



Board Binder Open Session

March 27, 2023

Agenda



**MIDLAND DEVELOPMENT CORPORATION AS AUTHORIZED BY CHAPTER 504 OF THE TEXAS
LOCAL GOVERNMENT CODE**

NOTICE OF PUBLIC MEETING

In accordance with Chapter 551, Texas Government Code, as amended, notice is hereby given to the public that the Board of Directors of the Midland Development Corporation will meet in special session, open to the public, in the Midland Chamber of Commerce board room, 303 West Wall Street, Suite 200, Midland, Texas, at 10:00 a.m. on March 27, 2023. A quorum of the Board of Directors of the Midland Development Corporation intends to be physically present at the aforementioned location.

Videoconference Information

Join Zoom Webinar

<https://us02web.zoom.us/j/86525239996?pwd=Rm9BMTJpUVp5S3FFZlNlZTBqa3ltZz09>

Or join by phone:

Dial (for higher quality, dial a number based on your current location):

US: +1 346 248 7799 or +1 719 359 4580 or +1 253 205 0468 or +1 253 215 8782 or +1 669 444 9171 or +1 669 900 9128 or +1 312 626 6799 or +1 360 209 5623 or +1 386 347 5053 or +1 507 473 4847 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 689 278 1000 or +1 301 715 8592 or +1 305 224 1968 or +1 309 205 3325

Webinar ID: 865 2523 9996

Passcode: 907343

International numbers available: <https://us02web.zoom.us/u/kolb3vfWw>

At such meeting, the Board of Directors may discuss, consider, and take action on any of the following items:

1. Call meeting to order.
2. Resolution authorizing the execution of a Master Development Agreement between the City of Midland, Texas, the Midland Development Corporation, and C. Hodges Development Services, L.P., regarding the development of a certain 17.345-acre tract of land located in the southeast quarter of Section 35, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas.
3. Pursuant to Texas Government Code §551.101, the Board of Directors will hold an Executive Session, which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:
 - a. Section 551.087 Deliberation Regarding Economic Development Negotiations
 - i. Discuss business prospects that the Midland Development Corporation seeks to have, locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives, and discuss contract compliance on the part of businesses.



Posted this 23rd day of March 2023.

Marcia Bentley German
City Governance Officer/City Secretary

Master Development Agreement

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A MASTER DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS, THE MIDLAND DEVELOPMENT CORPORATION, AND C. HODGES DEVELOPMENT SERVICES, L.P., REGARDING THE DEVELOPMENT OF A CERTAIN 17.345-ACRE TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

WHEREAS, C. Hodges Development Services, L.P., is scheduled to purchase a certain 17.345-acre tract of land located in the southeast quarter of Section 35, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas (the “*Property*”); and

WHEREAS, the City of Midland, Texas (the “*City*”), the Midland Development Corporation (the “*MDC*”), and C. Hodges Development Services, L.P. (“*Hodges*”), desire to cause the Property to be developed as a multi-tract retail and entertainment development (the “*Project*”), with related amenities and restaurant facilities for the use and enjoyment of residents and visitors of the City and to attract business and business patrons to the City; and

WHEREAS, the MDC is authorized to expend funds on the Project in accordance with Chapters 501 and 504 of the Texas Local Government Code; and

WHEREAS, the Board of Directors finds that the purpose of the Project qualifies as an infrastructure and site improvement project under Texas Local Government Code § 501.103 and is therefor eligible for MDC funding; and

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of a Master Development Agreement for development of the Project;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE MIDLAND DEVELOPMENT CORPORATION:

SECTION ONE. That the above recitals are hereby approved and adopted for all purposes.

SECTION TWO. That the Chairman is hereby authorized and directed to execute, on behalf of the Midland Development Corporation, a Master Development Agreement

between the City of Midland, Texas, the Midland Development Corporation, and C. Hodges Development Services, L.P. Said Master Development Agreement shall be in a form substantially similar to that of Exhibit A, which is attached hereto and incorporated herein for all purposes.

SECTION THREE. That the Chairman, or his designee, is hereby authorized and directed, on behalf of the Midland Development Corporation, to administer and enforce the terms of the Master Development Agreement.

SECTION FOUR. That the Chairman, or his designee, is hereby authorized and directed to negotiate and execute, on behalf of the Midland Development Corporation, any and all related agreements, amendments, legal instruments and documents necessary and appropriate to carry out the intent of the Master Development Agreement.

SECTION FIVE. That the City Comptroller is hereby authorized and directed to make payment(s) to Hodges, or other appropriate party, in accordance with the terms of the Master Development Agreement and all related agreements, amendments, easements, legal instruments and documents necessary and appropriate to carry out the intent of the Master Development Agreement, from funds available in the Midland Development Corporation Fund (235) Operating Budget upon receipt of proper invoice or statement approved by the MDC Executive Director or her designee.

On motion of Director _____, seconded by Director _____, the above and foregoing resolution was adopted by the Board of Directors of the Midland Development Corporation at a regular meeting on the _____ day of _____, A.D., 2023, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

CHASE GARDAPHE,
Chairman of the Midland
Development Corporation

ATTEST:

JILL PENNINGTON,
Secretary of the Midland
Development Corporation

APPROVED AS TO FORM ONLY:

JOHN OHNEMILLER,
Attorney for the Midland
Development Corporation

MASTER DEVELOPMENT AGREEMENT

BETWEEN

**CITY OF MIDLAND, TEXAS,
MIDLAND DEVELOPMENT CORPORATION
AND
C. HODGES DEVELOPMENT SERVICES, L.P.**

This Master Development Agreement (“**Agreement**”) is made and entered into by and among the City of Midland, Texas (“**CITY**”), a home rule municipal corporation, the Midland Development Corporation (“**MDC**”), an economic development corporation existing under the authority of Chapter 504 of the Texas Local Government Code, and C. HODGES DEVELOPMENT SERVICES, L.P., a Texas limited partnership (together with its successors and permitted assigns, collectively, “**COMPANY**”). CITY, MDC and COMPANY are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

WITNESSETH:

WHEREAS, CITY, MDC and COMPANY desire to combine their efforts to facilitate development of the Project (as defined herein) on the Property (as defined herein);

WHEREAS, the Parties propose that private and public funds and resources be used to develop the Project on the Property;

WHEREAS, the governing body of CITY finds and determines that providing the incentives described herein to COMPANY in exchange for COMPANY’S completion of the Project will promote local economic development, stimulate business and commercial activity and create jobs within the City of Midland;

WHEREAS, the governing body of CITY finds and determines that the Project is in the public interest and will directly establish a public purpose for the City of Midland and the State of Texas in promoting the economic welfare of the general public by securing and retaining business enterprises as a result of maintaining a higher level of employment, economic activity, and stability;

WHEREAS, Texas Constitution article III, section 52-a, and Texas Local Government Code § 380.001 provide constitutional and statutory authority for CITY’S grant of incentives hereunder to promote local economic development and to stimulate business and commercial activity in the City of Midland;

WHEREAS, MDC is a corporate entity organized under the laws of the state of Texas and is authorized by its governing body to enter into this Agreement;

WHEREAS, MDC is authorized to expend funds on the Infrastructure Improvements (as defined herein) in accordance with Chapters 501 and 504 of the Texas Local Government Code;

WHEREAS, the MDC Board of Directors finds that the purpose of this Agreement qualifies as an infrastructure improvement project under Texas Local Government Code § 501.103, and is therefore eligible for MDC funding;

WHEREAS, the governing bodies of CITY and MDC find that the expenditures of CITY and MDC hereunder are necessary to promote or develop new or expanded business enterprises within the City of Midland; and

WHEREAS, the Parties desire to enter into this Agreement in order to set forth the Parties' respective rights, obligations, and undertakings with regard to the funding, development, construction, and operation of the Project.

