



## CITY COUNCIL AGENDA



**THE CITY OF MIDWEST CITY COUNCIL**  
**SPECIAL MEETING AGENDA**

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

April 20, 2017 – 5:30 PM

Special Assistance requests – [tcoplen@midwestcityok.org](mailto:tcoplen@midwestcityok.org) or 739-1002. (Please provide no less than 24 hours' notice) Special assistance request during a meeting call 739-1388.

A. CALL TO ORDER.

B. DISCUSSION ITEMS.

1. Discussion and consideration of a resolution approving, consenting and agreeing to an amendment to the Trust Indenture of the Midwest City Memorial Hospital Authority, a public trust, as contained in the amended and restated trust indenture, and accepting beneficial interest in the trust. (Presentation By Dan McMahan, Representing the City of Midwest City, OK.)
2. Discussion and consideration of 1) approving and entering into an Economic Development Agreement with Midwest City Warren Theatre, Inc. and the City of Midwest City in the approximate amount of \$11,100,000 and other good and valuable consideration, to establish the terms and conditions under which the parties will participate in the development of approximately 16.6233 acres located on the northwest corner of Buena Vista Avenue and SE 15th Street; and 2) and authorizing the Mayor and/or the City Manager to enter into such other agreements and execute such other documents as may be necessary or appropriate to effect the provisions of the Agreement. (City Manager - G. Henson)
3. Discussion and consideration of 1) approving and entering into an Economic Development Agreement with Sooner Investment Group, Inc. and the City of Midwest City in the approximate amount of \$3,800,000 and other good and valuable consideration, to establish the terms and conditions under which the parties will participate in the purchase and in redevelopment of approximately 14.5 acres located on the north side of SE 15th Street between South Sooner Road and Buena Vista Avenue; and 2) and authorizing the chairman and/or the general manager/administrator to enter into such other agreements and execute such other documents as may be necessary or appropriate to effect the provisions of the Agreement. (City Manager - G. Henson)

C. ADJOURNMENT.



**City Manager's Office**  
100 N. Midwest Boulevard  
Midwest City, OK 73110  
Office: (405) 739-1207  
[ghenson@midwestcityok.org](mailto:ghenson@midwestcityok.org)  
[www.midwestcityok.org](http://www.midwestcityok.org)

## MEMORANDUM

To: Honorable Mayor and Midwest City Council

From: City Manager Guy Henson

Date: April 20, 2017

Subject: Discussion and consideration of a resolution approving, consenting and agreeing to an amendment to the Trust Indenture of the Midwest City Memorial Hospital Authority, a public trust, as contained in the amended and restated trust indenture, and accepting beneficial interest in the trust. (Presentation By Dan McMahan, Representing the City of Midwest City, OK.)

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During the April 11, 2017, meeting there was discussion concerning the effectiveness of the Midwest City Memorial Hospital Authority Trust Indenture as it applied to the development financing agreements proposed with Sooner Investment Group, Inc. and Midwest City Warren Theatre, Inc. Special counsel Dan McMahan recommended an amendment to the Indenture prior to signing the agreements. He advised the amendment was necessary to reflect changes to Oklahoma Statutes and the Oklahoma Constitution that have occurred since the Indenture was last amended on April 7, 1998.

The Midwest City Chamber of Commerce Executive Board met on April 17<sup>th</sup>, 2017, and unanimously recommended approval of the revisions proposed in the amendment. Its approval was subsequently confirmed by a majority of the governing board.

Staff recommends approving the resolution as presented.

Respectfully,

  
J. Guy Henson, City Manager

Attachments: Resolution  
Proposed Amendment  
Current MCMHA Trust Indenture

FIRST AMENDMENT TO  
AMENDED AND RESTATED TRUST INDENTURE OF THE  
MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY

WHEREAS, on April 8th, 1998, that certain "Amended and Restated Trust Indenture" (hereinafter, the "Amended Trust Indenture") of the Midwest City Memorial Hospital Authority (hereinafter, the "Authority") was adopted amending the original Trust Indenture of the Authority dated July 1st, 1961, for the use and benefit of the City of Midwest City, Oklahoma (the "Beneficiary"); and

WHEREAS, the City Council of the Beneficiary and the Trustees of the Authority now desire to amend said Amended Trust Indenture to clarify the purposes for which the Authority may act, and the powers it may utilize in doing so.

NOW, THEREFORE, pursuant to the authority of the Trustees of the Authority and the City Council of the Beneficiary, and with the consent of the Trustor, the Midwest City Chamber of Commerce, the Amended Trust Indenture is hereby amended, as follows:

SECTION 1. Paragraph 1(f) of Article III of said Amended Trust Indenture is hereby amended in its entirety, to read as follows:

"(f) To perform any other authorized and proper essential governmental function or act permitted by law to be performed by public trusts in the State of Oklahoma, including without limitation, to assist the Beneficiary, the United States, the State of Oklahoma, its municipalities, agencies, private entities and citizens in (i) promoting economic and community development, within and without the territorial limits of the City; (ii) developing additional employment which will benefit and strengthen the economy of the City; (iii) developing or redeveloping areas determined by the Beneficiary to be unproductive, undeveloped, underdeveloped or blighted; (iv) fostering an improved economic climate within the Beneficiary; and (v) otherwise promoting the general welfare and prosperity of the Beneficiary, all in order to achieve maximum utilization of the Beneficiary's human, economic and natural resources; and without restriction, in furtherance of the foregoing general objectives, to utilize the following specific powers or purposes, to-wit:

(1) by promoting, financing and developing any and all public works projects or facilities of any type or description including, but not limited to, those for water, sewer, solid waste, natural gas or other public utilities of any type or description;

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The foregoing First Amendment to Amended and Restated Trust Indenture was approved by the City Council of the City of Midwest City, Oklahoma on the \_\_\_\_ day of April, 2017.

CITY OF MIDWEST CITY, OKLAHOMA

ATTEST:

BY: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

(SEAL)

Approved as to form and legality this \_\_\_\_ day of April, 2017.

\_\_\_\_\_  
City Attorney

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The foregoing First Amendment to Amended and Restated Trust Indenture was approved by the Board of Directors of the Midwest City Chamber of Commerce on the 18<sup>th</sup> day of April, 2017.

ATTEST:

BY: \* Daniel Rose  
President

Bonnie Chaturvedi  
Secretary



**Midwest City Chamber of Commerce  
Executive Board of Directors Meeting Minutes  
April 17, 2017**

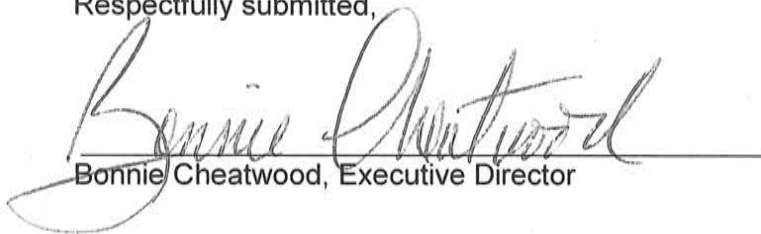
The Midwest City Chamber of Commerce Executive Board met at the Chamber office. The meeting was called to order at 1:35 p.m. Present: President Danita Rose, President-Elect Cliff Aldridge, James Finch, Dr. Jeanie Webb, Mike Kloiber, Wade Moore, Bonnie Cheatwood, City Manager Guy Henson, Economic Development Director Robert Coleman, and the City's legal counsel Dan McMahan. Not present: Randy Smith and Pam Teply.

**FIRST AMENDMENT TO THE AMENDED AND RESTATED TRUST INDENTURE OF THE MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY:** The Midwest City Chamber is Trustor of the Authority, The City Council are the Trustees, and the City is the Beneficiaries. The City Council of the Beneficiary and the Trustee of the Authority is performing a house keeping measure that updates the Trust Indenture as is relates to Economic and Community Development permitted by State Law. The amendment will allow for future economic development projects to promote and foster the general welfare and prosperity of the Beneficiaries. City Manager Guy Henson presented the amendment.

Because of a time sensitive project and the need for a special Council Meeting to be called on Thursday, April 20, 2017, a recommendation was made by Executive Board Member M. Kloiber for a call for a vote electronically by the entire active Board of Directors.

**Action:** The motion was made by M. Kloiber and seconded by J. Finch to approve the First Amendment to the Amended and Restated Trust Indenture of the Midwest City Memorial Hospital Authority. Motion carried.

Respectfully submitted,

  
Bonnie Cheatwood, Executive Director

  
Date Approved

**Midwest City Chamber of Commerce  
Board of Directors Meeting Minutes  
April 18, 2017**

The Midwest City Chamber of Commerce Active Board of Directors were presented the following information electronically at the request of the Executive Board, who met at the Chamber office on April 17, 2017.

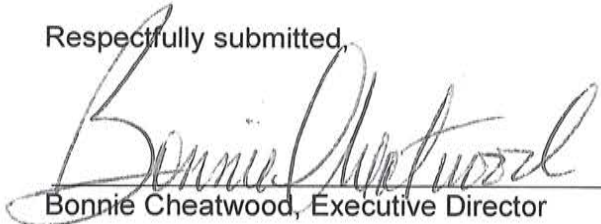
Present at the Executive Board meeting: President Danita Rose, President-Elect Cliff Aldridge, James Finch, Dr. Jeanie Webb, Mike Kloiber, Wade Moore, Bonnie Cheatwood, City Manager Guy Henson, Economic Development Director Robert Coleman, and the City's legal counsel Dan McMahan. Not present: Randy Smith and Pam Teply. City Manager Guy Henson presented the amendment.

The Midwest City Chamber is Trustor of the Authority, The City Council are the Trustees, and the City is the Beneficiaries. The City Council of the Beneficiary and the Trustee of the Authority is performing a house keeping measure that updates the Trust Indenture as is relates to Economic and Community Development permitted by State Law. The amendment will allow for future economic development projects to promote and foster the general welfare and prosperity of the Beneficiaries.

See attached amendment.

**Action:** The motion was made by J. Chappel and seconded by R. Epley to approve the First Amendment to the Amended and Restated Trust Indenture of the Midwest City Memorial Hospital Authority. Motion carried.

Respectfully submitted,

  
Bonnie Cheatwood, Executive Director

4-18-19  
Date Approved

FIRST AMENDMENT TO  
AMENDED AND RESTATED TRUST INDENTURE OF THE  
MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY

WHEREAS, on April 8th, 1998, that certain “Amended and Restated Trust Indenture” (hereinafter, the “Amended Trust Indenture”) of the Midwest City Memorial Hospital Authority (hereinafter, the “Authority”) was adopted amending the original Trust Indenture of the Authority dated July 1st, 1961, for the use and benefit of the City of Midwest City, Oklahoma (the “Beneficiary”); and

WHEREAS, the City Council of the Beneficiary and the Trustees of the Authority now desire to amend said Amended Trust Indenture to clarify the purposes for which the Authority may act, and the powers it may utilize in doing so.

NOW, THEREFORE, pursuant to the authority of the Trustees of the Authority and the City Council of the Beneficiary, and with the consent of the Trustor, the Midwest City Chamber of Commerce, the Amended Trust Indenture is hereby amended, as follows:

SECTION 1. Paragraph 1(f) of Article III of said Amended Trust Indenture is hereby amended in its entirety, to read as follows:

“(f) To perform any other authorized and proper essential governmental function or act permitted by law to be performed by public trusts in the State of Oklahoma-, including without limitation, to assist the Beneficiary, the United States, the State of Oklahoma, its municipalities, agencies, private entities and citizens in (i) promoting economic and community development, within and without the territorial limits of the City; (ii) developing additional employment which will benefit and strengthen the economy of the City; (iii) developing or redeveloping areas determined by the Beneficiary to be unproductive, undeveloped, underdeveloped or blighted; (iv) fostering an improved economic climate within the Beneficiary; and (v) otherwise promoting the general welfare and prosperity of the Beneficiary, all in order to achieve maximum utilization of the Beneficiary’s human, economic and natural resources; and without restriction, in furtherance of the foregoing general objectives, to utilize the following specific powers or purposes, to-wit:

(1) by promoting, financing and developing any and all public works projects or facilities of any type or description including, but not limited to, those for water, sewer, solid waste, natural gas or other public utilities of any type or description;



(2) by promoting, financing and developing commercial and industrial projects or facilities including, without limitation, offices, warehouses, retail and wholesale marketing facilities, motel and hotel establishments and restaurants; and

(3) by promoting financing and developing recreational, sports, cultural, tourism, entertainment and communication media projects or facilities.

SECTION 2. A new Paragraph 4 shall be added to Article VII of said Amended Trust Indenture which shall read, in its entirety, as follows:

(4) The Trustees hereof shall further have the right, power, duty, authority, discretion and privilege to exercise, for the benefit of the Beneficiary, those powers (including the power of eminent domain) as authorized by the economic, industrial or community development statutes of the State of Oklahoma, including, without limitation, the Local Development Act, the Local Industrial Development Act, and the Neighborhood Redevelopment Act, all as may be amended and supplemented from time to time.

The foregoing First Amendment to Amended and Restated Trust Indenture was approved by the Trustees of the Midwest City Memorial Hospital Authority on the \_\_\_\_ day of April, 2017.

MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY

(SEAL)  
ATTEST:

BY: \_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary

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The foregoing First Amendment to Amended and Restated Trust Indenture was approved by the City Council of the City of Midwest City, Oklahoma on the \_\_\_\_ day of April, 2017.

CITY OF MIDWEST CITY, OKLAHOMA

ATTEST: BY: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

(SEAL)

Approved as to form and legality this \_\_\_\_\_ day of April, 2017.

\_\_\_\_\_  
City Attorney

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The foregoing First Amendment to Amended and Restated Trust Indenture was approved by the Board of Directors of the Midwest City Chamber of Commerce on the \_\_\_\_ day of April, 2017.

ATTEST: BY: \_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

ACCEPTANCE OF BENEFICIAL INTEREST

Pursuant to Resolution No. \_\_\_\_\_ duly adopted by its City Council, the City of Midwest City, Oklahoma, hereby accepts the beneficial interest in the trust created by the within and foregoing Amended and Restated Trust Indenture, as modified by that certain "First Amendment to Amended and Restated Trust Indenture", in all respects in accordance with the terms of said Amended and Restated Trust Indenture.

CITY OF MIDWEST CITY, OKLAHOMA

ATTEST:

BY: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

(SEAL)

Approved as to form and legality this \_\_\_\_\_ day of April, 2017.

\_\_\_\_\_  
City Attorney



SOS



11800580002

AMENDED AND RESTATED  
TRUST INDENTURE

KNOW ALL BY THESE PRESENTS:

THIS AMENDMENT AND RESTATEMENT OF THE ORIGINAL TRUST INDENTURE dated as of the 1st day of July, 1961, hereinafter referred to as the "Original Trust Indenture," by the MIDWEST CITY CHAMBER OF COMMERCE, a corporation duly organized under the laws of the State of Oklahoma, hereinafter referred to as the "Trustor," and ORIN A. KIMBALL, CLAUDE R. RIGSBY, TOM C. PLEDGER, LLOYD A. SCHANTZ and FRED D. RYAN, JR., being citizens and residents of Midwest City, comprising the then-City Council of the City of Midwest City, Oklahoma, as trustees of this Trust,

W I T N E S S E T H:

THAT in consideration of the payment by the Trustor to the Trustees of the sum of one dollar (\$1), receipt of which was then acknowledged, the mutual covenants set forth in the Original Trust Indenture and other valuable consideration, the Trustees agreed to hold, manage, invest, assign, convey and distribute as provided, authorized and directed in the Original Trust Indenture such property as the Trustor, or others, may have from time to time assigned, transferred, leased, conveyed, given, bequeathed, devised or delivered unto this Trust to have and to hold such property and the proceeds, rents, profits and increases thereof in trust, for the use and benefit of the City of Midwest City, Oklahoma, hereinafter referred to as the "Beneficiary," and upon the following terms and conditions:

ARTICLE I  
CREATION OF TRUST

(1) This Trust was originally formed to create and establish a trust for the use and benefit of the Beneficiary to finance, operate, construct and administer hospital facilities, and for the public purposes set forth in the Original Trust Indenture, under the provisions of Title 60, Oklahoma Statutes 1951, Sections 176 to 180, inclusive, as amended by Title 60, Chapter 4, Oklahoma Sessions Laws 1953, the Oklahoma Trust Act and other applicable statutes of the State of Oklahoma. This Trust is now amended under the provisions of Oklahoma Statutes, Title 60, Chapter 4, Trusts for Furtherance of Public Functions, the Oklahoma Trust Act and any other law written specifically to create or govern the affairs of a public trust (together, as amended, the "Acts") to create and establish a trust for the use and benefit of the Beneficiary to finance, operate, construct and administer hospital facilities, and for the public purposes set forth in the Acts and the Original Trust Indenture.

(2) This Trust was not created and shall not be operated for pecuniary profit, nor shall it have any power to issue certificates of stock or declare dividends. No part of its net earnings shall inure to the benefit of or be distributable to any member, Trustee, officer or individual, except that this Trust shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and



distributions in furtherance of this Trust's purposes as set forth in this Amended Trust Indenture.

## ARTICLE II

### NAME OF TRUST

The name of this Trust shall be "MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY," hereinafter referred to as this "Trust." The Trustees shall conduct all business and execute all instruments, and otherwise perform the duties and functions required in the execution of this Trust.

## ARTICLE III

### PURPOSES OF TRUST

(1) The purposes of this Trust are:

(a) To furnish and supply to the inhabitants, owners and occupants of property, and to industrial, commercial and mercantile establishments and enterprises within the corporate limits of the Beneficiary and in territory in reasonably convenient proximity thereto, and to the Beneficiary and any other governmental agencies or endeavors, services and facilities for the conservation and implementation of the public welfare and protection and promotion of public health, for all purposes that the same be authorized and proper as a function of the Beneficiary; and to fix, demand and collect charges, rates and fees for any services

and/or facilities provided to the same extent as the Beneficiary itself might do provided that the furnishing of any services or facilities to any person delinquent in the payment of any indebtedness whatsoever to this Trust may be discontinued at any time; for the furtherance of the greater convenience and welfare of the Beneficiary and the inhabitants thereof, to provide and/or to aid in providing and/or to participate in providing to the United States of America, the State of Oklahoma, the Beneficiary, the county or counties in which the Beneficiary is located, the school district and/or districts included, in whole or in part, within the limits of the Beneficiary, and/or any agency or instrumentality of any of them, or to any one or more of them, facilities and/or services of any and/or all kinds necessary or convenient for the authorized and proper functioning thereof; and to hold, maintain and administer any leasehold rights in and to properties of the Beneficiary demised to this Trust, and to comply with the terms and conditions of any lease providing said rights;

(b) To acquire by lease, purchase or otherwise, and to hold, construct, install, equip, repair, enlarge, furnish, maintain and operate, or otherwise deal with, any and all physical properties and facilities necessary or convenient for utilization in .

executing or promoting this Trust's purposes, or any of them; to lease, rent, furnish, provide, relinquish, sell or otherwise dispose of, or otherwise make provision for, any or all of said properties and facilities either in execution of any of this Trust's purposes or in the event that any of this Trust's purposes or in the event that any of this Trust's physical properties and facilities shall no longer be necessary or convenient to execute or promote this Trust's purposes;

(c) To provide funds for the cost of financing, acquiring, constructing, purchasing, equipping, maintaining, repairing, improving, extending, enlarging, remodeling, operating and administering any or all of this Trust's services, buildings and facilities, and all properties necessary or convenient for executing and fulfilling this Trust's purposes, and all other charges, costs and expenses necessarily incurred in connection therewith and, in so doing, to incur indebtedness, either unsecured or secured by all or any part of the Trust Estate and its revenues;

(d) To expend all funds coming into this Trust as revenue or otherwise for the payment of any indebtedness incurred by this Trust, and in the payment of the aforesaid costs and expenses, and in payment of any other obligation properly chargeable against the Trust

Estate, and to distribute the residue and remainder of such funds to the Beneficiary upon termination of this Trust in accordance with Article IX of this Amended Trust Indenture. The only funds of this Trust to which the previous provisions of this subparagraph shall not apply are those in the principal amount of approximately \$46 million, hereinafter referred to as the "Principal," that came into this Trust as a result of the lease and/or sale of this Trust's real and personal property. The Principal and all capital gains and all income of any nature or kind earned from the Principal and all previous years' capital gains and all income of any nature or kind earned from the Principal shall hereinafter be referred to as the "Compounded Principal." The Compounded Principal, less and except two percent (2%) of the market value of the Compounded Principal as of June 30 each year, shall be segregated and set apart, and shall not be spent for any reason except in the event that (1) the lease of the real property to Health Management Associates, Inc. and Midwest City HMA, Inc. terminates prematurely prior to the end of the lease and this Trust regains the operation and control of the leased property; or (2) an affirmative vote of a majority of the electors in the city of Midwest City expressed during a public election, duly called as required by law, authorizes an

expenditure of all or any portion of the Compounded Principal for a specific public or governmental purpose or purposes and authorized and proper Trust function indicated on the ballot submitted at such an election. The two percent (2%) of the market value of the Compounded Principal excluded from the Compounded Principal each year, hereinafter referred to as the "Discretionary Funds," shall be available for distribution each year as grants, for other expenditures and/or to be otherwise designated at the Trustees' sole discretion, subject to the restriction contained in this Amended Trust Indenture. The Trustees may distribute or expend all or any portion of the Discretionary Funds as the Trustees may deem prudent or may make no distribution or expenditure of the Discretionary Funds at all. Undesignated Discretionary Funds shall be accumulated for use in subsequent years, provided grants from the Discretionary Funds are used for authorized and proper functions of the Beneficiary and follow the required channel of grant applications as set out in this Amended Trust Indenture;

(e) To seek, request, apply for and receive grants, gifts and donations, either in money or property, from any individual, entity, agency, corporation or organization by gift, devise, bequest or otherwise, absolutely or in trust, and to use the



principal and/or income from them, as may be directed by the grantor of the funds or property, in the furtherance of any authorized and proper essential governmental function; and

(f) To perform any other authorized and proper essential governmental function or act permitted by law to be performed by public trusts in the state of Oklahoma.

(2) (a) In no event shall any of the funds or property of this Trust be used for or to replace or supplant any existing recurring operating expenses or personal property needs of the Beneficiary or any other entity other than this Trust. This shall not preclude the Beneficiary or any other entity from requesting that this Trust make a grant or expenditure of funds or property from this Trust for initial or single occurrence expenses or projects. "Recurring operating expenses or personal property needs" shall be expenses or personal property needs such as maintenance or upkeep costs, supplies, salaries, wages, salary or wage adjustments, bonuses and general operating costs.

(b) Grants for the acquisition of, improvement to or enhancement of property shall be limited to properties or improvements or enhancements to properties that have an expected useful life of greater than twenty (20) years.

#### ARTICLE IV

##### DURATION OF TRUST

This Trust shall exist for so long as the Beneficiary exists and until such time as its purposes shall have been fulfilled, or until it shall be terminated as hereinafter provided.

#### ARTICLE V

##### THE TRUST ESTATE

The Trust Estate shall consist of:

(1) The funds and property, and any income therefrom, except the Compounded Principal:

(a) Presently owned by this Trust or to be acquired or constructed by this Trust; and

(b) Dedicated by the Trustor and others to be used for this Trust's purposes;

(2) Any and all money, property, contracts, leases, licenses, franchises, benefits and all other things of value coming into the possession of this Trust pursuant to the provisions of this Amended Trust Indenture; and

(3) Any and all money and leasehold rights remised to this Trust by the Beneficiary as authorized and empowered by law.

## ARTICLE VI

### THE TRUSTEES

(1) The Trustees of this Trust shall be the same persons who are the Mayor and members of the City Council, or any successor governing body that may replace the Mayor and City Council in the future, of the Beneficiary, hereinafter and previously referred to as the "Trustees" or, interchangeably, as this "Trust," and shall remain as Trustees until such person or persons shall have been succeeded and replaced by some other person or persons as Mayor and members of the City Council of the Beneficiary, and such latter person or persons shall without any further act or deed automatically become Trustees of this Trust. To assist the Trustees in their administration of this Trust, there shall be an advisory board which shall be known as the Trust Board of Grantors, hereinafter referred to as the "Board," and which shall consist of nine members. The Trustor shall appoint two members of the Board and the Trustees shall appoint seven members of the Board. The Board shall perform various functions assigned to it by the Trustees including accepting and reviewing grant applications. All funds expended from the Discretionary Funds shall be processed through the Board by the grant application process except those determined by the Trustees to be necessary for the administration of this Trust. The Board will send its funding recommendations to the Trustees. In the event the Trustees reject any or all of the funding recommenda-

tions of the Board, the Board shall, at the request of the Trustees, review and submit additional funding recommendations.

(2) The person who shall be the Mayor of the Beneficiary shall automatically become the Chairman of the Trustees and shall preside at all meetings and perform other duties designated by the Trustees. The person who shall be the Vice Mayor of the Beneficiary shall be automatically the Vice Chairman of the Trustees and preside in event of the absence of the Chairman, and shall, in the absence of the Chairman, perform all duties designated to be performed by the Chairman. The Trustees shall designate the time and place of all regular meetings. All actions by this Trust pursuant to the provisions of this Amended Trust Indenture shall be approved by the affirmative vote of at least a majority of the Trustees qualified to act as such under the provisions of this Amended Trust Indenture.

(3) The person who shall be the City Clerk of the Beneficiary shall act as Secretary of this Trust. The Secretary shall keep minutes of all meetings of the Trustees and shall maintain complete and accurate records of all of this Trust's financial transactions. All minutes, books and records of this Trust shall be on file in the office of the Secretary. All meetings of the Trustees shall be open to the public, and the books, records and minutes of this Trust shall be considered as public records and available for inspection at all times by any interested party.

(4) The person who shall be the City Attorney of the Beneficiary may act as attorney for this Trust. The attorney shall attend all meetings of the Trustees and shall provide them with legal advice. The attorney shall also represent this Trust in all of its legal matters to ensure that its legal interests are appropriately protected.

(5) The Trustees may appoint a general manager or administrator for this Trust, and may employ such other clerical, professional, legal and technical assistance as may be deemed necessary in the discretion of the Trustees to properly operate the business of this Trust, and may fix such employees' duties, terms of employment and compensation. Any such employee may be a person who shall be an officer or employee of the Beneficiary, in which event such officer or employee may receive compensation from this Trust. In the event a general manager or administrator for this Trust is appointed by the Trustees, the general manager or administrator shall administer the business of this Trust as directed from time to time by the Trustees. All Trustees shall serve without compensation but shall be reimbursed for actual expenses incurred in the performance of their duties hereunder.

(6) The Trustees are authorized to contract, in connection with the incurring of any funded indebtedness secured by the Trust Estate and/or its revenues, or any part of either or both, in the event of a default in the fulfillment of any contract obligation undertaken on behalf of this Trust or in the payment of any indebtedness incurred on behalf of this Trust,



that a temporary trustee or trustees shall be appointed to succeed to the rights, powers and duties of the Trustees then in office. Any contract, if made, shall set out the terms and conditions under which such temporary trustee or trustees shall be appointed and operate this Trust, and provide for compensation to be paid, and appointment to be vacated and the Trustees to be automatically reinstated upon termination of all defaults by which the appointment of the temporary trustee or trustees was authorized.

(7) Bonds or other evidences of indebtedness to be issued by this Trust shall not constitute an indebtedness of the State of Oklahoma, nor of the Beneficiary, nor personal obligations of the Trustees of this Trust, but shall constitute obligations payable solely from the Trust Estate.

(8) The Trustees, the State of Oklahoma and the Beneficiary shall not be charged personally with any liability whatsoever by reason of any act or omission committed or suffered in good faith or in the exercise of their honest discretion in the execution, performance or operation of this Trust; but any act or liability for any omission or obligation of the Trustees in the execution, performance or operation of this Trust shall extend to the whole of the Trust Estate or so much thereof as may be necessary to discharge such liability or obligation.

(9) Notwithstanding any other provision of this Amended Trust Indenture which shall appear to provide otherwise, no Trustee or Trustees shall have the power or authority to bind

or obligate any other Trustee, or the Beneficiary, in his/her or its capacity, nor can the Beneficiary bind or obligate this Trust or any individual Trustee.

## ARTICLE VII

### POWERS AND DUTIES OF THE TRUSTEES

(1) To accomplish the purposes of this Trust, and subject to the provisions and limitations otherwise provided in this Amended Trust Indenture, the Trustees shall have, in addition to the usual powers incident to their office and the powers granted to them in other parts of this Amended Trust Indenture, the following rights, powers, duties, authority, discretion and privileges, all of which may be exercised by them without any order or authority from any court:

(a) To finance, acquire, establish, develop, construct, enlarge, improve, extend, maintain, equip, operate, lease, furnish, provide, supply, regulate, hold, store and administer anything in the Trust Estate and the Compounded Principal, subject to the limitations contained in this Amended Trust Indenture, as the Trustees shall determine necessary for the benefit and development of the Beneficiary;

(b) To enter into contracts for the acquisition of equipment and supplies, and construction of necessary or convenient facilities authorized to be acquired and constructed pursuant to and in compliance with the

terms of this Amended Trust Indenture; provided, however, that:

(i) The Trustees shall be subject to the same limitations, and shall comply with the requirements of Oklahoma law imposed, upon the Beneficiary in relation to contracts for construction and the acquisition of equipment, materials and supplies; and

(ii) The Trustees may reject all bids and readvertise for bids or may enter into a contract or contracts with a responsible bidder or bidders who, in the opinion of the Trustees, shall offer the terms deemed most favorable to this Trust. All bidders to whom any contract for any purpose is let shall be financially responsible and bear a good reputation in the industry. The Trustees may prescribe such bidding qualifications as they deem necessary and desirable;

(c) To enter into contracts for the sale of bonds, notes or other evidences of indebtedness or obligations of this Trust for the purpose of acquiring or constructing works and facilities authorized to be acquired or constructed pursuant to the terms of this Amended Trust Indenture and for those purposes may:

(i) Employ a financial advisor, or committee of advisors, to advise and assist the

Trustees in the marketing of such bonds, notes or other evidences of indebtedness or obligations, and to present financial plans for the financing of the acquisition or construction of each project, and to recommend to, or consult with, the Trustees concerning the terms and provisions of bond indentures and bond issues, and may pay appropriate compensation for such work and services performed in the furtherance of the project;

(ii) Sell all bonds, notes or other evidences of indebtedness or obligations of this Trust in installments or series and on such terms and conditions and in such manner as the Trustees shall deem to be in this Trust's best interests; and

(iii) Appoint attorneys, paying agencies and corporate trustees in connection with the issuance of any such bonds, notes, evidences of indebtedness or other obligations of this Trust;

(d) To enter into and execute, purchase, lease, or otherwise acquire property, real, personal or mixed, contracts, leases, rights, privileges, benefits, choses in action or other things of value, and to pay for the same in cash, with bonds or other evidences of indebtedness or otherwise;

(e) To make and change investments, to lease, improve, exchange or sell, at public or private sale, upon such terms as the Trustees deem proper, and to resell, at any time and as often as they deem advisable, any or all the property in this Trust, to borrow money, or renew loans to this Trust, to refund outstanding bonded indebtedness and to execute therefor evidences of indebtedness, and to secure the same by mortgage, lien, pledge or otherwise; to purchase property from any person, firm or corporation, and lease land and other property to and from the Beneficiary and construct, improve, repair, extend, remodel and equip utilities or buildings, and facilities thereon, and to operate or lease or rent the same to individuals, partnerships, associations, corporations and others, including the United States of America or the State of Oklahoma and agencies or authorities of the United States of America, or of the State of Oklahoma, or of any municipality thereof, and also including all municipal or other political subdivisions of the State of Oklahoma as well as the Beneficiary, and to do all things provided for in Paragraph (1) of Article III of this Amended Trust Indenture, and procure funds necessary for such purpose by the sale of bonds or other evidences of indebtedness by the mortgage, lien, pledge or other encumbrance of such



personal property, utilities and facilities owned or otherwise acquired, leased or controlled by this Trust, and by rentals income, receipts and profits therefrom, or from any other revenues associated with the ownership, operation or control of the property of this Trust; to lease or sublease any property of this Trust or of which this Trust may become the owner or lessee.

(f) To fix, demand and collect charges, rentals and fees for the services and facilities of this Trust to the same extent as the Beneficiary might do and to discontinue furnishing of services and facilities to any person, firm, corporation or public instrumentality delinquent in the payment of any indebtedness to this Trust; and to purchase and sell such supplies, goods and commodities as are incident to the operation of this Trust's properties;

(g) To make and perform contracts of every kind, including management contracts, with any person, firm, corporation, association, trusteeship, municipality, government or sovereignty; and, without limit as to amount, to draw, make, accept, indorse, assume, guarantee, account, execute and issue promissory notes, drafts, bills of exchange, acceptances, warranties, bonds, debentures and other negotiable or non-negotiable instruments, obligations and evidences of unsecured indebtedness, or of indebtedness secured by mortgage,

deed of trust or otherwise upon any or all income of this Trust, in the same manner and to the same extent as a natural person might or could do; to collect and receive any property, money, rents or income of any sort and distribute the same or any portion thereof for the furtherance of the purposes authorized by this Amended Trust Indenture;

(h) To do all other acts in the Trustees' judgment necessary or desirable for the proper and advantageous management, investment and distribution of the Trust Estate and the Compounded Principal and income therefrom, subject to the limitations contained in this Amended Trust Indenture;

(i) To contract for the furnishing of any services or the performance of any duties that the Trustees' may deem necessary, or proper, and pay for the same as they see fit. The Trustees may select depositories for the funds and securities of this Trust; and

(j) To compromise any debts or claims of this Trust or against the Trust Estate, and may adjust any dispute in relation to such debts or claims by arbitration or otherwise and may pay any debts of this Trust or claims against the Trust Estate upon any evidence deemed by the Trustees to be sufficient. The Trustees may bring any suit or action, which in their judgment

is necessary or proper to protect the interests of this Trust, or to enforce any claim, demand or contract for this Trust; and they shall authorize, in their discretion, the defense of any suit against this Trust, or against its employees, agents or servants or the Trustees. The Trustees may compromise and settle any suit or action and discharge the same out of assets of the Trust Estate, together with court costs and attorneys' fees. All such expenditures shall be treated as expenses of executing this Trust.

(2) No purchaser at any sale or lessee under a lease made by the Trustees shall be bound to inquire into the expediency, propriety, validity or necessity of such sale or lease or to see to or be liable for the application of the purchase or rental moneys arising therefrom.

(3) The whole title, legal and equitable, to the properties of this Trust is and shall be vested in this Trust, as such title in this Trust is necessary for the due execution of this Trust. The Trustees shall have and exercise exclusive management and control of the properties of this Trust for the use and benefit of the Beneficiary; but may agree for approval of any or all of its actions and transactions by the Beneficiary.

