

RESOLUTION NO. 45-2007

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH SUN LIFE OF CANADA, L.L.C. FOR SUCH PURPOSES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes municipalities to establish and provide for the administration of programs that promote economic development and stimulate business and commercial activity in the City of Mesquite (the "City"); and

WHEREAS, the City held a public hearing to provide a reasonable opportunity for all interested persons to address the proposed agreement by and between the City and Sun Life of Canada, L.L.C., a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (the "Agreement"); and

WHEREAS, the City Council has been presented with the proposed Agreement and upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement will assist in implementing a program whereby economic development will be promoted and business and commercial activity will be stimulated in the City.

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

SECTION 1. That the City Council finds that the terms of the proposed agreement by and between the City of Mesquite (the "City") and Sun Life of Canada, L.L.C., a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (the "Agreement"), will promote economic development and stimulate business and commercial activity in the City and otherwise meet the criteria of Section 380.001 of the Texas Local Government Code.

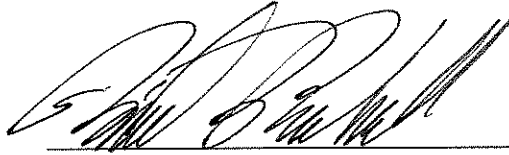
SECTION 2. That the City Council hereby adopts an economic development program whereby the City will make economic development program payments to Sun Life of Canada, L.L.C., and take other specified actions, in accordance with the terms outlined in the Agreement.

SECTION 3. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

SECTION 4. That the City Manager is hereby authorized to finalize and execute the Agreement and all other documents in connection therewith on behalf of the City substantially according to the terms and conditions set forth in the Agreement.

SECTION 5. That this resolution shall become effective immediately from and after its passage.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 2nd day of October, 2007.



David Paschall
Mayor Pro Tem

ATTEST:

APPROVED:



Judy Womack
City Secretary



B. J. Smith
City Attorney

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
(Chapter 380 Agreement)

This Economic Development Program Agreement ("Agreement") is made and entered into by and between the City of Mesquite, Texas (the "City"), and Sun Life Assurance Company of Canada (U.S.), a Delaware Corporation (the "Company"), for the purposes and considerations stated below:

W I T N E S S E T H:

WHEREAS, on October 2, 2007, the City adopted Resolution No. 45 - 2007 establishing an Economic Development Program pursuant to Section 380.001 of the Texas Local Government Code ("Section 380.001") and authorizing this Agreement as part of the Economic Development Program established by City Council Resolution (the "Program"); and

WHEREAS, the Company desires to participate in the Program by entering into this Agreement; and

WHEREAS, the Company has been a major shopping center destination for Mesquite citizens for many years; and

WHEREAS, the Company has contributed to the quality of life in Mesquite by providing a quality shopping environment with attractive retail users; and

WHEREAS, the Company desires to renovate and revitalize its presence as a shopping center destination within the market area by renovating and revitalizing both phases of The Emporium at Market East Shopping Center; and

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program, and that the Company's performance of its obligations herein will promote local economic development and stimulate business and commercial activity in the City.

NOW, THEREFORE, in consideration of the mutual benefits and premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Authorization.

The City has concluded that this Agreement is authorized by Section 380.001, and is authorized by Resolution of the City. The City has determined that substantial economic benefit and the creation of new opportunities of employment will accrue to the City as a result of the Company's development and operation of the Project as hereinafter defined.

This project, a combination or site re-development and property enhancement, will

have a positive impact on stabilizing and once completed will potentially add to the sales taxes generated by:

- A. Replacing older buildings with new buildings
- B. Renovating the façades of some properties
- C. Providing better site amenity and retail tenant identification
- D. Attracting new retail tenants to building sites where current buildings are vacant and have little potential to attract users.

2. **Definitions.** The following definitions shall apply to the terms used in this Agreement:

“City” means the City of Mesquite, Texas.

“Company Affiliate” means any Person directly or indirectly controlling, controlled by, or under common control with the Company. As used in the definition of “Affiliate,” the term “control” means, directly or indirectly, the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Complaining Party” has the meaning set forth in Section 10 of this Agreement.

“Defaulting Party” has the meaning set forth in Section 10 of this Agreement.

“Effective Date” means the date that all parties have executed this Agreement.

“Force Majeure” means any contingency or cause beyond the reasonable control of OWNER including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or defacto governmental action (unless caused by acts or omissions of Owner), fire, explosion or flood, and strikes.

