

HOTEL OCCUPANCY TAX GRANT AGREEMENT FOR HOTEL MARKETING AND TRANSPORTATION COSTS

This Hotel Occupancy Tax Grant Agreement for Hotel Marketing and Transportation Costs (the “Agreement”) is made by and between Kintetsu Enterprises Company of America dba Miyako Hotel, a California corporation, duly acting by and through its authorized representative (“Hotel Owner”), and the City of Plano, Texas, a home rule municipal corporation, duly acting herein by and through its City Manager (“City”).

RECITALS

WHEREAS, the Hotel Owner is developing a hotel with conference space located at Lot 8R, Block E Legacy West Addition located at the northwest corner of Legacy Drive and Corporate Drive, Plano, Texas, 75024, as more fully described in Exhibit “A” attached hereto (the “Hotel Site”); and

WHEREAS, the Hotel Owner plans to construct and occupy, at a minimum, a 215,000 square-foot hotel and event space at the Hotel Site. Such facility shall be developed as a Japanese-themed hotel and shall include, at a minimum: (i) 217 hotel guest rooms, (ii) 5,000 square-feet of meeting space, (iii) rooftop event space, and (iv) full-service restaurant (collectively, the “Hotel”); and

WHEREAS, the Hotel Owner plans to offer marketing/promotional services, including promoting travel to the City of Plano (“Plano”) by individuals who reside outside of Plano for leisure, business, conventions and similar events and/or guest transportation to and from the Hotel within Plano and the surrounding area (collectively, the “Plano Area”); and

WHEREAS, the Hotel Owner’s activities are compatible with the interests of the City, and the City desires to provide an incentive for such promotional and transportation activities; and

WHEREAS, the City currently levies a local hotel occupancy tax (the “Hotel Occupancy Tax” or “HOT”) pursuant to Texas Tax Code Chapter 351, as amended (“Chapter 351”); and

WHEREAS, when the Hotel is open and operational will be subject to the Hotel Occupancy Tax; and

WHEREAS, the City is authorized by Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, pursuant to Texas Tax Code Sections 315.101(a)(3) and 351.110 (“Tax Code”), the City is authorized to use Hotel Occupancy Tax funds for: (1) advertising to promote tourism and the convention and hotel industry and (2) transportation of hotel tourists respectively; and

WHEREAS, the City Council of the City of Plano finds that it is in best interest of the City to grant HOT funds to the Hotel Owner as an economic development incentive to use for promotional and transportation activities; and

NOW, THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the City and the Hotel Owner, intending to be legally bound, hereby covenant and agree as follows:

ARTICLE I TERM

Term. The term of this Agreement shall commence on the last date on which all of the Parties hereto have executed this Agreement (“Effective Date”) and shall terminate on December 31, 2032, unless sooner terminated herein (the “Term”).

ARTICLE II GRANT

2.01 **Grant.** The City agrees to provide the Hotel Owner an annual grant of 70,000.00 to be paid on a reimbursement basis from the HOT revenue in the City’s Convention and Tourism fund (the “Grant”). The total grant amount under the Term of this Agreement shall not exceed \$350,000.00. A grant year shall be from January 1st until December 31st of each year beginning on January 1, 2028 (“Grant Year”).

2.02 **Reimbursement.** The Grant will be provided to the Hotel Owner on a reimbursement basis. The Hotel Owner shall submit a reimbursement request to the City by December 31st of each Grant Year. The reimbursement request shall include the amount Hotel Owner is seeking reimbursement from the City as well as any supporting documentation to demonstrate to the City proof of payment of the expenses and costs paid by Hotel Owner pursuant to this Agreement, including, but not limited to receipts, invoices, and cancelled checks. City may request, in its sole discretion, additional documentation if such documentation is necessary. Whether an expense is reimbursable under this Agreement shall be determined by the City, in its sole discretion. City shall remit payment to Hotel Owner within thirty (30) days after approval of the reimbursement request. City’s obligation to reimbursement Hotel Owner under this Agreement shall terminate after December 31, 2032.

