ORDINANCE NO. 5154

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, PROHIBITING THE USE OF AND CONTACT DESIGNATED GROUNDWATER FROM BENEATH PROPERTY GENERALLY LOCATED AT 2106, 2108, AND 2110 NORTH GALLOWAY AVENUE IN MESQUITE, DALLAS COUNTY, TEXAS, TO FACILITATE CERTIFICATION OF A MUNICIPAL SETTING DESIGNATION (MSD) OF SAID PROPERTY BYTHE TEXAS COMMISSION ENVIRONMENTAL QUALITY PURSUANT TO THE TEXAS SOLID WASTE DISPOSAL ACT; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING PUBLICATION OF THE CAPTION HEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 361, Subchapter W of the Texas Health and Safety Code ("MSD Statute") authorizes the Texas Commission on Environmental Quality ("TCEQ") to certify Municipal Setting Designations ("MSDs") for properties upon receipt and approval of a proper application to the TCEQ; and

WHEREAS, the Texas legislature, in enacting the MSD Statute, found that an action by a municipality to restrict access to or the use of groundwater in support of or to facilitate an MSD advances a substantial and legitimate State interest; and

WHEREAS, as part of the application process for a MSD, an applicant is required to provide the TCEQ with documentation of a resolution or ordinance of support from the municipality in which the MSD is being sought, which ordinance prohibits the use of and contact with groundwater from beneath the designated property for potable purposes; and

WHEREAS, due to limited quantity and low quality, there are areas of shallow groundwater within the City of Mesquite (the "City") that are not valuable as potable water sources and therefore are not utilized for potable water; and

WHEREAS, some property within the City formerly used for certain commercial and industrial purposes are underlain with unusable groundwater that has become contaminated by historical on-site or off-site sources; and

WHEREAS, the potable use of groundwater in designated areas should be prohibited to protect public health and welfare when the quality of the groundwater presents an actual or potential threat to public health; and

WHEREAS, the use of an MSD allows for a State-evaluated corrective action process for groundwater that is directed towards the protection of human health and the environment; and

WHEREAS, the City Council finds that the MSD application to TCEQ to be filed by Vista Crossing SC, LLC (the "Owner") for certification of a MSD for properties located within the City's corporate limits in the Vista Crossing Shopping Center and located at 2106, 2108, and 2110

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North Galloway Avenue in Mesquite, Dallas County, Texas, more particularly described and depicted in <u>Exhibit A</u> hereto incorporated herein by reference (the "**Property**"), and owned by Owner, is in the public interest; and

WHEREAS, Oxford Cleaners (from as early as 1985) and Debonair Cleaners (from 1993 until 2011) were two historical dry cleaners that occupied Suite 105 in the Property and were identified as a recognized environmental condition; and

WHEREAS, a subsurface investigation was conducted in 2011 by Property Solutions, Inc., to determine if a release of dry cleaning solvents had occurred and, as a result of the investigation, the presence of several chlorinated volatile organic compounds was found but the concentrations did not exceed the Texas Risk Reduction Program Tier 1 soil-to-groundwater protective concentration levels established for residential land use; and

WHEREAS, the Owner applied to the TCEQ's Voluntary Cleanup Program ("VCP") on December 18, 2013, and was assigned VCP No. 2637; and

WHEREAS, the most recent October 2023 sampling event for the Property indicates that groundwater is consistent with measurements collected over the last nine years; and

WHEREAS, the Owner has certified that the type of known contaminants that are documented within the uppermost groundwater beneath the Property at concentrations above potable standards are as set forth in Exhibit B, attached hereto and made a part hereof; and

WHEREAS, the Owner has certified that:

