

ORDINANCE NO. 3772

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE A MASTER DEVELOPMENT AGREEMENT WITH GENERAL GROWTH PROPERTIES FOR THE RECONSTRUCTION OF THE LOOP WATER MAIN TO SERVE TOWN EAST MALL WHICH WILL BE REIMBURSED BY THE TOWNE CENTRE TAX INCREMENT FINANCE REINVESTMENT ZONE NUMBER TWO, CITY OF MESQUITE, TEXAS; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Mesquite (the "City") recognizes the importance of its continued role in local economic development; and

WHEREAS, the City Council of the City of Mesquite, Texas (the "City Council"), established the Towne Centre Tax Increment Finance Reinvestment Zone Number Two, City of Mesquite, Texas (the "TIF Zone") and approved a Project and Financing Plan (the "Plan"), for such zone in accordance with the Tax Increment Financing Act, as amended pursuant to V.T.C.A., Tax Code, Chapter 311 (the "Act") to promote development and redevelopment in the TIF Zone through the use of tax increment financing; and

WHEREAS, the Act authorizes the expenditure of funds derived within the TIF Zone (the "Tax Increment Fund") for the construction of public improvements consistent with the Plan, in which expenditures and monetary obligations constitute project costs as defined in the Act (the "Project Costs"); and

WHEREAS, General Growth Properties ("GGP") presented a proposal to the Board of Directors of the TIF Zone (the "TIF Board") to construct certain public improvements in accordance with a proposed developer participation contract (the "Development Agreement") for the reconstruction of the loop water main at Town East Mall (the "Water Main Reconstruction"); and

WHEREAS, on September 16, 2005, the TIF Board approved the expenditures set forth in this Development Agreement, thereby adopting an amendment to the Plan to include such expenditures as Project Costs and authorizing reimbursement from the Towne Centre TIF Zone Tax Increment Fund in an amount not to exceed \$3,000,000.00 plus interest for the Water Main Reconstruction; and

WHEREAS, pursuant to Ordinance No. 3771 approved on October 17, 2005, the City Council approved the amendments to the Plan to include such Project Costs thereby authorizing reimbursement to GGP from the Tax Increment Fund for a portion of the costs advanced by GGP for the Water Main Reconstruction as set forth in this Development Agreement; and

WHEREAS, the reimbursement of funds advanced by GGP for the Water Main Reconstruction is for the purpose of making public improvements consistent with and described in the Plan for the TIF Zone.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the terms and conditions of the developer participation contract between the City and General Growth Properties (the "Development Agreement"), which is attached hereto and made a part hereof for all purposes as Exhibit "A," having been reviewed by the City Council and found to meet the requirements of Subchapter C, Chapter 212, Local Government Code and in the best interests of the City of Mesquite and its citizens, are hereby in all things approved.


SECTION 2. That the Mayor is hereby authorized to execute the Development Agreement and all other documents in connection therewith on behalf of the City of Mesquite substantially according to the terms and conditions set forth therein.

SECTION 3. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 4. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

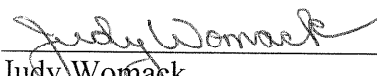
SECTION 5. That the need to enter into this Master Development Agreement and the need to protect the public interest, comfort and general welfare of the citizens of the City of Mesquite, creates an urgency and an emergency for the preservation of the public health, safety and welfare, and requires that this ordinance shall take effect immediately from and after its passage and publication of said ordinance, as the law in such cases provides.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 17th day of October, 2005.




Mike Anderson
Mayor

ATTEST:



Judy Womack
City Secretary

APPROVED:



B. J. Smith
City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

DEVELOPMENT AGREEMENT WITH TOWN EAST MALL, L.P., FOR THE RECONSTRUCTION OF THE LOOP WATER MAIN AT TOWN EAST MALL.

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as "AGREEMENT") is entered into by and between the City of Mesquite, a Texas municipal corporation of Dallas County, Texas (hereinafter referred to as "CITY"), and Town East Mall, L.P., a Delaware limited partnership, acting by and through its duly authorized officers and its affiliates (hereinafter referred to as "GGP"). GGP is an affiliate of General Growth Properties, Inc., a Delaware corporation.

