

There came on for consideration at a duly constituted meeting of the Mayor and Members of the City Council of the City of Gulfport, Mississippi, held on the ____ day of _____, 2014, the following Resolution:

**A RESOLUTION BY THE GULFPORT CITY COUNCIL TO APPROVE A
DEVELOPMENT AGREEMENT BETWEEN THE CITY AND THE GULFPORT
HIGHLANDS DEVELOPMENT, L.P. AND TO AUTHORIZE THE MAYOR TO
EXECUTE THE SAME ON BEHALF OF THE CITY**

WHEREAS, on December 6, 2011, the Governing Authority for the City adopted a Resolution determining the necessity for, and invoking the authority granted to Municipalities with respect to Tax Increment Financing and determined that the Gulfport Highlands Project was a project eligible for Tax Increment Financing under Mississippi law, and authorized a Public Hearing in connection with the Plan; and

WHEREAS, on December 20, 2011, the City held a Public Hearing on the “Tax Increment Financing Plan, Gulfport Highland Project, City of Gulfport, Mississippi, December 2011” in order to allow the general public to present their comments; and

WHEREAS, on December 20, 2011, following the public hearing, the Governing Authority approved the adoption and implementation of the Tax Increment Financing Plan for the Gulfport Highlands Project; and

WHEREAS, in accordance with Miss. Code Ann. Sec. 21-45-9, as amended, the City and the Developer now desire to enter into a Development Agreement for the purpose of defining the scope of obligations with respect to the Highlands Development Project; and

WHEREAS, the proposed Agreement is incorporated herein and attached hereto as **Exhibit “A”**.

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY
COUNCIL OF THE CITY OF GULFPORT, MISSISSIPPI, AS FOLLOWS, TO WIT:**

Section 1. That the matters, facts and things recited in the Preamble hereto are hereby adopted as the official findings of the Governing Authority.

Section 2. That the proposed Development Agreement between the City and the Gulfport Highlands Development, L.P. should be, and hereby is approved in the same or substantially the same form as set out in **Exhibit “A”** attached hereto, and that the Mayor is hereby authorized to execute any and all documents necessary to effectuate this Agreement.

Section 3. That this Resolution shall be in effect immediately upon its passage and enactment according to law, and shall be spread upon the minutes of the Gulfport City Council.

The above and foregoing Resolution, after having been first reduced to writing and read by the Clerk, was introduced by _____, seconded by _____, and was adopted by the following roll call vote:

AYES

NAYS

ABSENT

WHEREUPON, the President declared the motion carried and the Resolution adopted this the _____ day of _____, 2014.

(SEAL)

ATTEST:

ADOPTED:

CLERK OF THE COUNCIL

PRESIDENT

The above and foregoing Resolution was submitted to and approved by the Mayor, this the _____ day of _____, 2014.

APPROVED:

MAYOR

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into as of _____, 2014 (this "Agreement"), by and between **THE CITY OF GULFPORT, MISSISSIPPI** (the "City"), a body politic of the State of Mississippi (the "State"), and **GULFPORT HIGHLANDS DEVELOPMENT, L.P.**, a Delaware limited partnership (the "Developer").

WITNESSETH:

WHEREAS, the Developer is in the process of developing a high-quality regional retail shopping complex at the intersection of John Ross Road and Highway 605 (the "Project"), as more particularly described in the Tax Increment Financing Plan, Gulfport Highlands Project City of Gulfport, Mississippi, December 2011 (the "City TIF Plan") Tax Increment Financing Plan Gulfport Highlands Project, Harrison County, Mississippi, December 2011 (the "County TIF Plan") and in **EXHIBIT A**; and

WHEREAS, pursuant to Sections 21-45-1 *et seq.*, Mississippi Code of 1972, as amended from time to time (the "TIF Act" or the "Act"), the City is authorized to undertake and carry out redevelopment projects (as defined in the Act) in connection with redevelopment plans (as defined in the Act) and also to carry out such project jointly with other local governmental units, such as in this case, Harrison County, Mississippi (the "County"), within the City in order to encourage private redevelopment therein and is authorized to finance such redevelopment projects through the issuance of tax increment financing bonds; and

