

RESOLUTION NO. 08-2008

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 GENERAL GROWTH PROPERTIES 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 Council has been presented with a proposed agreement (the "Agreement") by and between the City and General Growth Properties ("GGP") to construct certain improvements for the reconstruction of site lighting and enhancement of public safety at Town East Mall (the "Mall") improving traffic circulation and security in and around the Mall; and

WHEREAS, this Agreement provides for reimbursement of such construction costs (the "Traffic Security and Lighting Project") out of funds collected from the Towne Centre Tax Increment Finance Reinvestment Zone Number Two, City of Mesquite, Texas (the "TIF Zone") established by the City Council in accordance with the Tax Increment Financing Act, as amended pursuant to V.T.C.A., Tax Code, Chapter 311 (the "TIF Act"); and

WHEREAS, the City Council approved a Project and Financing Plan (the "Plan"), for such zone to promote development and redevelopment in the TIF Zone through the use of funds derived within the TIF Zone (the "Tax Increment Fund"); and

WHEREAS, the TIF Act authorizes the expenditure of such Tax Increment Funds for payments made at the discretion of the City Council that the City Council finds necessary to the implementation of the project plans for the TIF Zone, in which expenditures and monetary obligations constitute project costs as defined in the TIF Act (the "Project Costs"); and

WHEREAS, on January 14, 2008, the TIF Board approved the expenditures set forth in this 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 \$2,000,000.00 plus interest for the Traffic Security and Lighting Project; and

WHEREAS, upon full review and consideration of this Agreement and all matters attendant and related thereto, the City Council is of the opinion that this Agreement will assist in implementing a program whereby economic development will be promoted and business and commercial activity will be stimulated in the City and that the reimbursement of funds advanced by GGP for the Traffic Security and Lighting Project from the Tax Increment Fund is for the purpose of making improvements consistent with and described in the Plan for the TIF Zone.

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 and GGP, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, 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.

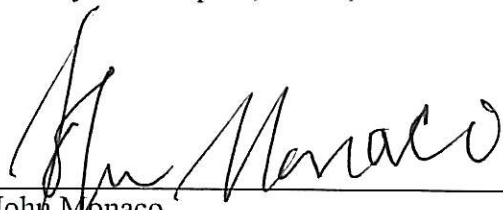
SECTION 2. That the City Council hereby adopts an economic development program whereby the City will make economic development program payments to GGP and take other specified actions, in accordance with the terms outlined in the Agreement.

SECTION 3. That the City Council further finds that the economic development program payments made to GGP pursuant to the Agreement for the Traffic Security and Lighting Project derived from the Tax Increment Fund are necessary to the implementation of the project plans for the TIF Zone and constitute project costs as defined in the TIF Act.

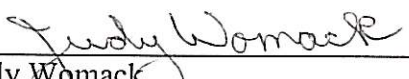
SECTION 4. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

SECTION 5. 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.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 4th day of February, 2008.

  
\_\_\_\_\_  
John Monaco  
Mayor

ATTEST:

  
\_\_\_\_\_  
Judy Womack  
City Secretary

APPROVED:

  
\_\_\_\_\_  
B. J. Smith  
City Attorney

**ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

**(Chapter 380 Agreement)**

**WITH GENERAL GROWTH PROPERTIES FOR THE RECONSTRUCTION OF  
SITE LIGHTING AND ENHANCED PUBLIC SAFETY AT TOWN EAST MALL**

THIS ECONOMIC DEVELOPMENT PROGRAM 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, LLC, a Delaware limited liability company, 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.