- 1. The purpose of the application is to assist the Owner in obtaining from the TCEQ closure documentation demonstrating the TCEQ's determination, after completion of any remediation requirements and appropriate review by the TCEQ, that no further environmental cleanup or restoration is required by the TCEQ with respect to the Property; and
- 2. As a part of the application, the Owner has or will submit to the TCEQ a statement regarding the type of known contamination in the groundwater beneath the Property and has identified that shallow groundwater contains chemicals of concern above Tier 1 groundwater ingestion protective concentration levels, as set forth in 30 Texas Administrative Code, Chapter 350, the Texas Risk Reduction Program; and

WHEREAS, the Owner has continuing obligations to satisfy applicable statutory and regulatory provisions concerning groundwater contamination investigation and response actions at the Property; and

WHEREAS, a public drinking water supply system exists that satisfies the requirements of Texas Health and Safety Code, Chapter 341 for the Property and property within one-half mile of the Property; and

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WHEREAS, the City Council further finds it to be in the best interest of the public and the City to authorize the City Manager to execute and file such additional documents as are necessary to support the Owner's application of an MSD on the Property and to facilitate the City's efforts to secure approval of such MSD and TCEQ closure documentation by passage of this Ordinance.

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

- SECTION 1. The City Council finds that the declarations and findings set forth in the preamble of this Ordinance are true and correct and are incorporated herein.
- <u>SECTION 2.</u> The City Council finds this Ordinance is necessary because the contaminant concentrations exceed TCEQ potable water standards.
- SECTION 3. The City Council supports the Owner's application for designation of the Property as a MSD and hereby authorizes the City Manager, acting on behalf of the City, to prepare, execute and submit, or cause to be prepared, executed and submitted, to the TCEQ any such additional documents as are necessary to support the Owner's application and take such other action as may be reasonable and necessary to obtain an MSD for the Property.
- <u>SECTION 4.</u> The City Council finds it is in the best interest and welfare of the public to facilitate TCEQ's certification of an MSD for the Property as well as the TCEQ closure documentation.
- SECTION 5. Upon and after the effective date of this Ordinance, the drilling of wells and use of designated groundwater for any purpose, including, but not limited to, any potable purpose, and excepting only: (i) wells used as monitoring wells for the collection of groundwater samples for chemical or biological laboratory analysis; and (ii) wells used for the purpose of remediation of soil or groundwater contamination, is hereby prohibited on or from any portion of the Property.
- <u>SECTION 6.</u> All portions of ordinances of the City of Mesquite in conflict with the provisions of this ordinance, to the extent of such conflict are hereby repealed; otherwise, they shall remain in full force and effect.
- <u>SECTION 7.</u> Should any word, sentence, clause, paragraph, or provision of this ordinance be held to be invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.
- <u>SECTION 8.</u> An offense committed before the effective date of this Ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed, and the former law is continued in effect for this purpose.
- <u>SECTION 9.</u> Any violation of the provisions or terms of this ordinance by any "person," as defined in Mesquite City Code, Chapter 1, <u>Section 1-2</u>, shall be deemed a Class C Misdemeanor criminal offense, and upon conviction thereof, shall be subject to a penalty of fine,

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or any other general penalties, as provided in Mesquite City Code, Chapter 1, <u>Section 1-6</u>, as amended.

<u>SECTION 10.</u> This Ordinance shall be published in the City's official newspaper in accordance with Mesquite City Charter, Article IV, <u>Section 24</u>.

SECTION 11. This Ordinance shall take effect and be in force from and after five days after publication.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 17th day of February 2025.

Signed by:

Daniel Alemán, Jr.