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits that will accrue to the Parties, the Parties have agreed and do hereby agree as follows:

ARTICLE I. **DEFINITIONS**

When used in this Agreement, capitalized terms not otherwise defined shall have the meanings set forth below:

- 1.1 **“Business Day”** shall mean a day that is not a Saturday, Sunday or legal holiday in the State of Texas. All other references to “days” hereunder shall mean calendar days.
- 1.2 **“Comptroller”** means the Texas Comptroller of Public Accounts.
- 1.3 **“Construction Completion Obligation”** is defined in Article 2.4.
- 1.4 **“Development Costs”** means the aggregate of costs expended or caused to be expended relating to construction and installation of improvements and/or infrastructure, including, but not limited to, costs such as those costs for site acquisition (including without limitation the cost of obtaining any third party consents, rights-of-way or easements); site preparation (e.g., infrastructure, paving, grading); construction costs; general contractor and subcontractor fees; the costs of equipment, supplies, materials and construction labor; buildings (foundation, interior, and exterior improvements); structures; utilities; demolition; environmental remediation; lighting; signage; landscaping; engineering fees and costs; surveying costs; fees of consultants; architectural and design fees; zoning fees; building permit, development, inspection and other CITY fees (the extent not otherwise waived pursuant to Article 4.2); sewer basin fees; water and sewer tap fees (if any, and only to the extent not otherwise waived or reimbursed pursuant to this Agreement); insurance and taxes directly related to the construction of such improvements or infrastructure; carrying costs; and other costs and fees for such construction and completion of improvements or infrastructure, as applicable.

- 1.5 “*Effective Date*” means March 28, 2023.
- 1.6 “*Entertainment Tract*” means the portion of the Property on which is planned to be located a family cinema and entertainment center occupying a building containing at least 50,000 square feet of space, and described in a Rebate Notice in accordance with Article 4.1 herein.
- 1.7 “*Force Majeure*” is defined in Article 9.7.
- 1.8 “*General Tract*” means any portion of the Property, other than the Entertainment Tract and the Retailer Tract, on which one or more Premium Retailers and Restaurants is or will be located and described in a Rebate Notice in accordance with Article 4.1 herein.
- 1.9 “*Infrastructure Funding*” means economic development incentive funding provided by MDC to COMPANY in an amount not to exceed the Infrastructure Funding Cap as consideration for the COMPANY’S completion of the Project and Infrastructure Improvements as set forth in Article III, and subject to the applicable terms and conditions of this Agreement.
- 1.10 “*Infrastructure Funding Cap*” means Five Million and No/100 Dollars (\$5,000,000.00).
- 1.11 “*Infrastructure Improvements*” is defined in Article 3.1.
- 1.12 “*Major Retailer*” means Bass Pro Outdoor World, L.L.C., a Missouri limited liability company, or any affiliated or related entity of Bass Pro Outdoor World, L.L.C. (collectively, “Bass Pro”), doing business as “Bass Pro Shops”, “Bass Pro Shops Outpost” or such other trade name as may be adopted by Bass Pro from time to time for all or any portion of its retail or commercial stores which are, as of the Effective Date, operated under the “Bass Pro Shops” or “Bass Pro Shops Outpost” trade name.
- 1.13 “*Phase*” means improvements to the Entertainment Tract, the Retailer Tract, or any of the General Tracts, as applicable. By way of example, development of each General Tract shall each be considered a separate Phase.
- 1.14 “*Premium Retailer or Restaurant*” means any retail or restaurant use located at other class A shopping centers located in the State of Texas.
- 1.15 “*Project*” means the improvements to the Retailer Tract, which, at a minimum, shall consist of one or more buildings containing, in total, at least 55,000 square feet of space to be used for retail use(s) (which may include restaurant use(s)) and may include other services and uses associated therewith as determined by the Major Retailer.
- 1.16 “*Project’s Rebate Term*” is defined in Article 4.1.
- 1.17 “*Property*” means that certain approximately 17.345 acre tract of land located in the southeast quarter of Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, as more particularly described on Exhibit A attached hereto and incorporated herein for all purposes.
- 1.18 “*Purchase Obligation*” is defined in Article 2.1.

- 1.19 “*Rebate Notice*” is defined in Article 4.1.
- 1.20 “*Retailer Tract*” means that portion of the Property more particularly described in Exhibit B attached hereto and incorporated herein for all purposes.
- 1.21 “*Rebate Term*” is defined in Article 4.1.
- 1.22 “*Reimbursable Costs*” means the costs expended or caused to be expended relating to construction and installation of the Infrastructure Improvements, which are expressly limited to costs for site acquisition (i.e., the purchase price of real property upon which the Infrastructure Improvements will be constructed, and the cost of obtaining any third party consents, rights-of-way or easements); site preparation (e.g., infrastructure, paving, grading); construction costs; general contractor and subcontractor fees; the costs of equipment, supplies, materials and construction labor; utilities; demolition; environmental remediation; and building permit, development, inspection and other CITY fees (to the extent not otherwise waived pursuant to Article 4.2).
- 1.23 “*Sales Tax Rebate*” means an annual payment made by CITY to COMPANY in the amount of fifty percent (50%) of Sales Tax Revenues as received by CITY from the Comptroller for the previous calendar year, and as reconciled with the sales and use tax information provided by the Comptroller. Said annual payment shall be calculated based on Sales Tax Revenues received for transactions arising from and within the Retailer Tract, the Entertainment Tract, or any Premium Retailer or Restaurant located on a General Tract or any combination thereof as more fully described in Article 4.1 of this Agreement.
- 1.24 “*Sales Tax Revenues*” means the amount of sales and use tax that CITY receives for transactions arising from and within the Retailer Tract, the Entertainment Tract, and the General Tracts resulting from the imposition of a municipal sales tax, such as the one percent sales tax currently in effect pursuant to Section 321.101(a), Section 321.103, and Section 321.104, Texas Tax Code, less any portion thereof that the State is permitted under law to retain.
- 1.25 “*Site Plan*” means the site plan shown on Exhibit C attached hereto and incorporated herein for all purposes.
- 1.26 “*Term*” is defined in Article VII.

ARTICLE II.

OBLIGATIONS OF COMPANY

During the Term of this Agreement, as conditions to COMPANY’S receipt of the incentives set forth in Article III and Article IV herein, COMPANY shall comply with the following terms and conditions. Notwithstanding any provision in this Agreement to the contrary, COMPANY has no obligation hereunder to construct all or any portion of the Project, the Infrastructure Improvements, or any other improvements to the Property. The Parties acknowledge and agree that this Agreement does not constitute a contract for providing goods and/or services,

but merely sets forth the conditions that must be satisfied in order for COMPANY to receive the incentives set forth herein:

- 2.1 Purchase of the Property.** As an express condition precedent to CITY’s and MDC’s obligations hereunder, COMPANY or the Major Retailer shall purchase the Property and acquire fee simple title to the same on or before May 1, 2023, and COMPANY shall provide CITY and MDC with a copy of the recorded deed conveying the Property to COMPANY or the Major Retailer, as applicable (the “*Purchase Obligation*”). For the avoidance of doubt, the Purchase Obligation shall be satisfied if COMPANY or the Major Retailer purchases the Property, and if COMPANY assigns this Agreement to the Major Retailer pursuant to Article 9.10 herein, the term COMPANY shall mean the Major Retailer to the extent of any and all rights and obligations so assigned. If COMPANY or the Major Retailer fails to complete the Purchase Obligation, this Agreement shall automatically terminate and the Parties shall have no further rights or obligations hereunder.
- 2.2 Design.** COMPANY shall plan, design, develop, and construct the Project substantially in accordance with the Site Plan; provided, however, that COMPANY’S duties to so plan, design, develop, and construct the Project shall be limited to the building identified as “Anchor” in the Site Plan.
- 2.3 Construction Commencement.** On or before January 1, 2026, subject to Force Majeure (i) COMPANY shall commence construction of the Project and Infrastructure Improvements, and (ii) COMPANY’S architect shall provide CITY and MDC written certification that construction on the Project and Infrastructure Improvements has commenced.
- 2.4 Construction Completion.** On or before January 1, 2027, subject to Force Majeure, COMPANY shall complete or cause to be completed construction on the Project and Infrastructure Improvements, as evidenced by a written certification from COMPANY’S architect provided to the CITY and MDC confirming such completion of construction. The total Development Costs for the Project (excluding any amounts reimbursed through the Infrastructure Funding contemplated herein) shall be not less than Fifteen Million and No/100 Dollars (\$15,000,000.00). COMPANY shall obtain a temporary certificate of occupancy for the Project and open or cause the Project to be open for business to the general public on or before June 1, 2027, subject to Force Majeure and any extensions of time allowed pursuant to this Agreement. COMPANY’S obligations under this Article 2.4 are collectively the “*Construction Completion Obligation*.”
- 2.5 Project Covenants.** COMPANY covenants to CITY and MDC the following:

 - (a) Subject to its right to contest by appropriate proceedings, to comply with all codes, ordinances, statutes, rules and regulations promulgated by the applicable governmental authorities which are applicable to the Project for any component of the Project that COMPANY develops or constructs, including, but not limited to, all health, safety, environmental, building and zoning codes, rules and regulations, including the Americans with Disabilities Act (42 U.S.C. §§ 12101 *et seq.*).

