

RESOLUTION NO. 3709

**A RESOLUTION OF THE CITY OF KELLER, TEXAS, APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT, PURSUANT TO CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE, AND PURSUANT TO THE CITY'S ECONOMIC DEVELOPMENT POLICY, WITH THE TAURUS GROUP LP, TO PROMOTE ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; ESTABLISHING PERFORMANCE REQUIREMENTS; AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY.**

**WHEREAS**, Chapter 380 of the Texas Local Government Code authorizes municipalities to establish and provide for the administration of programs that promote economic development and stimulate business and commercial activity in the City of Keller, Texas ("City"); and

**WHEREAS**, the City Council of the City on April 2, 2013 passed Resolution 3349 establishing the City's *Comprehensive Policy of Guidelines and Criteria for Economic Development Incentives* ("Policy"); and

**WHEREAS**, the City adopted Ordinance No. 850 on March 4, 1997, and amended same by Ordinance No. 1692 approved on May 6, 2014, providing for the levy, assessment and collection and disposition of a hotel occupancy tax, pursuant to Chapter 351 of the Texas Tax Code; and

**WHEREAS**, the City desires to attract high-quality long-term investment and the creation of new jobs and to stimulate business and commercial activity in the City; and

**WHEREAS**, the City desires to protect and enhance the City's fiscal ability to provide high-quality municipal services for the residents and businesses in the City; and

**WHEREAS**, the City has concluded and hereby finds that the Chapter 380 Economic Development Program Agreement ("Agreement") attached hereto as Exhibit A, promotes economic development in the City and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and the Policy, and further finds it is in the best interest of the City; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KELLER, TEXAS, THAT:**

**SECTION 1.**

The facts and recitations contained in the preamble of this Resolution are hereby found and declared to be true and correct and are incorporated herein in their entirety.

**SECTION 2.**

The City Council hereby approves the Chapter 380 Economic Development Program Agreement, attached hereto as Exhibit A, pursuant to Chapter 380 of the Texas Local Government Code, and pursuant to the City's Economic Development Policy, with The Taurus Group LP ("Grantee").

**SECTION 3.**

The Council hereby authorizes the City Manager to execute the Agreement on behalf of the City of Keller, Texas.

**SECTION 4.**

This Resolution shall become effective from and after its passage.

**PASSED AND APPROVED** this the 29<sup>th</sup> day of December 2015.

CITY OF KELLER

By:   
Mark Mathews, Mayor

ATTEST:

  
Sheila Stephens, City Secretary

Approved as to Form and Legality:

  
for L. Stanton Lowry, City Attorney

**EXHIBIT A**  
**Chapter 380 Economic Development Program Agreement**

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT  
(Chapter 380 Agreement)

This Economic Development Program Agreement (Agreement) is made and entered into by and between the City of Keller, a Home Rule municipality of Tarrant County, Texas (City), and The Taurus Group LP (Grantee), a limited partnership organized under the laws of Florida, together referenced herein as Parties to this Agreement. *LIABILITY COMPANY*

RECITALS

*Taurus Investment  
Group, LLC*

WHEREAS, on December 29th, 2015, the City approved Resolution No. 3709 (Resolution) establishing an Economic Development Program pursuant to Section 380.001 of the Texas Local Government Code (Section 380.001) and authorizing this Agreement as part of the Economic Development Program established by City Council Resolution (Program); and

WHEREAS, the City desires to participate in the Program by entering into this Agreement; and

WHEREAS, the City Council of the City (City Council) finds and determines that this Agreement will effectuate the purposes set forth in the Program, and that Grantee's performance of its obligations herein will promote local economic development and stimulate Grantee and commercial activity in the City; and

NOW, THEREFORE, in consideration of the mutual benefits and premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. INCORPORATION OF RECITALS

The City and Grantee hereby agree that the recitals set forth above are incorporated herein and are true and correct and form the basis upon which the Parties have entered into this Agreement.

2. DEFINITIONS

Affiliate: Any Person directly controlling or controlled by Grantee, or any Person controlling or controlled by the same Person who is controlling or is controlled by Grantee. As used in this definition, the term "control" means ownership or the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

Agreement: Shall mean this Chapter 380 Economic Development Grant Agreement, aka Performance Agreement.

Appraisal District: Shall mean the Tarrant Appraisal District.

Building Permit: A permit issued by the City authorizing one to construct, enlarge, alter, repair, move, improve, remove, convert or demolish any building or structure or portion thereof regulated by the City's building, plumbing, electrical, fire, energy, mechanical, and related codes. It does not include earth disturbance permits, tree removal permits or other non-building permits.

Certificate of Occupancy: Shall mean a temporary or permanent Certificate issued by the City and granting Grantee or its tenant(s) the right to occupy the Improvements.

City: Shall mean the City of Keller.

Commencement of Construction: Approval of the appropriate Building Permits and the commencement of actual on-site physical excavation or site grading required for installation of Improvements, excluding permits for clearing and grubbing.

Commercial Building Permit Fees: Fees paid to the City for review of building construction plans and building inspections.

Concept Plan: The Concept Plan or site plan for the Property, approved or as may be amended by the Council pursuant to the City's zoning regulations.

