

RESOLUTION NO. 11-2008

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 CERTAIN AGREEMENTS WITH LANG AND COMPANY, LLC, 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 two separate proposed agreements by and between the City and Lang and Company, LLC, one of which is attached hereto as Exhibit "A" (the "380 Agreement") and the other of which is attached hereto as Exhibit "B" (the "Contract of Sale"), both of which are hereby incorporated herein by reference and referred to jointly as the Agreements; and

WHEREAS, upon full review and consideration of the Agreements and all matters attendant and related thereto, the City Council is of the opinion that the Agreements 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 Agreements by and between the City of Mesquite (the "City") and Lang and Company, LLC, copies of which are attached hereto as Exhibits "A" and "B" and incorporated herein by reference (the "Agreements"), 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 Lang and Company, LLC, and take other specified actions, in accordance with the terms outlined in the Agreements.

SECTION 3. That the terms and conditions of the Agreements, 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.

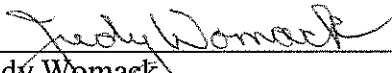
SECTION 5. That this resolution shall become effective immediately from and after its passage.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 18th day of February, 2008.



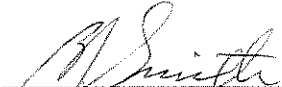
John Monaco
Mayor

ATTEST:



Judy Womack
City Secretary

APPROVED:



B. J. Smith
City Attorney

EXHIBIT "A" TO RESOLUTION

APPROVED BY CITY COUNCIL
DATE 2.18.08 #7B
CITY SEC. _____

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 Lang and Company, LLC (the "Company"), for the purposes and considerations stated below:

WITNESSETH:

WHEREAS, on February 18, 2008, the City adopted Resolution No. 11 - 2008 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 proposes to develop approximately 30 acres, known as the Peachtree Site, into the Peachtree Towne Center consisting of restaurants, offices, retail and commercial establishments, and a hotel and conference center; and

WHEREAS, the estimated taxable value of the Peachtree Towne Center is estimated to be over fifty million dollars (\$50,000,000) at build out; 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 development will increase the taxable value of the Property and will increase the sales tax generated for the City and the value of the benefits of the Project will outweigh the amount of expenditures required of the City under this Agreement.

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

“Bargain Discount Stores” means any retail or wholesale establishment characterized by self-serve, no-frills atmospheres and interior and/or exterior finish out in an attempt to cut overhead costs in addition to discounting prices on merchandise and that may contain the following words as a part of the name of the establishment or in their general advertising:

Bargain	Budget Price	Buy	Closeout
Deal	Discount	Dollar	Exchange
Good Buy	Good Deal	Good Value	Low Price
Markdown	Reduction	Steal	Swap
Trade	Value		

“Casual Plus Restaurants” means restaurants generally offering a variety of choices, market themselves as fresh, made-to-order selections, with a price point of entrees between \$10 and \$20 in 2008 dollars.

“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 Lang and Company, LLC., or assigns.

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

“Premises” means that certain tract of real property located on Peachtree Road generally south of Gross Road, north of the Union Pacific Railroad, west of IH 635, and east of Peachtree

Road, Mesquite, Dallas County, Texas, consisting of approximately 60 acres, more or less, as more particularly described on Exhibit "A" hereto.

"Project" means the Peachtree Towne Center consisting of restaurants, offices, retail and commercial establishments, and a hotel and conference center and as further described on Exhibit "B" hereto.

"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.

"Undocumented Worker" means an individual who, at the time of employment, is not:

- a. Lawfully admitted for permanent residence to the United States; or
- b. Authorized under law to be employed in that manner in the United States.

3. Term.

This Agreement shall be effective as of the date of execution by all parties. This Agreement will terminate upon the expiration of 15 years from the date of execution.

4. City's Development Program Incentives.

Sales Tax Grant. Subject to the Company's Required Use and continued satisfaction of all terms and conditions of this Agreement, the City agrees to provide Company with annual economic development grants in an amount equal to the schedule set forth below of the Sales Tax Receipts on the Property for the preceding Sales Tax Grant Period ("Sales Tax Grant").

- a. Schedule – 1% of the City Sales Tax for six (6) years from the issuance of a certificate of occupancy for each retail sales tax generator. The rebate incentive shall expire at the end of six (6) years from the issuance of the certificate of occupancy or 15 years from the effective date of this agreement, whichever comes first.

Sales Tax Grant Payment Date. The Sales Tax Grant shall be paid annually on the first day of the calendar month sixty (60) days after the end of each Sales Tax Grant Period, beginning with the first Sales Tax Grant Period. For example, if the first Sales Tax Grant Period ends December 14, 2008, the Annual Payment Date for Sales Tax Grant would be March 1, of each calendar year thereafter beginning March 1, 2009.

Property Tax Grant. Subject to the Developer's continued satisfaction of all the terms and conditions of this Agreement, the City agrees to provide the Developer with annual economic development grants for as set forth in the schedule below. To calculate the Property Tax Grant, the state percentage shall apply only to that portion of the Appraised Value of the Property for the Base Year. For purposes of the Grant calculation, the Appraised Value of the Property shall include the Appraised Value of any and all improvements located on all or part of the Property and constructed by Company or other persons or entities, regardless of whether the improvements are part of the same ad valorem tax account(s) as the Property.

Schedule – the following is a descending scale of the City property tax rebates for real property improvements and business personal property ten (10) years beginning in 2010.

- 1) Tax Year 2010: 90%
- 2) Tax Year 2011: 90%
- 3) Tax Year 2012: 80%
- 4) Tax Year 2013: 70%
- 5) Tax Year 2014: 60%
- 6) Tax Year 2015: 50%
- 7) Tax Year 2016: 40%
- 8) Tax Year 2017: 30%
- 9) Tax Year 2018: 20%
- 10) Tax Year 2019: 10%

Property Tax Base Year and Payment Date. The Base Year shall be that tax year during which the Commencement of Construction of the Office Improvements occurs.

Property Tax Grant Payment Date. The Property Tax Grants shall be paid annually and shall commence application with the tax year immediately following the year in which a final certificate of occupancy is issued for occupancy of the Office Improvements. The Property Tax Grants shall be paid on March 1 of the calendar year immediately following tax year for which the Grant applies, and provided the City has received the ad valorem taxes assessed against the Property for such Tax Year.

Property Tax Grant Example. For illustration purposes only, assuming that the Appraised Value of the Property (including improvements on the Property) for Tax Year 2010 totals \$5 Million Dollars and the Base Year Appraised Value for the Property is \$1 Million Dollars, then the amount of the Property Tax Grant for 2010 would be: the City's tax rate for Tax Year 2010 x 90% x (\$5 Million Dollars – \$1 Million Dollars), and would be paid on March 1, 2011.

Property Tax Protests and Appeals. The Company and all the future owners of the land or its subdivided parts will agree in the covenants that restrict the land usage to not contest or protest the Appraised Value of the real property or business personal property for a period of fifteen (15) years from the date of this Agreement. This shall not effect or limit any entity from negotiating/requesting the City of Mesquite or any other taxing authority from abating any and all taxes as allowed by law.

Current Revenue. The Grants made hereunder shall be paid from current revenue from available funds that have been appropriated by the City. Under no circumstances shall City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Company. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

Expiration of Rebates. All contrary provisions contained in this contract or its exhibits notwithstanding, all rebates regarding sales tax and/or incentives regarding sales tax shall expire upon the first to occur of the expiration of six (6) years from the date of the entity receiving a certificate of occupancy, or fifteen (15) years from the effective date of this agreement.

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. Escrow at closing \$2,000,000 for the construction of a bridge over South Mesquite Creek pursuant to a contract for sale executed between the parties.
- b. Escrow at closing \$50,000 for improvements dedicated to the City in the proposed open space as depicted on Exhibit "B" pursuant to a contract for sale executed between the parties.
- c. Donate to the City approximately 30 acres of property as open space following the platting of the property.
- d. Develop the Peachtree Towne Center as depicted on Exhibit "B".
- e. Prohibit "bargain discount stores" from locating in the Project during the term of this Agreement.
- f. Prohibit hotels/motels with fewer than 250 rooms and without full service restaurants during the term of this Agreement.
- g. 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 6 of this Agreement.

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 of Sections 5 and/or 6 hereunder, and upon receipt of notice from the City, to remit to the City a sum equal to the total of all incentives 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. Right Of Offset

The City may, at its option, but subject to the notice and cure periods of the default provisions in Section 10 above, offset any amounts due and payable under this Agreement against any debt, including taxes, lawfully due to City from Company, 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 the City has been reduced to judgment by a court.

