

SETTLEMENT AND RELEASE AGREEMENT

STATE OF TEXAS §

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COUNTY OF BEXAR

So

This Settlement and Release Agreement (hereinafter the “Settlement Agreement”) is entered into between and among the CITY OF SAN ANTONIO, a Texas Municipal Corporation (hereinafter the “CITY”), as authorized pursuant to Ordinance _____, passed and approved _____, 2014; MISSION DEL LAGO, LTD., a Texas limited partnership (hereinafter “MDL” or “Developer”); VIRGINIA ROGERS, as Chairperson of the City of San Antonio Tax Increment Reinvestment Zone Number Six (hereinafter “ROGERS”); and BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER SIX, City of San Antonio, Texas, a tax increment reinvestment zone (the “BOARD”), and approved by the BOARD on the 19th day of December, 2013 (collectively referred to herein as the “Parties”), which Settlement Agreement is set forth as follows:

WHEREAS, on or about March 19, 2013, ROGERS, as Realtor, filed Cause # 2013-CI-04574, Verified Petition for Writ of Mandamus, in the 45th Judicial District, Bexar County, Texas (the “Lawsuit”), seeking relief against LETICIA M. VACEK, City of San Antonio City Clerk (hereinafter “VACEK”); ABRAHAM DIAZ, Liaison, Planning and Community Development Department, City of San Antonio, Texas (hereinafter “DIAZ”); and

WHEREAS, the CITY and MDL entered into a Development Agreement pursuant to Ordinance No. 2006-06-29-0801, passed and approved by the CITY on the 29th day of June, 2006 (hereinafter the “Development Agreement”) for reimbursement of tax increment funds to MDL for eligible expenses incurred for the construction of public infrastructure within Tax Increment Reinvestment Zone Number Six (hereinafter the “TIRZ”); and

WHEREAS, MDL has asserted claims against the CITY seeking payment of invoices for reimbursement of TIRZ-related project expenses incurred in connection with the Development Agreement (hereinafter the “MDL Claim”); and

WHEREAS, the Parties hereto desire to resolve all claims and causes of action which exist among them of any kind whatsoever and in any way related to the Lawsuit and the MDL Claim, amicably and without further litigation. This Agreement shall not constitute nor be construed to be an

admission on any part by any of the Parties to this Agreement or the parties to the Lawsuit, nor as evidencing or indicating any admission of the truth or correctness of any claims asserted by the Parties to this Agreement or the parties to the Lawsuit;

NOW THEREFORE, in consideration of the mutual promises and agreements herein contained, including the recitals set forth above, the receipt and sufficiency of which are hereby formally acknowledged, the Parties agree as follows:

1. Developer will assure all future purchasers of land/lots from Developer in the project will be bound by contractual provisions that require all future building permits and plans for single-family residences must be Universal Design compliant and clearly stamped or printed “Universal Design” by the builder and its architect. Developer will execute, within 30 days of the finalization of this Agreement, a restrictive covenant, for recording in the Bexar County real property records, to run with the land as to all real estate parcels owned by the Developer in the TIRZ, obligating any developer, purchaser, successor, or assign, to comply with City’s Universal Design Policy on all improvements installed as required by City Code, Chapter 6, Article XII, and shall provide a right of redress to both the City and Developer in the event of non-compliance. Developer shall provide legal descriptions of all real estate parcels within the TIRZ to which the covenant shall apply.
2. Any UD non-compliant homes completed before the date hereof will be waived from UD compliance.
3. City of San Antonio staff will recommend financing of a tax note, in an amount not to exceed \$1.7 million, backed by City’s full faith and credit, toward street reconstruction/repair/crack seal in Unit 8, the scope of work to be agreed to by the engineers (George Weron and Mike Rogers) and to be performed in conformity with City standards. The total amount of the note will also be offset by the amount of City’s increment of TIRZ funds deposited in 2013, and payable to the Developer in 2014, pursuant to the terms of this Agreement.
4. The principal and interest payments due on the tax note shall be paid over seven years from the City’s tax increment applicable to this TIRZ, at a fixed interest rate set at the time of the sale of the tax note. City shall facilitate the payment of the principal and interest payments due on the tax note exclusively from the City’s tax increment as a first priority and prior to any other payments paid using said City increment from the TIRZ fund.

5. Developer will obtain at least three bids for street reconstruction/repair/crack seal in Unit 8, subject to scope of work agreed to by the engineers (George Weron and Mike Rogers) and in conformity with City required standards. The street reconstruction/repair/crack seal shall be undertaken by Developer or a contractor on behalf of Developer as a Private Project under a Developer Participation Contract subject to City approval. The City shall expedite plan review at no cost. The work under this paragraph may not be undertaken by the original contractor for the Unit 8 streets.