2.03 **Annual Certification.** Beginning December 31, 2028, the Hotel Owner must submit an annual certification on the form attached hereto as Exhibit “B” for each Grant Year certifying compliance with all of the obligations set out in Article III below. **FAILURE TO FILE THE ANNUAL CERTIFICATION BY THE DECEMBER 31ST DEADLINE SHALL BE AN EVENT OF DEFAULT AND, IF NOT CURED AS SET FORTH IN SECTION 6.01, SHALL RESULT IN THE HOTEL OWNER’S FORFEITURE OF ANY UNPAID GRANT FUNDS AND INVOKE THE CITY’S RIGHT TO SEEK A FULL REFUND OF PAID GRANT FUNDS, INCLUDING DAMAGES, AS SET OUT IN SECTION 6.01.**

ARTICLE III OBLIGATIONS OF HOTEL OWNER

In consideration of the Grant provided by the City, the Hotel Owner agrees to perform the following:

- (a) **Occupancy and Operation.** On or before December 31, 2027, and throughout the Term, occupy, operate and be open to the public a Hotel at the Hotel Site.
- (b) **Use of Funds.** The following expenditures by Hotel Owner shall be reimbursable to Hotel Owner under this Agreement:
 - 1. Expenditure of the Grant funds in conformance with the Tax Code, as amended, such as expenditures towards advertising, solicitation, and marketing programs to promote tourism and the convention and hotel industry to attract tourists and convention delegates or registrants to Plano and/or the Hotel and a transportation system to transport tourists from hotels in the Plano Area to the commercial center in Plano, a convention center in Plano; other hotels in or near the Plano Area; and tourist attractions in or near the Plano Area; and
 - 2. Expenditure of the Grant funds in conformance with the Annual Budget, as defined below, submitted by the Hotel Owner to the City.
- (c) **Hotel Occupancy Tax Payment.**
 - 1. Hotel Owner shall timely remit all money owed to the City pursuant to the Hotel Owner's responsibility to collect and make HOT payments as required by Section 20-74 of the City of Plano Code of Ordinances, as amended. **FAILURE TO FILE THE ANNUAL CERTIFICATION BY THE DECEMBER 31ST DEADLINE SHALL BE AN EVENT OF DEFAULT AND, IF NOT CURED AS SET FORTH IN SECTION 6.01, SHALL RESULT IN THE HOTEL OWNER'S FORFEITURE OF ANY UNPAID GRANT FUNDS AND INVOKE THE CITY'S RIGHT TO SEEK A FULL REFUND OF PAID GRANT FUNDS, INCLUDING DAMAGES, AS SET OUT IN SECTION 6.01.**

ARTICLE IV ANNUAL PLAN AND BUDGET

4.01 **Preparation of Proposed Annual Plan and Budget.** Hotel Owner shall prepare and submit to the City a proposed annual plan and budget itemizing the use of Grant funds for the upcoming Grant Year prior to any Grant funds being reimbursed ("Annual Budget"). The Annual Budget shall include, at a minimum, a line item budget detailing the use of the Grant funds for the upcoming Grant Year, the amount of expenditure for each item and a description of the item indicating how it complies with the requirements of Chapter 351. The Annual Budget shall be submitted to the City no later than December 31st immediately prior to commencement of each Grant Year. **FAILURE TO FILE THE ANNUAL CERTIFICATION BY THE DECEMBER**

31ST DEADLINE SHALL BE AN EVENT OF DEFAULT AND, IF NOT CURED AS SET FORTH IN SECTION 6.01, SHALL RESULT IN THE HOTEL OWNER'S FORFEITURE OF ANY UNPAID GRANT FUNDS AND INVOKE THE CITY'S RIGHT TO SEEK A FULL REFUND OF PAID GRANT FUNDS, INCLUDING DAMAGES, AS SET OUT IN SECTION 6.01.

- (a) **First Annual Plan and Budget Submission.** The first Annual Budget shall be submitted to the City by the Hotel Owner on or before February 29, 2028. Subsequent Annual Budgets shall be due on December 31st immediately prior to commencement of each Grant Year, as outlined above.

4.02 **Approval of Annual Plan and Budget.** The City Manager or his or her designee ("City Manager") shall approve or disapprove the Annual Budget submitted by the Hotel Owner prior to the reimbursement of any Grant funds for the upcoming Grant Year. The City shall have the right to request modifications to the Annual Budget, at its sole discretion.

4.03 **Alternatives.** Hotel Owner may request that the City approve one or more alternative programs in the overall Annual Budget for a particular Grant Year, so long as all applicable alternatives are in conformance with the authorized uses pursuant to the Tax Code, as amended ("Alternative Category").

