

## **ECONOMIC DEVELOPMENT AGREEMENT**

This Economic Development Agreement (the “Agreement”) is entered into by and between JMK5 Sears, LLC, a Texas limited liability company, JMK5 Mall of the Mainland, LLC, a Texas limited liability company, JMK5 Racing LLC, a Texas limited liability company, JMK5 Movies LLC, a Texas limited liability company (collectively “JMK5”) and the Texas City Economic Development Corporation, a Texas economic development corporation established pursuant to the Texas Local Government Code, § 504 (“EDC”). JMK5 and the EDC are sometimes referred to herein jointly as the “Parties” and each individually as a “Party.”

### **RECITALS**

**WHEREAS**, the EDC is authorized under Chapters 380 and 504 of the Texas Local Government Code authorizes municipalities to offer incentives designed to promote economic development such as commercial and retail projects; and

**WHEREAS**, the EDC Board of Directors and the City of Texas City, Texas (“City”) City Commission has authorized certain economic development grants to JMK5 in recognition of the positive economic and community benefits that will accrue to the EDC through JMK5’s development of the Property (herein defined) for a mixed-used commercial and retail development; and

**WHEREAS**, the EDC believes that the redevelopment of the Property will contribute to the economic development of the City by increasing ad valorem taxes, increasing sales tax and increasing employment; and

**WHEREAS**, this Agreement is determined to be a program for providing an economic development incentive as contemplated by Chapters 380 and 504 of the Texas Local Government Code;

**NOW, THEREFORE**, in consideration of the mutual benefits described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the EDC and JMK5 agree as follows:

### **ARTICLE I. Authority**

**1.1** The EDC’s execution of this Agreement is authorized by Chapters 380 and 504 of the Texas Local Government Code and constitutes a valid and binding obligation of the EDC subject to the condition precedent that JMK5 completes the Property Name (defined below), as specified herein.

**1.2** JMK5’s execution and performance of this Agreement constitutes a valid and binding obligation of JMK subject to the terms, provisions and conditions herein.

**1.3** The EDC acknowledges that JMK5 is acting in reliance upon the EDC's performance of their respective obligations under this Agreement in making its decision to commit substantial resources and money to develop the Property. Notwithstanding anything to the contrary herein, the EDC and JMK5 hereby acknowledge and agree that this Agreement is subject to the provisions of Subchapter I of Chapter 271, Texas Local Government Code, as amended. The EDC agrees that its immunity from suit is waived for the purpose of adjudicating a claim for breach of this Agreement, which is subject to the terms and conditions of Subchapter I of Chapter 271, Texas Local Government Code, as amended.

## **ARTICLE 2. Definitions**

As used in this Agreement, the following words or phrases shall have the following meanings:

**“Act of Default”** or **“Default”** means failure by a Party to comply with the requirements of this Agreement, as more particularly provided in Article 8 and Article 9.

**“Affiliate”** means (1) any entity 50% or more owned or controlled by JMK5, or any of its principal shareholders or any trust created for their benefit, (2) any entity taking over JMK5 interest in this Agreement as a result of merger or consolidation, (3) any entity acquiring all or substantially all of the assets of JMK5, or (4) any entity which has acquired a majority of the outstanding stock of JMK5.

**“Certificate of Occupancy”** means the document or other notice issued by the EDC indicating a building or premises has been built or maintained in accordance with all applicable codes, regulations, and ordinances enforced by the EDC.

**“Commencement Deadline”** shall have the same meaning as the “Effective Date” as defined herein.

**“Completion Deadline”** means (completion date).

**“JMK5”** means JMK5 Sears, LLC, a Texas limited liability, JMK5 Racing LLC, a Texas limited liability company, JMK5 Movies LLC, a Texas limited liability company and JMK5 Mall of the Mainland, LLC, a Texas limited liability.

**“EDC”** means the Texas City Economic Development Corporation.

**“Effective Date”** means the date this Agreement has been signed by all Parties.

**“Event of Bankruptcy or Insolvency”** means the insolvency of a party, appointment of receiver for any part of a party's property when such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any

bankruptcy or insolvency laws by or against a party when such proceeding is not dismissed within ninety (90) days after the filing thereof.

“**Force Majeure**” is defined in Section 11.5 herein.

“**Maximum Refund Amount**” means ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,500,000.00).

“**Notice**” shall have the meaning ascribed to it in Section 11.8 of this Agreement.