Construction Costs: The cost of permits, fees, construction materials, surveying and labor to construct the Facility. All other associated costs are deemed excluded, including, but not exclusively, the following costs: land, design, construction document preparation, bidding, and construction financing.

Council: Shall mean the City Council of the City.

Developer Agreement: That certain Developer Agreement (or Agreements) relating to the construction of Public Works Improvements.

Effective Date: The date that all parties have executed this Agreement.

Facility: Shall mean the building(s), surface parking, structured parking and Site Improvements related to the Hotel, excluding the Restaurant.

Force Majeure: Any acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action, (except actions taken by the City pursuant to or permitted by the terms of this Agreement, and except actions taken as a result of acts or omissions of Grantee), fire, explosion or flood, and strikes or other act beyond the reasonable control of Grantee, or the City, but not including the lack of funds.

→ Grantee: Shall mean ~~The Taurus Group LP~~. *INVESTMENT GROUP, LLC*  
*DR*

Hotel: Shall mean a Hampton Inn & Suites.

Hotel Occupancy Tax (HOT): Shall mean the tax collected by the City pursuant to Chapter 351 of the Texas Tax Code.

Impact Fee – Roadway: Shall mean the fee collected by the City pursuant to Chapter 395 of the Local Government Code providing for the construction of certain roadway improvements in the City.

Impact Fee – Water: Shall mean the fee collected by the City pursuant to Chapter 395 of the Local Government Code providing for the construction of certain water distribution system improvements in the City.

Impact Fee – Sewer: Shall mean the fee collected by the City pursuant to Chapter 395 of the Local Government Code providing for the construction of certain sanitary sewer system improvements in the City.

Improvements: Shall mean the New Construction of the Facility and Site Improvements and though not exclusively, excluding any tenant build-out improvements or Business Personal Property.

Land Base Value: Shall mean the Appraised Value of the Property as of the date of Effective Date of the Agreement.

Liens and Assessments: Shall mean any lien or assessment owed to the City by any Party to this Agreement, including but not limited to Town Center assessments, mowing and maintenance liens.

New Construction: Shall mean the first-time construction of Improvements utilizing newly purchased materials, and specifically excluding any remodeling or renovations undertaken after issuance of the first Certificate of Occupancy.

Performance Agreement: A written contract summarizing the performance requirements of Grantee or developer and the incentives to be provided by the City upon fulfillment of those performance requirements. Also referred to as the Agreement.

Person: An individual or a corporation, partnership, trust, estate, unincorporated organization, association, or other entity.

Program: Has the meaning set forth in the recitals to this Agreement.

Program Payments: The annual grant payments to be made by the City.

Project: Shall mean the Improvements and the Property.

Property – Business Personal: Shall mean the tangible Business Personal Property as defined by the Appraisal District and within the Improvements on the Property.

Property - Real: Shall mean the Property and the Improvements constructed on the Property, subject to the limitations of the Appraisal District.

Property: Shall mean the approximately 3.315 acres of land, being real property located in Tarrant County, Texas, as more particularly described on Exhibit A attached hereto.

Restaurant: Shall mean a sit-down table-service restaurant with name and Concept Plan as approved by the Council.

Section 380.001: Has the meaning set forth in the recitals to this Agreement.

Simple Interest: Shall mean a rate of four percent (4%) interest per annum.

Site Improvements: Shall mean the grading, landscaping, irrigation system, lighting, Public Works Improvements and signage affixed to the ground.

Substantial Completion: Shall mean the date a Certificate of Occupancy or equivalent is issued by the City allowing occupancy of the Facilities.

Tax – Ad Valorem: Shall mean the tax collected by the City from the owners of taxable real and tangible business personal property.

Taxable Value: Appraised value after the application of any lawful exemptions as determined by the Appraisal District.

### **3. GRANTEE PERFORMANCE REQUIREMENTS**

In consideration and as a prerequisite of the City's Incentives, Grantee agrees to the following:

- A. Hotel Requirements: Grantee agrees to construct a Hotel as defined herein and in accordance with the following requirements.
- i. Commencement of Construction: Commencement of Construction of the Hotel shall occur by October 30, 2016.
  - ii. Hotel Minimum Construction Requirements: Grantee shall construct a Hotel as defined herein of approximately 61,550 square feet and associated Improvements and substantially in conformance with a Concept Plan approved by the City including the following requirements, unless amended by the Council pursuant to approval of the Concept Plan:
    - a. Guest Rooms: The Hotel shall have a minimum of 105 guest rooms.
    - b. Business Center: The Hotel shall have approximately 200 square feet of Business Center.
    - c. Complimentary Breakfast Area & Pantry: The Hotel shall have approximately 1,500 square feet of Breakfast Area & Pantry.
    - d. Fitness Center: The Hotel shall have approximately 1,500 square feet of Fitness Center.
    - e. Meeting / Pre-Function Space: The Hotel shall have approximately 2,500 square feet of Meeting / Pre-Function space.
    - f. Public Space: The Hotel shall have approximately 3,000 square feet of Public Space.
    - g. Back-of-house Space: The Hotel shall have approximately 3,000 square feet of back-of-house space.

