



## ADDENDUM

### TO THE SPECIAL ECONOMIC DEVELOPMENT AGENDA

City Hall - Midwest City Council Chambers, 100 N. Midwest Boulevard

DECEMBER 14, 2021 – 6:03 PM

#### B. DISCUSSION ITEMS.

3. Discussion, consideration and possible action to amend and/or approve a resolution of the Midwest City Economic Development Authority approving that certain “Economic Development Assistance Agreement,” by and between the Midwest City Economic Development Authority and Mathis Oklahoma City, LLC (the “Development Assistance Agreement”); authorizing and directing the execution and delivery of the Development Assistance Agreement for the property located at 7271 SE 29<sup>th</sup> ST; and containing other provisions relating thereto.

MEMORANDUM

To: Honorable Chairman and Trustees

From: Tim Lyon, General Manager/Administrator

Date: December 14, 2021

Subject: Discussion, consideration and possible action to amend and/or approve a resolution of the Midwest City Economic Development Authority approving that certain “Economic Development Assistance Agreement,” by and between the Midwest City Economic Development Authority and Mathis Oklahoma City, LLC (the “Development Assistance Agreement”); authorizing and directing the execution and delivery of the Development Assistance Agreement for the property located at 7271 SE 29<sup>th</sup> ST; and containing other provisions relating thereto. (Economic Development – R. Coleman)

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Mathis Oklahoma City, LLC desires to lease the former JCPenney store, 7271 SE 29<sup>th</sup> ST for a period of not less than 20 years for use as a new, first-quality retail furniture store. The Economic Development Authority proposes committing certain resources and assistance to the project to help alleviate the cost of an extensive and expensive remodeling project.

Please contact Economic Development Director Robert Coleman (405/739-1218) with any question.

Respectfully,



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Tim Lyon, General Manager/Administrator

Attachment: Resolution  
Development Agreement

**RESOLUTION NO. EDA2021-\_\_\_\_\_**

**A RESOLUTION OF THE MIDWEST CITY ECONOMIC DEVELOPMENT AUTHORITY THAT CERTAIN “ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT,” BY AND BETWEEN THE MIDWEST CITY ECONOMIC DEVELOPMENT AUTHORITY AND MATHIS OKLAHOMA CITY, L.L.C. (THE “ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT”); AUTHORIZING AND DIRECTING EXECUTION AND DELIVERY OF THE DEVELOPMENT ASSISTANCE AGREEMENT FOR THE PROPERTY LOCATED AT 7271 SE 29th ST; AND CONTAINING OTHER PROVISIONS RELATING THERETO.**

**WHEREAS**, Mathis Oklahoma City, an Oklahoma Limited Liability Company (hereinafter the “Company”), intends to develop, construct, equip and operate a first quality, retail furniture store at 7271 SE 29<sup>th</sup> Street, also known as a portion of Lot 4 to Town Center Plaza Section 1; and to create approximately 60 new direct jobs with annual wages and benefits equal to or higher than the current average now obtained within Oklahoma County in addition to 20 support positions (hereinafter the “Project”); and

**WHEREAS**, as additional consideration for the Company’s agreement to undertake the Project, the Midwest City Economic Development Authority, an Oklahoma public trust (hereinafter “EDA”), has agreed to provide limited economic development assistance to the Company in connection with the Project, pursuant to the terms and conditions of that certain “Economic Development Assistance Agreement”, dated as of October 12, 2021, by and between the EDA and the Company; and

**WHEREAS**, the Trustees of the EDA have determined that it is in the best interest of the residents of Midwest City, Oklahoma that the Development Assistance Agreement be approved.

**NOW, THEREFORE, BUT IT RESOLVED BY THE CHAIRMAN AND TRUSTEES OF THE MIDWEST CITY ECONOMIC DEVELOPMENT AUTHORITY, AS FOLLOWS:**

**SECTION 1. Approving the Terms and Conditions of the Development Assistance Agreement.** The Trustees of the Midwest City Economic Development Authority hereby approve that certain “Economic Development Assistance Agreement”, dated as of October 12, 2021, by and between the EDA and the Company (“the Development Assistance Agreement”), in substantially the form submitted at this meeting, with such changes as made be hereafter approved by the Chairman of the EDA.