“**Ordinances**” means the City of Texas City, Texas’ Ordinances, whether codified or otherwise, in effect on the Effective Date.

“**Property**” shall mean the property presently owned by JMK5 or its affiliates and located generally location in Texas City, as depicted in “**Exhibit A.**”

“**Property Sales Taxes**” means, for any given calendar year under this Agreement, an amount of money collected by the City resulting from the imposition of a two-percent municipal sales tax (2.0%) (such as that presently in effect pursuant to Section 321.101(a), Texas Tax Code) on the sales of goods within the Property.

“**Rebate Commencement Date**” means JMK5 \_\_\_\_\_.

“**Retail Center**” means the approximately \_\_\_\_\_ square foot retail center located on the Property.

### **ARTICLE 3. Term**

This Agreement will become enforceable upon the Effective Date and will terminate upon the earlier to occur of: (a) the 10th anniversary of the Rebate Commencement Date (and final payment of Sales Tax Rebate Payments pursuant to this Agreement); (b) EDC’s payment of the Maximum Refund Amount to JMK5 prior to the 10th anniversary of the Rebate Commencement Date; or (3) earlier termination as provided herein (the “**Term**”).

### **ARTICLE 4. JMK5 Performance Conditions**

Notwithstanding any provision in this Agreement to the contrary, this Agreement imposes no obligation upon JMK5 to redevelop the Property, construct any infrastructure or any other improvements on the Property. The following are, however, conditions that must be satisfied in order for JMK5 to receive the Sales Tax Rebate Payments (defined below):

**4.1** JMK5 shall redevelop the Property, operate a mixed use facility located at

10000 Emmett. F. Lowry Expressway, Texas City, Texas 77591.

**4.2** JMK5 shall remain current and paid on all property taxes for portions of the Property owned by JMK5 or its affiliates, subject to rights of appeal in accordance with law and subject to a right to cure any tax payment delinquency.

**4.3** JMK5 and its affiliates shall collect and maintain all relevant records of Mainland City Centre, its successors, assigns, and tenants, related to each of the economic development considerations and incentives and performance requirements, as stated in this Agreement. JMK5, during normal business hours, shall allow the City reasonable access to review these records, but the confidentiality of such records and information shall be maintained by the City unless disclosure of such records and information shall be required by a court order, a lawfully possessed subpoena, or at the direction of the Office of the Attorney General.

**4.4** During the Term of this Agreement, JMK5 agrees to provide space within Mainland City Centre for the placement of an electronic kiosk or other stand near the front of the entrance for the purpose of providing information to visitors and citizens pertaining to local attractions and businesses within Texas City, should the City elect to install a Kiosk. JMK5 agrees to provide free and proximate internet connection and electricity for the Kiosk, should such service be required for the operation of the Kiosk. Should the City elect to install a Kiosk within Mainland City Centre, the Parties agree to negotiate and enter into a license agreement (the "Kiosk License") within 60 days following Notice of such election by the City. The design, placement, operation, maintenance and promotions of the Kiosk will be governed by the Kiosk License.

## **ARTICLE 5. EDC Performance Requirements**

**5.1 Sales Tax Refund.** During the Term after the Rebate Commencement Date, the EDC shall pay on a semi-annual basis on or about September 1st and March 1st of each calendar year to JMK5 the Property Sales Taxes generated during the prior calendar year (each a "Sales Tax Rebate Payment").

**5.1.1 Revenue Sharing Agreement.** The EDC hereby designates this Agreement as a "Revenue Sharing Agreement" as that term is used in Texas Tax Code Section 321.3022 (the "**Disclosure Statute**"). EDC shall notify the Texas Comptroller of Public Accounts (the "Comptroller") of such designation as necessary in order to determine the Property Sales Taxes generated within the Property and due to JMK5 under this Agreement.

**5.1.2 EDC Payment.** The EDC agrees that it will rebate, on a semi-annual basis, and after receiving the Report, confirmation from the State and any State audit adjustments, one cent (\$.01) of the Property Sales Tax received by EDC for sales occurring within the Property in excess of [INSERT]for the

duration of the Term of this Agreement (the "Rebate").

