

**SALES TAX REBATE AGREEMENT**  
**MATHIS CENTER**

This SALES TAX REBATE AGREEMENT (the "Agreement") is entered into by and between the CITY OF LAWTON, OKLAHOMA, a municipal corporation of Comanche County, Oklahoma ("City") and CACHE PROPERTIES, LLC, an Oklahoma corporation ("Developer"), whose principal place of business is 1834 NW 52<sup>nd</sup> Street, Lawton Oklahoma, 73505.

**WITNESSETH:**

A. Developer intends to construct a retail development, designated as the Mathis Center, on the land described on Exhibit A attached hereto and made a part hereof.

B. The retail development and accompanying improvements contemplated by Developer will promote economic development, stimulate business and commerce, create additional employment opportunities, offer retail shopping opportunities not now available, and generate new sales tax revenue.

C. Developer has advised City that a contributing factor that would induce Developer to develop the Mathis Center would be an agreement with City to provide economic development incentives, consistent with City Council Policy 1-10 Economic Development Assistance - Retail, in the form of a sales tax rebate. The sales tax rebate will defray the costs to be incurred by Developer for off-site infrastructure and public utilities necessitated by the retail development, specified in detail on Exhibit B attached hereto and made a part hereof.

D. City is authorized under the laws of the State of Oklahoma including Article 10, Section 14 of the Oklahoma Constitution and the cases decided thereunder to establish economic development programs and to provide sales tax incentives for development as part of its economic development plan and for its public purpose as defined in Article 10, Section 14.

E. City has determined that providing economic development incentives pursuant to this Agreement will further public purposes and the economic development goals of City.

F. In connection with the furtherance of public purposes and the economic development goals of City, City has determined that the contemplated improvements to and the use of that portion of the Project herein identified as "Phase One," more specifically described below, which falls within the boundaries of the land described on Exhibit A, are in compliance with State of Oklahoma and City retail incentive policy and criteria.

G. The Lawton City Council has approved the execution of this Agreement by and between City and Developer.

NOW THEREFORE, City and Developer, for good and valuable consideration, do mutually agree as follows:

1. **Definitions.** As utilized herein, the following terms shall have the meanings indicated.

**"Occupant"** means an occupant of the Project that is operating a business within the Project and either (a) owns fee simple title to the site of its business, or (b) operates its business pursuant to a written lease agreement with Developer or its assigns.

**"Project"** means the land described on Exhibit A attached hereto and made a part hereof and the improvements thereon. Attached hereto as Exhibit C is a depiction of the Project. The sales tax rebate provided under this Agreement shall only apply to the sales generated exclusively from Phase One of the Project, as defined hereafter.

**"Phase One"** means the part of the Project that is to be the initial development, which is limited to: (1) the approximately 76,000 square foot building [**"Initial Building"**] located within the Project, which will house one or more Phase One Stores; (2) the supporting appurtenances to that 76,000 square foot building; and (3) the off-site infrastructure improvements, including those described on Exhibit B (traffic signal, water and sewer).

**"Phase One Stores"** means those retail stores branded under the Mathis Brothers family of retail stores (e.g., Mathis Outlet or Mathis Sleep Center) or another nationally recognized home furnishing retail brand (e.g., Ashley Homestore or La-Z-Boy Furniture Store), each of which is operated and managed by Mathis Brothers.

**"Project Sales Tax Receipts"** means the sales taxes actually received by the City pursuant to the Oklahoma Tax Code attributable to Phase One during the term of this Agreement from the following two components:

a. **"Project Construction Sales Tax Receipts"** means sales taxes actually received by the City pursuant to the Oklahoma Tax Code, which were generated from sales associated with the construction of Phase One during the **"Initial Construction Period"**, i.e. the construction of the Initial Building (approximately 76,000 sq. ft), the supporting appurtenances to the Initial Building, and the off-sight infrastructure improvements (traffic signal, water and sewer). To determine the amount of Project Construction Sales Tax Receipts during the Initial Construction Period of Phase One, as defined in "Sales Tax Rebate Period" below, Developer will require that all contractors cause all construction purchases to be delivered to the construction site on the Project and use the appropriate City street address for such purchases and deliveries in such a manner that Oklahoma and City municipal sales taxes shall be applicable to the purchase. Developer shall provide reports and invoices to City and verify that Oklahoma and City municipal sales tax is collected on the City point of delivery for all building items and construction materials.

b. **"Project Retail Sales Tax Receipts"** means sales taxes actually received by City pursuant to the Oklahoma Tax Code during the "Project Retail Sales Period" of

the Project, as defined in “Sales Tax Rebate Period” below, such sales taxes being generated from retail sales conducted within any of the Phase One Stores to be located within the Initial Building of Phase One.