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Daniel Alemán, Jr. Mayor

ATTEST:

DocuSigned by:

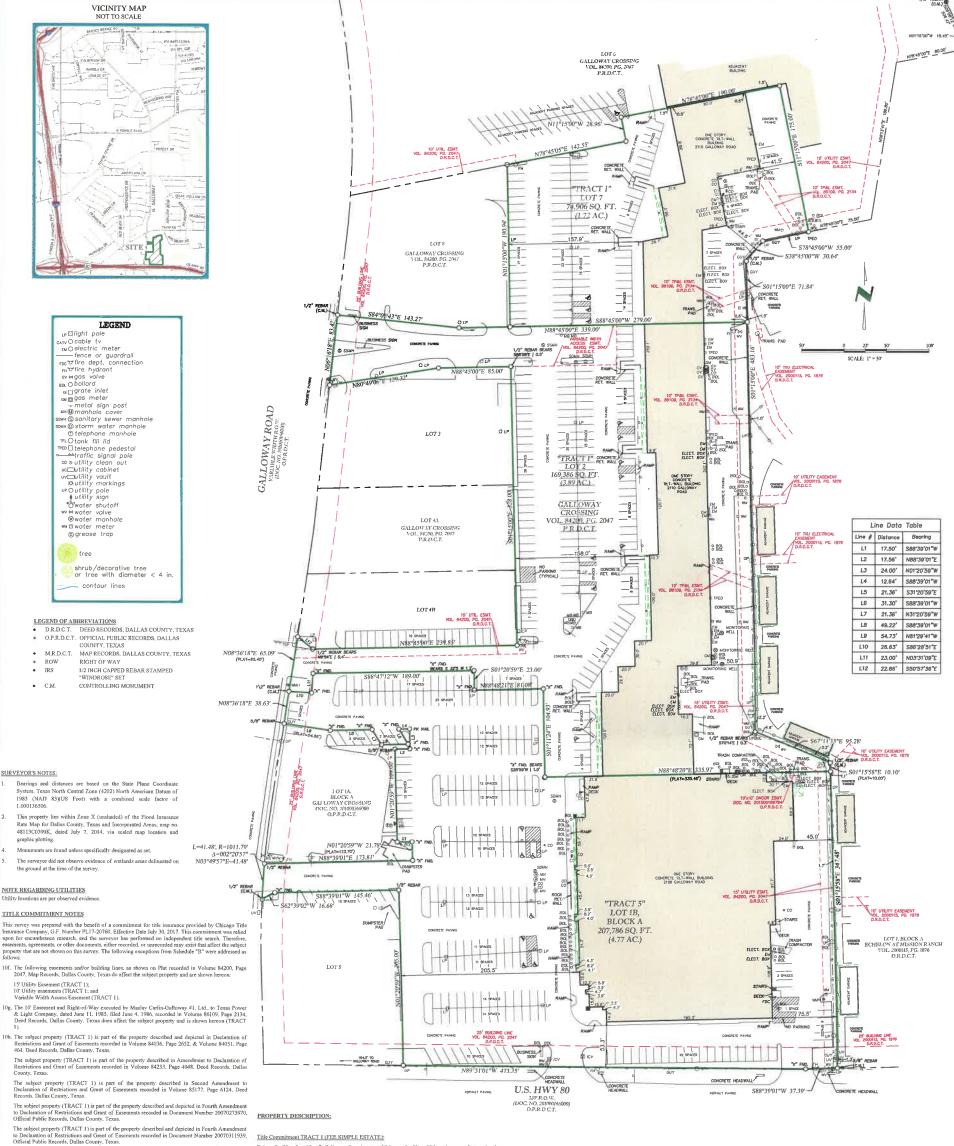
Sonja Land City Secretary APPROVED AS TO LEGAL FORM:

-Signed by:

David L. Paschall

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David L. Paschall City Attorney



Title Commitment TRACT | [FEE SIMPLE ESTATE]:

Being all of Lot 2 and Lot 7. Galloway Crossing, an addition to the City of Mesquite, according to the plat there recorded in Volume 84200, Page 2047, Deed Records. Dallas County, Texas.

