Supreme Bright Amarillo II, LLC
(Embassy Suites)
Summary Page

Project Goal:

Supreme Bright Amarillo II, LLC received financial assistance to construct a convention center hotel and parking garage.

Incentive Details:

Agreement Start Year: 2018
Agreement End Year: 2036

Developer's Obligations:

- Invest a minimum of $45.5M to construct a convention center hotel and parking garage.

City's Obligations:

- Annually reimburse 90 percent of Property Tax Increment for 20 years.

Performance Criteria

- Secure not less than $45.5M in private investment
- Comply with all terms, conditions, and obligations within the Agreement
- Comply with all terms, conditions, and obligations of the Lease and Development Agreement for Hotel between Amarillo Local Government Corporation and Supreme Bright Amarillo II, LLC

Benefit to City:

1. Enhances and diversifies economic and industrial base of Amarillo area.
2. Contributes to convention hotel development goal of Ord. 7012.
3. Attracts major investment that will be of benefit to the City.
4. Contributes to the economic development of the City.

ASSIGNMENT AND ASSUMPTION
OF INCENTIVE AGREEMENT

(EMBASSY SUITES DOWNTOWN AMARILLO, TEXAS - TIRZ)

This Assignment and Assumption of Incentive Agreement (this "**Assignment**") is executed as of the 13th day of January, 2022 (the "**Execution Date**") by and between SUPREME BRIGHT AMARILLO II, LLC, a Texas limited liability company ("**Assignor**"), and SUMMIT NCI JV 178, LLC, a Delaware limited liability company ("**Assignee**").

W I T N E S S E T H:

WHEREAS, pursuant to the terms of that certain Contribution and Purchase Agreement dated as of 2nd day of November, 2021, (the "**Agreement**") between NewcrestImage Holdings, LLC, a Delaware limited liability company ("**Holdings**"), the controlling entity of Assignor, and Assignee and its affiliates, Holdings has caused Assignor to convey to Assignee, that a hotel known as the Embassy Suites Downtown Amarillo located at 550 Buchanan Street in Amarillo, Texas (hereinafter referred to as the "**Project**") on or about the Execution Date; and

WHEREAS, Assignor, the Tax Increment Reinvestment Zone Number One, City of Amarillo, Texas, and the City of Amarillo, Texas (together, "**City Parties**"), have entered into that certain Developer Agreement dated as of December 11, 2014 (the "**Incentive Agreement**") in connection with the initial development of the Project, pursuant to which the City Parties have agreed to make certain economic development incentive payments to Assignor (the "**Incentives**"); and

WHEREAS, Assignor desires to assign and Assignee desires to assume such obligations and to accept the assignment of rights of Assignor arising under the Incentive Agreement; and

WHEREAS, all capitalized terms used herein and not otherwise defined shall have the same meaning as in the Agreement.

NOW, THEREFORE, for and in consideration of the above premises, Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, all parties hereby agree as follows effective as of the Effective Date (as hereinafter defined):

1. **Assignment**. Assignor hereby assigns, transfers, sells and conveys to Assignee all of its right, title and interest in and to the Incentive Agreement (other than Assignor's rights with respect to any portion of the Incentives paid to the Assignor prior to the Effective Date), including those directly contracted by Assignor and those which Assignor is an intended or incidental beneficiary, together with all of Assignor's rights, benefits, and privileges and all of Assignor's duties, liabilities, and obligations under, or arising in connection with the Incentive Agreement, excluding, however, (a) any duties, liabilities, and obligations of Assignor arising from a default by Assignor in the performance of its duties, liabilities, and obligations under the Incentive Agreement arising prior to the Effective Date, and (b) any duties, liabilities and obligations of Assignor arising from any deficient or wrongful performance by Assignor under, or in connection with, the Incentive Agreement.

2. **Assumption**. Subject to the exclusions set forth in Section 1, Assignee, for itself and its successors and assigns, hereby agrees to succeed to and assume all of Assignor's rights, benefits and privileges, and to pay or perform, or to cause to be paid or perform, and otherwise discharge or cause to be discharged, to the extent the same hereafter become performance, all of Assignor's duties, liabilities, and obligations under, or arising in connection with, the Incentive Agreement arising or accruing on and after the Effective Date.

3. **Indemnity**. Assignee agrees to indemnify and hold harmless Assignor from any cost, liability, damage or expense (including attorneys' fees) arising out of or relating to Assignee's failure to perform fully and timely perform any of the foregoing obligations of Assignee arising under the Incentive Agreement to the extent accruing on or after the Effective Date. Assignor agrees to indemnify and hold harmless Assignee from any cost, liability, damage or expense (including attorneys' fees) arising out of or relating to Assignor's failure to perform any of the obligations of Assignor arising under the Incentive Agreement to the extent accruing prior to the Effective Date.

4. **General Provisions**.

a. **Successors and Assigns**. Subject to the provisions herein, this Assignment shall be binding upon and inure to the benefit of and be enforceable by the parties hereto, and, in the case of Assignee, its successors and assigns.

b. **Governing Law**. This Assignment shall be governed by and construed in accordance with the laws of the State of Texas.

c. **Counterparts**. This Assignment may be executed in separate counterparts, each of which when so executed and delivered shall be an original, but all of which counterparts shall together constitute one and the same assignment.

5. **Consent to Assignment and Assumption**. This Assignment is subject to and not effective until and unless it is approved by City Parties and attested to below and the effective date of this Assignment shall be the date set forth on the signature page of the City Parties (the "**Effective Date**"). Prior to the Effective Date, Assignor agrees that any amounts paid by City Parties to Assignor under the Incentive Agreement after the Execution Date shall be held in trust by Assignor and paid to Assignee within one (1) business day of receipt of the same.

[signatures appear on the following pages]

EXECUTED as of the Execution Date.

ASSIGNOR:

SUPREME BRIGHT AMARILLO II, LLC,
a Texas limited liability company,

By: Supreme Bright Amarillo Downtown, LLC,
a Texas limited liability company,
its managing member

By: ______________________
Name: Mehul Patel
Title: President

ASSIGNEE:

SUMMIT NCI JV 178, LLC,
a Delaware limited liability company

By: ______________________
Name: ______________________
Its: ______________________

EXECUTED as of the Execution Date.

ASSIGNOR:

SUPREME BRIGHT AMARILLO II, LLC,
a Texas limited liability company,

By: Supreme Bright Amarillo Downtown, LLC,
a Texas limited liability company,
its managing member

By: ______________________________
Name: Mehul Patel
Title: President

ASSIGNEE:

SUMMIT NCI JV 178, LLC,
a Delaware limited liability company

By: Chris Eng
Name: Christopher Eng
Its: Secretary

ACKNOWLEDGEMENT AND CONSENT

The undersigned authorized representatives of (i) Tax Increment Reinvestment Zone Number One, City of Amarillo, Texas, and (ii) City of Amarillo, Texas (the "**City Parties**"), hereby acknowledge the foregoing Assignment and Assumption Agreement and consent to the assignment and assumption evidenced above. From and after the Effective Date, City Parties shall (i) recognize Assignee as the "Developer" under the Incentive Agreement, (ii) make all payments under the Incentive Agreement to Assignee, and (ii) give Assignee written notice at the address set forth below for Assignee in accordance with the terms of the Incentive Agreement. The City Parties consent and execution below is not to be interpreted or construed as an amendment to or diminution in any manner of the City Parties' rights and privileges pursuant to the terms of the Incentive Agreement.

CITY OF AMARILLO, TEXAS

DocuSigned by:

By: ______________________

C3E01BC653BF492...

Name: Jared Miller
Its: City Manager

TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF AMARILLO, TEXAS

DocuSigned by:

By: Dean Frigo ______________________

354EEDA23F02426...