**“Sales Tax Rebate Period”** is comprised of the following two periods:

a. **“Initial Construction Period”** means the period beginning upon the issuance by the City of a Building Permit for Phase One and ending upon either (1) the issuance by the City of a certificate of occupancy for the first of the Phase One Stores to be located and operated within the Initial Building of Phase One; or (2) twenty-four (24) months, whichever is earlier.

b. **“Project Retail Sales Period”** means the period beginning after the conclusion of the Initial Construction Period on the first day of the month of the first reported sales from the first of the Phase One Stores to be opened and operated within the Initial Building of Phase One; and ending (a) when the sales tax rebate is paid in full, (b) when the last of these stores ceases to operate in the Initial Building located in Phase One, or (c) at the end of seven (7) years after commencement of the Project Retail Sales Period, whichever occurs first, provided, however any sales tax rebate subject to this Agreement which remains unpaid after the termination of this Agreement and which accrued prior to expiration of the Sales Tax Rebate Period, shall be paid after the termination of this Agreement. In the event the Agreement is terminated subject to other provisions of the Agreement prior to the conclusion of the “Project Retail Sales Tax Period”, no further sales tax rebate obligation will accrue after such termination.

2. **Ownership Interest in Project.** Each party acknowledges and agrees that the Project is located entirely within the city limits of City, is not located in an improvement project financed by tax increment bonds, and does not include any property that is owned or leased by a member of City Council or by a member of City Planning Commission. Developer represents and warrants to City that Developer is the owner of the Project and, subject to paragraph 9 of this Agreement, will hold fee simple title as well as equitable title to the land described on Exhibit A, except as conveyed to an Occupant for the site of its store. The parties further agree that the City will be granted easements for the public improvements being made by the Developer, to include the public water line, public sewer line and traffic signal, with said easements to be in accordance with City standards. Upon completion [and passage of City inspection] of the aforementioned public water line, public sewer line and traffic signal, the City will accept dedication of the improvements and thereafter be responsible for their maintenance [subject to any applicable outstanding maintenance bond].

3. **Sales Tax Rebate Calculation.** City hereby agrees to provide to Developer, in the form of a sales tax rebate, an amount not to exceed seven hundred fifty thousand dollars (\$750,000) in sales tax generated exclusively from Phase One. The amount of sales tax rebate provided will be calculated based on the following:

- a) The sales tax rebate will be one-half (1/2) of the two percent (2%) sales tax collected from Phase One apportioned to the City's General Fund, up to a maximum of \$750,000 for public improvements; said amount being generated from the taxable sales from Phase One for the period of time set forth in the Sales Tax Rebate Period based upon the Project Sales Tax Receipts information obtained annually by City and confirmed by the Oklahoma Tax Commission.
- b) It is understood and agreed by Developer that if the development fails to generate sales sufficient within the Sales Tax Rebate Period to result in the transfer of the proposed sales tax rebate amount, City will only transfer the amount of actual sales tax generated according to the above criteria. For example, if the development only generates enough sales during the Sales Tax Rebate Period to result in \$500,000 in sales tax rebate, City will only pay the amount of \$500,000.
- c) It is further understood and agreed by Developer that the exact amount of the sales tax rebate will be determined by the actual hard and soft costs (including, but not limited to, interest carry and other financing costs) of constructing the public infrastructure improvements required by paragraph 12 of this Agreement, but in no event shall the amount exceed seven hundred fifty thousand dollars (\$750,000).

A major incentive for City to enter into this Agreement is the opening of one or more Phase One Stores inside the Initial Building that is part of Phase One of the Project. Should none of the Phase One Stores open for business within twelve (12) months after the issuance of the first certificate of occupancy for the Initial Building that is part of Phase One, this Agreement may become null and void at the sole and exclusive option of City. In the event this Agreement is declared null and void under this provision [i.e. terminated by City], no sales tax rebate obligation beyond what accrued during the Initial Construction Period that remains unpaid, if any, will be due the developer.

Except for the sales tax rebate in an amount not to exceed \$750,000, Developer acknowledges and agrees that City will provide no other incentive(s) or assistance as an inducement to construct (1) Phase One, and off-site infrastructure/public utility improvements necessitated by that portion of the Project, or (2) any future development phases to be added to or otherwise associated with the Project beyond Phase One.