- (b) To plan, design, develop and construct the Project, and from and after the actual, initial opening of the Project to the public to thereafter operate and maintain or cause to be operated and maintained, except in the event of and to the extent of temporary shut downs, renovations, remodels, upgrades, adding new service lines, repair, temporary cessations of a similar nature, casualty, and Force Majeure, the Project until the expiration of the Project's Rebate Term. COMPANY acknowledges and agrees the Project is anticipated to be highly visible to, and visited by, tourists, business visitors and residents of the greater Midland area. Accordingly, the Project shall at all times be maintained in accordance with commercially reasonable standards of cleanliness and safety. The Parties stipulate and agree that maintaining the Project in such a manner provides a benefit to CITY in encouraging expansion of the convention and tourism industry in Midland and in potentially attracting more businesses to the Midland area.

2.6 Project Inspection; Costs. Prior to the expiration of the Project's Rebate Term, at a time scheduled by COMPANY during COMPANY'S normal business hours and following at least ten (10) calendar days' prior written notice to COMPANY, but no more than once during any three-month period, CITY and its employees and agents shall have the right, without disturbing or interfering with any construction activities of COMPANY, or any operational activities of COMPANY or any businesses located on the Retailer Tract, to confirm that all work performed on the Project is being completed in accordance with the terms of this Agreement. COMPANY shall have the right to require that any representative of the CITY be escorted by a representative or security personnel of COMPANY or a business located on the Retailer Tract during any such inspection, and COMPANY shall be able to exercise its sole discretion in scheduling a requested inspection so as not to interfere with its ongoing business operations on the Property. COMPANY shall, within thirty (30) days following COMPANY'S completion of the Construction Completion Obligation, provide CITY with a report in the form attached as **Exhibit D** hereto certifying the total Development Costs for the Project, together with reasonable supporting documentation, and upon request from CITY, reasonable supplemental documentation or evidence of such costs.

ARTICLE III. MDC INCENTIVE

As consideration for COMPANY planning, designing, developing and constructing the Project and Infrastructure Improvements (as defined hereunder), and in accordance with the terms and conditions of this Agreement, MDC agrees to provide COMPANY with the Infrastructure Funding, subject to the following schedule, terms and conditions:

3.1 Infrastructure Funding. Upon (i) COMPANY'S construction and completion of (a) paving, drainage, water, and wastewater infrastructure improvements required for the two streets located at the northwest corner of the intersection of State Highway 158 and State Highway 191 (which shall be dedicated to the City), and (b) any other infrastructure improvements serving the Property that may be approved by the MDC Board of Directors in a future amendment to this Agreement (collectively, the "***Infrastructure Improvements***"), (ii) COMPANY'S dedication of the applicable Infrastructure

Improvements to CITY, (iii) CITY'S acceptance of the applicable Infrastructure Improvements (which shall not be unreasonably conditioned, withheld, or delayed), and (iv) COMPANY'S submission of a written statement or report, together with sufficient supporting documentation in a form reasonably acceptable to MDC, certifying the total Reimbursable Costs for the Infrastructure Improvements and evidencing the applicable Infrastructure Improvements dedication to CITY, MDC shall provide COMPANY with the Infrastructure Funding in an amount equal to the total Reimbursable Costs for the Infrastructure Improvements. The Infrastructure Improvements shall be constructed and completed in substantial accordance with those certain plans specifically pertaining to Kirkland Drive and Sinclair Avenue (as they are identified in such plans) prepared by Winkelmann & Associates, Inc., and approved by the City of Midland on March 9, 2020, which are hereby fully incorporated herein by reference for all purposes. The Infrastructure Funding shall be paid to COMPANY in one (1) lump sum no later than thirty (30) days following COMPANY'S submission of the written statement or report required by this Article. Upon the CITY'S acceptance of each of the Infrastructure Improvements, each such Infrastructure Improvement shall become the sole property and responsibility of the CITY (including any maintenance related thereto).

- 3.2 Clawback.** If the Infrastructure Funding is provided to COMPANY in accordance with Article 3.1 and COMPANY thereafter (i) terminates or abandons the Project prior to satisfying the Construction Completion Obligation and, within ninety (90) days following written notice thereof from MDC to COMPANY, COMPANY fails to cure the same by utilizing commercially reasonable efforts to pursue the Construction Completion Obligation, or (ii) otherwise fails to complete the Construction Completion Obligation within ninety (90) days following the deadline therefor, then COMPANY shall repay to MDC the Infrastructure Funding, without interest, within thirty (30) days after MDC provides written notice to COMPANY. Notwithstanding any contrary provision contained in this Agreement, under no circumstances shall COMPANY be obligated to repay MDC an amount in excess of the total dollar amount of Infrastructure Funding actually received by COMPANY.
- 3.3 Infrastructure Funding Cap.** For the avoidance of doubt and notwithstanding any statement to the contrary herein, the Infrastructure Funding for the Infrastructure Improvements shall not exceed the Infrastructure Funding Cap.
- 3.4 Additional Assistance.** MDC agrees to use reasonable efforts to assist COMPANY in obtaining (i) tax abatement agreements from Midland County, the Midland Community College District, and the Midland County Hospital District, (ii) available job creation credits and reimbursements from applicable authorities, and (iii) favorable industrial power rates from the electric utility provider for the Project and any additional development on the Property.

ARTICLE IV.
CITY INCENTIVES

As consideration for COMPANY planning, designing, developing, constructing, operating and maintaining the Project in accordance with the terms and conditions of this Agreement, CITY agrees to the following:

- 4.1 Sales Tax Rebate.** At any time within two (2) years following any Phase within the Property being open to the general public and obtaining a certificate of occupancy, COMPANY (and/or any other subsequent owner or tenant of the Retailer Tract, the Entertainment Tract, and/or a General Tract, as applicable) shall have the right to provide written notice to CITY of its election to commence the Sales Tax Rebate as to that Phase and the date of the commencement thereof (a “**Rebate Notice**”). The Rebate Notice shall contain a legal description describing the boundaries of the applicable Phase(s). A Rebate Notice may contain an election to commence the Sales Tax Rebate for any or all of the Phases contemplated herein; provided, however, that if the Rebate Notice contains an election to commence the Sales Tax Rebate for multiple Phases, then the Rebate Notice shall identify a date of commencement for the Sales Tax Rebate for each Phase identified in the Rebate Notice. For clarification purposes, the Rebate Notice for each Phase may be sent separately or jointly. Upon CITY’s receipt of any Rebate Notice, CITY shall pay to COMPANY (or the applicable owner or tenant of such Phase if this Agreement has been assigned or partially assigned to such owner or tenant), the Sales Tax Rebate for the associated Phase, beginning on the date of commencement contained in the Rebate Notice, as applicable, and continuing for seven (7) years thereafter (such seven (7) year term(s), each a “**Rebate Term**” and such seven (7) year term as applicable to the Project, the “**Project’s Rebate Term**”), and subject to the terms and conditions of this Agreement. CITY shall make such Sales Tax Rebate payment annually by March 31 during each Rebate Term. As a condition precedent to obtaining any Sales Tax Rebate from CITY, COMPANY (and/or any other subsequent owner or tenant of the Retailer Tract, the Entertainment Tract, and/or a General Tract that this Agreement has been assigned or partially assigned to, as applicable) shall sign, and shall cause any affiliate, tenant, licensee, third-party owner or other party generating Sales Tax Revenues that COMPANY (or its assignee) desires to be included for purposes of calculating the Sales Tax Rebate to sign, and submit to CITY and maintain during each Rebate Term, as applicable, the Waiver of Sales Tax Confidentiality form attached as **Exhibit E**, or other similar form required by the Comptroller, as may be required from time to time during the Term of this Agreement to permit the release of information about Sales Tax Revenues to CITY.
- 4.2 Waiver of Development Fees.** CITY hereby agrees to waive the following fees in connection with and applicable to the development of the Property: (i) permitting fees, (ii) inspection fees, (iii) utility connection fees, (iv) plan examination fees, (v) and water and sewer tap fees.

