

STATE OF TEXAS                   §  
  §       ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT  
COUNTY OF WILLIAMSON §

This Economic Development Incentive Agreement (“Agreement”) is made by and between the Georgetown Economic Development Corporation, a Type A sales tax corporation (“GEDCO”), and Confido III, LLC, a Texas limited liability company (“Company”) (GEDCO and Company each a “Party” and collectively the “Parties”), acting by and through their respective authorized representatives.

**W I T N E S S E T H:**

**WHEREAS**, Company owns or is under contract with Declarant (hereinafter defined) to purchase the real property described in Exhibit “A” (the “Land”), and intends to develop and use the Land for industrial park uses (the “Project”); and

**WHEREAS**, the Land is a portion of approximately 56.07 acres of land located in the City of Georgetown, Williamson County, Texas owned by the Declarant described as Lot 1, Block B, Lot 1, Block C, and Lot 1, Block D, of the Havins Airport Commercial Subdivision, an addition to the City of Georgetown, Williamson County, Texas, according to the map or plat thereof recorded in Document No. 2019011029, Official Public Records of Williamson County, Texas (the “Declarant Property”); and

**WHEREAS**, Company as a condition of closing on the purchase of Land has required Declarant to seek and obtain enactment by the City of an ordinance amending the zoning regulations relating to the use and development of the Land to be used and developed in accordance with regulations applicable to the Industrial Zoning District, File Number REZ-2018-018 Havins Zoning (“the Zoning Amendment”) as set forth in City’s Uniform Development Code, as amended (“UDC”); and

**WHEREAS**, Company intends to invest a minimum of One Million Seven Hundred Thousand Dollars (\$1,700,000.00) in the Land, Infrastructure (hereinafter defined), and real property improvements for the Project; and

**WHEREAS**, Company has advised GEDCO that a contributing factor that would induce Company to purchase the Land and construct the Project would be an agreement by GEDCO to provide an economic development grant to Company to offset the costs for Infrastructure (hereinafter defined) necessary for the Project; and

**WHEREAS**, as a condition to, and in consideration of an economic development grant to be provided by GTEC (hereinafter defined) to Company pursuant to the GTEC Economic Development Agreement (hereinafter defined) and as a condition to, and as consideration of the Grant (hereinafter defined) to be provided by GEDCO to Company herein, Company, GEDCO and GTEC have required, and Company has agreed to restrict, the uses and development of the Land pursuant to the Deed Restrictions (hereinafter defined) and to cause Declarant to agree to restrict the uses and development of the Declarant Property pursuant to the Deed Restrictions; and

**WHEREAS**, GEDCO has adopted programs for promoting economic development; and

**WHEREAS**, the Development Corporation Act, Chapter 501-505 of the Texas Local Government Code (the “Act”) authorizes GEDCO to provide economic development grants for the creation and retention of primary jobs that are required for the development of manufacturing and industrial facilities and for infrastructure suitable for new or expanded industrial business enterprises; and

**WHEREAS**, GEDCO has determined that the Grant to be made hereunder is required or suitable to promote corporate relocation or develop new or expanded business enterprises and constitutes a “project”, as that term is defined in the Act; and

**WHEREAS**, GEDCO has determined that providing the Grant to Company in accordance with this Agreement will further the objectives of GEDCO, will benefit the City and the City’s inhabitants and will promote local economic development and stimulate business and commercial activity in the City.

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

### **Article I Definitions**

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Bankruptcy or Insolvency” shall mean the dissolution or termination of Company’s existence, insolvency, employment of receiver for any part of Company’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors or the commencement of any proceedings under any bankruptcy or insolvency laws by or against Company and such proceedings are not dismissed within ninety (90) days after the filing thereof.

“Capital Investment” shall mean the total capitalized cost incurred and paid by Company for the acquisition of the Land, the construction of the Project and the Infrastructure.

“City” shall mean the City of Georgetown, Texas.

“Commencement of Construction” shall mean that: (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Infrastructure; and (ii) all necessary permits for the construction of the Infrastructure, pursuant to the respective plans therefore have been issued by all the applicable governmental authorities; and (iii) clearing and/or grading of the Land.

“Company” shall mean Confido III, LLC, a Texas limited liability company.

“Company Affiliate” means any entity related to Company by direct or indirect common or overlapping majority ownership, where collectively Company and Company Affiliate are a group of entities in which a single parent entity owns directly or indirectly a majority interest in each other entity that is part of the group.

“Completion of Construction” shall mean that: (i) substantial completion of the Infrastructure has occurred; and (ii) City has conducted the final inspection and accepted the Infrastructure.

“Declarant” shall collectively mean Stanley Havins, Larry Michael Havins aka Larry Havins, and Mary Elizabeth Havins aka Mary Havins Hill, individually and as Independent Executor of the Estate of Frances P. Havins aka Frances E. Havins, Deceased.

