



# Board Binder Open Session

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January 22, 2024

# 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 January 22, 2024. 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/87376967259?pwd=c29pZHZua3FEZGlicUFkMkVZN3d0Zz09>

Passcode: 554060

Or join by phone:

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

US: +1 346 248 7799 or +1 253 215 8782 or +1 669 444 9171 or +1 669 900 9128 or +1 719 359 4580 or +1 253 205 0468 or +1 305 224 1968 or +1 309 205 3325 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

Webinar ID: 873 7696 7259

Passcode: 554060

International numbers available: <https://us02web.zoom.us/j/87376967259?pwd=c29pZHZua3FEZGlicUFkMkVZN3d0Zz09>

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 approving the execution of a master development agreement between the Midland Development Corporation, the City of Midland, and Midland Downtown Renaissance, LP, regarding the development of certain real property including Lots 1A, 5, 6, 7, and 8, Block 35, Original Town Addition, City and County of Midland, Texas.
3. Resolution approving a memorandum of understanding with The MITRE Corporation; said memorandum of understanding to provide for the establishment of a framework for the Midland Development Corporation and The MITRE Corporation to work collaboratively on a broad range of strategies, initiatives, and activities in the furtherance of commercial space and high-speed flight operations in the Permian Basin.



Posted this 18<sup>th</sup> day of January 2024.

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Marcia Bentley German  
City Governance Officer/City Secretary

Convention  
Center Hotel  
Master  
Development  
Agreement

### Project Scope Phase I

- Full-service, 4+ star hotel with between 135 and 150 guest rooms
- Retail and restaurant space
- Ballroom and meeting space with between 8,000 to 10,000 square feet
- Minimum construction cost \$125M

### Project Scope Phase II

- New parking garage with at least 800 parking spaces

### Project Location

- Option A: hotel on parking lot bordered by Wall, Colorado and Texas, with parking garage on Block 35 (land owned by MDC and City)
- Option B: hotel and parking garage on Block 35
  - o Minimum construction cost and project scope for Phase I and Phase II are the same for Option A and Option B

### MDC Incentives

- Block 35 land owned by MDC: 1.61 acres where Western United Life Building and JL Davis properties stood
- Total \$45M capital contribution incentive:
  - o \$5M to be disbursed within 5 business days of completion of Project Phase I Construction Commencement Obligation (Disbursement No. 1)
  - o \$10M to be disbursed within 5 business days following MDC's receipt of architect's certification of 50% completion of Project Phase I (Disbursement No. 2)
  - o \$15M to be disbursed within 5 business days following MDC's receipt of Certificate of Completion for Project Phase I (Disbursement No. 3)
  - o \$7.5M to be disbursed within 5 business days following MDC's receipt of architect's certification of 25% completion of Project Phase II (Disbursement No. 4)
  - o \$7.5M to be disbursed within 5 business days following MDC's receipt of Certificate of Completion for Project Phase II (Disbursement No. 5)

### Project Timeline

- Assumes Master Development Agreement is approved by MDC and City Council on January 22 and 23
- Financing obligation with 60 days expiration of 90-day due diligence period and completion of conditions precedent
  - o Financing obligation must be satisfied by 12/31/2027
- MDC land conveyed to MDR
- Design and construction documents submitted to MDC & City
- Construction contract for Phase I
- MDC \$5M disbursement (Disbursement No. 1)
- 50% completion of Phase I
- MDC \$10M disbursement (Disbursement No. 2)

- Completion of Phase I within 32 months of construction commencement
- MDC \$15M disbursement (Disbursement No. 3)
- Phase II construction commencement within 24 months of completion of Phase I
- 25% completion of Phase II
- MDC \$7.5M disbursement (Disbursement No. 4)
- 100% completion of Phase II
- MDC \$7.5M disbursement (Disbursement No. 5)

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION AUTHORIZING THE EXECUTION OF A MASTER DEVELOPMENT AGREEMENT BETWEEN THE MIDLAND DEVELOPMENT CORPORATION, THE CITY OF MIDLAND, AND MIDLAND DOWNTOWN RENAISSANCE, LP, REGARDING THE DEVELOPMENT OF CERTAIN REAL PROPERTY INCLUDING LOTS 1A, 5, 6, 7, AND 8, BLOCK 35, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS**

**WHEREAS**, the Midland Development Corporation (the “*MDC*”) is the owner of the real property described as Lots 1A, 5, and 6, Block 35, Original Town Addition, City and County of Midland, Texas; and

**WHEREAS**, the City of Midland (the “*City*”) is the owner of the real property described as Lots 7 and 8, Block 35, Original Town Addition, City and County of Midland, Texas (together with the above-referenced City-owned property, the “*Property*”); and

**WHEREAS**, the MDC, the City, and Midland Downtown Renaissance, LP, desire to cause the Property to be developed into a mixed-use project that includes a new downtown, full-service hotel with event space, retail space, restaurant space, and a new parking facility (the “*Project*”), for the use and enjoyment of residents and visitors of the City, and to attract business and business patrons to downtown Midland; 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 Midland Development Corporation, the City of Midland, and Midland Downtown Renaissance, LP. Said Master Development Agreement shall be kept on file in the office of the City Secretary, referenced by the date and number of this Resolution.

**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, easements, legal instruments or 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 Midland Downtown Renaissance, LP, or other appropriate party, in accordance with the terms of the Master Development Agreement and all related agreements, amendments, easements, legal instruments or documents necessary and appropriate to carry out the intent of the Master Development Agreement, from funds available in the appropriate budget account(s) in the fiscal year in which the payment is to be made upon receipt of proper invoice or statement approved by the Chairman or his 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., 2024, by the following vote:

Directors voting "AYE":

Directors voting "NAY":

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P. LOURCEY SAMS,  
Chairman of the Midland  
Development Corporation

ATTEST:

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JILL PENNINGTON,  
Secretary of the Midland  
Development Corporation

APPROVED ONLY AS TO FORM:

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JOHN OHNEMILLER,  
Attorney for the Midland  
Development Corporation

**MASTER DEVELOPMENT AGREEMENT**

**BETWEEN**

**CITY OF MIDLAND, TEXAS,  
MIDLAND DEVELOPMENT CORPORATION  
AND  
MIDLAND DOWNTOWN RENAISSANCE, LP**

This Master Development Agreement (“*Agreement*”) is made and entered into by and between 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 Midland Downtown Renaissance, LP or assigns (“*MDR*”), a Texas limited partnership. CITY, MDC and MDR are sometimes referred to herein individually as a “*Party*” and collectively as the “*Parties*.”

**WITNESSETH:**

**WHEREAS**, CITY owns the City Land (as defined herein);

**WHEREAS**, MDC owns the MDC Land (as defined herein);

**WHEREAS**, MDR Land (as defined herein) is currently owned by unrelated third parties;

**WHEREAS**, MDR intends to acquire fee ownership of the entire surface estate of the MDR Land (as defined herein);

**WHEREAS**, MDR will raise and provide the at-risk private capital needed to complete the Project (as defined herein);

**WHEREAS**, CITY, MDC and MDR desire to combine their efforts to facilitate development of the Project Land (as defined herein) as the Project;

**WHEREAS**, due to the location of the Project Land in downtown Midland, Texas, the Parties desire for the Project to be developed at high standards in order to reflect positively on the City of Midland as a whole;

**WHEREAS**, the Parties propose that private and public funds and resources be used to develop the Project Land as the Project;

**WHEREAS**, MDR, subject to the terms of this Agreement, desires to develop the Project Land into a mixed-use project that includes a new downtown, full-service hotel with event space, retail space, restaurant space and a new parking facility;

**WHEREAS**, the governing body of CITY finds and determines that providing the incentives described herein to MDR in exchange for MDR’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**, Article III, Section 52-a, of the Texas Constitution and Chapter 380 of the Texas Local Government Code 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**, Section 253.0125 of the Texas Local Government Code authorizes the conveyance of real property by a municipality pursuant to a Chapter 380 economic development agreement for the promotion of a public purpose relating to economic development;

**WHEREAS**, the governing body of CITY finds and determines that (i) this Agreement constitutes a program for making a grant of public funds to promote local economic development, and (ii) CITY's expenditures hereunder will directly enhance and promote tourism and the convention and hotel industry, and will benefit, improve and promote the Convention Center (as defined herein);

**WHEREAS**, in accordance with the applicable provisions of Chapter 351 of the Texas Tax Code, CITY may pledge the revenue derived from the tax imposed under Chapter 351 from a hotel project that is located on land owned by CITY and located within 1,000 feet of a convention center facility owned by CITY for the payment of obligations incurred to acquire, lease, construct, and equip such a hotel and associated facilities;

**WHEREAS**, the governing body of CITY hereby designates the Hotel (as defined herein) as the official Convention Center hotel of CITY for all legal purposes;

**WHEREAS**, the governing body of CITY finds and determines that Chapters 272 and 380 of the Texas Local Government Code, and other applicable law, authorize CITY's real property obligations set out herein;

**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 Project 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 and site 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 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 “*Affiliate*” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with another Person. For purposes of this definition the term “control” (including its derivatives and similar terms) means possessing the power to direct or cause the direction of the management and policies of a Person, whether through ownership, by contract, or otherwise. Notwithstanding the foregoing, any Person shall be deemed to control any specified Person if such Person owns fifty percent (50%) or more of the voting securities of the specified Person, or if the specified Person owns fifty percent (50%) or more of the voting securities of such Person, or if fifty percent (50%) or more of the voting securities of the specified Person and such Person are under common control.
- 1.2 “*Alleys*” are defined in Section 3.8.
- 1.3 “*Annual Incentives*” means HOT Rebate, Property Tax Rebate and SCCHP incentive payments received by MDR in any given calendar year during the term of this Agreement, as economic development incentives for MDR’s design, development, construction, operation and maintenance of the Project.
- 1.4 “*Capital Contribution*” means economic development incentive funding provided by MDC to MDR in an aggregate amount not to exceed \$45,000,000.00 as set forth in Article IV, and subject to the terms and conditions of this Agreement.
- 1.5 “*Certificate of Completion*” is defined in Section 2.6.
- 1.6 “*Certificate of Occupancy*” is defined in Section 2.6.

- 1.7 “***Certified Appraised Value***” means, with respect to each portion of the Project Land on which each Project phase is located, the appraised value as certified by the Midland Central Appraisal District as of January 1 of each year of the applicable Property Tax Rebate Term.
- 1.8 “***Change Orders***” is defined in Section 2.3.
- 1.9 “***City Approvals***” means permits or approvals required under applicable City of Midland ordinances or regulations in order for MDR to develop, construct, use and operate the Project.
- 1.10 “***City Land***” means the surface estate only of Lots 7 and 8, Block 35, Original Town Addition, City and County of Midland, Texas with a Surface Waiver.
- 1.11 “***Comparable Hotels***” means the description of hotels listed on Exhibit A attached hereto and incorporated herein for all purposes.
- 1.12 “***Construction Commencement***” is defined in Section 2.5.
- 1.13 “***Construction Commencement Obligation***” is defined in Section 2.5.
- 1.14 “***Construction Completion Obligation***” is defined in Section 2.6.
- 1.15 “***Construction Materials Sales Tax Rebate***” means a one hundred percent (100%) rebate of CITY’s one percent (1%) sales and use tax receipts for materials and labor of taxable items used in the construction of the Project.
- 1.16 “***Convention Center***” means the CITY-owned convention center located at 105 N. Main Street, Midland, Texas 79701.
- 1.17 “***Design Commencement Date***” is defined in Section 2.2.
- 1.18 “***Effective Date***” means January 23, 2024.
- 1.19 “***Energas Property***” means the surface estate with a Surface Waiver of Lots 3 and 4, Block 35, Original Town Addition, City and County of Midland, Texas.
- 1.20 “***Financing Obligation***” is defined in Section 2.1.
- 1.21 “***Force Majeure***” is defined in Section 11.7.
- 1.22 “***Go Forward Notice***” is defined in Article IX.
- 1.23 “***Ground Lease***” is defined in Section 3.6 and the form of which is attached hereto as Exhibit B, which is incorporated herein for all purposes.
- 1.24 “***HOT Rebate***” means CITY’s rebate of municipal hotel occupancy tax revenue paid by MDR to CITY, at the current rate of seven percent (7%) of the price paid for a room in the Hotel, pursuant to Chapter 351 of the Texas Tax Code, as amended, and the Municipal Code of the City of Midland § 3-3-2, as amended.
- 1.25 “***HOT Rebate Commencement Date***” is defined in Section 5.1.

- 1.26 “**HOT Rebate Notice**” is defined in Section 5.1.
- 1.27 “**Hotel**” means the full-service hotel of a quality consistent with the Comparable Hotels to be designed, developed, and constructed by MDR on the Project Land as part of the Project.
- 1.28 “**Hotel Property**” means the MDR Land or the Midland Land as set forth in Section 3.6 herein.
- 1.29 “**Initial Appraised Value**” means, with respect to each portion of the Project Land on which each Project phase is located, the appraised value for the land only as certified by the Midland Central Appraisal District as of January 1 of the year in which this Agreement is executed.
- 1.30 “**Laydown Lot License Agreement**” is defined in Section 3.7.
- 1.31 “**Location Notice**” is defined in Section 3.6.
- 1.32 “**Maximum Energas Cost**” is defined in Section 3.10.
- 1.33 “**MDC Land**” means, collectively, MDC Tract A and MDC Tract B.
- 1.34 “**MDC Tract A**” means the surface estate only of Lots 5 and 6, Block 35, Original Town, City and County of Midland, Texas with a Surface Waiver.
- 1.35 “**MDC Tract B**” means the surface estate only of (i) Lot 1A, Block 35, Original Town Addition, Section 8, an addition to the City of Midland, Midland County, Texas, as recorded in Cabinet J, Page 8, of the Plat records of Midland, County, Texas; and (ii) Lots 9-12, Block 35, Original Town of Midland, an addition to the City of Midland, Midland County, Texas, as recorded in Volume 3, Page 232, of the Deed Records of Midland County, Texas with a Surface Waiver.
- 1.36 “**MDR Land**” means the surface estate only of all of Lots 1-13 and the east 1/2 of Lot 14, Block 56, Original Town of Midland, an addition to the City of Midland, Midland County, Texas, according to the map or plat thereof recorded in Volume 3, Page 232, Deed Records of Midland County, Texas to be acquired as set forth herein.
- 1.37 “**MDR Land Acquisition**” is defined in Section 3.5.
- 1.38 “**Midland Land**” means, collectively, the City Land and the MDC Land.
- 1.39 “**New Garage**” is defined in Section 2.7.
- 1.40 “**Off-Site Improvements**” means any utility costs, including but not limited to, extension fees, connection fees or relocation costs related to the completion of the Project.
- 1.41 “**Option to Terminate for Excess Construction Estimate**” is defined in Section 2.6.
- 1.42 “**Person**” means any natural person, corporation, voluntary association, joint stock company, business trust, partnership, limited liability company, common law or statutory trust, joint venture, governmental authority, proprietorship, or other legal entity however constituted.

- 1.43 “*Phase II Certificate of Completion*” is defined in Section 2.7.
- 1.44 “*Phase II Construction Commencement*” is defined in Section 2.7.
- 1.45 “*Project*” means the improvements to the Project Land, all to be developed and constructed by MDR, in accordance with the terms and conditions hereof, in order to achieve:

(A) the Hotel and associated and appurtenant facilities, which at a minimum shall consist of: (i) a full-service hotel of a quality consistent with the Comparable Hotels with approximately one hundred thirty-five (135) to one hundred fifty (150) guest rooms; (ii) retail and restaurant space; and (iii) ballroom and meeting space of approximately 8,000 to 10,000 square feet (“*Project Phase I*”); and

(B) the New Garage (“*Project Phase II*”).

The Project shall be constructed in accordance with the Project Design and Construction Documents and all other applicable terms and conditions hereof.

- 1.46 “*Project Design and Construction Documents*” means the site plan shown on Exhibit C hereto, the conceptual design documents attached hereto as Exhibit D, and the design and construction documents approved by CITY pursuant to Section 2.2, as amended by Change Orders and as otherwise provided herein.
- 1.47 “*Project Land*” means either (a) the Midland Land and the MDR Land, or (b) just the Midland Land.
- 1.48 “*Property Tax Rebate*” means, with respect to each portion of the Project Land on which each Project phase is located, an annual rebate of ad valorem property tax revenue that was paid by MDR to CITY on such portion of the Project Land during the applicable Property Tax Rebate Term as set forth herein, but only to the extent that the ad valorem tax attributable to the Certified Appraised Value during each year of the Property Tax Rebate Term exceeds the ad valorem tax that would be attributable to the Initial Appraised Value during the same year.
- 1.49 “*Property Tax Rebate Commencement Date*” is defined in Section 5.2.
- 1.50 “*Property Tax Rebate Notice*” is defined in Section 5.2.
- 1.51 “*Property Tax Rebate Term*” means, with respect to each Project phase, a period beginning on the Property Tax Rebate Commencement Date and ending ten (10) years following the Property Tax Rebate Commencement Date.
- 1.52 “*Qualified Transferee*” means any entity under common ownership or common management with MDR or entity identified in any financing or subscription documents delivered in connection with the Financing Obligation.
- 1.53 “*SCCHP*” means the State Convention Center and Hotel Program that provides for rebates of state hotel occupancy tax and sales tax revenue administered by the State Comptroller’s Office.



- 1.54 “*Surface Waiver*” means a waiver of surface rights, in the form approved by MDR that waives the rights of ingress/egress, access or use of the surface by the owner of any reserved interest in the land.
- 1.55 “*Street Improvements*” means any traffic signals, paving, bollards, striping, sidewalks, drainage, landscaping or other similar items reflected in the Project Design and Construction Documents or otherwise required by the CITY or any other governmental agency as a condition of the Project.

## **ARTICLE II.** **OBLIGATIONS OF MDR**

During the term of this Agreement, MDR shall comply with the following terms and conditions.

- 2.1 **Financing; Pro Forma.** MDR shall provide CITY and MDC evidence of sufficient capitalization, for completion of the Project, the form of which shall be in MDR’s reasonable discretion and subject to any reasonable requests by CITY or MDC for MDR to supplement the same (the “*Financing Obligation*”) within sixty (60) days following the completion of all of the following: (i) CITY’s and MDC’s approval and execution of this Agreement; (ii) the expiration of MDR’s due diligence period in Article IX; and (iii) the completion of the conditions precedent in Article X.

Notwithstanding the foregoing paragraph or any contrary provision contained herein, MDR shall satisfy the Financing Obligation on or before December 31, 2027. MDR’s timely satisfaction of the Financing Obligation on or before December 31, 2027, shall constitute a material covenant of this Agreement. If MDR fails to perform said material covenant (and CITY and MDC are not in breach of this Agreement and there has not been a Force Majeure event), either Party shall have the right to terminate this Agreement, in its sole discretion and without penalty, upon providing written notice to the other Parties.

In conjunction with MDR’s satisfaction of the Financing Obligation, MDR shall provide CITY and MDC a budget and financial pro forma for the Project and will provide a reasonable opportunity for representatives of MDC and CITY to review the financing documentation, including but not limited to any executed subscription agreements.