ARTICLE V.
AUDIT RIGHTS

COMPANY shall establish and maintain a reasonable accounting system that enables CITY to readily identify records relating to or pertaining to COMPANY'S obligations under this Agreement, including all Development Costs for the Project and property tax records. COMPANY shall maintain such records during the Term of this Agreement, together with such supporting or underlying documents and materials, and for a period of one (1) year following termination of this Agreement. Upon reasonable advance written notice, but in no event less than thirty (30) calendar days' advance notice, no more than two (2) times per year, and only to the extent necessary to verify COMPANY'S obligations pursuant to this Agreement, such records shall be made available to CITY, and its authorized representatives, for audit during normal business hours at COMPANY'S office or place of business. If any such documentation or records are contained in business records of COMPANY that also contain unrelated matters, COMPANY may redact any unrelated matters that are non-essential to the audit. Further, COMPANY may require that all individuals reviewing the business records of COMPANY must first sign a confidentiality agreement under which they agree to not discuss or publicize information contained in those records except as necessary for them to complete an audit of such records in accordance with this Agreement.

ARTICLE VI.
EVENTS OF DEFAULT

6.1 Subject to Force Majeure and the cure periods set forth herein, each of the following shall constitute an event of default on behalf of COMPANY under this Agreement except to the extent such event of default or failure to perform is caused by any act or failure to act on the part of CITY or MDC:

- (a) **Development Obligations and Failure to Operate Project.** COMPANY'S failure to design, develop, and construct, the Project substantially consistent with the terms and conditions of Article 2.2, Article 2.3, Article 2.4 and Article 2.5(a) of this Agreement and operate and maintain the Project in accordance with Article 2.5(b). If COMPANY fails to cure such failure within sixty (60) days after written notice from CITY detailing such failure, or if such failure cannot be cured within such sixty (60) day period in the exercise of all due diligence, then COMPANY shall have such additional amount of time as is reasonably necessary to effect cure up to an additional one hundred twenty (120) days, or longer period authorized by the City Council of CITY and the Board of Directors of MDC. The City Council of CITY and Board of Directors of MDC may authorize the execution of an amendment to this Agreement with COMPANY to extend the period for COMPANY to cure its failure to design, develop, construct, operate or maintain the Project in accordance with this Agreement.
- (b) **False Statements.** Any material written warranty, representation, or statement made or furnished to CITY or MDC by COMPANY under this Agreement or any document(s) related hereto furnished to CITY or MDC by COMPANY that is false or misleading in any material respect, either now or at the time made or furnished,

and COMPANY fails to cure the same within thirty (30) days after written notice from CITY or MDC detailing the violation, or if such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if COMPANY fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, or if COMPANY obtains actual knowledge that any such warranty, representation, or statement has become false or misleading after the time that it was made, and COMPANY fails to provide written notice to CITY and MDC of the false or misleading nature of such warranty, representation, or statement within thirty (30) days after COMPANY learns of its false or misleading nature.

- (c) **Insolvency.** The dissolution or termination of COMPANY'S existence as a going business or concern, COMPANY'S insolvency, appointment of receiver of any part of COMPANY'S portion of the Project, any assignment of all or substantially all of the assets of COMPANY or its affiliates for the benefit of creditors of COMPANY, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against COMPANY.
- (d) **Property Taxes.** COMPANY'S failure to pay its property taxes owed to CITY, or any other local taxing entity, and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes, and to cure such failure or post a satisfactory bond within sixty (60) days after written notice from CITY and/or the Midland Central Appraisal District.
- (e) **Company's Failure to Perform Material Covenant.** COMPANY'S failure to perform or observe any other material term, condition or covenant contained in this Agreement and COMPANY fails to cure the same within sixty (60) days after written notice from CITY or MDC, unless such failure cannot be cured within such sixty (60) day period in the exercise of all due diligence, then COMPANY shall have such additional amount of time as is reasonably necessary to effect cure up to an additional one hundred twenty (120) days, or longer period authorized by the City Council of CITY and the Board of Directors of MDC. The City Council of CITY and Board of Directors of MDC may authorize the execution of an amendment to this Agreement with COMPANY to extend the period for COMPANY to cure its failure to perform or observe a term, condition or covenant contained in this Agreement.

6.2 City or MDC's Failure to Perform Material Covenant. If the CITY or MDC fails to timely provide the Infrastructure Funding or any Sales Tax Rebate due and owing to COMPANY or any assignee pursuant to the terms of this Agreement and fails to cure the same within thirty (30) days after written notice from COMPANY; or if CITY fails to observe its obligations prescribed by Article 4.2 and fails to cure the same within sixty (30) days after written notice from COMPANY, then COMPANY may terminate this Agreement subject to Article 6.4 or seek specific performance of this Agreement. Notwithstanding any contrary provision contained herein, COMPANY'S right to terminate this Agreement or seek specific performance of this Agreement shall be COMPANY'S sole and exclusive remedies in the event of CITY'S or MDC'S uncured default.

- 6.3 Notice of Default.** If a default occurs, the non-defaulting Party must notify the defaulting Party in writing upon becoming aware of any event of default. Such notice shall specify the nature of the default and what action, if any, the non-defaulting Party requires or proposes with respect to curing the default.
- 6.4 Termination.** If a default occurs and continues to occur after the applicable cure periods contained in this Agreement following the defaulting Party's receipt of the notice prescribed in Article 6.3, or later if additional time is otherwise afforded for cure as provided herein, the non-defaulting Party may terminate this Agreement by providing written notice to the defaulting Party.
- 6.5** Notwithstanding any statement to the contrary herein, all terms, conditions and obligations of this Agreement shall apply to each Phase independently. By way of example and for the avoidance of doubt, in the event of a default with respect to the Entertainment Tract or any General Tract (if COMPANY or any assignee chooses, in its sole discretion, to develop the Entertainment Tract or General Tract(s)), such default would have no impact on the Infrastructure Funding, the Sales Tax Rebate for the Retail Tract, or COMPANY's obligations with respect to the Project or the Retail Tract.

ARTICLE VII. TERM OF AGREEMENT

Upon execution by the Parties, this Agreement becomes effective on the Effective Date and shall terminate on the earlier of: (i) January 1, 2040, and (ii) the seventh (7th) anniversary of the commencement date contained in the final Rebate Notice issued pursuant to Article 4.1 (the "*Term*").

ARTICLE VIII. USE OF PUBLIC FUNDS

The Parties acknowledge and agree that the public funds or resources expended, granted or guaranteed hereunder shall be utilized solely for purposes authorized under applicable law and the terms of this Agreement.

ARTICLE IX. GENERAL TERMS

- 9.1 Entire Agreement.** This Agreement embodies the complete agreement of the Parties, superseding all oral or written, previous and contemporary agreements between the Parties relating to matters in this Agreement; and except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the Parties.
- 9.2 Termination.** This Agreement may be terminated (i) by mutual agreement of the Parties, (ii) automatically pursuant to Article 2.1, or (iii) by any Party, as provided for in Article 6.4.
- 9.3 Multiple Counterparts.** This Agreement may be executed in any number of counterparts, each of which may be executed by any one or more of the Parties hereto, but all of which

shall constitute one instrument, and shall be binding and effective when all of the Parties hereto have executed at least one counterpart.

