

RESOLUTION NO. 28-2015

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 AND AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN AGREEMENT FOR SUCH PURPOSES WITH 2106 GALLOWAY, LLC, A TEXAS LIMITED LIABILITY COMPANY, AND VISTA CROSSING SC, LLC, A TEXAS LIMITED LIABILITY COMPANY, FOR THE SHOPPING CENTER LOCATED AT 2106 AND 2110 NORTH GALLOWAY, MESQUITE, TEXAS.

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 2106 Galloway, LLC, a Texas limited liability company (“Galloway”), and Vista Crossing SC, LLC, a Texas limited liability company (“Vista”, and together with Galloway, the “Company”), in connection with various improvements to the shopping center commonly known as 2106 and 2110 North Galloway, Mesquite, Texas, a copy of said agreement being 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 the Company pursuant to the Agreement shall not exceed \$300,000.00; 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:

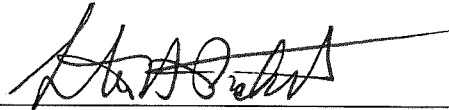
SECTION 1. That the City Council finds that the terms of the proposed Agreement by and between the City and the Company, a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference, will promote economic development, and stimulate business and commercial activity in the City 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 the Company and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions 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.

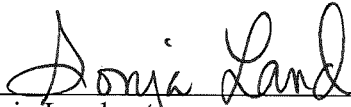
SECTION 4. That the City Manager is hereby authorized to execute the Agreement and all other documents necessary to consummate the transactions contemplated by the Agreement.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 1st day of June, 2015.




\_\_\_\_\_  
Stan Pickett  
Mayor

ATTEST:



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

APPROVED:



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

**EXHIBIT "A"**

**380 Agreement between the City of Mesquite and 2106 Galloway and Vista Crossing**

## **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 2106 Galloway, LLC, a Texas limited liability company (“Galloway”) and Vista Crossing SC, LLC, a Texas limited liability company (“Vista”, and together with Galloway, 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 may each hereinafter be referred to as a “Party,” and may collectively be referred to as the “Parties” to this Agreement; and

**WHEREAS**, the Company currently owns the Vista Crossing Shopping Center located at US Highway 80 and North Galloway in Mesquite, Texas, and being commonly known as 2106 and 2110 North Galloway, Mesquite, Texas and being more particularly described in **Exhibit “A”** attached hereto and made a part hereof for all purposes (the “Shopping Center”); and

**WHEREAS**, the Shopping Center is located at a high profile intersection in the City; and

**WHEREAS**, a substantial portion of the Shopping Center has been vacant for over a decade resulting in the Shopping Center becoming an under-performing retail center; and

**WHEREAS**, a major renovation and redevelopment of the Shopping Center consisting of substantial improvements and upgrades to the existing building and parking area of the Shopping Center is necessary in order to make the Shopping Center attractive to new retail tenants; and

**WHEREAS**, a grocery store and a retail clothing store, both new to the City, are planning to locate their businesses at the Shopping Center as part of the redevelopment of the Shopping Center; and

**WHEREAS**, the Company will be making expenditures of at least \$3,500,000.00 in connection with the renovation and redevelopment of the Shopping Center which will increase the productive life and taxable value of the improvements constituting a part of the Shopping Center and will add value to the City’s tax rolls thereby increasing the ad valorem real property taxes assessed and collected by the City; and

**WHEREAS**, the grocery store and retail clothing store locating at the Shopping Center as part of the renovation and redevelopment of the Shopping Center will stock and maintain substantial amounts of inventory and business personal property at the Shopping Center adding value to the City’s tax rolls and increasing the ad valorem personal property taxes assessed and collected by the City; and

**WHEREAS**, the location of a new grocery store, retail clothing store and other new retail tenants at the Shopping Center will increase the sales taxes assessed and collected by the City; and

**WHEREAS**, the addition of a new grocery store, retail clothing store and other new retail tenants to the Shopping Center will create employment opportunities in the City; and

**WHEREAS**, the Company has agreed to own and operate the Shopping Center for a period commencing on the Effective Date and continuing thereafter until and including the Termination Date; and

**WHEREAS**, the Company has advised the City that a contributing factor inducing the Company to renovate and redevelop the Shopping Center and to agree to own and operate the Shopping Center from the Effective Date and continuing thereafter until and including the Termination Date is the agreement by the City to provide the economic development incentives more fully set forth in this Agreement 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 §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

**WHEREAS**, the City Council finds and determines that the renovation and redevelopment of the Shopping Center and the Company’s commitment to own and operate the Shopping Center from the Effective Date and continuing thereafter until and including the Termination Date will benefit the City and its citizens because, *inter alia*, the renovation and redevelopment of the Shopping Center will: (i) promote local economic development and stimulate business and commercial activity in the City; (ii) result in substantial visual improvements to a high profile intersection in the City; (iii) increase the productive life and the taxable value of the building and improvements constituting the Shopping Center thereby adding value to the City’s tax rolls and increasing the ad valorem taxes to be collected by the City; and (iv) attract new retail tenants to the Shopping Center which will: (a) increase the taxable value of inventory and business personal property at the Shopping Center thereby adding value to the City’s tax rolls and increasing the ad valorem personal property taxes to be collected by the City; (b) increase the sales taxes collected by the City; and (c) create new employment opportunities in the City; 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 a 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:

“Acceptable Protest” with respect to the Land and Building shall mean an informal or formal review, protest, challenge or appeal to the Dallas County Appraisal Review Board for any Tax Year by the Company or any Person acting on behalf of the Company seeking a reduction in the taxable value of the Land and Building for such Tax Year to an amount equal to or greater than \$8,500,000.00.

“Additional Municipal Sales Taxes” shall mean all sales taxes now and hereafter authorized, adopted, imposed and/or collected by or on behalf of the City pursuant to §321.101(b) of the Texas Tax Code, as amended and/or replaced, and shall specifically include all Type B Sales Taxes, Property Tax Relief Taxes and all sales taxes now and hereafter prohibited by law from being used for payment of economic development incentives.

“Agreement” shall mean this agreement together with all exhibits attached hereto.

“Annual Sales Tax Period” as used herein shall mean January 1<sup>st</sup> through December 31<sup>st</sup> of each Incentive Tax Year.

“ARB Order” shall have the meaning set forth in Section 8.1(9) below.

“Building” shall mean the building and improvements constituting a part of the Shopping Center and being located on the Land.

“Capital Improvements” shall mean the renovations, replacements, upgrades and other alterations, changes, modifications, additions and/or physical improvements to the Shopping Center more particularly described in **Exhibit “B”** attached hereto and made a part hereof for all purposes.

“Certificate of Compliance” shall mean a certificate in such form as is reasonably acceptable to the City executed on behalf of the Company by a duly authorized Company Representative certifying to the City that: (i) all Conditions Precedent have been satisfied and are then continuing; and (ii) that no Default then exists by the Company under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a Default by the Company under the terms of this Agreement.

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

“City Council” shall mean the governing body of the City.

“City Sales Tax” and “City Sales Taxes” shall mean the municipal sales taxes collected by or on behalf of the City for general fund purposes authorized pursuant to §321.101(a) of the Texas Tax Code, as amended and/or replaced, and currently at the rate of one percent (1.0%) pursuant to §321.103(a) of the Texas Tax Code and specifically does not include the State of Texas Sales Taxes and any Additional Municipal Sales Taxes.

“Commencement Date” shall mean the earlier of: (i) on or before the expiration of thirty (30) days following the Company’s receipt of all applicable building permits from the City; or (ii) July 1, 2015.