- 2.2 **Design.** MDR shall submit to CITY and MDC a copy of the following Project Design and Construction Documents for approval in accordance with the following schedule:
- (a) Fifty percent (50%) design development drawings within three hundred (300) days following the approval referenced in Section 11.18 hereof, (the “*Design Commencement Date*”);
  - (b) Fifty percent (50%) construction drawings and specifications within one hundred eighty (180) days following CITY’s and MDC’s approval of the design development drawings referenced in Section 2.2(a) above; and

- (c) Ninety percent (90%) construction drawings and specifications within one hundred twenty (120) days following CITY's and MDC's approval of the construction drawings and specifications referenced in Section 2.2(b) above.

MDR must obtain CITY's and MDC's written approval of each design and construction drawing and specification submitted by MDR pursuant to Section 2.2(a) – (c), which shall not be unreasonably withheld, conditioned or delayed. CITY and MDC shall either approve or disapprove (with objections listed with specificity if disapproved) all design and construction drawings and specifications within fifteen (15) business days following delivery thereof to CITY and MDC. If CITY or MDC fails to approve or disapprove the applicable design or construction drawings and specifications within the fifteen (15) business day period, then MDR shall give CITY or MDC, as applicable, a second written notice, which must state in conspicuous type, the following: **"THIS NOTICE REQUIRES IMMEDIATE ATTENTION. FAILURE TO RESPOND IN WRITING IN THE MANNER REQUIRED BY THE MASTER DEVELOPMENT AGREEMENT WITH APPROVAL OR DISAPPROVAL OF THE ENCLOSED PLANS WITHIN FIVE (5) CALENDAR DAYS AFTER RECEIPT HEREOF SHALL BE DEEMED YOUR APPROVAL OF THE ENCLOSED."** In the event that CITY or MDC, as applicable, fails to either approve or disapprove (with objections listed with specificity) the applicable design or construction drawings and specifications within such additional five (5) calendar day period, then such design or construction drawings and specifications, as applicable, shall be deemed to have been approved by CITY and MDC. Compliance with the "fifty percent (50%)" and "ninety percent (90%)" standard as specified above shall be as reasonably determined by MDR's architect on the Project.

For the avoidance of doubt and notwithstanding any contrary provision herein, the timeline for the approvals set forth in this Section 2.2 shall not apply to or govern the City Approvals for the Project in Section 2.4. The timeline for the approvals of the Project Design and Construction Documents set forth in this Section 2.2 shall be for the sole and exclusive purpose of MDR obtaining a general and preliminary approval of the Project design, exclusive of the City Approvals. Any approval obtained by MDR under this Section 2.2 shall not be deemed to be a City Approval for the purposes of Section 2.4.

- 2.3 Change Orders.** Due to the complexity of the Project, CITY and MDR acknowledge that there will need to be on-going adjustments and deviations from the Project Design and Construction Documents. MDR shall utilize commercially reasonable efforts to minimize such adjustments and deviations. MDR will keep CITY advised in writing as to any material adjustments and deviations ("**Change Orders**"), which shall be subject to CITY's prior written approval, which will not be unreasonably withheld, conditioned or delayed. For purposes hereof, a "material adjustment or deviation" shall mean a change that: (i) costs more than \$5,000,000.00, (ii) materially reduces the quality of materials, or (iii) materially reduces the scope of the Project (as set forth in the definition thereof). CITY shall respond to MDR's written submission of a Change Order within five (5) business days from its receipt thereof. In the event CITY disapproves the applicable Change Order, CITY and MDR shall thereafter work together, diligently and in good faith, to modify the applicable Change Order so that it is acceptable to both Parties. In the event that CITY fails to either approve or disapprove (with objections listed with specificity) the applicable

Change Order within such five (5) business day period, then the applicable Change Order shall be deemed to have been approved by CITY.

- 2.4 Permitting.** The City Approvals required for the construction and development of the Project shall be issued pursuant to CITY's standard procedures and applicable ordinances. Such City Approvals include, without limitation, all building permits and certificate of occupancy. CITY shall cooperate in good faith with MDR to facilitate prompt and timely review and processing of all applications for City Approvals, including the timely processing and checking of all maps, plans, permits, building plans, construction work, subdivision plats, and other plans relating to development and construction of the Project.
- 2.5 Construction Commencement.** On or before three (3) months following the approval of the Project Design and Construction Documents, issuance of the required building permits, expiration of the Due Diligence Period in Article IX, and completion of the Conditions Precedent in Article X, MDR shall utilize commercially reasonable efforts to commence construction by entering into a construction contract for construction of Phase I of the Project ("**Construction Commencement**") of the Project in accordance with the Project Design and Construction Documents and MDR's architect shall provide CITY and MDC written certification that construction on the Project has commenced (the "**Construction Commencement Obligation**").
- 2.6 Construction Completion.** On or before thirty-two (32) months following Construction Commencement, MDR shall substantially complete Project Phase I improvements on the Project Land in substantial accordance with the Project Design and Construction Documents. The thirty-two (32) month time period referenced in the preceding sentence is subject to extension for Force Majeure (as defined herein) events or upon approval by CITY and MDC of MDR's written request for an extension, such approval not to be unreasonably withheld by CITY or MDC. MDR's architect shall provide CITY and MDC written certification of such completion of construction (the "**Certificate of Completion**"). The total construction cost (both hard and soft costs) of the Project shall be not less than One Hundred Twenty-Five Million and No/100 Dollars (\$125,000,000.00). MDR shall make reasonable efforts to obtain a temporary certificate of occupancy for the guest room and ballroom/meeting space components of the Hotel (the "**Certificate of Occupancy**") and open such components for business to the general public on or before three (3) months following the issuance of the Certificate of Completion. MDR's obligations under this section are collectively referred to herein as the "**Construction Completion Obligation.**" Notwithstanding anything to the contrary contained in this Agreement, in the event the estimated costs for the Project exceed One Hundred Seventy-Five Million and No/100 Dollars (\$175,000,000.00), MDR, shall have the right to terminate this Agreement upon written notice to City and upon such termination, MDR shall be released from all obligations herein ("**Option to Terminate for Excess Construction Estimate**"). MDR's Option to Terminate for Excess Construction Estimate shall expire on the satisfaction of the conditions precedent as set forth in Article X. In the event of such termination, MDR shall promptly reconvey all real property conveyed to MDR under this Agreement back to the CITY and MDC.
- 2.7 New Garage.** Upon completion of Project Phase I, MDR agrees to construct a new parking facility (the "**New Garage**") with a minimum of eight hundred (800) parking spaces on the

Midland Land. The budget for such New Garage, together with the plans and specifications therefor, shall be in the sole discretion of MDR; provided, however, that MDR shall keep CITY and MDC informed of the status of the New Garage during all phases of design and construction, including any material modifications or changes thereto; provided further, however, that the New Garage shall be designed to include 25% of the proposed parking spaces for unreserved self-parking for the public, and shall have reasonably sufficient and convenient vehicular ingress and egress. Construction of the New Garage shall commence at any time as determined by MDR but in no event later than twenty-four (24) months following the issuance of the Certificate of Occupancy referenced in Section 2.6 (“**Phase II Construction Commencement**”) and shall be diligently pursued and completed within twenty-four (24) months following the Phase II Construction Commencement. Following the completion of Phase II, MDR’s architect shall provide CITY and MDC written certification of the completion of construction on the New Garage (“**Phase II Certificate of Completion**”).

**2.8 Additional Obligations of MDR.** Subject to the terms and conditions set forth in this Agreement, MDR agrees to the following:

- (a) Subject to MDR’s right to contest by appropriate proceedings, to comply with all codes, ordinances, statutes, rules and regulations applicable to the Project, 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) Provided that neither the CITY or MDC are in default of this Agreement and subject to the completion of MDR’s Due Diligence in Article IX and Conditions Precedent in Article X, to plan, design, and construct the Project, while MDR or a Qualified Transferee is the owner of the Project, with high standards of cleanliness and safety as applicable to the Comparable Hotels. MDR acknowledges and agrees the Project will be highly visible to, and visited by, tourists, business visitors and residents of the greater Midland area. The Parties stipulate and agree that constructing 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 downtown Midland area.

**2.9 Project Inspection; Costs.** CITY and its employees and agents shall have the right, during reasonable hours, to confirm that all work performed on the Project is being completed in accordance with the terms of this Agreement. MDR shall, within thirty (30) days after completion of the Project, provide CITY with a written statement or report, together with sufficient supporting documentation in a form reasonably acceptable to CITY, certifying the total Project costs, and upon request from CITY, reasonable supplemental documentation or evidence of such costs.

### **ARTICLE III. PROPERTY**

The Parties agree to the following terms and conditions in relation to the subject land and improvements:

- 3.1 City Land.** Within two (2) months following the execution hereof, CITY agrees to completely abate, or cause to be abated, the City Land of all hazardous materials, including but not limited to asbestos, in a commercially reasonable fashion, and grade and compact the City Land in a commercially reasonable fashion and as necessary, as determined by MDR in its reasonable discretion, for a portion of the Project to be constructed thereon. CITY agrees to provide MDR with documentation reasonably satisfactory to MDR evidencing CITY's completion of its obligations pursuant to this section, including but not limited to adding MDR as a beneficiary to any environmental reports.
- 3.2 MDC Land.** Within two (2) months following the execution hereof, MDC agrees to completely abate, or cause to be abated, the MDC Land of all hazardous materials, including but not limited to asbestos, in a commercially reasonable fashion, and grade and compact the MDC Land in a commercially reasonable fashion and as necessary, as determined by MDR in its reasonable discretion. MDC agrees to provide MDR with documentation reasonably satisfactory to MDR evidencing MDC's completion of its obligations pursuant to this section, including but not limited to adding MDR as a beneficiary to any environmental reports.
- 3.3 Conveyance of City Land.** Concurrently with the execution hereof, CITY and MDR shall enter into a purchase and sale agreement (or other such instrument of conveyance), satisfactory in form and substance to the Parties thereto, pursuant to which, after MDR satisfaction of MDR's Financing Obligation, CITY shall sell and convey the City Land to MDR for the purchase price of One and No/Dollars (\$1.00).
- 3.4 Conveyance of MDC Land.** Concurrently with the execution hereof, MDC and MDR shall enter into a purchase and sale agreement (or other such instrument of conveyance), satisfactory in form and substance to the Parties thereto, pursuant to which, after MDR satisfaction of MDR's Financing Obligation, MDC shall sell and convey the MDC Land to MDR for the purchase price of One and No/100 Dollars (\$1.00).
- 3.5 MDR Land Acquisition.** MDR shall make reasonable efforts to acquire fee ownership in the entire surface estate of the MDR Land with Surface Waiver (the "**MDR Land Acquisition**") to be used for the Project.
- 3.6 Ground Lease for Hotel Property.** The Parties acknowledge that the Hotel may, at MDR's sole option, be constructed on either: (i) the MDR Land provided the MDR Land Acquisition is completed; or (ii) the Midland Land. The site selected by MDR for the Hotel shall be deemed the "**Hotel Property**"; provided, if the MDR Land is selected as the construction site for the Hotel, the term "**Hotel Property**" will not include Lot 13 and the east 1/2 of Lot 14, Block 56, on which sits the commercial building with an address of 306 Wall Street, Midland, Texas, as the Hotel will not be located on such land. The New Garage shall be located on the Midland Land. MDR shall provide CITY with written notice of the final location for the Hotel sixty (60) days prior to the Project Phase I Construction Commencement (the "**Location Notice**"). Within thirty (30) business days of delivery of the Location Notice, the Parties shall execute a purchase and sale agreement setting forth:

1) the conveyance of the land only (excluding any contemplated improvements) for the Hotel Property to CITY (subject to a reversion to MDR); 2) execution of a long-term ground lease for the Hotel Property in the form attached hereto as **Exhibit B**, pursuant to which CITY shall ground lease back to MDR the Hotel Property (the “**Ground Lease**”).

**3.7 Laydown Lot License Agreement.** If necessary and appropriate as determined by MDR, CITY and MDR agree to enter into a laydown lot license agreement (the “**Laydown Lot License Agreement**”), in form and substance satisfactory to the Parties thereto, to provide MDR with a construction laydown area located within reasonable proximity to the Project Land during construction of the Project. The Laydown Lot License Agreement shall not require the payment of any rent. MDR shall be limited to the use of such area as a construction lay-down and staging area in connection with the construction of the Project. Such construction lay-down area shall be reasonably limited in size.

**3.8 Alleys.**

(a) MDR and CITY acknowledge that there exists a CITY-owned alley in Block 35, Original Town of Midland, an addition to the City of Midland, Midland County, Texas between the City Land and MDC Tract A, and MDC Tract B and MDC Tract A that extends north to Illinois Avenue (the “**Block 35 Alley**”). CITY agrees to vacate the Block 35 Alley at its sole cost and expense. CITY shall include the fee conveyance of the Block 35 Alley to MDR at no cost pursuant to the purchase and sale agreement referenced in Section 3.3 herein.

(b) MDR and CITY acknowledge that there exists a CITY-owned alley in Block 56, Original Town of Midland, an addition to the City of Midland, Midland County, Texas between Lots 1-12 to the east and Lots 13-18 to the east (the “**Block 56 Alley**”). If the MDR Land Acquisition is completed, CITY agrees to vacate the Block 56 Alley at its sole cost and expense and convey in fee simple the Block 56 Alley to MDR.

(c) As used in this Agreement, “**Alleys**” shall refer to the Block 35 Alley and the Block 56 Alley.

**3.9 Colorado Street.** CITY shall commence the vacation of that certain portion of Colorado Street located between Wall Street and Texas Avenue and abutting the Project Land upon execution of this Agreement and shall convey the same to MDR, subject only to limited surface access rights by CITY as set forth in the purchase and sale agreement referenced in Section 3.3 herein.

**3.10 Energas Property.** CITY shall promptly make reasonable efforts to obtain title to the Energas Property and have all subsurface and surface improvements and equipment removed, at CITY’s cost, provided, however, that CITY shall not be obligated to expend an amount greater than \$250,000.00 (“**Maximum Energas Cost**”). In the event the cost exceeds the Maximum Energas Cost, the CITY shall notify MDR in writing and MDR shall, in its sole and exclusive option, have the option, to contribute funds above the Maximum Energas Cost, waive the requirement to obtain Energas Property, or terminate

this Agreement. MDR shall assist CITY in contacting and facilitating the negotiations with Energas.

**3.11 Aerial Easements.** If the Location Notice referenced in Section 3.6 specifies the MDR Land as the site selected by MDR for the Hotel, CITY shall execute easements in a form reasonably acceptable to MDR permitting the construction and maintenance of sky bridges over certain portions of public rights of way in connection with the completion of the Project and as reasonably requested by MDR. The portions of public rights of way that are subject to this section are more particularly shown on Exhibit E, which is attached hereto and incorporated herein for all purposes.

**3.12 Default by MDR; Termination.** If a default by MDR occurs and results in the termination of this Agreement pursuant to Section 2.1 or Section 6.3, MDR shall reconvey the Midland Land, inclusive of the Block 35 Alley and Energas Property, and the Block 56 Alley, if previously conveyed to MDR, to MDC and the CITY, respectively, at no cost. Notwithstanding anything to the contrary contained in this Agreement, the terms, provisions and obligations under this Section 3.12 shall survive any termination of this Agreement.

#### **ARTICLE IV. MDC INCENTIVE**

As consideration for MDR planning, designing, developing, and constructing the Project in accordance with the terms and conditions of this Agreement, MDC agrees to provide MDR with the Capital Contribution, subject to the following schedule, terms and conditions:

**4.1 Disbursement No. 1.** Within five (5) business days following MDR's completion of the Project Phase I Construction Commencement Obligation, MDC agrees to provide MDR with the first Capital Contribution disbursement in the amount of Five Million and No/100 Dollars (\$5,000,000.00). As a condition precedent to the first Capital Contribution disbursement, MDR shall have satisfied MDR's Financing Obligation.

**4.2 Disbursement No. 2.** Within five (5) business days following MDC's receipt of MDR's architect's written certification of the date on which the Project Phase I is, as determined by said architect, fifty percent (50%) complete based on work completed as a percentage of the estimated total work, MDC agrees to provide MDR with the second Capital Contribution disbursement in the amount of Ten Million and No/100 Dollars (\$10,000,000.00).

**4.3 Disbursement No. 3.** Within five (5) business days following MDC's receipt of the Certificate of Completion for Project Phase I, MDC agrees to provide MDR with the third Capital Contribution disbursement in the amount of Fifteen Million and No/100 Dollars (\$15,000,000.00). Disbursements No. 1, No. 2 and No. 3 shall collectively be referred to as the "*Phase I Disbursements*."

**4.4 Disbursement No. 4.** Within five (5) business days following MDC's receipt of MDR's architect's written certification of the date on which the Project Phase II is, as determined

by said architect, twenty-five percent (25%) complete based on work completed as a percentage of the estimated total work for Project Phase II, MDC agrees to provide MDR with the fourth Capital Contribution disbursement in the amount of Seven Million Five Hundred Thousand and No/100 Dollars (\$7,500,000.00).

**4.5 Disbursement No. 5.** Within five (5) business days following MDC's receipt of the Certificate of Completion for Project Phase II, MDC agrees to provide MDR with the final Capital Contribution disbursement in the amount of Seven Million Five Hundred Thousand and No/100 Dollars (\$7,500,000.00). Disbursements No 4 and No. 5 shall collectively be referred to as the "*Phase II Disbursements.*"

**4.6 Distribution of Disbursements.** Notwithstanding any contrary provision contained herein, MDC shall not be required to provide MDR with two Capital Contribution disbursements within the same MDC fiscal year. If two Capital Contribution disbursements shall become due in the same MDC fiscal year, the second Capital Contribution disbursement may be delayed until MDC's next fiscal year; provided that it is paid within ten (10) days of MDC's following fiscal year and provided further that such date shall not be later than ninety (90) days after such payment is due.

**4.7 Clawback.**

- (a) **Phase I.** If one or more Capital Contribution disbursements were provided to MDR and MDR (i) terminates or abandons the Project Phase I prior to the Construction Completion Obligation for Phase I and, within ninety (90) days following written notice thereof from MDC to MDR, MDR fails to cure same by utilizing commercially reasonable efforts to pursue the completion of the Construction Completion Obligation for Phase I, or (ii) otherwise fails to complete the Construction Completion Obligation for Phase I, as set forth in this Agreement, then MDR shall repay to MDC all Phase I disbursements, without interest, within thirty (30) days after MDC provides written notice to MDR. Upon completion of Phase I, the Phase I Disbursements shall be deemed earned by MDR.
- (b) **Phase II.** If one or more Capital Contribution disbursements were provided to MDR for Phase II and MDR (i) terminates or abandons the Project Phase II prior to the Construction Completion Obligation for Phase II and, within ninety (90) days following written notice thereof from MDC to MDR, MDR fails to cure same by utilizing commercially reasonable efforts to pursue the completion of the Construction Completion Obligation for Phase II, or (ii) otherwise fails to complete the Construction Completion Obligation for Phase II, as set forth in this Agreement, then MDR shall repay to MDC all Phase II disbursements, without interest, within thirty (30) days after MDC provides written notice to MDR. Upon completion of Phase II, the Phase II Disbursements shall be deemed earned by MDR.
- (c) Notwithstanding anything to the contrary contained in this Agreement, the terms, provisions and obligations under this Section 4.7 shall survive any termination of this Agreement.



