

RESOLUTION NO. 60-2017

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 MORBEN REALTY CO., INC., FOR A PROPOSED PUBLIC WATER LINE AND MAJOR RENOVATION AND REDEVELOPMENT OF A RETAIL SHOPPING CENTER LOCATED AT 2021 NORTH TOWN EAST BOULEVARD, 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 Morben Realty Co., Inc. (the “Company”), to construct a major renovation and redevelopment of an approximately 175,000-square foot shopping center located at 2021 North Town Boulevard, Mesquite, Texas, known as Town East Crossing Shopping Center in Mesquite, Texas (the “Shopping Center”), said renovation to consist of substantial improvements and upgrades to the façade and infill of the Shopping Center and the upgrade, replacement and reconstruction of a failed water line that serves the Shopping Center, a copy of said agreement being attached hereto as Exhibit “A” and incorporated herein by reference (the “Agreement”); 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.

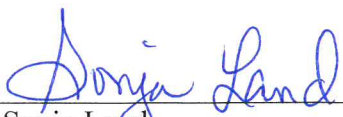
SECTION 5. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided 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.



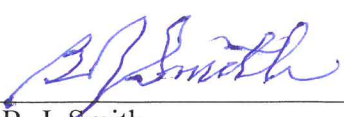
Stan Pickett
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED:



B. J. Smith
City Attorney

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 Morben Realty Co., Inc, a Texas corporation (“the Company”) for the purposes and considerations stated below:

WITNESSETH:

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

WHEREAS, the Company currently owns a portion of the Town East Crossing Shopping Center located at 2021 N. Town East Blvd., Mesquite, Texas, and being more particularly described in **Exhibit “A”** attached hereto and made a part hereof for all purposes (such land and improvements being collectively referred to as the “Shopping Center”); and

WHEREAS, the Shopping Center is an approximately 179,000 square foot retail shopping center at the highly visible corner of IH-635 and Town East Blvd in Mesquite, Texas; and

WHEREAS, a substantial portion of the Shopping Center was vacant for approximately 20 years resulting in the Shopping Center being an under-performing retail center; and

WHEREAS, a major renovation and redevelopment of the Shopping Center consisting of substantial improvements and upgrades to the façade and infill of the Shopping Center is necessary in order to make the Shopping Center attractive to new retail tenants; and

WHEREAS, the Company has agreed to replace and upgrade the existing substandard private water main that serves the Shopping Center in order to renovate and redevelop the Shopping Center; and

WHEREAS, the Company has agreed to make expenditures of approximately FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) in connection with the renovation and redevelopment of the Shopping Center which will increase the productive life and taxable value 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, new retail tenants attracted to the Shopping Center as a result of the renovation and redevelopment of the Shopping Center will add customer traffic that benefits other retailers surrounding the Shopping Center resulting in the increase of sales taxes assessed and collected by the City; and

WHEREAS, the Company has advised the City that a contributing factor inducing the Company to renovate and redevelop the Shopping Center is the agreement by the City to provide the Economic Development Incentive 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 this Agreement will effectuate the purposes set forth in the Program and that the Company’s performance of its obligations set forth in this Agreement should: (i) 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; (ii) attract new retail tenants and customers to the Shopping Center resulting in increased sales taxes assessed and collected by the City; (iii) promote local economic development and stimulate business and commercial activity in the City; and (iv) benefit the City and its citizens.

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 and confessed, 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:

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

“Capital Improvements” shall have the meaning set forth in Article VI, Section 7 of this Agreement.

“Capital Investment” shall have the meaning set forth in Article VI, Section 8 of this Agreement and shall include only expenditures capitalized as capital assets on the Company’s books in accordance with generally accepted accounting principles.

“Capital Investment Certificate” shall have the meaning set forth in Article VI, Section 8 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: (i) that all Conditions Precedent have been satisfied and are then continuing; (ii) that no Default then exists by the Company under the terms of this Agreement; and (iii) 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.

“Closeout and Acceptance Requirements” shall have the meaning set forth in Article VI, Section 3 of this Agreement.

“Company” shall mean Morben Realty Co., Inc., a Texas corporation, its successors and assigns only as permitted by Article X, Section 2 of this Agreement.