## ARTICLE VIII

### BENEFICIARY OF TRUST

(1) The beneficiary of this Trust shall be the City of Midwest City, Oklahoma, a municipal corporation, under and pursuant to the Acts. The Trustor now declares that this Amended Trust Indenture shall be irrevocable from the moment it is signed by it and delivered to the Trustees, and that the Trustor shall thereafter stand without any power whatsoever at any time to alter, amend, revise, modify, revoke or terminate any of the provisions of this Amended Trust Indenture. If, in the future, the Trustees, the Trustor and the Beneficiary agree to amend this Amended Trust Indenture, any such agreed-upon amendment to clauses (1) and (2) of subparagraph (1)(d) of Article III, of this Article VIII or of Article IX can only be accomplished by an affirmative vote of a majority of the electors in the city of Midwest City voting in a public election, duly called as required by law authorizing such an amendment as expressed on the ballot submitted at such an election.

(2) The Beneficiary shall have no legal title, claim or right to the Trust Estate or the Compounded Principal, their income, or to any part thereof, or to demand or require any partition or distribution thereof. Neither shall the Beneficiary have any authority, power or right, whatsoever, to do or transact any business for, or on behalf of, or binding upon the Trustees or upon this Trust, nor the right to control or direct the actions of the Trustees except to the extent herein provided.

The Beneficiary shall be entitled solely to the benefits of this Trust, as administered by the Trustees hereunder, and at the termination of the Trust, as provided herein, and, then only, the Beneficiary shall receive the residue of the Trust Estate.

#### ARTICLE IX

##### TERMINATION OF TRUST

This Trust shall terminate:

(1) When the purposes set out in this Amended Trust Indenture shall have been fully executed; or

(2) In the manner provided by Title 60 of the Oklahoma Statutes, Chapter 4, Section 180, as amended.

Provided, however, that this Trust shall not be terminated by voluntary action if there be outstanding indebtedness or fixed term obligations of this Trust, unless all owners of such indebtedness or obligations shall have consented in writing to such termination. If, in the future, the Trustees, the Trustor and the Beneficiary agree to terminate this Trust, any such agreed-upon termination of this Trust can only be accomplished by an affirmative vote of a majority of the electors in the city of Midwest City voting in a public election, duly called as required by law authorizing such termination as expressed on the ballot submitted at such an election.

Upon the termination of this Trust, the Trustees shall proceed to wind up the affairs of this Trust and, after payment of all debts, expenses and obligations out of the monies and

properties of the Trust Estate and the Compounded Principal to the extent thereof, shall distribute the residue of the money and properties of the Trust Estate to the Beneficiary. Upon final distribution, the powers, duties and authority of the Trustees shall cease.

#### ARTICLE X

##### PARTIAL INEFFECTIVENESS

The invalidity or ineffectiveness for any reason of any one or more words, phrases, clauses, paragraphs, subsections or sections of this Amended Trust Indenture shall not affect its remaining portions so long as such remaining portions shall constitute a rational instrument. Any such invalid or ineffective portions were inserted conditionally upon them being valid and effective only and this instrument shall be construed as if such invalid or ineffective portions had not been inserted herein.

#### ARTICLE XI

##### ACCEPTANCE BY TRUSTEES

The Trustees accept this Trust, created and provided for, and agree to carry out the provisions of this Amended Trust Indenture on their part to be performed.

IN WITNESS WHEREOF, this Amended Trust Indenture has been passed and approved by the Trustor on the 8th day of April, 1998, and by the Trustees on the 7th day of April, 1998.

MIDWEST CITY CHAMBER OF COM-  
MERCE

By: Dara M. McGlamery  
President

(SEAL)

ATTEST:

Carol L. Judd  
Secretary

as "Trustor"

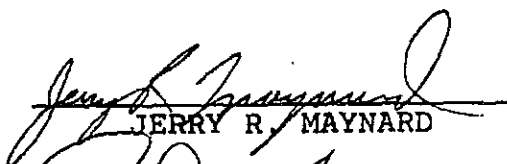
STATE OF OKLAHOMA     )  
                              :     ss.  
STATE OF OKLAHOMA     )

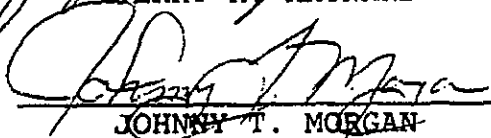
Before me, the undersigned, a Notary Public, in and for said County and State on this 29th day of April, 1998, personally appeared Dara L. McGlamery, to me known to be the President of the Midwest City Chamber of Commerce who executed the within and foregoing instrument and acknowledged to me that she executed the same as her free and voluntary act and deed and as the free and voluntary act and deed of such corporation for the uses and purposes set forth.

Given under my hand and seal the day and year last above written.

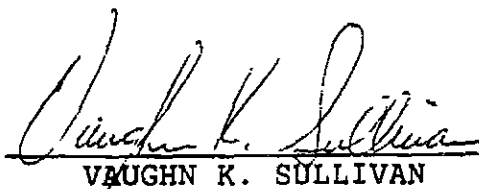
Suzanne W. Dockery  
Notary Public

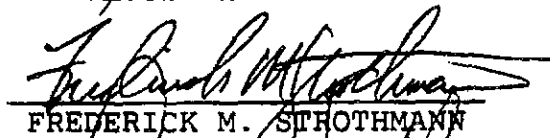
My commission expires: 8-22-98

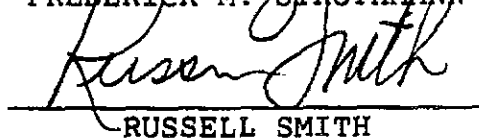
  
JERRY R. MAYNARD

  
JOHNNY T. MORGAN

  
LLOYD GORRELL

  
VAUGHN K. SULLIVAN

  
FREDERICK M. STROTHMANN

  
RUSSELL SMITH

  
EDDIE O. REED

as "Trustees"

STATE OF OKLAHOMA     )  
                                      :  
STATE OF OKLAHOMA     )     ss.

Before me, the undersigned, a Notary Public, in and for said County and State on this 7th day of April, 1998, personally appeared Jerry R. Maynard, Vaughn K. Sullivan, Johnny T. Morgan, Frederick M. Strothmann, Lloyd Gorrell, Russell Smith and Eddie O. Reed, to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

  
Notary Public

My commission expires: 8-28-99

ACCEPTANCE OF BENEFICIAL INTEREST

Pursuant to Resolution No. 98-18 duly adopted by its City Council, the City of Midwest City, Oklahoma, hereby accepts the beneficial interest in the trust created by the within and foregoing Amended and Restated Trust Indenture, in all respects in



accordance with the terms of said Amended and Restated Trust Indenture.

CITY OF MIDWEST CITY, OKLAHOMA

By: *Edith Reed*  
Mayor



Attest: (Seal)

*Sammy M. [Signature]*  
City Clerk

Approved as to form and legality this 7th day of April,  
1998.

*Natherine Bolles*  
City Attorney

"I CERTIFY THAT THIS IS A  
TRUE AND LIKE COPY OF A  
INSTRUMENT ON FILE IN THE  
OFFICE OF THE CITY CLERK  
OF THE CITY OF MIDWEST CITY  
OKLAHOMA COUNTY STATE OF  
OKLAHOMA."

*Shirley Atkins*  
CITY CLERK



**City Manager's Office**  
100 N. Midwest Boulevard  
Midwest City, OK 73110  
Office: (405) 739-1207  
[ghenson@midwestcityok.org](mailto:ghenson@midwestcityok.org)  
[www.midwestcityok.org](http://www.midwestcityok.org)

## MEMORANDUM

To: Honorable Mayor and City Council Members

From: City Manager Guy Henson

Date: April 20, 2017

Subject: Discussion and consideration of 1) approving and entering into an Economic Development Agreement with Midwest City Warren Theatre, Inc. and the City of Midwest City in the approximate amount of \$11,100,000 and other good and valuable consideration, to establish the terms and conditions under which the parties will participate in the development of approximately 16.6233 acres located on the northwest corner of Buena Vista Avenue and SE 15th Street; and 2) authorizing the chairman and/or the general manager/administrator to enter into such other agreements and execute such other documents as may be necessary or appropriate to effect the provisions of the Agreement.

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This agreement will establish the monetary amount the Memorial Hospital Authority ("Authority") will contribute and other terms that will govern the duties and responsibilities of Sooner Investment Group, Inc, the City and the Authority in the development of property located at the northeast corner of S Sooner Road and SE 15<sup>th</sup> Street.

Council took no action on this item at its April 11, 2017, meeting. Since then, there has been a significant change proposed to Section 4.1 (highlighted in red). This change, if approved, will allow Warren to continue contracting for professional design services uninterrupted while the Authority pursues its best financing options. At risk are Authority Discretionary funds being committed toward the design work should the deal fall through.

Staff recommends approval.

  
J. Guy Henson, City Manager

Attachments: Proposed agreement between the City of Midwest City and Midwest City Warren Theatre, Inc.

**STATE OF OKLAHOMA**

**SOONER ROSE PHASE II – THEATRE  
DEVELOPMENT FINANCING ASSISTANCE AGREEMENT**

**COUNTY OF OKLAHOMA**

**THIS SOONER ROSE PHASE II – THEATRE DEVELOPMENT FINANCING ASSISTANCE AGREEMENT** (this “Agreement”) is entered into as of the \_\_\_\_\_ day of April, 2017 (the “Effective Date”), by and between the Midwest City Memorial Hospital Authority, an Oklahoma public trust (the “Authority”), and MWC Warren Theatre, Inc., a Kansas corporation (“Warren”), and the City of Midwest City, Oklahoma (the “City”), a municipal corporation of the State of Oklahoma.

**RECITALS**

WHEREAS, the Authority was created by that certain “Amended and Restated Trust Indenture”, dated as of the 1st day of July, 1961, as a public trust for the use and benefit of the City of Midwest City, Oklahoma, (hereinafter, the “City”) pursuant to the provisions of Title 60, Sections 176, et seq., of the Oklahoma Statutes, as amended and supplemented (hereinafter, the “Public Trust Act”) and other applicable statutes of the State of Oklahoma; and

WHEREAS, the City, as the beneficiary thereof, acting through its City Council, has adopted a resolution accepting beneficial interest therein on behalf of said City; and

WHEREAS, the purposes of the Authority are, in part, to promote economic and community development, within and without the territorial limits of the City, and to promote additional employment which will benefit and strengthen the economy of the City and the State of Oklahoma; and

WHEREAS, in order to accomplish its designated purposes, the Authority is empowered to provide funds for the costs of acquiring, constructing, rehabilitating, equipping, securing, maintaining and developing real and personal property within and near the City, and to enter into, make and perform contracts for the sale of its bonds, notes or other evidence of indebtedness to finance the costs thereof, and to perform all of its obligations contained in the Agreement; and

WHEREAS, Warren has proposed to redevelop and construct a retail and movie theatre development within the boundaries of the City (hereinafter, the “Project”) and, in connection therewith, and the Authority offered Warren development financing assistance in acquiring land and in defraying the costs of certain building, site, and infrastructure improvements; and

WHEREAS, Warren has the professional ability and expertise to undertake the Project in a manner that will enhance and improve economic growth and development of commerce in the City; and

WHEREAS, both the Authority and Warren have a significant interest in encouraging and improving commerce and economic development in the City agree that the two entities working together with the City and others will have a greater, more positive impact on commerce and economic development in the City than they would have separately; and

WHEREAS, based on the contributions of the City, the Authority, and others as provided herein, and the performance of the other obligations referenced, Warren intends to invest its resources and capital to undertake the redevelopment and gentrification of an approximate 16.6233-acre parcel of property at the northwest quadrant of the intersection of Southeast 15<sup>th</sup> Street and Buena Vista Avenue,

and which is more particularly described in Exhibit A, attached hereto and incorporated by reference (the "Theatre Property"); and

WHEREAS, Sooner Investment Group, Inc. ("Sooner") has the Theatre Property and additional property adjacent thereto identified on Exhibit A-1 as the "Sooner Rose II Property" (the "Sooner Rose II Property") under contract pursuant to that certain Commercial/Industrial Real Estate Purchase Contract, by and between Sooner Investment Group, Inc., as Buyer, and G. Michael Vloedman, N. Carolyn Hurst Revocable Trust, and Garrett Vloedman and Emily Vloedman Living Trust, as Seller, and dated September 30, 2016 (the "Land Contract"), and Sooner intends to convey the Theatre Property to the Authority in furtherance of the parties' intent to redevelop the Theatre Property, and Sooner intends to concurrently redevelop the Sooner Rose II Property for retail and commercial uses complimentary to Warren's intended redevelopment of the Theatre Property; and

WHEREAS, the Authority and the City have concluded their independent assessment of the plan of development proposed by Warren and have determined that the redevelopment of the Theatre Property as proposed by Warren is feasible; and

WHEREAS, the City has adopted and approved that certain "Project Plan Relating to Tax Increment District No. Two, City of Midwest City, Oklahoma (Sooner Rose Increment District Project)" (the "Project Plan") and has created, within the boundaries set forth in the Project Plan, Increment District Number Two, City of Midwest City, Oklahoma (the "Sooner Rose Increment District") by Ordinance No. 3291 on March 28, 2017 (the "Ordinance"), pursuant to the Oklahoma Local Development Act, Title 62, Section 851, et seq., of the Oklahoma Statutes, as amended; and

WHEREAS, the parties wish to set forth the manner in which the Project is to be undertaken by Warren and the Authority, and the assistance in development financing which the Authority has agreed to provide.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the parties to this Agreement agree as follows:

1. **Recitals.** The forgoing recitals are true and correct and are hereby incorporated in this Agreement.
2. **Sooner Rose Phase II – Theatre Development Program.** Subject to the conditions and other provisions contained herein, Warren shall redevelop the Theatre Property for a movie theater building containing a minimum of ten movie screens and having an exterior appearance generally consistent with Warren's prototypical movie theatre in Moore, OK (excluding the IMAX addition to that theatre) (the "Theatre Building"), together with parking, drive aisles, signage, underground stormwater system and ancillary improvements, all substantially consistent with the Concept Site Plan, attached hereto and incorporated by reference as Exhibit B, and this Section, and as modified from time-to-time (the "Theatre Development").
  - 2.1. The Theatre Development shall include at least two – but not more than three – outparcels. The two outparcel configuration is generally depicted on Exhibit B, but Warren may alter that configuration and opt for three outparcels. In either event, one outparcel must be approximately  $\pm$  1.5 acres in size and must be developed and used initially for a sit-down restaurant where meals are prepared on-premises, served table-side, and no drive-through window service is available (the "Restaurant Use"). The Restaurant Use must open and operate for fully stocked and staffed as the Restaurant Use for one (1) business day prior to any change in use of the  $\pm$  1.5-acre outparcel. The second – and third, as applicable – outparcel may be

used for a restaurant, or for retail sales or services subject to the limitations contained in the PUD Agreement (defined below). It is not possible to know what market conditions shall prevail, so Warren shall have the right to alter the initial usage of the 1.5 acre outparcel from that of a Restaurant Use in the future, so long as the uses from time-to-time are compatible with the PUD Agreement, as amended. The parties hereto agree that Warren's obligations to Commence Construction (defined below) or Complete Construction (defined below) of the Theatre Development pursuant to this Agreement shall not include construction of improvements on the outparcels described in this Section.

- 2.2. The Theatre Development and the Sooner Rose Phase II – Retail Development shall be designed as a unified shopping center with coordinated vehicular and pedestrian ingress and egress (including drive aisles), all as consistent with the PUD Agreement.
  - 2.3. The parties intend that the Theatre Property shall be rezoned pursuant to the Sooner Rose Phase II – Theatre Planned Unit Development Agreement (the "PUD Agreement"), which must be prepared or reviewed and approved by Warren and submitted to and reviewed and approved by the City pursuant to the City's zoning authority in the City's absolute discretion subsequent to this Agreement and prior to Closing (defined below).
  - 2.4. The parties acknowledge that the Concept Site Plan and Theatre Development description provided in this Section represent a conceptual development program that has not been fully designed, determined or engineered, and that certain adjustments necessary for design, engineering, construction, or market conditions will be necessary for the Theatre Development to proceed, which adjustments shall be incorporated into the Theatre Development without need for further amendment to this Agreement provided such adjustments are permitted as part of the PUD Agreement (including any amendment thereto). The Concept Site Plan shall be superseded automatically by the PUD Agreement, as amended from time to time, without need for further amendment of this Agreement.
3. **Warren's Obligations.** In consideration of the Authority's obligations set forth in Section 4, and subject to the conditions and other provisions contained in this Agreement, Warren shall undertake the obligations set forth in this Section. Except as otherwise expressly provided in this Agreement, Warren shall undertake the obligations set forth in this Section at its sole cost and expense.
    - 3.1. From and after the Effective Date, and subject to the simultaneous performance of the other obligations to be performed by the other parties hereto, as referenced elsewhere herein, and the conditions contained herein, Warren shall in good faith undertake such actions as it determines are reasonably necessary for the design, rezoning and governmental permitting for the Theatre Development on the Theatre Property (excluding any outparcel improvements, Off-Site Improvements (defined below), and all building permits for vertical construction of the Theatre Development), including but not limited to, all applicable local and state permits and approvals, land use and zoning changes, site plan approval and all other permits reasonably necessary to Commence Construction (defined below) (collectively, the "Theatre Approvals"). All design and engineering documents relating to site grading, utilities, parking and vehicular circulation, and the stormwater system for the Theatre Property shall be generally consistent with the Concept Site Plan and shall be compatible with the Sooner Rose Phase II – Retail Development. When completed, the Theatre Development and Sooner Rose Phase II – Retail Development shall form a cohesive retail and entertainment center comparable with first-class retail centers in the Oklahoma County market.

- 3.2. Prior to Closing, but following the satisfaction of any conditions or other provisions contained in this Agreement, Warren shall deliver to the Authority information concerning Warren's financial and other abilities to develop the Theatre Development to the Authority as follows:
- 3.2.1.1. Copies of all Theatre Approvals necessary to Commence Construction (defined below) of the Theatre Development;
  - 3.2.1.2. An estimate of the Theatre Development's (excluding the outparcels) construction costs;
  - 3.2.1.3. A certificate executed by Warren and its general contractor certifying that they have entered into a contract for performance of such work; and
  - 3.2.1.4. A certificate executed by Warren and its lender certifying that they have executed loan documentation for financing in a specified sum of money sufficient for construction of the theatre and related facilities, excluding the equity requirement of such lender.
- 3.3. On the Closing Date (defined below), subject to the satisfaction of any conditions or other provisions contained in this Agreement, Warren shall accept title to the Theatre Property from the Authority.
- 3.4. Subject to Section 3.5.1, as soon as practicable following the Closing Date, and in any event not later than ninety (90) days, as extended by any Permitted Delays as defined in Section 4.2.2.2 below, following the Closing Date, Warren shall endeavor in good faith using diligent efforts to Commence Construction of the Theatre Development. The term "Commence Construction" shall mean (i) Warren's obtaining a development order or permit authorizing site clearing and grading and construction of site improvement, (ii) Warren's execution of the construction contract referenced in Section 3.2.1.3, and (iii) completion of at least \$10,000.00 of construction costs associated with the Theatre Development pursuant to the construction contract referenced in Section 3.2.1.3.
- 3.5. Once Warren has commenced construction of the Theatre Development, Warren shall thereafter diligently pursue construction of the Theatre Development until Warren shall Complete Construction of the Theatre Development. Warren shall make good faith, diligent efforts (without incurring overtime charges) to Complete Construction of the Theatre Development within fifteen (15) months following the date Warren shall Commence Construction but shall have no liability for failing to Complete Construction by such date so long as it continues such efforts. The term "Complete Construction" shall mean Warren's completing construction of all improvements associated with the Theatre Building and Warren's obtaining a certificate of occupancy for the Theatre Building.
- 3.5.1. Provided, however, in the event the Authority does not cause the removal of the Gas Line (defined in Section 4.3.1 below) and fully vacate the Gas Line Easement (defined below) from the Theatre Property in accordance with Section 4.3.1 within ninety (90) days after the Closing Date, Warren's endeavor to Commence Construction and to Complete Construction of the Theatre Building as provided in Sections 3.5 shall be tolled two (2) days for each single day after the ninetieth (90<sup>th</sup>) day the Authority has not relocated the Gas Line and vacated the Gas Line Easement. The Authority shall cause the site of the removed

Gas Line to be compacted and restored in a manner consistent with the site plan and grading plans prepared by Warren associated with the Theatre Development.

- 3.5.2. Warren shall use reasonable efforts to include in all contracts it executes with its Theatre Development contractors that, to the extent reasonably practicable, such contractors shall cause construction purchases to be delivered to the Theatre Property and shall use the appropriate Midwest City, OK street address for such purchases, and that Oklahoma state and Midwest City sales/use taxes, as applicable, shall apply to such purchases of building items and construction materials. Warren will use reasonable efforts to provide the City lists of purchase prices and copies of invoices Warren receives from such contractors for purchases to which this provision applies.
- 3.6. Following the date that Warren shall Complete Construction of the Theatre Development, Warren shall:
- 3.6.1.1. Deliver to the Authority all documentation reasonably necessary to establish that Warren has completed construction, including but not limited to the certificate of occupancy for the Theatre Building and other such administrative documentation necessary for occupying the Theatre building; and
- 3.6.1.2. Open the Theatre Building for business to the general public fully stocked and staffed as a Warren Theatre for at least one full business day (the "Theatre Opening").
- 3.7. Pursuant to the Authority's obligations in Section 4.4.1, the Authority, or Sooner on behalf on the Authority, shall negotiate an agreement ("Pipeline Relocation Agreement") concerning the removal and relocation of the Gas Line and Gas Line Easement with Enefrin in form and substance reasonably satisfactory to Warren. Warren shall grant to Enefrin a new easement for the relocated Gas Line as more particularly described in Section 4.4.1., which easement instrument shall be in form and substance reasonably satisfactory to Warren.
- 3.8. Other than the Theatre Development, Warren shall not develop, own or operate a movie theater located within ten (10) miles of the Theatre Property boundary for a period of ten (10) years from the Theatre Opening. In the event the Warren shall violate this provision, the City's and Authority's sole, right, remedy and recourse shall be that their obligations set forth in Section 4.6 shall be immediately null and void and of no further force or effect.
4. **Authority's Obligations; Certain City Obligations.** In consideration of Warren's obligations set forth in Section 3, the Authority shall undertake the obligations set forth in this Section. Except as otherwise expressly provided in this Agreement, and subject to any conditions contained herein, the Authority shall undertake the obligations set forth in this Section at its sole cost and expense.
- 4.1. Within ~~seventy-five (75) forty-five (45)~~ days following the Effective Date, the Authority shall provide evidence reasonably satisfactory to Warren that the Authority has sufficient authority and funds available to it **to acquire the Theatre Property under the Land Contract and convey the same to Warren and** to pay the Construction Contribution (defined below); the right to perform its obligations hereunder; and that all necessary or appropriate actions have been taken so that this Agreement is fully binding and enforceable against the Authority; **provided, however, that if the Authority cannot provide such evidence of funding, then either party may terminate this Agreement upon written notice given to the other and thereupon none of the parties hereto shall have any further obligations hereunder. In such case, the Authority shall**

reimburse Warren for all out-of-pocket engineering, architectural and design costs previously incurred by Warren to that point, up to but not exceeding, in aggregate, the amount of \$500,000, but, thereafter, neither the City, nor the Authority, shall be liable for further payments to Warren, whether in the nature of damages or otherwise.

- 4.2. In addition to the foregoing, prior to the execution hereby by Warren, the Authority has delivered to Warren a legal opinion opining that the Authority and the City have taken all necessary or appropriate actions to approve the execution and performance of this Agreement; that such bodies have the full power and authority to execute and perform this Agreement; and that the obligations of Authority and the City hereunder are fully enforceable by Warren; and such other matters relating to the foregoing as Warren shall reasonably request.
- 4.3. On the Closing Date, subject to satisfaction of any conditions or other provisions contained in this Agreement:
  - 4.3.1. Pursuant to a separate agreement between Sooner, the City and the Authority, Sooner shall assign its rights to purchase the Theatre Property pursuant to the Land Contract to the Authority, and the Authority shall accept such assignment and shall purchase the Theatre Property; and
  - 4.3.2. As part of the development financing assistance the Authority is providing hereunder, the Authority shall, within the period specified in Section 5.2, convey and contribute to Warren fee simple title to the Theatre Property, subject to the Temporary Use Restriction and Reversionary Interest (both defined below) pursuant to the terms of Section 5.
    - 4.3.2.1. The term "Temporary Use Restriction" shall mean a use restriction contained in the deed of conveyance from the Authority to Warren, which shall restrict the use of the Theatre Property, excluding the outparcels referenced in Section 2.1 above, and shown on the draft Warren Rose Phase II –Theatre Planned Unit Development, to only a movie theater (containing at least ten (10) screens) together with ancillary uses such as restaurants, concessions and movie-related merchandise sales. The Temporary Use Restriction shall terminate automatically and immediately on the date Warren shall Complete Construction. Following the date Warren shall Complete Construction, the parties hereto agree to cooperate in good faith with each other and Warren's lender to promptly execute and record in the real estate records such document as may be required by such lender or Warren to terminate the Temporary Use Restriction.
    - 4.3.2.2. The term "Reversionary Interest" shall mean a reversionary interest retained by the Authority as set forth in the deed of conveyance from the Authority to Warren, which shall provide that, in the event Warren does not Commence Construction of the Theatre Development within ninety (90) days of Closing, as extended as provided in Section 14 and due to any delay by the Authority in the removal and vacation of the Gas Line to any delay in completion of the Public Improvements (collectively, "Permitted Delays"), fee simple title to the Theatre Property shall vest in the Authority. The specific provision of the Reversionary Interest shall be satisfactory to Warren and the Authority. Provided, however, that the Reversionary Interest shall terminate automatically and be of no further force or effect immediately upon the date Warren shall Commence Construction of the Theatre Development. The parties hereto agree to cooperate in good faith with each other and Warren's lender at the



time Warren shall Commence Construction to execute such document as may be required by such lender or Warren to terminate the Reversionary Interest.

4.4. Following the Closing Date:

4.4.1. The parties hereto acknowledge that a natural gas transmission line and associated improvements owned by Enefrin is located on the Property (the "Gas Line"), and an easement associated with the Gas Line burdens the Theatre Property (the "Gas Line Easement"), all as more particularly shown on Exhibit B. Prior to Warren's obligation to Commence Construction as provided in Section 3.4, the Authority shall cause, at its sole cost and expense, the Gas Line to be removed from its current location on the Property and the Gas Line Easement to be vacated, released, or otherwise quit claimed to Warren by Enefrin, all in a manner reasonably satisfactory to Warren. Within thirty (30) days following the date the Gas Line is removed, the Authority shall, at its sole cost and expense, cause the Gas Line to be relocated to the eastern boundary of the Property immediately adjacent to Buena Vista Avenue in an area reasonably acceptable to Warren;

4.4.2. The Authority shall contract with Sooner for the construction of the Public Improvements (defined below) pursuant to the terms of Section 6,

4.5. The Authority shall pay to Warren the Construction Contribution in the amount and at the times specified in Section 7.

4.6. The Authority shall not provide economic/development funding or other consideration to a movie theater located within ten (10) miles of the Theatre Property for a period of ten (10) years following the Theatre Opening. In the event the Authority shall violate this provision, Warren's sole right, remedy and recourse shall be that its obligation set forth in Section 3.8 shall be immediately null and void and of no further force or effect.

**5. Authority Property Conveyance.**

5.1. Warren shall obtain, at Warren's sole cost, an owner's title insurance policy from a title company of Warren's choice agreeing to insure title to the Theatre Property in an amount that Warren estimates is equal to the value of the Theatre Property and subject to no exceptions other than those matters acceptable to Warren, those which will be discharged prior to or at the Closing, and the standard printed exceptions and exclusions from coverage modified in a manner acceptable to Warren (the "Commitment"). Additionally, unless otherwise available pursuant to the Land Contract, Warren may obtain a survey of the Theatre Property. Warren shall provide the Authority a copy of the Commitment and survey upon receipt. If the Commitment or survey, disclose exceptions or matters that are not acceptable to Warren or its lender, the Authority, at its option, may cure such defects to Warren's reasonable satisfaction. If the Authority fails to have the Commitment exceptions, or survey matters, removed or the defects cured prior to the Closing Date, Warren may terminate this Agreement or Warren may elect, in its discretion, to take title as it then is notwithstanding such exceptions, title defects or survey matters. If new exceptions or matters arise prior to the Closing, the Authority shall exercise reasonable diligence in the curing of any such matters, defects or exceptions, including payment and discharge of any liens or encumbrances affecting title of the Theatre Property, and the Closing and other deadlines associated with development of the Theatre Property shall be tolled until the Authority shall have cured such matters, exceptions or defects. At the Closing, Warren shall obtain an owner's title policy showing good and marketable title in

Warren through the Closing and subject only to the permitted exceptions and any survey or other matters accepted by Warren.

- 5.2. The parties hereto agree that Sooner's assignment of its rights to acquire the Theatre Property pursuant to the Land Contract to the Authority, and the Authority's purchase of the Theatre Property, shall occur prior to the Closing Date, but in any event, subject to the satisfaction of all conditions precedent or other provisions contained herein, not later than September 30, 2017.
- 5.3. In the event Warren's or Authority's conditions precedent as specified in Section 11 hereof are not satisfied by October 2, 2017, either such party may terminate this Agreement upon written notice given to the other and thereupon none of the parties hereto shall have any further obligations hereunder.
- 5.4. Subject to the other provisions contained herein, the Closing between Warren and the Authority shall occur on October 2, 2017, or such earlier date as the parties shall agree upon (the "Closing Date"). Subject to the other provisions of this Agreement, at the Closing, the Authority shall convey title to the Theatre Property to Warren by special warranty deed subject to the Reversionary Interest. The Authority shall convey the Theatre Property as a contribution to Warren for no compensation, other than the in consideration for the covenants and promises provided by Warren pursuant to this Agreement and the agreements made between the Authority and Sooner. Concurrent with the conveyance of the Theater Property, Warren shall convey to the Authority a temporary construction easement for the relocation of the Gas Line as provided in Section 4.4.1. Except as otherwise provided herein, and according to the Land Contract, Warren shall pay all of its costs associated with its Closing of the acquisition of the Theatre Property; provided, however, the Authority shall be responsible for its costs and legal fees associated with this Agreement and the Closing.
- 5.5. Except as otherwise provided in this Agreement, neither the City nor the Authority is making, and each hereby specifically disclaims, any representations or warranties of any kind, express or implied, with respect to the condition of the Theatre Property. Warren agrees that Warren has not relied upon and will not rely upon, either directly or indirectly, any representation of the City or the Authority (except as otherwise set forth in this Agreement) or any agent of the City or the Authority regarding the condition of the Theatre Property. EXCEPT AS OTHERWISE PROVIDED HEREIN, AND IN THE AUTHORITY'S DEED, Warren ACKNOWLEDGES AND AGREES THAT UPON THE CLOSING DATE THE AUTHORITY SHALL CONVEY TO Warren, AND Warren SHALL ACCEPT, THE THEATRE PROPERTY "AS IS, WHERE IS" WITH ALL FAULTS, AND, EXCEPT AS PROVIDED IN THIS AGREEMENT AND THE AUTHORITY'S DEED, THERE ARE NO ORAL AGREEMENTS, WARRANTIES, OR REPRESENTATIONS (EXCEPT AS OTHERWISE PROVIDED HEREIN), COLLATERAL TO OR AFFECTING THE THEATRE PROPERTY BY THE AUTHORITY, ANY AGENT OF THE CITY OR THE AUTHORITY OR ANY THIRD PARTY ACTING FOR ON BEHALF OF THE CITY OR THE AUTHORITY. The terms of this Section 5.5 shall expressly survive termination of this Agreement.
6. **Public Improvements.** In consideration of Warren undertaking the obligations set forth in Section 3, the Authority shall contract with Sooner pursuant to the Development Financing Agreement to be entered into between the Authority and Sooner for the construction of certain public improvements as more particularly described in Exhibit C (the "Public Improvements"). Prior to the Closing Date, the Authority shall provide Warren evidence that the construction and completion of the Public Improvements is included in the tax increment finance budget created concurrent with this Agreement. The Authority, shall complete, or cause Sooner to complete,

the Public Improvements not later than six months following the Closing Date. In the event the Authority fails to punctually perform its obligations under this Section, the City shall promptly perform such obligations.

- 7. Construction Contribution.** Subject to the terms of this Section, the Authority shall pay to Warren the amount of Five Million and No/100 Dollars (\$5,000,000.00), as a contribution for the construction of the Theatre Development pursuant to the terms of this Section (the "Construction Contribution"). After the later of: (i) the date Warren shall Complete Construction and (ii) the Theatre Opening, Warren shall submit to the Authority a written Contribution Notice, providing the Authority sufficient documentation as is reasonably necessary to confirm the occurrence of (i) and (ii). The Authority shall be entitled to inspect the Theatre Property to confirm that Warren shall have Completed Construction of the Theatre Development and the Theatre Opening has occurred. The Authority shall pay the Construction Contribution to Warren within fifteen (15) days of receipt of the Contribution Notice. In the event of a failure of the Authority to pay the Construction Contribution on or before the date required hereunder, the Construction Contribution shall accrue interest at the rate of ten (10%) per annum.
- 8. Assignment.** Warren's rights and obligations pursuant to this Agreement may be assigned by Warren only as set forth in this Section. Any assignment other than as provided in this Section shall be null and void except as approved by a prior written amendment to this Agreement, executed by the parties hereto.

  - a. The parties hereto acknowledge that Warren may undertake acquisition of the Theatre Property and development of the Theatre Development via an affiliate entity in which William Warren shall directly, or indirectly, have an ownership interest. Therefore, Warren's rights and obligations pursuant to this Agreement may be assigned in whole or in part without the prior consent of the Authority to any such entity or entities on or before the Closing Date without the need for amendment to this Agreement. Warren may desire to assign the rights hereunder to receive the outparcels referenced in Section 2.1 above to another entity permitted hereunder prior to the Closing Date.
  - b. The parties hereto acknowledge that Warren may undertake acquisition of the Theatre Property and development of the Theatre Development pursuant to an acquisition and development loan from a lender. Therefore, Warren's rights and obligations pursuant to this Agreement may be assigned, pledged and hypothecated to a lender associated with the acquisition of the Theatre Property and construction of the Theatre Development and without the prior consent of the Authority without the need for amendment to this Agreement.
  - c. Upon assignment pursuant to this Section, all the terms and conditions of this Agreement shall inure to the benefit of and bind the assignee.
- 9. Tax Matters.** The development financing assistance being provided hereunder, including the contribution of the Theatre Property as provided in Section 4 and the Construction Contribution as provided in Section 7, are intended by the parties to be nontaxable contributions to the capital of Warren by non-shareholders, as permitted by Section 118 of the Internal Revenue Code; provided, however, that the City and the Authority shall have no liability or responsibility to Warren regarding the treatment of such development financing assistance, including the

contribution of the Theatre Property and payment of the Construction Contribution, for federal or state income tax purposes.

