

RESOLUTION NO. 25-2010

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, CONSENTING TO THE CREATION OF A FRESH WATER SUPPLY DISTRICT ENCOMPASSING APPROXIMATELY 146.73 ACRES OF LAND LOCATED IN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF MESQUITE; AND PROVIDING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City of Mesquite, Texas (the "City"), is a home rule municipal corporation of the State of Texas; and

WHEREAS, 269 Kaufman Partners, Ltd., a Texas limited partnership (the "Owner") is the sole owner of approximately 146.73 acres of land located in the extraterritorial jurisdiction (the "ETJ") of the City depicted on Exhibit "A" and described by metes and bounds on Exhibit "B" attached hereto and incorporated herein (the "Property"); and

WHEREAS, Section 42.042 of the Texas Local Government Code provides that a fresh water supply district may not be created in the ETJ of a municipality unless the governing body of the municipality gives written consent for such creation; and

WHEREAS, on June 1, 2010, the Owner filed a "Petition Requesting Consent to the Creation of a Political Subdivision in Extraterritorial Jurisdiction" with the City Secretary's Office, requesting the City's consent to the creation of the Kaufman County Fresh Water Supply District No. 5, or if such name is not available, a similarly named fresh water supply district (the "District") to cover the Property, a copy of which petition is attached as Exhibit "C," which provides in part that the District shall be organized under the terms and provisions of Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 53, Texas Water Code, as amended; and

WHEREAS, the Property lies wholly within the ETJ of the City, and no portion of the Property lies in the corporate limits or ETJ of any other town or city; and

WHEREAS, the Owner has no intention to create a municipal utility district on the Property; and

WHEREAS, the Owner has no intention to petition the District following creation for annexation of any other land other than the Property owned or controlled by the Owner; and

WHEREAS, the City and the Owner intend to execute an agreement entitled "Heartland Town Center Development Agreement" pursuant to the provisions of Section 212.172 of the Texas Local Government Code regarding the development of the Property as a Town Center Development community type pursuant to the City's Comprehensive Plan, a true and correct copy of which is attached hereto as Exhibit "D" (referred to herein as the "Development Agreement").

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

SECTION 1. That all of the above premises are true and correct findings of the City of Mesquite City Council and they are hereby approved and incorporated into this resolution as if copied in their entirety.

SECTION 2. That the City of Mesquite, Texas (the "City"), consents to the creation of a fresh water supply district covering the approximately 146.73 acres of land depicted on Exhibit "A" and described by metes and bounds on Exhibit "B," or any portion thereof (the "District"), which District is to be organized (as set forth in the Petition) under the terms and provisions of Article III, Section 52, Article XVI, Section 59, and the applicable provisions of Chapters 49 and 53, Texas Water Code, as amended, and the general laws of the State of Texas.

SECTION 3. That the District shall have the right to exercise all rights, powers and authority granted to a fresh water supply district (a "FWSD") by the laws of the State of Texas, as amended.

SECTION 4. That the City also consents to the District being granted the authority to divide into multiple districts with the same powers as the original District and including the authority to enact boundary adjustments among the districts in the form of exclusions and additions of land within the Property.

SECTION 5. That the City further consents to the conversion from time to time of the original District or any divided district to a water control and improvement district (a "WCID") pursuant to the authority of Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution and Texas Water Code, Chapters 49, 51 and 53, as amended; provided, however, that the City expressly does not consent hereby to the creation of a municipal utility district, whether upon original petition of the Owner or upon conversion of the District to a WCID.

SECTION 6. That neither the original District nor any divided district may annex property without the prior consent of the City, which consent may be conditioned on issues and events at the time of such annexation.

SECTION 7. That the District or the Owner, as appropriate, will design, construct and install water and sanitary sewer facilities, stormwater facilities, and roads and roadway improvements, including related drainage facilities (collectively, the "Public Infrastructure") to serve the Property: (a) at no cost or expense to the City; (b) in accordance with the "Governing Regulations" as defined in the Development Agreement; and (c) in accordance with the applicable requirements of the Texas Water Code, and the rules, regulations and policies of the Texas Commission on Environmental Quality ("TCEQ").

SECTION 8. That the District or the Owner, as appropriate, will design, construct and install the Public Infrastructure using funds advanced to the District by the Owner; and that the District will thereafter reimburse the Owner for such advances using the proceeds of bonds issued by the District and secured solely by ad valorem taxes levied on property within the District and by other funds legally available to the District (with the City having no

responsibility or liability whatsoever for any District bonds); and that all District bonds shall be approved by the TCEQ and by the Texas Attorney General ("AG").

SECTION 9. That, except as otherwise provided in the Development Agreement, the City shall not annex the District into its corporate limits for full purposes for 15 years after the Development Agreement's effective date (as defined in the Development Agreement, the "Term"). The City shall have the right, but not the obligation, to full purpose annex the Property prior to the expiration of the Term if construction of the Public Infrastructure to serve the full development of the Property is complete and the District has issued bonds to reimburse the cost of the Public Infrastructure, or as otherwise stated in the Development Agreement.

SECTION 10. That, pursuant to the authority of Texas Local Government Code, Section 42.042, the consents granted by this resolution restrict the purposes for which the District may issue bonds; namely for those purposes set out in Section 54.016(e), (1), (2) and (3) of the Texas Water Code, as well as roads and roadway improvements and fire departments.

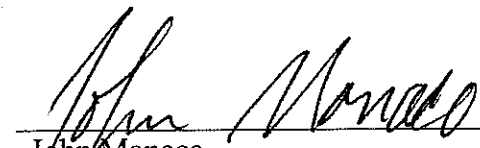
SECTION 11. That the consents granted by this resolution are effective immediately, are unconditional and irrevocable and shall not be withdrawn or modified in any way by the City by action of the City Council. The consents granted by this resolution shall be effective to fully satisfy all requirements of the Texas Water Code, as amended, the Texas Local Government Code, as amended, the rules, regulations and policies of the TCEQ, or any rules, regulations or policies of the AG.

SECTION 12. That this consent resolution shall apply to each FWSD or WCID created by division and/or conversion of the District.

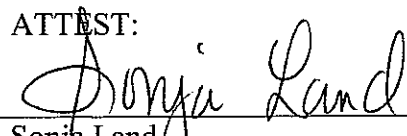
SECTION 13. That the above and foregoing premises to this resolution are true and correct and are incorporated herein and made a part hereof.

SECTION 14. That this resolution shall take effect immediately upon execution by the Mayor on behalf of the City.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 7th day of June, 2010.



John Monaco
Mayor

ATTEST:


Sonja Land
City Secretary

APPROVED:


B. J. Smith
City Attorney

EXHIBIT A Map of the Property

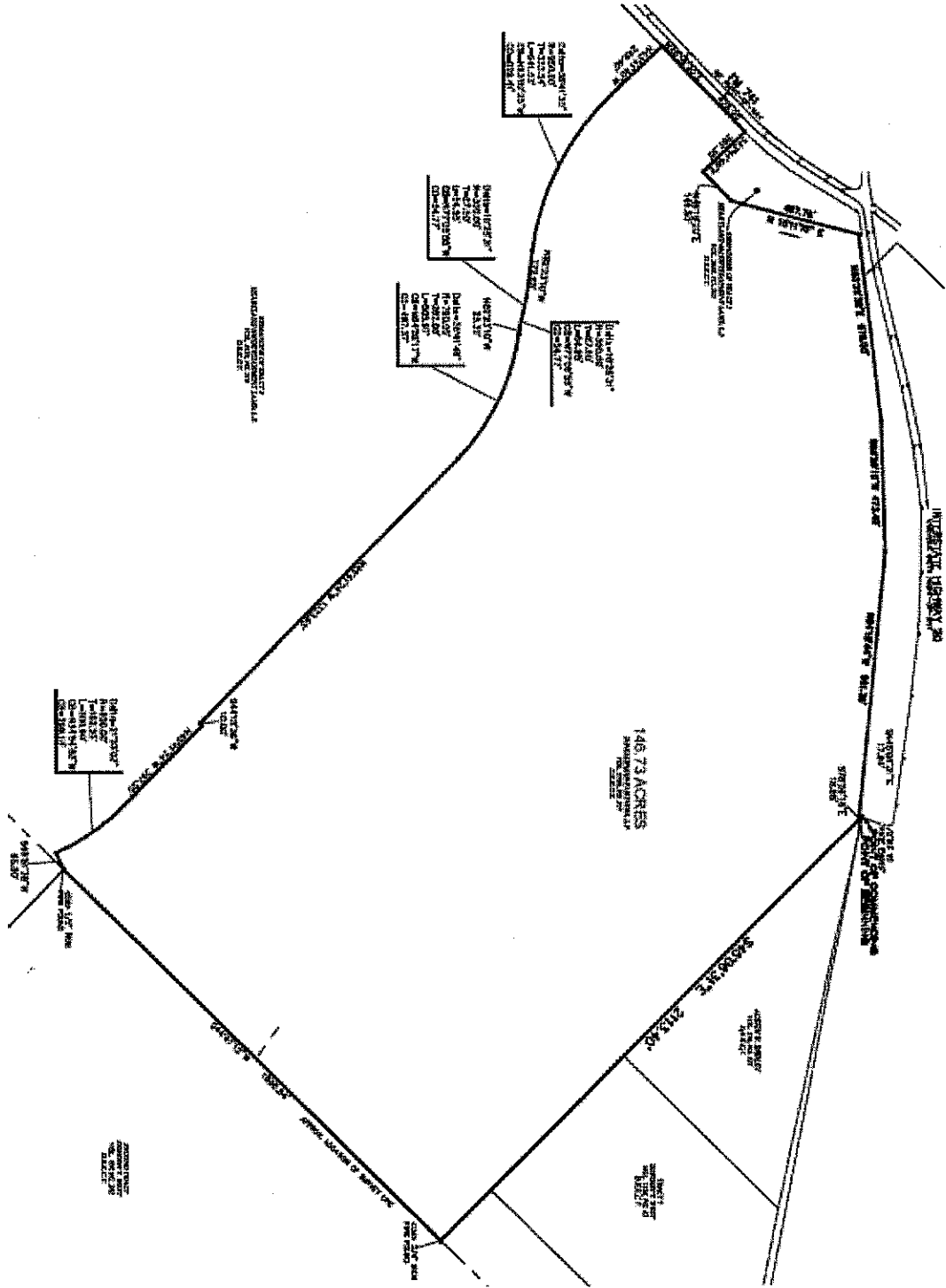


EXHIBIT B
Legal Description of the Property

146.73 ACRES

BEING a tract of land located in the MARTHA MUSICK SURVEY, ABSTRACT NO. 312, Kaufman County, Texas, and being a portion of that tract of land conveyed to 269 Kaufman Partners, L.P., recorded in Volume 2709, Page 267, Deed Records, Kaufman County, Texas and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod with a yellow plastic cap stamped "PATE ENGRS" found in the South line of Interstate Highway 20 at the most Northeasterly corner of said Kaufman Partners tract;

THENCE South 45 degrees 06 minutes 31 seconds East, with the Southwesterly line of that tract of land conveyed to Austin W. Shipley, recorded in Volume 270, Page 221, Deed Records, Kaufman County, Texas, a distance of 17.94 feet to the POINT OF BEGINNING;

THENCE South 45 degrees 06 minutes 31 seconds East, along the Southwesterly lines of said Shipley tract and a tract of land described as Tract 1 in Deed to Gordon T. West, recorded in Volume 1636, Page 43, Deed Records, Kaufman County, Texas and a Southwesterly line of a tract of land described as Second Tract in Deed to Gordon T. West, recorded in Volume 709, Page 242, Deed Records, Kaufman County, Texas, in all for a total distance of 2,113.40 feet to a 3/4 inch iron pipe found at an interior ell corner of said Second Tract;

THENCE South 44 degrees 47 minutes 12 seconds West, along the Northwesterly line of said Second Tract, a distance of 1,898.54 feet to a 1/2 inch iron pipe found for corner;

THENCE South 65 degrees 51 minutes 38 seconds West, a distance of 65.50 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the left having a central angle of 21 degrees 33 minutes 02 seconds, a radius of 800.00 feet and a chord bearing and distance of North 34 degrees 54 minutes 53 seconds West, 299.13 feet;

THENCE Northwesterly, along said curve to the left, an arc distance of 300.90 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 45 degrees 41 minutes 24 seconds West, a distance of 397.25 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE South 44 degrees 18 minutes 36 seconds West, a distance of 10.00 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 45 degrees 41 minutes 24 seconds West, a distance of 1,323.95 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the left having a central angle of 36 degrees 41 minutes 46 seconds, a radius of 790.00 feet and a chord bearing and distance of North 64 degrees 02 minutes 17 seconds West, 497.37 feet;

THENCE Northwesterly, along said curve to the left, an arc distance of 505.97 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 82 degrees 23 minutes 10 seconds West, a distance of 23.30 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the right having a central angle of 10 degrees 28 minutes 31 seconds, a radius of 300.00 feet and a chord bearing and distance of North 77 degrees 08 minutes 55 seconds West, 54.77 feet;

THENCE Westerly, along said curve to the right, an arc distance of 54.85 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a reverse curve to the left having a central angle of 10 degrees 28 minutes 31 seconds, a radius of 300.00 feet and a chord bearing and distance of North 77 degrees 08 minutes 55 seconds West, 54.77 feet;

THENCE Westerly, along said curve to the left, an arc distance of 54.85 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 82 degrees 23 minutes 10 seconds West, a distance of 172.65 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the right having a central angle of 38 degrees 41 minutes 30 seconds, a radius of 950.00 feet and a chord bearing and distance of North 63 degrees 02 minutes 25 seconds West, 629.41 feet;

THENCE Northwesterly, along said curve to the right, an arc distance of 641.53 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 43 degrees 41 minutes 40 seconds West, a distance of 249.40 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the Southeasterly line of Farm-to-Market Road 741, a 90-foot wide right-of-way;

THENCE North 46 degrees 18 minutes 20 seconds East, along the Southeasterly line of said Farm-to-Market Road 741, a distance of 428.95 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE South 43 degrees 41 minutes 40 seconds East, leaving said Southeasterly right-of-way line, a distance of 207.30 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 46 degrees 18 minutes 20 seconds East, a distance of 146.50 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 15 degrees 11 minutes 15 seconds East, a distance of 467.78 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE in a Easterly direction over and across the above mentioned Kaufman Partners tract the following (4) courses and distances:

North 83 degrees 22 minutes 32 seconds East, a distance of 675.50 feet to a point for a corner;

North 88 degrees 29 minutes 15 seconds East, a distance of 473.49 feet to a point for a corner

South 84 degrees 18 minutes 44 seconds East, a distance of 951.36 feet to a point for a corner;

South 78 degrees 59 minutes 18 seconds East, a distance of 18.88 feet to the POINT OF BEGINNING and containing or 146.73 acres of land, more or less.

EXHIBIT C

PETITION FOR CONSENT TO CREATION OF POLITICAL SUBDIVISION

IN EXTRATERRITORIAL JURISDICTION

THE STATE OF TEXAS

§
§
§

COUNTY OF KAUFMAN

TO THE HONORABLE MAYOR AND
CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

The undersigned petitioner (herein the "Petitioner", whether one or more), being a majority of the persons who hold title to land(s) situated within the area hereinafter described, which represents a total value of more than 50% of the value of all such area, and being a majority in value of the holders of title of said area, acting pursuant to the applicable provisions of the Texas Water Code, as amended, and Section 42.042, Local Government Code, together with all amendments and additions thereto, respectfully petitions your Honorable Body for consent to creation of a conservation and reclamation district and political subdivision of the State of Texas under Article XVI, Section 59, of the Texas Constitution (the "District") within the extraterritorial jurisdiction of the City of Mesquite (the "City"), and would respectfully show the following:

I.

The District shall be created under the terms and provisions of Article XVI, Section 59, of the Constitution of Texas and Chapter 53, Texas Water Code, as amended, together with all amendments and additions thereto. The name of the District shall be "Kaufman County Fresh Water Supply District No. 5" or, if such name is not available, a similarly named fresh water supply district.

II.

The District shall contain an area of approximately 146.73 acres of land, situated wholly within Kaufman County, Texas, described by metes and bounds in Exhibit "A", which is attached hereto and made a part hereof for all purposes. All of said land is located within the extraterritorial jurisdiction of the City. None of said land is within the corporate limits or extraterritorial jurisdiction of any other city, town or village.

III.

The undersigned Petitioner constitutes a majority of the persons who hold title to lands within the District which represents a total value of more than 50% of the value of all lands within the District, as well as a majority in value of the holders of title of the property to be included within the District.

IV.

The District shall be created for all of the purposes set forth in Chapter 49 and 53, Texas Water Code, as amended, including, without limitation, to conserve, transport, and distribute fresh water from any sources for domestic and commercial purposes inside and/or outside the boundaries of the District. In addition, subject to compliance with the applicable requirements of the Texas Water Code, as amended, the District may purchase, construct, acquire, own, operate, repair, improve, and extend sanitary sewer systems to control wastes. Subject to compliance with the applicable requirements of the Texas Water Code, as amended, the District may also assume all the rights, authority, privileges, and functions of a road district under Article III, Section 52(b)(3) of the Texas Constitution, Chapter 257, Transportation Code, and other general laws of the State relating to road districts.

The aforementioned purposes are to be accomplished by any and all mechanical and chemical means and processes incident, necessary or helpful to such purposes, to the end that public health and welfare may be conserved and promoted and the purity and sanitary condition of the State's waters protected, effected and restored.

V.

The District shall have the powers of government and authority to exercise the rights, privileges, and functions given to it by Chapter 49 and Chapter 53, Texas Water Code, as amended, or by any other State law.

VI.

Subject to compliance with the applicable provisions of the Texas Water Code, the general nature of the work to be done by the District at the present time is the acquisition, construction, maintenance and operation of a waterworks system, including the purchase and sale of water, for domestic and commercial purposes; the acquisition, construction, maintenance and operation of a sanitary sewer collection, treatment and disposal system, including the purchase and sale of sewer services, for domestic and commercial purposes; the acquisition, construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes for residential and commercial purposes; and such other acquisition, construction, installation, maintenance, purchase and operation of such additional facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is ultimately organized.

VII.

There is a necessity for the improvements above described because the District is located within an area which will experience a substantial and sustained residential and commercial growth, is urban in nature and is not supplied with adequate water supply, sanitary sewer facilities or services or with adequate roads and turnpikes. The health and welfare of the future inhabitants of the District and of the inhabitants of the area adjacent thereto require the acquisition and installation of an adequate waterworks system and sanitary sewer collection system and disposal system, together with roads and turnpikes.

The purchase, construction, extension, improvement, maintenance and operation of such waterworks system and sanitary sewer collection and disposal systems will conserve and preserve the natural resources of this State by promoting and protecting the purity and sanitary condition of the State's waters and will promote and protect the public health and welfare of the community; therefore, a public necessity exists for the organization of the District.

VIII.

Said proposed improvements are practicable and feasible, in that the terrain of the territory to be included in the District is of such a nature that a waterworks and sanitary sewer system, and roads and turnpikes can be constructed at a reasonable cost with reasonable tax rates and water and sewer rates, and said territory will be developed for residential and commercial purposes.

IX.

Petitioner requests consent and permission for the inclusion of the aforesaid lands in a fresh water supply district.

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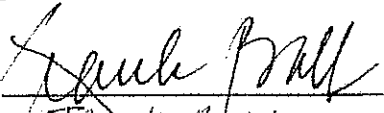
X.

WHEREFORE, the undersigned respectfully prays that this Petition be in all things granted, and that the City give its written consent to the creation of and inclusion of the aforesaid lands in the District, and for such other orders, acts, procedure and relief as are proper and necessary and appropriate to the purpose of organizing the District.

EXECUTED THIS 28th day of May, 2010.

269 KAUFMAN PARTNERS, LTD,
a Texas limited partnership

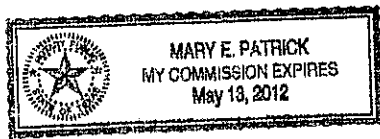
By: 269 Kaufman Partners GP, LLC,
a Texas limited liability company,
its general partner

By: 
Name: Frank Hobb
Title: SVP

THE STATE OF TEXAS §

COUNTY OF COUNTY §

This instrument was acknowledged before me on this the 20th day of May, 2010,
by Frank Balf, SVP of 269 Kaufman Partners GP,
LLC, a Texas limited liability company, General Partner of 269 Kaufman Partners, LTD, a Texas
limited partnership, as Petitioner.



Mary E. Patrick
Notary Public in and for
the State of Texas

Exhibit A

Legal Description of the Property

LEGAL DESCRIPTION

146.73 ACRES

BEING a tract of land located in the MARTHA MUSICK SURVEY, ABSTRACT NO. 312, Kaufman County, Texas, and being a portion of that tract of land conveyed to 269 Kaufman Partners, L.P., recorded in Volume 2709, Page 267, Deed Records, Kaufman County, Texas and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod with a yellow plastic cap stamped "PATE ENGRS" found in the South line of Interstate Highway 20 at the most Northeasterly corner of said Kaufman Partners tract;

THENCE South 45 degrees 06 minutes 31 seconds East, with the Southwesterly line of that tract of land conveyed to Austin W. Shipley, recorded in Volume 270, Page 221, Deed Records, Kaufman County, Texas, a distance of 17.94 feet to the POINT OF BEGINNING;

THENCE South 45 degrees 06 minutes 31 seconds East, along the Southwesterly lines of said Shipley tract and a tract of land described as Tract 1 in Deed to Gordon T. West, recorded in Volume 1636, Page 43, Deed Records, Kaufman County, Texas and a Southwesterly line of a tract of land described as Second Tract in Deed to Gordon T. West, recorded in Volume 709, Page 242, Deed Records, Kaufman County, Texas, in all for a total distance of 2,113.40 feet to a 3/4 inch iron pipe found at an interior ell corner of said Second Tract;

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THENCE Northwesterly, along said curve to the left, an arc distance of 505.97 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 82 degrees 23 minutes 10 seconds West, a distance of 23.30 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the right having a central angle of 10 degrees 28 minutes 31 seconds, a radius of 300.00 feet and a chord bearing and distance of North 77 degrees 08 minutes 55 seconds West, 54.77 feet;

THENCE Westerly, along said curve to the right, an arc distance of 54.85 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a reverse curve to the left having a central angle of 10 degrees 28 minutes 31 seconds, a radius of 300.00 feet and a chord bearing and distance of North 77 degrees 08 minutes 55 seconds West, 54.77 feet;

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South 84 degrees 18 minutes 44 seconds East, a distance of 951.36 feet to a point for a corner;

South 78 degrees 59 minutes 18 seconds East, a distance of 18.88 feet to the POINT OF BEGINNING and containing or 146.73 acres of land, more or less.

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EXHIBIT D
Development Agreement

**HEARTLAND TOWN CENTER
DEVELOPMENT AGREEMENT**

Between 269 Kaufman Partners, Ltd., and the City of Mesquite, Texas

Approved June 7, 2010

HEARTLAND TOWN CENTER DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is executed between 269 Kaufman Partners, Ltd. ("Owner") and the City of Mesquite, Texas (the "City") to be effective June 7, 2010, (the "Effective Date").