Name: Dean Frigo
Its: Board Chair

Executed effective as of January 13, 2022 (the "**Effective Date**")

NOTICE ADDRESS FOR ASSIGNEE:

c/o Summit Hotel Properties, Inc.
13215 Bee Cave Parkway, Suite B-300
Austin, Texas 78738
Attention: Legal Department/Christopher Eng
E-mail: ceng@shpreit.com

DEVELOPER AGREEMENT
TAX INCREMENT REINVESTMENT ZONE NO. 1
CITY OF AMARILLO, TEXAS

This DEVELOPER AGREEMENT ("Agreement") is entered into by and between the **TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF AMARILLO, TEXAS** (the "Zone"), by and through its administrative board appointed in accordance with Chapter 311 of the Texas Tax Code (the "Act") to oversee the administration of the Zone, a reinvestment zone designated by ordinance of the City of Amarillo, Texas ("City") in accordance with the Act, and **SUPREME BRIGHT AMARILLO II, LLC** ("Developer").

The Zone and Developer hereby agree that the following statements are true and correct and constitute the basis upon which the Zone and Developer have entered into this Agreement:

WHEREAS, on December 19, 2006, the City Commission approved Ordinance No. 7012 establishing Tax Increment Reinvestment Zone Number One, City of Amarillo, Texas, (the "Zone") in accordance with the Tax Increment Financing Act, as amended (V.T.C.A., Tax Code, Chapter 311) to promote development and redevelopment in the area through the use of tax increment financing;

WHEREAS, on November 13, 2007, pursuant to Ordinance No. 7076, the CITY did approve Tax Increment Financing Reinvestment Zone Number One, City of Amarillo, Texas, Project and Financing Plan (the "Plan") and certain amendments to Ordinance No. 7012;

WHEREAS, pursuant to the Plan, certain tax revenues will flow into a fund to be administered by the Zone, known as the Tax Increment Fund (TIF); also, the Zone may receive other gifts, grants or other revenue to be accounted for separately from the TIF but used only for duly approved authorized purposes of the Zone;

WHEREAS, pursuant to Section 311.010 of the Act and the provisions of City Ordinance No. 7012, as amended, City has delegated to the Zone the powers necessary for the implementation of the Plan, which powers include the power to enter into agreements for the construction of both private and public improvements that accomplish or enhance one of these four goals: 1) Convention Hotel, 2) Urban Residential Development, 3) Office/Commercial/Retail Development, or 4) Ballpark/Family Entertainment Venues;

WHEREAS, the Zone and City recognize the importance of its continued role in local economic development, including incentives under Chapter 380, Texas Local Government Code;

WHEREAS, Developer owns or controls certain property located within the Zone and has requested reimbursement for constructing certain improvements pursuant to the Plan; and, WHEREAS, Developer's proposed hotel project was previously approved for TIRZ participation by the Amarillo City Commission on August 23, 2011 to Wallace Bajjali Development Partners, LP; and,

WHEREAS, that agreement approved in 2011 allows Wallace Bajjali Development Partners, LP to assign it to another developer; and,

WHEREAS, Wallace Bajjali Development Partners, LP has now assigned its incentives to Supreme Bright Amarillo II, LLC for hotel development, and Supreme Bright Amarillo II, LLC has assumed such rights, obligations and benefits; and,

WHEREAS, the prior development agreement between Wallace Bajjali Development Partners, LP and Tax Increment Reinvestment Zone #1 is now terminated and this agreement with Supreme Bright Amarillo II, LLC now replaces and supersedes such prior agreement as to the hotel project;

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

Section 1. Site

Developer owns or controls by long term lease certain real property (the "Property"), which is within the city limits of Amarillo and the boundaries of the Zone. The Property is specifically described in Exhibit A.

Section 2. Project and Financing

Developer proposes to invest not less than $45.5 million to design, construct on the Property, and operate a convention center hotel ("Hotel") and parking garage (the "Private Improvements"), which are more particularly described on Exhibit B. The Hotel initially will be affiliated with the national chain, Embassy Suites.

Developer understands and agrees that the cost of the Private Improvements associated with the Project shall be funded by and through Developer's own capital or other financing means arranged and obtained by Developer. Further, the TIF payments made to Developer pursuant to this Agreement are not intended to reimburse Developer for all of its costs incurred in connection with the Private Improvements or the performance of its obligations under this Agreement.

Section 3. TIF Participation: partial reimbursement of tax increment

Subject to all limitations and conditions precedent contained in this Agreement and the attached exhibits, Zone agrees to provide: annual reimbursement to Developer of ninety percent (90%) of the annual ad valorem tax increment from participating taxing entities that is generated by the Property's ad valorem tax revenue until the expiration of twenty (20) years after the certificate of occupancy is issued for the Hotel. The term "tax increment" means the difference in tax revenue on the Property between the year in which City approved this Agreement and January 1 of each subsequent tax year during the term of this Agreement.

Unless explicitly provided differently in an exhibit attached hereto, all reimbursements payable to Developer under this Agreement shall be made in annual installments in June of each year (commencing after the first full year following certificate of occupancy issuance), provided all current taxes have been paid on the Property and any other prerequisites stated in this Agreement have been satisfied.

During each fiscal year for the term of this Agreement, payment of the annual installment to Developer shall have priority for reimbursement over all other Zone expenditures subject only to (i) preexisting debt service and (ii) any pre-existing annual expenditures required to be made pursuant to other Developer Agreements prior in time to this Agreement.

Section 4. Reimbursement Limited to TIF Fund

Developer understands and agrees that any and all payments, obligations, grants, loans, reimbursements and any other form of financial obligation imposed on the Zone by this Agreement ("Reimbursement") shall be made solely from then-currently available revenues in the TIF Fund and subject to pre-existing commitments described in the third paragraph in Section 3 above, and all other terms of this Agreement and applicable laws. In the event that there is not sufficient revenue in the TIF Fund to timely pay Developer any part of the Reimbursement, the Zone will pay Developer such portion of the Reimbursement that may be available at the time. The balance of any due but unpaid Reimbursement shall be carried forward without interest and paid by the Zone in the first year in which there is sufficient revenue in the TIF to pay such balance. Developer agrees that it will not look to other funds of the Zone, bonds or funds of the City, or any property of the Zone or City for all or any portion of the Reimbursement. Upon termination of the Zone on December 19, 2036, as provided by Ordinance No. 7012 or such other date as may be specified in a subsequent ordinance adopted in accordance with Section 311.017 of the Act, any portion of the Reimbursement that has not been paid due to the unavailability of revenue in the TIF Fund or due to Developer's failure to meet any precondition under this Agreement for receipt of the Reimbursement shall no longer be considered Project Costs of the Zone, and any obligation of the Zone to pay Developer any remaining balance of the Reimbursement shall automatically expire.

Section 5. Term

Notwithstanding Section 7, the term of this Agreement shall begin upon the Effective Date and end upon the earlier of: (a) the complete performance of all obligations and conditions precedent by parties to this Agreement; (b) expiration of twenty years after the issuance of the certificate of occupancy for the Hotel; or (c) the expiration of the term of the Zone. Section 8 shall survive the termination of this Agreement.

Section 6. Exhibits

The parties agree that each and every exhibit that is mentioned in and attached to this Agreement is a material part of this Agreement and each such exhibit is by this reference, incorporated into this agreement for all purposes as thought set forth verbatim here.

Section 7. Force Majeure

It is expressly understood and agreed by the parties that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities (SPS/Xcel Electric, Southwestern Bell Telephone, Atmos Gas, Suddenlink Cable or their Contractors or other utilities or their contractors), fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement, and this agreement, shall be extended for a period of time equal to the period such party was delayed.

Section 8. Indemnity

DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD THE ZONE, THE BOARD, THE CITY AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, ASSIGNS AND SUCCESORS, HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES, INTEREST, AND ATTORNEY FEES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE (INCLUDING LOSS) OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT MAY ARISE OUT OF OR BE OCCASIONED BY DEVELOPER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT ACT OR OMISSION OF DEVELOPER, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE ZONE, BOARD OR CITY OR THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES OR CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH DEVELOPER AND ZONE, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. HOWEVER, NOTHING IN THIS SECTION WAIVES ANY IMMUNITY OR OTHER DEFENSE AVAILABLE TO THE ZONE, BOARD OR CITY UNDER TEXAS OR FEDERAL LAW.