- 9.4 Legal Relationship.** The Parties are not, and shall not be considered as, joint venturers, partners, or agents of each other. No Party shall have the power to bind nor obligate another Party, except as set forth in this Agreement. The Parties agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another. It is mutually understood and agreed that nothing in this Agreement is intended or shall be construed as in any way creating or establishing any partnership, joint venture, or agency between CITY, MDC, and COMPANY. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a community of pecuniary interest or an equal right of control that would give rise to vicarious liability.
- 9.5 Legal Construction.** If one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 9.6 Consideration.** The Parties hereby agree and acknowledge that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties.
- 9.7 Force Majeure.** In the event that CITY, MDC, or COMPANY shall be delayed, hindered in, or prevented from the performance of any act required hereunder by reason of an act of God or the public enemy; strike; lockout; civil commotion; labor trouble, slowdowns or work stoppages; inability to procure, shortage or unavailability of supplies, materials, or labor; adverse or unseasonable weather materially affecting construction or operation; government or de facto governmental action or inaction (unless caused by negligence or omissions of such Party) resulting in changes to the plans and specifications required as a condition to issuance of any permits or any changes in laws or codes not reasonably foreseeable, and any delay in issuance of necessary permits by any governmental authority having jurisdiction, including unreasonable delays by the CITY (based on the then-current workload of the CITY department(s) responsible for undertaking the activity in question) in issuing any permits, consents, or certificates of occupancy or conducting any inspections of or with respect to the Property and the Project, but excluding delays due to work conditions that violate applicable codes and regulations; fires; explosions; floods; failure of power or utility delays; riot; insurrection; war; incidence of disease or other illness that reaches outbreak, epidemic, or pandemic proportions or any governmental orders, actions, shut-downs, mandates, restrictions or quarantines, or any quasi-governmental orders, actions, shut-downs, mandates, restrictions or quarantines resulting from any epidemics or pandemics, and any public health emergencies, whether declared by local, state or federal governmental authorities or agencies; any force majeure event or excusable delay under the general contractor's construction contract; 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, then performance of such act shall be excused for the period

of the delay and the period for the performance of any such act shall be extended for a period equal to the period of such delay (“*Force Majeure*”). Notwithstanding the foregoing or anything contained herein to the contrary, in no event shall Force Majeure apply to the payment of any monetary obligations of CITY or MDC.

- 9.8 No Disparity of Bargaining Position.** The Parties agree that there was no disparity of bargaining power between the Parties in the negotiation and execution of this Agreement. The Parties acknowledge and agree that they were represented by legal counsel. The Parties acknowledge and agree that they read and understood the entire Agreement prior to its execution. The Parties acknowledge and agree that there were numerous compromises and concessions made by the Parties resulting in the agreed-upon terms of this Agreement.
- 9.9 Third-Party Beneficiary.** The Parties’ approval of the Agreement does not create a third-party beneficiary. There is no third-party beneficiary to this Agreement. No person or entity that is not a Party to this Agreement shall have any third-party beneficiary or other rights hereunder.
- 9.10 Successors and Assigns.** CITY, MDC, and COMPANY each bind themselves, their successors, executors, administrators, and assigns to the other Parties to this Agreement. COMPANY may assign this Agreement, in whole or in part, to the Major Retailer without any further approval or consent by the CITY or the MDC, but upon written notice to the CITY and the MDC. The benefits and obligations conferred by this Agreement regarding the Entertainment Tract may be assigned by COMPANY to Red Raider Daughter, LLC, a Texas limited liability company, without the written consent of CITY and MDC, but upon written notice to the CITY and the MDC. The benefits of the Sales Tax Rebate conferred by this Agreement with respect to each General Tract may not be assigned by COMPANY, in whole or in part, to a Premium Retailer or Restaurant or the owner of a General Tract upon which a Premium Retailer or Restaurant is located, without the written consent of CITY and MDC (which shall not be unreasonably conditioned, withheld, or delayed). Except as otherwise provided herein, no Party may assign, subcontract, or transfer any interest in this Agreement without the written consent of the other Parties; the decision regarding whether to grant such consent shall be in the sole and exclusive discretion of the other Parties.
- 9.11 Independent Contractor.** It is expressly understood and agreed that each Party shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of any other Party; that the Parties shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of their officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between the Parties, their officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between the Parties. The Parties shall be independent contractors under this Agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractors hereunder. The Parties shall assume exclusive responsibility for their own work.

9.12 Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive and mandatory venue for any claim, suit or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the Parties shall be deemed to have occurred in Midland County, Texas.

9.13 Notices and Payments. All notices and payments to the Parties required under this Agreement shall be sent by one of the following: (i) certified U.S. mail, postage prepaid, (ii) an overnight courier service (such as, by way of example but not limitation, U.S. Express Mail, Federal Express or Purolator); (iii) personal delivery that provides a return receipt showing the date of actual delivery of the same to the addressee; or (iv) by electronic mail, each addressed as reflected below. Notice deposited in the mail in the manner specified in subsection (i) above will be effective two (2) Business Days after deposit. Notice given in the manner specified in subsections (ii), (iii), or (iv) above will be effective upon receipt. Any Party hereto may change the address below and add additional parties to whom notice will be sent by sending written notice of such to the other Parties in one of the manners specified herein.

If to CITY:

City Manager
City of Midland
P.O. Box 1152
Midland Texas 79702
E-mail: tjauz@midlandtexas.gov

With Copy to:

City Attorney's Office
City of Midland
300 N. Loraine Street, Suite 320
Midland, Texas 79701
E-mail: johnemiller@midlandtexas.gov

If to COMPANY:

C. Hodges Development Services, L.P.
13642 Omega Road
Dallas, Texas 75244
Attn: Charles Hodges
E-mail: chodges@hodgesusa.com

With Copy to:

Berger and Street Law PLLC

If to MDC:

Midland Development Corporation
Executive Director
200 N. Loraine Street, Suite 610
Midland Texas, 79701
E-mail: sharris@midlandtxedc.com

With Copy to:

City Attorney's Office
City of Midland
300 N. Loraine Street, Suite 320
Midland, Texas 79701
E-mail: ntcump@midlandtexas.gov

4445 Alpha Road, Suite 113
Dallas, Texas 75244
Attn: Christi Berger
E-mail: cberger@hodgesusa.com

- 9.14 Indemnity; Release. COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND MDC, AND ALL CITY AND MDC OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE, AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT OR INTENTIONAL ACT OF COMPANY, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, COMPANY'S ACTIVITIES OR OPERATIONS UNDER THIS AGREEMENT, AND COMPANY SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS THAT MAY BE OBTAINED AGAINST CITY OR MDC OR ANY OFFICERS, AGENTS, OR EMPLOYEES OF CITY OR MDC, INCLUDING REASONABLE ATTORNEY FEES, AS A RESULT THEREOF; PROVIDED THAT THE FOREGOING SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OR INTENTIONAL ACT OF THE CITY OR MDC, OR THE CITY'S OR MDC'S OFFICERS, AGENTS AND/OR EMPLOYEES, AND IN THE EVENT OF ANY SUCH NEGLIGENCE OR INTENTIONAL ACT, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.**

TO THE EXTENT PERMITTED BY LAW, CITY AND MDC SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND COMPANY, AND ALL COMPANY OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE, AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OR INTENTIONAL ACT OF CITY OR MDC, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, CITY'S OR MDC'S ACTIVITIES OR OPERATIONS UNDER THIS AGREEMENT, AND CITY AND MDC SHALL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS THAT MAY BE OBTAINED AGAINST COMPANY OR ANY OFFICERS, AGENTS, OR EMPLOYEES OF COMPANY, INCLUDING REASONABLE ATTORNEY FEES, AS A RESULT THEREOF; PROVIDED THAT THE FOREGOING SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OR INTENTIONAL ACT OF THE COMPANY, OR THE COMPANY'S OFFICERS, AGENTS AND/OR EMPLOYEES, AND IN THE EVENT OF ANY SUCH NEGLIGENCE OR INTENTIONAL ACT, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

CITY AND MDC SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE ACTS OR OMISSIONS OF COMPANY PURSUANT TO

THIS AGREEMENT. COMPANY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE ACTS OR OMISSIONS OF CITY OR MDC PURSUANT TO THIS AGREEMENT