ARTICLE I RECITALS

WHEREAS, the City is a home-rule municipal corporation of the State of Texas; and

WHEREAS, Owner is a Texas limited partnership; and

WHEREAS, Owner and the City are sometimes individually referred to as a "Party" and collectively as the "Parties"; and

WHEREAS, Owner is the owner of approximately 147.217 acres of real property located in Kaufman County (the "County") and depicted on Exhibit A and described by metes and bounds on Exhibit B (the "Property"); and

WHEREAS, the Property is located wholly within the extraterritorial jurisdiction ("ETJ") of the City and not within the ETJ or corporate limits of any other town or city; and

WHEREAS, the Parties intend for the Property to be developed within the City's ETJ, for the City to have and exercise exclusive jurisdiction over the subdivision and platting of the Property and the design, construction, installation, and inspection of water, sewer, drainage, roadway, and other public infrastructure ("Public Infrastructure") to serve the Property, and for the County to have and exercise no jurisdiction over such matters; and

WHEREAS, on March 18, 2002, pursuant to Chapter 242 of the Texas Local Government Code, the Kaufman County Commissioners Court and the City executed an interlocal agreement pursuant to which the City has exclusive jurisdiction over subdivision and platting of the Property and the design, construction, installation, and inspection of Public Infrastructure to serve the Property (the "Interlocal Agreement"); and

WHEREAS, the Parties intend for the Property to be developed within the City's ETJ and to be immune from full-purpose annexation by the City for the term of, and as otherwise provided by, this Agreement; and

WHEREAS, a portion of the Property is located within certificate of convenience and necessity ("CCN") No. 13087 issued by the Texas Commission on Environmental Quality or its predecessor (the "TCEQ") for the provision of retail water service held by Kaufman County Municipal Utility District No. 12, formerly known as Kingsborough Municipal Utility District No. 5 ("Kaufman MUD"), a portion of the Property is located within CCN No. 10850 for the provision of retail water service held by Talty Water Supply Corporation ("Talty WSC"), and the remainder of the Property is not within any water CCN; and

WHEREAS, a portion of the Property is located within CCN No. 20982 issued by the TCEQ for the provision of retail wastewater service held by Kaufman MUD, and the remainder of the Property is not located within any wastewater CCN; and

WHEREAS, the Parties intend, subject to approval of the North Texas Municipal Water District (the "NTMWD"), that the City will provide wholesale treated water and wholesale wastewater treatment services to serve the Property; and

WHEREAS, the Parties intend that retail water and wastewater service to the Property will be provided by the CCN-holder or by the District; and

WHEREAS, notwithstanding the fact that the Property is located within the City's ETJ and is not subject to the City's zoning regulations, the Parties intend that the Property be developed: (i) according to the City's Comprehensive Plan for the Extraterritorial Jurisdiction approved by the Mesquite City Council (the "City Council") by adoption of Ordinance No. 3978 on August, 4, 2008 (the "Comprehensive Plan") and the Interim Kaufman – Interstate 20 Development Code (the "K20 Code") approved by the City Council by adoption of Ordinance No. 3984 on September 2, 2008, to implement the strategies and policies of the Comprehensive Plan; (ii) as a high-quality, mixed-use Town Center Development community type, as defined in the K20 Code, consisting of residential dwellings, commercial, retail, office and entertainment uses, and parkland, civic space, and other public and private amenities that will provide economic benefits and serve the present and future citizens of the City (the "Project"); and (iii) pursuant to binding, contractual development regulations that are approved by Owner and the City, that are recorded in the deed records of the County (so as to bind Owner and all future owners of the Property or any portion thereof), and that will provide regulatory certainty during the term of this Agreement; and

WHEREAS, Public Infrastructure is not currently available to serve the Parties' intended development of the Property; and

WHEREAS, due to the location and other natural features of the Property, the cost of the Public Infrastructure does not allow the Parties' intended development of the Property in a cost-effective and market-competitive manner; and

WHEREAS, the City is unable (at the current time and for the foreseeable future) to provide, or participate in the cost of, the Public Infrastructure that will allow the Parties' intended development of the Property; and

WHEREAS, the City is unable (at the current time and for the foreseeable future) to provide full municipal services for the Parties' intended development of the Property; and

WHEREAS, to facilitate the Parties' intended development of the Property in a cost-effective and market-competitive manner, Owner submitted a written petition to the City Council dated June 1, 2010, requesting that the City Council consent to the creation of Kaufman County Fresh Water Supply District No. 5 (the "District") that will include all of the Property, save and except a 10-foot strip located adjacent to the Interstate 20 south (east-bound) frontage road which is subject to annexation by the City pursuant to Section 7.8, and that will design, construct and

install the Public Infrastructure necessary for the Parties' intended development of the Property; and

WHEREAS, the City Council adopted Resolution No. 25-2010 dated June 7, 2010, consenting to the creation of the District (the "Consent Resolution"), a copy of which Consent Resolution is attached as Exhibit C; and

WHEREAS, the Parties intend that the District, or Owner as appropriate, will design, construct and install the Public Infrastructure: (i) at no cost or expense to the City; (ii) in accordance with the "Governing Regulations" as defined in this Agreement; and (iii) in accordance with the applicable requirements of the Texas Water Code and the rules, regulations and policies of the TCEQ and the NTMWD; and

WHEREAS, the Parties intend that, to the extent permitted by law, the District will provide police, fire and EMS services to the Property, either directly or through contractual arrangements with other service providers; and

WHEREAS, the Parties intend that the intended development of the Property, including the design, construction and installation of Public Infrastructure, will benefit the City and its current and future citizens, including the creation of substantial future tax base for the City, without any capital investment by the City; and

WHEREAS, the Parties intend that this Agreement be a development agreement as provided for by Section 212.172 of the Texas Local Government Code; and

WHEREAS, the Parties have the authority to enter into this Agreement pursuant to Section 212.171, *et seq.*, of the Texas Local Government Code.

NOW THEREFORE, for and in consideration of the mutual covenants of the Parties set forth in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are acknowledged and agreed by the Parties, the Parties agree as follows:

ARTICLE II DEVELOPMENT REGULATIONS

2.1 Definition of Director. For purposes of this Agreement, the term "Director" shall mean the Director of Community Development for the City of Mesquite, Texas, his designee, or his successor-in-title or successor-in-responsibilities.

2.2 Governing Regulations. Development of the Property shall be governed solely by the following regulations (collectively, the "Governing Regulations"):

- (a) the New Community Plan (the "Community Plan") as created pursuant to Section 2.3 and incorporated subsequent to the Effective Date as Exhibit D, which shall include, without limitation, an Illustrative Plan and a Regulating Plan (the "Regulating Plan") that may be amended from time to time in accordance with this Agreement and with which all development applications shall be substantially consistent;

- (b) the K20 Code, as amended as of the date of submittal of a complete application for a Community Plan under Section 2.3 or an Alternative Community Type under Section 2.5. It is understood and acknowledged that when created the Community Plan will not fully illustrate all specific details of the Project and that, except as set forth herein, Owner shall be required to comply with requirements of the K20 Code;
- (c) the subdivision regulations of the City attached in Exhibit E (the "Subdivision Regulations") as amended as of the date of submittal of a complete application for the Community Plan or an Alternative Community Type pursuant to Section 2.3 or Section 2.5, respectively;
- (d) the building codes of the City of Mesquite (the "Building Codes");
- (e) Chapter 13 of the Code of the City of Mesquite, Texas (the "Sign Ordinance"), to the extent not superseded by the K20 Code;
- (f) the special regulations, if any, set forth in Exhibit F (the "Special Regulations");
- (g) the development regulations set forth in Exhibit G (the "Development Regulations");
- (h) final plats for portions of the Property that are approved, from time to time, by the City in accordance with this Agreement (the "Approved Plats");
- (i) revisions to the Development Regulations allowed by this Article II;
- (j) State and Federal Requirements described in this Article II;
- (k) the Development Processes described in Article III;
- (l) the Development Charges described in Article IV;
- (m) the Public Infrastructure provisions of Article V; and
- (n) Except as provided otherwise in this Section, any amendments to the above ordinances, rules, regulations, standards, policies, orders, guidelines, or other City-adopted or City-enforced requirements of any kind that are uniformly applied and enforced throughout the ETJ and corporate limits of the City and that are adopted subsequent to the Effective Date to the extent that the City may enforce the same pursuant to Chapter 245 of the Texas Local Government Code.

2.3 Approval of Community Plan.

- (a) Prior to making any beneficial improvement to the Property or submitting any application for a plat, public infrastructure permit or building permit for any part of the Property, Owner shall apply to the City for approval a Community Plan for development of the entirety of the Property as a Town Center Development

community type described in the Comprehensive Plan and in accordance with the K20 Code. For purposes of this section, "beneficial improvement" means the construction, erection or moving of any building or structure on the Property, conducting any use on the Property including fireworks stands, accepting fill dirt or other materials, mass grading, construction staking, clearing and grubbing, implementation of a Storm Water Control Plan, or the stockpiling of pipe or other construction materials not excepted herein. "Beneficial improvement" excludes the following uses, which are expressly permitted: erection of fencing to contain livestock, mowing, grazing of livestock, crop production, surveying, clearing unauthorized dumping, abating any other public nuisance, and stockpiling pipe or other materials for construction of roads, water or wastewater lines or other infrastructure pursuant to the approved plat for the Property. Temporary uses that do not impair the development or use of the Property as a Town Center Development in accordance with this Agreement may be approved by the Director or City Council. A complete Community Plan application shall consist of the following requirements:

- (1) A Community Plan, in the "New Community Plan Submittal" form and containing such information as shown in the Appendix of the K20 Code, that is prepared by and bears the signature of an architect or town planner who has knowledge of and is conversant with New Urbanism planning and design principles;
 - (2) A list of all requested Warrants or Variances from the requirements of the K20 Code for the Town Center Development community type (or an Alternative Community Type pursuant to Section 2.5, if applicable), including the Owner's justification for each request;
 - (3) A Traffic Impact Analysis as required in Section 5.4;
 - (4) A certified list of the owner names and addresses as shown on the records of the Kaufman County Appraisal District for all property or portions thereof lying within 200 feet of the area that is within the boundary of the Property; and
 - (5) An application fee in an amount equal to the fee charged for zoning district boundary changes.
- (b) The Community Plan application shall be deemed complete unless the Director notifies the Owner to the contrary within ten (10) business days following receipt of the application. Such notification, if any, shall list all omissions or deficiencies that must be corrected by the Owner before the application can be processed.
- (c) The Community Plan shall be subject to approval of the City Council. The Director shall forward the proposed Community Plan and his recommendations to the Planning Commission for review and recommendation to the City Council

within ninety (90) days of receipt of a complete application. The Planning Commission or City Council may postpone action on the application as deemed necessary to allow the Owner or the Director time to modify the proposed Community Plan.

- (d) Except for any Warrant or Variance requested in accordance with subsection (a)(2) of the application requirements and approved in writing by the Director or City Council, respectively, the final Community Plan shall comply with the requirements applicable to Town Center Developments (or Alternative Community Type, if applicable) pursuant to the K20 Code. The Property shall be developed with a combination of transects T-3 (Sub-Urban), T-4 (General Urban) and T-5 (Urban Center) providing for an allocation of both residential and non-residential functions in accordance with the K20 Code.
- (e) Except as provided otherwise in this Section, the procedures for processing the Community Plan application shall be those for processing a zoning district boundary change under the Mesquite Unified Development Code, Ordinance No. _____ (the ("Uniform Development Code")), provided, however, it shall not be necessary to publish notification of the public hearings. Upon approval by the City Council, the Community Plan shall be incorporated into this Agreement as **Exhibit D.**

2.4 Amendments to the Regulating Plan. The Regulating Plan for the Town Center Development (or the Alternative Community Type approved pursuant to Section 2.5) may be amended, from time to time, as set forth below. An Owner or developer of any portion of the Property may propose such amendments by submitting a complete application to the Director in accordance with the submittal requirements of subsection (c). In addition to the submittal and notification requirements enumerated herein, all amendments shall require the consent of the owners of the property to which the change applies.

- (a) Decision by Director. Within forty-five (45) days of the date a complete application for amendment is submitted to the Director, the Director shall render a written decision that either approves the application, approves the application with conditions, or denies the application. The Director may approve, with or without conditions, any application to amend the Regulating Plan for the Town Center Development or Alternative Community Type that conforms to the K20 Code and that meets each of the following conditions:
 - (1) A change to a Transect Zone shall maintain the overall allocation of Transect Zones within the permitted ranges for the Town Center Development or the Alternative Community Type as listed in Table 3-1 of the K20 Code;
 - (2) A Transect Zone shall only be changed to the next lower or the next higher Transect Zone;

- (3) The base residential densities and percentage of commercial functions as provided in Table 3-3 of the K20 Code are preserved; and
- (4) A deviation in the location of a Thoroughfare required to be included on the Regulating Plan shall maintain the maximum Block Perimeter and Block Face as provided in Table 3-4 of the K20 Code.

If the Director fails or refuses to render a decision within such 45-day period, the application to amend the Regulating Plan shall be deemed approved and no further action on the application shall be required.

- (b) Appeal. The applicant may appeal an adverse decision of the Director in accordance with this subsection. The appeal shall be filed in writing in the Office of the City Secretary within ten (10) days from receipt of the Director's decision. The notification procedures for processing the appeal shall be those for processing a zoning district boundary change under the Unified Development Code, provided, however, it shall not be necessary to publish notification of the public hearings. The Planning Commission shall conduct a public hearing on the application and submit its written recommendation to the City Council within ninety (90) days from the date the appeal is filed with the City Secretary. Within forty-five (45) days following receipt of the Commission's written recommendation, the City Council shall conduct a public hearing on the application for amendment and provide to the applicant a written decision to approve the application, approve the application with conditions, or deny the application. The decision of the City Council shall be final. If the Planning Commission or the City Council fails or refuses to process the appeal and deliver a decision within the time periods provided herein, the application to amend the Regulating Plan shall be deemed approved, and no further action on the application shall be required.
- (c) Complete Application Requirements. No incomplete application for an amendment to the Regulating Plan shall be accepted and processed under this section. The determination of completeness of the application shall be in accordance with Texas Local Government Code Section 245.002(e). The Director shall notify the applicant of an incomplete submittal in accordance with City Code Section 1-17, including a date for expiration of the application. For an application to be complete, the applicant must include the following:
 - (1) A revised Regulating Plan, including where applicable, calculations demonstrating compliance with (or the proposed deviation from) the required Transect allocations and base residential and commercial densities of the K20 Code for the Town Center Development or Alternative Community Type;
 - (2) Written consent to the change by the owner of the area that is the subject of the application;

- (3) A certified list of the owner names and addresses as shown on the records of the Kaufman County Appraisal District for all property or portions thereof lying within 200 feet of the area that is the subject of the application;
 - (4) An Updated Traffic Study, unless waived in writing by the City's Director of Public Works;
 - (5) An explanation of the need for the proposed amendment or Alternative Community Type, including an updated market study if the justification for the proposed action is based upon changes in the residential or non-residential market for the Property since the adoption of the Regulating Plan or its last amendment; and
 - (6) Payment of an application fee in an amount equal to the fee charged for zoning district boundary changes.
- (d) Decision Criteria. The City Council in deciding whether to approve, approve with conditions, or deny the application for an amendment to the Regulating Plan or a proposed Alternative Community Type shall consider whether the proposed amendment or Alternative Community Type:
- (1) Conforms to the strategic policies of the Comprehensive Plan;
 - (2) Creates an Alternative Community Type (if proposed) that is authorized by the K20 Code for the growth sector designated for the Property in the Comprehensive Plan;
 - (3) Adversely affects the economic interests of the City or the ability of the Property to support walk-to retail;
 - (4) Adversely affects the existing or planned pedestrian or open space connectivity within or between the areas subject to the change or future phases of the Project; or
 - (5) Prevents, or substantially and adversely lengthens the time for, full purpose annexation of the area subject to the change or of adjoining areas.

2.5 Alternative Community Types. If instead of amending the Regulating Plan the applicant proposes to change from a Town Center Development to another community type permitted by the K20 Code (an "Alternative Community Type"), the application shall be processed as a new community plan under Section 2.3 and in accordance with Section 2.4 (c)(4)-(5) and (d).

2.6 Unrecognized Developments Prohibited. The City has entered into this Agreement relying upon representations of Owner that Owner intends to develop a Town Center Development community type from which the City anticipates that economic benefits shall inure to the City. The City Council may approve Alternative Community Types as provided herein. Neither an Owner, the District nor a developer shall file an application for any type or form of

development that is not recognized by the Comprehensive Plan and the K20 Code, and any such application, whether styled as a new community plan, an amendment to the Regulating Plan, or an Alternative Community Type, shall not be processed by the City.

2.7 Plats. Plats for all or a portion of the Property shall conform with the adopted Regulating Plan. For purposes of the Subdivision Regulations, the Property shall be deemed to be located within a designated form-based district.

2.8 Development Regulation Warrants and Variances. The Director may administratively approve a practice that is not consistent with a specific provision of the K20 Code, but that is justified by its intent (a "Warrant"). The Planning Commission may approve a practice that is not consistent with either a specific provision or the intent of the K20 Code (a "Variance") in accordance with the procedures and decision criteria for Board of Adjustment variances under the Mesquite Unified Development Code.

2.9 State and Federal Requirements. Development of the Property shall also be subject to ordinances that the City is required to adopt, from time to time, by state or federal law.

2.10 Other City Regulations. Development of the Property shall also be subject to the following City ordinances adopted, and as they may from time to time be amended, and uniformly applied throughout the corporate limits of the City: regulations for sexually oriented businesses, on and off-premises signs, the sale of fireworks, animal control (except for livestock permitted pursuant to Section 2.3), condition of property, parking of vehicles, and nuisances that the City may enforce within its extraterritorial jurisdiction.

2.11 Conflicts.

- (a) Owner acknowledges that he has read and understands the Governing Regulations existing on the Effective Date. In the event of any conflict between this Agreement and the Governing Regulations as amended pursuant to Section 2.2, the Governing Regulations shall control, except where expressly modified by this Agreement.
- (b) In the event of any conflict between the Special Regulations and any of the other Governing Regulations, the Special Regulations shall control.
- (c) In the event of any conflict between any Approved Plat and any of the other Governing Regulations, the Approved Plat shall control.

ARTICLE III DEVELOPMENT PROCESS

3.1 Jurisdiction. Pursuant to the terms of the Interlocal Agreement and Section 232.001 of the Texas Local Government Code, the Parties intend that the City shall have and exercise exclusive jurisdiction over the review and approval of plats, the design, construction, installation and inspection of Public Infrastructure, and the construction and occupancy of structures; and that the County shall have and exercise no jurisdiction over such matters during the term of this Agreement.

3.2 Plat Approval. Subdivision of the Property shall require approval of plats by the City in accordance with the Governing Regulations.

3.3 City Inspectors. All inspections shall be performed by an authorized inspector from the City (a "City Inspector"). Each City Inspector shall use his best efforts to assist the District's consulting engineer in the preparation of infrastructure inspection reports required by TCEQ in connection with issuance of bonds in a form acceptable to TCEQ.

3.4 Public Infrastructure. Public Infrastructure shall be designed to comply with the Governing Regulations, and no construction or installation of Public Infrastructure shall begin until plans and specifications have been approved by the City (which approvals shall not be unreasonably withheld or delayed) and the NTMWD where applicable. All Public Infrastructure shall be permitted, constructed and installed in compliance with the Governing Regulations and shall be inspected to determine compliance.

3.5 Building Permits. No structure (as defined, by the Governing Regulations "Structure") shall be constructed unless a building permit has been issued by the City certifying that the plans and specifications for the Structure are in compliance with the Governing Regulations. Except for model units, no building permit shall be issued for a Structure unless a final plat has been recorded for the lot on which the Structure is being constructed. Building permits shall be issued for model units prior to the recordation of a final plat if the Public Infrastructure to serve the model homes has been completed and inspected (including fire protection and excluding sewer); however, no model home may be sold to any end-buyer of a fully developed and improved lot within the Property ("End-Buyer") until a final plat has been recorded. No building permit may be issued to a builder who does not own land within the Property unless such builder agrees in writing to be bound by this Agreement and delivers a copy of such writing to the Director and the City Secretary. All building permits shall be paid for by the builder performing the work (or by the owner of the property on which the work is being performed).

3.6 Final Inspections and Certificates of Occupancy. No Structure shall be occupied until a City Inspector has approved a final inspection (as required for residential structures) or issued a certificate of occupancy (as required for non-residential structures), whichever the case may be, certifying that the Structure has been constructed in compliance with the Governing Regulations. All final inspections and certificates of occupancy shall be paid for by the builder performing the work (or by the owner of the property on which the work is being performed).

3.7 Inspection Records and Reports. The City shall maintain a permanent record of all Public Infrastructure inspected, all building permits issued, and all final inspections and certificates of occupancy issued. All such records shall be available for copying by the District. All such records shall be kept in a form approved by the City and as otherwise required by state law. The City shall provide to the District a copy of each Public Infrastructure inspection report within fifteen (15) days after the inspection is performed (including reports that identify deficiencies and subsequent corrective action). The District shall bear the costs of such copies when provided. The City shall provide a monthly report to the District (by the 15th day of each month) identifying building permits and certificates of occupancy issued by the City during the previous calendar month. The report shall include, but not be limited to, the street address of the Structure, the name of the builder, and the name and phone number of a contact person.

ARTICLE IV
DEVELOPMENT CHARGES

4.1 Plat Review Fees. Development of the Property shall be subject to payment to the City of the reasonable fees and charges applicable to the City's plat review and approval process (the "Plat Review Fees") according to the fee schedule adopted by the City Council and in effect on the date of submittal of each plat application. The fee schedule applicable to the Property shall be uniformly applicable to all development within the corporate limits of the City.

4.2 Plan Review Fees. Development of the Property shall be subject to payment to the City of the reasonable fees and charges applicable to the City's review of plans and specifications for construction of structures and Public Infrastructure (the "Plan Review Fees") according to the fee schedule adopted by the City Council and in effect on the date of submittal of each set of plans and specifications. The fee schedule applicable to the Property shall be uniformly applicable to all development within the corporate limits of the City.

4.3 Permit Fees. Development of the Property shall be subject to the payment to the City of permit, inspection, and certificate-of-occupancy fees for construction of structures and Public Infrastructure (the "Permit Fees"), according to the fee schedule adopted by the City Council and in effect at the time of inspection.

4.4 Exclusive Fees. Except for the fees required under Article II, Plat Review Fees, Plan Review Fees, Permit Fees and other costs referenced herein or universally applicable within the corporate limits of the City, no other fees or charges of any kind are due and payable to the City in connection with the development of the Property.

ARTICLE V
PUBLIC INFRASTRUCTURE; RETAIL UTILITY SERVICE

5.1 Water Facilities. Owner (acting on behalf of the District) and the District shall have full responsibility at their sole cost for designing and constructing the on-Property and off-Property water facilities (together with and including any and all easements in or fee simple title to land to provide for and to accommodate such water facilities) that will serve the Property (the "Water Facilities"). The Water Facilities shall be owned by the District or the CCN-holder at all times. Owner or the District must design and construct the Water Facilities in compliance with all applicable statutory and regulatory requirements, including design and construction criteria and specifications of the City and the North Texas Municipal Water District (including without limitation permitting requirements for the construction, expansion, extension or enlargement of the Water Facilities), and in compliance with the Governing Regulations. The Water Facilities may be constructed in phases, but shall be adequate to meet City standards for each phase. Owner shall not be required to design or construct (or pay for designing or constructing) water facilities that exceed the capacity needed to serve the Property without Owner's written agreement.

5.2 Sewer Facilities. Owner (acting on behalf of the District) and the District shall have full responsibility at their sole cost for designing and constructing the on-Property and off-Property sewer facilities (together with and including any and all easements in or fee simple title to land to

provide for and to accommodate such sewer facilities) that will serve the Property (the "Sewer Facilities"). The Sewer Facilities shall be owned by the District or the CCN-holder at all times. Owner or the District must design and construct the Sewer Facilities including: all sewer transmission and distribution system(s) necessary to provide continuous and adequate service to customers in the Property in compliance with all applicable statutory and regulatory requirements, including design and construction criteria and specifications of the City and the North Texas Municipal Water District (including without limitation permitting requirements for the construction, expansion, extension or enlargement of the Sewer Facilities), and in compliance with the Governing Regulations. The Sewer Facilities may be constructed in phases but shall be adequate to meet City standards for each phase. Owner shall not be required to design or construct (or pay for designing or constructing) sewer facilities that exceed the capacity needed to serve the Property without Owner's written agreement.

5.3 Water and Wastewater Service; NTMWD Approval Required. The Parties intend that the District or the CCN-holder will provide retail water and wastewater services to customers within the District and will obtain treated water and wastewater treatment services from the City on a wholesale basis. Provision of wholesale treated water and wastewater treatment services by the City shall be subject to (a) NTMWD approval to provide sufficient treated water and wastewater treatment capacity to serve the Property at build-out; (b) NTMWD approval of system improvements necessary to transmit treated water to the Property and transmit wastewater from the Property to the NTMWD wastewater plant; and (c) execution of mutually acceptable utility agreements by the City and the CCN-holder or the District, including without limitation requirements that the CCN-holder or the District comply with all generally applicable contractual and regulatory requirements relating to provision of such wholesale services by the City.

