

RESOLUTION NO. 57-2020

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 BROADMOOR PLAZA RETAIL, LLC, FOR THE MAJOR RENOVATION AND REDEVELOPMENT OF PROPERTY LOCATED AT 500 NORTH GALLOWAY AVENUE, IN THE CITY OF 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 (the “**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 Broadmoor Plaza Retail, LLC (the “**Company**”), for the proposed major renovation and redevelopment of Broadmoor Plaza on property located at 500 North Galloway Avenue, in the City of Mesquite, Texas, 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.

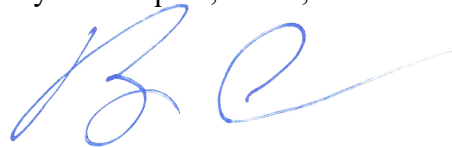
SECTION 3. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

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 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 5 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.

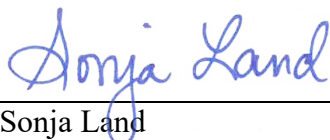
SECTION 6. That the sections, paragraphs, sentences, clauses and phrases of this Resolution are severable and, if any phrase, clause, sentence, paragraph or section of this Resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this Resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this Resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 2nd day of November 2020.



Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

EXHIBIT "A"

380 ECONOMIC DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF MESQUITE, TEXAS,

AND

BROADMOOR PLAZA RETAIL, LLC

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 (“**City**”), and Broadmoor Plaza Retail, LLC, a Texas limited liability company (“**Company**”), for the purposes and considerations stated below:

W I T N E S S E T H:

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

WHEREAS, the City and the Company may each hereinafter be referred to as a “**Party**,” and may collectively be referred to as the “**Parties**” to this Agreement; and

WHEREAS, Company currently owns the land and improvements constituting Broadmoor Plaza, a retail center, located at 500 N. Galloway Avenue, Mesquite, Texas 75149 and being more particularly described in **Exhibit “A”** attached hereto and made a part hereof for all purposes (“**Broadmoor Plaza**”); and

WHEREAS, Broadmoor Plaza is located at a high profile intersection in the City; and

WHEREAS, a substantial portion of Broadmoor Plaza has become an under-performing retail center; and

WHEREAS, a major renovation and redevelopment of Broadmoor Plaza consisting of substantial improvements and upgrades to the existing Buildings and parking area is necessary in order to make Broadmoor Plaza attractive to existing and new retail tenants resulting in increased property values and sales taxes; and

WHEREAS, the Company is considering making a major renovation and redevelopment of Broadmoor Plaza as more particularly described herein; and

WHEREAS, the Company has advised the City that a contributing factor inducing the Company to make the renovations and redevelopment is the agreement by the City to provide economic development incentives to the Company under the terms and conditions more fully set forth in this Agreement; and

WHEREAS, a major renovation and redevelopment of Broadmoor Plaza will substantially increase the taxable value of Broadmoor Plaza thereby adding value to the City’s tax rolls and increasing the ad valorem real property taxes and sales taxes to be collected by the City, along with increasing employment opportunities in the City; and

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

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

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

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

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

ARTICLE I Incorporation of Recitals

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

ARTICLE II Definitions

As used herein, the following terms shall have the following meanings:

“Additional Municipal Sales Taxes” shall mean all sales taxes now and hereafter authorized, adopted, imposed and/or collected by or on behalf of the City pursuant to § 321.101(b) of the Texas Tax Code, as amended and/or replaced, or any such other authority, and shall specifically include all Type B Sales Taxes and all sales taxes now and hereafter prohibited by law from being used for payment of economic development incentives. Notwithstanding the foregoing, however, this definition does not include Property Tax Relief Taxes, which are included in the definition of City Sales Taxes below.

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

“Annual Report” shall mean a report submitted by the Company to the City that contains an Initial Capital Investment Certificate and/or Subsequent Capital Investment Certificate showing the amount of the Capital Investment (if any) made for the applicable Incentive Tax Year.

“Base Year Ad Valorem Taxes” shall mean the total amount of Ad Valorem Taxes assessed by the City against the Land for the period beginning January 1, 2020 until and including December 31, 2020.