4.04 **Effect of Approval.** Approval by the City of the Annual Budget does not alleviate the Hotel Owner's responsibility to spend the Grant funds in accordance with the Tax Code, as amended. Hotel Owner acknowledges that has a fiduciary duty to the City with respect to its handling and use of the Grant funds provided to the Hotel Owner under this Agreement.

4.05 **Permitted Limited Reallocations.** The City recognizes that the tourism and hotel industry is a dynamic one, and that prudence dictates that the Hotel Owner retain the ability to make certain minimal adjustments from time to time within the confines of the Annual Budget. Accordingly, the City agrees that the Hotel Owner may, in its professional judgment and mindful of its fiduciary responsibility to the City: (i) reduce expenditures below the level approved in the Annual Budget for all or any particular categories as the Hotel Owner deems appropriate, (ii) reallocate up to ten (10%) of the amount in any category in the Annual Budget to another category, so as to allow a reasonable shift in emphasis as the Grant Year develops, or (iii) allocate any amount included in an Alternative Category in the Annual Budget to any other approved category. However, the Hotel Owner acknowledges and agrees that no Grant funds may be allocated or used for any activity or program that was not approved by the City for the Annual Budget for that specific Grant Year. The Hotel Owner shall notify the City in writing of any changes made to the Annual Budget pursuant to this Section within thirty (30) days of making the change.

4.06 **Annual Plan and Budget Amendments.** If the Annual Budget needs to be amended, beyond the permitted reallocation described above, Hotel Owner may, at any time, propose and request the City's written approval of an amendment to the approved Annual Budget for the current Grant Year. No such amendment shall be effective until approved in writing by the City Manager, in his or her sole discretion.

ARTICLE V LIABILITY

5.01 **Immunity.** The Hotel Owner agrees that no provision of this Agreement is intended to or shall be interpreted to negate or diminish any statutory or common law rights the City may have to immunity under the laws of the State of Texas or any other applicable law.

5.02 **INDEMNIFICATION. THE HOTEL OWNER AGREES TO INDEMNIFY, SAVE AND HOLD HARMLESS THE CITY, ITS AGENTS, OFFICERS, REPRESENTATIVES, EMPLOYEES, AND AFFILIATES, OF AND FROM ANY AND ALL PRESENT OR FUTURE CLAIMS, DEMANDS OR CAUSES OF ACTION THAT MAY ACCRUE ON ACCOUNT OF, OR IN ANY WAY ARISING OUT OF, THE HOTEL OWNER'S WRONGFUL ACTS AND/OR OMISSIONS UNDER THIS AGREEMENT AND/OR THE HOTEL OWNER'S MISUSE OR MISMANAGEMENT OF THE GRANT FUNDS.**

5.03 **Repayment of Grant Funds.** The Hotel Owner acknowledges that all funds are subject to repayment in the event any expenditure does not meet the requirements set forth in this Agreement or Chapter 351. This Section shall survive termination or expiration of this Agreement.

ARTICLE VI DEFAULT/TERMINATION/REFUND

6.01 **Default.** Any of the following events, shall be deemed a breach of this Agreement resulting in default, except where such event arises from an Event of Force Majeure, as defined below:

- (a) Hotel Owner fails to make HOT payments to the City in accordance with Article III(c);
- (b) Hotel Owner fails to comply with any of the terms and obligations in this Agreement; or
- (c) Hotel Owner is convicted of a violation of 8 U.S.C. Section 1324a(f) regarding the unlawful employment of aliens.

The term "Event of Force Majeure" means any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns, shortages or unavailability of materials or labor, or work stoppages any of which event(s) directly impact the operation of the Hotel. The term shall not include a downturn in the economy.

In the event of a default of this Agreement, the City shall give Hotel Owner written notice of such default and if the default is not cured or a waiver by the City has not been obtained by the

Hotel Owner within thirty (30) days, unless a longer period is provided for, of said written notice, this Agreement shall automatically terminate except any damages or refund as specified below shall survive the termination of this Agreement.

If an event of default occurs under Section(s) 6.01(a) and (b) and is not cured or waived, City may, at its sole discretion, require a full or partial refund of the entire amount of Grant funds paid by the City to the Hotel Owner. The City may use any efforts to collect such sums owed and the Hotel Owner agrees to pay and all interest and expenses, including reasonable attorney's fees and court costs, incurred by the City.