#### **10. Representations and Warranties.**

- 10.1 Each of the parties hereto represent and warrant to each of the other parties that it is a duly constituted entity; has the full right and authority to execute and perform its respective obligations under this Agreement; and the Agreement is in full force and effect and constitutes a valid and legal binding obligation, enforceable in accordance with its terms as provided in this Agreement.
- 10.2 The City and Authority have executed an agreement with Sooner concerning Sooner's assignment of its purchase rights concerning the Theatre Property under the Land Contract, a true and correct copy of which has been provided by the City and Authority to Warren. The City and Authority shall perform their respective obligations under such agreement, and take all action as necessary to cause Sooner to complete such assignment of the purchase rights under the Land Contract to Authority.

#### **11. Certain Conditions Precedent.**

- 11.1. Warren's obligation to acquire the Theatre Property is conditioned upon the following:

- 11.1.1. The Authority having cured such matters, defects or exceptions concerning the Commitment and the survey as provided in Section 5.1 above, and the Title Insurance Company's issuance to Warren and its lender of a title insurance policy, subject only to the exceptions and survey matters to which Warren shall not object pursuant to such Section 5.1.
- 11.1.2. Warren having obtained such environmental reports or audits as it shall desire, or its lender shall require, with respect to the Theatre Property. The Authority shall promptly following the Effective Date deliver to Warren all environmental reports and other information in its possession or available to it, and Warren may engage a reputable environmental inspection firm to inspect and evaluate the Theatre Property and report to Warren thereon.
- 11.1.3. The Theatre Approvals shall have been fully and finally granted to Warren and not subject to any further appeal or reconsideration, and in all respects shall be satisfactory to Warren and its lender.
- 11.1.4. Warren shall have obtained financing for the performance of the Theatre Development on terms satisfactory to it.
- 11.1.5. Warren shall have been satisfied, in its sole discretion, with the evidence that the Authority has sufficient funds as provided in Section 4.1 above.
- 11.1.6. Warren shall be satisfied, in its sole discretion, concerning the plans and specifications of the Off-Site Improvements.
- 11.1.7. A former retail gas station existed on the Out Parcel located closest to the intersection of Buena Vista Avenue and S.E. 15<sup>th</sup> Street and underground storage tanks are currently

located thereon. Such tanks and related equipment shall be removed and all remediation necessary to cause such site to fully comply with applicable laws, rules and regulations shall have been completed to Warren's satisfaction prior to the Closing Date.

11.1.8. Sooner shall have acquired the Sooner Rose II Property.

11.1.9. In the event any of the conditions contained in Sections 11.1.1 - 11.1.8 are not satisfied by the Closing Date, Warren may, upon written notice given to the other parties hereto, terminate this Agreement.

11.2. The Authority's obligation to acquire the Theatre Property under the Land Contract and convey the same to Warren hereunder is conditioned upon the following:

11.2.1. Authority's satisfaction with the cost and financial information to be delivered by Warren to Authority pursuant to Sections 3.2.1.2 – 3.2.1.4, inclusive.

**12. No Partnership.** Nothing contained in this Agreement shall be construed in any way as creating a joint venture, partnership, or similar business relationship between or among, the City, the Authority and Warren. Consistent with the terms of this Agreement, Warren shall develop, operate, maintain, lease, sell, hypothecate, and otherwise convey the Theatre Property or portions thereof in its sole and absolute discretion.

**13. Default.** Except as otherwise expressly provided in this Agreement, in the event either party hereto shall default of any its obligations as provided in this Agreement, following thirty (30) days' prior written notice from the non-defaulting party to the defaulting party with the defaulting party's opportunity to cure such default, the non-defaulting party may exercise any and all rights and remedies available at law or equity, including, but not limited to, specific performance of the defaulting party's obligations pursuant to the terms of this Agreement; provided, however, if the default is of a nature that cannot be reasonably cured within such 30-day period, then the defaulting party shall be allowed a reasonable period of time to cure such default provided that it diligently commences the cure within the 30-day period and thereafter undertakes and continuously pursues such cure; provided, notwithstanding the foregoing, any default regarding the payment of money must be cured within five (5) business days.

**14. Force Majeure.** Notwithstanding anything in this Agreement to the contrary, no party hereto shall be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Agreement to be performed by it if any failure of its performance shall be due to any fire, earthquake, labor dispute, act of terrorism, strike, lockout, civil commotion, war, warlike operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material or service, Act of God, weather, or any other cause whatsoever beyond the reasonable control of obligated party, and the time for performance by such obligated party shall be extended by the period of delay resulting from or due to any of said causes; provided, nothing in this section shall excuse or extend a party's obligation to pay any sum due under this Agreement.

**15. Termination.** Upon the completion of Warren's obligations set forth in Section 3, excluding 3.8, and completion of the Authority's obligations as set forth in Section 4, 5, 6, and 7, this Agreement shall terminate and shall be of no further force or effect except as to terms and conditions that expressly survive termination.

**16. Miscellaneous.** Each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the parties hereto, their successors and assigns. If any date herein set forth for the performance of any obligations by any party hereto or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. As used herein, the term "legal holiday" means any federal holiday for which financial institutions or post offices in the State of Oklahoma are generally closed for observance thereof. As used herein, the term "business day" shall mean a day which is not a Saturday, Sunday or legal holiday. The headings used herein are for convenience only and shall not be used in interpreting this Agreement. Nothing in this Agreement shall serve to affect or otherwise limit the City's and Authority's police powers, zoning authority or other governmental action of the City or Authority. This Agreement shall represent the entire understanding between the parties with respect to the subject matter hereof, and supersede all other negotiations and agreements made by the parties concerning the matters set forth herein. Any provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal or unenforceable, shall be severable and shall not be construed to render the remainder of the Agreement to be invalid, illegal, or unenforceable. This Agreement may not be amended, unless evidenced in writing and executed by the parties hereto. This Agreement shall be governed by and constructed in accordance with the laws of the State of Oklahoma. This Agreement may be executed in counterparts, each of which when so executed shall be deemed an original, and all of which shall together constitute one and the same instrument. Each party acknowledges that all parties to this Agreement participated in the preparation thereof, and that it was negotiated at arm's length. Accordingly, no court construing this Agreement shall construe it more strongly against one party than the other.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Effective Date.

Approved and agreed to by the Authority on the Effective Date.

**ATTEST:**

**MIDWEST CITY MEMORIAL HOSPITAL  
AUTHORITY**, a public trust

\_\_\_\_\_  
\_\_\_\_\_, Secretary

\_\_\_\_\_  
\_\_\_\_\_, Chairman

Approved as to form and legality this \_\_\_\_\_  
day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

Approved and agreed to by Warren on the Effective Date.

**MWC WARREN THEATRE, INC.**, a Kansas  
corporation

By: \_\_\_\_\_  
William J. Warren, President

Approved and agreed to by the City on the Effective Date.

**ATTEST:**

**CITY OF MIDWEST CITY, OKLAHOMA**, a municipal  
corporation of the State of Oklahoma

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

\_\_\_\_\_  
\_\_\_\_\_, Mayor

Approved as to form and legality this \_\_\_\_\_  
day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
\_\_\_\_\_, City Attorney

## **EXHIBIT A**

### **PROPERTY DESCRIPTION**

A tract of land lying in the Southwest Quarter of Section Four (4), Township Eleven (11) North, Range Two (2) West of the Indian Meridian, Oklahoma County, Oklahoma being more particularly described as follows:

COMMENCING at the southwest corner of said Southwest Quarter;

THENCE North 89°24'49" East, along the south line of said Southwest Quarter, a distance of 1,286.19 feet to the POINT OF BEGINNING;

THENCE North 00°35'11" West, perpendicular to the south line of said Southwest Quarter, a distance of 399.33 feet;

THENCE North 01°20'38" West, parallel with the west line of said Southwest Quarter, a distance of 920.64 feet to a point on the centerline of Southeast 12<sup>th</sup> Street as shown on the plat of CROSBY RICHLAND HILL ADDITION, according to the plat thereof recorded in Book 31 of Plats, Page 94, Oklahoma County records;

THENCE North 89°24'49" East, along said centerline and parallel with the south line of said Southwest Quarter, a distance of 547.18 feet to a point, said point being 792.00 feet South 89°24'49" West of the east line of the said Southwest Quarter;

THENCE South 01°23'57" East, parallel with the east line of said Southwest Quarter, a distance of 1,320.02 feet to a point on the south line of said Southwest Quarter, said point being 792.00 feet South 89°24'49" West of the southeast corner of said Southwest Quarter;

THENCE South 89°24'49" West, along said south line, a distance of 553.73 feet to the POINT OF BEGINNING.

Said tract of land containing 724,111 square feet or 16.6233 acres more or less.

The basis of bearings for this legal description is the Oklahoma State Plane Coordinate System (NAD83-North Zone) using a bearing of South 89°24'49" West on the south line of the Southwest Quarter of Section 4, Township 11 North, Range 2 West of the Indian Meridian, Oklahoma County, Oklahoma.

GWS 1-18-17



**EXHIBIT A-1**

**SOONER ROSE II PROPERTY DESCRIPTION**

A tract of land lying in the Southwest Quarter of Section Four (4), Township Eleven (11) North, Range Two (2) West of the Indian Meridian, Oklahoma County, Oklahoma being more particularly described as follows:

COMMENCING at the southwest corner of said Southwest Quarter;

THENCE North 89°24'49" East, along the south line of said Southwest Quarter, a distance of 593.83 feet (594.00 feet per vesting deed) to a point of intersection with the projected east line of Lot Five (5), in Block One (1) of SOONER ROSE ADDITION, an Addition to the City of Midwest City, Oklahoma, according to the plat thereof recorded in Book 75 of Plats at Page 12 in the records of the Oklahoma County Clerk, said point being the POINT OF BEGINNING;

THENCE along said projected line and the actual east line of said Lot 5 and the east and south lines of Lot One (1), in Block One (1) of said SOONER ROSE ADDITION, the following two (2) courses:

1. North 01°20'38" West a distance of 660.00 feet,
2. North 89°24'49" East, passing at a distance of 254.66 feet to an easterly corner of said Lot 1, Block 1, SOONER ROSE ADDITION, and continuing for a total distance of 584.67 feet (585.00 feet per vesting deed);

THENCE North 01°20'38" West a distance of 660.00 feet to a point on the centerline of Southeast 12th Street as shown on the plat of CROSBY RICHLAND HILL ADDITION, according to the plat thereof recorded in Book 31 of Plats, Page 94, Oklahoma County records;

THENCE North 89°24'49" East, along said centerline and parallel with the south line of said Southwest Quarter, a distance of 112.97 feet;

THENCE South 01°20'38" East, parallel with the west line of said Southwest Quarter, a distance of 920.64 feet;

THENCE South 00°35'11" East, perpendicular to the south line of said Southwest Quarter, a distance of 399.33 feet to a point on the south line of said Southwest Quarter;

THENCE South 89°24'49" West, along said south line, a distance of 692.36 feet to the POINT OF BEGINNING.

Said tract of land containing 533,905 square feet or 12.2568 acres more or less.

The basis of bearings for this legal description is the Oklahoma State Plane Coordinate System (NAD83-North Zone) using a bearing of South 89°24'49" West on the south line of the Southwest Quarter of Section 4, Township 11 North, Range 2 West of the Indian Meridian, Oklahoma County, Oklahoma.

GWS 1-18-17

**EXHIBIT B**

**CONCEPT PLAN**

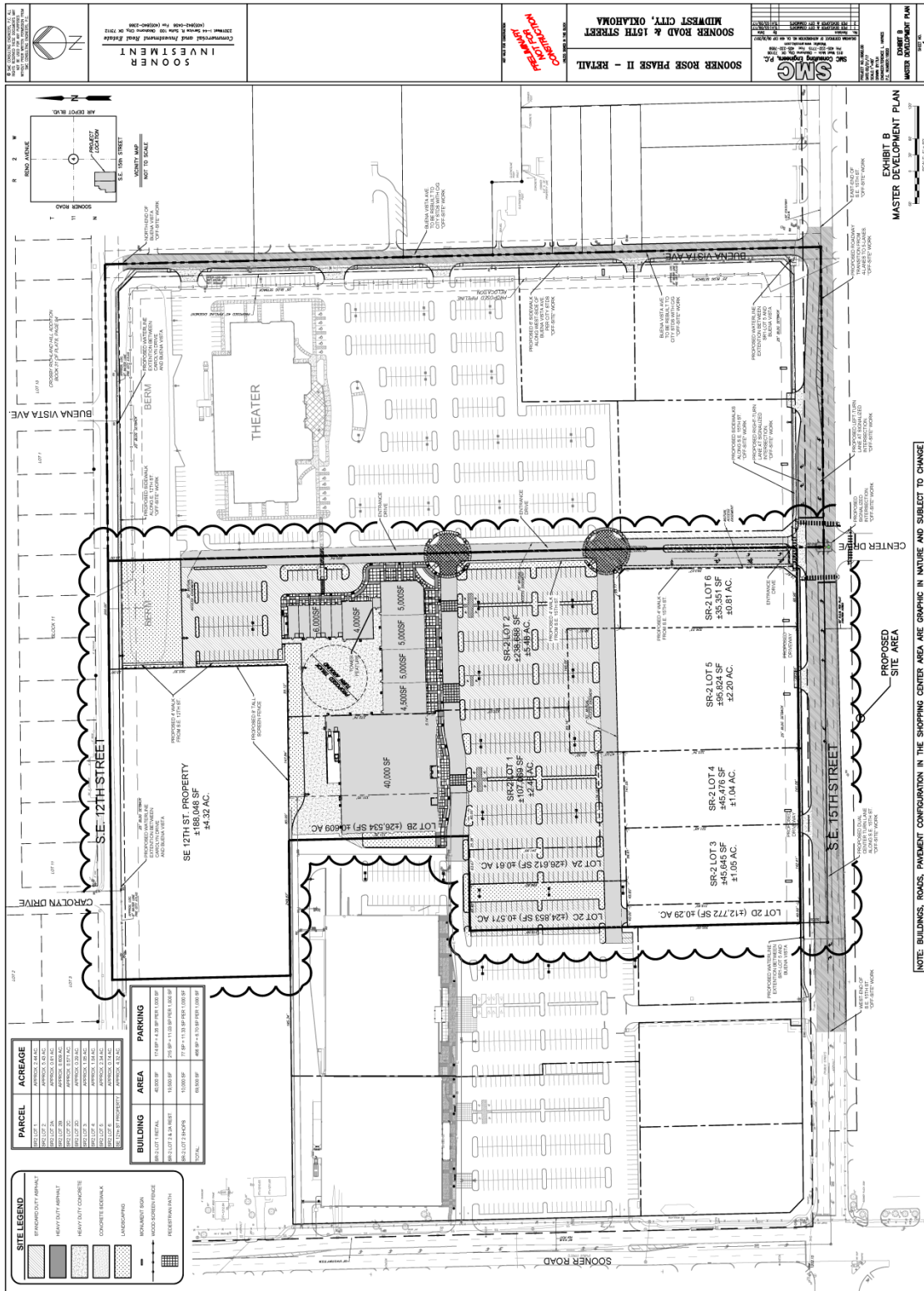


EXHIBIT C  
PUBLIC IMPROVEMENTS

1. The term “Public Improvements” as provided in Sections **Error! Reference source not found.** and **Error! Reference source not found.** of the Agreement shall mean the improvements set forth in this Exhibit C, Section 1, and as more particularly shown on the Site Map Exhibit “C-1”, prepared by SMC Consulting Engineers, P.C., and the attached hereto and incorporated by reference.
  - 1.1. Sooner shall widen and restripe S.E. 15<sup>th</sup> Street along the Property. The widening shall include dedicated left-turn lanes along the centerline of the roadway and a dedicated right-turn lane along the north-side of the roadway at Center Drive. Sooner shall also construct 5-foot wide concrete sidewalks with ADA compliant ramps along the north-side of S.E. 15<sup>th</sup> Street, and Sooner shall construct four (4) concrete driveway approaches for access to the Sooner Rose development along the north-side of S.E. 15<sup>th</sup> Street. Incidental construction such as demolition of existing features and the relocation of utilities shall be included in the S.E. 15<sup>th</sup> Street widening project.
  - 1.2. Sooner shall install a Traffic Signal at the intersection of S.E. 15<sup>th</sup> Street and Center Drive. The Traffic Signal shall be designed to direct traffic for the additional turn-lanes constructed on S.E. 15<sup>th</sup> Street and to interact with the existing traffic signal at S.E. 15<sup>th</sup> Street and Sooner Road. Incidental construction such as demolition of existing features and the relocation of utilities shall be included in the Traffic Signal project.
  - 1.3. Sooner shall reconstruct Buena Vista Avenue to current City Standards for a Local Residential and Commercial Street with curb and gutter from S.E. 12<sup>th</sup> Street to S.E. 15<sup>th</sup> Street. Sooner shall construct 6-foot wide concrete sidewalks with ADA compliant ramps adjacent to the west curb of Buena Vista Avenue, and Sooner shall construct four (4) concrete driveway approaches for access to the Sooner Rose development along the west-side of Buena Vista Avenue. Incidental construction such as demolition of existing features and the relocation of utilities shall be included in the Buena Vista Avenue reconstruction project.
  - 1.4. Sooner shall extend an 8-inch water line along the north-side of S.E. 15<sup>th</sup> Street from the existing 8” water line located on the west-side of Buena Vista Avenue to the southwest corner of the Property and connect to an existing 8” water line located north of S.E. 15<sup>th</sup> Street.
  - 1.5. Sooner shall extend an 8-inch water line along the south-side of S.E. 12<sup>th</sup> Street from the existing 8” water line located at Carolyn Drive to the existing 8” water line located at Buena Vista Avenue.
  - 1.6. Sooner shall construct a 5-foot wide sidewalk along the south-side of S.E. 12<sup>th</sup> Street between Buena Vista Avenue and the northwest corner of the Property.
  - 1.7. Sooner shall relocate the existing oil pipeline owned by Enefrin from the Property to the northern and eastern boundary of the Property along S.E. 12<sup>th</sup> Street and Buena Vista Avenue, respectively, which activities shall include, but not be limited to, removal of the Gas Line from its current location on the Vloedman Property, vacation of the gas line easement by release or quit claim of all rights, title and interest to the Authority by Enefrin, and construction of the Gas Line in a new location along the eastern boundary of the Vloedman Property immediately adjacent to the western right-of-way of Buena Vista Avenue in an area reasonably acceptable to the Authority, all as more particularly shown on Exhibits C and C-1.
  - 1.8. To provide increased pedestrian connectivity for the community, Sooner shall construct sidewalk improvements extending from the current terminus of Center Drive north along the entry drive, and sidewalk improvements extending from the southern boundary of S.E. 12<sup>th</sup> Street south along the common boundary of the Property and the S.E. 12<sup>th</sup> St. Property.
2. All applicable inspections and testing of the “Public Improvements” shall be conducted by Sooner pursuant to State and Federal regulations.
3. The parties hereto estimate that the costs of the Public Improvements shall be as set forth below:

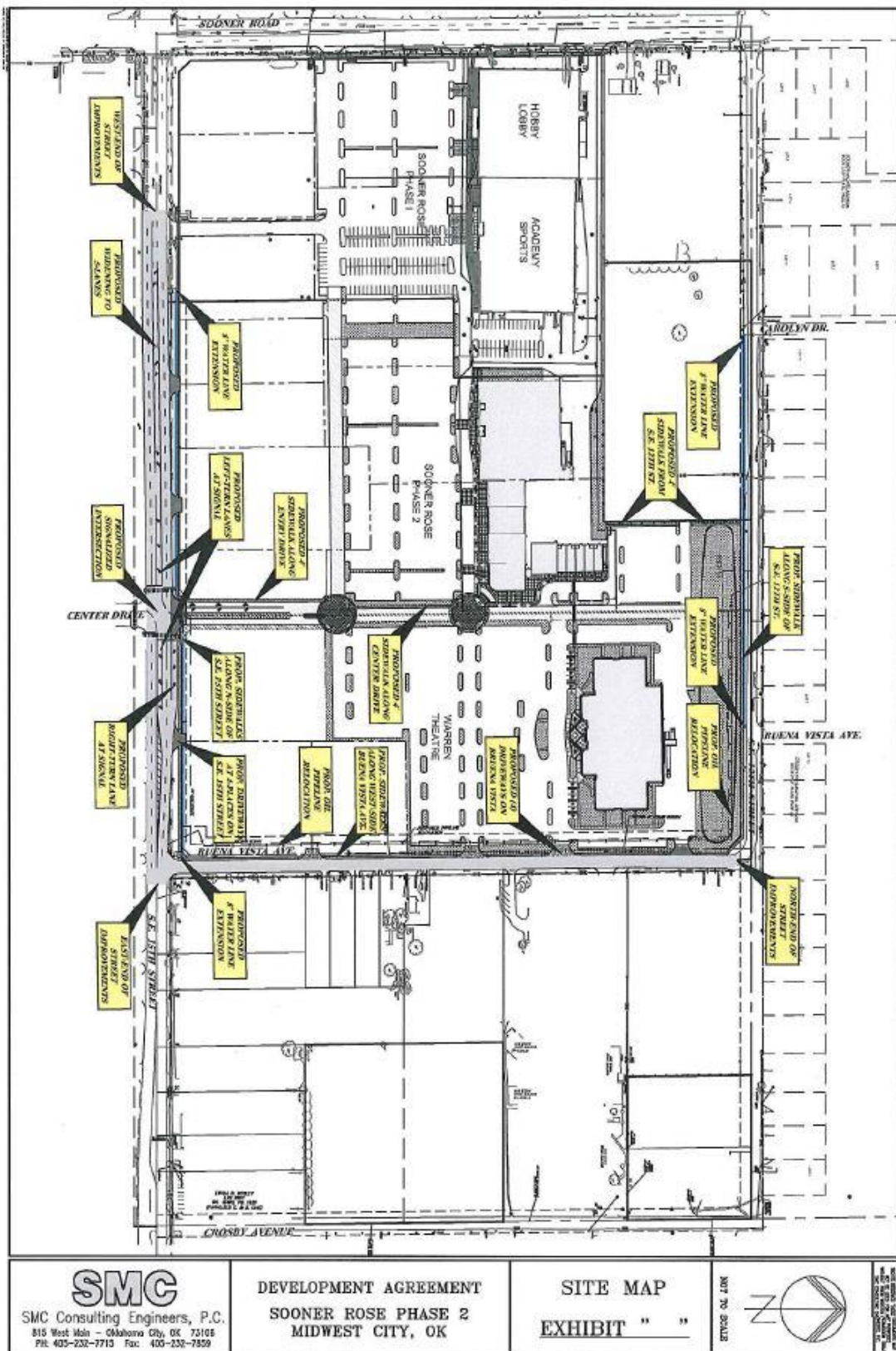
Public Improvements Total Cost Estimate		\$1,524,055.00
SE 15 <sup>th</sup> Street Improvements		\$743,175.00
Buena Vista Avenue Improvements		\$399,190.00
SE 12 <sup>th</sup> Street Improvements		\$90,915.00
Center Drive Sidewalks		\$45,815.00
Gas Line Relocation		\$100,000.00
Civil Engineering for Public Improvements		\$59,960.00
Development Fee (3%)		\$45,000.00
Construction Management Fee (2.5%)		\$40,000.00

In the event the actual costs of the Public Improvements shall be less than the estimates provided above, the Authority's obligation to pay for the Public Improvements shall be only the Public Improvements costs actually incurred pursuant to this Agreement. In the event the actual costs of the Public Improvements exceed the estimates provided above, the Authority shall nevertheless be obligated to pay the actual costs incurred regardless of the estimates provided above.

4. The authority shall pay the Public Improvements Contribution (as referenced in Section **Error! Reference source not found.** of the Agreement) pursuant to the terms of this Section.
  - 4.1. Costs of the civil engineering associated with the Public Improvements as referenced in Section **Error! Reference source not found.** of the Agreement shall be paid by the Authority after the Effective Date pursuant to the terms of Exhibit C, Section 4.3.
  - 4.2. Costs of construction of the Public Improvements incurred by Sooner pursuant to Section **Error! Reference source not found.** of the Agreement shall be paid by the Authority after the Closing pursuant to the terms of Exhibit C, Section 4.3.
  - 4.3. Not more than twice per month, Sooner shall submit written invoices for costs associated with Public Improvements to the Authority (each, a "Contribution Request") identifying the activities associated with the Public Improvements and the costs incurred associated therewith. The Authority shall pay the Public Improvements Contribution to Sooner or directly to the payee as identified in the Contribution Request, in the amount set forth in the Contribution Request, within fourteen (14) days of receipt of the Contribution Request.

EXHIBIT C-1

SITE MAP EXHIBIT





**City Manager's Office**  
100 N. Midwest Boulevard  
Midwest City, OK 73110  
Office: (405) 739-1207  
[ghenson@midwestcityok.org](mailto:ghenson@midwestcityok.org)  
[www.midwestcityok.org](http://www.midwestcityok.org)

## MEMORANDUM

To: Honorable Mayor and City Council Members

From: City Manager, Guy Henson

Date: April 20, 2017

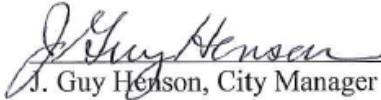
Subject: Discussion and consideration of 1) approving and entering into an Economic Development Agreement with Sooner Investment Group, Inc. and the City of Midwest City in the approximate amount of \$3,800,000 and other good and valuable consideration, to establish the terms and conditions under which the parties will participate in the purchase and redevelopment of approximately 14.5 acres located on the north side of SE 15th Street between South Sooner Road and Crosby Boulevard; and 2) authorizing the chairman and/or the city manager to enter into such other agreements and execute such other documents as may be necessary or appropriate to effect the provisions of the Agreement.

---

This agreement will establish the monetary amount the City of Midwest ("City") will contribute and other terms that will govern the duties and responsibilities of Sooner Investment Group, Inc, the City and the Midwest City Memorial Hospital Authority ("Authority") in the development of property located at the northwest corner of Buena Vista Avenue and SE 15<sup>th</sup> Street.

Council took no action on this item at its April 11, 2017, meeting. Since then, there has been a change proposed to Section 4 (highlighted in red). This change, if approved, automatically terminates the agreement should the Authority fail to find adequate project funding.

Staff recommends approval.

  
J. Guy Henson, City Manager

Attachments: Proposed agreement between the City of Midwest City and Sooner Investment Group.



**STATE OF OKLAHOMA**

**SOONER ROSE PHASE II – RETAIL  
DEVELOPMENT FINANCING ASSISTANCE AGREEMENT**

**COUNTY OF OKLAHOMA**

**THIS SOONER ROSE PHASE II – RETAIL DEVELOPMENT FINANCING ASSISTANCE AGREEMENT** (this “Agreement”) is entered into as of the \_\_\_\_ day of April, 2017 (the “Effective Date”), by and between the Midwest City Memorial Hospital Authority, an Oklahoma public trust (the “Authority”), and Sooner Investment Group, Inc., an Oklahoma corporation (“Sooner”), and the City of Midwest City, Oklahoma (the “City”), a municipal corporation of the State of Oklahoma.

**RECITALS**

WHEREAS, the Authority was created by that certain “Amended and Restated Trust Indenture”, dated as of the 1st day of July, 1961, as a public trust for the use and benefit of the City of Midwest City, Oklahoma, (hereinafter, the “City”) pursuant to the provisions of Title 60, Sections 176, et seq., of the Oklahoma Statutes, as amended and supplemented (hereinafter, the “Public Trust Act”) and other applicable statutes of the State of Oklahoma; and

WHEREAS, the City, as the beneficiary thereof, acting through its City Council, has adopted a resolution accepting beneficial interest therein on behalf of said City; and

WHEREAS, the purposes of the Authority are, in part, to promote economic and community development, within and without the territorial limits of the City, and to promote additional employment which will benefit and strengthen the economy of the City and the State of Oklahoma; and

WHEREAS, in order to accomplish its designated purposes, the Authority is empowered to provide funds for the costs of acquiring, constructing, rehabilitating, equipping, securing, maintaining and developing real and personal property within and near the City, and to enter into, make and perform contracts for the sale of its bonds, notes or other evidence of indebtedness to finance the costs thereof; and

WHEREAS, Warren has proposed to redevelop and construct a retail and movie theatre development within the boundaries of the City (hereinafter, the “Project”) and, in connection therewith, has requested development financing assistance from the Authority in acquiring land and in defraying the costs of certain building, site, and infrastructure improvements; and

WHEREAS, Sooner has the professional ability and expertise to undertake the Project in a manner that will enhance and improve economic growth and development of commerce in the city; and

WHEREAS, both the Authority and Sooner have a significant interest in encouraging and improving commerce and economic development in the City and agree that the two entities working together will have a greater, more positive impact on commerce and economic development in the City than each would have separately; and

WHEREAS, Sooner is investing its resources and capital to undertake the redevelopment and gentrification of an approximate 14.5-acre parcel of property immediately adjacent to the Sooner Rose retail shopping center located at the intersection of Southeast 15<sup>th</sup> Street and South Sooner Road,



comprised of the property identified on Exhibit A as the “Sooner Rose II Property” and “Hospital Authority Property”, which is attached hereto and incorporated by reference (the “Property”); and

WHEREAS, Sooner has the Property under contract pursuant to that certain Commercial/Industrial Real Estate Purchase Contract, by and between Sooner Investment Group, Inc., as Buyer, and G. Michael Vloedman, N. Carolyn Hurst Revocable Trust, and Garrett Vloedman and Emily Vloedman Living Trust, as Seller, and dated September 30, 2016 (the “Land Contract”), which contract includes a total of 34.8-acres of property near the intersection of SE 15<sup>th</sup> Street and Buena Vista Avenue and which is more particularly shown on Exhibit A and more particularly described on Exhibit A-1 (the “Vloedman Property”);

WHEREAS, the Authority is the owner of that certain 3.45-acre property immediately adjacent to the Property as shown on Exhibit A and more particularly described on Exhibit A-2 (the “Hospital Authority Property”), and the Authority intends to contribute the Hospital Authority Property to the Phase II Retail Development (defined below) as more particularly described below;

WHEREAS, the Authority and Sooner have been working with Warren Theatres, LLC (“Warren”) to redevelop an approximately 14.8-acre portion of the Vloedman Property (shown on Exhibit A as the “Theatre Property”) for a movie theater, retail and restaurant uses as more particularly shown on Exhibit B (the “Theatre Development”);

WHEREAS, the Authority and Sooner have entered into that certain Preliminary Development Agreement, dated December 22, 2016, as amended by the First Amendment to Preliminary Development Agreement, dated February 28, 2017 (collectively, the “Preliminary Development Agreement”), pursuant to which Sooner is to undertake certain Predevelopment Activities (as defined in the Preliminary Development Agreement) pertaining to the Vloedman Property in preparation for the transactions set forth in this Agreement;

WHEREAS, the Authority and the City have concluded their independent assessment of the plan of development proposed by Sooner and has determined that the redevelopment of the Property as proposed by Sooner is feasible; and

WHEREAS, the City has adopted and approved that certain “Project Plan Relating to Tax Increment District No. Two, City of Midwest City, Oklahoma (Sooner Rose Increment District Project)” (the “Project Plan”) and has created, within the boundaries set forth in the Project Plan, Increment District Number Two, City of Midwest City, Oklahoma (the “Sooner Rose Increment District”) by Ordinance No. 3291 on March 28, 2017 (the “Ordinance”), pursuant to the Oklahoma Local Development Act, Title 62, Section 851, et seq., of the Oklahoma Statutes, as amended; and

WHEREAS, the parties wish to set forth the manner in which the Project is to be undertaken by Warren and the Authority, and the assistance in development financing which the Authority has agreed to provide.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the parties to this Agreement agree as follows:

1. **Recitals.** The forgoing recitals are true and correct and are hereby incorporated in this Agreement.

2. **Phase II Retail Development Program.** Sooner shall redevelop the Property for a retail shopping center containing retail and restaurant buildings and associated improvements between the existing Sooner Rose shopping center and the Theatre Property, as more particularly shown on Exhibit B (the “Phase II Retail Development”). The Phase II Retail Development shall consist of first-class retail buildings, parking, drive aisles, signage, and ancillary improvements consistent with the quality of the existing Sooner Rose shopping center. The Phase II Retail Development and the Theatre Development shall be part of a unified retail development program coordinated by Sooner and Warren, all as consistent with Exhibit B.
  - 2.1. The parties intend that the Property shall be rezoned to Sooner Rose Phase II – Retail Planned Unit Development Agreement (the “PUD Agreement”), which must be reviewed and approved by the City pursuant to the City’s zoning authority in the City’s absolute discretion prior to the Closing Date (defined below).
  - 2.2. The parties acknowledge that the Phase II Retail Development and Theatre Development shall be a unified, cohesive development program and the PUD Agreement and the PUD zoning for the Theatre Development shall each require mutual cooperation and coordination between Sooner and Warren for the respective developments.
  - 2.3. The parties further acknowledge that Exhibit B and the Phase II Retail Development description provided in this Section represent a conceptual development program that has not been fully engineered, and that certain adjustments necessary for design, engineering, construction, or market conditions may be necessary for the Phase II Retail Development to proceed, which adjustments shall be incorporated into the Phase II Retail Development without need for further amendment to this Agreement provided such adjustments are approved by the City pursuant to the City’s permitting authority and the PUD Agreement (including any amendment thereto).
3. **Sooner’s Obligations.** In consideration of the Authority’s obligations set forth in Section 4, Sooner shall undertake the obligations set forth in this Section. Except as otherwise expressly provided in this Agreement and the Preliminary Development Agreement, Sooner shall undertake the obligations set forth in this Section at its sole cost and expense.
  - 3.1. From and after the Effective Date:
    - 3.1.1. Sooner shall comply with the Preliminary Development Agreement and shall in good faith conduct all reasonable and necessary due diligence associated with the Property, including but not limited to title, survey and environmental assessments as customary in acquiring land for commercial retail development and consistent with the Economic Development Contract, and shall provide copies of such materials to the Hospital Authority. In addition to Sooner’s due diligence conducted pursuant to this Section, the Authority shall be permitted to undertake any its own due diligence at its sole cost and Sooner shall cooperate with the Authority’s efforts in that regard.
    - 3.1.2. Sooner shall in good faith undertake all actions reasonably necessary for the design, rezoning and governmental permitting for the Phase II Retail Development on the Property (excluding building permits for vertical construction of the Phase II Retail Development), including but not limited to, all local and state permits and approvals, land use and zoning

changes, site plan approval and all other permits reasonably necessary to commence construction of the Phase II Retail Development (collectively, the “Retail Approvals”). All design and engineering documents relating to site grading, utilities, parking and vehicular circulation, and the stormwater system for the Property shall be generally consistent with Exhibit B and shall be compatible with the Theatre Development. When complete, the Phase II Retail Development and Theatre Development shall form a cohesive retail and entertainment center comparable with first-class retail centers in the Oklahoma County market.