“Company” shall have the meaning set forth in the Preamble of this Agreement.

“Company Representative” shall mean the Chief Executive Officer, Chief Financial Officer or President of the Company.

“Completion Date” shall mean one (1) year from the Commencement Date.

“Condition Precedent” and “Conditions Precedent” shall have the meanings set forth in Article VIII of this Agreement.

“DCAD” shall mean the Dallas Central Appraisal District.

“Default” shall have the meaning set forth in Section 10.1 of this Agreement.

“Disclosure Statute” shall have the meaning set forth in Section 9.6 of this Agreement.

“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.

“Existing Tenants” shall mean the tenants of the Shopping Center listed on **Exhibit “C”** attached hereto and made a part hereof for all purposes.

“Incentive Payment” and “Incentive Payments” shall mean economic development incentive(s) to be paid by the City to the Company pursuant to the terms and subject to the conditions and limitations set forth in this Agreement to provide grants to the Company for the Incentive Period measured by a percentage of: (i) the ad valorem taxes assessed and collected by the City against the Land and Building for each Incentive Tax Year during the Incentive Period; and (ii) the Net City Sales Taxes paid by tenants of the Shopping Center during the Incentive Period, provided, however, notwithstanding anything herein to the contrary, the maximum amount of Incentive Payments shall not exceed the collective amount of \$300,000.00.

“Incentive Period” shall mean the period commencing with January 1, 2017 and continuing until the earlier of: (i) December 31, 2026; or (ii) the date the Incentive Payments paid by the City to the Company under the terms of this Agreement collectively equal \$300,000.00.

“Incentive Tax Year” shall mean the 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, 2017 and ending on December 31, 2017 and continuing on January 1<sup>st</sup> and ending on December 31<sup>st</sup> of each calendar year thereafter during the Incentive Period.

“Land” shall mean the real property described in **Exhibit “A”** attached hereto and made a part hereof for all purposes.

“Maximum Incentive Amount” shall mean the maximum amount of economic development incentives payable under the terms of this Agreement which is the collective sum of THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00).

“Maximum Lawful Rate” shall mean the maximum lawful rate of non-usurious interest that 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).

“Net City Sales Taxes” shall mean the City Sales Taxes collected by or on behalf of the City less the two percent (2%) collection fee retained by the State Comptroller and less any credits for returned items.

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

“Payment Request” and “Payment Requests” shall mean written request(s) executed by a duly authorized Company Representative requesting an Incentive Payment.

“Person” shall mean an individual or a corporation, partnership, limited liability company, trust, estate, unincorporated organization, association or other entity.

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

“Property Tax Relief Taxes” shall mean the municipal sales taxes authorized, adopted, imposed and/or collected by or on behalf of the City pursuant to §321.101(b) of the Texas Tax Code, as amended and/or replaced, currently at the rate of one-half of one percent to be used to reduce the property tax rate of the City.

“Shopping Center” shall have the meaning set forth in the Recitals to this Agreement.

“State Comptroller” shall mean the Office of the Texas Comptroller of Public Accounts, or any successor agency.

“State of Texas Sales Taxes” shall mean the State of Texas sales taxes, currently at the rate of six and one-quarter percent (6.25%), authorized, adopted, imposed and/or collected pursuant to §151.051 of the Texas Tax Code, as amended and/or replaced, and all other sales taxes now and hereafter authorized, adopted, imposed and/or collected by or on behalf of the State of Texas.

“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.

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

“Termination Date” as used herein shall mean June 30, 2027.

“Type B Sales Taxes” shall mean the municipal sales taxes authorized, adopted, imposed and/or collected by or on behalf of the City pursuant to §321.101(b) of the Texas Tax Code, as amended and/or replaced, currently at the rate of one-half of one percent, for use by the Mesquite Quality of Life Corporation, a Type B economic development corporation, operating pursuant to Chapter 505 of the Texas Local Government Code, as amended and/or replaced, and shall also include any other sales taxes now or hereafter authorized, adopted, imposed and/or collected by or on behalf of the City for use by any other Type B economic development corporation hereafter created by or on behalf of the City.

“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 included within the definition of undocumented workers pursuant to 8 U.S.C. §1324a (f) and/or or any other applicable state and/or federal law or regulation.



## 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 renovation and redevelopment of the Shopping Center and the Company's commitment to own and operate the Shopping Center from the Effective Date and continuing thereafter until and including the Termination Date because, *inter alia*, the renovation and redevelopment of the Shopping Center will: (i) promote local economic development and stimulate business and commercial activity in the City; (ii) result in substantial visual improvements to a high profile intersection in the City; (iii) increase the productive life and the taxable value of the Shopping Center thereby adding value to the City's tax rolls and increasing the ad valorem taxes to be collected by the City; (iv) attract new tenants to the Shopping Center which will: (a) increase the taxable value of inventory and business personal property at the Shopping Center thereby adding value to the City's tax rolls and increasing the ad valorem personal property taxes to be collected by the City; (b) increase the sales taxes collected by the City; and (c) create new employment opportunities in the City and accordingly, the value of the benefits of this Agreement to the City outweigh the amount of 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 thereafter until and including the Termination Date, unless sooner terminated as provided herein (the "Term").

## ARTICLE V

### Covenant Not to Protest, Challenge or Appeal Property Valuations

5.1 Covenant. The Company acknowledges that a material consideration for the City's agreement to grant the economic development incentives as set forth herein is the agreement by the Company that the taxable value of the Land and Building as assessed by DCAD for each Tax Year during the Term of this Agreement will be an amount at least equal to EIGHT MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$8,500,000.00). The Company represents and covenants to the City that during the Term of this Agreement, the Company shall be the sole Person with the right or option to protest, challenge or appeal property tax valuations with respect to the Land and Building for any Tax Year during the Term of this Agreement. The Company hereby covenants and agrees that the Company and/or any Person acting on behalf of the Company will not protest, challenge or appeal the taxable value of the Land and Building as assessed by DCAD for any Tax Year during the Incentive Period unless the protest, challenge or appeal is an Acceptable Protest.

5.2 Survival. The terms, provisions, covenants, representations, agreements and obligations of the Company set forth in Article V of this Agreement shall expressly survive the expiration or termination of this Agreement.

## ARTICLE VI

### Company's Covenants Regarding Undocumented Workers

6.1 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.

6.2 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.

6.3 Repayment of Incentive Payments in Event of Conviction for Employing Undocumented Workers. If, after receiving any Incentive Payment under the terms of this Agreement, the Company, or a branch, division or department of the Company, is convicted of a violation under 8 U.S.C. §1324a (f), the Company shall pay to the City, not later than the 120<sup>th</sup> day after the date the City notifies the Company of the violation, an amount equal to the total amount of all Incentive Payments paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on each such Incentive Payment from the date each such Incentive Payment was paid by the City to the Company until the date repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate.

6.4 Limitation on Incentive Payments. The City shall have no obligation to make any Incentive Payments to the Company if the Company, or any branch, division or department of the Company, is convicted of a violation under 8 U.S.C. §1324a (f).

6.5 Remedies. The City shall have the right to exercise all remedies available by law to collect any sums due by the Company to the City pursuant to this Article VI including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.

