

RESOLUTION NO. 17-2020

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE A REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF MESQUITE, TEXAS, BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER ELEVEN, CITY OF MESQUITE, TEXAS (HEARTLAND TOWN CENTER) (the “ZONE”), AND HEARTLAND RETAIL, LLC, REGARDING THE REIMBURSEMENT OF PROJECT COSTS FOR PUBLIC IMPROVEMENTS WITHIN THE RETAIL TRACT OF THE ZONE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the City of Mesquite, Texas (the “**City**”), created Reinvestment Zone Number Eleven, City of Mesquite, Texas (Heartland Town Center) (the “**Zone**”), and established a Board of Directors for the Zone (the “**Board**”) to promote development or redevelopment in the Zone pursuant to Ordinance No. 4532, approved by the City Council on December 18, 2017, in accordance with the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code, as amended (the “**Act**”); and

**WHEREAS**, at the time of its creation, the Zone included the 25.464 acre tract described in more detail in Exhibit A hereto; and

**WHEREAS**, on June 18, 2018, the Board adopted a Project Plan and Reinvestment Zone Financing Plan and the City Council adopted Ordinance No. 4574 approving the Project Plan and Reinvestment Zone Financing Plan; and

**WHEREAS**, Heartland Retail, LLC (the “**Developer**”), desires to improve and develop the property described in Exhibit A in addition to an adjacent and contiguous 1.935 acre tract located wholly within the corporate limits of the City and described in more detail in Exhibit B hereto (the property described in Exhibit A and Exhibit B being collectively referenced herein as the “**Retail Tract**”); and

**WHEREAS**, the Developer intends to design, construct and install certain public improvements for the benefit of development of the Retail Tract (the “**Public Improvements**”); and

**WHEREAS**, on April 20, 2020, the Board adopted an Amended Project Plan and Reinvestment Zone Financing Plan (the “**Amended Plan**”) expanding the boundaries of the Zone to include the property described in Exhibit B within the Zone, extending the term of the Zone by seven additional years, and dedicating twenty-five percent (25%) of the City’s ad valorem tax increment from within the boundaries of the Retail Tract for a period of 38 years or until the amount of TIRZ increment generated from the Retail Tract totals \$2,170,667, whichever occurs first, to directly reimburse the Developer for the costs of construction of the Public Improvements necessary for the Development, which the Board found is necessary for implementation of the Amended Plan; and

**WHEREAS**, the Board desires to enter into an agreement with the City and Developer with respect to the matters set forth herein, a true and correct copy of such agreement being attached hereto as Exhibit C and made a part hereof for all purposes (the “**Agreement**”); and

**WHEREAS**, the Board found and determined that approval of the Agreement by the Board and the Board’s recommendation to the City Council to approve the Agreement is in the best interests of the Zone and the citizens of the City; and

**WHEREAS**, the City finds and determines that the Agreement is in the best interests of the Zone and the citizens of the City.

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

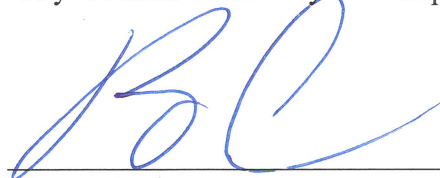
**SECTION 1.** That the statements, facts, findings and recitals set forth above are hereby found and declared to be true and correct and are incorporated into this Resolution and adopted as part of this Resolution for all purposes.

**SECTION 2.** That in accordance with the Act, the City Council of the City of Mesquite, Texas, hereby approves the Agreement, attached hereto as Exhibit C and incorporated herein for all purposes, and hereby authorizes the City Manager to finalize and execute the Agreement and all other documents necessary to consummate the transactions contemplated by the Agreement and to take such actions and to execute such documents as may be necessary or advisable to carry out the intent and purpose of this Resolution, and the City Manager is further 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, or any part thereof, that requires 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 2, provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager and the City’s Director of Finance pursuant to this Section 2 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council’s legislative functions.

**SECTION 3.** That should any word, sentence, clause, paragraph or provision of this resolution be held to be invalid or unconstitutional, the validity of the remaining provisions of this resolution shall not be affected and shall remain in full force and effect.

**SECTION 4.** That this resolution shall take effect immediately from and after its passage.

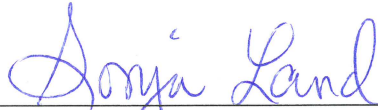
**DULY PASSED AND APPROVED** by the City Council of the City of Mesquite, Texas,  
on the 20th day of April 2020.



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Bruce Archer  
Mayor

ATTEST:



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Sonja Land  
City Secretary

APPROVED AS TO LEGAL FORM:



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David L. Paschall  
City Attorney

**Metes and Bounds - Legal Description**  
**25.464 Acres**

BEING that certain tract of land situated in the Martha Music Survey, Abstract No. 312, in Kaufman County, Texas, and being part of that certain tract of land described in deed to CADG Kaufman 146, LLC, recorded in Volume 4363, Page 38, of the Deed Records of Kaufman County, Texas (DRKCT), and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod with cap marked "PETITT-RPLS 4087" set at the intersection of the southeast right-of-way line of Farm to Market Road No. 741 (called 90 foot R.O.W. at this point), and the northeasterly right-of-way line of Heartland Parkway (called 100 foot R.O.W. at this point), and being the west corner of said CADG Kaufman 146, LLC tract;

THENCE North 46°18'40" East, with said southeast right-of-way line of Farm to Market Road No. 741, said southeast right-of-way line according to Deed to the State of Texas recorded in Volume 454, Page 159, DRKCT, a distance of 428.96 feet to a 1/2 inch iron rod with cap stamped "DAA" found for corner at the west corner of that certain tract of land described as Tract 7 in deed to HW Heartland, L.P. recorded in Volume 3119, Page 142, DRKCT;