**SECTION 2. Authorizing and Directing Execution and Delivery of the Development Assistance Agreement and All Related Instruments.** The Chairman and the Secretary are hereby authorized and directed to execute and deliver the Development Assistance Agreement and such other instruments as may be necessary or appropriate in order to effectuate the execution and delivery of the Development Assistance Agreement.

PASSED AND APPROVED by the Chairman and Trustees of the Midwest City Economic development Authority this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

MIDWEST CITY ECONOMIC DEVELOPMENT AUTHORITY

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Matthew D. Dukes II, Chairman

{SEAL}

ATTEST:

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Sara Hancock, Secretary

APPROVED as to form and legality this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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Don Maisch, City Attorney

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**7271 SE 29<sup>th</sup> STREET REDEVELOPMENT PROJECT  
ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT**

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By and Between The  
MIDWEST CITY ECONOMIC DEVELOPMENT AUTHORITY

And  
MATHIS BROS. OKLAHOMA CITY, LLC

Dated as of December 14, 2021

# 7271 SE 29<sup>th</sup> STREET REDEVELOPMENT PROJECT

## Table of Contents

		Page
<b>RECITALS</b>		
<b>ARTICLE I</b>	<b>PURPOSE OF AGREEMENT</b>	
Section 1.01	Purpose of Agreement	1
<b>ARTICLE II</b>	<b>REPRESENTATIONS AND WARRANTIES</b>	
Section 2.01	Status of the Company	2
Section 2.02	Inducement to the Company	2
Section 2.03	Full Power and Authority	2
Section 2.04	No Breach	3
Section 2.05	No Litigation	3
Section 2.06	Conflicts of Interest	3
Section 2.07	Status of the Development Authority	3
Section 2.08	Authorization of the Development Authority	3
Section 2.09	No Default	3
Section 2.10	No Further Approvals	3
Section 2.11	No Litigation	4
Section 2.12	Survival of Representations and Warranties	4
<b>ARTICLE III</b>	<b>ACQUISITION OF THE PROJECT FACILITIES, DEVELOPMENT AND CONSTRUCTION OF THE MATHIS RETAIL STORE</b>	
Section 3.01	Scope of Development	4
Section 3.02	Construction Drawings and Related Documents	4
Section 3.03	Construction of Improvements	5
Section 3.04	City and Other Government Permits	5
Section 3.05	Cost of Construction	5
Section 3.06	Rights of Access	5
Section 3.07	Indemnification of the Development Authority	5
Section 3.08	Liability Insurance	6
Section 3.09	Local, State and Federal Laws	6
Section 3.10	Anti-Discrimination During Construction	6
Section 3.11	Taxes, Assessments, Encumbrances and Liens	6
Section 3.12	Reports by the Company	7
Section 3.13	Conditions Preceding Project Development	7
Section 3.14	Acknowledgment, Support and Assistance in Obtaining Governmental Approvals and Incentives.	7
<b>ARTICLE IV</b>	<b>DEVELOPMENT INCENTIVES</b>	
Section 4.01	Reimbursement for Company Expenditures	7

<b>ARTICLE V</b>	<b>USE OF THE PROJECT FACILITIES</b>	
Section 5.01	Covenant for Non-Discrimination	8
Section 5.02	Maintenance Covenants	8
Section 5.03	Effect of Violation of the Terms and Provisions of this Development Assistance Agreement After Completion of Construction; No Partnership	8
<b>ARTICLE VI</b>	<b>EVENTS OF DEFAULTS AND REMEDIES</b>	
Section 6.01	Events of Default	9
Section 6.02	Notices of Default; Remedies	10
Section 6.03	Selective Enforcement	10
Section 6.04	Enforced Delay; Extension of Time of Performance	10
Section 6.05	Non-Liability of Officials, Employees and Agents of the Authority	10
Section 6.06	Non-Liability of Representatives, Employees and Agents of the Company	10
<b>ARTICLE VII</b>	<b>MISCELLANEOUS</b>	
Section 7.01	Development Authority's Obligations Limited	11
Section 7.02	Notices	11
Section 7.03	Amendment	11
Section 7.04	Non-Waiver, Cumulative Remedies	11
Section 7.05	Assignment	11
Section 7.06	Applicable Law	12
Section 7.07	Descriptive Headings	12
Section 7.08	Time of Essence	12
Section 7.09	Binding Effect	12
Section 7.10	Right to Defend	12
Section 7.11	Execution in Counterparts	12
Section 7.12	Trustees' Disclaimer	12
<b>EXECUTION PAGE</b>		13
<b>ACKNOWLEDGEMENTS</b>		14
Appendix "1"	Legal Description of the Project Facilities	