“Base Year City Sales Taxes” shall mean the total amount of Net City Sales Taxes attributable to City Sales Taxes paid by Tenants and collected by the City for the period beginning January 1, 2020 until and including December 31, 2020.

“Broadmoor Plaza” shall have the meaning set forth in the Recitals to this Agreement. Notwithstanding the foregoing, the CVS building, and the lot on which it is located, is not included in Broadmoor Plaza for purposes of this Agreement.

“Buildings” shall mean the buildings and improvements constituting a part of Broadmoor Plaza and being located on the Land, existing as of October 15, 2020 and during the Term. Notwithstanding the foregoing, the CVS building is not a Building for purposes of this Agreement.

“Capital Investment” shall mean, collectively, the Initial Capital Investment and any Subsequent Capital Investment. Capital Investments may consist of capital expenditures (excluding land acquisition costs) by the Company, by tenants or other occupants of Broadmoor Plaza, including ground lessees, or by third party purchasers of lots or pad-sites in Broadmoor Plaza, and such purchasers’ tenants or occupants. Capital Investment will not include routine maintenance performed as part of a single project the cost of which does not exceed \$5,000.00.

“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 General Conditions Precedent and Initial Payment Conditions Precedent and Subsequent Payment Conditions Precedent, as applicable at the time of presentation of the Certificate of Compliance, have been satisfied and are continuing; (ii) that Company has complied with and is in compliance with Company’s Additional Covenants provided in Article VI; and (ii) that to the knowledge of the Company no default then exists by the Company under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a default by the Company under the terms of this Agreement. As used in this paragraph and in Section 6.1.3, the terms “knowledge” or “knowingly” means the actual, then-current knowledge of the officer or employee of the Company with the most knowledge of the operations and management of Broadmoor Plaza. Currently, as of the Effective Date, the officer or employee of the Company with the most knowledge of the operations and management of Broadmoor Plaza is Oliver Robinson. If during the term of this Agreement Oliver Robinson is no longer an officer or employee of the Company or no longer the officer or employee of the Company with the most knowledge of the operations and management of Broadmoor Plaza, or if this Agreement is assigned to another Person in accordance with the terms hereof, the Company or its assignee, as applicable, shall notify the City of the individual who thereafter has the most knowledge of the operations and management of Broadmoor Plaza.

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

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

“City Manager” shall mean the City Manager of the City.

“City Sales Tax” and “City Sales Taxes” shall mean the municipal sales taxes, including Property Tax Relief Taxes, collected by or on behalf of the City for general fund and tax relief purposes authorized pursuant to § 321.101(a) and (b) of the Texas Tax Code, as amended and/or replaced, and currently at the rate of one percent and one-half of one percent (1.5%) pursuant to § 321.103(a) and (b) of the Texas Tax Code and specifically not including the State of Texas Sales Taxes and any Additional Municipal Sales Taxes.

“Company” shall mean Broadmoor Plaza Retail, LLC, a Texas limited liability company, its successors and assigns only as permitted by this Agreement.

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

“Disclosure Statute” shall mean § 321.3022 of the Texas Tax Code, as amended and/or replaced.

“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 such 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.

“Existing Leases” shall mean the lease agreements between the Company (or its predecessors in interest) and the Existing Tenants, as they may have been or may hereafter be amended, restated or supplemented.

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

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

“Incentive Grant” shall mean the Initial Incentive Grant and/or Subsequent Incentive Grants.

“Incentive Period” shall mean the period commencing on the earlier of (A) January 1 of the first Incentive Tax Year for which the Company files an Annual Report evidencing that an amount not less than the Initial Capital Investment has been incurred in connection with the Initial Improvements or (B) January 1, 2024 (such earlier date herein called the “**Incentive Period Commencement Date**”) and continuing until the earlier of: (i) December 31 of the calendar year in which the tenth (10) anniversary of the Incentive Period Commencement Date occurs; or (ii) the date the Incentive Grant payments paid by the City to the Company under the terms of this Agreement collectively equal the Maximum Incentive Amount. For example, if the Incentive Period Commencement Date is January 1, 2023, then the Incentive Period shall continue until the

earlier of (i) December 31, 2033, or (ii) the date the Incentive Grant payments paid by the City to the Company under the terms of this Agreement collectively equal the Maximum Incentive Amount.