- h. Pool / Spa: The Hotel shall have a Pool / Spa area of approximately 1,500 square feet.
- i. Total Construction Cost: The Improvements shall have a minimum Construction Cost of eleven million, five hundred and fifty thousand dollars (\$11,550,000).
  - 1. Documentation: Grantee shall provide the City all documentation necessary to confirm the Construction Costs.
- iii. Substantial Completion of Hotel: The Hotel Improvements shall be Substantially Complete by November 30, 2017.
  - a. Workmanlike Pursuit: Grantee agrees and covenants that it will diligently and faithfully in a good and workmanlike manner pursue (or cause to be pursued) the completion of the Improvements as a good and valuable consideration of this Agreement.
- B. Restaurant: Grantee agrees to construct a Restaurant as defined herein on the Property.
  - i. Commencement of Construction: Commencement of Construction of the Restaurant shall occur prior to December 31, 2019 or within one year of the City's incentive payment pursuant to section 4.D, whichever comes first.
- C. Developer Agreement: Grantee agrees to execute the City's Developer Agreement(s).
- D. Inspection: Grantee agrees that the City and its agents and employees, upon reasonable prior written notice to Grantee, shall have reasonable right of access to the Property to inspect the Improvements in order to insure that the construction of the Improvements are in accordance with this Agreement and all applicable state and local laws and regulations or valid waiver thereof; and subject to Grantee reasonable security requirements, they shall have the continuing right to inspect Property to insure that the Improvements are thereafter maintained, operated and occupied in accordance with this Agreement.
- E. Continuous Operation: In further consideration, from the date a Certificate of Occupancy is issued until the expiration of this Agreement, Grantee covenants and agrees that the Facilities will be continuously operated, maintained and occupied as a Hotel and Restaurant respectively, except in the event of Force Majeure.
- F. Annual Reporting: Grantee shall provide an Annual Report to the City documenting information necessary for the City to confirm satisfaction of the Performance Requirements in the Agreement.
- G. Ad Valorem Taxes: Grantee agrees to remain current on payment of ad valorem property taxes for the term of this Agreement; provided, however, Grantee retains the right to timely and properly protest and contest any such ad valorem taxes and so long as Grantee is timely and properly protesting or contesting the same, it shall not constitute an event of default under this agreement. If Grantee becomes delinquent in the payment of ad valorem taxes on Property owned by Grantee, it shall be an event of default under this Agreement. If Grantee sells the Property, or any part thereof, to a third party which is not owned or controlled by Grantee, and the third party becomes delinquent in payment of ad valorem taxes, it shall not be a default under this Agreement.
- H. Documentation: Grantee shall submit to the City, as a condition of payment of any Incentive, reasonably detailed evidence of compliance with Section 3 herein. This shall include detailed Invoicing from contractors and payments made sufficient to identify the costs directly related to this Section.
- I. Compliance: Grantee shall comply with any and all remaining terms and provisions herein.
- J. Compliance with Laws and Regulations: Grantee covenants and agrees that all construction of the Facility will be in accordance with all applicable local, state and national laws and regulations or valid waiver thereof.

- K. Recapture Payments: In the event of Default (which is not cured within the allowable time period) by the Grantee, all costs and taxes which otherwise would have been paid to the City without the benefit of this Agreement, and all Grants provided pursuant to this Agreement, including interest thereon, will become a debt to the City from Grantee and shall be due, owing and paid to the City by Grantee (Recapture Payment) within 120 days of the expiration of the applicable cure period. Such Recapture Payment shall include interest at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas.
- L. Liens and Assessments: Grantee shall be free and clear of any Liens and / or Assessments owed to the City and must be in good standing with the City to qualify for and receive any incentives.
4. **CITY PERFORMANCE REQUIREMENTS**
- Subject to Grantee's performance of its obligations as required by the Agreement, to promote local economic development pursuant to the Program, the City shall grant Grantee the following economic development incentives:
- A. Conveyance Grant: The City will make available to the Grantee via escrow, a Grant of five hundred thousand dollars (\$500,000) to be granted simultaneously with the Grantee's purchase of the Property. The scheduled date of the closing is on or about February 28, 2016.
- B. Hotel Building Permit Grant: The City will Grant Grantee five hundred thousand dollars (\$500,000) within thirty (30) calendar days of the issuance of a Building Permit for construction of the Hotel.
- C. Hotel Occupancy Grant: The City will Grant Grantee two hundred thousand dollars (\$200,000) within thirty (30) calendar days of the issuance of a Certificate of Occupancy for the Hotel.
- D. Restaurant Grant: The City will Grant Grantee two hundred thousand dollars (\$200,000) within thirty (30) calendar days of the issuance of a Building Permit for the Restaurant.
- E. Real Property Taxes: For all Improvements on the Property, the City will Grant Grantee an annual Program Payment, (excluding the taxes currently received by the City on the Land Base Value, approximately \$2,500), equal to the Real Property Taxes paid by the Grantee and received by the City as follows:
- i. 2017-2019 (3 Years): One hundred percent (100%).
  - ii. Year 2020: Seventy-five percent (75%).
  - iii. Year 2021: Fifty percent (50%).
  - iv. Outstanding Property Taxes: The City agrees to waive the City portion of the outstanding property taxes, penalties and interest on the Property up to the closing date of the sale of the Property. Approximate amount to date is \$12,358.55.
- F. Business Personal Property Taxes: For all Improvements on the Property, the City will Grant Grantee an annual Program Payment equal to the tangible Business Personal Property Taxes paid by the Grantee and received by the City as follows:
- i. 2017-2019 (3 Years): One hundred percent (100%).
  - ii. Year 2020: Seventy-five percent (75%).
  - iii. Year 2021: Fifty percent (50%).
- G. Hotel Occupancy Tax Grant: The City will Grant Grantee an annual Program Payment equal to one hundred percent (100%) of the Hotel Occupancy Taxes paid by the Grantee and received by the City for a period of seven (7) years.
- i. Cap One: This Grant shall not exceed \$180,000 per Program year.