Section 9. Reserved.

Section 10. Events of Default and Remedies

A default shall exist if either party fails to perform or observe any material covenant contained in this Agreement, including exhibits, which is not otherwise excused under the terms of this Agreement. The non-defaulting party shall immediately notify the defaulting party in writing upon becoming aware of any change in the existence of any condition or event that would constitute a default or, with the giving of notice or passage of time, or both, would constitute a default under this Agreement. Such notice shall specify the nature and the period of existence thereof and what action, if any, the non-defaulting party requires or proposes to require with respect to curing the default.

If a default shall occur and continue, after thirty (30) day's notice to cure default, the non-defaulting party may, at its option, pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law, without the necessity of further notice to or demand upon the defaulting party. The Zone shall not, however, pursue remedies for as long as Developer proceeds in good faith and with due diligence to remedy and correct the default, provided that Developer has commenced to cure such default within the 30 days following notice.

Section 11. Venue and Governing Law

This Agreement is performable in Potter County, Texas and venue of any action arising out of this Agreement shall be exclusively in Potter County. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Amarillo, applicable federal and state laws, the violation of which shall constitute a default of this Agreement. To the extent permitted by law, the law of the state of Texas shall apply without regard to applicable principles of conflicts of law, and the parties submit to the jurisdiction of the state and federal courts in Amarillo, Potter County, Texas.

Section 12. Notices

Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mail by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described.

If intended for Zone, to:

Tax Increment Reinvestment Zone No. 1
c/o City of Amarillo Director of Planning
509 S.E. 7th Street, Suite 206
Amarillo TX 79101
Fax: 806/378-9388

If intended for Developer, to:

Supreme Bright Amarillo II, LLC
1141 Kinwest Parkway, Suite 150
Irving, Texas 75063
Phone: 214-496-9300 x201
Fax: 469-519-8801
Attn: Chirag Patel

Copy to:

Office of the City Attorney
509 S.E. 7th Street, Suite 303
Amarillo, Texas 79101
Fax: 806/378-3018

Copy to:

Robert H. Voelker, Esq.
Mursch Hardt Kopf & Harr, PC
500 N. Akard, Suite 3800
Dallas, Texas 75201
Phone: (214) 855-7594
Fax: (214) 978-4379

Section 13. Severability

In case any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect by a court or agency of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other remaining provisions hereof and this Agreement shall remain in full force and effect and be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

Section 14. Counterparts and Signatures

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

This agreement may be executed in multiple originals. This agreement may be executed by facsimile signatures which shall be deemed originals and equally admissible as originals.

Section 15. Captions and Recitals

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement. The Recitals are a part of this Agreement.

Section 16. Successors and Assigns

The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. Provided, however, Developer shall not assign this Agreement without prior written Zone approval, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, written approval of the Zone shall not be required for an assignment to an Affiliate of Developer. "Affiliate of Developer" as used herein, includes any parent, sister, partner, joint venturer, or subsidiary entity of Developer; any entity in which Developer is a major shareholder, owns an equity interest, or is a joint venturer or partner (whether general or limited), or to the Developer's financial institution, provided that Developer's assignee expressly assumes the obligations of Developer hereunder and that Developer and Developer's assignee are thereafter jointly and severally liable hereunder.

Section 17. Limited Rights and Non-waiver

This agreement is intended only to establish the rights and obligations as between the parties hereto and it creates no right, expectation, benefit or obligation for or toward any other person or entity. Nothing stated or omitted from this Agreement shall be construed as a waiver of any defense, affirmative defense, or immunity available to the Zone or the City and their respective officials, directors, members, employees, agents, assigns, successors.

Section 18. Entire Agreement

This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

EXECUTED as of the dates shown below so as to be effective for all purposes as of the last date upon which all persons and parties for whom a blank is provided have signed (the "Effective Date").

TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF AMARILO, TEXAS

By: 12/11/14
Richard Brown — Date
Chairman of Board

SUPREME BRIGHT AMARILLO II, LLC

By: 12/11/14
CHIRAG PATEL — Date
CFO

CITY OF AMARILO, TEXAS

By: 12/11/14
W. Jarrett Atkinson — Date
City Manager

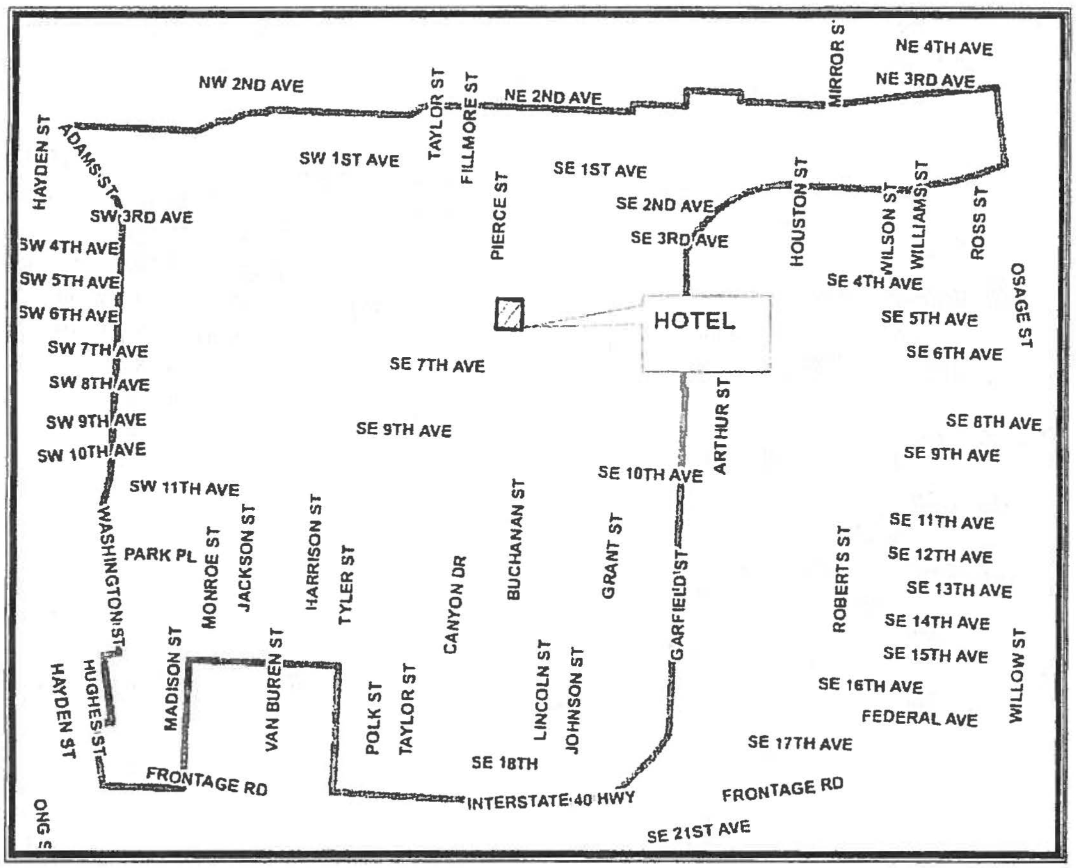
APPROVED AS TO FORM AND LEGALITY FOR CITY AND ZONE

By: 12/11/14
Marcus W. Norris — Date
City Attorney

Attachments that are part of this Agreement:
Exhibit A Site description & map
Exhibit B Private Improvements to the Property

EXHIBIT A

MAP OF TIRZ BOUNDARY AND SITE LOCATION



Hotel: Block 58 G&S Plemmons Addition, Amarillo, Potter County, Texas

EXHIBIT B

PRIVATE IMPROVEMENTS TO THE PROPERTY

SECTION 1. PRIVATE IMPROVEMENTS TO BE CONSTRUCTED

Developer promises to construct the following as the Private Improvements to the Property as described in Exhibit A:

Hotel	As described in and in accordance with that certain Lease and Development Agreement for Hotel between Amarillo Local Government Corporation and Supreme Bright Amarillo II, LLC

SECTION 2. FINANCIAL ANALYSIS

TIRZ analysis of data indicates the proposed costs of the project are not fully supported by the potential revenue, coupled with the reluctance of financial lenders to invest in an untried hotel market downtown. The proposed gap assistance will encourage and support the construction of the Private Improvements and is consistent with the goals of the Zone and public purpose to diversify the economy, eliminate un-and under-employment in the zone, and to develop or expand business and commercial activity in the TIRZ. Making grants and loans from the TIF of the Zone will serve those ends.