7271 SE 29TH STREET REDEVELOPMENT PROJECT

ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT

THIS ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT, dated as of December 14, 2021 (hereinafter, the “Development Assistance Agreement”), is made and entered into by and between the Midwest City Economic Development Authority, an Oklahoma public trust (hereinafter, the “Development Authority”), and Mathis Bros. Oklahoma City, LLC, an Oklahoma limited liability company (hereinafter, the “Company”).

W I T N E S S E T H:

WHEREAS, the Company intends to develop, construct, equip and operate a quality retail furniture facility (hereinafter, the “Mathis Retail Store”), and desires to locate the activities of such facility within the building located at 7271 SE 29<sup>th</sup> Street, in the Town Center Plaza Shopping Center, Midwest City, Oklahoma, such land and building being more particularly described on Appendix “1” hereto (hereinafter, the “Project Facilities”), and to operate the Project Facilities to serve retail customers living or visiting in and/or near the City of Midwest City, Oklahoma (hereinafter, the “City”); and

WHEREAS, the Company intends to create up to 80 new direct jobs at the Mathis Retail Store, approximately 60 of which it is contemplated will receive salaries and benefits equal to or higher than the current average now obtaining within Oklahoma County; and

WHEREAS, the Company will actively market and promote the Mathis Retail Store within the Oklahoma City metropolitan area in a manner consistent with the Company’s marketing and promotion activities for its other retail locations; and

WHEREAS, marketing activities undertaken by the Company are expected to result in up to 118,000 customers shopping in Town Center Plaza that would not normally visit but for the fact the Mathis Retail Store is operating; and

WHEREAS, the parties wish to set forth the terms under which the Development Authority has agreed to provide development financing assistance and other incentives set forth herein.

IN CONSIDERATION of the mutual covenants and agreement contained herein, the Development Authority and the Company agree as follows:

**ARTICLE I**

**PURPOSE OF THE AGREEMENT**

SECTION 1.01 Purpose of the Agreement.

A. Subject to the terms and conditions provided, the Company hereby agrees:



(i) to lease the Project Facilities on the terms and conditions set forth in that certain [INSERT NAME OF LEASE AGREEMENT], dated November \_\_\_\_, 2021 by and between the Company and Sooner Town Center, LLC (hereinafter, the “Lease”) providing for a lease term of no less than twenty (20) years; and

(ii) to obtain all financing commitments from debt and equity sources as may be necessary to undertake the leasing, renovation, installation and equipping of the Project Facilities as contemplated by the Construction Plans; and

(iii) to cause the design, construction, installation, remodel and equipping of the former JC Penny department store comprising approximately 97,440 square feet located at 7271 SE 29<sup>th</sup> Street in the Town Center Plaza Shopping Center; and

(iv) to operate and manage the Mathis Retail Store for that period set forth herein.

(The undertaking of the foregoing by the Company may be hereinafter referred to as the “Project”.)

B. Subject to the terms hereinafter set forth, the Development Authority hereby agrees to provide development financing assistance and other incentives for the Project as hereinafter set forth.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

SECTION 2.01 Status of the Company. The Company represents it is a limited liability company duly organized and existing under the laws of the State of Oklahoma. The Company is authorized to conduct business in the State of Oklahoma, and is not in violation of any provisions of its articles of incorporation, bylaws, or any other agreement governing the Company, or any law of the State of Oklahoma affecting the Company’s ability to perform under this Development Assistance Agreement.

SECTION 2.02 Inducement to the Company. The Company’s ability to accomplish the Project with development financing assistance from the Development Authority has induced the Company to proceed with the Project and the Company hereby covenants to complete the contemplated improvements to the Mathis Retail Store, which must commence on or before January 1, 2022 and be completed by December 31, 2022.

