

DEVELOPMENT AND REIMBURSEMENT AGREEMENT

This Development and Reimbursement Agreement dated May __, 2021, by and between the **CITY OF DIAMONDHEAD, MISSISSIPPI** (the “*City*”), a municipal corporation organized and existing under the laws of the State of Mississippi (the “*State*”) and **MARSHALL LAND HOLDINGS, LLC**, its successors and assigns, a corporation duly organized, existing, and in good standing under the laws of the State (the “*Developer*”).

WITNESSETH:

WHEREAS, the City approved its “*Tax Increment Financing Redevelopment Plan, City of Diamondhead, Mississippi, 2021*” (the “*Redevelopment Plan*”), as authorized by and under Section 21-45-1 *et seq.*, Mississippi Code of 1972, as amended (the “*TIF Act*”); and

WHEREAS, on April 6, 2021, the City, acting by and through its Mayor and City Council (the “*Governing Body*”), adopted a resolution giving notice of its intention to hold a hearing to consider approval of the “*Tax Increment Financing Plan Diamondhead Medical Center Project, Diamondhead, Mississippi, 2021*” (the “*City TIF Plan*”) to express its intent at a future time or times to issue tax increment financing bonds in one or more series (the “*Bonds*”) in a principal amount not to exceed One Million Dollars (\$1,000,000), all as provided by the TIF Act; and to create a tax increment financing district on approximately 14.73 acres of property located on the corner of East Aloha Drive and Veterans Avenue within the City and describe in **Exhibit A** attached hereto (the “*TIF District*”) for the purpose of providing funds to the Developer as an incentive to develop and redevelop the TIF District by constructing (1) a new medical care facility in conjunction with Memorial Hospital in the City that is over 20,000 square feet and that will include a cancer care area, a new CT scanning lab, with diagnostic imagining, x-ray imaging, specialty pharmacy, and over twenty (20) exam rooms, (2) an in-house compounding pharmacy that requires a specialized environmentally controlled space and (3) a full-service retail pharmacy including household goods, food products, and other services (the “*Project*”); and

WHEREAS, the City TIF Plan was developed in conformity with the Redevelopment Plan; and

WHEREAS, on April 21, 2021, the City published a Notice of a Public Hearing on the City TIF Plan, and on May 4, 2021, the Governing Body held a public hearing on the City TIF Plan, all as required by the TIF Act, after which the Governing Body adopted a resolution giving final approval to the City TIF Plan and authorizing the issuance of the Bonds for the purpose of acquiring and constructing the Infrastructure Improvements, as defined below; and

WHEREAS, on April 5, 2021, Hancock County, Mississippi (the “*County*”), acting by and through its Board of Supervisors, adopted a resolution giving notice of its intention to hold a hearing to consider approval of the *Tax Increment Financing Plan Diamondhead Medical Center Project, Hancock County, Mississippi, 2021*” (the “*County TIF Plan*”) and together with the City TIF Plan, the “*TIF Plans*”) to express its intent to participate with the City in the City’s issuance of the Bonds, all as provided by the TIF Act within the TIF District for the purpose of providing the Developer an additional incentive to develop and redevelop the TIF District by constructing the Project; and

WHEREAS, on April 21, 2021, the County published a Notice of Public Hearing on the County TIF Plan, and on May 3, 2021, the County Board of Supervisors held a public hearing on the County TIF Plan, all as required by the TIF Act, after which the County Board of Supervisors adopted a resolution giving final approval to the County TIF Plan to assist in the development of the Project and its joint participation with the City, pursuant to Sections 17-13-1 *et seq.*, Mississippi Code of 1972, as amended (the “*Interlocal Act*”); and

WHEREAS, pursuant to the TIF Plans and the TIF Act, the City has agreed to issue the Bonds, in one or more series, subject in part in compliance with the terms of this Agreement to pay the cost of acquiring and constructing eligible improvements, which may include, but are not necessarily limited to, installation, rehabilitation and/or relocation of utilities such as water and sanitary sewer; regional storm water improvements; construction, renovation, or rehabilitation of drainage improvements, roadways, curbs, gutters, sidewalks; site improvements; offsite improvements and infrastructure which may include roads, rights-of-way, utilities, and water and sewer lines; parking; relocation of electrical lines; lighting; signalization; wetlands and stream mitigation payments; storm drainage pipes; culverts; landscaping of rights-of way; costs associated with the acquisition of land for the foregoing improvements; related architectural/engineering fees, attorney's fees, issuance costs, capitalized interest, and other related soft costs (collectively, the “*Infrastructure Improvements*”); and

