

CONFIDENTIAL

**THE CITY OF MANSFIELD, TEXAS AND MANSFIELD TRADITION LLC
HOTEL DEVELOPMENT AGREEMENT**

This Hotel Development Agreement is between the City of Mansfield, Texas, a home rule municipal corporation ("City"), the Mansfield Economic Development Corporation, a nonprofit Corporation organized under Title 12, Subtitle C1, of the Texas Local Government Code ("MEDC"), and Mansfield Tradition LLC, Texas limited liability company ("MT"). City, MEDC, and MT may sometimes hereafter be referred to individually as a "party" or collectively as the "parties."

RECITALS

WHEREAS, MT has expressed an interest in developing and operating an upscale Courtyard® by Marriott hotel, with conference center facilities, dining area, public improvements and parking lots ("Hotel Project"), on a tract of land located adjacent to Hwy 287 at Heritage Parkway in the City of Mansfield, Texas, more fully described on Exhibit A attached hereto and made a part hereof for all purposes ("Hotel Property"); and

WHEREAS, the intent of the District is to establish quality development standards to ensure the area develops in a manner that provides an attractive appearance and assures consistent compatible land uses within specified design guidelines; and

WHEREAS, City and MEDC desire to provide certain incentives to MT, including a payment of Hotel Occupancy Tax revenues generated from the Hotel to be used to promote tourism in City and the payment of grants to reimburse costs for infrastructure required for the development of the Hotel Project; and

WHEREAS, the City and MEDC are authorized by Article III, Section 52-a of the Texas Constitution and Chapter 380 and 501 of the Texas Local Government Code to provide economic development grants and incentives to promote state and local economic development and to stimulate business and commercial activity in City; and

WHEREAS, the Hotel Project and its operation will attract visitors to the City of Mansfield, thus directly enhancing and promoting tourism as outlined in Chapter 351 of the State of Texas Tax Code; and

WHEREAS, MEDC has determined that the MEDC grants described herein are necessary to promote new or expanded business development, and the Hotel Project constitutes an eligible project under Texas law that will further the objectives of MEDC, will benefit City and City's inhabitants, and will promote local economic development and stimulate business and commercial activity in City; and

WHEREAS, MEDC also desires to provide the MEDC grants described herein to MT pursuant to Chapter 380 of the Texas Local Government Code in consideration of MT bringing the Hotel to City; and

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WHEREAS, City and MEDC have concluded and hereby find that this Agreement promotes economic development in City, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution, by assisting in the development and diversification of the economy of the State of Texas and City, by eliminating unemployment or underemployment in the State of Texas and City, and will enhance business and commercial activity within the State of Texas and City.

NOW, THEREFORE, in consideration of the foregoing, and the mutual promises contained herein, the parties hereby agree as follows:

Section 1. Definitions.

The defined terms in the recitals above shall have the meaning ascribed to them and the following terms shall have the meanings set forth below:

- a. "Affiliate" of MT means any other person directly controlling, or directly controlled by or under direct common control with MT. As used in this definition, the term "control," "controlling" or "controlled by" shall mean the possession, directly, of the power either to (a) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of the Company, or (b) direct or cause the direction of management or policies of the Company, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any lender of the Company or any affiliate of such lender.
- b. "Agreement" means this hotel development agreement, together with all exhibits attached to this Agreement.
- c. "Commencement of Construction" shall mean that (i) the plans for the Hotel Project have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Hotel Project on the Hotel Property; (ii) all necessary permits for the construction of the Hotel Project on the Hotel Property pursuant to the respective plans have been issued by all applicable governmental authorities; and (iii) grading of the Hotel Property for the construction of the Hotel Project has commenced.
- d. "Conference Center Facilities" means a combined minimum of 7,500 square feet of conference/meeting space, prefunction and pool/courtyard located on the first floor of the Hotel, that is to be primarily used to host conferences and meetings.
- e. "Effective Date" means the date this Agreement is fully executed by all the parties.
- f. "Event of Default" means any of the Events of Default set forth in Sections 4 and 5 of this Agreement.
- g. "Force Majeure" means any act that (i) materially and adversely affects the affected party's ability to perform the relevant obligations under this Agreement or delays such affected party's ability to do so, (ii) is beyond the reasonable control of the affected party, (iii) is not due to the