In order to make Developer's planned development or redevelopment financially feasible, Developer has requested that the Zone reimburse Developer for certain actual costs incurred for financial "gap" assistance per §311.010 of the Texas Tax Code and chapter 380 of the Texas Local Government Code, with such reimbursement to be in the form of a rebate of a portion of the ad valorem tax increment.

SECTION 3. DEVELOPER'S OBLIGATIONS

As conditions precedent to the Zone making any payment from the TIF to Developer, the Developer must:

- Comply with all terms, conditions, and obligations of the Agreement and all exhibits.

- Comply with the terms, rights, and obligations of the Lease and Development Agreement for Hotel between Amarillo Local Government Corporation and Supreme Bright Amarillo II, LLC

- Pay all taxes due on the Private Improvements and the Property.

ASSIGNMENT AND ASSUMPTION
OF INCENTIVE AGREEMENT

(EMBASSY SUITES DOWNTOWN AMARILLO, TEXAS - EDA)

This Assignment and Assumption of Incentive Agreement (this "**Assignment**") is executed as of the 13th day of January, 2022 (the "**Execution Date**") by and between SUPREME BRIGHT AMARILLO II, LLC, a Texas limited liability company ("**Assignor**"), and SUMMIT HOTEL TRS 178, LLC, a Delaware limited liability company ("**Assignee**").

W I T N E S S E T H:

WHEREAS, pursuant to the terms of that certain Contribution and Purchase Agreement dated as of 2nd day of November, 2021, (the "**Agreement**") between NewcrestImage Holdings, LLC, a Delaware limited liability company ("**Holdings**"), the controlling entity of Assignor, and Assignee and its affiliates, Holdings has caused Assignor to convey to Summit Hospitality 178, LLC, that a hotel known as the Embassy Suites Downtown Amarillo located at 550 Buchanan Street in Amarillo, Texas (hereinafter referred to as the "**Project**") on or about the Execution Date; and

WHEREAS, Assignor and the City of Amarillo, Texas ("**City Party**"), has entered into that certain Amended and Restated Economic Development Agreement dated as of April 10, 2015, as amended by that certain First Amendment to Economic Development Agreement dated as of January 13, 2022 (as amended, the "**Incentive Agreement**") in connection with the initial development of the Project, pursuant to which the City Party has agreed to make certain economic development incentive payments to Assignor (the "**Incentives**"); and

WHEREAS, Assignor desires to assign and Assignee desires to assume such obligations and to accept the assignment of rights of Assignor arising under the Incentive Agreement; and

WHEREAS, all capitalized terms used herein and not otherwise defined shall have the same meaning as in the Agreement.

NOW, THEREFORE, for and in consideration of the above premises, Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, all parties hereby agree as follows effective as of the Execution Date (as hereinafter defined):

1. **Assignment**. Assignor hereby assigns, transfers, sells and conveys to Assignee all of its right, title and interest in and to the Incentive Agreement (other than Assignor's rights with respect to any portion of the Incentives paid to the Assignor prior to the Effective Date), including those directly contracted by Assignor and those which Assignor is an intended or incidental beneficiary, together with all of Assignor's rights, benefits, and privileges and all of Assignor's duties, liabilities, and obligations under, or arising in connection with the Incentive Agreement, excluding, however, (a) any duties, liabilities, and obligations of Assignor arising from a default by Assignor in the performance of its duties, liabilities, and obligations under the Incentive Agreement arising prior to the Effective Date, and (b) any duties, liabilities and obligations of Assignor arising from any deficient or wrongful performance by Assignor under, or in connection with, the Incentive Agreement.

2. **Assumption**. Subject to the exclusions set forth in Section 1, Assignee, for itself and its successors and assigns, hereby agrees to succeed to and assume all of Assignor's rights, benefits and privileges, and to pay or perform, or to cause to be paid or perform, and otherwise discharge or cause to be discharged, to the extent the same hereafter become performance, all of Assignor's duties, liabilities, and obligations under, or arising in connection with, the Incentive Agreement arising or accruing on and after the Effective Date.

3. **Indemnity**. Assignee agrees to indemnify and hold harmless Assignor from any cost, liability, damage or expense (including attorneys' fees) arising out of or relating to Assignee's failure to perform fully and timely perform any of the foregoing obligations of Assignee arising under the Incentive Agreement to the extent accruing on or after the Effective Date. Assignor agrees to indemnify and hold harmless Assignee from any cost, liability, damage or expense (including attorneys' fees) arising out of or relating to Assignor's failure to perform any of the obligations of Assignor arising under the Incentive Agreement to the extent accruing prior to the Effective Date.

4. **General Provisions**.

a. **Successors and Assigns**. Subject to the provisions herein, this Assignment shall be binding upon and inure to the benefit of and be enforceable by the parties hereto, and, in the case of Assignee, its successors and assigns.

b. **Governing Law**. This Assignment shall be governed by and construed in accordance with the laws of the State of Texas.

c. **Counterparts**. This Assignment may be executed in separate counterparts, each of which when so executed and delivered shall be an original, but all of which counterparts shall together constitute one and the same assignment.

5. **Consent to Assignment and Assumption**. This Assignment is subject to and not effective until and unless it is approved by the City Party and attested to below and the effective date of this Assignment shall be the date set forth on the signature page of the City Party (the "**Effective Date**"). Prior to the Effective Date, Assignor agrees that any amounts paid by City Party to Assignor under the Incentive Agreement after the Execution Date shall be held in trust by Assignor and paid to Assignee within one (1) business day of receipt of the same.

[signatures appear on the following pages]

EXECUTED as of the Execution Date.

ASSIGNOR:

SUPREME BRIGHT AMARILLO II, LLC,
a Texas limited liability company,

By: Supreme Bright Amarillo Downtown, LLC,
a Texas limited liability company,
its managing member

By: ______________________
Name: Mehul Patel
Title: President

ASSIGNEE:

SUMMIT HOTEL TRS 178, LLC,
a Delaware limited liability company

By: ______________________
Name: ______________________
Its: ______________________

EXECUTED as of the Execution Date.

ASSIGNOR:

SUPREME BRIGHT AMARILLO II, LLC,
a Texas limited liability company,

By: Supreme Bright Amarillo Downtown, LLC,
a Texas limited liability company,
its managing member

By: ______________________________
Name: Mehul Patel
Title: President

ASSIGNEE:

SUMMIT HOTEL TRS 178, LLC,
a Delaware limited liability company

By: Chris Eng
Name: Christopher Eng
Its: Secretary

ACKNOWLEDGEMENT AND CONSENT

The undersigned authorized representatives of City of Amarillo, Texas ("**City Party**") hereby acknowledges the foregoing Assignment and Assumption Agreement and consent to the assignment and assumption evidenced above. From and after the Effective Date, City Party shall (i) recognize Assignee as the "Developer" under the Incentive Agreement, (ii) make all payments under the Incentive Agreement to Assignee, and (ii) give Assignee written notice at the address set forth below for Assignee in accordance with the terms of the Incentive Agreement. The City Party consent and execution below is not to be interpreted or construed as an amendment to or diminution in any manner of the City Party's rights and privileges pursuant to the terms of the Incentive Agreement.

