

RESOLUTION NO. 31-2014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN AGREEMENT FOR SUCH PURPOSES WITH VANSTON PARK INVESTMENTS, LP, FOR THE VILLAS OF VANSTON PARK PROJECT LOCATED AT 4540 GUS THOMASSON ROAD, MESQUITE, DALLAS COUNTY, TEXAS; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the City Council has been presented with a proposed agreement providing economic incentives to the affordable housing project known as The Villas of Vanston Park (“Project”) by and between the City and Vanston Park Investments, L.P., a Texas Limited partnership (“VPI”), a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference (the “Agreement”); and

WHEREAS, the aggregate of all economic development incentives provided by the City to VPI pursuant to the Agreement shall not exceed \$1,657,400; and

WHEREAS, when combined with the perpetual roadway easement obtained by the City for the construction of Broadway Street, a required improvement of The Villas of Vanston Park having a determined value of \$42,600, the City’s local contribution to the Project will equal \$1,700,000; and

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

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

SECTION 1. That the City Council finds that the terms of the proposed Agreement by and between the City and VPI, a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference, will promote economic development and stimulate business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

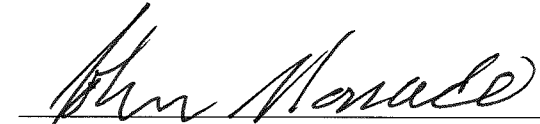
SECTION 2. That the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide

economic development incentives to VPI and take other specified actions, in accordance with the terms outlined in the Agreement.

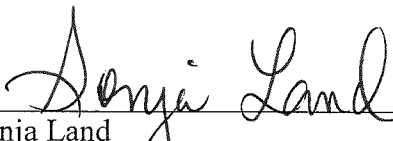
SECTION 3. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

SECTION 4. That the City Manager is hereby authorized to finalize and execute the Agreement and all other documents in connection therewith on behalf of the City including but not limited to the City Loan Documents (as defined in the Agreement) and all other documents necessary to consummate the transactions contemplated by the Agreement.


DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 2nd day of September, 2014.

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

ATTEST:

  
\_\_\_\_\_  
Sonja Land  
City Secretary

APPROVED:

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

# **ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

## **(Chapter 380 Agreement)**

This Economic Development Program Agreement (“Agreement”) is made and entered into by and between the City of Mesquite, a Texas home rule municipality (the “City”) and VANSTON PARK INVESTMENTS, LP, a Texas limited partnership (the “Company”), for the purposes and considerations stated below:

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

**WHEREAS**, all capitalized terms used herein shall have the meanings set forth in Article II of this Agreement; and

**WHEREAS**, the City and the Company are hereinafter sometimes referred to individually as a “Party” and collectively as the “Parties”; and

**WHEREAS**, the Company is in the business of constructing, owning, leasing and operating affordable housing projects; and

**WHEREAS**, the Company will construct, or cause its contractors to construct, an affordable housing project consisting of a four (4) building, 155 unit multi-family residential rental project, clubhouse and structured parking to be known as Villas of Vanston Park Apartments, located on the real property commonly known as 4540 Gus Thomasson Road, Mesquite, Dallas County, Texas and being more particularly described on Exhibit A attached hereto and made a part hereof for all purposes (the “Project”); and

**WHEREAS**, the Project will also consist of approximately 9,000 square feet of space to be available for retail, office, live-work and/or other primarily non-residential uses as shown on the approved Site Plan (the “Commercial Rental Space”); and

**WHEREAS**, in connection with the Project, the Company will construct substantial improvements to the public infrastructure on and adjacent to the Project and along the North Gus Thomasson Corridor; and

**WHEREAS**, the residents of the Project will increase the number of patrons within walking distance of businesses located along the North Gus Thomasson Corridor; and

**WHEREAS**, the Commercial Rental Space will promote local economic development and will stimulate business and commercial activity along the North Gus Thomasson Corridor; and

**WHEREAS**, the proposed Project presents the City with a rare catalyst opportunity to launch the revitalization of the distressed North Gus Thomasson Corridor and the Project will play a crucial role in such revitalization efforts; and

**WHEREAS**, a housing study conducted in 2010 for the North Gus Thomasson Corridor notes that future retail activity within the commercial redevelopment zone of the corridor, which includes the site of the proposed Project, must be made accessible to low to moderate income households, and further, the study recommends that the City “should explore mechanisms to incentivize developers to construct new affordable housing units” as a means for stabilizing housing conditions over the long term; and

**WHEREAS**, the proposed Project is designed to comply with the City’s North Gus Thomasson Corridor Revitalization Code, and once constructed, the Project will affirmatively demonstrate the City’s goal to encourage new construction and rehabilitation within the North Gus Thomasson Corridor; and

**WHEREAS**, the Project design includes a vertical mixed-use component, which is the first of its kind within the City of Mesquite, and upon issuance of the building permit for construction will satisfy a requirement of the North Central Texas Council of Governments Sustainable Development grant and qualify the City for reimbursement of a ten percent retainage in the amount of \$375,000 over the life of the grant; and

**WHEREAS**, the construction of the Project will result in an increase in the taxable value of the Land and improvements located on the Land thereby adding value to the City's tax rolls and increasing the ad valorem taxes to be collected by the City and other taxing jurisdictions; and

**WHEREAS**, the Company has advised the City that a contributing factor inducing the Company to construct the Project is the agreement by the City to provide the Economic Development Incentives more fully set forth in this Agreement to the Company upon the terms and subject to the conditions more fully set forth in this Agreement; and

**WHEREAS**, the City has established an Economic Development Program pursuant to Section 380.001 of the Texas Local Government Code (the "Program") and authorizes this Agreement as part of the Program; and

**WHEREAS**, the Company desires to participate in the Program by entering into this Agreement and has filed a Business Incentive Program Application describing the Project and the attendant benefits; and

**WHEREAS**, the City Council finds and determines that the Project will benefit the City and its citizens because, inter alia, (i) the Project will provide affordable housing in the City; (ii) the Project will promote local economic development and stimulate business and commercial activity in the City; (iii) substantial improvements to the public infrastructure on and adjacent to the Project and along the North Gus Thomasson Corridor will be constructed in connection with the Project; (iv) the Project will increase the taxable value of the Land and improvements located on the Land thereby adding value to the City's tax rolls and increasing the ad valorem taxes to be collected by the City; and (v) the Project will be a catalyst to the revitalization of the North Gus Thomasson Corridor; and

**WHEREAS**, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the granting of the Economic Development Incentives more fully set forth herein on the terms and subject to the conditions more fully set forth herein will benefit the City and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City.

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

## **ARTICLE I**

### **Incorporation of Recitals**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

## ARTICLE II

### Definitions

As used herein, the following terms shall have the following meanings, to-wit:

“Agreement” shall mean this agreement together with all exhibits attached hereto, as hereafter amended in writing signed by the Parties.

“Architect” shall mean JHP Architecture/Urban Design, PC. and each other architect, whether one or more, engaged by Company, and approved in writing by the City, in connection with the design and construction of the Project Improvements or the Public Infrastructure.

“Bank” shall mean COMMUNITYBANK OF TEXAS, N.A., a national banking association having its address at 5999 Delaware, Beaumont, Texas 77706-7607, Attn: Mahesh S. Aiyer, its successors and assigns (to the extent expressly permitted by the Bank Loan Documents).

“Bank Loan” shall mean collectively, (a) prior to the “Conversion Date” as defined in the Bank Loan Documents, the construction loan by the Bank to the Company in the principal amount of up to \$16,000,000.00 for the construction of the Project Improvements in accordance with the Bank Loan Agreement, and (b) on and after the “Conversion Date” as defined in the Bank Loan Documents, the permanent loan by the Bank to the Company in the principal amount of up to \$6,900,000.00.

“Bank Loan Agreement” shall mean that certain Credit Support and Funding Agreement by and between the Company and the Bank pertaining to the Bank Loan.

“Bank Loan Documents” shall mean the Bank Loan Agreement, the Bank Note, the Bank Mortgage, the Intercreditor Agreement, all other documents defined as the “Loan Documents” in the Bank Loan Agreement and such other instruments, documents, and agreements governing, evidencing, securing, or pertaining to the Bank Loan which have heretofore been or hereafter are from time to time executed and delivered to Bank by Company or any other Person pursuant to the Bank Loan.

“Bank Mortgage” shall mean that certain Multifamily Leasehold Construction and Permanent Deed of Trust, Assignment of Rents, and Security Agreement and Fixture Filing executed by the Company for the benefit of the Bank covering, among other things, the sub-leasehold interest in the Land and the Project Improvements, and all amendments, supplements, restatements, renewals, and extensions thereof.

“Bank Note” shall mean that certain Promissory Note in the maximum amount of up to \$16,000,000.00, executed by Company and made payable to the order of the Bank, and all renewals, extensions, modifications, increases, restatements, replacements, and rearrangements thereof.

“Broadway Street Improvements” shall mean those improvements generally depicted in Exhibit C attached hereto and made a part hereof for all purposes and being more particularly described in the Broadway Street Plans.

“Building Official” shall mean “Building Official” as defined in Section 202, “Definitions,” of Chapter 2, “Definitions,” of the *International Building Code*, 2009 Edition, a publication of the International Code Council, adopted and designated as the official building code of the City.

“Building Permit” shall mean a written authorization issued, after review and verification of code compliance, by the Building Official to an applicant for a specific project allowing the applicant to proceed with construction, and includes any construction-related permit required under Section 105, “Permits,” of Part 2, “Administration and Enforcement,” of Chapter 1, “Scope and Administration,” of

the *International Building Code*, 2009 Edition, a publication of the International Code Council, adopted and designated as the official building code of the City.

“Capital Contribution Account” shall have the meaning set forth in the Bank Loan Agreement.

“Capital Contributions” shall have the meaning set forth in the Bank Loan Agreement.

“Certificate of Compliance” shall mean a certificate in the form agreed to by the Parties pursuant to Section 7.1(3) of this Agreement, executed on behalf of the Company by a duly authorized Company Representative certifying to the City that: (i) there has not been a Material Adverse Change in the business, operations, properties or condition (financial or otherwise) of the Company since the execution and delivery of this Agreement; (ii) all Conditions Precedent have been satisfied and are then continuing; and (iii) that no Company Default then exists under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a Company Default under the terms of this Agreement.