**5.1.3 Disclosure of Financial Report.** JMK5 agrees that it will provide the EDC, on a monthly basis, a copy of any financial report that JMK5 or its tenants will submit to the Comptroller of the State of Texas (the "Comptroller") relating to JMK5 or its tenant's remission of sales taxes collected in the City for sales attributed to the Property as described in Section 1 above (the "Report"). Additionally, JMK5 hereby consents to the State of Texas releasing these monthly reported figures along with any State audit adjustments to the EDC, and the EDC hereby consents to keep this information "Confidential" in accordance with the Texas Tax Code, including, without limitation, Section 151.027 and to the extent allowed by law.

**5.1.4 Disclosure of Sales Taxes.** If there are fewer than three sales tax accounts located within the Property, the Comptroller may not disclose information regarding Property Sales Taxes without permission of those persons doing business within the Property. JMK5 hereby agrees that if EDC is unable to determine the Property Sales Taxes under the Disclosure Statute, JMK5 shall obtain and provide a release that will allow the Comptroller to disclose to the EDC and JMK5 aggregated sales tax information relating to any business generating sales and use taxes within the Property (an example release form is attached hereto as "Exhibit B"). JMK5 will provide a list of businesses operating on the property as they are identified by the Comptroller's office for identification.

**5.2 Future Adjustments to Rebates.** Should an excess Sales Tax Rebate Payment occur in the final tax year of this Agreement, JMK5 agrees to repay the EDC for any excess amount received within thirty (30) days following receipt of Notice from EDC providing documentation of said over payment.

**5.3 Maximum Refund Amount.** In no event shall the cumulative total payments of Sales Tax Rebate Payments to JMK5 exceed the Maximum Refund Amount ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,500,000.00).

## **ARTICLE 6.**

### **JMK5's Covenants, Warranties, Obligations and Duties**

JMK5 makes the following covenants and representations to the EDC and agrees to timely and fully perform the following obligations and duties, subject to the terms, provisions and conditions hereof. Any false statement contained herein or failure to timely and fully perform as required in this Agreement shall be an Act of Default by JMK5, subject to the cure periods set forth in Article 8 below. Failure to comply with any one covenant or representation shall constitute an Act of Default by JMK5, subject to the cure

periods set forth in Article 8 below.

**6.1** JMK5 is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.

**6.2** The execution of this Agreement has been duly authorized by JMK5, the individual signing this Agreement is empowered to execute such Agreement and bind the company, and said authorization, signing and binding effect is not in contravention of the provisions of JMK5's partnership documents.

**6.3** To the knowledge of JMK5, no litigation or governmental proceeding is pending or threatened against or affecting the Property.

**6.4** There are no actions, suits or proceedings pending or, to JMK5's knowledge, threatened against JMK5 affecting any portion of the Property, at law or in equity, or before or by any federal, state, municipal or other governmental court, department, commission, board, bureau, agency or instrumentality, domestic or foreign.

**6.5 Employment of Undocumented Workers.** During the term of this Agreement, JMK5 agrees not to knowingly employ any undocumented workers at the Property and if convicted of a violation under 8 U.S.C. Section 1324a(f), JMK5 shall repay the amount of the reimbursements received by JMK5 as of the date of such violation within 120 business days after the date JMK5 is notified by the EDC of such violation, plus interest at the rate of five percent (5.0%) per annum, from the date of such notice until paid. JMK5 agrees to notify EDC within thirty (30) days of any charge filed against JMK5 alleging the employment of undocumented workers under 8 U.S.C. Section 1324a(f).

## **ARTICLE 7. Reporting and Monitoring**

**7.1** During the Term of this Agreement, JMK5 shall collect and maintain all records necessary for verifying compliance with the terms and conditions of this Agreement (the "Records"). JMK5, during normal business hours with ten (10) business days' prior notice, shall allow the EDC reasonable access to review the Records, but the confidentiality of such Records shall be maintained by the EDC unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, or at the direction of the Office of the Texas Attorney General.

## **ARTICLE 8. JMK5 Default and Recapture**

**8.1** If ad valorem taxes for the portion of the Property on which the JMK5 Center is located become past due and delinquent, or the occurrence of any of the following events occur, or should JMK5 fail to substantially comply with any of the material requirements, obligations, duties, terms, conditions or warranties of this Agreement, such

failure shall be considered an “**Act of Default by JMK5**” and, if not cured within ninety (90) days after written notice from EDC to JMK5, EDC, as its sole remedy, may terminate this Agreement and shall have the right to recapture the Rebate for the entire calendar year in which the termination occurred, to wit:

- 8.1.1** The appointment of a receiver of JMK5, or of all or any substantial part of its property, and the failure of such receiver to be discharged within ninety (90) days thereafter;
  - 8.1.2** The adjudication of JMK5 as a bankrupt; or
  - 8.1.3** The filing by JMK5 of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition files against it in any bankruptcy or reorganization proceeding.
- 8.2** Notwithstanding anything contained herein to the contrary, JMK5 shall not be liable to EDC for any consequential, punitive or exemplary damages.