5.4 Traffic Impact Analysis.

- (a) To ensure that off-site roadways have the necessary added capacity to accommodate the traffic from development of the Property and other developments, Owner, at its sole expense, shall perform a Traffic Impact Analysis ("TIA") based on full build-out of the Property in accordance with the Community Plan, to be finalized concurrently with approval of the Community Plan required pursuant to Section 2.3. The TIA shall identify the nature, timing, and costs (design and construction) for the following off-site roadway improvements (collectively, the "Roadway Improvements"):
 - (1) Signalization of and lane improvements (including, if necessary, new dedicated turn lanes) to the intersection of FM 741 and the Interstate 20 east-bound frontage road (the "I20 Intersection Improvements"); and
 - (2) Improvements to FM 741 adjacent to the Property, which shall be constructed to BV-125-43 assembly standards in accordance with the K20 Code (the "FM 741 Improvements"); and

- (3) Transition improvements where the FM 741 Improvements meet the existing pavement at the southern and northern boundaries of the Property (the "Transition Improvements").
- (b) Except as provided in this Section, the Traffic Impact Analysis shall be prepared in accordance with the "City of Mesquite Requirements for Preparing a Traffic Impact Analysis" issued by the Mesquite Traffic Engineering Division, dated December 3, 2008, as amended. The TIA shall reflect the cost and a plan for sequencing design and construction of the Roadway Improvements as development of the Property occurs (the "Sequencing Plan").
- (c) Owner shall be responsible for dedication of one-half of the right-of-way adjacent to the Property needed for a total of 125 feet of right-of-way (including right-of-way existing as of the Effective Date) for construction of the FM 741 Improvements adjacent to the Property.
- (d) Owner shall be responsible for one-half of the costs of design and construction of the Roadway Improvements, based on the approved TIA and after the approval of the Texas Department of Transportation; provided, however, if any of such Roadway Improvements are designed or constructed by persons other than Owner prior to the design and construction dates established in the Sequencing Plan, Owner shall have no obligation with respect to such design or construction costs. Consistent with the Sequencing Plan reflected in the TIA, Owner shall dedicate the right-of-way described in subsection (c) and shall provide financial security for the costs referenced in subsection (a) in accordance with the City's generally applicable requirements for funding of infrastructure. In the event that Kaufman County and/or the State of Texas contributes funds for the construction of any part of the Roadway Improvements, Owner shall be responsible for one-half of the costs identified in subsection (a), net of one-half of such state and/or county contributions.
- (d) Owner will submit an updated TIA at any point during implementation of the Community Plan when deemed necessary by the City to address the traffic impacts of development of the Property.

ARTICLE VI TERM OF AGREEMENT

The term of this Agreement shall be 15 years after the Effective Date unless terminated pursuant to Section 7.6, 7.10, 7.11 or 7.12, or extended by mutual agreement of Owner and the City (the "Term"). The Term shall not be affected by any limited purpose annexation pursuant to Article VII.

ARTICLE VII
JURISDICTIONAL STATUS

7.1 Immunity From Full Purpose Annexation. Except as provided in Sections 7.2, 7.6, 7.7 and 7.8 of this Agreement, the Property shall remain in the ETJ of the City and be immune from full purpose annexation by the City for the Term.

7.2 Full Purpose Annexation. The City shall have the right, but not the obligation, to full purpose annex the Property prior to the expiration of the Term if construction of the Public Infrastructure to serve full development of the Property is complete and the District has issued bonds to reimburse the cost of the Public Infrastructure. In such case, and to the extent that Section 43.035 of the Texas Local Government Code applies, the City shall not be required to offer any Owner a development agreement that would prevent the City from completing a full annexation of the Property. Upon full purpose annexation of the Property prior to the expiration of the Term (and the resulting dissolution of the District and City assumption of District obligations as required by law), the Term shall terminate upon the effective date of the full purpose annexation. OWNER AND ALL FUTURE OWNERS OF THE PROPERTY (INCLUDING END-BUYERS) AND DEVELOPERS IRREVOCABLY AND UNCONDITIONALLY CONSENT TO THE FULL PURPOSE ANNEXATION OF THE PROPERTY INTO THE CORPORATE LIMITS OF THE CITY IN ACCORDANCE WITH THIS AGREEMENT AND WAIVE ALL OBJECTIONS AND PROTESTS TO SUCH ANNEXATION. THIS AGREEMENT SHALL SERVE AS THE PETITION OF OWNER AND ALL FUTURE OWNERS AND DEVELOPERS TO FULL PURPOSE ANNEXATION OF THE PROPERTY IN ACCORDANCE WITH THIS AGREEMENT.

7.3 Annexation Plan. In the future the City shall have the right, but not the obligation, to include the Property in the City's municipal annexation plan ("Annexation Plan") pursuant to Section 43.052 of the Texas Local Government Code. The inclusion of the Property in the Annexation Plan shall not alter the Term of this Agreement or authorize the City to annex the Property during the Term of this Agreement except as provided in Sections 7.2, 7.6, 7.7 and 7.8.

7.4 Notice to End-Buyers. At the time each prospective buyer contracts with Owner for the purchase of property in the District, and at the time each buyer closes the purchase of property in the District from Owner, Owner shall give the buyer a disclosure notice and consent to annexation, together with a disclosure notice in the form required by the Texas Water Code, as amended. Further, within 90 days after the election confirming creation of the District, Owner shall cause the District to file an annexation notice in the form attached as **Exhibit H** in the real property records of Kaufman County.

7.5 Limited Purpose Annexation. Nothing in this Agreement shall prevent the City from annexing any land within the Property occupied in whole or in part by a non-residential use that is subject to sales or use taxes for the limited purpose of collecting such taxes, to the extent permitted by law. Owner and the City shall collaborate to seek amendments to Section 43.0751, Texas Local Government Code, during the 2011 session of the Texas Legislature to authorize fresh water supply districts to enter into a Strategic Partnership Agreement ("SPA"). Owner, upon request by the City Manager of the City, shall provide periodic reports to the City concerning the status of such proposed legislation. Owner shall cause the District to approve an

SPA providing for assessment and collection of sales and use taxes by the City and division of such taxes between the City and the District on a 50/50 basis, in substantially the form attached hereto as **Exhibit I** (provided state law is amended to authorize fresh water supply districts to enter into SPAs), or amended as appropriate if the District is converted to a water control and improvement district, and deliver such agreement to the City for approval within 180 days after:

- (a) the confirmation election creating the District; and
- (b) the first to occur of either:
 - (i) The effective date of any amendment to Section 43.0751 of the Local Government Code or any other of the general laws of the State of Texas that would authorize fresh water supply districts to enter into strategic partnership agreements; or
 - (ii) The effective date of conversion of the District to a water control and improvement district, provided, however, nothing herein requires the District to convert to a water control and improvement district; or
 - (iii) The effective date of any special legislation approved by the Texas Legislature authorizing the District to enter into a strategic partnership agreement.

Owner expressly consents to limited purpose annexation of land within the Property in accordance with the terms of an SPA approved by the District and the City. No plat applications for the Property shall be filed with, accepted or processed by the City until the District (including a water control and improvement district created pursuant to the consent given in Section 7.10) delivers an executed SPA to the City. Owner hereby expressly waives any claims that the City's failure to accept or process plat applications pending delivery by the District to the City of an executed SPA, constitutes a violation of statutory, contractual or constitutional rights.

7.6 Expiration of Development Rights Due to Project Dormancy: Termination of Agreement.

- (a) The Project shall become dormant upon the occurrence of any of the following events:
 - (1) The Owner fails or refuses to submit a complete application for a Community Plan before January 1, 2014; or
 - (2) The District fails or refuses to deliver an executed SPA to the City before July 1, 2014; or
 - (3) A Community Plan and Traffic Impact Analysis for the Property are not approved by the City Council within nine (9) months after submittal of a complete application for a Community Plan; or

- (4) A complete plat or permit application for the development of the Property consistent with the approved Community Plan is not submitted to the City within one year after delivery of an executed SPA to the City (but no later than July 1, 2015).
- (b) If the Project becomes dormant, the Property may not be used or developed for any purpose except for agricultural uses unless the Owner's development rights are reinstated pursuant to this subsection. At its option, the Owner may either:
 - (1) Submit a written petition to the Director to reinstate the Owner's right to develop and use the Property in accordance with the last-approved Community Plan, if any, and the K20 Code as amended as of the date of reinstatement and under such conditions of the K20 Code as the City Council deems appropriate, including but not limited to revisions to the Community Plan; or
 - (2) Apply for an Alternative Community Type pursuant to Section 2.5 to replace the last-approved Community Plan.
- (c) If the City Council does not approve the Owner's petition for reinstatement or application for an Alternative Community Type within one hundred twenty (120) days following receipt, the Owner or the City may terminate this Agreement, and upon such termination, the City shall have the right to annex the Property for full purposes. The Parties may extend the time for City Council approval by mutual agreement.

7.7 Incorporation Petition. In the event that the requisite number of voters and property owners submit a petition to the City requesting incorporation pursuant to and in compliance with Section 43.041 of the Texas Local Government Code or successor statute, the City shall have the right, to the extent permitted by law, to full purpose annex the entire District within which such voters reside and such property is located.

7.8 Pass-Through Annexation. Owner consents and agrees to full annexation by the City of a 10-foot strip of the Property adjacent to the Interstate 20 east-bound frontage road, as described in **Exhibit J** and depicted on **Exhibit K** (the "Pass-Through Area") in order to facilitate contiguity to the City's corporate limits required for annexation of land within the City's extraterritorial jurisdiction. If necessary, the description of the Pass-Through Area shall be adjusted to ensure that the area lies within the City's extraterritorial jurisdiction. The Pass-Through Area shall be excluded from the District boundaries. Notwithstanding the zoning designation approved for the Pass-Through Area once annexed, such area can be developed and used in accordance with this Agreement.

7.9 Limitation on Annexation by District. The District may not add land that is located in the corporate limits or ETJ of the City, or within the ETJ of another City, into the boundaries of the District without the prior written consent of the City, which consent shall be in the sole and absolute discretion of the City. Upon receipt of a petition by a landowner for annexation to the

District, the District shall notify the City of such request and provide a copy of the petition to the City. In accordance with Section 10 of the Consent Resolution, the District shall have no authority to issue bonds for the purchase, construction, acquisition, repair, extension and improvement of land, easements, works, improvements, facilities, plants, equipment and appliances that would serve property annexed into the District without the consent of the City.

7.10 Joinder by District. Within 90 days from the date of creation of the District whether by Order of the Kaufman County Commissioners Court or Texas Legislature, Owner shall cause the District to adopt and enter into a Joinder Agreement (the "Joinder Agreement"), by which the District shall confirm and adopt the applicable terms and provisions of this Agreement. Upon due approval and execution of the Joinder Agreement by the District it shall become a "Party" to this Agreement. Such Joinder Agreement shall be in such form as may be mutually agreeable to the Parties. Similarly, within 90 days from the date of the creation of any new District by division election conducted pursuant to Chapter 51 or 53, Texas Water Code (each a "Resulting District"), the Resulting District shall adopt and enter into a Joinder Agreement. Owner shall use its best efforts to secure the execution of the Joinder Agreement by the District as set forth herein. In the event that the District shall fail to execute the Joinder Agreement within the time periods set forth above, the City shall have the right, at its option, to terminate this Agreement by giving sixty (60) days written notice to Owner; provided, however, this Agreement shall not terminate if the District signs the Joinder Agreement within such 60-day period.

7.11 Limitation on Conversion. The City consents to the conversion of the District to a water control and improvement district pursuant to Article III, Section 52, and Article XVI, Section 59, of the Texas Constitution and the Texas Water Code, Chapters 49, 51 and 53, as amended, and upon conversion, said water control and improvement district shall be referred to thereafter as the District for purposes of this Agreement. The District shall not convert to a municipal utility district, whether upon original petition of Owner or upon conversion of the fresh water supply district or water control and improvement district, without the written consent of the City. In the event that the District shall fail to obtain the written consent of the City prior to conversion to a municipal utility district, the City shall have the right, at its option, to terminate this Agreement by giving sixty (60) days written notice to Owner.

7.12 Termination of Agreement by Owner. Owner may terminate the Agreement prior to creation of the District by giving sixty (60) days written notice to City. After the District is created, Owner may dissolve the District and terminate the Agreement by giving sixty (60) days written notice to City.

ARTICLE VIII EVENTS OF DEFAULT; REMEDIES

8.1 Events of Default. No Party shall be in default under this Agreement until written notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than 30 days after written notice of the alleged failure

has been given). In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. In the event that a Party gives notice pursuant to this Section 8.1, the Parties shall meet within 15 days after delivery of such Notice and shall use their best efforts to resolve the alleged failure to perform.

8.2 Remedies. If a Party is in default, the aggrieved Party may, at its option and without prejudice to any other right or remedy under this Agreement, seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act, specific performance, mandamus, and injunctive relief. If Owner, successor or assign is in default, the City may refuse to grant approval for any plat or permit application that may otherwise comply with this Agreement and State law, on property owned or being developed by the defaulting Party and that is subject to the default, until such default is cured. The defaulting Party shall be deemed to have waived any vested right acquired either through this Agreement or otherwise under Texas Local Gov't Code Chapter 245 or any other provision of state law conferring such right with respect to such property. Thereafter, during the period the defaulting Party remains in default, the City may enforce, but shall not be obligated to review, development applications submitted by the defaulting Party with respect to such Property under the Governing Regulations but may apply some or all of the standards as then may be in effect to any development application submitted by the Owner. Upon cure of the default by the defaulting Party, Owner's vested rights shall be reinstated as of the applicable date provided in Section 2.2 (b) or (c), and the City shall review development applications submitted by the defaulting Party thereafter for compliance with the Governing Regulations. **NOTWITHSTANDING THE FOREGOING, HOWEVER, NO DEFAULT UNDER THIS AGREEMENT SHALL:**

- (a) entitle the aggrieved Party to terminate this Agreement, except as provided in Sections 7.10 and 7.11; or
- (b) entitle the aggrieved Party to suspend performance under this Agreement unless the portion of the Property for which performance is suspended is the subject of the default (for example, the City shall not be entitled to suspend its performance with regard to the development of "Tract X" by "Developer A" based on the grounds that Developer A is in default with respect to any other tract or based on the grounds that any other developer is in default with respect to any other tract); or
- (c) adversely affect or impair the current or future obligations of the City to provide water or sewer service (whether wholesale or retail) or any other service to any developed portion of the Property or to any undeveloped portion of the Property unless the undeveloped portion of the Property is the subject of the default; or
- (d) entitle the aggrieved Party to seek or recover monetary damages of any kind; or
- (e) adversely affect or impair the effectiveness or validity of any consents given by the City in the Consent Resolution to the creation of District; or

- (f) adversely affect or impair the current or future rights, powers or authority of the District (including, but not limited to, the issuance of bonds) or the day-to-day administration of any of such districts; or
- (g) adversely affect or impair the continuation of the ETJ status of the Property and its immunity from annexation as provided by this Agreement; or
- (h) limit the Term.

8.3 Governmental Powers: Waivers of Immunity. By its execution of this Agreement, the City does not waive or surrender any of its governmental powers, immunities, or rights except as follows:

- (a) The City waives its governmental immunity from suit and immunity from liability as to any action brought by a Party (or by the District) to pursue the remedies available under this Agreement, but only to the extent necessary to pursue such remedies. Nothing in this section shall waive any claims, defenses or immunities that the City has with respect to suits against the City by persons or entities other than the District or a Party to this Agreement.
- (b) Nothing in this Agreement is intended to delegate or impair the performance by the City of its governmental functions, and the City waives any claim or defense that any provision of this Agreement is unenforceable on the grounds that it constitutes an impermissible delegation or impairment of the City's performance of its governmental functions.

ARTICLE IX ASSIGNMENT AND ENCUMBRANCE

9.1 Assignment by Owner to the District. Owner has the right to assign to the District those portions of this Agreement concerning the provision of water and/or sewer service to the Property and the design, construction, installation, maintenance, and repair of any Public Infrastructure; provided, however, that the District as a condition of assignment shall agree to the provisions of Article VII and Article VIII of this Agreement. Thereafter, for the limited purposes of such assignment, the District shall be considered an "Assignee," and therefore a Party, for purposes of this Agreement. Each assignment shall be in writing executed by Owner and the District and shall obligate the District to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. A copy of each assignment shall be provided to all Parties within 15 days after execution. From and after such assignment, the City agrees to look solely to the District for the performance of all obligations assigned to the District and agrees that Owner shall be released from subsequently performing the assigned obligations and from any liability that results from the District's failure to perform the assigned obligations; provided, however, if a copy of the assignment is not given to the City within 15 days after execution, Owner shall not be released until the City receives the assignment. No assignment by Owner shall release Owner from any liability resulting from an act or omission by Owner that occurred prior to the effective date of the assignment unless the City approves the release in writing. Owner shall maintain written records of all assignments

made by Owner to the District, including a copy of each executed assignment, and, upon written request from any Party or Assignee, shall provide a copy of such records to the requesting person or entity.

9.2 Assignment by Owner to Successor Owners. Owner has the right (from time to time without the consent of the City, but upon written notice to the City) to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of Owner under this Agreement, to any person or entity (an "Assignee") that is or will become an owner of any portion of the Property. Each assignment shall be in writing executed by Owner and the Assignee and shall obligate the Assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. A copy of each assignment shall be provided to all Parties within 15 days after execution. From and after such assignment, the City agrees to look solely to the Assignee for the performance of all obligations assigned to the Assignee and agrees that Owner shall be released from subsequently performing the assigned obligations and from any liability that results from the Assignee's failure to perform the assigned obligations; provided, however, if a copy of the assignment is not received by the City within 15 days after execution, Owner shall not be released until the City receives such assignment. No assignment by Owner shall release Owner from any liability that resulted from an act or omission by Owner that occurred prior to the effective date of the assignment unless the City approves the release in writing. Owner shall maintain written records of all assignments made by Owner to Assignees, including a copy of each executed assignment and the Assignee's Notice information as required by this Agreement, and, upon written request from any Party or Assignee, shall provide a copy of such records to the requesting person or entity.

9.3 Assignment by Owner to Non-Owners. Subject to the City's prior written approval, Owner has the right, from time to time, to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of Owner under this Agreement, to any person or entity that is not an owner of any portion of the Property (a "Non-Owner Assignee"). Each assignment shall be in writing executed by Owner and the Non-Owner Assignee and shall obligate the Non-Owner Assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. A copy of each assignment shall be provided to all Parties within 15 days after execution. If the City approves the Non-Owner Assignee in writing (which approval shall not be unreasonably withheld or delayed if the Non-Owner Assignee can demonstrate, to the reasonable satisfaction of the City, that the Non-Owner Assignee has the financial ability to perform the assigned obligations), then the City agrees to look solely to the Non-Owner Assignee for the performance of all obligations assigned to the Non-Owner Assignee and agrees that Owner shall be released from subsequently performing the assigned obligations and from any liability that results from the Non-Owner Assignee's failure to perform the assigned obligations. If the City fails or refuses to approve the Non-Owner Assignee, the assignment shall nevertheless be effective; however, the Owner shall continue to be responsible, jointly and severally, with the Non-Owner Assignee for the performance of all obligations assigned. No assignment by Owner shall release Owner from any liability resulting from an act or omission by Owner that occurred prior to the effective date of the assignment unless the City approves the release in writing. Owner shall maintain written records of all assignments made by Owner to Non-Owner Assignees, including a copy of each executed assignment and the Non-Owner Assignee's Notice information as required by this

Agreement, and, upon written request from any Party or Non-Owner Assignee, shall provide a copy of such records to the requesting person or entity.

9.4 Assignment by the City. The City shall not assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of the City under this Agreement, without the prior written approval of Owner and the District.

9.5 Encumbrance by Owner and Assignees. Owner and Assignees have the right, from time to time, to collaterally assign, pledge, grant a lien or security interest in, or otherwise encumber any of their respective rights, title, or interest under this Agreement for the benefit of their respective lenders without the consent of, but with prompt written notice to, the City. The collateral assignment, pledge, grant of lien or security interest, or other encumbrance shall not, however, obligate any lender to perform any obligations or incur any liability under this Agreement unless the lender agrees in writing to perform such obligations or incur such liability. Provided the City has been given a copy of the documents creating the lender's interest, including Notice (hereinafter defined) information for the lender, then that lender shall have the right, but not the obligation, to cure any default under this Agreement and shall be given a reasonable time to do so in addition to the cure periods otherwise provided to the defaulting Party by this Agreement; and the City agrees to accept a cure offered by the lender as if offered by the defaulting Party. A lender is not a Party to this Agreement unless this Agreement is amended, with the consent of the lender, to add the lender as a Party. Notwithstanding the foregoing, however, this Agreement shall continue to bind the Property and shall survive any transfer, conveyance, or assignment occasioned by the exercise of foreclosure or other rights by a lender, whether judicial or non-judicial. Any purchaser from or successor owner through a lender of any portion of the Property shall be bound by this Agreement and shall not be entitled to the rights and benefits of this Agreement with respect to the acquired portion of the Property until all defaults under this Agreement with respect to the acquired portion of the Property have been cured.

9.6 Encumbrance by City. The City shall not collaterally assign, pledge, grant a lien or security interest in, or otherwise encumber any of its rights, title, or interest under this Agreement without Owner's prior written consent.

9.7 Assignees as Parties. An Assignee shall be considered a "Party" for the purposes of this Agreement.

ARTICLE X RECORDATION AND RELEASES

10.1 Binding Obligations. Pursuant to the requirements of Section 212.172(f) of the Texas Local Government Code, this Agreement and all amendments hereto (including Community Plans and amendments to the Regulating Plan) shall be recorded in the deed records of the County. In addition, all assignments to this Agreement shall be recorded in the deed records of the County. This Agreement, when recorded, shall be binding upon the Parties and their successors and assigns permitted by this Agreement and upon the Property; however, this Agreement shall not be binding upon, and shall not constitute any encumbrance to title as to, any End-Buyer except for land use and development regulations that apply to specific lots. For

purposes of this Agreement, the Parties agree: (a) that the term "End-Buyer" means any resident, tenant, user, occupant or owner that is not an Owner or Assignee of Owner, as defined in Article IX, or a person or entity who constructs a primary structure on a fully developed and improved lot; (b) that the term "fully developed and improved lot" means any lot, regardless of proposed use, for which a final plat has been approved by the City and recorded in the deed records; and (c) that the term "land use and development regulations that apply to specific lots" means all of the Governing Regulations except the Public Infrastructure and Retail Utility Service provisions of Article V, together with all other provisions of Articles II, III and IV of this Agreement.

10.2 Releases. From time to time upon written request of Owner or the District, the City Manager shall execute, in recordable form, a release of this Agreement for a portion of the Property for which the release requirements of this Agreement have been fully met, subject to the continued application of the Governing Regulations.

ARTICLE XI ADDITIONAL PROVISIONS

11.1 Recitals. The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) are legislative findings of the City Council, and (d) reflect the final intent of the Parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.

11.2 Notices. All notices required or contemplated by this Agreement (or otherwise given in connection with this Agreement) (a "Notice") shall be in writing, shall be signed by or on behalf of the Party giving the Notice, and shall be effective as follows: (a) on or after the 10th business day after being deposited with the United States mail service, Certified Mail, Return Receipt Requested with a confirming copy sent by FAX; (b) on the day delivered by a private delivery or private messenger service (such as FedEx or UPS) as evidenced by a receipt signed by any person at the delivery address (whether or not such person is the person to whom the Notice is addressed); or (c) otherwise on the day actually received by the person to whom the Notice is addressed, including, but not limited to, delivery in person and delivery by regular mail or by E-mail (with a confirming copy sent by FAX). Notices given pursuant to this section shall be addressed as follows:

To the City:	Attn: Ted Barron Mesquite City Manager 1515 N. Galloway Avenue Mesquite, Texas 75149 or PO Box 850137 Mesquite, TX 75185-0137 FAX: 972-216-6431
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With a copy to: Attn: Richard G. Gertson
Director of Community Development
1515 N. Galloway Avenue
Mesquite, Texas 75149 or
PO Box 850137
Mesquite, Texas 7585-0137
FAX: 972-216-8109

To Owner: Attn: Frank Babb
269 Kaufman Partners, Ltd.
953 Dallas Parkway
Suite 200A
Plano, Texas 75093-8189
FAX: 214-696-8110

With a copy to: Attn: Marcella Olson
Shupe Ventura Lindelow & Olson, PLLC
500 Main St., Suite 800
Fort Worth, Texas, 76102
FAX: 214-329-9258

11.3 Reservation of Rights. This Agreement constitutes a "permit" within the meaning of Chapter 245, Texas Local Government Code.