- H. Fee Reduction Grant: The City will waive the collection of the fees outlined below for all New Construction on the Property for a period of three (3) years from the Effective Date, collectively the Fee Reduction Grant. All other fees shall be paid by Grantee as they are normally required.
- i. Zoning / Platting / Processing Fees: This shall include applications for changes in zoning, specific use permits, site plans, concept plans, subdivision platting or re-platting.
  - ii. Building Permit Fees: Fees related to the review of construction plans, processing and issuance of Building Permits.
  - iii. Impact Fees: The City will Grant the equivalency of the Project's water, sanitary sewer and roadway impact fees within forty-five (45) days of receipt of payment of same by Grantee.
    - a. Exclusions: This shall not include any "Pass-thru" fees owed to other agencies (e.g. Fort Worth water impact fees).
  - iv. Public Works Plan Review and Inspection Fees: Fees associated with the review of construction plans related to Public Works Improvements and inspection of those components.
  - v. Excluded Items: The following fees are excluded from this incentive:
    - a. Third Party Fees: Fees where the City must send plans / construction documents to outside professionals for their review due to the unique nature of the Project (e.g. fire protection systems).
    - b. Re-Inspection Fees: Fees associated with "call-back" inspections outside of the inspections provided for by the building permit fee.
    - c. Over-time Fees: Fees associated with over-time requests for work outside normal working hours, weekends or official City holidays.
- I. Annual Program Payments: Upon satisfactory documentation being provided to the City by Grantee in January, and the collection by the City of any taxes due for the prior year, whichever comes later, the City shall make a Program Payment to Grantee pursuant to the Agreement.
- i. First Payment: The first Program Grant shall be paid based on the assessed value determined as of January the year after the first Certificate of Occupancy is Issued and within 90 days after the taxes have been paid and received by the City (which may be January of the following year).
  - ii. Annual Payments: The Program Grant shall be paid within 90 days after the taxes have been paid and received by the City during each year for which Grantee satisfies the Performance Requirements herein for the Term of the Agreement.
  - iii. Condition Precedent: Notwithstanding any other provisions hereof, City shall not be obligated to make any Program Payments or other payment or grant pursuant to this Agreement unless and until Grantee is in compliance with the provisions of this Agreement in all material respects.

## 5. TERM

This Agreement shall be effective as of the Effective Date and shall terminate upon completion of the Program Payments as provided in Section 4.I, unless earlier terminated pursuant to Section 7.

## 6. CONFLICT OF INTEREST

The Property is not owned or leased to any member of the City Council or any member of the Planning and Zoning Commission. In addition, Grantee agrees to complete a Conflict of Interest Questionnaire as required by Chapter 176 of the Texas Local Government Code.

## 7. DEFAULT AND TERMINATION

Grantee shall immediately notify the City in writing upon becoming aware of any change in the existence of any condition or event which 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 notifying party is taking or proposes to take with respect thereto.

If either party should fail to comply with the terms of this Agreement, or if a bankruptcy or other insolvency proceeding shall be filed by or against either party and such proceeding is not vacated within 30 days, it shall be deemed a default and the party shall have 30 days after delivery of written notice of such default from the other party to cure such default. If the noncompliance is not cured within that period, the non-defaulting party may terminate this Agreement by written notice and shall have no further obligation to the other party; provided that the City shall grant Grantee an extension to cure the default if Grantee demonstrates, to the reasonable satisfaction of the City Council that: the default cannot be cured by the payment of monies and (2) cannot be reasonably cured within 30 days and (3) that Grantee is diligently pursuing cure.

Notwithstanding the foregoing, in the event either party fails to pay the other party any monetary amounts owing under this Agreement when due, and such failure continues for a period of 30 days after delivery of written notice of such default, then such outstanding amounts shall accrue interest from the date owing until paid at the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. That rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

Failure to meet the requirement of Section 3.B.1 by the Grantee shall not be deemed a default of the Agreement.