“Initial Construction” means any construction of any phase of the Project, upon the Premises for which a building permit is required, but does not include any renovation, remodeling, retrofitting, or reconfiguration of any building or structure upon the Premises.

“Owner” means Sun Life Assurance Company of Canada (U.S.), a Delaware Corporation.

“Person” means an individual or a corporation, partnership, trust, estate, unincorporated organization, association or other entity.

“Premises” means those certain tracts of real property located at 1515 North Town East Boulevard, 1519 North Town East Boulevard, 1601 North Town East Boulevard, 1645 North Town East Boulevard, 1649 North Town East Boulevard, and 1705 North Town East Boulevard Mesquite, Dallas County, Texas, consisting of approximately 46.78 acres, more or less, as more particularly described on Exhibit “A” hereto.

“Project” means the redevelopment of Phase 1 of The Emporium at Market East Shopping Center and the partial demolition and new construction of an approximately 130,000 square foot retail establishment of Phase 2 of The Emporium at Market East Shopping Center.

“Program” has the meaning set forth in the recitals to this Agreement.

“Program Payment” means the payments to be made by the City pursuant to Section 4 of this Agreement.

“Section 380.001” has the meaning set forth in the recitals to this Agreement.

“Term” has the meaning set forth in Section 3 of this Agreement.

3. Term.

This Agreement shall be effective as of the date of execution by all parties. This Agreement will terminate upon the provision of \$2,000,000 to Sun Life Assurance Company of Canada (U.S.), a Delaware Corporation, estimated to be six years from the execution of this Agreement.

4. City’s Development Program Incentives.

For all Initial Construction or demolition by Company upon the Premises during the term of this Agreement, the City shall grant Company the following incentives:

Cash Grant. The City shall provide the following:

- 1) Payment of \$500,000 in cash within 30 calendar days after the closing of the real estate contract between the Target Corporation and the Company for the approximate 16,000 square feet of existing retail space adjacent to the Target store in the Emporium at Market East Shopping Center;
- 2) Payment of \$500,000 in cash within 30 calendar days after the issuance of a demolition permit and the mobilization of work for demolition of the approximate 16,000 square feet of existing retail space adjacent to the Target store in the Emporium at Market East Shopping Center; and
- 3) Payment of \$500,000 in cash within 30 calendar days the issuance of a demolition permit and the mobilization of work for demolition of the existing Mervyn’s and Wickes Furniture retail stores, in the Emporium at Market East Shopping Center.

Sales Tax Incentives. After the issuance of a demolition permit and the mobilization of work for demolition of the existing Mervyn’s and Wickes Furniture retail stores, in the Emporium at Market East Shopping Center, the City shall start to reimburse to the Company from proceeds received on taxable sales of 1 percent an amount equal to 50 percent of the

sales taxes generated from retail sales reported to the State Comptroller's Office for the tenants of Phase I, Phase II and the related out-parcels owned by Sun Life. The sales tax incentive payments shall be made to the Company within 30 days of the end of the quarter. The total amount of sales taxes to be reimbursed to the Company shall not exceed \$500,000.

Only the 1 percent municipal sales tax raised by the City is to be used to reimburse the Company. Excluded is sales tax revenues generated for the Mesquite Quality of Life Corporation, EDST 4B, and the sales tax revenues generated for the reduction of property tax rates. It is estimated that the total amount of sales taxes to be reimbursed to the Company shall be reimbursed within 5 years.

Under no circumstances shall the amount of the above incentives collectively total more than \$2,000,000. Should the maximum incentive of \$2,000,000 be achieved prior to the end of the term of this agreement then this agreement shall be considered satisfied for all parties.

5. Company Covenants.

In consideration of the City's incentives under this Agreement (including the payment of monies to the Company), the Company agrees to:

- (a) Take all reasonable steps to attract to the Project new retail tenants not currently in the Mesquite market;
- (b) Take all reasonable steps to attract to the Project high quality retail tenants;
- (c) Take steps to attract to the Project retail tenants generating high sales totals per square foot of retail space;
- (d) Take steps to market and promote the Project as a destination shopping center for east Dallas County, the Mesquite trade area, and areas to the east of Mesquite;
- (e) To expend between \$5 million and \$15 million on the renovation and re-developing of the Project which shall include façade improvements, anchor tenant façade "bump ups", installation of an additional pylon sign, and uniformity in the façade and architectural treatment between the two phases of the Project. The following design standards and concepts are provided to further define the intent of the architectural / design quality to be pursued:
 - The façade of both the new construction phase (west of Emporium Drive) and the remodeled phase (east of Emporium Drive) shall provide for either uniformity of shapes, colors, and materials or close architectural compatibility and design integrity between the two phases referenced above recognizing that full uniformity may not be practical, whereas close architectural compatibility may achieve the

same objectives (particularly considering that the two phases will be separated by the new Super Target).