- 9.15 Waiver of Attorney Fees.** SUBJECT TO ARTICLE 9.14, BY EXECUTING THIS AGREEMENT, EACH PARTY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM EACH PARTY HAS OR MAY HAVE IN THE FUTURE AGAINST THE OTHER PARTIES REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS AGREEMENT OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. EACH PARTY SPECIFICALLY AGREES THAT IF IT BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, SAID PARTY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH SAID PARTY MIGHT OTHERWISE BE ENTITLED.
- 9.16 Limited Waiver of Immunity; Governmental Immunity.** The Parties are entering into this Agreement in reliance upon its enforceability. Consequently, the CITY and the MDC irrevocably waive all claims of sovereign and governmental immunity which either may have (including, but not limited to, immunity from suit and immunity to liability), if any, to the extent, but only to the extent, that a waiver is necessary to enforce specific performance of this Agreement (including all of the remedies provided under this Agreement) and to give full effect to the intent of the Parties under this Agreement. Notwithstanding the foregoing, the waiver contained herein shall not waive any immunities that the City may have with respect to claims of injury to persons or property, which claims shall be subject to all of their respective immunities and to the provisions of the Texas Tort Claims Act. Further, the waiver of immunity herein is not enforceable by any party not a Party to this Agreement. Except as otherwise provided herein, the Parties acknowledge and agree that CITY and MDC are not waiving their respective rights to governmental immunity by executing this Agreement.
- 9.17 Remedies.** Except as otherwise provided herein, no right or remedy granted herein or reserved to a Party is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder.
- 9.18 Waiver of Performance.** The failure of any Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights under this Agreement, will not be construed as a waiver or relinquishment by such Party of such term, covenant, condition or right with respect to further performance.
- 9.19 Confidentiality.** COMPANY acknowledges that CITY and MDC are governmental entities subject to the Texas Public Information Act, as amended. COMPANY agrees that this Agreement in no way affects, modifies or limits the obligation of CITY or MDC to

comply with the Texas Public Information Act or any ruling or decision of the Texas Attorney General. COMPANY further agrees that CITY and MDC retain the right to exercise their sole and absolute discretion in determining their respective obligations under the Texas Public Information Act. Upon the CITY'S or the MDC's receipt of a request to inspect or obtain copies of records relating to the confidential or proprietary information of COMPANY or the Major Retailer, then the CITY and/or MDC, as applicable, shall promptly provide written notice of the same to COMPANY, which notice shall include a copy of such request and instructions and deadline(s) for COMPANY to make its argument of confidentiality to the Texas Attorney General, in COMPANY'S discretion.

9.20 Estoppel. Any Party shall, at any time upon reasonable request by any other Party, provide an estoppel certificate or similar document evidencing that, to the best of the Party's knowledge, this Agreement is in full force and effect, that no event of default exists hereunder (or, if appropriate, specifying the nature and duration of any existing default and the steps required to cure the same), the status of completion of the Project and/or any other improvements, and/or any other obligations set forth in this Agreement.

9.21 Authority. Each Party represents, warrants, and agrees that it has the full right, power and authority to execute this Agreement, and that this Agreement shall become valid and binding among the Parties upon execution.

9.22 Approval. This Agreement was approved by Resolution No. _____, on March 28, 2023, a duly-passed resolution of the Midland City Council. Further, this Agreement was duly approved by the MDC at its meeting on March 27, 2023, pursuant to Resolution No. _____.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

CITY OF MIDLAND, TEXAS,
a home rule municipal corporation

Robert Patrick, City Manager

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2023, personally appeared, ROBERT PATRICK, City Manager of the CITY OF MIDLAND, TEXAS, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2023.

Notary Public, State of Texas

**MIDLAND DEVELOPMENT
CORPORATION**

Chase Gardaphe, Chairman

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2023, personally appeared, CHASE GARDAPHE, Chairman of the MIDLAND DEVELOPMENT CORPORATION, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2023.

Notary Public, State of Texas

C. HODGES DEVELOPMENT SERVICES, L.P., a Texas limited partnership

Charles Hodges, Partner and Founder

STATE OF _____ §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2023, personally appeared, CHARLES HODGES, Partner and Founder of C. HODGES DEVELOPMENT SERVICES, L.P., known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2023.

Notary Public, State of Texas

EXHIBIT A

Property Description and Survey

FIELD NOTE DESCRIPTION OF A 17.345 ACRE TRACT OF LAND, SITUATED IN SECTION 35, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS and PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS, BEING A PORTION OF THAT SAME LAND AS DESCRIBED AS TRACT SEVEN IN A WARRANTY DEED FILED AS DOCUMENT NUMBER 2008-26873 IN VOLUME 3131 ON PAGE 210 OF THE OFFICIAL PUBLIC RECORDS (OPR) OF SAID MIDLAND COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT N.(Y):10693732.66, E.(X):1726261.95, A POINT WITHIN A TXDOT TYPE I CONCRETE MONUMENT (TYPE I) FOUND AND ACCEPTED AS BEING ON THE NORTH RIGHT-OF-WAY LINE OF STATE HIGHWAY 191, AS DESCRIBED IN VOLUME 715 ON PAGE 287 OF SAID "OPR" AT THE SOUTHEAST CORNER OF A TRACT DESCRIBED AS AN 80-FOOT-WIDE DRAINAGE EASEMENT IN VOLUME 715 ON PAGE 280 OF SAID "OPR" AND BEING THE SOUTHWEST CORNER OF A CALLED 7.573 ACRE TRACT IN DOCUMENT NUMBER 2018-31010 OF SAID "OPR", **THENCE** S.75°15'20"W., ALONG SAID RIGHT-OF-WAY, 79.47 FEET TO A "TYPE I" FOUND FOR THE **POINT OF BEGINNING** AND THE SOUTHEAST CORNER HEREOF;

THENCE S.75°15'20"W., ALONG SAID RIGHT-OF-WAY, 724.82 FEET TO A "TYPE I" FOUND FOR AN ANGLE CORNER HEREOF;

THENCE S.71°08'16"W., ALONG SAID RIGHT-OF-WAY, 80.97 FEET TO A POINT THAT BEARS S.14°44'01"E., 0.31 FEET FROM A ONE HALF INCH IRON ROD WITH A PLASTIC CAP MARKED "WAI 5714" (WAI) FOR THE SOUTHWEST CORNER HEREOF;

THENCE N.14°44'01"W., ACROSS SAID TRACT SEVEN, 742.30 FEET TO A "WAI" FOUND FOR THE POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 220.00 FEET AND A CHORD BEARING AND DISTANCE OF N.22°58'18"W., 62.86 FEET;

THENCE ALONG THE ARC OF SAID CURVE 63.08 FEET TO A "WAI" FOUND FOR A POINT OF DEFLECTION HEREOF;

THENCE N.79°38'54"W., 30.25 FEET TO A "WAI" FOUND FOR AN ANGLE CORNER HEREOF;

THENCE N.30°32'30"W., 99.89 FEET TO A "WAI" FOUND FOR A POINT OF DEFLECTION AND THE POINT OF CURVATURE FOR A CURVE TO THE NORTHEAST HAVING A RADIUS OF 550.00 FEET AND A CHORD BEARING AND DISTANCE OF N.45°10'40"E., 271.48 FEET FOR THE NORTHWEST CORNER HEREOF;

THENCE ALONG THE ARC OF SAID CURVE 274.32 FEET TO A "WAI" FOUND FOR A POINT OF TANGENCY HEREOF;

THENCE N.30°55'14"E., 384.19 FEET TO A ONE HALF INCH IRON ROD FOUND FOR A CUTBACK CORNER HEREOF;

THENCE N.14°40'14"W., 28.28 FEET TO A POINT ON THE SOUTHWEST RIGHT-OF-WAY LINE OF STATE HIGHWAY 158, BEING THE NORTHEAST LINE OF SAID "TRACT SEVEN" THAT BEARS S.69°42'03"W., 0.23 FEET FROM A ONE HALF INCH IRON ROD, FOR THE NORTH CORNER HEREOF;

THENCE S.59°05'27"E., ALONG SAID TRACT SEVEN AND SAID RIGHT OF WAY, A DISTANCE OF 120.15 FEET TO A ONE-HALF INCH IRON ROD WITH RED PLASTIC CAP MARKED "MAVERICK FIRM #10194514" (RPC) SET FOR THE NORTH NORTHEAST CORNER HEREOF;

THENCE S.30°54'15"W., A DISTANCE OF 300.00 FEET TO AN "RPC" SET FOR AN INTERIOR CORNER HEREOF;

THENCE S.59°05'27"E., A DISTANCE OF 701.14 FEET TO AN "RPC" SET ON THE WEST LINE OF SAID 80-FOOT WIDE DRAINAGE EASEMENT FOR THE EAST NORTHEAST CORNER HEREOF;

THENCE ALONG AND ACROSS SAID DRAINAGE EASEMENT THE FOLLOWING 4 CALLS:

- 1.) S.14°42'47"E., A DISTANCE OF 217.83 FEET TO AN "RPC" SET FOR AN INTERIOR CORNER HEREOF;
- 2.) N.75°16'29"E., A DISTANCE OF 79.54 FEET TO AN "RPC" SET FOR A CORNER HEREOF;
- 3.) S.14°42'04"E., A DISTANCE OF 80.00 FEET TO AN "RPC" SET FOR A CORNER HEREOF;
- 4.) S.75°16'29"W., A DISTANCE OF 79.52 FEET TO AN "RPC" SET FOR AN INTERIOR CORNER HEREOF;

THENCE S.14°42'47"E., CONTINUING ALONG SAID EASEMENT, 245.61 FEET TO THE **POINT OF BEGINNING**, CONTAINING 17.345 ACRES OF LAND.