Title Commitment TRACT 2 (EASEMENT ESTATE):

Non-Exclusive Easement Estate created in Declaration of Restrictions and Grant of Easements by and between Albertson's. Inc., and Maclay Carlin-Galloway Conssing #1, Ltd., dated February 14, 1984, field for record on February 20, 1984 and recorded in Volume #80405, Page 2625, Decel Records, Dallas County. (As to Tract 1 and Tract 5 Only) for fector of n recruiny 2d, 1794 min recruine in volume envisor, rage abulan Scottis, Texas, are needed by the recruin recruing 18051, Page 464, Deed Records, Dallas County, Texas, amended by instrument recorded in Volume 84233, Page 4048, Deed Records, Dallas County, Texas, and further amended by Volume 84171, Page 6124, Deed Records, Dallas County, Texas, filed July 31, 2007. recorded under CC#20070273970, Official Public Records, Dallas County, Texas.

Title Commitment TRACT 3 (EASEMENT ESTATE):

Non-Exclusive Easement Estate created in Reciprocal Declaration of Easements and Uses and Development Agreement by and between Maclay Carlin-Galloway Crossing #1, Ltd., and Wal-Mart Properties, Inc., dated August 16, 1984, filed for record on August 14, 1984, and recorded in Volume 84160, Page 5476, Deed Records, Dallas County, Texas. Title Commitment TRACT 4 (EASEMENT ESTATE):

Easement Estate created in Reciprocal Easement Agreement executed by and between Maclay Carlin-Galloway Crossing #1, Ltd., a Texas Limited Partnership, Wal-Mart Properties, Inc., a Delaware Corporation, and Albeston's Inc., a Delaware Corporation, dated August 10, 1984, and recorded in Volume 84166, Page 7178, Deed Records, Dallas County, Texas. Title Commitment TRACT 5 FEE SIMPLE ESTATE :

Being all of Lot 1B. Block A, Galloway Crossing, an addition to the City of Mesquite, accoptat thereof recorded in Document Number 201000166000, Plat Records, Dallas County, Texas

Title Commitment TRACT 6 EASEMENT ESTATE

Title Commitment TRACT 6 (EASEMENT ESTATE):

Essement State created in Declaration on Retrictions and Grant of Easements executed by and between Albertson's Inc., and Meslay Carlin-Galloway Crossing 41, 11d. dated February 14, 1984 and recorded in Albertson's Inc., and Meslay Carlin-Galloway Crossing 41, 11d. dated February 14, 1984 and recorded in Volume 84036, Page 2652, Deed Records, Dallas County, Texas and recorded in Volume 84036, Page 4048, Deled Records, Dallas County, Texas, Amended by instrument recorded in Volume 84034, Page 4048, Deed Records, Dallas County, Texas, As affected by Tirth Amendment recorded under Clerk's File No. 20070231930, Official Public Records, Dallas County, Texas, by Filth Amendment recorded under Clerk's File No. 20070311930, Official Public Records, Dallas County, Texas and by Fifth Amendment recorded under Clerk's File No. 201402023591, Official Public Records, Dallas County, Texas and by Fifth Amendment recorded under Clerk's File No. 201402023591, Official Public Records, Dallas County, Texas and Public Records Dallas County. Texas

Title Commitment TRACT 7 (EASEMENT ESTATE):

Essement Estate created in Reciprocal Essement Agreement executed by and between Maclas Carlin-Galloway #1, Ltd., a Texas limited partnership, Wal-Mart Properties, Inc., a Delaware corporation and Albertson's Inc., a Delaware corporation, dated August 10, 1984, and recorded in Volume 84166, Pag 7178, Deed Records, Dallas County, Texas.

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 2, 3, 4, 7(a), 8, 9, 14, 18 of Table A thereof. The field work was completed on July 28, 2017.