“Incentive Tax Year” shall mean the period consisting of three hundred and sixty five (365) calendar days [or three hundred and sixty six (366) calendar days for any calendar year that is a leap year]. An Incentive Tax Year shall commence on January 1st and end on December 31st of each calendar year thereafter during the Incentive Period.

“Initial Capital Investment” shall have the meanings set forth in Article VII.

“Initial Capital Investment Certificate” shall have the meanings set forth in Article VII.

“Initial Improvements” shall have the meanings set forth in Article VII.

“Initial Incentive Grant” shall have the meaning set forth in Article VIII and shall be equal to the lesser of (A) thirty-five percent (35%) of the Initial Capital Investment or (B) the Maximum Incentive Amount.

“Initial Payment Conditions Precedent” shall have the meanings set forth in Article VII.

“Land” shall mean the real property described in **Exhibit “A”** attached hereto and made a part hereof for all purposes. Notwithstanding the foregoing, the CVS pad-site is not part of the Land for purposes of this Agreement.

“Maximum Incentive Amount” shall mean the maximum amount of economic development incentives payable under the terms of this Agreement, which is the collective sum of TWO MILLION, ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,100,000.00).

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

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

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

“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.

“Primary Use” shall mean goods sold or services provided by a tenant or occupant of leased space in Broadmoor Plaza that generate more than 40% of the total sales of such tenant or occupant on an annual basis.

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

“Property Tax Relief Taxes” shall mean the municipal sales taxes authorized, adopted, imposed and/or collected by or on behalf of the City pursuant to § 321.101(b) of the Texas Tax Code, as amended and/or replaced, currently at the rate of one-half of one percent (0.5%) to be used to reduce the property tax rate of the City.

“Qualifying Improvements” shall mean capital improvements and upgrades, excluding land acquisition costs, commenced after October 15, 2020, that make Broadmoor Plaza more attractive to existing and new retail tenants, intended to result in increased property values and sales taxes. The Initial Improvements are deemed to be Qualifying Improvements. Notwithstanding the foregoing, no capital improvements and upgrades constructed by tenants that use their premises in violation of the provisions of Section 6.1.3, including without limitation by Existing Tenants or by assignees and sublessees of Existing Leases, shall constitute Qualifying Improvements

“Roadway Impact Fees” mean impact fees charged by the City to generate revenue to fund or recoup all or part of the cost of roadway capital improvements or roadway facility expansions necessitated by and attributable to new development projects pursuant to the City’s Impact Fee Ordinance No. 4366, as now and hereafter amended.

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

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

“Subsequent Capital Investment” shall have the meanings set forth in Article VII.

“Subsequent Capital Investment Certificate” shall have the meanings set forth in Article VII.

“Subsequent Improvements” shall have the meanings set forth in Article VII.

“Subsequent Incentive Grants” shall have the meaning set forth in Article VIII and shall be equal to thirty-five percent (35%) of the Subsequent Capital Investment, provided that the aggregate of all Incentive Grant payments will not exceed the Maximum Incentive Amount.

“Subsequent Payment Conditions Precedent” shall have the meanings set forth in Article VII.

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

“Tenants” shall mean the tenants of Broadmoor Plaza.

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

“Type B Sales Taxes” shall mean the municipal sales taxes authorized, adopted, imposed and/or collected by or on behalf of the City pursuant to § 321.101(b) of the Texas Tax Code, as amended and/or replaced, currently at the rate of one-half of one percent (0.5%), for use by the Mesquite Quality of Life Corporation, a Type B economic development corporation, operating pursuant to Chapter 505 of the Texas Local Government Code, as amended and/or replaced, and shall also include any other sales taxes now or hereafter authorized, adopted, imposed and/or collected by or on behalf of the City for use by any other Type B economic development corporation hereafter created by or on behalf of the City.