EXHIBIT B

Retailer Tract Metes and Bounds

EXHIBIT B TO TAX ABATEMENT AGREEMENT

MAVERICK
ENGINEERING - SURVEY - WATER RESOURCES
1909 West Wall Street, Suite K - Midland, TX 79701
Tel: 432.262.0999 - Fax: 432.262.0989 - maverick-eng.com
ENGINEER FIRM #: F-15089 | SURVEY FIRM #: I0194514



FIELD NOTE DESCRIPTION:

FIELD NOTE DESCRIPTION OF A 11.578 ACRE TRACT OF LAND, SITUATED IN SECTION 35, BLOCK 40, TOWNSHIP 1 SOUTH, TEXAS and PACIFIC RAILWAY COMPANY SURVEY, MIDLAND COUNTY, TEXAS, BEING A PORTION OF THAT SAME LAND AS DESCRIBED AS TRACT SEVEN IN A WARRANTY DEED FILED AS DOCUMENT NUMBER 2008-26873 IN VOLUME 3131 ON PAGE 210 OF THE OFFICIAL PUBLIC RECORDS (OPR) OF SAID MIDLAND COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT N.(Y):10693732.66, E.(X):1726261.95, A POINT WITHIN A TXDOT TYPE I CONCRETE MONUMENT (TYPE I) FOUND AND ACCEPTED AS BEING ON THE NORTH RIGHT-OF-WAY LINE OF STATE HIGHWAY 191, AS DESCRIBED IN VOLUME 715 ON PAGE 287 OF SAID "OPR" AT THE SOUTHEAST CORNER OF A TRACT DESCRIBED AS AN 80-FOOT-WIDE DRAINAGE EASEMENT IN VOLUME 715 ON PAGE 280 OF SAID "OPR" AND BEING THE SOUTHWEST CORNER OF A CALLED 7.573 ACRE TRACT IN DOCUMENT NUMBER 2018-31010 OF SAID "OPR", **THENCE** S.75°15'20"W., ALONG SAID RIGHT-OF-WAY, 79.47 FEET TO A "TYPE I" FOUND FOR THE **POINT OF BEGINNING** AND THE SOUTHEAST CORNER HEREOF;

THENCE S.75°15'20"W., ALONG SAID RIGHT-OF-WAY, 724.82 FEET TO A "TYPE I" FOUND FOR AN ANGLE CORNER HEREOF;

THENCE S.71°08'16"W., ALONG SAID RIGHT-OF-WAY, 80.97 FEET TO A POINT THAT BEARS S.14°44'01"E., 0.31 FEET FROM A ONE HALF INCH IRON ROD WITH A PLASTIC CAP MARKED "WAI 5714" (WAI) FOR THE SOUTHWEST CORNER HEREOF;

THENCE N.14°44'01"W., ACROSS SAID TRACT SEVEN, 742.30 FEET TO A "WAI" FOUND FOR THE POINT OF CURVATURE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 220.00 FEET AND A CHORD BEARING AND DISTANCE OF N.22°58'18"W., 62.86 FEET;

THENCE ALONG THE ARC OF SAID CURVE 63.08 FEET TO A "WAI" FOUND FOR A POINT OF DEFLECTION HEREOF;

THENCE N.79°38'54"W., 30.25 TO A "WAI" FOUND FOR AN ANGLE CORNER HEREOF;

THENCE N.30°32'30"W., 99.89 FEET TO A "WAI" FOUND FOR A POINT OF DEFLECTION AND THE POINT OF CURVATURE FOR A CURVE TO THE NORTHEAST HAVING A RADIUS OF 550.00 FEET AND A CHORD BEARING AND DISTANCE OF N.45°10'40"E., 271.48 FEET FOR THE NORTHWEST CORNER HEREOF;

THENCE ALONG THE ARC OF SAID CURVE 274.32 FEET TO A "WAI" FOUND FOR A POINT OF TANGENCY HEREOF;

THENCE N.30°55'14"E., 384.19 FEET TO A ONE HALF INCH IRON ROD FOUND FOR A CUTBACK CORNER HEREOF;

THENCE N.14°40'14"W., 28.28 FEET TO A POINT ON THE SOUTHWEST RIGHT-OF-WAY LINE OF STATE HIGHWAY 158, BEING THE NORTHEAST LINE OF SAID "TRACT SEVEN" THAT BEARS S.69°42'03"W., 0.23 FEET FROM A ONE HALF INCH IRON ROD, FOR THE NORTH CORNER HEREOF;

THENCE S.59°05'27"E., ALONG SAID TRACT SEVEN AND SAID RIGHT OF WAY, A DISTANCE OF 120.15 FEET TO A ONE-HALF INCH IRON ROD WITH RED PLASTIC CAP MARKED "MAVERICK FIRM #10194514" (RPC) SET FOR THE NORTH NORTHEAST CORNER HEREOF;

THENCE S.30°54'15"W., A DISTANCE OF 300.00 FEET TO AN "RPC" SET FOR AN INTERIOR CORNER HEREOF;

THENCE S.59°05'27"E., A DISTANCE OF 360.96 FEET TO AN "RPC" SET FOR AN EXTERIOR CORNER HEREOF;

THENCE S.75°36'12"W., A DISTANCE OF 439.06 FEET TO AN "RPC" SET FOR AN INTERIOR CORNER HEREOF;

THENCE S.14°27'48"E., A DISTANCE OF 361.42 FEET TO AN "RPC" SET FOR AN INTERIOR CORNER HEREOF;

THENCE N.75°17'17"E., 111.11 FEET TO A POINT OF CURVATURE FOR A CURVE TO THE RIGHT, HAVING A RADIUS OF 121.28 FEET AND A CHORD BEARING AND DISTANCE OF S.81°27'48"E., 93.96 FEET;

THENCE ALONG THE ARC OF SAID CURVE BEING CONVEX TO THIS TRACT, 96.48 FEET TO THE POINT OF REVERSE CURVE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 80.16 FEET AND A CHORD BEARING AND DISTANCE OF S.81°49'24"E., 62.67 FEET;

THENCE ALONG THE ARC OF SAID CURVE BEING CONCAVE TO THIS TRACT, 64.39 FEET TO THE POINT OF TANGENCY;

THENCE N.75°09'54"E., 204.33 FEET TO THE POINT OF CURVATURE FOR A CURVE TO THE RIGHT HAVING A RADIUS OF 181.73 FEET AND A CHORD BEARING AND DISTANCE OF S.88°38'41"E., 94.32 FEET;

THENCE ALONG THE ARC OF SAID CURVE BEING CONVEX TO THIS TRACT, 95.41 FEET TO THE POINT OF REVERSE CURVE FOR A CURVE TO THE LEFT HAVING A RADIUS OF 130.81 FEET AND A CHORD BEARING AND DISTANCE OF S.87°44'33"E., 69.20 FEET;

THENCE ALONG THE ARC OF SAID CURVE BEING CONCAVE TO THIS TRACT, 70.04 FEET TO THE POINT OF TANGENCY;


THENCE N.75°09'02"E., 62.21 FEET TO A POINT ON THE WEST LINE OF SAID CALLED 80 FOOT EASEMENT FOR AN INTERIOR CORNER HEREOF;

THENCE ALONG AND ACROSS SAID DRAINAGE EASEMENT THE FOLLOWING 4 CALLS:

- 1.) N.14°42'47"W., A DISTANCE OF 52.1 FEET TO AN "RPC" SET FOR AN EXTERIOR CORNER HEREOF;
- 2.) N.75°16'29"E., A DISTANCE OF 79.54 FEET TO AN "RPC" SET FOR A CORNER HEREOF;
- 3.) S.14°42'04"E., A DISTANCE OF 80.00 FEET TO AN "RPC" SET FOR A CORNER HEREOF;
- 4.) S.75°16'29"W., A DISTANCE OF 79.52 FEET TO AN "RPC" SET FOR AN INTERIOR CORNER HEREOF;

THENCE S.14°42'47"E., CONTINUING ALONG SAID EASEMENT, 245.61 FEET TO THE **POINT OF BEGINNING**, CONTAINING 11.578 ACRES OF LAND.

