this Agreement shall not violate any applicable judgment, order, law or regulation; that Developer's performance under this Agreement shall not result in the creation of any claim against the City for money or performance, any lien, charge, encumbrance or security interest upon any asset of the City, except that this Agreement shall constitute a claim against available Hotel Occupancy Taxes to the extent provided herein; and that Developer shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital.
  
- 4. Title to Property Established.
  - a. Property Purchased. Developer represents and warrants that it is the record owner in fee simple of the Property and will seek approval of the City to re-plot the Property (hereinafter sometimes referred to as the "Hotel Site").
  
  - b. Construction: Developer shall commence construction of the Hotel within one hundred twenty (120) calendar days after the execution of this Agreement. Construction commences upon demolition, leveling and grading of the Hotel Site and on-site mobilization by the contractor selected to construct the Hotel. Once Developer commences construction on the Hotel Site, Developer agrees to cause the construction of the Hotel to be diligently completed and agrees not to delay or cease construction of the Hotel except for force majeure.
  
- 5. Obligations of Developer
  - a. Hotel. Developer shall operate the Hotel pursuant to and in accordance with the standards of a TownePlace Suites by Marriott franchise, or such other nationally recognized hotel franchise as the City may reasonably approve. Subject to the below, Developer agrees from and after the effective date of this Agreement to continuously use and operate the Hotel, and the Hotel shall not be used for any purpose, other than as an upscale select service hotel with related amenities, open

to the public and serving the adjacent business community, visitors, and the citizens of City. The Hotel shall have a combined minimum of 3,500 square feet of conference/meeting space, pre-function, and courtyard. Notwithstanding the foregoing, Developer shall not be in violation of this Section 5 (a) if the Hotel is temporarily closed due to an event of force majeure, casualty, condemnation, or temporary remodeling (each, a "Temporary Closure Event"), so long as Developer uses commercially reasonable efforts to resume operations at the Hotel within a reasonable time period following such Temporary Closure Event. In cases of temporary closure, Developer must provide notice to the City within five (5) working days of such closure, must include reasons for closure and the anticipated date Hotel shall resume operation.

- b. Developer understands that the Hotel Occupancy Tax rebate is contingent on the Hotel being a TownePlace Suites by Marriott hotel. If the Hotel is not a TownePlace Suites by Marriott hotel the City must approve in writing another nationally recognized hotel franchise as may be recommended by Developer. The loss of the City approved brand without a comparable nationally recognized hotel franchise brand as a replacement will result in termination of this Agreement and no further Hotel Occupancy Tax rebate for any period following the loss of the approved hotel brand.
- c. Developer understands that the Hotel Occupancy Tax rebate is contingent on the Hotel employing a dedicated outside director of sales with demonstrated experience (the "Sales Director") no later than on the date the Hotel is opened. Failure to employ a Sales Director will result in termination of this Agreement and no further Hotel Occupancy Tax rebate for any period following a termination of the Sales Director, provided, however, if the position of Sales Director becomes vacant for any reason following the date the Hotel is opened, Developer shall not be in violation of this Section 5(c) so long as Developer uses commercially reasonable efforts to fill such vacancy within a reasonable time period. Failure to fill the position ninety (90) days after becoming vacant will result in termination of this Agreement. Developer upon request by the City agrees to provide a written certification to the City confirming the continuing employment of the Sales Director as described in this Agreement.
- d. Hotel Tax Return. Developer has agreed to file, and shall continue throughout the term of this Agreement, a Hotel Occupancy Tax Return with City (in the form attached hereto as Exhibit B, or, if no form is attached, in a form reasonably prescribed by the City) which shall include a copy of the Hotel's Hotel Occupancy Tax report submitted to the State Comptroller or successor agency. Developer shall keep and maintain accurate records of the consideration and Hotel Occupancy Tax paid by the occupant of each sleeping room in the Hotel. Such records shall include, but not be limited to, at a minimum, guest folios, tax

exemption confiscates, and any original documents such as posting ledgers and rate and stay adjustment reports. These records may be retained in any retrievable format; shall be maintained for a period of not less than three (3) years; and shall be available for inspection upon request by any employee, agent, and officer or representative of the City at all reasonable times. Any adjustments or allowances made or granted shall be reported to City on a form prescribed by City.

- e. In the event of any sale or other disposition of all or any part of the Property or Hotel, Developer shall promptly notify City of such sale or disposition and provide City with a copy of the deed or other instrument pursuant to which the sale or other disposition is made.

