

RESOLUTION NO. 59-2017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL 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 TOWN EAST MALL, LLC, FOR A PROPOSED PUBLIC PLAY AREA TO BE LOCATED WITHIN TOWN EAST MALL IN MESQUITE, TEXAS, AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

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

WHEREAS, the City Council has been presented with a proposed agreement providing economic incentives to Town East Mall, LLC (the “Company”), for a proposed interior children’s public play area (“Children’s Play Area”) to provide recreational and educational amenities as well as family interaction at Town East Mall in Mesquite, Texas, a copy of said agreement being attached hereto as Exhibit “A” and incorporated herein by reference (the “Agreement”); and

WHEREAS, pursuant to the terms of the Agreement, the City will be allowed to display and promote programs provided by the City’s Parks and Recreation Department, Library and other City Departments in the Children’s Play Area to increase public awareness of City events, opportunities and programs; and

WHEREAS, the Children’s Play Area will attract families and increase retail customers and patrons for businesses located in and around Town East Mall and increase sales taxes assessed and collected by or on behalf of the City; 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 local 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 benefit the City and will accomplish the public purpose of promoting local economic development and stimulating 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 finalize and execute the Agreement and all other documents necessary to consummate the transactions contemplated by the Agreement.

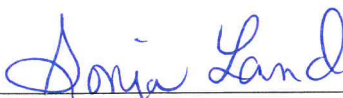
SECTION 5. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$50,000; (iii) approve or deny any matter in the Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 5.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 6th day of November, 2017.



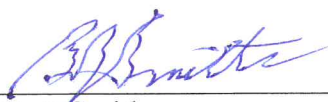
Stan Pickett
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED:



B. J. Smith
City Attorney

(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 Town East Mall, LLC, a Delaware limited liability company (the "Company"), for the purposes and considerations stated below:

WITNESSETH:

WHEREAS, on or about September 21, 1998, the Mesquite City Council created a reinvestment zone for tax increment financing encompassing only the area described in **Exhibit "A"** attached hereto and made a part hereof for all purposes pursuant to Chapter 311 of the *Texas Property Tax Code, Vernon's Texas Codes Annotated* (the "Act") and designated such reinvestment zone as the "Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas" (the "Zone"); and

WHEREAS, on or about September 21, 1998, the Mesquite City Council further created and established a Tax Increment Fund for the Zone ("TCTIF"); and

WHEREAS, the Act authorizes the expenditure of funds derived within a reinvestment zone, whether from bond proceeds or other funds, for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by a municipality listed in the project plan as costs of programs or other projects that benefit the zone, and such expenditures and monetary obligations constitute project costs as defined in the Act; and

WHEREAS, the Company owns that certain tract of real property commonly known as 2063 Town East Mall, Mesquite, Dallas County, Texas, and also being known as 1800 N. Town East Boulevard, Mesquite, Dallas County, Texas said real property being more particularly described on **Exhibit "B"** attached hereto and made a part hereof for all purposes (said real property, together with all improvements located thereon, being hereinafter collectively referred to as the "Property"); and

WHEREAS, the Company owns and operates parts of Town East Mall, a structure or structures located on the Property containing a minimum of 440,000 square feet (the "Shopping Center"); and

WHEREAS, the Property and the Shopping Center are located within the Zone; and

WHEREAS, the Company desires to make renovations and improvements to the Shopping Center consisting of the purchase and installation of a new children's playground facility where the public can gather and children can read, talk and play and consisting of play elements, structures, equipment, seating, improvements and playground amenities as more particularly depicted and/or described in **Exhibit "C"** attached hereto and made a part hereof for all purposes (the "Children's Play Area Improvements"); and

WHEREAS, the Children's Play Area Improvements will be located in an area in the mall of the Shopping Center accessible to the public in the approximate location depicted on **Exhibit "D"** attached hereto and made a part hereof for all purposes (the "Children's Play Area"); and

WHEREAS, the City will be allowed to have a promotional area within the Children's Play Area Improvements to display and promote programs provided by the City's Parks and Recreation Department, Library and other City Departments to increase public awareness of City events, opportunities and programs; and