BASIS OF BEARING, COORDINATES, DISTANCES AND ACREAGE ARE A LAMBERT CONICAL PROJECTION OF THE TEXAS COORDINATE SYSTEM, STATE PLANE GRID, CENTRAL ZONE, NORTH AMERICAN DATUM 1983, U.S. SURVEY FOOT WITH A CONVERGENCE ANGLE (theta) OF -0°56'51.02" AND A COMBINED SCALE FACTOR OF 0.999898361, AT A TX DOT ALUMINUM CAP CONTROL MARK LOCATED AT N.10693706.99, E.1726246.47, EL2865.82.



Gregory W. Shoults

www.maverick-eng.com

Texas RPLS - No. 5356

Maverick Engineering (FIRM – No. 10194514)

February 23, 2023



EXHIBIT C

Site Plan

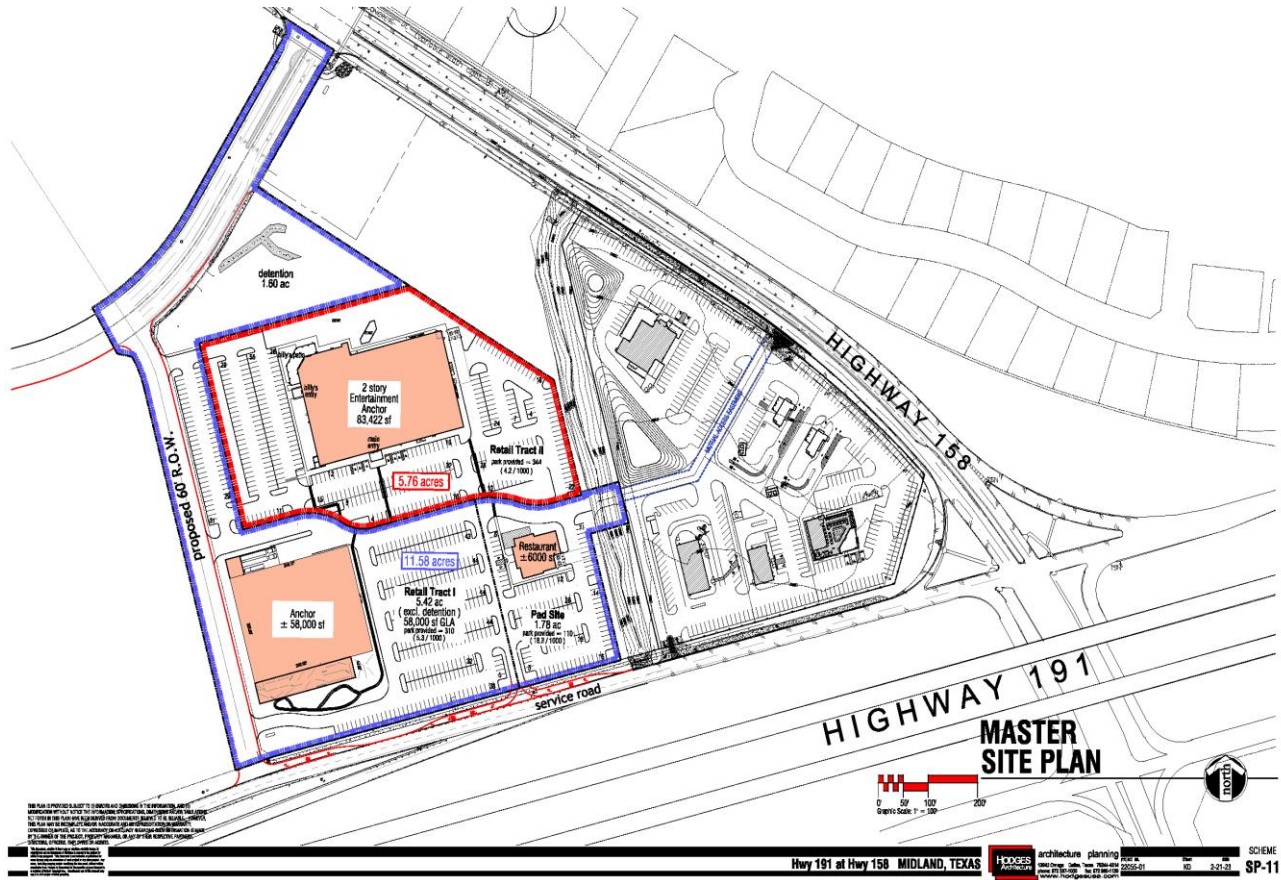


EXHIBIT D

Form of Report on Development Costs for the Project

**CITY OF MIDLAND – MASTER DEVELOPMENT AGREEMENT
DEVELOPMENT COSTS REPORT**

Date:
Company:
Effective Date of Agreement:

Calendar Year	Item	Reported Development Costs for the Project
TOTAL:		\$

EXHIBIT E

Waiver of Sales Tax Confidentiality Form

AGREEMENT FOR DISCLOSURE OF CONFIDENTIAL TAX INFORMATION

This Agreement for Disclosure of Confidential Tax Information (this “Agreement”) is entered into between the City of Midland, Texas (the “City”) and _____ (the “Taxpayer”) for the purposes indicated herein.

The undersigned Taxpayer hereby authorizes the Texas Comptroller’s Office to release and disclose to the City any and all sales and use tax information pertaining to Taxpayer’s business located at the physical location specified below. This authorization applies only to Taxpayer’s business located at the physical location specified below.

The undersigned Taxpayer understands and agrees that this release will be made by the Texas Comptroller’s Office to the City on an ongoing monthly basis beginning on the date this Agreement is executed. Taxpayer waives any and all rights of confidentiality of tax information under Sections 111.006, 151.027 of the Texas Tax Code to the extent, and only to the extent, necessary to permit the Texas Comptroller’s Office to release and disclose Taxpayer’s sales and use tax information as provided in this Agreement.

The City agrees that the City will use the sales and use tax information disclosed by the Texas Comptroller pursuant to this Agreement solely and exclusively for the purposes under the Master Development Agreement between City of Midland, Texas, Midland Development Corporation and C. Hodges Development Services, LP, and subject to the terms thereof.

This Agreement is entered into in the City of Midland, Midland County, Texas, and Texas law will apply to its interpretation and enforcement.

SIGNED AND AGREED TO on this ____ day of _____, 20__.

Name of Taxpayer Listed on Texas Sales Tax Permit

Name Under Which Taxpayer is Doing Business (d/b/a or Outlet Name)

Taxpayer Mailing Address

Physical Location of Business Permitted for Sales Tax

Texas Taxpayer ID Number	Tax Outlet Number
	(As Shown on Texas Sales Tax Permit)

Taxpayer's Authorized Signature*

Print Name of Authorized Signature

Position of Authorized Signature

*The authorized signature must be that of an owner, officer, director, partner, or agent authorized to sign a Texas Sales Tax Return. If you have any questions concerning this waiver of confidentiality, please contact the Texas Comptroller of Public Accounts at 1 (800) 531-5441.

City of Midland, Texas

City's Authorized Signature*

Print Name of Authorized Signature

Position of Authorized Signature