THENCE leaving said southeast right-of-way line of Farm to Market Road No. 741, and with the southwest and southeast lines of said Tract 7, the following bearings and distances to 1/2 inch iron rods with cap stamped "DAA" found for corner:

South 43°42'15" East, a distance of 207.45 feet;

And North 46°15'02" East, a distance of 146.43 feet;

THENCE North 15°07'57" East, continuing with said southeast line of Tract 7, a distance of 467.14 feet to a 5/8 inch iron rod with cap marked "PETITT-RPLS 4087" set for corner;

THENCE North 83°20'17" East, leaving said northwest line of Tract 7, and with the northerly line of said CADG Kaufman 146, LLC tract, a distance of 465.52 feet to a 5/8 inch iron rod with cap marked "PETITT-RPLS 4087" set for corner;

THENCE over and across said CADG Kaufman 146, LLC tract, the following bearings and distances to 5/8 inch iron rods with cap marked "PETITT-RPLS 4087" set for corner:

South 06°39'43" East, a distance of 222.01 feet;

South 68°43'31" East, a distance of 145.05 feet;

North 86°42'10" East, a distance of 198.45 feet;

South 07°44'02" East, a distance of 285.71 feet;

South 42°35'50" West, a distance of 477.61 feet;

South 15°12'36" West, a distance of 235.81 feet;

North 78°15'28" West, a distance of 65.47 feet;

And South 09°46'40" West, a distance of 165.00 feet, said iron rod being located on said northeasterly right-of-way line of Heartland Parkway (variable width R.O.W. at this point), and being the beginning of a non-tangent curve to the left;

THENCE with said northeasterly right-of-way line of Heartland Parkway, said right-of-way dedicated by Final Plat of Heartland Tract A, Phase 2B, recorded in Cabinet 3, Slide 38, of the Plat Records of Kaufman County, Texas, and with said curve having a central angle of 02°09'35", a radius of 790.00 feet, a chord which bears North 81°18'07" West, a chord distance of 29.78 feet, for an arc distance of 29.78 feet to the end of said curve, a 1/2 inch iron rod with cap stamped "DAA" found for corner;

THENCE North 82°23'59" West, continuing with said northeasterly right-of-way line of Heartland Parkway, a distance of 23.30 feet to a 1/2 inch iron rod with cap stamped "DAA" found for corner, and being the beginning of a tangent curve to the right;

THENCE continuing with said northeasterly right-of-way line of Heartland Parkway, and with said curve having a central angle of 10°28'32", a radius of 300.00 feet, a chord which bears North 77°08'39" West, a chord distance of 54.77 feet, for an arc distance of 54.85 feet to the end of said curve, a 1/2 inch iron rod with cap stamped "DAA" found for corner, and being the beginning of a tangent reverse curve to the left;

THENCE continuing with said northeasterly right-of-way line of Heartland Parkway, and with said curve having a central angle of 10°28'32", a radius of 300.00 feet, a chord which bears North 77°08'39" West, a chord distance of 54.77 feet, for an arc distance of 54.85 feet to the end of said curve, a 1/2 inch iron rod with cap stamped "DAA" found for corner (called 100 foot R.O.W. at this point);

THENCE North 82°22'55" West, continuing with said northeasterly right-of-way line of Heartland Parkway, a distance of 172.65 feet to a 1/2 inch iron rod with cap stamped "DAA" found for corner, and being the beginning of a tangent curve to the right;

THENCE continuing with said northeasterly right-of-way line of Heartland Parkway, and with said curve having a central angle of 38°41'30", a radius of 950.00 feet, a chord which bears North 63°02'10" West, a chord distance of 629.41 feet, for an arc distance of 641.53 feet to the end of said curve, a 1/2 inch iron rod with cap stamped "DAA" found for corner;

THENCE North 43°41'26" West, continuing with said northeasterly right-of-way line of Heartland Parkway, a distance of 249.59 feet to the POINT OF BEGINNING of herein described tract, containing 25.464 acres of land.

**EXHIBIT "B" to Resolution No. 17-2020  
1.935-Acre Tract**

**Additional Property in the Retail Tract of the Zone**

LEGAL DESCRIPTION  
1.935 ACRE TRACT

BEING that certain tract of land situated in the Martha Music Survey, Abstract No. 312, in Kaufman County, Texas, and being that certain tract of land described as Tract 7 in deed to H.W. Heartland, L.P. (now known as UST-Heartland, L.P. according to Certificate of Amendment filed in the Office of the Secretary of State of Texas on December 3, 2013), recorded in Volume 3119, Page 142, of the Deed Records of Kaufman County, Texas (DRKCT), and being more particularly described as follows:

COMMENCING at a 5/8 inch iron rod with cap marked "PETITT-RPLS 4087" set at the intersection of the southeast right-of-way (R.O.W.) line of Farm to Market Road No. 741 (called 90 foot R.O.W. at this point), and the northeasterly right-of-way line of Heartland Parkway (called 100 foot R.O.W. at this point), and being the west corner of that certain tract of land described in deed to Heartland Retail, LLC recorded in Volume 5787, Page 437, DRKCT;

THENCE North 46°18'40" East, with said southeast right-of-way line of Farm to Market Road No. 741, a distance of 428.96 feet to a 1/2 inch iron rod with cap stamped "DAA" found at the west corner of said Tract 7, and being the POINT OF BEGINNING of herein described tract;

THENCE North 46°18'40" East, continuing with said southeast right-of-way line of Farm to Market Road No. 741, a distance of 22.96 feet to a 5/8 inch iron rod with cap marked "PETITT-RPLS 4087" set for corner at the beginning of a tangent curve to the left;