WHEREAS, the Children's Play Area Improvements will attract families to the Shopping Center and increase retail customers and patrons for businesses located in the Zone and increase sales taxes assessed and collected by or on behalf of the City; and

WHEREAS, the Company has advised the City that a contributing factor inducing the Company to purchase and install the Children's Play Area Improvements is the agreement by the City to provide the Economic Development Incentive to the Company upon the terms and subject to the conditions more fully set forth in this Agreement; and

WHEREAS, the Board of Directors of the Zone and the City Council of the City have determined that the reimbursement to the Company of ONE HUNDRED AND FIFTY THOUSAND (\$150,000.00) of the costs to purchase and install the Children's Play Area Improvements under the terms and subject to the limitations set forth in this Agreement is necessary to implement the project plan and reinvestment zone financing plan of the Zone and achieve their purposes and are project costs of the Zone that will benefit the Zone; and

WHEREAS, the City has adopted an Economic Development Program pursuant to Section 380.001 of the Texas Local Government Code (the "Program") to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the Company desires to participate in the Program by entering into this Agreement; and

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the Company's performance of its obligations herein will: (i) increase retail customers and patrons for businesses located in the Zone; (ii) increase sales taxes assessed and collected by or on behalf of the City; (iii) promote local economic development and stimulate business and commercial activity in the Zone and the City; and (iv) benefit the City and its citizens.

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:

"Act" as used herein shall mean Chapter 311 of the *Texas Property Tax Code, Vernon's Texas Codes Annotated*.

"Affiliate" as used herein shall have the meaning set forth in Article XIII, Section 5 of this Agreement.

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

"Capital Investment" shall have the meaning set forth in Article VI, Section 2 of this Agreement.

"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 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 under the terms of this Agreement.

"Children's Play Area" shall mean an area in the mall of the Shopping Center accessible to the public in the approximate location depicted on **Exhibit "D"** attached hereto and made a part hereof for all purposes.

"Children's Play Area Improvements" shall mean a new children's playground facility to be located at the Children's Play Area where the public can gather and children can read, talk and play and consisting of play elements, structures, equipment, seating, improvements and playground amenities as more particularly depicted and/or described in **Exhibit "C"** attached hereto and made a part hereof for all purposes.

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

"Company" shall mean Town East Mall, LLC, a Delaware limited liability company, its successors and permitted assigns.

“Company Representative” shall mean the Chief Financial Officer or Manager of the Company.

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

“Default” shall have the meaning set forth in Article IX, Section 1 of this Agreement.

“Defaulting Party” shall have the meaning set forth in Article IX, Section 1 of this Agreement.

“Economic Development Incentive” shall mean the incentive described in Article VIII, Section 1.

“Effective Date” shall mean the date of the later to execute this Agreement by and between the Company and the City.

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

“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.

“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).

“Non-Defaulting Party” shall have the meaning set forth in Article IX, Section 1 of this Agreement.

“Party” shall mean either the Company or the City.

“Parties” shall mean both the Company and the City.

“Payment Request” shall mean the written request executed by the Company requesting the payment of the Economic Development Incentive.

“Person” shall mean an individual or a corporation, partnership, trust, estate, unincorporated organization, association or other entity. “Persons” shall mean more than one Person.

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

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

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

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

“TCTIF” shall mean that certain Tax Increment Fund created and established on or about September 21, 1998 by the Mesquite City Council for the Zone.

“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) or any other applicable law or regulation.

“Zone” shall mean that certain reinvestment zone for tax increment financing created by the Mesquite City Council on or about September 21, 1998, encompassing only the area described in **Exhibit “A”** attached hereto and made a part hereof for all purposes and being designated as the “Towne Centre Reinvestment Zone Number Two, City of Mesquite, Texas.”

ARTICLE III

Authority for Agreement

This Agreement is authorized by the Act and Chapter 380 of the Texas Local Government Code. The Board of Directors of the Zone and the City Council of the City have determined that the reimbursement to the Company of a portion of the funds advanced to purchase and install the Children’s Play Area Improvements under the terms and subject to the limitations set forth in this Agreement is necessary to implement the project plan and reinvestment zone financing plan of the Zone and achieve their purposes and are project costs of the Zone that will benefit the Zone. The Board of Directors of the Zone and the City Council of the City have further determined that the purchase and installation of the Children’s Play Area Improvements will promote local economic development in the City, will increase the sales tax generated for the City and will stimulate business and commercial activity in the Zone and in the City and will benefit the City and its citizens.