SECTION 2.03 Full Power and Authority. The Company represents that it has the full power and authority to execute this Development Assistance Agreement and this Development Assistance Agreement shall constitute a legal, valid and binding obligation of the Company in accordance with its terms, and the consent of no other party is required for the execution and delivery of this Development Assistance Agreement by the Company or the consummation of the transactions contemplated hereby.

SECTION 2.04 No Breach. The Company represents that the execution and delivery of this Development Assistance Agreement, the consummation of the transaction contemplated herein, and the fulfillment of or compliance with the terms and conditions of this Development Assistance Agreement are not prevented or limited by or in conflict with, and will not result in a breach of, other provisions of its articles of organization, limited liability company operating agreement or any other agreements, or instruments of whatever nature to which the Company is a party or by which it may be bound, and will not constitute a default under any of the foregoing.

SECTION 2.05 No Litigation. There is not currently any pending action, suit, proceeding or investigation, nor, to the knowledge of the undersigned representative of the Company, is any such action threatened which, if adversely determined, would materially adversely affect the Company or the Project, or impair the ability of the Company to carry on its business substantially as now conducted or result in any substantial liability not adequately covered by insurance.

SECTION 2.06 Conflicts of Interest. The Company warrants that it has not paid or given and will not pay or give any officer, employee, or agent of the City, the Development Authority or any entity thereof, any money or other consideration for obtaining this Development Assistance Agreement. The Company further represents that, to the best of its knowledge and belief, no officer, employee or agent with the City of Midwest City, the Development Authority, or any entity thereof, who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision-making process with regard to the Project, has or will have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project, or in any activity, or benefit therefrom, during or after the term of this Development Assistance Agreement.

SECTION 2.07 Status of the Development Authority. The Development Authority is a duly organized and validly existing public trust under the laws of the State of Oklahoma and as such, is duly constituted authority of the City and an agency of the State of Oklahoma.

SECTION 2.08 Authorization of the Development Authority. The Development Authority is fully empowered to enter into this Development Assistance Agreement and to perform the transactions contemplated thereby and generally to carry out its obligations hereunder and thereunder. The Development Authority has authorized its Chairman, or in his absence, the Vice-Chairman, to execute and deliver the Development Assistance Agreement and all other documentation required to consummate the transaction contemplated herein on behalf of the Development Authority.

SECTION 2.09 No Default. The performance by the Development Authority under this Development Assistance Agreement will not violate any provision or constitute a default under any indenture, agreement, or instrument to which either entity is currently bound or by which it is affected.

SECTION 2.10 No Further Approvals. As of the date of execution hereof, all requisite governmental action for the execution and delivery of this Development Assistance Agreement has occurred and no further consent, approval or authorization by any court, administrative agency or governmental authority is required in connection with the execution and delivery of or

performance under any of the other instruments referred to in this Development Assistance Agreement, except otherwise specifically provided in this agreement.

SECTION 2.11 No Litigation. There is no action, suit, proceeding, inquiry at law or in equity pending or, to the knowledge of the undersigned officer of the Development Authority, threatened, affecting either entity wherein any unfavorable decision, ruling or finding would materially adversely affect such entity's ability to perform under this Development Assistance Agreement or under any other instrument pertinent to the transaction contemplated herein to which such entity is a party.

SECTION 2.12 Survival of Representations and Warranties. All representations and warranties made by the Company and the Development Authority contained herein shall survive the delivery of this Development Assistance Agreement and other instruments described herein and remain in effect through the term of this Development Assistance Agreement.

### ARTICLE III

#### REDEVELOPMENT AND OPERATION OF THE MATHIS RETAIL STORE

SECTION 3.01 Scope of Development. The Project Facilities shall be redeveloped within the general requirements established by the building and zoning codes of the City (hereinafter "Code") and related laws of the State of Oklahoma governing municipal building, planning, zoning and subdivision applicable to the Project Facilities. The Company shall be responsible for the construction, renovation, improvement, equipping, repair and installation, of all public and private improvements in conformance with such requirements, except as may otherwise be provided herein including, but not limited to, the Company's reliance in part on the assistance in development financing provided herein.

