

COST PARTICIPATION AGREEMENT

THE STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF WILLIAMSON §

THIS COST PARTICIPATION AGREEMENT (this “**Agreement**”) is entered into between **WILLIAMSON COUNTY, TEXAS**, a Texas political subdivision (the “**County**”) and **MIDDLEBROOK, LTD.**, a Texas limited partnership, its successors and assigns (“**Developer**”). In this Agreement, the County and Developer are sometimes individually referred to as “**Party**” and collectively referred to as the “**Parties**”.

RECITALS

WHEREAS, the County and Developer desire to co-operate in the construction of a turn lane at the intersection of Santa Rita Blvd. and Ronald Reagan Blvd. (the “**Project**”), which is located within the County’s territorial limits; and

WHEREAS, the Project will be mutually beneficial to the Parties, and the citizens of the County; and

WHEREAS, the Parties wish to memorialize their respective agreements, duties and obligations with respect to the Project;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements of the Parties contained in this Agreement, the Parties agree as follows:

I.

TERMS

- A. Recitals.** The Recitals above are incorporated herein.
- B. Project.** The Project will consist of the turn lane improvements generally depicted on the schematic plan attached **Exhibit A** (the “**Schematic Plan**”).
- C. Design of Project.** The County will cause the plans and specifications for the Project to be prepared in compliance with all applicable governmental rules and regulations, including environmental regulations, as well as good engineering and design practices. The Project will include, at a minimum, the design features included in the Schematic Plan.
- D. Bidding and Construction.** The County will be solely responsible for approving the plans and specifications for and bidding, and constructing the Project.
- E. Developer Participation.** Developer agrees to pay, as its full share for all costs

related to the design, bidding and construction of the Project, the sum of ONE HUNDRED AND SIXTY-SIX THOUSAND SIX HUNDRED AND FORTY-FOUR DOLLARS (\$166,644) (the “**Developer Funding**”). The Developer Funding shall be due and owing to the County before the County awards a construction contract for the Project, upon the County’s delivery of at least ten days’ written notice to Developer that such payment is due.

- F. **County Participation.** The County agrees to pay for all Project costs over and above the Developer Funding and Developer will have no responsibility for any costs of the Project other than as described in Section E, above .

II.

GENERAL PROVISIONS

- A. **Severability.** The provisions of this Agreement are severable and, if any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement shall not be affected and this Agreement shall be construed as if the invalid portion had never been contained herein.
- B. **Cooperation.** The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.
- C. **Entire Agreement.** This Agreement contains the entire agreement of the Parties regarding the sharing of costs for the Project and supersedes all prior or contemporaneous understandings or representations, whether oral or written, regarding the subject matter.
- D. **Amendments.** Any amendment of this Agreement must be in writing and shall be effective if signed by the authorized representatives of both of the Parties.
- E. **Assignment.** Developer may not assign its obligations under this Agreement to a third party without the express written consent of the County (which consent shall not be unreasonably withheld, conditioned, or denied).
- F. **Termination.** If the County elects not to proceed with the Project as contemplated by this Agreement, the County shall notify the Developer in writing of such election and return the Developer Funding to the Developer and, upon the refund of the Developer Funding, this Agreement and the obligations of both Parties hereunder will terminate and of no further force or effect. Notwithstanding anything to the contrary contained in this Agreement, in the event County does not award a construction contract for the Project by December 31, 2018, Developer may elect to terminate this Agreement by giving County written notice at any time after December 31, 2018 and before the County awards a contract for the Project. In the event of Developer’s delivery of such notice, the County will refund the Developer Funding to Developer and, upon such refund, this Agreement and the obligations of both Parties will terminate and be of no further force or effect.
- G. **Applicable Law; Venue.** This Agreement shall be construed in accordance with Texas law. Venue for any action arising hereunder shall be in Williamson County, Texas.

- H. Force Majeure.** The Parties shall not be deemed in violation of this Agreement if they prevented from performing any of their obligations hereunder by reasons of Force Majeure. As used herein, "Force Majeure" means any period of delay experienced by due to strikes, civil riots, war, invasion, fire or other casualty, Acts of God, unavailability of labor or materials, adverse weather conditions, act or failure to act of governmental authorities other than the County, defaults of the other party to this Agreement, or other causes beyond the reasonable control of the performing party, provided that the Party affected by such delay promptly gives notice of such event of Force Majeure to the other Party and uses due diligence to resume performance as soon as reasonably practicable..

I. Exhibit. The following exhibit is attached to this Agreement and incorporated herein by reference:

Exhibit "A" - Schematic Plan

- J. Counterparts.** To facilitate execution, this Agreement may be executed in any number of counterparts, and it will not be necessary that the signatures of all Parties be contained on any one counterpart. Additionally, for purposes of facilitating the execution of this Agreement: (a) the signature pages taken from separate, individually executed counterparts of this Agreement may be combined to form multiple fully executed counterparts; and (b) a facsimile signature will be deemed to be an original signature for all purposes. All executed counterparts of this Agreement will be deemed to be originals, but all such counterparts, when taken together, will constitute one and the same instrument
- K. Authority.** Each Party represents and warrants that it has the full right, power and authority to execute this Agreement.
- L. Notices.** Notices provided hereunder shall be sufficient if forwarded to the other Party by hand-delivery or via U.S. Postal Service, postage prepaid, to the address of the other Party shown below:

THE COUNTY: Williamson County
Attn: County Judge
710 Main St., suite 101
Georgetown, TX 78628

DEVELOPER: Middlebrook, Ltd.
7143 Valburn Drive
Austin, Texas 78731
Attn: James Edward Horne

With Copy to: Ryan Anderson
4601 College Boulevard, Suite 300
Leawood, Kansas 66211

And Copy To: Hurst, Savage & Vanderburg, LLP
814 W. Tenth Street
Austin, Texas 78701
Attn.: Ann E. Vanderburg, Esq.