WHEREAS, the Developer is requesting the City, acting on behalf of itself and on behalf of the County pursuant to an Interlocal Agreement between the City and County, to issue its tax increment financing bonds, in one or more series, pursuant to the Act in a principal amount not to exceed Three Million Dollars (\$3,000,000) (the "Bonds"), in order to finance all or a part of the cost of construction of various public infrastructure improvements in connection with the Project, which improvements, upon completion, shall be dedicated to the City of Gulfport, including, but not limited to installation of utilities such as water, sanitary sewer, relocation of utilities; installation and relocation of electrical services; installation of storm drainage; construction of roadways with curb and gutter, sidewalks; installation of traffic signalization and signage; grading; lighting and landscaping of rights-of-way; capitalized interest; engineering; TIF Plan preparation fees; other incidental costs and related professional fees, as more particularly described in **EXHIBIT A**, attached hereto and made a part hereof (the "Infrastructure Improvements"); and

WHEREAS, the total cost of the Infrastructure Improvements and the Project is estimated to be approximately Three Million Dollars (\$3,000,000); and

WHEREAS, at the request of the Developer, by Resolution dated December 20, 2011, the City adopted and approved the City TIF Plan, after holding a public hearing in connection therewith, and indicated its intent, subject to certain conditions precedent, to proceed with the sale and issuance of the Bonds, in one or more series, in order to finance all or a part of the costs of the Infrastructure Improvements pursuant to further proceedings of the City and by virtue of

such statutory authority as may now or hereafter be conferred by the Act and as described in the City TIF Plan; and

WHEREAS, by Resolution dated December 5, 2011, Harrison County, Mississippi (the “County”) adopted and approved the County TIF Plan, after holding a public hearing in connection therewith, and indicated its intent to proceed with the sale and issuance of the Bonds, in one or more series, in order to finance all or a part of the costs of the Infrastructure Improvements pursuant to the request of the Developer and by virtue of such statutory authority as may now or hereafter be conferred by the Act and as described in the County TIF Plan; and

WHEREAS, it is anticipated that the City and the County will enter into an Interlocal Cooperation Agreement, pursuant to the authority granted in the Interlocal Cooperation Act of 1974, Sections 17-13-1 *et seq.*, Mississippi Code of 1972, wherein the City and County will agree to pledge certain ad valorem taxes in connection with City’s issuance of the Bonds, which amounts are to be established, or have been established by the Governing Authorities of the City of Gulfport and Harrison County;

WHEREAS, in order to secure and provide for the payment of the principal of and interest on the Bonds, the City and the County will pledge their respective share of the increase in ad valorem real and personal property taxes generated by the development of the Project, excluding levies for public school purposes, all as provided in Article VI of the TIF Plan (the “Tax Increment”); provided however that the County’s pledge shall be limited to fifty percent (50%) of the increase in real and personal property ad valorem taxes generated for the County by the Project; and

WHEREAS, the City and the Developer now desire to enter into this Agreement pursuant to the Act in order to, among other things, provide for (a) the construction and installation of the Project and the Infrastructure Improvements by the Developer and (b) the phased sale and issuance of the Bonds by the City in order to finance all or a part of the costs of the Infrastructure Improvements and the costs incident to the sale and issuance of the Bonds;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the parties hereto intend to be legally bound hereby and in consideration of mutual covenants hereinafter contained do hereby agree as follows:

1. UNDERTAKINGS OF THE CITY. Subject to the conditions herein stated, the City agrees as follows:

a. At its discretion, and based on the advice of the City’s Bond Counsel, the City will affect such procedures with respect to the sale and issuance of the Bonds, including, without limitation, the adoption of appropriate resolutions and such other procedures and documents as may be required by the Act.