- 3.1.3. Sooner shall in good faith undertake all actions reasonably necessary for the design and governmental permitting for the construction of the Public Improvements described on Exhibits C and C-1, attached hereto and incorporated by this reference (collectively, the “Public Improvements”), including but not limited to all actions reasonably necessary for the design, permitting and approvals for the relocation of the natural gas transmission line and associated improvements owned by Enefrin located on the Vloedman Property (the “Gas Line”). All design and engineering documents relating to site grading, utilities, parking and vehicular circulation, and the stormwater system for the Property shall be generally consistent with Exhibits C and C-1. Costs associated with the civil engineering and permitting associated with the Public Improvements shall be paid by the Authority pursuant to the terms of Exhibit C.
- 3.2. Prior to Closing, Sooner shall deliver to the Authority information concerning Sooner’s financial ability to develop the Phase II Retail Development to the Authority’s reasonable satisfaction, which information shall include, but not be limited to:
  - 3.2.1. Copies of all Retail Approvals necessary to commence construction of the Phase II Retail Development;
  - 3.2.2. A pro forma of the Phase II Retail Development with construction estimates;
  - 3.2.3. An executed contract for construction of the site work for the Phase II Retail Development; and
  - 3.2.4. A loan commitment or other documentation establishing that Sooner has sufficient financing or other resources to undertake and complete the purchase of the Sooner Rose II Property.
- 3.3. On the Closing Date (defined below), Sooner shall acquire the Property and shall assign to the Authority Sooner’s right to acquire the following portions of the Vloedman Property: (i) the Theatre Property; and (ii) two parcels located east of Buena Vista Avenue identified as Vloedman Parcel 1 and Vloedman Parcel 2 on Exhibit A and described on Exhibit A-1 (collectively, the “Assignment Property”).
- 3.4. Following the Closing Date:
  - 3.4.1. Sooner shall undertake the development of the Phase II Retail Development pursuant to the terms of this Agreement. Sooner shall be solely responsible for all costs associated with the Phase II Retail Development except as otherwise expressly provided for herein.

Sooner will, in its best judgment and discretion, develop, plan and execute the redevelopment of the Property by designing the Phase II Retail Development and obtaining permits from local, state and federal agencies, rezoning the Property (as necessary), replatting the Property (including imposition of any declaration of covenants and easements necessary for the operation of the Property), constructing the Phase II Retail Development, and performing such other duties and assuming such other responsibilities as any other developer would undertake to complete a Class A commercial real estate development of the size of the Property. Sooner will also take whatever other actions and perform all such other duties, such as marketing the Property to local and national retailers and restaurants, that, in the best professional judgment of Sooner, will lead to the successful redevelopment of the Property, which will enhance and improve commerce and economic development in Midwest City, Oklahoma.

3.4.2. Sooner shall construct the Public Improvements. Sooner shall complete the construction of the Public Improvements prior to completion of the construction of the Theatre Development.

4. **Authority's Obligations.** In consideration of Sooner's obligations set forth ~~herein Section 3~~, the Authority shall undertake the obligations set forth in this Section. Except as otherwise expressly provided in this Agreement, the Authority shall undertake the obligations set forth in this Section at its sole cost and expense; ~~provided, however, that the Authority's obligations under this agreement shall be contingent upon the ability of the Authority to secure the necessary financing within seventy-five (75) days after the Effective Date. If the Authority is unable to secure appropriate financing within such period, then this Agreement shall terminate without liability by any of the parties hereto to any other party or to undertake any further actions hereunder.~~

4.1. Following the Effective Date, as the Hospital Authority Property owner, the Authority shall join in all applications prepared by Sooner for the Retail Approvals consistent with the terms of this Agreement.

4.2. On the Closing Date, the Authority shall:

4.2.1. Convey to Sooner the Hospital Authority Property pursuant to the terms of Section 5;

4.2.2. Accept from Sooner assignment of Sooner's rights to acquire the Assignment Property from Vloedman and shall purchase the Assignment Property from Vloedman pursuant to the terms of the Vloedman Contract;

4.2.3. Convey to Warren the Theatre Property pursuant to the terms of a separate agreement between the Authority and Warren; and

4.2.4. The Authority shall pay to Sooner a development contribution in the amount of One Million Eight Hundred Forty-Five Thousand Seven Hundred and No/100 Dollars (\$1,845,700.00) for the construction of the Phase II Retail Development.

4.3. Following the Closing Date, except as otherwise provided in Section 3.1.3, the Authority shall pay for all costs associated with the construction of the Public Improvements (the "Public Improvements Contribution") as set forth in Exhibit C.

## **5. Hospital Authority Property Conveyance.**

- 5.1. Sooner shall obtain, at Sooner's sole cost, an owner's title insurance policy from a title company of Sooner's choice agreeing to insure title to the Hospital Authority Property in an amount that Sooner estimates is equal to the value of the Hospital Authority Property and subject to no exceptions other than those matters herein permitted, those which will be discharged prior to or at the Closing, and the standard printed exceptions and exclusions from coverage customarily contained in an owner's title policy (the "Commitment"). Sooner shall provide the Authority a copy of the Commitment upon receipt. If the Commitment discloses unpermitted exceptions or matters that render the title unmarketable, the Authority, at its option, may cure such defects to Sooner's reasonable satisfaction. If the Authority fails to have the Commitment exceptions removed or the defects cured prior to the Closing Date, Sooner may terminate this Agreement or Sooner may elect, in its discretion, to take title as it then is notwithstanding such exceptions or title defects. In the event that new exceptions or matters arise by or through the Authority, the Authority shall exercise reasonable diligence in the curing of any such defects or exceptions, including payment and discharge of any liens or encumbrances affecting title of the Hospital Authority Property, and the Closing and other deadlines associated with development of the Property shall be tolled until the Authority shall have cured such exceptions or defects. At the Closing, Sooner shall obtain an owner's title policy showing good and marketable title in Sooner through the Closing and subject only to the permitted exceptions and any matters accepted by Sooner.
- 5.2. The parties hereto agree that the date of Sooner's assignment of its rights to acquire the Assignment Property pursuant to the Land Contract to the Authority, and the Authority's purchase of the Assignment Property, shall occur prior to the Closing Date, but in any event, the Closing Date shall occur not later than July 30, 2017.
- 5.3. At the Closing, the Authority shall convey title to the Hospital Authority Property to Sooner by special warranty deed. The Authority shall convey the Hospital Authority Property as development financing assistance, other than the consideration provided by Sooner pursuant to Section 3. Except as otherwise provided herein, Sooner shall pay all costs associated with the acquisition of the Property, including the Hospital Authority Property; provided, however, the Authority shall be responsible for its own legal fees associated with this Agreement and the Closing.
- 5.4. Except as otherwise provided in this Agreement, neither the City nor the Authority is making, and each hereby specifically disclaims, any representations or warranties of any kind, express or implied, with respect to the Hospital Authority Property. Sooner agrees that Sooner has not relied upon and will not rely upon, either directly or indirectly, any representation of the City or the Authority (except as otherwise set forth in this Agreement) or any agent of the City or the Authority. EXCEPT AS OTHERWISE PROVIDED HEREIN, SOONER ACKNOWLEDGES AND AGREES THAT UPON THE CLOSING DATE THE AUTHORITY SHALL CONVEY TO SOONER, AND SOONER SHALL ACCEPT, THE HOSPITAL AUTHORITY PROPERTY "AS IS, WHERE IS" WITH ALL FAULTS, AND THERE ARE NO ORAL AGREEMENTS, WARRANTIES, OR REPRESENTATIONS (EXCEPT AS OTHERWISE PROVIDED HEREIN), COLLATERAL TO OR AFFECTING THE HOSPITAL AUTHORITY PROPERTY BY THE AUTHORITY, ANY AGENT OF THE CITY OR THE AUTHORITY OR ANY THIRD

PARTY ACTING FOR ON BEHALF OF THE CITY OR THE AUTHORITY. The terms of this Section shall expressly survive termination of this Agreement.

- 5.5. Except as otherwise provided in this Agreement, Sooner is not making, and specifically disclaims, any representations or warranties of any kind, express or implied, with respect to the Assignment Property. The Authority agrees that the Authority has not relied upon and will not rely upon, either directly or indirectly, any representation of Sooner (except as otherwise set forth in this Agreement) or any agent of the Authority. EXCEPT AS OTHERWISE PROVIDED HEREIN, THE AUTHORITY ACKNOWLEDGES AND AGREES THAT UPON THE CLOSING DATE THE AUTHORITY SHALL ACQUIRE THE ASSIGNMENT PROPERTY PURSUANT TO THE TERMS OF THE VLOEDMAN CONTRACT AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS SOONER FROM ANY AND ALL CLAIMS AND CAUSES OF ACTION ASSOCIATED WITH THE AUTHORITY'S ACQUISITION OF THE ASSIGNMENT PROPERTY TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT TO AS TO ANY CLAIMS OR CAUSES OF ACTION ARISING FROM OR RELATING TO SOONER'S ACTIONS, OR THE ACTIONS OF ITS OFFICERS, DIRECTORS, EMPLOYEES, OR CONTRACTORS. The terms of this Section shall expressly survive termination of this Agreement.
6. **Assignment.** Sooner's rights and obligations pursuant to this Agreement may be assigned by Sooner only as set forth in this Section. Any assignment other than as provided in this Section shall be null and void except as approved by a prior written amendment to this Agreement, executed by the parties hereto.
- 6.1. The parties hereto acknowledge that Sooner may undertake acquisition of the Property and development of the Phase II Retail Development via an affiliate entity owned or controlled by Sooner or its President, Bob Stearns. Therefore, Sooner's rights and obligations pursuant to this Agreement may be assigned without the prior consent of the Authority to any entity owned or controlled by Sooner or its President, Bob Stearns, on or before the Closing Date without the need for amendment to this Agreement.
- 6.2. The parties hereto acknowledge that Sooner may undertake acquisition of the Property and development of the Phase II Retail Development pursuant to an acquisition and development loan from a lender. Therefore, Sooner's rights and obligations pursuant to this Agreement may be assigned, pledged and hypothecated to a lender associated with the acquisition of the Property and construction of the Phase II Retail Development and without the prior consent of the Authority without the need for amendment to this Agreement. The parties shall execute the Collateral Assignment and Consent to Assignment in a form substantially similar to that provided in Exhibit D, attached hereto and incorporated by reference in furtherance of this Section.
- 6.3. Upon assignment pursuant to this Section, all the terms and conditions of this Agreement shall inure to the benefit of and bind the assignee.
7. **Tax Matters.** The contribution of the Hospital Authority Property and other consideration provided by the Authority pursuant to Section 4 are intended to be as permitted by Section 118 of the Internal Revenue Code, provided, however, that the City and the Authority make no representations or warranties regarding the characterization or treatment of such development financing assistance for federal or state income tax purposes.

- 8. No Partnership.** Nothing contained in this Agreement shall be construed in any way as creating a joint venture, partnership, or similar business relationship between or among, the City, the Authority and Sooner. Consistent with the terms of this Agreement, Sooner shall develop, operate, maintain, lease, sell, hypothecate, and otherwise convey the Property or portions thereof in its sole and absolute discretion.
- 9. Default.** Except as otherwise expressly provided in this Agreement, in the event either party hereto shall default of any its obligations as provided in this Agreement, following thirty (30) days' prior written notice from the non-defaulting party to the defaulting party with the defaulting party's opportunity to cure such default, the non-defaulting party may terminate this Agreement or seek specific performance of the defaulting party's obligations pursuant to the terms of this Agreement; provided, however, if the default is of a nature that cannot be reasonably cured within such 30-day period, then the defaulting party shall be allowed a reasonable period of time to cure such default provided that it diligently commences the cure within the 30-day period and thereafter undertakes and continuously pursues such cure.
- 10. Force Majeure.** Notwithstanding anything in this Agreement to the contrary, no party hereto shall be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Agreement to be performed by it if any failure of its performance shall be due to any strike, lockout, civil commotion, war, warlike operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material or service, Act of God, weather, or any other cause whatsoever beyond the reasonable control of obligated party, and the time for performance by such obligated party shall be extended by the period of delay resulting from or due to any of said causes; ; provided, nothing in this section shall excuse or extend a party's obligation to pay any sum due under this Agreement.
- 11. Termination.** Upon the completion of Sooner's obligations set forth in Section 3 and completion of the Authority's obligations as set forth in Section 4 and 5, this Agreement shall terminate and shall be of no further force or effect except as to terms and conditions that expressly survive termination.
- 12. Miscellaneous.** Nothing in this Agreement shall serve to affect or otherwise limit the City's and Authority's police powers, zoning authority or other governmental action of the City or Authority. This Agreement shall represent the entire understanding between the parties with respect to the subject matter hereof, and supersede all other negotiations and agreements made by the parties concerning the matters set forth herein. Any provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal or unenforceable, shall be severable and shall not be construed to render the remainder of the Agreement to be invalid, illegal, or unenforceable. This Agreement may not be amended, unless evidenced in writing and executed by the parties hereto. This Agreement shall be governed by and constructed in accordance with the laws of the State of Oklahoma. This Agreement may be executed in counterparts, each of which when so executed shall be deemed an original, and all of which shall together constitute one and the same instrument. Each party acknowledges that all parties to this Agreement participated in the preparation thereof, and that it was negotiated at arm's length. Accordingly, no court construing this Agreement shall construe it more strongly against one party than the other.

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Effective Date.

Approved and agreed to by the Authority on the Effective Date.

**ATTEST:**

**MIDWEST CITY MEMORIAL HOSPITAL  
AUTHORITY**, a public trust

\_\_\_\_\_  
\_\_\_\_\_, Secretary

\_\_\_\_\_  
\_\_\_\_\_, Chairman

Approved as to form and legality on the Effective Date.

\_\_\_\_\_  
\_\_\_\_\_, Attorney for  
the Authority

Approved and agreed to by Sooner on the Effective Date.

**SOONER INVESTMENT GROUP, INC.**, an  
Oklahoma corporation

\_\_\_\_\_  
Robert Stearns, President



## **EXHIBIT A**

### **PROPERTY DESCRIPTION**

A tract of land lying in the Southwest Quarter of Section Four (4), Township Eleven (11) North, Range Two (2) West of the Indian Meridian, Oklahoma County, Oklahoma being more particularly described as follows:

COMMENCING at the southwest corner of said Southwest Quarter;

THENCE North 89°24'49" East, along the south line of said Southwest Quarter, a distance of 593.83 feet to a point of intersection with the projected east line of Lot Five (5), in Block One (1) of SOONER ROSE ADDITION, an Addition to the City of Midwest City, Oklahoma according to the plat thereof recorded in Book 75 of Plats at Page 12 in the records of the Oklahoma County Clerk, said point being the POINT OF BEGINNING;

THENCE along said projected line and the actual east line of said Lot 5 and the east, south and east lines of Lot One (1), in Block One (1) of said SOONER ROSE ADDITION, the following three (3) courses:

1. North 01°20'38" West a distance of 660.00 feet;
2. North 89°24'49" East a distance of 254.66 feet;
3. North 01°20'38" West, passing at a distance of 331.70 feet the northeast corner of said Lot 1, Block 1, SOONER ROSE ADDITION, and continuing for a total distance of 410.00 feet;

THENCE North 89°24'49" East, parallel with the south line of said Southwest Quarter, a distance of 242.96 feet;

THENCE North 01°20'38" West, parallel with the west line of said Southwest Quarter, a distance of 328.30 feet; feet to a point on the centerline of Southeast 12<sup>th</sup> Street as shown on the plat of CROSBY RICHLAND HILL ADDITION, according to the plat thereof recorded in Book 31 of Plats, Page 94, Oklahoma County records;

THENCE North 89°24'49" East, along said centerline and parallel with the south line of said Southwest Quarter, a distance of 200.00 feet;

THENCE South 01°20'38" East, parallel with the west line of said Southwest Quarter, a distance of 920.64 feet;

THENCE South 00°35'11" East, perpendicular to the south line of said Southwest Quarter, a distance of 399.33 feet to a point on the south line of said Southwest Quarter;

THENCE South 89°24'49" West, along said south line, a distance of 692.36 feet to the POINT OF BEGINNING.

Said tract of land containing 671,922 square feet or 15.4252 acres more or less.

The basis of bearings for this legal description is the Oklahoma State Plane Coordinate System (NAD83-North Zone) using a bearing of South 89°24'49" West on the south line of the Southwest Quarter of Section 4, Township 11 North, Range 2 West of the Indian Meridian, Oklahoma County, Oklahoma.

GWS 2-22-17

## **EXHIBIT A-1**

### **VLOEDMAN PROPERTY DESCRIPTION**

A portion of the Vloedman Property, comprising the Theatre Property and portion of the Property :

An unplatted part of the Southwest Quarter (SW/4) of Section Four (4), Township Eleven (11) North, Range Two (2) West of the Indian Meridian, Oklahoma County, Oklahoma, more particular described as follows:

Beginning at the Southwest Corner of said SW/4, thence east for a distance of 594 feet; Thence, north for a distance of 660 feet; Thence, east for a distance of 585 feet; Thence, north for a distance of 660 feet; Thence, south for a distance of 1320 feet to the South line of said Section 4; Thence, west for a distance of 1245 feet to the Point or Place of Beginning, less and except the south 33 feet of the described parcel dedicated as street right-of-way. Said tract containing 28.8636 acres, more or less (27.92 minus the 33-ft. roadway dedication).

“Parcel 1” and “Parcel 2,” as referenced in Section 3.3(ii):

An unplatted part of the Southeast Quarter (SE/4) of the Southwest Quarter (SW/4) of Section Four (4), Township Eleven (11) North, Range Two (2) West of the Indian Meridian, Oklahoma County, Oklahoma, more particular described as follows:

Beginning 330 feet north of the Southeast Corner of the SW/4 of said Section 4; Thence west 396 feet; Thence, north 440 feet; Thence east 396 feet; Thence, south 440 feet to the Point or Place of Beginning; containing 4.00 acres more or less; and

Beginning 1045 feet north of the Southeast Comer of the Southeast Quarter of the SW/4 of said Section 4; Thence, north 275 feet; Thence, west 316.8 feet; Thence south 275 feet; Thence, east 316.8 feet to the Point or Place of Beginning; containing 2.0013 acres more or less.

Collectively, the “Vloedman Property”).

**EXHIBIT A-2**

**HOSPITAL AUTHORITY PROPERTY DESCRIPTION**

A tract of land lying in the Southwest Quarter of Section Four (4), Township Eleven (11) North, Range Two (2) West of the Indian Meridian, Oklahoma County, Oklahoma being more particularly described as follows:

COMMENCING at the southwest corner of said Southwest Quarter;

THENCE North 01°20'38" West, along the west line of said Southwest Quarter, a distance of 1,320.00 feet to the centerline of Southeast 12<sup>th</sup> Street as shown on the plat of CROSBY RICHLAND HILL ADDITION, according to the plat thereof recorded in Book 31 of Plats, Page 94, Oklahoma County records;

THENCE North 89°24'49" East, along said centerline and parallel with the south line of said Southwest Quarter, a distance of 988.50 feet to the POINT OF BEGINNING;

THENCE continuing North 89°24'49" East, along said centerline of Southeast 12<sup>th</sup> Street and parallel with the south line of said Southwest Quarter, a distance of 190.00 feet;

THENCE South 01°20'38" East, parallel with the west line of said Southwest Quarter, a distance of 660.00 feet;

THENCE South 89°24'49" West, parallel with the south line of said Southwest Quarter, a distance of 330.00 feet;

THENCE North 01°20'38" West, parallel with the west line of said Southwest Quarter, a distance of 410.00 feet;

THENCE North 89°24'49" East, parallel with the south line of said Southwest Quarter, a distance of 140.00 feet;

THENCE North 01°20'38" West, parallel with the west line of said Southwest Quarter, a distance of 250.00 feet to the POINT OF BEGINNING.

Said tract of land containing 182,791 square feet or 4.1963 acres more or less.

The foregoing description being all lands described in the WARRANTY DEED recorded in Book 7734, Page 1846, and the WARRANTY DEED recorded in Book 8323, Page 467.

GWS 1-16-17



## **EXHIBIT C**

### **PUBLIC IMPROVEMENTS**

1. The term “Public Improvements” as provided in Sections 3 and 4 of the Agreement shall mean the improvements set forth in this Exhibit C, Section 1, and as more particularly shown on the Site Map Exhibit “C-1”, prepared by SMC Consulting Engineers, P.C., and the attached hereto and incorporated by reference.
  - 1.1. Sooner shall widen and restripe S.E. 15<sup>th</sup> Street along the Property. The widening shall include dedicated left-turn lanes along the centerline of the roadway and a dedicated right-turn lane along the north-side of the roadway at Center Drive. Sooner shall also construct 5-foot wide concrete sidewalks with ADA compliant ramps along the north-side of S.E. 15<sup>th</sup> Street, and Sooner shall construct four (4) concrete driveway approaches for access to the Sooner Rose development along the north-side of S.E. 15<sup>th</sup> Street. Incidental construction such as demolition of existing features and the relocation of utilities shall be included in the S.E. 15<sup>th</sup> Street widening project.
  - 1.2. Sooner shall install a Traffic Signal at the intersection of S.E. 15<sup>th</sup> Street and Center Drive. The Traffic Signal shall be designed to direct traffic for the additional turn-lanes constructed on S.E. 15<sup>th</sup> Street and to interact with the existing traffic signal at S.E. 15<sup>th</sup> Street and Sooner Road. Incidental construction such as demolition of existing features and the relocation of utilities shall be included in the Traffic Signal project.
  - 1.3. Sooner shall reconstruct Buena Vista Avenue to current City Standards for a Local Residential and Commercial Street with curb and gutter from S.E. 12<sup>th</sup> Street to S.E. 15<sup>th</sup> Street. Sooner shall construct 6-foot wide concrete sidewalks with ADA compliant ramps adjacent to the west curb of Buena Vista Avenue, and Sooner shall construct four (4) concrete driveway approaches for access to the Sooner Rose development along the west-side of Buena Vista Avenue. Incidental construction such as demolition of existing features and the relocation of utilities shall be included in the Buena Vista Avenue reconstruction project.
  - 1.4. Sooner shall extend an 8-inch water line along the north-side of S.E. 15<sup>th</sup> Street from the existing 8” water line located on the west-side of Buena Vista Avenue to the southwest corner of the Property and connect to an existing 8” water line located north of S.E. 15<sup>th</sup> Street.
  - 1.5. Sooner shall extend an 8-inch water line along the south-side of S.E. 12<sup>th</sup> Street from the existing 8” water line located at Carolyn Drive to the existing 8” water line located at Buena Vista Avenue.
  - 1.6. Sooner shall construct a 5-foot wide sidewalk along the south-side of S.E. 12<sup>th</sup> Street between Buena Vista Avenue and the northwest corner of the Property.
  - 1.7. Sooner shall relocate the existing oil pipeline owned by Enefrin from the Property to the northern and eastern boundary of the Property along S.E. 12<sup>th</sup> Street and Buena Vista Avenue, respectively, which activities shall include, but not be limited to, removal of the Gas Line from its current location on the Vloedman Property, vacation of the gas line easement by release or quit claim of all rights, title and interest to the Authority by Enefrin, and construction of the Gas Line in a new location along the eastern boundary of the Vloedman Property immediately adjacent to the western right-of-way of Buena Vista Avenue in an area reasonably acceptable to the Authority, all as more particularly shown on Exhibits C and C-1.
  - 1.8. To provide increased pedestrian connectivity for the community, Sooner shall construct sidewalk improvements extending from the current terminus of Center Drive north along the entry drive, and sidewalk improvements extending from the southern boundary of S.E. 12<sup>th</sup> Street south along the common boundary of the Property and the S.E. 12<sup>th</sup> St. Property.

2. All applicable inspections and testing of the “Public Improvements” shall be conducted by Sooner pursuant to State and Federal regulations.
3. The parties hereto estimate that the costs of the Public Improvements shall be as set forth below:

<b>Public Improvements Total Cost Estimate</b>		<b>\$1,524,055.00</b>
SE 15 <sup>th</sup> Street Improvements	\$743,175.00	
Buena Vista Avenue Improvements	\$399,190.00	
SE 12 <sup>th</sup> Street Improvements	\$90,915.00	
Center Drive Sidewalks	\$45,815.00	
Gas Line Relocation	\$100,000.00	
Civil Engineering for Public Improvements	\$59,960.00	
Development Fee (3%)	\$45,000.00	
Construction Management Fee (2.5%)	\$40,000.00	

In the event the actual costs of the Public Improvements shall be less than the estimates provided above, the Authority’s obligation to pay for the Public Improvements shall be only the Public Improvements costs actually incurred pursuant to this Agreement. In the event the actual costs of the Public Improvements exceed the estimates provided above, the Authority shall nevertheless be obligated to pay the actual costs incurred regardless of the estimates provided above.

4. The authority shall pay the Public Improvements Contribution (as referenced in Section 4.3 of the Agreement) pursuant to the terms of this Section.
  - 4.1. Costs of the civil engineering associated with the Public Improvements as referenced in Section 3.1.3 of the Agreement shall be paid by the Authority after the Effective Date pursuant to the terms of Exhibit C, Section 4.3.
  - 4.2. Costs of construction of the Public Improvements incurred by Sooner pursuant to Section 3.4.2 of the Agreement shall be paid by the Authority after the Closing pursuant to the terms of Exhibit C, Section 4.3.
  - 4.3. Not more than twice per month, Sooner shall submit written invoices for costs associated with Public Improvements to the Authority (each, a “Contribution Request”) identifying the activities associated with the Public Improvements and the costs incurred associated therewith. The Authority shall pay the Public Improvements Contribution to Sooner or directly to the payee as identified in the Contribution Request, in the amount set forth in the Contribution Request, within fourteen (14) days of receipt of the Contribution Request.

**EXHIBIT C-1**

**SITE MAP EXHIBIT**



Sooner Rose Phase II – Retail Economic Development Agreement | Page 18

**COLLATERAL ASSIGNMENT  
OF ECONOMIC DEVELOPMENT CONTRACTS**

**THIS COLLATERAL ASSIGNMENT OF ECONOMIC DEVELOPMENT CONTRACTS** (this “Collateral Assignment”) is entered into effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by and between \_\_\_\_\_, an Oklahoma limited liability company (the “Borrower”), SOONER INVESTMENT GROUP, INC., an Oklahoma corporation (“SIG”) and \_\_\_\_\_, an \_\_\_\_\_ banking association (“Bank” and/or “Assignee”).

**WHEREAS**, on December 22, 2016 the MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY, a public trust (“MWCMHA”), and SIG entered into that certain Preliminary Development Agreement (the “SIG Economic Development Contract”);

**WHEREAS**, effective February 23, 2016, the MWCMHA and Borrower entered into that certain Sooner Rose Phase II – Retail Economic Development Agreement (the “Sooner Rose Economic Development Agreement”; the SIG Economic Development Contract and the Sooner Rose Economic Development Agreement are collectively referred to herein as the “Economic Development Contracts”);

**WHEREAS**, a true and correct copy of the SIG Economic Development Contract is attached hereto as Exhibit E-1 and the Sooner Rose Economic Development Agreement is attached hereto as Exhibit E-2;

**WHEREAS**, Borrower and Bank have entered into a Construction Loan Agreement dated as of \_\_\_\_\_, 2017 (the “Loan Agreement”) under the terms of which the Bank provided Borrower with a loan in the amount of \$\_\_\_\_\_ (the “Loan”) evidenced by a promissory note in a like amount (the “Note”) which such Loan is secured by, among other things, Borrower’s rights in the Economic Development Contracts (the “Collateral”);

**WHEREAS**, capitalized terms not otherwise defined herein shall be defined as set forth in the Loan Agreement;

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of SIG and Borrower hereby grants, transfers and assigns to Assignee and Assignee’s successors and assigns and each of SIG and Borrower hereby grants a security interest in all of their right, title, and interest to all rights and privileges arising under and pursuant to the Economic Development Contracts to Assignee.

This Collateral Assignment is made to secure Borrower’s Indebtedness as defined in the Loan Agreement, and secured further by the Loan Documents (as that term is defined in the Loan Agreement), which Indebtedness includes the Loan evidenced by the Note.

In the event of the occurrence of an Event of Default (as defined in the Loan Agreement), and the continuance of any such Event of Default, at Assignee’s option, Assignee may exercise any and all of the rights permitted and held by each of SIG and Borrower under their respective Economic Development Contract, which Assignee may then deem proper to protect Assignee’s security interest in Borrower’s and SIG’s rights under the Economic Development Contracts, as applicable, and succeed to the fullest extent possible in and to all right, title and interest of SIG and Borrower, as applicable, under

their respective Economic Development Contract and any and all renewals, modifications or extensions thereof. Assignee may exercise Assignee's rights under this paragraph as often and whenever any such Event of Default may occur. Provided, however, the parties hereto acknowledge that certain Events of Default are subject to a notice and cure period pursuant to the Loan Agreement; therefore, Assignee's rights as set forth in this paragraph shall be subject to Borrower's rights to notice and cure to the extent expressly provided in the Loan Agreement. Should Assignee choose to exercise any rights under this Collateral Assignment Agreement, Assignee agrees to give timely notice to MWCMHA, and Assignee (or its successor) agrees, upon the exercise of the assignment, to fulfill SIG's and Borrower's duties and responsibilities, of the obligations as set forth under their respective Economic Development Contracts upon Assignee's exercise of its rights under this Collateral Assignment Agreement. Further, nothing in this Agreement shall give the Assignee any greater rights than held by SIG and Borrower, as applicable, under their respective Economic Development Contract.

Until its exercise of its right upon the occurrence of an Event of Default under the Loan Agreement to step into the shoes of SIG and/or Borrower and assume control of the Economic Development Contracts, Assignee shall not be obligated to perform or discharge, nor does Assignee hereby undertake to perform or discharge, any obligation, duty or liability of either of SIG and/or Borrower under the respective Economic Development Contracts, or under or by reason of this Collateral Assignment thereof, and each of SIG and Borrower shall and do hereby agree to indemnify and hold Assignee harmless of and from any and all liability, loss or damage, including reasonable costs, expenses and professional fees, which Assignee may or might incur under the Economic Development Contracts subsequent to the date hereof and prior to exercise by Assignee of any right granted to Assignee hereunder and/or under or by reason of the execution and delivery to Assignee this date of this Collateral Assignment and of and from any and all claims and demands whatever which may be asserted against Assignee by reason of any alleged obligation claimed to have been undertaken on Assignee's part to perform or discharge any of the terms, covenants or agreements contained in the Economic Development Contracts solely by reason of the execution by SIG and Borrower of this Collateral Assignment.

Until the Indebtedness secured hereby is paid in full, each of SIG and Borrower covenants and agrees to transfer and assign to Assignee any and all subsequent agreements relating to the Economic Development Contracts or the property associated therewith, upon the same or substantially the same terms and conditions as are herein contained, and to make, execute and deliver to Assignee upon demand any and all instruments that may be necessary therefor.

Upon the payment in full and of all indebtedness secured hereby, this Collateral Assignment shall be and become void and of no further force and effect.

This Collateral Assignment shall bind and inure to the benefit of each of SIG and Borrower, their successors and assigns, and Assignee, and its successors and assigns.

All notices, demands and documents of any kind which may be desired or required to be served upon Assignor hereunder shall be sent by certified mail, return receipt requested, postage pre-paid, or may be delivered directly to Assignor pursuant to the terms of the Loan Agreement.

Each of SIG and Borrower hereby expressly waives any right of trial by jury in any action or legal proceeding arising out of or relating to the Loan Agreement or the transactions contemplated thereby or hereby.

**EXECUTED** as of the date first above written.

“BORROWER”

\_\_\_\_\_,  
an Oklahoma limited liability company

By: \_\_\_\_\_  
Bob Stearns, Manager

“SIG”

SOONER INVESTMENT GROUP, INC., an Oklahoma corporation

\_\_\_\_\_  
By: Robert Stearns  
Title: President

“ASSIGNEE/BANK”

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

## **CONSENT TO ASSIGNMENT**

The MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY, a public trust (the “Trust”) hereby consents to the Collateral Assignment of Economic Development Contracts and agrees as follows:

1. Consent and Recognition of Assignment. Upon the occurrence of the events described in this Collateral Assignment, the Trust hereby (i) recognizes and consents to the assignment of all rights of \_\_\_\_\_, an Oklahoma limited liability company (“Sooner”), in that certain Sooner Rose Phase II – Retail Economic Development Agreement between Sooner and the Trust dated as of \_\_\_\_\_, 2017 (the “Sooner Rose Agreement”) and all rights of SOONER INVESTMENT GROUP, INC., an Oklahoma corporation (“SIG”), in that certain Economic Development Contract between SIG and the Trust dated as of December 22, 2016 (the “SIG Agreement”; the Sooner Rose Agreement and the SIG Agreement are collectively referred to in this Consent to Assignment as the “Economic Development Agreements”) to \_\_\_\_\_ and (ii) confirms that \_\_\_\_\_ shall be entitled to all the benefits of such Economic Development Contracts and will fulfill all Borrower’s duties and responsibilities of the Economic Development Contracts.
2. Notices. \_\_\_\_\_ shall be deemed to have requested notice under the Economic Development Agreements for any notice of default or any other notice under the Economic Development Agreements. The Trust shall deliver or mail in the United States mail, postage prepaid, to \_\_\_\_\_ a duplicate and concurrent copy of any such notice. \_\_\_\_\_ shall not be required to make any further request for notice.
3. Liability for Prior Acts. \_\_\_\_\_, if it succeeds to the interest of either SIG or Sooner Rose in either of the Economic Development Agreements, shall not (a) be liable for any damages or other relief attributable to any act or omission of either SIG or Sooner Rose; or (b) be bound by any modification or amendment of or to either of the Economic Development Agreements unless the amendment or modification shall have been approved in writing by \_\_\_\_\_.
4. Third-Party Beneficiary. \_\_\_\_\_ shall be deemed to be a third party beneficiary of the Economic Development Agreements with respect to any and all provisions of the Economic Development Agreements. Notwithstanding anything to the contrary in either Economic Development Agreement, Trust may terminate either of the Economic Development Agreements because of a default thereunder (where termination is an available remedy under either of such Economic Development Agreements) only after Trust, in accordance with the Economic Development Agreements and/or this Agreement, has delivered or mailed notice of such termination to \_\_\_\_\_ at the address set forth herein, specifying such default, and \_\_\_\_\_ shall have the cure rights provided to SIG and/or Sooner Rose dating from the date \_\_\_\_\_ receives such notice.
5. No Voluntary Termination. So long as the Loan from \_\_\_\_\_ to Sooner Rose is in effect, neither Economic Development Agreement will be voluntarily canceled, surrendered, or terminated, without the prior written consent of \_\_\_\_\_, which consent shall not be unreasonably withheld, conditioned or delayed.
6. True and Complete Economic Development Agreements. The Trust represents and warrants to \_\_\_\_\_ that the Economic Development Agreements attached as Exhibits E-1 and E-2 accurately identify the Economic Development Agreements and all amendments, supplements, side letters and other agreements and memoranda pertaining to the Economic Development Agreements.
7. No Default. As of the date of this Consent to Assignment, the Trust represents and warrants that, to the best of its knowledge, there exist no events of default or events that, with notice or the passage of time or both, would be events of default under the Economic Development Agreements on the

part of the Trust or either SIG or Sooner Rose. The Trust represents and warrants that the Economic Development Agreements are in full force and effect as of the date of this Consent to Assignment.