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affected party's fault or negligence, and (iv) could not be avoided, by the party who suffers it, by the exercise of commercially reasonable efforts. "Force Majeure" shall include: (a) natural phenomena, such as storms, floods, lightning and earthquakes; (b) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (c) transportation disasters, whether by ocean, rail, land or air; (d) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected party; (e) fires; (f) epidemics or pandemics where shut-down of construction or the manufacturing of supplies relating thereto has been ordered by a governmental authority; and (g) actions or omissions of a governmental authority (including the actions of the City in its capacity as a governmental authority) that were not voluntarily induced or promoted by the affected party, or brought about by the breach of its obligations under this Agreement or any applicable law or failure to comply with City regulations; provided, however, that under no circumstances shall Force Majeure include any of the following events: (g) economic hardship, unless related to the above; (h) changes in market condition, unless related to the above; (i) any strike or labor dispute involving the employees of the Company or any Affiliate of the Company, other than industry or nationwide strikes or labor disputes; (j) during construction, normal weather conditions which could reasonably be anticipated by experienced contractors operating the relevant location; or (k) the occurrence of any manpower, material or equipment shortages except as set forth in (f) above.

h. "Hotel" means an upscale select service Courtyard® by Marriott hotel or similar nationally recognized hotel approved by City, containing a minimum of 125 rooms and Conference Center Facilities located on the Hotel Property.

i. "Hotel Occupancy Tax" means City's receipt of tax imposed by City pursuant to Chapter 351 of the Texas Tax Code, as amended.

j. "Impositions" mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on MT or the Hotel Property, or any property or any business owned by MT within City.

k. "Project Costs" means the expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred on the Hotel Property, as costs of public works, public improvements, infrastructure, streets and roads, site improvements or other related improvements, plus other costs incidental to those expenditures and obligations.

i. "Project Cost Payment" means amounts paid by MT to fund Project Costs, up to an aggregate maximum of NINE HUNDRED SEVENTY-FIVE THOUSAND & NO/100 DOLLARS (\$975,000.00).

j. "Project Cost Reimbursement" means the amount paid to MT by City to reimburse MT for a Project Cost Payment, up to an aggregate maximum of NINE HUNDRED SEVENTY-FIVE THOUSAND & NO/100 DOLLARS (\$975,000.00).

k. "Sales Director" means a dedicated outside director of sales with demonstrated

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experience.

- l. "Taxable Value" shall mean the appraised value of the Hotel Property, not including personal property, as certified by the Tarrant Appraisal District, or its successor, for a given tax year.
- m. "Temporary Closure Event" means an event of force majeure, casualty, condemnation, or temporary remodeling, causing the Hotel to be temporarily closed.
- n. "Term" means the term of this Agreement as described in Article 2 of this Agreement.

Section 2. Term.

The term of this Agreement shall commence on the Effective Date and shall continue until the parties have fully satisfied all terms and conditions of this Agreement unless sooner terminated as provided herein.

Section 3. Obligations of MT

- a. **Hotel Property.** MT represents and warrants that it is the record owner in fee simple of the Hotel Property or that it will be the record owner in fee simple of the Hotel Property within one hundred and eighty (180) days of the Effective Date.
- b. **Hotel Construction.** MT shall accomplish the Commencement of Construction of the Hotel within three hundred sixty (360) calendar days after the date of the closing on the purchase of the Hotel Property. Once MT commences construction of the Hotel, MT agrees to cause the construction of the Hotel to be diligently completed and agrees not to delay or cease construction of the Hotel except for Force Majeure.
- c. **Hotel Operation.** MT shall operate the Hotel as an upscale Courtyard® by Marriott hotel or similar nationally recognized hotel, which has been approved in writing by City. City shall not unreasonably withhold its approval. Except as otherwise provided herein, MT agrees to continuously operate the Hotel, and the Hotel shall not be used for any purpose, other than as an upscale select service hotel with related amenities, open to the public and serving the adjacent business community, visitors and the citizens of City. Notwithstanding the foregoing, MT shall not be in violation of this subsection if the Hotel is temporarily closed due to a Temporary Closure Event, so long as MT uses commercially reasonable efforts to resume operations at the Hotel within a reasonable time period following such Temporary Closure Event. In cases of temporary closure, MT shall provide notice to City within five (5) working days of such closure and include reasons for closure and the anticipated date Hotel shall resume operation.
- d. **Hotel Brand.** MT understands that the Hotel Occupancy Tax rebate is contingent on the Hotel being operated as an upscale Courtyard® by Marriott hotel or similar nationally recognized hotel brand approved in writing by City. The loss of the brand approved by City without a comparable nationally recognized hotel franchise brand as a replacement will result in termination of this Agreement without further notice or opportunity to cure, and no further payments shall be

paid to MT under Section 4a following the loss of the approved hotel brand.