“Certificate of Occupancy” shall mean Certificate of Occupancy as defined by Section 6-102, “Definitions,” of Article 6-100, “Definitions and Interpretation of Terms,” of Part 6, “Definitions,” of Appendix C, “Zoning Ordinance,” of the Mesquite City Code, as amended, and as interpreted, administered and enforced by the Director; and includes the certificate of occupancy required under Section 111, “Certificate of Occupancy,” of Part 2, “Administration and Enforcement,” of Chapter 1, “Scope and Administration,” of the *International Building Code*, 2009 Edition, a publication of the International Code Council, adopted and designated as the official building code of the City, and as interpreted, administered and enforced by the Building Official.

“City” shall mean the City of Mesquite, a Texas home rule municipality.

“City Default” shall have the meaning set forth in Section 11.3 of this Agreement.

“City Engineer” shall mean an employee, agent, representative or independent contractor of the City that is an engineer and is the person designated by the City to conduct inspections of the Public Infrastructure and/or the Project Improvements pursuant to this Agreement on behalf of the City.

“City Loan” shall mean collectively, (a) prior to the Conversion Date defined in the City Loan Documents, the construction loan by the City to the Company in the principal amount of up to \$1,127,400.00 for the construction of the Public Infrastructure, the Streetscape Improvements and the Oncor Relocation in accordance with the City Loan Agreement, provided, however, such amount may hereafter be adjusted as more fully set forth in Article VI and in the City Loan Documents, and (b) on and after the Conversion Date defined in the City Loan Documents, the permanent loan by the City to the Company in the principal amount of up to \$1,127,400.00, provided, however, such amount may hereafter be adjusted as more fully set forth in Article VI and in the City Loan Documents.

“City Loan Agreement” shall mean that certain Construction Loan Agreement by and between the Company and the City pertaining to the City Loan containing such terms, provisions, covenants, conditions and agreements as are acceptable to the City in its sole discretion and agreed to by the Company. Without limiting the foregoing, the City Loan Agreement will include the provisions set forth in Section 6.2 of this Agreement.

“City Loan Documents” shall mean the City Loan Agreement, the City Note, the Intercreditor Agreement, all other documents defined as the “Loan Documents” in the City Loan Agreement and such other instruments, documents, and agreements governing, evidencing, securing, or pertaining to the City Loan which have heretofore been or hereafter are from time to time executed and delivered to City by Company or any other Person pursuant to the City Loan.

“City Note” shall mean that certain Promissory Note in the maximum amount of up to \$1,127,400.00 (provided, however, such amount may hereafter be adjusted as more fully set forth in Article VI and in the City Loan Documents) containing the following general terms: (i) a maximum interest rate of 3% per annum; (ii) a term not to exceed 15 years; (iii) interest-only payments for the first 10 years with principal and interest payments during years 11 through 15, inclusive; and (iv) right of prepayment without penalty and such Promissory Note shall further contain such additional terms, provisions, covenants, conditions and agreements as are acceptable to the City in its sole discretion and agreed to by the Company and shall be executed by the Company and made payable to the order of the City, and all renewals, extensions, modifications, increases, reductions, restatements, replacements, and rearrangements thereof. Without limiting the foregoing, the City Note will include the provisions set forth in Section 6.2 of this Agreement.

“City Termination Notice” shall have the meaning set forth in Section 11.1 of this Agreement.

“Commence Construction” or “Commencement of Construction” shall mean that: (i) the plans have been prepared and all approvals thereof required by applicable Governmental Authorities have been obtained for construction of the improvements; (ii) the Building Permit for the construction of the improvements has been issued by the applicable Governmental Authorities; and (iii) construction of the building elements of the improvements (whether located above or below ground) has commenced.

“Commercial Rental Space” shall have the meaning set forth in the Recitals to this Agreement.

“Company” shall mean Vanston Park Investments, LP, a Texas limited partnership, its successors and permitted assigns.

“Company Default” shall have the meaning set forth in Section 11.2 of this Agreement.

“Company Representative” shall mean the Chief Executive Officer, Chief Financial Officer or Manager of the General Partner of the Company.

“Condition Precedent” shall mean each condition precedent set forth in Article VII of this Agreement individually and “Conditions Precedent” shall refer collectively to more than one Condition Precedent up to and including all Conditions Precedent set forth in Article VII of this Agreement.

“Construction Contracts” shall mean the contracts now and hereafter executed by the Company and the Contractor in connection with the construction of the Public Infrastructure and/or the Project Improvements.

“Contractor” shall mean SDC Construction, LLC and each other general contractor, whether one or more, engaged by Company, and approved in writing by the City, to construct the Public Infrastructure and/or the Project Improvements, and charged by the Company with responsibility for monitoring and reporting on the quantity and quality of work performed.

“Conversion Date” shall have the meaning set forth in the City Note.

“Credit Agency” shall mean the Texas Department of Housing and Community Affairs, together with its successors and assigns in such capacity.

“Credit Agency Documents” shall mean the LURA, QAP, all regulations establishing requirements of the Credit Agency for maintaining the Low Income Housing Tax Credit, the “extended low-income housing commitment”, as such term is used in § 42(h)(6) of the Internal Revenue Code executed by the Bank and delivered to the Company, and all other agreements now and/or hereafter executed between the Company and the Credit Agency relating to the Project.

“Development Fees” shall mean fees normally assessed by the City and paid by the Company in connection with the construction of the Public Infrastructure and the Project Improvements and shall include, among other things, plan review fees, building permit fees, inspection fees, connection fees and impact fees.

“Development Fees Grant” shall mean an economic development grant provided by the City to the Company through the waiver by the City of not less than \$87,000.00 of Development Fees as more fully set forth in herein.

“Director” shall mean the City’s Director of Community Development or his designee.

“Economic Development Incentives” shall collectively mean the City Loan, Project-Based Voucher Incentive, and Development Fees Grant.

“Effective Date” shall mean the date the Company and the City execute this Agreement if both the Company and the City execute this Agreement on the same date. If the Company and the City execute this Agreement on different dates, any reference to the “Effective Date” shall mean the later of the two dates this Agreement is executed by the Company and the City.

“Engineer” shall mean CEI Engineering Associates, Inc. and each other engineer, whether one or more, engaged by Company, and approved in writing by the City, in connection with the design and construction of the Project Improvements and/or the Public Infrastructure.

“Event of Bankruptcy or Insolvency” shall mean: (i) if Company shall (a) apply for or consent to the appointment of a receiver, trustee or liquidator of the Company or all or a substantial part of its assets, (b) file a voluntary petition commencing a bankruptcy or other insolvency proceeding, (c) make a general assignment for the benefit of creditors, (d) be unable, or admit in writing its inability, to pay its debts generally as they become due, or (e) file an answer admitting the material allegations of a petition filed against it in a bankruptcy or other insolvency proceeding; and (ii) an order, judgment, or decree entered against Company by any court of competent jurisdiction or by any other duly authorized authority, on the petition of a creditor or otherwise, granting relief in a bankruptcy or other insolvency proceeding or approving a petition seeking reorganization or an arrangement of its debts or appointing a receiver, trustee, conservator, custodian or liquidator of it or all or any substantial part of its assets and such order, judgment or decree shall not be dismissed or stayed within 60 days.

“Event of Force Majeure” shall mean a major unforeseeable act or event that: (i) prevents a Party from performing its obligations under this Agreement (the “Non-Performing Party”); (ii) is beyond the reasonable control of the Non-Performing Party; (iii) is not caused by any act or omission on the part of the Non-Performing Party or the Non-Performing Party’s officers, agents, representatives, employees, contractors, customers or invitees; and (iv) could not have been prevented or avoided by the exercise by the Non-Performing Party of such reasonable diligence and reasonable care as would be exercised by a prudent person under similar circumstances. An “Event of Force Majeure” must satisfy each of the above requirements and includes but is not necessarily limited to the following, to-wit: lightning, floods, ice storms, hurricanes, tornadoes, earthquakes, natural disasters, acts of God, explosions, fires, war, terrorism, civil disturbance, temporary work stoppages due to strikes by employees and material shortages due to the inability of the Company to obtain materials from the Company’s suppliers for reasons other than the cost of the materials. Notwithstanding the foregoing, an “Event of Force Majeure” does not include any financial or economic hardship, changes in market or economic conditions, or insufficiency of funds.

“Governmental Authority” shall mean any nation, country, commonwealth, territory, government, state, county, parish, municipality, agency, or other political subdivision and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government (which shall include the City), including, without limitation, any state agencies and Persons responsible in whole or in part for monitoring compliance with all land use restriction agreements relating to the Low-



Income Housing Tax Credit, and for environmental matters in the state in which Company is located or otherwise conducting its business activities and the United States Environmental Protection Agency. “Governmental Authorities” shall mean more than one Governmental Authority.

“Governmental Permits” shall mean all certificates, licenses, zoning variances, warrants, permits, and no action letters from any Governmental Authority required as evidence of full compliance by the Company, and conformance of the construction of the Public Infrastructure and the Project Improvements, with all Requirements of Law applicable to the Land, the construction of the Public Infrastructure and the Project Improvements to completion, and the operation of the Project Improvements.

“Ground Sub-Lease” shall collectively mean that certain Amended and Restated Sublease Agreement dated effective as of January 7, 2013, between Broadway Square, Inc., as sublessor, and Sphinx Development Corporation, as sublessee (which has assigned its interest in the sublease to the Company), as amended by that certain First Amendment to Amended and Restated Sublease Agreement dated effective June 23, 2014, between Broadway Square, Inc., as sublessor, Sphinx Development Corporation, as sublessee, and the Company, as assignee, covering the leased premises more fully described therein including, without limitation, the Land.

“HAP Contracts” shall mean Part I, Part II and all exhibits of that certain PBV Agreement to Enter into Housing Assistance Payments Contract now or hereafter executed between the Company and the City relating to the construction of the PBV Units in compliance with HUD HQS and Part 1, Part 2 and all exhibits of any PBV Housing Assistance Payments Contract hereafter entered into between the City and the Company pursuant to the PBV Agreement to Enter into Housing Assistance Contracts relating to housing assistance payments for eligible families who lease the PBV Units.