THENCE continuing with said southeast right-of-way line of Farm to Market Road No. 741, and with said curve having a central angle of 14°27'58", a radius of 999.93 feet, a chord which bears North 39°04'41" East, a chord distance of 251.79 feet, for an arc distance of 252.46 feet to the end of said curve, a 5/8 inch iron rod with cap marked "PETITT-RPLS 4087" set for corner;

THENCE North 32°01'23" East, continuing with said southeast right-of-way line of Farm to Market Road No. 741, a distance of 211.13 feet to a 5/8 inch iron rod with cap marked "PETITT-RPLS 4087" set for corner at the beginning of a non-tangent curve to the left;

THENCE continuing with said southeast right-of-way line of Farm to Market Road No. 741, and with said curve having a central angle of 00°58'12", a radius of 909.93 feet, a chord which bears North 31°32'17" East, a chord distance of 15.40 feet, for an arc distance of 15.40 feet to the end of said curve, a concrete monument found for corner at the intersection of said southeast right-of-way line of Farm to Market Road No. 741, and the southerly right-of-way line of Interstate Highway No. 20 (variable width R.O.W.);

THENCE North 83°20'17" East, with said southerly right-of-way line of Interstate Highway No. 20, a distance of 79.06 feet to a 5/8 inch iron rod with cap marked "PETITT-RPLS 4087" set for corner at the northeast corner of said Tract 7;

THENCE South 15°07'57" West, leaving said southerly right-of-way line of Interstate Highway No. 20, and with the southeasterly line of said Tract 7, a distance of 477.91 feet to a 1/2 inch iron rod with cap stamped "DAA" found for corner;

THENCE South 46°15'02" West, continuing with said southeasterly line of Tract 7, a distance of 146.43 feet to a 1/2 inch iron rod with cap stamped "DAA" found for corner;

THENCE North 43°42'15" West, with the southwest line of Tract 7, a distance of 207.45 feet to the POINT OF BEGINNING of herein described tract, containing 1.935 acres of land.

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**EXHIBIT "C"**  
**To Resolution No. 17-2020**

**REIMBURSEMENT AGREEMENT  
BETWEEN THE CITY OF MESQUITE, TEXAS,  
BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER ELEVEN, CITY OF  
MESQUITE, TEXAS (HEARTLAND TOWN CENTER),  
AND  
HEARTLAND RETAIL, LLC**

**TIRZ REIMBURSEMENT AGREEMENT**

This TIRZ Reimbursement Agreement (this "Agreement") is entered into among the City of Mesquite, Texas (the "City"), the Board of Directors of Reinvestment Zone Number Eleven, City of Mesquite, Texas (Heartland Town Center) (the "Board"), and Heartland Retail, LLC (the "Developer") to be effective April 20, 2020 (the "Effective Date"). The City, the Board, and the Developer are individually referred to as a "Party" and collectively as the "Parties." The City and the Board are collectively referred to as the "Public Parties."

**ARTICLE I**  
**RECITALS**

**WHEREAS**, the Developer owns the approximately 25.464-acre tract of land described on Exhibit A, and will be the developer of the land described on Exhibit A and Exhibit B (collectively the "Retail Tract"); and

**WHEREAS**, CADG Kaufman 146, LLC, Kaufman County Fresh Water Supply District No. 5, and the City entered into that certain Heartland Town Center Development Agreement dated effective April 2, 2018 and recorded May 29, 2018, in Volume 5691, Page 352 of the Real Property Records of Kaufman County, Texas (the "Development Agreement"); and

**WHEREAS**, on August 27, 2018, CADG Kaufman 146, LLC assigned to the Developer all of its rights in the Development Agreement with respect to the General Retail Tract, as defined in the Development Agreement, and the City consented to such assignment; and

**WHEREAS**, the Development Agreement provides for 25 percent of the City's collected ad valorem tax increment from the General Retail Tract, based on the City's tax rate in effect on the date of the establishment of the Zone, for a period of up to 31 years or until the amount of TIRZ increment placed into the commercial account of the TIRZ Fund (hereinafter defined) totals \$3,283,602, whichever occurs first, to reimburse the Developer for the costs of public improvements; and

**WHEREAS**, Reinvestment Zone Number Eleven, City of Mesquite, Texas (Heartland Town Center) (the "Zone") is a tax increment reinvestment zone created by the governing body of the City (the "City Council") in accordance with the Tax Increment Financing Act, Chapter 311, Texas Tax Code, as amended (the "Act"), by Ordinance No. 4532 adopted on December 18, 2017; and

**WHEREAS**, in addition to creating the Zone, Ordinance No. 4532 appointed the Board; and

**WHEREAS**, on June 18, 2018, the Board adopted a Project Plan and Reinvestment Zone Financing Plan establishing, in part, a commercial account for the collection of twenty-five percent (25%) of the City's ad valorem tax increment from within the boundaries of the General Retail Tract for a period of 31 years or until the amount of TIRZ increment placed into the commercial account totals \$3,283,602, or the termination of any Chapter 380 Economic



Development Program Agreement with any property owner of any part of the General Retail Tract, whichever comes first; and

**WHEREAS**, on June 18, 2018, the City Council adopted Ordinance No. 4574 approving the Project Plan and Reinvestment Zone Financing Plan; and

**WHEREAS**, on April 20, 2020, the Board adopted an Amended Project Plan and Reinvestment Zone Financing Plan (the "Project and Finance Plan") expanding the boundaries of the Zone to enlarge the General Retail Tract within the Zone to include all of the Retail Tract, being the property described on the attached **Exhibit A** and **Exhibit B**, extend the term of the Zone by seven additional years, and to dedicate twenty-five percent (25%) of the City's ad valorem tax increment from within the boundaries of the Retail Tract for a period of 38 years or until the amount of TIRZ increment placed into the commercial account totals \$2,170,667 to directly reimburse the Developer for Project Costs (hereinafter defined), whichever occurs first; and