- To achieve compatibility and design integrity between the two phases, architectural design of both phases of the project referenced above may include the use of the same type masonry, stucco type products, pavers, landscaping, attached and free-standing light standards, glazing materials and colors.
- Architectural design elements shall be compatible (as opposed to matching or having the same design) with the new Super Target and shall incorporate building materials of as least equal quality. Design elements may include facades, building facade articulation or variation, building relief, screened from public street view utility and mechanical components, sidewalks, pedestrian access, and parapet walls.
- It is agreed that the revitalization of the retail center east of Emporium and the construction of the new retail center west of Emporium shall incorporate:
 - Façade articulation of the building frontage facing the principal street (breaking the façade into multiple planes), which may be accomplished by façade offsets, breaks created by a shaded sidewalk, or other design concepts.
 - Façade variation along the side of buildings siding or facing Emporium using offsets for sections of building in excess of 100 feet.
 - Each phase shall incorporate similar patterns, rhythms, and proportions as used in the other phases addressed in this agreement.
 - Connectivity between separate buildings within the phase east of Emporium and within the phase west of Emporium shall be provided using pedestrian friendly sidewalks.
 - Heightened parapets may be installed on the remodeled retail center to enhance the presence and visual appeal of the buildings, with such work designed to be complementary or compatible with the new construction phase.
 - A minimum of 75% of the building walls of the new construction phase and any new exterior construction of the remodeled phase shall consist of kiln fired masonry, architectural CMU, or natural stone (area of glass glazing not counted in this calculation).
 - Parapets with horizontal tops shall have height changes incorporated into the design or other features to minimize monotony.
 - Some parapets shall have detailing such as cornices, moldings, trim, or variation in building material.

(f) Demolish the former Mervyn's and Wickes Furniture retail stores; and

(g) To construct new retail space to replace the Mervyn's and Wickes Furniture retail stores (which totaled approximately 90,000 square feet) and to attract quality retail tenants to lease said replacement square footage (it is acknowledged that the replacement space may be less square footage than the retail stores to be demolished).

(g) Take all reasonable steps to cause all Construction Sales to occur in the City in order to generate city sales tax revenue to the extent feasible; and

(b) Maintain and operate the Project and the Premises as a retail shopping center open to the general public; and

(c) Comply with all applicable federal, state and local laws in the operation of the Project.

6. Restrictions on Use of Incentives to Employ Undocumented Workers.

The Company certifies that it does not and will not knowingly employ an undocumented worker and that if, after receiving any incentive set forth in Section 4 of this Agreement, it is convicted of a violation of the Immigration Laws found under 8 U.S.C. Section 1324a(f), the Company shall be required to notify the City of such conviction. Upon notification of conviction by Company, or if City should discover such conviction on its own and notifies Company of same, the Company shall repay an amount equal to the total amount of incentives received hereunder with interest, at the rate and according to the terms provided in Section 10(b) of this Agreement not later than the 120th day after the date of such notification.

7. Mutual Assistance.

The City and the Company shall take all reasonable measures, which are necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

8. Covenants Running with the Land.

The Company's rights, covenants, restrictions, burdens, privileges and charges, set forth in this Agreement shall exist at all times as long as this Agreement is in effect, among all parties having any right, title or interest in any portion of all the Property, but which covenants shall absolutely expire without further action by any person upon termination of this Agreement as provided herein.

9. Representations and Warranties.

The City represents and warrants to the Company that the Program and this

Agreement are within the scope of its authority and the provisions of its charter and that it is duly authorized and empowered to establish the Program and enter into this Agreement. The Company represents and warrants to the City that it has the requisite authority to enter into this Agreement.

10. Default.

- (a) If either party should default (the "Defaulting Party") with respect to any of its obligations hereunder and should fail, within 30 days after delivery of written notice of such default from the other party (the "Complaining Party") to cure such default, the Complaining Party, by action or proceeding at law or in equity, may be awarded its damages for such default. Notwithstanding anything to the contrary contained herein, any Program Payments from the City which are not timely paid by the City shall incur interest at the highest rate per annum allowed by applicable law from the date such Program Payment is due until paid.
- (b) The Company agrees, that upon an event of default and receipt of notice from the City, and after applicable cure period has expired, to remit to the City a sum equal to the Program Payment for which the default applies, and which was granted by the City to the Company pursuant to this Agreement, plus interest at the highest rate per annum allowed by applicable law from the date payments were made, until paid.