ARTICLE IV

Term

The term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) December 31, 2022; or (ii) the date this Agreement is terminated by the City pursuant to a right to terminate as expressly provided herein (the “Term”).

ARTICLE V

Company’s Covenant Not to Employ Undocumented Workers

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.

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.

3. Repayment of Economic Development Incentives in Event of Conviction for Employing Undocumented Workers. If, after receiving the Economic Development Incentive 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 120th day after the date the City notifies the Company of the violation, an amount equal to the total amount of the Economic Development Incentive previously 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 the Economic Development Incentive being recaptured from the date the Economic Development Incentive 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.

4. Limitation on Economic Development Incentives. The City shall have no obligation to pay any Economic Development Incentive 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).

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 V including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.

6. Limitation. The Company is not liable for a violation of Article V of this Agreement by a subsidiary, affiliate, or franchisee of the Company, or by a person with whom the Company contracts.

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

ARTICLE VI

Company's Covenants

In consideration of the City's agreement to grant the Economic Development Incentive to the Company upon the terms and subject to the Conditions Precedent and limitations more fully set forth herein, the Company covenants and agrees to comply with the following covenants during the Term of this Agreement, to-wit:

1. Purchase and Installation of Children's Play Area Improvements. The Company shall purchase and install the Children's Play Area Improvements on or before December 31, 2017;

2. Capital Investment. The Company shall make expenditures (which may include shipping and sales tax) in the amount of at least TWO HUNDRED AND TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$225,000.00) in connection with the purchase and installation of the Children's Play Area Improvements (the "Capital Investment") on or before December 31, 2017;

3. Records. The Company shall deliver to the City within thirty (30) days after completion of the installation of the Children's Play Area Improvements, copies of such invoices, paid receipts, payment records, and other documentation as the City may reasonably request to confirm compliance by the Company with the covenants set forth in this Article VI;

4. Repair and Maintenance Obligations. The Company shall, at its sole cost and expense, maintain the Children's Play Area Improvements in good repair, in proper working condition and operational at all times during the Term of this Agreement and in connection therewith, the Company covenants and agrees, at the Company's sole cost and expense, to make all repairs, replacements and capital expenditures necessary to keep and maintain the Children's Play Area Improvements in good repair, operational and in proper working condition during the Term of this Agreement;

5. Operational Expenses. The Company, at its sole cost and expense, shall pay all utilities, monthly expenses and other costs of operating the Children's Play Area Improvements during the Term of this Agreement;

6. Operation of Shopping Center. The Company shall own and operate the Shopping Center from the Effective Date of this Agreement and continuously thereafter during the Term of this Agreement except for (i) such temporary periods of time that Company's continued operation of the Shopping Center is prevented by an Event of Force Majeure; or (ii) an assignment if permitted by Article XI, Section 5 herein.

7. Operation of Children's Play Area Improvements. The Company shall operate the Children's Play Area Improvements from December 31, 2017 and continuously thereafter during the Term of this Agreement except for (i) such temporary periods of time that Company's continued operation of the Children's Play Area Improvements is prevented by an Event of Force Majeure; or (ii) an assignment if permitted by Article XI, Section 5 herein.

8. City Informational Signs. The Company agrees to provide the City with one (1) promotional area within the Children's Play Area Improvements where the City can display information and promote programs provided by the City's Parks and Recreation Department, Library and other City Departments to increase public awareness of City events, opportunities and programs, with the original cost of such promotional material to be paid by the Company as part of the Capital Investment and with any updates or changes to be at the City's expense;

9. MISD Informational Signs. The Company agrees to provide the Mesquite Independent School District ("MISD") with one (1) promotional area within the Children's Play Area Improvements where the MISD can display information and promote programs provided by the MISD to increase public awareness of MISD events, opportunities and programs, with the original cost of such promotional material to be paid by the Company as part of the Capital Investment and with any updates or changes to be at MISD's expense;