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

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 January 14, 2008, the Board of Directors for the TOWNE CENTRE TIF ZONE 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 Resolution No. 08-2008 approved on February 4, 2008, 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 funded by GGP to design and construct the site lighting with public safety

enhancements at Town East Mall (hereinafter referred to as the "SITE LIGHTING"); and

WHEREAS, the work under this AGREEMENT involves the design and construction of new site lighting surrounding Town East Mall, which includes closed circuit television cameras compatible with the Mesquite Police Department's specifications as of the time of installation and the installation of The Rows of Texas lighting standard at the entrances to Town East Mall's parking areas from public roadways; and

WHEREAS, due to the age and design of the existing site lighting which is no longer adequate for 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 SITE LIGHTING will be funded by GGP and utilize City approved engineering designs; and

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 by GGP for the cost of the design and construction of the SITE LIGHTING is for the purpose of making 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"), and is necessary to the implementation of the PROJECT PLAN, which plan is attached hereto and made a part hereof for all purposes as Exhibit "A."; and

WHEREAS, the City Council finds and determines that GGP's construction of the SITE LIGHTING and performance of its obligations as set forth in this AGREEMENT will promote local economic development and stimulate business and commercial activity in the City and therefore authorizes this AGREEMENT as part of an Economic Development Program established by Resolution No. 08-2008 adopted pursuant to Section 380.001 of the Texas Local Government Code ("Section 380.001")

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

**1. Authorization under Section 380.01.**

CITY has concluded that this AGREEMENT is authorized by Section 380.001 and is authorized by Resolution. CITY has determined that substantial economic benefit and the creation of new opportunities of employment will accrue to CITY as a result of GGP's development and operation of the SITE LIGHTING improvements as hereinafter defined. CITY finds that the SITE LIGHTING improvements will increase the security of the public, thus encouraging more shoppers to come to Town East Mall, resulting in an increase in the sales tax generated for CITY and further finds that the value of the benefits of the SITE

LIGHTING improvements will outweigh the amount of expenditures required of CITY under this AGREEMENT. CITY additionally finds that these expenditures are necessary to the implementation of the PROJECT PLAN for the TOWNE CENTRE TIF ZONE.

**2. Development Plan for TOWN CENTRE TIF ZONE**

In conjunction with the long-term development plan for the TOWNE CENTRE TIF ZONE, as described in the PROJECT PLAN, GGP will design and construct the SITE LIGHTING improvements which will subsequently be reimbursed by CITY pursuant to the terms of this AGREEMENT. The SITE LIGHTING improvements to be constructed 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.

**3. 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 CITY to apply a tax increment which has accrued during the term of the TOWNE CENTRE TIF ZONE but which is not collected until subsequent to the expiration of such term toward un-reimbursed PROJECT COSTS pursuant to Section 5 of this AGREEMENT, shall survive.

**4. CITY's Development Program Incentive.**

For all work and improvements funded by GGP pursuant to this AGREEMENT, the City shall grant GGP the following incentive:

TIF Incentive. Upon completion of the PROJECT, CITY agrees, subject to the conditions contained in this AGREEMENT, to reimburse GGP as provided in Section 5 for 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 and not to exceed two million dollars (\$2,000,000.00) plus interest as specified in Section 5, 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 4, 5, and 6 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 under this AGREEMENT in excess of two million dollars (\$2,000,000.00) plus interest, without prior authorization by CITY and pursuant to any applicable provisions in the ACT.

**5. Reimbursement Procedure.**

A. CITY and GGP agree that the PROJECT COSTS funded by GGP may be reimbursed only from the TAX INCREMENT FUND, and only to the extent funds are available in said Fund. Subject to the conditions and limitations set out in Sections 4, 5 and 6 of this AGREEMENT, reimbursement shall be made to GGP only from funds in the TAX INCREMENT FUND and only to the extent such funds are on deposit or to be deposited in the TAX INCREMENT FUND. 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 PROJECT COSTS funded by GGP to the extent monies in the TAX INCREMENT FUND are available. 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 of Mesquite, Texas.

B. Upon the expiration of the term of the TOWNE CENTRE TIF ZONE as provided in the ordinance creating same, as amended, any PROJECT COSTS funded 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.

C. 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 funded 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 sixth 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 and 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 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 thousand and twenty-five dollars (\$1,964,025.00) plus interest to reconstruct the I-635 main lanes from Town East Boulevard to US 80.

(4) Monies advanced by GGP for reimbursement of costs for the design and reconstruction of the loop water main at Town East Mall not to exceed the amount of three million dollars (\$3,000,000.00) plus interest.