6. The currently held TIF funds shall be applied towards the remainder of the street reconstruction/repair/crack seal costs only after application of the tax note discussed in Paragraph 3 above. If the bid amount is less than \$2.8 million, Developer shall receive the difference between the \$2.8 million and the bid amount, up to the total amount currently held in TIRZ funds up to March 2013, in accordance with the standard TIF procedures for payment on invoices that have been previously approved for reimbursement. Said difference shall be paid directly to the Developer within 15 days of the signed contract with the contractor for street repair/reconstruction/crack seal being delivered to the Director of the City's Planning and Community Development Department.

7. The tax note funds, the City's increment of TIRZ funds payable in April/May 2013, and the applicable portion of the currently held TIRZ funds accrued prior to April/May 2013 necessary to make up the difference between \$1.7 million and the accepted bid price shall be held on account by the City for payment of all construction invoices associated with the required Unit 8 street reconstruction/repair/crack seal. Payments under the contract shall be made through the City's Primelink system.

8. Developer shall receive TIRZ funds payable in April/May 2013, less the amount of the City's increment (\$339,506.52) which shall be placed in the account referenced in Paragraph 7 above and applied to the cost of the street reconstruction/repair/crack seal project. Payment of the balance of the April/May 2013 TIRZ accrual shall be made within 30 days of finalizing the Agreement. All future TIRZ funds obtained shall be distributed in accordance with the standard TIRZ procedures, less the amount required of the City's increment for each accrual, which shall be applied to pay principal and interest payments due on the tax note as set forth in Paragraph 3 above.

9. All street reconstruction/repair/crack seal made pursuant to #3 above must include a 2 year warranty bond and be constructed in accordance with current City standards.

10. If the TIRZ Board makes a recommendation to City Council to extend the TIRZ by 2 years, City staff will recommend approval to City Council and the other participating taxing

entities within 60 days from said recommendation by the Board; and City will facilitate a Board meeting within 45 days for consideration of the recommendation.

11. Developer and ROGERS will immediately dismiss with prejudice the mandamus proceeding in *Virginia Rogers, as Chairperson of the City of San Antonio Tax Increment Reinvestment Zone Number Six v. Leticia Vacek, City of San Antonio City Clerk and Abraham Diaz, Liaison, Planning and Community Development Department, City of San Antonio, Texas*, Cause No. 2013-CI-04574.

12. The City of San Antonio will post and facilitate the holding of at least one Mission Del Lago TIRZ Board meeting per year and as otherwise needed.

13. Release of Claims by MDL and ROGERS

MDL and ROGERS, for and on behalf of themselves, all related companies, partnerships or joint ventures, with respect to each of them, their predecessors and successors, do hereby, RELEASE, ACQUIT and FOREVER DISCHARGE the City of San Antonio, its Council members, officers, directors, assigns, representatives, agents, or employees, including VACEK and DIAZ, of and from any and all claims, damages, demands, liability, lawsuits, actions or causes of action, costs, losses, expenses, compensation and/or obligations, whether known or unknown, at law or in equity, which MDL and/or ROGERS have or may have against the City arising from or related in any way whatsoever to the MDL Claim and/or the Lawsuit as a whole that MDL and/or ROGERS may have incurred or accrued up to the date of this Agreement. It is the express intent of MDL and ROGERS that this Agreement operate as a bar to any subsequent proceedings with respect to any claims, causes of action or lawsuits arising from or related to the MDL Claim or the Lawsuit, perceived or actual, that MDL and/or ROGERS may have incurred or accrued up to the date of this Agreement.

14. The City is specifically reserving any and all claims, damages, demands, liability, lawsuits, actions or causes of action, costs, losses, expenses, compensation and/or obligations related to or arising out of any work, work product, services, or other product created under or services performed pursuant to the Development Agreement and/or the Developer Participation Contract.

Miscellaneous Provisions

15. It is understood and agreed by the Parties to this Agreement that it is executed for the sole purpose of compromising and settling the matters involved in and associated with the Claim and the Lawsuit, and it is expressly understood and agreed, as a condition of the compromise, that this Agreement shall not constitute or be construed to be an admission on any part of the City or as evidencing or indicating any admission of the truth or correctness of the Claim asserted and/or the allegations of the Lawsuit. This Agreement is a satisfaction and accord of disputed claims relating to and arising out of the Claim and the Lawsuit.

16. The Parties understand and agree that any legal fees or costs expended shall be borne by the party incurring the same.

17. The Parties acknowledge that the terms of this Agreement have been negotiated by the Parties hereto and that they have had the opportunity to review this settlement agreement for themselves and with their attorneys. By the execution hereof, the Parties hereto expressly warrant that they have read the Agreement, understand its terms, and are signing this Agreement of their own free will.