SECTION 3.02 Construction Drawings and Related Documents. Prior to the commencement of construction, development work or work in connection with the building or other improvements to the Mathis Retail Store, the Company shall prepare and submit construction drawings, specification and related documents for the initial phase of the Mathis Retail Store (hereinafter, the "Preliminary Construction Plans") to the City for its review pursuant to the Code. Thereafter, if the Company desires to make any substantial or significant changes in the Preliminary Construction Plans, the Company shall submit the proposed changes to the City for approval (as amended, the "Construction Plans"). The Company and its agents shall communicate and consult as frequently with the City as it is necessary to ensure that any modifications to the Preliminary Construction Plans can received prompt and speedy consideration by the City. If any material revisions or corrections of Preliminary Construction Plans shall be required by the City or any government official, agency, department or bureau having jurisdiction or any lending institution involved in financing, the Company and the Development Authority shall cooperate in efforts to develop a mutually accepted alternative.

SECTION 3.03 Construction of Improvements. The Company agrees that all construction, renovation, improvement, equipping, repair and installation in and to the Mathis Retail Store shall be completed in accordance in all material respects with the building and safety codes of the City, and the Construction Plans and related documents as originally approved by the City, or as amended with the approval of the City.

SECTION 3.04 City and Other Governmental Permits. Before commencement of construction, development work or on work in connection with the building or other improvements to the Mathis Retail Store, the Company shall, at its own expense, secure or cause to be secured any and all permits and approvals which may be required by the City and any other governmental agency having jurisdiction as to such construction, development or work. The Development Authority shall cooperate and provide all usual assistance to the Company in assisting in securing these permits and approvals.

SECTION 3.05 Cost of Construction. All costs of the Project shall be borne by the Company, or third parties under contract with the Company to pay such costs.

SECTION 3.06 Rights of Access. For the purpose of ensuring compliance with this Development Assistance Agreement, representatives of the Development Authority shall have the right to access the Project Facilities without charges or fees, during normal construction hours during the period of construction for the purposes of this Development Assistance Agreement, including, but not limited to, the inspection of the work being performed in constructing, renovating, improving, equipping, repairing and installing the Project, so long as the Development Authority and each of its representatives comply with all applicable safety rules and other legal requirements. The Company shall not incur any financial obligation for providing the Development Authority access to the Project Facilities. Said right of access shall be subject to reasonable notice and consent of the Company, which consent shall not be unreasonably withheld. Such representatives of the Development Authority shall carry proper identification, shall insure their own safety, assume the risk of injury, and shall not interfere with construction activities. The Development Authority agrees to cooperate with the Company in facilitating access by the Company to the Project Facilities for construction purposes, provided that the Development Authority shall incur no financial obligations therefor.

SECTION 3.07 Indemnification of the Development Authority and the City. The Company shall defend, indemnify, assume all responsibility for, and hold the Development Authority and the City, its respected elected and appointed officers and employees and agents, harmless from, all costs (including attorney's fees and costs), claims, demands, liabilities and judgments (except those which have arisen from the willful misconduct or negligence of the Development Authority and the City, its officers, employees or agents) for inquiry or damage to property and injuries to persons, including death, relating to any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in the Comprehensive Environmental Response, Compensation and Liability Act; codified at Title 42, Section 9601, et seq. of the United States Code (hereinafter, "CERCLA"), and all amendments thereto, at any place where the Company owns or has control of real property pursuant to the Company's activities under this

Development Assistance Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA to assure, protect, hold harmless and indemnify the Development Authority from liability.

SECTION 3.08 Liability Insurance.

A. The Company shall furnish, or cause to be furnished, to the Development Authority and to the City evidence satisfactory to the Development Authority and to the City that the Company has taken out and maintains during the period set forth in subsection (D) of this Section, a comprehensive general liability policy covering the Mathis Retail Store in the amount of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate with respect to bodily injury and property damage, including contractual liability, and for any occurrence, and One Hundred Thousand Dollars (\$100,000) with respect to property damage. The Company will name the Development Authority and to the City as an "Additional Insured" and include endorsements to the effect that the insurer agrees to notify the Development Authority and the City not less than thirty (30) days in advance of any modification or cancelation thereof.

B. The Company will furnish a certificate of insurance signed by an authorized agent of the insurance carrier setting forth the general provisions of the insurance coverage.