“Company Representative” shall mean the Chief Executive Officer, Chief Financial Officer, Manager or any other duly authorized officer of the Company acting on behalf 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 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.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business insolvency, appointment of a receiver for any part of such Party’s property and such appointment is not terminated

within ninety (90) days after each appointment is initially made, any general assignment for the benefit of creditors, the voluntary commencement of any proceeding under any bankruptcy or insolvency laws by any Party, or the involuntary commencement of any proceeding against any Party under any bankruptcy or insolvency laws and such involuntary proceeding is not dismissed within ninety (90) days after the filing thereof.

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

“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” or “Persons” shall mean one or more individual(s) or corporation(s), general or limited partnership(s), limited liability company(s), trust(s), estate(s), unincorporated business(es), organization(s), association(s) or any other entity(s) of any kind.

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

“Record Drawings and Plat Requirements” shall have the meaning set forth in Article VI, Section 3 of this Agreement.

“Shopping Center” shall have the meaning set forth in the recitals of this Agreement.

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

“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.

“Water Main Improvements” shall have the meaning set forth in Article VI, Section 1 of this Agreement.

ARTICLE III

Authority for Agreement

This Agreement is authorized by Chapter 380 of the Texas Local Government Code. The City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the performance of the Company’s obligations set forth in this Agreement will: (i) 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; (ii) attract new retail tenants and customers to the Shopping Center resulting in increased sales taxes assessed and collected by the City; (iii) promote local economic development and stimulate business and commercial activity in the City; and (iv) 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) sixty (60) days after the date the Economic Development Incentive is paid by the City to the Company; (ii) March 1, 2019; or (iii) the date this Agreement is terminated by the City pursuant to a right to terminate as expressly provided herein (the "Term").

ARTICLE V

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 any Economic Development 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 120th day after the date the City notifies the Company of the violation, an amount equal to the total amount of all Economic Development Incentive payments 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 each such Economic Development Incentive payment being recaptured from the date each such Economic Development 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.

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 Additional 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 set forth in this Agreement, the Company covenants and agrees to comply with all of the following covenants during the Term of this Agreement, to-wit:

1. Water Main Improvements. The Company, at the Company's cost and expense, will: (i) upgrade the existing substandard private water main improvements on the Land; and (ii) design and construct new water main improvements on the Land substantially in accordance with the Plans attached hereto as **Exhibit "B"** and made a part hereof for all purposes (the "Water Main Improvements") by August 31, 2018;

2. City Ordinances. The Company covenants that the Water Main Improvements shall be constructed in accordance with and shall comply in all respects with all City ordinances.

3. Water Main Improvement Requirements. The Company covenants that the Water Main Improvements will be constructed in accordance with City standards and in accordance with the City's development review process including inspections. Without limiting the foregoing, the Company shall comply in all respects with (i) the Project Closeout and Acceptance Requirements set forth in **Exhibit "C"** attached hereto and made a part hereof for all purposes (the "Closeout and Acceptance Requirements"); and (ii) the Requirements for Record Drawings and Plats for Private Development Projects attached hereto as **Exhibit "D"** and made a part hereof for all purposes (the "Record Drawings and Plat Requirements");

4. Location of Water Main Improvements. The Company shall construct the Water Main Improvements wholly within an area dedicated as a public right of way or public easement on a replat of the Shopping Center;

5. City Inspections of Drainage Water Main Improvements. The Company shall permit the City, its agents, representatives, employees, engineers and/or independent contractors to inspect the Water Main Improvements on such dates and at such times as the City may reasonably request during normal business hours;

6. Dedication of Water Main Improvements and Easement. The Company shall replat the Shopping Center to include: (i) the dedication of the Water Main Improvements to the City for public use; and (ii) the granting of an easement to the City for the maintenance of the new Water Main Improvements;

7. Capital Improvements. The Company will redevelop and renovate the Shopping Center substantially as described and/or depicted in **Exhibit "E"** attached hereto and made a part hereof for all purposes (the "Capital Improvements") by August 31, 2018;