e. **Sales Director.** MT understands that the payments to MT under Section 4.a. are contingent on MT employing a Sales Director no later than the date the Hotel opens. Failure to employ a Sales Director by the opening date will result in the forfeiture of the right to any payments under Section 4a. After the Hotel opens, if the position of Sales Director becomes vacant, MT shall, within ten (10) calendar days, give City written notice of the vacancy. Failure to fill the position within ninety (90) days after it becomes vacant will result in the forfeiture of the right to any further payments under Section 4a, without further notice or opportunity to cure. MT agrees to provide a written certification to City every one hundred eighty (180) days confirming the continuing employment of the Sales Director as described in this Agreement.

f. **Hotel Occupancy Tax, Tax Return and Records.**

- (1). Throughout the Term of this Agreement, MT shall file a Hotel Occupancy Tax Return with City (in the form attached hereto as **Exhibit B** or in such other form as is approved by City in writing) each quarter, which shall include a copy of the Hotel's Hotel Occupancy Tax report submitted to the State Comptroller or successor agency.
- (2). MT shall keep and maintain accurate records of the consideration and Hotel Occupancy Tax paid by the occupants of each sleeping room in the Hotel. The records maintained by MT shall include, but are not limited to, guest folios, tax exemption certificates, and any original documents such as posting ledgers and rate and stay adjustment reports. These records may be retained in any retrievable digital format and shall be maintained for a period of not less than three (3) years. The records shall be available for inspection upon request by any employee, agent, officer or representative of City at all reasonable times. Any adjustments or allowances made or granted shall be reported to City on a form prescribed by City.
- (3). MT shall keep and maintain accurate records of the use of the Hotel Occupancy Tax paid to MT under Section 4a. MT shall provide City with an annual budget for approval by City in advance, as required by Section 351.101(c) of the Texas Tax Code. MT shall provide to City quarterly reports listing the expenditures made, demonstrating that the Hotel Occupancy Tax paid to MT was used for one or more of the purposes enumerated in Section 351.101 of the Texas Tax Code. MT shall make the records of each expenditure available for inspection and review as required by Section 351.101(d) of the Texas Tax Code.
- (4). The funds from the HOT Payments (as defined, below) shall be deposited in a separate account established for that purpose; shall not be commingled with any other funds; and shall be used only to promote tourism and the conference and hotel industry in accordance with Sections 351.101 and 351.103(c) of the Texas Tax Code.

g. **Project Cost Records.** MT shall keep and maintain accurate records of each Project Cost

Payment, identifying the Project Cost. MT shall provide City information and documents reasonably requested by City to substantiate each Project Cost Payment.

h. Increase in Tax Base and Payment of Taxes. MT shall make capital improvements to the Hotel Property so that the Taxable Value is at least Five Million Dollars (\$5,000,000) for the first full calendar year following the year the Hotel opens and for every tax year thereafter during the Term of this Agreement. Payment of ad valorem taxes shall be made by MT no later than the due date for such taxes without penalty for the year for which the taxes are assessed during the Term of this Agreement.

i. Use of Conference Space. MT agrees to provide City with at least five (5) dates every year when City may utilize the Conference Center Facilities at zero room rental fees. Any tables, chairs, or other equipment owned by MT located at the Hotel and not utilized by other customers/guests will be made available to City at no cost on the dates the City chooses to utilize the Conference Center Facilities. City will be responsible for any other costs. City shall provide at least thirty (30) days' notice before utilization of the Conference Center Facilities. Hotel is under no obligation to provide the Conference Center Facilities to City if an approved event has already been scheduled for the date requested by City.

j. Use of Hotel Rooms. Subject to availability and reasonable advance notice, MT agrees to provide City with twenty (20) room nights every year where City may utilize these room nights. A room night shall be the use of one room per night so that if City utilized all twenty (20) rooms in one night, this would constitute the twenty (20) room nights allotted to City per this section. Notwithstanding the foregoing, on an annual basis, MT shall provide to City by January 31st of each year this Agreement is in effect, certain proposed "blackout dates" which City cannot utilize for purposes of this Section; provided however, the "blackout dates" shall be subject to the mutual agreement of City and MT.

k. Sale or Other Disposition. In the event of any sale or other disposition of all or any part of the Hotel Property (including the Hotel and other improvements), MT shall promptly notify City of such sale or disposition and provide City with a copy of the deed or other instrument pursuant to which the sale or other disposition is made.