C. The Company shall also furnish, or cause to be furnished, to the Development Authority and the City evidence satisfactory to the Development Authority and the City that any contactor with whom it has contracted for the performance of work on the Project Facilities, or otherwise pursuant to this Development Assistance Agreement, carries workers compensation insurance as required by law at the time of execution of the Agreement.

D. The insurance obligations set forth in this Section shall remain in effect until performance of the obligations in Section 1.01(A) of this Development Assistance Agreement.

SECTION 3.09 Local, State and Federal Laws. The Company shall carry out the provisions of this Development Assistance Agreement in conformity in all material respects with all applicable local, state and federal laws and regulations.

SECTION 3.10 Anti-Discrimination During Construction. The Company, for itself, its successors and assigns, and any contractor with whom the Company has contracted for the performance of work on the Project Facilities, agrees that in the construction, renovation, improvement, equipping, repair and installation of the Project provided for in this Development Assistance Agreement, the Company shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, handicap, national origin or ancestry.

SECTION 3.11 Taxes, Assessments, Encumbrances and Liens. The Company shall pay when due all real estate taxes and assessments on the Project Facilities; provided, however, that nothing herein contained shall be deemed to prohibit the Company from contesting the validity or amounts of any tax assessment, encumbrance or lien, nor to limit the remedies available to the Company in respect thereto.

SECTION 3.12 Reports by the Company; Sales/Use Tax Collections.

A. The agreement with the Project Manager chosen for the Project the Company shall include the following language:

- (i) The General Contractor shall ensure Midwest City sales or use taxes are collected for all material deliveries to the Project where applicable.
  - i. Midwest City's current tax rate is 4.6%, which combined with the State of Oklahoma rate (4.5%) equals 9.1%.
  - ii. Midwest City's Oklahoma Tax Commission code is 5522.

B. Following the issuance of a City Certificate of Occupancy for the Mathis Retail Store, the Company shall provide proof of remitting sales taxes to the Oklahoma Tax Commission ("OTC") (1) for sales occurring at the Mathis Retail Store and (2) for deliveries originating from any Mathis store and delivered within the city limits of the City. The Company shall exercise commercially reasonable efforts to ensure such information shall be transmitted electronically within thirty (30) days of when the OTC report was filed.

SECTION 3.13 Conditions Preceding Project Development. The Company's obligation to perform under this Development Assistance Agreement shall be subject to the following conditions:

- (a) Receipt by the Company of all permits, approvals, and resources necessary to construct and operate the Project on the leased premises in a commercially reasonable manner as intended by the Company; and
- (b) Receipt by the Company of approvals for all Construction Plans in a commercially reasonable manner as intended by the Company.

## ARTICLE IV

### DEVELOPMENT INCENTIVES

SECTION 4.01 Reimbursement for Company Expenditures. The Company estimates that the costs associated with converting the Project Facilities from a department store to a first-quality, modern retail furniture store will range between Five Million and Six Million Dollars (\$5,000,000 to \$6,000,000), and that without development financing assistance from the Development Authority, such costs will make the Project economically infeasible for the Company. To induce the Company to undertake the Project, the Development Authority agrees to reimburse the Company for fifty percent (50%) of all "qualified reimbursable expenditures" made by the Company, up to Three Million Dollars (\$3,000,000), for the remodeling, refurbishing, and improving of the Project Facilities. "Qualified reimbursable expenditures" shall include actual costs for materials and labor used in the alterations, modifications and improvements to the Project Facilities' building, premises and signage. Such reimbursements shall be disbursed annually no earlier than July 1st and no later than July 31st of the year following the year in which such

qualified reimbursable expenditure is incurred, and shall be based upon reports submitted by the Company as outlined in Section 3.13 above; provided, however, that in no case shall the Development Authority reimburse to the Company, in any one fiscal year, more than fifty percent (50%) of the sum of all municipal sales/use taxes remitted to the City by (a) the Mathis Retail Store for taxable sales occurring within the Project Facilities from January 1<sup>st</sup> to December 31<sup>st</sup> in the preceding calendar year, and (b) any other Mathis stores for sales delivered within the city limits of the City from January 1<sup>st</sup> to December 31<sup>st</sup> in the preceding calendar year.