## 8. KNOWING EMPLOYMENT OF UNDOCUMENTED WORKERS

Grantee acknowledges that effective September 1, 2007, the City is required to comply with Chapter 2264 of the Texas Government Code, enacted by House Bill 1196 (80<sup>th</sup> Texas Legislature), which relates to restrictions on the use of certain public subsidies. Grantee hereby certifies that Grantee, and any branches, divisions, or departments of Grantee, does not and will not knowingly employ an undocumented worker, as that term is defined by Section 2264.001(4) of the Texas Government Code. In the event that Grantee, or any branch, division, or department of Grantee, is convicted of a violation under 8 U.S.C. Section 1324a(f) (relating to federal criminal penalties and injunctions for a pattern or practice of employing unauthorized aliens):

- A. Conviction During Term: If such conviction occurs during the Term of this Agreement, this Agreement shall terminate contemporaneously upon such conviction (subject to any appellate rights that may lawfully be available to and exercised by Grantee) and Grantee shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the City, the aggregate amount of the Program Payments by Grantee hereunder, in any, plus Simple Interest.
- B. Conviction After Expiration or Termination: If such conviction occurs after expiration or termination of this Agreement, subject to any appellate rights that may lawfully be available to and exercised by Grantee, Grantee shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the City, the aggregate amount of the Program Payments received by Grantee hereunder, if any, plus Simple Interest.
- C. Applicability: This Section 8 does not apply to convictions of any subsidiary or Affiliate entity of Grantee, by any franchisees of Grantee, or by a person or entity with whom Grantee contracts.

D. Survivability: Notwithstanding anything to the contrary herein, this Section 8 shall survive the expiration or termination of this Agreement.

**9. FORCE MAJEURE**

Either party may be excused from performance under this Agreement when its performance is prevented as the result of Force Majeure as defined in Section 2. If a party suffers an event of Force Majeure, it shall provide written notice of the event to the other party promptly after its occurrence. Subject to this provision, such nonperformance shall not be deemed an event of default.

Following the occurrence of any event of Force Majeure, Grantee shall have such additional time to complete the applicable portion of the Improvements as may be reasonably required if Grantee is diligently and faithfully pursuing the completion of the same.

**10. AUDIT**

If necessary to determine whether the requirements in Section 3 are met and if requested by the City, an independent firm mutually agreeable to the City and Grantee (Auditor) shall audit the construction associated with the Improvements, and shall determine whether Grantee has met the requirements. The conclusion of the Auditor shall be final, binding and conclusive on the City and Grantee and the City's payments shall be adjusted in accordance therewith. The City shall be responsible for the cost of the audit.

**11. INDEMNIFICATION**

GRANTEE EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND ITS OFFICERS, AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF GRANTEE OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT IN THE PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE, GROSS NEGLIGENCE, WRONGFUL ACT, OR FAULT OF THE CITY OR ITS OFFICERS, AGENTS, OR EMPLOYEES, CONTRIBUTES IN ANY WAY TO THE DAMAGE, INJURY, OR OTHER HARM. Nothing in this paragraph may be construed as waiving any immunity available to the City under state law. This provision is solely for the benefit of Grantee and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other Person.

**12. MISCELLANEOUS MATTERS**

- A. Section or Other Headings: Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- B. Attorney's Fees: The prevailing party in the adjudication of any proceeding relating to this Agreement shall be authorized to recover its reasonable and necessary attorney's fees pursuant to Section 271.159 of the Texas Local Government Code.
- C. Entire Agreement: This Agreement (with all referenced exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both Parties, superseding all oral or written previous and contemporary agreements between the Parties relating to matters set forth in this Agreement.
- D. Amendment: This Agreement may only be amended, altered, or revoked by written instrument signed by the Grantee and the City.

- E. Successors and Assigns: This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns. Grantee may assign all or part of its rights and obligations hereunder (a) to any Grantee Affiliate effective upon written notice to the City, provided the Grantee Affiliate agrees in writing to comply with each and every obligation of Grantee in this Agreement including constructing the Improvements to a design standard consistent with the Concept Plan, or (b) to any Person other than a Grantee Affiliate with the prior written approval of the City, which approval shall not be unreasonably withheld or delayed, so long as in the City's sole discretion the Improvements will be constructed to a design standard consistent with the Concept Plan and the assignee is financially able to perform this Agreement. After Substantial Completion of the Improvements, Grantee's obligation under this Agreement may be assigned to unrelated third parties upon written notice to the City and the assignee's written agreement to comply with each and every obligation of Grantee contained herein as the same relate to the applicable portion of the Property conveyed to such third party. Nothing in this Section shall release Grantee from Grantee's obligations under Section 3 hereof unless the City gives its express written consent.
- F. Notice: Any notice and / or statement required and permitted to be delivered shall be deemed delivered by hand delivery, depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

If intended to the City:

Mark Hafner  
 City Manager  
 City of Keller  
 PO Box 770  
 1100 Bear Creek Parkway  
 Keller, Texas 76248

If intended to the Grantee:

Linda Kassof  
 Chief Financial Officer  
 Taurus Investment Holdings GROUP, LLC  
 610 N. Wymore Road, Suite 200  
 Maitland, Florida 32751

Guenther Reibling, COO  
 Taurus Investment Holdings GROUP LLC  
 505 East Huntland Dr., Suite 540  
 Austin, Texas 78752

With a copy to:

Boyle & Lowry, L.L.P.  
 Attn: L. Stanton Lowry  
 4201 Wingren Dr., Suite 108  
 Irving, Texas 75062

With a copy to:

Steve Metcalfe  
 Metcalfe, Wolff, Stuart & Williams LLP  
 221 W. 6<sup>th</sup> Street, Suite 1300  
 Austin, Texas 78701

- G. Interpretation: Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.
- H. Applicable Law and Venue: This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas and is fully performable in Tarrant County, Texas, and venue of any dispute relating to this Agreement shall lie in Tarrant County, Texas.
- I. Counterparts: This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.
- J. Limitation on Liability: Grantee agrees that City shall not be liable to Grantee or any other party for any special or consequential damages, direct or indirect, punitive damages, interest, or cost of court or expenses related to litigation other than reasonable and necessary attorney's fees, as provided in Section 12.B hereof for any act of default by City under this Agreement.