CITY OF AMARILLO, TEXAS

DocuSigned by:

By: ______________________

C3E01BC653BF492...

Name: Jared Miller
Its: City Manager

Executed effective as of January 13, 2022 (the "**Effective Date**")

NOTICE ADDRESS FOR ASSIGNEE:

c/o Summit Hotel Properties, Inc.
13215 Bee Cave Parkway, Suite B-300
Austin, Texas 78738
Attention: Legal Department/Christopher Eng
E-mail: ceng@shpreit.com

FIRST AMENDMENT TO AMENDED AND RESTATED ECONOMIC DEVELOPMENT AGREEMENT

(EMBASSY SUITES DOWNTOWN AMARILLO, TEXAS)

This First Amendment to Amended and Restated Economic Development Agreement (this "**Amendment**") is made and entered into effective as of the 13th day of January, 2022 (the "**Effective Date**") by and between SUPREME BRIGHT AMARILLO II, LLC, a Texas limited liability company ("**Developer**"), and THE CITY OF AMARILLO, TEXAS, a home-rule municipality located within Potter County, Texas ("**City**").

W I T N E S S E T H:

WHEREAS, Developer and City entered into that certain Amended and Restated Economic Development Agreement dated effective as of April 10, 2015 (the "**Agreement**") in connection with the initial development of the Hotel Project (as defined in the Agreement) (terms not otherwise defined herein shall have the meaning set forth in the Agreement;

WHEREAS, pursuant to terms of the Agreement, the City have agreed to make certain economic development incentive grants from Project HOT Revenues and State Rebates of State HOT Revenues and State Sales Tax Revenues for a term expiring the earlier of the date when the Hotel Project Financing has been fully paid or the statutory time limit for the City's receipt a particular pledge of Project HOT Revenues, State Sales Tax Revenues, and/or State HOT Revenues; and

WHEREAS, Developer and City desire to (i) clarify that the Hotel Project Financing may include the allocation of certain parent company indebtedness related to the Hotel Project and may not be secured by a lien on the Hotel Project, (ii) permit payments of City Pledged Revenues to be paid to Developer on the Monthly Transfer Date, and (iii) clarify that the City Pledged Revenues will be paid until the applicable statutory time limit on the maximum period for pledge and payment of City Pledged Revenues.

NOW, THEREFORE, for and in consideration of the above premises, Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, all parties hereby agree as follows effective as of the Effective Date:

1. Definition of Hotel Project Financing. The definition of "Hotel Project Financing" in Section 1.1 is hereby deleted in its entirety and replaced with the following:

> "**'Hotel Project Financing'** shall mean the any financing, whether secured by the Hotel Project or otherwise, for the purpose of financing the construction, purchase, furnishing or operation of the Hotel Project, any refinancing, rearrangement and renewal thereof, including, without limitation, any corporate debt of any parent or affiliate entity owning or controlling the Hotel Project ."

2. Amendment to Section 5.1. Section 5.1 of the Agreement is hereby deleted in its entirety and is replaced with the following:

"**Section 5.1** **<u>Transfers of City Pledged Revenues</u>**. On or before the fifth (5^{th}) Business Day after which City has received City Pledged Revenues, the City shall transfer all City Pledged Revenues as described in Section 5.2 hereof to Developer or, upon written direction by Developer, to the Lender for the benefit of Developer."

3. Amendment to Section 5.2(b) through 5.2(d). Sections 5.2(b) through 5.2(d) are hereby deleted in their entirety and replaced with the following:

"(b) **<u>Project HOT Revenues</u>**. On or before the date of opening of the Hotel Project, the City shall create a separate account on the financial records of the City into which the City shall deposit all Project HOT Revenues when received by the City (the "**<u>Project HOT Revenue Account</u>**"). Pursuant to the Economic Development Act, the City hereby grants to the Developer (subject to Section 5.3(c) hereof) the Project HOT Revenues and all funds on deposit in the Project HOT Revenue Account and agrees to transfer such Project HOT Revenues and funds at the times and in the manner set forth herein.

(c) **<u>State HOT Revenues</u>**. On or before the date of opening of the Hotel Project, the City shall create a separate account on the financial records of the City into which the City shall deposit all State HOT Revenues when received by the City (the "**<u>State HOT Revenue Account</u>**"). Pursuant to the Economic Development Act, the City hereby grants to the Developer (subject to the provisions of Section 5.3(b) hereof) the State HOT Revenues and all funds on deposit in the State HOT Revenue Account and agrees to transfer such State HOT Revenues and funds at the times and in the manner set forth herein.

(d) **<u>State Sales Tax Revenues</u>**. On or before the date of opening of the Hotel Project, the City shall create a separate account on the financial records of the City into which the City shall deposit all State Sales Tax Revenues when received by the City (the "**<u>State Sales Tax Revenue Account</u>**"). Pursuant to the Economic Development Act, the City hereby grants to the Developer (subject to the provisions of Section 5.3(b) hereof) the State Sales Tax Revenues and all funds on deposit in the State Sales Tax Revenue Account and agrees to transfer such State Sales Tax Revenues and funds at the times and in the manner set forth herein."

4. <u>Amendment to Section 5.3(a)</u>. Section 5.3(a) of the Agreement is hereby deleted in its entirety and is replaced with the following:

"(a) **<u>Unconditional Payments by the City to the Developer</u>**. In consideration of the Developer's agreement to secure the Hotel Project Financing to fund the cost of the construction and furnishing of the Hotel Project and executing the Hotel Project as provided in the Lease and Development Agreement, the City agrees that it will pay Developer, during the term hereof, as an unconditional obligation of the City (but solely from the sources described in Section 5.2 hereof, and subject to the provisions of Section 5.3(b)), the amounts received from the Hotel Project that are required to be paid by Section 5.1 hereof.

Such payments of monies received are not subject to any reduction of any kind, whether by offset or otherwise. THE DEVELOPER, LENDER, AND ANY OTHER BENEFICIARY HEREOF SHALL NEVER HAVE THE RIGHT TO DEMAND PAYMENTS REQUIRED TO BE MADE BY THE CITY PURSUANT TO THIS AGREEMENT OUT OF ANY FUNDS RAISED OR TO BE RAISED BY TAXATION OR FROM ANY SOURCE WHATSOEVER OTHER THAN AS SPECIFIED IN SECTION 5.2 HEREOF, AND SUBJECT TO THE PROVISIONS OF SECTIONS 5.3(b) AND 5.3(c) BELOW."

5. Amendment to Section 7.1. Section 7.1 of the Agreement is hereby deleted in its entirety and is replaced with the following:

"**Section 7.1 Term**. This Agreement shall commence on the closing date of the Hotel Project Financing and shall automatically terminate as to a particular pledge of Project HOT Revenues, State Sales Tax Revenues and/or State HOT Revenues as required by any applicable statutory time limit on the maximum period for the pledge and payment of such Project HOT Revenues, State Sales Tax Revenues and/or State HOT Revenues."

6. Ratification. All other terms, provisions, conditions and obligations of the Agreement remain unaffected and in full force and effect, are binding on the parties and hereby ratified by City and Developer. If there is a conflict between the terms of this Amendment and the Agreement, then the

7. Counterparts. This Amendment may be executed in one or more counterparts all of which when taken together shall constitute one and the same agreement. Electronic signatures shall be effective for all purposes as original signatures.

[signatures appear on the following pages]

IN WITNESS WHEREOF, the City and Developer have caused this Amendment to be executed by their duly authorized officers and representatives as of the Effective Date.

DEVELOPER:

SUPREME BRIGHT AMARILLO II, LLC

By: Supreme Bright Amarillo Downtown, LLC, its managing member

By: ______________________________
Name: Mehul Patel
Title: President

CITY:

CITY OF AMARILLO, TEXAS

By: ______________________________
Jared Miller, City Manager

Attest:

____
Stephanie Coggins, City Secretary

Approved as to Form:

____
Bryan McWilliams, City Attorney

IN WITNESS WHEREOF, the City and Developer have caused this Amendment to be executed by their duly authorized officers and representatives as of the Effective Date.