WHEREAS, the Developer agrees to develop the Project, or cause the Project to be developed, and the City intends issue the Bonds to support the Project and to allow a portion of the proceeds from the Bonds to be used to reimburse the Developer for the cost of Infrastructure Improvements in a principal amount not to exceed One Million Dollars (\$1,000,000); and

WHEREAS, the Bonds will be secured by a pledge of all of the City’s incremental ad valorem tax increased from the real and personal property and all of the incremental increases in sales tax rebates generated within the TIF District from the development of the Project and all of the incremental increase in the County’s ad valorem tax revenues generated from real and personal property located within the TIF District and lawfully available to the City and County under the TIF Act for such pledge (together, the “*TIF Revenues*”); and

WHEREAS, the principal amount of the Bonds to be issued by the City to support the Infrastructure Improvements related to the Project will be determined based on the lesser of (1) such amounts as can be retired out of the projected TIF Revenues attributable to seventy-five percent (75%) of the City’s increase in real and personal property ad valorem taxes generated by the Project, plus fifty percent (50%) of the City’s incremental increase of sales tax rebates generated by the Project, plus seventy-five percent (75%) of the County’s incremental increases in ad valorem taxes on real and personal property generated within the TIF District at the marketable interest rate for tax increment bonds for a period not to exceed fifteen (15) years; or (2) \$1,000,000; and

WHEREAS, part or all of the Project and all of the Infrastructure Improvements except as herein provided, will be acquired or constructed by the Developer prior to the issuance of the Bonds; and

WHEREAS, as required by the Section 21-45-9 of the TIF Act, this Agreement is being executed and delivered in order to set forth the agreements between the parties hereto with respect to the Developer being reimbursed for its expenditures for the Infrastructure Improvements; and

WHEREAS, this Agreement incorporates by reference all of the related terms and conditions of the TIF Plans.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY AND THE DEVELOPER HEREBY AGREE AS FOLLOWS:

SECTION 1. The Developer is a Mississippi corporation duly organized, existing, and in good standing in the State of Mississippi.

SECTION 2. The Developer has commenced construction of the Project and shall complete the construction of the Project, or cause construction of the Project to be completed, and the City shall, subject to the provisions of this Agreement and the issuance of the Bonds, reimburse the Developer, or its designee, for expenditures on the Infrastructure Improvements.

SECTION 3. The City will issue the Bonds to defray the costs of the Infrastructure Improvements of the Project in one or more series, as may be reasonably determined by the City, in a principal amount equal to the lesser of:

- (a) such amounts as can be retired out of the projected TIF Revenues attributable to seventy-five percent (75%) of the City's increase in real and personal property ad valorem taxes generated by the Project, plus fifty percent (50%) of the City's incremental increase of sales tax rebates generated by the Project, plus seventy-five percent (75%) of the County's incremental increases in ad valorem taxes on real and personal property generated within the TIF District at the marketable interest rate for tax increment bonds for a period not to exceed fifteen (15) years; or
- (b) \$1,000,000.

The City will deliver the Bonds in its soled discretion when (1) the Project is constructed as described herein; (2) the Developer is able to demonstrate to the satisfaction of the City that projected TIF Revenues will provide moneys sufficient to make the payments for each series of Bonds issued; and (3) the Developer submits a requisition for reimbursement for its costs of the Infrastructure Improvements in the form of the requisition in **EXHIBIT B** attached hereto (the "**Requisition**"). In no event shall the Bonds be issued in an amount that would require the annual payment on such series of Bonds to exceed the projected annual amount available to the City and County from those revenues specified in Section 3(a) above.

Proceeds of Bonds issued hereunder shall be applied in accordance with the provisions of Section 6 hereof.

SECTION 4. The Developer acknowledges that the City and the County have entered into that certain Interlocal Cooperation Agreement, dated as of May __, 2021, which sets forth the City's and the County's joint and mutual efforts to be performed in connection with the TIF Plan, the TIF District and the Bonds.

SECTION 5. The acquisition and construction of all or any portion of the Project by the Developer will be at the Developer's own cost prior to the delivery of any series of Bonds and, to the extent allowed by law and this Agreement, the City will reimburse, from proceeds of the Bonds, the Developer, or its designee, for the Developer's expenditures on the Infrastructure Improvements to support the Developer in a principal amount as provided in Section 3 hereof.