11.4 Manufactured Housing. Notwithstanding any other provision of this Agreement to the contrary, HUD-certified manufactured homes may be located within the Property, from time to time, for any purpose necessary for the creation or administration of the District (including, but not limited to, providing qualified voters within the District or qualifying persons to serve on the board of supervisors of the District). Owner will notify the City of the location of, make and model of, HUD number for, and 911 address of each home within 30 days after the home is occupied. Manufactured homes permitted by this Agreement: (a) are not required to be located on a platted lot; (b) do not require a building permit; (c) do not require a certificate of substantial completion; (d) do not otherwise have to comply with the Governing Regulations; (e) do not require any permit or other approval by the City; and (f) will be promptly removed when no longer needed for creation or administration of the District. Manufactured homes permitted by this Agreement shall, however, be subject to all permits or approvals otherwise required by the County; and the City shall cooperate in good faith to assist Owner in obtaining such permits and approvals and in obtaining water, sewer, and utility service for such homes.

11.5 Interpretation. The Parties acknowledge that each of them has been actively involved in negotiating this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this Agreement. In the event of any dispute over the meaning or application of any provision of this Agreement, the provision will be interpreted fairly and reasonably and neither more strongly for or against any Party, regardless of which Party originally drafted the provision.

11.6 Authority and Enforceability. The City represents and warrants that this Agreement has been approved by the City Council in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been duly authorized to do so. Owner represents and warrants that this Agreement has been approved by appropriate action of Owner and that the individual executing this Agreement on behalf of Owner has been duly authorized to do so. Each Party acknowledges and agrees that this Agreement is binding upon such Party and enforceable against such Party in accordance with its terms and conditions and that the performance by the Parties under this Agreement is authorized by Section 212.171 of the Texas Local Government Code.

11.7 Entire Agreement; Severability. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the subject matter of this Agreement. This Agreement shall not be modified or amended except in writing signed by the Parties. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, such unenforceable provision shall be deleted from this Agreement, and the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties. Without limiting the generality of the foregoing, (a) if it is determined that, as of the Effective Date, Owner does not own any portion of the Property, this Agreement shall remain in full force and effect with respect to all of the Property that Owner does then own, and (b) if it is determined, as of the Effective Date, that any portion of the Property is not within the City's ETJ, this Agreement shall remain in full force and effect with respect to all of the Property that is then within the City's ETJ. If at any time after the Effective Date it is determined that any portion of the Property is no longer within the City's ETJ, this Agreement shall remain in full force and effect with respect to all of the Property that remains within the City's ETJ.

11.8 Director Qualifying Lots. Notwithstanding any other provision of this Agreement to the contrary, the conveyance, from time to time, by metes and bounds or otherwise of any portion of the Property to any person for the purpose of qualifying such person to be a member of the board of supervisors of the District shall not be considered a subdivision of land requiring a plat or otherwise requiring the approval of the City; provided, however, no Structure, other than manufactured housing authorized by Section 11.4, shall be constructed on any property conveyed for such purpose unless and until a plat of such portion has been approved by the City in accordance with this Agreement.

11.9 Applicable Law; Venue. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Texas, and all obligations of the Parties are performable in Dallas County. Venue for any action to enforce or construe this Agreement shall be the County.

11.10 No Waiver. Any failure by a Party to insist upon strict performance by another Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party of any term or condition of this Agreement shall

be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

11.11 No Third Party Beneficiaries. Except as otherwise provided in this Section 11.11, this Agreement only inures to the benefit of, and may only be enforced by, the Parties. If the District is not an Assignee, the District shall be considered a third-party beneficiary of this Agreement. An End-Buyer shall be considered a third-party beneficiary of this Agreement, but only for the limited purposes for which an End-Buyer is bound by this Agreement. No other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this Agreement.

11.12 Force Majeure. Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Agreement, and time shall be of the essence in such performance; however, in the event a Party is unable, due to force majeure, to perform its obligations under this Agreement, then the obligations affected by the force majeure shall be temporarily suspended. Within three business days after the occurrence of a force majeure, the Party claiming the right to temporarily suspend its performance shall give Notice to all the Parties, including a detailed explanation of the force majeure and a description of the action that will be taken to remedy the force majeure and resume full performance at the earliest possible time. The term "force majeure" shall include events or circumstances that are not within the reasonable control of the Party whose performance is suspended and that could not have been avoided by such Party with the exercise of good faith, due diligence and reasonable care.

11.13 Proportionality.

- (a) The Parties agree that the dedication or construction of public improvements described in Article V, and/ or the payment of Development Charges described in Article IV are roughly proportional to the nature and extent of the proposed development of the Property on the City's public facilities systems. Owner further agrees that the City may expressly rely upon the provisions of this paragraph in any certification under Section 212.904, Texas Local Government Code ("Section 212.904"), and that a court in determining rough proportionality may consider all of the Property.
- (b) Owner hereby covenants not to sue the City for any claim, or otherwise consent to participate in any action against the City arising from any claim by such party or by its affiliates, alleging that application of the construction, dedication or fee requirements set forth in Articles IV and V of this Agreement to the development of the Property, or the imposition of conditions to a plat application for a portion of the Property that are consistent with the requirements of the Governing Regulations or this Agreement, are not roughly proportional to the impacts of the development depicted in the Regulating Plan, including but not limited to any action premised upon Section 212.904 or successor statute, or that such application of the construction, dedication or fee requirements violates Texas Local Government Code Chapter 395 ("Chapter 395") or successor statute. Such covenant not to sue touches and concerns the Property, and is a covenant running with the land such that it binds successors in interest and assigns of Owner. As

used in this Agreement, the term "affiliate" means any person, corporation, partnership, or other entity controlled by, controlling, or under common control with Owner.

- (c) Should Owner or any affiliate, successor-in-interest, or assign of Owner violate the covenant not to sue contained in this paragraph, the City may either enforce the covenant or pursue the alternative remedies provided for herein. Should a court declare the covenant not to sue unenforceable in whole or in part, Owner agrees that the City may pursue the alternative remedies in subsection (d).
- (d) Should Owner or any affiliate, successor-in-interest, or assign of Owner assert in a court of competent jurisdiction any of the claims set forth in subsection (b), in violation of this Section, such party shall be deemed to have waived any vested rights acquired either through this agreement or otherwise under Texas Local Government Code Chapter 245 or any other provision of state law conferring such right, including any warrants, variances or exceptions from the Governing Regulations. Thereafter, the City may enforce, but shall not be obligated to review any future development applications under the Governing Regulations submitted by the Party asserting any of the claims set forth in subsection (b), and may apply some or all of the standards as then may be in effect to any development application submitted by that Party.
- (e) Should Owner or any affiliate, successor-in-interest, or assign of Owner assert in a court of competent jurisdiction any of the claims set forth in subsection (b), in violation of this Section, with respect to development of any portion of the Property, Owner shall indemnify, hold harmless and reimburse the City, its agents, employees, successors, and assigns against all costs, damages, expenses, attorneys fees or other liabilities resulting from claims arising out of any breach of this section 11.13, including but not limited to claims asserting that the City's application of the standards and provisions of this Agreement requiring dedication, construction or contribution of fees for public facilities and services is not roughly proportional to the impacts of development of the Property or any part thereof, including expressly any claims premised on Section 212.904 or Chapter 395.

11.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

11.15 Further Documents. Each Party shall, upon request of the other Party, execute and deliver such further documents and perform such further acts as may reasonably be requested to effectuate the terms of this Agreement and achieve the intent of the Parties.

11.16 Exhibits. The following Exhibits are attached to this Agreement and are incorporated herein for all purposes:

- Exhibit A Map of the Property
- Exhibit B Legal Description of the Property

- Exhibit C Consent Resolution
- Exhibit D Community Plan approved pursuant to Section 2.3 (to be attached to Agreement after the Effective Date)
- Exhibit E Subdivision Regulations
- Exhibit F Special Regulations
- Exhibit G Development Regulations
- Exhibit H Annexation Notice
- Exhibit I Strategic Partnership Agreement
- Exhibit J Legal Description of Pass-Through Area
- Exhibit K Map of Pass-Through Area

Executed by Owner and the City to be effective on the Effective Date.

ATTEST:

Sonja Land
 Name: Sonja Land
 Title: City Secretary

CITY OF MESQUITE, TEXAS

By: *John Monaco*
 Name: John Monaco
 Title: Mayor
 Date: 6/23/10

APPROVED AS TO FORM

Liz Lunday
 Name: Liz Lunday
 Title: Deputy City Attorney

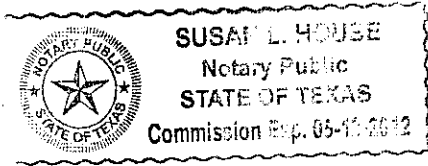
269 KAUFMAN PARTNERS, LTD.
 A Texas limited partnership

By: 269 Kaufman Partners GP, LLC.
 Its: General Partner

By: *Frank Ball*
 Name: SVB
 Title: SVB
 Date: 6/22/2010

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

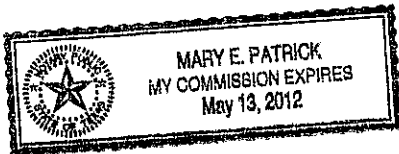
This instrument was acknowledged before me on the 23rd day of June, 20 10, by John Monaco, Mayor of the City of Mesquite, Texas on behalf of said city.



Susan L. House
Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 22nd day of June, 20 10, by Frank Babb, SVP of 269 Kaufman Partners GP, LLC, general partner of 269 Kaufman Partners, Ltd., a Texas limited partnership, on behalf of such partnership.



Mary E. Patrick
Notary Public, State of Texas

EXHIBIT B
Legal Description of the Property

BEING a tract of land located in the MARTHA MUSICK SURVEY, ABSTRACT NO. 312, Kaufman County, Texas, and being all of a tract of land described in Deed to 269 Kaufman Partners, L.P., recorded in Volume 2709, Page 267, Deed Records, Kaufman County, Texas and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod with a yellow plastic cap stamped "PATE ENGRS" found in the South line of Interstate Highway 20 at the most Northeasterly corner of said Tract 2;

THENCE South 45 degrees 06 minutes 31 seconds East, along the Southwesterly lines of a tract of land described in Deed to Austin W. Shipley, recorded in Volume 270, Page 221, Deed Records, Kaufman County, Texas, a tract of land described as Tract 1 in Deed to Gordon T. West, recorded in Volume 1636, Page 43, Deed Records, Kaufman County, Texas and a Southwesterly line of a tract of land described as Second Tract in Deed to Gordon T. West, recorded in Volume 709, Page 242, Deed Records, Kaufman County, Texas, in all for a total distance of 2,131.34 feet to a 3/4 inch iron pipe found at an interior ell corner of said Second Tract;

THENCE South 44 degrees 47 minutes 12 seconds West, along the Northwesterly line of said Second Tract, a distance of 1,898.54 feet to a 1/2 inch iron pipe found for corner;

THENCE South 65 degrees 51 minutes 38 seconds West, a distance of 65.50 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the left having a central angle of 21 degrees 33 minutes 02 seconds, a radius of 800.00 feet and a chord bearing and distance of North 34 degrees 54 minutes 53 seconds West, 299.13 feet;

THENCE Northwesterly, along said curve to the left, an arc distance of 300.90 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 45 degrees 41 minutes 24 seconds West, a distance of 397.25 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE South 44 degrees 18 minutes 36 seconds West, a distance of 10.00 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 45 degrees 41 minutes 24 seconds West, a distance of 1,323.95 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the left having a central angle of 36 degrees 41 minutes 46 seconds, a radius of 790.00 feet and a chord bearing and distance of North 64 degrees 02 minutes 17 seconds West, 497.37 feet;

THENCE Northwesterly, along said curve to the left, an arc distance of 505.97 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 82 degrees 23 minutes 10 seconds West, a distance of 23.30 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the right having a

central angle of 10 degrees 28 minutes 31 seconds, a radius of 300.00 feet and a chord bearing and distance of North 77 degrees 08 minutes 55 seconds West, 54.77 feet;

THENCE Westerly, along said curve to the right, an arc distance of 54.85 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a reverse curve to the left having a central angle of 10 degrees 28 minutes 31 seconds, a radius of 300.00 feet and a chord bearing and distance of North 77 degrees 08 minutes 55 seconds West, 54.77 feet;

THENCE Westerly, along said curve to the left, an arc distance of 54.85 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 82 degrees 23 minutes 10 seconds West, a distance of 172.65 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the right having a central angle of 38 degrees 41 minutes 30 seconds, a radius of 950.00 feet and a chord bearing and distance of North 63 degrees 02 minutes 25 seconds West, 629.41 feet;

THENCE Northwesterly, along said curve to the right, an arc distance of 641.53 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 43 degrees 41 minutes 40 seconds West, a distance of 249.40 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the Southeasterly line of Farm-to-Market Road 741, a 90-foot wide right-of-way;

THENCE North 46 degrees 18 minutes 20 seconds East, along the Southeasterly line of said Farm-to-Market Road 741, a distance of 428.95 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE South 43 degrees 41 minutes 40 seconds East, leaving said Southeasterly right-of-way line, a distance of 207.30 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 46 degrees 18 minutes 20 seconds East, a distance of 146.50 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 15 degrees 11 minutes 15 seconds East, a distance of 478.55 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the South line of Interstate Highway No. 20, a variable width right-of-way;

THENCE Easterly, along the Southerly lines of said Interstate Highway No. 20, the following four (4) courses and distances:

North 83 degrees 22 minutes 32 seconds East, a distance of 671.95 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "PATE ENGRS" found for corner;

North 88 degrees 29 minutes 15 seconds East, a distance of 474.57 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "PATE ENGRS" found for corner;

South 84 degrees 18 minutes 44 seconds East, a distance of 952.45 feet to a broken concrete right-of-way monument found for corner;

South 78 degrees 59 minutes 18 seconds East, a distance of 4.45 feet to the POINT OF BEGINNING and containing or 147.217 acres of land, more or less.

EXHIBIT C
Consent Resolution
RESOLUTION NO. 25-2010

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, CONSENTING TO THE CREATION OF A FRESH WATER SUPPLY DISTRICT ENCOMPASSING APPROXIMATELY 146.73 ACRES OF LAND LOCATED IN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF MESQUITE; AND PROVIDING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City of Mesquite, Texas (the "City"), is a home rule municipal corporation of the State of Texas; and

WHEREAS, 269 Kaufman Partners, Ltd., a Texas limited partnership (the "Owner") is the sole owner of approximately 146.73 acres of land located in the extraterritorial jurisdiction (the "ETJ") of the City depicted on Exhibit "A" and described by metes and bounds on Exhibit "B" attached hereto and incorporated herein (the "Property"); and

WHEREAS, Section 42.042 of the Texas Local Government Code provides that a fresh water supply district may not be created in the ETJ of a municipality unless the governing body of the municipality gives written consent for such creation; and

WHEREAS, on June 1, 2010, the Owner filed a "Petition Requesting Consent to the Creation of a Political Subdivision in Extraterritorial Jurisdiction" with the City Secretary's Office, requesting the City's consent to the creation of the Kaufman County Fresh Water Supply District No. 5, or if such name is not available, a similarly named fresh water supply district (the "District") to cover the Property, a copy of which petition is attached as Exhibit "C," which provides in part that the District shall be organized under the terms and provisions of Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 53, Texas Water Code, as amended; and

WHEREAS, the Property lies wholly within the ETJ of the City, and no portion of the Property lies in the corporate limits or ETJ of any other town or city; and

WHEREAS, the Owner has no intention to create a municipal utility district on the Property; and

WHEREAS, the Owner has no intention to petition the District following creation for annexation of any other land other than the Property owned or controlled by the Owner; and

WHEREAS, the City and the Owner intend to execute an agreement entitled "Heartland Town Center Development Agreement" pursuant to the provisions of Section 212.172 of the Texas Local Government Code regarding the development of the Property as a Town Center Development community type pursuant to the City's Comprehensive Plan, a true and correct copy of which is attached hereto as Exhibit "D" (referred to herein as the "Development Agreement").

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

SECTION 1. That all of the above premises are true and correct findings of the City of Mesquite City Council and they are hereby approved and incorporated into this resolution as if copied in their entirety.

SECTION 2. That the City of Mesquite, Texas (the "City"), consents to the creation of a fresh water supply district covering the approximately 146.73 acres of land depicted on Exhibit "A" and described by metes and bounds on Exhibit "B," or any portion thereof (the "District"), which District is to be organized (as set forth in the Petition) under the terms and provisions of Article III, Section 52, Article XVI, Section 59, and the applicable provisions of Chapters 49 and 53, Texas Water Code, as amended, and the general laws of the State of Texas.

SECTION 3. That the District shall have the right to exercise all rights, powers and authority granted to a fresh water supply district (a "FWSD") by the laws of the State of Texas, as amended.

SECTION 4. That the City also consents to the District being granted the authority to divide into multiple districts with the same powers as the original District and including the authority to enact boundary adjustments among the districts in the form of exclusions and additions of land within the Property.

SECTION 5. That the City further consents to the conversion from time to time of the original District or any divided district to a water control and improvement district (a "WCID") pursuant to the authority of Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution and Texas Water Code, Chapters 49, 51 and 53, as amended; provided, however, that the City expressly does not consent hereby to the creation of a municipal utility district, whether upon original petition of the Owner or upon conversion of the District to a WCID.

SECTION 6. That neither the original District nor any divided district may annex property without the prior consent of the City, which consent may be conditioned on issues and events at the time of such annexation.

SECTION 7. That the District or the Owner, as appropriate, will design, construct and install water and sanitary sewer facilities, stormwater facilities, and roads and roadway improvements, including related drainage facilities (collectively, the "Public Infrastructure") to serve the Property: (a) at no cost or expense to the City; (b) in accordance with the "Governing Regulations" as defined in the Development Agreement; and (c) in accordance with the applicable requirements of the Texas Water Code, and the rules, regulations and policies of the Texas Commission on Environmental Quality ("TCEQ").

SECTION 8. That the District or the Owner, as appropriate, will design, construct and install the Public Infrastructure using funds advanced to the District by the Owner; and that the District will thereafter reimburse the Owner for such advances using the proceeds of bonds issued by the District and secured solely by ad valorem taxes levied on property within the District and by other funds legally available to the District (with the City having no

responsibility or liability whatsoever for any District bonds); and that all District bonds shall be approved by the TCEQ and by the Texas Attorney General ("AG").

SECTION 9. That, except as otherwise provided in the Development Agreement, the City shall not annex the District into its corporate limits for full purposes for 15 years after the Development Agreement's effective date (as defined in the Development Agreement, the "Term"). The City shall have the right, but not the obligation, to full purpose annex the Property prior to the expiration of the Term if construction of the Public Infrastructure to serve the full development of the Property is complete and the District has issued bonds to reimburse the cost of the Public Infrastructure, or as otherwise stated in the Development Agreement.

SECTION 10. That, pursuant to the authority of Texas Local Government Code, Section 42.042, the consents granted by this resolution restrict the purposes for which the District may issue bonds; namely for those purposes set out in Section 54.016(e), (1), (2) and (3) of the Texas Water Code, as well as roads and roadway improvements and fire departments.

SECTION 11. That the consents granted by this resolution are effective immediately, are unconditional and irrevocable and shall not be withdrawn or modified in any way by the City by action of the City Council. The consents granted by this resolution shall be effective to fully satisfy all requirements of the Texas Water Code, as amended, the Texas Local Government Code, as amended, the rules, regulations and policies of the TCEQ, or any rules, regulations or policies of the AG.

SECTION 12. That this consent resolution shall apply to each FWSD or WCID created by division and/or conversion of the District.

SECTION 13. That the above and foregoing premises to this resolution are true and correct and are incorporated herein and made a part hereof.

SECTION 14. That this resolution shall take effect immediately upon execution by the Mayor on behalf of the City.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 7th day of June, 2010.

John Monaco
Mayor

ATTEST:

APPROVED:

Sonja Land
City Secretary

B. J. Smith
City Attorney

Exhibit A Map of the Property

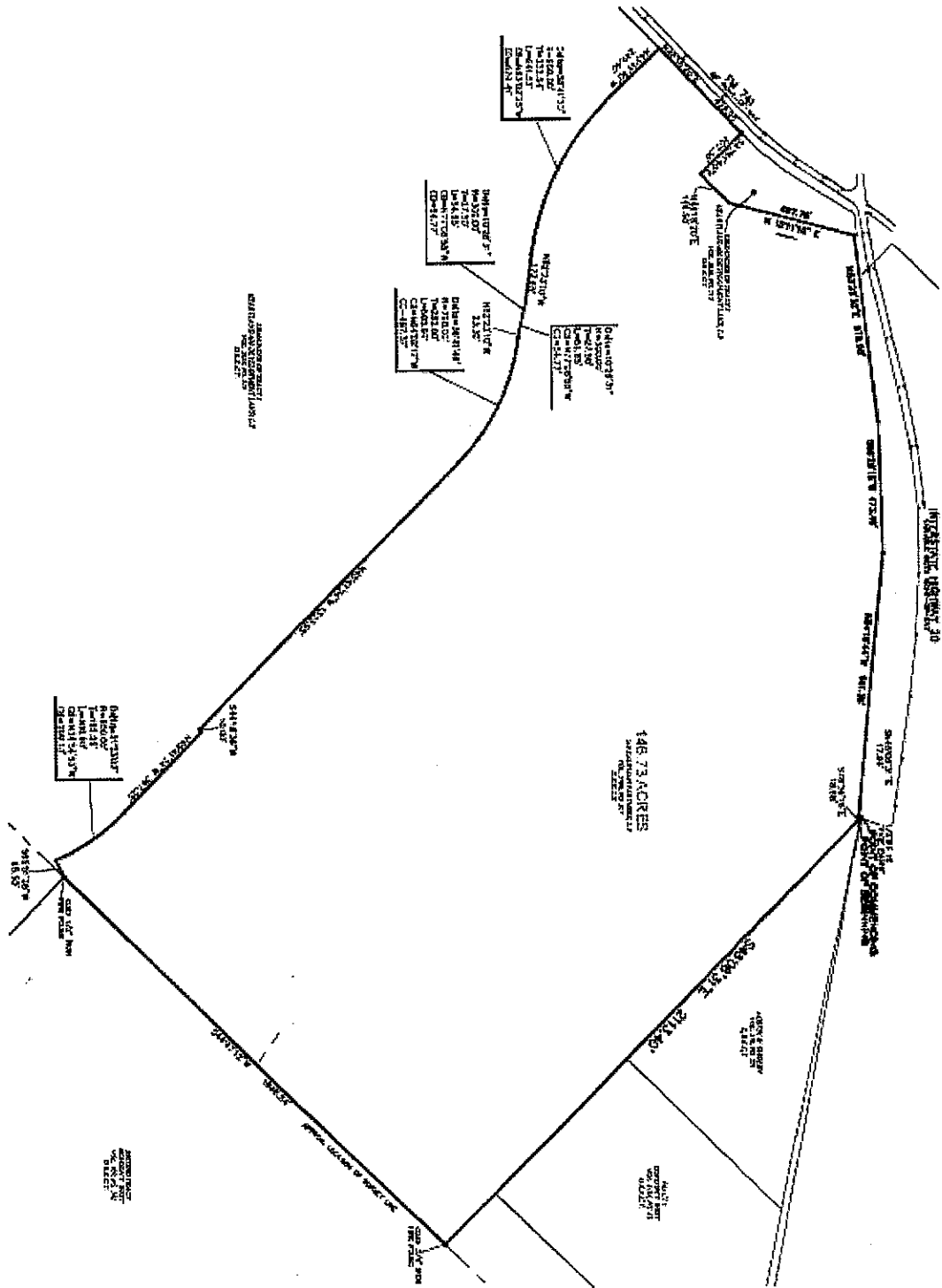


Exhibit B
Legal Description of the Property

146.73 ACRES

BEING a tract of land located in the MARTHA MUSICK SURVEY, ABSTRACT NO. 312, Kaufman County, Texas, and being a portion of that tract of land conveyed to 269 Kaufman Partners, L.P., recorded in Volume 2709, Page 267, Deed Records, Kaufman County, Texas and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod with a yellow plastic cap stamped "PATE ENGRS" found in the South line of Interstate Highway 20 at the most Northeasterly corner of said Kaufman Partners tract;

THENCE South 45 degrees 06 minutes 31 seconds East, with the Southwesterly line of that tract of land conveyed to Austin W. Shipley, recorded in Volume 270, Page 221, Deed Records, Kaufman County, Texas, a distance of 17.94 feet to the POINT OF BEGINNING;

THENCE South 45 degrees 06 minutes 31 seconds East, along the Southwesterly lines of said Shipley tract and a tract of land described as Tract 1 in Deed to Gordon T. West, recorded in Volume 1636, Page 43, Deed Records, Kaufman County, Texas and a Southwesterly line of a tract of land described as Second Tract in Deed to Gordon T. West, recorded in Volume 709, Page 242, Deed Records, Kaufman County, Texas, in all for a total distance of 2,113.40 feet to a 3/4 inch iron pipe found at an interior ell corner of said Second Tract;

THENCE South 44 degrees 47 minutes 12 seconds West, along the Northwesterly line of said Second Tract, a distance of 1,898.54 feet to a 1/2 inch iron pipe found for corner;

THENCE South 65 degrees 51 minutes 38 seconds West, a distance of 65.50 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the left having a central angle of 21 degrees 33 minutes 02 seconds, a radius of 800.00 feet and a chord bearing and distance of North 34 degrees 54 minutes 53 seconds West, 299.13 feet;

THENCE Northwesterly, along said curve to the left, an arc distance of 300.90 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 45 degrees 41 minutes 24 seconds West, a distance of 397.25 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE South 44 degrees 18 minutes 36 seconds West, a distance of 10.00 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 45 degrees 41 minutes 24 seconds West, a distance of 1,323.95 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the left having a central angle of 36 degrees 41 minutes 46 seconds, a radius of 790.00 feet and a chord bearing and distance of North 64 degrees 02 minutes 17 seconds West, 497.37 feet;

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THENCE North 82 degrees 23 minutes 10 seconds West, a distance of 23.30 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the right having a central angle of 10 degrees 28 minutes 31 seconds, a radius of 300.00 feet and a chord bearing and distance of North 77 degrees 08 minutes 55 seconds West, 54.77 feet;

THENCE Westerly, along said curve to the right, an arc distance of 54.85 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a reverse curve to the left having a central angle of 10 degrees 28 minutes 31 seconds, a radius of 300.00 feet and a chord bearing and distance of North 77 degrees 08 minutes 55 seconds West, 54.77 feet;

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THENCE Northwesterly, along said curve to the right, an arc distance of 641.53 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 43 degrees 41 minutes 40 seconds West, a distance of 249.40 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the Southeasterly line of Farm-to-Market Road 741, a 90-foot wide right-of-way;

THENCE North 46 degrees 18 minutes 20 seconds East, along the Southeasterly line of said Farm-to-Market Road 741, a distance of 428.95 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE South 43 degrees 41 minutes 40 seconds East, leaving said Southeasterly right-of-way line, a distance of 207.30 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 46 degrees 18 minutes 20 seconds East, a distance of 146.50 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 15 degrees 11 minutes 15 seconds East, a distance of 467.78 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE in a Easterly direction over and across the above mentioned Kaufman Partners tract the following (4) courses and distances:

North 83 degrees 22 minutes 32 seconds East, a distance of 675.50 feet to a point for a corner;

North 88 degrees 29 minutes 15 seconds East, a distance of 473.49 feet to a point for a corner

South 84 degrees 18 minutes 44 seconds East, a distance of 951.36 feet to a point for a corner;

South 78 degrees 59 minutes 18 seconds East, a distance of 18.88 feet to the POINT OF BEGINNING and containing or 146.73 acres of land, more or less.