10. All informational signs referenced in Section 8 and 9 above shall be subject to review and approval by Company, which approval shall not be unreasonably withheld;

11. No Encumbrance. The Company shall not, at any time during the Term of this Agreement, grant any lien, security interest, options or rights in the Children's Play Area Improvements to any Person except a mortgagee of the Company that also has a lien or mortgage against the Property;

12. Taxes. The Company shall timely pay all ad valorem taxes assessed against the Property, the Shopping Center and the Company's business personal property during the Term of this Agreement prior to the date such taxes become delinquent;

13. Performance of Agreement. The Company shall timely keep and perform all terms, provisions, covenants, conditions, and obligations to be kept or performed by the Company under the terms of this Agreement;

14. Performance of Other Agreements. The Company shall timely keep and perform all terms, provisions, covenants, conditions, and obligations to be kept or performed by the Company under the terms of all other agreements now or hereafter existing between the Company and the City, as now and hereafter amended;

15. Inspections. The Company shall provide the City, its 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 deems necessary in order to confirm compliance by the Company with the representations, covenants and agreements of the Company as set forth in this Agreement; and

16. Accompanying Inspections. The Company shall provide a representative of the Company to accompany the City during all inspections of the Shopping Center conducted by the City pursuant to Article VI, Section 15 above.

ARTICLE VII

Conditions Precedent to Payment of Incentive Payments

The Company and the City hereby expressly acknowledge and agree that the payment of the Economic Development Incentive shall expressly be conditioned upon the satisfaction of each and every one of the following conditions precedent (hereinafter sometimes singularly referred to as a "Condition Precedent" and sometimes collectively referred to as the "Conditions Precedent"), to-wit:

1. Payment Request. The Company shall submit a Payment Request to the City for the Economic Development Incentive payable pursuant to this Agreement within sixty (60) days after all Conditions Precedent of this Agreement have been satisfied. Such Payment Request shall be accompanied by a Certificate of Compliance dated effective as of the date of the Payment Request;

2. Capital Investment. The Company shall have satisfied the Company's obligation to make the Capital Investment by making expenditures (which may include shipping and sales taxes) in the collective amount of at least TWO HUNDRED TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$225,000.00) in connection with the Children's Play Area Improvements on or before December 31, 2017;

3. Purchase and Installation of Children's Play Area Improvements. The Company shall have paid the purchase price and all installation costs of the Children's Play Area Improvements in full and the installation of the Children's Play Area Improvements shall have been completed on or before December 31, 2017;

4. Completion Date. The Children's Play Area Improvements shall be fully functional, operational and open for use by the public on or before December 31, 2017;

5. Reports. The Company shall have delivered to the City copies of such invoices, paid receipts, payment records and such other documentation as the City may reasonably request to confirm compliance by the Company with the Conditions Precedent set forth in this Article VII;

6. Taxes. The Company shall have timely paid all ad valorem taxes assessed against the Property, the Shopping Center and the Company's business personal property as of the date of the Payment Request and the City shall have confirmed the receipt of such tax payments;

7. Performance of Agreement. 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 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;

8. Performance of Other Agreements. 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 all other agreements now and hereafter existing between the Company and the City, and no default by the Company under the terms of such agreement(s) 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 such agreement(s);

9. Inspection. At the option of the City, the City shall have inspected the Children's Play Area Improvements to confirm the Company's compliance with the terms and provisions of this Agreement;

10. Undocumented Workers. 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 been convicted by a court of competent jurisdiction of knowingly employing Undocumented Workers to work for the Company at the Shopping Center or at any other branch, division or department of the Company; and

11. 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

Economic Development Incentives

1. Grant of Economic Development Incentive. The City hereby approves, subject to the Conditions Precedent and the covenants and limitations set forth in this Agreement, an economic development grant to the Company in the amount of ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) to reimburse the Company for a portion of the costs incurred by the Company to purchase and install the Children's Area Play Improvements (the "Economic Development Incentive").