13. 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: Lang and Company, LLC
P.O. Box 700023
Dallas, TX 75370

With a copy to: Mr. Craig Laird
Ashley & Laird, L.C.
800 W. Airport Fwy., Ste. 880 LB 6015
Irving, TX 75062

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 Barron
City Manager

ATTEST:

Judy Domack
City Secretary

COMPANY:

LANG and COMPANY, LLC

By: Jin Lang, Pres

APPROVED AS TO FORM AND LEGALITY:

[Signature]
City Attorney or his Designee

Date: 2-26-08

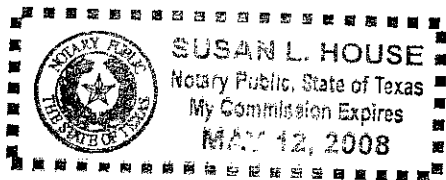
THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

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 27th 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 TEXAS

§
§
§

COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Jim Lang, President (name and title of person), 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.

GIVEN UNDER MY HAND AND SEAL OF OFFICE in said County and State this 27th 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

EXHIBIT "A"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Description of Premises

FIELD NOTES

BEING a tract of land situated in the Daniel Tanner Survey, Abstract No. 1426, in the City of Mesquite, Dallas County, Texas, and being part of that called 85.204 acre tract of land described in deed to The City of Mesquite, Texas, as recorded in Volume 95191, Page 00916 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and being more particularly described as follows:

COMMENCING at a 1/2-inch found iron rod for the west corner of Lot 1, Block 1 of Peachtree/Gross Addition, and addition to the City of Mesquite, Texas, as recorded in Volume 99074, Page 00009, D.R.D.C.T., said point being on the easterly right-of-way line of Peachtree Road (a 100 foot wide public right-of-way) as described in deed recorded in Volume 71054, Page 0405, D.R.D.C.T., said point also being the most westerly north corner of that tract of land described in deed to Golden Shamrock Realty, Inc., as recorded in Volume 2001007, Page 02031, D.R.D.C.T.;

THENCE South 46 degrees 16 minutes 40 seconds West, along the common westerly line of said Golden Shamrock Realty tract and said easterly right-of-way line of Peachtree Road, a distance of 120.96 feet to a 1/2-inch set iron rod with yellow plastic cap stamped "HALFF ASSOC INC." (hereinafter referred to as "with cap") for the POINT OF BEGINNING;

THENCE South 43 degrees 43 minutes 20 seconds East, departing said common line and along the southeasterly line of said Golden Shamrock Realty tract, a distance of 269.56 feet (deed 270.00 feet) to a 5/8-inch found iron rod for corner;

THENCE South 21 degrees 45 minutes 55 seconds East, continuing along said southeasterly line, a distance of 650.20 feet (deed 650.00 feet) to a 1/2-inch set iron rod with cap for the southwest corner of said Golden Shamrock Realty tract;

THENCE North 77 degrees 14 minutes 05 seconds East, along the southerly line of said Golden Shamrock Realty tract, a distance of 312.75 feet (deed 313.33 feet) to a 1/2-inch set iron rod with cap for the southeast corner of said Golden Shamrock Realty tract, said point being on the common westerly right-of-way line of Interstate Highway 635 (L.B.J. Freeway, a variable width public right-of-way) and the easterly line of said City of Mesquite tract;

THENCE South 15 degrees 17 minutes 27 seconds East, along said common line, a distance of 503.14 feet to a point for corner, from which point a found aluminum TXDOT monument bears North 65 degrees 26 minutes 11 seconds East a distance of 0.68 feet;

THENCE South 09 degrees 56 minutes 00 seconds East, continuing along said common line, a distance of 250.56 feet to a point for corner, from which point a found aluminum TXDOT monument bears North 63 degrees 51 minutes 49 seconds East a distance of 0.74 feet;

THENCE South 02 degrees 28 minutes 33 seconds East, continuing along said common line, a distance of 800.01 feet to a 1/2-inch set iron rod with cap for corner;

THENCE South 06 degrees 24 minutes 28 seconds East, continuing along said common line, a distance of 311.76 feet to a 1/2-inch found iron rod with cap stamped "BRITTAIN AND CRAWFORD" for the northeast corner of Lots 2 and 3, Block 1, Peachtree Center, an addition to the City of Mesquite as recorded in Volume 2003092, Page 00027, D.R.D.C.T.;

THENCE departing said common line and along the northerly line of said Peachtree Center addition, the following courses and distances:

North 70 degrees 39 minutes 48 seconds West a distance of 578.50 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for corner;

North 19 degrees 20 minutes 12 seconds East a distance of 60.00 feet to a 1/2-inch found iron rod with cap stamped "BRITTAIN AND CRAWFORD" for corner;

North 70 degrees 39 minutes 48 seconds West a distance of 70.00 feet to a 1/2-inch found iron rod with cap stamped "BRITTAIN AND CRAWFORD" for corner;

South 80 degrees 33 minutes 59 seconds West a distance of 124.66 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for corner;

North 05 degrees 37 minutes 15 seconds East a distance of 103.27 feet to a point for corner from which a found 2-inch diameter disk stamped "MLA RPLS #4873" bears North 21 degrees 18 minutes 56 seconds East a distance of 0.26 feet;

North 84 degrees 22 minutes 45 seconds West a distance of 150.41 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for the point of curvature of a tangent circular curve to the left having a radius of 535.10 feet whose chord bears South 82 degrees 19 minutes 40 seconds West a distance of 246.07 feet;

Westerly, along said circular curve to the left, through a central angle of 26 degrees 35 minutes 10 seconds, an arc distance of 248.29 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for the point of tangency;

South 69 degrees 02 minutes 05 seconds West a distance of 15.00 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for corner;

North 65 degrees 11 minutes 14 seconds West a distance of 45.81 feet to a 1/2-inch set iron rod with cap for the most westerly northwest corner of said Peachtree Center addition, said point also being in the common westerly line of said City of

Mesquite tract and the aforementioned easterly right-of-way line of Peachtree Road, said point being on a circular curve to the left having a radius of 759.73 feet whose chord bears North 31 degrees 03 minutes 06 seconds West a distance of 136.50 feet, said curve being non-tangent to the last described course;

THENCE Northwesterly, departing said northerly line of said Peachtree Center addition, along said common line between said City of Mesquite tract and said Peachtree Road and along said circular curve, through a central angle of 10 degrees 18 minutes 29 seconds, an arc distance of 136.68 feet to a 1/2-inch set iron rod with cap for the point of tangency;

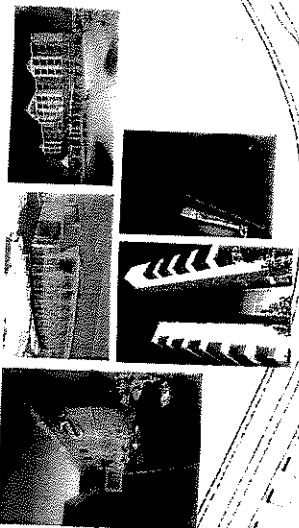
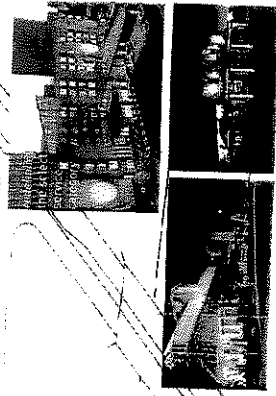
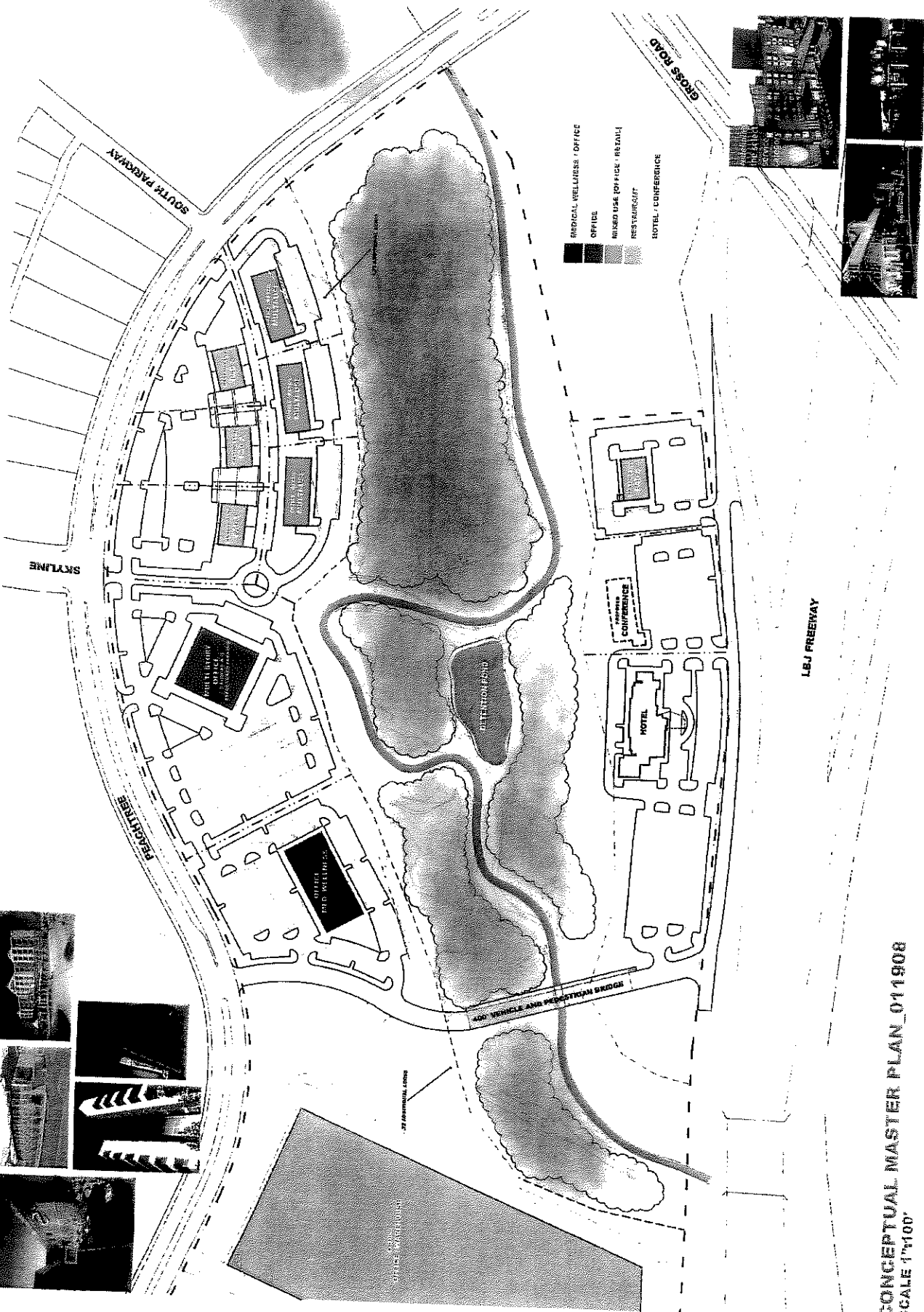
THENCE North 36 degrees 12 minutes 20 seconds West, along said common line, a distance of 248.77 feet to a 1/2-inch set iron rod with cap for the point of curvature of a tangent circular curve to the right having a radius of 1,269.75 feet whose chord bears North 05 degrees 02 minutes 10 seconds East a distance of 1,674.13 feet;