Exhibit C

PETITION FOR CONSENT TO CREATION OF POLITICAL SUBDIVISION

IN EXTRATERRITORIAL JURISDICTION

THE STATE OF TEXAS

§
§
§

COUNTY OF KAUFMAN

TO THE HONORABLE MAYOR AND
CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

The undersigned petitioner (herein the "Petitioner", whether one or more), being a majority of the persons who hold title to land(s) situated within the area hereinafter described, which represents a total value of more than 50% of the value of all such area, and being a majority in value of the holders of title of said area, acting pursuant to the applicable provisions of the Texas Water Code, as amended, and Section 42.042, Local Government Code, together with all amendments and additions thereto, respectfully petitions your Honorable Body for consent to creation of a conservation and reclamation district and political subdivision of the State of Texas under Article XVI, Section 59, of the Texas Constitution (the "District") within the extraterritorial jurisdiction of the City of Mesquite (the "City"), and would respectfully show the following:

I.

The District shall be created under the terms and provisions of Article XVI, Section 59, of the Constitution of Texas and Chapter 53, Texas Water Code, as amended, together with all amendments and additions thereto. The name of the District shall be "Kaufman County Fresh Water Supply District No. 5" or, if such name is not available, a similarly named fresh water supply district.

II.

The District shall contain an area of approximately 146.73 acres of land, situated wholly within Kaufman County, Texas, described by metes and bounds in Exhibit "A", which is attached hereto and made a part hereof for all purposes. All of said land is located within the extraterritorial jurisdiction of the City. None of said land is within the corporate limits or extraterritorial jurisdiction of any other city, town or village.

III.

The undersigned Petitioner constitutes a majority of the persons who hold title to lands within the District which represents a total value of more than 50% of the value of all lands within the District, as well as a majority in value of the holders of title of the property to be included within the District.

IV.

The District shall be created for all of the purposes set forth in Chapter 49 and 53, Texas Water Code, as amended, including, without limitation, to conserve, transport, and distribute fresh water from any sources for domestic and commercial purposes inside and/or outside the boundaries of the District. In addition, subject to compliance with the applicable requirements of the Texas Water Code, as amended, the District may purchase, construct, acquire, own, operate, repair, improve, and extend sanitary sewer systems to control wastes. Subject to compliance with the applicable requirements of the Texas Water Code, as amended, the District may also assume all the rights, authority, privileges, and functions of a road district under Article III, Section 52(b)(3) of the Texas Constitution, Chapter 257, Transportation Code, and other general laws of the State relating to road districts.

The aforementioned purposes are to be accomplished by any and all mechanical and chemical means and processes incident, necessary or helpful to such purposes, to the end that public health and welfare may be conserved and promoted and the purity and sanitary condition of the State's waters protected, effected and restored.

V.

The District shall have the powers of government and authority to exercise the rights, privileges, and functions given to it by Chapter 49 and Chapter 53, Texas Water Code, as amended, or by any other State law.

VI.

Subject to compliance with the applicable provisions of the Texas Water Code, the general nature of the work to be done by the District at the present time is the acquisition, construction, maintenance and operation of a waterworks system, including the purchase and sale of water, for domestic and commercial purposes; the acquisition, construction, maintenance and operation of a sanitary sewer collection, treatment and disposal system, including the purchase and sale of sewer services, for domestic and commercial purposes; the acquisition, construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes for residential and commercial purposes; and such other acquisition, construction, installation, maintenance, purchase and operation of such additional facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is ultimately organized.

VII.

There is a necessity for the improvements above described because the District is located within an area which will experience a substantial and sustained residential and commercial growth, is urban in nature and is not supplied with adequate water supply, sanitary sewer facilities or services or with adequate roads and turnpikes. The health and welfare of the future inhabitants of the District and of the inhabitants of the area adjacent thereto require the acquisition and installation of an adequate waterworks system and sanitary sewer collection system and disposal system, together with roads and turnpikes.

The purchase, construction, extension, improvement, maintenance and operation of such waterworks system and sanitary sewer collection and disposal systems will conserve and preserve the natural resources of this State by promoting and protecting the purity and sanitary condition of the State's waters and will promote and protect the public health and welfare of the community; therefore, a public necessity exists for the organization of the District.

VIII.

Said proposed improvements are practicable and feasible, in that the terrain of the territory to be included in the District is of such a nature that a waterworks and sanitary sewer system, and roads and turnpikes can be constructed at a reasonable cost with reasonable tax rates and water and sewer rates, and said territory will be developed for residential and commercial purposes.

IX.

Petitioner requests consent and permission for the inclusion of the aforesaid lands in a fresh water supply district.

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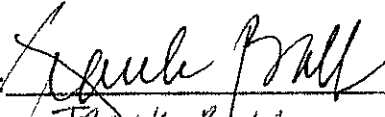
X.

WHEREFORE, the undersigned respectfully prays that this Petition be in all things granted, and that the City give its written consent to the creation of and inclusion of the aforesaid lands in the District, and for such other orders, acts, procedure and relief as are proper and necessary and appropriate to the purpose of organizing the District.

EXECUTED THIS 28th day of May, 2010.

269 KAUFMAN PARTNERS, LTD,
a Texas limited partnership

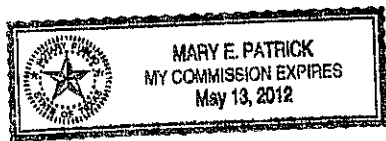
By: 269 Kaufman Partners GP, LLC,
a Texas limited liability company,
its general partner

By: 
Name: FRANK BOBB
Title: SVP

THE STATE OF TEXAS §

COUNTY OF CORN §

This instrument was acknowledged before me on this the 28th day of May, 2010,
by Frank Bask, SVP, of 269 Kaufman Partners GP,
LLC, a Texas limited liability company, General Partner of 269 Kaufman Partners, LTD, a Texas
limited partnership, as Petitioner.



Mary E. Patrick
Notary Public in and for
the State of Texas

Exhibit A

Legal Description of the Property

LEGAL DESCRIPTION

146.73 ACRES

BEING a tract of land located in the MARTHA MUSICK SURVEY, ABSTRACT NO. 312, Kaufman County, Texas, and being a portion of that tract of land conveyed to 269 Kaufman Partners, L.P., recorded in Volume 2709, Page 267, Deed Records, Kaufman County, Texas and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod with a yellow plastic cap stamped "PATE ENGRS" found in the South line of Interstate Highway 20 at the most Northeasterly corner of said Kaufman Partners tract;

THENCE South 45 degrees 06 minutes 31 seconds East, with the Southwesterly line of that tract of land conveyed to Austin W. Shipley, recorded in Volume 270, Page 221, Deed Records, Kaufman County, Texas, a distance of 17.94 feet to the POINT OF BEGINNING;

THENCE South 45 degrees 06 minutes 31 seconds East, along the Southwesterly lines of said Shipley tract and a tract of land described as Tract 1 in Deed to Gordon T. West, recorded in Volume 1636, Page 43, Deed Records, Kaufman County, Texas and a Southwesterly line of a tract of land described as Second Tract in Deed to Gordon T. West, recorded in Volume 709, Page 242, Deed Records, Kaufman County, Texas, in all for a total distance of 2,113.40 feet to a 3/4 inch iron pipe found at an interior ell corner of said Second Tract;

THENCE South 44 degrees 47 minutes 12 seconds West, along the Northwesterly line of said Second Tract, a distance of 1,898.54 feet to a 1/2 inch iron pipe found for corner;

THENCE South 65 degrees 51 minutes 38 seconds West, a distance of 65.50 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the left having a central angle of 21 degrees 33 minutes 02 seconds, a radius of 800.00 feet and a chord bearing and distance of North 34 degrees 54 minutes 53 seconds West, 299.13 feet;

THENCE Northwesterly, along said curve to the left, an arc distance of 300.90 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 45 degrees 41 minutes 24 seconds West, a distance of 397.25 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

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THENCE Northwesterly, along said curve to the left, an arc distance of 505.97 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 82 degrees 23 minutes 10 seconds West, a distance of 23.30 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the right having a central angle of 10 degrees 28 minutes 31 seconds, a radius of 300.00 feet and a chord bearing and distance of North 77 degrees 08 minutes 55 seconds West, 54.77 feet;

THENCE Westerly, along said curve to the right, an arc distance of 54.85 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a reverse curve to the left having a central angle of 10 degrees 28 minutes 31 seconds, a radius of 300.00 feet and a chord bearing and distance of North 77 degrees 08 minutes 55 seconds West, 54.77 feet;

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THENCE Northwesterly, along said curve to the right, an arc distance of 641.53 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 43 degrees 41 minutes 40 seconds West, a distance of 249.40 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the Southeasterly line of Farm-to-Market Road 741, a 90-foot wide right-of-way;

THENCE North 46 degrees 18 minutes 20 seconds East, along the Southeasterly line of said Farm-to-Market Road 741, a distance of 428.95 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE South 43 degrees 41 minutes 40 seconds East, leaving said Southeasterly right-of-way line, a distance of 207.30 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 46 degrees 18 minutes 20 seconds East, a distance of 146.50 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 15 degrees 11 minutes 15 seconds East, a distance of 467.78 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE in a Easterly direction over and across the above mentioned Kaufman Partners tract the following (4) courses and distances:

North 83 degrees 22 minutes 32 seconds East, a distance of 675.50 feet to a point for a corner;

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North 88 degrees 29 minutes 15 seconds East, a distance of 473.49 feet to a point for a corner

South 84 degrees 18 minutes 44 seconds East, a distance of 951.36 feet to a point for a corner;

South 78 degrees 59 minutes 18 seconds East, a distance of 18.88 feet to the POINT OF BEGINNING and containing or 146.73 acres of land, more or less.

R:\Data\2002\02004\00\Survey Docs\Exhibits\02004-146.73AC.docx

Exhibit D
Heartland Town Center Development Agreement

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EXHIBIT D
Community Plan
(to be attached after the Effective Date)

EXHIBIT E
Subdivision Regulations

MESQUITE SUBDIVISION ORDINANCE

ADOPTED BY
Ordinance 1136, September 4, 1973

AMENDED BY

Ord. 1250	6-16-75
Ord. 1334	10-04-76
Ord. 2283	3-03-86
Ord. 2331	9-15-86
Ord. 2351	10-20-86
Ord. 2355	11-03-86
Ord. 2443	7-06-87
Ord. 2721	1-21-91
Ord. 3323	9-20-99
Ord. 3392	9-19-00
Ord. 3426	4-16-01
Ord. 3523	9-16-02
Ord. 3540	11-4-02
Ord. 3573	4-21-03
Ord. 4040	3-16-09

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ORDINANCE NO. 1136

AN ORDINANCE OF THE CITY OF MESQUITE PROVIDING SUBDIVISION REGULATIONS FOR THE PLATTING AND DEVELOPING OF SUBDIVISIONS WITHIN THE LIMITS OF THE CITY OF MESQUITE AND FOR SUCH OTHER AREAS AS MAY BE AUTHORIZED BY VCTA Local Government Code, Section 212.001 et.seq.; PROVIDING A SEVERABILITY CLAUSE; DECLARING AN EMERGENCY; AND PROVIDING THE EFFECTIVE DATE.

WHEREAS, the present rules and regulations of the City of Mesquite regulating the platting and developing of subdivisions are inadequate to protect the public interest; and,

WHEREAS, after holding public hearings, it is the opinion of the City Council of the City of Mesquite that the following rules and regulations should be adopted; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE:

SECTION 1. That the following rules and regulations be, and the same are, hereby adopted as the Subdivision Regulations for the City of Mesquite.

MESQUITE SUBDIVISION REGULATIONS

ARTICLE I

INTERPRETATION AND PURPOSE

(Ord. 3323, 9-20-99)

A. INTERPRETATION

In the interpretation and application of the provisions of these regulations, it is the intention of the City Council that the principles, standards and requirements provided for herein shall be minimum requirements for the platting and developing of subdivisions in the City of Mesquite and, where other ordinances of the City are more restrictive in their requirements, such other ordinances shall control.

B. PURPOSE

The procedures and standards for the development, layout and design of subdivisions of land are intended to: (Ord. 2721, 1-21-91)

1. Promote and develop the utilization of land in a manner to assure the best possible community environment in accordance with, the Comprehensive Plan of the City of Mesquite.
2. Guide and assist the developers in the correct procedures to be followed and to inform them of the standards which shall be required.
3. Protect the public interest by supervising the location, design, class and type of streets, sidewalks, utilities, and essential areas and services required.
4. Protect and promote the health, safety and general welfare of the people.

C. JURISDICTION

These regulations shall apply to all subdivision of land located within the corporate limits of the City of Mesquite and within the City's extraterritorial jurisdiction, as provided by law, and to all subsequent additions of land to the corporate limits or the extraterritorial jurisdiction of the City.

ARTICLE II

DEFINITIONS

For the purpose of this ordinance the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. Definitions not expressly prescribed herein are to be determined in accordance with customary usage in municipal planning and engineering practices. The word "shall" is always mandatory, and not discretionary.

ALLEY: A minor public right-of-way, not intended to provide the primary means of access to abutting lots, which is used primarily for vehicular service access to the back or sides of properties otherwise abutting on a street.

BUILDING SETBACK LINE: The line which defines the minimum horizontal distance between a building and the adjacent street line.

CITY ENGINEER: The City Engineer of the City of Mesquite or his authorized representative.

CITY MANAGER: The City Manager of the City of Mesquite or his authorized representative.

CITY PLANNER: The City Planner of the City of Mesquite or his authorized representative.

COMMISSION: The Planning and Zoning Commission of the City of Mesquite.

COUNCIL: The City Council of the City of Mesquite.

DEVELOPMENT REVIEW COMMITTEE: A committee comprised of employed personnel of the City of Mesquite assigned the responsibility for the review of plats, site plans, and building plans submitted for approval prior to construction or development. This Committee can make certain recommendations to the Commission and the Council.

DEVELOPER: The term developer shall include any person, partnership, firm, association, or corporation who acts to subdivide or develop land by platting; place or cause to have utilities placed in or on the ground; and/or construct or cause to have permanent structures constructed.

DIRECTOR OF COMMUNITY DEVELOPMENT: The Director of Community Development of the City of Mesquite or his authorized representative.

EASEMENT: A right granted for the purpose of limited public or semi-public use across, over, or under private land.

ENGINEER: A professional engineer registered in the State of Texas and experienced in Civil Engineering.

FLOOD PLAIN: The relatively flat low lands adjoining the channel of a river, stream, or watercourse, which has been or may be covered by flood water. Any land covered by the water of a one hundred (100) year frequency storm is considered in the flood plain and must comply with the engineering criteria found in the City of Mesquite Comprehensive Drainage Ordinance and subsequent revisions.

FORM-BASED DISTRICT: A mixed-use district that stands separate and apart from all other zoning districts in the City. The basis for regulation in a form-based district is a form-based code.

GREEN BELT: A piece of land, normally relatively narrow in comparison to its length, reserved to provide for both passive and active recreation, to function as a corridor connecting park areas, to serve as a buffer between various land uses, or to provide for open space. It frequently utilizes flood plains along creeks and is often left in its natural state.

LOT: Land occupied or to be occupied by a building and accessory building and including such open spaces as are required by ordinances of the City and having its principal frontage on a public street or officially approved place.

LOT OF RECORD: A lot which is part of a subdivision, the plat of which has been recorded with the County Clerk, Dallas or Kaufman County, as applicable., Dallas County, or a parcel of land, the deed for which was recorded with the County Clerk, Dallas or Kaufman County, as applicable., Dallas County.

OPEN SPACE: That part of any lot or tract that is used for recreational purposes, both passive and active, but not including areas used for parking or maneuvering of automobiles, or drives or approaches to and from parking areas. Flood plains, or 50% of any standing surface water, may be considered as open space, provided such open space is contiguous and part of the platted lot and is maintained and utilized in the same manner and to the same degree as all other open space areas as designated on the site plan as filed with the building permit application. (Ord. 1250, 6-16-75)

PLAT: A complete and exact subdivision plan submitted to the Commission for approval and if approved, shall be filed with the County Clerk, Dallas or Kaufman County, as applicable, Dallas County.

REGULATING PLAN: A zoning map for a form-based district that shows the transect zones, civic zones, thoroughfares, special districts, if any, and special requirements, if any, of areas subject to, or potentially subject to, regulations by a form-based code.

STANDARDS: The official maps, plans, ordinances, and resolutions of the City of Mesquite.

STREETS: The term "street" is a way for vehicular traffic, whether designated street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place, or otherwise designated.

ARTERIAL STREETS: Provide routes to move large volumes of traffic of a local nature to the freeway or expressway systems. Interchange of traffic **from freeway systems** to the local streets occur via the arterial street.

COLLECTOR STREETS: Pass through neighborhoods collecting traffic from local streets and distributing the traffic to arterial streets. These streets also serve neighborhood facilities.

RESIDENTIAL STREETS: Provide the basic function of serving private property with access to other streets.

CUL-DE-SAC: Is a short minor street having but one (1) vehicular access to another street and terminated by a vehicular turn-around.

DEAD-END STREET: Is a street, other than a cul-de-sac, with only one (1) outlet.

SUBDIVISION: The division of a parcel of land into two or more lots or tracts, or the creation from said parcel of one or more lots or record, for the purpose of transfer of ownership; for dedication of streets, alleys, or easements; for use for building development; or for the assimilation of separate, contiguous tracts into one or more tracts under common ownership. This definition includes resubdivision, and shall relate to either the process of subdividing or to the land subdivided, as appropriate to the context. (Ord. 3323, 9-20-99)

SUBDIVIDER: Any person or agent thereof, dividing or proposing to divide land so as to constitute a subdivision as that term is defined herein. In any event, the term "subdivider" shall be restricted to include only the owner, equitable owners, or authorized agent of such owner or equitable owner of land sought to be subdivided.

SURVEYOR: A Registered State Land Surveyor or a Registered Public Surveyor, as authorized by the state statutes to, practice the profession of surveying.

UTILITY EASEMENT: An interest in land granted to the City, to the public generally, and/or to a private utility corporation, for installing or maintaining utilities across, over, or under private land, together with the right to enter thereon with machinery, vehicles, and people necessary for the maintenance of said utilities.

ARTICLE III

PLATTING PROCEDURES

A. PRE-APPLICATION

The subdivider shall avail himself of the advice and assistance of the City Staff before preparing the preliminary plat and formal application for approval.

B. PROCEDURE FOR APPROVAL OF PRELIMINARY PLAT

(1) On reaching conclusions, informally, as recommended above, regarding a general program and objectives, the subdivider shall prepare a preliminary plat, with improvement plans and other supplementary material as applicable in other sections of these regulations.

(2) Sixteen (16) copies of the preliminary plat and supplementary materials specified and printed on good grade ozalid process paper or direct black and white paper shall be submitted by the developer, his engineer, or some other authorized representative of the developer to the City of Mesquite with the filing fee as provided herein and written application for approval at least twelve (12) days prior to the Commission meeting at which the plat is to be considered.

Copies or prints of the proposed subdivision drawn on sheets a maximum size of twenty-four (24) inches by thirty-six (36) inches and drawn to scale of one hundred (100) feet or fifty (50) feet to the inch (one inch equals one hundred feet or one inch equals fifty feet) shall be submitted in the number specified hereinabove. In cases of large developments which exceed the dimensions of the sheet of one hundred (100) foot scale, preliminary plats may be two hundred (200) feet to the inch (one inch equals two hundred feet). The sixteen (16) copies or prints of the proposed subdivision shall show the following:

a. Boundary lines, bearings, and distances sufficient to locate the exact area proposed for the subdivision.

b. Name and location of all adjoining subdivisions or large tracts shall be drawn to the same scale and shown in dashed lines adjacent to the tract proposed for subdivision in sufficient detail to show accurately the existing streets, alleys, lots, and all other features that may influence the layout of the development of the proposed subdivision. Adjacent unplatted land shall show property lines, owners of record, and all existing conditions and features, such as drainage channels, which may influence or have bearing on the development of the proposed subdivision.

c. The location and width of all streets, alleys, and easements, existing or proposed, within the subdivision. In case of easements, a written statement as to the easement use shall be included on the plat. All drainage structures, public and private, must be placed in a drainage easement. (Ord. 3426, 4-16-03)

d. Primary control points or descriptions, and ties to such control points to which all dimensions, angles, bearings, block numbers, and similar data are referred.

The plat must show two property corners with grid coordinates. Grid coordinates must be referenced from a GPS point. Grid coordinates must be in North American Datum (NAD) 83, Texas State Plane, North Central FIPS Zone 4202. The plat must hold grid bearings. Bearings may not be from an assumed North. Distances on the plat will be surface distances.

e. The location of all existing property lines, buildings, storm drainage facilities, water and sanitary sewer mains, gas mains, electrical power lines, telephone lines, cable television, survey abstract lines, municipal corporation lines, or any other existing features within the area proposed for the subdivision.

f. Proposed subdivision of property, including lot and block numbers.

g. The proposed building lines shown in conformance with the Zoning Ordinance or provisions herein.

h. The title under which the proposed subdivision is to be recorded, the name and address of owner with name of the Registered Land Surveyor, or Registered Professional Engineer platting the tract.

i. Sites, if any, to be reserved or dedicated for parks, playgrounds, schools, or other public uses.

j. Scale, north arrow, date, and other pertinent data.

k. Each subdivision shall be prepared on a topographical base map showing contours at intervals not greater than five (5) feet. Any subdivision which in the opinion of the City Planner would be affected by the topographical features of the terrain shall also show contours at two (2) foot intervals. All topographical maps shall be based on sea-level data.

l. All physical features of the property to be subdivided, including location and size of all watercourses, ravines, bridges, culverts, existing structures, drainage area in acres or areas draining into subdivisions, and other features pertinent to the subdivision. The outline of wooded areas or the location of important individual trees may be required.