WITNESSETH:

WHEREAS, CITY recognizes the importance of its continued role in local economic development; and

WHEREAS, on September 21, 1998, the City Council of the City of Mesquite, Texas, approved Ordinance No. 3257 establishing the Towne Centre Tax Increment Financing Reinvestment Zone Number Two, City of Mesquite, Texas (hereinafter referred to as "TOWNE CENTRE TIF ZONE"), as amended, in accordance with the Tax Increment Financing Act, as amended pursuant to V.T.C.A., Tax Code, Chapter 311 (hereinafter referred to as the "ACT") to promote development and redevelopment in the Towne Centre area through the use of tax increment financing; and

WHEREAS, the ACT authorizes the expenditure of funds derived within a reinvestment zone, whether from bond proceeds or other funds, for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by a municipality consistent with the project plan of the reinvestment zone, in which expenditures and monetary obligations constitute project costs as defined in the ACT (hereinafter referred to as "PROJECT COSTS"); and

WHEREAS, on September 16, 2005 the Board of Directors for the TOWNE CENTRE TIF ZONE (hereinafter referred to as the "TIF Board") approved this AGREEMENT, authorizing reimbursement to GGP from the Tax Increment Fund for the TOWNE CENTRE TIF ZONE (hereinafter referred to as the "TAX INCREMENT FUND");

WHEREAS, pursuant to Ordinance No. 3772 approved on October 17, 2005, the City Council of the City of Mesquite, Texas, authorized the execution of this AGREEMENT, wherein reimbursement will hereby be made to GGP

from the TAX INCREMENT FUND for the costs advanced by GGP to design and construct the loop water line at Town East Mall (hereinafter referred to as the "WATER LOOP"); and

WHEREAS, the work under this AGREEMENT involves the design and construction of a new water main surrounding Town East Mall. This water main was originally installed during construction of the mall in the early 1970's and was never dedicated to the CITY. Due to the age of the water main, numerous breaks have occurred which have jeopardized the life, safety, and welfare of area citizens and which have negatively impacted Town East Mall and the CITY. The design and construction of the replacement WATER LOOP will be funded by GGP and utilize City approved engineering designs and comply with bidding and construction requirements as set forth in this AGREEMENT.

WHEREAS, the contemplated improvements to be developed within the TOWNE CENTRE TIF ZONE, as set forth in this AGREEMENT, are consistent with encouraging development of the TOWNE CENTRE TIF ZONE in accordance with the purposes for its creation and are in compliance with the CITY's Guidelines and Criteria as established by the ordinance creating such reinvestment zone adopted by the CITY and all applicable laws; and

WHEREAS, the reimbursement of funds advanced by GGP for the cost of the design and construction of the WATER LOOP is for the purpose of making public improvements consistent with and described in the Project Plan and Reinvestment Zone Financing Plan for the TOWNE CENTRE TIF ZONE (hereinafter referred to as the "PROJECT PLAN"), which plan is attached hereto and made a part hereof for all purposes as Exhibit "A".

NOW THEREFORE, in consideration of the mutual covenants and obligations herein the parties agree as follows:

SECTION 1. DEVELOPMENT PLAN FOR TOWNE CENTRE AREA
IMPROVEMENTS

In conjunction with the long-term development plan for the TOWNE CENTRE TIF ZONE, as described in the PROJECT PLAN, and subject to the provisions of this AGREEMENT, GGP agrees to advance to CITY for public purposes the funding necessary to design and construct the WATER LOOP improvements. The WATER LOOP improvements to be constructed with the advanced funding shall hereinafter be referred to as the "PROJECT". A description of the PROJECT is attached hereto and made a part hereof for all purposes as Exhibit "B". The PROJECT is located entirely within the city limits and within the TOWNE CENTRE TIF ZONE and all eligible infrastructure improvements shall be constructed within the public right-of-way, within public easements, or within right-of-way or easements to be dedicated to CITY. GGP agrees that all improvements, whether located within or outside of the right-of-way or easements, that are reimbursed from the TAX INCREMENT FUND shall belong to CITY

upon final completion of the PROJECT and acceptance of all improvements by the Department of Public Works. GGP shall use its best efforts to expeditiously complete construction of the PROJECT and obtain a final certificate of acceptance by the Department of Public Works for the improvements.