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

ARTICLE III **Authority for Agreement**

This Agreement is authorized by Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code. The City Council finds and determines that substantial economic benefit will accrue to the City as a result of the renovation and redevelopment of Broadmoor Plaza because, *inter alia*, the renovation and redevelopment of Broadmoor Plaza will: (i) promote local economic development and stimulate business and commercial activity in the City; (ii) result in substantial visual improvements to a high profile intersection in the City; (iii) increase the productive life and the taxable value of Broadmoor Plaza thereby adding value to the City’s tax rolls and increasing the ad valorem taxes to be collected by the City; (iv) maintain Existing Tenants and attract new Tenants to Broadmoor Plaza which will: (a) increase the taxable value of inventory and business personal property at Broadmoor Plaza thereby adding value to the City’s tax rolls and increasing the ad valorem personal property taxes to be collected by the City; (b) increase the sales taxes collected by the City; and (c) create new employment opportunities in the City and accordingly, the value of the benefits of this Agreement to the City outweigh the amount of incentives to be paid by the City under this Agreement.

ARTICLE IV **Term**

The Term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) the expiration of the Incentive Period; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein; or (iii) City has paid Company the Maximum Incentive Amount (“**Term**”).

ARTICLE V **Company’s Covenants Regarding Undocumented Workers**

5.1 Covenant Not to Employ Undocumented Workers. The Company hereby certifies that the Company and each branch, division, and department of the Company does not knowingly 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.

5.2 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 knowing violation under 8 U.S.C. § 1324a (f) within thirty (30) days from the date of such conviction.

5.3 Repayment of Incentive Grants in Event of Conviction for Employing Undocumented Workers. If, after receiving any Incentive Grant 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 Incentive Grant payments paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on each such Incentive Grant payment from the date each such Incentive Grant 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.

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

5.5 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.

5.6 Survival. The terms, provisions, covenants, agreements and obligations of the Company and the rights and remedies of the City set forth in this Article of this Agreement shall expressly survive the expiration or termination of this Agreement until payment of the final Incentive Grant as provided in Section 8.4 if not yet paid at the expiration or termination of this Agreement.

ARTICLE VI

Company's Additional Covenants

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

1. To complete or cause the completion of the construction of the Initial Improvements on or before the completion date provided in Article VII;
2. To deliver to the City within thirty (30) days after written request, copies of such invoices, payment records and other documentation as the City may reasonably request to confirm compliance by the Company with its covenants in this Article;
3. To operate Broadmoor Plaza exclusively for only the uses permitted under the current zoning applicable to Broadmoor Plaza during the Term of this Agreement

including, without limitation, retail, restaurant, professional office, medical office, medical services and personal services, except as provided herein. Notwithstanding the foregoing, the Company covenants and agrees that during the Term of this Agreement, the Company will not enter into any oral and/or written leases or otherwise knowingly permit the use of all or any portion of Broadmoor Plaza for any one or more of the following uses as a Primary Use (provided, that, the foregoing shall not apply to Existing Tenants at Broadmoor Plaza as of the Effective Date of this Agreement or to any assignee of or sublessee under any of the Existing Leases): (a) stores selling electronic cigarettes or other oral devices as a Primary Use that allow users to inhale a vapor of liquid nicotine or other substances including, without limitation, e-cigarettes, e-cigars, e-pipes, e-hookahs, and/or vape pipes; and (b) tobacco stores as a Primary Use (and specifically excluding the ancillary sale thereof in any pharmacy, grocery or convenience store located in Broadmoor Plaza). The Company further covenants and agrees that during the Term of this Agreement, the Company will not enter into any oral and/or written leases or otherwise knowingly permit the use of all or any portion of Broadmoor Plaza for any one or more of the following uses as a Primary Use (provided, that, the foregoing shall not apply to Existing Tenants at Broadmoor Plaza as of the Effective Date of this Agreement or to any assignee of or sublessee under any of the Existing Leases, where such uses are not prohibited under the Existing Leases):