6. Obligations of City.

- a. The City will provide Developer a rebate of taxes collected from the Hotel Occupancy Tax. The first year of rebate will commence on the end of the first full quarter after the Hotel opens. Developer shall deliver notice to City of the date Hotel is opened for business. The City's obligation to contribute its Hotel Occupancy Tax collections from this Hotel will be as follows:

Year 1	90%
Year 2	90%
Year 3	85%
Year 4	85%
Year 5	85%

- b. The sole source of the funds to reimburse Developer for the Hotel shall be the Local Hotel Occupancy Tax collected at the Hotel. It is expressly understood by City and Developer that this Agreement in no way obligates City's General Fund monies or any other monies or credits of the City.

7. Use of Hotel Facilities.

- a. HOTEL further agrees to provide the City with at least five (5) dates every year where the City may utilize the Meeting/Conference space at zero room rental fees. Any tables, chairs or other equipment owned by Developer located at Hotel and not being utilized by other customers/guests will be made available to the City at no cost. City will be responsible for any other costs. The City shall provide at least thirty (30) days' notice before utilization of the Meeting/Conference space. Hotel is under no obligation to provide the Meeting/Conference space if an approved event has already been scheduled for the date requested by the City.

- b. Subject to availability and reasonable advance notice, Developer further agrees to provide the City with fifteen (15) room nights every year where the City may utilize these room nights. A room night shall be the use of one room per night so that if the City utilized all 15 rooms in one night, this would constitute the 15 room nights allotted to the City per this section. Notwithstanding the foregoing, on an annual basis, Developer shall provide to the City by January 31st of each year this Agreement is in effect, certain proposed "blackout dates" which the City cannot utilize for purposes of this Section; provided however, the "blackout dates" shall be subject to the mutual agreement of the City and Developer.

8. Events of Default by Developer and City Remedies. Each of the following shall constitute an Event of Default by Developer under this Agreement:

- a. False Statements. Any warranty, representation or statement made or furnished to City by or on behalf of Developer under this Agreement which was false or misleading in any material respect, either now or at the time made or furnished, and Developer fails to cure same within thirty (30) days after written notice from City describing the violation, or if such violation cannot be cured within such 30-day period in the exercise of all due diligence, then if Developer fails to commence such cure within such 30-day period or fails to continuously thereafter diligently prosecute the cure of such violation; or if Developer deems that any such warranty, representation or statement has become false or misleading at the time that it was made, and the Developer fails to provide written notice to City of the false and misleading nature of such warranty, representation or statement within ten (10) days after the Developer learns of its false or misleading nature.
- b. Insolvency. The dissolution or termination of Developer 's existence as a going business, an Developer 's insolvency, appointment of receiver for any part of its property, any assignment of all or substantially all of the assets of Developer for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer unless, in the case of involuntary proceeding such proceedings are discharged within sixty (60) days after filing.
- c. Taxes. Developer allows its property taxes owed to City, the County or the Forney Independent School District to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from the taxing entity. The failure of the operator of the Hotel to submit Hotel Occupancy Tax reports when due.

- d. Other Defaults. Failure of Developer to comply with or to perform any other term, obligation, covenant, or condition contained in this Agreement, or failure of Developer to comply with or to perform any other term, obligation, covenant or condition contained in any other written agreement between City and Developer, and Developer fails to cure such failure within thirty (30) days after written notice from City describing such failure.
  - e. Remedies. If any Event of Default by Developer shall occur and Developer shall fail to cure under the applicable time period, City may by written notice to Developer elect to terminate City's obligations hereunder, at the option of City, except for an Event of Default described in the "Insolvency" subsection above, in which case such termination of obligations shall be automatic and not optional, in addition to seeking such other remedies as may be allowed under Texas law.
9. Events of Default by City and Developer Remedies. Each of the following shall constitute an Event of Default by City under this Agreement:
- a. Defaults. Failure of City to comply with or to perform any term, obligation, covenant, or condition contained in this Agreement, and City fails to cure such failure within thirty (30) days after written notice from the Developer describing such failure.
  - b. Remedies of Developer. In the event City defaults under its obligation and fails to cure within 30 days after written notice by Developer and Developer is not otherwise in default, Developer may by written notice to City elect to terminate its obligations hereunder, at the option of Developer, in addition to seeking such other remedies as may be allowed under Texas law. Notwithstanding anything to the contrary herein, the obligation of Developer to make payments of taxes as set forth in Paragraph 6(a), shall survive any termination of obligations by Developer for those tax years preceding the year in which the right to terminate is exercised by Developer.
10. Term. This Agreement shall remain in effect through 11:59 p.m. on the last day of the rebate period (as set forth in Section 6(a) hereof).
11. Miscellaneous. The following miscellaneous provisions are a part of this Agreement:
- a. Notwithstanding any provision herein to the contrary, all development on the Property shall be subject to the assessment, collection, and payment of utility impact fees (water, sewer, drainage, etc.) under applicable Forney ordinances or state law, as such shall exist or be amended in the future. Nothing contained in this Agreement shall be deemed or construed to waive or impair the powers and authority of City under the terms of the City's Charter or under applicable law,

which are expressly reserved to City for all purposes. Nothing herein affects City's rights as an ad valorem taxing authority.