SECTION 2. CITY PARTICIPATION

In consideration of GGP's advance of funding for the PROJECT, CITY agrees, subject to the conditions contained in this AGREEMENT, to reimburse GGP for the PROJECT COSTS from current funds in the TAX INCREMENT FUND, as such funds are on deposit in the TAX INCREMENT FUND; provided however, that notwithstanding any other provisions to the contrary, CITY'S obligation to reimburse GGP as described below shall be limited to those aggregate costs for design and construction, estimated to be three million dollars (\$3,000,000.00) plus interest as specified in Section 3C, which have been incurred by GGP as summarized in Exhibit "B". The costs incurred by GGP under this AGREEMENT shall be reimbursed solely from the TAX INCREMENT FUND, subject to the limitation on reimbursement provided in Sections 2, 3, and 4 of this AGREEMENT. Notwithstanding any other provision to the contrary, in no event shall the monies on deposit in the TAX INCREMENT FUND be used to reimburse GGP for PROJECT COSTS advanced under this AGREEMENT in excess of three million dollars (\$3,000,000.00) plus interest as specified in Section 3C, without prior authorization by the TIF Board and the City Council for CITY and pursuant to any applicable provisions in the ACT.

SECTION 3. REIMBURSEMENT PROCEDURE

A. CITY and GGP agree that the PROJECT COSTS advanced by GGP may be reimbursed only from the TAX INCREMENT FUND, subject to the conditions and limitations set out in Sections 2, 3, and 4 of this AGREEMENT and only to the extent such funds are on deposit or to be deposited in the TAX INCREMENT FUND after (i) prior obligations approved by CITY have been paid; and (ii) the WATER LOOP improvements are completed in accordance with all the conditions contained in this AGREEMENT. GGP agrees to look solely to the TAX INCREMENT FUND and not to CITY's general funds or other CITY bond funds for reimbursement of all PROJECT COSTS advanced by GGP. Nothing in this AGREEMENT shall be construed to require CITY to approve reimbursements from any source of CITY funds other than the TAX INCREMENT FUND or to require CITY to issue TIF bonds, the issuance of such bonds being within the discretion of the City Council of the CITY. **Upon the expiration of the term of the TOWNE CENTRE TIF ZONE as provided in the ordinance creating same, as amended, any PROJECT COSTS advanced by GGP under this AGREEMENT that remain un-reimbursed due to the lack or unavailability of TAX INCREMENT FUNDS or due to GGP's failure to meet any precondition of reimbursement under this AGREEMENT, shall no longer be considered PROJECT COSTS of the TOWNE CENTRE TIF ZONE and any obligation of CITY to reimburse**

GGP shall automatically expire on such date; this provision, however, shall not be construed to limit or modify the obligations or covenants contained in any outstanding TIF bonds which CITY in its discretion may issue for the purpose of paying or reimbursing PROJECT COSTS. Further, any increment which has accrued during the term of the TOWNE CENTRE TIF ZONE but is collected subsequent to the date on which the term of the TOWNE CENTRE TIF ZONE expires shall be applied toward the un-reimbursed payment of PROJECT COSTS that remains un-reimbursed immediately prior to the expiration of the term.

B. The frequency and amount of reimbursement to GGP under this AGREEMENT shall coincide with the frequency and amount of payments made by the various taxing units into the TAX INCREMENT FUND from fiscal year to fiscal year. Subject to all limitations and conditions precedent contained in this AGREEMENT, CITY agrees to reimburse PROJECT COSTS advanced by GGP within thirty (30) days after receipt of payments into the TAX INCREMENT FUND. **HOWEVER, CITY reserves the right, when payments come into the TAX INCREMENT FUND, to repay all or any portion of the total amount to be reimbursed under this AGREEMENT at any given time.** CITY will administer reimbursements from the TAX INCREMENT FUND for any monies advanced for the purpose of funding PROJECT COSTS in an order of priority as hereinafter provided, generally coinciding with the date of advances, with the earliest advances paid off first and maintaining at all times in the TAX INCREMENT FUND a minimum fund balance as may be recommended by the TIF Board and City Council for CITY. Payments made pursuant to this AGREEMENT are fourth in priority, subject only to the following outstanding obligations for other projects described in the PROJECT PLAN, as each may be amended:

- (1) Monies borrowed from the State Infrastructure Bank ("SIB") pursuant to that certain loan agreement in the principal amount of five million six hundred fifteen thousand two hundred eighty seven dollars (\$5,615,287.00) plus interest from the SIB to pay for public improvements in the TOWNE CENTRE TIF ZONE to reconstruct the I-635 main lanes from Town East Boulevard to US 80.
- (2) The balance of monies advanced by Mesquite Independent School District ("MISD") to reimburse MISD for construction of public improvements in the TOWNE CENTRE TIF ZONE in the amount of six million dollars (\$6,000,000.00) plus interest for campus improvements and in the amount of two million seven hundred and five thousand six hundred and sixteen dollars (\$2,705,616.00) plus interest for operation of project facilities.
- (3) Monies advanced by Mesquite Quality of Life for reimbursement of design and engineering costs for public improvements in the TOWNE CENTRE TIF ZONE in the amount of one million nine hundred sixty four and twenty five dollars (\$1,964,025.00) plus interest to reconstruct the I-635 main lanes from Town East Boulevard to US 80.

C. Interest on any unpaid PROJECT COSTS advanced by GGP under this AGREEMENT shall accrue beginning from the date construction of the WATER LOOP as summarized in Exhibit B has been completed and the improvements have been accepted by CITY. The interest rate at which such interest shall be calculated shall be a fixed rate equal to 5.25% or the maximum rate provided by law, whichever is less. Such interest will be compounded monthly based on the existing unpaid balance plus accrued interest to date and shall cease to accrue under this AGREEMENT when the existing unpaid balance plus any previously accrued interest is fully reimbursed or paid off, or upon expiration of the term of the TOWNE CENTRE TIF ZONE as provided in the ordinance creating same as amended. Nothing in this sub-paragraph shall be construed to obligate CITY to pay previously accrued interest or unpaid PROJECT COSTS that cease to be due as reimbursable PROJECT COSTS on or after the date of expiration of the TOWNE CENTRE TIF ZONE. Reimbursement of any interest under the terms of this AGREEMENT shall be made, subject to the limitations and conditions set out in subparagraphs A, B, D, and E hereof.

D. If CITY issues TIF bonds to pay for previous and/or future projects, CITY may encumber TAX INCREMENT FUNDS in support of TIF bonds and may fully disburse from bond proceeds received, the existing unpaid PROJECT COSTS under this AGREEMENT. Notwithstanding anything contained in this AGREEMENT to the contrary, if CITY issues TIF bonds and for so long as such bonds are outstanding, GGP's right to repayment shall be subject to the terms and conditions of the ordinances authorizing the issuance and sale of such TIF bonds and the CITY's right to maintain at all times in the TAX INCREMENT FUND a minimum fund balance as may be recommended by the TIF Board and City Council for CITY.

E. CITY hereby declares that the reimbursement procedure outlined above is necessary to implement the PROJECT PLAN and that the design and reconstruction of the WATER LOOP is a public improvement or public work that constitutes eligible PROJECT COSTS.

SECTION 4. GGP OBLIGATIONS

A. GGP agrees to hire, subject to CITY's approval, an engineering firm to design the proposed WATER LOOP. GGP shall pay all costs and expenses to design the WATER LOOP as a PROJECT COST. GGP's engineer shall prepare and submit to CITY for its review and approval all drawings, plans and specifications for the design of the WATER LOOP. Following CITY's approval of the final plans and specifications for the WATER LOOP, GGP shall prepare all bid documents, including the construction contract and performance and maintenance bonds, which will be used by GGP to bid construction of the PROJECT as provided in subparagraphs B, C and D hereof. CITY will review and approve the bid documents. GGP agrees that all costs and expenses for designing the WATER LOOP shall be paid by GGP and shall be subject to reimbursement from the TAX INCREMENT FUND as a PROJECT COST pursuant to Section 3.