**ARTICLE V.**  
**CITY INCENTIVES**

As consideration for MDR planning, designing, developing, and constructing the Project, at its sole expense, and in accordance with the terms and conditions of this Agreement, CITY agrees to the following:

- 5.1 HOT Rebate.** At any time within two (2) years following the completion of the Construction Completion Obligation for each Project phase, MDR shall have the right to provide written notice (the “*HOT Rebate Notice*”) to CITY of MDR’s election to commence the HOT Rebate and the date of the commencement thereof (the “*HOT Rebate Commencement Date*”). Upon CITY’s receipt of such HOT Rebate Notice, CITY agrees to rebate to MDR the municipal hotel occupancy tax revenue paid by MDR to CITY pursuant to Chapter 351 of the Texas Tax Code and the applicable provisions of the Midland City Code applicable to the period beginning on the HOT Rebate Commencement Date and ending ten (10) years following the HOT Rebate Commencement Date for each respective Project phase. CITY agrees to rebate said funds to MDR on a quarterly basis with such rebates due within thirty (30) days following the end of any calendar quarter during which CITY receives said funds from MDR.
- 5.2 Property Tax Rebate.** At any time within two (2) years following the completion of the Construction Completion Obligation for each Project phase, MDR shall have the right to provide written notice (the “*Property Tax Rebate Notice*”) to CITY of MDR’s election to commence the Property Tax Rebate and the date of the commencement for each Project phase thereof (the “*Property Tax Rebate Commencement Date*”). Conditioned upon MDR complying with all material terms, conditions and covenants of this Agreement, CITY agrees to pay to MDR the Property Tax Rebate for each Project phase during each applicable Property Tax Rebate Term. CITY agrees to pay each applicable Property Tax Rebate to MDR on an annual basis with each Property Tax Rebate being due within thirty (30) days following the end of each calendar year during which CITY receives said funds from MDR.
- 5.3. State Convention Center and Hotel Program.** CITY agrees to request a private letter ruling from the Texas Comptroller confirming the Project’s eligibility for the SCCHP. A copy of such request and response shall be promptly provided to MDR. Conditioned upon the Texas Comptroller issuing a ruling confirming the Project’s eligibility for the SCCHP and MDR complying with all material terms, conditions and covenants of this Agreement, CITY agrees to rebate, on behalf of the State of Texas, all state hotel occupancy tax and sales tax revenue for the Project to MDR applicable to the period beginning on the HOT Rebate Commencement Date and ending ten (10) years following the HOT Rebate Commencement Date. CITY’s payments of such funds shall occur within sixty (60) days of the City’s receipt of said funds from the State.
- 5.4 No Warranty.** For the avoidance of doubt, Annual Incentives shall be subject to all other applicable terms and conditions hereof. **MDR acknowledges and agrees that neither CITY nor MDC has made any representation, warranty or covenant of any kind or**

**character, express or implied, with respect to the amount of Annual Incentives that the Project may achieve.**

- 5.5 Audit Rights.** MDR shall establish and maintain a reasonable accounting system that enables CITY to readily identify records relating to or pertaining to MDR's obligations under this Agreement, including Project costs, hotel occupancy tax, and property tax records. CITY and its authorized representatives shall have the right to audit, examine, and make copies of such records (in whatever form they may be kept, whether written, electronic, or other) kept by or under the control of MDR, including those kept by MDR, its employees, agents, assigns, successors, and subcontractors. MDR shall maintain such records during the term of this Agreement, together with such supporting or underlying documents and materials, and for a period of three (3) years following termination of this Agreement provided that the records of the Project costs shall only be maintained for two (2) years following Construction Completion for the respective phase. Upon reasonable advance written notice, such records shall be made available to CITY, and its authorized representatives, for audit during normal business hours at MDR's office or place of business, or at a time and location that is reasonably convenient for CITY. Costs of any audit conducted pursuant to the authority of this section shall be borne by CITY, unless otherwise agreed to in writing by MDR.
- 5.6 CITY Fees.** CITY agrees to waive any street closure fees and development fees, including but without limitation, building permit fees and any similar charges or fees (save and except for impact fees) that would be payable by MDR to CITY in connection with the Project, and/or any construction, maintenance, repair, alterations, renovations, improvements, remedial, casualty repair or condemnation repair work related thereto.
- 5.7 Construction Materials Sales Tax Refund.** CITY shall refund to MDR one hundred percent (100%) of CITY's sales and use tax receipts for materials and labor of taxable items used in the construction of each phase of the Project. MDR shall use its best efforts to obtain said materials and labor from within the corporate limits of the City of Midland, Texas.
- 5.8 Street Improvements.** CITY and MDR agree to work together for the purpose of determining mutually agreeable Street Improvements (if any) that benefit or enhance the urban functionality, vehicular access, and pedestrian realm on streets adjacent to the Project, including Texas Avenue and Colorado Street. CITY agrees to pay for any such Street Improvements.
- 5.9 Off-Site Improvements.** CITY and MDR agree to work together for the purpose of determining mutually agreeable Off-Site Improvements required to complete the Project. CITY agrees to pay for any such Off-Site Improvements.
- 5.10 Official Designations.** Conditioned upon the completion of the Hotel and its opening to the public, the governing body of CITY hereby designates, for all legal purposes: (i) the Convention Center as the official convention center of CITY, and (ii) the Hotel as the official convention center hotel of CITY.

- 5.11 Preferred Vendor.** Upon completion and opening to the public Hotel, the City shall identify the Hotel as the preferred food and beverage vendor and the Garage as the preferred parking facility for Convention Center events.

**ARTICLE VI.**  
**EVENTS OF DEFAULT**

- 6.1** Subject to Force Majeure in Section 11.7 and any applicable notice and cure periods contained herein, each of the following shall constitute event of default under this Agreement:

- (a) **Failure to Complete Project.** MDR's failure to design, develop, construct, open the Project consistent with the terms and conditions of this Agreement, and if MDR fails to cure such failure within ninety (90) days after written notice from CITY detailing such failure, or if such failure cannot be cured within such ninety (90) day period in the exercise of all due diligence, then if MDR fails to commence such cure within such ninety (90) day period or fails to continuously thereafter diligently prosecute the cure of such failure. Provided however, that if MDR does not proceed with the Phase II Project, the City and MDC's sole remedy shall be as set forth in Section 4.7(b) herein.
- (b) **False Statements.** Any material written warranty, representation, or statement knowingly made or furnished to CITY or MDC by MDR under this Agreement or any material document(s) related hereto furnished to CITY or MDC by MDR is knowingly false or misleading in any material respect, either now or at the time made or furnished, and MDR 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 MDR fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure, or if MDR obtains actual knowledge that any such material warranty, representation, or statement has become false or misleading after the time that it was made, and MDR fails to promptly provide written notice to CITY and MDC of the false or misleading nature of such warranty, representation, or statement after MDR learns of its false or misleading nature. Notwithstanding anything to the contrary contained herein, MDR's knowledge is limited to the actual knowledge of any officer or manager of MDR.
- (c) **Insolvency.** The dissolution or termination of MDR's existence as a going business or concern, insolvency, appointment of receiver of any part of MDR's portion of the Project, any assignment of all or substantially all of the assets of MDR for the benefit of creditors of MDR, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against MDR.
- (d) **Development Obligations.** MDR's failure to comply with any obligation set forth in Article II of this Agreement and MDR's failure to cure the same within ninety (90) days after MDR's receipt of written notice from CITY, unless such failure

cannot be cured within such ninety (90) day period in the exercise of all due diligence, then if MDR fails to commence such cure within such ninety (90) day period or fails to continuously thereafter diligently prosecute the cure of such failure, except to the extent such failure is caused by any act or failure to act on the part of CITY or MDC.

- (e) **Property Taxes.** MDR's failure to pay its property taxes for the Project Land owed to CITY and MDR's failure 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 thirty (30) days after written notice from CITY and/or the Midland Central Appraisal District for two successive tax years.
- (f) **Failure to Perform Material Covenant.** A Party's failure to perform or observe any material term, condition or covenant contained in this Agreement and such Party's failure to cure the same within ninety (90) days after written notice from CITY or MDR as applicable, unless such failure cannot be cured within such ninety (90) day period in the exercise of all due diligence, then if CITY or MDR, as applicable, fails to commence such cure within such ninety (90) day period or fails to continuously thereafter diligently prosecute the cure of such failure, except to the extent such failure is caused by any act or failure to act on the part of the other Party hereto.

**6.2 Notice of Default.** If a default occurs, and a non-defaulting Party desires to assert such default, such non-defaulting party shall notify the defaulting Party in writing in accordance with Section 11.12 herein. 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.

**6.3 Termination.** Except as provided in this Agreement, if a default occurs and continues to occur after the applicable cure period following the defaulting Party's receipt of the notice prescribed in Section 6.2, or later if additional time is otherwise afforded for cure as provided herein, the non-defaulting Party may terminate this Agreement after delivery of a further written notice to or demand upon the defaulting Party; provided, however, the non-defaulting Party shall not terminate this Agreement for as long as the defaulting Party proceeds in good faith and using its best efforts to remedy and correct the default, having commenced said efforts within the ninety (90) days or, if said efforts cannot be commenced within said ninety (90) day period, within a reasonable time following the notice prescribed in Section 6.2. Except as provided in Section 4.7, in the event of termination of this Agreement, any liability of MDR or its Affiliate for a default by MDR or its Affiliate under this Agreement, shall be limited solely to its interest in the phase of the Project during which MDR has defaulted.

**6.4 Cross Default.** Notwithstanding any contrary provision contained herein, an uncured material default by MDR in the Ground Lease, after passage of the applicable notice and cure periods (if any), shall, at the option of CITY, be a default under this Agreement, in which event CITY shall be entitled (but not required) to apply all rights and remedies of CITY under the terms of this Agreement.

**ARTICLE VII.**  
**TERM OF AGREEMENT**

Upon execution by the Parties, this Agreement becomes effective on the Effective Date and shall terminate on the later of: (i) the tenth (10<sup>th</sup>) anniversary of the HOT Rebate Commencement Date for Project Phase II; (ii) the tenth (10<sup>th</sup>) anniversary of the Property Tax Rebate for Project Phase II; and (iii) the date of CITY's final SCCHP rebate payment due under this Agreement, unless terminated earlier as provided for herein; provided, however, if CITY has not fulfilled its obligation to provide the HOT Rebate or the Property Tax Rebate to MDR for any period within such ten (10) year time period, this Agreement shall not terminate until such HOT Rebate and Property Tax Rebate has been paid for each Project phase.

**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. CITY represents and warrants that it is authorized under applicable law to enter into this Agreement. CITY and MDC expressly waive their respective rights of governmental immunity, including but not limited, pursuant to Section 271.152 of the Local Government Code but only as to a suit for a breach of contract and an action in equity by MDR for specific performance to enforce the terms of this Agreement, including but not limited to, any incentive payments due and owing to MDR and any attorney's fees incurred by MDR.

**ARTICLE IX.**  
**DUE DILIGENCE PERIOD**

Beginning on the Effective Date, MDR may inspect the Midland Land and determine whether it is suitable for MDR's needs. If MDR determines that the Midland Land is acceptable, MDR shall deliver to CITY and MDC within ninety (90) days of the Effective Date written notice of MDR's intent to proceed with the Project ("***Go Forward Notice***"). If MDR fails to timely deliver the Go Forward Notice, this Agreement shall be deemed terminated without further notice, instruction or delay and the Parties shall have no further rights or obligations under this Agreement. If MDR delivers the Go Forward Notice before the end of the ninety (90) day due diligence period, MDR shall proceed with the Project subject to completion of the conditions precedent set forth in Article X. MDR shall have the right to access and inspect the physical condition of the Midland Land and make such engineering, environmental and other studies of the Midland Land as MDR may elect. CITY and MDC agree to fully cooperate and to reasonably assist MDR in obtaining any entitlements and/or to satisfy any requirements necessary to allow the Midland Land to be used for the Project. During the ninety (90) day due diligence period, MDR shall complete its review of the Midland Land, which may include, but shall not limited to the following items.

- 9.1** CITY and MDC shall be the sole owners of good and indefeasible fee simple title to the surface estate of their respective portions of the Midland Land, free and clear of all liens, encumbrances, restrictions, conditions and agreements except for permitted exceptions

approved by MDR.

- 9.2** Good and indefeasible fee simple title to the surface estate of the Midland Land shall be insurable as such by the title company, at its lowest rates allowed by law, as required by MDR.
- 9.3** CITY and MDC have provided an ALTA survey encompassing all of the Midland Land adequate for the title company to delete any exception for general survey matters in the title policy and in a form acceptable to MDR.

**ARTICLE X.**  
**CONDITIONS PRECEDENT TO MDR'S PERFORMANCE**

- 10.1 Vacation of Alleys.** CITY has vacated the Block 35 Alley and conveyed fee simple title of the surface estate, with a Surface Waiver, to MDR at no cost, and if the MDR Land Acquisition is completed, CITY has then vacated the Block 56 Alley and conveyed fee simple title of the surface estate, with a Surface Waiver, to MDR at no cost, all in accordance with Section 3.8.
- 10.2 Removal of the Energas Improvements and Transfer of Ownership.** CITY has removed or caused the removal of all surface and subsurface improvements located on the Energas Land, at its cost and has transferred or caused to be transferred fee simple title of the surface estate, with Surface Waiver, of the Energas Land to MDR at no cost to MDR.
- 10.3 Vacation of Colorado Street.** CITY has vacated that certain portion of Colorado Street located between Wall Street and Texas Avenue and abutting the Project Land, and conveyed fee simple title to MDR at no cost, all in accordance with Section 3.9. Upon completion of the Project Design and Construction Documents, MDR may reconvey said vacated portions of Colorado Street not incorporated into the Project to CITY at no cost.
- 10.4 MDR Land Acquisition.** MDR has completed or waived the fee simple acquisition of the entire surface estate of the MDR Land, all in accordance with Section 3.5.
- 10.5 Construction Permitting and Design Approvals.** MDR has received (1) CITY's and MDC's written approval of each design and construction drawing and specifications subject by MDR pursuant to Section 2; and (2) governmental approvals, including from CITY, of all land use requirements, utility approvals and building permit requirements required to commence construction of the Project.
- 10.6 Financing Approval.** MDR has obtained the required capitalization, including but not limited to any financing approvals, necessary for completion of the Project, in its sole and absolute discretion. Completion of this condition precedent shall be evidenced by delivery of a written notice by MDR to CITY and MDC.
- 10.7 Receipt of Construction Estimate.** MDR has received and approved the construction

estimate for the Project.

If any condition precedent to MDR's performance set forth above cannot or will not be satisfied, MDR, at its sole option, may terminate this Agreement at any time, in which event all other rights and obligations of CITY, MDC and MDR hereunder shall terminate immediately.

## **ARTICLE XI.** **GENERAL TERMS**

- 11.1 Entire Agreement.** This Agreement, together with the instruments attached hereto as exhibits, 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.
- 11.2 Termination.** This Agreement may be terminated by mutual agreement of the Parties or as otherwise specifically provided for under the terms of this Agreement.
- 11.3 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.
- 11.4 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. The Parties acknowledge and agree that they are separate and distinct entities, and no Party shall be held responsible for the actions or obligations of another Party. 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 MDR. 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.
- 11.5 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.
- 11.6 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.
- 11.7 Force Majeure.** In the event that CITY, MDC or MDR shall be delayed, hindered in, or prevented from the performance of any act required hereunder by reason of an act of God, strike, lockout, hazardous material, latent defects, labor trouble, inability to procure

materials, labor shortages, utility delays, pandemic, unseasonable weather affecting construction or operation, failure of power, riot, insurrection, or war, national, regional or local emergency, or other similar events beyond the reasonable control of the delayed Party, that is not the result of any intentional act or misconduct (“*Force Majeure*”), then: (i) the delayed Party shall promptly provide written notice of such event of Force Majeure to the other Parties; and (ii) the delayed Party’s performance of such act shall be excused for the period of the delay; and (iii) the period for the performance of any such act shall be extended for a period equal to the period of such delay.

**11.8 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 their own 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.

**11.9 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 and no person or entity that is not a Party to this Agreement shall have any third-party beneficiary or other rights hereunder.

**11.10 Successors and Assigns.** CITY, MDC, and MDR each bind themselves and their respective successors, executors, administrators, and assigns to the other Parties to this Agreement. Except as specifically provided in this Agreement, no Party may assign, subcontract, or transfer any interest in this Agreement without the written consent of the other Parties. The issue of whether or not to grant consent to an assignment is in the sole discretion of the Parties. Notwithstanding the foregoing, MDR shall have the right, without the consent of CITY, to: (i) collaterally assign its rights under this Agreement to its mortgage lender at any time; (ii) assign its rights under this Agreement in connection with a transfer to a Qualified Transferee; (iii) assign its rights under this Agreement to an Affiliate; (iv) substitute and/or add general partners and limited partners; or (v) enter into concession agreements, operating agreements, or management agreements as determined necessary by MDR in its sole and absolute discretion. Upon the assignment of this Agreement by MDR, CITY agrees that MDR, its owners, members, managers and employees, shall be released from all liability and obligations under this Agreement including as to time periods before and after the date of such assignment; provided that the assignee assumes such liability and obligations. Except as specifically provided in this Agreement, no assignment, delegation of duties, or subcontract under this Agreement will be effective without the written consent of CITY and MDC.

**11.11 Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Texas. All performance and payments 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.

**11.12 Notices and Payments.** All notices required to be given under this Agreement shall be given in writing and shall be effective when (i) actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the Party to whom the notice is to be given at the addresses shown below; (ii) sent via electronic transmission to the email addresses set forth below of the Party to whom the notice is to be given; or (iii) when delivered by hand-delivery. Any Party may change its address for notices under this Agreement by giving formal written notice to the other Parties, specifying that the purpose of the notice is to change the Party's address. For notice purposes, each Party agrees to keep the other Parties informed at all times of its current address.