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

## ARTICLE VII

### Company's Additional Covenants

7.1 Company's Additional Covenants. In consideration of the City's agreement to make the Incentive Payments to the Company as more fully set forth herein, the Company covenants and agrees to comply with each and every one of the following covenants during the Term of this Agreement, to-wit:

1. To commence the construction of the Capital Improvements on or before the Commencement Date;
2. To complete the construction of the Capital Improvements on or before the Completion Date;
3. To own and operate the Shopping Center from the Effective Date and continuing thereafter until and including the Termination Date;
4. To make expenditures of at least THREE MILLION FIVE HUNDRED AND NO/100 DOLLARS (\$3,500,000.00) in connection with the renovation and redevelopment of the Shopping Center by the Completion Date;

5. To deliver to the City within thirty (30) days after written request, copies of such invoices, payment records and other documentation as the City may reasonably request to confirm compliance by the Company with Article VII, Section 4 above;
6. To operate the Shopping Center exclusively for retail, professional office and personal service uses during the Term of this Agreement including, without limitation, the Company covenants and agrees that during the Term of this Agreement, the Company will not enter into any oral and/or written leases or otherwise permit the use of all or any portion of the Shopping Center for any one or more of the following uses (provided, that, the foregoing shall not apply to Existing Tenants at the Shopping Center as of the Effective Date of this Agreement), to-wit: (i) stores selling electronic cigarettes or other oral devices that allow users to inhale a vapor of liquid nicotine or other substances including, without limitation, e-cigarettes, e-cigars, e-pipes, e-hookahs, and/or vape pipes; (ii) tobacco stores (other than the ancillary sale thereof in the grocery store located in the Shopping Center); (iii) pawn shops; and/or (iv) industries, establishments, uses, stores and/or services included within the following industry classifications as established by the North American Industry Classification System (NAICS), to-wit:
  - (i) Classification #812199 – Other Personal Care Services; this U.S. industry comprises establishments primarily engaged in providing personal care services (except hair, nail, facial, nonpermanent makeup or nonmedical diet and weight reducing services). Illustrative examples of establishments within NAICS Classification #812199 include, but are not limited to, depilatory or electrolysis (i.e. hair removal salons), saunas, ear piercing services, steam or turkish baths, hair replacement (except by offices of physicians) or weaving services, tanning salons (save and except retail establishments such as “Palm Beach Tan”, etc.), massage parlors (save and except retail establishments such as “Massage Envy”, etc.), tattoo parlors and permanent makeup salons;
  - (ii) Classification #813410 – Civic and Social Organizations; this industry comprises establishments primarily engaged in promoting the civic and social interests of their members. Illustrative examples of establishments within NAICS Classification #813410 include, but are not limited to, bars and restaurants operated for members of civic and social organizations, alumni associations, granges, automobile clubs (except travel), parent-teacher associations, booster clubs, scouting organizations, ethnic associations, social clubs, fraternal lodges and veterans’ membership organizations; and
  - (iii) Classification #813110 Religious Organizations; this industry comprises (1) establishments primarily engaged in operating religious organizations, such as churches, religious temples, and monasteries, and/or (2) establishments primarily engaged in administering an organized religion or promoting religions activities. Illustrative examples of establishments within NAICS Classification #813110 include, but are not limited to, churches, religious shrines, monasteries (except schools), synagogues, religious mosques and religious temples;
7. To provide the City, it’s agents and employees with access to the Shopping Center at such times as the City may reasonably request to conduct such inspections as the City reasonably deems necessary upon no less than 48 hours’ advance notice to the Company in order to

confirm compliance by the Company with the terms and provisions of this Agreement; provided, however, that the City shall not conduct inspections more than once per month, and further provided that the City agrees not to unreasonably interfere with the business operations at the Shopping Center during such inspections;

8. To provide a representative of the Company to accompany the City during all inspections of the Shopping Center conducted by the City pursuant to this Article VII;
9. To timely pay all ad valorem taxes assessed against the Land and Building during the Term of this Agreement prior to the date such taxes become delinquent;
10. 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 and all other agreements now or hereafter existing between the Company and the City; and
11. To timely comply with all applicable federal, state and local laws and regulations.

7.2 Survival. The terms, provisions, agreements, covenants, conditions and obligations of the Company set forth in Article VII of this Agreement shall expressly survive the expiration or termination of this Agreement.

## ARTICLE VIII

### Conditions Precedent to Payment of Incentive Payments

8.1 Conditions Precedent to Payment of Incentive Payments. The Company and the City hereby expressly acknowledge and agree that the City's obligation to pay any Incentive Payment shall expressly be conditioned upon the satisfaction of the following conditions precedent (individually a "Condition Precedent" and collectively the "Conditions Precedent"), to-wit:

1. The construction of the Capital Improvements shall have been substantially completed on or before the Completion Date as evidenced by the issuance of certificates of occupancy to the new grocery and retail clothing store tenants locating at the Shopping Center as part of the renovation and redevelopment of the Shopping Center on or before the Completion Date;
2. The Company shall submit annual Payment Requests to the City for all Incentive Payments payable pursuant to Section 9.1(i) of this Agreement. The first such Payment Request shall be submitted on or before April 15, 2018 and subsequent Payment Requests shall be submitted on or before April 15<sup>th</sup> of each calendar year thereafter during the Incentive Period. Each such Payment Request shall be accompanied by a Certificate of Compliance dated effective as of the date of the Payment Request;
3. The Company shall have timely paid all ad valorem taxes assessed against the Land and Building for the Incentive Tax Year for which the Payment Request is being made and for all previous Tax Years during the Term of this Agreement and the City shall have confirmed the receipt of such tax payments;
4. The Company shall submit annual Payment Requests to the City for all Incentive Payments payable pursuant to Section 9.1(ii) of this Agreement. Such Payment Requests shall be submitted by the Company to the City no earlier than March 15<sup>th</sup> and no later than June 30<sup>th</sup> of the calendar year following the end of each Annual Sales Tax Period during the Incentive Period. Each such Payment Request shall be accompanied by a Certificate of

Compliance dated effective as of the date of the Payment Request. For illustration purposes only, the Payment Request for the Incentive Payment payable pursuant to Section 9.1(ii) of this Agreement for the first Incentive Tax Year shall be submitted to the City no earlier than March 15, 2018 and no later than June 30, 2018 for the Annual Sales Tax Period commencing January 1, 2017 and ending on December 31, 2017;