THENCE Northerly, continuing along said common line and along said circular curve, through a central angle of 82 degrees 29 minutes 00 seconds, an arc distance of 1,827.94 feet to a 1/2-inch set iron rod with cap for the point of tangency;

THENCE North 46 degrees 16 minutes 40 seconds East, continuing along said common line, a distance of 341.44 feet to the POINT OF BEGINNING AND CONTAINING 2,626,887 square feet or 60.31 acres of land, more or less.

EXHIBIT "B"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Description of Project



CONCEPTUAL MASTER PLAN_011908
SCALE 1"=100'

STATE OF TEXAS §
 § **CONTRACT OF SALE**
 §
COUNTY OF DALLAS §

This Contract of Sale ("Agreement") is made by and between the City of Mesquite, Texas (the "City"), and Lang and Company, LLC ("Company"), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, the City will transfer the land described in Exhibit "A" to the Mesquite Economic Development Foundation, Inc. (hereinafter "MEDF") for transfer to the Company;

WHEREAS, the Company is or will be under contract to purchase from MEDF approximately 60 acres of land located in Mesquite, Texas (hereinafter the "Property") and as more particularly described in Exhibit "A"; and

WHEREAS, the Company intends to construct an office building with at least 75,000 square feet (hereinafter the "Office Improvements") on the Property, and to further develop the Property with retail, and/or residential uses as initially developed under the concept plan attached as Exhibit "B"; and

WHEREAS, Company has agreed to install or cause to have installed certain roadway and bridge improvements on the Property as depicted and described in Exhibit "C" attached hereto ("Capital Improvements"); and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to construct the Office Improvements and the Capital Improvements would be an agreement by the City to provide an economic development grant to the Company to defray a portion of the cost of such construction; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 AND THE ORDINANCES OF THE CITY to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with this Agreement will further the objectives of the City, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the parties agree as follows:

Article I Definitions

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

“Appraised Value” shall have the same meaning assigned by Section 1.04 of the TEX. TAX CODE, as amended.

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

“Commencement of Construction” shall mean that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained; and (ii) all necessary permits permitting commencement of construction have been issued by all applicable governmental authorities.

“Company” shall mean Lang and Company, LLC or assigns.

“Effective Date” shall mean the date of execution of this Agreement by the City of Mesquite, Texas.

Exhibit “A” is the approximately 60 acres property description.

Exhibit “B” is the Initial Concept Plan of Company for the Land, which concept shall not be altered without the mutual agreement of the parties to this Agreement.

Exhibit “C” is the Capital Improvements -- Description and Construction Schedule of Road and Bridge.

Exhibit “D” is the *Economic Development Grant*.

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

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Grants” shall mean the Sales Tax Grants and Property Tax Grants to be paid the Company from lawfully available funds.

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

“MEDF” shall mean Mesquite Economic Development Foundation, Inc.

“Office Improvements” shall mean the construction and operation of an office building or office buildings with at least 75,000 square feet of space therein, and other ancillary facilities such as required parking and landscaping located on the Property.

“Property” shall mean those approximately 60 acres of land described in Exhibit “A” attached hereto, along with any current or future improvements thereto.

“Required Use” shall mean the Company’s development of the property pursuant to this Agreement, the attachments to this Agreement, and the ordinances of City.

“Sales and Use Tax” shall mean the City’s one percent (1%) sales and use tax imposed pursuant to Chapter 321 of the Texas Tax Code on the sale of Taxable Items consummated on the Property.

“Sales Tax Certificate” shall mean a certificate or other statement in a form reasonably acceptable to the City setting forth the Company’s collection of Sales and Use Tax imposed by the City and received by the City from the State of Texas for the sale of Taxable Items by Company consummated on the Property for the previous twelve (12) calendar months which are to be used to determine the amount and the Company’s eligibility for a Grant, together with such supporting documentation required herein, and as City may reasonably request.

“Sales Tax Grant Period” shall mean the first full twelve (12) calendar months beginning on the date a final certificate of occupancy is issued for occupancy of the Office Improvements, and each successive twelve (12) calendar month period thereafter during the term hereof. For example, if the final Certificate of Occupancy for the Company’s occupancy of the Office Improvements is issued December 15, 2008 then the first Sales Tax Grant Period shall be from December 15, 2008 through and including December 14, 2009.

“Sales Tax Receipts” shall mean the City’s receipts from the State of Texas from the collection of the City’s Sales and Use Tax imposed by the City pursuant to Chapter 321 of the Texas Tax Code (it being expressly understood that the Sales and Use Tax

receipts are being used only as a measurement for its participation through the use of general funds), attributed to the collection of the City's one percent (1%) sales and use tax by Company as a result of sale of Taxable Items consummated on the Property. Sales Tax Receipts do not include any sales and use tax imposed by City for the benefit of the Mesquite Economic Development Corporation, pursuant to Sections 4A or 4B of the Development Corporation Act of 1979, article 5190.6, Vernon's Revised Civil Statutes.

"State of Texas" shall mean the office of the Texas Comptroller, or its successor.

"Tax Rebate Provision" shall mean that taxes will commence to be rebated upon issuance of a certificate of occupancy by a user and shall continue until the first to occur of six (6) years from issuance of the certificate of occupancy or fifteen (15) years from the date of this Agreement.

"Taxable Items" shall have the same meaning assigned by Chapter 151, TEX. TAX CODE, as amended.

Article II Terms and Conditions Precedent

2.1 **Term.** This Agreement shall be effective on the Effective Date and shall continue for a period of ten (10) years or until all Grants have been paid, whichever is later ("Expiration Date"), unless sooner terminated as provided herein. This term does not effect the period of time granted under this agreement for property tax abatements.

2.2 **Condition Precedent.** A condition precedent to the enforceability of this Agreement shall be Company's purchase or acquisition of the Property from MEDF. Unless or until Company acquires title to the Property, this Agreement shall not be binding upon either Company or City. In the event that Company does not acquire the Property within six (6) months of the Effective Date, this Agreement shall be automatically void.

2.3 **Transfer of Land to MEDF.** A Condition precedent to the enforceability of this agreement shall be the City of Mesquite transferring the land pursuant to the Local Government Code to the MEDF.

2.4 **Transfer of Land to Company.** A condition precedent to the enforceability of this agreement is the sale of the Land to the Company by the MEDF. The terms of the sale are the following:

- 1) MEDF shall deliver to Company a Special Warranty Deed upon the placing in escrow pursuant to paragraph 5.1 \$2,000,000 (two million dollars).
- 2) MEDF shall have a deed of trust lien on the property to be released at the completion of the financial terms of this Agreement. The Deed of Trust shall contain language satisfactory to City in its sole discretion.