**If to CITY:**

City Manager  
City of Midland  
P.O. Box 1152  
Midland Texas 79702  
Email: tgonzalez@midlandtexas.gov

*With Copy to:*

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

**If to MDC:**

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

*With Copy to:*

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

**If to MDR:**

Midland Downtown Renaissance, LP  
223 West Wall Street Suite 300  
Midland, Texas 79702

*With Copy to:*

Hedloc Investments Co, LP  
223 W. Wall Street, Suite 300  
Midland, Texas 79701  
info@hedlocinv.com

*With Copy to:*

Moorman Tate, LLP  
207 East Main Street  
Brenham, Texas 77833

c/o Andrew Hefferly  
hefferly@moormantate.com

- 11.13 Indemnity.** MDR 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 THE PROJECT LAND, ON ACCOUNT OF ANY NEGLIGENT ACT OF MDR, ITS OFFICERS, AGENTS OR EMPLOYEES, OR ANY CONTRACTOR, ARISING OUT OF, OR RESULTING FROM, MDR'S ACTIVITIES OR OPERATIONS UNDER THIS AGREEMENT.
- 11.14 Remedies.** 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.
- 11.15 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.
- 11.16 Confidentiality.** MDR acknowledges that CITY and MDC are governmental entities subject to the Texas Public Information Act, as amended. MDR 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. Provided however, that CITY agrees to promptly provide MDR with written notice of any request received by CITY under the Texas Public Information Act and shall cooperate with MDR in pursuing an Attorney General Ruling to withhold MDR's trade secrets or information considered confidential by MDR.
- 11.17 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 between the Parties upon execution.
- 11.18 Approval.** This Agreement shall not become effective until approved by a duly-passed resolution of the Midland City Council.
- 11.19 No Recording.** The Parties agree that this Agreement shall not be recorded in any real property records; provided, however, that the Parties shall cooperate to execute a Memorandum of this Agreement in form and substance reasonably acceptable to the Parties upon the request of a Party.
- 11.20 Delegation of Authority.** Notwithstanding anything to the contrary contained in this Agreement, the City and MDC hereby delegate authority to the City Manager for the City

of Midland to extend the Due Diligence Period upon written request of MDR for an additional ninety (90) days. The City Manager and MDC Chairman are hereby authorized to execute an amendment to this Agreement setting for such extension without any further action from the City Council or MDC board.

*[Signature pages follow]*

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**

By: \_\_\_\_\_  
Tommy Gonzalez, City Manager

STATE OF TEXAS                   §  
   §  
COUNTY OF MIDLAND         §

BEFORE ME, the undersigned authority, on this \_\_\_\_ day of \_\_\_\_\_, 2024, personally appeared, TOMMY GONZALEZ, 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 \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public, State of Texas

**MIDLAND DEVELOPMENT  
CORPORATION**

By: \_\_\_\_\_  
P. Lourcey Sams, Chairman

STATE OF TEXAS                   §  
  §  
COUNTY OF MIDLAND         §

BEFORE ME, the undersigned authority, on this \_\_\_\_ day of \_\_\_\_\_, 2024, personally appeared, P. LOURCEY SAMS, 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 \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public, State of Texas

**MIDLAND DOWNTOWN RENAISSANCE, LP**

By: Midland Downtown Development, LLC  
Its: General Partner

\_\_\_\_\_  
By: W.D. Hord, III  
Its: Manager

STATE OF TEXAS                    §  
  §  
COUNTY OF \_\_\_\_\_       §

BEFORE ME, the undersigned authority, on this \_\_\_\_ day of \_\_\_\_\_, 2024, personally appeared, W.D. Hord, III, as Manager of Midland Downtown Development, LLC, a Texas limited liability company, as the General Partner of MIDLAND DOWNTOWN RENAISSANCE, LP, a Texas limited partnership, on behalf of said limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public, State of Texas

**Exhibit A**

*Comparable Hotels*

## **Exhibit A – Comparable Hotels**

### **Hotel Description**

#### **4.0+ Star Hotel Standards; Requirements; Expectations, & Description of Amenities**

The facility must offer the upscale accommodations expected by high-end corporate groups and conventioners, as well as independent business travelers, and a wide range of event and assembly groups. It is expected that the facility management team will be experienced with full-service, convention-oriented, business travel hotels with 100+ guestrooms.

#### **Atmosphere**

Offer a welcoming, comfortable and exceptional guest experience while also respecting the surrounding environment.

#### **Interior Finishes and Standards**

All interior finishes will be reflective of an upscale property. The quality of the finishes will also be designed to endure usage and exhibit an elegant feel.

#### **Guestrooms**

The proposed hotel should offer a minimum of 135 guestrooms, in order to sell a convention center and guestroom package. Each guestroom should offer, at a minimum, the following desired amenities:

- sufficient area to accommodate a king size bed or two double size beds;
- one telephone, speakerphone, voice mail and data port access;
- high-speed internet access and Wi-Fi service;
- television, with cable and on-command movies;
- bath/dressing area equipped with a hand-held hair dryer, and amenity tray;
- supplied with upscale branded soaps, shampoo and conditioner.

#### **Food and Beverage**

The hotel should offer at a minimum a bar/lounge and full-service restaurant. The restaurant should offer a separate exterior entrance to attract not only hotel guests but also other diners. Room service should be available during normal operating hours seven days a week with overnight service preferred but not required.

#### **Other Facilities and Amenities**

The hotel should offer function and meeting space, business center, a market, Wi-Fi service in all public areas of the hotel, and valet parking. The property must meet all required standards of the Americans with Disabilities Act (ADA), if applicable. It is expected that the property will be privately-owned and offer facilities and amenities on a level approximately similar to hotel products such as, but not limited to, a full-service Hilton, Hyatt, Omni, or Marriott Hotels, as well as The Hotel Paso Del Norte, El Paso, Texas, and The Plaza Hotel Pioneer Park, El Paso, Texas.



**Exhibit B**

*Ground Lease*

## **GROUND LEASE**

THIS GROUND LEASE AGREEMENT (this “Lease”) is entered into this \_\_\_\_\_ day of 20 by and between the **CITY OF MIDLAND, TEXAS** (“Landlord”) and \_\_\_\_\_, a Texas \_\_\_\_\_ (“Tenant”).

**WHEREAS**, Landlord owns the land more particularly described in Section 1.01 below, but not any of the improvements located thereon (with such land without the improvements being referred to as the “Premises”);

**WHEREAS**, Landlord, Tenant, and the Midland Development Corporation have entered into that certain Master Development Agreement (the “Master Development Agreement”) dated as of January 23, 2024, which is incorporated into this Lease by reference as if fully set forth herein and provides for, among other items, a program of incentives in exchange for Tenant completing certain improvements on the Premises (the “Project,” as defined in the Master Development Agreement) that will promote local economic development and stimulate business and commercial activity within the City of Midland, Texas;

**WHEREAS**, Tenant’s lease of the Premises under the terms and conditions contained herein is desired and essential for the viability of the Project; and

**WHEREAS**, Tenant has indicated a willingness and ability to properly keep, maintain and improve the Premises in accordance with standards established by Landlord and the Master Development Agreement;

**NOW THEREFORE**, Landlord and Tenant agree as follows:

### **ARTICLE I - PREMISES**

**1.01 Description of Premises Demised.** Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Landlord does hereby demise and lease to Tenant, and Tenant does hereby lease from Landlord, the following described land (excluding all improvements) located in Midland County, Texas:

\_\_\_\_\_  
Midland County, Texas, as more particularly described in Exhibit  
“A” attached hereto.

### **ARTICLE II - TERM OF LEASEHOLD**

**2.01 Term.** This Lease shall be effective immediately after execution of the deed which conveys title to the Premises from Tenant to Landlord, as contemplated in the Master Development Agreement (“Effective Date”). This Lease shall be for a term of fifty (50) years, commencing on the Effective Date (the “Term”), unless this Lease is terminated in accordance with the terms hereof.

**2.02 Holding Over.** Any holding over by Tenant of the Premises at the expiration, termination or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rent of the current monthly Rent, and Tenant shall be liable to Landlord for all loss or damage on account of any holding over against Landlord's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Landlord from Tenant after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required or operate as a waiver of any right of the Landlord to retake and resume possession of the Premises.

### **ARTICLE III - RENT**

**3.01 Rent.** Tenant shall pay Landlord rent at the rate of One and 00/100ths Dollars (\$1.00) per year during the Term (the "Rent"). All Rent to be paid by Tenant to Landlord shall be in lawful money of the United States of America and at such place or places as may be designated from time to time by Landlord. Tenant's obligation to pay Rent under this Lease is an independent covenant and no act or circumstance, regardless of whether such act or circumstance constitutes a breach of this Lease by Landlord, shall release Tenant of its obligation to pay Rent as required by this Lease.

**3.02 Commencement of Rent.** Tenant's obligation to pay the Rent to Landlord shall commence as of the Effective Date.

**3.03 Time of Payment.** The Rent shall be paid annually. The Rent payments shall be paid in advance on or before the first day of the annual anniversary of the Effective Date of this Lease. The initial Rent payment will be paid within ten (10) days after the Effective Date. At Tenant's option, Tenant may elect to make one or more lump sum rent payments in lieu of paying \$1.00 per year, such lump sum payment to serve as the Rent hereunder for the number of years equal to the quotient when using the Rent paid in a period as the numerator and \$1.00 as the denominator.

**3.04 Unpaid Rent, Fees and Charges.** Any installment of Rent, fees, or other charges or monies accruing under any provisions of this Lease that are not received by Landlord within thirty (30) days after written notice from Landlord to Tenant, shall be deducted from any payments to Tenant from the City of Midland as contemplated by the Master Development Agreement. In the event such sums are satisfied by deduction from payments due to Tenant under the Master Development Agreement, any such missed Rent, fees, or other charges accrued or owed by Landlord shall not be deemed a default of this Lease.

**3.05 Place of Payment.** All Rent shall be paid to Landlord at the following address:

City of Midland  
P.O. Box 1152  
Midland, Texas 79701

In lieu of payments being mailed to the above address, electronic payments may be made via any electronic payment system acceptable to Landlord.

#### **ARTICLE IV - PRIVILEGES**

**4.01 Right to Redevelop the Premises.** Tenant shall have the right and privilege, at any time and from time to time, to freely, and without notice to or consent of Landlord, maintain, rehabilitate, redevelop, remodel, remove or otherwise modify the improvements upon the Premises, and to construct new improvements upon the Premises, subject to the terms, covenants, and conditions of the Master Development Agreement and as provided herein. Landlord and Tenant acknowledge and agree that there are existing improvements located on the Premises of which Tenant has had possession and title prior to the Effective Date; in accordance with the Master Development Agreement, immediately prior to the Effective Date of this Lease, Tenant owned the Premises.

#### **ARTICLE V - OBLIGATIONS OF LANDLORD**

**5.01 Quiet Enjoyment.** Landlord, upon Tenant's paying Rent and performing all of the obligations, conditions set forth in the Lease, covenants and warrants that, Tenant shall and may peaceably and quietly have, hold, and enjoy sole possession of the Premises. Landlord has no knowledge, nor any reason to believe, that there is any legal impediment to its full right to enter into this Lease and perform its obligations hereunder.

**5.02 Authority of Landlord to Lease Premises.** Landlord hereby represents and warrants that, as of the Effective Date, Landlord owns fee simple title to the Premises and has the full, requisite authority to enter into this Lease and to carry out and perform all obligations under this Lease.

#### **ARTICLE VI - OBLIGATIONS OF TENANT**

**6.01 Net Lease.** This Lease shall be without cost to Landlord except for Landlord's obligations specifically set forth elsewhere in this Lease. Tenant shall or shall cause the following to occur:

- A. Keep and maintain the Premises and improvements located thereon in good repair at all times, subject, in any event, to Tenant's rights under Section 4.01 absent casualty or condemnation;
- B. Pay any and all taxes assessed against the Premises and improvements and Tenant's interest in the Premises, and all of Tenant's personal property located on the Premises, subject to Tenant's right to protest the valuation in accordance with state law and the Master Development Agreement; and
- C. Pay all insurance premiums required to be carried by Tenant in accordance with the terms of this Lease.

**6.02 Condition of Premises.** Tenant accepts the Premises in its present condition and agrees that the Premises is suitable for Tenant's business, activities, and operations proposed to be conducted thereon relying on its own inspection and judgment. Landlord has not made any warranties expressed or implied with regard to the condition of the Premises, improvements or their suitability for a particular use except as set forth in this Lease and in the Master Development Agreement. Tenant accepts the Premises "As Is", with all faults, relying on Tenant's own inspection and judgment and not in reliance on any representations of Landlord, other than those set forth in this Lease and in the Master Development Agreement. Landlord shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition, subject to casualty and condemnation as provided herein.

**6.03 Compliance With Laws.** Tenant, at Tenant's expense, agrees that it will construct, operate and maintain or cause the construction, operation and maintenance of the improvements on the Premises in accordance with the Master Development Agreement and in accordance with all applicable laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Landlord or Tenant, with respect to the use, occupation or alteration of the Premises and any improvements thereon. Notwithstanding the foregoing, Landlord will not impose new laws or regulations upon Tenant, its sublessees/subtenants, or the Property that are not applied equally to all hotel/motel properties in Midland, Texas, or that will increase Tenant's obligations or reduce Tenant's benefits under this Lease.

Tenant, at Tenant's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990 and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, in force on the Effective Date of the Lease or which may hereafter be in force and applicable to the Premises, which relate to the use or occupation of the Premises and any improvements thereon by disabled persons.

Notwithstanding anything to the contrary contained herein, Tenant shall not be obligated to comply with any laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county or municipal authorities which may be adopted or amended after the Effective Date of the Lease for which tenant may have vesting/legal non-conforming rights under applicable law and, provided further that nothing in this Lease shall be deemed to be a waiver of Tenant's vested/grandfathered rights under the Laws.

Tenant shall, at Tenant's expense, comply or shall cause the compliance with all present and hereinafter enacted "Environmental Laws" (as defined below), and any amendments thereto affecting Tenant's use, operation, occupation or alteration of the Premises including any improvements thereon.

A. Definitions.

- (1) “Environmental Laws” means any one or all of the: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.
- (2) “Hazardous Material” shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, diesel fuel, and the like.
- (3) “Release” shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

- (1) Tenant shall not cause or permit any Hazardous Material, other than those used during the operation of a hotel and related facilities, to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Tenant, its subtenants, agents, employees, contractors, invitees, licensees, or a third party in violation of any Environmental Law. **TENANT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS LANDLORD, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND ATTORNEYS FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, DAMAGE, EXPENSE, PENALTIES AND LEGAL AND INVESTIGATION FEES OR COSTS, ARISING FROM OR RELATED TO ANY CLAIM OR ACTION FOR INJURY, LIABILITY, BREACH OF WARRANTY OR REPRESENTATION, OR DAMAGE TO PERSONS OR PROPERTY AND ANY AND ALL CLAIMS OR ACTIONS BROUGHT BY ANY PERSON, ENTITY OR GOVERNMENTAL BODY, ARISING IN CONNECTION WITH CONTAMINATION OF, OR ADVERSE EFFECTS**

**ON, THE ENVIRONMENT OR VIOLATION OF ANY ENVIRONMENTAL LAW OR OTHER STATUTE, ORDINANCE, RULE, REGULATION, JUDGMENT OR ORDER OF ANY GOVERNMENT OR JUDICIAL ENTITY, TO THE EXTENT THEY ARE INCURRED OR ASSESSED AS A RESULT OF ANY ACTIVITY OR OPERATION ON OR DISCHARGE FROM THE PREMISES OR ANY IMPROVEMENTS THEREON CAUSED BY THE ACT OR OMISSION OF TENANT, ITS SUBTENANTS, AGENTS, EMPLOYEES, CONTRACTORS, LICENSEES OR INVITEES. THIS OBLIGATION INCLUDES, BUT IS NOT LIMITED TO, ALL COSTS AND EXPENSES RELATED TO CLEANING UP THE PREMISES, IMPROVEMENTS, LAND, SOIL, UNDERGROUND OR SURFACE WATER TO THE EXTENT REQUIRED UNDER ENVIRONMENTAL LAWS (“ENVIRONMENTAL CLAIMS”). TENANT'S OBLIGATIONS AND LIABILITIES UNDER THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS LEASE. THIS INDEMNIFICATION OF LANDLORD BY TENANT INCLUDES, WITHOUT LIMITATION, COSTS INCURRED IN CONNECTION WITH ANY INVESTIGATION OF SITE CONDITIONS OR ANY CLEANUP, REMEDIAL, REMOVAL OR RESTORATION WORK TO THE EXTENT REQUIRED BY ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AGENCY OR POLITICAL SUBDIVISION HAVING AUTHORITY TO ENFORCE ENVIRONMENTAL LAWS BECAUSE OF HAZARDOUS MATERIAL LOCATED ON THE PREMISES OR ANY IMPROVEMENTS THEREON, OR PRESENT IN THE SOIL OR GROUND WATER ON, UNDER OR ABOUT THE PREMISES. THE PARTIES AGREE THAT LANDLORD'S RIGHT TO ENFORCE TENANT'S PROMISE TO INDEMNIFY IS AN ADEQUATE REMEDY AT LAW FOR TENANT'S VIOLATION OF ANY PROVISION OF THIS SECTION.**

- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Tenant or caused by the Tenant or its employees, subcontractors, agents, subtenants, or contractors results in any permanent contamination by such Hazardous Material of the Premises or any improvements thereon, or any surrounding property, Tenant shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon or the surrounding property to the condition existing prior to such contamination.
- (3) Tenant shall, at Tenant's own cost and expense, make or cause to be made all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws that are applicable to Tenant's operations and activities on the Premises. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon or on surrounding property to comply with applicable Environmental Laws because of the Tenant's operations or activities on the Premises, then Tenant shall, at Tenant's own cost and expense, prepare and submit or cause to be prepared and submitted the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Landlord, Tenant shall promptly respond or shall cause prompt response to reasonable requests for non-privileged information in Tenant's possession by Landlord to determine the applicability of the Environmental Laws to the Premises, to respond to any governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination of the Premises or the improvements thereon or the surrounding property that is caused by the Tenant's operations or activities on the Premises.
- (4) Tenant shall notify Landlord or shall cause Landlord to be notified within five (5) business days after Tenant becomes aware of any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Tenant's operation on the Premises.
- (5) Tenant shall insert the provisions of this Section 6.03 in any lease, agreement, license, or contract by which it grants a right or privilege to any person, firm or corporation under this Lease, but only with respect to those leases, agreements, licenses or contracts executed after the Effective Date of this Lease.
- (6) Tenant's responsibilities and obligations under the entirety of Section 6.03(B) shall apply only to Environmental Claims to the extent that they are caused by the actions of the Tenant or its employees, agents,



contractors or subtenants beginning on the Effective Date of this Lease and such actions ending on the effective date of the termination of this Lease.

C. Reporting.

- (1) At any time that Tenant or Landlord submits any filing or response pertaining to its property, operations, or presence on the Premises with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the EPA or the TCEQ, or any successor agencies, Tenant or Landlord shall provide duplicate copies to the other of such filing(s) or response(s) with any related documents at the time same are made.

**6.04 Compliance by Tenant.** With respect to compliance called for in Section 6.03, if a complaint is received by Tenant from either a private or government entity regarding compliance with laws, rules or regulations and/or Hazardous Materials or disability access or compliance of the Premises, Tenant reserves the right to mediate, contest, comply with or otherwise respond to such complaint as Tenant deems to be reasonably prudent under the circumstances, including but not limited assertion of a nonconforming use exception. Landlord and Tenant agree that so long as the governmental entity or entities charged with enforcing such statutes, rules and regulations have not expressly required Tenant to take specific action to effectuate compliance with such statutes, rules and regulations, Tenant shall be conclusively deemed to be in compliance with such statutes, rules and regulations. In the event Tenant is required to take action to effectuate compliance with such statutes, rules and regulations Tenant shall have a reasonable period of time to make the improvements and alterations necessary to effectuate such compliance.