8. No Prior Assignments. The Trust has not received notice of any prior assignment, hypothecation or pledge of either SIG's or Sooner Rose's interest in either of the Economic Development Agreements.

"TRUST"

MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY, a  
public trust,

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
CHAIRMAN

"CITY"

\_\_\_\_\_  
REVIEWED for form and legality as of  
\_\_\_\_\_, 2017.

\_\_\_\_\_  
\_\_\_\_\_, City Attorney



## MEMORIAL HOSPITAL AUTHORITY AGENDA



## **MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY AGENDA**

Midwest City Council Chambers, 100 N. Midwest Boulevard

April 20, 2017 - 5:31 PM

A. CALL TO ORDER.

B. DISCUSSION ITEMS.

1. Discussion and consideration of an amendment to the Trust Indenture of the Midwest City Memorial Hospital Authority, a public trust, as contained in the amended and restated trust indenture. (Presentation by Dan McMahan, Representing the City of Midwest City, OK.)
2. Discussion and consideration of 1) approving and entering into an Economic Development Agreement with Midwest City Warren Theatre, Inc. and the Midwest City Memorial Hospital Authority ("MCMHA") in the approximate amount of \$11,100,000 and other goods and valuable consideration, to establish the terms and conditions under which the parties will participate in the development of approximately 16.6233 acres located on the northwest corner of Buena Vista Avenue and SE 15th Street; and 2) authorizing the chairman and/or the general manager/ administrator to enter into such other agreements and execute such other documents as may be necessary or appropriate to effect the provisions of the Agreement; and 3) authorizing up to \$500,000 in reimbursements from MCMHA Discretionary funds for professional design services if necessary. (General Manager - G. Henson)
3. Discussion and consideration of 1) approving and entering into an Economic Development Agreement with Sooner Investment Group, Inc. and the Midwest City Memorial Hospital Authority in the approximate amount of \$3,800,000 and other good and valuable consideration, to establish the terms and conditions under which the parties will participate in the purchase and redevelopment of approximately 14.5 acres located on the north side of SE 15th Street between South Sooner Road and Buena Vista Avenue; and 2) and authorizing the chairman and/or the general manager/ administrator to enter into such other agreements and execute such other documents as may be necessary or appropriate to effect the provisions of the Agreement. (General Manager - G. Henson)

C. ADJOURNMENT.





## ***Midwest City Memorial Hospital Authority***

100 North Midwest Boulevard  
Midwest City, Oklahoma 73110  
Office (405) 739-1207 - Fax (405) 739-1208  
E-mail: ghenson@midwestcityok.org

J. Guy Henson  
*General Manager/  
Administrator*

### *Trustees*

Matthew D. Dukes II  
Susan Eads  
Pat Byrne  
Rick Dawkins  
M. Sean Reed  
Christine Allen  
Jeff Moore

### *Board of Grantors*

Sherry Beaird  
John Cauffiel  
Marcia Conner  
Pam Dimski  
Dara McGlamery  
Joyce Jackson  
Charles McDade  
Nancy Rice  
Sheila Rose

## **MEMORANDUM**

TO: Honorable Chairman and Trustees

FROM: General Manager/Administrator Guy Henson


DATE: April 20, 2017

SUBJECT: Discussion and consideration of an amendment to the Trust Indenture of the Midwest City Memorial Hospital Authority, a public trust, as contained in the amended and restated trust indenture. (Presentation by Dan McMahan, Representing the City of Midwest City, OK.)

During the April 11, 2017, City Council meeting there was discussion concerning the effectiveness of the Midwest City Memorial Hospital Authority Trust Indenture as it applied to the development financing agreements proposed with Sooner Investment Group, Inc. and Midwest City Warren Theatre, Inc. Special counsel Dan McMahan recommended an amendment to the Indenture prior to signing the agreements. He advised the amendment was necessary to reflect changes to Oklahoma Statutes and the Oklahoma Constitution that has occurred since the Indenture was last amended on April 7, 1998.

The Midwest City Chamber of Commerce Executive Board met on April 17<sup>th</sup>, 2017, and unanimously recommended approval of the revisions proposed in the amendment. Its approval was subsequently confirmed by a majority of the governing board.

Staff recommends approving the document as presented.

  
J. Guy Henson, City Manager

Attachments: Proposed amendments to Indenture  
(See previous City Council items as well)

FIRST AMENDMENT TO  
AMENDED AND RESTATED TRUST INDENTURE OF THE  
MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY

WHEREAS, on April 8th, 1998, that certain “Amended and Restated Trust Indenture” (hereinafter, the “Amended Trust Indenture”) of the Midwest City Memorial Hospital Authority (hereinafter, the “Authority”) was adopted amending the original Trust Indenture of the Authority dated July 1st, 1961, for the use and benefit of the City of Midwest City, Oklahoma (the “Beneficiary”); and

WHEREAS, the City Council of the Beneficiary and the Trustees of the Authority now desire to amend said Amended Trust Indenture to clarify the purposes for which the Authority may act, and the powers it may utilize in doing so.

NOW, THEREFORE, pursuant to the authority of the Trustees of the Authority and the City Council of the Beneficiary, and with the consent of the Trustor, the Midwest City Chamber of Commerce, the Amended Trust Indenture is hereby amended, as follows:

SECTION 1. Paragraph 1(f) of Article III of said Amended Trust Indenture is hereby amended in its entirety, to read as follows:

“(f) To perform any other authorized and proper essential governmental function or act permitted by law to be performed by public trusts in the State of Oklahoma-, including without limitation, to assist the Beneficiary, the United States, the State of Oklahoma, its municipalities, agencies, private entities and citizens in (i) promoting economic and community development, within and without the territorial limits of the City; (ii) developing additional employment which will benefit and strengthen the economy of the City; (iii) developing or redeveloping areas determined by the Beneficiary to be unproductive, undeveloped, underdeveloped or blighted; (iv) fostering an improved economic climate within the Beneficiary; and (v) otherwise promoting the general welfare and prosperity of the Beneficiary, all in order to achieve maximum utilization of the Beneficiary’s human, economic and natural resources; and without restriction, in furtherance of the foregoing general objectives, to utilize the following specific powers or purposes, to-wit:

(1) by promoting, financing and developing any and all public works projects or facilities of any type or description including, but not limited to, those for water, sewer, solid waste, natural gas or other public utilities of any type or description;

- (2) by promoting, financing and developing commercial and industrial projects or facilities including, without limitation, offices, warehouses, retail and wholesale marketing facilities, motel and hotel establishments and restaurants; and
- (3) by promoting financing and developing recreational, sports, cultural, tourism, entertainment and communication media projects or facilities.

SECTION 2. A new Paragraph 4 shall be added to Article VII of said Amended Trust Indenture which shall read, in its entirety, as follows:

(4) The Trustees hereof shall further have the right, power, duty, authority, discretion and privilege to exercise, for the benefit of the Beneficiary, those powers (including the power of eminent domain) as authorized by the economic, industrial or community development statutes of the State of Oklahoma, including, without limitation, the Local Development Act, the Local Industrial Development Act, and the Neighborhood Redevelopment Act, all as may be amended and supplemented from time to time.

The foregoing First Amendment to Amended and Restated Trust Indenture was approved by the Trustees of the Midwest City Memorial Hospital Authority on the \_\_\_\_ day of April, 2017.

MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY

(SEAL)  
ATTEST:

BY: \_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary

-----  
The foregoing First Amendment to Amended and Restated Trust Indenture was approved by the City Council of the City of Midwest City, Oklahoma on the \_\_\_\_ day of April, 2017.

CITY OF MIDWEST CITY, OKLAHOMA

ATTEST: BY: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

(SEAL)

Approved as to form and legality this \_\_\_\_\_ day of April, 2017.

\_\_\_\_\_  
City Attorney

-----  
The foregoing First Amendment to Amended and Restated Trust Indenture was approved by the Board of Directors of the Midwest City Chamber of Commerce on the \_\_\_\_ day of April, 2017.

ATTEST: BY: \_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

ACCEPTANCE OF BENEFICIAL INTEREST

Pursuant to Resolution No. \_\_\_\_\_ duly adopted by its City Council, the City of Midwest City, Oklahoma, hereby accepts the beneficial interest in the trust created by the within and foregoing Amended and Restated Trust Indenture, as modified by that certain "First Amendment to Amended and Restated Trust Indenture", in all respects in accordance with the terms of said Amended and Restated Trust Indenture.

CITY OF MIDWEST CITY, OKLAHOMA

ATTEST:

BY: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

(SEAL)

Approved as to form and legality this \_\_\_\_\_ day of April, 2017.

\_\_\_\_\_  
City Attorney

FIRST AMENDMENT TO  
AMENDED AND RESTATED TRUST INDENTURE OF THE  
MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY

WHEREAS, on April 8th, 1998, that certain "Amended and Restated Trust Indenture" (hereinafter, the "Amended Trust Indenture") of the Midwest City Memorial Hospital Authority (hereinafter, the "Authority") was adopted amending the original Trust Indenture of the Authority dated July 1st, 1961, for the use and benefit of the City of Midwest City, Oklahoma (the "Beneficiary"); and

WHEREAS, the City Council of the Beneficiary and the Trustees of the Authority now desire to amend said Amended Trust Indenture to clarify the purposes for which the Authority may act, and the powers it may utilize in doing so.

NOW, THEREFORE, pursuant to the authority of the Trustees of the Authority and the City Council of the Beneficiary, and with the consent of the Trustor, the Midwest City Chamber of Commerce, the Amended Trust Indenture is hereby amended, as follows:

SECTION 1. Paragraph 1(f) of Article III of said Amended Trust Indenture is hereby amended in its entirety, to read as follows:

"(f) To perform any other authorized and proper essential governmental function or act permitted by law to be performed by public trusts in the State of Oklahoma, including without limitation, to assist the Beneficiary, the United States, the State of Oklahoma, its municipalities, agencies, private entities and citizens in (i) promoting economic and community development, within and without the territorial limits of the City; (ii) developing additional employment which will benefit and strengthen the economy of the City; (iii) developing or redeveloping areas determined by the Beneficiary to be unproductive, undeveloped, underdeveloped or blighted; (iv) fostering an improved economic climate within the Beneficiary; and (v) otherwise promoting the general welfare and prosperity of the Beneficiary, all in order to achieve maximum utilization of the Beneficiary's human, economic and natural resources; and without restriction, in furtherance of the foregoing general objectives, to utilize the following specific powers or purposes, to-wit:

(1) by promoting, financing and developing any and all public works projects or facilities of any type or description including, but not limited to, those for water, sewer, solid waste, natural gas or other public utilities of any type or description;

-----  
The foregoing First Amendment to Amended and Restated Trust Indenture was approved by the City Council of the City of Midwest City, Oklahoma on the \_\_\_\_ day of April, 2017.

CITY OF MIDWEST CITY, OKLAHOMA

ATTEST:

BY: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

(SEAL)


Approved as to form and legality this \_\_\_\_ day of April, 2017.

\_\_\_\_\_  
City Attorney

-----  
The foregoing First Amendment to Amended and Restated Trust Indenture was approved by the Board of Directors of the Midwest City Chamber of Commerce on the 18<sup>th</sup> day of April, 2017.

ATTEST:

BY: \*   
President

  
Secretary

**Midwest City Chamber of Commerce  
Executive Board of Directors Meeting Minutes  
April 17, 2017**

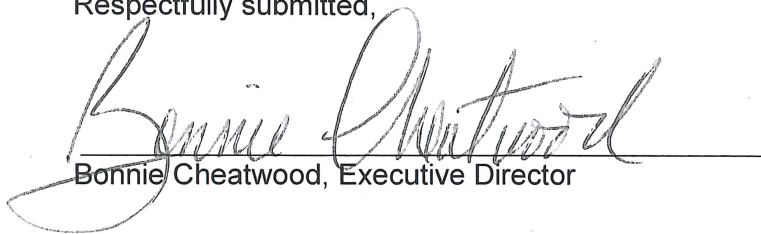
The Midwest City Chamber of Commerce Executive Board met at the Chamber office. The meeting was called to order at 1:35 p.m. Present: President Danita Rose, President-Elect Cliff Aldridge, James Finch, Dr. Jeanie Webb, Mike Kloiber, Wade Moore, Bonnie Cheatwood, City Manager Guy Henson, Economic Development Director Robert Coleman, and the City's legal counsel Dan McMahan. Not present: Randy Smith and Pam Teply.

**FIRST AMENDMENT TO THE AMENDED AND RESTATED TRUST INDENTURE OF THE MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY:** The Midwest City Chamber is Trustor of the Authority, The City Council are the Trustees, and the City is the Beneficiaries. The City Council of the Beneficiary and the Trustee of the Authority is performing a house keeping measure that updates the Trust Indenture as is relates to Economic and Community Development permitted by State Law. The amendment will allow for future economic development projects to promote and foster the general welfare and prosperity of the Beneficiaries. City Manager Guy Henson presented the amendment.

Because of a time sensitive project and the need for a special Council Meeting to be called on Thursday, April 20, 2017, a recommendation was made by Executive Board Member M. Kloiber for a call for a vote electronically by the entire active Board of Directors.

**Action:** The motion was made by M. Kloiber and seconded by J. Finch to approve the First Amendment to the Amended and Restated Trust Indenture of the Midwest City Memorial Hospital Authority. Motion carried.

Respectfully submitted,

  
Bonnie Cheatwood, Executive Director

4-18-17  
Date Approved



**Midwest City Chamber of Commerce**  
**Board of Directors Meeting Minutes**  
**April 18, 2017**

The Midwest City Chamber of Commerce Active Board of Directors were presented the following information electronically at the request of the Executive Board, who met at the Chamber office on April 17, 2017.

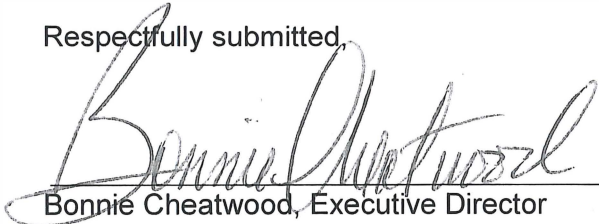
Present at the Executive Board meeting: President Danita Rose, President-Elect Cliff Aldridge, James Finch, Dr. Jeanie Webb, Mike Kloiber, Wade Moore, Bonnie Cheatwood, City Manager Guy Henson, Economic Development Director Robert Coleman, and the City's legal counsel Dan McMahan. Not present: Randy Smith and Pam Teply. City Manager Guy Henson presented the amendment.

The Midwest City Chamber is Trustor of the Authority, The City Council are the Trustees, and the City is the Beneficiaries. The City Council of the Beneficiary and the Trustee of the Authority is performing a house keeping measure that updates the Trust Indenture as is relates to Economic and Community Development permitted by State Law. The amendment will allow for future economic development projects to promote and foster the general welfare and prosperity of the Beneficiaries.

See attached amendment.

**Action:** The motion was made by J. Chappel and seconded by R. Epley to approve the First Amendment to the Amended and Restated Trust Indenture of the Midwest City Memorial Hospital Authority. Motion carried. C. Judd abstained.

Respectfully submitted,

  
Bonnie Cheatwood, Executive Director

4-18-19  
Date Approved



SOS



11800580002

AMENDED AND RESTATED  
TRUST INDENTURE

KNOW ALL BY THESE PRESENTS:

THIS AMENDMENT AND RESTATEMENT OF THE ORIGINAL TRUST INDENTURE dated as of the 1st day of July, 1961, hereinafter referred to as the "Original Trust Indenture," by the MIDWEST CITY CHAMBER OF COMMERCE, a corporation duly organized under the laws of the State of Oklahoma, hereinafter referred to as the "Trustor," and ORIN A. KIMBALL, CLAUDE R. RIGSBY, TOM C. PLEDGER, LLOYD A. SCHANTZ and FRED D. RYAN, JR., being citizens and residents of Midwest City, comprising the then-City Council of the City of Midwest City, Oklahoma, as trustees of this Trust,

W I T N E S S E T H:

THAT in consideration of the payment by the Trustor to the Trustees of the sum of one dollar (\$1), receipt of which was then acknowledged, the mutual covenants set forth in the Original Trust Indenture and other valuable consideration, the Trustees agreed to hold, manage, invest, assign, convey and distribute as provided, authorized and directed in the Original Trust Indenture such property as the Trustor, or others, may have from time to time assigned, transferred, leased, conveyed, given, bequeathed, devised or delivered unto this Trust to have and to hold such property and the proceeds, rents, profits and increases thereof in trust, for the use and benefit of the City of Midwest City, Oklahoma, hereinafter referred to as the "Beneficiary," and upon the following terms and conditions:

ARTICLE I

CREATION OF TRUST

(1) This Trust was originally formed to create and establish a trust for the use and benefit of the Beneficiary to finance, operate, construct and administer hospital facilities, and for the public purposes set forth in the Original Trust Indenture, under the provisions of Title 60, Oklahoma Statutes 1951, Sections 176 to 180, inclusive, as amended by Title 60, Chapter 4, Oklahoma Sessions Laws 1953, the Oklahoma Trust Act and other applicable statutes of the State of Oklahoma. This Trust is now amended under the provisions of Oklahoma Statutes, Title 60, Chapter 4, Trusts for Furtherance of Public Functions, the Oklahoma Trust Act and any other law written specifically to create or govern the affairs of a public trust (together, as amended, the "Acts") to create and establish a trust for the use and benefit of the Beneficiary to finance, operate, construct and administer hospital facilities, and for the public purposes set forth in the Acts and the Original Trust Indenture.

(2) This Trust was not created and shall not be operated for pecuniary profit, nor shall it have any power to issue certificates of stock or declare dividends. No part of its net earnings shall inure to the benefit of or be distributable to any member, Trustee, officer or individual, except that this Trust shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and

distributions in furtherance of this Trust's purposes as set forth in this Amended Trust Indenture.

## ARTICLE II

### NAME OF TRUST

The name of this Trust shall be "MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY," hereinafter referred to as this "Trust." The Trustees shall conduct all business and execute all instruments, and otherwise perform the duties and functions required in the execution of this Trust.

## ARTICLE III

### PURPOSES OF TRUST

(1) The purposes of this Trust are:

(a) To furnish and supply to the inhabitants, owners and occupants of property, and to industrial, commercial and mercantile establishments and enterprises within the corporate limits of the Beneficiary and in territory in reasonably convenient proximity thereto, and to the Beneficiary and any other governmental agencies or endeavors, services and facilities for the conservation and implementation of the public welfare and protection and promotion of public health, for all purposes that the same be authorized and proper as a function of the Beneficiary; and to fix, demand and collect charges, rates and fees for any services

and/or facilities provided to the same extent as the Beneficiary itself might do provided that the furnishing of any services or facilities to any person delinquent in the payment of any indebtedness whatsoever to this Trust may be discontinued at any time; for the furtherance of the greater convenience and welfare of the Beneficiary and the inhabitants thereof, to provide and/or to aid in providing and/or to participate in providing to the United States of America, the State of Oklahoma, the Beneficiary, the county or counties in which the Beneficiary is located, the school district and/or districts included, in whole or in part, within the limits of the Beneficiary, and/or any agency or instrumentality of any of them, or to any one or more of them, facilities and/or services of any and/or all kinds necessary or convenient for the authorized and proper functioning thereof; and to hold, maintain and administer any leasehold rights in and to properties of the Beneficiary demised to this Trust, and to comply with the terms and conditions of any lease providing said rights;

(b) To acquire by lease, purchase or otherwise, and to hold, construct, install, equip, repair, enlarge, furnish, maintain and operate, or otherwise deal with, any and all physical properties and facilities necessary or convenient for utilization in .

executing or promoting this Trust's purposes, or any of them; to lease, rent, furnish, provide, relinquish, sell or otherwise dispose of, or otherwise make provision for, any or all of said properties and facilities either in execution of any of this Trust's purposes or in the event that any of this Trust's purposes or in the event that any of this Trust's physical properties and facilities shall no longer be necessary or convenient to execute or promote this Trust's purposes;

(c) To provide funds for the cost of financing, acquiring, constructing, purchasing, equipping, maintaining, repairing, improving, extending, enlarging, remodeling, operating and administering any or all of this Trust's services, buildings and facilities, and all properties necessary or convenient for executing and fulfilling this Trust's purposes, and all other charges, costs and expenses necessarily incurred in connection therewith and, in so doing, to incur indebtedness, either unsecured or secured by all or any part of the Trust Estate and its revenues;

(d) To expend all funds coming into this Trust as revenue or otherwise for the payment of any indebtedness incurred by this Trust, and in the payment of the aforesaid costs and expenses, and in payment of any other obligation properly chargeable against the Trust

Estate, and to distribute the residue and remainder of such funds to the Beneficiary upon termination of this Trust in accordance with Article IX of this Amended Trust Indenture. The only funds of this Trust to which the previous provisions of this subparagraph shall not apply are those in the principal amount of approximately \$46 million, hereinafter referred to as the "Principal," that came into this Trust as a result of the lease and/or sale of this Trust's real and personal property. The Principal and all capital gains and all income of any nature or kind earned from the Principal and all previous years' capital gains and all income of any nature or kind earned from the Principal shall hereinafter be referred to as the "Compounded Principal." The Compounded Principal, less and except two percent (2%) of the market value of the Compounded Principal as of June 30 each year, shall be segregated and set apart, and shall not be spent for any reason except in the event that (1) the lease of the real property to Health Management Associates, Inc. and Midwest City HMA, Inc. terminates prematurely prior to the end of the lease and this Trust regains the operation and control of the leased property; or (2) an affirmative vote of a majority of the electors in the city of Midwest City expressed during a public election, duly called as required by law, authorizes an

expenditure of all or any portion of the Compounded Principal for a specific public or governmental purpose or purposes and authorized and proper Trust function indicated on the ballot submitted at such an election. The two percent (2%) of the market value of the Compounded Principal excluded from the Compounded Principal each year, hereinafter referred to as the "Discretionary Funds," shall be available for distribution each year as grants, for other expenditures and/or to be otherwise designated at the Trustees' sole discretion, subject to the restriction contained in this Amended Trust Indenture. The Trustees may distribute or expend all or any portion of the Discretionary Funds as the Trustees may deem prudent or may make no distribution or expenditure of the Discretionary Funds at all. Undesignated Discretionary Funds shall be accumulated for use in subsequent years, provided grants from the Discretionary Funds are used for authorized and proper functions of the Beneficiary and follow the required channel of grant applications as set out in this Amended Trust Indenture;

(e) To seek, request, apply for and receive grants, gifts and donations, either in money or property, from any individual, entity, agency, corporation or organization by gift, devise, bequest or otherwise, absolutely or in trust, and to use the



principal and/or income from them, as may be directed by the grantor of the funds or property, in the furtherance of any authorized and proper essential governmental function; and

(f) To perform any other authorized and proper essential governmental function or act permitted by law to be performed by public trusts in the state of Oklahoma.

(2) (a) In no event shall any of the funds or property of this Trust be used for or to replace or supplant any existing recurring operating expenses or personal property needs of the Beneficiary or any other entity other than this Trust. This shall not preclude the Beneficiary or any other entity from requesting that this Trust make a grant or expenditure of funds or property from this Trust for initial or single occurrence expenses or projects. "Recurring operating expenses or personal property needs" shall be expenses or personal property needs such as maintenance or upkeep costs, supplies, salaries, wages, salary or wage adjustments, bonuses and general operating costs.

(b) Grants for the acquisition of, improvement to or enhancement of property shall be limited to properties or improvements or enhancements to properties that have an expected useful life of greater than twenty (20) years.

#### ARTICLE IV

##### DURATION OF TRUST

This Trust shall exist for so long as the Beneficiary exists and until such time as its purposes shall have been fulfilled, or until it shall be terminated as hereinafter provided.

#### ARTICLE V

##### THE TRUST ESTATE

The Trust Estate shall consist of:

(1) The funds and property, and any income therefrom, except the Compounded Principal:

(a) Presently owned by this Trust or to be acquired or constructed by this Trust; and

(b) Dedicated by the Trustor and others to be used for this Trust's purposes;

(2) Any and all money, property, contracts, leases, licenses, franchises, benefits and all other things of value coming into the possession of this Trust pursuant to the provisions of this Amended Trust Indenture; and

(3) Any and all money and leasehold rights remised to this Trust by the Beneficiary as authorized and empowered by law.

## ARTICLE VI

### THE TRUSTEES

(1) The Trustees of this Trust shall be the same persons who are the Mayor and members of the City Council, or any successor governing body that may replace the Mayor and City Council in the future, of the Beneficiary, hereinafter and previously referred to as the "Trustees" or, interchangeably, as this "Trust," and shall remain as Trustees until such person or persons shall have been succeeded and replaced by some other person or persons as Mayor and members of the City Council of the Beneficiary, and such latter person or persons shall without any further act or deed automatically become Trustees of this Trust. To assist the Trustees in their administration of this Trust, there shall be an advisory board which shall be known as the Trust Board of Grantors, hereinafter referred to as the "Board," and which shall consist of nine members. The Trustor shall appoint two members of the Board and the Trustees shall appoint seven members of the Board. The Board shall perform various functions assigned to it by the Trustees including accepting and reviewing grant applications. All funds expended from the Discretionary Funds shall be processed through the Board by the grant application process except those determined by the Trustees to be necessary for the administration of this Trust. The Board will send its funding recommendations to the Trustees. In the event the Trustees reject any or all of the funding recommenda-

tions of the Board, the Board shall, at the request of the Trustees, review and submit additional funding recommendations.

(2) The person who shall be the Mayor of the Beneficiary shall automatically become the Chairman of the Trustees and shall preside at all meetings and perform other duties designated by the Trustees. The person who shall be the Vice Mayor of the Beneficiary shall be automatically the Vice Chairman of the Trustees and preside in event of the absence of the Chairman, and shall, in the absence of the Chairman, perform all duties designated to be performed by the Chairman. The Trustees shall designate the time and place of all regular meetings. All actions by this Trust pursuant to the provisions of this Amended Trust Indenture shall be approved by the affirmative vote of at least a majority of the Trustees qualified to act as such under the provisions of this Amended Trust Indenture.

(3) The person who shall be the City Clerk of the Beneficiary shall act as Secretary of this Trust. The Secretary shall keep minutes of all meetings of the Trustees and shall maintain complete and accurate records of all of this Trust's financial transactions. All minutes, books and records of this Trust shall be on file in the office of the Secretary. All meetings of the Trustees shall be open to the public, and the books, records and minutes of this Trust shall be considered as public records and available for inspection at all times by any interested party.

(4) The person who shall be the City Attorney of the Beneficiary may act as attorney for this Trust. The attorney shall attend all meetings of the Trustees and shall provide them with legal advice. The attorney shall also represent this Trust in all of its legal matters to ensure that its legal interests are appropriately protected.

(5) The Trustees may appoint a general manager or administrator for this Trust, and may employ such other clerical, professional, legal and technical assistance as may be deemed necessary in the discretion of the Trustees to properly operate the business of this Trust, and may fix such employees' duties, terms of employment and compensation. Any such employee may be a person who shall be an officer or employee of the Beneficiary, in which event such officer or employee may receive compensation from this Trust. In the event a general manager or administrator for this Trust is appointed by the Trustees, the general manager or administrator shall administer the business of this Trust as directed from time to time by the Trustees. All Trustees shall serve without compensation but shall be reimbursed for actual expenses incurred in the performance of their duties hereunder.

(6) The Trustees are authorized to contract, in connection with the incurring of any funded indebtedness secured by the Trust Estate and/or its revenues, or any part of either or both, in the event of a default in the fulfillment of any contract obligation undertaken on behalf of this Trust or in the payment of any indebtedness incurred on behalf of this Trust,

that a temporary trustee or trustees shall be appointed to succeed to the rights, powers and duties of the Trustees then in office. Any contract, if made, shall set out the terms and conditions under which such temporary trustee or trustees shall be appointed and operate this Trust, and provide for compensation to be paid, and appointment to be vacated and the Trustees to be automatically reinstated upon termination of all defaults by which the appointment of the temporary trustee or trustees was authorized.

(7) Bonds or other evidences of indebtedness to be issued by this Trust shall not constitute an indebtedness of the State of Oklahoma, nor of the Beneficiary, nor personal obligations of the Trustees of this Trust, but shall constitute obligations payable solely from the Trust Estate.

(8) The Trustees, the State of Oklahoma and the Beneficiary shall not be charged personally with any liability whatsoever by reason of any act or omission committed or suffered in good faith or in the exercise of their honest discretion in the execution, performance or operation of this Trust; but any act or liability for any omission or obligation of the Trustees in the execution, performance or operation of this Trust shall extend to the whole of the Trust Estate or so much thereof as may be necessary to discharge such liability or obligation.

(9) Notwithstanding any other provision of this Amended Trust Indenture which shall appear to provide otherwise, no Trustee or Trustees shall have the power or authority to bind

or obligate any other Trustee, or the Beneficiary, in his/her or its capacity, nor can the Beneficiary bind or obligate this Trust or any individual Trustee.

## ARTICLE VII

### POWERS AND DUTIES OF THE TRUSTEES

(1) To accomplish the purposes of this Trust, and subject to the provisions and limitations otherwise provided in this Amended Trust Indenture, the Trustees shall have, in addition to the usual powers incident to their office and the powers granted to them in other parts of this Amended Trust Indenture, the following rights, powers, duties, authority, discretion and privileges, all of which may be exercised by them without any order or authority from any court:

(a) To finance, acquire, establish, develop, construct, enlarge, improve, extend, maintain, equip, operate, lease, furnish, provide, supply, regulate, hold, store and administer anything in the Trust Estate and the Compounded Principal, subject to the limitations contained in this Amended Trust Indenture, as the Trustees shall determine necessary for the benefit and development of the Beneficiary;

(b) To enter into contracts for the acquisition of equipment and supplies, and construction of necessary or convenient facilities authorized to be acquired and constructed pursuant to and in compliance with the

terms of this Amended Trust Indenture; provided, however, that:

(i) The Trustees shall be subject to the same limitations, and shall comply with the requirements of Oklahoma law imposed, upon the Beneficiary in relation to contracts for construction and the acquisition of equipment, materials and supplies; and

(ii) The Trustees may reject all bids and readvertise for bids or may enter into a contract or contracts with a responsible bidder or bidders who, in the opinion of the Trustees, shall offer the terms deemed most favorable to this Trust. All bidders to whom any contract for any purpose is let shall be financially responsible and bear a good reputation in the industry. The Trustees may prescribe such bidding qualifications as they deem necessary and desirable;

(c) To enter into contracts for the sale of bonds, notes or other evidences of indebtedness or obligations of this Trust for the purpose of acquiring or constructing works and facilities authorized to be acquired or constructed pursuant to the terms of this Amended Trust Indenture and for those purposes may:

(i) Employ a financial advisor, or committee of advisors, to advise and assist the



Trustees in the marketing of such bonds, notes or other evidences of indebtedness or obligations, and to present financial plans for the financing of the acquisition or construction of each project, and to recommend to, or consult with, the Trustees concerning the terms and provisions of bond indentures and bond issues, and may pay appropriate compensation for such work and services performed in the furtherance of the project;

(ii) Sell all bonds, notes or other evidences of indebtedness or obligations of this Trust in installments or series and on such terms and conditions and in such manner as the Trustees shall deem to be in this Trust's best interests; and

(iii) Appoint attorneys, paying agencies and corporate trustees in connection with the issuance of any such bonds, notes, evidences of indebtedness or other obligations of this Trust;

(d) To enter into and execute, purchase, lease, or otherwise acquire property, real, personal or mixed, contracts, leases, rights, privileges, benefits, choses in action or other things of value, and to pay for the same in cash, with bonds or other evidences of indebtedness or otherwise;

(e) To make and change investments, to lease, improve, exchange or sell, at public or private sale, upon such terms as the Trustees deem proper, and to resell, at any time and as often as they deem advisable, any or all the property in this Trust, to borrow money, or renew loans to this Trust, to refund outstanding bonded indebtedness and to execute therefor evidences of indebtedness, and to secure the same by mortgage, lien, pledge or otherwise; to purchase property from any person, firm or corporation, and lease land and other property to and from the Beneficiary and construct, improve, repair, extend, remodel and equip utilities or buildings, and facilities thereon, and to operate or lease or rent the same to individuals, partnerships, associations, corporations and others, including the United States of America or the State of Oklahoma and agencies or authorities of the United States of America, or of the State of Oklahoma, or of any municipality thereof, and also including all municipal or other political subdivisions of the State of Oklahoma as well as the Beneficiary, and to do all things provided for in Paragraph (1) of Article III of this Amended Trust Indenture, and procure funds necessary for such purpose by the sale of bonds or other evidences of indebtedness by the mortgage, lien, pledge or other encumbrance of such

personal property, utilities and facilities owned or otherwise acquired, leased or controlled by this Trust, and by rentals income, receipts and profits therefrom, or from any other revenues associated with the ownership, operation or control of the property of this Trust; to lease or sublease any property of this Trust or of which this Trust may become the owner or lessee.