5. With respect to each Incentive Payment payable pursuant to Section 9.1(ii) below: (i) the Company shall have submitted to the City a Payment Request; (ii) the City shall have obtained from the State Comptroller a confidential information report confirming at a minimum the total amount of City Sales Taxes paid by the tenants of the Shopping Center to the State Comptroller relating only to taxable sales from such tenants' locations in the Shopping Center during the previous Annual Sales Tax Period; and (iii) the City shall have verified that it has received payment in full of all City Sales Taxes payable by the tenants of the Shopping Center relating to taxable sales from the tenants' locations in the Shopping Center for the Annual Sales Tax Period for which the Payment Request is being made. Notwithstanding the foregoing, pursuant to the Disclosure Statute, the State Comptroller is to disclose the sales taxes paid during the current or prior year without disclosing individual sales tax account information. However, if there are fewer than three (3) sales tax accounts at the Shopping Center, the State Comptroller will not disclose information regarding the actual sales taxes paid by tenants of the Shopping Center without permission of those persons doing business at the Shopping Center. As such, the Company covenants and agrees to include as a condition in its future leases at the Shopping Center, language which requires the Company and future lessees to provide a release to the City that will allow the State Comptroller, if so required by the Disclosure Statute (as defined herein), to disclose to the City aggregated sales tax information relating to any business generating sales tax within the Shopping Center for any Annual Sales Tax Period during the Incentive Period. The Parties agree that no Incentive Payment shall be due or payable pursuant to Section 9.1(ii) of this Agreement for any Annual Sales Tax Period during the Incentive Period if there are less than three (3) persons doing business in the Shopping Center and the Company fails to provide written permission from the Company and each tenant of the Shopping Center allowing the State Comptroller to provide the City with information relating to the amount of City Sales Taxes paid by such tenants to the City during such Annual Sales Tax Period. Provided all Conditions Precedent have been satisfied and are then continuing, the City shall, following the end of each Annual Sales Tax Period and within thirty (30) days after receiving a Payment Request from the Company, make a request to the State Comptroller pursuant to Subsection (b) of the Disclosure Statute and within thirty (30) days after receipt of such information will calculate and pay to the Company the Incentive Payment due pursuant to Section 9.1(ii) of this Agreement for such Annual Sales Tax Period. The City and the Company shall rely on reports received by the City from the State Comptroller reflecting City Sales Taxes paid by the tenants of the Shopping Center relating to taxable sales made from the tenants' locations in the Shopping Center as accurate and definitive for purposes of this Agreement, and the City shall have no right to review or audit records of the Company or its successors, assigns or lessees. The Company acknowledges that sales tax information, records and reports are confidential under the laws of the State of Texas and accordingly, the Company agrees that it shall have no right to review or audit any sales tax information, records or reports in the possession of the City including, without limitation, any confidential information reports obtained by the City pursuant to this Agreement and the Disclosure Statute. In the event the Disclosure Statute is hereafter amended or a new law is enacted requiring additional consents and/or information to obtain any information necessary for the City to calculate the amount of any Incentive Payment payable pursuant to Section 9.1(ii) of this Agreement, no sums payable pursuant to Section 9.1(ii) of this Agreement shall be due or payable unless and until the Company provides the City with such additional consents

and/or information. Notwithstanding anything contained herein to the contrary, the Parties acknowledge that the City shall have no obligation to pay any Incentive Payment due under the terms of Section 9.1(ii) of this Agreement if the State Comptroller fails, after written request by the City, to provide the City with the information necessary to: (i) verify the amount of sales taxes paid by the tenants of the Shopping Center relating to taxable sales made from such tenants' locations in the Shopping Center; and (ii) calculate the amount of such Incentive Payment;

6. The Company shall have owned and operated the Shopping Center from the Effective Date up to and including the date of such Payment Request;
7. The Company shall have delivered to the City within thirty (30) days after written request, copies of such documentation as the City may reasonably request to confirm compliance by the Company with the Conditions Precedent set forth in this Agreement;
8. Neither the Company and/or any Person acting on behalf of the Company shall have informally or formally reviewed, protested, challenged or appealed the taxable value of the Land and Building as assessed by DCAD for the Incentive Tax Year for which the Payment Request is being made unless such review, protest, challenge or appeal is an Acceptable Protest; and (ii) the time for any review, protest, challenge or appeal of the taxable value of the Land and Building for such Incentive Tax Year shall have passed;
9. For any Incentive Tax Year in which the Company and/or any Person acting on behalf of the Company has filed an Acceptable Protest of the taxable value of the Land and Building: (i) the taxable value of the Land and Building for such Incentive Tax Year shall have been determined by a written Notice of Final Order issued by the Dallas County Appraisal Review Board to be an amount at least equal to EIGHT MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$8,500,000.00) (the "ARB Order"); (ii) the time for appeal of the ARB Order shall have passed or, (a) if the ARB Order is appealed to binding arbitration, a final non-appealable order shall have been entered in such arbitration proceeding determining the taxable value of the Land and Building for such Tax Year to be an amount at least equal to EIGHT MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$8,500,000.00); (b) if the ARB Order is appealed to the State Office of Administrative Hearings, a final non-appealable order shall have been entered by the State Office of Administrative Hearings determining the taxable value of the Land and Building for such Tax Year to be an amount at least equal to EIGHT MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$8,500,000.00); and/or (c) if the ARB Order is appealed to District Court, a final non-appealable order of such District Court (or of the highest court for which an appeal shall have been filed) shall have been entered determining the taxable value of the Land and Building for such Tax Year to be an amount at least equal to EIGHT MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$8,500,000.00); (iii) the Company shall have paid all ad valorem taxes assessed against the Land and Building for such Incentive Tax Year based on a taxable value of EIGHT MILLION FIVE HUNDRED THOUSAND AND NO/100 (\$8,500,000.00); and (iv) the City shall have confirmed the receipt of such tax payment;
10. The Company shall have timely kept and performed all terms, provisions, covenants, conditions and agreements to be kept or performed by the Company pursuant to the terms of this Agreement and no Default by the Company shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Default by the Company under the terms of this Agreement;

11. At the option of the City, the City shall have inspected the Shopping Center to confirm the Company's compliance with the terms and provisions of this Agreement;
12. As of the date of the Payment Request, and at all times during the Term of this Agreement prior to the Payment Request, the Company shall not have knowingly employed Undocumented Workers to work for the Company or any branch, division or department of the Company; and
13. The amount of the Incentive Payment being requested, when added to all previous Incentive Payments paid pursuant to this Agreement, shall not exceed the maximum sum of THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00).

8.2 Survival. The terms, provisions, agreements, covenants, conditions 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

### Economic Development Incentives

9.1 Economic Development Incentives. Provided all Conditions Precedent have been satisfied and are then continuing, and subject to the limitations set forth in this Agreement including, without limitation, Section 9.4 below, the City shall pay Incentive Payments to the Company during the Incentive Period measured according to the following calculations, provided, however, notwithstanding anything contained herein to the contrary, the collective amount of Incentive Payments payable under the terms of this Agreement shall not exceed the sum of THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00), to-wit:

- (i) 50% of the sum paid by the Company to the City for ad valorem taxes assessed against the Land and Building during the Incentive Period; and
- (ii) 50% of the Net City Sales Taxes paid by the tenants of the Shopping Center to the City during the Incentive Period relating solely to taxable sales made from the tenants' locations in the Shopping Center.

9.2 Payment Date for Incentive Payments Payable Pursuant to Section 9.1(i). Provided all Conditions Precedent have been satisfied and are then continuing including, without limitation, the Maximum Incentive Amount has not been satisfied, the Incentive Payments due and payable pursuant to Section 9.1(i) of this Agreement shall be paid by the City to the Company on or before June 15<sup>th</sup> of the calendar year following the Incentive Tax Year for which the Incentive Payment is payable. For illustration purposes only, the Incentive Payment payable pursuant to Section 9.1(i) of this Agreement for the first Incentive Tax Year [2017] shall be due and payable on or before June 15, 2018. If an Acceptable Protest is filed for any Incentive Tax Year, the payment date for any Incentive Payment payable pursuant to Sections 9.1(i) above shall be delayed until sixty (60) days after all Conditions Precedent including, without limitation, the Conditions Precedent set forth in Article VIII, Sections 8.1(8) and 8.1(9) have been satisfied. Any Incentive Payment delayed as a result of the filing of an Acceptable Protest shall no longer be due and payable in the event the Maximum Incentive Amount is satisfied before the delayed payment date for such Incentive Payment. Notwithstanding the foregoing, in addition to all other remedies set forth in this Agreement, in the event the City fails to timely pay any Incentive Payment, the Company shall provide written notice of such failure to the City and the City shall have ninety (90) days to make such Incentive Payment. In the event that the City does not make the Incentive Payment within such ninety (90) day cure period, the Incentive Payment shall accrue interest at the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum beginning the day after such ninety (90) day cure period until paid, and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate

9.3 Payment Date for Incentive Payments Payable Pursuant to Section 9.1(ii). Provided all Conditions Precedent have been satisfied and are then continuing including, without limitation, the Maximum Incentive Amount has not been satisfied, the Incentive Payments due and payable pursuant to Section 9.1(ii) of this Agreement shall be paid by the City to the Company on the date(s) as set forth in Section 8.1(5) of this Agreement.