2.5 Restrictive Covenants/Deed Restrictions. The Company shall create pursuant to the Texas Property Code and/or other laws of the State of Texas restrictive covenants/deed restrictions and/or an association with applicable rules/restrictions concerning the land that at a minimum does the following, the other covenants/deed restrictions and/or an association rules shall be decided by Company

1) Hotels shall have at least 250 rooms, contain a full service restaurant, provide at least 10,000 square feet of conference space and comply with City's zoning requirements as determined from time to time, for which a conditional use permit is approved by City.

2) Prohibit bargain discount stores. For the purpose of this Agreement, the phrase, "bargain discount stores" shall mean any retail or wholesale establishment characterized by self-serve, no frills atmospheres and interior and/or exterior finish out in an attempt to cut overhead costs in addition to discounting prices on merchandise. No establishment shall be permitted with the following words as a part of the name of the establishment or using the word(s) in their general advertising: bargain, budget price, buy, closeout, deal discount, dollar, exchange, good buy, good deal, good value, low price, markdown, reduction, steal, swap, trade and/or value.

3) Provide that all restaurants located on the property must be "casual plus. For purposes of this Agreement, casual plus restaurants are defined as restaurants that offer a variety of choices, market themselves as fresh, made-to-order selections, with a price point of entrees between \$10.00 and \$20.00 in 2008 dollars.

2.6 INITIAL CONCEPT PLAN. Attached as Exhibit "B" is a initial concept plan that is a proposal for the development of the land by the Company.

2.7 RESTAURANT DEVELOPMENT. A condition precedent to the enforceability of this Agreement's tax rebate provisions shall be Company's development of two pad sites as restaurants with a "casual plus" environment for which a conditional use permit is approved by City's City Council.

2.8 OPEN SPACE LAND. The Company after the deeding of the land to the Company by MEDF shall deed back to the City approximately 30 acres of land as open space. The Company agrees to escrow with a bank satisfactory to City, Fifty Thousand no/100 Dollars (\$50,000.00) to be applied and paid toward improvements dedicated to City in the proposed open space as depicted on Exhibit "B". Company agrees that it shall obtain the written agreement from the escrowing bank to the effect that the funds on deposit may not be withdrawn without the express written consent of City.

2.9. City, Company and MEDF acknowledge and agree that City's conveyance of the Property shall not include the rights and interest of City in and to the oil, gas and other minerals in, on or under the Property; and, the deed to be delivered by City to MEDF shall contain a reservation stating that "Grantor excepts from this conveyance all of it's interest in and to the oil, gas and other minerals in, on and under the Property." The deed to be delivered by MEDF to Company shall specifically reference the prior reservation of mineral interest by City. City

agrees, however, to cooperate with Company concerning the placement of any mineral extraction equipment in an effort to minimize the impact to Company. In the event that City and Company cannot reach an agreement with regard to the placement of such equipment, City and Company agree to submit the issue to an impartial mediator to determine the least disruptive location that allows full recovery of minerals from the Property. City further agrees to abide by the same ordinances or other local regulations established by City concerning extraction of minerals from other similarly developed properties.

Article III Economic Development Grants

Subject to Company's required use and continued satisfaction of the terms and conditions of this Agreement, City agrees to adopt an ordinance in the form attached hereto as Exhibit "D".

Article IV Conditions to Economic Development Grants

4.1 **Conditions to Annual Sales Tax Grants.** The City's obligation to pay the Grants hereunder shall be conditioned upon the Company's compliance and satisfaction of each of the following conditions:

(a) **Office Improvements and Required Use.** During the term of this Agreement following the issuance of a final certificate of occupancy for the Improvements and continuing thereafter until expiration of this Agreement, or earlier termination, Company agrees to continuously own, lease or occupy at least 75,000 square feet of space in the Office Improvements, and that the Office Improvements shall be used for the Required Use and that the Company shall not allow the operation of the Office Improvements in conformance with the Required Use to cease for more than thirty (30) days except in connection with, and to the extent of an event of a Force Majeure.

(b) **Capital Improvements.** Company shall cause the Capital Improvements to be constructed as provided in Article V of this Agreement.

(c) **Sales Tax Certificate.** During the term of this Agreement, within thirty (30) days after the end of each Sales Tax Grant Period, the Company shall provide the City with a Sales Tax Certificate. The City shall have no duty to calculate the Sales Tax Receipts or determine Company's entitlement to any Grant, or pay any Grant during the term of this Agreement until such time as Company has provided the City a Sales Tax Certificate for the applicable Sales Tax Grant Period. The City may but is not required to provide Company with a form for the Sales Tax Certificate required herein. At the request of the City, the Company shall provide such additional documentation as may be reasonably requested by City to evidence, support and establish the Sales and Use Tax paid and collected (including sales and use tax paid directly to the State of Texas pursuant to a direct payment permit) by Company for the sale of Taxable Items by Company consummated at the Improvements and received by City from the State of Texas. The Sales Tax Certificate shall at a minimum contain, include or be accompanied by the following:

- i. A schedule detailing the amount of the City's Sales and Use Tax collected and paid to the State of Texas as a result of the sale of Taxable Items consummated at the Property for the Sales Tax Grant Period;
- ii. A copy of all sales and use tax returns and reports, sales and use tax prepayment returns, direct payment permits and reports, including amended sales and use tax returns or reports, for the Sales Tax Grant Period showing the Sales and Use Tax collected (including sales and use tax paid directly to the State of Texas pursuant to a direct payment certificate) for the sale of Taxable Items consummated at the Property;
- iii. A copy of all direct payment and self-assessment returns, including amended returns, filed for the Sales Tax Grant Period showing the Sales and Use Tax collected and paid to the State of Texas for the sale of Taxable Items consummated at the Property;

City agrees to the extent allowed by law to maintain the confidentiality of the Sales Tax Certificate. As a condition precedent to the payment of any Sales Tax Grant hereunder, City shall have received a Sales Tax Certificate from the Company for the Sales Tax Grant Period for which payment of a Sales Tax Grant is requested.

(d) **No Uncured Breach.** Company shall not have an uncured breach or default of this Agreement.

(e.) In the event of conflict in the data provided by Company as required by this Article and data supplied by the Comptrollers Office of the State of Texas, the data provided by the Comptrollers Office shall control.

4.2 **Adjustments.** In the event the Company files an amended sales and use tax return, or report with the State of Texas, or if additional Sales and Use Tax is due and owing, as determined or approved by the State of Texas, affecting Sales Tax Receipts for a previous Grant Year, the Grant payment for the Grant Year immediately following such State of Texas approved amendment shall be adjusted accordingly provided the City has received Sales Tax Receipts attributed to such adjustment. As a condition precedent to payment of such adjustment, the Company shall provide the City with a copy of any such amended sales and use tax report or return, and the approval thereof by the State of Texas. The provisions of this Section 4.2 shall survive termination of this Agreement.

4.3 **Refunds.** In the event the State of Texas determines that the City erroneously received Sales Tax Receipts, or that the amount of Sales and Use Tax paid to the City exceeds the correct amount of Sales and Use Tax for a previous Sales Tax Grant Period, for which the Company has received a Grant, the Company shall, within thirty (30) days after receipt of notification thereof from the City specifying the amount by which such Grant exceeded the amount to which the Company was entitled pursuant to such State of Texas determination, repay such amount to the City. The City may at its option adjust the Grant payment for the Sales Tax Grant Period

immediately following such State of Texas determination. As a condition precedent to payment of such refund, the City shall provide Company with a copy of such determination by the State of Texas. The provisions of this Section 4.3 shall survive termination of this Agreement.

Article V Capital Improvements

5.1 **Owner Construction Obligations.** Owner agrees, without cost to City, to design, and construct, or have constructed, certain roadway and bridge improvements on the Property as further described in Exhibit "C" attached hereto ("Capital Improvements"), and in accordance with the applicable standards, ordinances and regulations adopted by the City. Construction of the Capital Improvements shall not commence until and unless the City has approved the construction plans for the Capital Improvements, which approved plans shall become a part of this Agreement. Company agrees to place in escrow in Frost Bank or another national banking institution satisfactory to City \$2,000,000 for the construction costs of the Capital improvements. These funds will be drawn down as the Capital improvements are completed. Subject to events of Force Majeure, Owner shall cause Commencement of Construction, completion of construction, and dedication of the Capital Improvements to the City to occur within one year from the date of the deed from MEDF to Company. Company agrees that it shall obtain the written agreement from the escrowing bank to the effect that the funds on deposit may not be withdrawn without the express written consent of City.

5.2. **City Reimbursement.** Upon acceptance of the Capital Improvements, City agrees to reimburse to Company an amount equal to thirty percent (30%) of the total costs not to exceed \$600,000 for the cost of the bridge connection to the open space. The City's agreement to partially reimburse Company for these costs shall be performed within thirty (30) days after notice of substantial completion of the bridge.