City covenants and agrees that it will not take any action which would otherwise place Developer in a subordinated position to receive sales tax rebate amounts under this Agreement from Phase One, it being the intent of the parties that Developer shall have the first right to receive the sales tax rebate described in this Agreement.

#### 4. **Rebate of Project Sales Tax Receipts.**

- a) City will rebate to Developer, on or before May 1st of each year, sales tax as set forth herein, issuance of a sales tax rebate payment amount by City being deemed City's representation to Developer that the amount of such payment is accurate in accordance with this Agreement. If City has any inquiries concerning the Project Sales Tax Receipts for any Occupant(s) of Phase One (including, without limitation, the inability of the Oklahoma Tax Commission to segregate the sales taxes attributable to the location of an Occupant(s) location in Phase One versus other locations of such retailer in the City of Lawton), City shall have the right to withhold payment of any rebate with respect of such Occupant(s) that City may dispute until City receives such additional information as City shall reasonably require.
- b) Developer shall obtain from each Occupant of Phase One such Occupant's Federal Tax Identification Number, such Occupant's Sales Tax Permit Number issued by the Oklahoma Tax Commission, and an executed release from such Occupant authorizing the Oklahoma Tax Commission to provide to City the Project Sales Tax Receipts information of such Occupant for each calendar year during the Sales Tax Rebate Period. Developer will cooperate with City's efforts to obtain the Project Sales Tax Receipts information.
- c) Subject to City's obligation below to use reasonable efforts to maintain the confidentiality of the Project Sales Tax Receipts, Developer hereby waives any and all right of confidentiality, which Developer may have in respect of sales taxes generated from the Project. Without limiting the generality of the preceding sentence, Developer agrees that City shall have the right to inspect and audit the books and records of Developer to confirm the total amount of sales taxes and Project Sales Tax Receipts attributable to Phase One. Developer shall use reasonable efforts to cause all leases of Phase One and other contracts with Occupants relating to occupancy of Phase One that are executed after the date of this Agreement to include provisions in which the Occupant (i) waives, for the benefit of both Developer and City, any and all rights of confidentiality which such Occupant may have in respect of sales taxes generated from its business at Phase One; (ii) agrees that City shall have the right to inspect and audit the books and records of such Occupant to confirm the total amount of sales taxes generated from the business of such Occupant at Phase One; and (iii) agrees that if during the Sales Tax Rebate Period it has more than one location within the Lawton, Oklahoma city limits it will provide to the Oklahoma Tax Commission a calculation of sales taxes attributable to the store located in Phase One separate from the sales taxes attributable to such other location(s) within the Lawton, Oklahoma, city limits.
- d) City will use its best efforts to obtain from the Oklahoma Tax Commission such sales tax reports as are necessary for City to confirm the Project Sales

Tax Receipts for the immediately preceding calendar year. If City is unable to obtain the amount of sales taxes generated from the business of an Occupant, then such Occupant shall be deemed to have generated no sales taxes for the purposes of calculating the rebate of Project Sales Tax Receipts. City shall use reasonable efforts to maintain the confidentiality of the Project Sales Tax Receipts, subject to any laws that may require disclosure thereof. Performance of this provision shall be deemed to have been completed at the end of the Sales Tax Rebate Period or when receipt of the \$750,000 by Developer is complete, whichever is earlier. Unless terminated earlier by another provision of this Agreement, the Agreement will terminate when the first of the aforementioned conditions is met.

- e) Developer will provide to City as soon as is reasonably practicable after the effective date of this Agreement and in any event within thirty (30) days following the date/dates any Phase One Store opens for business in Phase One, an initial or updated, as applicable, roster confirming the Occupants of Phase One and such federal tax identification numbers, sales tax permit numbers, and releases as are obtained by Developer from such Occupants pursuant to Section 4(b) hereof. In addition to the above and foregoing, City shall be entitled, at least on an annual basis, to a report from the Oklahoma Tax Commission on the amount of sales tax generated from Phase One. Developer shall cooperate with City and the Oklahoma Tax Commission to provide information necessary to generate the report requested by City. To allow City to identify accounts for verification, as often as is necessary, but not less often than annually, Developer shall provide to City an updated roster confirming the Occupants of Phase One and any additional federal tax identification numbers and releases obtained by Developer.

5. **Maximum Incentive.** Notwithstanding anything contained herein to the contrary, in no event shall the sum of the cumulative rebates of sales taxes made by City under this Agreement exceed the sum of \$750,000. Accordingly, notwithstanding any other provision of this Agreement, if the sum of the amounts described herein prior to the expiration of the Sales Tax Rebate Period reaches \$750,000, then as of such date Developer shall not be entitled to any further tax rebates or other incentives under this Agreement.