- b. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- c. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to mediation as a prerequisite to filing suit. Nothing herein shall impair either party's rights or remedies hereunder in the event of a default.
- d. No modifications or amendments to this Agreement shall be valid unless in writing and signed by the signatories hereto or their heirs, successors, and assigns.
- e. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Kaufman County, Texas. Venue for any action arising under this Agreement shall lie in Kaufman County, Texas.
- f. The signatories hereto shall be subject to all ordinances of City, whether now existing or in the future arising. This Agreement shall confer no vested rights on the Property unless specifically enumerated herein.
- g. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. Developer warrants and represents that the individuals executing this Agreement on their behalf have full authority to execute this Agreement and bind Developer to the same.
- h. City Council shall authorize City Manager to execute this Agreement on behalf of City.
- i. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Agreement shall, to the extent reasonably possible, remain in force as if such invalid provision were not a part hereof.
- j. All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the



notice is to be given at the addresses shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

- j. The effective date of this Agreement shall be the date upon which the parties have fully executed this Agreement. The term of this Agreement shall be from the effective date through 11:59 p.m. on the last day of the rebate period (as set forth in Section 6(a) hereof), unless this Agreement, or any specific provision thereof, is earlier terminated under those applicable provisions or its term is modified by written amendment to this Agreement.

EXECUTED as of the effective date set forth above.

**FORNEY HOTEL, LP, a Texas limited partnership**

By: FORNEY TRADITION, LLC, it's General Partner

By: \_\_\_\_\_  
Tomas E. Kirkland, Manager

**CITY OF FORNEY**

By: \_\_\_\_\_  
Charles W. Daniels, City Manager

ATTEST:

\_\_\_\_\_  
Dorothy Brooks, City Secretary

APPROVED AS TO FORM

\_\_\_\_\_  
Jennifer Barnes Smith, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS           §  
                                      §  
CITY OF ROCKWALL       §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2022 by Thomas E. Kirkland, Manager of Forney Tradition, LLC, a limited liability company, on behalf of said company.

\_\_\_\_\_

Name: \_\_\_\_\_

Notary Public - State of Texas

My commission expires: \_\_\_\_\_

STATE OF TEXAS           §  
                                      §  
CITY OF FORNEY         §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2022 by Charles W. Daniels, City Manager of The City of Forney, Texas, on behalf of said city.

\_\_\_\_\_

Name: \_\_\_\_\_

Notary Public, State of Texas

My commission expires: \_\_\_\_\_

EXHIBIT A

Legal Description of 2.104-acre tract

Exhibit B  
CITY OF FORNEY, TEXAS  
REPORT OF HOTEL OCCUPANCY TAX

Name of Reporting Hotel:

Address of Hotel:

Report for Quarter Ending;

Total Taxable Receipts: \$ \_\_\_\_\_

If Paid By the 20th Day After End of Quarter:

Amount of Tax @ 7% of Taxable Receipts: \$ \_\_\_\_\_

Less Rebate Retained by Hotel Owner per Agreement: \$ \_\_\_\_\_

Total Amount Due: \$ \_\_\_\_\_

If Paid After the 20th Day After End of Quarter:

Amount of Tax due from above \$ \_\_\_\_\_

Penalty - 5% of Taxes Due \$ \_\_\_\_\_

Subtotal \$ \_\_\_\_\_

More than 30 Days Past Due:

Additional Penalty of 5% after 30 Days \$ \_\_\_\_\_

More than 60 Days Past Due:

10% Interest Per Annum Beginning 60 Days from Due Date \$ \_\_\_\_\_

This report is due no later than 20 days from the last day of each quarter

I declare, under penalties prescribed, that the information contained in this document is true and correct to the best of my knowledge and that a copy of the Quarterly Tax Report filed with the State Comptroller in connection with the State of Texas Hotel Occupancy Tax is attached hereto.

Signed:

Printed Name:

Title:

Phone #:

Date:

Return to: City of Forney Finance Department  
385 South Goliad Street  
Forney, Texas 75087