- (i) Steam or Turkish baths, massage parlors that exist for reasons beyond therapeutic massage (i.e., lascivious purposes), and tattoo and/or piercing parlors;
- (ii) Bars and restaurants operated for members of civic and social organizations, alumni associations, granges, automobile clubs (except travel), parent-teacher associations, booster clubs, scouting organizations, ethnic associations, social clubs, fraternal lodges and veterans' membership organizations;
- (iii) Churches, religious shrines, monasteries (except schools), synagogues, religious mosques and religious temples;
- (iv) Gifts, novelty or souvenir stores that as a Primary Use sell items of a sexually lewd or offensive nature, or of paraphernalia intended to be used with illegal drugs; and
- (v) Pawn shops (and specifically excluding consignment, second-hand and vintage stores).

Notwithstanding the foregoing, a violation of the foregoing uses shall only exist if the certificate of occupancy issued for the applicable premises specifically permits one or more of the prohibited uses listed above by name, and not for example by a description such as "retail store".

4. To provide the City, its agents and employees with access to Broadmoor Plaza at such times as the City may reasonably request to conduct such inspections as the City reasonably deems necessary upon no less than 48 hours' advance notice to the

Company in order to confirm compliance by the Company with the terms and provisions of this Agreement, subject to the rights of tenants; provided, however, and excepting inspections required by the City's Code of Ordinances, that the City shall not conduct inspections more than once per month, and further provided that the City agrees not to unreasonably interfere with the business operations at Broadmoor Plaza during such inspections;

5. To provide a representative of the Company to accompany the City during all inspections of Broadmoor Plaza conducted by the City pursuant to this Article;
6. To timely pay all ad valorem taxes assessed against the Land and Buildings during the Term of this Agreement prior to the date such taxes become delinquent; provided, that the Company may in good faith protest any such taxes in accordance with normal and customary procedures;
7. Other than in the event of casualty or other events beyond the reasonable control of the Company, to maintain Broadmoor Plaza in good repair and condition at all times, which at a minimum shall mean meeting or exceeding all Federal, State and Local laws and regulations, including but not limited to the City's Code of Ordinances and terms of this Agreement, applicable to Broadmoor Plaza and the activities thereon.
8. To keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of this Agreement and all other agreements now or hereafter existing between the Company and the City; and
9. To comply with all applicable federal, state and local laws and regulations applicable to Broadmoor Plaza.

6.2 Survival. The terms, provisions, covenants, agreements and obligations of the Company and set forth in this Article of this Agreement shall expressly survive the expiration or termination of this Agreement until payment of the final Incentive Grant as provided in Section 8.4 if not yet paid at the expiration or termination of this Agreement.

ARTICLE VII Conditions Precedent to Payment of Incentive Grants

7.1 General Conditions Precedent to Payment of Each and Any Incentive Grant. The Company and the City hereby expressly acknowledge and agree that the City's obligation to pay each and any Incentive Grant shall expressly be conditioned upon the satisfaction of the following conditions precedent (individually a "**General Condition Precedent**" and collectively the "**General Conditions Precedent**"):

1. The Company shall have timely paid all ad valorem taxes assessed against the Land and Buildings for the Incentive Tax Year for which the Annual Report is submitted and for all previous Tax Years during the Term of this Agreement, except for any such taxes as are being contested in good faith;