The Project will be:

- (a) constructed in multiple phases on approximately 14.73 acres of land with the TIF District;
- (b) include (1) a new medical care facility in conjunction with Memorial Hospital in the City that is over 20,000 square feet and that will include a cancer care area, a new CT scanning lab, with diagnostic imaging, x-ray imaging, specialty pharmacy, and over twenty (20) exam rooms, (2) an in-house compounding pharmacy that requires a specialized environmentally controlled space and (3) a full-service retail pharmacy including household goods, food products, and other services; and
- (c) the first phase of the Project will be constructed on approximately +/- 2.2 acres within the TIF District, represent a private investment of approximately \$4,600,000, and it will include (1) a new medical care facility in conjunction with Memorial Hospital in the City that is over 20,000 square feet and that will include a cancer care area, a new CT scanning lab, with diagnostic imaging, x-ray imaging, specialty pharmacy, and over twenty (20) exam rooms, (2) an in-house compounding pharmacy that requires a specialized environmentally controlled space and (3) a full-service retail pharmacy including household goods, food products, and other services.

The parties hereto acknowledge and agree that the Developer will either acquire and construct the Project or cause the Project to be acquired and constructed consistent with the provisions of this Section 5.

SECTION 6. The City and The Developer agree that at such time as one or more series of the Bonds are sold and delivered, the City shall deposit and apply Bond proceeds in the maximum principal amount of One Million Dollars (\$1,000,000) in the priority as follows: (1) first used to pay or reimburse the City's for outstanding obligations incurred in connection with the adoption of the TIF Plan, cost of issuance of the Bonds and Infrastructure Improvements, if any, constructed by the City for the Project, (2) then, in the City's sole discretion, establish a debt service reserve fund in an amount determined solely by the City to pay the highest annual payment of principal and interest on the TIF Bonds and (3) then the proceeds shall next be used to reimburse the Developer for all costs and expenditures made by the Developer in connection with the acquisition and construction of the Infrastructure Improvements described in the Requisition within thirty (30) days of receipt of said Requisition. Any moneys remaining after application of the Bond proceeds pursuant to this Section shall be used for payment of the Bonds.

SECTION 7. (a) The City covenants and agrees to use all reasonable efforts to issue the Bonds in the amounts, for the purposes and at the times contemplated herein, and covenants and agrees that the Bonds will be issued unless the issuance thereof is prevented by rule of law, commercial inability to issue such Bonds or by the lack of sufficient projected TIF Revenues to provide for the debt service on the Bonds, or a series thereof in the minimum amount provided for

in this Agreement, as may reasonably be determined by the City in accordance with the facts and circumstances existing at the time.

(b) The City hereby agrees that it will make all reasonable efforts to issue and deliver the Bonds, from time to time, in a timely manner and represents to the Developer that, subject to construction, completion and operation of the Project by the Developer as described in this Agreement, it knows of no reason why the Bonds will not be issued and delivered

(c) The Developer hereby acknowledges and agrees that the City is not authorized to use its general funds to pay (or to reimburse the Developer) any part of the cost of the Infrastructure Improvements or cost and expense incurred in connection with issuing the Bonds and that the City's obligation to expend funds or reimburse the Developer to pay for the acquisition and construction of the Infrastructure Improvements is limited to the proceeds of any series of Bonds, and in the event the Bonds are not sold and delivered, no resulting liability shall accrue to the City irrespective of expenditures made by the Developer in connection with construction of the Project. However, the Developer hereby acknowledges that the City cannot guarantee that a purchaser for the Bonds will be found and that to enhance the marketability of the Bonds it may be necessary for the Developer to provide a guarantee for the payment of the Bonds or a purchaser may require a debt service reserve fund for the Bonds to be established that will be funded with Bond proceeds.

SECTION 8. (a) Prior to any reimbursement, the Developer will present a description of any portion of the Infrastructure Improvements to be dedicated to the City, if any. If the City shall approve such dedication, in the City's sole discretion and after determining that the Infrastructure Improvements meet the City standards, codes, and ordinances, then such Infrastructure Improvements shall be dedicated to the City. The City agrees to accept maintenance responsibility for that part, if any, of the Infrastructure Improvements which are dedicated to the City.

(b) If no property is to be dedicated to the City, the Developer shall so inform the City prior to any reimbursement. The non-dedicated Infrastructure Improvements shall remain the property of the Developer or other private party and shall be maintained by the Developer or such other private party.

SECTION 9. The Developer acknowledges and agrees that it assumes the risk of proceeding with the construction and acquisition of the Project prior to the issuance and sale of any series of Bonds and further acknowledges that the City's sole source of funds available to pay the cost of the Project or reimburse the Developer for such cost is the proceeds derived from the sale of the Bonds. Any reduction in the taxes paid to the City that are generated within the TIF District due to low property assessments, failure to pay property taxes, or otherwise will reduce the principal amount of Bonds that will be issued and likely affect the marketability of the Bonds.