B. GGP agrees to bid construction of the improvements, by sealed bid. GGP shall use construction contract, performance and payment bond forms and any other necessary documents that have been reviewed and approved by the City Attorney for CITY. The performance and payment bonds shall name GGP and CITY as joint obligees. Sealed bids shall be mailed to the Purchasing Agent for CITY and shall be opened and reviewed by both GGP and CITY. Should the total cost to design and to construct the eligible project improvements exceed the financing that is to be reimbursed by CITY as provided in Section 2 (\$3,000,000), GGP may elect to i) renegotiate the bids; ii) revise the scope of the construction contract as approved by CITY; iii) request approval from the TIF Board and City Council for CITY to increase the amount to be reimbursed; or iv) terminate this Agreement upon written notice to CITY. All PROJECT COSTS in excess of the amount of reimbursement, including those costs incurred as a result of change orders and claims, shall be paid by GGP, and GGP shall not look to CITY for reimbursement of such excess costs.

C. GGP shall obtain CITY's approval before award of the construction contract. GGP acknowledges and agrees that the successful contractor shall be required to obtain CITY's approval to construct the PROJECT and pay CITY inspection costs of 2% of the total contract amount, the costs of which may be included as eligible PROJECT COSTS. GGP shall administer the construction contract as construction manager, for all purposes including inspection, supervision and coordination of all construction work. GGP shall perform the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this project. GGP and CITY shall inspect the work of the construction contractor to guard the CITY against deficiencies, without assuming responsibilities for means and methods used by the contractor. GGP shall insure that all Project improvements are completed in a timely manner, in substantial accordance with the contract documents, plans and specifications approved by CITY. GGP shall review all monthly and final payment estimates and make all payments for work performed under the construction contract. GGP shall forward Contractor's request for final payment to CITY for review with such supporting documentation as CITY may require. CITY reserves the right to perform inspection, measurements or verifications of the estimates or work quantities as are necessary. Final payment to the construction contractor shall not be made until all project improvements have been finally completed (as verified by GGP and CITY) in accordance with the approved contract documents, plans and specifications and accepted by CITY.

D. In addition to the requirements of subparagraphs A, B, and C above, GGP shall fully and completely settle, by litigation or otherwise, any claims of the Contractor arising out of performance of the construction contract without involving the CITY, unless such claims result from a wrongful action or failure to act by the CITY in the performance of this AGREEMENT. Provided, however, that if GGP intends to seek reimbursement for the expense of resolving any claim, GGP shall notify CITY in writing in advance of the claim and any proposed settlement or resolution, by change order, litigation or otherwise. CITY reserves the right upon such notice, at CITY's sole election, to make a

reasonable audit of all books, records, accounts and other data of the Contractor relating to the claim and overall performance of the construction contract before it approves reimbursement of expenses for such claim. GGP shall provide for CITY's right to audit claims and change order requests in its form contract with the Contractor.

E. GGP understands that no reimbursement for PROJECT COSTS, as required under Section 3 of this AGREEMENT, shall be made unless GGP advances such costs and that failure of GGP to advance funding to CITY for such costs as provided in this Section shall render this AGREEMENT null and void and of no further effect.

SECTION 5. TERM

The term of this AGREEMENT shall begin on the date of execution and end upon the earlier of (a) the complete performance of all obligations and conditions precedent by parties to this AGREEMENT; (b) the expiration of the term of the TOWNE CENTRE TIF ZONE on December 31, 2019 as stated in City of Mesquite Ordinance No. 3257; provided however, that the obligation of the CITY to apply increment which has accrued during the term of the TOWNE CENTRE TIF ZONE but which is not collected until subsequent to the expiration of the term toward un-reimbursed PROJECT COSTS pursuant to Section 3.A. of this agreement shall survive.