2. Payment of Economic Development Incentive. Provided all Conditions Precedent have been satisfied and are continuing, the City will pay the Economic Development Incentive to the Company in one (1) payment within thirty (30) days after the later of: (i) the date of the Payment Request; (ii) the completion of the installation of the Children's Play Area Improvements; (iii) the satisfaction by the Company of the requirement to make the Capital Investment; and (iv) the date all other Conditions Precedent have been satisfied by the Company and are then continuing.

3. Funds Available for Payment of Economic Development Incentive. The grant of the Economic Development Incentive payable by the City to the Company as more fully set forth in this Agreement is 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. The Economic Development Incentive payable hereunder shall be paid only from funds available in the TCTIF and authorized by Article III, Section 52-a, of the Texas Constitution, Texas Local Government Code Chapter 380 and Chapter 311 of the Act. The Company agrees to look solely to the TCTIF and not to the City's general funds or any City bond funds for payment of the Economic Development Incentive. The Economic Development Incentive shall be subject to the City's appropriation of funds for such purpose to be paid in the budget year for which such Economic Development Incentive payment is to be made. All terms, provisions, agreements, covenants, conditions, obligations, rights and remedies of each Party pursuant to this Article VIII, Section 3 shall expressly survive the expiration or termination of this Agreement.

4. Limitation on Economic Development Incentives. Notwithstanding anything contained in this Agreement to the contrary, the maximum amount of the Economic Development Incentive payable under the terms of this Agreement is ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00). If there is any conflict between this Article VIII, Section 4 and any other term or provision of this Agreement, this Article VIII, Section 4, shall control.

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

ARTICLE IX

Defaults Recapture of Incentives Remedies

1. Default. A Party shall be in default of this Agreement (the "Defaulting Party"): (i) upon the occurrence of an Event of Bankruptcy or Insolvency of such Party; or (ii) if such Party fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by such Party under the terms of this Agreement and such failure continues for sixty (60) days after written notice by any other Party (the "Non-Defaulting Party") (each a "Default").

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

3. Recapture of Economic Development Incentives. In the event this Agreement is terminated by the City pursuant to Article IX, Section 2 above, the City shall have no obligation to pay the Economic Development Incentive to the Company and the Company shall immediately pay to the City, at the City's address set forth in Article XI, Section 6 of this Agreement, or such other address as the City may hereafter notify the Company in writing, the amount equal to the Economic Development Incentive previously 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 the Economic Development Incentive being recaptured from the date such Economic Development Incentive 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. In the event the Company fails to timely pay any sums due by the Company to the City pursuant to this Article IX, Section 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.