SECTION 10. The Developer agrees that all costs incurred by the City regarding the Project, including, but not limited to, inspection costs, legal fees, and expenses and bond issuance costs shall be paid by the Developer in the event that within eighteen (18) months of the date this Agreement is executed either the Bonds are not issued for any reason or the Infrastructure Improvements are not completed. Additionally, the Developer shall pay attorneys' fees incurred by any of the parties in connection with the enforcement of any of the provisions of this Section.

SECTION 11. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

SECTION 12. Any notice, request, complaint, demand, communication or other paper shall be sufficiently given when delivered or mailed by registered or certified mail, postage prepaid, or sent by telegram, addressed to the addresses set forth below:

If to the City:

City of Diamondhead, Mississippi
Attention: City Manager
5000 Diamondhead Circle
Diamondhead, Mississippi 39525

(With a copy to the City Attorney at Law Offices of Derek R. Cusick, PLLC 1325
25th Avenue, Gulfport, MS 39501)

If to The Developer:

Marshal Land Holdings, LLC
16 Rivers Bend Drive
Gulfport, MS 395074

SECTION 13. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 14. 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. Provided, neither the Developer nor the City shall assign its obligations or interests in this Agreement without prior written consent of the other, which consent shall not be unreasonably withheld or delayed

SECTION 15. This Agreement shall be valid and enforced from and after the date first written above.

SECTION 16. This Agreement shall be governed as to validity, construction and performance by the Constitution and the laws of the State.

DULY EXECUTED on the day and year first written hereinabove.

CITY OF DIAMONDHEAD, MISSISSIPPI

By: _____
Michael J. Reso, City Manager

ATTEST:

By: _____
Jeannie Klein, City Clerk

STATE OF MISSISSIPPI

COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, on this ____ day of _____, 2021, within my jurisdiction, the within named Micheal J. Reso and Jeannie Klein, who acknowledged they are the City Manager and City Clerk, respectively, of the City of Diamondhead, Mississippi, and that for and on behalf of said City and as its act and deed, they executed the above and foregoing instrument, after first having been duly authorized so to do.

Notary Public

My Commission Expires:

MARSHALL LAND HOLDINGS, LLC

By: _____
Richard V. Marshall, Member

STATE OF MISSISSIPPI

COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, on this ____ day of _____, 2021, within my jurisdiction, the within named Richard V. Marshall, who acknowledged he is a member of Marshall Land Holdings, LLC and that for and on behalf of said limited liability company and as its act and deed, executed the above and foregoing instrument, after first having been duly authorized so to do.

Notary Public

My Commission Expires:

EXHIBIT A
TIF DISTRICT

EXHIBIT B

FORM OF REQUISITION

Not to Exceed \$1,000,000
Diamondhead, Mississippi
Tax Increment Limited Obligation Bonds, Series 2021
(Diamondhead Medical Center Project)

REQUISITION FOR PAYMENT

The undersigned duly authorized representative of Marshall Land Holdings, LLC (the “*Developer*”), hereby requests the City of Diamondhead, Mississippi (the “*City*”), to reimburse the Developer for the following eligible costs or other amounts to be paid from the Construction Fund established for the payment of costs and reimbursements in connection with the Infrastructure Improvements in an amount not to exceed \$1,000,000 (see Development and Reimbursement Agreement dated _____, 2021, for definitions of such terms):

- (a) Acquisition and Construction Costs \$ _____
- (b) Other Authorized Costs \$ _____
- Total Costs to be Paid or Reimbursed: \$ _____

Attached hereto are copies of statements for acquisition transactions, invoices, and statements from a contractor, vendor or supplier for authorized costs of the Infrastructure Improvements to document the amounts requisitioned herein.

I hereby certify that:

1. The amounts to be paid from the Construction Fund have been paid or incurred by the undersigned in the amounts specified herein.
2. No requisition with respect to such amounts has previously been delivered to the City.
3. The amounts set forth in this requisition have been properly expended or incurred for costs of the Infrastructure Improvements for the Project and such amounts have been paid.
4. The undersigned has no notice of any vendor’s, mechanic’s or other liens or right to liens, chattel mortgages, conditional sales contracts, security interests or other contracts or obligations which should be satisfied or discharged before payment of the amounts set forth in this requisition is made.

All defined terms shall have the meaning ascribed to each as set forth in the Bond Resolution of the City dated _____, 20_.

WITNESS the due execution of this requisition this, the ____ day of _____ 20__.

MARSHALL LAND HOLDINGS, LLC

By: _____
[NAME], [TITLE]

APPROVED:

CITY OF DIAMONDHEAD, MISSISSIPPI

By: _____

Printed Name: _____

Title: _____