Section 4. Obligations of City and MEDC.

a. Payment Based on Hotel Occupancy Tax. Subject to City's timely receipt of Hotel Occupancy Taxes collected at the Hotel and MT's compliance with this Agreement, including Sections 3d, 3e, 3f, and 3g, City shall pay to MT a portion of the Hotel Occupancy Taxes collected at the Hotel for the purpose of managing or supervising programs and activities funded by Hotel Occupancy Taxes ("HOT Payments"). For purposes of calculating the HOT Payments, the first year will commence at the end of the first full month after the Hotel opens for business and will end one year later. MT shall deliver written notice to City acknowledging the date the Hotel is opened for business. The HOT Payments shall be a percentage of the Hotel Occupancy Taxes collected at the Hotel and received by City for each year, as follows:

Year 1 95%

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| Year 2 | 90% |
| Year 3 | 90% |
| Year 4 | 85% |
| Year 5 | 85% |
| Year 6 | 80% |
| Year 7 | 75% |
| Year 8 | 70% |
| Year 9 | 65% |
| Year 10 | 60% |

b. **Source of Payments Based on Hotel Occupancy Tax.** The sole source of the payments to be made by City under Section 4.a. to MT shall be City's hotel occupancy tax fund. It is expressly understood and agreed by City and MT that this Agreement in no way obligates City's general fund monies or any other monies, credits, or property of City or MEDC for the payment of the HOT Payments.

c. **Project Cost Reimbursement.** Subject to receipt of satisfactory evidence in support and appropriate approval of a Project Cost Payment by MEDC, MEDC shall make a payment to reimburse MT for Project Cost Payments within thirty (30) days after MEDC receives evidence of the Project Cost Payment that is reasonably satisfactory to MEDC to establish that it is an approved Project Cost and is eligible for reimbursement under this Agreement.

Section 5. Termination, Offset and Repayment.

a. **Termination.** This Agreement may be terminated upon any one or more of the following:

- (1) by mutual written agreement of the parties; or
- (2) upon written notice by City or MEDC, if:
 - i. any warranty, representation, or statement made or furnished to City by or on behalf of MT under this Agreement was false or misleading in any material respect, at the time made or furnished;
 - ii. MT fails to become the record owner in fee simple of the Hotel Property within one hundred and eighty (180) days of the Effective Date;
 - iii. MT fails to accomplish the Commencement of Construction of the Hotel within three hundred sixty (360) calendar days after the date of the closing on the purchase of the Hotel Property;
 - iv. the dissolution or termination of MT's existence as a going business, appointment of a receiver for all or substantially all of its assets, assignment of all or a substantially all of its assets for the benefit of creditors, or the commencement of any proceeding under bankruptcy or insolvency laws by or against MT, unless such proceedings are dismissed within sixty (60) days after filing;
 - v. MT fails to pay ad valorem taxes to City, the County, or the Mansfield Independent School District on or before the due date for such taxes without

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- vi. penalty of the year following the year for which the taxes are assessed; MT fails to submit Hotel Occupancy Tax reports to City when due, to pay the Hotel Occupancy Tax to City when due, or to pay any penalty or interest on a delinquent payment pursuant to Section 351.004(a)(3) and (4) of the Texas Tax Code;
 - vii. MT fails to increase the Taxable Value of the Hotel Property as required by Section 3h. of this Agreement; or
 - viii. the Taxable Value of the Hotel Property falls below the minimum amount stated in Section 3h. for any tax year during the Term of this Agreement.
- (3) upon written notice by any party, if another party defaults or breaches any of the other terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof; or
 - (4) upon written notice by City or MEDC, if any Impositions owed to City or MEDC become delinquent and such delinquency has not been cured within thirty (30) days after written notice thereof; or
 - (5) upon written notice by any party if any subsequent federal or state legislation or any decision of a court of competent jurisdiction renders this Agreement invalid, illegal, or unenforceable.
- b. Offset.** MT shall not allow the ad valorem taxes owed to City or MEDC on any property owned by MT and located within the City to become delinquent beyond the last day ad valorem taxes can be paid without assessment of penalty. City or MEDC may at its option, and after delivering written notice to MT of its intent to do so, increase any amounts due and payable to City or MEDC under this Agreement to recover any delinquent debt (including taxes) lawfully due to City or MEDC, regardless of whether or not the debt due to City or MEDC has been reduced to judgment by a court.
- c. Repayment.** In the event this Agreement is terminated by City or MEDC pursuant to Sections 4.a.(2)(vii.-viii), MT shall, within 90 days after demand from the City, repay all Project Cost Reimbursements to City or MEDC, as applicable.