b. Prior to the Termination Date (as defined herein), the City will use all reasonable efforts to sell and issue the Bonds, in one or more series, in an amount not to exceed Three Million Dollars (\$3,000,000). Any bonds issued shall be issued pursuant to the terms of the Act and on such terms, conditions, principal amount and rates of interest as shall be mutually agreeable to the City and to the Purchaser (as defined herein). Bonds issued must be reasonably supported by the Tax Increment pledge, and costs incurred by

the Developer; provided, however, that the Bonds will not be sold and issued until such time as the Developer has complied with the requirements of Paragraph 3 herein.

c. The sale of the Bonds shall be by negotiated sale to one or more purchasers (the “Purchaser”).

d. Pursuant to the resolution or resolutions of the City authorizing the sale and issuance of the Bonds (collectively, the “Bond Resolution”), the proceeds from the sale of the Bonds will be delivered to the City or to a financial institution selected by the City for handling and distribution according to the terms of the Bond Resolution and the Act.

e. Among other provisions, the Bond Resolution will provide that proceeds from the sale of the Bonds shall first pay the City’s costs incurred in connection with the Project, which shall include but not be limited to the expenses, costs and fees incurred by the City engineer in connection with the TIF Plan, the TIF Plan, and this Agreement, including cost of issuance of the Bonds and funding a reserve, if any, to pay any debt service on the Bonds that will be due and payable before the first Tax Increment is received by the City and any reserve that may be required by the Purchasers. Only after the aforementioned expenses are satisfied shall the proceeds be used to reimburse Developers for eligible costs, in an amount not to exceed Three Million Dollars (\$3,000,000), for installing and constructing the Infrastructure Improvements; and the remainder of the Bond proceeds, if any, shall be disbursed by the City in the manner authorized by the Act.

f. The Bonds shall mature at such time or times not exceeding fifteen (15) years from their date, may be subject to redemption at such times and at such premiums and shall be in such form and in all other respects be of such detail and issued under such conditions as may be determined by the City in the Bond Resolution.

g. The Bonds will be secured by a pledge from the City and the County of the Tax Increment as provided in the TIF Plan. The City will use all reasonable efforts to secure from the County an Interlocal Agreement to formalize the County's pledge commitment.

h. Costs of issuance for the Bonds, including, but not limited to, the fees and expenses of City Counsel, Bond Counsel, and Financial Advisor will be paid from the proceeds of the Bonds; provided, however, that if the Bonds are not issued and this Agreement is terminated as provided in Paragraph 5 herein, fees and expenses incurred by the City Attorney, Bond Counsel, and Financial Advisor, if any, will be paid as provided in Paragraph 5 herein.

i. Within a reasonable time after adoption of all proceedings of the City required by the Act for the sale and issuance of the Bonds, the City shall submit the same for validation under the provisions of Sections 31-13-1, *et seq.*, Mississippi Code of 1972, as amended from time to time, and will prosecute said validation proceedings and secure therein a final decree of the Chancery Court of Harrison County, Mississippi validating the Bonds.

j. The City's obligation to reimburse the Developer under this Agreement is further limited to the Developer's actual costs to install and construct the Infrastructure Improvements as defined in **EXHIBIT A** hereto, including professional fees, and shall in no event exceed the lesser of Three Million Dollars (\$3,000,000) or Bond proceeds available after the distribution in accordance with the Bond Resolution and Paragraph 1(d) and (e) of this Agreement. Furthermore, the City's obligation to expend funds or reimburse the Developer is expressly limited to funds available under this Agreement and the Bond Resolution from bond proceeds derived from the sale and delivery of the Bonds and available after distribution in accordance with the Bond Resolution and Paragraph 1(d) and (e) of this Agreement.