**WHEREAS**, on April 20, 2020, the City Council adopted Ordinance No. 4777 approving the Project and Finance Plan for the Zone that recognized the expanded boundaries of the Zone and the extended term of the Zone, and described the Public Improvements (hereinafter defined) for the Retail Tract that are eligible for reimbursement from the Tax Increment; and

**WHEREAS**, the Act authorizes the execution of a "TIRZ Reimbursement Agreement" to implement the Project and Finance Plan; and

**WHEREAS**, this Agreement is the "TIRZ Reimbursement Agreement" contemplated by the Project and Finance Plan; and

**WHEREAS**, the liability of the Public Parties under this Agreement is limited to amounts required to be deposited into the TIRZ Fund, as defined herein; and

**WHEREAS**, this Agreement supersedes the Development Agreement on all matters related to tax increment financing for the General Retail Tract, as defined in the Development Agreement; and

**WHEREAS**, the Parties desire to enter into this Agreement to satisfy the TIRZ reimbursement obligations associated with the Retail Tract, as set forth in the Development Agreement, as amended, and the Project and Finance Plan.

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

## ARTICLE II DEFINITIONS

Words and phrases used in this Agreement that have their initial letters capitalized shall have the meanings given to them in the introductory paragraph above, in the Recitals, and in this Article II unless the context in which a word or phrase is used clearly requires a different meaning.

1. "Act" is defined in the Recitals.
2. "Agreement" means this TIRZ Reimbursement Agreement.
3. "Board" means the Board of Directors of the Zone.
4. "City" means the City of Mesquite, Texas.
5. "City Council" is defined in the Recitals.
6. "City Manager" means the City Manager of the City.
7. "Developer" means Heartland Retail, LLC.
8. "Effective Date" is defined in the introductory paragraph of this Agreement.
9. "Party" and "Parties" are defined in the introductory paragraph of this Agreement.
10. "Project and Finance Plan" is defined in the Recitals.
11. "Project Costs" are the actual costs of Public Improvements.
12. "Public Parties" are defined in the introductory paragraph to this Agreement.
13. "Public Improvements" are defined in the Project and Finance Plan and described on **Exhibit C** together with the estimated cost of each Public Improvement.
14. "Retail Tract" is defined as the approximately 25-acre tract of land described on **Exhibit A** and the approximately 1.9-acre tract of land described on **Exhibit B**.
15. "Tax Increment" is the 25 percent Tax Increment for the Retail Tract, as defined in Project and Finance Plan.
16. "TIRZ Fund" is the appropriate subaccount of the tax increment fund created by the City and segregated from all other funds of the City to pay the Project Costs associated with the Retail Tract.
17. "Term" means the term of this Agreement, beginning on the Effective Date and continuing for the term of the Zone.
18. "Zone" means Tax Increment Reinvestment Zone Number Eleven, City of Mesquite, Texas.

**ARTICLE III**  
**REIMBURSEMENT OF PROJECT COSTS**

3.1 Deposits into TIRZ Fund. Commencing on the Effective Date, and continuing for the Term or until the cumulative amount of TIRZ increment placed into the TIRZ Fund totals \$2,170,667, whichever occurs first, the Public Parties shall cause the Tax Increment to be deposited into the TIRZ Fund. Funds in the TIRZ Fund shall be used only to pay the Developer for the Project Costs up to a maximum of \$2,170,667.

3.2 Developer Reimbursement. The Public Parties agree to reimburse the Developer for Project Costs from the TIRZ Fund in an amount not to exceed \$2,170,667, provided that the Developer commences a portion of the Public Improvements identified on Exhibit C no later than December 31, 2025 and completes all Public Improvements no later than eight (8) years after the Effective Date (the "Completion Deadline"). If all Public Improvements are not completed by the Completion Deadline, (a) the failure to meet the Completion Deadline for some or all Public Improvements shall not constitute an event of default under this Agreement; (b) the Developer shall be entitled to retain all reimbursements received by Developer prior to the Completion Deadline, and shall be entitled to reimbursement for all costs incurred by the Developer for the Public Improvements prior to the Completion Deadline; and (c) the Developer shall not be entitled to reimbursement for any costs incurred for Public Improvements after the Completion Deadline. The City Manager may, in his or her sole discretion, extend such commencement and completion dates by a maximum of two years upon a finding that general economic conditions contributed to the delay in commencement or completion. None of the Public Parties shall take any actions the effect of which would be to reduce or adversely affect the Tax Increment or otherwise reduce or adversely affect the timely deposit of funds into the TIRZ Fund or held in the TIRZ Fund. The TIRZ Fund shall only be used to pay Project Costs in accordance with this Agreement, the Project and Finance Plan, and the Act.

3.3 Procedure for Reimbursement. The Developer will present to the City Director of Finance not more frequently than quarterly invoices evidencing expenditures for Project Costs (including supporting documentation reasonably requested by the City Director of Finance). The City Director of Finance shall review the invoices and shall approve or deny them on behalf of the Public Parties within twenty (20) days (which approvals shall not be unreasonably withheld). If the City Director of Finance disapproves an invoice, the City Director of Finance shall give written notification to the Developer of the City's disapproval, in whole or in part, of such invoice, specifying the reason(s) for such disapproval and the additional requirements to be satisfied for approval of such invoice. If the City Director of Finance takes no action within such 20-day period, the invoices shall be deemed approved. Invoices that have been approved by the City Finance Director or that are deemed approved shall be paid to the Developer from the TIRZ Fund within fifteen (15) days after the end of the next calendar month, provided funds are available in the TIRZ Fund. The Parties will use all reasonable efforts to resolve disputes within thirty (30) days, after which time period the Developer may pursue its remedies under this Agreement.