2. The Company shall have timely paid to the City all impact fees, permit fees, development fees, review fees and inspection fees arising during the Term of this Agreement in connection with the construction of any improvements to or upon Broadmoor Plaza, including, without limitation, all Roadway Impact Fees (if applicable);
3. The Company shall have submitted an Annual Report to the City not later than June 30 of the first calendar year after the Incentive Period Commencement Date and for each calendar year thereafter until the calendar year immediately following the expiration of the Incentive Period; provided, that the Company shall not be required to file an Annual Report for any Incentive Tax Year for which the Company is not requesting an Incentive Grant payment. Each such Annual Report shall be accompanied by a Certificate of Compliance dated effective as of the date of the Annual Report, a list of all Tenants during the Incentive Tax Year for which the Annual Report is submitted and an Initial Capital Investment Certificate and/or Subsequent Capital Investment Certificate, if applicable. For illustration purposes only, the Annual Report for the Incentive Grant payment payable for the 2023 Incentive Tax Year shall be submitted to the City no later than June 30, 2024 for the Incentive Tax Year commencing January 1, 2023 and ending on December 31, 2023. For avoidance of doubt, it is understood and agreed that an Annual Report, including the Annual Report submitted for the initial Incentive Tax Year, may include Qualifying Improvements made at any time after October 15, 2020, as long as no request for an Incentive Grant payment has previously been made for such Qualifying Improvements. As an example, if the initial Incentive Tax Year is the 2023 calendar year, and no Annual Report has previously been provided, the Annual Report may include Qualifying Improvements made from October 15, 2020 through December 31, 2023;
4. With respect to each Incentive Grant payment payable pursuant to Article VIII: (i) the Company shall have submitted to the City an Annual Report; and (ii) the City shall have obtained from the State Comptroller a confidential information report confirming at a minimum the total amount of City Sales Taxes paid by the Tenants to the State Comptroller relating only to taxable sales from such Tenants' locations in Broadmoor Plaza during the previous Incentive Tax Year (which report the City agrees to use diligent, good faith efforts to timely obtain); and (iii) the City shall have verified that it has received payment in full of all City Sales Taxes payable by the Tenants relating to taxable sales from the Tenants' locations in Broadmoor Plaza for the Incentive Tax Year for which the Annual Report is submitted, and the City agrees to use diligent, good faith efforts to promptly verify such information. Notwithstanding the foregoing, pursuant to the Disclosure Statute, the State Comptroller is to disclose the sales taxes paid during the current or prior year without disclosing individual sales tax account information. However, if there are fewer than three (3) sales tax accounts at Broadmoor Plaza, the State Comptroller will not disclose information regarding the actual sales taxes paid by Tenants without permission of those persons doing business at Broadmoor Plaza. As such, the Company covenants and agrees to use good faith, commercially reasonable efforts to include as a condition in its future leases at Broadmoor Plaza, language which requires the Company and future lessees to provide a release to the City that will allow the State Comptroller, if so required by the Disclosure Statute, to disclose

to the City aggregated sales tax information relating to any business generating sales tax within Broadmoor Plaza for any Incentive Tax Year during the Incentive Period. The Parties agree that no Incentive Grant payment shall be due or payable for any Incentive Tax Year during the Incentive Period if there are less than three (3) Tenants doing business in Broadmoor Plaza and the Company fails to provide written permission from the Company and each Tenant allowing the State Comptroller to provide the City with information relating to the amount of City Sales Taxes paid by such Tenants to the City during such Incentive Tax Year. Provided all General Conditions Precedent and, as applicable, Initial Payment Conditions Precedent and Subsequent Payment Conditions Precedent have been satisfied and are then continuing, the City shall, following the end of each Incentive Tax Year and within thirty (30) days after receiving an Annual Report from Company, make a request to the State Comptroller pursuant to Subsection (b) of the Disclosure Statute, will use diligent, good faith efforts to cause the State Comptroller to promptly provide the City Sales Tax information, and within seventy-five (75) days after receiving such information will calculate and, provided all Conditions Precedent are satisfied, pay to the Company the Incentive Grant payment for such Incentive Tax Year. The City and the Company agree reports received by the City from the State Comptroller, if requested, reflecting City Sales Taxes paid by the Tenants relating to taxable sales made from the Tenants' locations in Broadmoor Plaza as accurate and definitive for purposes of this Agreement, and the City shall have no right to review or audit records of the Company or its successors, assigns or lessees. The Company acknowledges that sales tax information, records and reports are confidential under the laws of the State of Texas and accordingly, the Company agrees that it shall have no right to review or audit any sales tax information, records or reports in the possession of the City including, without limitation, any confidential information reports obtained by the City pursuant to this Agreement and the Disclosure Statute. In the event the Disclosure Statute is hereafter amended or a new law is enacted requiring additional consents and/or information to obtain any information necessary for the City to calculate the amount of any Incentive Grant payment payable pursuant to Section 8.3.2 of this Agreement, no sums payable pursuant to Section 8.3.2 of this Agreement shall be due or payable unless and until the Company provides the City with such additional consents and/or information; provided, (A) that the City will pay such amounts as it may be able to determine from the information so provided, with the balance to be paid in accordance with this Agreement when such additional consents and/or information is provided, and (B) any change in law shall not impact the City's obligation to make payment of any Incentive Grant payments previously earned and owed by the City to the extent not prohibited by applicable law. Notwithstanding anything contained herein to the contrary, the Parties acknowledge that the City's obligation to pay any Incentive Grant payment due under the terms of Section 8.3.2 of this Agreement shall be deferred if the State Comptroller fails, after written request by the City, to provide the City with the information necessary to: (i) verify the amount of sales taxes paid by the Tenants relating to taxable sales made from such Tenants' locations in Broadmoor Plaza; and (ii) calculate the amount of such Incentive Grant payment; provided, that (A) the City will continue to use diligent, good faith efforts to cause the Comptroller to provide the City the necessary information, (B) the City will provide updates to the Company upon request of the status of obtaining the necessary information, (C) the City will pay any portion of the applicable Incentive