If an event of default occurs under Section 6.01(c) and is not cured or waived, City may, in its sole discretion seek a full or partial refund of the entire amount of Grant funds paid by the City to the Hotel Owner together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by Texas Tax Code Section 33.01, but without the addition of penalty. Repayment of Grant funds and interest shall be due not later than one hundred twenty (120) days after the date the City notifies the Hotel Owner of the refund requirement.

The City Manager is authorized to send notice of default and to terminate this Agreement for any default that is not cured or waived.

6.02 **Effect of Termination/Survival of Obligations.** The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations or default(s) that existed prior to such termination or as otherwise provided herein and those liabilities and obligations shall survive the termination of this Agreement, including the refund provision, maintenance of records, and access thereto.

ARTICLE VII RETENTION AND ACCESSIBILITY OF RECORDS

7.01 The Hotel Owner shall maintain the fiscal records and supporting documentation for expenditures of Grant funds. The Hotel Owner shall retain such Records, as defined below, and any supporting documentation for the greater of: (1) five (5) years from the end of the Term; or (2) the period required by other applicable laws and regulations. The Hotel Owner agrees to maintain the Records in an accessible location.

7.02 The Hotel Owner gives the City, its designee, or any of their duly authorized representatives, access to and the right to examine relevant books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or Grant funds account belonging to or in use by the Hotel Owner pertaining to the deposit, use, and expenditure of Grant funds (the "Records") upon receipt of ten (10) business days written notice from the City. The City's access to the Hotel Owner's books and records will be limited to information needed to verify that the Hotel Owner is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by the City. The Hotel Owner shall not be required to disclose to the City any

information that by law the Hotel Owner is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the City reserves the right to require the Hotel Owner to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided to the City at the sole cost of the Hotel Owner. The rights to access the Records shall terminate five (5) years after the termination or expiration of this Agreement. Failure to provide reasonable access to the Records to the City shall give the City the right to suspend or terminate this Agreement.

ARTICLE VIII ASSIGNMENT

This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Hotel Owner may assign this Agreement without obtaining the City's consent to: (a) one of its wholly owned affiliates or (b) any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than ninety (90) percent of the assets of the Hotel Owner as long as the Hotel Owner gives sixty (60) days prior written notice to the City and the assignee executes an agreement with the City to be bound to all the terms and conditions of this Agreement and be responsible for any default(s) that occurred prior to or after the assignment.

For any assignment not covered by (a) or (b) in the preceding paragraph, the Hotel Owner must obtain the prior approval of the City and the assignee must agree to be bound to all the terms and conditions of this Agreement and to accept all liability for any default that occurred prior to and/or after the assignment.

Any assignment agreement must be furnished in a form acceptable to the City and be provided at least thirty (30) days prior to the effective assignment date. The City agrees to notify the potential assignee of any known default, but such notification shall not excuse defaults that are not yet known to the City.

ARTICLE IX MISCELLANEOUS

9.01 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

9.02 **Notice of Bankruptcy.** In the event the Hotel Owner files for bankruptcy, whether involuntarily or voluntary, the Hotel Owner shall provide written notice to the City within three (3) business days of such event.

9.03 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

9.04 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas
Attention: Mr. Mark D. Israelson, City Manager
P.O. Box 860358
Plano, TX 75086-0358

With a copy to:
City of Plano, Texas
Attention: Ms. Paige Mims, City Attorney
P.O. Box 860358
Plano, TX 75086-0358

If intended for the Company before relocation:
Kintetsu Enterprises Co. of America
Attention: Mr. Ryo Yamada, Vice President
2141 S. Western Avenue #100
Torrance, CA 90501

9.05 **Entire Agreement.** This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

9.06 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

9.07 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

9.08 **Severability.** In the event 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 other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

9.09 **Recitals.** The recitals to this Agreement are incorporated herein.

9.10 **Authorized to Bind.** The persons who execute their signatures to this Agreement represent and agree that they are authorized to sign and bind their respective parties to all of the terms and conditions contained herein.

9.11 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

ATTEST:

CITY OF PLANO, TEXAS, a
home-rule municipal corporation

Lisa C. Henderson, CITY SECRETARY

Mark D. Israelson, CITY MANAGER
Date: _____

APPROVED AS TO FORM:

for Paige Mims, CITY ATTORNEY

ATTEST:

KINTETSU ENTERPRISES COMPANY OF
AMERICA dba MIYAKO HOTEL, a California
corporation

Name: _____
Title: _____

By: _____
Name: _____
Title: _____
Date: _____

South 20°57'37" West, a distance of 224.47 feet to the POINT OF BEGINNING and containing a computed area of 135,024 square feet or 3.100 acres of land.