8. Capital Investment. The Company will make expenditures in the amount of approximately FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) in connection with the Capital Improvements (the "Capital Investment") by August 31, 2018. Within sixty (60) days after the Company has satisfied its Capital Investment covenant, the Company shall submit to the City a certificate in such form as is reasonably acceptable to the City executed by the Company certifying the amount of expenditures made by the Company in connection with the Capital Improvements as of the date of the certificate (the "Capital Investment Certificate"). When calculating the expenditures required under this Article VI, Section 8, the Parties agree that no expenditure shall be included as part of the Capital Investment unless the expenditure is capitalized as a capital asset on the Company's books in accordance with generally accepted accounting principles;

9. Records and Reports. The Company shall deliver to the City within thirty (30) business days after written request, 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 representations, covenants and agreements set forth in this Article VI;

10. 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;

11. Representative of Company to Accompany 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 10 above;

12. Timely Payment of Taxes. The Company shall timely pay all ad valorem property taxes assessed against the Shopping Center 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, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of this Agreement; and

14. Performance of Other Agreements. The Company shall timely keep and perform all terms, provisions, agreements, 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.

ARTICLE VII

Conditions Precedent to Payment of Economic Development Incentive

The Company and the City hereby expressly acknowledge and agree that the City's obligation to pay the Economic Development Incentive under the terms of this Agreement shall expressly be conditioned upon the satisfaction of each and every one of the following conditions precedent (sometimes referred to singularly herein 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. Approval of Unit Prices. The Company shall have submitted to the City unit prices for the work to be performed pursuant to the construction contract for the Water Main Improvements and the City shall have approved such unit prices as being reasonable;
3. Completion of Construction of Water Main Improvements. The Company shall have removed or abandoned the existing substandard private water main improvements on the Land and construction of the new Water Main Improvements shall have been substantially completed in accordance with the Plans attached hereto as **Exhibit "B"** and made a part hereof for all purposes;
4. Completion of Construction of Capital Improvements. The Company shall have substantially completed the Capital Improvements;
5. Water Main Improvement Requirements. The Company shall have complied with all of the Closeout and Acceptance Requirements and the Record Drawings and Plat Requirements;
6. Dedication of Water Main Improvements and Easement. The Company shall have taken all actions necessary to replat the Shopping Center and shall have: (i) dedicated the Water Main Improvements to the City for public use; and (ii) granted an easement to the City for the maintenance of the Water Main Improvements and the City shall have timely approved of such replat;
7. Acceptance of Water Main Improvements. The City shall have inspected the Water Main Improvements and shall have accepted the Water Main Improvements in writing;
8. Payment of Removal, Design and Construction Costs and Inspection Fees. The Company shall have: (i) paid all costs and expenses in connection with the removal or abandonment of the existing substandard Water Main improvements on the Land; (ii) paid all costs and expenses in connection with the design and construction of the new Water Main Improvements; (iii) paid all contractors and the Company's contractors shall have paid all subcontractors, suppliers, laborers and materialmen for all labor and materials in connection with the removal or abandonment of the existing substandard water main improvements and the design and construction of the new Water Main Improvements; (iv) paid all inspection fees assessed by the City in accordance with the City's existing fee schedule in connection with inspections of the Water Main Improvements; and (v) provided the City with invoices, paid receipts, payment records, lien waivers, final affidavits of payment and such other documentation as the City may reasonably request to confirm compliance with Article VII, Subsections 8(i), 8(ii) and 8(iii) of this Agreement;
9. Records and Reports. The Company shall have delivered to the City copies of such invoices, paid receipts, payments records and such other documentation as the City may reasonably request to calculate the amount of the Economic Development Incentive as more fully set forth in Article VIII, Section 1 below;
10. Timely Payment of Ad Valorem Taxes. The Company shall have timely paid all ad valorem taxes assessed against the Shopping Center as of the date of the Payment Request and the City shall have confirmed the receipt of such tax payments;
11. Performance of this 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;

12. 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);

13. No Conviction for 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

14. Survival. The terms, provisions, agreements, covenants, conditions and obligations 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 more fully set forth below to reimburse the Company for the costs incurred in connection with the removal of the existing substandard private water main improvements on the Land and the design and construction of the new Water Main Improvements, such economic development grant to be in the amount equal to *the lesser of*: (i) the actual costs incurred by the Company in connection with: (1) the removal or abandonment of the existing substandard private water main improvements on the Land; (2) the design and construction of the new Water Main Improvements; and (3) fees charged by the City to inspect the new Water Main Improvements; or (ii) ONE HUNDRED TWELVE THOUSAND TWENTY AND NO/100 DOLLARS (\$112,020.00_) (the "Economic Development Incentive").