2. UNDERTAKINGS OF THE DEVELOPER. Subject to the conditions herein stated, the Developer agrees as follows:

a. The Developer, or its agents, will endeavor to timely construct and install each Phase, or portion thereof, of the Project in accordance with the TIF Plan and in accordance with the building codes of the City and all other applicable Federal, State, County and City laws and regulations.

b. The Developer, or its agents, will endeavor to timely construct and install the Infrastructure Improvements in accordance with the building codes of the City and all other applicable Federal, State, County and City laws and regulations. The Developer shall submit plans and specifications with respect to the Infrastructure Improvements to the City and such plans and specifications shall be subject to the approval of the City.

c. The Developer will prepare and file with the City a Preliminary Plat and Final Plat in connection with the Project in accordance with the City's zoning and subdivision regulations.

d. In connection with the construction and installation of the Project and the Infrastructure Improvements, the Developer will obtain all necessary approvals from all applicable Federal, State, County, City, and other governmental agencies.

e. The Developer will execute all appropriate documents necessary to complete the sale and issuance of the Bonds and to the extent required by the City, the Developer will enter into a Tax Payment and Assessment Agreement with the City in a form substantially as set forth in **EXHIBIT B** to this Agreement, pursuant to which the Developer will agree, among other things, (i) to timely pay its pro rata share of all ad valorem and other taxes in connection with the Project, and (ii) not to contest the tax assessment on its portion of the Project in a manner that would result in a reduction of the assessed value of the Developer's portion of the Project to an amount less than an amount to be agreed to by the City and the Developer to be incorporated by amendment into this Agreement.

f. To the extent required by the City, the Developer will cause to be executed by any and all parties that acquire ownership interests in the Project a Tax Payment and Assessment Agreement in the form attached as **EXHIBIT B** hereto.

g. The Infrastructure Improvements described in **EXHIBIT A** will be constructed and installed to City standards and specifications to allow for their dedication or conveyance to the City, if applicable.

h. Following their installation and construction and in a manner and form satisfactory to the City, the Developer will dedicate or convey or have dedicated or conveyed to the City, the Infrastructure Improvements described in **EXHIBIT A**, and, if required by the nature of such Infrastructure Improvements, and at no additional cost to the City, convey or have conveyed easements to the City in connection with such Infrastructure Improvements.

i. The Developer assumes the risk of proceeding with construction of the Project and Infrastructure Improvements prior to sale and issuance of the Bonds, and acknowledges and agrees the City is not authorized or obligated to use its general fund to pay any part of the costs of the Project or the Infrastructure Improvements. In the event the Bonds are not sold and delivered, no resulting liability shall accrue to the City, irrespective of expenditures made by Developer. Developer acknowledges and agrees that the final amount of the Bonds to be issued will be determined solely at the discretion of the City based upon the pledged Tax Increment available to fund the debt service on the Bonds. In the event the Bond proceeds are insufficient to pay the costs of the Infrastructure Improvements, the Developer agrees to pay such deficiency necessary to complete the Infrastructure Improvements as set forth herein.

j. The Developer shall maintain separate records on the costs of the Project and the Infrastructure Improvements in a manner so as to aid the City in accounting for costs eligible for reimbursement under this Agreement. Throughout the term of the Project, City shall have the authority to inspect any Project or Infrastructure records that will be used to support any reimbursement from or payment issued by the City.

3. **CONDITIONS PRECEDENT TO ISSUANCE OF THE BONDS.** Prior to the sale and issuance of Bonds, the Developer shall, in connection with construction and installation of the Project, which is more particularly described in the City TIF Plan, and the Infrastructure Improvements for which reimbursement is sought, have (i) secured all necessary approvals from applicable Federal, State, County, City and other governmental agencies; (ii) completed, at Developer's own cost, the acquisition, construction and installation of such Infrastructure Improvements to City standards and specifications; (iii) dedicated the completed and installed such Infrastructure Improvements to the City; (iv) the Developer shall have completed, at the Developer's own costs, acquisition, installation and construction, or Developer's coordination of third party private investment for those purposes, a Phase of the Project, or any portion thereof, and a certificate of completion and occupancy for such Phase of the Project, or portion thereof, shall have been issued and which Phase or portion of the Project shall be open for business as set forth in the TIF Plan; (v) executed such documents as the City may require pursuant to Paragraph 2.e. of this Agreement; and (vi) agreed to and be in substantial compliance with the undertakings of the Developer set forth in Paragraph 2 of this Agreement. Upon satisfaction of the requirements of this paragraph 3, the City agrees to use its best efforts to timely sell and issue the Bonds on a schedule mutually acceptable to the City and the Developer.