## ARTICLE V

### USE OF THE PROJECT FACILITIES

SECTION 5.01 Covenant for Non-Discrimination. The Company covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any group or group of persons on account of race, color, creed, religion, sex, familial status, marital status, age, handicap, national origin or ancestry in the lease, sublease, transfer, use occupancy, tenure or enjoyment of the Project Facilities, nor shall the Company itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection of employees, vendors and vendees, and the operation of the Project Facilities. The covenant established in this section shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Development Authority, its successors and assigns, and any successor in the interest to the Project Facilities or any part thereof. The covenants contained in this section shall remain for the term of this Development Assistance Agreement.

Section 5.02 Maintenance; Other Operating Covenants.

A. The Company, and all successors and assigns in interest to the Company, shall be obligated to maintain the Mathis Retail Store, and all exterior improvements it is responsible for as defined in the Lease, in a clean and neat condition and in a continuous state of safety and good repair in accordance with the Code.

B. The Company shall use all reasonable efforts to recruit and employ contractors and employees who are located within or near the City, for work done within the Project Facilities; provided, however, that all decisions regarding the selection of such contractors and employees shall remain within the Company's reasonable discretion.

C. The Company shall advertise the location of the Mathis Retail Store as the Company customarily identifies all locations within a given trade area in its marketing materials and methods.

Section 5.03 Effect of Violation of the Terms and Provisions of this Development Assistance Agreement After Final Payment is Disbursed; No Partnership. The Development Authority is deemed the beneficiary of the terms and provisions of this Development Assistance Agreement, for and in its own rights and for the purposes of protecting the interest of the community and other parties, public or private, in whose favor and for whose benefit this

Development Assistance Agreement and the covenants running with the Project Area have been provide. This Development Assistance Agreement shall run in favor of the Development Authority, without regard to whether the Development Authority shall have the right, if this agreement or covenants contained herein are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Development Assistance Agreement and covenants may be entitled. Nothing contained herein shall be construed as creating a partnership between the Company and the Development Authority.

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

SECTION 6.01 Events of Default. The following shall constitute Events of Default hereunder and under each of the instruments executed pursuant to this Development Assistance Agreement:

- (i) Default in payment when due of any amount payable to any party hereto under the terms of this Development Assistance Agreement;
- (ii) Material variance from the approved Preliminary Construction Plans without prior written consent of the Development Authority with regard to any of the materials acquired in connection with the Project or appurtenances thereto, or any other material variance from the Preliminary Construction Plans;
- (iii) Material default by the Company or the Development Authority in the performance or observance of any other covenants contained in this Development Assistance Agreement (other than those contemplated in subparagraph (i) above), or any other instrument executed pursuant to this Development Assistance Agreement, or under the terms of any other instrument delivered to the Development Authority in connection with this Development Assistance Agreement, including, without limitation, the falsity or breach of any representation, warranty or covenant;
- (iv) Any representation, statement, certificate, schedule or report made or furnished by the Development Authority to the Company or made or furnished by the Company to the Development Authority with respect to the matters and transactions covered by this Development Assistance Agreement, which proves to be false or erroneous in any material respect at the time of its making or any warrant of a continuing nature which ceases to be complied with in any material respect and the defaulting party fails to take or cause to be taken corrective measures satisfactory to the other party within thirty (30) days after written policy by the Authority; or
- (v) The initiation of bankruptcy or receivership proceedings by or against the Company and the pendency of such proceedings for sixty (60) days.



SECTION 6.02 Notice of Default; Remedies.

A. Each party hereto shall provide the defaulting party with notice and thirty (30) days opportunity to cure any Event of Default described in Section 6.01(ii) through (v).

B. Upon the failure of either party to cure any Event of Default to the other party's satisfaction within the applicable period of the time described in Section 6.01(A), the non-defaulting party may, at its option, proceed simultaneously or selectively and successively to enforce its rights under the Development Assistance Agreement executed pursuant to the terms hereof, of any one or all of them.

C. Notwithstanding anything herein to the contrary, the Company shall not be liable to the Development Authority for any losses, claims or damages in excess of the development incentives, reimbursements or any other proceeds received by the Company hereunder, which arise out of, or in any way related to, the transactions described under this Development Assistance Agreement, regardless of whether such losses, claims or damages arise pursuant to the Company's indemnity obligations, negligence (whether such negligence be sole, joint and/or concurrent, active or passive), gross negligence, strict liability, contractual, breach of warranty, or any other theory of legal liability.