2. Payment of Economic Development Incentive. The City will pay the Economic Development Incentive to the Company in one (1) payment within sixty (60) days after the later of: (i) the date of the Payment Request; (ii) the final acceptance by the City in writing of the Water Main Improvements; (iii) the substantial completion of the Capital Improvements; (iii) the satisfaction by the Company of the Capital Investment requirement; 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 Incentives. 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 of the City authorized by Article III, Section 52-a, of the Texas Constitution and Texas Local Government Code Chapter 380. 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 TWELVE THOUSAND TWENTY AND NO/100 DOLLARS (\$112,020.00). 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 the other Party (the “Non-Defaulting Party”) (each a “Default”).

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.

3. Non-Payment of Economic Development Incentives. In the event the Company is in Default of this Agreement, or in the event the Company, but for notice, the lapse of time, or both, would be in Default of this Agreement, the City shall have no obligation to pay the Economic Development Incentive to the Company.

4. Recapture of Economic Development Incentives. In the event the Company is in Default of this Agreement, the Company shall immediately pay to the City, at the City’s address set forth in Article X, Section 3 of this Agreement, or such other address as the City may hereafter notify the Company in writing, the amount equal to ten percent (10%) of the Economic Development Incentive 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 percentage of Economic Development Incentive being recaptured from the date the Economic Development Incentive was paid by the City to the Company until the date the percentage of Economic Development Incentive being recaptured 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. In the event the Company fails to timely pay any sums due by the Company to the City pursuant to this Article IX, Section 4, 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 including, without limitation, institution of a suit in a court of competent jurisdiction seeking a judgment against the Company for all sums due by the Company to the City pursuant to Article IX, Section 4, together with attorneys’ fees and court costs.

5. 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

Miscellaneous Provisions

1. Indemnity. **THE COMPANY IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT IS ACTING INDEPENDENTLY, AND CITY ASSUMES NO RESPONSIBILITY OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE REMOVAL OR ABANDONMENT OF THE EXISTING SUBSTANDARD PRIVATE WATER MAIN IMPROVEMENTS ON THE LAND, THE DESIGN AND CONSTRUCTION OF THE NEW WATER MAIN IMPROVEMENTS, OR ANY OTHER MATTER. THE COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS PUBLIC OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, INDIVIDUALLY AND IN THEIR PUBLIC CAPACITIES, FROM AND AGAINST ALL CLAIMS, LAWSUITS, JUDGMENTS, LOSSES, DAMAGES, CAUSES OF ACTION AND LIABILITIES OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, REASONABLE EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS AND REASONABLE ATTORNEY’S FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF USE OR OF DAMAGE TO PROPERTY, DIRECTLY ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF THIS AGREEMENT INCLUDING ANY ERRORS OR OMISSIONS OR NEGLIGENT ACT OR OMISSION OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES, PROVIDED, HOWEVER, THAT THIS INDEMNIFICATION SHALL NOT APPLY IF A COURT OF COMPETENT JURISDICTION FINDS THAT THE DAMAGE OR LIABILITY ARISES FROM THE SOLE**

NEGLIGENCE OF THE CITY, ITS OFFICERS OR EMPLOYEES. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

2. 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 and in the event the Company attempts to assign this Agreement in violation of this Article X, Section 2, the City shall have the right to terminate this Agreement by written notice to the Company.

3. Notices. All notices required or permitted to be given to any Party hereto shall be in writing and shall be considered properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Party at the following address(es) or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective upon deposit in the United States mail. Notices 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:

THE COMPANY: Morben Realty Co., Inc
c/o CenterPoint Commercial Properties, LLC
5330 Alpha Road
Dallas, Texas 75240
Attention: Mark Cohen

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

With a copy to: City Attorney
City of Mesquite
1515 N. Galloway Ave.
Mesquite, Texas 75149

4. Right to Offset. The City shall have the right to offset any amounts due and payable by the City under this Agreement against any debt (including taxes) lawfully due and owing by the Company to the City, 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. Governing Law; Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas (without giving effect to any conflict of law principles that would result in the application of the laws of any state other than Texas). The Parties agree that venue of any suit to construe or enforce this Agreement shall lie exclusively in state courts in Dallas County, Texas.