“HQS” shall mean the HUD minimum quality standards for dwelling units occupied by families receiving project-based voucher program assistance.

“HUD” shall mean the U.S. Department of Housing and Urban Development, together with its successors and assigns in such capacity.

“Indemnitee” and “Indemnitees” shall have the meaning set forth in Section 12.19 of this Agreement.

“Initial Capital Contribution” shall have the meaning set forth in the Bank Loan Agreement.

“Intercreditor Agreement” shall mean that certain Subordination Agreement among Bank, Company and the City subordinating the City Loan to the Bank Loan under the terms and conditions more fully set forth in the Intercreditor Agreement.

“Internal Revenue Code” shall mean the Internal Revenue Code of 1986, as amended; all references to a particular section of the Internal Revenue Code include (a) rulings of the Internal Revenue Service applicable to such sections and (b) final, proposed and temporary regulations issued under the Internal Revenue Code with respect to such sections, to the extent such are available to the general public.

“Land” shall mean the land located at 4540 Gus Thomasson Road, Casa View Heights Neighborhood Revitalization Plan, in Mesquite, Dallas County, Texas, and which is more particularly described in Exhibit B attached hereto and made a part hereof for all purposes.

“Limited Servicer” shall mean Bank of America, N.A., a national banking association, and any replacement or substitution thereof as provided in the Bank Loan Agreement.

“Low-Income Housing Tax Credit” shall mean the allocation of a 2013 Low-Income Housing Credit as that term is used in Section 42 of the Internal Revenue Code allocated to the Premises in the anticipated amount of approximately \$1,500,000.00 annually for ten (10) years (total sum of award is anticipated to be approximately \$15,000,000.00).

“LURA” shall mean that certain Land Use Restriction Agreement between the Company and the Credit Agency in the standard form promulgated by the State of Texas and otherwise satisfying all requirements of Internal Revenue Code §42(h)(6) and all other state and federal requirements for maintaining a Low-Income Housing Tax Credit for the Premises.

“Market Rate” shall mean rent charged for comparable units in the private unassisted market.

“Material Adverse Change” shall mean any act, circumstance, or event (including, without limitation, any announcement of action) which (i) causes a Company Default, (ii) otherwise could reasonably be expected to be material and adverse to the financial condition or operations of Company, and (iii) in any manner could reasonably be expected to materially and adversely affect the validity or enforceability of any City Loan Document.

“Maximum Rate” shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by the City in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits the City to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law).

“Mesquite City Code” shall mean the Code of the City of Mesquite, Texas, including all appendices, adopted under the authority of Chapter 53, “Code of Municipal Ordinances,” of the Texas Local Government Code and Section 2, Codification of Ordinances,” of Article III, “Corporate Powers,” and Section 23, “Codification of Ordinances, of Article IV, “Officers and Elections, of the City Charter of Mesquite, Texas, as amended.

“North Gus Thomasson Corridor” shall mean the North Gus Thomasson Corridor established by the North Gus Thomasson Corridor Revitalization Code, as amended, generally described as a commercial corridor situated along Gus Thomasson Road between Interstate Highway 30 North to the City Limit Line.

“North Gus Thomasson Corridor Revitalization Code” or “NGTCRC” shall mean the North Gus Thomasson Corridor Revitalization Code, as amended, established by Ordinance No. 4022, adopted by the Mesquite City Council on December 15, 2008, as amended by Ordinance No. 4187, adopted by the Mesquite City Council on November 7, 2011.

“Notice of Undocumented Worker Violation” shall have the meaning set forth in Section 10.3 of this Agreement.

“Oncor Relocation” shall have the meaning set forth in the definition of the Thomasson Square Project and shall include, without limitation, the adjustment of utilities within the rights-of-ways of Gus Thomasson Road, Oates Drive and Forrest Drive that abut the Project.

“Owner” shall mean J.B. Galloway and W. B. Hailey, their successors and permitted assigns.

“Partnership Agreement” shall have the meaning set forth in the Bank Loan Agreement.

“Party” and “Parties” shall have the meanings set forth in the Recitals to this Agreement.

“Payment and Performance Bond” shall mean a payment and performance bond reasonably acceptable to the City issued by a corporate surety in accordance with Article 7.19-1 of Vernon’s Texas

Insurance Code and issued in compliance with Chapter 2253 of the Texas Government Code (the bond shall contain an obligee clause in favor of the City).

“PBV Units” shall mean the portion of the Residential Units that are leased to individuals or families receiving housing assistance pursuant to the HAP Contracts.

“Person” shall mean any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

“Premises” shall mean the Land, the Project Improvements, and any other improvements, fixtures, and buildings currently or hereafter existing on the Land.

“Primary Lease” shall mean that certain Lease Agreement between J.B. Galloway and W.B. Hailey, as lessors, and Broadway Square, Inc., as lessee, dated December 14, 1960, as now and hereafter amended.

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

“Project” shall have the meaning set forth in the recitals to this Agreement.

“Project-Based Voucher Incentive” shall have the meaning set forth in Section 6.3 of this Agreement.

“Project Completion Date” shall mean December 31, 2015.

“Project Improvements” shall mean the four (4) building, 155-unit multi-family residential rental project, clubhouse and structured parking to be known as Villas of Vanston Park Apartments and the Commercial Rental Space to be located on the Land and to be constructed with the proceeds of the Capital Contributions and the Bank Loan in accordance with the Project Plans.

“Project Plans” shall mean the plans and specifications relating to the Project Improvements which have been prepared by the Company’s Architect or Engineer and delivered to and then reviewed and approved by the Bank and the City, and any and all amendments thereto approved by the Bank and the City.

“Public Infrastructure” shall mean, without limitation, the Broadway Street Improvements, including the transition and connection to the Thomasson Square Project; the Water & Sewer Improvements; drainage improvements and appurtenances; fire lines to be dedicated to the City; street lighting, the streetside plaza, street trees, landscaping and other amenities within the public right-of-ways; and on-street parking with streetscape improvements on Forrest Drive, all as defined herein or in the City Loan Documents or shown on the Project Plans, and which may be constructed by the Contractor under separate contracts with the Company or a consolidated contract for all such improvements.

“Public Infrastructure Plans” shall mean the plans and specifications relating to the Public Infrastructure which have been prepared by the Company’s Engineer and delivered to and then reviewed and approved by the City, and any and all amendments thereto approved by the City.

“QAP” shall mean the Qualified Allocation Plan for the 2013 Housing Tax Credit Program adopted by the Credit Agency (as may be amended, replaced, or superseded).

“Required Use” shall mean the continuous use and operation of: (i) a 155 unit multi-family residential rental project and clubhouse providing affordable housing, with structured parking; and (ii) the Commercial Rental Space.

“Requirements of Law” shall mean, as to any Person, the certificate or articles of incorporation and by-laws, partnership agreement, or other organizational or governing documents of such Person; all applicable requirements of the Ground Sub-Lease, the Primary Lease, the Partnership Agreement, requirements of this Agreement and the City Loan Documents, the QAP, and other requirements of the Credit Agency for maintaining the Low Income Housing Tax Credit, the LURA, and any other restrictions or covenants affecting the use and development of the Premises; and any applicable law, treaty, ordinance, order, judgment, rule, decree, regulation, or determination of an arbitrator, court, or other Governmental Authority, including, without limitation, rules, decrees, judgments, regulations, orders, and requirements for permits, licenses, registrations, approvals, or authorizations (and any authoritative interpretation of any of the foregoing); in each case as such now exist or may be hereafter amended and are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject. Without limiting the generality of the foregoing, Requirements of Law shall also include, without limitation, the requirements of Section 42 of the Internal Revenue Code, any and all applicable (a) federal, state and municipal laws, codes, ordinances, rules and regulations applicable to the Premises, whether currently existing or hereafter promulgated provided that non-conforming use shall be allowed, including without limitation environmental laws, building codes, land use, and zoning codes, (b) all requirements and terms of the most recently adopted QAP as adopted by the Credit Agency, and (c) federal regulations and policies issued pursuant to these regulations, including without limitations: (a) the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157); (b) the Uniform Federal Accessibility Standards, 24 CFR Part 40, Appendix A; (c) the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973 and 24 CFR Part 8 where applicable; (d) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and regulations at 49 CFR Part 24; and (e) for existing properties built prior to 1978, the Lead-Based Paint Poisoning Protection Act (42 U.S.C. §4831(b) and the Residential Lead Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856) and implementing regulations at 24 CFR Part 35.

“Residential Units” shall mean the 155 multi-family residential units being constructed as part of the Project.

“Site Plan” shall mean a plan complying with the requirements of all applicable regulations, including but not limited to Section 5-101, “General Review Requirements,” of Article 5-100, “Review and Enforcement Procedures,” of Part 5, “Administration,” of Appendix C, “Zoning Ordinance,” of the Mesquite City Code, as amended, and as interpreted, administered and enforced by the Director.

“Streetscape Improvements” shall mean those improvements described generally in the definition of Thomasson Square Project and being more particularly described in the plans and specifications for the Thomasson Square Project and made a part hereof for all purposes.

“Sublessor” shall mean Broadway Square, Inc., a Texas corporation, its successors and permitted assigns.

“Substantially Complete” shall mean: (i) that the Company has delivered to the City a Certificate of Substantial Completion for the improvement on Standard AIA Form G-704 certified by the Company’s Architect; and (ii) with respect to the Public Infrastructure or any component thereof, the City has inspected the improvements and the improvements have been dedicated to the City, or the City is willing to accept dedication to the City as evidenced by a written document signed by the City; and (iii) with respect to the Project Improvements, a Certificate of Occupancy for the Project Improvements has been issued, or the City is willing to issue a Certificate of Occupancy for the Required Use as evidenced by a written document signed by the City.

“Tax Credit Allocation” shall mean the letter (or other form of notice) awarding the allocation of a Low-Income Housing Tax Credit for the Premises.

“Tax Year” shall mean a period consisting of three hundred and sixty five (365) calendar days [or three hundred and sixty six (366) calendar days for any calendar year that is a leap year] beginning on January 1<sup>st</sup> of each calendar year during the Term of this Agreement and continuing until and including December 31<sup>st</sup> of the same calendar year.