9.4 Limitation on Incentive Payments. Notwithstanding anything contained herein to the contrary, (i) the maximum amount of Incentive Payments payable under the terms of this Agreement is THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00); (ii) if the collective amount of Incentive Payments equal \$300,000.00 prior to the end of an Incentive Tax Year, no further Incentive Payments will be due or payable for the remainder of such Incentive Tax Year; (iii) in the event any tenant of the Shopping Center owns and/or operates multiple locations, the Incentive Payments payable under the terms of this Agreement shall be limited only to the percentage stated in Section 9.1(ii) above of taxable sales from such tenant's location in the Shopping Center; (iv) no Incentive Payments shall be due and payable for any Tax Year prior to 2017; and (v) no Incentive Payments shall be due and payable for any Tax Year after the Incentive Period. If there is any conflict between this Section 9.4 and any other term or provision of this Agreement, this Section 9.4 shall control.

9.5 Funds Available for Payment of Economic Development Incentives. The grants of economic development incentives payable by the City to the Company as more fully set forth in this Agreement are not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City. All Incentive Payments payable 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 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 is to be made.

9.6 Revenue Sharing Agreement. The Parties designate this Agreement as a revenue sharing agreement, thereby entitling the City to request sales tax information from the State Comptroller, pursuant to §321.3022 of the Texas Tax Code (the "Disclosure Statute"), as amended and/or replaced.

9.7 Survival. All terms, provisions, covenants, agreements, obligations, rights and remedies of each Party pursuant to this Article IX shall expressly survive the expiration or termination of this Agreement.

## ARTICLE X

### Defaults Recapture of Incentives Remedies

10.1 Default. A Party shall be in default of this Agreement if such Party fails to timely keep or perform any term, provision, covenant, condition, obligation or agreement to be kept or performed by such Party 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 non-defaulting Party to the defaulting Party (a "Default").

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



10.3 Recapture of Incentive Payments. In the event this Agreement is terminated by the City pursuant to Section 10.2 above, the City shall have no obligation to make any further Incentive Payments to the Company and the Company shall immediately pay to the City, at the City’s address set forth in Section 11.2 of this Agreement, or such other address as the City may hereafter notify the Company in writing, the sum equal to the following percentage amounts of all Incentive Payments paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest to be calculated on the percentage of each Incentive Payment being recaptured from the date each such Incentive Payment was paid by the City to the Company until the date the percentage stated below of each such Incentive Payment is repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate, to-wit:

| Date Agreement is Terminated  | Percentage of Incentive Payments Recaptured |
|---|---|
| If this Agreement is terminated by the City pursuant to Section 10.2 above at any time during the period from the Effective Date until and including December 31, 2019      | 100%  |
| If this Agreement is terminated by the City pursuant to Section 10.2 above at any time during the period beginning January 1, 2020 until and including December 31, 2023    | 60%   |
| If this Agreement is terminated by the City pursuant to Section 10.2 above at any time during the period beginning January 1, 2024 until and including the Termination Date | 30%   |

By way of illustration only, if this Agreement is terminated by the City pursuant to Section 10.2 above on January 1, 2020, and as of such date the City has paid the Company the aggregate amount of \$200,000.00 in Incentive Payments, the principal amount of Incentive Payments to be recaptured and paid by the Company to the City pursuant to this Section 10.3 would be \$120,000.00 calculated as follows:

$$\$200,000.00 \times 60\% = \$120,000.00.$$

In the event the Company fails to timely pay any sums due by the Company to the City pursuant to this Section 10.3, the Company shall be in breach of this Agreement and the City shall have the right, without further notice to the Company, to exercise any and/or all rights and/or remedies available to the City pursuant to the laws of the State of Texas to collect such sums.

10.4 Survival. All terms, provisions, covenants, agreements, obligations, rights and remedies of each Party pursuant to this Article X shall expressly survive the expiration or termination of this Agreement.

## ARTICLE XI

### Miscellaneous Provisions

11.1 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 such shares or membership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Company. In the event the Company is a 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 or the partnership interests of a partnership 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, membership interests or partnership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Company. 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 by the Company.

11.2 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: c/o Vista Property Company  
8350 N. Central Expressway, Suite 1275  
Dallas, Texas 75206  
Attention: Colton Wright

With a Copy to: Wick Phillips Gould & Martin LLP  
3131 McKinney Avenue, Suite 100  
Dallas, Texas 75204  
Attention: Chris Fuller

CITY: City of Mesquite  
1515 N. Galloway Avenue  
Mesquite, TX 75149  
Attention: City Manager

With a copy to: Paula Anderson  
Deputy City Attorney  
City of Mesquite  
1515 N. Galloway Ave.

11.3 Remedies Cumulative. Each right and remedy of the Parties provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas shall be cumulative and concurrent and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas.

11.4 Captions. The descriptive captions of this Agreement are for convenience of reference only and shall in no way define, describe, limit, expand or affect the scope, terms, conditions, or intent of this Agreement.

11.5 Modification. This Agreement may only be revised, modified or amended by a written document signed by the City and the Company. Oral revisions, modifications or amendments are not permitted.

11.6 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.

11.7 Waivers. All waivers, to be effective, must be in writing and signed by the waiving party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party upon a Default 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.

11.8 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas and venue shall lie exclusively in Dallas County, Texas.

11.9 Severability. The sections, paragraphs, sentences, clauses, and phrases of this Agreement are severable and, if any phrase, clause, sentence, paragraph, or section of this Agreement should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect the validity or enforceability of any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Agreement and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid provision had never been included in the Agreement.

11.10 No Partnership or Joint Venture. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of partnership or joint venture between the Parties.

11.11 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.

11.12 Number and Gender. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

11.13 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.

11.14 Entire Agreement. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature are entirely superseded hereby and extinguished by the execution of this Agreement. There are no oral agreements between the Parties.

11.15 Authority. The Company represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. Each Party represents and warrants to each other Party that this Agreement has been duly authorized by such Party and that each Party has the full power and authority to enter into and fulfill its obligations under this Agreement. Each Person signing this Agreement represents that such Person has the authority to sign this Agreement on behalf of the Party indicated.

11.16 City Council Authorization. This Agreement was authorized by resolution of the City Council approved at a City Council meeting.

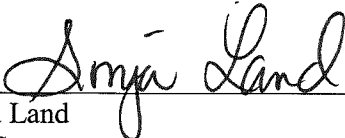
11.17 Usury Savings Clause. The Company and City intend to conform strictly to all applicable usury laws. All agreements of the City and the Company are hereby limited by the provisions of this Section 11.17 which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no event shall any interest contracted for, charged, received, paid or collected under the terms of this Agreement exceed the Maximum Lawful Rate or amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under applicable law. If, from any possible development of any document, interest would otherwise be payable to City in excess of the Maximum Lawful Rate, any such construction shall be subject to the provisions of this Section 11.17 and such document shall be automatically reformed and the interest payable to the City shall be automatically reduced to the Maximum Lawful Rate, without the necessity of execution of any amendment or new document. If the 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 Lawful 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 such document in the inverse order of its maturity and not to the payment of interest. The right to accelerate any 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 Lawful Rate.