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

ARTICLE X

Release and Indemnification

It is understood and agreed that the relationship between the Parties is contractual in nature between independent parties and nothing contained in this Agreement shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of employer and employee or principal and agent between the Parties. The Parties agree that: (i) the Company shall own the Children's Play Area Improvements; (ii) the Company shall be solely responsible, at the Company's sole cost and expense, for maintaining, repairing and operating the Children's Play Area and the Children's Play Area Improvements; (iii) the Company shall be solely responsible for the safety of its officers, employees, agents, subcontractors, licensees, invitees and all other Persons while using the Children's Play Area Improvements and/or participating in activities in the Children's Play Area; and (iv) the Company shall be solely responsible for any premise defects or conditions which may now or hereafter exist in the Children's Play Area. **COMPANY AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST LIABILITY FOR ANY AND ALL CLAIMS, LIENS, SUITS, DEMANDS, AND/OR CAUSES OF ACTION FOR DAMAGES, INJURIES TO PERSONS (INCLUDING DEATH), PROPERTY DAMAGE (INCLUDING LOSS OF USE), AND EXPENSES, INCLUDING COURT COSTS AND ATTORNEYS' FEES, AND OTHER REASONABLE COSTS ARISING OUT OF OR RESULTING FROM ANY PREMISE DEFECTS IN THE CHILDREN'S PLAY AREA AND/OR ARISING OUT OF OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE COMPANY, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES AND/OR ANY OTHER PERSONS IN CONNECTION WITH OF OR RELATING TO (I) THE MAINTENANCE, REPAIR AND OPERATION OF THE CHILDREN'S PLAY AREA AND/OR THE CHILDREN'S PLAY AREA IMPROVEMENTS; (II) THE USE OF THE CHILDREN'S PLAY AREA IMPROVEMENTS; AND/OR (III) THE PARTICIPATION IN ACTIVITIES IN THE CHILDREN'S PLAY AREA INCLUDING, WITHOUT LIMITATION, ALL CAUSES OF ACTION BASED IN WHOLE OR IN PART UPON THE NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF COMPANY, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES, AND OTHER PERSONS WHETHER OR NOT ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY THE ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS OF THE OFFICERS, EMPLOYEES, OR AGENTS OF THE CITY. THE PROVISION OF THIS ARTICLE X ARE SOLELY FOR THE BENEFIT OF THE PARTIES AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSONS. TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, AND EXPRESSLY WITHOUT WAIVING ANY IMMUNITIES OR DEFENSES AVAILABLE TO THE CITY, THE CITY SHALL INDEMNIFY, HOLD HARMLESS, DEFEND AND REIMBURSE COMPANY, INCLUDING COMPANY'S PARENT COMPANIES, SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE EMPLOYEES, OFFICERS, MEMBERS, PARTNERS AND DIRECTORS FROM AND FOR ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, EXPENSES, ENCUMBRANCES, ATTORNEYS' FEES AND LITIGATION EXPENSES WHICH ARISE OR ARE ALLEGED TO ARISE WHOLLY OR PARTLY OUT OF ANY INFRINGEMENT BY THE CITY OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS SOLELY IN CONNECTION WITH PROMOTIONAL INFORMATION APPROVED AND DISPLAYED BY THE CITY WITHIN THE CHILDREN'S PLAY AREA IMPROVEMENTS TO INCREASE AWARENESS OF CITY EVENTS, OPPORTUNITIES AND PROGRAMS. NOTWITHSTANDING THE FOREGOING, IT IS EXPRESSLY AGREED BY THE PARTIES THAT THE FOREGOING INDEMNITY SPECIFICALLY EXCLUDES ANY PROMOTIONAL MATERIAL DISPLAYED BY THE COMPANY OR MISD AND ANY MATERIALS PROMOTING THE CITY INCLUDED AS PART OF THE CAPITAL INVESTMENT. ALL TERMS, PROVISIONS, AGREEMENTS, COVENANTS, CONDITIONS, 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

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.

2. Attorneys' Fees. In the event any legal action or proceeding is commenced to enforce or interpret provisions of this Agreement, the prevailing Party in any such legal action shall be entitled to recover its reasonable attorneys' fees and expenses incurred by reason of such action.

3. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated herein. There are no oral agreements between the City and the Company.

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

5. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns. The Company may assign all of its rights and obligations under this Agreement to an Affiliate of the Company provided the Company and Affiliate execute and deliver to the City a written agreement whereby the Affiliate expressly assumes all obligations of the Company to the City under the terms of this Agreement and the Company acknowledges and agrees that it shall not be released from its obligations under this Agreement. This Agreement and the rights and obligations of the Company hereunder may not be assigned or transferred by the Company to any Person other than an Affiliate of the Company without the prior written consent of the City, which consent shall not be unreasonably withheld. As used herein, "Affiliate" means any Person directly or indirectly controlling, controlled by, or under common control with the Company. The term "control" as used in the prior sentence means, directly or indirectly, the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise. 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. 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. 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, such consent not to be unreasonably withheld. 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.

6. Notices. Any notice and/or certificate or statement required or permitted to be delivered by this Agreement shall be deemed delivered as of the date such notice, certificate or statement is deposited in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate Party at the following addresses, or at such other addresses as any Party hereto may hereafter provide to the other Party hereto by written notice in accordance with this Article XI, Section 6:

Company: Town East Mall, LLC
c/o General Growth Properties, Inc.
110 North Wacker Drive
Chicago, Illinois 60606
Attention: Chief Legal Officer

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

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

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.

8. Applicable Law. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in Dallas County, Texas.

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

10. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument. A facsimile, electronic or digitally scanned signature shall be an original signature for all purposes.