“Temporary Periods” as used herein shall mean one or more periods of time when the Company’s continued use of the Project Improvements for the Required Use is prevented by an Event of Force Majeure, provided, however, in no event shall any such period exceed the period of time prescribed in writing by the Director or Building Official..

“Term” shall have the meaning set forth in Article IV of this Agreement.

“Thomasson Square Project” shall mean that certain street reconstruction project scheduled to commence in 2015, which is to be paid by the City and funded in part by a sustainable development grant from the North Central Texas Council of Governments, and which shall make pedestrian, bicycle, landscaping, lighting and other above-ground streetscape improvements (collectively the “Streetscape Improvements”) within the right-of-way of Gus Thomasson Road between Moon Drive-Whitson Way and Karla Drive, including that portion of the Gus Thomasson Road and Oates Drive frontages to be occupied by the Project. For purposes of this Agreement, “Thomasson Square Project” shall include all ancillary contracts for improvements, utilities and appurtenances on public or private property necessary and proper to remove, relocate and install ONCOR power, telephone and cable facilities, underground or aerial, to effectively reconstruct the street in accordance with the NGTCRC and prepare private property for redevelopment in accordance with the NGTCRC (the “Oncor Relocation”), including those portions of the Gus Thomasson Road, Oates Drive and Forrest Drive frontages to be occupied by the Project.

“Undocumented Workers” shall mean individuals who, at the time of employment with the Company, are not: (i) lawfully admitted for permanent residence to the United States or are not authorized under law to be employed in that manner in the United States; and (ii) such other Persons as are now or hereafter included within the definition of undocumented workers pursuant to 8 U.S.C. §1324a (f) or any other applicable law or regulation.

“Water & Sewer Improvements” shall mean those improvements generally depicted in Exhibit D attached hereto and made a part hereof for all purposes and being more particularly described in the Water & Sewer Plans.

### ARTICLE III

#### Authority for Agreement

This Agreement is authorized by Article III, Section 52-a, of the Texas Constitution and Chapter 380 of the Texas Local Government Code. The City Council finds and determines that substantial economic benefit will accrue to the City as a result of the Project and that the Project will benefit the City and its citizens because, inter alia, (i) the Project will provide affordable housing in the City; (ii) the Project will promote local economic development and stimulate business and commercial activity in the City; (iii) substantial improvements to the public infrastructure on and adjacent to the Project and along the North Gus Thomasson Corridor will be constructed in connection with the Project; (iv) the Project will increase the taxable value of the Land and the improvements located on the Land thereby adding value to the City’s tax rolls and increasing the ad valorem taxes to be collected by the City; and (v) the Project will be a catalyst to the revitalization of the North Gus Thomasson Corridor and accordingly, the value of the benefits of this Agreement to the City will outweigh the incentives to be paid by the City under this Agreement.

## ARTICLE IV

### Term

The Term of this Agreement shall commence on the Effective Date and shall continue for fifteen (15) years after the Project Completion Date, unless sooner terminated as provided herein.

## ARTICLE V

### Streetscape Improvements Oncor Relocation

As part of the Project, and in compliance with the NGTCRC, the Company would normally be required to construct the Streetscape Improvements and pay the Oncor Relocation costs. Due to the complex, integrated nature of the Thomasson Square Project, the Company's portion of the total costs of the Streetscape Improvements and the Oncor Relocation cannot be precisely allocated to or calculated for the Project; however, the Parties stipulate and agree that a reasonable share of the Streetscape Improvements apportioned to the Project equals EIGHTY SIX THOUSAND AND NO/100 DOLLARS (\$86,000.00) and a reasonable share of the Oncor Relocation apportioned to the Project equals ONE HUNDRED NINETY THOUSAND AND NO/100 DOLLARS (\$190,000.00). The Parties hereby stipulate that said sums represent a fair apportionment of the Streetscape Improvements and Oncor Relocation costs that, but for the Thomasson Square Project, the Company would be required to construct as part of the Project. The Company further acknowledges and agrees that the Company is and shall be responsible for all costs incurred in connection with other required improvements within the right-of-ways and for all costs incurred in making temporary or permanent utility connections to the Project, including but not limited to electric power, telephone and cable.

## ARTICLE VI

### Economic Development Incentives

The Economic Development Incentives to be provided by the City to the Company pursuant to this Agreement shall consist of the following, to-wit:

6.1 Maximum Amount. The aggregate of all Economic Development Incentives provided by the City to the Company shall not exceed ONE MILLION SIX HUNDRED FIFTY-SEVEN THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$1,657,400.00). In the event of any conflict between the terms and provisions of this Section 6.1 and any other provision of this Agreement, the provisions of this Section 6.1 shall control.

6.2 The City Loan. Subject to the terms and conditions set forth in the City Loan Documents and this Agreement including, without limitation, the satisfaction of the Conditions Precedent more fully set forth in Sections 7.1 and 7.2 below, the City agrees to loan to the Company and the Company agrees to borrow from the City, the sum of up to ONE MILLION ONE HUNDRED TWENTY SEVEN THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$1,127,400.00) provided, however, the Company and the City agree that at the sole option of the City, in lieu of advancing EIGHTY SIX THOUSAND AND NO/100 DOLLARS (\$86,000.00) cash or cash equivalent to the Company for the construction of the Streetscape Improvements and in lieu of advancing ONE HUNDRED NINETY THOUSAND AND NO/100 DOLLARS (\$190,000.00) in cash or cash equivalent to the Company for the Oncor Relocation costs, the City can elect at its sole option to construct the Streetscape Improvements up to a maximum of EIGHTY SIX THOUSAND AND NO/100 DOLLARS (\$86,000.00) and to pay the Oncor Relocation costs up to a maximum of ONE HUNDRED NINETY THOUSAND AND NO/100 DOLLARS on behalf of the Company and in the event the City elects to do so, the amount available for

advance under the City Loan shall without further agreement or documentation on behalf of the Company or the City be reduced by the sum of TWO HUNDRED SEVENTY SIX THOUSAND AND NO/100 DOLLARS (\$276,000.00) (the "City Loan"). The City Loan shall be evidenced by and subject to the terms, provisions, agreements, covenants and conditions set forth in the City Loan Agreement, the City Note and the other City Loan Documents. Up to EIGHT HUNDRED FIFTY ONE THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$851,400.00) of the proceeds of the City Loan shall be used solely for costs incurred in connection with the construction of the Public Infrastructure and shall be advanced as construction of the Public Infrastructure progresses and each such advance shall be upon such terms and subject to such conditions as more fully set forth herein and in the City Loan Documents. The remaining TWO HUNDRED SEVENTY SIX THOUSAND AND NO/100 DOLLARS (\$276,000.00) of the proceeds of the City Loan shall be used solely for costs incurred in connection with the construction of the Streetscape Improvements and the Oncor Relocation and, at the sole option of the City, shall either be advanced as construction of the Streetscape Improvements and the Oncor Relocation progresses or, if the City elects to construct the Streetscape Improvements and pay the costs of the Oncor Relocation as more fully set forth in this Section 6.2, the amount available for advance under the City Note shall be reduced by \$276,000.00, all upon the terms and subject to the conditions more fully set forth herein and in the City Loan Documents. If: (i) the Project Improvements are Substantially Complete by the Project Completion Date; (ii) the Public Infrastructure is Substantially Complete by March 31, 2016; (iii) the Company has met such other conditions for the reduction in the principal amount owed under the terms of the City Note as more fully set forth in the City Loan Documents; (iv) no default exists under the terms of the City Loan Documents and no event exists which, but for notice, the lapse of time or both would constitute a default under the terms of any one or more of the City Loan Documents; and (v) no Company Default exists and no event exists which, but for notice, the lapse of time, or both, would constitute a Company Default under the terms of this Agreement, the City, in consideration of and as an incentive to the Company to complete the Project and Public Infrastructure as expeditiously as possible, agrees to reduce the Company's obligation under the City Loan as of the date when all conditions set forth in Subsections 6.2(i) through 6.2(v) above, inclusive, have been satisfied to the lesser of: (a) SIX HUNDRED EIGHTY FOUR THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$684,400.00); or (b) the unpaid principal amount advanced under the terms of the City Note as of the date of such reduction, all upon such additional conditions and as more fully set forth in the City Loan Documents.

6.3 Project-Based Voucher Incentive. Subject to the terms and conditions set forth in this Agreement including, without limitation, the satisfaction of the Conditions Precedent more fully set forth in Sections 7.1 and 7.3 below, the City agrees to enter into HAP Contracts with the Company for eighteen (18) project-based vouchers for a period of five (5) years to provide project-based vouchers for housing assistance payments for eligible individuals and families who lease the PBV Units (the "Project-Based Voucher Incentive").

6.4 Development Fees Grant. Subject to the terms and conditions set forth in this Agreement including, without limitation, the satisfaction of the Conditions Precedent more fully set forth in Sections 7.1 and 7.4 of this Agreement, the City agrees to waive up to EIGHTY SEVEN THOUSAND AND NO/100 DOLLARS (\$87,000.00) of Development Fees associated with the design, permit approval, construction and inspection of the Public Infrastructure and the Project Improvements and required by the applicable development rules and regulations of the City. The particular Development Fees to be waived pursuant to this Agreement shall be subject to the written approval of the City. The City and the Company agree and acknowledge that the City has waived certain Development Fees prior to the Effective Date of this Agreement, and that subject to the terms and conditions of this Agreement, the City will continue to waive certain Development Fees after the Effective Date in anticipation of, and relying upon the representations of the Company, that the Company shall obtain an unconditional Building Permit and unconditional approval of a Site Plan for the Project Improvements. The total amount of the Development Fees waived prior to and after the Effective Date shall be applied against the City's total obligations under this Development Fees Grant. The Development Fees Grant shall be subject to recapture in the event of termination of this Agreement under Sections 10.3, 11.1 and 11.6 of this Agreement.

6.5 Limitations. Under no circumstances shall City be obligated to pay the Bank or any other commercial bank, lender or similar institution for any loan or credit agreement made by the Company. The Company shall not pledge or otherwise encumber its rights under this Agreement in favor of the Bank or any other commercial lender and/or similar financial institution.