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

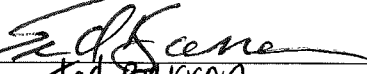
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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized agents, officers and/or officials on the dates set forth below.

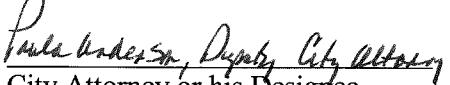
**ATTEST:**

By:   
Sonja Land  
City Secretary  
Date: 6/26/15

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

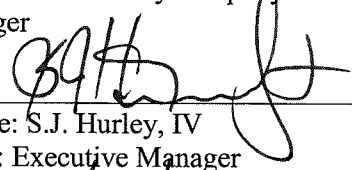
By:   
Name: Ted Barron  
Title: City Manager  
Date: 6/26/15

**APPROVED AS TO FORM:**

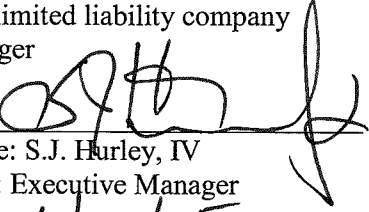
  
Paula Anderson, Deputy City Attorney  
City Attorney or his Designee

**COMPANY:**

**Vista Crossing SC, LLC**  
a Texas limited liability company

By: Paso Vista GP, LLC  
a Texas limited liability company  
its Manager  
By:   
Name: S.J. Hurley, IV  
Title: Executive Manager  
Date: 6/16/15

**2106 Galloway, LLC**  
a Texas limited liability company

By: Paso Vista GP, LLC,  
a Texas limited liability company  
its Manager  
By:   
Name: S.J. Hurley, IV  
Title: Executive Manager  
Date: 6/16/15

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

**Legal Description of Land**

- (i) That certain property commonly known as 2106 North Galloway, Mesquite, Texas, and being more particularly described as follows:

TRACT 1:

Being Lot 1B, Block A of GALLOWAY CROSSING, an Addition to the City of Mesquite, Dallas County, Texas, according to the Map thereof recorded under Clerk's File No. 201000166000, Real Property Records, Dallas County, Texas.

TRACT 2:

Easement Estate created in Declaration of Restrictions and Grant of Easements executed by and between Albertson's Inc., and Maclay Carlin-Galloway Crossing #1, Ltd., dated February 14, 1984 and recorded in Volume 84036, Page 2652, Real Property Records, Dallas County, Texas and re-recorded in Volume 84051, Page 464, Real Property Records, Dallas County, Texas. Amended by instrument recorded in Volume 84051, Page 4048, Real Property Records, Dallas County, Texas. As affected by Third Amendment recorded under Clerk's File No. 20070273970, Real Property Records, Dallas County, Texas, by Fourth Amendment recorded under Clerk's File No. 20070311939, Real Property Records, Dallas County, Texas and by Fifth Amendment recorded under Clerk's File No. 201400263591, Real Property Records, Dallas County, Texas.

TRACT 3:

Easement Estate created in Reciprocal Easement Agreement executed by and between Maclay Carlin-Galloway #1, Ltd., a Texas limited partnership, Wal-Mart Properties, Inc., a Delaware corporation and Albertson's Inc., a Delaware corporation, dated August 10, 1984 and recorded in Volume 84166, Page 7178, Real Property Records, Dallas County, Texas; and

- (ii) That certain property commonly known as 2110 North Galloway, Mesquite, Texas, and being more particularly described as follows:

TRACT 1: (FEE SIMPLE)

Two tracts of land in the William Foreman Survey, Abstract No. 486, being all of Lot 2 and Lot 7 of Galloway Crossing, an addition to the City of Mesquite, Texas according to the plat thereof recorded in Volume 84200, Page 2047, Map Records, Dallas County, Texas; said tract being more particularly described as follows:

LOT 2 OF GALLOWAY CROSSING

Description of a 3.8912 acre tract of land in the William Foreman Survey, Abstract No. 486, said tract being all of Lot 2 of Galloway Crossing, an addition to the City of Mesquite, Texas according to the plat thereof recorded in Volume 84200, Page 2047, Map Records, Dallas County, Texas; said 3.8912 acre tract being more particularly described as follows:

COMMENCING, at a 3/8-inch iron rod found at the intersection of the north right-of-way line of U.S. Hwy. 80 (320-feet wide) and the east right-of-way line of North Galloway Avenue (100-feet wide) as defined by deed to the City of Mesquite, recorded in Volume 52, Page 1772, Volume 5765, Page 504, and Volume 109, Page 0289, Deed Records, Dallas County, Texas;

THENCE, North 00 degrees 48 minutes 59 seconds West with said easterly right-of-way line of North Galloway Avenue, a distance of 118.83 feet to a point at the beginning of a curve to the right whose center bears North 89 degrees 11 minutes 01 seconds East, a distance of 1011.79 feet from said point;

THENCE, in a northeasterly direction with the easterly right-of-way line of North Galloway Avenue and along said curve to the right, said curve having a central angle of 09 degrees 48 minutes 55 seconds, an arc distance of 173.33 feet to a "X" cut found for end of said curve;

THENCE, North 08 degrees 59 minutes 56 seconds East, with said easterly right-of-way line of North Galloway Avenue, a distance of 145.66 feet to a 1/2-inch iron found for the most westerly southwest corner of said Lot 2; said point being also the POINT OF BEGINNING;

THENCE, North 08 degrees 59 minutes 56 seconds East, a distance of 65.40 feet to a "X" cut found for corner;

THENCE, South 50 degrees 33 minutes 58 seconds East, a distance of 22.85 feet to a "X" cut in concrete found for corner;

THENCE, North 89 degrees 08 minutes 38 seconds East, a distance of 239.86 feet to a "X" cut in concrete found for corner;

THENCE, North 00 degrees 51 minutes 22 seconds West, a distance of 328.00 feet to a 1/2-inch iron rod found for corner;

THENCE, South 89 degrees 08 minutes 38 seconds West, a distance of 85.00 feet to a 1/2-inch iron rod found for corner;

THENCE, South 81 degrees 12 minutes 44 seconds West, a distance of 129.32 feet to a 1/2-inch iron rod found for corner;

THENCE, North 06 degrees 39 minutes 56 seconds East, a distance of 83.41 feet to a 1/2-inch iron rod with "Powell & Powell" cap for found for corner;

THENCE, South 83 degrees 42 minutes 05 seconds East, a distance of 143.28 feet to a 1/2-inch iron rod found for corner;

THENCE, North 89 degrees 08 minutes 38 seconds East, a distance of 339.00 feet to a 1/2-inch iron rod found for corner;

THENCE, South 00 degrees 51 minutes 22 seconds East, a distance of 483.16 feet to a 1/2-inch iron rod found for corner;

THENCE, South 66 degrees 47 minutes 55 seconds East, a distance of 95.28 feet to a 1/2-inch iron rod found for corner;

THENCE, South 00 degrees 51 minutes 22 seconds East, a distance of 10.00 feet to a 1/2-inch iron rod found for corner;

THENCE, South 89 degrees 08 minutes 38 seconds West, a distance of 336.00 feet to a "X" cut found for corner;

THENCE, North 00 degrees 51 minutes 22 seconds West, a distance of 105.00 feet to a "X" cut found for corner;

THENCE, South 89 degrees 08 minutes 38 seconds West, a distance of 81.00 feet to a "X" cut found for corner;

THENCE, North 00 degrees 51 minutes 22 seconds West, a distance of 23.00 feet to a "X" cut found for corner;

THENCE, South 89 degrees 08 minutes 38 seconds West, a distance of 189.00 feet to a "X" cut found for corner;

THENCE, South 04 degrees 00 minutes 46 seconds West, a distance of 23.00 feet to a "X" in concrete found for corner;

THENCE, North 85 degrees 59 minutes 14 seconds West, a distance of 26.63 feet to a 1/2-inch iron rod found for the POINT OF BEGINNING;

CONTAINING 169,500 square feet or 3.8912 acres of land.