“Deed Restrictions” shall mean that certain Declaration of Covenants, Conditions and Restrictions made by Declarant imposing certain covenants, conditions, and restrictions upon the development and use of the Declarant Property and which inter alia grants City the right to enforce said covenants, conditions and restrictions.

“Effective Date” shall mean the last date of execution hereof.

“Expiration Date” shall mean the date the Parties have satisfied their respective obligations herein.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the Party), fires, earthquake, volcanic eruption, impact of meteor or extraterrestrial body, tidal or wave event such as a tsunami, meteorological event including but not limited to tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages, plague or other epidemiological event.

“GEDCO” shall mean the Georgetown Economic Development Corporation.

“Grant” shall mean an economic development grant in an amount equal to fifty percent (50%) of the actual costs paid and incurred by Company for the design, construction and installation of the Infrastructure, not to exceed Six Hundred Thousand Dollars (\$600,000.00), to be paid as set forth herein.

“GTEC” shall mean Georgetown Transportation Enhancement Corporation.

“GTEC Economic Development Incentive Agreement” shall mean that certain Economic Development Incentive Agreement of approximate even date herewith by and between GTEC and Company or Company Affiliate relating to the Project.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license, and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company with respect to any property or any business owned by Company and/or Company Affiliate within City.

“Infrastructure” shall collectively mean: (i) collector level street intersecting with Lakeway Drive that will provide internal access within the Land connecting to City’s airport property in accordance with plans approved by the City; and (ii) right-hand turn lane on Lakeway Drive in accordance with plans approved by the City, as generally depicted in **Exhibit “B”**.

“Land” shall mean a portion of the Declarant Property described in **Exhibit “A”**, as generally depicted in **Exhibit “B”**.

“Payment Request” shall mean a written request from Company to GEDCO for payment of the Grant accompanied by copies of invoices, bills, receipts and such other information, as may reasonably be requested by the GEDCO evidencing the costs incurred and paid by the Company for Infrastructure and evidencing the Capital Investment.

“Property” shall mean the Land and any improvements constructed thereon.

“Related Agreement” shall mean any agreement (other than this Agreement) by and between the City, GEDCO, and/or GTEC and Company and/or a Company Affiliate.

“Zoning Amendment” shall mean the ordinance adopted by the City Council for the City amending the zoning regulations relating to the use and development of the Land (File Number REZ-2018-018 Havins Zoning) and the Declarant Property to be used and developed in accordance with regulations applicable to the Industrial Zoning District as set forth in City’s Uniform Development Code, as amended.

## **Article II**

### **Term**

The term of this Agreement shall begin on the Effective Date and continue until the Expiration Date, unless sooner terminated as provided herein.

## **Article III**

### **Economic Development Grant**

3.1 **Grant.** Subject to the obligation of Company to repay the Grant pursuant to Article V herein, and the continued satisfaction of all the terms and conditions of this Agreement by Company, GEDCO agrees to provide the Grant to Company to be paid within thirty (30) days after receipt of the Payment Request following Completion of Construction of the Infrastructure.

3.2 Current Revenue. The Grant made hereunder shall be paid solely from lawful available funds, which have been appropriated by GEDCO. Under no circumstances shall the obligations of GEDCO hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, GEDCO shall have no obligation or liability to pay the Grant except as allowed by law.

3.3 Grant Limitations. GEDCO shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by Company. None of the obligations of GEDCO under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

#### **Article IV**

#### **Conditions to Economic Development Grant**

The obligation of GEDCO to pay the Grant to Company shall be conditioned upon the compliance and satisfaction by Company of the terms and conditions of this Agreement and each of the conditions set forth in this Article.

4.1 Good Standing. As a condition of the payment of the Grant, Company shall not have an uncured breach or default of this Agreement or a Related Agreement.

4.2 Payment Request. Company shall, as a condition precedent to the payment of the applicable Grant, timely provide City with the applicable Payment Request.

4.3 Zoning Amendment. The Zoning Amendment shall have been approved by the City.

4.4 Infrastructure Construction. Company shall, subject to events of Force Majeure, cause Commencement of Construction of the Infrastructure to occur within two (2) years after the Effective Date, and shall subject to events of Force Majeure, cause Completion of Construction of the Infrastructure to occur within three (3) years after the Effective Date.

4.5 Capital Investment. The Capital Investment shall be at least One Million Seven Hundred Thousand Dollars (\$1,700,000.00) as of the date of Completion of Construction of the Infrastructure. Company shall within thirty (30) days after the date of Completion of Construction of the Infrastructure provide GEDCO with copies of receipts and other records evidencing the required Capital Investment and such other records as GEDCO may reasonably request.

4.6 Compliance with UDC. The Land and any improvements constructed thereon shall comply with the UDC standards for non-residential development, as well as design and materials for non-residential development for all building facades visible from Lakeway Drive.