6.6 Current Revenue. The Economic Development Incentives made hereunder shall be paid only from funds of the City authorized by Article III, Section 52-a, of the Texas Constitution and Texas Local Government Code Chapter 380. Each incentive, payment or advance thereon shall be subject to the City's appropriation of funds for such purpose to be paid in the budget year for which the incentive, payment or advance is to be made.

## ARTICLE VII

### Conditions Precedent to Economic Development Incentives

7.1 Conditions Precedent to the Granting of all Economic Development Incentives. The Company and the City hereby expressly acknowledge and agree that the granting by the City to the Company of each of the Economic Development Incentives more fully set forth herein shall expressly be conditioned upon the satisfaction of all of the following Conditions Precedent on or before the date of closing on the City Loan Documents, to-wit:

1. The Company and the City mutually agreeing to all of the terms, provisions, agreements, covenants and conditions of the City Loan and the City Loan Documents;
2. The Company executing and delivering to the City the original City Note and the Company and the City executing and delivering to each other executed counterparts of the City Loan Agreement and all other City Loan Documents containing only such terms, provisions, agreements, covenants and conditions as have been approved by the City and have been agreed to by the Company;
3. The Company and the City agreeing in writing to the form of the Certificate of Compliance to be delivered by the Company to the City at such times as more fully set forth in this Agreement;
4. The City, the Bank and the Company mutually agreeing to the terms of the Intercreditor Agreement;
5. The Company delivering to the City evidence reasonably acceptable to the City that the Initial Capital Contribution shall have been deposited with the Bank to pay budgeted items (or Company has provided the City with evidence that any portion of the Initial Capital Contribution not deposited in the Capital Contribution Account has been used to pay budgeted items in a manner satisfactory to Bank, Limited Servicer and the City);
6. The Company delivering to the City evidence reasonably acceptable to the City establishing that a 2013 Low-Income Housing Tax Credit as that term is used in Section 42 of the Internal Revenue Code has been allocated to the Premises in the anticipated amount of approximately \$1,500,000.00 annually for ten (10) years (total sum of award is anticipated to be approximately \$15,000,000.00) and that such Tax Credit Allocation has not been rescinded, repealed, cancelled or otherwise suspended and is in full force and effect and Company is in full compliance with the terms and provisions thereof;



7. The Company delivering to the City evidence reasonably acceptable to the City that the Bank Loan has closed in accordance with the terms of the Bank Loan Documents and the Company delivering to the City copies of the fully executed Bank Loan Documents and an executed counterpart of the Intercreditor Agreement executed by the City, the Company and the Bank;
8. The Company delivering to the City an executed copy of the Primary Lease (and all modifications and amendments thereto);
9. The Company delivering to the City an executed copy of the Ground Sub-Lease (and all modifications and amendments thereto);
10. The Company delivering to the City an executed copy of the Partnership Agreement (and all modifications and amendments thereto) and a copy of the filed Certificate of Limited Partnership for the Company and such other evidence of the Company's and its General Partner's (and its constituent entities, if any) existence and good standing as may be required by City;
11. The Company delivering to the City evidence of the authority of the Company (its General Partner and its General Partner's sole member) to enter into the transactions described herein including, without limitation, such certificates of organization, articles of organization and regulations (or operating agreement, if applicable) of the General Partner of Company, together with all modifications thereof; and
12. The Company delivering to the City such certificates of authority, certificates of good standing, certificates of existence, resolutions (with secretary's certificate), Secretary's certificates of incumbency, and all other documents required by City to evidence the existence and good standing of the Company, authorizing the transactions contemplated herein and designating the officer(s) authorized to execute this Agreement and the City Loan Documents on behalf of the Company.

7.2 Specific Conditions Precedent to each Advance under the City Loan. The Company and the City hereby expressly acknowledge and agree that each advance by the City to the Company under the City Loan shall expressly be conditioned upon the satisfaction of each of the following additional Conditions Precedent, to-wit:

1. The Company and the City hereby expressly acknowledge and agree that each advance under the City Loan shall expressly be conditioned upon compliance in all respects with this Section 7.2(1) and V.T.C.A., Local Government Code §252.021, et. seq., regarding competitive bidding of the construction contract for the Public Infrastructure. In consideration of the City Loan, the Company agrees, at its sole cost and expense, to hire an Engineer to design the proposed Public Infrastructure and to prepare the Public Infrastructure Plans. At the Company's option, plans may be prepared for bidding under a bundled contract for all Public Infrastructure or for separate contracts for the specific components thereof (e.g., streets, water, sewer, drainage). The Public Infrastructure Plans shall be submitted to the City for review, approval and bidding in a customary form and manner approved by the City Engineer. Should the lowest responsible bid to construct the Public Infrastructure or any component thereof, when added to any previous advances or payments under the City Loan exceed the maximum amount available for advance under the terms of the City Note for construction of the Public Infrastructure, the Company may request a revision to the scope of the construction contract. Any revision to the scope of the construction contract shall be subject to approval by the Director. All construction costs, including those costs incurred as a result of change orders and claims, shall be paid by the Company, and the Company shall not look to the City for payment of

any such costs. Notwithstanding the foregoing, at the sole option of the City, the City may waive the Conditions Precedent set forth in this Section 7.2(1) if the City, in its sole discretion, determines that an exemption to the competitive bidding requirements for the construction of any or all of the Public Infrastructure applies under V.T.C.A. Local Government Code §252.022, or that an alternative method of competitive bidding from the City's customary method can meet the requirements thereof. No such waiver shall be valid or effective unless it is in writing and is signed by the City prior to the Commencement of Construction of the Public Infrastructure or any component thereof;

2. The Company delivering to the City executed copies of the general contract(s) for the construction of the Public Infrastructure, which contract(s) shall comply in all respects to the final approved Public Infrastructure Plans;
3. The Company delivering to the City proof in form and substance satisfactory to the City that the required permits and authorizations from all appropriate Governmental Authorities including, without limitation, the City, that are necessary or required in connection with the Commencement of Construction of the Public Infrastructure have been obtained or available to be obtained subject only to payment by Company of applicable fees, together with copies of all other required Governmental Permits;
4. The Company delivering to the City Payment and Performance Bonds in the amount of the Construction Contracts for the construction of the Public Infrastructure, unless the City waives this requirement in writing;
5. The Company shall have submitted to the City a request for an advance in compliance with the City Loan Documents accompanied by a duly executed Certificate of Compliance dated as of the date of such request for advance;
6. All conditions precedent to such advance more fully set forth in the City Loan Documents shall have been satisfied;
7. The amount of the advance, when added to all previous advances under the City Note, shall not exceed the maximum sum then available for advance under the terms of the City Note (as such sum may have been reduced as more fully set forth in the City Loan Documents and Section 6.2 of this Agreement);
8. The Contractor shall have inspected the Public Infrastructure and the Company shall have delivered to the City contemporaneously with each request for advance an AIA form G702 executed by the Engineer certifying: (i) the quantity and quality of work then in place in connection with the construction of the Public Infrastructure; (ii) that such quantity and quality of work includes the work for which the advance is being requested; and (iii) that the work for which the advance is being requested has been completed in compliance with the Public Infrastructure Plans;
9. A City Engineer shall have inspected the Public Infrastructure completed as of the date of each request for advance and shall have confirmed that the Public Infrastructure that has been completed as of the date of such request for advance has been constructed in a good and workmanlike manner and in conformity with sound construction practices and that the work for which the advance is being requested has been completed in compliance with the Public Infrastructure Plans and that the value of the work performed equals or exceeds the amount of the advance;
10. The Company shall have provided such other documentation requested by the City to verify that the Conditions Precedent of this Section 7.2 have been satisfied;

11. The Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of this Agreement and no Company Default shall then exist under the terms of this Agreement and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Company Default under the terms of this Agreement; and
12. The Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of the City Loan Documents, the HAP Contracts, the Bank Loan Documents, the Credit Agency Documents, the Ground Sub-Lease and the Construction Contracts and no default shall then exist under the terms of any one or more of such documents and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default under any one or more of such documents.

7.3 Additional Conditions Precedent to Project-Based Voucher Incentive. The Company and the City hereby expressly acknowledge and agree that the Project-Based Voucher Incentive shall expressly be conditioned upon the satisfaction of each of the following additional Conditions Precedent at all times throughout the five (5) year grant term, to-wit:

1. The execution by the City and the Company of the HAP Contracts;
2. The Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of the HAP Contracts and no default shall then exist by the Company under the terms of any one or more of the HAP Contracts and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default by the Company under any one or more of the HAP Contracts;
3. The approval by HUD of the HAP Contracts;
4. The City not having terminated any one or more of the HAP Contracts pursuant to a right to terminate set forth in the HAP Contracts;
5. The Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of the LURA, the QAP and all other agreements now and/or hereafter executed between the Company and the Credit Agency relating to the Project;
6. The Company shall construct and maintain the PBV Units in compliance with HUD's HQS and shall timely comply with all state and federal laws, rules and regulations to establish and maintain the PBV Units' eligibility for project-based voucher program assistance;
7. The Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of this Agreement and no Company Default shall then exist under the terms of this Agreement and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Company Default under the terms of this Agreement; and
8. The Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of the City Loan Documents, the HAP Contracts, the Bank Loan Documents, the Credit Agency Documents, the Ground Sub-Lease and the Construction Contracts and no default shall then exist under the terms of any one or more of such documents and no

event shall exist which, but for notice, the lapse of time, or both, would constitute a default under any one or more of such documents.

7.4 Additional Conditions Precedent to Development Fees Grant. The Company and the City hereby expressly acknowledge and agree that each waiver of a Development Fee shall expressly be conditioned upon the satisfaction of each of the following additional Conditions Precedent at the time of the waiver of such Development Fee, to-wit:

1. The Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of this Agreement and no Company Default shall then exist under the terms of this Agreement and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Company Default under the terms of this Agreement; and
2. The Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of the City Loan Documents, the HAP Contracts, the Bank Loan Documents, the Credit Agency Documents, the Ground Sub-Lease and the Construction Contracts and no default shall then exist under the terms of any one or more of such documents and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default under any one or more of such documents.