Section 6. Indemnification

CITY AND MEDC SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE ACTS OR OMISSIONS OF MT OR ITS CONTRACTORS PURSUANT TO THIS AGREEMENT. MT HEREBY WAIVES ALL CLAIMS AGAINST CITY AND MEDC, THEIR COUNCIL, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO AS THE "CITY REPRESENTATIVES") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE (OTHER THAN THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL ACT OF THE CITY REPRESENTATIVES) ARISING FROM THE ACTS OR OMISSIONS OF MT OR ITS CONTRACTORS PURSUANT TO THIS AGREEMENT. MT DOES HEREBY

INDEMNIFY AND SAVE HARMLESS THE CITY REPRESENTATIVES FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON, OR DAMAGE TO OR LOSS OF PROPERTY ARISING FROM MT'S BREACH OF ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR BY REASON OF ANY WRONGFUL ACT OR OMISSION ON THE PART OF MT OR ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUB-CONTRACTOR(S), LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS IN THE PERFORMANCE OF THIS AGREEMENT (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL ACT OF THE CITY REPRESENTATIVES). NOTWITHSTANDING THE FOREGOING, IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF BOTH THE CITY REPRESENTATIVES AND MT THE RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY REPRESENTATIVES AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. MT'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY COMPANY OR OPERATOR UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

Section 7. Access to Information

Notwithstanding any other provision to the contrary in this Agreement, all information, documents, and communications relating to this Agreement may be subject to the Texas Public Information Act and any opinion of the Texas Attorney General or a court of competent jurisdiction relating to the Texas Public Information Act. In addition to the foregoing sentence, City shall submit to the comptroller the information as required by Texas Local Gov't Code Sec. 380.004, and any other information the comptroller considers necessary to operate and update the database described by Section 403.0246, Government Code. Upon City's or MEDC's request, MT agrees to provide City access to contract documents, invoices, receipts, records, and reports to verify MT's compliance with this Agreement.

Section 8. Governmental Functions and Immunity.

The parties hereby acknowledge and agree that City and MEDC are entering into this Agreement pursuant to their governmental functions and that nothing contained in this Agreement shall be construed as constituting a waiver of their police power, legislative power, or

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governmental immunity from suit or liability, which are expressly reserved to the extent allowed by law. The parties agree that this is not an Agreement for goods or services to City. To the extent a Court of competent jurisdiction determines that City's governmental immunity from suit or liability is waived in any manner, or that this Agreement is subject to the provisions of Chapter 271 of the Texas Local Gov't Code, as amended, City's immunity from suit may be waived only as set forth in Subchapter I of Chapter 271, Texas Local Gov't Code. Further, the parties agree that this Agreement is made subject to all applicable provisions of the Texas Civil Practice and Remedies Code, including but not limited to all defenses, limitations, and exceptions to the limited waiver of immunity from liability provided in Chapter 101 and Chapter 75.

Section 9. General Provisions.

a. **Mutual Assistance.** The parties shall do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

b. **Rights Reserved.** Notwithstanding any provision herein to the contrary, all development on the Hotel Property shall be subject to the assessment, collection, and payment of utility impact fees (water, sewer, drainage, etc.) under applicable City ordinances or state law, as such shall exist or may be amended in the future. Nothing contained in this Agreement shall be deemed or construed to waive or impair the powers and authority of City or under the terms of City's Charter or under applicable law, which are expressly reserved to City for all purposes. Nothing herein affects City's rights as an ad valorem taxing authority.

c. **Section or Other Headings.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

d. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement.

e. **Amendment.** This Agreement may only be amended, altered, or revoked by written instrument signed by the parties.

f. **City Ordinances.** MT shall be subject to all ordinances of City, whether now existing or in the future arising. This Agreement shall confer no vested rights on the Hotel Property unless specifically enumerated herein.

g. **Representations and Warranties.** City, MEDC and MT represent and warrant that they have the requisite authority to enter into this Agreement. MT represents and warrants that it will not knowingly violate any federal, state or local laws in constructing or operating the Hotel.

