

**AGREEMENT REGARDING GAS SERVICE TO MACY'S AT 19201 HAMISH ROAD  
IN TOMBALL, TEXAS**

This Agreement Regarding Gas Service to Macy's at 19201 Hamish Road in Tomball, Texas ("Agreement") is entered into by and between the City of Tomball, Texas ("City") and LIT INTERCHANGE 249 HANKS OWNER, LLC, a Delaware limited liability company ("Owner") (collectively, "Parties").

**RECITALS**

WHEREAS, the City owns and operates the gas system within the city limits of Tomball, Texas.

WHEREAS, Owner is developing a Macy's distribution and logistics center at 19201 Hamish Road in Tomball, Texas ("Macy's"), which requires gas service.

WHEREAS, City has the gas supply capacity to serve Macy's.

WHEREAS, City is in the process of constructing the necessary infrastructure to provide gas service to Macy's.

WHEREAS, following City's completion of the necessary services lines and gas supply gate, the Parties agree that City will provide gas service to Macy's.

WHEREAS, the Parties agree that Owner may develop additional commercial buildings at 19201 Hamish Road and on adjacent land in the future that require gas service, but this Agreement only applies to gas service for Macy's.

WHEREAS, the Parties understand that any current estimate of City's costs to build the necessary gas service lines and city gas supply gate to accommodate Macy's is subject to change based on factors including, but not limited to, material costs, labor costs, and engineering assessments.

WHEREAS, City desires to assist Owner with obtaining reimbursements for Owner's contribution in aid of construction of the proposed gas service line and city gas supply gate from the City of Tomball Tax Increment Reinvestment Zone Number Three (the "TIRZ"), including obtaining and maintaining Owner's eligibility for such reimbursements from the TIRZ, amending the TIRZ Preliminary Project Plan and Reinvestment Zone Financing Plan (the "TIRZ Finance Plan and Project Plan"), and ultimately finalizing and obtaining the necessary approvals for the TIRZ Finance Plan and Project Plan to include the gas service line.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, City and Owner agree as follows:

## **AGREEMENT**

### **I. Commencement of City Gas Services to Macy's**

City expects to complete construction of the service lines and gas gate necessary for providing gas service to Macy's by April 2024 ("Expected Service Date").

Owner will use gas service from CenterPoint ("CPE") until the Expected Service Date, or until such other time as City's service lines and gas supply gate are complete and City can begin providing gas service to Macy's.

Owner must terminate service with CPE and begin obtaining gas service from City for Macy's no later than 30 days from the date City's construction of the necessary service lines is complete.

### **II. Contribution in Aid of Construction**

Owner must provide a contribution in aid of construction ("CIAC") for the City's construction of the city gas supply gate and appurtenances that amounts to 30% of the total project cost. Prior to commencing construction of the gas service lines, City and Owner must agree to the location and routing of the gas service lines, the anticipated schedule for construction of the gas service lines, and a detailed estimated cost of construction for gas service lines (collectively, the "Service Line Plans"). City's and Owner's approval of the city gas supply gate and appurtenances Plans shall not be unreasonably conditioned, withheld, or delayed. Notwithstanding the foregoing, Owner may withhold approval if the proposed routing and location of the gas service line would adversely affect Owner's or Owner's affiliate's development of 19201 Hamish Road, Tomball, Texas 77377 and the adjacent real property. Further notwithstanding Owner's share of CIAC will not exceed \$240,000.00.

Throughout the construction process, City will periodically notify Owner of the costs of constructing the necessary service lines to provide gas service to Macy's.

### **III. Remedies in Event of Default**

In addition to all rights and remedies prescribed by the laws of the State of Texas, in the event of a breach of this Agreement by either party, the other party shall be entitled, but not limited to, specific performance or a writ of mandamus to compel any necessary action by the breaching party. In the event that a party seeks monetary damages, the breaching party shall be required to pay for the non-breaching party's attorneys' fees and court costs.

### **IV. Effective Date and Expiration**

This Agreement becomes effective as of the date of the last signature by either party. This Agreement shall automatically expire upon on the earlier of the following to occur: (a) first

(1<sup>st</sup>) day the City provides gas service to Macy's, or (b) 2 years after effective date of this Agreement.

**V. Severability**

If any provision contained in this Agreement is held to be invalid, unconstitutional, or unenforceable, the remaining provisions shall be deemed severable and shall remain in full force and effect.

**VI. Recitals**

Each of the recitals contained herein, by this reference, shall be incorporated into, and deemed a part of, this Agreement.

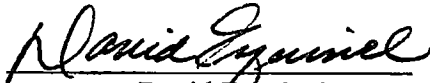
**VII. Modification of Agreement**

This Agreement cannot be modified or amended without the written consent of the Parties attached to and made part of this Agreement.

*[signature page to follow]*

IN WITNESS WHEREOF, the Parties have executed this Agreement with an effective date as set forth by Section IV of this Agreement.

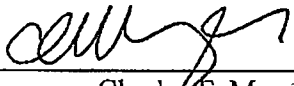
**CITY OF TOMBALL**

By:   
Name: David Esquivel  
Title: City Manager  
Date: 05/02, 2023

**LIT INTERCHANGE 249 HANKS OWNER, LLC,**  
a Delaware limited liability company

By: Interchange 249 Business Park, LP,  
a Texas limited partnership  
its Managing Member

By: Interchange 249 Business Park GP, LLC,  
a Texas limited liability company  
its General Partner

By:   
Name: Charles F. Meyer, Jr.  
Title: Authorized Signatory