#### LOT 7 OF GALLOWAY CROSSING

Description of a 1.7196 acre tract of land in the William Foreman Survey, Abstract No. 486, said tract being all of Lot 7 of Galloway Crossing, an addition to the City of Mesquite, Texas according to the plat thereof recorded in Volume 84200, Page 2047, Map Records, Dallas County, Texas; said 1.7196 acre tract being more particularly described as follows:

COMMENCING, at a 3/8-inch iron rod found at the intersection of the north right-of-way line of U.S. Hwy. 80 (120-foot wide) and the east right-of-way line of North Galloway Avenue (100-foot wide) as defined by deed to the City of Mesquite, recorded in Volume 52, Page 1772, Volume 5765, Page 504, and Volume 109, Page 0289, Deed Records, Dallas County, Texas;

THENCE, North 00 degrees 48 minutes 59 seconds West, with said easterly right-of-way line of North Galloway Avenue, a distance of 118.83 feet to a point at the beginning of a curve to the right whose center bears North 89 degrees 11 minutes 01 second East, a distance of 1011.79 feet from said point;

THENCE, in a northeasterly direction with the easterly right-of-way line of North Galloway Avenue and along said curve to the right, said curve having a central angle of 09 degrees 48 minutes 55 seconds, an arc distance of 173.33 feet to a 1/2-inch iron rod found for end of said curve;

THENCE, North 08 degrees 59 minutes 56 seconds East, with said easterly right-of-way line of North Galloway Avenue, a distance of 337.87 feet to a 1/2-inch iron rod found for angle point;

THENCE, North 06 degrees 39 minutes 56 seconds East, with said easterly right-of-way line of North Galloway Avenue, a distance of 255.33 feet to a 1/2-inch iron rod with "Powell & Powell" cap found for corner;



THENCE, South 83 degrees 42 minutes 05 seconds East, a distance of 143.28 feet to a 1/2-inch iron rod found for angle point;

THENCE, North 89 degrees 08 minutes 38 seconds East, a distance of 60.00 feet to a 1/2-inch iron rod found the PLACE OF BEGINNING;

THENCE, North 00 degrees 51 minutes 22 seconds West, a distance of 190.94 feet to a "X" cut in concrete found for corner;

THENCE, North 79 degrees 08 minutes 38 seconds East, a distance of 142.55 feet to a "X" in concrete found for corner;

THENCE, North 10 degrees 51 minutes 22 seconds West, a distance of 28.96 feet to a "X" cut in concrete found for corner;

THENCE, North 79 degrees 08 minutes 38 seconds East, a distance of 190.00 feet to a "X" in concrete found for corner;

THENCE, South 10 degrees 51 minutes 22 seconds East, a distance of 175.00 feet to a 1/2-inch iron rod with "Powell & Powell" cap found for corner;

THENCE, South 79 degrees 08 minutes 38 seconds West, a distance of 55.00 feet to a 1/2-inch iron rod found for corner;

THENCE, South 39 degrees 08 minutes 38 seconds West, a distance of 30.64 feet to a 1 1/2-inch iron rod found for corner;

THENCE, South 00 degrees 51 minutes 22 seconds East, a distance of 71.84 feet to a 1/2-inch iron rod found for corner;

THENCE, South 89 degrees 08 minutes 38 seconds West, a distance of 279.00 feet to the PLACE OF BEGINNING;

CONTAINING 74,906 square feet or 1.7196 acres of land.

#### TRACT 2: (NON-EXCLUSIVE EASEMENT)

Non-Exclusive Easement Estate created in Declaration of Restrictions and Grant of Easements by and between Albertson's, Inc., and Maclay Carlin-Galloway Crossing #1, Ltd., dated February 14, 1984, filed for record on February 20, 1984 and recorded in Volume 84036, Page 2652, Real Property Records, Dallas County, Texas, re-recorded in Volume 84051, Page 464, Real Property Records, Dallas County, Texas, amended by instrument recorded in Volume 84233, Page 4048, Real Property Records, Dallas County, Texas and further amended by Volume 85177, Page 6124, Real Property Records, Dallas County, Texas, and filed July 31, 2007, recorded under Clerk's File No. 20070273970, Real Property Records, Dallas County, Texas, recorded under Clerk's File No. 20070311939, Real Property Records, Dallas County, Texas, recorded under Clerk's File No. 201400263591, Real Property Records, Dallas County, Texas.

#### TRACT 3: (NON-EXCLUSIVE EASEMENT)

Non-Exclusive Easement Estate created in Reciprocal Declaration of Easements and Uses and Development Agreement by and between Maclay Carlin-Galloway # 1, Ltd., and Wal-Mart Properties,

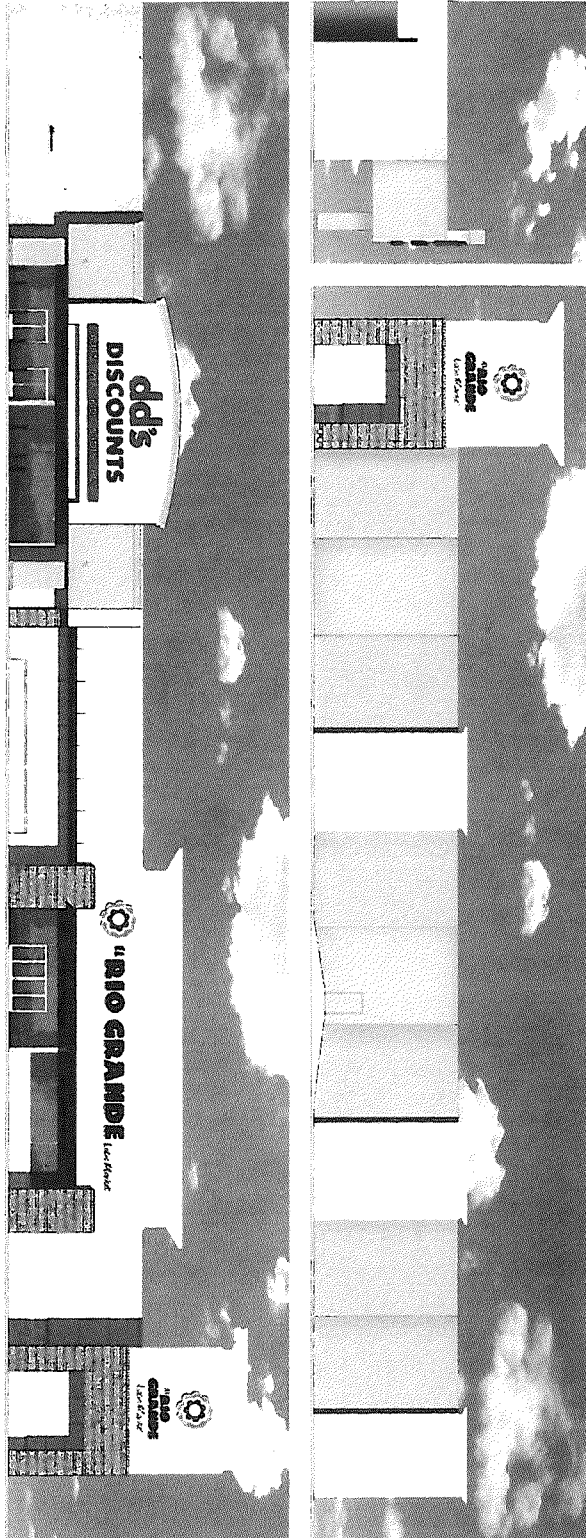
Inc., dated August 16, 1984, filed for record on August 14, 1984 and recorded in Volume 84160, Page 5476, Real Property Records, Dallas County, Texas.