Mark N. Peepis Registered Professional Land Surveyor No. 1977 State of Texas

ON-SITE PARKING: REGULAR SPACES: HANDICAPPED SPACES: 18 TOTAL SPACES:

ALTA/NSPS LAND TITLE SURVEY

LOT 2 & LOT 7 & LOT 1B, BLOCK A **Galloway Crossing**

W. Foreman Survey, Abstract No. 486 City of Mesquite, Dallas County, Texas

DRAWN: E.R. CHECKED: MNP DATE: 08/28/2017 JOB NO.: C1708184-1



10s. The Agreement for Low Clearance Monument Sign executed by and between Vista Property Company LLC, a Delaware limited liability company, dated November 17, 2014, filed December 05, 2014, and recorded in Document Number 201400309757, Official Public Records, Dallas County, Texas does affect the subject property (TRACT 5). - 2108-2110 Authory ALTA - Mongato\Dra

The subject property (TRACT 1) is the same tract of land described as "Parcel II" in Fifth Amendment to Declaration of Restrictions and Grant of Easements recorded in Document Number 201400263591, Official Public Records, Dallas County, Texas.

The subject property (TRACT 1) is part of the property described and depicted in Reciprocal Easement Agreement recorded in Volume 84166. Page 7178, Deed Records, Dallas County, Texas.

10j. The subject property (TRACT 1) is part of the property described and depicted in Reciprocal Declaration of Easements and Uses and Development Agreement recorded in Volume 84160, Page 5476, Deed Records, Dallas County, Texas.

10k. The subject property (TRACT 1) is part of the property described and depicted in Reciprocal Easement Agreement recorded in Volume 84166, Page 7178, Deed Records, Dallas County, Texas.

101. The following easements and/or building lines, as shown on Plat recorded in Document Number 201000166000, Official Public Records, Dallas County, Texas do affect the subject property and are

The subject property (TRACT 5) is part of the property described and depicted in Declaration of Restrictions and Grant of Easements recorded in Volume 84036, Page 2652, & Volume 84051, Page 464, Deed Records, Dallas County, Texas.

Fine subject property (TRACT 5) is part of the property described in Amendment to Declaration of Restrictions and Grant of Easements recorded in Volume 84233, Page 4048, Deed Records, Dallas

The subject property (TRACT 5) is part of the property described and depicted in Fourth Amendment to Declaration of Restrictions and Grant of Easements recorded in Document Number 20070273970, Official Public Records, Dallas County, Texas.

The subject property (TRACT 5) is part of the property described and depicted in Fourth Amendment to Declaration of Restrictions and Grant of Easements recorded in Document Number 20070311939. Official Public Records, Dallas County. Texas.

The subject property (TRACT 5) is the same tract of land described as "Parcel II" in Fifth Amendment to Declaration of Restrictions and Grant of Easements recorded in Document Number 2014/07263591, Official Public Records, Dallas County, Texas.

subject property (TRACT 5) is part of the property described and depicted in Reciprocal ement Agreement recorded in Volume 84166, Page 7178, Deed Records, Dallas County, Texas.

10q. The subject property (TRACT 5) is part of the property described and depicted in Memorandum of Lease recorded in Document Number 201400324151, Official Public Records, Dallas County, Texas.

10r. The 10'x10' Oncor Easement described and depicted in Document No. 201500169794, Official Public Records, Dallas County, Texas does affect the subject property (TRACT 1& TRACT5) and is shown