6. **Validity of Incentives.** It is understood and expressly agreed by Developer that City does not warrant or guarantee that the grant of sales tax rebates as provided for in this Agreement will be upheld as valid, lawful, enforceable or constitutional in the event the statutory authority for same or City's use thereof is challenged by court action. In the event such action related to this Agreement is instituted, Developer shall be responsible for defending itself, this Agreement, and the sales tax rebates hereunder, at Developer's sole cost of defense. Developer and City shall cooperate with each other in defending against such action to the extent permitted by applicable law. Should such litigation result in the loss of tax rebates as previously paid as provided herein, Developer shall be solely responsible for the payment of all taxes due, including

all taxes which otherwise would have been paid to City without the benefit of sales tax rebates without recourse to City, and without any obligation by City to reimburse same back to Developer.

In the event of any legislative or judicial interpretation that limits or restricts City's ability to rebate the general sales tax rebates herein provided or otherwise extracts or imposes any penalty or other restriction upon the payment of same, such rebate will cease and be of no further force, effect or consequence in which event City shall be under no further obligation to Developer. However, City and Developer may agree to modify the sales tax rebate provided for herein to the extent permitted by such legislative or judicial action to the fullest extent then authorized without penalty or other restriction upon City for the rebate of same. Each party shall be responsible for its respective attorney's fees under this Section 6.

In the event the Oklahoma Tax Commission determines, for any reason, that any sales taxes were erroneously paid to City from the sales provided for herein and City shall be required to rebate or repay any portion of such taxes, the amount of such rebate or repayment shall be deducted from the calculation of the general sales taxes paid to Developer and in the event the calculation of sales taxes during the Sales Tax Rebate Period shall reflect an overpayment of the payments, as provided for herein, by City to Developer, Developer agrees to reimburse City the amount of such overpayment, through: (1) an adjustment from the next payment due during the Sales Tax Rebate Period, or in the event the Sales Tax Rebate Period has expired, (2) by direct payment from Developer to City within thirty days after being notified by City of such overpayment.. Notice, given in accordance with Section 14 hereof, of any such required adjustment will be provided to Developer at the earliest practical date.

7. **Default.** In the event that (a) at any time during the term of this Agreement, taxes owed to City by Developer become delinquent (provided that Developer retains its right to timely and properly follow the legal procedures for protest and/or contest of any such taxes), or (b) Developer breaches any of the terms and conditions of this Agreement, then Developer shall be in default under this Agreement. In the event of such default, City shall give Developer written notice of such default, and if Developer has not cured such default in its entirety within ninety (90) days of said written notice, this Agreement may be terminated by City, in which event Developer shall no longer have the benefit of any rebates set forth herein that accrue on or after the date of such termination. Notice shall be given in accordance with Section 14 hereof. It is expressly agreed that, notwithstanding any termination or expiration of this Agreement, City shall, throughout the period of any applicable statute of limitations, maintain its rights to audit books and records under Section 4 hereof and to collect any amounts owed to City due to miscalculations of the sales tax rebates provided to Developer hereunder.

8. **Intentionally Omitted.**

9. **Assignment.** In connection with a sale of the Project to a bona fide third party purchaser, Developer shall have the right without City's consent to either: (a) assign its rights and obligations under this Agreement; or (b) to retain its rights and obligations under this Agreement. Within thirty (30) days following a sale of the Project, Developer shall provide City written notice of its election of (a) or (b) above. In the event Developer elects (a) above, then the

assignee ("New Developer") shall execute and deliver to City an instrument, reasonably satisfactory to City in form and substance, whereby New Developer (i) agrees that it will continue to operate the Project as a retail shopping center during the remaining term of this Agreement, and (ii) assumes all the obligations of Developer under this Agreement and agrees to be bound by the provisions of this Agreement during the remaining term of this Agreement as if New Developer had been the original Developer hereunder.