OWNERS CERTIFICATION:

**STATE OF TEXAS
COUNTY OF COLLIN**

WHEREAS KINTETSU ENTERPRISES COMPANY OF AMERICA, are the owners of a tract of land situated in the J.C. Barrow Survey, Abstract No. 91, and the Collin County School Land Survey No. 5, Abstract No. 150, City of Plano, Collin County, Texas and being all of Lot 8R, Block E, of Legacy West Addition, Lots 2R, 5R & 8R, Block E, an addition to the City of Plano, Texas according to the plat recorded in Volume 2024, Page 352, Official Records of Collin County, Texas, and being all of the land described in the Special Warranty Deed to Kintetsu Enterprises Company of America, recorded in Instrument No. 20190401000334950, Official Public Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at a cut "X" found in concrete for the southeast corner of said Lot 8R, Block E, and being on the north right-of-way line of Legacy Drive (a variable width right-of-way) and at the beginning of a non-tangent curve to the right with a radius of 1,989.50 feet, a central angle of 08°53'10", and a chord bearing and distance of North 64°35'45" West, 308.25 feet;

THENCE with the south line of said Lot 8R, Block E, common to the north right-of-way line of said Legacy Drive, in a northwesterly direction, with said non-tangent curve to the right, an arc distance of 308.55 feet to a 5/8" iron rod with plastic cap stamped "KHA" found for the southwest corner of said Lot 8R, Block E;

THENCE with the common line of said Lot 8R, Block E, and Lot 5R, Block E of said Legacy West Addition, Lots 2R, 5R & 8R, Block E, the following courses and distances:

North 26°11'30" East, a distance of 130.78 feet to a 5/8" iron rod with plastic cap stamped "KHA" found for corner;

North 00°12'24" East, a distance of 230.31 feet to a 5/8" iron rod with plastic cap stamped "KHA" found for the northwest corner of said Lot 8R, Block E;

South 89°48'08" East, a distance of 275.60 feet to a 5/8" iron rod with plastic cap stamped "KHA" found for corner;

South 65°10'59" East, a distance of 73.66 feet to a cut "X" found in concrete for the northeast corner of said Lot 8R, Block E, and being the beginning of a non-tangent curve to the left with a radius of 230.15 feet, a central angle of 26°25'16", and a chord bearing and distance of South 10°32'25" West, 105.19 feet;

In a southerly direction, with said non-tangent curve to the left, an arc distance of 106.13 feet to a cut "X" found in concrete at the beginning of a non-tangent curve to the right with a radius of 350.00 feet, a central angle of 22°33'53", and a chord bearing and distance of South 09°40'41" West, 136.95 feet;

In a southerly direction, with said non-tangent curve to the right, an arc distance of 137.84 feet to a cut "X" found in concrete;

South 20°57'37" West, a distance of 224.47 feet to the **POINT OF BEGINNING** and containing a computed area of 135,024 square feet or 3.100 acres of land.

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

Please select one of the options below before signing and returning the certification:

- _____ a. I hereby certify that Kintetsu Enterprises Company of America, a California corporation, is in compliance with each applicable term as set forth in the Agreement. Attached is an annual plan and budget for the upcoming Grant Year as required by the Agreement. I further certify that Kintetsu Enterprises Company of America is entitled to receive a reimbursement in accordance with the terms and conditions set out in the Agreement.
- _____ b. I hereby certify that Kintetsu Enterprises Company of America, a California corporation, is not in compliance with each applicable term as set forth in the Agreement. As such, I further certify that Kintetsu Enterprises Company of America is not entitled to receive a reimbursement in accordance with the terms and conditions set out in Agreement.

ATTEST:

KINTETSU ENTERPRISES COMPANY
OF AMERICA dba MIYAKO HOTEL, a
California corporation

Name: _____
Title: _____

By: _____
Name: _____
Title: _____
Date: _____

NOTE:

This form is due by December 31 of each year beginning on December 31, 2028, and as long as this Agreement is in effect.

This Certificate of Compliance should be mailed to:

City of Plano, Texas
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358