**6.05 Plans.** Tenant will apply for and obtain or shall cause to be applied and obtained the appropriate building permits from the City of Midland, Texas. Nothing herein will require Tenant to obtain any approvals beyond what is normally required for hotel facilities in Midland, Texas.

**6.06 Landscaping and Maintenance of Improvements.** Tenant shall landscape the Premises or shall cause the Premises to be landscaped in accordance with applicable provisions of the City of Midland Municipal Code and shall keep the improvements on the Premises in a good state of repair and condition and in a presentable condition, subject to Tenant's rights under Section 4.01 above.

**6.07 Utilities.** Tenant shall pay or shall cause to be paid for all costs or charges for utility services furnished to the Premises during the Term. Tenant shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense.

**6.08 Trash, Garbage, and Other Refuse.** Tenant shall provide or shall cause to be provided a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Premises, of all trash, garbage and other refuse caused as a result of its use and occupancy of the Premises. Tenant shall provide and use or shall cause to be provided and used suitable covered

commercial type receptacles for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Premises, shall not be permitted.

**6.09 Permitted Uses.** Tenant will not enter into any business activity on the Premises other than that which is permitted pursuant to zoning regulations applicable to the Premises.

**6.10 Penalties Assessed by State or Federal Agencies.** Tenant understands and agrees that in the event any state or federal agency assesses a civil penalty against Landlord for any violation, including but not limited to any security violation, as a result of or related to any act or failure to act on the part of Tenant, its subtenants, agents, employees, contractors, licensees or invitees, with respect to the Premises, Tenant shall reimburse Landlord in the amount of such civil penalty assessed. Failure to reimburse Landlord within thirty (30) calendar days of receipt of written notice shall constitute an event of default hereunder. Upon the occurrence of any event giving rise to liability of Tenant under this Section, Landlord shall give Tenant notice of such event in a copy of any communication or document received by Landlord with respect to each event and Tenant shall be entitled to conduct the negotiation or defense of any claim, cause of action, suit, demand, or judgment by counsel selected by Tenant, subject to the approval of such counsel by Landlord in its reasonable judgment. The failure of Landlord to give Tenant prompt notice of such occurrence shall not excuse Tenant from liability under this Section, except to the extent that such liability arose directly by reason of, or was increased or enhanced by, the failure of Landlord to give such notice.

## **ARTICLE VII - INSURANCE AND INDEMNIFICATION**

**7.01 Insurance.** Prior to the execution of this Lease, Tenant shall obtain, provide Landlord proof of, and shall maintain for the Term, the types and amounts of insurance coverage on the Premises listed below:

Comprehensive General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence;

Two Million Dollars (\$2,000,000.00) for bodily injuries to more than one person arising out of each occurrence; and

One Million Dollars (\$1,000,000.00) for property damage arising out of each occurrence.

**7.02 Additional Insured.** Landlord shall be named as an additional insured on all Comprehensive general liability insurance policies obtained by Tenant with respect to the Premises either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy.

All policies shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled, or the amount of coverage decreased without either thirty (30) calendar days prior written notice to the Landlord or ten (10) calendar days prior written notice for non-payment of insurance policy premiums.

All policies shall also provide for a waiver of subrogation in favor of Landlord.

**7.03 Fire and Other Risks Insurance.** Tenant, at its sole cost and expense, shall throughout the Term, keep or cause to be kept all improvements, now or hereafter located upon the Premises, insured for full replacement value against loss or damage by fire and against loss or damage by other risks embraced by “extended coverage” and against civil commotions, riots, vandalism and malicious mischief in an amount equal to the actual replacement cost of such improvements, which may include costs of replacing excavations and foundation, but without deduction for depreciation.

**7.04 Authorized Insurance and Surety Companies.** All required policies of insurance and bonds shall be written by insurance and surety companies or brokers authorized to do business in the State of Texas. Certificates of insurance shall be delivered to Landlord at least ten (10) calendar days prior to the effective date of the insurance policy for which the certificate is issued and prior to the Effective Date of this Lease. Each insurance policy shall contain:

- A. a statement of the coverage provided by the policy;
- B. a statement certifying the Landlord to be listed as an additional insured in the general liability policy;
- C. a statement of the period during which the policy is in effect;
- D. a statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
- E. an agreement by the insurance company issuing such policy that the policy shall not be canceled without at least thirty (30) days' prior written notice to Landlord.

**7.05 Indemnification. DURING THE TERM AND FOR SUCH CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES RESULT FROM AN INCIDENT OCCURRING DURING THE TERM, TENANT AGREES TO INDEMNIFY AND HOLD LANDLORD HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF TENANT'S BUSINESS ON THE PREMISES, ITS USE OF THE**

**PREMISES, ACT OR NEGLIGENCE OF TENANT, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISE, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART, FROM THE NEGLIGENCE OF THE LANDLORD, IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LANDLORD BY REASON OF ANY SUCH CLAIM, TENANT, UPON NOTICE FROM LANDLORD, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LANDLORD AND LANDLORD WILL COOPERATE WITH TENANT IN SUCH DEFENSE, INCLUDING THE ASSERTION OF ANY IMMUNITY OR LIMITATION OF LIABILITY DEFENSE AS APPLICABLE.** Upon the occurrence of any event giving rise to liability of Tenant under the indemnification contained in this Section, Landlord shall give Tenant notice of such event and a copy of any communication or document received by Landlord with respect to each event and Tenant shall be entitled to conduct the negotiation or defense of any claim, cause of action, suit, demand, or judgment by counsel selected by Tenant, subject to the approval of such counsel by Landlord in its reasonable judgment. The failure of Landlord to give Tenant prompt notice of such occurrence shall not excuse Tenant from liability under this Section, except to the extent that such liability arose directly by reason of, or was increased or enhanced by, the failure of Landlord to give such notice.

**ARTICLE VIII - DESTRUCTION OF IMPROVEMENTS BY FIRE  
OR OTHER CASUALTY**

**8.01 Obligations of Tenant.** During the Term, should the improvements on the Premises be damaged or destroyed in whole or in part by fire or other casualty, Tenant shall give prompt notice thereof to Landlord, and, if the damage or destruction is to fifty percent (50%) or less of the Premises, Tenant shall, subject to and limited to the amount of insurance proceeds paid to Tenant by the insurance company or companies, promptly repair, replace and rebuild the same, to the greatest extent as practical to the character of the buildings and improvements existing immediately prior to such damage or destruction. If the damage or destruction is greater than fifty percent (50%) of the Premises, Tenant may elect to either: (i) subject to and limited to the amount of insurance proceeds paid to Tenant by the insurance company or companies, promptly repair, replace and rebuild to the greatest extent as practical and as nearly as practical to the character of the buildings and improvements existing immediately prior to such damage or destruction; or (ii) exercise its option to purchase the Premises as set forth in Article IX below. Any such repairs, replacements or rebuilding shall be made by Tenant as aforesaid and subject to and in accordance with the following terms and conditions:

- A. In the event the plans and specifications for reconstruction of the Premises (“Plans”) are substantially different from Tenant’s plans for the initial redevelopment of the Premises, Tenant shall deliver to Landlord, for review and approval (which shall not be unreasonably withheld, conditioned or delayed),

such reconstruction plans; provided, however, that Tenant shall, in any event comply with the Master Development Agreement in connection with any reconstruction. Landlord agrees to review such Plans within thirty (30) days of receipt and provide any reasonable comments to Tenant. Should Landlord fail to provide its comments during this time period, the Plans shall be deemed approved and Tenant may proceed to permitting.

- B. Upon approval or completion of the Plans, whichever is applicable, Tenant shall prepare, or cause to be prepared, final working plans and specifications in substantial conformity to the preliminary plans and specifications, and submit the same to appropriate governmental agencies for permitting. Upon approval by such agencies and the issuance of permits for the commencement of construction, Tenant shall deliver to Landlord one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction there over and copies of all issued permits for the Premises. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.
- C. Upon compliance with the foregoing, Tenant's obligation to repair, replace or rebuild shall be subject to settlement occurring with the insurance company or companies and said proceeds of such insurance policy or policies having been paid to Tenant. Receipt by Tenant's lender will not be considered receipt by Tenant under the terms of the Lease. After actual receipt of such insurance proceeds, Tenant shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.
- D. Upon completion of the construction, Tenant shall deliver to Landlord, a complete set of record (as-built) drawings of the construction signed and sealed by a professional engineer licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises, all to be in hard-copy form and in electronic form.

**8.02 Insurance Proceeds.** Upon receipt by Tenant of the proceeds of the insurance policy or policies, Tenant shall pay for the cost of such repair, replacement or rebuilding. If the amount of such insurance proceeds is insufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements, Tenant may exercise its option to purchase the Premises or trigger the reversion as set forth in Article IX below. If the amount of such insurance proceeds is in excess of such costs thereof, the amount of such excess shall be retained by Tenant.

## **ARTICLE IX – OPTION TO PURCHASE/PUT**

### **9.01 Tenant's Option to Purchase.**

A. Grant of Option. For separate, additional consideration in the amount of ten dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, Landlord grants to Tenant a purchase option (the "Option"), exercisable at any time on or after the earlier of: 1) the fifteenth (15<sup>th</sup>) anniversary date of the opening of the hotel facilities (including, obtaining Certificates of Occupancy for all guest rooms; restrooms; conference, meeting and ball rooms; all retail and dining spaces; and other areas accessible to the general public) on the Premises pursuant to the Master Development Agreement (as evidenced by Tenant's written notice to Landlord) or; 2) upon receipt by Tenant from the City of Midland of all State Convention Center Hotel Program ("SCCHP") funds as set forth in the Master Development Agreement, and expiring at the end of the Term (the "Option Period"), pursuant to and subject to the conditions of this Article IX, to purchase the Premises (excluding the Improvements thereon, which are owned by Tenant), from Landlord for the agreed upon price of One and 00/100ths dollars (\$1.00) (the "Purchase Price").

B. Exercise of Option.

(1) Tenant shall give notice of the exercise of the Option prior to the expiration of the Option Period.

(2) If Tenant has exercised the Option, Tenant shall purchase the Premises within one hundred eighty (180) days after the date of the exercise of the Option, and shall pay to Landlord the Purchase Price, subject to Section 9.04 below.

(3) Notwithstanding the foregoing, or any provision herein to the contrary, if the City of Midland receives a preliminary determination that the City and Development are not qualified for participation in the SCCHP, as contemplated in the Midland Development Agreement, Tenant may immediately exercise the Option, and the Option Period shall run from the date on which Tenant was notified that the City of Midland and Development did not qualify for participation in the SCCHP through and including the date that is one (1) year thereafter.

(4) Notwithstanding the foregoing, or any provision herein to the contrary, if Landlord has the right to terminate this Lease for any reason, prior to termination, Landlord will provide Tenant at least thirty (30) days prior written (the "Termination Notice") in which case, Tenant may then immediately exercise the Option, and the Option Period shall run from the date Tenant receives the Termination Notice through and including one (1) year thereafter.

(5) Notwithstanding the foregoing, or any provision herein to the contrary, if Landlord is in default of this Lease or the Master Development Agreement and Landlord fails to cure said default within thirty (30) days following written notice from Tenant to Landlord detailing such default (the "Landlord Default Notice"), or if such default cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if Landlord fails to commence such cure within such thirty (30) day period or fails to continuously and diligently pursue the cure

of said default thereafter, Tenant may then immediately exercise the Option, and the Option Period shall run from the date of the Landlord Default Notice through and including one (1) year thereafter.

**9.02 Landlord's Put.** For separate, additional consideration in the amount of ten dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, Tenant hereby grants to Landlord an option to put the Premises to Tenant (the "Put") during the Option Period defined in Section 9.01 herein for a price equal to the Purchase Price ("Put Option"). To exercise the Put Option, Landlord must give notice of its exercise prior to the expiration of the Put; provided, however, if Landlord fails to exercise the Put within such time period, Tenant shall deliver written notice to Landlord requesting, in conspicuous type, that Landlord notify Tenant whether Landlord will exercise the Put set forth in this Section 9.02. Landlord will have One Hundred Eighty (180) days following receipt of Tenant's notice to exercise the Put, even if such One Hundred Eighty (180) day period extends beyond the term of the Put Option. Notwithstanding the foregoing, or any provision herein to the contrary, if Landlord, after submission of a complete application to SCCHP, is unable to qualify for incentives through participation in the SCCHP as contemplated in the Master Development Agreement, Landlord may then immediately exercise the Put, and the Put Option shall run from the date on which Tenant was notified by Landlord that it was unable to qualify for the SCCHP through and including the date which is one (1) year thereafter.

**9.03 Terms and Conditions of Option/Put.** In the event that the Premises are to be acquired by Tenant pursuant to Tenant's exercise of the Option or Landlord's exercise of the Put: (a) the closing of such acquisition shall occur in such place as Landlord and Tenant mutually determine; (b) the closing shall occur on a date designated by Tenant (with at least thirty (30) days' advance written notice to Landlord of such date) not later than One Hundred Eighty (180) days after the termination of the Option Period; (c) the Purchase Price shall be paid by Tenant to Landlord in cash; (d) Landlord shall execute and deliver such other documentation as shall be necessary to vest title to the Premises and all appurtenances owned by Landlord in Tenant including, but not limited to a special warranty deed free and clear of all liens and encumbrances except matters of title that existed on the Effective Date or that were approved by Tenant; (e) this Lease shall automatically terminate upon the recordation of the deed conveying the Premises to Tenant in the Deed Records of Midland County, and Tenant may file a memorandum of termination in the Deed Records of Midland County; and (f) all expenses of closing, including but not limited to any title policy premiums, survey costs, and recording fees (but excluding attorneys' fees, which shall be borne by the party incurring such fees), shall be borne solely by Tenant.

**9.04 Reversion.** Notwithstanding the foregoing, the deed conveying title to the Premises to Landlord from Tenant, shall reserve for Tenant a right of reversion wherein title to the Premises will automatically revert to Tenant upon expiration or termination of the Lease.

## **ARTICLE X – ENCUMBRANCES**

**10.01 Encumbrance.** As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiaries under deeds of trust, whether one or more. Tenant may

encumber its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises by the execution and delivery of a Mortgage; if so, Tenant shall promptly notify Landlord in writing. The Mortgagee of any such Mortgage may deliver to Landlord a written notice specifying:

- A. The amount of the obligation secured by the Mortgage,
- B. The date of the maturity or maturities thereof; and
- C. The name and mailing address of the Mortgagee.

After receipt of such notice, Landlord shall serve such Mortgagee by certified mail at the latest address furnished by such Mortgagee a copy of every notice of default or demand served by Landlord upon Tenant under the terms and provisions of this Lease so long as such Mortgage is in effect.

**10.02 Mortgage's Rights.** Upon receipt of a notice of default or demand in accordance with Section 10.01 above, Mortgagee shall have sixty (60) days after receipt of such notice within which, at Mortgagee's election, either:

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;
- C. If the default cannot be cured within sixty (60) days, to commence performance within such sixty (60) day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- D. To institute foreclosure proceedings and prosecute same diligently to conclusion.

No notice of a default by Tenant hereunder given by Landlord shall be effective against a Mortgagee that has provided Landlord the information specified in Section 10.01 of this Lease unless Landlord has given a copy of it to such Mortgagee.

No Mortgagee shall have any personal liability under this Lease unless and until it becomes Tenant under this Lease.

If this Lease and the fee estate in the Premises are ever commonly held as a result of a default by Tenant, then they shall remain separate and distinct estates and shall not merge until such time as all cure periods for Mortgagee specified in this Lease have expired.

This Lease may not be amended, modified, changed, cancelled, waived, or terminated without prior written notice to all Mortgagees. Landlord shall not accept a voluntary surrender of the Lease without consent by all Mortgagees.



**10.03 Rights on Foreclosure.** In the event of foreclosure by Mortgagee, the purchaser at the foreclosure sale or the person acquiring Tenant's interest in lieu of foreclosure shall succeed to all of Tenant's rights, interests, duties and obligations under this Lease.

**10.04 Estoppel Certificates.** Upon request, Landlord shall provide to Tenant, any subtenant or sublessee of Tenant, or Tenant's Mortgagee an estoppel certificate containing the following information: confirmation that Landlord remains owner of the Premises and lessor under this Lease; confirmation that this Lease contains the full agreement between Landlord and Tenant with regard to the Premises; confirmation that, if accurate, Tenant is current in its obligations under this Lease as of a certain date; confirmation that, if accurate to the best knowledge of Landlord, Tenant is not in default under the terms of the Lease nor is Landlord aware of any condition which with notice or the passage of time would constitute default under this Lease if uncured; and confirmation of the Effective Date and the date of expiration of the Term.

**ARTICLE XI - EXPIRATION, CANCELLATION,  
ASSIGNMENT AND TRANSFER**

**11.01 Expiration.** Except as otherwise provided in this Lease, this Lease shall expire at the end of the Term or any extension thereof.

**11.02 Cancellation.** Subject to the provisions of Article IX above, the following shall be events of default under this Lease in the event Tenant shall:

- A. be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Landlord has notified Tenant in writing that payment was not received when due ("Monetary Default");
- B. file in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Tenant's property and such petition is not dismissed within thirty (30) days after filing;
- C. make any general assignment for the benefit of creditors;
- D. abandon the Premises for more than one hundred and eighty (180) consecutive days after the Premises are open for business;
- E. be in violation of any local, state, or federal rules and/or regulations or in default in the performance of any of the covenants and conditions required herein (except payments) to be kept and performed by Tenant, and such violation or default continues for a period of thirty (30) days after receipt of written notice from Landlord to cure such default, unless during such thirty (30) day period, Tenant commences and thereafter diligently performs such action as may be reasonably necessary to cure such default;
- F. be adjudged bankrupt in involuntary bankruptcy proceedings;

- G. be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Tenant where such receivership is not vacated within Thirty (30) days after the appointment of such receiver; or
- H. be in default of the Master Development Agreement beyond any notice and cure period.

In any of the aforesaid events, Tenant may immediately exercise the Option, and Landlord may immediately exercise the Put. If neither Tenant nor Landlord elects to exercise the Option or the Put, respectively, and Tenant fails to cure a default within the cure period specified in this Lease, Landlord may, bring suit for the collection of rent as it becomes due without cancellation or termination of this Lease or Tenant's right to possession.

Failure of Landlord to declare Tenant in default of this Lease for any of the reasons set out shall not operate to bar or destroy the right of Landlord to declare Tenant in default of this Lease by reason of any subsequent violation of the terms of this Lease.

No receipt or acceptance of money by Landlord from Tenant after the service of any notice, after the commencement of any suit, shall affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required.

**11.03 Waiver of Landlord's Lien.** Landlord hereby waives any constitutional, statutory or contractual landlord's lien against any property or improvements of Tenant.

**11.04 Assignment and Transfer.** Tenant shall have the right and privilege to assign or transfer this Lease subject to the prior written approval of Landlord, which shall not be unreasonably withheld; provided, however, that Landlord's approval shall not be required in the event of an assignment of this Lease by Tenant to the first leasehold Mortgagee or to a Permitted Assignee or a sublease of the Premises to an Affiliate of the Tenant associated with the development and redevelopment of the Premises and the improvements thereon.