DEVELOPER:

SUPREME BRIGHT AMARILLO II, LLC

By: Supreme Bright Amarillo Downtown, LLC,
its managing member

By: ________________________________
Name: Mehul Patel
Title: President

CITY:

CITY OF AMARILLO, TEXAS

By: DocuSigned by:
C3E01BC653BF492...
Jared Miller, City Manager

Attest:

DocuSigned by:
Stephanie Coggins
0F9A4D93DB01427...
Stephanie Coggins, City Secretary

Approved as to Form:

DocuSigned by:
Bryan McWilliams
C890556882334B2...
Bryan McWilliams, City Attorney

AMENDED AND RESTATED

ECONOMIC DEVELOPMENT AGREEMENT

between

CITY OF AMARILLO, TEXAS

and

SUPREME BRIGHT AMARILLO II, LLC

April 10, **2015**

CONVENTION CENTER HOTEL

AMARILLO, POTTER COUNTY, TEXAS

TABLE OF CONTENTS

AMENDED AND RESTATED ECONOMIC DEVELOPMENT AGREEMENT

THE STATE OF TEXAS §

COUNTY OF POTTER §

THIS AMENDED AND RESTATED ECONOMIC DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into by and among the **CITY OF AMARILLO, TEXAS**, a home-rule municipality located primarily within Potter County, Texas (hereinafter called the "**City**") and **SUPREME BRIGHT AMARILLO II, LLC**, a Texas limited liability company (the "**Developer**"), each acting by and through their respective authorized officers and representatives.

RECITALS:

WHEREAS, the City owns and operates "convention center facilities" within the meaning of Chapter 351, Texas Tax Code, as amended (the "**HOT Statute**"), comprised of the Amarillo Civic Center and the Globe News Center (together, the "**Convention Center**"); and

WHEREAS, the Amarillo Local Government Corporation (the "**Corporation**") was created by the City pursuant to the provisions of Subchapter D of Chapter 431, Texas Transportation Code, as amended, for the purpose, among other things, of acting on behalf of the City in the financing, construction, and furnishing of the Hotel Project (defined below) in order to promote economic development and to stimulate business and commercial activity in the city; and

WHEREAS, the Corporation entered into a Lease and Development Agreement, dated June 6, 2012 (the "**Original Lease and Development Agreement**") with Wallace-Bajjali Development Partners, LP ("**WB**") for the purposes of the development and construction by WB of a full-service hotel and related parking garage located within 1,000 feet of the Convention Center; and

WHEREAS, on or about November 25, 2014, WB assigned all of its rights and obligations under the Original Lease and Development Agreement with respect to the full-service hotel (but not the related parking garage) to Developer; and

WHEREAS, on or about November 25, 2014, the Corporation and Developer entered into that certain Amended and Restated Lease and Development Agreement (the "**Lease and Development Agreement**") for the purposes of (i) the development and construction by Developer of a convention center headquarters hotel in accordance with the Lease and Development Agreement (the "**Hotel Project**") that will be located within 1,000 feet of the Convention Center on land owned by the City and leased to the Corporation; and (ii) the lease by Developer from the Corporation of the Hotel Project and related real property on which the Hotel Project will be located; and

WHEREAS, the City previously determined that the construction and operation of the Hotel Project will promote economic development and will stimulate business and commercial activity in the city; and

WHEREAS, the City entered into that certain Economic Development Agreement with WB dated July 31, 2012 (the "**Original Economic Development Agreement**"), and WB had assigned its rights thereunder to Developer pursuant to that certain Assignment and Assumption of Incentive Agreement dated November 25, 2014; and

WHEREAS, pursuant to Section 52-a of Article III of the Texas Constitution and Chapter 380, Texas Local Government Code, as amended (the "**Economic Development Act**"), the City may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, the City has taken all necessary legal action to adopt an economic development program in satisfaction of the Economic Development Act; and

WHEREAS, the Hotel Project qualifies under the City's economic development program established under the Economic Development Act and this Agreement is authorized pursuant to, and the revenues granted to the Developer herein, satisfy and comply in all respects with the Economic Development Act; and

WHEREAS, the Developer will secure private financing for the construction and furnishing of the Hotel Project, such to be secured in part by the revenues granted and pledged herein; and

WHEREAS, in connection with obtaining the Hotel Project Financing (hereinafter defined), Developer has requested the City to amend and restate the Original Economic Development Agreement; and

WHEREAS, pursuant to the HOT Statute, the City imposes a City-wide hotel occupancy tax at a rate not to exceed seven percent (7%) of the price paid for a room (together with any higher rate that may be lawfully imposed in the future, the "**Local HOT Revenues**"); and

WHEREAS, Section 351.102(b) of the HOT Statute authorizes the City to pledge the revenue derived from the Local HOT Revenues collected and paid to City at the Hotel Project (the "**Project HOT Revenues**") for the payment of bonds or other obligations issued or incurred to acquire, lease, construct, and equip the Hotel Project and any facilities ancillary to the Hotel Project; provided, however, that pursuant to Section 351.102(b-1) of the HOT Statute, the City may not pledge, pay, or transfer the Project HOT Revenues after the earlier of (i) the twentieth (20th) anniversary of the date the City first pledges the Project HOT Revenues or (ii) the date the Project HOT Revenues equal forty percent (40%) of the total construction cost of the Hotel Project (such earlier date, the "**Project HOT Revenue Termination Date**"); and

WHEREAS, pursuant to Chapter 156, Texas Tax Code, as amended, the State of Texas (the "**State**") currently imposes a tax for the use or possession or for the right to the use or possess a room or space in a hotel costing $15 or more each day at a rate equal to six percent (6%) of the price paid for a room at such hotel, and herein as applicable to and generated by the Hotel Project (together with any higher rate that may be imposed in the future, the "**State HOT Revenues**"); and

WHEREAS, pursuant to Chapter 151, Texas Tax Code, as amended, the State currently imposes a sales and use tax on taxable items at a rate equal to six and one quarter percent (6.25%) of the sale of such taxable items on sales occurring at or in the Hotel Project (together with any higher rate that may be imposed in the future, the "**State Sales Tax Revenues**"); and

WHEREAS, Section 151.429(h), Texas Tax Code, as amended, provides that the owner of a "qualified hotel project" shall receive a rebate, refund, or payment of (i) 100% of the State HOT Revenues during the first ten (10) years after such qualified hotel project is open for initial occupancy, and (ii) 100% of the State Sales Tax Revenues during the first ten (10) years after such qualified hotel project is open for initial occupancy (together, the "**State Rebates**"); and

WHEREAS, Section 351.102(c) of the HOT Statute and Section 151.429(h), Texas Tax Code, as amended, together provide (when interpreted in accordance with the rules of code construction set forth in the Code Construction Act, Chapter 311, Texas Government Code, as amended, particularly Sections 311.025 and 311.026 thereof) that the Hotel Project is a "qualified hotel project" and that the City, as owner of the site for the Hotel Project, is entitled to receive the Project HOT Revenues and the State Rebates; and

WHEREAS, based on the legal authorities described above, the City has determined that the following sources of revenues shall be pledged or granted to the Developer pursuant to this Agreement in order to provide security for the payment of debt service on the Hotel Project Financing, as follows (collectively, the "**City Pledged Revenues**"):

1. All Project HOT Revenues generated at or in the Project for the statutorily specified period; and

2. All State Rebates of State HOT Revenues and State Sales Tax Revenues generated at or in and paid by the Hotel Project for the statutorily specified period.

AGREEMENT

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

ARTICLE I.
DEFINITIONS

Section 1.1 **Definitions**. Capitalized terms defined herein have the meanings set forth herein. Capitalized terms not defined herein have the meanings given to such terms in the Lease and Development Agreement. In addition, the following terms shall be construed to mean as follows:

"**City Commission**" shall mean the City Commission of the City of Amarillo, Texas, which is the governing body the City.