## ARTICLE VIII

### Company's Covenants

8.1 Company's Covenants. In consideration of the covenants and agreements of the City more fully set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the Company hereby covenants and agrees that during the Term of this Agreement and for so long as the City Loan remains unpaid, in whole or in part, the Company covenants and agrees with the City as follows:

1. To timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of this Agreement, the City Loan Documents and all other agreements now and/or hereafter executed by and between the City and the Company;
2. To make full and timely payments of the principal and interest, if any, due under the terms of the City Note in accordance with the payment schedule set forth in the City Note, and to timely pay all other debts and obligations of the Company to the City, whether now existing or hereafter arising, as and when such sums become due and payable;
3. Prior to the Commencement of Construction of the Public Infrastructure and at all times thereafter until at least six (6) months after the Public Infrastructure is Substantially Complete, Company, at its sole cost and expense, shall obtain or require its contractors and all subcontractors performing all or any part of the work to obtain, insurance covering the types of risks, in such amounts, containing such provisions and meeting the insurance requirements of the City;
4. That the Broadway Street Improvements shall be Substantially Complete in the judgment of the Director and the City Engineer on or before March 31, 2016;

5. That the Water & Sewer Improvements shall be Substantially Complete in the judgment of the City Engineer on or before December 31, 2015;
6. That the Project Improvements shall be Substantially Complete in the judgment of the Director and the Building Official on or before December 31, 2015 (the "Project Completion Date");
7. That the Public Infrastructure and each component thereof shall be constructed in a good and workmanlike manner substantially in accordance with the Public Infrastructure Plans and in compliance with all Requirements of Law;
8. To dedicate the Public Infrastructure and each component thereof to the City for public use on the final Plat of the Land or in a manner approved by the City Engineer;
9. That the Project Improvements shall be constructed in a good and workmanlike manner substantially in accordance with the Project Plans and in compliance with all Requirements of Law;
10. To cooperate or require the Company's Contractor(s), Architect, Engineer, work crews or other representatives to cooperate at all times with the Director, the City Engineer, the Building Official, the City's contractors, work crews and other City representatives during the construction of the Thomasson Square Project so as not to cause undue delay or economic waste in the construction of the Thomasson Square Project.
11. To obtain an unconditional, permanent Certificate of Occupancy for the Project Improvements on or before March 31, 2016, unless the Director extends such date in writing and in the event the Director extends such date in writing, to obtain an unconditional, permanent Certificate of Occupancy for the Project by the date as extended by the Director.
12. To use the Project Improvements for the Required Use during the Term of this Agreement except for such Temporary Periods when the Company's continued use of the Project Improvements for the Required Use is prevented by an Event of Force Majeure;
13. During the Term of this Agreement, the Project Improvements shall not be used for any purpose other than the Required Use without prior written approval of the Director;
14. To timely pay all ad valorem taxes assessed against the Land and Project Improvements for the first Tax Year after the Project Completion Date and every Tax Year thereafter prior to the date such taxes become delinquent;
15. To use the proceeds of the City Loan only for the purposes set forth in this Agreement and the City Loan Documents and for no other purpose;
16. That the Commercial Rental Space will be leased only for retail, office, live-work and/or other primarily non-residential uses during the Term of this Agreement;
17. That during the Term of this Agreement at least 42 of the Residential Units will be leased at Market Rate, and the balance of the units will be income-restricted as required by the Credit Agency;
18. To timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of the HAP

Contracts, the Bank Loan Documents, the Credit Agency Documents, the Ground Sub-Lease and the Construction Contracts;

19. To timely comply with all Requirements of Law including, without limitation, all Requirements of Law relating to the ownership, use, occupancy and operation of the Project Improvements;
20. To timely comply with all rules, regulations and requirements of the Credit Agency and HUD to maintain the Project as an affordable housing project and to maintain the eligibility of the Project for project-based voucher program assistance;
21. To permit the City, and its duly authorized employees, independent contractors, inspectors, agents and representatives including, without limitation, an independent engineer acceptable to the City, to inspect the Public Infrastructure on such dates and at such times as the City may reasonably request during normal business hours;
22. To immediately notify the City in writing if the Company, the Company's partners, employees, agents and/or representatives receive any oral or written notice that any laborers, subcontractors or materialmen have not been paid when due for any labor or materials furnished in connection with the construction of the Public Infrastructure;
23. To notify the City in writing immediately upon the occurrence of: (i) a Company Default or event which, but for notice, the lapse of time, or both, would constitute a Company Default under the terms of this Agreement; and (ii) a default, or event which, but for notice, the lapse of time, or both, would constitute a default under the terms of any one or more of the City Loan Documents, the HAP Contracts, the Credit Agency Documents, the Bank Loan Documents, the Primary Lease, the Ground Sub-Lease and/or the Construction Contracts;
24. To deliver to the City within thirty (30) days after written request, copies of such records, information and documentation as the City may reasonably request to confirm compliance by the Company with the terms, provisions, agreements, covenants, conditions and obligations of the Company more fully set forth in this Agreement and the City Loan Documents and such additional information as may be requested to process the Economic Development Incentives;
25. To provide the City, its agents and employees, including without limitation the Building Official and City Engineer, with access to the Project Improvements and the offices, buildings and facilities of the Company at such times as the City may reasonably request to conduct such inspections as the City deems reasonably necessary for the purpose of confirming compliance by the Company with the terms, provisions, agreements, covenants, conditions and obligations of the Company pursuant to this Agreement and the City Loan Documents;
26. To provide a representative of the Company to accompany the City during all inspections conducted by the City pursuant to this Agreement; and
27. To abide by the Company's covenants under Article IX during the Term of this Agreement.

8.2 Survival. The covenants, agreements and obligations of the Company set forth in Article VIII of this Agreement shall expressly survive the expiration or termination of this Agreement.

## ARTICLE IX

### Company's Covenant Regarding the City's Public Revenue Benefits

9.1 Covenant for Ad Valorem Taxes. Company represents to the City that the Company is and will be responsible to pay all ad valorem taxes assessed against the Land and Project Improvements during the Term of this Agreement. The Company agrees and covenants that so long as the taxable value of the Land and Project Improvements for any given Tax Year after the Project Completion Date is determined in accordance with the methodology as set forth in the Texas Property Tax Code §23.012, then the Company shall not protest, challenge or appeal the valuation of the Land or the Project Improvements as assessed by Dallas County Appraisal District for such Tax Year during the Term of this Agreement.

9.2 Covenant for Sales and Use Taxes. The Company agrees that during the period of construction of the Public Infrastructure and the Project Improvements, the prime contract(s) to improve real property and all sub-contracts that contain significant materials that are to be incorporated into the real property (e.g. HVAC, electrical, roofing, plumbing, insulation, precast concrete, structural steel, etc.) shall separate the value of incorporated materials from all other charges within the terms of each contract. Accordingly, these contracts for sales/use tax purposes shall be "separated contracts" as defined by 34 Tax Administrative Code §3.291, and all significant incorporated materials should be purchased tax free for resale from both the prime and sub-contractor(s), and State and City sales tax shall be charged/collected/remitted by the prime contractor on the selling price of the separated value of the incorporated materials.

9.3 Survival. The covenants, agreements and obligations of the Company set forth in Article IX of this Agreement shall expressly survive the expiration or termination of this Agreement.

## ARTICLE X

### Company's Covenants Regarding Undocumented Workers Right of Recapture Remedies

10.1 Covenant Not to Employ Undocumented Workers. The Company hereby certifies that the Company and each branch, division, and department of the Company does not employ any Undocumented Workers and the Company hereby covenants and agrees that the Company and each branch, division and department of the Company will not knowingly employ any Undocumented Workers during the Term of this Agreement.

10.2 Covenant to Notify City of Conviction for Undocumented Workers. The Company further hereby covenants and agrees to provide the City with written notice of any conviction of the Company, or any branch, division or department of the Company, of a violation under 8 U.S.C. §1324a (f) within thirty (30) days from the date of such conviction.

10.3 Recapture of Development Fees Grant in Event of Conviction for Employing Undocumented Workers. The Company shall, within one hundred and twenty (120) business days after the date the City notifies the Company of a violation under 8 U.S.C. §1324a (f) (the "Notice of Undocumented Worker Violation"), pay to the City, at the City's address set forth in Section 12.5 of this Agreement, an amount equal to the total amount of all Development Fees that have been waived by the City under the terms of this Agreement as of the date of the Notice of Undocumented Worker Violation (including waivers made prior to and after the Effective Date), plus interest at the rate equal to the *lesser* of: (i) the Maximum Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on the amount of each Development Fee waived from the date such waiver was agreed to by the City until the date the Company pays the Development Fee to the City pursuant to this Section 10.3.

10.4 Recapture of City Loan. A violation of the covenants set forth in this Article X shall be a default under the terms of the City Loan Documents. In the event of a default under the terms of the City Loan Documents, the City shall have the right to exercise the remedies set forth in the City Loan Documents including, without limitation, the right to declare the outstanding unpaid principal balance plus all accrued but unpaid interest, if any, then due under the terms of the City Note immediately due and payable in full. Interest will accrue on such sum to the extent and at the rate set forth in the City Note.

10.5 Remedies. If the Company, or any branch, division or department of the Company, is convicted of a violation under 8 U.S.C. §1324a (f), the City shall have the right to exercise all the remedies set forth in Section 11.4 below and all remedies available pursuant to Chapter 2264 of the Texas Government Code.

10.6 Survival. The covenants, agreements and obligations of the Company and the rights and remedies of the City set forth in Article X of this Agreement shall expressly survive the expiration or termination of this Agreement.

## ARTICLE XI

### Termination, Defaults Remedies and Recapture

11.1 Termination. The City shall have the right to terminate this Agreement by written notice to the Company in the event any one or more of the Conditions Precedent set forth in Section 7.1 of this Agreement are not satisfied on or before the date of closing on the City Loan Documents (the “City Termination Notice”). In the event this Agreement is terminated pursuant to this Section 11.1, the Company shall, within thirty (30) days from the date of the City’s Termination Notice, pay to the City at the City’s address set forth in Section 12.5 of this Agreement, or such other address as the City may hereafter notify the Company in writing, an amount equal to the total amount of all Development Fees that have been waived by the City as of the date of the City Termination Notice (including waivers made prior to and after the Effective Date). In the event of the termination of this Agreement pursuant to this Section 11.1, neither Party hereto shall have any further rights or obligations hereunder except as provided in this Section 11.1 and except for those, if any, that expressly survive the termination of this Agreement. The rights and obligations of the Parties set forth in this Section 11.1 shall expressly survive the termination of this Agreement.