(5) Monies advanced by the CITY to Halff Associates, Inc., for reimbursement of costs for the design improvements to South Mesquite Creek, and a tributary creek, from just south of North Mesquite Drive to Towne Centre Drive, and trail improvements in compliance with the City Trail Master Plan in the amount of two hundred seventy-two thousand and four hundred seventy dollars (\$272,470.00).

D. Interest on any unpaid PROJECT COSTS funded by GGP under this AGREEMENT shall accrue beginning from the date of completion of the PROJECT and operation of the SITE LIGHTING to the satisfaction of CITY. The interest rate at which such interest shall be calculated shall be a fixed rate equal to 5.25 percent or the maximum rate provided by law, whichever is less. Such interest will be prorated on a daily basis for the purpose of determining the amount of interest owed with respect to a particular advance. Such interest will be compounded semi-annually 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 from the proceeds of TIF bonds or other monies on deposit in the TAX INCREMENT FUND as applicable, but shall not be an obligation to be paid from any other funds of CITY.

E. CITY hereby declares that the reimbursement procedure outlined above is necessary to implement the PROJECT PLAN and that the cost for design and reconstruction of the SITE LIGHTING constitutes an appropriate project cost.

F. Since the reimbursement of the total estimated cost to construct the PROJECT (including any necessary construction change orders authorized) will require an expenditure of more than fifty thousand dollars (\$50,000.00) from a municipal fund (the TAX INCREMENT FUND), the PROJECT must be competitively bid in accordance with state law. Bids shall be mailed to the CITY, where they will be publicly opened. Thereafter, GGP shall evaluate and determine the lowest responsible bidder. Prior to award and execution of the contract, GGP shall notify CITY of the amount of the lowest responsible bid recommended for award, or any other determination (e.g., rejection of all bids, rebid). Should the lowest responsible bid to construct the eligible Project improvements exceed the \$2,000,000.00 incentive that is to be provided by CITY, GGP may, upon mutual agreement of the parties, either fund the balance of such amount needed to award the construction contract, or revise the scope of the construction contract. All construction costs in excess of the above-stated amount to be provided by CITY, 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 any reimbursement of such excess costs. CITY reserves the right to conduct a reasonable audit of the construction contractor's books, records and other data supporting the amount it will reimburse GGP for PROJECT COSTS.

G. GGP shall use performance and payment bond forms that have been reviewed and approved by the City Attorney. The performance and payment bonds shall name GGP and CITY as joint obligees. GGP shall thoroughly inspect the work of the assigned contractor to guard the CITY against deficiencies in the Project improvements, without assuming responsibilities for means and methods used by the assigned contractor.

## **6. GGP Covenants.**

A. In consideration of the incentive paid by CITY under this AGREEMENT, GGP agrees to hire, subject to CITY's approval, an engineering firm to design the proposed SITE LIGHTING. GGP shall pay all costs and expenses to design the SITE LIGHTING 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 SITE LIGHTING. Following CITY's approval of the final plans and specifications for the SITE LIGHTING, GGP shall prepare all bid documents, including the construction contract and performance and maintenance bonds. GGP agrees that all costs and expenses for designing the SITE LIGHTING shall be paid by GGP and shall be subject to reimbursement from the TAX INCREMENT FUND as a PROJECT COST pursuant to Section 5.

B. GGP agrees to prepare the bid documents, competitively bid PROJECT and manage and



fund construction of the PROJECT to final completion. Upon completion of the PROJECT, GGP agrees to obtain execution of an Affidavit of Final Payment and Release by the contractor, and operate the SITE LIGHTING to the satisfaction of CITY.

C. GGP agrees to comply with all applicable federal, state and local laws in the operation of the PROJECT, including but not limited to, the statutory requirements relating to undocumented workers as set forth in Section 7 of this AGREEMENT.

D. GGP agrees to maintain, repair and continuously operate the SITE LIGHTING from the time of completion until the expiration of the term of this AGREEMENT.

**7. Restrictions on Use of Incentives to Employ Undocumented Workers.**

GGP 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), GGP shall be required to notify CITY of such conviction. Upon notification of conviction by GGP, or if CITY should discover such conviction on its own and notifies GGP of same, GGP 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 11 of this AGREEMENT not later than the 120th day after the date of such notification. As used herein, "undocumented worker" means an individual who, at the time of employment, is not : (1) lawfully admitted for permanent residence to the United States; or (2) authorized under law to be employed in that manner in the United States.