11. Authorization. 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.

12. Right of Offset. The City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due and owing to the City from the Company, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

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

14. Third Party Beneficiaries. The Parties to this Agreement acknowledge that it is their intent that this Agreement shall directly benefit MISD as an intended third party beneficiary of this Agreement. The Parties further expressly acknowledge and agree that MISD shall have the right to enforce this Agreement including, without limitation, the covenants of the Company set forth in Article VI, Section 9 the same as if MISD was a party to this Agreement and MISD shall have the same indemnity obligations as the City set forth in Article X herein. The Parties do not intend to create any third party beneficiaries of the contract rights contained herein to and Person except MISD. This Agreement shall not create any rights in any Person, individual or entity that is not a signatory hereto except for MISD. 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 except for MISD. The provisions of this Article XI, Section 14 shall expressly survive the termination of this Agreement.

15. City Council Authorization. This Agreement is authorized by resolution of the City Council approved at a City Council meeting.

16. **WAIVER OF CONSEQUENTIAL, PUNITIVE OR SPECULATIVE DAMAGES.** THE COMPANY AND THE CITY AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, EACH PARTY MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE OR SPECULATIVE DAMAGES.

17. Usury Savings Clause. The Company and the 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 Article XI, Section 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 Article XI, Section 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.

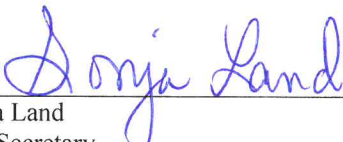
18. Execution of Agreement by Parties. If this Agreement is not executed by both the Company and the City on or before January 5, 2018, this Agreement will be null and void and of no force or effect.

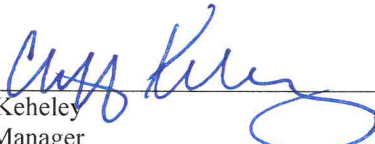
19. Form 1295 Certificate. The Company agrees to comply with Texas Government Code, Section 2242.908 and in connection therewith, the Company agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate, execute the completed certificate before a notary and the Company each hereby agrees to provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed and notarized completed Form 1295 Certificate.

20. Time is of the Essence. THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH AND EVERY PROVISION OF THIS AGREEMENT AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.

ATTEST:


CITY OF MESQUITE,
a Texas home rule municipality

By: 
Sonja Land
City Secretary

By: 
Cliff Keheley
City Manager

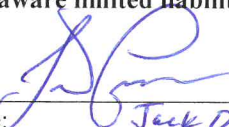
APPROVED AS TO FORM:

12/20/17


City Attorney or his Designee
Date: 12/20/17

COMPANY:

TOWN EAST MALL, LLC,
a Delaware limited liability company

By: 
Name: Jack D. Love
Title: Senior General Manager
Date: 11/28/2017

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

Depiction of Zone

TIF Zone: Towne Centre #2



MESQUITE
City of Mesquite

1 inch = 1,000 feet

TIF Zone

City Limit

Date: 5/26/2017
Path: Q:\GIS\Projects\Finance\TIF_Zones\TIF_TowneCentre.mxd

EXHIBIT "B"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Legal Description of Property

Lot 2, Block A, of TOWN EAST MALL, BLOCK A, LOTS 1-7, an addition to the City of Mesquite, Dallas County, Texas, according to the plat thereof recorded in cc# 201200064295, Map Records, Dallas County, Texas.

EXHIBIT "C"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Depiction of Children's Play Area Improvements