11. Indemnification.

THE COMPANY IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT IS ACTING INDEPENDENTLY, AND THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE PREMISES OR IMPROVEMENTS. THE COMPANY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST CLAIMS SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS AND ATTORNEYS FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF USE OF OR DAMAGE TO PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF THIS AGREEMENT, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES, PROVIDED HOWEVER THAT THIS INDEMNIFICATION SHALL NOT APPLY IF A COURT OF COMPETENT JURISDICTION FINDS THAT THE DAMAGE OR LIABILITY ARISES FROM THE SOLE NEGLIGENCE OF THE CITY, ITS OFFICERS OR EMPLOYEES.

12. Miscellaneous Matters.

- (a) Section or Other Headings. Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- (b) Attorneys Fees. In the event any legal action or proceeding is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its reasonable attorneys' fees and expenses incurred by reason of such action.
- (c) Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the transactions contemplated herein.
- (d) Amendment. This Agreement may only be amended, altered or revoked by written instrument signed by the Company and the City.
- (e) Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. The Company may assign all or part of its rights and obligations hereunder (a) to any Affiliate effective upon written notice to the City, or (b) to any Person other than an Affiliate with the prior written approval of the City, which approval shall not be unreasonably withheld.
- (f) Notice. Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

Company:

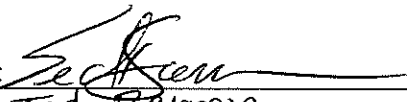
Sun Life Financial
1 Sun Life Exec. Park
Wellesley Hills, MA 02481
ATTN: Tom Pedulla

City:


City Manager
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

- (g) Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.
- (h) Applicable Law. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in Dallas County, Texas.
- (i) Severability. In the event any provision of this Agreement is illegal, invalid or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or 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.
- (j) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

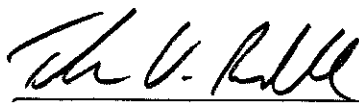
THE CITY OF MESQUITE

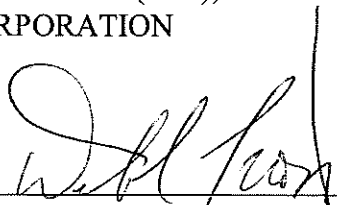
By: 
 Ted Burton
 City Manager

ATTEST:


 City Secretary

SUN LIFE ASSURANCE COMPANY OF
 CANADA (U.S.), A DELAWARE
 CORPORATION


 THOMAS V. PEDULLA
 SENIOR MANAGING DIRECTOR

By: 
 DEBORAH K. TIRONE
 SENIOR DIRECTOR

APPROVED AS TO FORM AND LEGALITY:


City Attorney or his Designee

Date: 10-24-07

THE STATE OF TEXAS

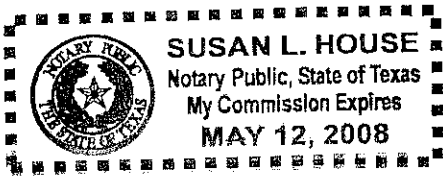
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COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Ted Barron, City Manager of the CITY OF MESQUITE, a municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he was duly authorized to perform the same by appropriate resolution of the City Council of the City of Mesquite and that he executed the same as the act of the said City for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 25th day of October, 2007.

Susan L. House
Notary Public in and for the State of Texas




Susan L. House
Notary's Printed Name

My Commission Expires: 5.12.08

THE STATE OF ~~TEXAS~~ §
Massachusetts §
COUNTY OF ~~DALLAS~~ §
Norfolk §

BEFORE ME, the undersigned authority, on this day personally appeared Tom Pedulla + Deborah Tirone known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that said instrument was signed on behalf of said partnership, and said Tom Pedulla acknowledged said instrument to be his free act and deed. and Deborah Tirone

GIVEN UNDER MY HAND AND SEAL OF OFFICE in said County and State this 29th day of October, 2007.


Notary Public in and for the State of Texas



ELIZABETH ROGAN ROBICHAUD
Notary Public
Commonwealth of Massachusetts
My Commission Expires
July 27, 2014

Elizabeth Rogan Robichaud
Notary's Printed Name

My Commission Expires: 7/27/2014

EXHIBIT "A"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Description of Premises