As used herein, a "Permitted Assignee" means: (i) an entity created by merger, reorganization or recapitalization of or with Tenant; or (ii) a purchaser of all or substantially all of Tenant's ownership interest or Tenant's assets in the Midland, Texas area, provided Landlord issues its prior written approval (not to be unreasonably conditioned, withheld, or delayed) of said purchaser; or (iii) an Affiliate of Tenant.

"Affiliate" For purposes of this Agreement, affiliate shall mean any entity under common ownership of more than 50% or under common management with Tenant.

Any person or entity to which this Lease is assigned to pursuant to the Bankruptcy Code, 11 U.S.C. 101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Landlord an instrument confirming such assumption.

**11.05 Subleasing.** Tenant shall have the right to sublease all or any part of the Premises hereunder for the same purposes permitted under the terms and provisions of this Lease. Any such sublease executed after the Effective Date shall be subject to the same conditions, obligations and terms as set forth herein and Tenant shall be responsible for the observance by its subtenants of the terms and covenants contained in this Lease. Tenant shall promptly report to Landlord any sublease of the Premises, or any improvements thereon and, upon request of Landlord, Tenant shall furnish Landlord with a copy of any sublease agreement. In addition, Tenant shall provide to Landlord a list of its subtenants and the subtenants contact information every six months or, if sooner, whenever the identity of any subtenant changes. Landlord acknowledges that Tenant, without the consent of the Landlord, may sublease the Premises to an Affiliate of the Tenant associated with the redevelopment of the Premises and the improvements thereon. Upon request, Landlord shall provide to any subtenant or sublessee of Tenant a reasonable subordination, attornment and non-disturbance agreement regarding this Lease.

## **ARTICLE XII - CONDEMNATION**

**12.01 Definitions.** The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. “Taking” means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute and / or limitation on use, including, but not limited to limitation of use of or access to the Premises by governmental action or restriction. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken or the date the limitation of use or access by the condemning authority is taken.
- B. “Total Taking” means the taking of the fee title to all of the Premises and improvements thereon.
- C. “Substantial Taking” means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
  - 1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Tenant in Tenant’s reasonable judgement;
  - 2. The conduct of Tenant’s business on the Premises would be substantially prevented or impaired in Tenant’s reasonable judgement; or
  - 3. The portion of the Premises not so taken cannot be repaired or reconstructed, taking into consideration the amount of the award available

for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the Rent and after performance of all covenants and conditions required of Tenant under this Lease.

- D. “Partial Taking” means the taking of a fee title that is not either a Total Taking or a Substantial Taking.
- E. “Notice of Intended Taking” means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of Taking as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a written notice of intent to effectuate a Taking of any portion of the Premises or improvements thereon, containing a description or map reasonably defining the extent of the Taking.
- F. “Award” means compensation paid for the Taking, whether pursuant to judgment, or by agreement, or otherwise.
- G. “Date of Taking” means the date that (i) Tenant is required to vacate the Premises; (2) use of the Premises is limited pursuant to a final order of condemnation; or (3) the date of an agreement related to the Taking is entered into.

**12.02 Notice of Condemnation.** The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of Intended Taking;
- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

Upon receipt by Landlord or Tenant of any Notice of Intended Taking, Tenant and Landlord shall have the right to exercise the Option and the Put, respectively. In such event, Tenant shall thereafter have all rights as the owner of the Premises under such condemnation proceeding and shall receive all Awards in connection therewith.

**12.03 Rights of Parties During Condemnation Proceeding.** In the event neither Tenant nor Landlord exercises the Option or the Put, respectively, in accordance with Section 12.02 above,

then Landlord and Tenant shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a Taking or Intended Taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

**12.04 Taking of Leasehold.** In the event neither Tenant nor Landlord exercises the Option or the Put, respectively, in accordance with Section 12.02 above, then:

(A) Upon a Total Taking: (i) Tenant's obligation to pay Rent and other charges hereunder shall terminate on the Date of Taking, but Tenant's interest in the leasehold shall continue until the Taking is completed by deed, contract or final order of condemnation; and (ii) Tenant may, at its election, exercise the Option in accordance with the terms of Section 9.01 above.

(B) If the Taking is a Substantial Taking under the aforementioned definition, Tenant may, by notice to Landlord within thirty (30) days after Tenant receives the Notice of Intended Taking, elect to treat the Taking as a Total Taking, and Tenant may then likewise exercise the Option in accordance with the terms of Section 9.01 above. If Tenant does not so notify Landlord, the Taking shall be deemed a Partial Taking.

(C) Upon a Partial Taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the Rent payable hereunder by Tenant shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

**12.05 Total Taking.** In the event of a Total Taking, all of Tenant's obligations under the Lease shall terminate as of the Date of Taking. Upon a Total Taking, all sums awarded for any Tenant-owned improvements and the leasehold estate shall be disbursed to Tenant. Unless Tenant or Landlord exercises the Option or the Put, respectively, in accordance with Section 12.02 above, all sums awarded for the Premises, as unencumbered by any Tenant-owned improvements, but subject to the Lease, shall be disbursed to Landlord.

**12.06 Partial Taking.** Unless Tenant or Landlord exercises the Option or the Put, respectively, in accordance with Section 12.02 above, upon a Partial Taking, all Awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises; and
- B. The balance, if any, to Landlord and Tenant as follows: Tenant shall receive all sums awarded for Tenant-owned improvements and damages or loss to the Leasehold estate. Landlord shall receive all sums awarded for the Premises, as unencumbered by the Tenant-owned improvements but subject to the Lease.

**12.07 Obligations of Tenant Under Partial Taking.** Promptly after any such Partial Taking, Tenant, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises is leased. Notwithstanding the foregoing to the contrary, should there be a Partial Taking in the last two (2) years of the term hereof, Tenant shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Landlord of its intention to that effect. In no event will Tenant be required to spend funds for restoration or repair in excess of the funds received by Tenant.

**12.08 Taking of Temporary Use of Premises and Improvements.** Upon any Taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the Term, neither the term nor the Rent shall be reduced or affected in any way and Tenant shall be entitled to the entire award.

**12.09 Award.** Notwithstanding the foregoing, Tenant will be entitled to pursue all claims with respect to a Taking and to receive the entire award arising from the Taking.

If any such Taking is for a period extending beyond the expiration date of the Term, the Taking shall be treated under the foregoing provisions for Total, Substantial and Partial Takings.

### **ARTICLE XIII - GENERAL PROVISIONS**

**13.01 Master Development Agreement.** This Lease is subject to the terms, covenants and conditions contained in the Master Development Agreement. If this Lease conflicts with the provisions of Master Development Agreement, the Master Development Agreement shall control. Notwithstanding anything to the contrary contained herein, the exercise of Tenant's Option or Landlord's Put, as provided herein, shall not abate or terminate Landlord's obligations to pay Tenant the grant payments due under the Master Development Agreement.

**13.02 Time is of the Essence.** Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

**13.03 Notices.** All notices provided to be given under this Lease shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

LANDLORD:

City Manager  
City of Midland  
P.O. Box 1152  
Midland Texas 79702  
Email: [tgonzalez@midlandtexas.gov](mailto:tgonzalez@midlandtexas.gov)

*With Copy to:*

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

TENANT:

Midland Downtown Renaissance, LP:  
223 West Wall Street Suite 300  
Midland, Texas 79702

*With Copy to:*

Hedloc Investments Co, LP  
223 W. Wall Street, Suite 300  
Midland, Texas 79701  
info@hedlocinv.com

*With Copy to:*

Moorman Tate, LLP  
207 East Main Street  
Brenham, Texas 77833  
c/o Andrew Hefferly  
hefferly@moormantate.com

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

**13.04 Attorney's Fees.** If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

**13.05 Agreement Made in Texas.** The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in Midland County, Texas.

**13.06 Nondiscrimination Covenant.** Tenant, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. Tenant shall maintain and operate or cause to be maintained and operated such facilities and services in compliance with all requirements imposed pursuant to such state and federal regulations regarding nondiscrimination as said regulations may be amended.
- B. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.
- C. That in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- D. That Tenant shall use or shall cause to be used the Premises in compliance with all requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Tenant shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- E. Economic Discrimination. To the extent that, under this Lease, Tenant furnishes goods or services to the public at Tenant's development, Tenant agrees that it shall or shall cause the following:
  - 1. Furnish each and every good and service on a fair, reasonable, and not unjustly discriminatory basis to all users of Tenant's Development, and
  - 2. Charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers as otherwise permitted under the law.
- F. That, in the event of breach of any of the above nondiscrimination covenants, Landlord shall have the right to terminate this Lease and re-enter and repossess the Premises and the improvements thereon, and hold the same as if said Lease had never been made or issued.

**13.07 Cumulative Rights and Remedies.** All rights and remedies of Landlord here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Landlord of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

**13.08 Interpretation.** Landlord and Tenant agree that this Lease has been freely negotiated by both parties and that any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conclusion. There shall be no inference, presumption, or conclusion drawn whatsoever against other party by virtue of that



party having drafted this Lease or any portion thereof.

Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

**13.09 Agreement Made in Writing.** This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

**13.10 Paragraph Headings.** The captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

**13.11 Severability.** If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

**13.12 Successors and Assigns.** All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Landlord and Tenant and their successors, assigns, legal representatives, heirs, executors and administrators. Tenant shall cause any assignee to execute an agreement whereby the assignee expressly agrees to be bound by all terms and conditions hereof.

**13.13 Tax Exempt.** Tenant shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against Tenant or Landlord, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Tenant's use and/or occupancy of the Premises during the Term of this Lease. Tenant will provide written proof satisfactory to Landlord that all taxes and governmental charges of any kind as described herein have been paid in full upon request from Landlord. Landlord is a tax-exempt governmental entity and shall not be responsible for any taxes or assessments arising from Tenant's use of the property or possession of the Premises.

Tenant in good faith may contest any tax or governmental charge, subject to the provisions in the Master Development Agreement, and provided that Tenant may not permit such tax or governmental charge to remain unpaid during the period of such contest, subject to state law, and any appeal therefrom unless, in the opinion of counsel satisfactory to Landlord, such action will not adversely affect any right or interest of Landlord.

**13.14 Waiver of Warranty of Suitability.** LANDLORD DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. TENANT ACKNOWLEDGES THAT TENANT IS FULLY AND COMPLETELY FAMILIAR WITH THE PREMISES AND TENANT LEASES THE PREMISES "AS IS – WHERE IS" AND LANDLORD DOES

**NOT WARRANT THAT THERE ARE NO LATENT DEFECTS THAT ARE VITAL TO TENANT'S USE OF THE PREMISES FOR ITS INTENDED COMMERCIAL PURPOSE NOR SHALL LANDLORD BE RESPONSIBLE OR LIABLE FOR ANY CONDITION OF THE PREMISES WHICH SHALL SOLELY BE THE RESPONSIBILITY OF TENANT.**

**13.15 Survival of Certain Provisions.** All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Paragraphs 6.03 and 7.06.

**13.16 Restrictions and Reservations.** This Lease is subject to all existing rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. Landlord will not amend or impose additional rights-of-way, easements, dedications, restrictions, reservations and other encumbrances affecting the Premises without Tenant's prior consent to be granted or withheld in Tenant's sole discretion.

Landlord reserves for itself and any authorized agent to, at any reasonable time and with forty-eight (48) hour notice (including notice via electronic mail), and will only be conducted in such manner as to not unreasonably interfere with the development or operation of the Premises, associated improvements and/or any parking facilities associated with the Premises, enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with municipal, state, federal, and Environmental Laws. Landlord shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

**13.17 Authorization to Enter into Lease.** Each person executing this Lease on behalf of Tenant warrants to Landlord that Tenant is a duly authorized and existing legal entity, that Tenant is qualified to do business in the State of Texas, that Tenant has full right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon Landlord's request, Tenant will provide evidence satisfactory to Landlord confirming these representations.

**13.18 Effective Date/Memorandum.** Regardless of the date signed, this Lease shall be effective immediately after execution of the deed which conveys title to the Premises from Tenant to Landlord, as contemplated in the Master Development Agreement. Simultaneously with the full execution and delivery of this Lease, Landlord, acting through its City Manager without the need for City Council approval, and Tenant may execute and acknowledge a memorandum of this Lease in form and substance reasonably acceptable to Landlord and Tenant. At a minimum, the memorandum of lease will include notification regarding Tenant's Option to Purchase in Section 9.01 of this Lease. Tenant shall provide to Landlord a copy of any memorandum filed of record in the Real Property records for Midland County, Texas.

***[SIGNATURE PAGE AND ACKNOWLEDGEMENTS FOLLOW]***

**IN WITNESS WHEREOF**, the parties have hereunto set their hands as of this \_\_\_ day of \_\_\_\_\_, 20\_\_.

**LANDLORD:  
CITY OF MIDLAND, TEXAS**

\_\_\_\_\_  
Tommy González  
City Manager

**ACKNOWLEDGMENT**

**THE STATE OF TEXAS )**  
**)**  
**COUNTY OF MIDLAND )**

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Tommy González as City Manager for the City of Midland, Texas (Landlord).

\_\_\_\_\_  
Notary Public, State of Texas

**TENANT:**

**MIDLAND DOWNTOWN RENAISSANCE, LP**

By: Midland Downtown Development, LLC  
Its: General Partner

\_\_\_\_\_  
By: W.D. Hord, III  
Its: Manager

**ACKNOWLEDGMENT**

**THE STATE OF TEXAS )**  
**)**  
**COUNTY OF MIDLAND )**

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by W.D. Hord, III, as Manager of Midland Downtown Development, LLC, a Texas limited liability company, as the General Partner of MIDLAND DOWNTOWN RENAISSANCE, LP, a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT A**  
**PREMISES**

**Exhibit C**

*Site Plan(s)*

### **Exhibit C – Site Plan**

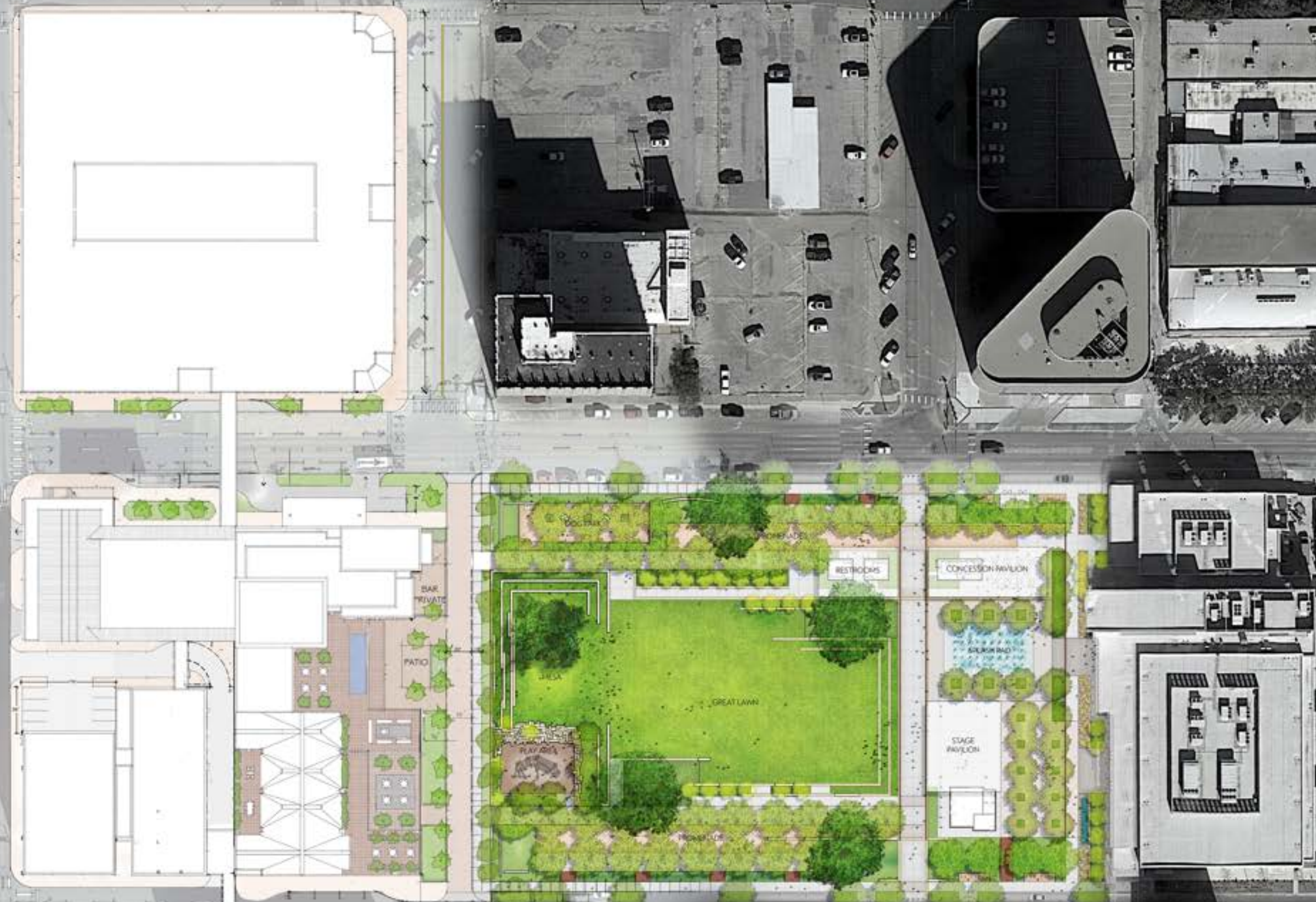
The following site plan drawings are in draft form, not final, and are made only for the purposes of illustrating a possible site plan for purposes of the Master Development Agreement between City of Midland, Texas, Midland Development Corporation, and Midland Downtown Renaissance, LP, to which these site plan drawings are attached. These documents are preliminary in nature and are subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.

Other than the last page of this Exhibit C, these site plan drawings contemplate placement of the hotel on the MDR Land (as defined in the Agreement), but per the Agreement, the hotel may be placed on the Midland Land (as defined in the Agreement). The last page of this Exhibit C contemplates placement of the hotel on the Midland Land.



