

## **ESCROW DEPOSIT AGREEMENT**

This **ESCROW DEPOSIT AGREEMENT** (this "Agreement") is made and entered into to be effective as of the \_\_\_\_ day of \_\_\_\_ 2021 (the "Effective Date"), is by and among **FM 973 BUILDING HOPE, LLC**, a Texas limited liability company ("Building Hope"), **COTTONWOOD HOLDINGS, LTD**, a Texas limited partnership ("Owner"), and the **CITY OF MANOR, TEXAS**, a Texas home-rule municipal corporation situated in Travis County (the "City") pursuant to the authority granted to the City by its powers as a home rule municipal corporation and the general laws of the State of Texas including § 212.172 of the Texas Local Government Code.

### **RECITALS**

**WHEREAS**, the Owner owns the tract of land generally described as 13538 N FM 973, Manor TX 78653, and more particularly described as Lot 1, Block B, Shadowglen Trace Commercial Section B and a 6.5548 acre tract being shown in Exhibit A, attached hereto and incorporated herein (collectively, the "Property");

**WHEREAS**, Building Hope intends to lease the Property from the Owner (the "Lease Agreement") and develop the Property for use as a public school, including without limitation, a public charter school, together with uses ancillary thereto (collectively, the "Permitted Uses") by constructing and maintaining modular buildings (the "Temporary Structures") for one (1) year from the Effective Date, and in no case for longer than December 31, 2022 (the "Project") according to the terms included in this Agreement;

**WHEREAS**, that certain Development Agreement for the ShadowGlen Subdivision dated January 10, 2011 (recorded as Document No. 2012158027) and amendments thereto (the "ShadowGlen Development Agreement") currently permits the use of the Property for the Project;

**WHEREAS**, further amendment to the ShadowGlen Development Agreement will allow for the continuation of any currently permitted uses, so long as a required site development permit is filed with the City before additional amendments to the ShadowGlen Development Agreement are adopted; and

**WHEREAS**, in reflecting the parties' intent that the Project be temporary, Building Hope will provide a payment in escrow to ensure that the Temporary Structures are removed on the earlier of thirty days after the earlier of (a) the end of the term of the Lease Agreement (the "Lease Term"); or (b) December 31, 2022 (the "Removal Date");

**NOW, THEREFORE**, for and in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **I. APPLICABLE SITE REGULATIONS AND ESCROW**

- 1.1 Incorporation of Recitals. The recitals set forth above are incorporated herein and made a part of this Agreement to the same extent as if fully set forth herein.
- 1.2 Site Regulations. Building Hope shall be permitted to construct modular buildings commonly used by public schools for temporary classroom space at the Property, save and except the 6.5548 acre tract described in Exhibit A (the “Adjacent Tract”). Building Hope agrees to only construct a driveway and soccer fields on the Adjacent Tract and no modular buildings or structures shall be installed or constructed on the Adjacent Tract. The Project shall comply with site location, parking, and height requirements found in the original ShadowGlen Development Agreement.
- 1.3 Temporary Nature of Development. The Temporary Structures shall be removed within thirty (30) days after the earlier of the (a) expiration of the Lease Term; or (b) the Removal Date.
- 1.4 Escrow. Building Hope shall deposit \$50,000.00 in escrow held in a separate account of the City within ten (10) business days after site plan approval for the Project (the “Deposit”). The funds may be used by City for removal of the Temporary Structures within sixty (60) days after the Removal Date if Building Hope has not removed the Temporary Structures prior to such sixtieth (60<sup>th</sup>) day. Any surplus funds shall be reimbursed to Building Hope after the City provides notice that the Temporary Structures are removed from the Property. If the Temporary Structures are removed by Building Hope by the Removal Date, the City shall return the Deposit to Building Hope thirty (30) days after Building Hope provides notice to the City that the Temporary Structures are removed from the Property.
- 1.5 Consulting Fees. Building Hope shall be responsible for reimbursing the City for its reasonable, out of pocket, consultant fees related to the consideration of this Agreement, whether such consideration occurs prior to the Effective Date.

## **II. DEFAULT AND REMEDIES**

- 2.1 Remedies. Following the occurrence of a breach of Building Hope’s obligations or the City’s obligations under Article I of this Agreement, only Building Hope, the Owner, and the City shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. If a party shall fail to comply with any term, provision or covenant of this Agreement (a “Defaulting Party”) and shall not cure such failure within fifteen (15) days after receipt of written notice (or if the default is of such character as to require more than fifteen (15) days to cure and the Defaulting Party

shall fail to commence to cure the same within such period or shall fail to use reasonable diligence in curing such default thereafter) from a person or entity with the right hereunder to seek relief for such breach (a “Non-Defaulting Party”) to the Defaulting Party of such failure, the Non-Defaulting Party shall have the option of pursuing any remedy it may have at law or in equity, including, without limitation, specific performance or injunctive relief from a court of competent jurisdiction. Notwithstanding the foregoing, the City shall not be required to provide written notice to Building Hope before the City removes the Temporary Structures so long as the City proceeds in accordance with the timelines set forth in Section 1.4 hereof.