TRACT 4: (NON-EXCLUSIVE EASEMENT)

Non-Exclusive Easement Estate created in Reciprocal Easement Agreement by and between Maclay Carlin-Galloway Crossing #1, Ltd.; Wal-Mart Properties, Inc., and Albertson's, Inc., dated August 10, 1984, filed for record on August 22, 1984 and recorded in Volume 84166, Page 7178, Real Property Records, Dallas County, Texas.

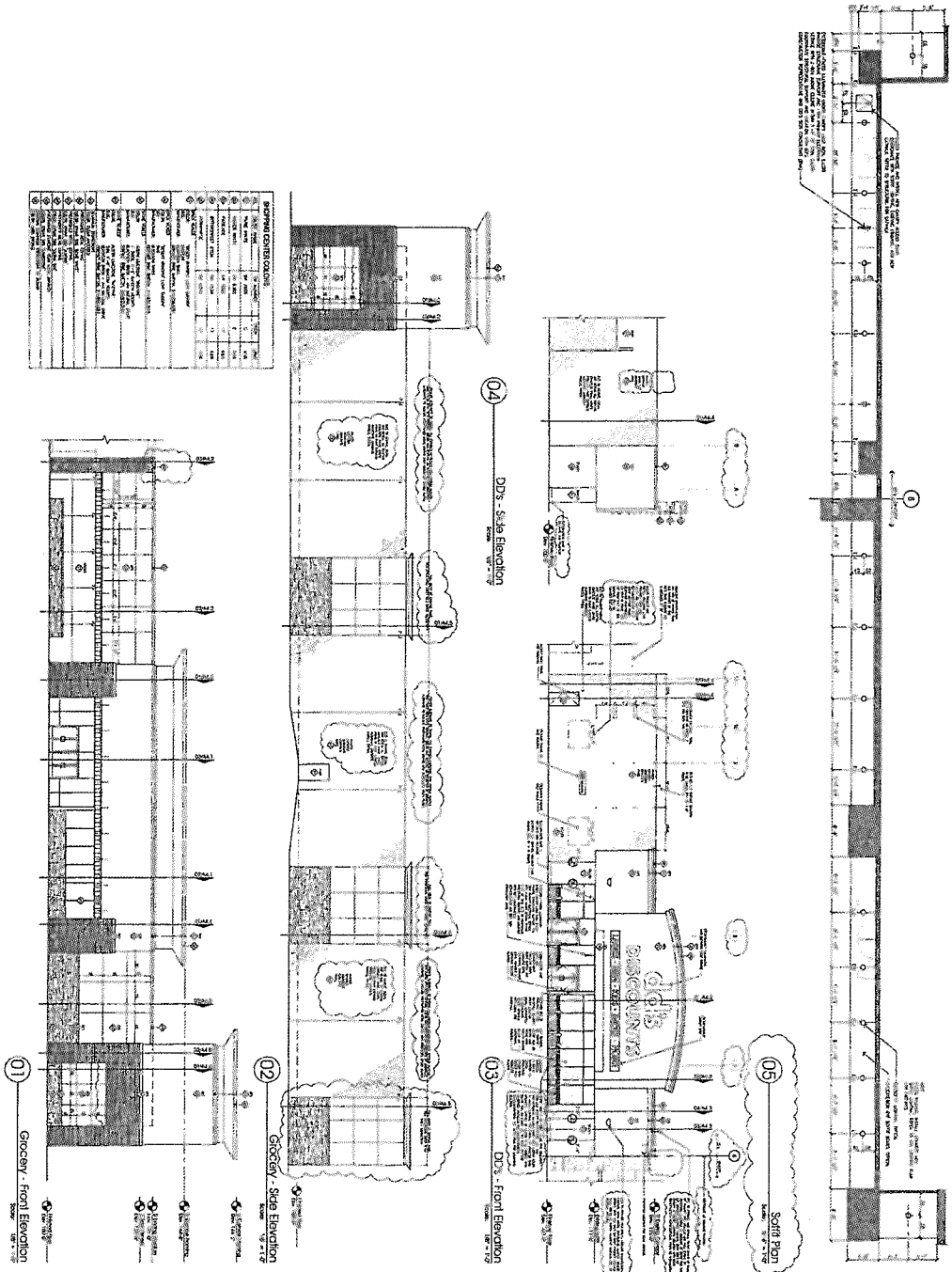
EXHIBIT "B"  
TO  
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Capital Improvements



*Preliminary Exterior Elevations*  
HWY 80 & GALLOWAY - Mesquite, TEXAS





| FORMER CONSTRUCTION |             |
|---------------------|-------------|
| NO.                 | DESCRIPTION |
| 1                   | REWORK      |
| 2                   | REVISION    |
| 3                   | REVISION    |
| 4                   | REVISION    |
| 5                   | REVISION    |
| 6                   | REVISION    |
| 7                   | REVISION    |
| 8                   | REVISION    |
| 9                   | REVISION    |
| 10                  | REVISION    |
| 11                  | REVISION    |
| 12                  | REVISION    |
| 13                  | REVISION    |
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| 48                  | REVISION    |
| 49                  | REVISION    |
| 50                  | REVISION    |

PROJECT # 1401  
**A3.0**

**Johnson Controls**  
 1401  
 1401  
 1401

DD's and Grocery at  
**Vista Crossing**  
 HWY 80 & N. Galloway Ave. Mesquite, Texas

1. ALL DIMENSIONS ARE IN FEET AND INCHES UNLESS OTHERWISE NOTED.  
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.  
 3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.  
 4. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.  
 5. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.  
 6. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.  
 7. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.  
 8. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.  
 9. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.  
 10. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.

**EXHIBIT “C”  
TO  
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

**List of Existing Tenants of the Shopping Center**

**Vista Crossing Tenant List**

**Maya Gal, LLC** dba El Rio Grande Latin Market

**Ross Dress For Less, Inc.** dba DD’s Discounts

**David S. Lim** dba Queen’s Beauty Supply

**Lisa Busch and Tony Valenti** dba Rodeo City Popcorn

**H&R Block Enterprises, LLC**

**Fred Loya Insurance**

**Dr. James Mullooney** dba Family Physician

**Horace Wallace** dba Texas Purified Water & More

**Rico Byrddha** dba Suave's Barbershop

**Rockhill Staffing Texas, LLC** dba Swift Staffing

**TitleMax**

**Dallas County Local Workforce Development Board, Inc.** dba Workforce Solutions Greater Dallas

**Don Nguyen and Tam Nguyen** dba Only Nails

**Markham East Stylists**

**Dolgencorp of Texas** dba Dollar General

**Van Anh Tran and Song Tan** dba Chan's Restaurant

**Nelson Education Corporation** dba Sylvan Learning Center