(f) To fix, demand and collect charges, rentals and fees for the services and facilities of this Trust to the same extent as the Beneficiary might do and to discontinue furnishing of services and facilities to any person, firm, corporation or public instrumentality delinquent in the payment of any indebtedness to this Trust; and to purchase and sell such supplies, goods and commodities as are incident to the operation of this Trust's properties;

(g) To make and perform contracts of every kind, including management contracts, with any person, firm, corporation, association, trusteeship, municipality, government or sovereignty; and, without limit as to amount, to draw, make, accept, indorse, assume, guarantee, account, execute and issue promissory notes, drafts, bills of exchange, acceptances, warranties, bonds, debentures and other negotiable or non-negotiable instruments, obligations and evidences of unsecured indebtedness, or of indebtedness secured by mortgage,

deed of trust or otherwise upon any or all income of this Trust, in the same manner and to the same extent as a natural person might or could do; to collect and receive any property, money, rents or income of any sort and distribute the same or any portion thereof for the furtherance of the purposes authorized by this Amended Trust Indenture;

(h) To do all other acts in the Trustees' judgment necessary or desirable for the proper and advantageous management, investment and distribution of the Trust Estate and the Compounded Principal and income therefrom, subject to the limitations contained in this Amended Trust Indenture;

(i) To contract for the furnishing of any services or the performance of any duties that the Trustees' may deem necessary, or proper, and pay for the same as they see fit. The Trustees may select depositories for the funds and securities of this Trust; and

(j) To compromise any debts or claims of this Trust or against the Trust Estate, and may adjust any dispute in relation to such debts or claims by arbitration or otherwise and may pay any debts of this Trust or claims against the Trust Estate upon any evidence deemed by the Trustees to be sufficient. The Trustees may bring any suit or action, which in their judgment

is necessary or proper to protect the interests of this Trust, or to enforce any claim, demand or contract for this Trust; and they shall authorize, in their discretion, the defense of any suit against this Trust, or against its employees, agents or servants or the Trustees. The Trustees may compromise and settle any suit or action and discharge the same out of assets of the Trust Estate, together with court costs and attorneys' fees. All such expenditures shall be treated as expenses of executing this Trust.

(2) No purchaser at any sale or lessee under a lease made by the Trustees shall be bound to inquire into the expediency, propriety, validity or necessity of such sale or lease or to see to or be liable for the application of the purchase or rental moneys arising therefrom.

(3) The whole title, legal and equitable, to the properties of this Trust is and shall be vested in this Trust, as such title in this Trust is necessary for the due execution of this Trust. The Trustees shall have and exercise exclusive management and control of the properties of this Trust for the use and benefit of the Beneficiary; but may agree for approval of any or all of its actions and transactions by the Beneficiary.

## ARTICLE VIII

### BENEFICIARY OF TRUST

(1) The beneficiary of this Trust shall be the City of Midwest City, Oklahoma, a municipal corporation, under and pursuant to the Acts. The Trustor now declares that this Amended Trust Indenture shall be irrevocable from the moment it is signed by it and delivered to the Trustees, and that the Trustor shall thereafter stand without any power whatsoever at any time to alter, amend, revise, modify, revoke or terminate any of the provisions of this Amended Trust Indenture. If, in the future, the Trustees, the Trustor and the Beneficiary agree to amend this Amended Trust Indenture, any such agreed-upon amendment to clauses (1) and (2) of subparagraph (1)(d) of Article III, of this Article VIII or of Article IX can only be accomplished by an affirmative vote of a majority of the electors in the city of Midwest City voting in a public election, duly called as required by law authorizing such an amendment as expressed on the ballot submitted at such an election.

(2) The Beneficiary shall have no legal title, claim or right to the Trust Estate or the Compounded Principal, their income, or to any part thereof, or to demand or require any partition or distribution thereof. Neither shall the Beneficiary have any authority, power or right, whatsoever, to do or transact any business for, or on behalf of, or binding upon the Trustees or upon this Trust, nor the right to control or direct the actions of the Trustees except to the extent herein provided.

The Beneficiary shall be entitled solely to the benefits of this Trust, as administered by the Trustees hereunder, and at the termination of the Trust, as provided herein, and, then only, the Beneficiary shall receive the residue of the Trust Estate.

#### ARTICLE IX

##### TERMINATION OF TRUST

This Trust shall terminate:

(1) When the purposes set out in this Amended Trust Indenture shall have been fully executed; or

(2) In the manner provided by Title 60 of the Oklahoma Statutes, Chapter 4, Section 180, as amended.

Provided, however, that this Trust shall not be terminated by voluntary action if there be outstanding indebtedness or fixed term obligations of this Trust, unless all owners of such indebtedness or obligations shall have consented in writing to such termination. If, in the future, the Trustees, the Trustor and the Beneficiary agree to terminate this Trust, any such agreed-upon termination of this Trust can only be accomplished by an affirmative vote of a majority of the electors in the city of Midwest City voting in a public election, duly called as required by law authorizing such termination as expressed on the ballot submitted at such an election.

Upon the termination of this Trust, the Trustees shall proceed to wind up the affairs of this Trust and, after payment of all debts, expenses and obligations out of the monies and

properties of the Trust Estate and the Compounded Principal to the extent thereof, shall distribute the residue of the money and properties of the Trust Estate to the Beneficiary. Upon final distribution, the powers, duties and authority of the Trustees shall cease.

#### ARTICLE X

##### PARTIAL INEFFECTIVENESS

The invalidity or ineffectiveness for any reason of any one or more words, phrases, clauses, paragraphs, subsections or sections of this Amended Trust Indenture shall not affect its remaining portions so long as such remaining portions shall constitute a rational instrument. Any such invalid or ineffective portions were inserted conditionally upon them being valid and effective only and this instrument shall be construed as if such invalid or ineffective portions had not been inserted herein.

#### ARTICLE XI

##### ACCEPTANCE BY TRUSTEES

The Trustees accept this Trust, created and provided for, and agree to carry out the provisions of this Amended Trust Indenture on their part to be performed.



IN WITNESS WHEREOF, this Amended Trust Indenture has been passed and approved by the Trustor on the 8th day of April, 1998, and by the Trustees on the 7th day of April, 1998.

MIDWEST CITY CHAMBER OF COM-  
MERCE

By: Dara M. McGlamery  
President

(SEAL)

ATTEST:

Carol L. Judd  
Secretary

as "Trustor"

STATE OF OKLAHOMA     )  
                              :     ss.  
STATE OF OKLAHOMA     )

Before me, the undersigned, a Notary Public, in and for said County and State on this 29th day of April, 1998, personally appeared Dara L. McGlamery, to me known to be the President of the Midwest City Chamber of Commerce who executed the within and foregoing instrument and acknowledged to me that she executed the same as her free and voluntary act and deed and as the free and voluntary act and deed of such corporation for the uses and purposes set forth.

Given under my hand and seal the day and year last above written.

Suzanne W. Dockery  
Notary Public

My commission expires: 8-22-98

Jerry R. Maynard  
JERRY R. MAYNARD

Johnny T. Morgan  
JOHNNY T. MORGAN

Lloyd Gorrell  
LLOYD GORRELL

Vaughn K. Sullivan  
VAUGHN K. SULLIVAN

Frederick M. Strothmann  
FREDERICK M. STROTHMANN

Russell Smith  
RUSSELL SMITH

Eddie O. Reed  
EDDIE O. REED

as "Trustees"

STATE OF OKLAHOMA     )  
                                      :     ss.  
STATE OF OKLAHOMA     )

Before me, the undersigned, a Notary Public, in and for said County and State on this 7th day of April, 1998, personally appeared Jerry R. Maynard, Vaughn K. Sullivan, Johnny T. Morgan, Frederick M. Strothmann, Lloyd Gorrell, Russell Smith and Eddie O. Reed, to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

Lorinda Moore  
Notary Public

My commission expires: 8-28-99

ACCEPTANCE OF BENEFICIAL INTEREST

Pursuant to Resolution No. 98-18 duly adopted by its City Council, the City of Midwest City, Oklahoma, hereby accepts the beneficial interest in the trust created by the within and foregoing Amended and Restated Trust Indenture, in all respects in

accordance with the terms of said Amended and Restated Trust Indenture.

CITY OF MIDWEST CITY, OKLAHOMA

By: *Edith Reed*  
Mayor



Attest: (Seal)

*Sammy Miller*  
City Clerk

Approved as to form and legality this 7th day of April,  
1998.

*Natherine Bolles*  
City Attorney

"I CERTIFY THAT THIS IS A  
TRUE AND LIKE COPY OF A  
INSTRUMENT ON FILE IN THE  
OFFICE OF THE CITY CLERK  
OF THE CITY OF MIDWEST CITY  
OKLAHOMA COUNTY STATE OF  
OKLAHOMA."

*Shirley Atkins*  
CITY CLERK



## ***Midwest City Memorial Hospital Authority***

100 North Midwest Boulevard  
Midwest City, Oklahoma 73110  
Office (405) 739-1207 - Fax (405) 739-1208  
E-mail: ghenson@midwestcityok.org

J. Guy Henson  
*General Manager/  
Administrator*

*Trustees*  
Matthew D. Dukes II  
Susan Eads  
Pat Byrne  
Rick Dawkins  
M. Sean Reed  
Christine Allen  
Jeff Moore

*Board of Grantors*  
Sherry Beaird  
John Cauffiel  
Marcia Conner  
Pam Dimski  
Dara McGlamery  
Joyce Jackson  
Charles McDade  
Nancy Rice  
Sheila Rose

### **MEMORANDUM**

TO: Honorable Chairman and Trustees

FROM: General Manager Guy Henson

DATE: April 20, 2017

SUBJECT: Discussion and consideration of 1) approving and entering into an Economic Development Agreement with Midwest City Warren Theatre, Inc. and the Midwest City Memorial Hospital Authority ("MCMHA") in the approximate amount of \$11,100,000 and other goods and valuable consideration, to establish the terms and conditions under which the parties will participate in the development of approximately 16.6233 acres located on the northwest corner of Buena Vista Avenue and SE 15th Street; and 2) authorizing the chairman and/or the general manager/ administrator to enter into such other agreements and execute such other documents as may be necessary or appropriate to effect the provisions of the Agreement; and 3) authorizing up to \$500,000 in reimbursements from MCMHA Discretionary funds for professional design services if necessary. (General Manager - G. Henson)

This agreement will establish the monetary amount the Memorial Hospital Authority ("Authority") will contribute and other terms that will govern the duties and responsibilities of Warren Theatres ("Warren"), the City and the Authority in the development of property located at the northwest corner of Buena Vista Avenue and SE 15<sup>th</sup> Street.

The Board of Trustees took no action on this item at its April 11, 2017, meeting. Since then, there has been a significant change proposed to Section 4.1 (highlighted in red). This change, if approved, will allow Warren to continue contracting for professional design services uninterrupted while the Authority pursues its best financing options. At risk are funds being committed toward the design work should the deal fall through.

Staff recommends approval.

J. Guy Henson, AICP  
General Manager/Administrator

Attachments: Proposed agreement between the MCMHA and Midwest City Warren Theatre, Inc.

**STATE OF OKLAHOMA**

**SOONER ROSE PHASE II – THEATRE  
DEVELOPMENT FINANCING ASSISTANCE AGREEMENT**

**COUNTY OF OKLAHOMA**

**THIS SOONER ROSE PHASE II – THEATRE DEVELOPMENT FINANCING ASSISTANCE AGREEMENT** (this “Agreement”) is entered into as of the \_\_\_\_\_ day of April, 2017 (the “Effective Date”), by and between the Midwest City Memorial Hospital Authority, an Oklahoma public trust (the “Authority”), and MWC Warren Theatre, Inc., a Kansas corporation (“Warren”), and the City of Midwest City, Oklahoma (the “City”), a municipal corporation of the State of Oklahoma.

**RECITALS**

WHEREAS, the Authority was created by that certain “Amended and Restated Trust Indenture”, dated as of the 1st day of July, 1961, as a public trust for the use and benefit of the City of Midwest City, Oklahoma, (hereinafter, the “City”) pursuant to the provisions of Title 60, Sections 176, et seq., of the Oklahoma Statutes, as amended and supplemented (hereinafter, the “Public Trust Act”) and other applicable statutes of the State of Oklahoma; and

WHEREAS, the City, as the beneficiary thereof, acting through its City Council, has adopted a resolution accepting beneficial interest therein on behalf of said City; and

WHEREAS, the purposes of the Authority are, in part, to promote economic and community development, within and without the territorial limits of the City, and to promote additional employment which will benefit and strengthen the economy of the City and the State of Oklahoma; and

WHEREAS, in order to accomplish its designated purposes, the Authority is empowered to provide funds for the costs of acquiring, constructing, rehabilitating, equipping, securing, maintaining and developing real and personal property within and near the City, and to enter into, make and perform contracts for the sale of its bonds, notes or other evidence of indebtedness to finance the costs thereof, and to perform all of its obligations contained in the Agreement; and

WHEREAS, Warren has proposed to redevelop and construct a retail and movie theatre development within the boundaries of the City (hereinafter, the “Project”) and, in connection therewith, and the Authority offered Warren development financing assistance in acquiring land and in defraying the costs of certain building, site, and infrastructure improvements; and

WHEREAS, Warren has the professional ability and expertise to undertake the Project in a manner that will enhance and improve economic growth and development of commerce in the City; and

WHEREAS, both the Authority and Warren have a significant interest in encouraging and improving commerce and economic development in the City agree that the two entities working together with the City and others will have a greater, more positive impact on commerce and economic development in the City than they would have separately; and

WHEREAS, based on the contributions of the City, the Authority, and others as provided herein, and the performance of the other obligations referenced, Warren intends to invest its resources and capital to undertake the redevelopment and gentrification of an approximate 16.6233-acre parcel of property at the northwest quadrant of the intersection of Southeast 15<sup>th</sup> Street and Buena Vista Avenue,

and which is more particularly described in Exhibit A, attached hereto and incorporated by reference (the "Theatre Property"); and

WHEREAS, Sooner Investment Group, Inc. ("Sooner") has the Theatre Property and additional property adjacent thereto identified on Exhibit A-1 as the "Sooner Rose II Property" (the "Sooner Rose II Property") under contract pursuant to that certain Commercial/Industrial Real Estate Purchase Contract, by and between Sooner Investment Group, Inc., as Buyer, and G. Michael Vloedman, N. Carolyn Hurst Revocable Trust, and Garrett Vloedman and Emily Vloedman Living Trust, as Seller, and dated September 30, 2016 (the "Land Contract"), and Sooner intends to convey the Theatre Property to the Authority in furtherance of the parties' intent to redevelop the Theatre Property, and Sooner intends to concurrently redevelop the Sooner Rose II Property for retail and commercial uses complimentary to Warren's intended redevelopment of the Theatre Property; and

WHEREAS, the Authority and the City have concluded their independent assessment of the plan of development proposed by Warren and have determined that the redevelopment of the Theatre Property as proposed by Warren is feasible; and

WHEREAS, the City has adopted and approved that certain "Project Plan Relating to Tax Increment District No. Two, City of Midwest City, Oklahoma (Sooner Rose Increment District Project)" (the "Project Plan") and has created, within the boundaries set forth in the Project Plan, Increment District Number Two, City of Midwest City, Oklahoma (the "Sooner Rose Increment District") by Ordinance No. 3291 on March 28, 2017 (the "Ordinance"), pursuant to the Oklahoma Local Development Act, Title 62, Section 851, et seq., of the Oklahoma Statutes, as amended; and

WHEREAS, the parties wish to set forth the manner in which the Project is to be undertaken by Warren and the Authority, and the assistance in development financing which the Authority has agreed to provide.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the parties to this Agreement agree as follows:

1. **Recitals.** The forgoing recitals are true and correct and are hereby incorporated in this Agreement.
2. **Sooner Rose Phase II – Theatre Development Program.** Subject to the conditions and other provisions contained herein, Warren shall redevelop the Theatre Property for a movie theater building containing a minimum of ten movie screens and having an exterior appearance generally consistent with Warren's prototypical movie theatre in Moore, OK (excluding the IMAX addition to that theatre) (the "Theatre Building"), together with parking, drive aisles, signage, underground stormwater system and ancillary improvements, all substantially consistent with the Concept Site Plan, attached hereto and incorporated by reference as Exhibit B, and this Section, and as modified from time-to-time (the "Theatre Development").
  - 2.1. The Theatre Development shall include at least two – but not more than three – outparcels. The two outparcel configuration is generally depicted on Exhibit B, but Warren may alter that configuration and opt for three outparcels. In either event, one outparcel must be approximately  $\pm$  1.5 acres in size and must be developed and used initially for a sit-down restaurant where meals are prepared on-premises, served table-side, and no drive-through window service is available (the "Restaurant Use"). The Restaurant Use must open and operate for fully stocked and staffed as the Restaurant Use for one (1) business day prior to any change in use of the  $\pm$  1.5-acre outparcel. The second – and third, as applicable – outparcel may be

used for a restaurant, or for retail sales or services subject to the limitations contained in the PUD Agreement (defined below). It is not possible to know what market conditions shall prevail, so Warren shall have the right to alter the initial usage of the 1.5 acre outparcel from that of a Restaurant Use in the future, so long as the uses from time-to-time are compatible with the PUD Agreement, as amended. The parties hereto agree that Warren's obligations to Commence Construction (defined below) or Complete Construction (defined below) of the Theatre Development pursuant to this Agreement shall not include construction of improvements on the outparcels described in this Section.

- 2.2. The Theatre Development and the Sooner Rose Phase II – Retail Development shall be designed as a unified shopping center with coordinated vehicular and pedestrian ingress and egress (including drive aisles), all as consistent with the PUD Agreement.
  - 2.3. The parties intend that the Theatre Property shall be rezoned pursuant to the Sooner Rose Phase II – Theatre Planned Unit Development Agreement (the "PUD Agreement"), which must be prepared or reviewed and approved by Warren and submitted to and reviewed and approved by the City pursuant to the City's zoning authority in the City's absolute discretion subsequent to this Agreement and prior to Closing (defined below).
  - 2.4. The parties acknowledge that the Concept Site Plan and Theatre Development description provided in this Section represent a conceptual development program that has not been fully designed, determined or engineered, and that certain adjustments necessary for design, engineering, construction, or market conditions will be necessary for the Theatre Development to proceed, which adjustments shall be incorporated into the Theatre Development without need for further amendment to this Agreement provided such adjustments are permitted as part of the PUD Agreement (including any amendment thereto). The Concept Site Plan shall be superseded automatically by the PUD Agreement, as amended from time to time, without need for further amendment of this Agreement.
3. **Warren's Obligations.** In consideration of the Authority's obligations set forth in Section 4, and subject to the conditions and other provisions contained in this Agreement, Warren shall undertake the obligations set forth in this Section. Except as otherwise expressly provided in this Agreement, Warren shall undertake the obligations set forth in this Section at its sole cost and expense.
    - 3.1. From and after the Effective Date, and subject to the simultaneous performance of the other obligations to be performed by the other parties hereto, as referenced elsewhere herein, and the conditions contained herein, Warren shall in good faith undertake such actions as it determines are reasonably necessary for the design, rezoning and governmental permitting for the Theatre Development on the Theatre Property (excluding any outparcel improvements, Off-Site Improvements (defined below), and all building permits for vertical construction of the Theatre Development), including but not limited to, all applicable local and state permits and approvals, land use and zoning changes, site plan approval and all other permits reasonably necessary to Commence Construction (defined below) (collectively, the "Theatre Approvals"). All design and engineering documents relating to site grading, utilities, parking and vehicular circulation, and the stormwater system for the Theatre Property shall be generally consistent with the Concept Site Plan and shall be compatible with the Sooner Rose Phase II – Retail Development. When completed, the Theatre Development and Sooner Rose Phase II – Retail Development shall form a cohesive retail and entertainment center comparable with first-class retail centers in the Oklahoma County market.

- 3.2. Prior to Closing, but following the satisfaction of any conditions or other provisions contained in this Agreement, Warren shall deliver to the Authority information concerning Warren's financial and other abilities to develop the Theatre Development to the Authority as follows:
- 3.2.1.1. Copies of all Theatre Approvals necessary to Commence Construction (defined below) of the Theatre Development;
  - 3.2.1.2. An estimate of the Theatre Development's (excluding the outparcels) construction costs;
  - 3.2.1.3. A certificate executed by Warren and its general contractor certifying that they have entered into a contract for performance of such work; and
  - 3.2.1.4. A certificate executed by Warren and its lender certifying that they have executed loan documentation for financing in a specified sum of money sufficient for construction of the theatre and related facilities, excluding the equity requirement of such lender.
- 3.3. On the Closing Date (defined below), subject to the satisfaction of any conditions or other provisions contained in this Agreement, Warren shall accept title to the Theatre Property from the Authority.
- 3.4. Subject to Section 3.5.1, as soon as practicable following the Closing Date, and in any event not later than ninety (90) days, as extended by any Permitted Delays as defined in Section 4.2.2.2 below, following the Closing Date, Warren shall endeavor in good faith using diligent efforts to Commence Construction of the Theatre Development. The term "Commence Construction" shall mean (i) Warren's obtaining a development order or permit authorizing site clearing and grading and construction of site improvement, (ii) Warren's execution of the construction contract referenced in Section 3.2.1.3, and (iii) completion of at least \$10,000.00 of construction costs associated with the Theatre Development pursuant to the construction contract referenced in Section 3.2.1.3.
- 3.5. Once Warren has commenced construction of the Theatre Development, Warren shall thereafter diligently pursue construction of the Theatre Development until Warren shall Complete Construction of the Theatre Development. Warren shall make good faith, diligent efforts (without incurring overtime charges) to Complete Construction of the Theatre Development within fifteen (15) months following the date Warren shall Commence Construction but shall have no liability for failing to Complete Construction by such date so long as it continues such efforts. The term "Complete Construction" shall mean Warren's completing construction of all improvements associated with the Theatre Building and Warren's obtaining a certificate of occupancy for the Theatre Building.
- 3.5.1. Provided, however, in the event the Authority does not cause the removal of the Gas Line (defined in Section 4.3.1 below) and fully vacate the Gas Line Easement (defined below) from the Theatre Property in accordance with Section 4.3.1 within ninety (90) days after the Closing Date, Warren's endeavor to Commence Construction and to Complete Construction of the Theatre Building as provided in Sections 3.5 shall be tolled two (2) days for each single day after the ninetieth (90<sup>th</sup>) day the Authority has not relocated the Gas Line and vacated the Gas Line Easement. The Authority shall cause the site of the removed



Gas Line to be compacted and restored in a manner consistent with the site plan and grading plans prepared by Warren associated with the Theatre Development.

- 3.5.2. Warren shall use reasonable efforts to include in all contracts it executes with its Theatre Development contractors that, to the extent reasonably practicable, such contractors shall cause construction purchases to be delivered to the Theatre Property and shall use the appropriate Midwest City, OK street address for such purchases, and that Oklahoma state and Midwest City sales/use taxes, as applicable, shall apply to such purchases of building items and construction materials. Warren will use reasonable efforts to provide the City lists of purchase prices and copies of invoices Warren receives from such contractors for purchases to which this provision applies.
- 3.6. Following the date that Warren shall Complete Construction of the Theatre Development, Warren shall:
- 3.6.1.1. Deliver to the Authority all documentation reasonably necessary to establish that Warren has completed construction, including but not limited to the certificate of occupancy for the Theatre Building and other such administrative documentation necessary for occupying the Theatre building; and
- 3.6.1.2. Open the Theatre Building for business to the general public fully stocked and staffed as a Warren Theatre for at least one full business day (the "Theatre Opening").
- 3.7. Pursuant to the Authority's obligations in Section 4.4.1, the Authority, or Sooner on behalf on the Authority, shall negotiate an agreement ("Pipeline Relocation Agreement") concerning the removal and relocation of the Gas Line and Gas Line Easement with Enefrin in form and substance reasonably satisfactory to Warren. Warren shall grant to Enefrin a new easement for the relocated Gas Line as more particularly described in Section 4.4.1., which easement instrument shall be in form and substance reasonably satisfactory to Warren.
- 3.8. Other than the Theatre Development, Warren shall not develop, own or operate a movie theater located within ten (10) miles of the Theatre Property boundary for a period of ten (10) years from the Theatre Opening. In the event the Warren shall violate this provision, the City's and Authority's sole, right, remedy and recourse shall be that their obligations set forth in Section 4.6 shall be immediately null and void and of no further force or effect.
4. **Authority's Obligations; Certain City Obligations.** In consideration of Warren's obligations set forth in Section 3, the Authority shall undertake the obligations set forth in this Section. Except as otherwise expressly provided in this Agreement, and subject to any conditions contained herein, the Authority shall undertake the obligations set forth in this Section at its sole cost and expense.
- 4.1. Within ~~seventy-five (75) forty-five (45)~~ days following the Effective Date, the Authority shall provide evidence reasonably satisfactory to Warren that the Authority has sufficient authority and funds available to it **to acquire the Theatre Property under the Land Contract and convey the same to Warren and** to pay the Construction Contribution (defined below); the right to perform its obligations hereunder; and that all necessary or appropriate actions have been taken so that this Agreement is fully binding and enforceable against the Authority; **provided, however, that if the Authority cannot provide such evidence of funding, then either party may terminate this Agreement upon written notice given to the other and thereupon none of the parties hereto shall have any further obligations hereunder. In such case, the Authority shall**

reimburse Warren for all out-of-pocket engineering, architectural and design costs previously incurred by Warren to that point, up to but not exceeding, in aggregate, the amount of \$500,000, but, thereafter, neither the City, nor the Authority, shall be liable for further payments to Warren, whether in the nature of damages or otherwise.

- 4.2. In addition to the foregoing, prior to the execution hereby by Warren, the Authority has delivered to Warren a legal opinion opining that the Authority and the City have taken all necessary or appropriate actions to approve the execution and performance of this Agreement; that such bodies have the full power and authority to execute and perform this Agreement; and that the obligations of Authority and the City hereunder are fully enforceable by Warren; and such other matters relating to the foregoing as Warren shall reasonably request.
- 4.3. On the Closing Date, subject to satisfaction of any conditions or other provisions contained in this Agreement:
  - 4.3.1. Pursuant to a separate agreement between Sooner, the City and the Authority, Sooner shall assign its rights to purchase the Theatre Property pursuant to the Land Contract to the Authority, and the Authority shall accept such assignment and shall purchase the Theatre Property; and
  - 4.3.2. As part of the development financing assistance the Authority is providing hereunder, the Authority shall, within the period specified in Section 5.2, convey and contribute to Warren fee simple title to the Theatre Property, subject to the Temporary Use Restriction and Reversionary Interest (both defined below) pursuant to the terms of Section 5.
    - 4.3.2.1. The term "Temporary Use Restriction" shall mean a use restriction contained in the deed of conveyance from the Authority to Warren, which shall restrict the use of the Theatre Property, excluding the outparcels referenced in Section 2.1 above, and shown on the draft Warren Rose Phase II –Theatre Planned Unit Development, to only a movie theater (containing at least ten (10) screens) together with ancillary uses such as restaurants, concessions and movie-related merchandise sales. The Temporary Use Restriction shall terminate automatically and immediately on the date Warren shall Complete Construction. Following the date Warren shall Complete Construction, the parties hereto agree to cooperate in good faith with each other and Warren's lender to promptly execute and record in the real estate records such document as may be required by such lender or Warren to terminate the Temporary Use Restriction.
    - 4.3.2.2. The term "Reversionary Interest" shall mean a reversionary interest retained by the Authority as set forth in the deed of conveyance from the Authority to Warren, which shall provide that, in the event Warren does not Commence Construction of the Theatre Development within ninety (90) days of Closing, as extended as provided in Section 14 and due to any delay by the Authority in the removal and vacation of the Gas Line to any delay in completion of the Public Improvements (collectively, "Permitted Delays"), fee simple title to the Theatre Property shall vest in the Authority. The specific provision of the Reversionary Interest shall be satisfactory to Warren and the Authority. Provided, however, that the Reversionary Interest shall terminate automatically and be of no further force or effect immediately upon the date Warren shall Commence Construction of the Theatre Development. The parties hereto agree to cooperate in good faith with each other and Warren's lender at the

time Warren shall Commence Construction to execute such document as may be required by such lender or Warren to terminate the Reversionary Interest.

4.4. Following the Closing Date:

4.4.1. The parties hereto acknowledge that a natural gas transmission line and associated improvements owned by Enefrin is located on the Property (the "Gas Line"), and an easement associated with the Gas Line burdens the Theatre Property (the "Gas Line Easement"), all as more particularly shown on Exhibit B. Prior to Warren's obligation to Commence Construction as provided in Section 3.4, the Authority shall cause, at its sole cost and expense, the Gas Line to be removed from its current location on the Property and the Gas Line Easement to be vacated, released, or otherwise quit claimed to Warren by Enefrin, all in a manner reasonably satisfactory to Warren. Within thirty (30) days following the date the Gas Line is removed, the Authority shall, at its sole cost and expense, cause the Gas Line to be relocated to the eastern boundary of the Property immediately adjacent to Buena Vista Avenue in an area reasonably acceptable to Warren;

4.4.2. The Authority shall contract with Sooner for the construction of the Public Improvements (defined below) pursuant to the terms of Section 6,

4.5. The Authority shall pay to Warren the Construction Contribution in the amount and at the times specified in Section 7.

4.6. The Authority shall not provide economic/development funding or other consideration to a movie theater located within ten (10) miles of the Theatre Property for a period of ten (10) years following the Theatre Opening. In the event the Authority shall violate this provision, Warren's sole right, remedy and recourse shall be that its obligation set forth in Section 3.8 shall be immediately null and void and of no further force or effect.

**5. Authority Property Conveyance.**

5.1. Warren shall obtain, at Warren's sole cost, an owner's title insurance policy from a title company of Warren's choice agreeing to insure title to the Theatre Property in an amount that Warren estimates is equal to the value of the Theatre Property and subject to no exceptions other than those matters acceptable to Warren, those which will be discharged prior to or at the Closing, and the standard printed exceptions and exclusions from coverage modified in a manner acceptable to Warren (the "Commitment"). Additionally, unless otherwise available pursuant to the Land Contract, Warren may obtain a survey of the Theatre Property. Warren shall provide the Authority a copy of the Commitment and survey upon receipt. If the Commitment or survey, disclose exceptions or matters that are not acceptable to Warren or its lender, the Authority, at its option, may cure such defects to Warren's reasonable satisfaction. If the Authority fails to have the Commitment exceptions, or survey matters, removed or the defects cured prior to the Closing Date, Warren may terminate this Agreement or Warren may elect, in its discretion, to take title as it then is notwithstanding such exceptions, title defects or survey matters. If new exceptions or matters arise prior to the Closing, the Authority shall exercise reasonable diligence in the curing of any such matters, defects or exceptions, including payment and discharge of any liens or encumbrances affecting title of the Theatre Property, and the Closing and other deadlines associated with development of the Theatre Property shall be tolled until the Authority shall have cured such matters, exceptions or defects. At the Closing, Warren shall obtain an owner's title policy showing good and marketable title in

Warren through the Closing and subject only to the permitted exceptions and any survey or other matters accepted by Warren.

- 5.2. The parties hereto agree that Sooner's assignment of its rights to acquire the Theatre Property pursuant to the Land Contract to the Authority, and the Authority's purchase of the Theatre Property, shall occur prior to the Closing Date, but in any event, subject to the satisfaction of all conditions precedent or other provisions contained herein, not later than September 30, 2017.
- 5.3. In the event Warren's or Authority's conditions precedent as specified in Section 11 hereof are not satisfied by October 2, 2017, either such party may terminate this Agreement upon written notice given to the other and thereupon none of the parties hereto shall have any further obligations hereunder.
- 5.4. Subject to the other provisions contained herein, the Closing between Warren and the Authority shall occur on October 2, 2017, or such earlier date as the parties shall agree upon (the "Closing Date"). Subject to the other provisions of this Agreement, at the Closing, the Authority shall convey title to the Theatre Property to Warren by special warranty deed subject to the Reversionary Interest. The Authority shall convey the Theatre Property as a contribution to Warren for no compensation, other than the in consideration for the covenants and promises provided by Warren pursuant to this Agreement and the agreements made between the Authority and Sooner. Concurrent with the conveyance of the Theater Property, Warren shall convey to the Authority a temporary construction easement for the relocation of the Gas Line as provided in Section 4.4.1. Except as otherwise provided herein, and according to the Land Contract, Warren shall pay all of its costs associated with its Closing of the acquisition of the Theatre Property; provided, however, the Authority shall be responsible for its costs and legal fees associated with this Agreement and the Closing.
- 5.5. Except as otherwise provided in this Agreement, neither the City nor the Authority is making, and each hereby specifically disclaims, any representations or warranties of any kind, express or implied, with respect to the condition of the Theatre Property. Warren agrees that Warren has not relied upon and will not rely upon, either directly or indirectly, any representation of the City or the Authority (except as otherwise set forth in this Agreement) or any agent of the City or the Authority regarding the condition of the Theatre Property. EXCEPT AS OTHERWISE PROVIDED HEREIN, AND IN THE AUTHORITY'S DEED, Warren ACKNOWLEDGES AND AGREES THAT UPON THE CLOSING DATE THE AUTHORITY SHALL CONVEY TO Warren, AND Warren SHALL ACCEPT, THE THEATRE PROPERTY "AS IS, WHERE IS" WITH ALL FAULTS, AND, EXCEPT AS PROVIDED IN THIS AGREEMENT AND THE AUTHORITY'S DEED, THERE ARE NO ORAL AGREEMENTS, WARRANTIES, OR REPRESENTATIONS (EXCEPT AS OTHERWISE PROVIDED HEREIN), COLLATERAL TO OR AFFECTING THE THEATRE PROPERTY BY THE AUTHORITY, ANY AGENT OF THE CITY OR THE AUTHORITY OR ANY THIRD PARTY ACTING FOR ON BEHALF OF THE CITY OR THE AUTHORITY. The terms of this Section 5.5 shall expressly survive termination of this Agreement.
6. **Public Improvements.** In consideration of Warren undertaking the obligations set forth in Section 3, the Authority shall contract with Sooner pursuant to the Development Financing Agreement to be entered into between the Authority and Sooner for the construction of certain public improvements as more particularly described in Exhibit C (the "Public Improvements"). Prior to the Closing Date, the Authority shall provide Warren evidence that the construction and completion of the Public Improvements is included in the tax increment finance budget created concurrent with this Agreement. The Authority, shall complete, or cause Sooner to complete,

the Public Improvements not later than six months following the Closing Date. In the event the Authority fails to punctually perform its obligations under this Section, the City shall promptly perform such obligations.