11.2 Company Default. Each of the following shall constitute a default by the Company under the terms of this Agreement (each a “Company Default”), to-wit:

- (i) If the Company shall fail to timely keep or perform any monetary term, provision, covenant, condition, obligation or agreement to be kept or performed by the Company under the terms of this Agreement and such failure continues for ten (10) days after written notice by the City to the Company;
- (ii) If the Company shall fail to timely keep or perform any non-monetary term, provision, covenant, condition, obligation or agreement to be kept or performed by the Company under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the City to the Company;
- (iii) If the Company shall fail to timely keep or perform any term, provision, covenant, condition, obligation or agreement to be kept or performed by the Company under the terms of any of the City Loan Documents and/or under the terms of any other agreement now or hereafter existing between the City and the Company and such failure continues past any applicable notice and/or cure period contained in such City Loan Document and/or other agreement;



- (iv) If the Company shall fail to timely keep or perform any term, provision, covenant, condition, obligation or agreement to be kept or performed by the Company under the terms of any one or more of the HAP Contracts, the Bank Loan Documents, the Credit Agency Documents, the Ground Sub-Lease and the Construction Contracts and such failure continues past any applicable notice and/or cure period contained in such document;
- (v) Any assignment by the Company of this Agreement other than as expressly allowed by Section 12.4 of this Agreement; and/or
- (vi) An Event of Bankruptcy or Insolvency by the Company.

11.3 City Default. The City shall be in default of this Agreement if the City fails to timely keep or perform any term, provision, covenant, condition, obligation or agreement to be kept or performed by the City under the terms of this Agreement and/or any other agreement now or hereafter existing between the Parties and such failure continues for sixty (60) days after written notice by the Company to the City (a “City Default”).

11.4 City Remedies. Upon the occurrence of a Company Default, the City may, at the City’s option, exercise any one or more of the following rights and/or remedies, to-wit:

- (i) terminate this Agreement by written notice to the Company in which event the City shall have the right to recapture all or part of the Economic Development Incentives as more fully set forth in Section 11.6 and Section 11.7 below and the City’s obligation to make any further advances, expenditures or payments under this Agreement shall terminate. More particularly, in the event of the termination of this Agreement pursuant to this Section 11.4(i), the City shall have no further obligation to: (a) make any further advances on the City Loan; (b) waive any Development Fees that accrue after the date of such termination; and/or (c) keep or perform any other term, provision, covenant, condition, obligation or agreement to be kept or performed by the City pursuant to the terms of this Agreement that does not expressly survive the termination of this Agreement;
- (ii) exercise any and/or all rights and/or remedies of the City under the terms of the City Loan Documents;
- (iii) if the Company Default is also a default under the terms of the HAP Contracts, the City shall have the right to exercise any rights and/or remedies of the City under the terms of the HAP Contracts; and/or
- (iv) exercise any and/or all other rights and/or remedies available to the City pursuant to the laws of the State of Texas.

11.5 Company Remedies. Upon the occurrence of a City Default, the Company shall have the right to terminate this Agreement by written notice to the City and shall further have the right to exercise any and/or all other rights and/or remedies available to the Company pursuant to the laws of the State of Texas.

11.6 Recapture of Development Fees Grant. In the event this Agreement is terminated by the City pursuant to Section 11.4(i) above, the Company shall immediately pay to the City, at the City’s address set forth in Section 12.5 of this Agreement, or such other address as the City may hereafter notify the Company in writing, an amount equal to the total amount of all Development Fees that have been

waived by the City under the terms of this Agreement as of the date of the City Termination Notice (including waivers made prior to and after the Effective Date).

11.7 Recapture of City Loan. A Company Default shall be a default under the terms of the City Loan Documents. In the event of a default under the terms of the City Loan Documents, the City shall have the right to exercise the remedies set forth in the City Loan Documents including, without limitation, the right to declare the outstanding unpaid principal balance plus all accrued but unpaid interest, if any, then due under the terms of the City Note immediately due and payable in full. Interest will accrue on such sum to the extent and at the rate set forth in the City Note.

11.8 Survival. The covenants, agreements, obligations, rights and remedies of the City and the Company set forth in Article XI of this Agreement shall expressly survive the expiration or termination of this Agreement.

## ARTICLE XII

### Miscellaneous Provisions Indemnity

12.1 Caption Headings. Caption headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

12.2 Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated herein. All prior negotiations, discussions, correspondence and preliminary understandings between the Parties are superseded by this Agreement. There are no oral agreements between the City and the Company.

12.3 Amendment. This Agreement may only be amended by a written document signed by the Company and the City.

12.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, notwithstanding anything contained herein to the contrary, this Agreement and the rights and obligations of the Company hereunder may not be assigned or transferred by the Company to any Person without the prior written consent of the City which may be withheld in the City's sole discretion. In the event the Company is a corporation or limited liability company, the sale, transfer or assignment of a controlling interest in the shares of the Company or the sale, transfer or assignment of a controlling interest in the membership interests of the Company shall constitute an assignment of this Agreement and the failure of the Company to obtain the prior written consent of the City prior to such sale, transfer or assignment of shares or membership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a Company Default. In the event the Company is a limited partnership, the sale, transfer or assignment of a controlling interest in the shares of a corporation or the membership interests of a limited liability company that is the Company's general or managing partner shall constitute an assignment of this Agreement and the failure of the Company to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares or membership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a Company Default. Furthermore, neither the Company nor any approved assignee or their legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of the Company or any approved assignee under this Agreement, without obtaining the City's prior written consent, which may be given or withheld in the City's sole discretion. Any consent by the City to any assignment of this Agreement shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. Every assignee shall be subject to and be bound by all the provisions, covenants, and conditions of this Agreement and shall be required to obtain the prior

written consent of the City with respect to any future or further assignment. Any attempted assignment in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement.

12.5 Notices. Any notice and/or certificate or statement required or permitted to be given under the terms of this Agreement shall be in writing and shall be considered properly given if mailed by United States mail, certified mail, return receipt requested, in a postage paid envelope addressed to the Party at the address set forth below, or by delivering same in person to the intended addressee by hand delivery or by a nationally recognized courier service such as Federal Express or United Postal Service. Notices mailed by certified mail as set forth above shall be effective upon deposit in the United States mail. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that any Party shall have the right to change such Party's address for notice purposes by giving the other Party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

Company: Vanston Park Investments, LP,  
A Texas limited partnership  
3030 LBJ Freeway, Suite 880  
Dallas, Texas 75234  
Attn: Joseph Agumadu  
Email: [joseph@sphinxdevelopment.com](mailto:joseph@sphinxdevelopment.com)

With a copy to: John C. Shackelford, Esq.  
Shackelford, Melton, McKinley & Norton, LLP  
3333 Lee Parkway  
Tenth Floor  
Dallas, Texas 75219  
Fax: (214) 780-1401  
E-mail: [jshack@shackelfordlaw.net](mailto:jshack@shackelfordlaw.net)

The Limited Partner: Bank of America, N.A.  
700 Louisiana 5<sup>th</sup> Floor  
Mail Code: TX4-213-05-15  
Houston, Texas 77002  
Attn: Cassandra Silvernail  
Senior Vice President  
Telephone: 713-247-6645  
Facsimile: 713-247-7049

With a copies to: Bank of America CDC Special Holding Company, Inc.  
c/o Bank of America Merrill Lynch, Tax Credit  
Equity Investment Asset Management  
225 Franklin Street  
MA1-225-02-02  
Boston, MA 02110  
Attn: Mark C. Nightingale  
Facsimile: 617-346-2724

Sidley Austin, LLP  
One South Dearborn Street  
Chicago, IL 60603  
Attn: David R. Hill, Esq.  
Facsimile: 312-853-7036

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

With copies to: City Attorney  
P. O. Box 850137  
Mesquite, Texas 75185-0137

Director of Community Development  
P.O. Box 850137  
Mesquite, Texas 75185-0137

12.6 City Inspections. Company hereby acknowledges that all inspections of the Public Infrastructure and/or the Project Improvements conducted by the City, the City's agents, representatives, employees, engineers and/or independent contractors, including, without limitation, the City Engineer and the Building Official, shall be for the sole benefit and protection of the City and shall not be for the benefit or protection of the Company, the Bank or any other Person. The Company acknowledges that it, or a duly authorized agent, will make its own inspections and that the Company will not rely on any inspections made by the City, the City's agents, representatives, employees, engineers and/or independent contractors including, without limitation, the City Engineer and the Building Official.

12.7 Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.

12.8 Waivers. All waivers, to be effective, must be in writing and signed by the waiving Party. No course of dealing between the Company and the City or any failure by either Party to insist upon the strict or timely performance of any covenant, duty, agreement, term, condition or obligation of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term, condition or obligation. No delay or omission in the exercise of any right or remedy accruing to either Party upon a breach of this Agreement shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring. No single or partial exercise of any rights or remedies of either Party shall operate as a waiver or preclude the exercise of any other rights or remedies of such Party.

12.9 Rights and Remedies Cumulative. No right or remedy herein conferred upon either Party is intended to be exclusive of any other right or remedy provided to such Party as contained herein, or in the City Loan Documents or provided to such Party by law or in equity, and every such right or remedy shall be cumulative and shall be in addition to every other right or remedy conferred upon such Party as contained herein or now or hereafter existing in favor of such Party at law or in equity or by statute, or otherwise.

12.10 No Vesting. The approval or execution of this Agreement is not required for the Company to perform an action or initiate, continue, or complete the Project, or to obtain any permit required to initiate, continue, or complete the endeavor. Accordingly, this Agreement shall not be construed to constitute a "permit" within the meaning of Chapter 245, Local Government Code.

12.11 Applicable Law. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas and venue for any dispute arising under this Agreement shall lie in the state courts of Dallas County, Texas.

12.12 Severability. In the event any provision of this Agreement is held by a court or government authority of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws, then, and in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision that is so held to be illegal, invalid or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

12.13 Counterparts. This Agreement may be executed in any number of original, facsimile or electronically-scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument. A facsimile or electronically-scanned signature shall be considered an original signature for all purposes.