Grant payment for which it has received the necessary information and (D) the due date for payment to the Company of the applicable Incentive Grant payment (or the balance thereof if a portion has been paid under the previously clause (C)) shall be extended until such time as the necessary information is received by the City, at which point the payment will be made in accordance with the other terms of this Agreement, and this obligation shall survive the expiration of this Agreement;

5. The Company shall have delivered to the City within thirty (30) days after written request, copies of such documentation in the Company's possession, custody or control as the City may reasonably request to confirm compliance by the Company with the Conditions Precedent set forth in this Agreement (any such request to be made by the City not later than thirty (30) days after the date of the Annual Report for which payment is being processed, unless such information was previously requested and not timely provided by the Company);
6. The Company shall have delivered to the City copies of such invoices, paid receipts, payment records and such other documentation as the City may reasonably request to confirm compliance by the Company with its obligations herein and the Conditions Precedent (any such request to be made by the City not later than thirty (30) days after the date of the Annual Report for which payment is being processed, unless such information was previously requested and not timely provided by the Company);
7. The Company shall be in compliance with all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company pursuant to the terms of this Agreement and no default by the Company shall then exist beyond any applicable grace or cure period;
8. The Company shall be in compliance with all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of all other agreement(s) now and hereafter existing between the Company and the City, if any, and no default shall then exist under the terms of such agreement(s) beyond any applicable grace or cure period;
9. Broadmoor Plaza and all improvements and activities thereon shall comply in all material respects (or be legally non-conforming uses or structures) with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City as of the date of any Annual Report and the Buildings shall be in good repair and condition (effects of casualty and ordinary wear and tear excepted);
10. At the option of the City, the City shall have inspected Broadmoor Plaza to confirm the Company's compliance with the terms and provisions of this Agreement (any such inspection to be conducted not later than thirty (30) days after the date of the Annual Report for which payment is being processed unless such inspection was previously requested and not timely provided by Company);
11. As of the date of the Annual Report, and at all times during the Term of this Agreement prior to the Annual Report, the Company shall not have knowingly

employed Undocumented Workers to work for the Company or any branch, division or department of the Company; and

12. The amount of the Incentive Grant payment being requested, when added to all previous Incentive Grant payments paid pursuant to this Agreement, shall not exceed the Maximum Incentive Amount.