**8. Mutual Assistance.**

CITY and GGP 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.

**9. Covenants Running with the Land.**

GGP'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.

**10. Representations and Warranties.**

CITY represents and warrants to GGP 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. GGP represents and warrants to CITY 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.

**11. Default.**

A. If either party should default (the "Defaulting Party") with respect to any of its material obligations or any representations hereunder and should fail, within 60 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.

B. GGP agrees, that upon an event of default of any of its obligations set forth in Section 6 hereunder, and upon receipt of notice from CITY and expiration of applicable cure periods, to remit to CITY a sum equal to the total of all incentives granted by CITY to GGP pursuant to this AGREEMENT, plus interest at the highest rate per annum allowed by applicable law from the date payments were made, until paid.

**12. Indemnification.**

**GGP IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT IS ACTING INDEPENDENTLY, AND CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE PREMISES OR IMPROVEMENTS. GGP AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, IN THEIR PUBLIC CAPACITY, 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, DIRECTLY 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 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 CITY, ITS OFFICERS OR EMPLOYEES. 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.**

**13. Right Of Offset**

CITY may, at its option, but subject to the notice and cure periods provided in Section 11 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.

**14. 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 GGP and CITY.

E. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. GGP may assign all or part of its rights and obligations hereunder (1) to any Affiliate effective upon written notice to CITY, or (2) to any Person other than an Affiliate with the prior written approval of CITY, which approval shall not be unreasonably withheld. As used herein, "Affiliate" means any Person directly or indirectly controlling, controlled by, or under common control with General Growth Properties, Inc. 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.

F. Notice. Any notice and/or statement required and permitted to be delivered shall be deemed delivered (a) five business days after 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 or (b) one business day after deposit with a national overnight delivery service:

GGP:                                   Town East Mall, LLC  
  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

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.

EXECUTED and effective as of the 4<sup>th</sup> day of February, by CITY, signing by and through its City Manager, duly authorized to execute same by Resolution No. 08-2008 approved by the City Council of the City of Mesquite, Texas, on February 4, 2008, and GGP, acting through its duly authorized officials.

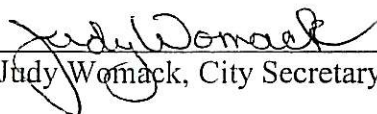
**THE CITY OF MESQUITE:**

By: 

Ted Barron  
Printed Name

City Manager  
Title

ATTEST:

  
Judy Wornack, City Secretary

APPROVED AS TO FORM AND  
LEGALITY

  
City Attorney or his Designee

**GGP:**

Town East Mall, LLC, a Delaware limited  
liability company

By: 

Ronald L. Gem

Printed Name

Authorized Signatory

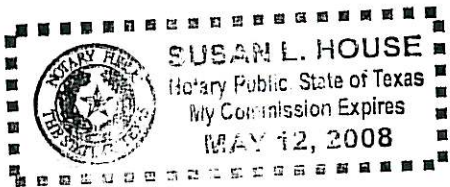
Title

Date: \_\_\_\_\_

THE STATE OF TEXAS           §  
   §  
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 4<sup>th</sup> day of February, 2008.



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 ILLINOIS     §  
  §  
COUNTY OF COOK           §

BEFORE ME, the undersigned authority, on this day personally appeared Ronald L. Gern, Authorized officer, of Town East Mall, LLC, a Delaware limited liability company, 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 corporation and for the purposes stated therein.

2<sup>ND</sup> GIVEN UNDER MY HAND AND SEAL OF OFFICE in said County and State this day of April, 2008.