- 7. Construction Contribution.** Subject to the terms of this Section, the Authority shall pay to Warren the amount of Five Million and No/100 Dollars (\$5,000,000.00), as a contribution for the construction of the Theatre Development pursuant to the terms of this Section (the "Construction Contribution"). After the later of: (i) the date Warren shall Complete Construction and (ii) the Theatre Opening, Warren shall submit to the Authority a written Contribution Notice, providing the Authority sufficient documentation as is reasonably necessary to confirm the occurrence of (i) and (ii). The Authority shall be entitled to inspect the Theatre Property to confirm that Warren shall have Completed Construction of the Theatre Development and the Theatre Opening has occurred. The Authority shall pay the Construction Contribution to Warren within fifteen (15) days of receipt of the Contribution Notice. In the event of a failure of the Authority to pay the Construction Contribution on or before the date required hereunder, the Construction Contribution shall accrue interest at the rate of ten (10%) per annum.
- 8. Assignment.** Warren's rights and obligations pursuant to this Agreement may be assigned by Warren only as set forth in this Section. Any assignment other than as provided in this Section shall be null and void except as approved by a prior written amendment to this Agreement, executed by the parties hereto.

  - a. The parties hereto acknowledge that Warren may undertake acquisition of the Theatre Property and development of the Theatre Development via an affiliate entity in which William Warren shall directly, or indirectly, have an ownership interest. Therefore, Warren's rights and obligations pursuant to this Agreement may be assigned in whole or in part without the prior consent of the Authority to any such entity or entities on or before the Closing Date without the need for amendment to this Agreement. Warren may desire to assign the rights hereunder to receive the outparcels referenced in Section 2.1 above to another entity permitted hereunder prior to the Closing Date.
  - b. The parties hereto acknowledge that Warren may undertake acquisition of the Theatre Property and development of the Theatre Development pursuant to an acquisition and development loan from a lender. Therefore, Warren's rights and obligations pursuant to this Agreement may be assigned, pledged and hypothecated to a lender associated with the acquisition of the Theatre Property and construction of the Theatre Development and without the prior consent of the Authority without the need for amendment to this Agreement.
  - c. Upon assignment pursuant to this Section, all the terms and conditions of this Agreement shall inure to the benefit of and bind the assignee.
- 9. Tax Matters.** The development financing assistance being provided hereunder, including the contribution of the Theatre Property as provided in Section 4 and the Construction Contribution as provided in Section 7, are intended by the parties to be nontaxable contributions to the capital of Warren by non-shareholders, as permitted by Section 118 of the Internal Revenue Code; provided, however, that the City and the Authority shall have no liability or responsibility to Warren regarding the treatment of such development financing assistance, including the

contribution of the Theatre Property and payment of the Construction Contribution, for federal or state income tax purposes.

#### **10. Representations and Warranties.**

- 10.1 Each of the parties hereto represent and warrant to each of the other parties that it is a duly constituted entity; has the full right and authority to execute and perform its respective obligations under this Agreement; and the Agreement is in full force and effect and constitutes a valid and legal binding obligation, enforceable in accordance with its terms as provided in this Agreement.
- 10.2 The City and Authority have executed an agreement with Sooner concerning Sooner's assignment of its purchase rights concerning the Theatre Property under the Land Contract, a true and correct copy of which has been provided by the City and Authority to Warren. The City and Authority shall perform their respective obligations under such agreement, and take all action as necessary to cause Sooner to complete such assignment of the purchase rights under the Land Contract to Authority.

#### **11. Certain Conditions Precedent.**

- 11.1. Warren's obligation to acquire the Theatre Property is conditioned upon the following:

- 11.1.1. The Authority having cured such matters, defects or exceptions concerning the Commitment and the survey as provided in Section 5.1 above, and the Title Insurance Company's issuance to Warren and its lender of a title insurance policy, subject only to the exceptions and survey matters to which Warren shall not object pursuant to such Section 5.1.
- 11.1.2. Warren having obtained such environmental reports or audits as it shall desire, or its lender shall require, with respect to the Theatre Property. The Authority shall promptly following the Effective Date deliver to Warren all environmental reports and other information in its possession or available to it, and Warren may engage a reputable environmental inspection firm to inspect and evaluate the Theatre Property and report to Warren thereon.
- 11.1.3. The Theatre Approvals shall have been fully and finally granted to Warren and not subject to any further appeal or reconsideration, and in all respects shall be satisfactory to Warren and its lender.
- 11.1.4. Warren shall have obtained financing for the performance of the Theatre Development on terms satisfactory to it.
- 11.1.5. Warren shall have been satisfied, in its sole discretion, with the evidence that the Authority has sufficient funds as provided in Section 4.1 above.
- 11.1.6. Warren shall be satisfied, in its sole discretion, concerning the plans and specifications of the Off-Site Improvements.
- 11.1.7. A former retail gas station existed on the Out Parcel located closest to the intersection of Buena Vista Avenue and S.E. 15<sup>th</sup> Street and underground storage tanks are currently

located thereon. Such tanks and related equipment shall be removed and all remediation necessary to cause such site to fully comply with applicable laws, rules and regulations shall have been completed to Warren's satisfaction prior to the Closing Date.

11.1.8. Sooner shall have acquired the Sooner Rose II Property.

11.1.9. In the event any of the conditions contained in Sections 11.1.1 - 11.1.8 are not satisfied by the Closing Date, Warren may, upon written notice given to the other parties hereto, terminate this Agreement.

11.2. The Authority's obligation to acquire the Theatre Property under the Land Contract and convey the same to Warren hereunder is conditioned upon the following:

11.2.1. Authority's satisfaction with the cost and financial information to be delivered by Warren to Authority pursuant to Sections 3.2.1.2 – 3.2.1.4, inclusive.

**12. No Partnership.** Nothing contained in this Agreement shall be construed in any way as creating a joint venture, partnership, or similar business relationship between or among, the City, the Authority and Warren. Consistent with the terms of this Agreement, Warren shall develop, operate, maintain, lease, sell, hypothecate, and otherwise convey the Theatre Property or portions thereof in its sole and absolute discretion.

**13. Default.** Except as otherwise expressly provided in this Agreement, in the event either party hereto shall default of any its obligations as provided in this Agreement, following thirty (30) days' prior written notice from the non-defaulting party to the defaulting party with the defaulting party's opportunity to cure such default, the non-defaulting party may exercise any and all rights and remedies available at law or equity, including, but not limited to, specific performance of the defaulting party's obligations pursuant to the terms of this Agreement; provided, however, if the default is of a nature that cannot be reasonably cured within such 30-day period, then the defaulting party shall be allowed a reasonable period of time to cure such default provided that it diligently commences the cure within the 30-day period and thereafter undertakes and continuously pursues such cure; provided, notwithstanding the foregoing, any default regarding the payment of money must be cured within five (5) business days.

**14. Force Majeure.** Notwithstanding anything in this Agreement to the contrary, no party hereto shall be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Agreement to be performed by it if any failure of its performance shall be due to any fire, earthquake, labor dispute, act of terrorism, strike, lockout, civil commotion, war, warlike operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material or service, Act of God, weather, or any other cause whatsoever beyond the reasonable control of obligated party, and the time for performance by such obligated party shall be extended by the period of delay resulting from or due to any of said causes; provided, nothing in this section shall excuse or extend a party's obligation to pay any sum due under this Agreement.

**15. Termination.** Upon the completion of Warren's obligations set forth in Section 3, excluding 3.8, and completion of the Authority's obligations as set forth in Section 4, 5, 6, and 7, this Agreement shall terminate and shall be of no further force or effect except as to terms and conditions that expressly survive termination.

**16. Miscellaneous.** Each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the parties hereto, their successors and assigns. If any date herein set forth for the performance of any obligations by any party hereto or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. As used herein, the term "legal holiday" means any federal holiday for which financial institutions or post offices in the State of Oklahoma are generally closed for observance thereof. As used herein, the term "business day" shall mean a day which is not a Saturday, Sunday or legal holiday. The headings used herein are for convenience only and shall not be used in interpreting this Agreement. Nothing in this Agreement shall serve to affect or otherwise limit the City's and Authority's police powers, zoning authority or other governmental action of the City or Authority. This Agreement shall represent the entire understanding between the parties with respect to the subject matter hereof, and supersede all other negotiations and agreements made by the parties concerning the matters set forth herein. Any provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal or unenforceable, shall be severable and shall not be construed to render the remainder of the Agreement to be invalid, illegal, or unenforceable. This Agreement may not be amended, unless evidenced in writing and executed by the parties hereto. This Agreement shall be governed by and constructed in accordance with the laws of the State of Oklahoma. This Agreement may be executed in counterparts, each of which when so executed shall be deemed an original, and all of which shall together constitute one and the same instrument. Each party acknowledges that all parties to this Agreement participated in the preparation thereof, and that it was negotiated at arm's length. Accordingly, no court construing this Agreement shall construe it more strongly against one party than the other.

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Effective Date.

Approved and agreed to by the Authority on the Effective Date.

**ATTEST:**

**MIDWEST CITY MEMORIAL HOSPITAL  
AUTHORITY**, a public trust

\_\_\_\_\_  
\_\_\_\_\_, Secretary

\_\_\_\_\_  
\_\_\_\_\_, Chairman

Approved as to form and legality this \_\_\_\_\_  
day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
\_\_\_\_\_, General Counsel

Approved and agreed to by Warren on the Effective Date.

**MWC WARREN THEATRE, INC.**, a Kansas  
corporation

By: \_\_\_\_\_  
William J. Warren, President

Approved and agreed to by the City on the Effective Date.

**ATTEST:**

**CITY OF MIDWEST CITY, OKLAHOMA**, a municipal  
corporation of the State of Oklahoma

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

\_\_\_\_\_  
\_\_\_\_\_, Mayor

Approved as to form and legality this \_\_\_\_\_  
day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
\_\_\_\_\_, City Attorney

## **EXHIBIT A**

### **PROPERTY DESCRIPTION**

A tract of land lying in the Southwest Quarter of Section Four (4), Township Eleven (11) North, Range Two (2) West of the Indian Meridian, Oklahoma County, Oklahoma being more particularly described as follows:

COMMENCING at the southwest corner of said Southwest Quarter;

THENCE North 89°24'49" East, along the south line of said Southwest Quarter, a distance of 1,286.19 feet to the POINT OF BEGINNING;

THENCE North 00°35'11" West, perpendicular to the south line of said Southwest Quarter, a distance of 399.33 feet;

THENCE North 01°20'38" West, parallel with the west line of said Southwest Quarter, a distance of 920.64 feet to a point on the centerline of Southeast 12<sup>th</sup> Street as shown on the plat of CROSBY RICHLAND HILL ADDITION, according to the plat thereof recorded in Book 31 of Plats, Page 94, Oklahoma County records;

THENCE North 89°24'49" East, along said centerline and parallel with the south line of said Southwest Quarter, a distance of 547.18 feet to a point, said point being 792.00 feet South 89°24'49" West of the east line of the said Southwest Quarter;

THENCE South 01°23'57" East, parallel with the east line of said Southwest Quarter, a distance of 1,320.02 feet to a point on the south line of said Southwest Quarter, said point being 792.00 feet South 89°24'49" West of the southeast corner of said Southwest Quarter;

THENCE South 89°24'49" West, along said south line, a distance of 553.73 feet to the POINT OF BEGINNING.

Said tract of land containing 724,111 square feet or 16.6233 acres more or less.

The basis of bearings for this legal description is the Oklahoma State Plane Coordinate System (NAD83-North Zone) using a bearing of South 89°24'49" West on the south line of the Southwest Quarter of Section 4, Township 11 North, Range 2 West of the Indian Meridian, Oklahoma County, Oklahoma.

GWS 1-18-17

**EXHIBIT A-1**

**SOONER ROSE II PROPERTY DESCRIPTION**

A tract of land lying in the Southwest Quarter of Section Four (4), Township Eleven (11) North, Range Two (2) West of the Indian Meridian, Oklahoma County, Oklahoma being more particularly described as follows:

COMMENCING at the southwest corner of said Southwest Quarter;

THENCE North 89°24'49" East, along the south line of said Southwest Quarter, a distance of 593.83 feet (594.00 feet per vesting deed) to a point of intersection with the projected east line of Lot Five (5), in Block One (1) of SOONER ROSE ADDITION, an Addition to the City of Midwest City, Oklahoma, according to the plat thereof recorded in Book 75 of Plats at Page 12 in the records of the Oklahoma County Clerk, said point being the POINT OF BEGINNING;

THENCE along said projected line and the actual east line of said Lot 5 and the east and south lines of Lot One (1), in Block One (1) of said SOONER ROSE ADDITION, the following two (2) courses:

1. North 01°20'38" West a distance of 660.00 feet,
2. North 89°24'49" East, passing at a distance of 254.66 feet to an easterly corner of said Lot 1, Block 1, SOONER ROSE ADDITION, and continuing for a total distance of 584.67 feet (585.00 feet per vesting deed);

THENCE North 01°20'38" West a distance of 660.00 feet to a point on the centerline of Southeast 12th Street as shown on the plat of CROSBY RICHLAND HILL ADDITION, according to the plat thereof recorded in Book 31 of Plats, Page 94, Oklahoma County records;

THENCE North 89°24'49" East, along said centerline and parallel with the south line of said Southwest Quarter, a distance of 112.97 feet;

THENCE South 01°20'38" East, parallel with the west line of said Southwest Quarter, a distance of 920.64 feet;

THENCE South 00°35'11" East, perpendicular to the south line of said Southwest Quarter, a distance of 399.33 feet to a point on the south line of said Southwest Quarter;

THENCE South 89°24'49" West, along said south line, a distance of 692.36 feet to the POINT OF BEGINNING.

Said tract of land containing 533,905 square feet or 12.2568 acres more or less.

The basis of bearings for this legal description is the Oklahoma State Plane Coordinate System (NAD83-North Zone) using a bearing of South 89°24'49" West on the south line of the Southwest Quarter of Section 4, Township 11 North, Range 2 West of the Indian Meridian, Oklahoma County, Oklahoma.

GWS 1-18-17



## EXHIBIT C

### PUBLIC IMPROVEMENTS

1. The term “Public Improvements” as provided in Sections **Error! Reference source not found.** and **Error! Reference source not found.** of the Agreement shall mean the improvements set forth in this Exhibit C, Section 1, and as more particularly shown on the Site Map Exhibit “C-1”, prepared by SMC Consulting Engineers, P.C., and the attached hereto and incorporated by reference.
  - 1.1. Sooner shall widen and restripe S.E. 15<sup>th</sup> Street along the Property. The widening shall include dedicated left-turn lanes along the centerline of the roadway and a dedicated right-turn lane along the north-side of the roadway at Center Drive. Sooner shall also construct 5-foot wide concrete sidewalks with ADA compliant ramps along the north-side of S.E. 15<sup>th</sup> Street, and Sooner shall construct four (4) concrete driveway approaches for access to the Sooner Rose development along the north-side of S.E. 15<sup>th</sup> Street. Incidental construction such as demolition of existing features and the relocation of utilities shall be included in the S.E. 15<sup>th</sup> Street widening project.
  - 1.2. Sooner shall install a Traffic Signal at the intersection of S.E. 15<sup>th</sup> Street and Center Drive. The Traffic Signal shall be designed to direct traffic for the additional turn-lanes constructed on S.E. 15<sup>th</sup> Street and to interact with the existing traffic signal at S.E. 15<sup>th</sup> Street and Sooner Road. Incidental construction such as demolition of existing features and the relocation of utilities shall be included in the Traffic Signal project.
  - 1.3. Sooner shall reconstruct Buena Vista Avenue to current City Standards for a Local Residential and Commercial Street with curb and gutter from S.E. 12<sup>th</sup> Street to S.E. 15<sup>th</sup> Street. Sooner shall construct 6-foot wide concrete sidewalks with ADA compliant ramps adjacent to the west curb of Buena Vista Avenue, and Sooner shall construct four (4) concrete driveway approaches for access to the Sooner Rose development along the west-side of Buena Vista Avenue. Incidental construction such as demolition of existing features and the relocation of utilities shall be included in the Buena Vista Avenue reconstruction project.
  - 1.4. Sooner shall extend an 8-inch water line along the north-side of S.E. 15<sup>th</sup> Street from the existing 8” water line located on the west-side of Buena Vista Avenue to the southwest corner of the Property and connect to an existing 8” water line located north of S.E. 15<sup>th</sup> Street.
  - 1.5. Sooner shall extend an 8-inch water line along the south-side of S.E. 12<sup>th</sup> Street from the existing 8” water line located at Carolyn Drive to the existing 8” water line located at Buena Vista Avenue.
  - 1.6. Sooner shall construct a 5-foot wide sidewalk along the south-side of S.E. 12<sup>th</sup> Street between Buena Vista Avenue and the northwest corner of the Property.
  - 1.7. Sooner shall relocate the existing oil pipeline owned by Enefrin from the Property to the northern and eastern boundary of the Property along S.E. 12<sup>th</sup> Street and Buena Vista Avenue, respectively, which activities shall include, but not be limited to, removal of the Gas Line from its current location on the Vloedman Property, vacation of the gas line easement by release or quit claim of all rights, title and interest to the Authority by Enefrin, and construction of the Gas Line in a new location along the eastern boundary of the Vloedman Property immediately adjacent to the western right-of-way of Buena Vista Avenue in an area reasonably acceptable to the Authority, all as more particularly shown on Exhibits C and C-1.
  - 1.8. To provide increased pedestrian connectivity for the community, Sooner shall construct sidewalk improvements extending from the current terminus of Center Drive north along the entry drive, and sidewalk improvements extending from the southern boundary of S.E. 12<sup>th</sup> Street south along the common boundary of the Property and the S.E. 12<sup>th</sup> St. Property.

2. All applicable inspections and testing of the “Public Improvements” shall be conducted by Sooner pursuant to State and Federal regulations.
3. The parties hereto estimate that the costs of the Public Improvements shall be as set forth below:

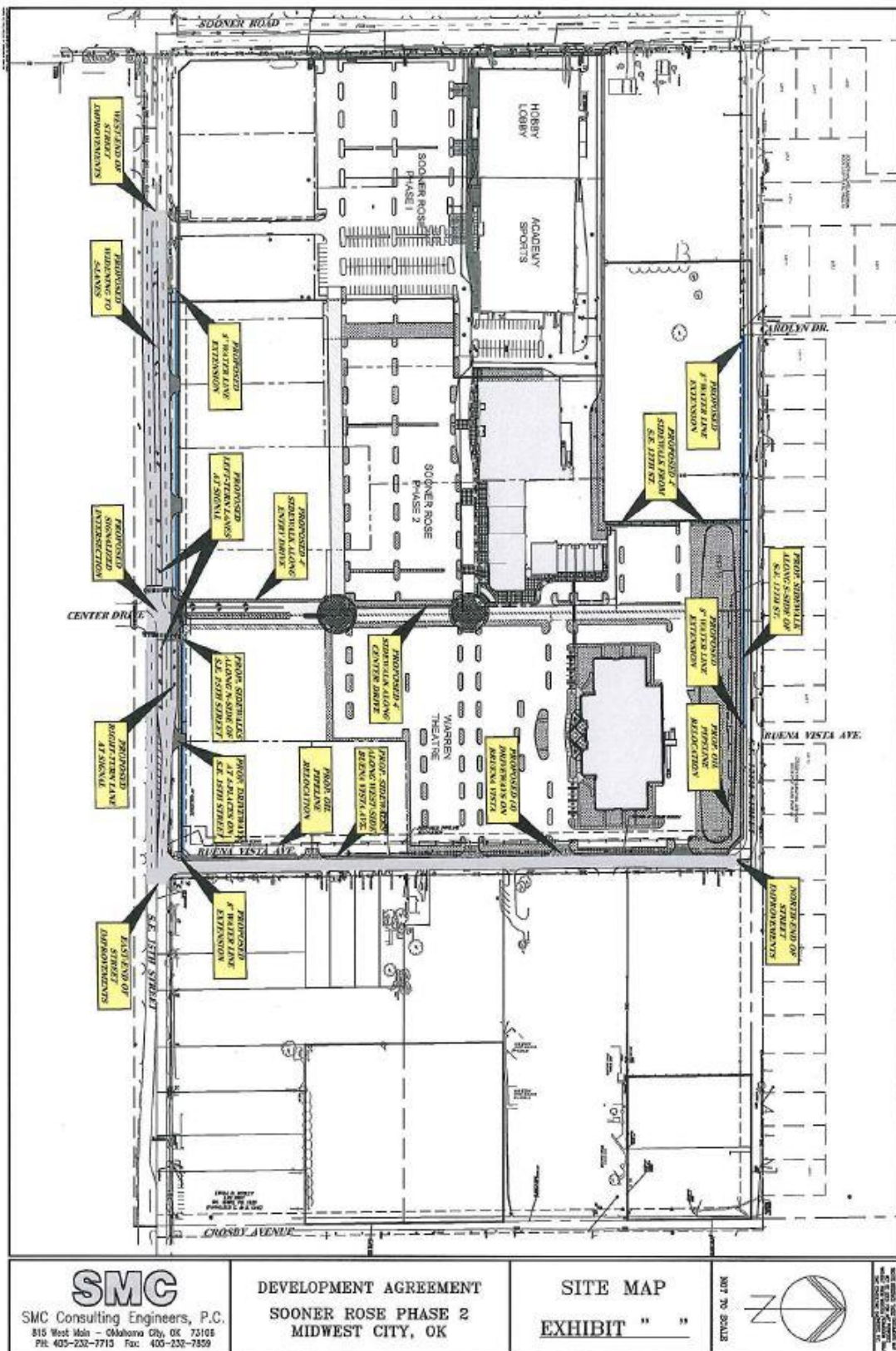
Public Improvements Total Cost Estimate		\$1,524,055.00
SE 15 <sup>th</sup> Street Improvements		\$743,175.00
Buena Vista Avenue Improvements		\$399,190.00
SE 12 <sup>th</sup> Street Improvements		\$90,915.00
Center Drive Sidewalks		\$45,815.00
Gas Line Relocation		\$100,000.00
Civil Engineering for Public Improvements		\$59,960.00
Development Fee (3%)		\$45,000.00
Construction Management Fee (2.5%)		\$40,000.00

In the event the actual costs of the Public Improvements shall be less than the estimates provided above, the Authority’s obligation to pay for the Public Improvements shall be only the Public Improvements costs actually incurred pursuant to this Agreement. In the event the actual costs of the Public Improvements exceed the estimates provided above, the Authority shall nevertheless be obligated to pay the actual costs incurred regardless of the estimates provided above.

4. The authority shall pay the Public Improvements Contribution (as referenced in Section **Error! Reference source not found.** of the Agreement) pursuant to the terms of this Section.
  - 4.1. Costs of the civil engineering associated with the Public Improvements as referenced in Section **Error! Reference source not found.** of the Agreement shall be paid by the Authority after the Effective Date pursuant to the terms of Exhibit C, Section 4.3.
  - 4.2. Costs of construction of the Public Improvements incurred by Sooner pursuant to Section **Error! Reference source not found.** of the Agreement shall be paid by the Authority after the Closing pursuant to the terms of Exhibit C, Section 4.3.
  - 4.3. Not more than twice per month, Sooner shall submit written invoices for costs associated with Public Improvements to the Authority (each, a “Contribution Request”) identifying the activities associated with the Public Improvements and the costs incurred associated therewith. The Authority shall pay the Public Improvements Contribution to Sooner or directly to the payee as identified in the Contribution Request, in the amount set forth in the Contribution Request, within fourteen (14) days of receipt of the Contribution Request.

EXHIBIT C-1

SITE MAP EXHIBIT







## ***Midwest City Memorial Hospital Authority***

100 North Midwest Boulevard  
Midwest City, Oklahoma 73110  
Office (405) 739-1207 - Fax (405) 739-1208  
E-mail: ghenson@midwestcityok.org

J. Guy Henson  
*General Manager/  
Administrator*

### *Trustees*

Matthew D. Dukes II  
Susan Eads  
Pat Byrne  
Rick Dawkins  
M. Sean Reed  
Christine Allen  
Jeff Moore

### *Board of Grantors*

Sherry Beaird  
John Cauffiel  
Marcia Conner  
Pam Dimski  
Dara McGlamery  
Joyce Jackson  
Charles McDade  
Nancy Rice  
Sheila Rose

## **MEMORANDUM**

TO: Honorable Chairman and Trustees

FROM: General Manager Guy Henson

DATE: April 20, 2017

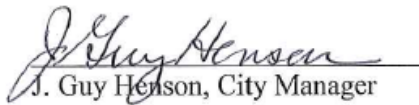
SUBJECT: Discussion and consideration of 1) approving and entering into an Economic Development Agreement with Sooner Investment Group, Inc. and the Midwest City Memorial Hospital Authority in the approximate amount of \$3,800,000 and other goods and valuable consideration, to establish the terms and conditions under which the parties will participate in the purchase and redevelopment of approximately 14.5 acres located on the north side of SE 15th Street between South Sooner Road and Crosby Boulevard; and 2) authorizing the chairman and/or the general manager/administrator to enter into such other agreements and execute such other documents as may be necessary or appropriate to effect the provisions of the Agreement.

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This agreement will establish the monetary amount the Memorial Hospital Authority ("Authority") will contribute and other terms that will govern the duties and responsibilities of Sooner Investment Group, Inc, the City and the Authority in the development of property located at the northwest corner of Buena Vista Avenue and SE 15<sup>th</sup> Street.

The Board of Trustees took no action on this item this item at its April 11, 2017, meeting. Since then, there has been a change proposed to Section 4 (highlighted in red). This change, if approved, automatically terminates the agreement should the Authority fail to find adequate project funding.

Staff recommends approval.

  
J. Guy Henson, City Manager

Attachments: Proposed agreement between the MCMHA and Sooner Investment Group, Inc..



**STATE OF OKLAHOMA**

**SOONER ROSE PHASE II – RETAIL  
DEVELOPMENT FINANCING ASSISTANCE AGREEMENT**

**COUNTY OF OKLAHOMA**

**THIS SOONER ROSE PHASE II – RETAIL DEVELOPMENT FINANCING ASSISTANCE AGREEMENT** (this “Agreement”) is entered into as of the \_\_\_\_ day of April, 2017 (the “Effective Date”), by and between the Midwest City Memorial Hospital Authority, an Oklahoma public trust (the “Authority”), and Sooner Investment Group, Inc., an Oklahoma corporation (“Sooner”), and the City of Midwest City, Oklahoma (the “City”), a municipal corporation of the State of Oklahoma.

**RECITALS**

WHEREAS, the Authority was created by that certain “Amended and Restated Trust Indenture”, dated as of the 1st day of July, 1961, as a public trust for the use and benefit of the City of Midwest City, Oklahoma, (hereinafter, the “City”) pursuant to the provisions of Title 60, Sections 176, et seq., of the Oklahoma Statutes, as amended and supplemented (hereinafter, the “Public Trust Act”) and other applicable statutes of the State of Oklahoma; and

WHEREAS, the City, as the beneficiary thereof, acting through its City Council, has adopted a resolution accepting beneficial interest therein on behalf of said City; and

WHEREAS, the purposes of the Authority are, in part, to promote economic and community development, within and without the territorial limits of the City, and to promote additional employment which will benefit and strengthen the economy of the City and the State of Oklahoma; and

WHEREAS, in order to accomplish its designated purposes, the Authority is empowered to provide funds for the costs of acquiring, constructing, rehabilitating, equipping, securing, maintaining and developing real and personal property within and near the City, and to enter into, make and perform contracts for the sale of its bonds, notes or other evidence of indebtedness to finance the costs thereof; and

WHEREAS, Warren has proposed to redevelop and construct a retail and movie theatre development within the boundaries of the City (hereinafter, the “Project”) and, in connection therewith, has requested development financing assistance from the Authority in acquiring land and in defraying the costs of certain building, site, and infrastructure improvements; and

WHEREAS, Sooner has the professional ability and expertise to undertake the Project in a manner that will enhance and improve economic growth and development of commerce in the city; and

WHEREAS, both the Authority and Sooner have a significant interest in encouraging and improving commerce and economic development in the City and agree that the two entities working together will have a greater, more positive impact on commerce and economic development in the City than each would have separately; and

WHEREAS, Sooner is investing its resources and capital to undertake the redevelopment and gentrification of an approximate 14.5-acre parcel of property immediately adjacent to the Sooner Rose retail shopping center located at the intersection of Southeast 15<sup>th</sup> Street and South Sooner Road,

comprised of the property identified on Exhibit A as the “Sooner Rose II Property” and “Hospital Authority Property”, which is attached hereto and incorporated by reference (the “Property”); and

WHEREAS, Sooner has the Property under contract pursuant to that certain Commercial/Industrial Real Estate Purchase Contract, by and between Sooner Investment Group, Inc., as Buyer, and G. Michael Vloedman, N. Carolyn Hurst Revocable Trust, and Garrett Vloedman and Emily Vloedman Living Trust, as Seller, and dated September 30, 2016 (the “Land Contract”), which contract includes a total of 34.8-acres of property near the intersection of SE 15<sup>th</sup> Street and Buena Vista Avenue and which is more particularly shown on Exhibit A and more particularly described on Exhibit A-1 (the “Vloedman Property”);

WHEREAS, the Authority is the owner of that certain 3.45-acre property immediately adjacent to the Property as shown on Exhibit A and more particularly described on Exhibit A-2 (the “Hospital Authority Property”), and the Authority intends to contribute the Hospital Authority Property to the Phase II Retail Development (defined below) as more particularly described below;

WHEREAS, the Authority and Sooner have been working with Warren Theatres, LLC (“Warren”) to redevelop an approximately 14.8-acre portion of the Vloedman Property (shown on Exhibit A as the “Theatre Property”) for a movie theater, retail and restaurant uses as more particularly shown on Exhibit B (the “Theatre Development”);

WHEREAS, the Authority and Sooner have entered into that certain Preliminary Development Agreement, dated December 22, 2016, as amended by the First Amendment to Preliminary Development Agreement, dated February 28, 2017 (collectively, the “Preliminary Development Agreement”), pursuant to which Sooner is to undertake certain Predevelopment Activities (as defined in the Preliminary Development Agreement) pertaining to the Vloedman Property in preparation for the transactions set forth in this Agreement;

WHEREAS, the Authority and the City have concluded their independent assessment of the plan of development proposed by Sooner and has determined that the redevelopment of the Property as proposed by Sooner is feasible; and

WHEREAS, the City has adopted and approved that certain “Project Plan Relating to Tax Increment District No. Two, City of Midwest City, Oklahoma (Sooner Rose Increment District Project)” (the “Project Plan”) and has created, within the boundaries set forth in the Project Plan, Increment District Number Two, City of Midwest City, Oklahoma (the “Sooner Rose Increment District”) by Ordinance No. 3291 on March 28, 2017 (the “Ordinance”), pursuant to the Oklahoma Local Development Act, Title 62, Section 851, et seq., of the Oklahoma Statutes, as amended; and

WHEREAS, the parties wish to set forth the manner in which the Project is to be undertaken by Warren and the Authority, and the assistance in development financing which the Authority has agreed to provide.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the parties to this Agreement agree as follows:

1. **Recitals.** The forgoing recitals are true and correct and are hereby incorporated in this Agreement.

2. **Phase II Retail Development Program.** Sooner shall redevelop the Property for a retail shopping center containing retail and restaurant buildings and associated improvements between the existing Sooner Rose shopping center and the Theatre Property, as more particularly shown on Exhibit B (the “Phase II Retail Development”). The Phase II Retail Development shall consist of first-class retail buildings, parking, drive aisles, signage, and ancillary improvements consistent with the quality of the existing Sooner Rose shopping center. The Phase II Retail Development and the Theatre Development shall be part of a unified retail development program coordinated by Sooner and Warren, all as consistent with Exhibit B.
  - 2.1. The parties intend that the Property shall be rezoned to Sooner Rose Phase II – Retail Planned Unit Development Agreement (the “PUD Agreement”), which must be reviewed and approved by the City pursuant to the City’s zoning authority in the City’s absolute discretion prior to the Closing Date (defined below).
  - 2.2. The parties acknowledge that the Phase II Retail Development and Theatre Development shall be a unified, cohesive development program and the PUD Agreement and the PUD zoning for the Theatre Development shall each require mutual cooperation and coordination between Sooner and Warren for the respective developments.
  - 2.3. The parties further acknowledge that Exhibit B and the Phase II Retail Development description provided in this Section represent a conceptual development program that has not been fully engineered, and that certain adjustments necessary for design, engineering, construction, or market conditions may be necessary for the Phase II Retail Development to proceed, which adjustments shall be incorporated into the Phase II Retail Development without need for further amendment to this Agreement provided such adjustments are approved by the City pursuant to the City’s permitting authority and the PUD Agreement (including any amendment thereto).
3. **Sooner’s Obligations.** In consideration of the Authority’s obligations set forth in Section 4, Sooner shall undertake the obligations set forth in this Section. Except as otherwise expressly provided in this Agreement and the Preliminary Development Agreement, Sooner shall undertake the obligations set forth in this Section at its sole cost and expense.
  - 3.1. From and after the Effective Date:
    - 3.1.1. Sooner shall comply with the Preliminary Development Agreement and shall in good faith conduct all reasonable and necessary due diligence associated with the Property, including but not limited to title, survey and environmental assessments as customary in acquiring land for commercial retail development and consistent with the Economic Development Contract, and shall provide copies of such materials to the Hospital Authority. In addition to Sooner’s due diligence conducted pursuant to this Section, the Authority shall be permitted to undertake any its own due diligence at its sole cost and Sooner shall cooperate with the Authority’s efforts in that regard.
    - 3.1.2. Sooner shall in good faith undertake all actions reasonably necessary for the design, rezoning and governmental permitting for the Phase II Retail Development on the Property (excluding building permits for vertical construction of the Phase II Retail Development), including but not limited to, all local and state permits and approvals, land use and zoning

changes, site plan approval and all other permits reasonably necessary to commence construction of the Phase II Retail Development (collectively, the “Retail Approvals”). All design and engineering documents relating to site grading, utilities, parking and vehicular circulation, and the stormwater system for the Property shall be generally consistent with Exhibit B and shall be compatible with the Theatre Development. When complete, the Phase II Retail Development and Theatre Development shall form a cohesive retail and entertainment center comparable with first-class retail centers in the Oklahoma County market.