"Hotel Project Financing" shall mean the private financing secured by the Developer for the purpose of financing the construction and furnishing of the Hotel Project, and any refinancing, rearrangement and renewal thereof.

"Lender" shall mean the lender under the Loan Documents.

"Loan Documents" shall mean those loan documents by and between the Developer and the Lender pursuant to which the Lender is providing the Hotel Project Financing to the Developer.

"Permitted Investments" shall mean any investments now or hereafter permitted by Chapter 2256, Texas Government Code, as amended, or any successor statute.

"Tax Code" shall mean the Texas Tax Code, as amended.

ARTICLE II.
RECITALS

Section 2.1 **Recitals Are Substantive**. The City and Developer agree that the Recitals hereinabove are true and correct, and are substantive provisions of this Agreement.

ARTICLE III.
AGREEMENT TO SECURE HOTEL PROJECT FINANCING

Section 3.1 **Hotel Project Financing**. In order to assist the City with accomplishing its economic development objectives, the Developer agrees to secure the Hotel Project Financing in accordance with the terms and conditions of the Lease and Development Agreement for the purpose of financing the costs of construction and furnishing of the Hotel Project.

ARTICLE IV.
REPRESENTATIONS AND COVENANTS OF THE CITY

Section 4.1 **City Economic Development Program**. The City represents that it has taken all necessary legal action to adopt and establish an economic development program within the meaning of the Economic Development Act.

Section 4.2 **Qualification Of Hotel Project Under City Economic Development Program**. The City represents that (i) the Hotel Project qualifies under the City's economic development program and (ii) this Agreement is authorized pursuant to, and the City's grant of the Project HOT Revenues and the State Rebates as set forth herein, complies in all respects with the Economic Development Act.

Section 4.3 **Fulfillment of Certain City Obligations Under Lease and Development Agreement**. The City is entering into this Agreement, in part, in order to fulfill certain obligations of the Corporation contained in the Lease and Development Agreement.

Section 4.4 **Covenants of the City**. The Developer and the City agree that the covenants of the City contained in this Section shall only be enforced by the Developer and the

Lender, and their permitted assigns, to the extent necessary to enforce the payment provisions contained herein.

(a) **Levy and Collection of Hotel Occupancy Tax.** The City hereby represents that it currently levies, and while any Hotel Project Financing remains outstanding (and for such other periods before and after such Financing), the City shall continue to levy the Local HOT, as authorized by the HOT Statute. The City further covenants that, while any Hotel Project Financing remains outstanding, the City shall enforce the provisions of any ordinance levying the Local HOT concerning the collection, remittance and payment of such tax in accordance with all applicable laws then in effect.

(b) **Enforcement of Receipt of State Tax Revenues.** The City hereby covenants that while any Hotel Project Financing remains outstanding, the City shall take all steps necessary to enforce the City's rights under Sections 351.102(c) and 151.429(h) of the Tax Code to receive the State Rebates in accordance with all applicable laws then in effect.

(c) **Affirmation of Covenant Not to Pledge Revenues to Other Obligations.** The City hereby covenants that it shall not make a pledge of the City Pledged Revenues to any additional obligations of any kind other than the Hotel Project Financing, that would be effective prior to the Project HOT Revenue Termination Date.

(d) **Further Assurances.** The City will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to assist Developer in the financing of the Hotel Project and to allow the Developer to comply with reporting obligations, to assure the Developer of the City's intentions to perform hereunder and for the better assuring and confirming unto the Developer and the Lender of the rights and benefits provided to them herein.

ARTICLE V.
PAYMENT OF CITY PLEDGED REVENUES BY THE CITY

Section 5.1 **Transfers to Lender.** On or before the fifth Business Day after which City has received the Project HOT and State HOT revenues (the "Monthly Transfer Date"), the City shall transfer all City Pledged Revenues as described in Section 5.2 hereof to the Lender for the benefit of Developer.

Section 5.2 **Source of City Payments; Revenue Transfers.**

(a) **Source of City Payments.** All funds required to be transferred to the Lender pursuant to Section 5.1 hereof are payable solely from the following revenue sources of and as received by the City:

(i) Project HOT Revenues;

(ii) State Sales Tax Revenues; and

(iii) State HOT Revenues.

This Agreement shall create no obligation of the City which is payable from any other taxes or other revenues of the City other than the City Pledged Revenues described herein as and when such are actually received by the City. The Developer and the Lender shall never have the right to demand that any of these payments be made from any accounts or funds raised or to be raised by ad valorem taxation or other City revenue sources that are not City Pledged Revenues.

(b) **Project HOT Revenues**. On or before the date of opening of the Hotel Project, the City shall create a separate account on the financial records of the City into which the City shall deposit all Project HOT Revenues when received by the City (the "**Project HOT Revenue Account**"). Pursuant to the Economic Development Act, the City hereby grants to the Developer (subject to Section 5.3(c) hereof), for the benefit of the Lender, the Project HOT Revenues and all funds on deposit in the Project HOT Revenue Account and agrees to transfer such Project HOT Revenues and funds at the times and in the manner set forth herein.

(c) **State HOT Revenues**. On or before the date of opening of the Hotel Project, the City shall create a separate account on the financial records of the City into which the City shall deposit all State HOT Revenues when received by the City (the "**State HOT Revenue Account**"). Pursuant to the Economic Development Act, the City hereby grants to the Developer (subject to the provisions of Section 5.3(b) hereof), for the benefit of the Lender, the State HOT Revenues and all funds on deposit in the State HOT Revenue Account and agrees to transfer such State HOT Revenues and funds at the times and in the manner set forth herein.

(d) **State Sales Tax Revenues**. On or before the date of opening of the Hotel Project, the City shall create a separate account on the financial records of the City into which the City shall deposit all State Sales Tax Revenues when received by the City (the "**State Sales Tax Revenue Account**"). Pursuant to the Economic Development Act, the City hereby grants to the Developer (subject to the provisions of Section 5.3(b) hereof), for the Lender, the State Sales Tax Revenues and all funds on deposit in the State Sales Tax Revenue Account and agrees to transfer such State Sales Tax Revenues and funds at the times and in the manner set forth herein.

Section 5.3 Unconditional Payments by the City to the Developer; Certain Payments Subject to Non-Appropriation Upon Occurrence of Certain Events.

(a) **Unconditional Payments by the City to the Developer**. In consideration of the Developer's agreement to secure the Hotel Project Financing to fund the cost of the construction and furnishing of the Hotel Project and executing the Hotel Project as provided in the Lease and Development Agreement, the City agrees that it will pay to the Lender for the benefit of the Developer, during the term hereof, as an unconditional obligation of the City (but solely from the sources described in Section 5.2 hereof, and subject to the provisions of Section 5.3(b), the amounts received from the Hotel Project that are required to be paid by Section 5.1 hereof. Such payments of monies received are not subject to any reduction of any kind, whether by offset or otherwise. **THE DEVELOPER, LENDER, AND ANY OTHER BENEFICIARY HEREOF SHALL NEVER HAVE THE RIGHT TO DEMAND PAYMENTS REQUIRED TO BE MADE BY THE CITY PURSUANT TO THIS AGREEMENT OUT OF ANY FUNDS RAISED OR TO BE RAISED BY TAXATION OR FROM ANY SOURCE WHATSOEVER OTHER THAN AS SPECIFIED IN SECTION 5.2 HEREOF, AND SUBJECT TO THE PROVISIONS OF SECTIONS 5.3(b) AND 5.3(c) BELOW.**

(b) **Certain Payments Subject to Non-Appropriation Upon Occurrence of Certain Events**. Notwithstanding the foregoing, in the event the obligations of the City set forth in Sections 5.2(c) and/or 5.2(d) hereof (granting to the Developer the State HOT Revenues and the State Sales Tax Revenues and the funds on deposit in the State HOT Revenue Account and the State Sales Tax Revenue Account) are held by a Texas court of law having competent jurisdiction to create an unconstitutional debt or obligation of the City, then the grant of such Revenues and funds, and the obligations of the City set forth in Sections 5.2(c) and 5.2(d) hereof, shall thereafter automatically be deemed to be subject to annual appropriation by the City Commission of the City. In such event, the City shall use its best efforts to include in each annual budget, for consideration and approval by the City Commission (such approval being solely within the discretion of the City Commission) such amounts as would be sufficient to satisfy the City's obligations set forth in Sections 5.2(c) and 5.2(d) hereof; provided however, that the failure to appropriate such amounts in an annual budget shall not constitute a default hereunder.