11. **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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

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

20. 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 Article X, Section 20 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 X, Section 20 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.

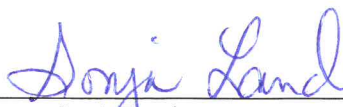
21. Form 1295 Certificate. The Company agrees to comply with Texas Government Code, Section 2242.908 and in connection therewith, the Company agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate, execute the completed certificate before a notary and 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.

22. 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.

23. 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.

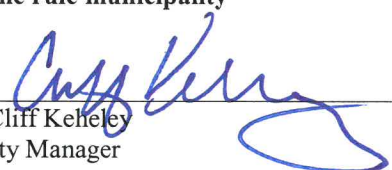
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized agents, officers and/or officials on the dates set forth below.

ATTEST:

By: 
Name: Sonja Land
Title: City Secretary

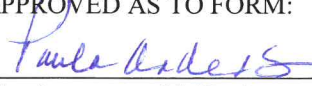
Date: 1.5.2018

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

By: 
Name: Cliff Keheley
Title: City Manager

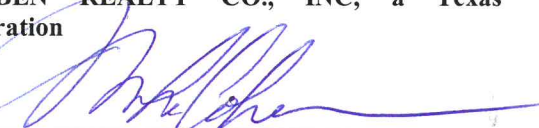
Date: JANUARY 5, 2018

APPROVED AS TO FORM:


City Attorney or his Designee

THE COMPANY:

MORBEN REALTY CO., INC, a Texas corporation

By: 
Name: Mark Cohen
Title: President

Date: JANUARY 3, 2018

EXHIBIT "A"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Legal Description of Land

Part of Town East Crossing, an Addition to the City of Mesquite, Texas, Dallas County, Texas, recorded in Vol. 84078, Page 5312 Deed Records of Dallas County, Texas, and being situated in the I. Thomas Survey, Abst. #1501, Lot 4 Treasury Addition, City of Mesquite, Dallas County, Texas, containing approx. 8.13 acres more or less.

AND,

Being a tract of land containing approximately 1.5117 Acres along with a building containing approximately 20,166 sq. ft. and being a part of Town East Crossing, an Addition to the City of Mesquite, Texas, Dallas County, Texas, recorded in Vol. 84078, Page 5312 Deed Records of Dallas County, Texas, and being situated in the I. Thomas Survey, Abst. #1501, Lot 1-A, Block A, Treasury Addition, City of Mesquite, Dallas County, Texas, Parcels 1 (Vol. 80222, Page 1271) LESS:

TRACT I (TO CONN'S):

BEING a tract of land situated in the L THOMAS SURVEY, ABSTRACT NO. 1501, City of Mesquite, DALLAS County, Texas and being part of Lot 2, Block A of TOWN EAST CROSSING ADDITION, an addition to the City of Mesquite as recorded in Volume 84078, Page 5312, Deed Records, DALLAS County, Texas and being more particularly described as follows:

COMMENCING an "X" cut in concrete found in the North line of Town East Boulevard (a 100 foot right of way) at the most Southerly Southeast corner of said Lot 2, said "X" cut also being the most Southerly Southwest corner of Lot 1, Block A of said Town East Crossing Addition; Thence North 12 degrees 47 minutes 30 seconds East along a West line of said Lot 1, Block A of said Town East Crossing Addition; Thence North 12 degrees 47 minutes 30 seconds East along a West line of said Lot 1 a distance of 137.40 feet to a P.K. nail found for corner; Thence North 09 degrees 50 minutes SO seconds West along a West line of said Lot 1 a distance of 15107 feet to the POINT OF BEGINNING;

THENCE South 80 degrees 09 minutes 10 seconds West a distance of 58.09 feet to a point for corner;

THENCE North 09 degrees 50 minutes 50 seconds West a distance of 51.00 feet to a point for corner;