3.4 Limitation on Reimbursement. The Developer agrees to look solely to the TIRZ Fund, not the City's general fund or other funds, for payment of Project Costs. Nothing in this Agreement shall be construed to obligate the City to provide reimbursement of Project Costs from

any other source of funds or to otherwise require the City to pay the Developer for Project Costs in the event there are insufficient funds in the TIRZ Fund to pay Project Costs or in the event the Zone terminates prior to payment in full of the accrued Project Costs (provided the City shall not adopt an ordinance providing for termination of Zone on a date earlier than provided in Ordinance No. 4777 adopted on April 20, 2020 extending the term of the Zone unless this Agreement has been terminated in accordance with its terms). Upon the termination of this Agreement or the expiration of the Zone, any Project Costs that remain un-reimbursed or that remain unpaid, due to lack of availability of funds in the TIRZ Fund, shall no longer be considered Project Costs or obligations of the Zone, and any obligation of the City to provide reimbursement payments to the Developer for Project Costs shall automatically expire and terminate on such date. Notwithstanding any of the foregoing, the maximum and total amount of Project Costs for which Developer may be reimbursed under this Agreement is \$2,170,667.

3.5 Obligations Absolute. The obligation of the Public Parties to make the payments set forth in this Agreement from the TIRZ Fund are absolute and unconditional, and the Public Parties shall not suspend or discontinue any deposits or payments provided for in this Agreement or terminate this Agreement for any cause.

3.6 Remaining Balance; Term. Any balance remaining in the TIRZ Fund upon expiration of the Term of the Zone that is not otherwise legally committed to pay Project Costs shall be returned to the City as required by the Act. This Agreement shall automatically terminate on the expiration of the Term.

3.7 Park. As a condition to the City's reimbursement of the cost of the park described on Exhibit C, the Developer shall submit construction plans for the park, including a landscape plan that meets or exceeds applicable zoning, to the City Director of Development and receive approval of such plans, which approval shall not be reasonably withheld, conditioned, or delayed. The construction plans for the park, including the landscaping plans, may be part of the construction plans and landscaping plans for the adjacent development of the Retail Tract. The park will be a privately owned, publicly accessible open space area that is owned and maintained by the property owner's association.

#### ARTICLE IV ADDITIONAL PROVISIONS.

4.1 Assignment. The Developer has the right, from time to time without the consent of the City, but upon written notice to the City, to assign this Agreement, in whole or in part, including any obligation, right, title, or interest of the Developer under this Agreement, to the following (an "Assignee"): (a) any person or entity that is or will become an owner of or who leases any portion of the Retail Tract; (b) any entity that is controlled by or under common control with the Developer; and (c) in the limited case of an assignment of just the TIRZ reimbursements under this Agreement, to any other person or entity. Each assignment shall be in writing executed by the Developer and the Assignee and shall obligate the Assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. A copy of each assignment shall be provided to the City within 15 days after execution. From and after such assignment and notwithstanding anything to the contrary in this Agreement, the City agrees to look solely to the Assignee for the performance of

all obligations assigned to the Assignee and agrees that the Developer shall be released from subsequently performing the assigned obligations and from any liability that results from the Assignee's failure to perform the assigned obligations; provided, however, if a copy of the assignment is not received by the City within 15 days after execution, the Developer shall not be released until the City receives such assignment. An Assignee shall be considered the "Developer" and a "Party" for the purposes of this Agreement. The City may rely on any notice of assignment received from the Developer without obligation to investigate or confirm the validity or occurrence of such assignment. The Developer waives all rights or claims against the Public Parties for any funds provided to an Assignee as a result of receipt of a notice of assignment from the Developer, and the Developer's sole remedy shall be to seek the funds directly from the Assignee.

4.2 Collateral Assignment. The Developer shall have the right to collaterally assign, pledge, or encumber, in whole or in part, to any lender as security for any loan in connection with development within the Zone, all rights, title, and interests of the Developer to receive payments under this Agreement. Such collateral assignments (i) shall not require the consent of the Public Parties, (ii) shall require notice to the Public Parties together with full contact information for such lenders, (iii) shall not create any liability for any lender under this Agreement by reason of such collateral assignment unless the lender agrees, in writing, to be bound by this Agreement; and (iv) may give lenders the right, but not the obligation, to cure any failure of the Developer to perform under this Agreement. No collateral assignment shall relieve the Developer from any obligations or liabilities under this Agreement.

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

4.4 Defaults; Remedies.

(a) No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given 30 days to perform. If the default cannot reasonably be cured within such 30-day period, and the Party in default has diligently pursued such remedies as shall be reasonably necessary to cure such default, then the non-defaulting Party may, at its sole option, extend the period in which the default must be cured.

(b) If the Developer is in default, the Public Parties shall have available all remedies at law or in equity, including but not limited to termination of this Agreement. Additionally, should Developer default under any other agreement between City and Developer involving the Retail Tract resulting in termination of that agreement, then this Agreement shall also terminate.

(c) If the Public Parties are in default, Developer's sole and exclusive remedies shall be limited to: (1) seeking a writ of mandamus to compel performance by the Public Parties; (2) seeking specific enforcement of this Agreement; or (3) termination of this Agreement.

(d) In no event shall any Party have any liability under this Agreement for any exemplary or consequential damages.