Sherr Bradberry  
Notary Public in and for the State of Illinois

Sherr Bradberry  
Notary's Printed Name

My Commission Expires: 12/9/08



**EXHIBIT "A"**  
**TO**  
**ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

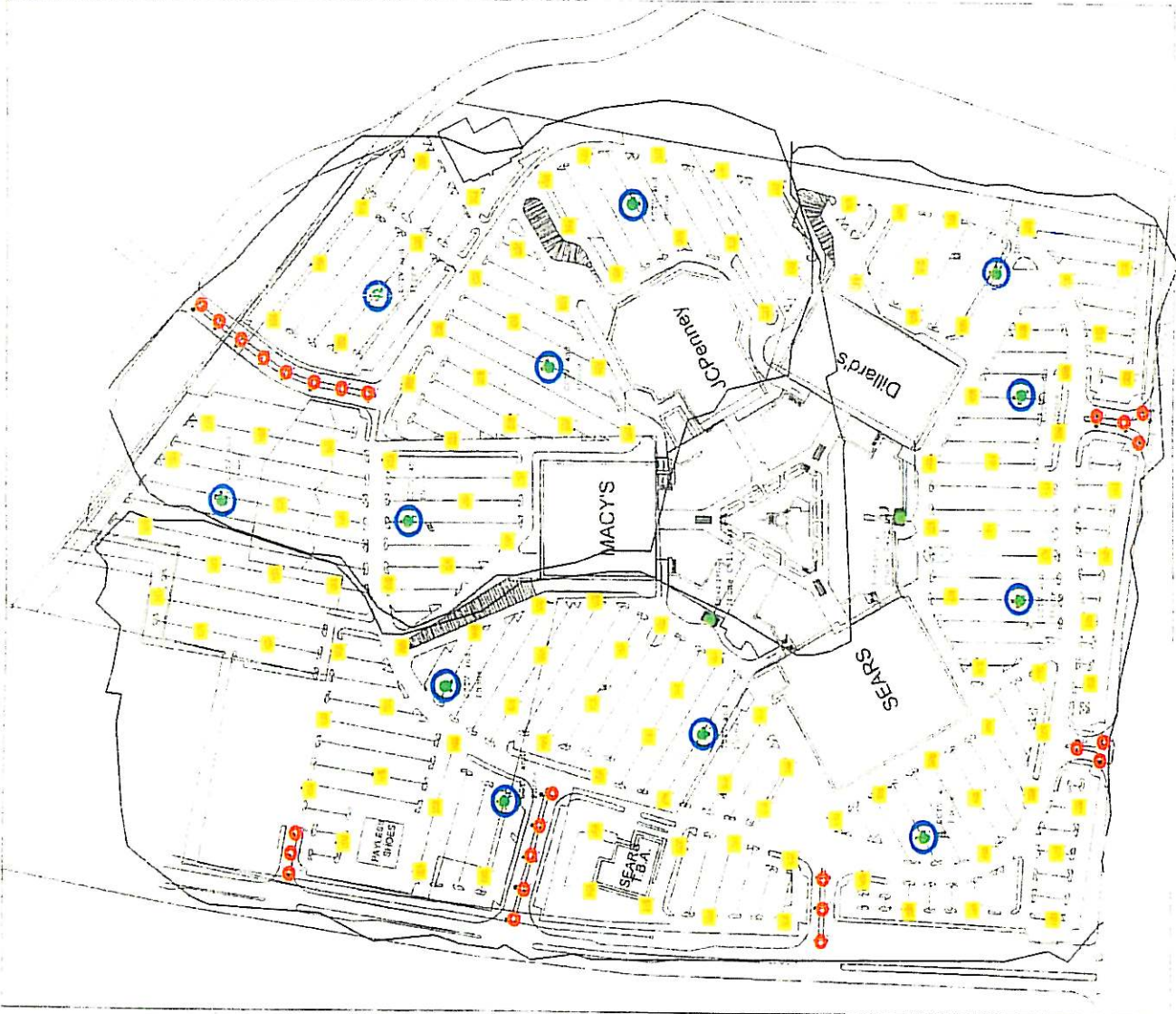
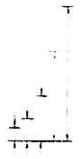
**Description of Premises**



GCP Town East Mall  
 2003 Town East Mall Blvd  
 Mesquite Texas

DATE	DESCRIPTION	BY

GSP18/20



- New Light Fixture
- CCTV Camera
- Emergency Call Box
- Rows of Texas Fixture