THENCE South 80 degrees 09 minutes 10 seconds West a distance of 21.91 feet to a point for corner;

THENCE North 09 degrees 50 minutes 50 seconds West a distance of 125.10 feet to a point for corner at a corner of said Lot 1;

THENCE North 80 degrees 09 minutes 10 seconds East along a Southerly line of said Lot 1 a distance of 80.00 feet to a point for corner;

THENCE South 09 degrees 50 minutes 50 seconds East along a West line of said Lot 1 a distance of 176.10 feet to the POINT OF BEGINNING and CONTAINING 12,971 square feet or .2978 acres of land, more or less.

TRACT II:

BEING a tract of land situated in the I. THOMAS SURVEY, ABSTRACT NO. 1501, City of Mesquite, DALLAS County, Texas and being part of Lot 2, Block A of TOWN EAST CROSSING ADDITION, an addition to the City of Mesquite as recorded in Volume 84078, Page 5312, Deed Records, DALLAS County, Texas and being more particularly described as follows:

Towne East Crossing\Mesquite COMMENCING an "X" cut in concrete found in the North line of Town East Boulevard (a 100 foot right of way) at the most Southerly Southeast corner of said Lot 2, said "X" cut also being the most Southerly Southwest corner of Lot 1, Block A of said Town East Crossing Addition; Thence North 12 degrees 47 minutes 30 seconds

East along a West line of said Lot 1 a distance of 137.40 feet to a P.K. nail found for corner; Thence North 09 degrees 50 minutes 50 seconds West along a West line of said Lot 1 a distance of 328.17 feet to a point for corner; Thence South 80 degrees 09 minutes 10 seconds West along a Southerly line of said Lot 1 a distance of 80.00 feet to a point for corner; Thence North 09 degrees 50 minutes 50 seconds West along a West line of said Lot I a distance of 66.68 feet to the POINT OF BEGINNING;

THENCE South 80 degrees 09 minutes 10 seconds West a distance of 36.42 feet to a point for corner;

THENCE North 09 degrees 50 minutes 50 seconds West a distance of 4A2 feet to a point for corner;

THENCE South 80 degrees 09 minutes 10 seconds West a distance of 22.92 feet to a point for corner;

THENCE South 09 degrees 50 minutes 50 seconds East a distance of 132.14 feet to a point for corner;

THENCE South 80 degrees 09 minutes 10 seconds West a distance of 38.83 feet to a point for corner;

THENCE North 09 degrees 50 minutes 50 seconds West a distance of 10.40 feet to a point for corner;

THENCE South 80 degrees 09 minutes 10 seconds West a distance of 42.96 feet to a point for corner in an Easterly line of said Lot 1;