- M. No Joint Venture.** It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture between the Parties.
- N. Interested Parties.** Developer acknowledges that Texas Government Code Section 2252.908 (“*Section 2252.908*”) requires disclosure of certain matters by contractors entering into a contract with a local government entity such as the County. Developer confirms that it has reviewed Section 2252.908 and will 1) complete FORM 1295, using the unique identification number specified on page 1 of this Agreement, and electronically file it with the Texas Ethics Commission (“*TEC*”); and 2) submit the signed Form 1295, including the certification of filing number of the Form 1295 with the TEC, to the County at the same time Developer executes and submits this Agreement to the County. Form 1295 is available at the TEC’s website: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. This Agreement is not effective until the requirements listed above are satisfied and any award of this Agreement by the County is expressly made contingent upon Developer’ compliance with such requirements. **The signed Form 1295 may be submitted to the County in an electronic format.**
- O. Conflicts of Interest.** Developer acknowledges that Texas Local Government Code Chapter 176 (“*Chapter 176*”) requires the disclosure of certain matters by contractors doing business with or proposing to do business with local government entities such as the County. Developer confirms that it has reviewed Chapter 176 and, if it is required to do so, will complete and return FORM CIQ promulgated by the TEC and available on the TEC website at <https://www.ethics.state.tx.us/forms/CIQ-New-2015.pdf> within seven days of the date of submitting this Agreement to the County or within seven days of becoming aware of a matter that requires disclosure under Chapter 176, whichever is applicable.
- P. Verification Under Chapter 2270, Texas Government Code.** For purposes of Chapter 2270 of the Texas Government Code, Developer represents and warrants that, at the time of execution and delivery of this Agreement, neither Developer, nor any wholly owned subsidiary, majority owned subsidiary, parent company, or affiliate of Developer, boycotts Israel. Developer agrees that, except to the extent otherwise required by applicable federal law, including, without limitation, 50 U.S.C. Section 4607, neither Developer, nor any wholly owned subsidiary, majority owned subsidiary, parent company, or affiliate of Developer, will boycott Israel during the term of this Agreement. The terms “boycotts Israel” and “boycott Israel” as used in this provision have the same meaning assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code.
- Q. Verification Under Chapter 2252, Texas Government Code.** For purposes of

Subchapter F of Chapter 2252 of the Texas Government Code, Developer represents and warrants that, at the time of execution and delivery of this Agreement, neither Developer, nor any wholly owned subsidiary, majority owned subsidiary, parent company, or affiliate of Developer, (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller under Sections 2270.0201 or 2252.153 of the Texas Government Code. The term “foreign terrorist organization” as used in this provision has the same meaning assigned to such term in Section 2252.151 of the Texas Government Code

(The remainder of this page has been left blank intentionally and the signature pages follow)

THE COUNTY:

WILLIAMSON COUNTY, TEXAS

By: [Signature]
Dan A. Gattis, County Judge

ATTEST:

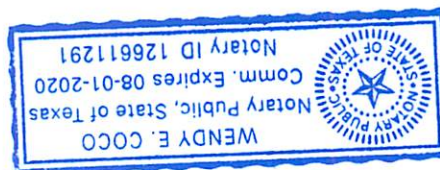
[Signature]
Nancy Rister, County Clerk

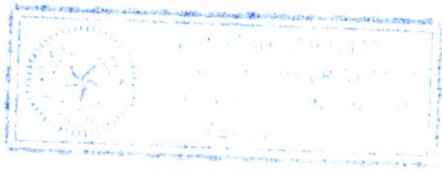
Date: _____

STATE OF TEXAS §
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COUNTY OF WILLIAMSON §

On this 18 day of September, 2018, before me, the undersigned notary public, personally appeared Judge Dan A. Gattis, , known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein stated.

[Signature]
Notary Public, State of Texas



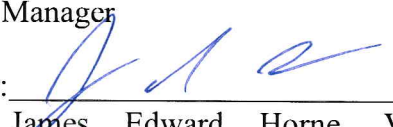


DEVELOPER:

MIDDLEBROOK, LTD., a Texas limited partnership

By: Middlebrook GP, LLC, a Texas limited liability company, its general partner

By: MREM Texas Manager, LLC, a Delaware limited liability company, its Manager

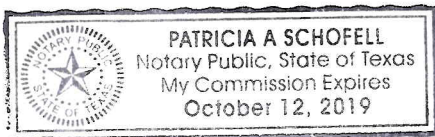
By: 
James Edward Horne, Vice President

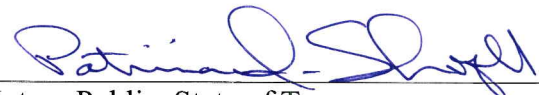
Date: 9/3/18

STATE OF TEXAS §

COUNTY OF TRAVIS §

On this 3 day of SEPT, 2018, before me, the undersigned notary public, personally appeared James Edward Horne, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein stated.




Notary Public, State of Texas

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