The first series of Bonds to be issued upon completion of Phase I of the Project, or a portion thereof, shall be in an amount not to exceed the lesser of a) the costs incurred by the City

in connection with the Project and the costs incurred by the Developer in connection with the Infrastructure Improvements or b) the amount mutually agreeable to the City and Purchaser as may be reasonably supported by the City's and the County's pledge of the Tax Increment generated within the TIF District related thereto. The second and any subsequent series of Bonds to be issued shall, likewise, be in an amount not to exceed the lesser of a) the remaining costs, if any, incurred by the City in connection with the Project and the remaining costs incurred by the Developer in connection with the Infrastructure Improvements, or b) the amount mutually agreeable to the City and Purchaser as may be reasonably supported by the City's and the County's pledge of the Tax Increment generated within the TIF District related to the completion of any of the remaining Phases of the Project or any portions thereof.

4. LIMITED OBLIGATION. The Bonds will be limited obligations of the City and County payable solely from the Tax Increment and other moneys pledged therefor. Except for the Tax Increment, neither the faith, credit or taxing power of the City nor the faith, credit or taxing power of the State or any political subdivision thereof, including the City or the County, is pledged to the payment of the Bonds.

5. TERMINATION. If the Bonds are not issued and delivered on or before ten (10) years from the date hereof, this Agreement shall thereupon terminate (the "Termination Date"); provided, however, that this Termination Date may be extended by the same amount of time as is reflected in any duly adopted TIF Plan Amendment in accordance with the Act. This Agreement may also be terminated by written agreement of the parties hereto. Upon termination of this Agreement, it is expressly understood that the Developer shall bear the sole responsibility and liability for all reasonable fees and expenses incurred by the City Attorney, Bond Counsel and Financial Advisor in relation, directly or indirectly, to the sale and issuance of the Bonds, and the preparation of this Agreement, recognizing that the City does not have the authority to pay such costs except from the proceeds of the Bonds.

6. ADDITIONAL PROVISIONS.

a. This Agreement has been made by the City and the Developer and no person other than the foregoing and their successors and assigns shall acquire or have any right under or by virtue of this Agreement.

b. This Agreement shall become effective upon the execution and acceptance hereof by the parties hereto and shall be valid and enforced from and after the time of such execution and acceptance.

c. If any paragraph or part of a paragraph of this Agreement shall be declared null and void or unenforceable against any of the parties hereto by any court of competent jurisdiction, such declaration shall not affect the validity or enforceability of any other section or part of a paragraph of this Agreement.

d. In the event any agreement contained in this Agreement shall be breached and such breach shall thereafter be waived, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

e. This Agreement shall inure to the benefit of the City and the Developer and their respective successors and assigns.

f. This Agreement shall be governed as to validity, construction and performance by the laws of the State.

g. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall constitute but one and the same agreement.

h. No amendment, change, modification, alteration or termination of this Agreement shall be made other than pursuant to a written agreement signed by the City and the Developer.

[COUNTERPART SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereby have caused this Agreement to be duly executed as of the ____ day of _____, 2014.

CITY OF GULFPORT, MISSISSIPPI

By: _____
Council President

By: _____
Mayor

ATTEST:

City Clerk

[Signature Page to Development Agreement]

IN WITNESS WHEREOF, the parties hereby have caused this Agreement to be duly executed as of the ____ day of _____, 2014.

Gulfport Highlands Development, L.P.