12.14 Authority to Execute and Perform Agreement. The Company hereby covenants that: (i) the Company is duly authorized to enter into this Agreement and perform its obligations hereunder; (ii) the individual executing this Agreement on behalf of the Company has full authority to execute this Agreement on behalf of the Company; and (iii) the Company is a duly formed, validly existing limited partnership in good standing under the laws of the State of its formation and under the laws of the State of Texas and is duly authorized to transact business in the State of Texas.

12.15 No Third Party Beneficiaries. The Parties to this Agreement do not intend to create any third party beneficiaries of the contract rights contained herein. This Agreement shall not create any rights in any individual or entity that is not a signatory hereto. No person who is not a party to this Agreement may bring a cause of action pursuant to this Agreement as a third party beneficiary.

12.16 No Joint Venture; Company Acting Independently. Nothing contained in this Agreement or in any other agreement between the Company and the City shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of partnership, joint venture or joint enterprise between the Parties and nothing contained herein shall appoint either Party as agent of the other Party for any purpose.

12.17 Usury Savings Clause. Company and City intend to conform strictly to the applicable usury laws. All agreements between City and Company (or any other party liable with respect to any indebtedness under this Agreement and the City Loan Documents) are hereby limited by the provisions of this Section 12.17 which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest contracted for, charged, or received under this Agreement or the City Note otherwise exceed the Maximum Rate. If, from any possible development of any document, interest would otherwise be payable to City in excess of the Maximum Rate, any such construction shall be subject to the provisions of this Section 12.17 and such document shall be automatically reformed and the interest payable to City shall be automatically reduced to the Maximum Rate, without the necessity of execution of any amendment or new document. If City shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Rate, an amount equal to the amount which would have been excessive interest shall at the option of the City be refunded to Company or applied to the reduction of the principal amount owing under this Agreement or the City Note in the inverse order of its maturity and not to the payment of interest. The right to accelerate maturity of the City Note or any other indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and City does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or

agreed to be paid to the City shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Rate.

12.18 Execution of City Loan Documents. The City Manager is authorized to take all actions and execute all documents necessary to consummate the transactions contemplated in this Agreement including, without limitation, the City Manager is authorized to negotiate and finalize the specific terms and provisions of the City Loan Documents and is authorized to execute the City Loan Documents and all other documents necessary to consummate the transactions contemplated in this Agreement, such City Loan Documents and other documents to contain such terms and provisions as are acceptable to the City Manager.

12.19 Indemnity. THE COMPANY HEREBY AGREES TO ASSUME FULL RESPONSIBILITY AND LIABILITY FOR THE DESIGN AND CONSTRUCTION OF THE PUBLIC INFRASTRUCTURE AND THE PROJECT IMPROVEMENTS. THE COMPANY HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS THE CITY, AND ITS ELECTED OFFICIALS, AGENTS, REPRESENTATIVES, EMPLOYEES, ATTORNEYS AND INSURERS (INDIVIDUALLY "AN "INDEMNITEE" AND COLLECTIVELY THE "INDEMNITEES") OF AND FROM ALL CLAIMS, DEMANDS, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, WHETHER NOW EXISTING OR HEREAFTER ARISING, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO PERSONS (INCLUDING DEATH) AND ANY LOSSES FOR DAMAGES TO PROPERTY CAUSED BY OR ALLEGED TO BE CAUSED, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, EITHER DIRECTLY OR INDIRECTLY, THE DESIGN AND CONSTRUCTION OF THE PUBLIC INFRASTRUCTURE AND/OR THE PROJECT IMPROVEMENTS INCLUDING, WITHOUT LIMITATION, ALL INJURIES TO PERSONS (INCLUDING DEATH) AND LOSSES FOR DAMAGES TO PROPERTY CAUSED BY OR ALLEGED TO BE CAUSED BY, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, EITHER DIRECTLY OR INDIRECTLY, ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF THE COMPANY, ITS PARTNERS, AGENTS, EMPLOYEES, ARCHITECTS, ENGINEERS, CONTRACTORS, SUBCONTRACTORS AND/OR ITS CONTRACTORS' AND SUBCONTRACTORS' EMPLOYEES IN CONNECTION WITH THE DESIGN AND CONSTRUCTION OF THE PUBLIC INFRASTRUCTURE AND/OR THE PROJECT IMPROVEMENTS, EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION 12.19 SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF ANY INDEMNITEE AND THE COMPANY, ITS PARTNERS, AGENTS, EMPLOYEES, ARCHITECTS, ENGINEERS, CONTRACTORS, SUBCONTRACTORS AND/OR ITS CONTRACTORS' AND SUBCONTRACTORS' EMPLOYEES, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO ANY INDEMNITEE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF ANY PARTY UNDER TEXAS LAW. THE PROVISIONS OF THIS SECTION 12.19 ARE SOLELY FOR THE BENEFIT OF THE INDEMNITEES AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THE PROVISIONS OF THIS SECTION 12.19 SHALL EXPRESSLY SURVIVE THE COMPLETION OF THE PUBLIC INFRASTRUCTURE AND THE PROJECT IMPROVEMENTS AND SHALL FURTHER SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

12.20 Time is of the Essence. The Parties agree that time is of the essence of this Agreement.

**ATTEST:**

By: Sonja Land  
Sonja Land  
City Secretary  
Date: 9/5/14

**CITY OF MESQUITE,  
a Texas home rule municipality**

By: Ted Barron  
Name: Ted Barron  
Title: City Manager  
Date: 9/5/14

**APPROVED AS TO FORM:**

[Signature]  
City Attorney or his Designee

**COMPANY:**

**VANSTON PARK INVESTMENTS, LP,  
a Texas limited partnership**

By: Vanston Villas Development, LLC,  
a Texas limited liability company,  
Its General Partner

By: Joseph B. Alvarado  
Name: Joseph B. Alvarado  
Title: Manager  
Date: 9/3/14

# Exhibit A



**JHP**

Gus Thomasson Mixed Use  
Mesquite, Texas

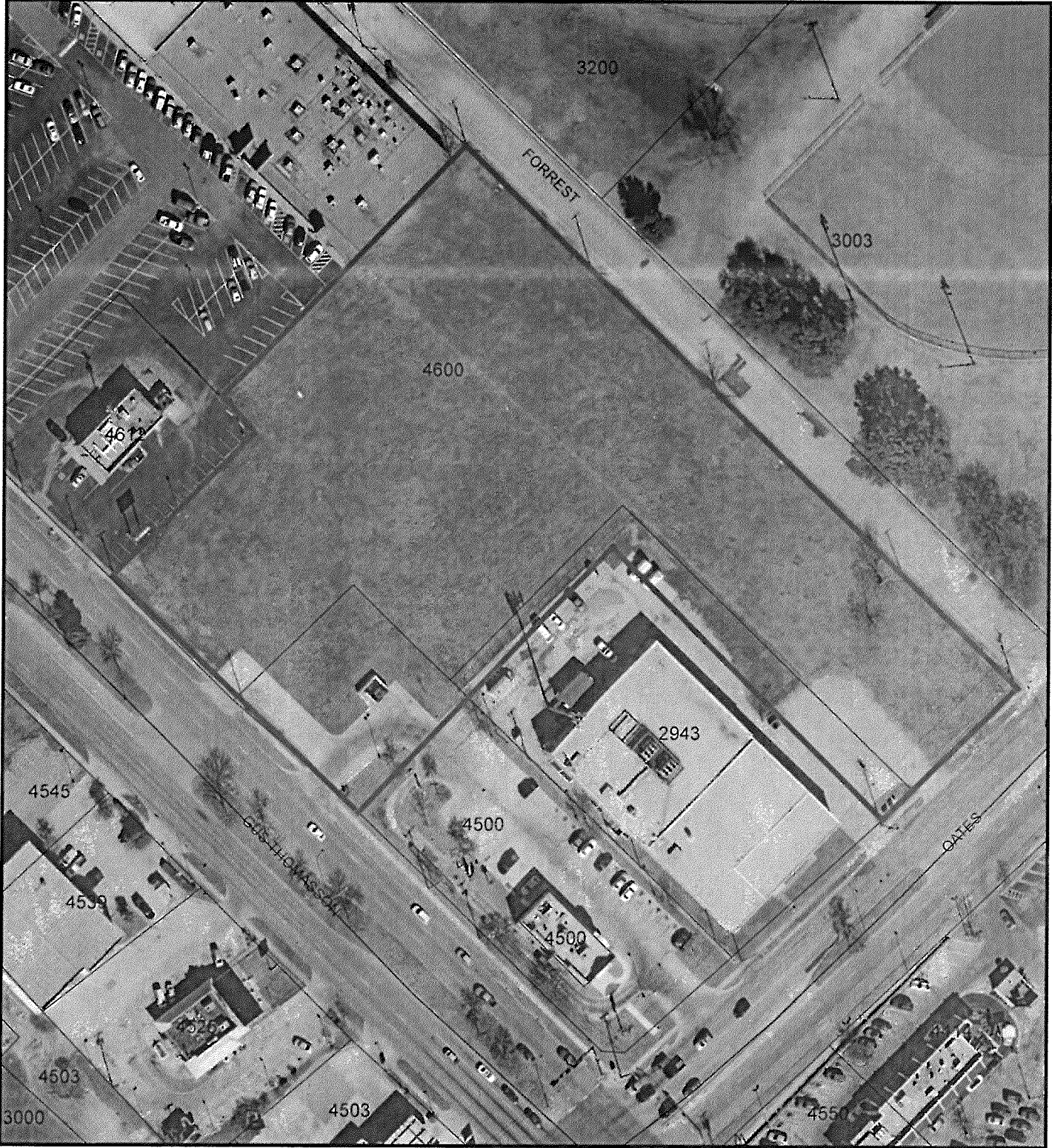
Sphinx Development Corporation

Architectural Illustration

02.01.2013	2012100	22
Copyright © JHP 2013 Not for Regulatory Approval, Permit or Construction. (Mike L. Adams) Registered Architect of State of Texas, Registration No. 11954		

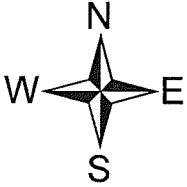


# Exhibit B



**Address**  
4540 Gus Thomasson Rd.

**Legend**  
□ Subject Property





# Exhibit D