**8.3** Notwithstanding the above, if an Act of Default by JMK5 is such a matter that cannot be cured by reasonably diligent efforts within ninety (90) days, then such occurrence shall not be an Act of Default by JMK5 provided that JMK5 promptly initiates and diligently attempts to cure the same, even if the same is not cured within said ninety (90) day period.

**8.4** Any waiver granted by EDC to JMK5 of an Act of Default by JMK5 shall not be deemed to be or constitute a waiver of any other existing or future Act of Default by JMK5 or of a subsequent Act of Default of the same act or event by JMK5.

**8.5** If during the Term of this Agreement, JMK5 should discontinue substantially all of its business operations described in Article 4 hereinabove (other than as a result of fire or an act of nature) or closes, vacates or abandons more than thirty-three (33) percent (33%) of the Property, then the EDC shall have the right to recapture the Rebate for the entire calendar year in which such discontinuance occurs and terminate this Agreement; and, in the event of termination pursuant this Section 8.1, a bill for the total amount due, being the Rebate paid to JMK5 during the calendar year in which such discontinuance occurs, will be sent to JMK5 and if JMK5 agrees to pay the total amount due within ninety (90) days after receipt of the bill. Statutory penalty and interest will accrue if JMK5 fails to timely pay said bill as provided herein.

## **ARTICLE 9. Assignment**

Under no circumstances may JMK5 assign this Agreement without the express written consent of the EDC. Notwithstanding anything to the contrary herein, JMK5 may assign all or part of its rights and obligations hereunder without the prior written consent of the EDC (i) to an affiliate, (ii) third-party lender advancing funds for the acquisition,

construction or operation of the Retail Center, and/or (iii) to a third-party purchaser of the Property.

## **ARTICLE 10.**

### **Miscellaneous Provisions**

**10.1 Complete Agreement/Amendment.** This Agreement represents a complete agreement of the Parties and supersedes all prior written and oral matters related to this Agreement. This Agreement may be canceled, changed, modified or amended, in whole or in part, only by the written agreement by the Parties.

**10.2 Permitting.** The EDC agrees to cooperate with JMK5 to facilitate the expeditious processing of permits, plat approvals, development application(s) and building permit applications required for the JMK5 and other development on the Property.

**10.3 Representations and Warranties.** The Parties represent and warrant to one another that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction.

**10.4 Force Majeure.** All obligations of JMK5 and EDC (excluding monetary obligations) shall be subject to events of “force majeure” which shall mean any contingency or cause beyond the reasonable control of a party, as applicable, including, without limitations, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action or inaction (unless caused by negligence or omissions of such party), fires, explosions, floods, strikes, slowdowns or work stoppages, shortage of materials and labor.

**10.5 Binding Effect.** This Agreement will be binding on and inure to the benefit of the Parties and their respective successors and assigns.

**10.6 Termination.** If JMK5 elects not to proceed with the development of the JMK5 Store as contemplated by this Agreement, JMK5 may notify the EDC in writing, and this Agreement and the obligations of each party will be deemed terminated and of no further force or effect as of the date of such notice, except those that expressly survive the termination hereof, if any.

**10.7 Notice.** Any notice or other communication (“**Notice**”) given under this Agreement must be in writing, and may be given: (i) by depositing the Notice in the United States Mail, postage paid, certified, and addressed to the Party to be notified with return receipt requested; (ii) by personal delivery of the Notice to the Party, or an agent of the Party; or (iii) by confirmed facsimile, provided that a copy of the Notice is also given in one of the manners specified in (i) or (ii). Notice deposited in the mail in the manner specified will be effective two (2) business days after deposit. Notice given in any other manner will be effective only if and when received by the Party to be notified. For the purposes of Notice, the addresses of the Parties will, until changed as provided below, be

as follows:

**JMK5:** JMK5  
308 W. Parkwood, Suite 104A  
Friendswood, TX 77546  
Attn: Jarome Karam

With a copy to:

**EDC:** Texas City Economic Development Corporation  
1801 9<sup>th</sup> Avenue  
Texas City, TX 77592  
Attn: Economic Development Director

With a copy to: City Attorney  
1801 9<sup>th</sup> Avenue  
Texas City, TX 77592

Each Party may designate a different address at any time by giving Notice to the other Party.