## **Article V Termination**

- 5.1 This Agreement shall terminate upon any one of the following:
- (a) by written agreement of the Parties;
  - (b) Expiration Date;
  - (c) upon written notice by either Party in the event the other Party breaches any of the terms or conditions of this Agreement or a Related Agreement and such breach is not cured within sixty (60) days after written notice thereof;
  - (d) upon written notice by GEDCO, if Company suffers an event of Bankruptcy or Insolvency;
  - (e) upon written notice by GEDCO, if any Impositions owed to City or the State of Texas by Company shall become delinquent after sixty (60) days written notice is delivered pursuant to this Agreement (provided, however Company retains the right to timely and properly protest and contest any such Impositions); and
  - (f) upon written notice by either Party, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

5.2 Repayment. In the event this Agreement is terminated by GEDCO pursuant to Section 5.1(c), (d), (e), or (f), Company shall immediately repay to GEDCO an amount equal to the Grant previously paid by GEDCO to Company as of the date of termination, plus interest at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by GEDCO) as its prime or base commercial lending rate, which shall accrue from the date of the Grant payment until paid.

5.3 Offsets. GEDCO may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to GEDCO and/or City from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise, and regardless of whether the debt due GEDCO and/or City has been reduced to judgment by a court.

## **Article VI Miscellaneous**

6.1 Binding Agreement; Assignment. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, affiliates, administrators, executors, and permitted assigns

of the respective Parties. This Agreement may not be assigned without the prior written consent of GEDCO; provided however Company may upon thirty (30) days prior written notice to GEDCO assign this Agreement to a Company Affiliate.

6.2 Limitation on Liability. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties. It is understood and agreed between the Parties that Company, in satisfying the conditions of this Agreement, has acted independently, and GEDCO assumes no responsibilities or liabilities to third parties in connection with these actions. Company agrees to indemnify and hold harmless GEDCO from all such claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever arising out of the Company's performance of the conditions under this Agreement.

6.3 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. The undersigned officers and/or agents of the Parties are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties.

6.4 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received as sent by courier or otherwise hand delivered.

If intended for GEDCO, to

President  
Georgetown Economic Development  
Corporation  
City of Georgetown  
808 Martin Luther King, Jr. Street  
Georgetown, Texas 78626

With a copy to:

City Attorney  
City of Georgetown  
113 E. Eighth Street  
Georgetown, Texas 78626

If intended for Company, to:

Attn: Nicholas R. Boyd  
Confido III, LLC  
10812 Galsworthy Lane  
Austin, Texas 78739

With a copy to:

Attn: Jonathan S. Connor  
Blazier, Christensen, Browder & Virr, PC  
901 S. Mopac, Building V, Suite 200  
Austin, Texas 78746

6.5 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

6.6 Governing Law. This Agreement shall be governed by the laws of the State of Texas, and venue for any action concerning this Agreement shall be in the State District Court of Williamson County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said Court.

6.7 Amendment. This Agreement may be amended by the mutual written agreement of the Parties.

6.8 Legal Construction. In the event 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 other provisions, and it is the intention of the Parties 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.

6.9 Recitals. The recitals to this Agreement are incorporated herein.

6.10 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 Exhibits. Any exhibits to this Agreement are incorporated herein by reference for the purposes wherever reference is made to the same.

6.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.13 Employment of Undocumented Workers. During the term of this Agreement, Company agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Company shall repay the amount of the Grant and any other funds received by Company from the GEDCO as of the date of such violation within 120 days after the date Company is notified by the GEDCO of such violation, plus interest at the rate of 4% compounded annually from the date of violation until paid. Company is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of Company or by a person with whom Company contracts.

6.14 Conditions Precedent. This Agreement is expressly subject to and the obligations of the Parties are conditioned on the following: (i) Company closing its purchase of the Land on or before September 1, 2019; (ii) the execution of the GTEC Economic Development Agreement; (iii) the execution and recordation of the Deed Restrictions; and (iv) the approval of the Zoning Amendment.

*[Signature Page to Follow]*



**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**GEORGETOWN ECONOMIC  
DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Kevin Kelly, President

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**CONFIDO III, LLC**

By: \_\_\_\_\_  
Name: Nicholas R. Boyd  
Title: Managing Member

CERTIFICATION OF CITY COUNCIL APPROVAL

I hereby certify that the foregoing Economic Development Incentive Agreement of the Georgetown Economic Development Corporation and the Project described therein was approved by the City Council of the City of Georgetown, Texas, on the \_\_\_\_ day of \_\_\_\_\_, 2019.

THE CITY OF GEORGETOWN, TEXAS  
A Texas home-rule municipality

By: \_\_\_\_\_  
Dale Ross, Mayor

By: \_\_\_\_\_  
Robyn Densmore, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Charlie McNabb, City Attorney

**Exhibit “A”**

Lot 1, Block C, of the Havins Airport Commercial Subdivision, an addition to the City of Georgetown, Williamson County, Texas, according to the map or plat thereof recorded in Document No. 2019011029, Official Public Records of Williamson County, Texas.

# Exhibit "B"