4.5 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received if sent by courier or otherwise hand delivered:

To the City: City of Mesquite, Texas  
Attn: Cliff Keheley  
1515 N. Galloway Ave.  
Mesquite, TX 75149  
E-mail: [ckeheley@cityofmesquite.com](mailto:ckeheley@cityofmesquite.com)

With a copy to: City of Mesquite, Texas  
Attn: City Attorney  
1515 N. Galloway Ave.  
Mesquite, TX 75149  
[dpaschall@cityofmesquite.com](mailto:dpaschall@cityofmesquite.com)

To the Board: Reinvestment Zone Number Eleven, City of Mesquite, Texas  
(Heartland Town Center)  
Attn: Chairman  
1515 N. Galloway Ave.  
Mesquite, TX 75149

With a copy to: City of Mesquite, Texas  
Attn: City Attorney  
1515 N. Galloway Ave.  
Mesquite, TX 75149  
[dpaschall@cityofmesquite.com](mailto:dpaschall@cityofmesquite.com)

To the Developer: Heartland Retail, LLC  
Attn: Phillip Huffines  
8200 Douglas Ave # 300  
Dallas, TX 75225  
E-mail: [phuffines@huffinescommunities.com](mailto:phuffines@huffinescommunities.com)

With a copy to: Shupe Ventura Lindelow & Olson, PLLC  
Attn: Misty Ventura  
9406 Biscayne Boulevard  
Dallas, Texas 75218  
E-mail:misty.ventura@svlandlaw.com

4.6 Authority and Enforceability. The Public Parties represent and warrant that this Agreement has been approved by resolution duly adopted by each of their governing bodies in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individuals executing this Agreement on behalf of the Public Parties have been duly authorized to do so. The Developer represents and warrants that this Agreement has been approved by appropriate action of the Developer, and that the individuals executing this Agreement on behalf of the Developer has been duly authorized to do so. Each Party acknowledges and agrees that this Agreement is binding upon such Party and enforceable against such Party in accordance with its terms and conditions.

4.7 Entire Agreement; Severability. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the subject matter of this Agreement. This Agreement shall not be modified or amended except in writing signed by the Parties. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, then (a) such unenforceable provision shall be deleted from this Agreement; (b) the unenforceable provision shall, to the extent possible, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.

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

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

4.10 Force Majeure. Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Agreement, and time shall be of the essence in such performance; however, in the event a Party is unable, due to force majeure, to perform its obligations under this Agreement, then the obligations affected by the force majeure shall be temporarily suspended. Within ten business days after the occurrence of a force majeure, the Party claiming the right to temporarily suspend its performance, shall give notice to all the Parties, including a detailed explanation of the force majeure and a description of the action that

will be taken to remedy the force majeure and resume full performance at the earliest possible time. The term "force majeure" shall include events or circumstances that are not within the reasonable control of the Party whose performance is suspended and that could not have been avoided by such Party with the exercise of good faith, due diligence and reasonable care, including, but not limited to, the occurrence of a pandemic such as COVID-19.

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

4.12 Employment of Undocumented Workers. During the term of this Agreement, the Developer agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), the Developer shall repay to the City the funds received by the Developer under this Agreement within 120 days after the date the Developer is notified by the City of such violation, plus interest at the rate of six percent (6%) compounded annually from the date of violation until paid. Pursuant to Section 2264.101(c), TEXAS GOVERNMENT CODE, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

4.13 Form 1295. Submitted herewith is a completed Form 1295 generated by the Texas Ethics Commission's (the "TEC") electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the "Form 1295"). The City hereby confirms receipt of the Form 1295 from the Developer, and the City agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. The Parties understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Developer; and, neither the City nor its consultants have verified such information.

4.14. No Boycott of Israel. Pursuant to Section 2270.002, Texas Government Code and to the extent this Agreement constitutes a contract for goods and services, if the Developer employs ten (10) or more full-time employees and this Agreement has a value of \$100,000 or more, the Developer hereby (i) represents that it does not boycott Israel, and (ii) subject to or as otherwise required by applicable federal law, including without limitation 50 U.S.C. § 4607, agrees it will not boycott Israel during the term of the Agreement. As used in the immediately preceding sentence, "boycott Israel" shall have the meaning given such term in Section 2271.001, Texas Government Code. Developer further represents that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under § 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. As used in the immediately preceding sentence, "foreign terrorist organization" shall have the meaning given such term in Section 2252.151, Texas Government Code.

4.15 Obligations Payable Only from TIRZ Fund. The obligations of the Public Parties under this Agreement are non-recourse and payable only from amounts transferred to the TIRZ Fund under the Project and Finance Plan, and such obligations do not create a debt or other obligation payable from any other City revenues, taxes, income or property. Neither of the Public



Parties nor any of their appointed or elected officials or any of their officers or employees shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of this Agreement or their acts or omissions under this Agreement.

4.16. Other Agreements and Remedies. Nothing in this Agreement is intended to constitute a waiver by the Public Parties of any remedy the Public Parties may have outside this Agreement against the Developer, or any Assignee, or any other person or entity involved in the design, construction or installation of the Public Improvements. The obligations of the Developer hereunder shall be those as a Party hereto and not solely as an owner of property in the Zone. Nothing herein shall be construed, nor is intended, to affect the Public Parties' or the Developer's rights and duties to perform their respective obligations under other agreements, regulations and ordinances.

4.17. No Waiver of Governmental Powers and Immunities. The Public Parties do not waive or surrender any of their governmental powers, immunities or rights and, notwithstanding any provision in this Agreement, this Agreement does not control, waive, limit or supplant the legislative authority or discretion of the Public Parties.

4.18. No Third Party Rights. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give any person or entity other than the Parties any rights, remedies or claims under or by reason of this Agreement, and all covenants, conditions, promises and agreements in this Agreement shall be for the sole and exclusive benefit of the Parties.