**10.8 Interpretation.** In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against either Party based on draftsmanship.

**10.9 Relationship of the Parties.** This Agreement will not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship between the Parties. Neither the EDC, nor any of its respective past, present or future officers, elected officials, employees or agents assumes any responsibility or liability to any third party in connection with the development of the Property or the design, construction or operation of any portion of the Property.

**10.10 Applicable Law.** This Agreement is made, and will be construed and interpreted, under the laws of the State of Texas and venue will lie in Galveston County, Texas. No Party to this Agreement waives or relinquishes any immunity or defense on behalf of itself, its officers, employees, agents or representatives as a result of the approval or execution of this Agreement, except as otherwise expressly set forth herein.

**10.11 Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected and it is also the intention of the Parties that, in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

**10.12 Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the paragraphs.

**10.13 No Third Party Beneficiaries.** This Agreement is not intended to nor shall it be interpreted to confer any rights, privileges or causes of action upon any third party.

**10.14 Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. A facsimile signature will be deemed to be an original signature for all purposes.

**10.15 Legal Action.** In the event that a Party initiates a cause of action in court, the prevailing party or parties shall be entitled to reasonable and necessary attorney's fees and costs of court.

**10.16 Exhibits.** The following exhibits are attached to and incorporated into this Agreement for all purposes.

- Exhibit "A": Legal Description of Real Property
- Exhibit "B": Form – Disclosure Agreement

**EXECUTED** to be effective as of the \_\_\_\_ day of \_\_\_\_\_, 2021.

**JMK5 MALL OF THE MAINLAND, LLC**

\_\_\_\_\_  
Jerome Karam  
Managing Member

\_\_\_\_\_  
Date

**JMK5 SEARS, LLC**

\_\_\_\_\_  
Jerome Karam  
Managing Member

\_\_\_\_\_  
Date

**JMK5 RACING, LLC**

\_\_\_\_\_  
Jerome Karam  
Managing Member

\_\_\_\_\_  
Date

**JMK5 MOVIES, LLC**

\_\_\_\_\_  
Jerome Karam  
Managing Member

\_\_\_\_\_  
Date

**TEXAS CITY ECONOMIC DEVELOPMENT CORPORATION**

\_\_\_\_\_  
Mark Ciavaglia  
Chairman

\_\_\_\_\_  
Date

**Exhibit A**

Legal Description of Real Property

**Exhibit B**

**EXAMPLE AGREEMENT FOR DISCLOSURE OF CONFIDENTIAL TAX INFORMATION**

This agreement is entered into between the Texas City Economic Development Corporation (hereafter the "EDC") and \_\_\_\_\_[business name] (hereinafter the "taxpayer") for the purposes indicated herein.

I, \_\_\_\_\_, \_\_\_\_\_[title], the duly authorized agent of \_\_\_\_\_[business name], doing business at \_\_\_\_\_[Name and Address of Facility] do hereby stipulate and agree as follows:

I hereby authorize the Texas Comptroller's Office to release and disclose only that information regarding the amount of municipal sales and use tax accruing from the operation of the above referenced taxpayer's business location to the EDC. I understand and agree that this release will be made by the Comptroller's Office to the EDC on an ongoing monthly basis beginning on the date this Agreement is executed.

This Agreement waives any and all rights with respect to the parties regarding the confidentiality of tax information under Sections 111.006, 151.027, Tax Code, or other state law.

The EDC agrees that it will use the tax information disclosed by the Comptroller pursuant to this Agreement solely and exclusively for the purposes of calculating payments to be made pursuant to a Ch. 380 Economic Development Agreement between the EDC and JMK5 Sears, LLC, a Texas limited liability JMK5 and JMK5 Mall of the Mainland, LLC dated \_\_\_\_\_, 2021. The confidentiality of such records and information shall be maintained by EDC unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, or at the direction of the Office of the Texas Attorney General.

This Agreement is entered into in or with regard to property located in Texas EDC, Galveston County, Texas and Texas law will apply to its interpretation and enforcement.

SIGNED AND AGREED TO on this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**Texas City Economic Development Corporation**

**[BUSINESS NAME]**

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

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