The ultimate and FEMA 100-year floodplain and FEMA floodway boundaries must be shown. Also, finished floor elevations for any structure, including garages (2 feet above the ultimate 100-year water surface elevation) must be shown for all lots within or adjacent to the 100-year floodplain. (Ord. 3426, 4-16-03)

m. Vicinity map showing the location and the relationship of the property to be subdivided with other developments in the area.

(3) The following notice shall be placed on the face of each preliminary plat by the developer:
"Preliminary Plat - For Review Purposes Only"

(4) The Development Review Committee shall make a study of the plat and the City Planner shall present a written report to the Commission before final action on the plat.

(5) Following review of the preliminary plat and other material submitted for conformity thereof to these regulations, and negotiations with the subdivider on changes deemed advisable and the kind and extent of improvements to be made, the Commission shall, within thirty (30) days after the filing of such preliminary plat, act thereon as submitted, or modified, and if approved, the Commission shall express approval and state the conditions of such approval or if disapproved, shall express disapproval and reasons.

(6) The action of the Commission shall be noted on two (2) copies of the preliminary plat, referenced and attached to any conditions required by the Commission. Action of the Commission shall be certified by the City Planner. One (1) copy shall be returned to the subdivider and the other retained in the files of the City of Mesquite.

(7) Approval of a preliminary plat by the Commission shall serve as a guide to the installation of streets, water, sewer, and other required improvements and utilities and in the preparation of the final plat.

(8) Approval of a preliminary plat shall expire after one (1) year from date of approval unless a final plat has been filed and accepted by the Commission. If no development or change in development requirements has occurred within that one (1) year period which would affect the proposed plat, the Commission may extend its approval for another year. No filing fee is required for such reapproval.

(9) A preliminary plat shall be in conformance with the comprehensive plan.

(10) Within a designated form-based district, a preliminary plat shall be in conformance with an adopted regulating plan. A preliminary plat shall not be approved without an adopted regulating plan.

C. PROCEDURE FOR APPROVAL OF FINAL PLAT

(1) The final plat shall conform to the preliminary plat as approved incorporating all changes, directions, and additions imposed by the Commission. The final plat may be withheld from filing until detailed engineering plans for construction have been approved by the City of Mesquite.

(2) If so desired by the developer, the final plat may constitute only that portion of the approved preliminary plat which he proposes to record and develop, provided, however, that such portion conforms to all the requirements of these regulations.

(3) Engineering plans showing details of streets, sidewalks, alleys, culverts, bridges, storm sewers, drainage channels, water mains, sanitary sewers, fire hydrants and fire lanes in

compliance with the General Basic Schedule of the State Board of Insurance, and other engineering data of the proposed subdivision shall be submitted to the City Engineer. Such plans shall be prepared by a professional engineer registered in the State of Texas and experienced in Civil Engineering and shall conform to the design standards established by the City of Mesquite.

The final plat may not be released for filing until detailed engineering plans have been approved by the City Engineer.

(4) Upon receipt of the final plat, accompanied by a final filing fee as prescribed herein, the City Planner shall check the plat to ascertain compliance with these regulations and the action of the Commission. When the copy of the final plat has been checked and found to meet all general requirements and design standards, the developer or his engineers shall submit sixteen (16) copies of the final plat to the City Planner. The City Planner shall stamp on each of the sixteen (16) copies the certificate of approval of the Commission attested by the Chairman. '

At the time the developer files the final plat with the City Planner, the City Tax Assessor shall sign a certificate showing that all taxes have been paid on the tract to be subdivided and that no delinquent taxes exist against the property.

The developer or his authorized agent shall take the final plats to the County Clerk, Dallas or Kaufman County, as applicable, Dallas County, for filing within thirty (30) days of the date of the final approval, otherwise the approval of the Commission becomes invalid. Fourteen (14) copies of the recorded final plat shall be returned immediately to the City Planner.

(5) All final plats shall be submitted on sheets twenty-four (24) inches by thirty-six (36) inches and to a scale of not less than one hundred (100) feet to the inch or longer. When more than one sheet is required to encompass the subdivision, an index sheet (24 inches by 36 inches) shall be filed showing the entire subdivision together with the complete dedication, attests, dates, titles, and seals on one (1) sheet.

An electronic version of the final plat is required at the time the recorded plat is returned to the Planning and Zoning division office. The electronic file will be a ".dwg" file composed in Auto Cad, and version. The electronic version must be submitted on CD-ROM. If any revisions are made to the final plat, an updated electronic copy of the final plat must be forwarded. (Ord. 3426, 4-16-03)

(6) The exterior boundary of the subdivision shall be indicated by a distinctive dashed line and corner markers by individual symbols.

(7) The length and bearing of all straight lines, radii, arc lengths, tangent lengths, and central angles of all curves shall be indicated along the boundary line of the subdivision and each block. All dimensions along the lines of each lot shall be shown. The curve data pertaining to block or lot boundary may be placed in a curve table at the base of the plat and prepared in the following manner:

CURVE TABLE

Curve Number	Description	Elements	Outer Property Line	Center Line	Inner Property Line
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(8) A final plat shall be in conformance with the comprehensive plan.

(9) Within a designated form-based district, a final plat shall be in conformance with an adopted regulating plan. A final plat shall not be approved without an adopted regulating plan.

(10) The names of all adjoining subdivisions, the dimensions of all abutting lots, lot and block numbers and accurate reference ties to courses and distances of at least two (2) recognized land corners shall be shown if no existing legally platted subdivision is adjacent to the subject property.

(11) The names and accurate location of all streets adjoining, abutting, or within not more than five hundred (500) feet of the subdivision shall be shown unless a platted subdivision exists adjacent to the property under consideration.

(12) The location and dimension of any utility easement adjoining or abutting the subdivision or proposed within the subdivision shall be shown.

(13) The description and location of all survey monuments placed in the addition or subdivision shall be shown. In all subdivisions and additions, corners shall be established at the corner of each block in the subdivision consisting of an iron rod or pipe not less than three-fourths (3/4) inch in diameter and twenty-four (24) inches deep flush with the top of the sidewalk. Lot corner monuments shall be placed at all lot corners except corners which are also block corners, consisting of iron rods or pipes of a diameter of not less than one-half (1/2) inch and eighteen (18) inches deep set flush with the top of the sidewalk. In addition, curve point markers shall be established of the same specification as lot corners. All lot corners shall be installed prior to filing of the final plat.

(14) The final plat shall show a title including the name of the addition or subdivision, the name of the owner and engineer or surveyor, scale and location of subdivision with reference to original land grant or survey and abstract number and a north point with true or magnetic north.

(15) A certificate of ownership giving a metes and bounds description of the property, dedication of all streets, alleys, easements, parkways, and parks where dedicated to the City and dedication or reservation of all easements and drainage ways to the public use, signed and acknowledged before a Notary Public by the owner of the land, the Maintenance Agreement for Drainage Facilities, shall appear on the face of the plat or index sheet of the plats where two (2) or more sheets are required.

(15) The certificate of the Registered Professional Engineer or Registered Public Land Surveyor who surveyed, mapped, and monumented the land, which certificates shall be attested before a Notary Public, shall be placed on the face of the plat or on index sheets of the plats together with

the seals of the engineer or surveyor and Notary Public. Printed seals and signatures are prohibited except for extra prints that the owner or developer may need certified for other purposes. The certificates of the engineer or surveyor to be placed on the plat shall be as follows:

KNOWN ALL MEN BY THESE PRESENTS:

That I, ... do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments shown thereon were properly placed, under my personal supervision, in **accordance with** the Subdivision Regulations of the City of Mesquite, Texas.

D. PROCEDURE FOR SHORT FORM PLAT

(1) A preliminary plat may be designated a "Short Form Plat" and may follow the abbreviated preliminary approval procedures if it falls within the following criteria:

a. The land in question shall be bounded by legally dedicated streets) railroads, and alleys or by legally subdivided land and shall not exceed five (5) acres.

b. The subdivision or use of the land shall not necessitate any appreciable alteration of utilities installation, streets, alleys or building setback lines.

c. The tracts so subdivided shall conform in size and shape to the lots in the vicinity.

d. The plat shall not involve resubdivision or replatting in a single family or duplex subdivision in which some or all of the lots have been sold.

(2) The DRC shall be authorized to review and grant preliminary plat approval and to state conditions for such approval for any designated "Short Form Plat". Such "Short Form Plat" shall be reviewed by the Planning and Zoning Commission only if the applicant is dissatisfied with the DRC determinations and appeals the staff decision to the Commission.

(3) The DRC shall also be authorized to review requests for waiver of required sidewalks and/or alleys on "Short Form Plats" in accordance with the following criteria:

a. A sidewalk or alley shall be required unless a connection need (either planned or existing) is clearly shown not to exist.

b. If alley is not required, provisions must be made for service access to the property, including a provision for public utilities, sanitation services, and off-street loading, unloading and parking for the lots proposed.

c. If the applicant is dissatisfied with the Staff determination, he may appeal the decision to the Planning and Zoning Commission.

(4) A "Short Form Plat" shall comply with all standards, regulations and requirements as set out herein for preliminary plats, except that the plat may be approved by the DRC as stated.

(5) Final plat procedures for a "Short Form Plat" shall be the same as set out herein for any final plat. (Ord. 2355, 11-3-86)

(6) A short form plat shall be in conformance with the comprehensive plan.

(7) Within a designated form-based district, a short form plat shall be in conformance with an adopted regulating plan. A short form plat shall not be approved without an adopted regulating plan.

E. IMPROVEMENTS REQUIRED PRIOR TO ACCEPTANCE OF SUBDIVISION BY THE CITY

(1) Survey Monuments:

a. Survey monuments as prescribed hereinabove shall be placed at all comers as required hereinabove.

(2) Street and Alley Improvements:

a. The developer shall prepare or have prepared and submit two (2) copies of the complete engineering plans of streets, alleys, curbs and gutters, storm sewers and drainage structures, water and sanitary sewer improvements for the area covered by the final plat. The developer shall have these plans prepared by a Professional Engineer, registered in the State of Texas, and experienced in Civil Engineering, subject to approval by the City of Mesquite. The City Engineer shall review the plans and specifications and if approved, shall request three (3) additional sets of plans for stamping approval. Two (2) sets of plans will be returned to the developer. If not approved, one (1) set shall be marked with the objections noted and returned to the developer for correction.

After approval of the plat, plans, and specifications, the developer shall cause his contractor to install the facilities in accordance with the approved plans and specifications. The developer shall cause his engineer to design, stake, and supervise the construction of such improvements and shall cause his contractor to construct the said improvements in accordance with these regulations. The City Engineer shall inspect the installation of the improvements.

Acceptance of the completed improvements by the City will be after receipt of a one (1) year maintenance bond from each separate contractor in the amount of ten (10) percent of the contract price, three (3) sets of "AS BUILT" plans for each project, and a letter stating the contractor's compliance with these regulations.

b. Residential streets shall be paved twenty-seven (27) feet wide from back-of-curb to back-of-curb. Collector streets shall be paved thirty-seven (37) feet wide from back-of-curb to back-of-curb.

c. Residential alleys shall be paved twelve (12) feet wide within eighteen (18) feet right-of-way for front or rear entry.

(3) Storm Drainage:

a. An adequate storm sewer system shall be installed in accordance with the Comprehensive Drainage Ordinance, and all subsequent revisions. Areas subject to flood conditions as established by the City of Mesquite will not be considered for development until adequate drainage has been provided. (Ord. 2351, 10-20-86)

(4) Water:

a. All subdivisions shall be provided with an approved water system designed and constructed in accordance with the City's water distribution plan and "Water and Sewer Specifications". In the corporate limits of the City of Mesquite, all subdivisions shall be connected with the City of Mesquite water supply distribution system, unless otherwise approved by the City of Mesquite. (Ord. 2351, 10-20-86)

(5) Sewer Improvements:

a. All subdivisions shall be provided with an approved sewage disposal system designed and constructed in accordance with the City's Sewer Plan and the "Water and Sewer Specifications". In the corporate limits of the City of Mesquite, all subdivisions shall be connected with the City of Mesquite sanitary sewer system, unless otherwise approved by the City of Mesquite. (Ord. 2351, 10-20-86)

b. In locations where sanitary sewers are not available and where there is no immediate prospect for installation of sanitary sewers, then septic tanks of approved type may be installed in conformity with the rules, regulations, and ordinances of the City of Mesquite pertaining to public health, provided that in no case shall septic tanks be installed without the express approval and inspection of the City of Mesquite.

(6) As Built Plans:

a. The developer or his engineer shall present the City with three (3) sets of blue line or black line prints on paper of As Built Plans for all paving, drainage structures, water mains, and sewer mains within sixty (60) days after completion of each contract.

(7) Engineering Inspection Fee:

An engineering inspection fee of two percent (2%) of the actual contract costs of city-maintained improvements shall be established. The fee shall be based on a percentage of the estimated cost of public improvements including but not limited to water, sanitary sewer, lift stations, storm sewer, drainage structures, bridges, culverts, paving, screening walls, etc. The fee shall be due and payable at the time of the preconstruction meeting for residential developments and at the time of the building permit for industrial and commercial developments. (Ord. 3392, 9-19-2000)

F. WITHHOLDING IMPROVEMENTS UNTIL APPROVED

(1) The City of Mesquite hereby defines its policy to be that the City will withhold ALL CITY IMPROVEMENTS of whatsoever nature including the maintenance of streets and the furnishing

of sewage facilities, water service, fire hydrants, and fire lanes from all additions, the platting of which has not been approved by the Commission.

(2) The Director of Community Development may withhold the issuing of a street number or building permit for the erection of any building in the City of Mesquite until all requirements of these subdivision regulations have been complied with, including installation of and acceptance by the City of all waterworks, sewage, and paving improvements for the area designated.

(3) No construction work shall begin on the proposed improvements in any proposed subdivision prior to approval of the final plat by the City of Mesquite and filing of such plat with the County Clerk, Dallas or Kaufman County, as applicable. of Dallas County, unless expressly authorized by the Director.

ARTICLE IV

FILING FEES

The applicant shall submit with the application a fee in the amount set by the City Council for the purpose of defraying the administrative costs of processing the subdivision/plat. The fee shall be charged on all plats, regardless of the action taken by the Commission, whether the plat is approved or denied.

PLATTING FEES (Ord. 3523):

SHORT	FORM	\$500	Combined
PLAT.....		Preliminary/Final Fee	
		(Due at Preliminary Submission)	
SUBDIVISION PLAT			
Preliminary.....		\$500 + \$25 per acre	
.....			
Final.....		\$500 + (All Acreages)	
.....			

ARTICLE V

GENERAL REQUIREMENTS AND DESIGN STANDARDS

A. STREETS

(1) The arrangement, character, extent, width, grade, and location of all streets shall conform to the City of Mesquite Thoroughfare Plan, and shall be considered in relation to existing and planned streets, to topographical conditions, to public safety and in appropriate relation to the proposed uses of the land to be served by such streets. (Ord. 2351, 10-20-86)

(2) When such street is not on the Thoroughfare Plan, the arrangement of streets in a subdivision shall either:

a. Provide for the continuation or appropriate projection of existing streets in surrounding areas;
or

b. Conform to a plan for the neighborhood approved or adopted by the Commission to meet a particular situation where topographical or other conditions make continuance or conformity to existing streets impracticable.

(3) Streets constructed within the City of Mesquite shall be classified as follows:

a. Residential - twenty-seven (27) feet pavement within fifty (50) feet of right-of-way with a minimum thickness of six (6) inches. The reinforcing steel will be number four (4) bars on eighteen (18) inch centers both ways. (Ord. 3426, 4-16-03)

b. Collector - thirty-seven (37) feet pavement within sixty (60) feet right-of-way

c. Arterial

Single section - forty-eight (48) feet pavement within eighty (80) feet right-of-way

Four lane boulevard - Two (2) twenty-four (24) feet paved sections with fourteen (14) feet median within minimum eighty (80) feet right-of-way

Six lane boulevard - Two (2) thirty-four (34) feet paved sections with fourteen (14) feet median within minimum one hundred (100) feet right-of-way

(4) Residential streets shall be so laid out that use for through traffic will be discouraged.

(5) Arterial streets shall intersect at ninety (90) degree angles unless otherwise approved by the City. Other street intersections shall be laid out so as to intersect as nearly as possible at right angles, and no street shall intersect another street at less than sixty (60) degrees.

(6) Half-streets shall be prohibited, except when essential to the reasonable development of the subdivision in conforming with other requirements of these regulations, and where the Council

finds it will be practical to require the dedication of the other one-half (1/2) when the adjoining property is subdivided. Whenever a partial street exists along a common property line, the other portion of the street shall be dedicated. Where part of a street is being dedicated along a common property line and the ultimate planned width is fifty (50) feet, the first dedication will be twenty-five (25) feet; where the ultimate planned width is sixty (60) feet, the first dedication will be thirty (30) feet.

(7) Strips of privately owned property reserved for the obvious purpose of controlling access to streets shall be prohibited except where control is definitely placed in the City under conditions approved by the Commission.

(8) Street alignments with centerline offsets of less than one hundred twenty-five (125) feet shall be avoided.

(9) New streets of like alignment shall bear the names of existing streets and shall be dedicated at equal or greater widths than the existing streets. No street names shall be used which will duplicate or be confused with the names of existing streets. Street names shall be subject to the approval of the Commission.

(10) A cul-de-sac shall not be longer than six hundred (600) feet and at the closed end shall have a turn-around provided, having an outside roadway diameter of at least eighty (80) feet and a street property line diameter of at least one hundred (100) feet. Medians or islands in cul-de-sacs shall be prohibited, unless expressly approved by the City.

(11) New streets shall not dead-end. Some means of traffic circulation must be provided. Properly designed cul-de-sacs are acceptable.

(12) All new streets within a subdivision shall be constructed in accordance with the Paving and Drainage Specifications. (Ord. 2351, 10-20-86)

(13) At the intersection of a new subdivision street with an existing boulevard arterial, the developer of the subdivision shall construct a median opening in the boulevard street to allow direct access to the subdivision from the boulevard, unless otherwise directed by the City. The developer may also be required to construct a left-turn lane in the boulevard to insure adequate traffic control and safety at that intersection.

(14) Street signs, including street name, regulatory and warning signs shall be furnished and installed by the developer of the subdivision in accordance with city specifications. The developer shall meet with the city to ascertain the required number and location of all street signs. The developer shall show the type and location of the required street signs on the engineering plans for the subdivision. No building permit will be issued for the subdivision until all street signs are installed in accordance with the approved plans. Until such time as the subdivision or, if applicable, the subdivision phase, is built out, repair, maintenance and replacement of street signs that are damaged or removed from the subdivision shall be the responsibility of the developer. Stop signs shall be repaired or replaced within two (2) hours of

notification. All other signs must be reinstalled within five (5) calendar days of notification. (Ord. 3540, 11-4-02)

B. ALLEYS

(1) Alleys shall be required in all new developments and replatting of existing subdivisions unless expressly waived because of drainage, topographical features, or other existing conditions which may preclude the use of an alley in a particular location.

(2) The requirement for the construction of alleys may be waived when other definite and assured provision is made for service access to the property, including a provision for public utilities, sanitation services, off-street loading, unloading, and parking required for the property use proposed.

(3) Alleys in residential districts (including multifamily districts) shall be provided parallel, or approximately parallel, to the property frontage on the street. Alley right-of-way dedications in residential districts shall be a minimum of eighteen (18) feet in width and pavement shall be constructed a minimum of twelve (12) feet in width except where the alley connects to a residential street. The alley width will be sixteen (16) feet wide to the proposed street right-of-way. The alley width will transition from sixteen (16) feet at the street right-of-way to twelve (12) feet in a distance of twenty (20) feet. The alley right-of-way will transition from twenty-two (22) feet at the street right-of-way to eighteen (18) feet in that same transition length. (Ord. 3426, 4-16-03)

(4) Alleys in non-residential districts shall be a minimum of twenty-five (25) feet in right-of-way width, with a minimum paved width of twenty-two (22) feet. (Ord. 2351, 10-20-86)

(5) Where the deflection of alley alignment exceeds thirty (30) degrees, a cutback of a minimum fifteen (15) feet or of such greater distance to provide safe vehicular movement shall be established on the inside property line and the paving of the alley shall be cut back in the same manner.

(6) Dead-end alleys shall be avoided where possible, but if unavoidable, shall be provided with adequate turn-around facilities at the dead-end as determined by the Commission.

(7) Access to residential property for required off-street parking shall be from the alley wherever paved alley access is available. Access from the alley shall not exclude another means of access from the front or side. No side lot or rear lot access to residential property shall be allowed from any arterial street as defined herein. (Ord. 2351, 10-20-86)

C. SIDEWALKS

(1) Sidewalks shall be constructed in each new subdivision or development in accordance with the Paving and Drainage Specifications. (Ord. 2351, 10-20-86)

(2) Pedestrian sidewalks not less than four (4) feet wide shall be provided around the perimeter of all blocks adjacent to the right of way/property line. Sidewalks not less than five (5) feet in

width adjacent to the curb may be approved by the DRC if connecting walks are adjacent to the curb, if placement on the right of way line will cover utilities, or if the required landscape/screening option along a major street specifies a sidewalk adjacent to the curb. The DRC shall deny requests to place sidewalks adjacent to a curb where such sidewalk will cover utilities lines unless the above conditions are met. (Ord. 2351, 10-20-86)

(3) When a lot is platted and developed adjacent to a drainage, utility or other right of way or easement, the extension of the sidewalk across such right of way or easement shall be required to provide a continuous sidewalk connection. If no connecting sidewalk exists on the opposite side of the easement or right of way, extension of the sidewalk to the midpoint of the easement or right of way shall be required. (Ord. 2351, 10-20-86)

D. EASEMENTS

(1) Easements across lots or centered on rear or side lot lines shall be provided for utilities where necessary and shall be of such width as may be reasonably necessary for the intended purpose.

(2) Storm drainage easements shall be granted by the developer as required by the Comprehensive Drainage Ordinance and all subsequent revisions. (Ord. 2351, 10-20-86)

(3) The land area of any easement on any lot shall be included or excluded in computation of the lot according to the usability of the land within the easement area.

(4) No building or structure may be erected on an easement except as provided in the Comprehensive Drainage Ordinance and all subsequent revisions. (Ord. 2351, 10-20-86)

E. BLOCKS

(1) The length, width, and shape of blocks shall be determined with due regard to:

- a. Provision of adequate building sites suitable to special needs of the type of use contemplated.
- b. Zoning requirements as to lot size and dimensions.
- c. Needs for convenient access, circulation, control and safety of street traffic.
- d. Topographical situation of the proposed block.

(2) In general, intersecting streets, determining blocks, lengths and widths shall be provided at such intervals as to serve cross traffic adequately, and to meet existing streets or customary subdivision practices.

Where no existing subdivision controls, block lengths shall not exceed one thousand six hundred (1,600) feet and shall generally be one thousand (1,000) feet to one thousand two hundred (1,200) feet in length.

Where no existing subdivision controls, blocks shall not be less than five hundred (500) feet in length.

In cases where physical barriers or property ownership create conditions where it is appropriate that these standards be varied, the length may be increased or decreased to meet existing conditions, having due regard for connecting streets, circulation of traffic, existing and proposed topographic conditions, and public safety.

(3) Where blocks in the vicinity of school, park, or shopping center are platted one thousand (1,000) feet or longer, the Commission may require a walkway near the middle of the block or at a street that terminates between the streets at the end of the block. The walkway shall not be less than four (4) feet nor more than eight (8) feet in width, shall have a four (4) foot concrete walk through the block from sidewalk to sidewalk, or to rear property line, if no street.

Where no existing subdivision controls, block width or depth shall be platted to give lots with a depth to width ratio of generally not more than two and one-half (2 1/2) to one (1) and in no case, more than four (4) to one *M*.