- K. Representations: Grantee represents and warrants to the City that it has the requisite authority to enter into this Agreement and that its representations in the Agreement are true.
- L. No Joint Venture: The parties agree that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The City, its elected officials, directors, employees and agents do not assume any responsibility to any third party in connection with Grantee's construction or operation of the Project.
- M. Conflicting Agreements: Where conflicts might arise between this Agreement and the Developer's Agreement or other agreements between the City and Grantee, this Agreement shall prevail. Grantee agrees to comply with the City's normal development regulations while developing the Property, except where those regulations conflict with the provisions of this Agreement.
- N. Severability: In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.
- O. Waiver of Immunity: The City enters this Agreement subject to the provisions of Chapter 271, Subchapter I of the Texas Local Government Code and hereby waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of this Agreement, subject to the terms and conditions of Chapter 271, Subchapter I. The City does not waive a defense or a limitation on damages available to a party to a contract, other than a bar against suit based on sovereign immunity.
- P. Revenue Sharing Agreement: The City designates this Agreement as a revenue sharing agreement, thereby entitling the City to request Sales and Use Tax Information from the State Comptroller, pursuant to Section 321.3022 of the Texas Tax Code, as amended.
- Q. Source of Funds: All payments required to be made by the City hereunder shall be made by the City from current revenues available to the City.

### 13. REMEDIES CUMULATIVE

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

### 14. WAIVER

No waiver by a party in any event of default, or breach of any covenant, condition or stipulation herein contained shall be treated as waiver of any subsequent default or breach of the same or any other covenant, condition or stipulation hereof.

### 15. RIGHT TO OFFSET

City may, at its option, offset any amounts due and payable to Grantee under this Agreement against any debt (including taxes) lawfully due to City from Grantee and which are delinquent under applicable law or by agreement, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise and regardless of whether or not the debt due to City has been reduced to judgment by a court, provided that if Grantee is in good faith challenging the validity of any debt, in accordance with applicable laws, the City may not offset unless and until such challenge is finally resolved.

16. ROUGH PROPORTIONALITY

Grantee agrees that all property dedicated to the City and all public facilities constructed pursuant to this Agreement are reasonably necessary to serve the Project and are roughly proportional to the need generated by the subdivision for such land and facilities. Grantee acknowledges its right to seek a variance to the dedication and/or construction requirements and that it has voluntarily chosen not to pursue such remedies and waives any claim for a taking of property, or any other constitutional or statutory claim, that it may have under either the Texas or United States Constitutions or statutes.

EXECUTED and effective as of the date of the last authorized signature below. \*

Executed this 7<sup>th</sup> day of Jan, 2016.

Executed this 13 day of JAN, 2016.

The City of Keller, Texas

Grantee: ~~The Taurus Group LP~~

TAURUS INVESTMENT GROUP, LLC

By: [Signature]  
Mark Hafner, City Manager

By: [Signature]  
Linda Kassof, CFO, MANAGER

Attest:

[Signature]  
City Secretary

By: [Signature]  
Guenther Reibling, COO / Partner

Approved as to form:

\_\_\_\_\_  
City Attorney

## ESTOPPEL AND RECOGNITION CERTIFICATE RELATING TO 380 AGREEMENT

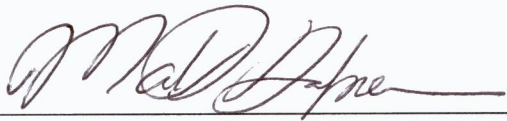
Reference is hereby made to (a) that certain Economic Development Program Agreement (Chapter 380 Agreement), dated as of January 13, 2016, by and between the City of Keller (“City”) and Taurus Investment Group, LLC (“TIG”), as amended by that certain Amendment #1 dated as of May 2, 2017 and that certain Amendment #2 dated as of February 6, 2018, and that certain Amendment #3 dated as of September 27, 2018, as further affected by that certain Partial Assignment of 380 Agreement (the “Partial Assignment”) between TIG, as assignor, and TIG Town Center Hotel LP (“Hotel Owner”), as assignee, dated as of September 28, 2018 (collectively, the “380 Agreement”), relating to land located in City of Keller, County of Tarrant, Texas, described as Lots 1 and 2, Block A, Keller Town Center, an addition to the City of Keller, Tarrant County, Texas, according to the plat thereof recorded in Clerk’s File No. D218171316, Plat records, Tarrant County, Texas (Lots 1 and 2 are referred to herein collectively as the “Property”, Lot 1 is referred to herein as the “Remainder Property” and Lot 2 is referred to herein as the “Hotel Property”); (b) that certain Development Agreement dated as of October 30, 2018, entered into by and between the City and Hotel Owner, pursuant to the terms of Section 3C of the 380 Agreement (the “Development Agreement”); and (c) that certain Collateral Assignment of 380 and Development Agreement (the “Collateral Assignment”) to be entered into, by and between Hotel Owner, as borrower, and Hall Keller, LLC, a Texas limited liability company, as lender (“Lender”).