(c) **Hotel Project HOT Revenues Not Subject to Appropriation Following the Project HOT Revenue Termination Date**. Notwithstanding the foregoing, following the Project HOT Revenue Termination Date, the grant of the Project HOT Revenues and obligation to transfer the funds on deposit in the HOT Revenue Account shall terminate.

Section 5.4 Investment of Funds on Deposit in Various Accounts. The City may invest any funds on deposit in the Hotel Project HOT Revenue Account, the State HOT Revenue Account and the State Sales Tax Revenue Account in any Permitted Investments which mature, or will permit the City to liquidate or withdraw without penalty, on or before the date the City may be required to transfer such funds to Lender.

ARTICLE VI.
AUDITS, ACCOUNTS, RECORDS AND REPORTS

Section 6.1 Accounts, Records and Accounting Reports. The City covenants and agrees that each, as applicable, will maintain, or cause to be maintained, books, records and accounts relating to the City Pledged Revenues, the Project HOT Revenue Account, the State HOT Revenue Account and the State Sales Tax Revenue Account, and same shall be available for inspection by the Developer and the Lender at reasonable hours and under reasonable circumstances at City's offices, at Developer's expense upon two Business Days' prior notice.

Section 6.2 **Annual Audits**. After the end of each fiscal year of the City, if requested by the Developer or the Lender, and at Developer's expense, the City shall have its books, records, and accounts related to the City Pledged Revenues, the Project HOT Revenue Account, the State HOT Revenue Account and the State Sales Tax Revenue Account, audited by a certified public accountant and shall submit the results of such audit to the Developer and the Lender within one hundred thirty-five (135) days after the end of the fiscal year.

ARTICLE VII.
TERM OF AGREEMENT

Section 7.1 **Term**. This Agreement shall commence on the closing date of the Hotel Project Financing and shall automatically terminate on the date when the Hotel Project Financing has been fully paid, provided however this Agreement may terminate as to a particular pledge of Project HOT Revenues, State Sales Tax Revenues and/or State HOT Revenues before such Hotel Project Financing is fully paid if and as required by any applicable statutory time limit on the maximum period for the pledge and payment of such Project HOT Revenues, State Sales Tax Revenues and/or State HOT Revenues, as applicable.

ARTICLE VIII.
REMEDIES UPON DEFAULT

Section 8.1 **No Waiver**. The failure of either party to insist in any one or more instances upon performance of any of the terms, covenants or conditions hereof shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by the other party hereto, but the obligation of such party with respect to future performance shall continue in full force and effect.

Section 8.2 **Payment Default**. In the event of a default by the City in the payment of any sum due and payable under Section 5.1, the Lender shall be authorized to pursue any remedies authorized by applicable law on behalf of the Developer without notice to or consent of the Developer.

ARTICLE IX.
ASSIGNMENT

Section 9.1 **Assignment**. None of the Developer nor the City may assign or otherwise transfer any rights or obligations created hereby without the written consent of the other parties hereto except that, notwithstanding the foregoing and without the consent of the parties hereto (i) the Developer may assign to the Lender any of its rights and interests herein as security for the Hotel Project Financing and (ii) the Developer may assign this Agreement to any person or entity who succeeds to the Developer's interest as tenant under the Lease and Development Agreement. Upon assignment pursuant to Section 9.l(ii), the assignee shall be bound to the terms, conditions, duties, rights, limitations, and all other provisions of the Developer set forth in this Agreement.

ARTICLE X.
AMENDMENTS

Section 10.1 **Amendments**. This Agreement may be amended only by written instrument duly executed on behalf of each of the parties hereto. Prior to the closing date for the Hotel Project Financing, the parties agrees to enter into one or more amendments hereto containing such modifications to this Agreement as the Lender reasonably may request or as the Attorney General of Texas may require in connection with the Attorney General's approval of this Agreement, if required by applicable law; provided however, that the modifications do not, in the aggregate, materially increase the City's obligations or decrease City's rights under this Agreement.

ARTICLE XI.
ADDRESSES AND NOTICES

Section 11.1 **City's Notice Information**. Until the other parties hereto are otherwise notified in writing by the City, the address of the City is and shall remain as follows:

City of Amarillo, Texas
509 SE 7th, Suite 303
Amarillo, Texas 79101
Attention: City Manager
Telephone: 806.378.3000
Facsimile: 806.378-3018

with a copy to:

City of Amarillo, Texas
509 SE 7th, Suite 303
Amarillo, Texas 79101
Attention: City Attorney
Telephone: 806.378.3000
Facsimile: 806.378.3018

Section 11.2 **Developer's Notice Information**. Until the other parties hereto are otherwise notified in writing by the Developer, the address of the Developer is and shall remain as follows:

Supreme Bright Amarillo II, LLC
1141 Kinwest Parkway, Suite 150
Irving, Texas 75063
Phone: (214) 496-9300 x 201
Fax: (214) 519-8801
Attn: Chirag Patel

with a copy to:

Munsch, Hardt, Kopf & Harr, PC
500 N. Akard, Suite 3800
Dallas, Texas 75201
Phone: (214) 855-7594
Fax: (214) 978-4379
Attn: Robert Voelker

Section 11.3 **Timing of Notices**. All written notices required or permitted to be given under this Agreement from one party to the other shall be deemed given by facsimile transmission or other electronic means when sent by the sending party or three Business Days after the deposit thereof in a United States Postal Service mail box or receptacle with proper postage affixed thereto for certified mail return receipt requested and addressed to the respective other party at the address set forth above or at such other address as the parties respectively shall designate by written notice.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

Section 12.1 **Successors and Assigns**. This Agreement shall bind and benefit the respective parties and their legal successors and assigns, subject to the terms of Article IX above.

Section 12.2 **Benefit of Agreement**. This Agreement shall be for the sole and exclusive benefit of the City and the Developer and shall not be construed to confer any rights upon any third party other than the Lender.

Section 12.3 **Compliance with Laws**. This Agreement shall be subject to all present and future valid laws, orders, rules and regulations of the United States of America, the State of Texas and of any regulatory body having jurisdiction.

Section 12.4 **Severability**. In the event any term, covenant or condition herein contained shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained, provided that such invalidity does not materially prejudice any of the Developer or the City in their respective rights and obligations contained in the valid terms, covenants or conditions hereof.

Section 12.5 **Entire Agreement**. This Agreement merges the prior negotiations and understandings of the parties hereto and embodies the entire agreement of the parties with respect to the subject matter hereof. This Agreement amends and supersedes in its entirety that certain Economic Development Agreement dated July 31, 2012, between the City and WB relating to the Hotel Project.

Section 12.6 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same instrument.

Section 12.7 **<u>Approvals</u>**. This Agreement has been duly approved by the City Commission of the City and by the governing body of the Developer.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

SUPREME BRIGHT AMARILLO II, LLC

By: [signature]
Name: CHIRAG PATEL
Title: Manager, of its Managing Member Newcrest Image Holdings, ...

CITY OF AMARILLO, TEXAS

By: [signature]
W. Jarrett Atkinson, City Manager

Attest:

[signature]
Frances Hibbs, City Secretary

Approved as to Form:
[signature]
Marcus W. Norris, City Attorney