SECTION 6. INDEMNITY

GGP agrees to defend, indemnify and hold CITY, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, actual costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought that may directly arise out of or be occasioned by GGP's breach of any of the terms or provisions of this AGREEMENT, or by any negligent act or omission of GGP, its officers, agents, associates, employees or subconsultants in the performance of this AGREEMENT, including any liability arising from the construction of the PROJECT; 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 GGP and CITY, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any defenses of the parties under Texas 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.

SECTION 7. AUTHORITY TO BIND

GGP represents that _____, the _____ of GGP, by executing this AGREEMENT for GGP, is acting within the scope of his authority as agent to bind GGP regarding the obligations and assurances contained in this AGREEMENT.

SECTION 8. EVENTS OF DEFAULT

A default shall exist if either party fails to perform or observe any material covenant contained in this AGREEMENT or if the representation provided for in Section 7 is not true or correct. A party shall immediately notify the defaulting party in writing upon becoming aware of any change in the existence of any condition or event which would constitute a default by the defaulting party, or with the giving of notice and/or passage of time would constitute a default by the defaulting party under this AGREEMENT. Such notice shall specify the nature and the period of existence thereof and what action, if any, the notifying party requires or proposes to require with respect to curing the default.

SECTION 9. REMEDIES AVAILABLE TO CITY

If a default shall occur and continue after sixty (60) days written notice to cure default, except if such default is not able to be cured within 60 days and GGP is diligently pursuing cure, in which event notice is extended to 120 days, CITY may at its option terminate this AGREEMENT or pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law without the necessity of further notice to or demand upon GGP.

SECTION 10. RIGHT OF OFFSET

CITY may, at its option, but subject to the notice and cure periods provided in SECTION 9 above, offset any amounts due and payable under this AGREEMENT against any debt, including taxes, lawfully due to CITY from GGP, regardless of whether the amount due arises pursuant to the terms of this AGREEMENT or otherwise and regardless of whether or not the debt due to CITY has been reduced to judgment by a court.

SECTION 11. VENUE AND GOVERNING LAW

This AGREEMENT is performable in Dallas County, Texas, and venue of any action arising out of this AGREEMENT shall be exclusively in Dallas County, Texas. This AGREEMENT shall be governed and construed in accordance with the laws of the State of Texas.

SECTION 12. NOTICES

Any notice required by this AGREEMENT shall be deemed to be properly served (a) five business days after deposit in the U.S. mails by certified letter, return receipt requested, addressed to the receipt at the recipient's address shown below, or (b) one business day after deposit with a national overnight delivery service, subject in all events 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 Manager
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

If intended for GGP to:

Town East Mall, L.P.
c/o General Growth Properties, Inc.
110 North Wacker Drive
Chicago, Illinois 60606

With a copy to:
Town East Mall
2063 Town East Mall
Mesquite, Texas 75150-4118

SECTION 13. APPLICABLE LAWS

This AGREEMENT is made subject to the provisions of the Charter and ordinances of CITY as amended and all applicable State and federal laws.

SECTION 14. 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 or illegality, or unenforceability shall not affect any other provision thereof and this AGREEMENT shall be considered as if such invalid, illegal or unenforceable provision had never been contained in this AGREEMENT.

SECTION 15. 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.

SECTION 16. 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.

SECTION 17. SUCCESSORS AND ASSIGNS

The terms and conditions of this AGREEMENT are binding upon the successors and assigns of all parties hereto. Provided, however, this AGREEMENT shall not be assigned by GGP without prior City Council of the City of Mesquite, Texas, approval, which approval shall not be unreasonably withheld.

SECTION 18. 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 and made a part of this AGREEMENT.

EXECUTED and effective as of the _____ day of _____, by CITY, signing by and through its Mayor, duly authorized to execute same by Ordinance No _____, approved by the City Council of the City of Mesquite, Texas, on _____ and GGP, acting through its duly authorized officials.

CITY OF MESQUITE

Mike Anderson
Mayor

ATTEST:

APPROVED AS TO FORM:

Judy Womack
City Secretary

B. J. Smith
City Attorney

TOWN EAST MALL, L.P., a Delaware limited partnership

By: GGP-TOWN EAST MALL, INC., a Delaware corporation, its general partner

By: _____
Printed Name: _____
Its: _____