4.19. Books and Records. The City shall have the right, during normal business hours and upon three (3) business days' prior written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer with respect to any of the Public Improvements. For a period of two (2) years after completion of the Public Improvements, the Developer shall maintain proper books of record and account for the construction of the Public Improvements and all costs related thereto. Such accounting books shall be maintained in accordance with customary real estate accounting principles.

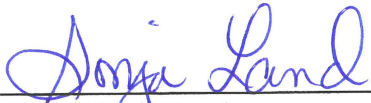
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IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

CITY:


CITY OF MESQUITE, TEXAS

ATTEST:

  
\_\_\_\_\_  
Name: Sonja Land  
Title: City Secretary

By:   
\_\_\_\_\_  
Name: Cliff Keneley  
Title: City Manager

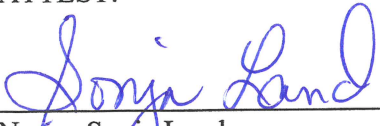
APPROVED AS TO FORM:

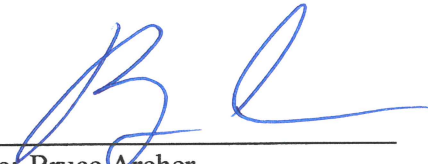
  
\_\_\_\_\_  
Name: David L. Paschall  
Title: City Attorney

**BOARD:**

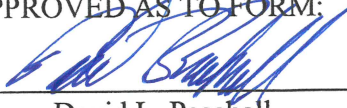
Board of Directors of Reinvestment Zone Number Eleven, City of Mesquite, Texas (Heartland Town Center)

ATTEST:

  
\_\_\_\_\_  
Name: Sonja Land  
Title: City Secretary

By:   
\_\_\_\_\_  
Name: Bruce Archer  
Title: Chair


APPROVED AS TO FORM:

  
\_\_\_\_\_  
Name: David L. Paschall  
Title: City Attorney

**DEVELOPER:**

HEARTLAND RETAIL, LLC,  
a Texas limited liability company

By: UST-Heartland GP, LLC  
a Texas limited liability company  
its Manager

By:   
\_\_\_\_\_  
Lance Fair  
Vice President

**Exhibit A**  
**Metes and Bounds Legal Description of the Retail Tract**

25.464 ACRE TRACT

BEING that certain tract of land situated in the Martha Music Survey, Abstract No. 312, in Kaufman County, Texas, and being part of that certain tract of land described in deed to CADG Kaufman 146, LLC, recorded in Volume 4363, Page 38, of the Deed Records of Kaufman County, Texas (DRKCT), and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod with cap marked "PETITT-RPLS 4087" set at the intersection of the southwest right-of-way line of Farm to Market Road No. 741 (called 90 foot R.O.W. at this point), and the northeasterly right-of-way line of Heartland Parkway (called 100 foot R.O.W. at this point), and being the west corner of said CADG Kaufman 146, LLC tract;

THENCE North 46°18'40" East, with said southwest right-of-way line of Farm to Market Road No. 741, said southwest right-of-way line according to Deed to the State of Texas recorded in Volume 454, Page 159, DRKCT, a distance of 428.96 feet to a 1/2 inch iron rod with cap stamped "DAA" found for corner at the west corner of that certain tract of land described as Tract 7 in deed to HW Heartland, L.P. recorded in Volume 3119, Page 142, DRKCT;

THENCE leaving said southwest right-of-way line of Farm to Market Road No. 741, and with the southwest and southeast lines of said Tract 7, the following bearings and distances to 1/2 inch iron rods with cap stamped "DAA" found for corner:

South 43°42'15" East, a distance of 207.45 feet;

And North 46°15'02" East, a distance of 146.43 feet;

THENCE North 15°07'57" East, continuing with said southeast line of Tract 7, a distance of 467.14 feet to a 5/8 inch iron rod with cap marked "PETITT-RPLS 4087" set for corner;

THENCE North 83°20'17" East, leaving said northwest line of Tract 7, and with the northerly line of said CADG Kaufman 146, LLC tract, a distance of 465.52 feet to a 5/8 inch iron rod with cap marked "PETITT-RPLS 4087" set for corner;

THENCE over and across said CADG Kaufman 146, LLC tract, the following bearings and distances to 5/8 inch iron rods with cap marked "PETITT-RPLS 4087" set for corner:

South 06°39'43" East, a distance of 222.01 feet;

South 68°43'31" East, a distance of 145.05 feet;

North 86°42'10" East, a distance of 198.45 feet;

South 07°44'02" East, a distance of 285.71 feet;

South 42°35'50" West, a distance of 477.61 feet;

South 15°12'36" West, a distance of 235.81 feet;

North 78°15'28" West, a distance of 65.47 feet;

And South 09°46'40" West, a distance of 165.00 feet, said iron rod being located on said northeasterly right-of-way line of Heartland Parkway (variable width R.O.W. at this point), and being the beginning of a non-tangent curve to the left;

THENCE with said northeasterly right-of-way line of Heartland Parkway, said right-of-way dedicated by Final Plat of Heartland Tract A, Phase 2B, recorded in Cabinet 3, Slide 38, of the Plat Records of Kaufman County, Texas, and with said curve having a central angle of 02°09'35", a radius of 790.00 feet, a chord which bears North 81°18'07" West, a chord distance of 29.78 feet, for an arc distance of 29.78 feet to the end of said curve, a 1/2 inch iron rod with cap stamped "DAA" found for corner;

THENCE North 82°23'59" West, continuing with said northeasterly right-of-way line of Heartland Parkway, a distance of 23.30 feet to a 1/2 inch iron rod with cap stamped "DAA" found for corner, and being the beginning of a tangent curve to the right;