EXHIBIT B - page 1 of 3

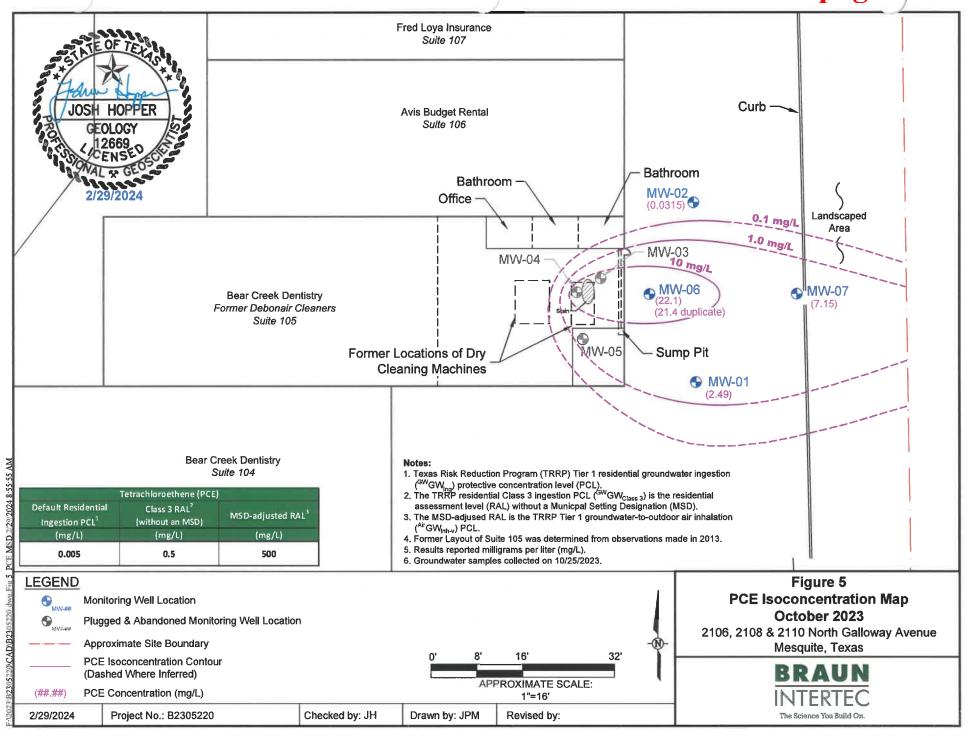


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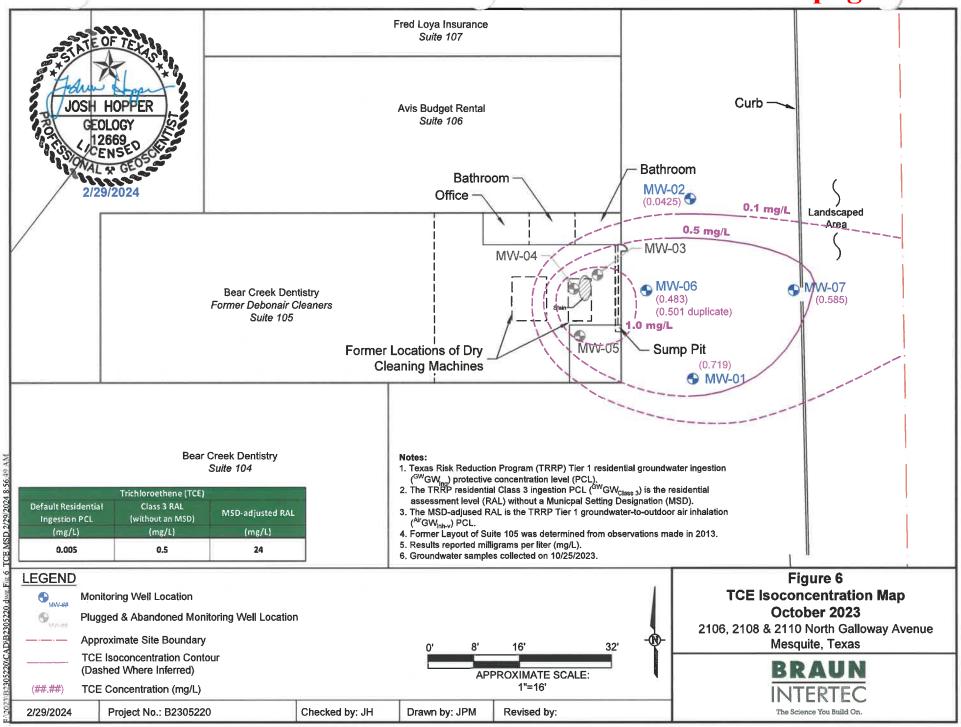


EXHIBIT B - page 3 of 3