### **III. GENERAL PROVISIONS**

- 3.1 No Third-Party Beneficiary. The provisions of this Agreement are for the exclusive benefit of the parties hereto, and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person or the public.
- 3.2 Notice. All notices required or permitted to be given hereunder, or given in regard to this Agreement, shall be in writing and the same shall be given and be deemed to have been served, given and received (a) one (1) business day after being placed in a prepaid package with a national, reputable overnight courier addressed to the other party at the address hereinafter specified; or (b) if mailed, three (3) business days following the date placed in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to the party at the address hereinafter specified. A party may change its respective addresses for notices by giving five (5) business days' advance written notice to the other in the manner provided for herein. Until changed in the manner provided herein, the parties' addresses for notice is as follows:

Owner:

Cottonwood Holdings, Ltd.  
C/o Dwyer Realty Companies  
9900 US HWY 290 E  
Manor, TX 78653  
Attn: Danny Burnett

With a copy to:

Metcalf, Wolff, Stuartt & Williams, LLP  
221 W. 6<sup>th</sup> Street, Suite 1300  
Austin, Texas 78701  
Attn: Talley J. Williams

Building Hope:

Building Hope Predevelopment, LLC  
910 17<sup>th</sup> Street NW, Suite 1100  
Washington DC, USA 20006

With a copy to:

Drenner Group, P.C.  
200 Lee Barton Drive, Suite 100  
Austin, Texas 78704  
Attn.: Charley Dorsaneo

City:

City of Manor  
105 E. Eggleston Street  
Manor, Texas 78653  
Attn: City Manager

With a copy to:  
The Knight Law Firm LLP  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752  
Attn: Paige Saenz

- 3.3 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto regarding the matters set forth herein. The parties do not rely upon any statement, promise or representation with respect to the matters set forth herein that is not herein expressed, and, this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.
- 3.4 Severability. If any provision of this Agreement shall be declared invalid, illegal or unenforceable in any respect under any applicable law by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. It is the further intention of the parties that in lieu of each covenant, provision or agreement of this Agreement that is held invalid, illegal or unenforceable, that be added as a part hereof a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may possible and be legal, valid and enforceable.
- 3.5 Counterparts; Multiple Originals. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which

together shall constitute one and the same instrument.

- 3.6 Termination. This Agreement shall terminate upon the removal of the Temporary Structures.
- 3.7 Conflict with Ordinance. To the extent that any of the covenants, conditions and restrictions contained within this Agreement conflict with terms or conditions addressed in the ordinance issued by the City of Manor, or any supporting materials, for purposes of this Agreement the terms and conditions of this Agreement shall control.
- 3.8 Applicable Law. This Agreement shall be governed by and construed under and in accordance with the laws of the State of Texas. The obligations set forth herein are and shall be performable in Travis County, Texas.
- 3.9 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. The City, Owner and Building Hope have the authority to enter into this Agreement and no additional signatories or consents are required by either parties to make this Agreement binding and fully enforceable.
- 3.10 Construction. References made in the singular shall be deemed to include the plural and the masculine shall be deemed to include the feminine or neuter. If any date for performance of an obligation or exercise of a right set forth in this Agreement falls on a Saturday, Sunday or federal holiday, such date shall be automatically extended to the next day which is not a Saturday, Sunday or federal holiday.
- 3.11 Anti-Boycott Verification. To the extent this Agreement constitutes a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, Owner and Building Hope represent that neither Owner and Building Hope nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Owner and Building Hope (i) boycotts Israel or (ii) will boycott Israel through the term of this Agreement. The terms “boycotts Israel” and “boycott Israel” as used in this paragraph have the meanings assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code, as amended.
- 3.12 Iran, Sudan and Foreign Terrorist Organizations. To the extent this Agreement constitute a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, Owner and Building Hope represent that Owner and Building Hope nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Owner and Building Hope is a company listed by the Texas Comptroller of Public

Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

***[The Remainder of This Page Is Intentionally Left Blank. Signature Pages Follow.]***

**EXECUTED**, effective as of the Effective Date as provided herein above.

**OWNER**

**COTTONWOOD HOLDINGS, LTD**, a Texas limited partnership

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*6/10/2021*

**BUILDING HOPE**

**FM 973 BUILDING HOPE, LLC**, a Texas limited  
liability company

By: 

Name: **Jerry Zayets**

Title: **Vice President**



**THE CITY**

**CITY OF MANOR**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT A