# Exhibit C - site plan

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



# Exhibit C - site plan

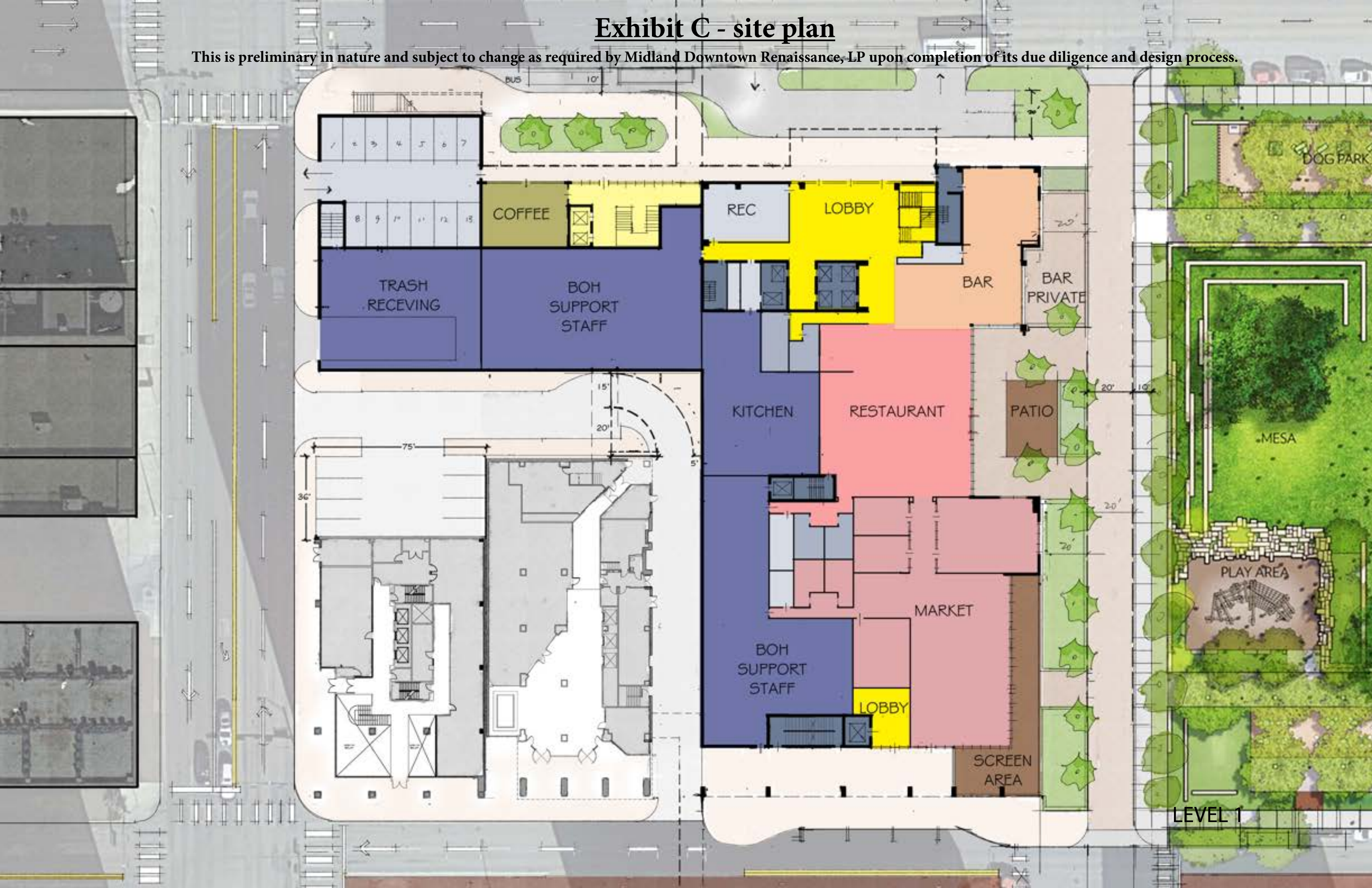
This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



LEVEL 1

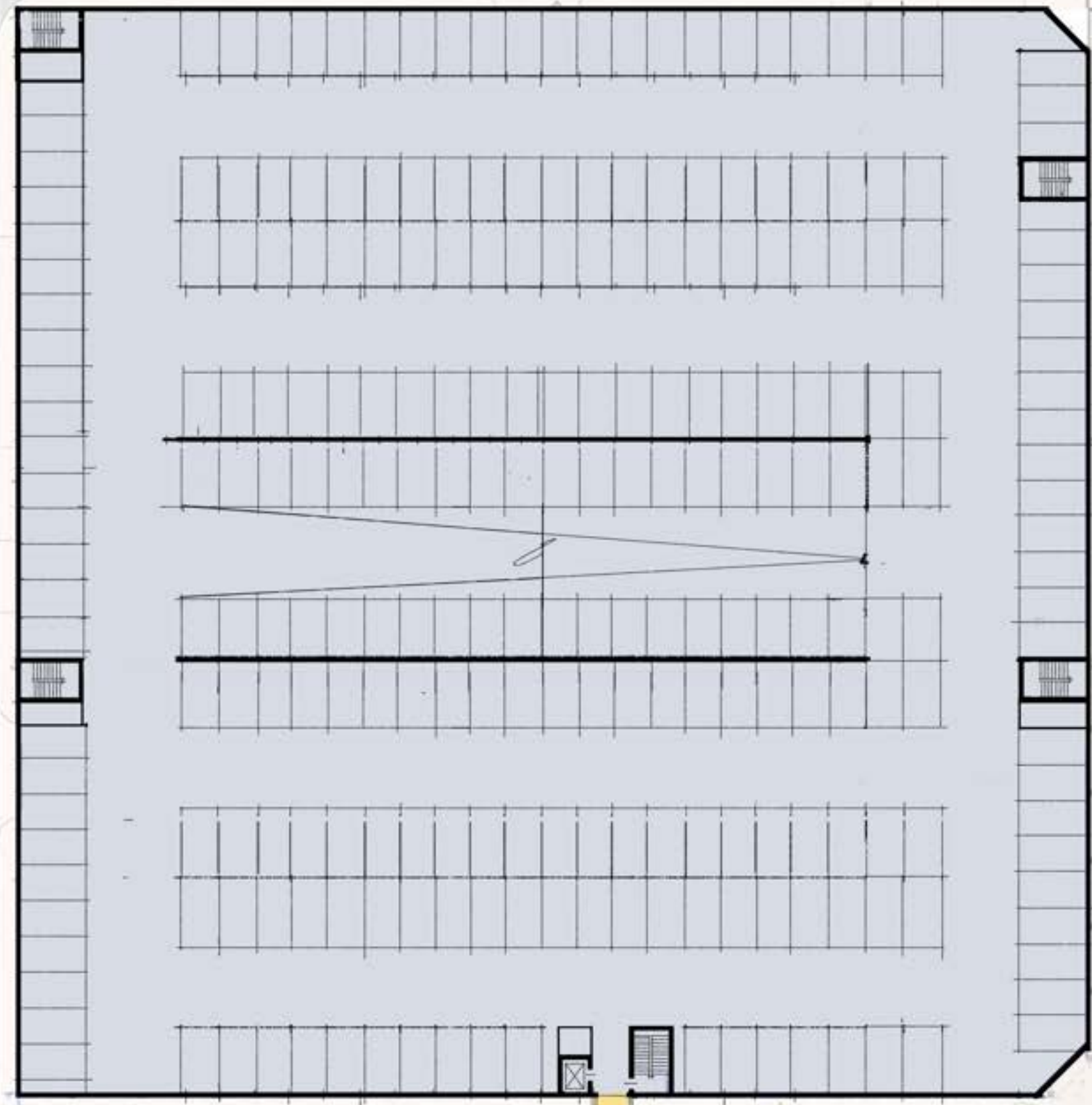
# Exhibit C - site plan

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



# Exhibit C - site plan

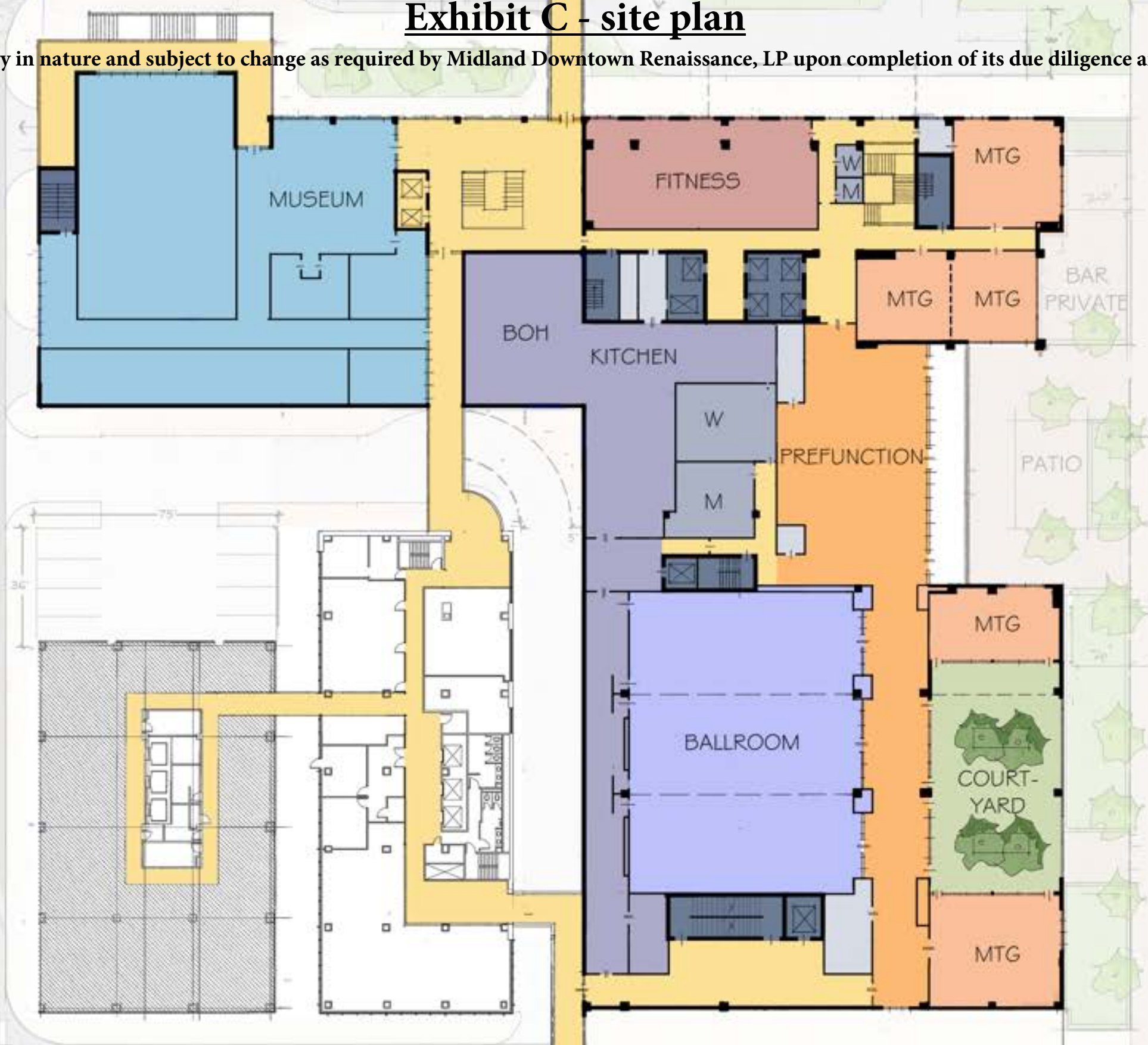
This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



LEVEL 2

# Exhibit C - site plan

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



LEVEL 2

# Exhibit C - site plan

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



LEVEL 3

# Exhibit C - site plan

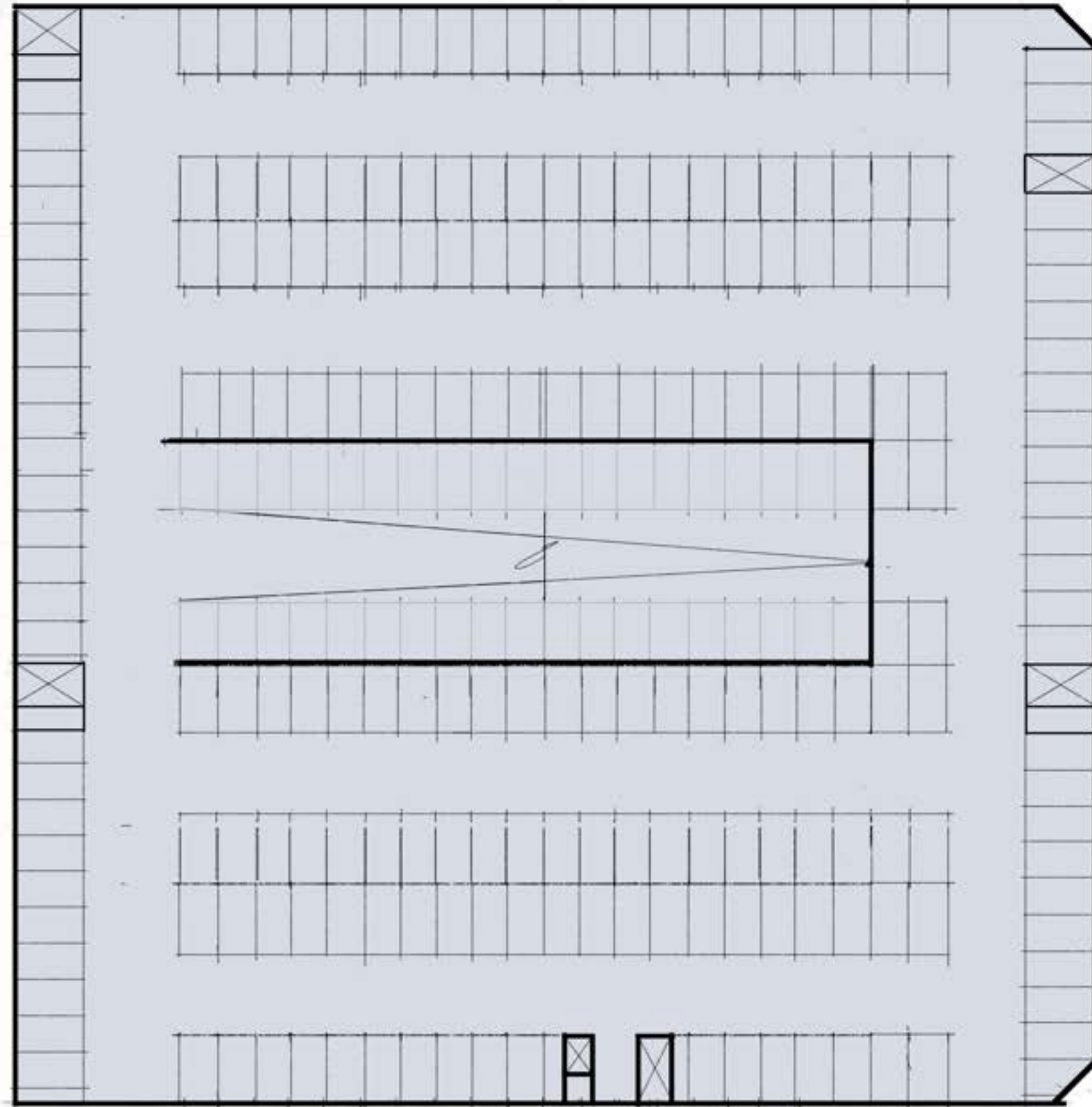
This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



LEVEL 4

# Exhibit C - site plan

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.

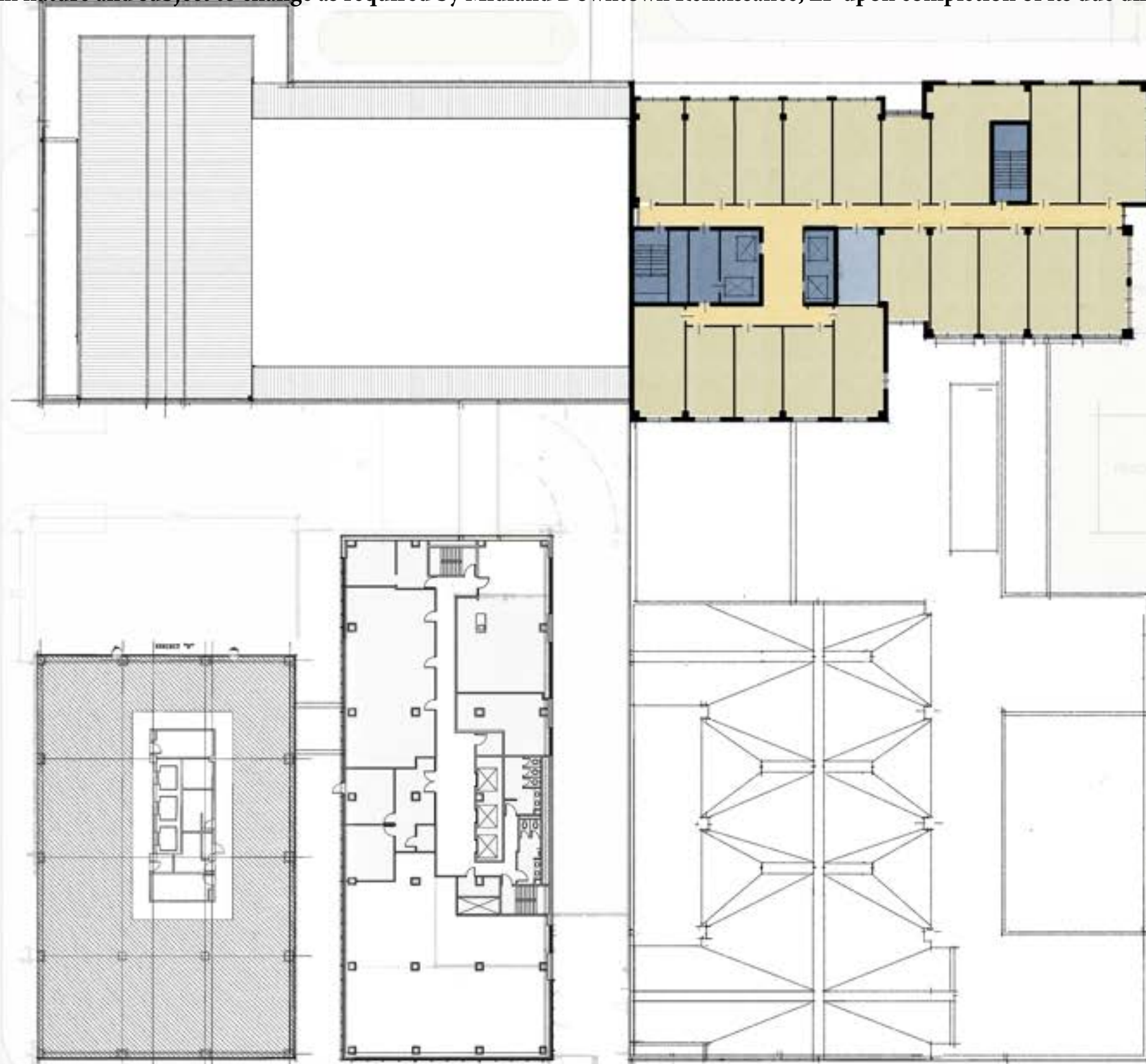


LEVEL 5 GARAGE  
ROOFTOP



## Exhibit C - site plan

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



LEVEL 5

# Exhibit C - site plan

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process. This image shows all development on the "Midland Land".



**Exhibit D**

*Conceptual Design Documents*

## **Exhibit D – Conceptual Design Documents**

The following conceptual design documents are in draft form, not final, and are made only for the purposes of illustrating possible conceptual designs for purposes of the Master Development Agreement between City of Midland, Texas, Midland Development Corporation, and Midland Downtown Renaissance, LP, to which these conceptual designs are attached. These documents are preliminary in nature and are subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.

The following pages of Exhibit D are conceptual design documents which illustrate placement of the hotel on the MDR Land (as defined in the Agreement).

Later in Exhibit D – as indicated by page break – are conceptual design documents which illustrate placement of the hotel on the Midland Land (as defined in the Agreement).