### ESTOPPEL AND RECOGNITION

The City hereby (i) acknowledges the existence of the Partial Assignment attached hereto as Exhibit A; (ii) confirms that the 380 Agreement and the Development Agreement are in full force and effect, and except as described above, there have been no amendments, modifications, revisions or supplements to the 380 Agreement or the Development Agreement; (iii) recognizes and consents to the terms of the Partial Assignment attached hereto as Exhibit A, such that the City shall recognize the 380 Agreement as two separate agreements that independently apply to each of the Hotel Property and the Remainder Property separately and not the Property collectively; (iv) agrees that with respect to the 380 Agreement and the Development Agreement, Hotel Owner has no rights or obligations with respect to any of the Remainder Property and that TIG has no rights or obligations with respect to any of the Hotel Property; (v) agrees that in no event shall Hotel Owner be responsible for any default of TIG or its successor under the 380 Agreement with respect to the Remainder Property, nor shall Hotel Owner’s rights or obligations under the 380 Agreement be adversely affected by such default; (vi) agrees that in no event shall TIG be responsible for any default of Hotel Owner or its successor under the 380 Agreement with respect to the Hotel Property, nor shall TIG’s rights or obligations under the 380 Agreement be adversely affected by such default; (vii) confirms that, to the knowledge of the City, neither TIG nor Hotel Owner are in default under the 380 Agreement or the Development Agreement beyond any applicable cure period, and no event, act or omission has occurred which, with the giving of notice or passage of time, or both, could result in a default under the 380 Agreement or the Development Agreement; (viii) confirms that there is no pending or, to the City’s current, actual knowledge, threatened, dispute or litigation between or among any of the parties to the 380 Agreement or the Development Agreement; (ix) agrees that, upon receipt of notice from Lender or its successors or assigns that an Event of Default has occurred under the Collateral


Assignment or any loan documents related thereto, the City will continue to perform all of its obligations, covenants, conditions and agreements under the 380 Agreement and the Development Agreement for the benefit of Lender and its successors and assigns (the City further acknowledges that Lender may assign its interest in the 380 Agreement and the Development Agreement to its nominee), so long as the duties and obligations of the Hotel Owner under the 380 Agreement and the Development Agreement continue to be performed; (x) agrees to provide Lender with a reasonable opportunity to cure any default by Hotel Owner under the 380 Agreement or the Development Agreement provided that Lender; (xi) acknowledges that Hotel Owner may not enter into any amendment or modification of the 380 Agreement or the Development Agreement without the prior written consent of Lender so long as the Collateral Assignment remains in effect; (xii) agrees that if any Recapture Payment (as defined in Section 3.K. of the 380 Agreement) ever becomes due and payable to the City for any reason by Hotel Owner or Lender, the City shall look solely to Hotel Owner for such payment; and (xiii) agrees to provide notice to Lender (concurrent with provision of the subject notice from City to Hotel Owner) of any default under the 380 Agreement or the Development Agreement by Hotel Owner or otherwise affecting the Hotel Property at the following address: Hall Keller, LLC, c/o Hall Structured Finance, 2323 Ross Victory Avenue, Suite 200, Dallas, Texas 75201, Attention: Mike Jaynes. The City acknowledges and agrees that this Estoppel and Recognition Certificate may be relied upon by TIG, Hotel Owner, Lender, and any other lender of TIG or Hotel Owner, and their respective successors and assigns.

**CITY OF KELLER, TEXAS**  
a Home Rule municipality

By:   
Mark Hafner  
City Manager


Dated: October 30, 2018

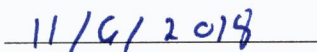
ATTEST:

  
Kelly Ballard  
City Secretary

  
Date

APPROVED AS TO FORM AND LEGALITY:

  
L. Stanton Lowry  
City Attorney

  
Date



**EXHIBIT A**

**Partial Assignment**

(attached)

**ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**  
(Chapter 380 Agreement)  
**AMENDMENT #2**

This Amendment #2 to the Economic Development Program Agreement (Agreement) is made and entered into by and between the City of Keller, a Home Rule municipality of Tarrant County, Texas (City), and The Taurus Investment Group LLC Group (Grantee), a limited partnership organized under the laws of Florida, together referenced herein as Parties to this Agreement.

**RECITALS**

**WHEREAS**, the City on December 29, 2015, approved resolution #3709, granting a Chapter 380 Economic Development Agreement with the Taurus Investment Group LLC specifying certain incentives that were date specific for the construction of a Hampton Inn and Suites Hotel; and

**WHEREAS**, the City on May 2, 2017, approved resolution #3874, granting Amendment #1 to the Chapter 380 Economic Development Agreement with the Taurus Investment Group LLC which extended the commencement of construction date, and substantial completion dates, leaving all other terms of the agreement the same; and

**WHEREAS**, the Taurus Investment Group LLC has been working diligently in trying to commence construction of the hotel but continues to experience delays and is looking to amend the Chapter 380 agreement with another set of new dates; and

**WHEREAS**, the City desires to extend the commencement of construction date, and substantial completion dates, leaving all other terms of the agreement the same; and

**NOW, THEREFORE**, in consideration of the mutual benefits and premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Amend the following sections of the Chapter 380 Economic Development Agreement:

**Chapter 3AI.** Change date of Commencement of Construction from January 31, 2018 to July 31, 2018.

**Chapter 3AII.** Change date of Substantial Completion of Hotel from July 31, 2018 to March 31, 2019.

**Chapter 3BI.** Change date of Commencement of Construction of Restaurant from September 30, 2020 to March 31, 2021 or within one year from the City's incentive payment pursuant to section 4,D, whichever comes first.