h. **Successors and Assigns.**

(1) This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

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- (2) MT may assign all or part of its rights and obligations under this Agreement to a non-Affiliate only upon prior written approval of the City and MEDC. However, this Agreement may be assigned by MT to: (i) its Affiliate without consent by City or MEDC, if MT provides City and MEDC with at least forty-five (45) days' prior written notice thereof and such assignee assumes in writing the obligations and liabilities of such transferring Affiliate in a form reasonably approved by City and MEDC; and (ii) to third-parties providing loans to MT as collateral for such loans; provided, however, the assignment of this Agreement as collateral shall not be construed as creating any debt of City, MEDC, or the Board within the meaning of any constitutional or statutory provision, and City, MEDC, and Board shall not be required to subordinate their rights or obligations under this Agreement to any financial institution, or to any other third-party providing loans to MT when mutually agreed upon by Parties pursuant to Article 5 of this Agreement.
- i. **Notice.** Any notices or other communications required or permitted by this Agreement shall be in writing and delivered personally, or by messenger or a nationally recognized overnight courier service, or alternatively, shall be sent by United States certified mail, return receipt requested. The effective date of any notice shall be (i) if by personal delivery, messenger or courier service, the date of delivery of the notice, or (ii) if mailed, on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as undeliverable, as the case may be. The parties hereby designate the addresses set forth below as their respective notice addresses under this Agreement.

MT: Mansfield Tradition, LLC
3021 Ridge Rd., A-120
Rockwall, Texas 75032
Attn: Thomas Kirkland

With a copy to: Lamberth Ratcliffe Covington
1010 W. Ralph Hall Parkway, Suite 100
Rockwall, Texas 75032
Attn: R. Brad Lamberth

CITY: City of Mansfield, Texas
1200 E. Broad Street
Mansfield, Texas 76063
Attn: City Manager

With a copy to: Taylor, Olson, Adkins, Sralla & Elam, LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107
Attn: Bradley A. Anderle

Handwritten initials: JSM

MEDC: Mansfield Economic Development Corp.
301 South Main Street
Mansfield, Texas 76063
Attn: Director

- j. **Interpretation.** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.
- k. **Applicable Law/Venue.** The substantive laws of the State of Texas (and not its conflicts of law principles) govern all matters arising out of, or relating to, this Agreement and all of the transactions it contemplates, including without limitation its validity, interpretation, construction, performance and enforcement. Mandatory and exclusive venue for any action arising out of, or relating to, this Agreement must be in a court of competent jurisdiction in Tarrant County, Texas.
- l. **Severability.** In the event any provision of this Agreement is ruled illegal, invalid, or unenforceable by any court of competent jurisdiction, under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- m. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.
- n. **No Joint Venture.** The provisions of this Agreement are not intended to create, nor will they be in any way interpreted or construed to create a joint venture, partnership, or any other similar relationship between the parties.
- o. **Force Majeure.** If any party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder (other than the payment of money) by reason of Force Majeure, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, provided that the foregoing shall not be applicable to any payment obligation of any party under this Agreement.
- p. **Attorney's Fees.** If any party employs an attorney or attorneys to enforce any of the provisions hereof, or to recover damages for the breach of this Agreement, the non-prevailing party in any final judgment or award agrees to pay the other party all reasonable costs, charges and expenses, including reasonable attorneys' fees and costs of court, expended or incurred in connection therewith.
- q. **Limitation of Liability.** The parties further agree that no party will be liable to any other party under this Agreement for special, consequential (including lost profits), or exemplary

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damages.

- r. **Undocumented Workers.** MT covenants and certifies that it does not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.001(4) of the Texas Government Code.
- s. **City Council Approval.** This Agreement is not valid unless first approved by the City Council of the City of Mansfield.
- t. **Gift to Public Servant.** City may terminate the Agreement immediately if MT has offered or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.
- u. **Texas Boycott Prohibitions.** To the extent required by Texas law, MT verifies that: (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as defined in Texas Government Code § 2274.001, and that it will not during the term of this Agreement discriminate against a firearm entity or firearm trade association; (2) it does not "boycott Israel" as that term is defined in Texas Government Code § 808.001 and it will not boycott Israel during the term of this Agreement; and (3) it does not "boycott energy companies," as those terms are defined in Texas Government Code §§ 809.001 and 2274.001, and it will not boycott energy companies during the term of this Agreement.
- v. **380 Grant Limitations.** Under no circumstances shall the obligations of City or MEDC hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision; provided, however, City and MEDC agree during the Term of this Agreement to make a good faith effort to appropriate funds to pay the grant for this Agreement. Further, City and MEDC shall not be obligated to pay any lienholder, commercial bank, lender, or similar person or financial institution for any loan or credit agreement made by MT. None of the obligations of City or MEDC under this Agreement shall be pledged or otherwise encumbered by MT in favor of any lienholder, commercial bank, lender, or similar person, or financial institution.
- w. **Full Execution Required.** This Agreement will not be binding on any party unless fully executed by all parties.