18. In making this Agreement, it is understood and agreed that the undersigned have relied wholly upon their own respective judgment, belief and knowledge of the nature, extent, and duration of any damages, as well as any liability question involved, the undersigned have not been influenced to any extent whatsoever in making this release by any representations or statements or any other matters made by the municipality, persons, firms, or corporations hereby released or by any person representing or acting for them, and that regardless of whether any representations have been made by any Party or any agent of any Party, the Parties hereto are entering into this Agreement based solely upon the terms contained herein. All Parties hereto expressly disclaim any and all past or oral representations made by such Parties or their agents. This Agreement reflects the entire agreement of understanding between the Parties with respect to the foregoing subject matter.

19. MDL represents and warrants that it is the sole and lawful owner of all right, title and interest in and to every claim and other matter that MDL is purporting to release or settle by this Agreement and that MDL has not previously assigned or transferred, either by act or operation of law, to any party or entity, any claim or other matters released by this Agreement. ROGERS represents and warrants that she is the sole and lawful owner of all right, title and interest in and to every claim and other matter that ROGERS is purporting to release or settle by this Agreement and that ROGERS has not previously assigned or transferred, either by act or operation of law, to any party or entity, any claim or other matters released by this Agreement. It is further understood and specifically agreed that in the event that City is subjected to further claim, whether in law or in equity, by any person, firm, corporation or other entity, acting under any actual or purported right or subrogation, or assignment, MDL and ROGERS, whose claim such person asserts, will indemnify, hold harmless and defend the City from any such claim or demand.

20. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, insurers, sureties, administrators, legal representatives, corporations, partnerships, entities, successors or predecessors, directors, officers, employees, servants, assigns, attorneys or any one in privity with any of them.

21. The Parties agree that they will execute such other and further instruments as are or may become necessary or convenient to effectuate and carry out this Agreement, including, but not limited to: First Amendment to Development Agreement, Restrictive Covenant, Developer Participation Contract, Agreed Dismissal of Lawsuit, and related TIRZ documents.

22. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are to be performed in Bexar County, Texas. Any actions arising out of this Agreement shall be brought in the State District Court of Bexar County, Texas.

23. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not effect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

24. If any action in law or in equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees from the other Party(ies), which fees may be set by the Court in the trial of such action, or may be enforced in a separate action brought for that purpose, and which fees shall be in addition to any other relief which may be awarded.

25. In the event that this Agreement, or any provisions hereof, is construed or determined to be ambiguous by any court of law or arbitrator, then in that event, the Parties agree that each Party has contributed to the preparation of this Agreement and have jointly written or composed the clauses herein contained and that no Party hereto shall be given any advantage over the other Parties under the laws of construction of instruments based upon the authorship hereof.

26. Any person signing this Agreement on behalf of any type of legal entity, including, but not limited to, a corporation, partnership, limited partnership or joint venture, represents and warrants that the person signing has actual authority to sign this Settlement Agreement in order to bind the legal entity he or she represents, and further warrants that the legal entity has taken all internal actions necessary or appropriate to bind the legal entity to this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this Settlement and Release Agreement to be executed by their duly authorized representatives as of the latter date set forth below.

CITY OF SAN ANTONIO

By: _____

Title: _____

Date: _____

MISSION DEL LAGO, LTD.,

A Texas Limited Partnership,
By and through its General Partner,
MDL, Inc., a Texas Corporation

By: _____

Title: _____

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

**BOARD OF DIRECTORS
TAX INCREMENT REINVESTMENT
ZONE NUMBER SIX,
CITY OF SAN ANTONIO, TEXAS**

VIRGINIA ROGERS,

Chairperson of City of San Antonio Tax
Increment Reinvestment Zone Number Six

Date: _____

Title: Presiding Officer, Board of Directors

Date: _____

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BEFORE ME, the undersigned authority, on this day personally appeared _____, _____ of CITY OF SAN ANTONIO, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she has executed the same for the purposes and consideration therein expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on this ____ day of _____, 2014, to certify which witness my hand and seal of office.

Notary Public, State of Texas

My Commission expires:_____

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BEFORE ME, the undersigned authority, on this day personally appeared _____, _____ of MISSION DEL LAGO, LTD., a Texas Limited Partnership, by and through its General Partner, MDL, Inc., a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she has executed the same for the purposes and consideration therein expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on this _____ day of _____, 2014, to certify which witness my hand and seal of office.

Notary Public, State of Texas

My Commission expires:_____

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BEFORE ME, the undersigned authority, on this day personally appeared VIRGINIA ROGERS, CHAIRPERSON OF CITY OF SAN ANTONIO TAX INCREMENT REINVESTMENT ZONE NUMBER SIX, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she has executed the same for the purposes and consideration therein expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on this _____ day of _____, 2014, to certify which witness my hand and seal of office.

Notary Public, State of Texas

My Commission expires:_____

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BEFORE ME, the undersigned authority, on this day personally appeared VIRGINIA ROGERS, BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER SIX, CITY OF SAN ANTONIO, TEXAS, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she has executed the same for the purposes and consideration therein expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on this _____ day of _____, 2014, to certify which witness my hand and seal of office.

Notary Public, State of Texas

My Commission expires: _____