THENCE continuing with said northeasterly right-of-way line of Heartland Parkway, and with said curve having a central angle of 10°28'32", a radius of 300.00 feet, a chord which bears North 77°08'39" West, a chord distance of 54.77 feet, for an arc distance of 54.85 feet to the end of said curve, a 1/2 inch iron rod with cap stamped "DAA" found for corner, and being the beginning of a tangent reverse curve to the left;

THENCE continuing with said northeasterly right-of-way line of Heartland Parkway, and with said curve having a central angle of 10°28'32", a radius of 300.00 feet, a chord which bears North 77°08'39" West, a chord distance of 54.77 feet, for an arc distance of 54.85 feet to the end of said curve, a 1/2 inch iron rod with cap stamped "DAA" found for corner (called 100 foot R.O.W. at this point);

THENCE North 82°22'55" West, continuing with said northeasterly right-of-way line of Heartland Parkway, a distance of 172.65 feet to a 1/2 inch iron rod with cap stamped "DAA" found for corner, and being the beginning of a tangent curve to the right;

THENCE continuing with said northeasterly right-of-way line of Heartland Parkway, and with said curve having a central angle of 38°41'30", a radius of 950.00 feet, a chord which bears North 63°02'10" West, a chord distance of 629.41 feet, for an arc distance of 641.53 feet to the end of said curve, a 1/2 inch iron rod with cap stamped "DAA" found for corner;

THENCE North 43°41'26" West, continuing with said northeasterly right-of-way line of Heartland Parkway, a distance of 249.59 feet to the POINT OF BEGINNING of herein described tract, containing 25.464 acres of land.

**Exhibit B**  
**Additional Property in the Retail Tract of the Zone**

LEGAL DESCRIPTION  
1.935 ACRE TRACT

BEING that certain tract of land situated in the Martha Music Survey, Abstract No. 312, in Kaufman County, Texas, and being that certain tract of land described as Tract 7 in deed to H.W. Heartland, L.P. (now known as UST-Heartland, L.P. according to Certificate of Amendment filed in the Office of the Secretary of State of Texas on December 3, 2013), recorded in Volume 3119, Page 142, of the Deed Records of Kaufman County, Texas (DRKCT), and being more particularly described as follows:

COMMENCING at a 5/8 inch iron rod with cap marked "PETITT-RPLS 4087" set at the intersection of the southeast right-of-way (R.O.W.) line of Farm to Market Road No. 741 (called 90 foot R.O.W. at this point), and the northeasterly right-of-way line of Heartland Parkway (called 100 foot R.O.W. at this point), and being the west corner of that certain tract of land described in deed to Heartland Retail, LLC recorded in Volume 5787, Page 437, DRKCT;

THENCE North 46°18'40" East, with said southeast right-of-way line of Farm to Market Road No. 741, a distance of 428.96 feet to a 1/2 inch iron rod with cap stamped "DAA" found at the west corner of said Tract 7, and being the POINT OF BEGINNING of herein described tract;

THENCE North 46°18'40" East, continuing with said southeast right-of-way line of Farm to Market Road No. 741, a distance of 22.96 feet to a 5/8 inch iron rod with cap marked "PETITT-RPLS 4087" set for corner at the beginning of a tangent curve to the left;

THENCE continuing with said southeast right-of-way line of Farm to Market Road No. 741, and with said curve having a central angle of 14°27'58", a radius of 999.93 feet, a chord which bears North 39°04'41" East, a chord distance of 251.79 feet, for an arc distance of 252.46 feet to the end of said curve, a 5/8 inch iron rod with cap marked "PETITT-RPLS 4087" set for corner;

THENCE North 32°01'23" East, continuing with said southeast right-of-way line of Farm to Market Road No. 741, a distance of 211.13 feet to a 5/8 inch iron rod with cap marked "PETITT-RPLS 4087" set for corner at the beginning of a non-tangent curve to the left;

THENCE continuing with said southeast right-of-way line of Farm to Market Road No. 741, and with said curve having a central angle of 00°58'12", a radius of 909.93 feet, a chord which bears North 31°32'17" East, a chord distance of 15.40 feet, for an arc distance of 15.40 feet to the end of said curve, a concrete monument found for corner at the intersection of said southeast right-of-way line of Farm to Market Road No. 741, and the southerly right-of-way line of Interstate Highway No. 20 (variable width R.O.W);

THENCE North 83°20'17" East, with said southerly right-of-way line of Interstate Highway No. 20, a distance of 79.06 feet to a 5/8 inch iron rod with cap marked "PETITT-RPLS 4087" set for corner at the northeast corner of said Tract 7;

THENCE South 15°07'57" West, leaving said southerly right-of-way line of Interstate Highway No. 20, and with the southeasterly line of said Tract 7, a distance of 477.91 feet to a 1/2 inch iron rod with cap stamped "DAA" found for corner;

THENCE South 46°15'02" West, continuing with said southeasterly line of Tract 7, a distance of 146.43 feet to a 1/2 inch iron rod with cap stamped "DAA" found for corner;

THENCE North 43°42'15" West, with the southwest line of Tract 7, a distance of 207.45 feet to the POINT OF BEGINNING of herein described tract, containing 1.935 acres of land.

**Exhibit C**  
**Project Costs and Public Improvements**

<b>Improvements:</b>	<b>Cost:</b>
Site Grading	\$210,000
Paving for common drives	\$560,000
Electric Relocation	\$140,000
Signage (enhanced)	\$200,000
Street Lighting (internal)	\$50,000
Common area/park	\$500,000
Sidewalks	\$200,000
FM 740 Interim improvements	\$300,000
<u>Landscape &amp; Irrigation</u>	<u>\$300,000</u>
Total Public Improvements	\$2,460,000