Article VI Termination

6.1 This Agreement shall terminate upon any one of the following:

- (a) by written agreement of the parties;
- (b) the Expiration Date;
- (c) by either party in the event the other party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof;
- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency;
- (e) by City, if any Impositions owed to the City or the State of Texas by Company shall become delinquent (provided, however the Company retains the right to timely and properly protest and contest any such Impositions); and
- (f) by City, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

6.2 City may terminate this Agreement upon the following events:

- (a) Company's failure to construct improvements in accordance with Exhibit "C";
- (b) Company's failure to escrow the funds made the subject of paragraphs 2.8 and 5.1 of this Agreement; or
- (c) Company's failure to perform any other matter required of Company by this Agreement.

6.3 **Refund of Grants.** In the event the Agreement is terminated by the City pursuant to this Agreement, the Company shall immediately refund to the City an amount equal to the sum of all previous Grants paid by the City to the Company under this Agreement prior to the date of such termination.

6.4

(a) In the event that Company breaches any of the terms of this Agreement, the Property shall be reconveyed to MEDF by Company free and clear of all liens, unexpended funds required to be escrowed by Company pursuant to paragraph 2.8 and 5.1 of this Agreement shall become the property of City; Company shall assign, transfer and deliver all plans, architectural designs, engineering reports, flood studies and surveys to City; and, Company shall refund the grants pursuant to paragraph 6.3 of this Agreement.

(b) To secure Company's obligations under this Agreement, Company agrees to deliver to City:

- i. A deed of trust lien on the Property;
- ii. A conditional assignment of the escrowed funds called for in paragraphs 2.8 and 5.1 of this Agreement; and,
- iii. A conditional assignment of all of Company's plans, architectural designs, engineering reports, flood studies and surveys concerning the Property.

The deed of trust and assignments called for in paragraph 6.4(b) shall be in such form and contain such provisions as shall be satisfactory to City in its sole discretion.

Article VII Miscellaneous

7.1 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and assigns of the parties hereto. This Agreement may not be assigned

without the express written consent of the City Manager. City agrees that any immunity from suit has been waived solely for the purpose of enforcing this Agreement.

7.2 **Limitation on Liability.** It is understood and agreed between the parties that the Company, in satisfying the conditions of this Agreement, have acted independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions. The Company agrees to indemnify and hold harmless the City from all such claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever by a third party arising out of the Company's performance of the conditions under this Agreement, excluding actions of third parties with whom Company has not contracted with or whom are not injured on the Land or within the Improvements.

7.3 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

7.4 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

7.5 **Notice.**

a. To be effective, any notice to City under this contract relating to claims of default must strictly comply with the provisions of the Texas Government Code, the Texas Local Government Code, and City's ordinances regarding suits and/or claims against a municipality. However, notices sent to the City in the ordinary course of this Agreement shall be sent to City pursuant to paragraph 7.5(b)

b. Any notice required or permitted to be delivered hereunder (other than those described in paragraph 7.5(a)) shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below or on the day actually received if sent by courier or otherwise hand delivered.

If intended for City, to:

Attn: City Manager
City of Mesquite, Texas
711 North Galloway Ave
Mesquite, Texas

With a copy to:

Attn: City Attorney
City of Mesquite, Texas
711 North Galloway Ave
Mesquite, Texas

If intended for the Company, to:

Lang and Company, LLC
PO Box 700023
Dallas, TX 75370

With a copy to:

Mr. Craig Laird
Ashley & Laird, L.C.
800 W. Airport Fwy., Ste. 917
Irving, TX 75062

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

7.7 **Governing Law.** The Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas.

7.8 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

7.9 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall 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.

7.10 **Recitals.** The recitals to this Agreement are incorporated herein.

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

7.12 **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

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

7.14 In the event of conflict between this document and Exhibit "D" to this Agreement, Exhibit "D" shall control.

7.15 The exhibits are incorporated herein by reference for all purposes.

EXECUTED on this 27th day of February, 2008.

City of Mesquite, Texas

By: [Signature]
Mayor

Attest:

By: [Signature]
City Secretary

Approved as to Form:

By: [Signature]
City Attorney

EXECUTED this the 27th day of February, 2008.

Lang and Company, LLC

By: [Signature]
President

City's Acknowledgment

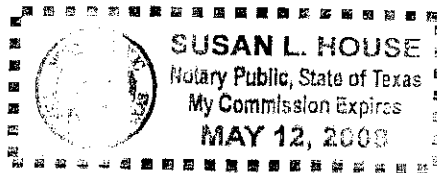
State of Texas §
 §
County of Dallas §

This instrument was acknowledged before me on the 27th day of February 2008, by John Monaco Mayor of the City of Mesquite, Texas, a Texas municipality, on behalf of said municipality.

Susan L. House
Notary Public, State of Texas

My Commission Expires:

May 12, 2008



Company's Acknowledgment

State of Texas

§

County of Dallas

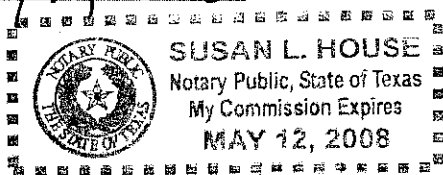
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This instrument was acknowledged before me on the 27th day of February 2008, by Jim Lang, President, of Lang and Company, LLC.

Susan L. House
Notary Public In and For the State of Texas

My Commission Expires:
May 12, 2008



My Commission expires: _____

Exhibit "A"

Description of Property

FIELD NOTES

BEING a tract of land situated in the Daniel Tanner Survey, Abstract No. 1426, in the City of Mesquite, Dallas County, Texas, and being part of that called 85.204 acre tract of land described in deed to The City of Mesquite, Texas, as recorded in Volume 95191, Page 00916 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and being more particularly described as follows:

COMMENCING at a 1/2-inch found iron rod for the west corner of Lot 1, Block 1 of Peachtree/Gross Addition, and addition to the City of Mesquite, Texas, as recorded in Volume 99074, Page 00009, D.R.D.C.T., said point being on the easterly right-of-way line of Peachtree Road (a 100 foot wide public right-of-way) as described in deed recorded in Volume 71054, Page 0405, D.R.D.C.T., said point also being the most westerly north corner of that tract of land described in deed to Golden Shamrock Realty, Inc., as recorded in Volume 2001007, Page 02031, D.R.D.C.T.;

THENCE South 46 degrees 16 minutes 40 seconds West, along the common westerly line of said Golden Shamrock Realty tract and said easterly right-of-way line of Peachtree Road, a distance of 120.96 feet to a 1/2-inch set iron rod with yellow plastic cap stamped "HALFF ASSOC INC." (hereinafter referred to as "with cap") for the POINT OF BEGINNING;

THENCE South 43 degrees 43 minutes 20 seconds East, departing said common line and along the southeasterly line of said Golden Shamrock Realty tract, a distance of 269.56 feet (deed 270.00 feet) to a 5/8-inch found iron rod for corner;

THENCE South 21 degrees 45 minutes 55 seconds East, continuing along said southeasterly line, a distance of 650.20 feet (deed 650.00 feet) to a 1/2-inch set iron rod with cap for the southwest corner of said Golden Shamrock Realty tract;

THENCE North 77 degrees 14 minutes 05 seconds East, along the southerly line of said Golden Shamrock Realty tract, a distance of 312.75 feet (deed 313.33 feet) to a 1/2-inch set iron rod with cap for the southeast corner of said Golden Shamrock Realty tract, said point being on the common westerly right-of-way line of Interstate Highway 635 (L.B.J. Freeway, a variable width public right-of-way) and the easterly line of said City of Mesquite tract;

THENCE South 15 degrees 17 minutes 27 seconds East, along said common line, a distance of 503.14 feet to a point for corner, from which point a found aluminum TXDOT monument bears North 65 degrees 26 minutes 11 seconds East a distance of 0.68 feet;

THENCE South 09 degrees 56 minutes 00 seconds East, continuing along said common line, a distance of 250.56 feet to a point for corner, from which point a found aluminum TXDOT monument bears North 63 degrees 51 minutes 49 seconds East a distance of 0.74 feet;

THENCE South 02 degrees 28 minutes 33 seconds East, continuing along said common line, a distance of 800.01 feet to a 1/2-inch set iron rod with cap for corner;

THENCE South 06 degrees 24 minutes 28 seconds East, continuing along said common line, a distance of 311.76 feet to a 1/2-inch found iron rod with cap stamped "BRITTAİN AND CRAWFORD" for the northeast corner of Lots 2 and 3, Block 1, Peachtree Center, an addition to the City of Mesquite as recorded in Volume 2003092, Page 00027, D.R.D.C.T.;

THENCE departing said common line and along the northerly line of said Peachtree Center addition, the following courses and distances:

North 70 degrees 39 minutes 48 seconds West a distance of 578.50 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for corner;

North 19 degrees 20 minutes 12 seconds East a distance of 60.00 feet to a 1/2-inch found iron rod with cap stamped "BRITTAİN AND CRAWFORD" for corner;

North 70 degrees 39 minutes 48 seconds West a distance of 70.00 feet to a 1/2-inch found iron rod with cap stamped "BRITTAİN AND CRAWFORD" for corner;