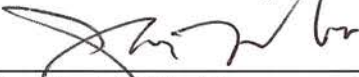
This Agreement was approved by the City Council of the City of Mansfield on the _____ day of _____, 2023.

MANSFIELD TRADITION, LLC,
a Texas limited liability corporation

Thomas Kirkland, Manager,

Date: _____

CITY OF MANSFIELD, TEXAS



~~Joe Smolinski~~, City Manager, of designee *Jason Moore*

Date: 11-7-23

ATTEST:



Susana Marin, City Secretary

**MANSFIELD ECONOMIC
DEVELOPMENT CORPORATION,**
a Texas non-profit corporation

By: 

Name: David Godin

Title: Board President

Date: 11/7/2023

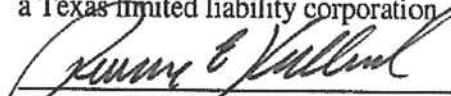
ATTEST:



Board Secretary

fm

MANSFIELD TRADITION, LLC,
a Texas limited liability corporation



Thomas Kirkland, Manager,

Date: 11-7-2023

CITY OF MANSFIELD, TEXAS

Joe Smolinski, City Manager, or designee

Date: _____

ATTEST:

Susana Marin, City Secretary

**MANSFIELD ECONOMIC
DEVELOPMENT CORPORATION,**
a Texas non-profit corporation

By: _____

Name: _____

Title: _____

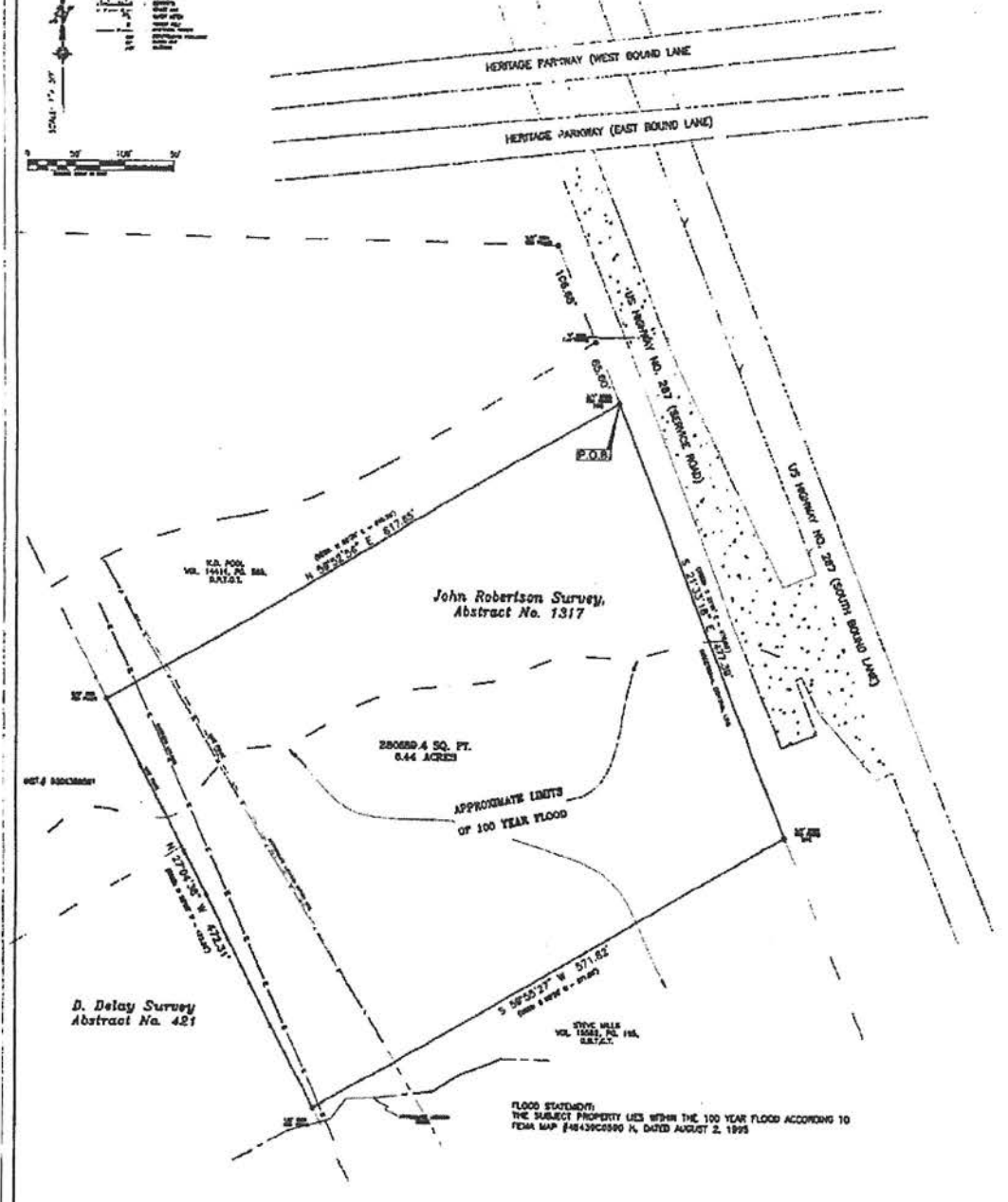
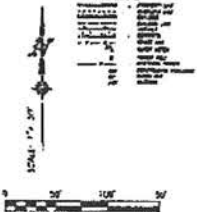
Date: _____