10. **Indemnity.** It is understood and agreed between the parties that Developer in performing its obligations hereunder, is acting independently, and City assumes no responsibility or liability in connection therewith to third parties, and Developer agrees to forever indemnify, defend and hold harmless City, its officers, agents and employees, against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons that may arise out of or be occasioned by Developer's breach of any of the terms or provisions of this Agreement, or by any negligent act or omission of Developer, its officers, agents, associates, employees or subconsultants, in the performance of this Agreement; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of City, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence of both Developer and City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Oklahoma, without, however, waiving any governmental immunity available to City under Oklahoma law and without waiving any defenses of the parties under Oklahoma law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

11. **Term.** The term of this Agreement shall expire upon the end of the Sales Tax Rebate Period, unless terminated prior to such time in accordance with the provisions of this Agreement. Except as stated otherwise in this Agreement, any obligations of the parties, as well as any rights and benefits of the parties, which by the express terms of this Agreement or of necessity pertain to a period of time following the termination of this Agreement, shall survive termination.

12. **Public Infrastructure Improvements.** In connection with its construction Phase One of the Project, and as the primary consideration for the rebate of sales tax made by City in a sum not to exceed \$750,000, Developer will be constructing certain public infrastructure improvements necessitated by Phase One of the Project. These public improvements are subject to Developer's compliance with all City ordinances and regulations with respect to the construction performed by Developer. Specifically, Developer agrees to construct those public water, sewer, and roadway improvements as indicated within the construction plans as approved by the City Council, to include each of the improvements listed on Exhibit B attached hereto and made a part hereof. Upon completion of all listed improvements, Developer will provide to City final hard and soft construction costs (including, but not limited to, interest carry and other financing costs) of each improvement within thirty (30) days of such completion as the basis for determining the actual sales tax rebate (not to exceed \$750,000) due to Developer.



13. **Requirements for Construction Purposes.** Developer shall use reasonable efforts to include in the contract it enters into with each contractor for construction of improvements to Phase One of the Project a requirement that, to the extent feasible, such contractor shall cause construction purchases to be delivered to the Project and use the appropriate City street address for such purchases and deliveries in such a manner that Oklahoma and City municipal sales and/or use taxes, to the extent applicable, shall apply to such purchases of building items and construction materials to be used for Phase One. Developer shall provide City copies of invoices Developer receives from such contractors for purchases to which this Section 13 applies. Developer agrees that City shall have the right to inspect and audit the books and records of Developer to confirm the total amount of purchases to which this Section 13 applies.

14. **Notices.** Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mail by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described.

If intended for City, to:

City of Lawton  
City Manager  
212 SW 9th Street  
Lawton, Oklahoma 73501

If intended for Developer, to:

Cache Properties, LLC  
Attn. Michael McKee  
1834 NW 52<sup>nd</sup> Street  
Lawton, Oklahoma 73505

With a copy, to:

Cache Properties, LLC  
3434 West Reno Ave.  
Oklahoma City, OK 73107  
Attn: David Burrage and Sissy Holloway  
Email: [dburrage@mathisbrothers.com](mailto:dburrage@mathisbrothers.com)  
[sholloway@mathisbrothers.com](mailto:sholloway@mathisbrothers.com)

15. **Venue.** The obligations of the parties to this Agreement are performable in Comanche County, Oklahoma, and if legal action is necessary to enforce same, exclusive venue shall lie in Comanche County, Oklahoma.

16. **Applicable Laws.** This Agreement and construction of Phase One is made subject to the provisions of the Charter and ordinances of City, as amended, and all applicable State and federal laws.

17. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Oklahoma.

18. **Legal Construction.** 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 affect any other provision thereof, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

19. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

20. **Captions.** The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

21. **Entire Agreement.** This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

22. **Subject to Annual Appropriations.** It is hereby acknowledged that under Oklahoma law, City may not become obligated to transfer money beyond its fiscal year (July 1 – June 30) and therefore the covenants to rebate sales taxes made herein by City shall be on a year-to-year basis to be renewed by the annual appropriation for additional one year periods until such time as the pledged sales tax rebate has been paid or the Sales Tax Rebate Period has expired, whichever occurs first.

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**EXECUTED** to be effective as of this \_\_\_th day of September, 2021.

CITY OF LAWTON, OKLAHOMA,  
a Municipal Corporation

By: \_\_\_\_\_  
STANLEY BOOKER, Mayor

ATTEST:

\_\_\_\_\_  
TRACI L. HUSHBECK, City Clerk

CACHE PROPERTIES, LLC,  
An Oklahoma limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Manager

Approved as to form and legality for City of Lawton, Oklahoma, this \_\_\_\_\_ day of September, 2021.

\_\_\_\_\_  
JOHN RATLIFF, City Attorney

**EXHIBIT A**  
**LEGAL DESCRIPTION**

## **EXHIBIT B**

### **Off-Site Infrastructure and Public Utilities**

**EXHIBIT C**  
**SITE PLAN**