South 80 degrees 33 minutes 59 seconds West a distance of 124.66 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for corner;

North 05 degrees 37 minutes 15 seconds East a distance of 103.27 feet to a point for corner from which a found 2-inch diameter disk stamped "MLA RPLS #4873" bears North 21 degrees 18 minutes 56 seconds East a distance of 0.26 feet;

North 84 degrees 22 minutes 45 seconds West a distance of 150.41 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for the point of curvature of a tangent circular curve to the left having a radius of 535.10 feet whose chord bears South 82 degrees 19 minutes 40 seconds West a distance of 246.07 feet;

Westerly, along said circular curve to the left, through a central angle of 26 degrees 35 minutes 10 seconds, an arc distance of 248.29 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for the point of tangency;

South 69 degrees 02 minutes 05 seconds West a distance of 15.00 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for corner;

North 65 degrees 11 minutes 14 seconds West a distance of 45.81 feet to a 1/2-inch set iron rod with cap for the most westerly northwest corner of said Peachtree Center addition, said point also being in the common westerly line of said City of

Mesquite tract and the aforementioned easterly right-of-way line of Peachtree Road, said point being on a circular curve to the left having a radius of 759.73 feet whose chord bears North 31 degrees 03 minutes 06 seconds West a distance of 136.50 feet, said curve being non-tangent to the last described course;

THENCE Northwesterly, departing said northerly line of said Peachtree Center addition, along said common line between said City of Mesquite tract and said Peachtree Road and along said circular curve, through a central angle of 10 degrees 18 minutes 29 seconds, an arc distance of 136.68 feet to a 1/2-inch set iron rod with cap for the point of tangency;

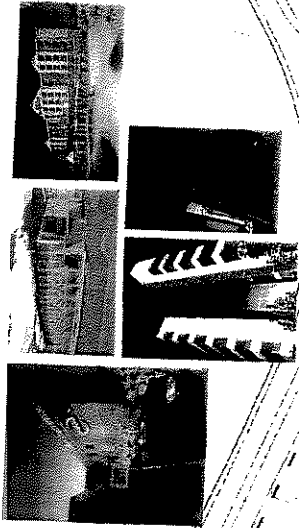
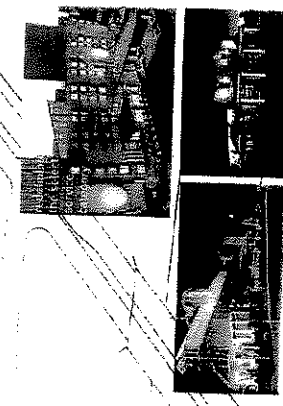
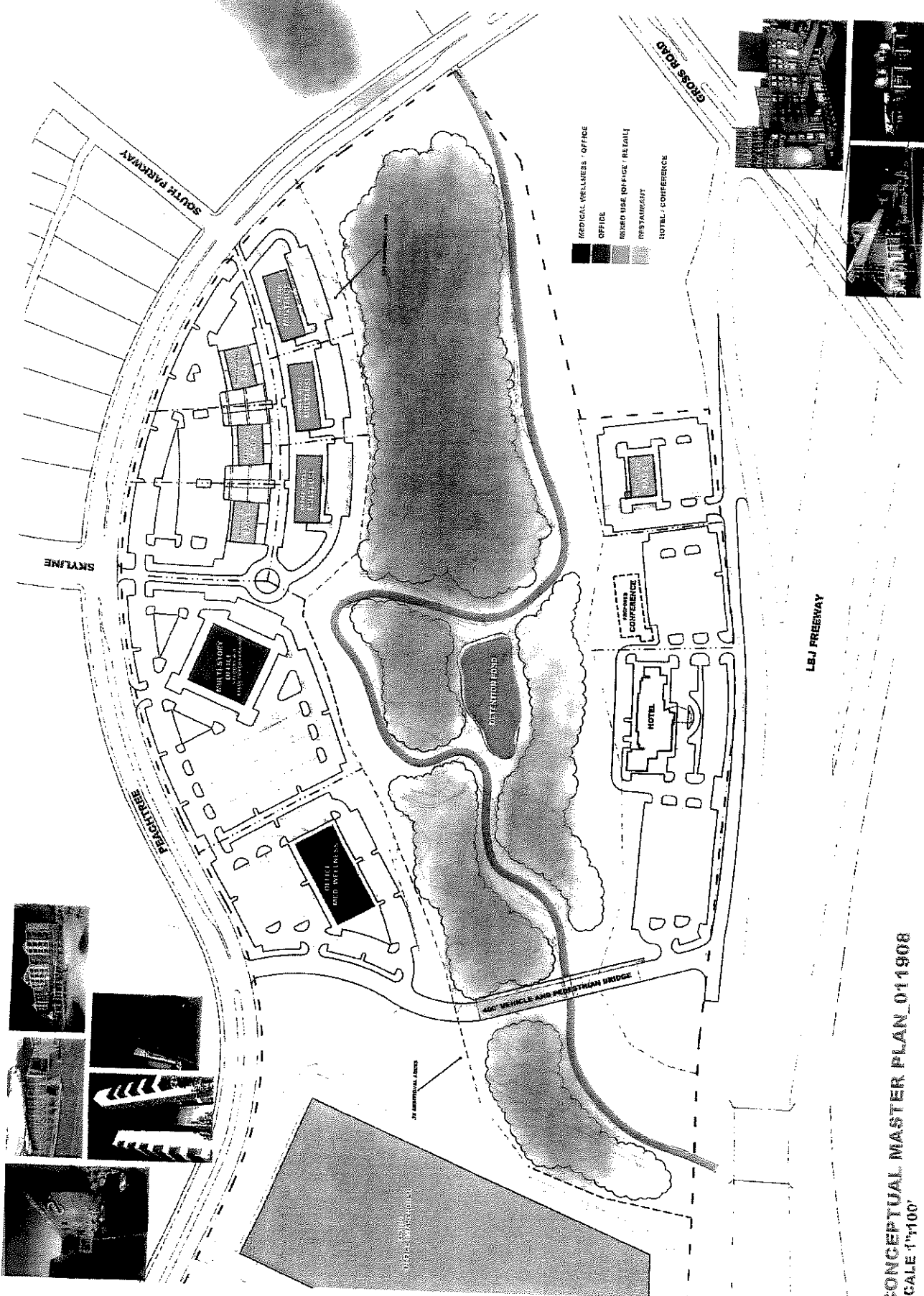
THENCE North 36 degrees 12 minutes 20 seconds West, along said common line, a distance of 248.77 feet to a 1/2-inch set iron rod with cap for the point of curvature of a tangent circular curve to the right having a radius of 1,269.75 feet whose chord bears North 05 degrees 02 minutes 10 seconds East a distance of 1,674.13 feet;

THENCE Northerly, continuing along said common line and along said circular curve, through a central angle of 82 degrees 29 minutes 00 seconds, an arc distance of 1,827.94 feet to a 1/2-inch set iron rod with cap for the point of tangency;

THENCE North 46 degrees 16 minutes 40 seconds East, continuing along said common line, a distance of 341.44 feet to the POINT OF BEGINNING AND CONTAINING 2,626,887 square feet or 60.31 acres of land, more or less.

Exhibit "B"

Initial Concept Plan of Company for the Land

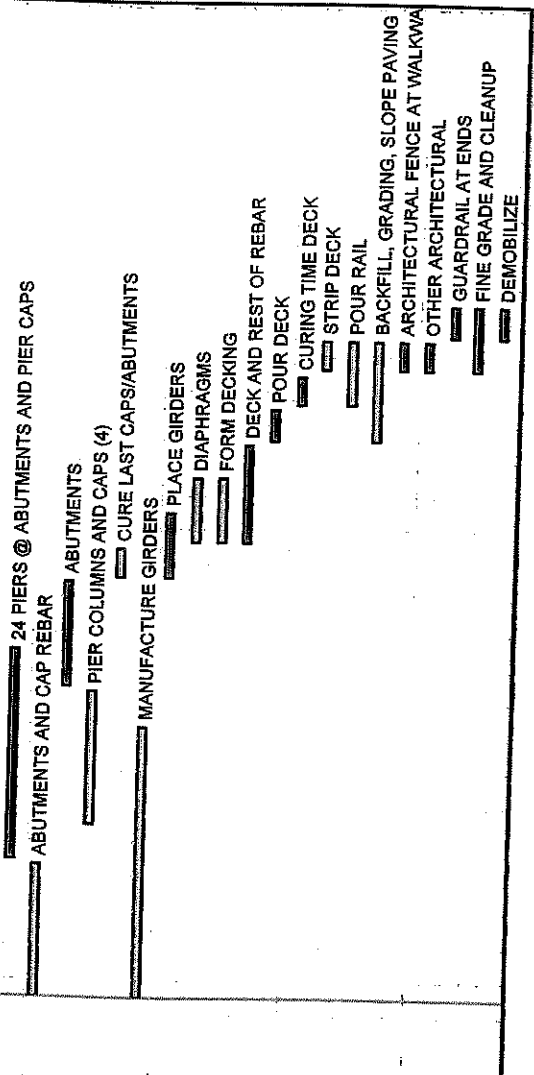


CONCEPTUAL MASTER PLAN_011908
SCALE 1/4"=100'