- 3.1.3. Sooner shall in good faith undertake all actions reasonably necessary for the design and governmental permitting for the construction of the Public Improvements described on Exhibits C and C-1, attached hereto and incorporated by this reference (collectively, the “Public Improvements”), including but not limited to all actions reasonably necessary for the design, permitting and approvals for the relocation of the natural gas transmission line and associated improvements owned by Enefrin located on the Vloedman Property (the “Gas Line”). All design and engineering documents relating to site grading, utilities, parking and vehicular circulation, and the stormwater system for the Property shall be generally consistent with Exhibits C and C-1. Costs associated with the civil engineering and permitting associated with the Public Improvements shall be paid by the Authority pursuant to the terms of Exhibit C.
- 3.2. Prior to Closing, Sooner shall deliver to the Authority information concerning Sooner’s financial ability to develop the Phase II Retail Development to the Authority’s reasonable satisfaction, which information shall include, but not be limited to:
  - 3.2.1. Copies of all Retail Approvals necessary to commence construction of the Phase II Retail Development;
  - 3.2.2. A pro forma of the Phase II Retail Development with construction estimates;
  - 3.2.3. An executed contract for construction of the site work for the Phase II Retail Development; and
  - 3.2.4. A loan commitment or other documentation establishing that Sooner has sufficient financing or other resources to undertake and complete the purchase of the Sooner Rose II Property.
- 3.3. On the Closing Date (defined below), Sooner shall acquire the Property and shall assign to the Authority Sooner’s right to acquire the following portions of the Vloedman Property: (i) the Theatre Property; and (ii) two parcels located east of Buena Vista Avenue identified as Vloedman Parcel 1 and Vloedman Parcel 2 on Exhibit A and described on Exhibit A-1 (collectively, the “Assignment Property”).
- 3.4. Following the Closing Date:
  - 3.4.1. Sooner shall undertake the development of the Phase II Retail Development pursuant to the terms of this Agreement. Sooner shall be solely responsible for all costs associated with the Phase II Retail Development except as otherwise expressly provided for herein.

Sooner will, in its best judgment and discretion, develop, plan and execute the redevelopment of the Property by designing the Phase II Retail Development and obtaining permits from local, state and federal agencies, rezoning the Property (as necessary), replatting the Property (including imposition of any declaration of covenants and easements necessary for the operation of the Property), constructing the Phase II Retail Development, and performing such other duties and assuming such other responsibilities as any other developer would undertake to complete a Class A commercial real estate development of the size of the Property. Sooner will also take whatever other actions and perform all such other duties, such as marketing the Property to local and national retailers and restaurants, that, in the best professional judgment of Sooner, will lead to the successful redevelopment of the Property, which will enhance and improve commerce and economic development in Midwest City, Oklahoma.

3.4.2. Sooner shall construct the Public Improvements. Sooner shall complete the construction of the Public Improvements prior to completion of the construction of the Theatre Development.

4. **Authority's Obligations.** In consideration of Sooner's obligations set forth ~~herein Section 3~~, the Authority shall undertake the obligations set forth in this Section. Except as otherwise expressly provided in this Agreement, the Authority shall undertake the obligations set forth in this Section at its sole cost and expense; ~~provided, however, that the Authority's obligations under this agreement shall be contingent upon the ability of the Authority to secure the necessary financing within seventy-five (75) days after the Effective Date. If the Authority is unable to secure appropriate financing within such period, then this Agreement shall terminate without liability by any of the parties hereto to any other party or to undertake any further actions hereunder.~~

4.1. Following the Effective Date, as the Hospital Authority Property owner, the Authority shall join in all applications prepared by Sooner for the Retail Approvals consistent with the terms of this Agreement.

4.2. On the Closing Date, the Authority shall:

4.2.1. Convey to Sooner the Hospital Authority Property pursuant to the terms of Section 5;

4.2.2. Accept from Sooner assignment of Sooner's rights to acquire the Assignment Property from Vloedman and shall purchase the Assignment Property from Vloedman pursuant to the terms of the Vloedman Contract;

4.2.3. Convey to Warren the Theatre Property pursuant to the terms of a separate agreement between the Authority and Warren; and

4.2.4. The Authority shall pay to Sooner a development contribution in the amount of One Million Eight Hundred Forty-Five Thousand Seven Hundred and No/100 Dollars (\$1,845,700.00) for the construction of the Phase II Retail Development.

4.3. Following the Closing Date, except as otherwise provided in Section 3.1.3, the Authority shall pay for all costs associated with the construction of the Public Improvements (the "Public Improvements Contribution") as set forth in Exhibit C.

## **5. Hospital Authority Property Conveyance.**

- 5.1. Sooner shall obtain, at Sooner's sole cost, an owner's title insurance policy from a title company of Sooner's choice agreeing to insure title to the Hospital Authority Property in an amount that Sooner estimates is equal to the value of the Hospital Authority Property and subject to no exceptions other than those matters herein permitted, those which will be discharged prior to or at the Closing, and the standard printed exceptions and exclusions from coverage customarily contained in an owner's title policy (the "Commitment"). Sooner shall provide the Authority a copy of the Commitment upon receipt. If the Commitment discloses unpermitted exceptions or matters that render the title unmarketable, the Authority, at its option, may cure such defects to Sooner's reasonable satisfaction. If the Authority fails to have the Commitment exceptions removed or the defects cured prior to the Closing Date, Sooner may terminate this Agreement or Sooner may elect, in its discretion, to take title as it then is notwithstanding such exceptions or title defects. In the event that new exceptions or matters arise by or through the Authority, the Authority shall exercise reasonable diligence in the curing of any such defects or exceptions, including payment and discharge of any liens or encumbrances affecting title of the Hospital Authority Property, and the Closing and other deadlines associated with development of the Property shall be tolled until the Authority shall have cured such exceptions or defects. At the Closing, Sooner shall obtain an owner's title policy showing good and marketable title in Sooner through the Closing and subject only to the permitted exceptions and any matters accepted by Sooner.
- 5.2. The parties hereto agree that the date of Sooner's assignment of its rights to acquire the Assignment Property pursuant to the Land Contract to the Authority, and the Authority's purchase of the Assignment Property, shall occur prior to the Closing Date, but in any event, the Closing Date shall occur not later than July 30, 2017.
- 5.3. At the Closing, the Authority shall convey title to the Hospital Authority Property to Sooner by special warranty deed. The Authority shall convey the Hospital Authority Property as development financing assistance, other than the consideration provided by Sooner pursuant to Section 3. Except as otherwise provided herein, Sooner shall pay all costs associated with the acquisition of the Property, including the Hospital Authority Property; provided, however, the Authority shall be responsible for its own legal fees associated with this Agreement and the Closing.
- 5.4. Except as otherwise provided in this Agreement, neither the City nor the Authority is making, and each hereby specifically disclaims, any representations or warranties of any kind, express or implied, with respect to the Hospital Authority Property. Sooner agrees that Sooner has not relied upon and will not rely upon, either directly or indirectly, any representation of the City or the Authority (except as otherwise set forth in this Agreement) or any agent of the City or the Authority. EXCEPT AS OTHERWISE PROVIDED HEREIN, SOONER ACKNOWLEDGES AND AGREES THAT UPON THE CLOSING DATE THE AUTHORITY SHALL CONVEY TO SOONER, AND SOONER SHALL ACCEPT, THE HOSPITAL AUTHORITY PROPERTY "AS IS, WHERE IS" WITH ALL FAULTS, AND THERE ARE NO ORAL AGREEMENTS, WARRANTIES, OR REPRESENTATIONS (EXCEPT AS OTHERWISE PROVIDED HEREIN), COLLATERAL TO OR AFFECTING THE HOSPITAL AUTHORITY PROPERTY BY THE AUTHORITY, ANY AGENT OF THE CITY OR THE AUTHORITY OR ANY THIRD

PARTY ACTING FOR ON BEHALF OF THE CITY OR THE AUTHORITY. The terms of this Section shall expressly survive termination of this Agreement.

- 5.5. Except as otherwise provided in this Agreement, Sooner is not making, and specifically disclaims, any representations or warranties of any kind, express or implied, with respect to the Assignment Property. The Authority agrees that the Authority has not relied upon and will not rely upon, either directly or indirectly, any representation of Sooner (except as otherwise set forth in this Agreement) or any agent of the Authority. EXCEPT AS OTHERWISE PROVIDED HEREIN, THE AUTHORITY ACKNOWLEDGES AND AGREES THAT UPON THE CLOSING DATE THE AUTHORITY SHALL ACQUIRE THE ASSIGNMENT PROPERTY PURSUANT TO THE TERMS OF THE VLOEDMAN CONTRACT AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS SOONER FROM ANY AND ALL CLAIMS AND CAUSES OF ACTION ASSOCIATED WITH THE AUTHORITY'S ACQUISITION OF THE ASSIGNMENT PROPERTY TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT TO AS TO ANY CLAIMS OR CAUSES OF ACTION ARISING FROM OR RELATING TO SOONER'S ACTIONS, OR THE ACTIONS OF ITS OFFICERS, DIRECTORS, EMPLOYEES, OR CONTRACTORS. The terms of this Section shall expressly survive termination of this Agreement.
6. **Assignment.** Sooner's rights and obligations pursuant to this Agreement may be assigned by Sooner only as set forth in this Section. Any assignment other than as provided in this Section shall be null and void except as approved by a prior written amendment to this Agreement, executed by the parties hereto.
- 6.1. The parties hereto acknowledge that Sooner may undertake acquisition of the Property and development of the Phase II Retail Development via an affiliate entity owned or controlled by Sooner or its President, Bob Stearns. Therefore, Sooner's rights and obligations pursuant to this Agreement may be assigned without the prior consent of the Authority to any entity owned or controlled by Sooner or its President, Bob Stearns, on or before the Closing Date without the need for amendment to this Agreement.
- 6.2. The parties hereto acknowledge that Sooner may undertake acquisition of the Property and development of the Phase II Retail Development pursuant to an acquisition and development loan from a lender. Therefore, Sooner's rights and obligations pursuant to this Agreement may be assigned, pledged and hypothecated to a lender associated with the acquisition of the Property and construction of the Phase II Retail Development and without the prior consent of the Authority without the need for amendment to this Agreement. The parties shall execute the Collateral Assignment and Consent to Assignment in a form substantially similar to that provided in Exhibit D, attached hereto and incorporated by reference in furtherance of this Section.
- 6.3. Upon assignment pursuant to this Section, all the terms and conditions of this Agreement shall inure to the benefit of and bind the assignee.
7. **Tax Matters.** The contribution of the Hospital Authority Property and other consideration provided by the Authority pursuant to Section 4 are intended to be as permitted by Section 118 of the Internal Revenue Code, provided, however, that the City and the Authority make no representations or warranties regarding the characterization or treatment of such development financing assistance for federal or state income tax purposes.

- 8. No Partnership.** Nothing contained in this Agreement shall be construed in any way as creating a joint venture, partnership, or similar business relationship between or among, the City, the Authority and Sooner. Consistent with the terms of this Agreement, Sooner shall develop, operate, maintain, lease, sell, hypothecate, and otherwise convey the Property or portions thereof in its sole and absolute discretion.
- 9. Default.** Except as otherwise expressly provided in this Agreement, in the event either party hereto shall default of any its obligations as provided in this Agreement, following thirty (30) days' prior written notice from the non-defaulting party to the defaulting party with the defaulting party's opportunity to cure such default, the non-defaulting party may terminate this Agreement or seek specific performance of the defaulting party's obligations pursuant to the terms of this Agreement; provided, however, if the default is of a nature that cannot be reasonably cured within such 30-day period, then the defaulting party shall be allowed a reasonable period of time to cure such default provided that it diligently commences the cure within the 30-day period and thereafter undertakes and continuously pursues such cure.
- 10. Force Majeure.** Notwithstanding anything in this Agreement to the contrary, no party hereto shall be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Agreement to be performed by it if any failure of its performance shall be due to any strike, lockout, civil commotion, war, warlike operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material or service, Act of God, weather, or any other cause whatsoever beyond the reasonable control of obligated party, and the time for performance by such obligated party shall be extended by the period of delay resulting from or due to any of said causes; ; provided, nothing in this section shall excuse or extend a party's obligation to pay any sum due under this Agreement.
- 11. Termination.** Upon the completion of Sooner's obligations set forth in Section 3 and completion of the Authority's obligations as set forth in Section 4 and 5, this Agreement shall terminate and shall be of no further force or effect except as to terms and conditions that expressly survive termination.
- 12. Miscellaneous.** Nothing in this Agreement shall serve to affect or otherwise limit the City's and Authority's police powers, zoning authority or other governmental action of the City or Authority. This Agreement shall represent the entire understanding between the parties with respect to the subject matter hereof, and supersede all other negotiations and agreements made by the parties concerning the matters set forth herein. Any provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal or unenforceable, shall be severable and shall not be construed to render the remainder of the Agreement to be invalid, illegal, or unenforceable. This Agreement may not be amended, unless evidenced in writing and executed by the parties hereto. This Agreement shall be governed by and constructed in accordance with the laws of the State of Oklahoma. This Agreement may be executed in counterparts, each of which when so executed shall be deemed an original, and all of which shall together constitute one and the same instrument. Each party acknowledges that all parties to this Agreement participated in the preparation thereof, and that it was negotiated at arm's length. Accordingly, no court construing this Agreement shall construe it more strongly against one party than the other.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Effective Date.

Approved and agreed to by the Authority on the Effective Date.

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_, Secretary

**MIDWEST CITY MEMORIAL HOSPITAL  
AUTHORITY**, a public trust

\_\_\_\_\_  
\_\_\_\_\_, Chairman

Approved as to form and legality on the Effective Date.

\_\_\_\_\_  
\_\_\_\_\_, Attorney for  
the Authority

Approved and agreed to by Sooner on the Effective Date.

**SOONER INVESTMENT GROUP, INC.**, an  
Oklahoma corporation

\_\_\_\_\_  
Robert Stearns, President

## **EXHIBIT A**

### **PROPERTY DESCRIPTION**

A tract of land lying in the Southwest Quarter of Section Four (4), Township Eleven (11) North, Range Two (2) West of the Indian Meridian, Oklahoma County, Oklahoma being more particularly described as follows:

COMMENCING at the southwest corner of said Southwest Quarter;

THENCE North 89°24'49" East, along the south line of said Southwest Quarter, a distance of 593.83 feet to a point of intersection with the projected east line of Lot Five (5), in Block One (1) of SOONER ROSE ADDITION, an Addition to the City of Midwest City, Oklahoma according to the plat thereof recorded in Book 75 of Plats at Page 12 in the records of the Oklahoma County Clerk, said point being the POINT OF BEGINNING;

THENCE along said projected line and the actual east line of said Lot 5 and the east, south and east lines of Lot One (1), in Block One (1) of said SOONER ROSE ADDITION, the following three (3) courses:

1. North 01°20'38" West a distance of 660.00 feet;
2. North 89°24'49" East a distance of 254.66 feet;
3. North 01°20'38" West, passing at a distance of 331.70 feet the northeast corner of said Lot 1, Block 1, SOONER ROSE ADDITION, and continuing for a total distance of 410.00 feet;

THENCE North 89°24'49" East, parallel with the south line of said Southwest Quarter, a distance of 242.96 feet;

THENCE North 01°20'38" West, parallel with the west line of said Southwest Quarter, a distance of 328.30 feet; feet to a point on the centerline of Southeast 12<sup>th</sup> Street as shown on the plat of CROSBY RICHLAND HILL ADDITION, according to the plat thereof recorded in Book 31 of Plats, Page 94, Oklahoma County records;

THENCE North 89°24'49" East, along said centerline and parallel with the south line of said Southwest Quarter, a distance of 200.00 feet;

THENCE South 01°20'38" East, parallel with the west line of said Southwest Quarter, a distance of 920.64 feet;

THENCE South 00°35'11" East, perpendicular to the south line of said Southwest Quarter, a distance of 399.33 feet to a point on the south line of said Southwest Quarter;

THENCE South 89°24'49" West, along said south line, a distance of 692.36 feet to the POINT OF BEGINNING.

Said tract of land containing 671,922 square feet or 15.4252 acres more or less.

The basis of bearings for this legal description is the Oklahoma State Plane Coordinate System (NAD83-North Zone) using a bearing of South 89°24'49" West on the south line of the Southwest Quarter of Section 4, Township 11 North, Range 2 West of the Indian Meridian, Oklahoma County, Oklahoma.

GWS 2-22-17

## **EXHIBIT A-1**

### **VLOEDMAN PROPERTY DESCRIPTION**

A portion of the Vloedman Property, comprising the Theatre Property and portion of the Property :

An unplatted part of the Southwest Quarter (SW/4) of Section Four (4), Township Eleven (11) North, Range Two (2) West of the Indian Meridian, Oklahoma County, Oklahoma, more particular described as follows:

Beginning at the Southwest Corner of said SW/4, thence east for a distance of 594 feet; Thence, north for a distance of 660 feet; Thence, east for a distance of 585 feet; Thence, north for a distance of 660 feet; Thence, south for a distance of 1320 feet to the South line of said Section 4; Thence, west for a distance of 1245 feet to the Point or Place of Beginning, less and except the south 33 feet of the described parcel dedicated as street right-of-way. Said tract containing 28.8636 acres, more or less (27.92 minus the 33-ft. roadway dedication).

“Parcel 1” and “Parcel 2,” as referenced in Section 3.3(ii):

An unplatted part of the Southeast Quarter (SE/4) of the Southwest Quarter (SW/4) of Section Four (4), Township Eleven (11) North, Range Two (2) West of the Indian Meridian, Oklahoma County, Oklahoma, more particular described as follows:

Beginning 330 feet north of the Southeast Corner of the SW/4 of said Section 4; Thence west 396 feet; Thence, north 440 feet; Thence east 396 feet; Thence, south 440 feet to the Point or Place of Beginning; containing 4.00 acres more or less; and

Beginning 1045 feet north of the Southeast Comer of the Southeast Quarter of the SW/4 of said Section 4; Thence, north 275 feet; Thence, west 316.8 feet; Thence south 275 feet; Thence, east 316.8 feet to the Point or Place of Beginning; containing 2.0013 acres more or less.

Collectively, the “Vloedman Property”).

**EXHIBIT A-2**

**HOSPITAL AUTHORITY PROPERTY DESCRIPTION**

A tract of land lying in the Southwest Quarter of Section Four (4), Township Eleven (11) North, Range Two (2) West of the Indian Meridian, Oklahoma County, Oklahoma being more particularly described as follows:

COMMENCING at the southwest corner of said Southwest Quarter;

THENCE North 01°20'38" West, along the west line of said Southwest Quarter, a distance of 1,320.00 feet to the centerline of Southeast 12<sup>th</sup> Street as shown on the plat of CROSBY RICHLAND HILL ADDITION, according to the plat thereof recorded in Book 31 of Plats, Page 94, Oklahoma County records;

THENCE North 89°24'49" East, along said centerline and parallel with the south line of said Southwest Quarter, a distance of 988.50 feet to the POINT OF BEGINNING;

THENCE continuing North 89°24'49" East, along said centerline of Southeast 12<sup>th</sup> Street and parallel with the south line of said Southwest Quarter, a distance of 190.00 feet;

THENCE South 01°20'38" East, parallel with the west line of said Southwest Quarter, a distance of 660.00 feet;

THENCE South 89°24'49" West, parallel with the south line of said Southwest Quarter, a distance of 330.00 feet;

THENCE North 01°20'38" West, parallel with the west line of said Southwest Quarter, a distance of 410.00 feet;

THENCE North 89°24'49" East, parallel with the south line of said Southwest Quarter, a distance of 140.00 feet;

THENCE North 01°20'38" West, parallel with the west line of said Southwest Quarter, a distance of 250.00 feet to the POINT OF BEGINNING.

Said tract of land containing 182,791 square feet or 4.1963 acres more or less.

The foregoing description being all lands described in the WARRANTY DEED recorded in Book 7734, Page 1846, and the WARRANTY DEED recorded in Book 8323, Page 467.

GWS 1-16-17



## **EXHIBIT C**

### **PUBLIC IMPROVEMENTS**

1. The term “Public Improvements” as provided in Sections 3 and 4 of the Agreement shall mean the improvements set forth in this Exhibit C, Section 1, and as more particularly shown on the Site Map Exhibit “C-1”, prepared by SMC Consulting Engineers, P.C., and the attached hereto and incorporated by reference.
  - 1.1. Sooner shall widen and restripe S.E. 15<sup>th</sup> Street along the Property. The widening shall include dedicated left-turn lanes along the centerline of the roadway and a dedicated right-turn lane along the north-side of the roadway at Center Drive. Sooner shall also construct 5-foot wide concrete sidewalks with ADA compliant ramps along the north-side of S.E. 15<sup>th</sup> Street, and Sooner shall construct four (4) concrete driveway approaches for access to the Sooner Rose development along the north-side of S.E. 15<sup>th</sup> Street. Incidental construction such as demolition of existing features and the relocation of utilities shall be included in the S.E. 15<sup>th</sup> Street widening project.
  - 1.2. Sooner shall install a Traffic Signal at the intersection of S.E. 15<sup>th</sup> Street and Center Drive. The Traffic Signal shall be designed to direct traffic for the additional turn-lanes constructed on S.E. 15<sup>th</sup> Street and to interact with the existing traffic signal at S.E. 15<sup>th</sup> Street and Sooner Road. Incidental construction such as demolition of existing features and the relocation of utilities shall be included in the Traffic Signal project.
  - 1.3. Sooner shall reconstruct Buena Vista Avenue to current City Standards for a Local Residential and Commercial Street with curb and gutter from S.E. 12<sup>th</sup> Street to S.E. 15<sup>th</sup> Street. Sooner shall construct 6-foot wide concrete sidewalks with ADA compliant ramps adjacent to the west curb of Buena Vista Avenue, and Sooner shall construct four (4) concrete driveway approaches for access to the Sooner Rose development along the west-side of Buena Vista Avenue. Incidental construction such as demolition of existing features and the relocation of utilities shall be included in the Buena Vista Avenue reconstruction project.
  - 1.4. Sooner shall extend an 8-inch water line along the north-side of S.E. 15<sup>th</sup> Street from the existing 8” water line located on the west-side of Buena Vista Avenue to the southwest corner of the Property and connect to an existing 8” water line located north of S.E. 15<sup>th</sup> Street.
  - 1.5. Sooner shall extend an 8-inch water line along the south-side of S.E. 12<sup>th</sup> Street from the existing 8” water line located at Carolyn Drive to the existing 8” water line located at Buena Vista Avenue.
  - 1.6. Sooner shall construct a 5-foot wide sidewalk along the south-side of S.E. 12<sup>th</sup> Street between Buena Vista Avenue and the northwest corner of the Property.
  - 1.7. Sooner shall relocate the existing oil pipeline owned by Enefrin from the Property to the northern and eastern boundary of the Property along S.E. 12<sup>th</sup> Street and Buena Vista Avenue, respectively, which activities shall include, but not be limited to, removal of the Gas Line from its current location on the Vloedman Property, vacation of the gas line easement by release or quit claim of all rights, title and interest to the Authority by Enefrin, and construction of the Gas Line in a new location along the eastern boundary of the Vloedman Property immediately adjacent to the western right-of-way of Buena Vista Avenue in an area reasonably acceptable to the Authority, all as more particularly shown on Exhibits C and C-1.
  - 1.8. To provide increased pedestrian connectivity for the community, Sooner shall construct sidewalk improvements extending from the current terminus of Center Drive north along the entry drive, and sidewalk improvements extending from the southern boundary of S.E. 12<sup>th</sup> Street south along the common boundary of the Property and the S.E. 12<sup>th</sup> St. Property.

2. All applicable inspections and testing of the “Public Improvements” shall be conducted by Sooner pursuant to State and Federal regulations.
3. The parties hereto estimate that the costs of the Public Improvements shall be as set forth below:

<b>Public Improvements Total Cost Estimate</b>		<b>\$1,524,055.00</b>
SE 15 <sup>th</sup> Street Improvements	\$743,175.00	
Buena Vista Avenue Improvements	\$399,190.00	
SE 12 <sup>th</sup> Street Improvements	\$90,915.00	
Center Drive Sidewalks	\$45,815.00	
Gas Line Relocation	\$100,000.00	
Civil Engineering for Public Improvements	\$59,960.00	
Development Fee (3%)	\$45,000.00	
Construction Management Fee (2.5%)	\$40,000.00	

In the event the actual costs of the Public Improvements shall be less than the estimates provided above, the Authority’s obligation to pay for the Public Improvements shall be only the Public Improvements costs actually incurred pursuant to this Agreement. In the event the actual costs of the Public Improvements exceed the estimates provided above, the Authority shall nevertheless be obligated to pay the actual costs incurred regardless of the estimates provided above.

4. The authority shall pay the Public Improvements Contribution (as referenced in Section 4.3 of the Agreement) pursuant to the terms of this Section.
  - 4.1. Costs of the civil engineering associated with the Public Improvements as referenced in Section 3.1.3 of the Agreement shall be paid by the Authority after the Effective Date pursuant to the terms of Exhibit C, Section 4.3.
  - 4.2. Costs of construction of the Public Improvements incurred by Sooner pursuant to Section 3.4.2 of the Agreement shall be paid by the Authority after the Closing pursuant to the terms of Exhibit C, Section 4.3.
  - 4.3. Not more than twice per month, Sooner shall submit written invoices for costs associated with Public Improvements to the Authority (each, a “Contribution Request”) identifying the activities associated with the Public Improvements and the costs incurred associated therewith. The Authority shall pay the Public Improvements Contribution to Sooner or directly to the payee as identified in the Contribution Request, in the amount set forth in the Contribution Request, within fourteen (14) days of receipt of the Contribution Request.





## **EXHIBIT D**

### **COLLATERAL ASSIGNMENT OF ECONOMIC DEVELOPMENT CONTRACTS**

**THIS COLLATERAL ASSIGNMENT OF ECONOMIC DEVELOPMENT CONTRACTS** (this “Collateral Assignment”) is entered into effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by and between \_\_\_\_\_, an Oklahoma limited liability company (the “Borrower”), SOONER INVESTMENT GROUP, INC., an Oklahoma corporation (“SIG”) and \_\_\_\_\_, an \_\_\_\_\_ banking association (“Bank” and/or “Assignee”).

**WHEREAS**, on December 22, 2016 the MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY, a public trust (“MWCMHA”), and SIG entered into that certain Preliminary Development Agreement (the “SIG Economic Development Contract”);

**WHEREAS**, effective February 23, 2016, the MWCMHA and Borrower entered into that certain Sooner Rose Phase II – Retail Economic Development Agreement (the “Sooner Rose Economic Development Agreement”; the SIG Economic Development Contract and the Sooner Rose Economic Development Agreement are collectively referred to herein as the “Economic Development Contracts”);

**WHEREAS**, a true and correct copy of the SIG Economic Development Contract is attached hereto as Exhibit E-1 and the Sooner Rose Economic Development Agreement is attached hereto as Exhibit E-2;

**WHEREAS**, Borrower and Bank have entered into a Construction Loan Agreement dated as of \_\_\_\_\_, 2017 (the “Loan Agreement”) under the terms of which the Bank provided Borrower with a loan in the amount of \$\_\_\_\_\_ (the “Loan”) evidenced by a promissory note in a like amount (the “Note”) which such Loan is secured by, among other things, Borrower’s rights in the Economic Development Contracts (the “Collateral”);

**WHEREAS**, capitalized terms not otherwise defined herein shall be defined as set forth in the Loan Agreement;

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of SIG and Borrower hereby grants, transfers and assigns to Assignee and Assignee’s successors and assigns and each of SIG and Borrower hereby grants a security interest in all of their right, title, and interest to all rights and privileges arising under and pursuant to the Economic Development Contracts to Assignee.

This Collateral Assignment is made to secure Borrower’s Indebtedness as defined in the Loan Agreement, and secured further by the Loan Documents (as that term is defined in the Loan Agreement), which Indebtedness includes the Loan evidenced by the Note.

In the event of the occurrence of an Event of Default (as defined in the Loan Agreement), and the continuance of any such Event of Default, at Assignee’s option, Assignee may exercise any and all of the rights permitted and held by each of SIG and Borrower under their respective Economic Development Contract, which Assignee may then deem proper to protect Assignee’s security interest in Borrower’s and SIG’s rights under the Economic Development Contracts, as applicable, and succeed to

the fullest extent possible in and to all right, title and interest of SIG and Borrower, as applicable, under their respective Economic Development Contract and any and all renewals, modifications or extensions thereof. Assignee may exercise Assignee's rights under this paragraph as often and whenever any such Event of Default may occur. Provided, however, the parties hereto acknowledge that certain Events of Default are subject to a notice and cure period pursuant to the Loan Agreement; therefore, Assignee's rights as set forth in this paragraph shall be subject to Borrower's rights to notice and cure to the extent expressly provided in the Loan Agreement. Should Assignee choose to exercise any rights under this Collateral Assignment Agreement, Assignee agrees to give timely notice to MWCMHA, and Assignee (or its successor) agrees, upon the exercise of the assignment, to fulfill SIG's and Borrower's duties and responsibilities, of the obligations as set forth under their respective Economic Development Contracts upon Assignee's exercise of its rights under this Collateral Assignment Agreement. Further, nothing in this Agreement shall give the Assignee any greater rights than held by SIG and Borrower, as applicable, under their respective Economic Development Contract.

Until its exercise of its right upon the occurrence of an Event of Default under the Loan Agreement to step into the shoes of SIG and/or Borrower and assume control of the Economic Development Contracts, Assignee shall not be obligated to perform or discharge, nor does Assignee hereby undertake to perform or discharge, any obligation, duty or liability of either of SIG and/or Borrower under the respective Economic Development Contracts, or under or by reason of this Collateral Assignment thereof, and each of SIG and Borrower shall and do hereby agree to indemnify and hold Assignee harmless of and from any and all liability, loss or damage, including reasonable costs, expenses and professional fees, which Assignee may or might incur under the Economic Development Contracts subsequent to the date hereof and prior to exercise by Assignee of any right granted to Assignee hereunder and/or under or by reason of the execution and delivery to Assignee this date of this Collateral Assignment and of and from any and all claims and demands whatever which may be asserted against Assignee by reason of any alleged obligation claimed to have been undertaken on Assignee's part to perform or discharge any of the terms, covenants or agreements contained in the Economic Development Contracts solely by reason of the execution by SIG and Borrower of this Collateral Assignment.

Until the Indebtedness secured hereby is paid in full, each of SIG and Borrower covenants and agrees to transfer and assign to Assignee any and all subsequent agreements relating to the Economic Development Contracts or the property associated therewith, upon the same or substantially the same terms and conditions as are herein contained, and to make, execute and deliver to Assignee upon demand any and all instruments that may be necessary therefor.

Upon the payment in full and of all indebtedness secured hereby, this Collateral Assignment shall be and become void and of no further force and effect.

This Collateral Assignment shall bind and inure to the benefit of each of SIG and Borrower, their successors and assigns, and Assignee, and its successors and assigns.

All notices, demands and documents of any kind which may be desired or required to be served upon Assignor hereunder shall be sent by certified mail, return receipt requested, postage pre-paid, or may be delivered directly to Assignor pursuant to the terms of the Loan Agreement.

Each of SIG and Borrower hereby expressly waives any right of trial by jury in any action or legal proceeding arising out of or relating to the Loan Agreement or the transactions contemplated thereby or hereby.

**EXECUTED** as of the date first above written.

“BORROWER”

\_\_\_\_\_,  
an Oklahoma limited liability company

By: \_\_\_\_\_  
Bob Stearns, Manager

“SIG”

SOONER INVESTMENT GROUP, INC., an Oklahoma corporation

\_\_\_\_\_  
By: Robert Stearns  
Title: President

“ASSIGNEE/BANK”

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

## **CONSENT TO ASSIGNMENT**

The MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY, a public trust (the “Trust”) hereby consents to the Collateral Assignment of Economic Development Contracts and agrees as follows:

1. Consent and Recognition of Assignment. Upon the occurrence of the events described in this Collateral Assignment, the Trust hereby (i) recognizes and consents to the assignment of all rights of \_\_\_\_\_, an Oklahoma limited liability company (“Sooner”), in that certain Sooner Rose Phase II – Retail Economic Development Agreement between Sooner and the Trust dated as of \_\_\_\_\_, 2017 (the “Sooner Rose Agreement”) and all rights of SOONER INVESTMENT GROUP, INC., an Oklahoma corporation (“SIG”), in that certain Economic Development Contract between SIG and the Trust dated as of December 22, 2016 (the “SIG Agreement”; the Sooner Rose Agreement and the SIG Agreement are collectively referred to in this Consent to Assignment as the “Economic Development Agreements”) to \_\_\_\_\_ and (ii) confirms that \_\_\_\_\_ shall be entitled to all the benefits of such Economic Development Contracts and will fulfill all Borrower’s duties and responsibilities of the Economic Development Contracts.
2. Notices. \_\_\_\_\_ shall be deemed to have requested notice under the Economic Development Agreements for any notice of default or any other notice under the Economic Development Agreements. The Trust shall deliver or mail in the United States mail, postage prepaid, to \_\_\_\_\_ a duplicate and concurrent copy of any such notice. \_\_\_\_\_ shall not be required to make any further request for notice.
3. Liability for Prior Acts. \_\_\_\_\_, if it succeeds to the interest of either SIG or Sooner Rose in either of the Economic Development Agreements, shall not (a) be liable for any damages or other relief attributable to any act or omission of either SIG or Sooner Rose; or (b) be bound by any modification or amendment of or to either of the Economic Development Agreements unless the amendment or modification shall have been approved in writing by \_\_\_\_\_.
4. Third-Party Beneficiary. \_\_\_\_\_ shall be deemed to be a third party beneficiary of the Economic Development Agreements with respect to any and all provisions of the Economic Development Agreements. Notwithstanding anything to the contrary in either Economic Development Agreement, Trust may terminate either of the Economic Development Agreements because of a default thereunder (where termination is an available remedy under either of such Economic Development Agreements) only after Trust, in accordance with the Economic Development Agreements and/or this Agreement, has delivered or mailed notice of such termination to \_\_\_\_\_ at the address set forth herein, specifying such default, and \_\_\_\_\_ shall have the cure rights provided to SIG and/or Sooner Rose dating from the date \_\_\_\_\_ receives such notice.
5. No Voluntary Termination. So long as the Loan from \_\_\_\_\_ to Sooner Rose is in effect, neither Economic Development Agreement will be voluntarily canceled, surrendered, or terminated, without the prior written consent of \_\_\_\_\_, which consent shall not be unreasonably withheld, conditioned or delayed.
6. True and Complete Economic Development Agreements. The Trust represents and warrants to \_\_\_\_\_ that the Economic Development Agreements attached as Exhibits E-1 and E-2 accurately identify the Economic Development Agreements and all amendments, supplements, side letters and other agreements and memoranda pertaining to the Economic Development Agreements.
7. No Default. As of the date of this Consent to Assignment, the Trust represents and warrants that, to the best of its knowledge, there exist no events of default or events that, with notice or the passage of time or both, would be events of default under the Economic Development Agreements on the

part of the Trust or either SIG or Sooner Rose. The Trust represents and warrants that the Economic Development Agreements are in full force and effect as of the date of this Consent to Assignment.

8. No Prior Assignments. The Trust has not received notice of any prior assignment, hypothecation or pledge of either SIG's or Sooner Rose's interest in either of the Economic Development Agreements.

"TRUST"

MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY, a  
public trust,

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
CHAIRMAN

"CITY"

\_\_\_\_\_  
REVIEWED for form and legality as of  
\_\_\_\_\_, 2017.

\_\_\_\_\_  
\_\_\_\_\_, City Attorney