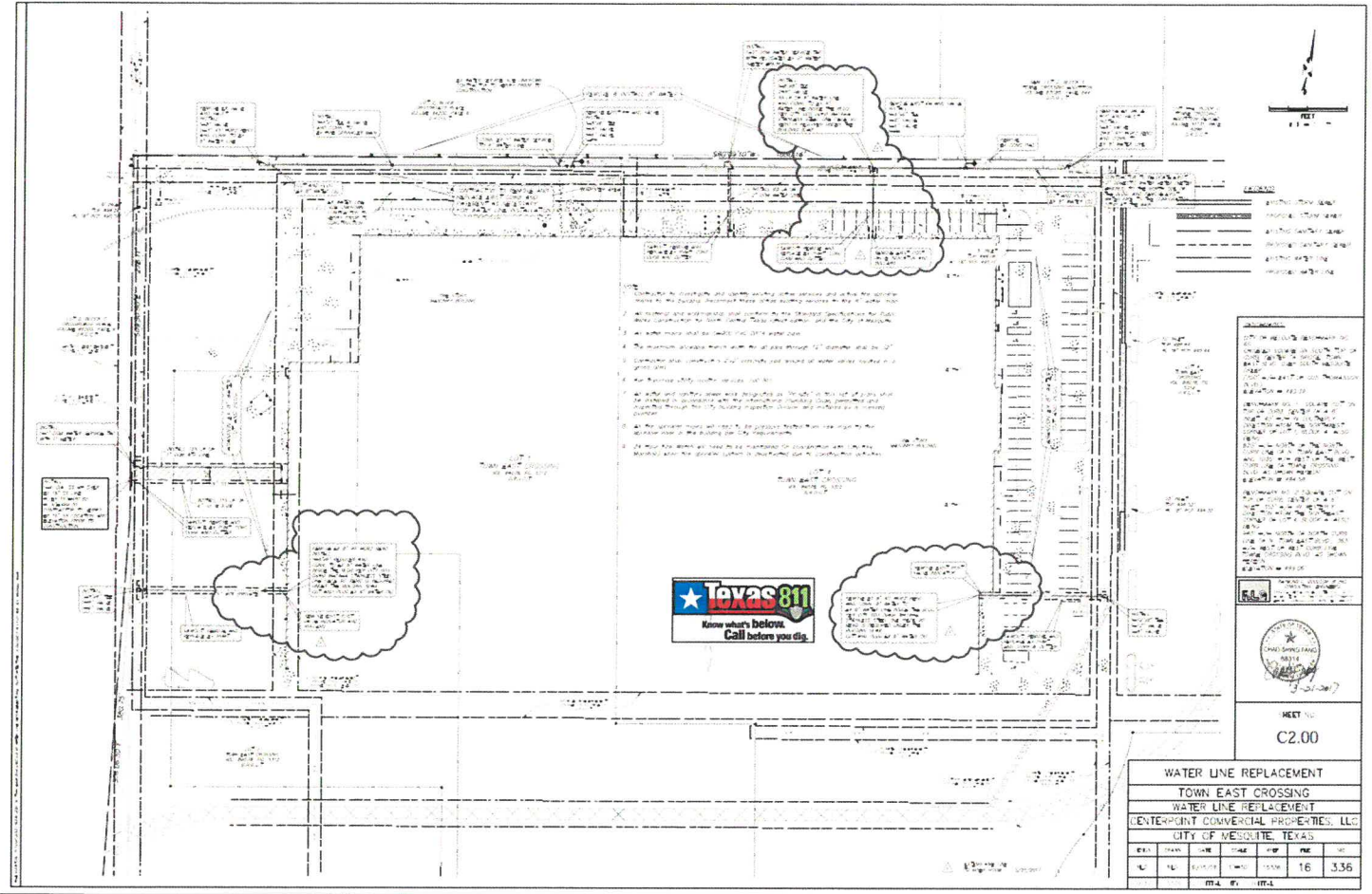
THENCE North 09 degrees 50 minutes 50 seconds West along an Easterly line of said Lot 1 a distance of 190.84 feet to a P.K. nail found for corner;

THENCE North 80 degrees 09 minutes 10 seconds East along a Southerly line of said Lot 1 a distance of 141.13 feet to an "X" cut in concrete found for corner;

THENCE South 09 degrees 50 minutes 50 seconds East along a West line of Lot 1 a distance of 73.32 feet to the POINT OF BEGINNING and CONTAINING 20,246 square feet or 0.4648 acres of land, more or less.

EXHIBIT "B"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Water Main Improvements



WATER LINE REPLACEMENT	
TOWN EAST CROSSING	
WATER LINE REPLACEMENT	
CENTERPOINT COMMERCIAL PROPERTIES, LLC	
CITY OF MESQUITE, TEXAS	
DATE	16 3.36
BY	
CHECKED BY	
DATE	

EXHIBIT "C"

Closeout and Acceptance Requirements

City of Mesquite - Engineering Acceptance of Civil Construction:

June 30, 2015

In addition to proper completion of the construction shown on the engineering plans, there are several important administrative items that must be submitted and approved prior to City acceptance of the improvements and issuance of a Certificate of Occupancy for a project. These administrative items include:

- Record Drawings.** If changes to the "released" set of Engineering Plans are needed during construction, they must be submitted to the City Engineering Division for review and release. Both hard copy and electronic copy of record drawings are required prior to final acceptance. Requirements for records drawings can be obtained on the Engineering Division web page at:
<http://www.cityofmesquite.com/DocumentCenter/Home/View/417>
- Maintenance Bond** – a one-year maintenance bond for 10% of the cost of the public improvements (or a minimum of \$500.00) must be submitted to your assigned Engineering Division Public Works Construction Inspector.
- Acceptance Letter Request Form** – fill out this form and turn into your assigned Engineering Division Public Works Construction Inspector. This form is available at:
<http://www.cityofmesquite.com/DocumentCenter/Home/View/5128>
- All required **construction and material tests reports** have been successfully completed and witnessed by your inspector and related documentation of these tests submitted to your assigned Engineering Division Public Works Construction Inspector.
- All other project documentation complete, City invoices paid, etc.