# Exhibit D - Conceptual Design Documents

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



# Exhibit D - Conceptual Design Documents

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



# Exhibit D - Conceptual Design Documents

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.





The following pages of Exhibit D are conceptual design documents which illustrate placement of the hotel on the Midland Land (as defined in the Agreement).

# Exhibit D - Conceptual Design Documents

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



# Exhibit D - Conceptual Design Documents

This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.



**Exhibit E**

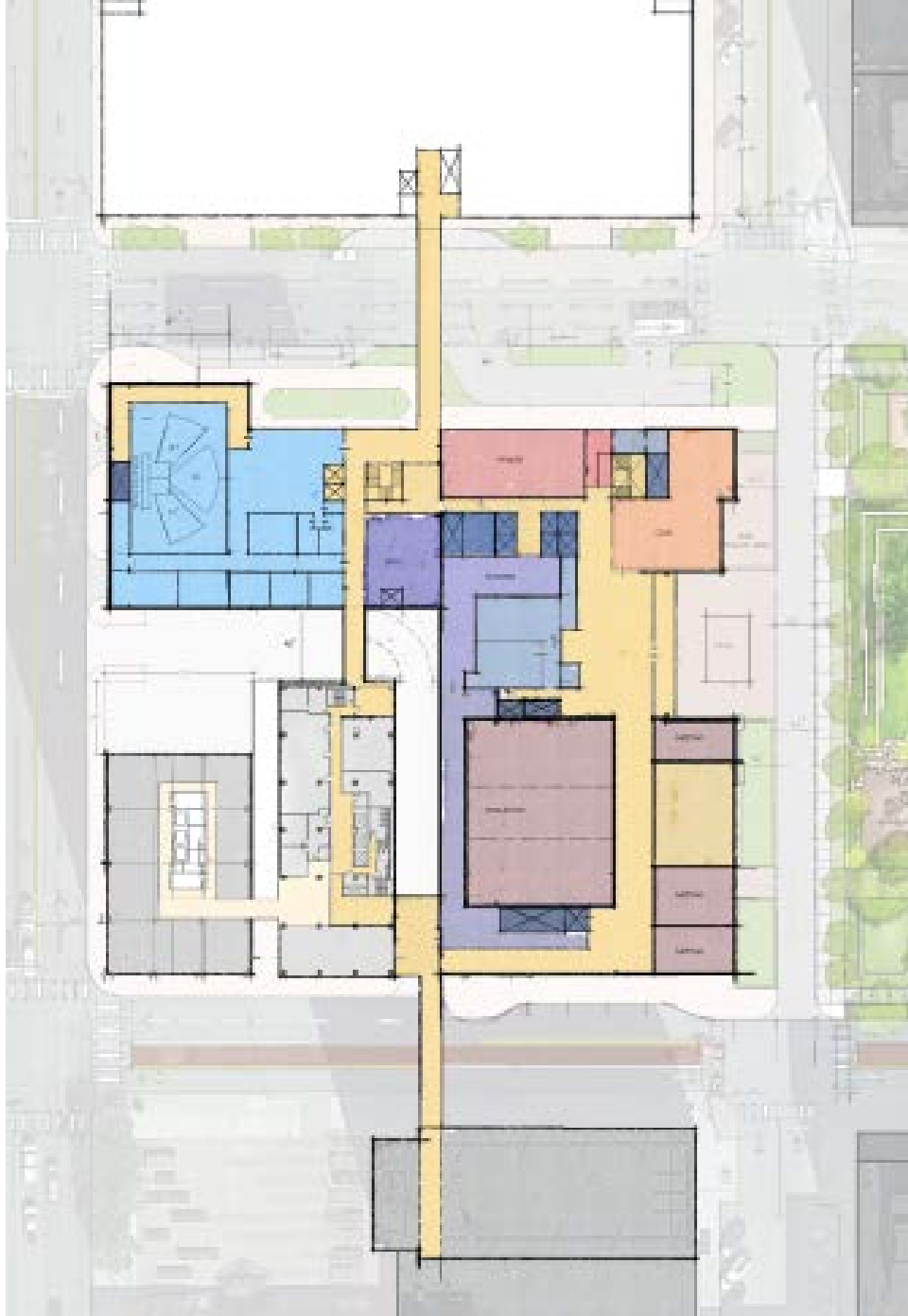
*Portions of CITY Rights of Way Subject to Aerial Easements*

## **Exhibit E – Aerial Easements**

The following site plan design documents are in draft form, not final, and are made only for the purposes of illustrating possible site plans for an aerial easement for purposes of the Master Development Agreement between City of Midland, Texas, Midland Development Corporation, and Midland Downtown Renaissance, LP, to which these site plans are attached. These documents are preliminary in nature and are subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.

## **Exhibit E – Aerial Easements**

**This is preliminary in nature and subject to change as required by Midland Downtown Renaissance, LP upon completion of its due diligence and design process.**



# The MITRE Corporation MOU

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING WITH THE MITRE CORPORATION; SAID MEMORANDUM OF UNDERSTANDING TO PROVIDE FOR THE ESTABLISHMENT OF A FRAMEWORK FOR THE MIDLAND DEVELOPMENT CORPORATION AND THE MITRE CORPORATION TO WORK COLLABORATIVELY ON A BROAD RANGE OF STRATEGIES, INITIATIVES, AND ACTIVITIES IN THE FURTHERANCE OF COMMERCIAL SPACE AND HIGH-SPEED FLIGHT OPERATIONS IN THE PERMIAN BASIN**

WHEREAS, the Board of Directors finds it to be in the public interest to authorize the execution of a memorandum of understanding with The MITRE Corporation for the purpose of establishing a framework for the Midland Development Corporation and The MITRE Corporation to work collaboratively on a broad range of strategies, initiatives, and activities in furtherance of commercial space and high-speed flight operations in the Permian Basin;

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

THAT the Chairman is hereby authorized and directed to execute and attest, respectively, memorandum of understanding with The MITRE Corporation for the purpose creating and establishing a framework for the Midland Development Corporation and The MITRE Corporation to work collaboratively on a broad range of strategies, initiatives, and activities in furtherance of commercial space and high-speed flight operations within the Permian Basin. Said memorandum of understanding being in a form substantially similar to that of Exhibit A, which is attached hereto and incorporated herein for all purposes.

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., 2024, by the following vote:



Directors voting "AYE":

Directors voting "NAY":

---

P. LOURCEY SAMS,  
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

## Memorandum of Understanding

Between

The MITRE CORPORATION

and

The Midland Development Corporation

to Advance Safe and Efficient Network of Launch and Reentry Spaceports

---

**THIS** Memorandum of Understanding (“MOU”) is made and entered into as of the date of last signature (“Effective Date”), by and between The MITRE Corporation (“MITRE”), a Delaware non-profit corporation, having its principal offices at 7515 Colshire Drive, McLean, Virginia 22102, and the Midland Development Corporation (the “MDC”), an economic development corporation existing under the authority of Chapter 504 of the Texas Local Government Code, having its principal place of business at 200 North Loraine Street, Suite 610, Midland, Texas 79701. MITRE and the MDC may each be referred to individually as a “Party” and collectively as the “Parties”.

**WHEREAS** MITRE and the MDC wish to cooperate, collaborate, and exchange information and ideas in areas of mutual interest to advance a safe and efficient network of launch and reentry spaceports.

**NOW THEREFORE**, the Parties agree as follows:

### 1. BACKGROUND.

- A. Founded in 1958 to operate in the public interest, MITRE is a not-for-profit organization that works with the public and private sectors through its Federally Funded Research and Development Centers (“FFRDCs”) including the Center for Advanced Aviation Systems Development (“CAASD”), public-private partnerships, and an independent research and work program to solve problems for a safer world and provide economic value. As an integral part of its public interest mission, MITRE seeks to enter into partnerships that (i) solve problems that impact the nation and its people; (ii) create social benefit and economic opportunity; and (iii) builds a safer and better world for today and future generations. An integral part of MITRE’s corporate strategy is MITRE’s mission commitment to advancing the National Airspace System, optimizing safe and efficient transportation operations, and realizing the next level of safety across the transportation domain. This mission focus includes helping to advance a robust, innovative national system of Spaceports to bolster the U.S. as a global leader in the commercial space transportation industry.
- B. The MDC looks to partner with private industry, non-profits, government and institutions of higher education and research to develop and promote business expansion, job creation, and investment opportunities to diversity and strengthen the local and regional innovation

ecosystem and economy. The MDC and industry stakeholders have been engaged in technical discussions regarding the use of airspace around Midland International Air and Space Port (“MAF”). In 2022, the MDC commissioned a study to assess the feasibility of developing high-speed airspace corridors accessible from MAF to support a range of potential aerospace systems that include subsonic and supersonic aircraft, hypersonic systems, and suborbital launch vehicles. While initial findings indicate that a high-speed airspace corridor is feasible from an airspace and operations perspective, more stakeholder engagement and analysis need to be done to support mission and airspace planning.

- 2. PURPOSE.** The purpose of this MOU is to articulate the mutual understanding and cooperative spirit with which the Parties intend to work together to accelerate and achieve their common vision for commercial space and high-speed flight operations in the United States and to increase and enable related regional economic development and diversity efforts. The Parties will endeavor to cooperate on a broad range of strategies, initiatives, and activities.

Areas of mutual interest, which may involve education, economic and workforce development, and research related activities that complement each Party’s respective missions, initially include but are not limited to:

- Research and development. Cooperation in research and development initiatives, projects, and operational demonstrations that are of critical importance to enabling commercial space and high-speed flight operations at Midland International Air and Space Port.
- Knowledge sharing. Sharing of knowledge and technology in the areas of commercial space, space health, high-speed flight, air traffic management, airspace design, simulation and modeling, safety and regulation issues, and new entrant integration into the National Airspace System.
- Regional innovation. Identification of opportunities that contribute towards the development and establishment of capabilities and infrastructure required to support research and development activities and operational demonstrations in Midland and the greater West Texas region. The Parties may work together to identify potential projects for joint research and collaboration.

Any joint research, collaborative efforts, or other similar work undertaken by the Parties shall be set forth in a separate agreement which shall provide for the rights and responsibilities of each Party with respect to such work, including intellectual property ownership. Each Party, in its sole discretion, shall have the right to decline to participate in any proposed research project or collaboration.

- 3. EXPENSES.** Each Party shall bear all of that Party’s own expenses incurred in connection with activities under this MOU unless otherwise agreed to in writing.
- 4. DISCLOSURE AND PROTECTION OF INFORMATION.** During the performance of this MOU, each Party (“Receiving Party”) may be given access to information which relates to the other Party’s (“Disclosing Party”) business or operational activities, products, services, technical knowledge, and customers, all of which are collectively considered confidential, proprietary, and privileged information (“Confidential Information”). The Receiving Party may use this Confidential Information only for the

# MITRE

purpose of providing and receiving services in accordance with this MOU. The Receiving Party shall not, at any time, use the Confidential Information in any other fashion, form, or manner.

“Confidential Information” does not include any information that the Receiving Party can demonstrate (a) is or becomes publicly known through no fault of Receiving Party; (b) is known by the Receiving Party when disclosed by the Disclosing Party if the Receiving Party does not then have a duty to maintain its confidentiality; or (c) is rightfully obtained by the Receiving Party from a third party not obligated to preserve its confidentiality who did not receive the material or information directly or indirectly from the Disclosing Party.

The Receiving Party shall protect the confidentiality of the Confidential Information in at least the same manner that the Receiving Party protects the confidentiality of the Receiving Party’s own proprietary and confidential information, and in any event shall take all reasonable measures to prevent improper disclosure of the Confidential Information or any portion thereof. If the Receiving Party receives an order, subpoena, or other compulsory legal process from a court or other governmental body that requires disclosure of the Confidential Information, then the Receiving Party shall notify the Disclosing Party of the order, subpoena, or other compulsory legal process (unless prohibited by law from doing so) and shall reasonably cooperate with the Disclosing Party in seeking an appropriate protective order. The Receiving Party agrees to furnish only that portion of the Confidential Information which is legally required (in the opinion of the Receiving Party’s counsel). All Confidential Information obtained by the Receiving Party from the Disclosing Party shall remain the property of the Disclosing Party and shall be returned to the Disclosing Party, or destroyed, promptly at the Disclosing Party’s request, together with all copies made thereof by the Receiving Party. The Receiving Party’s duty to protect the Disclosing Party’s Confidential Information shall commence from initial disclosure and continue until such time as any of the exceptions of (a) through (c) herein apply to the relevant piece of Confidential Information.

Notwithstanding any other provision contained herein, this MOU in no way affects, modifies, or limits the obligation of the MDC to comply with the Texas Public Information Act (the “Act”) or any ruling or decision of the Texas Attorney General. The Parties hereby agree that the MDC retains its right to exercise its discretion to determine its obligations under the Act. MITRE acknowledges and agrees that the MDC’s issuance of a request for a ruling from the Office of the Attorney General as to whether the disclosure of Confidential Information is required under the Act in response to a public information request submitted to the MDC shall not constitute a default under this Agreement and that the MDC’s disclosure of Confidential Information pursuant to a ruling from the Office of the Attorney General shall not constitute a default under this Agreement.

- 5. WAIVER OF ATTORNEY FEES.** BY EXECUTING THIS MOU, THE PARTIES AGREE TO WAIVE AND DO HEREBY WAIVE ANY CLAIM THEY HAVE OR MAY HAVE AGAINST THE OTHER PARTY REGARDING THE AWARD OF ATTORNEY FEES, WHICH ARE IN ANY WAY RELATED TO THIS MOU, OR THE CONSTRUCTION, INTERPRETATION, OR BREACH OF THIS MOU. THE PARTIES SPECIFICALLY AGREE THAT IF EITHER PARTY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS MOU, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS MOU, 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), THAT PARTY AGREES TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY FEES TO WHICH IT MIGHT OTHERWISE BE ENTITLED.

- 6. WARRANTY DISCLAIMER.** THE PARTIES ACKNOWLEDGE THAT ALL RESEARCH PROJECTS, INCLUDING THE EFFORTS CONTEMPLATED HEREIN, ARE SPECULATIVE VENTURES AND THAT IT IS IMPOSSIBLE FOR EITHER PARTY TO DETERMINE IN ADVANCE WHAT THE RESULTS OF THAT PARTY'S EFFORTS WILL BE. THEREFORE, THE PARTIES AGREE THAT ANY RESEARCH, MATERIALS, SERVICES OR PROTOTYPES CONTEMPLATED HEREIN, OR PROVIDED HEREUNDER, ARE DONE ON AN "AS IS" BASIS ONLY WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTY WARRANTS THAT THE RESEARCH PROJECTS OR ANY INFORMATION DERIVED FROM THE RESEARCH PROJECTS WILL FULFILL ANY OF THE OTHER PARTY'S PARTICULAR PURPOSES OR NEEDS.
- 7. LIMITATION OF LIABILITY.** IN NO EVENT SHALL MITRE OR THE MDC BE LIABLE FOR ANY GENERAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THIS MOU, NO MATTER THE CAUSE OF ACTION, EVEN IF MITRE OR THE MDC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S TOTAL CUMULATIVE LIABILITY UNDER THIS MOU FOR ANY REASON, WHETHER IN CONTRACT, TORT, OR ANY OTHER FORM OF ACTION, SHALL BE LIMITED TO ZERO UNITED STATES DOLLARS (US \$0). THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY FOR BODILY INJURY OR ACTUAL DAMAGES TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY FOR WHICH THAT PARTY IS LEGALLY LIABLE.
- 8. GENERAL.**

  - A. Term.** This MOU is effective as the Effective Date above and will remain in effect through December 31, 2028 ("Term"). Either Party may terminate this MOU at any time, for any reason, upon thirty (30) days' prior written notice to the other Party.
  - B. Compliance with Laws.** Each Party shall comply with all applicable laws, rules, and regulations in the performance of this MOU. In compliance with U.S. Department of Commerce Export Administration Regulations and the U.S. Department of State International Traffic in Arms Regulations, and notwithstanding any other provision of this MOU, neither Party shall attempt to, nor export or re-export to any country prohibited from obtaining such data, either directly, or indirectly through affiliates, licensees, or subsidiaries, any U.S. source technical data acquired from the other Party, any products utilizing such data, or any information provided under this MOU or any ancillary agreements, to any countries outside the U.S. in violation of U.S. Export Laws or Regulations. Neither Party shall take any action which would cause either Party to be in violation of the laws governing that Party's conduct of business.
  - C. No Assignment.** Neither Party may assign nor transfer that Party's rights or obligations under this MOU without the prior written consent of the other Party; provided that the MDC may assign this MOU to a successor board, agency, or commission of the State of Texas upon prompt written notice to MITRE. Any assignment in contravention of the foregoing shall be null and void.
  - D. Publicity.** The Parties agree to jointly prepare any news releases, public announcements, or other publicity documents. Neither Party will use the marks or name of the other Party in any advertising or other publicity without the written permission of the other Party. All news releases, public announcements, public release of research results, or other dissemination of information

# MITRE

arising out of or related to this MOU shall acknowledge and give due credit to the contribution of each Party.

- E. Relationship of the Parties. This MOU shall not constitute, create, or in any way be interpreted to create a joint venture, partnership, agency, franchise, or formal business organization, or employment, of any kind between MITRE and the MDC. Neither Party shall have any right, power, or authority to enter into any agreement for or on behalf of, or incur any obligation or liability, or to otherwise bind, the other Party.
- F. Amendment. Any amendments to this MOU must be in a writing signed by both Parties.
- G. Notices. The primary points of contact for the exchange of any information pertaining to this Agreement, and subject to change upon written notice, shall be as follows:

For MITRE: Elizabeth McQueen, Department Manager  
For the MDC: Sara Harris, Executive Director

The points of contact for official notices pertaining to this Agreement, at the official addresses noted above in this Agreement, and subject to change upon written notice, shall be as follow:

For MITRE: Legal Department  
For the MDC: Board of Directors

Notice given by next-day delivery shall be deemed to have been provided upon the date sent to the recipient. Either Party may change such address by providing written notice to the other Party as set forth above.

- H. Governing Law and Venue. This MOU shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this MOU shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this MOU or the performance of this MOU 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.
- I. Computer Security Responsibilities. In the event it is desirable to make electronic connections between computers (other than electronic mail), the Parties agree to abide by the rules governing the security of the other Party's computer facilities and systems.
- J. Entire Agreement. This MOU represents the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous representations, understandings, and agreements between the Parties with respect to such subject matter. Terms set forth in any electronic signature process shall have no bearing or effect in this Agreement and a signatory's acceptance of any such terms shall not be deemed to modify or alter this Agreement in any manner whatsoever.

# MITRE

- K. Authority. The Parties and each individual executing this MOU on behalf of the Parties hereto represent and warrant that such individual is duly authorized and has the authority to bind the Party on whose behalf they are signing to the terms and the obligations set forth herein.

**IN WITNESS WHEREOF**, the Parties by their authorized representatives have executed this MOU as of the Effective Date.

**The MITRE Corporation**

**The Midland Development Corporation**

\_\_\_\_\_

\_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_