Exhibit "C"

Capital Improvements -- Description and Construction Schedule of Road and Bridge

Act ID	Description	Orig Dur	Rem Dur	Early Start	Early Finish
1000	MOBILIZATION	5d	5d	01MAY08	07MAY08
1010	CLEARING	5d	5d	08MAY08	14MAY08
1020	ACCESS AND OTHER GRADING	5d	5d	08MAY08	14MAY08
1030	PIER REBAR	20d	20d	01MAY08	28MAY08
1040	24 PIERS @ ABUTMENTS AND PIER	30d	30d	29MAY08	10JUL08
1050	ABUTMENTS AND CAP REBAR	20d	20d	01MAY08	28MAY08
1060	ABUTMENTS	15d	15d	03JUL08	24JUL08
1070	PIER COLUMNS AND CAPS (4)	20d	20d	05JUN08	02JUL08
1080	CURE LAST CAPS/ABUTMENTS	5d	5d	25JUL08	31JUL08
1090	MANUFACTURE GIRDERS	40d	40d	01MAY08	25JUN08
1100	PLACE GIRDERS	10d	10d	25JUL08	07AUG08
1110	DIAPHRAGMS	10d	10d	01AUG08	14AUG08
1120	FORM DECKING	10d	10d	01AUG08	14AUG08
1130	DECK AND REST OF REBAR	15d	15d	01AUG08	21AUG08
1140	POUR DECK	5d	5d	22AUG08	28AUG08
1150	CURING TIME DECK	5d	5d	29AUG08	04SEP08
1160	STRIP DECK	5d	5d	05SEP08	11SEP08
1170	POUR RAIL	10d	10d	29AUG08	11SEP08
1180	BACKFILL, GRADING, SLOPE PAVING	15d	15d	22AUG08	11SEP08
1190	ARCHITECTURAL FENCE AT	5d	5d	05SEP08	11SEP08
1200	OTHER ARCHITECTURAL	5d	5d	05SEP08	11SEP08
1210	GUARDRAIL AT ENDS	5d	5d	12SEP08	18SEP08
1220	FINE GRADE AND CLEANUP	10d	10d	05SEP08	18SEP08
1230	DEMOLIBLIZE	5d	5d	12SEP08	18SEP08



**BRB CONTRACTORS, INC.
PEACHTREE BRIDGE PROJECT**

Start date 01MAY08
 Finish date 18SEP08
 Data date 01MAY08
 Run date 13FEB08
 Page number 1A
 © Primavera Systems, Inc.

Legend for Gantt chart symbols:

- Early bar
- Progress bar
- Critical bar
- Summary bar
- Start milestone point
- Finish milestone point

Exhibit "D"

Economic Development Grant

EXHIBIT "D"

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 Lang and Company, LLC (the "Company"), for the purposes and considerations stated below:

WITNESSETH:

WHEREAS, on February 18, 2008, the City adopted Resolution No. 11 - 2008 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 proposes to develop approximately 30 acres, known as the Peachtree Site, into the Peachtree Towne Center consisting of restaurants, offices, retail and commercial establishments, and a hotel and conference center; and

WHEREAS, the estimated taxable value of the Peachtree Towne Center is estimated to be over fifty million dollars (\$50,000,000) at build out; 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 development will increase the taxable value of the Property and will increase the sales tax generated for the City and the value of the benefits of the Project will outweigh the amount of expenditures required of the City under this Agreement.

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

“Bargain Discount Stores” means any retail or wholesale establishment characterized by self-serve, no-frills atmospheres and interior and/or exterior finish out in an attempt to cut overhead costs in addition to discounting prices on merchandise and that may contain the following words as a part of the name of the establishment or in their general advertising:

Bargain	Budget Price	Buy	Closeout
Deal	Discount	Dollar	Exchange
Good Buy	Good Deal	Good Value	Low Price
Markdown	Reduction	Steal	Swap
Trade	Value		

“Casual Plus Restaurants” means restaurants generally offering a variety of choices, market themselves as fresh, made-to-order selections, with a price point of entrees between \$10 and \$20 in 2008 dollars.

“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 Lang and Company, LLC., or assigns.

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

“Premises” means that certain tract of real property located on Peachtree Road generally south of Gross Road, north of the Union Pacific Railroad, west of IH 635, and east of Peachtree

Road, Mesquite, Dallas County, Texas, consisting of approximately 60 acres, more or less, as more particularly described on Exhibit "A" hereto.

"Project" means the Peachtree Towne Center consisting of restaurants, offices, retail and commercial establishments, and a hotel and conference center and as further described on Exhibit "B" hereto.

"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.

"Undocumented Worker" means an individual who, at the time of employment, is not:

- a. Lawfully admitted for permanent residence to the United States; or
- b. Authorized under law to be employed in that manner in the United States.

3. Term.

This Agreement shall be effective as of the date of execution by all parties. This Agreement will terminate upon the expiration of 15 years from the date of execution.

4. City's Development Program Incentives.

Sales Tax Grant. Subject to the Company's Required Use and continued satisfaction of all terms and conditions of this Agreement, the City agrees to provide Company with annual economic development grants in an amount equal to the schedule set forth below of the Sales Tax Receipts on the Property for the preceding Sales Tax Grant Period ("Sales Tax Grant").

- a. Schedule – 1% of the City Sales Tax for six (6) years from the issuance of a certificate of occupancy for each retail sales tax generator. The rebate incentive shall expire at the end of six (6) years from the issuance of the certificate of occupancy or 15 years from the effective date of this agreement, whichever comes first.

Sales Tax Grant Payment Date. The Sales Tax Grant shall be paid annually on the first day of the calendar month sixty (60) days after the end of each Sales Tax Grant Period, beginning with the first Sales Tax Grant Period. For example, if the first Sales Tax Grant Period ends December 14, 2008, the Annual Payment Date for Sales Tax Grant would be March 1, of each calendar year thereafter beginning March 1, 2009.

Property Tax Grant. Subject to the Developer's continued satisfaction of all the terms and conditions of this Agreement, the City agrees to provide the Developer with annual economic development grants for as set forth in the schedule below. To calculate the Property Tax Grant, the state percentage shall apply only to that portion of the Appraised Value of the Property for the Base Year. For purposes of the Grant calculation, the Appraised Value of the Property shall include the Appraised Value of any and all improvements located on all or part of the Property and constructed by Company or other persons or entities, regardless of whether the improvements are part of the same ad valorem tax account(s) as the Property.

Schedule – the following is a descending scale of the City property tax rebates for real property improvements and business personal property ten (10) years beginning in 2010.

- 1) Tax Year 2010: 90%
- 2) Tax Year 2011: 90%
- 3) Tax Year 2012: 80%
- 4) Tax Year 2013: 70%
- 5) Tax Year 2014: 60%
- 6) Tax Year 2015: 50%
- 7) Tax Year 2016: 40%
- 8) Tax Year 2017: 30%
- 9) Tax Year 2018: 20%
- 10) Tax Year 2019: 10%

Property Tax Base Year and Payment Date. The Base Year shall be that tax year during which the Commencement of Construction of the Office Improvements occurs.

Property Tax Grant Payment Date. The Property Tax Grants shall be paid annually and shall commence application with the tax year immediately following the year in which a final certificate of occupancy is issued for occupancy of the Office Improvements. The Property Tax Grants shall be paid on March 1 of the calendar year immediately following tax year for which the Grant applies, and provided the City has received the ad valorem taxes assessed against the Property for such Tax Year.

Property Tax Grant Example. For illustration purposes only, assuming that the Appraised Value of the Property (including improvements on the Property) for Tax Year 2010 totals \$5 Million Dollars and the Base Year Appraised Value for the Property is \$1 Million Dollars, then the amount of the Property Tax Grant for 2010 would be: the City's tax rate for Tax Year 2010 x 90% x (\$5 Million Dollars – \$1 Million Dollars), and would be paid on March 1, 2011.

Property Tax Protests and Appeals. The Company and all the future owners of the land or its subdivided parts will agree in the covenants that restrict the land usage to not contest or protest the Appraised Value of the real property or business personal property for a period of fifteen (15) years from the date of this Agreement. This shall not effect or limit any entity from negotiating/requesting the City of Mesquite or any other taxing authority from abating any and all taxes as allowed by law.

Current Revenue. The Grants made hereunder shall be paid from current revenue from available funds that have been appropriated by the City. Under no circumstances shall City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Company. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

Expiration of Rebates. All contrary provisions contained in this contract or its exhibits notwithstanding, all rebates regarding sales tax and/or incentives regarding sales tax shall expire upon the first to occur of the expiration of six (6) years from the date of the entity receiving a certificate of occupancy, or fifteen (15) years from the effective date of this agreement.