**Chapter 4EI.** Change 2018-2020 (3 years) to 2019-2021 (3 years)

**Chapter 4EII.** Change Year 2021 to Year 2022

**Chapter 4E.** Change Year 2022 to Year 2023

**Chapter 4FI.** Change 2018-2020 (3 years) to 2019-2021 (3 years)

**Chapter 4FII.** Change Year 2021 to Year 2022

**Chapter 4FIII.** Change Year 2022 to Year 2023

All other terms and conditions of the Agreement not hereby amended shall remain in full force and effect.

The City and Grantee hereby agree that the recitals set forth above are incorporated herein and are true and correct and form the basis upon which the Parties have entered into this Amendment #2 of the Agreement.

EXECUTED and effective as of the date of the last authorized signature below.

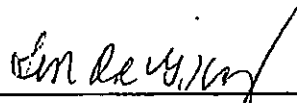
Executed this 6 day of February 2018.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2018.

The City of Keller, Texas

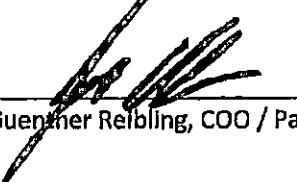
Grantee: The Taurus Investment Group LLC

By:   
Mark R. Hafner, City Manager

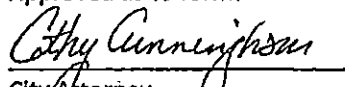
By:   
Linda Kassof, CFO, Manager

Attest:

  
Kelly Ballard  
City Secretary

By:   
Guenther Reibling, COO / Partner

Approved as to form:

  
Cathy Cunningham  
City Attorney

**ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**  
(Chapter 380 Agreement)

**AMENDMENT #3**

This Amendment #3 to the Economic Development Program Agreement (Agreement) is made and entered into by and between the City of Keller, a Home Rule municipality of Tarrant County, Texas (City), and Taurus Investment Group LLC (Grantee), a limited liability company organized under the laws of Delaware, together referenced herein as Parties to this Agreement.

**RECITALS**

**WHEREAS**, the City on December 29, 2015, approved resolution #3709, granting a Chapter 380 Economic Development Agreement with the Taurus Investment Group LLC specifying certain incentives that were date specific for the construction of a Hampton Inn and Suites Hotel; and

**WHEREAS**, the City and Grantee previously entered into Amendment #1 and Amendment #2 to the Chapter 380 Economic Development Agreement with the Taurus Investment Group LLC; and

**WHEREAS**, the Taurus Investment Group LLC has been working diligently in trying to commence construction of the hotel but continues to experience delays and is looking to amend the Chapter 380 agreement to amend the date of commencement, substantial completion, and certain other related dates; and

**WHEREAS**, the City desires to extend the commencement of construction date, and substantial completion dates, and certain other related dates, leaving all other terms of the agreement the same; and

**NOW, THEREFORE**, in consideration of the mutual benefits and premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Amend the following sections of the Chapter 380 Economic Development Agreement:

**Chapter 3Ai.** Change date of Commencement of Construction from July 31, 2018 to December 1, 2018.

**Chapter 3Aiii.** Change date of Substantial Completion of Hotel from March 31, 2019 to February 28, 2020.

**Chapter 3Bi.** Change date of Commencement of Construction of Restaurant from March 31, 2021 to March 31, 2022 or within one year from the City's incentive payment pursuant to section 4,D, whichever comes first.

**Chapter 4Ei.** Change 2019-2021 (3 years) to 2020-2022 (3 years)

**Chapter 4Eii.** Change Year 2022 to Year 2023

**Chapter 4Eiii.** Change Year 2023 to Year 2024

**Chapter 4Fi.** Change 2019-2021 (3 years) to 2020-2022 (3 years)

**Chapter 4Fii.** Change Year 2022 to Year 2023

**Chapter 4Fiii.** Change Year 2023 to Year 2024

All other terms and conditions of the Agreement not hereby amended shall remain in full force and effect.

The City and Grantee hereby agree that the recitals set forth above are incorporated herein and are true and correct and form the basis upon which the Parties have entered into this Amendment #3 of the Agreement.


**EXECUTED** and effective as of September 27, 2018.

Executed this 27<sup>th</sup> day of Oct 2018.

Executed this \_\_\_ day of \_\_\_ 201\_.

The City of Keller, Texas

Grantee: Taurus Investment Group LLC

By:   
Mark R. Hafner, City Manager

By: \_\_\_\_\_  
Linda Kassof, CFO, Manager

Attest:  
  
City Secretary

By: \_\_\_\_\_  
Guenther Reibling, COO/Partner

Approved as to form:

  
City Attorney