SECTION 6.03 Selective Enforcement. In the event that either party shall elect to selectively and successfully enforce its rights under any of the aforementioned documents, such action shall not be deemed a waiver of any default under this Development Assistance Agreement.

SECTION 6.04 Enforced Delay; Extension of Times of Performance.

A. In addition to specific provisions of this Development Assistance Agreement, performance by any party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Development Assistance Agreement shall be extended, where the party seeking the extension has acted diligently and delays or defaults are due to events beyond the reasonable control of the party such as, but not limited to: insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; publicly mandated restrictions including quarantines enforced as result of epidemics; freight embargoes; invasion; lack of transportation; litigation; unusually severe weather; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform.

B. Times of Performance and other sections of this Development Assistance Agreement may be amended in writing by mutual agreement of the Development Authority and the Company.

SECTION 6.05 Non-Liability of Officials, Employees and Agents of the Development Authority. No official, employee or agent of the Development Authority shall be personally liable to the Company, or any successor in interest, pursuant to the provisions of this Development Assistance Agreement, for any default or breach by the Development Authority.

SECTION 6.06 Non-Liability of Representatives, Employees and Agents of the Company. No representative, employee or agent of the Company shall be personally liable to the Development Authority, or any successor in interest, pursuant to the provisions of this Development Assistance Agreement, for any default or breach by the Company.



- B. There is an assignment of the Midwest City Mathis Store to a similar operator for a similar purpose as approved by the Authority sixty (60) days in advance of the assignment. Such approval shall not be unreasonably withheld.
- C. The Company may assign the Agreement without consent of the Authority anytime but shall notify the Authority ten (10) days prior to the event, which shall result in the immediate termination of all incentives due as described in Article IV of this Agreement.

SECTION 7.06 Applicable Law. This Development Assistance Agreement and the documents issued and executed hereunder shall be deemed to be a contract made under the laws of the State of Oklahoma and shall not be construed to constitute the Development Authority as a joint venture with the Company or to constitute a partnership among parties. The parties further agree that all proceedings arising in connection with this Development Assistance Agreement shall be filed and tried only in the Oklahoma or United States courts located in Oklahoma County, OK.

SECTION 7.07 Descriptive Headings. The descriptive headings of the articles and sections of this Development Assistance Agreement are for convenience only and shall not be used in the construction of the terms hereof.

SECTION 7.08 Time of Essence. Time is of the essence in the performance of this Development Assistance Agreement.

SECTION 7.09 Binding Effect. This Development Assistance Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal representatives and assigns.

SECTION 7.10 Attorneys Fees. In the event either party should seek to enforce this Agreement, the prevailing party shall be entitled to such court costs and attorney's fees as the court deems reasonable.

SECTION 7.11 Counterparts. This Agreement may be executed separately in counterparts, and a facsimile or PDF signature shall be as good as an original signature. Counterparts shall have the same force and effect as if executed at the same time in one place.

SECTION 7.12 Trustees' Disclaimer. This instrument is executed by the authorized representatives of the Midwest City Economic Development Authority in their official capacities. By the execution hereof all parties agree that, for the payment of any claim or the performance of any obligations hereunder, resort shall be had solely to the specific assets of the respective authorities described herein and no trustee or officer of the Development Authority shall be held personally liable therefore.

IN WITNESS WHEREOF, the Development Authority and the Company have caused this instrument to be duly executed this \_\_\_\_ day of December, 2021.

MIDWEST CITY ECONOMIC DEVELOPMENT AUTHORITY

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Chairman

(SEAL)  
ATTEST:

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Secretary

MATHIS BROS. OKLAHOMA CITY, LLC



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David Burrage, Manager



APPENDIX "1"

LEGAL DESCRIPTION OF THE PROJECT FACILITIES

The Project Facilities consist of certain land, buildings and other improvements situated at 7271 SE 29<sup>th</sup> Street, in the Town Center Plaza Shopping Center, Midwest City, Oklahoma, and more particular described as follows:

A Part of Outparcel 4, Town Center Plaza Section 1, to the City of Midwest City, Oklahoma