EXHIBIT "D"

Record Drawings and Plats Requirements

Interoffice

MEMORANDUM

Updated: March 5, 2015

To: Private Developers, Consulting Engineers, Contractors and Engineering Division Staff

From: Matthew Holzapfel, P.E. - City Engineer

Subject: Requirements for Record Drawings and Plats for Private Development Projects

The contractor shall arrange an appointment with the assigned City Public Works Construction Inspector (PWCI) to review his "marked-up" field set of civil drawings prior to submitting to the consulting engineer. This "marked-up" field set should have notes and changes identified for all deletions, additions, change orders, addendums and other changes to the plans. This "marked-up" field set must be approved by the assigned PWCI. Once approved by the PWCI the contractor shall submit the "marked-up" field set to the consulting engineer who prepared the plans for preparation of record drawings and digital files that meet the below requirements.

Engineering Firms for Private Development Projects shall submit the following to the assigned City Public Works Construction Inspector:

Record Drawings (As-Builts):

- 2 Blackline (24" x 36" or 22" x 34") Copies & Associated Electronic Files.
- These record drawings shall be sealed by the engineer of record in accordance with the Texas Board of Professional Engineers Policy Advisory Opinion Regarding Record (As-Built) Drawings, Issued February 8, 2007, available at web address (<http://www.tbpe.state.tx.us/nm/pa18.pdf>).
- All sheets of the approved civil drawings with all details shall be included.
- All changes shall be shown and noted in the revision block.
- Revisions shall be drawn using accepted drafting standards and shall be neat and easily read and interpreted.
- Line work and notes related to work deleted or changed shall be omitted from the drawing. **All information on the blackline copies shall be crisp with well defined lines and lettering. The information shall have high contrast and be capable of producing a high quality, legible microfilm and scanned image.**
- An electronic copy of the record drawings shall be submitted on CD-ROM, DVD or flash drive in all the following digital formats:
 - AutoCAD (.dwg file format) - The .dwg files for the plan set may be in either model or paper space.
 - TIFF Class IV, 400 dpi format.
 - pdf format
- The City Public Works Construction Inspector shall check that the above digital images are complete and correct and copy all the digital files to the network Q: drive in the project digital folder under a separate folder labeled *.rcd dwgs*.
- The PWCI shall give the two blackline record drawing copies to the Engineering Division GIS staff for indexing, filming, scanning and placement in the City record drawing database. The GIS staff member receiving the blackline drawings and digital files on CD-ROM, DVD or flash drive from the PWCI shall sign and date the Project Final Acceptance Check-Off List. The Engineering Division GIS staff will also distribute one copy of the blackline record drawings to the Fire Marshall.

Plats:

- An electronic copy of the Final Plat (without signatures) must be submitted to the Planning and Zoning Office on CD-ROM in AutoCAD 2006 or later in .dwg file format. The AutoCAD drawing must be in "model-space". The plat must show two property corners in grid coordinates. Grid coordinates must be referenced to a City GPS point. The grid coordinates must be in North American Datum (NAD) 83, Texas State Plane, North Central FIPS Zone 4202. This electronic copy does not need a seal. This copy will be used by the GIS technicians to place the plat properly on the updated street maps.

No Certificate of Occupancy of any sort shall be approved by the Engineering Division until an acceptable set of record drawings and associated digital files are received and approved.

EXHIBIT "E"

Capital Improvements

	Cost	
Fitness Connection	\$	1,950,000.00
Gattis	\$	241,140.00
Canales	\$	180,000.00
Renovations	\$	2,000,000.00
Landscape	\$	70,000.00
Roof	\$	478,000.00
Parking Lot	\$	125,000.00
	\$	5,044,140.00