Platting shall be such that the block width or depth generally shall not exceed three hundred fifty (350) feet nor be less than two hundred fifteen (215) feet. When possible, the block width and length shall be such to allow two (2) tiers of lots back to back to an alley.

F. LOTS

(1) Lots shall conform to the minimum requirements of the zoning classification district in which the subdivision is located.

(2) Every lot shall abut a dedicated public street or a private street.

(3) Where corner lots are key lots, that is where the lots face the frontage street and other lots face the side street, the corner lot shall have a building setback line on both streets as required by the Zoning Ordinance and subsequent revisions.

(4) Key lots or irregular shaped lots shall have sufficient width at the building line to meet frontage requirements of the appropriate zoning classification district in which they are located. The rear width shall be sufficient to provide access for all utilities including sanitation services, but not less than ten (10) feet.

(5) No lot shall be platted less than one-hundred (100) feet in depth unless specifically approved in the applicable zoning, except that the Commission may waive the depth requirement to prevent a hardship to the developer in cases where an irregular shaped tract is platted into lots and a remnant piece of property is sufficient to plat one or more lots. (Ord. 2351, 10-20-86)

(6) Side lot lines shall be substantially at right angles or radial to street lines.

(7) Double frontage and reverse frontage lots should be avoided except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantage of topography and orientation. Where lots have double frontage, a front building line shall be established for each street.

(8) It shall be lawful to increase the size of lots from that originally platted, provided, that there is no remaining portion of a lot or lots smaller than the original lot and provided that the final plat is submitted in accordance with the requirements of a final plat as contained hereinabove.

(9) In areas where city sewer is not immediately available, a lot shall be platted of such area as to meet the minimum requirements' of the State of Texas, pertaining to septic tank operation. When the sewer line is within one hundred (100) feet of the lot, the property owner is required to connect to same.

(10) No lot shall be replatted to reduce the size of lots originally platted by a common dedicator without public hearings and procedures as set out in State Law. No lot may be reduced below the minimum size and width **required** in its zoning classification. (Ord. 2351, 10-20-86)

(11) When an applicant exhibits a duly executed and recorded deed covering a lot having dimensions of fifty (50) feet by one hundred twenty (120) feet or more, which has been sold by metes and bounds prior to May 15th 1953, and such lot is being assessed for city taxes and conforms to the established lot pattern and zoning classification in the block where located, then a building permit may be issued provided the requested use of such property conforms to the permanent zoning of the property covered by the application.

G. BUILDING LINES

Building lines shall be shown on the final plat on all lots intended for business or residential use and shall provide the minimum setback as required by the Zoning Ordinance and subsequent revisions.

H. DRIVEWAYS FOR INGRESS AND EGRESS

(1) Access driveways to multifamily and nonresidential uses shall comply with Section 15-150, Access Management and Driveway Standards, of the Code of the City of Mesquite. (Ord. 3573, 4-21-03)

(2) Wherever possible, major driveway entrances into apartment, retail, commercial, church and industrial sites shall be aligned with similar drives on opposite sides of the street. (Ord. 3573, 4-21-03)

(3) Deleted by Ord. 3573, 4-21-03

I. MEDIAN DESIGNS AFFECTING DRIVEWAY ENTRANCES

The developer may be required to construct median openings and left-turn lanes in boulevard streets at major access driveways to insure adequate traffic control and safety at that intersection. The median openings and driveways should be provided in accordance with Section 15-150, Access Management and Driveway Standards, of the Code of the City of Mesquite. (Ord. 3573, 4-21-03)

J. PARKING AREAS

- (1) Off street parking shall be provided in accordance with the requirements of the Zoning Ordinance and shall be paved in accordance with the standard specifications and requirements of the City of Mesquite. (Ord. 2351, 10-20-86)
- (2) The design and layout of all off-street parking facilities shall conform with the parking layout and design standards set forth by the City of Mesquite. (Ord. 2351, 10-20-86)
- (3) Premises used as motor vehicle service stations or parking lots shall have six-inch raised curbs or other approved traffic barriers along the entire street frontage except at the driveway approaches and access walks. The curbs shall be placed so that automobile bumpers shall not extend over the sidewalk or public property. (Ord. 3573, 4-21-03)

K. STORM DRAINAGE

The construction or improvement of storm drainage facilities in any development shall be in accordance with the Comprehensive Drainage Ordinance and all subsequent revisions and the Paving and Drainage Specifications. (Ord. 2351, 10-20-86)

L. SITE PLANS

- (1) Prior to any construction or change in use of a tract, a site plan shall be submitted, reviewed by the Development Review Committee, and approved by the Commission. Development shall conform to the approved site plan. The approved site plan may be revised or amended if the revision or amendment is approved.
- (2) All on-site improvements shall be specified on the site plan.
- (3) All adjacent property uses shall be shown on the site plan.
- (4) All means of ingress and egress shall be shown.
- (5) All inside and outside storage facilities shall be shown.
- (6) Off-street parking facilities shall be provided as indicated on the approved site plan and shall not be less than the requirement of the Zoning Ordinance for each use and occupancy.
- (7) Underground Utilities Required.

a. Site Plans and final plats approved after March 3, 1986 shall require all electrical, telephone and cable TV utilities (lateral and/or service distribution) lines and wires to be placed underground in new residential (Single Family-Detached, Single Family-Attached, Multifamily) subdivisions.

b. In case of special or unique circumstances, the City Planning and Zoning Commission may recommend to the City Manager's Office and Utility Company deviation from the ordinance but still adhere to the intent of the ordinance.

c. Where electrical service is to be placed underground, street lighting shall also be placed underground.

d. All electrical and telephone support equipment (transformers, amplifiers, switching devices, etc.) necessary for underground installations shall be pad mounted or placed underground.

e. The utility companies shall be responsible for developing administrative policies and cost reimbursement procedures for the installation and extension of underground utilities.

f. Any utility location that deviates from the City's Standard Specifications shall be approved by the City of Mesquite.

g. The electrical utility company can, at its discretion, plan overhead feeds and/or feeder laterals on perimeters of subdivisions or property. Feeders is defined as those high voltage supply lines, that originate from sub-stations, used to distribute power throughout an area.

a. "Laterals" shall mean those electric lines that emanate from feeder line and used to distribute power to smaller areas of electric consumers. These electric lines are normally connected to a feeder line through a sectionalizing device such as a fuse or disconnect switch. (Ord. 2283, 3-3-86)

M. RESIDENTIAL DEVELOPMENT ADJACENT TO ARTERIAL STREETS

Where a subdivision is platted so that the rear yards of residential lots are separated by an alley from an arterial street, as defined here in and shown on the Mesquite Thoroughfare Plan, a solid masonry wall, 6 to 8 feet in height, constructed of 1) clay fired brick of natural colors, either double wall brick or thin wall brick, or 2) a reinforced concrete, simulated brick type wall or other appropriate texture, in earthtone color achieved through color additives, shall be erected on the street right-of-way line with a 4 foot wide sidewalk adjacent to the wall on the arterial side. Such wall shall be structurally designed with plans and specifications approved by the Building Official and no wall shall be placed so as to obstruct traffic visibility. The City Council may modify or waive this requirement or approve alternate screening methods based on site and/or design considerations. Installation of the masonry wall is required prior to issuance of permits on any adjacent lots.(Ord. 2331, 9-15-86; Ord. 2443, 7-6-87).

N. LANDSCAPING ON PUBLIC RIGHTS OF WAY (Ord. 2331, 9-15-86; Deleted by Ord. 2443, 7-6-87)

ARTICLE VI

PUBLIC SITES AND OPEN SPACES

The subdivider shall give consideration to suitable sites for schools, parks, playgrounds, and other areas for public use so as to conform with the recommendations of the Commission and reflect the Comprehensive Plan. Any provision for schools, parks, etc. shall be indicated on the preliminary plat.

No individual, partnership, firm, or corporation shall deepen, widen, fill, re-route, or change the course or location of any existing ditch, channel, stream, or drainage way, without first submitting engineering plans for approval by the City Engineer. Such plans shall be prepared by a Professional Engineer, registered in the State of Texas, and experienced in Civil Engineering.

In cases where a subdivision abuts a school or park site, the subdivider, or developer, shall dedicate one-half (1/2) of the right-of-way required for construction of the perimeter street and shall bear the cost of street construction to the extent of one-half (1/2) the cost of a collector street, or ninety (90) percent of one-half (1/2) the cost of an arterial street, in accordance with the City's Street Improvement Policy. The owner, or owners, of the public site abutting the subdivision street shall provide one-half (1/2) of the right-of-way required, and shall participate with the developer in the cost of street construction in accordance with the Street Improvement Policy. Street construction costs shall include the cost of storm drainage and engineering services, as well as the cost of actual street construction.

In cases where a subdivision abuts a school or park site, the developer shall be responsible for the installation of water and sanitary sewer utilities adjacent to the public site, and to owner, or owners of the public site shall reimburse to the developer one-half (1/2) of the installation cost upon acceptance of such utility work. (Ord. 2355, 11-3-86)

ARTICLE VII

UTILITIES

A. WATER SYSTEM

- (1) The water system in any development shall conform to the requirements of the Water and Sewer Specifications, unless otherwise approved by the City Engineer. (Ord. 2351, 10-20-86)
- (2) The water system shall be designed and constructed to meet the fire protection requirements pertaining to fire hydrant locations, water main sizes, and fire flows set forth in the Key Rate Schedule for Standard Cities, General Basic Schedule, and the National Fire Protection Association.
- (3) Generally, the water distribution lines should be located within the public street right-of-way, but outside the limits of the street pavement to the extent possible.
- (4) In accordance with the Water and Sewer Main Extension Ordinance, the City shall reimburse the developer the oversize cost of any water main larger than eight (8) inches in diameter, unless such larger water main is necessary to serve the property in question.

B. SANITARY SEWER

- (1) The sanitary sewer system in any development shall be designed and constructed to meet the requirements of the Water and Sewer Specifications, unless otherwise approved by the City Engineer. (Ord. 2351, 10-20-86)
- (2) The sanitary sewer system shall be designed to handle the anticipated sewage flow from the total drainage area contributing to flow in that system, as if the drainage area is fully developed.
- (3) Generally, the sanitary sewer collection lines should be located within public alley right-of-way or public utility easements.
- (4) In accordance with the Water and Sewer Main Extension Ordinance, the City shall reimburse the developer the oversize cost of any main larger than eight (8) inches in diameter, unless such larger main is necessary to serve the property in question.

In addition, the City may reimburse the developer for extra depth cuts made in the installation of sanitary sewers deeper than required to serve the property in question.

C. FIRE PROTECTION

- (1) Water mains shall be not less than six (6) inches in diameter, looped, in residential sections and not less than eight (8) inches in diameter in mercantile districts.
- (2) Fire hydrants are to be located so there will be a fire hydrant every three hundred (300) feet in the mercantile and industrial areas, and every five hundred (500) feet in residential areas. In any case, a fire hydrant shall be placed no more than one hundred (100) feet from the curb line at the intersection of two arterial streets as defined herein. Hydrants are to be located so that no structure shall be more than 500 feet in hose laying distance from a fire hydrant. Hose laying distances shall be computed as that distance the fire apparatus must travel for the purpose of laying a fire hose on public street or private drive or shall be the equivalent of an approved fire

lane including the required turning radius and shall include any distance between the structure and said street or drive. (Ord. 2351, 10-20-86)

(3) Where cul-de-sacs are proposed, a fire hydrant shall be placed near the opening of the cul-de-sac allowing a maximum distance of five hundred (500) feet as the fire hose is laid from the fire hydrant to the most distance residence.

(4) Fire department access routes shall be provided by the developer as required by city ordinances and shall be approved by the Fire Department.

ARTICLE VIII

ENFORCEMENT

Every building hereafter erected, altered, expanded, or otherwise located shall be on a platted lot of record, which creates a building site, except when situated on a bona fide farm or ranch. No building permit shall be issued until such platted building site is created. (Ord. 2351, 10-20-86)

Any subdivision of land being developed in violation of the terms and provisions of these regulations is hereby declared to be a public nuisance and the City Planner is hereby authorized to institute any action which may be necessary to restrain or abate such violations.

ARTICLE IX

VARIANCES

The Commission may authorize a variance from these regulations when in the opinion of the Commission, undue hardship will result from requiring strict compliance. In granting a variance, the Commission shall prescribe only conditions that are deemed necessary or desirable to the public interest and making the findings hereinbelow required. The Commission shall take into account the nature of the proposed use of land involved, and existing uses of the land in the vicinity, the number of persons who will reside or work in the proposed subdivision, and the probable effect of such variance upon traffic conditions and upon the public health, safety, convenience, and welfare in the vicinity. No variance will be granted unless the Commission finds:

- (1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this ordinance would deprive the applicant of the reasonable use of his land.
- (2) That the variances are necessary for the preservation and enjoyment of a substantial property right of the applicant, that the granting of the variance will not be detrimental to the public health, safety, or welfare or injurious to other property in the area.
- (3) That the granting of the variance will not have the effect of preventing the orderly subdivision of other lands in the area in accordance with the provisions of this ordinance. Such findings of the Commission together with specific facts on which such findings are based shall be incorporated under the official minutes of the Commission meeting at which such variance is granted. Variances may be granted only when in harmony with the general purpose and intent of this ordinance so that the public health, safety, and welfare may be secured and substantial justice done. Pecuniary hardship to the subdivider, standing alone, shall not be deemed to constitute undue hardship.
- (4) The Commission may not authorize a variance that would constitute a violation of any other valid ordinance of the City of Mesquite.

ARTICLE X

CONFLICTS

All ordinances or parts of ordinances, with the exception of the Building Code and the Comprehensive Zoning Ordinance for the City of Mesquite, which are inconsistent or in conflict with any of the provisions of this ordinance be, and the same are, hereby repealed. Where the Building Code of the City of Mesquite or the Comprehensive Zoning Ordinance of the City of Mesquite contain regulations which are more restrictive than the regulations contained herein, the ordinance which is more restrictive shall control.

ARTICLE XI

RESPONSIBILITIES

The developer shall be responsible for the conformance of all parties as encompassed in the improvements undertaken to the ordinances, rules, and regulations of the City of Mesquite.

ARTICLE XII

EXCEPTIONS

Plats of subdivisions which have received preliminary approval of the Commission within one (1) year prior to the effective date of this ordinance shall be excepted from the requirements of this ordinance, provided that the final plat of such subdivision is approved and filed for record within one hundred eighty (180) days after the effective date of this ordinance or within one (1) year after the approval date of the preliminary plat, whichever is greater.

SECTION 2. That should any word, phrase, sentence, paragraph, or section of this ordinance be held to be void and unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect the same as if no portion of this ordinance had been held to be void and unenforceable.

SECTION 3. EFFECTIVE DATE: All changes from the existing ordinance required by this ordinance shall become effective on October 1, 1973.

SECTION 4. The fact that the present regulations of the City of Mesquite are inadequate to properly protect the public health, safety, and welfare creates an urgency and an emergency and requires that this ordinance shall take effect immediately from and after its passage as the law in such cases provides.

DULY PASSED by the City Council of the City of Mesquite on the fourth day of September, 1973.

Bob Beard - Mayor

ATTEST:

Norma McGaughey
City Secretary

APPROVED AS TO FORM:

Elland Archer - City Attorney

EXHIBIT F
Special Regulations

I. General

1. Development Regulations. The Development Regulations set forth in Exhibit G are incorporated herein by reference and shall be construed as Special Regulations.

2. Temporary Dead-Ends. New streets in a phase of the Property may temporarily dead end at a boundary of that phase without the requirement of a temporary turnaround if the dead end is located within 150 feet of an intersection. Type III barricades shall be installed at the end of pavement with signage required by the TMUTCD.

3. Barrier Free Ramps. Barrier free ramps located at all intersections shall be constructed concurrently with adjacent sidewalks in accordance with TAS/ADAAG standards, as amended.

II. (Reserved, if needed)

EXHIBIT G

Development Regulations

1. K20 Code Controlling. Section 4-1102 of the Mesquite Zoning Ordinance provides that land within the City's extraterritorial jurisdiction that is developed pursuant to a development agreement shall be subject to application of the Interim K20 Development Code. Except and only to the extent provided in Exhibit F, Special Regulations, the K20 Code as amended as of the date of submittal of a complete application for a Community Plan under Section 2.3 or an Alternative Community Type under Section 2.5 shall be the controlling regulations for development and use of the Property.

2. Architectural Standards. The design of buildings on the Property shall comply with the Community Appearance Manual dated December 17, 2007, Ordinance No. 3919, as amended and the K20 Code.

EXHIBIT H
Annexation Notice

STATE OF TEXAS §
 §
COUNTY OF KAUFMAN §

NOTICE CONCERNING ANNEXATION AND SERVICES

The real property described in Exhibit A attached hereto and incorporated herein is located in Kaufman County Fresh Water Supply District No. 5 (the "District"). The District is located wholly within the extraterritorial jurisdiction of the City of Mesquite. The City of Mesquite may annex the District for full purposes upon the earliest to occur of:

- (1) Dissolution of the District; or
- (2) June 7, 2025.

Further, to the extent permitted by law, the City may annex commercial areas within the District for the sole purpose of collecting sales tax.

For additional information concerning potential annexation of the District, contact the City of Mesquite Director of Community Development.

KAUFMAN COUNTY FRESH WATER
SUPPLY DISTRICT NO. 5

By: _____
Name printed: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me, on the ____ day of _____, 200__, by _____, President, of the Board of Directors of Kaufman County Fresh Water Supply District No. 5, on behalf of said District.

Notary Public, State of Texas
Printed Name: _____
My Commission Expires: _____

[SEAL]

After recording, return to:
City Attorney
City of Mesquite
PO Box 850137
Mesquite, Texas 75185-0137

EXHIBIT I
Strategic Partnership Agreement

**STRATEGIC PARTNERSHIP AGREEMENT BETWEEN
THE CITY OF MESQUITE, TEXAS AND KAUFMAN COUNTY
FRESH WATER SUPPLY DISTRICT NO. 5**

STATE OF TEXAS §
 §
COUNTY OF KAUFMAN §

This Strategic Partnership Agreement (this "Agreement") is entered into by the City of Mesquite, a home-rule municipal corporation situated in Kaufman County, Texas (the "City"), and Kaufman County Fresh Water Supply District No. 5 (the "District"), acting by and through its duly authorized Board of Directors, under the authority of Section 43.0751 of the Texas Local Government Code ("Local Government Code").

RECITALS

WHEREAS, Local Government Code, Section 43.0751 (the "Act"), authorizes the City and the District to negotiate and enter into a strategic partnership agreement by mutual consent; and

WHEREAS, the District encompasses approximately 146.73 acres within the City's extraterritorial jurisdiction, as shown on Exhibit A and described in Exhibit B (the "Property"); and

WHEREAS, this Agreement authorizes the City to annex certain portions of the Property that have been or may in the future be designated for commercial use for limited purposes for the purpose of collecting Sales and Use Tax Revenues (hereafter defined) within such commercial tracts; and

WHEREAS, it is contemplated that the City will annex the Property for full purposes at some future date in accordance with the terms of the Development Agreement (hereafter defined); and

WHEREAS, the District and the City acknowledge that this Agreement provides benefits to each party, including revenue, services and regulatory benefits; and

WHEREAS, the District and the City acknowledge that this Agreement does not require the District to provide revenue to the City solely for the purpose of obtaining an agreement with the City to forgo annexation of any portion of the Property.

NOW THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are acknowledged, the District and the City agree as follows:

ARTICLE I
FINDINGS

A. The District is a fresh water supply district encompassing approximately 146.73 acres in the City's extraterritorial jurisdiction.

B. The District was created _____ on _____, 20__.

C. On June 7, 2010, the City Council adopted Resolution No. 25-2010 consenting to the creation of the District (the "Consent Resolution").

D. 269 Kaufman Partners, Ltd., a Texas limited partnership ("Owner"), is the owner of the Property.

E. Owner and the City have entered into the Heartland Town Center Development Agreement governing the Property (the "Development Agreement"), which includes land use and development standards that are designed to produce a quality mixed-use development and which provides, among other things, that commercial development may occur on tracts described in the Community Plan attached to the Development Agreement as Exhibit D, as shown on Exhibit C and described on Exhibit D attached to this Agreement.

F. The City and the District desire to enter into this Agreement providing for limited purpose annexation of the portions of the Property designated for commercial uses for the purpose of collecting Sales and Use Tax Revenues within the annexed areas in accordance with Subsection (k) of the Act, and for the use of Sales and Use Tax Revenues.

G. The District provided notice of two public hearings concerning the adoption of this Agreement and the proposed limited purpose annexation of the Original Commercial Property, as defined below, in accordance with the procedural requirements of the Act.

H. The Board of Directors of the District conducted two public hearings regarding this Agreement and the proposed limited purpose annexation of the Original Commercial Property, at which members of the public who wished to present testimony or evidence regarding this Agreement and the proposed limited purpose annexation were given the opportunity to do so, in accordance with the procedural requirements of the Act on _____, 20__, at _____ .m. at _____ and on _____, 20__, at _____ .m. at _____.

I. The Board of Directors of the District approved this Agreement on _____, 20__, in open session at a meeting held in accordance with Chapter 551 of the Government Code.

J. The City provided notice of two public hearings concerning the adoption of this Agreement and the proposed limited purpose annexation of the Original Commercial Property, in accordance with the procedural requirements of the Act.

K. The City Council conducted two public hearings regarding this Agreement and the proposed limited purpose annexation of the Original Commercial Property, at which members of the public who wished to present testimony or evidence regarding this Agreement and the proposed limited purpose annexation were given the opportunity to do so, in accordance with the procedural requirements of the Act on _____, 20__, at _____ .m., at the City Council Chambers and on _____, 20__, at _____ .m., at the City Council Chambers.

L. The City Council approved this Agreement on _____, 20__, in open session at a meeting held in accordance with Chapter 551 of the Government Code (M & C _____), which approval occurred after the Board of Directors of the District approved this Agreement.

M. All procedural requirements imposed by law for the adoption of this Agreement have been met.

N. In accordance with the requirements of Subsection (p)(2) of the Act, this Agreement provides benefits to the City and the District, including revenue, services, and regulatory benefits which are reasonable and equitable with regard to the benefits provided to the other.

ARTICLE II **DEFINITIONS**

Terms used in this Agreement shall have the following meanings:

“Act” means the Texas Local Government Code, Section 43.0751, and any amendments thereto.

“Additional Commercial Property” means any property within the District Boundaries designated for commercial use, other than the Original Commercial Property.

“Agreement” means this Strategic Partnership Agreement between the City and the District.

“Board” means the board of supervisors of the District.

“City” means the City of Mesquite, Texas, a home-rule municipal corporation of the State of Texas.

“City Council” means the City Council of the City.

“City Secretary” means the City Secretary of the City.

“City Share” means the City’s share of Sales and Use Tax Revenues as defined by Section 4.02 of this Agreement.

“Community Plan” means Exhibit D to the Development Agreement identifying the location of the Original Commercial Property, as may be amended by Owner from time to time pursuant to Section 2.4 of the Development Agreement.

“Comptroller” means the Comptroller of Public Accounts of the State of Texas.

“Development Agreement” means the Heartland Town Center Development Agreement executed by Owner and the City effective June 7, 2010.

“District” means the Kaufman County Fresh Water Supply District No. 5.

“District Boundaries” means the boundaries of the District, consisting of the boundaries of the 146.73-acre tract as shown on Exhibit A and described in Exhibit B.

“District Share” means the District’s share of the Sales and Use Tax Revenues as defined in **Section 4.02** of this Agreement.

“ETJ” means the extraterritorial jurisdiction of a city as defined by the Local Government Code, as amended, with the City’s ETJ being an unincorporated area presently extending one-half mile from the City’s corporate limits, excluding other incorporated municipalities and their respective ETJs.

“Effective Date” means the date on which the City adopts this Agreement.

“Finance Director” means the Director of the City’s Finance Department, or other person designated by the City Council to perform the duties assigned to the Finance Director pursuant to this Agreement.

“Government Code” means the Texas Government Code, as amended.

“Limited Purpose Annexation Period” means the period commencing on the effective date of the limited purpose annexation of Limited Purpose Property and ending upon the full purpose annexation or disannexation of such property.

“Limited Purpose Property” means the property in the District that is annexed for limited purposes pursuant to this Agreement, including the Original Commercial Property and any Additional Commercial Property.

“Local Government Code” means the Texas Local Government Code, as amended.

“Notice” means notice as defined in **Section 7.01** of this Agreement.