BOOK STACK
 SIZE: 50"L x 57"W x 37"H
 FUNCTIONALITY: CLIMBER, RAMP



TALK POND
 SIZE: 140"L x 71"W x 25"H
 FUNCTIONALITY: CLIMBER



BLOCKS
 SIZE: 94"L x 77"W x 46"H
 FUNCTIONALITY: CLIMBER, TUNNEL



CABOOSE
 SIZE: 74"L x 42"W x 40"H
 FUNCTIONALITY: CLIMBER, RAMP



RINGS
 SIZE: 72"L x 54"W x 46"H
 FUNCTIONALITY: CLIMBER



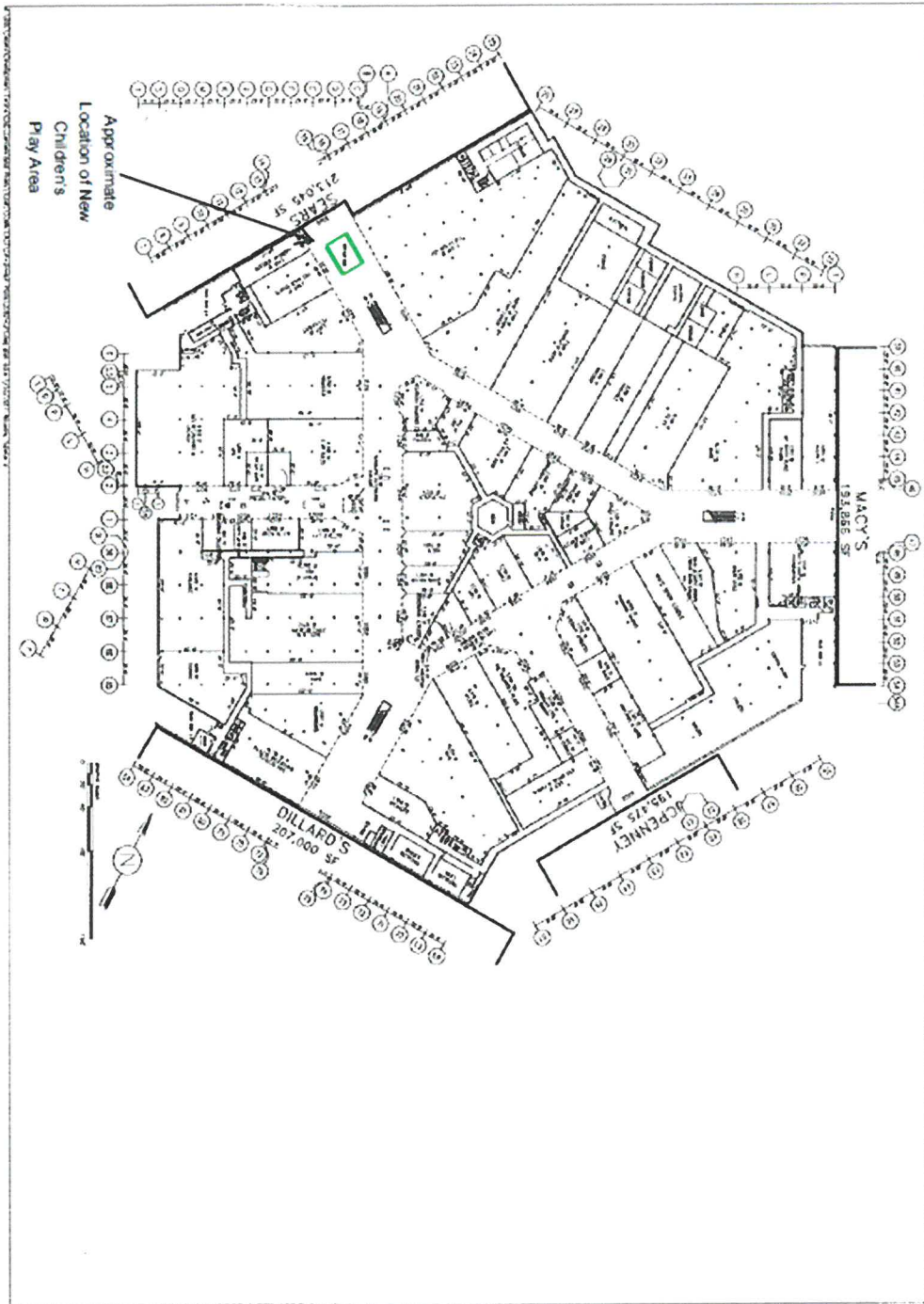
SOCCER BALL
 SIZE: 36"L x 30"W x 10"H
 FUNCTIONALITY: CLIMBER





EXHIBIT "D"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Depiction of Approximate Location of Children's Play Area



PROJECT: TOWN EAST MALL
 SHEET NO: LP1
 DATE: 04/18/2017
 DRAWN BY: [unreadable]
 CHECKED BY: [unreadable]
 APPROVED BY: [unreadable]

TOWN EAST MALL
 2063 TOWN EAST MALL
 MESQUITE, TEXAS 75150