ATTEST:

Board Secretary

SM

LEGEND



D. Delay Survey
Abstract No. 421

John Robertson Survey,
Abstract No. 1317

280689.4 SQ. FT.
6.44 ACRES

APPROXIMATE LIMITS
OF 100 YEAR FLOOD

FLOOD EVIDENCE:
THE SUBJECT PROPERTY LIES WITHIN THE 100 YEAR FLOOD ACCORDING TO
FEMA MAP #48429C0000 K, DATED AUGUST 2, 1995

SURVEY SHOWING
6.44 Acres
on the
D. Delay Survey,
Abstract No. 421, and the
John Robertson Survey,
Abstract No. 1317
Tarrant County, Texas.

MONITOR BRANCH
FRANK BRIDG
ON A S.W. CORNER
P.O. BOX

NOTES AND BOUNDS DESCRIPTION

BEING all that certain lot, tract or parcel of land situated in the D. Delay Survey, Abstract No. 421, and the John Robertson Survey, Abstract No. 1317, Tarrant County, Texas and being that same called 6.50 acre tract of land conveyed to Arnie M. Cogle by deed recorded in Volume 11659, Page 1339 Deed Records, Tarrant County, Texas, and being more particularly described by notes and bounds as follows:

- BEGINNING at a 3/4" steel rod found on the east right-of-way line of U.S. Highway No. 287 (various sixth right-of-way), and 3/4" steel rod being the northwesterly corner of that certain tract of land conveyed to K.C. Pool by deed recorded in Volume 14414, Page 565, Deed Records, Tarrant County, Texas, and the northwesterly corner of said Cogle tract;
- THENCE South 21 degrees 33 minutes 18 seconds East along the west right-of-way line of U.S. Highway No. 287 and the east side line of said Cogle tract a distance of 477.39 feet to a 3/4" iron rod found on the east right-of-way line of U.S. Highway, Steve Mills by deed recorded in Volume 12082, Page 185, Deed Records, Tarrant County, Texas;
- THENCE South 28 degrees 08 minutes 27 seconds West along the common line between said Cogle tract and said Mills tract a distance of 571.82 feet to a 1/2" iron rod found for a corner, being the northwesterly corner of said Mills tract and the southwesterly corner of said Cogle tract;
- THENCE North 27 degrees 04 minutes 30 seconds West generally along a fence line and the westerly line of said Cogle tract a distance of 472.31 feet to a 5/8" iron rod found for a corner, being the southwesterly corner of the aforementioned Pool tract and the northwesterly corner of said Cogle tract;
- THENCE North 58 degrees 52 minutes 55 seconds East along the common line between said Pool tract and said Cogle tract a distance of 517.83 feet to the POINT OF BEGINNING and containing 6.44 acres of land, more or less.

By Robert M. ...
Surveyor
[Signature]



RAM
P.O. Box 100
GROUSE, TEXAS 76037
PHONE (817) 774-6624

500

EXHIBIT A
HOTEL PROPERTY DESCRIPTION

fm

EXHIBIT B

CITY OF MANSFIELD, TEXAS HOTEL OCCUPANCY TAX REPORT