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. Escrow at closing \$2,000,000 for the construction of a bridge over South Mesquite Creek pursuant to a contract for sale executed between the parties.
- b. Escrow at closing \$50,000 for improvements dedicated to the City in the proposed open space as depicted on Exhibit "B" pursuant to a contract for sale executed between the parties.
- c. Donate to the City approximately 30 acres of property as open space following the platting of the property.
- d. Develop the Peachtree Towne Center as depicted on Exhibit "B".
- e. Prohibit "bargain discount stores" from locating in the Project during the term of this Agreement.
- f. Prohibit hotels/motels with fewer than 250 rooms and without full service restaurants during the term of this Agreement.
- g. 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 6 of this Agreement.

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 of Sections 5 and/or 6 hereunder, and upon receipt of notice from the City, to remit to the City a sum equal to the total of all incentives 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. Right Of Offset

The City may, at its option, but subject to the notice and cure periods of the default provisions in Section 10 above, offset any amounts due and payable under this Agreement against any debt, including taxes, lawfully due to City from Company, 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 the City has been reduced to judgment by a court.

13. 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:

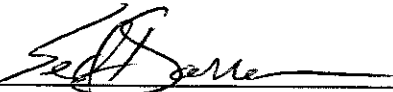
Company: Lang and Company, LLC
P.O. Box 700023
Dallas, TX 75370

With a copy to: Mr. Craig Laird
Ashley & Laird, L.C.
800 W. Airport Fwy., Ste. 880 LB 6015
Irving, TX 75062

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 Barron
City Manager

ATTEST:

Judy Womack
City Secretary

COMPANY:

LANG and COMPANY, LLC

By: Jim Lang, Pres.

APPROVED AS TO FORM AND LEGALITY:

[Signature]
City Attorney or his Designee

Date: 2-26-08

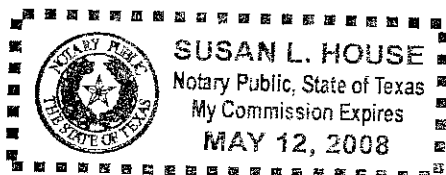
THE STATE OF TEXAS §
 §
 §
COUNTY OF DALLAS §

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 27th 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

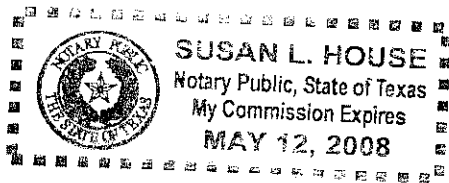
THE STATE OF TEXAS

§
§
§

COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Jim Lang, President (name and title of person), 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.

27th GIVEN UNDER MY HAND AND SEAL OF OFFICE in said County and State this 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

EXHIBIT "A"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Description of Premises

FIELD NOTES

BEING a tract of land situated in the Daniel Tanner Survey, Abstract No. 1426, in the City of Mesquite, Dallas County, Texas, and being part of that called 85.204 acre tract of land described in deed to The City of Mesquite, Texas, as recorded in Volume 95191, Page 00916 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and being more particularly described as follows:

COMMENCING at a 1/2-inch found iron rod for the west corner of Lot 1, Block 1 of Peachtree/Gross Addition, and addition to the City of Mesquite, Texas, as recorded in Volume 99074, Page 00009, D.R.D.C.T., said point being on the easterly right-of-way line of Peachtree Road (a 100 foot wide public right-of-way) as described in deed recorded in Volume 71054, Page 0405, D.R.D.C.T., said point also being the most westerly north corner of that tract of land described in deed to Golden Shamrock Realty, Inc., as recorded in Volume 2001007, Page 02031, D.R.D.C.T.;

THENCE South 46 degrees 16 minutes 40 seconds West, along the common westerly line of said Golden Shamrock Realty tract and said easterly right-of-way line of Peachtree Road, a distance of 120.96 feet to a 1/2-inch set iron rod with yellow plastic cap stamped "HALFF ASSOC INC." (hereinafter referred to as "with cap") for the POINT OF BEGINNING;

THENCE South 43 degrees 43 minutes 20 seconds East, departing said common line and along the southeasterly line of said Golden Shamrock Realty tract, a distance of 269.56 feet (deed 270.00 feet) to a 5/8-inch found iron rod for corner;

THENCE South 21 degrees 45 minutes 55 seconds East, continuing along said southeasterly line, a distance of 650.20 feet (deed 650.00 feet) to a 1/2-inch set iron rod with cap for the southwest corner of said Golden Shamrock Realty tract;

THENCE North 77 degrees 14 minutes 05 seconds East, along the southerly line of said Golden Shamrock Realty tract, a distance of 312.75 feet (deed 313.33 feet) to a 1/2-inch set iron rod with cap for the southeast corner of said Golden Shamrock Realty tract, said point being on the common westerly right-of-way line of Interstate Highway 635 (L.B.J. Freeway, a variable width public right-of-way) and the easterly line of said City of Mesquite tract;

THENCE South 15 degrees 17 minutes 27 seconds East, along said common line, a distance of 503.14 feet to a point for corner, from which point a found aluminum TXDOT monument bears North 65 degrees 26 minutes 11 seconds East a distance of 0.68 feet;

THENCE South 09 degrees 56 minutes 00 seconds East, continuing along said common line, a distance of 250.56 feet to a point for corner, from which point a found aluminum TXDOT monument bears North 63 degrees 51 minutes 49 seconds East a distance of 0.74 feet;

THENCE South 02 degrees 28 minutes 33 seconds East, continuing along said common line, a distance of 800.01 feet to a 1/2-inch set iron rod with cap for corner;

THENCE South 06 degrees 24 minutes 28 seconds East, continuing along said common line, a distance of 311.76 feet to a 1/2-inch found iron rod with cap stamped "BRITTAIN AND CRAWFORD" for the northeast corner of Lots 2 and 3, Block 1, Peachtree Center, an addition to the City of Mesquite as recorded in Volume 2003092, Page 00027, D.R.D.C.T.;

THENCE departing said common line and along the northerly line of said Peachtree Center addition, the following courses and distances:

North 70 degrees 39 minutes 48 seconds West a distance of 578.50 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for corner;

North 19 degrees 20 minutes 12 seconds East a distance of 60.00 feet to a 1/2-inch found iron rod with cap stamped "BRITTAIN AND CRAWFORD" for corner;

North 70 degrees 39 minutes 48 seconds West a distance of 70.00 feet to a 1/2-inch found iron rod with cap stamped "BRITTAIN AND CRAWFORD" for corner;

South 80 degrees 33 minutes 59 seconds West a distance of 124.66 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for corner;

North 05 degrees 37 minutes 15 seconds East a distance of 103.27 feet to a point for corner from which a found 2-inch diameter disk stamped "MLA RPLS #4873" bears North 21 degrees 18 minutes 56 seconds East a distance of 0.26 feet;

North 84 degrees 22 minutes 45 seconds West a distance of 150.41 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for the point of curvature of a tangent circular curve to the left having a radius of 535.10 feet whose chord bears South 82 degrees 19 minutes 40 seconds West a distance of 246.07 feet;

Westerly, along said circular curve to the left, through a central angle of 26 degrees 35 minutes 10 seconds, an arc distance of 248.29 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for the point of tangency;

South 69 degrees 02 minutes 05 seconds West a distance of 15.00 feet to a found 2-inch diameter disk stamped "MLA RPLS #4873" for corner;

North 65 degrees 11 minutes 14 seconds West a distance of 45.81 feet to a 1/2-inch set iron rod with cap for the most westerly northwest corner of said Peachtree Center addition, said point also being in the common westerly line of said City of

Mesquite tract and the aforementioned easterly right-of-way line of Peachtree Road, said point being on a circular curve to the left having a radius of 759.73 feet whose chord bears North 31 degrees 03 minutes 06 seconds West a distance of 136.50 feet, said curve being non-tangent to the last described course;

THENCE Northwesterly, departing said northerly line of said Peachtree Center addition, along said common line between said City of Mesquite tract and said Peachtree Road and along said circular curve, through a central angle of 10 degrees 18 minutes 29 seconds, an arc distance of 136.68 feet to a 1/2-inch set iron rod with cap for the point of tangency;

THENCE North 36 degrees 12 minutes 20 seconds West, along said common line, a distance of 248.77 feet to a 1/2-inch set iron rod with cap for the point of curvature of a tangent circular curve to the right having a radius of 1,269.75 feet whose chord bears North 05 degrees 02 minutes 10 seconds East a distance of 1,674.13 feet;

THENCE Northerly, continuing along said common line and along said circular curve, through a central angle of 82 degrees 29 minutes 00 seconds, an arc distance of 1,827.94 feet to a 1/2-inch set iron rod with cap for the point of tangency;

THENCE North 46 degrees 16 minutes 40 seconds East, continuing along said common line, a distance of 341.44 feet to the POINT OF BEGINNING AND CONTAINING 2,626,887 square feet or 60.31 acres of land, more or less.

EXHIBIT "B"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Description of Project