“Original Commercial Property” means those certain tracts encompassing approximately _____ acres designated for commercial uses in the Community Plan attached to the Development Agreement as Exhibit D, and shown on Exhibit C and described on Exhibit D, subject to amendment of the boundaries of the Original Commercial Property by Owner from time to time in accordance with Section 2.4 of the Development Agreement.

“Owner” means 269 Kaufman Partners, Ltd., a Texas limited partnership, and its successors and assigns.

“Party” means, individually, the City or the District, their successors and assigns as permitted by **Section 7.11** of this Agreement.

“Sales and Use Tax Revenues” means those revenues received by the City from the sales and use tax authorized to be imposed by the City on sales consummated at locations within the Limited Purpose Property pursuant to the Act and Chapter 321 of the Texas Tax Code and whose use is not otherwise controlled or regulated, in whole or in part, by another governmental entity, authority, or applicable law, ordinance, rule, or regulation.

“Tax Code” means the Texas Tax Code, as amended.

ARTICLE III
ADOPTION OF AGREEMENT AND
LIMITED-PURPOSE ANNEXATION OF ORIGINAL COMMERCIAL PROPERTY
AND ADDITIONAL COMMERCIAL PROPERTY

3.01 Public Hearings. The District and the City acknowledge and agree that prior to the execution of this Agreement, the governing bodies of the District and the City have conducted public hearings for the purpose of considering the adoption of this Agreement and that such hearings were noticed and conducted in accordance with the terms of the Act, this Agreement and Chapter 551 of the Government Code.

3.02 Effective Date. Pursuant to Subsection (c) of the Act, this Agreement is effective _____, the date of adoption of this Agreement by the City.

3.03 Filing in Property Records. The City shall file this Agreement in the Real Property Records of Kaufman County, Texas.

3.04 Limited Purpose Annexation of Original Commercial Property. The District and the City agree that the City may annex all or any portion of the Original Commercial Property for the limited purpose of collecting Sales and Use Tax Revenues within the Original Commercial Property pursuant to Subsection (k) of the Act. The District acknowledges that the City Council may adopt one or more limited purpose annexation ordinances at one or more meetings conducted in accordance with Chapter 551 of the Government Code and further acknowledges that no additional notices, hearings, or other procedures are required by law in order to approve such limited purpose annexations. The City may annex for limited purposes any portion of the Original Commercial Property at any time after Owner submits a final plat for such property to the City.

3.05 Connections to the City Limits. The District consents to the limited purpose annexation of portions of the Property in the minimum width needed to connect the Original Commercial Property or the Additional Commercial Property to the City limits.

3.06 Consent to Limited Purpose Annexation. THE DISTRICT ON BEHALF OF ITSELF AND ALL PRESENT AND FUTURE OWNERS OF LAND WITHIN THE DISTRICT BOUNDARIES HEREBY

REQUESTS THAT THE CITY ANNEX THE ORIGINAL COMMERCIAL PROPERTY AND THE ADDITIONAL COMMERCIAL PROPERTY FOR LIMITED PURPOSES AS PROVIDED IN THIS AGREEMENT. THE DISTRICT CONSENTS TO SUCH ANNEXATION AND TO THE COLLECTION OF SALES AND USE TAX REVENUES BY THE CITY WITHIN SUCH LIMITED PURPOSE PROPERTY. SUCH CONSENT SHALL BIND THE DISTRICT AND OWNER AND FUTURE OWNER OF LAND WITHIN THE DISTRICT BOUNDARIES.

ARTICLE IV **TAXATION AND PROVISION OF SERVICES**

4.01 Collection of Sales and Use Tax Revenues. The City may impose a sales and use tax within the Limited Purpose Property pursuant to Subsection (k) of the Act. The sales and use tax shall be imposed on all eligible commercial activities at the rate of one percent or other rate allowed under future amendments to Chapter 321 of the Tax Code and imposed by the City. Collection of the Sales and Use Tax Revenues shall take effect on the date described in Section 321.102 of the Tax Code.

4.02 Payment of Sales and Use Tax.

(a) In return for the benefits received by the City pursuant to this Agreement, the City shall pay to the District an amount equal to 50% of the Sales and Use Tax Revenues paid to the City as reflected in sales tax reports provided by the Comptroller to the City (the "District Share"). The City shall retain all Sales and Use Tax Revenues that do not constitute the District Share (the "City Share").

(b) The City shall pay the District Share to the District within thirty (30) days after the City receives both the sales tax report reflecting such revenues and the payment of such revenues from the Comptroller. Any payment of the District Share not made within such 30-day period shall bear interest calculated in accordance with Section 2251.025 of the Government Code.

4.03 Use of Sales and Use Tax Revenues. The District may use the District Share for any lawful purpose, and the City may use the City Share for any lawful purpose.

4.04 Delivery of Sales Tax Reports to District. The City shall include with each payment of the District Share a copy of the sales tax report provided by the Comptroller to the City relating to the Sales and Use Tax Revenues, or, at City's option, a condensed version of each sales tax report.

4.05 Notification of Comptroller. The City shall send notice of this Agreement, together with other required documentation, to the Comptroller in the manner provided by Tax Code, Section 321.102, after the City Council annexes any portion of the Limited Purpose Property for limited purposes.

4.06 City's Maintenance of Records and District's Audit Rights. The District may audit the Sales and Use Tax Revenues collected by the City to determine whether the District Share has been paid to the District in accordance with this Agreement. The City shall provide reasonable accommodations for the District to perform the audit. Any audit shall be made at the

District's sole expense and may be performed at any time during the City's regular business hours on thirty (30) days Notice to the City. The City shall maintain and make available to the District's representatives all books, records, documents and other evidence of accounting procedures or practices in form sufficiently maintained to reflect the amount of Sales and Use Tax Revenues received by the City from the Limited Purpose Property. Notwithstanding the foregoing, however, if any audit conducted by the District reveals that the District Share has been underpaid by more than two percent (2%), the City shall reimburse the District for the reasonable cost of the audit.

ARTICLE V **TERM**

This Agreement commences on the Effective Date and continues until the City annexes the Property for full purposes in accordance with the Development Agreement. The provisions of this Agreement relating to the collection of sales and use tax will automatically terminate with regard to any portion of the Limited Purpose Property upon disannexation or full purpose annexation of such property.

ARTICLE VI **BREACH, NOTICE AND REMEDIES**

6.01 Notification of Breach. If either Party commits a breach of this Agreement, the non-breaching Party shall give Notice to the breaching Party that describes the breach in reasonable detail.

6.02 Cure of Breach. The breaching Party shall commence curing such breach within fourteen (14) calendar days after receipt of Notice of the breach and shall complete the cure within fourteen (14) calendar days from the date of commencement of the cure; however, if the breach is not reasonably susceptible to cure by the breaching Party within such fourteen (14) day period, the non-breaching Party shall not bring any action so long as the breaching Party has commenced to cure the default within such fourteen (14) day period and diligently completes the work within a reasonable time without unreasonable cessation of the work.

6.03 Remedies for Breach. If the breaching Party does not substantially cure such breach within the stated period of time, the non-breaching Party may, in its sole discretion, and without prejudice to any other right under this Agreement, law, or equity, seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act, specific performance, mandamus and injunctive relief; provided, however, the non-breaching Party shall not be entitled to terminate this Agreement. The Parties specifically waive any right that they have or in the future may have to terminate this Agreement. Damages, if any, to which any non-breaching Party may be entitled shall be limited to actual damages and shall not include special or consequential damages. In addition, the prevailing party in any such action shall be entitled to reasonable attorney's fees and costs of litigation as determined in a final, non-appealable order in a court of competent jurisdiction.

ARTICLE VII
ADDITIONAL PROVISIONS

7.01 Notice. Any notices, certifications, approvals, or other communications (a "Notice") required to be given by one Party to another under this Agreement shall be given in writing addressed to the Party to be notified at the address set forth below and shall be deemed given: (a) when the Notice is delivered in person to the person to whose attention the Notice is addressed; (b) when received if the Notice is deposited in the United States Mail, certified or registered mail, return receipt requested, postage prepaid; (c) when the Notice is delivered by Federal Express, UPS, or another nationally recognized courier service with evidence of delivery signed by any person at the delivery address; or (d) five business days after the Notice is sent by FAX (with electronic confirmation by the sending FAX machine) with a confirming copy sent by United States mail within 48 hours after the FAX is sent. If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following the Saturday, Sunday, or legal holiday. For the purpose of giving any Notice, the addresses of the Parties are set forth below. The Parties may change the information set forth below by sending Notice of such changes to the other Party as provided in this section.

To the City: City of Mesquite
Attn: Ted Barron
City Manager
PO Box 850137
Mesquite, TX 75185-0137
FAX: 972-216-6431

With a copy to: _____

To the District: Kaufman County Fresh Water
Supply District No. 5 c/o
Clay Crawford
Crawford & Jordan, LLP
3100 McKinnon Street, Suite 950
Dallas, Texas 75201
FAX: 214-981-9071

7.02 Payments. The City shall forward payments of the District Share to the District at the address set out in **Section 7.01** by regular U.S. Mail or other method of delivery mutually acceptable to the Parties.

7.03 No Waiver. Any failure by a Party to insist upon strict performance by the other Party of any provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purpose

for which it is given. No waiver by any Party hereto of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

7.04 Governing Law and Venue. THIS AGREEMENT MUST BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AS THEY APPLY TO CONTRACTS PERFORMED WITHIN THE STATE OF TEXAS AND WITHOUT REGARD TO ANY CHOICE OF LAW RULES OR PRINCIPLES TO THE CONTRARY. THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS PERFORMABLE IN KAUFMAN COUNTY, TEXAS AND HEREBY SUBMIT TO THE JURISDICTION OF THE COURTS OF KAUFMAN COUNTY, TEXAS AND AGREE THAT ANY SUCH COURT SHALL BE A PROPER FORUM FOR THE DETERMINATION OF ANY DISPUTE ARISING HEREUNDER.

7.05 Authority to Execute. The City warrants that this Agreement has been approved by the City Council in accordance with all applicable public meeting and public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been authorized to do so. The District warrants that this Agreement has been approved by the Board in accordance with all applicable public meeting and public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the Board has been authorized to do so.

7.06 Entire Agreement; Severability. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the subject matter of this Agreement. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, then (a) such unenforceable provision shall be deleted from this Agreement; (b) the unenforceable provision shall, to the extent possible, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.

7.07 Changes in State or Federal Laws. If any state or federal law changes so as to make it impossible for the City or the District to perform its obligations under this Agreement, the parties will cooperate to amend this Agreement in such a manner that is most consistent with the original intent of this Agreement as legally possible.

7.08 Additional Documents and Acts. The Parties agree that at any time after execution of this Agreement, they will, upon request of the other Party, execute and/or exchange any other documents necessary to effectuate the terms of this Agreement and perform any further acts as the other Party may reasonably request to effectuate the terms of this Agreement.

7.09 Captions. Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

7.10 Assignability, Successors, and Assigns. This Agreement shall not be assignable without the other Party's written consent. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns.

7.11 Amendment. This Agreement may be amended only by written agreement with approval of the governing bodies of the City and the District.

7.12 Interpretation. The Parties acknowledge that each Party and, if it so chooses, its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. As used in this Agreement, the term "including" means "including without limitation" and the term "days" means calendar days, not business days. Wherever required by the context, the singular shall include the plural, and the plural shall include the singular. Each defined term herein may be used in its singular or plural form whether or not so defined.

7.13 No Third-Party Beneficiaries. This Agreement is solely for the benefit of the City and the District. Neither the City nor the District intends by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit or enforceable rights under this Agreement or otherwise upon anyone other than the City and the District.

7.14 Governmental Powers. By execution of this Agreement, neither the City nor the District waives or surrenders any of its respective governmental powers, immunities or rights, except as specifically waived pursuant to this section. The City and the District mutually waive their governmental immunity from suit and liability only as to any action brought by a Party to pursue the remedies available under this Agreement and only to the extent necessary to pursue such remedies. Nothing in this section shall waive any claims, defenses or immunities that the City or the District has with respect to suits against the City or the District by persons or entities not a party to this Agreement. Nothing in this Agreement is intended to delegate or impair the performance by the City of its governmental functions, and the City waives any claim or defense that any provision of this Agreement is unenforceable on the grounds that it constitutes an impermissible delegation or impairment of the City's performance of its governmental functions.

7.15 Incorporation of Exhibits by Reference. All exhibits attached to this Agreement are incorporated into this Agreement by reference for the purposes set forth herein, as follows:

Exhibit A	Map of the Property
Exhibit B	Legal Description of the Property
Exhibit C	Map of Original Commercial Property
Exhibit D	Legal Description of Original Commercial Property

7.16 Conspicuous Provisions. The City and the District acknowledge that the provisions of this Agreement set out in **bold, CAPITALS** (or any combination thereof) satisfy the requirements for the express negligence rule and/or are conspicuous.

7.17 Counterpart Originals. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

ATTEST:

CITY OF MESQUITE, TEXAS

Name: _____
Title: City Secretary

By: _____
John Monaco, Mayor

Date: _____

APPROVED AS TO FORM

City Attorney

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me, on the ____ day of _____, 20__, by _____, Mayor of the City of Mesquite, Texas on behalf of said city.

[SEAL]

Notary Public, State of Texas
Printed Name: _____
My Commission Expires: _____

KAUFMAN COUNTY FRESH WATER SUPPLY
DISTRICT NO. 5

By: _____
Printed Name: _____
President, Board of Directors

Date: _____

STATE OF TEXAS

§

COUNTY OF DALLAS

§

§

This instrument was acknowledged before me, on the ____ day of _____, 20 __, by _____, Mayor of the City of Mesquite, Texas on behalf of said city.

[SEAL]

Notary Public, State of Texas

Printed Name: _____

My Commission Expires: _____

Exhibit A
Map of the Property

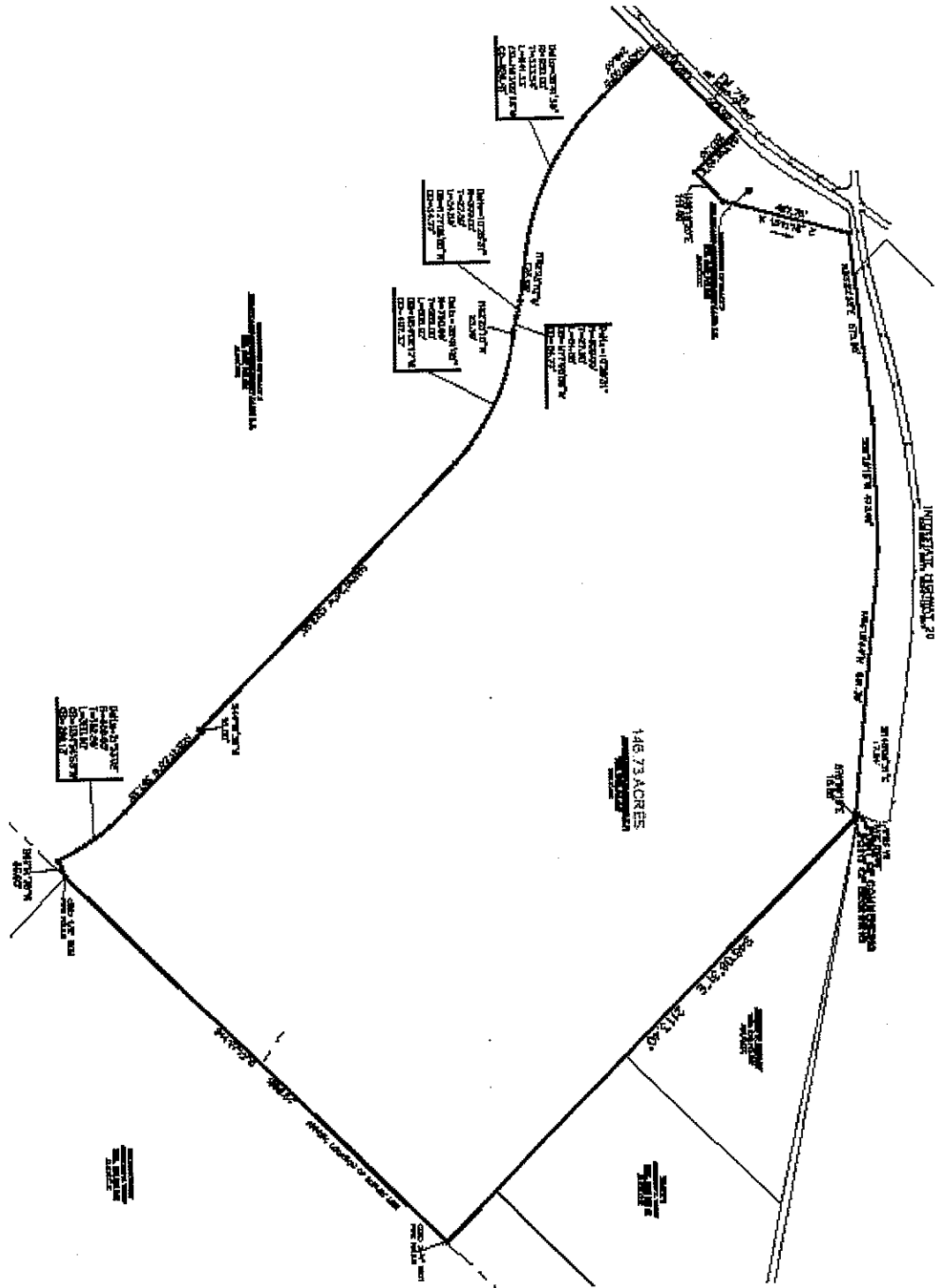


Exhibit B
Legal Description of the Property

146.73 ACRES

BEING a tract of land located in the MARTHA MUSICK SURVEY, ABSTRACT NO. 312, Kaufman County, Texas, and being a portion of that tract of land conveyed to 269 Kaufman Partners, L.P., recorded in Volume 2709, Page 267, Deed Records, Kaufman County, Texas and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod with a yellow plastic cap stamped "PATE ENGRS" found in the South line of Interstate Highway 20 at the most Northeasterly corner of said Kaufman Partners tract;

THENCE South 45 degrees 06 minutes 31 seconds East, with the Southwesterly line of that tract of land conveyed to Austin W. Shipley, recorded in Volume 270, Page 221, Deed Records, Kaufman County, Texas, a distance of 17.94 feet to the POINT OF BEGINNING;

THENCE South 45 degrees 06 minutes 31 seconds East, along the Southwesterly lines of said Shipley tract and a tract of land described as Tract 1 in Deed to Gordon T. West, recorded in Volume 1636, Page 43, Deed Records, Kaufman County, Texas and a Southwesterly line of a tract of land described as Second Tract in Deed to Gordon T. West, recorded in Volume 709, Page 242, Deed Records, Kaufman County, Texas, in all for a total distance of 2,113.40 feet to a 3/4 inch iron pipe found at an interior ell corner of said Second Tract;

THENCE South 44 degrees 47 minutes 12 seconds West, along the Northwesterly line of said Second Tract, a distance of 1,898.54 feet to a 1/2 inch iron pipe found for corner;

THENCE South 65 degrees 51 minutes 38 seconds West, a distance of 65.50 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the left having a central angle of 21 degrees 33 minutes 02 seconds, a radius of 800.00 feet and a chord bearing and distance of North 34 degrees 54 minutes 53 seconds West, 299.13 feet;

THENCE Northwesterly, along said curve to the left, an arc distance of 300.90 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 45 degrees 41 minutes 24 seconds West, a distance of 397.25 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE South 44 degrees 18 minutes 36 seconds West, a distance of 10.00 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 45 degrees 41 minutes 24 seconds West, a distance of 1,323.95 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the left having a central angle of 36 degrees 41 minutes 46 seconds, a radius of 790.00 feet and a chord bearing and distance of North 64 degrees 02 minutes 17 seconds West, 497.37 feet;

THENCE Northwesterly, along said curve to the left, an arc distance of 505.97 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 82 degrees 23 minutes 10 seconds West, a distance of 23.30 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the right having a central angle of 10 degrees 28 minutes 31 seconds, a radius of 300.00 feet and a chord bearing and distance of North 77 degrees 08 minutes 55 seconds West, 54.77 feet;

THENCE Westerly, along said curve to the right, an arc distance of 54.85 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a reverse curve to the left having a central angle of 10 degrees 28 minutes 31 seconds, a radius of 300.00 feet and a chord bearing and distance of North 77 degrees 08 minutes 55 seconds West, 54.77 feet;

THENCE Westerly, along said curve to the left, an arc distance of 54.85 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 82 degrees 23 minutes 10 seconds West, a distance of 172.65 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the right having a central angle of 38 degrees 41 minutes 30 seconds, a radius of 950.00 feet and a chord bearing and distance of North 63 degrees 02 minutes 25 seconds West, 629.41 feet;

THENCE Northwesterly, along said curve to the right, an arc distance of 641.53 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 43 degrees 41 minutes 40 seconds West, a distance of 249.40 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the Southeasterly line of Farm-to-Market Road 741, a 90-foot wide right-of-way;

THENCE North 46 degrees 18 minutes 20 seconds East, along the Southeasterly line of said Farm-to-Market Road 741, a distance of 428.95 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE South 43 degrees 41 minutes 40 seconds East, leaving said Southeasterly right-of-way line, a distance of 207.30 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 46 degrees 18 minutes 20 seconds East, a distance of 146.50 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 15 degrees 11 minutes 15 seconds East, a distance of 467.78 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE in a Easterly direction over and across the above mentioned Kaufman Partners tract the following (4) courses and distances:

North 83 degrees 22 minutes 32 seconds East, a distance of 675.50 feet to a point for a corner;

North 88 degrees 29 minutes 15 seconds East, a distance of 473.49 feet to a point for a corner

South 84 degrees 18 minutes 44 seconds East, a distance of 951.36 feet to a point for a corner;

South 78 degrees 59 minutes 18 seconds East, a distance of 18.88 feet to the POINT OF BEGINNING and containing or 146.73 acres of land, more or less.

Exhibit C
Map of Original Commercial Property

[To be determined upon creation of the Strategic Partnership Agreement]

Exhibit D
Legal Description of Original Commercial Property
[To be determined upon creation of the Strategic Partnership Agreement]

EXHIBIT J
Legal Description of Pass-Through Area

LEGAL DESCRIPTION

0.48 ACRES

BEING a tract of land located in the MARTHA MUSICK SURVEY, ABSTRACT NO. 312, Kaufman County, Texas, and being a portion of a tract of land conveyed to 269 Kaufman Partners, L.P., recorded in Volume 2709, Page 267, Deed Records, Kaufman County, Texas, as Tract (2), and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod with a yellow plastic cap stamped "PATE ENGRS" found in the South line of Interstate Highway 20 at the most Northeasterly corner of said Tract 2;

THENCE South 45 degrees 06 minutes 31 seconds East, with the Southwesterly lines of that tract of land conveyed to Austin W. Shipley, according to the document filed in Volume 270, Page 221, Deed Records, Kaufman County, Texas, for a distance of 17.94 feet to a point in said line for a corner of this tract;

THENCE in a Westerly direction over and across said tract the following (4) courses and distances:

North 78 degrees 59 minutes 18 seconds West, a distance of 18.88 feet to a point for a corner;

North 84 degrees 18 minutes 44 seconds West, a distance of 951.36 feet to a point for a corner;

South 88 degrees 29 minutes 15 seconds West, a distance of 473.49 feet to a point for a corner;

South 83 degrees 22 minutes 32 seconds West, a distance of 675.50 feet to a point for a corner in the Easterly line of that tract of land conveyed to Heartland 600 Development Land, L.P., according to the document filed of record in Volume 2658, Page 510 Deed Records of Kaufman County, Texas;

THENCE North 15 degrees 11 minutes 15 seconds West, with said Easterly line, a distance of 10.77 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the South line of Interstate Highway No. 20, a variable width right-of-way;

THENCE in a Easterly direction, with said South line, the following four (4) courses and distances:

North 83 degrees 22 minutes 32 seconds East, a distance of 671.95 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "PATE ENGRS" found for corner;

North 88 degrees 29 minutes 15 seconds East, a distance of 474.57 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "PATE ENGRS" found for corner;

South 84 degrees 18 minutes 44 seconds East, a distance of 952.45 feet to a broken concrete right-of-way monument found for corner;

South 78 degrees 59 minutes 18 seconds East, a distance of 4.45 feet to the POINT OF BEGINNING and containing or 0.48 acres of land, more or less.

EXHIBIT K

Map of Pass-Through Area