Gulfport Highlands Management, LLC, General Partner

By: _____

Name: Noel C. Simms, Manager

ATTEST:

Name: _____

Title: _____

[Signature Page to Development Agreement]

EXHIBIT A

INFRASTRUCTURE IMPROVEMENTS

Funds will be used to pay eligible costs of constructing and installing various infrastructure improvements of the Project, which improvements upon completion must be eligible for dedication to the City of Gulfport as public utilities and infrastructure, including, but not limited to, parking improvements and utilities; utilities, such as water and sewer, storm drainage; installation and relocation of electrical services required for public improvements, including utility meters; roadways with curbs, gutters and sidewalks; installation of traffic signalization and signage; grading; landscaping of rights-of-way; purchase of rights-of-way necessary for the installation of the infrastructure improvements described hereinabove; capitalized interest, engineering; TIF Plan preparation fees; other incidental costs; and related professional fees for the Project. The construction of the aforementioned improvements will be undertaken to provide for the public convenience, health, and welfare.

EXHIBIT B

TAX PAYMENT AND ASSESSMENT LETTER AGREEMENT

(See Attached)

Mayor and City Council
of the City of Gulfport

Gulfport, MS

Re: City of Gulfport, Mississippi Tax Increment Financing Bonds, Series _____
(Gulfport Highlands Project)

Gentlemen:

_____, a _____, (the "Owner"), will construct and own approximately _____ square feet of _____ (the "Improvements") to be constructed on the real estate described in Exhibit A hereto (the "Real Estate") located in the overlay district of the City of Gulfport, Mississippi. The Owner has been informed and is aware that, in order to facilitate the construction of the Improvements, certain infrastructure improvements are being financed, in part, with the proceeds of one or more series of City of Gulfport, Mississippi Tax Increment Financing Bonds, Series _____ in an aggregate principal amount not to exceed Three Million Dollars (\$3,000,000) (the "Bonds"), the principal of and interest on the Bonds will be repaid, in part, from a portion of the sales and ad valorem taxes, both real and personal, paid by the Owner to Harrison County, Mississippi (the "County") and to the City of Gulfport, Mississippi (the "City") in the connection with the Real Estate, the Improvements and the personal property to be located thereon.

The Owner has been informed that prior to the construction of the Improvements, the estimated assessed value of the Real Estate on which the Improvements are being constructed is \$ _____ (the "Original Assessed Value") as estimated by the Harrison County Tax Assessor. The Owner acknowledges that upon completion of the Improvements, the assessed value of the Real Estate, the Improvements and the personal property to be located thereon will be in an amount determined by the Harrison County Tax Assessor (the "Current Assessed Value").

The Owner understands and agrees that a portion of the sales taxes and real and personal property ad valorem taxes of the City and County generated from the difference between the Original Assessed Value and the Current Assessed Value will be pledged by the City and County to the payment of the Bonds and that the Owner's only obligation in connection with the repayment of the Bonds is to timely pay its sales taxes and its real and personal property ad valorem taxes when due in accordance with the laws of the State of Mississippi.

The Owner further agrees that until the Bonds are paid in full it will not contest the tax assessment on the Improvements, the Real Estate and the personal property located thereon in a

manner which would result in a reduction of said assessment to an amount less than _____ No/100 Dollars (\$_____).

The Owner understands and agrees that the City intends for this Tax Payment and Assessment Agreement (this "Agreement") to be binding upon the successors and assigns to the Owner's interest in the Improvements and the Real Estate. The Owner agrees, prior to or contemporaneously with the sale or other disposition of the Improvements and the Real Estate, to obtain from any assignee, purchaser or transferee a Tax Payment and Assessment Agreement in form substantially similar to this Agreement. Upon the acceptance by the City of such substitute Tax Payment and Assessment Agreement, the undersigned shall be released from any subsequently accruing obligation hereunder.

Sincerely,

By: _____

Title: _____

* * *

ACCEPTED:

CITY OF GULFPORT, MISSISSIPPI

By: _____

Title _____