7.2 Initial Payment Conditions Precedent. The Company and the City hereby expressly acknowledge and agree that the City's obligation to pay the Initial Incentive Grant payment to the Company shall expressly be conditioned upon the satisfaction of each and every one of the following conditions precedent (the "**Initial Payment Conditions Precedent**") in addition to the General Conditions Precedent stated above:

1. Construction and Completion of Initial Improvements. The Initial Improvements identified in **Exhibit "B"** hereto (the "**Initial Improvements**") shall have been constructed at Broadmoor Plaza. The Initial Improvements shall be substantially completed on or before the date four (4) years after the Effective Date, as evidenced by the issuance by the City of a final inspection, final green tag, certificate of completion, or other equivalent, confirming completion of the requirements of the building permit issued by the City in connection with the construction of the Initial Improvements. If the Initial Improvements have not been substantially completed by the date four (4) years after the Effective Date, this Agreement shall automatically terminate and the parties shall have no further rights or obligations hereunder. The Initial Improvements may include both improvements constructed by the Company, improvements constructed by tenants or other occupants of Broadmoor Plaza, including without limitation ground lessees, and/or improvements constructed by third party purchasers of lots or pad-sites in Broadmoor Plaza, and such purchasers' tenants or occupants, and include improvements construction of which commenced at any time after October 15, 2020;
2. Initial Investment. Expenditures in the collective amount of at least ONE MILLION, FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,500,000.00) shall have been incurred in connection with the Initial Improvements (the "**Initial Capital Investment**") from and after October 15, 2020. When calculating such expenditures, the Parties agree that no expenditure shall be included as part of the Initial Capital Investment unless the expenditure is capital in nature (excluding land acquisition costs). The Initial Capital Investment may be more than \$1,500,000.00; and
3. Initial Capital Investment Certificate. The Company shall have submitted to the City a certificate confirming that the Company has complied with this Section 7.2 (the "**Initial Capital Investment Certificate**") with the Annual Report submitted for the first Incentive Tax Year.

7.3 Subsequent Payment Conditions Precedent. The Company and the City hereby expressly acknowledge and agree that the City's obligation to pay to the Company that portion of the Incentive Grant payments in excess of the Initial Incentive Grant amount shall expressly be conditioned upon the satisfaction of each and every one of the following conditions precedent (the "**Subsequent Payment Conditions Precedent**") in addition to the General Conditions Precedent stated above and the Initial Payment Conditions Precedent stated above:

1. Construction and Completion of Subsequent Improvements. In addition to the Initial Improvements, subsequent capital improvements, excluding land acquisition costs and approved in advance by the City Manager (such approval not to be unreasonably withheld), may from time to time during the Term of this Agreement be made to Broadmoor Plaza that constitute Qualifying Improvements (“**Subsequent Improvements**”). Notwithstanding the foregoing, subsequent capital improvements intended to enhance the appearance, operations, value and marketability of Broadmoor Plaza shall be deemed to be approved Subsequent Improvements not requiring the consent or approval of the City Manager. The Subsequent Improvements shall not include any of the Initial Improvements. Any Subsequent Improvements for which the Company is seeking an Incentive Grant payment must be substantially completed on or before December 31 of the eighth (8th) Incentive Tax Year of the Incentive Period, such completion to be evidenced by the issuance by the City of a final inspection, final green tag, certificate of completion, or other equivalent, confirming completion of the requirements of the building permit issued by the City in connection with the construction of any Subsequent Improvements. The Subsequent Improvements may include both improvements constructed by the Company, improvements constructed by tenants or other occupants of Broadmoor Plaza, including without limitation ground lessees, and/or improvements constructed by third party purchasers of lots or pad-sites in Broadmoor Plaza, and such purchasers’ tenants or occupants;

2. Subsequent Capital Investment. Expenditures in an aggregate amount equal to the difference between Six Million Dollars (\$6,000,000.00) and the amount of the Initial Capital Investment (such amount, as calculated, being herein called the “**Subsequent Capital Investment**”) may be incurred from time to time in connection with the Subsequent Improvements. When calculating such expenditures, the Parties agree that no expenditure shall be included as part of the Subsequent Capital Investment unless: (i) the expenditure is a Capital Investment (excluding land acquisition costs); and (ii) the expenditure is not for an Initial Improvement. It is acknowledged and agreed that the entire Subsequent Capital Investment is not required to be incurred in order for the Company to receive installments of the Subsequent Incentive Grant payment; provided, that no additional Subsequent Capital Investment for which the Company is seeking an Incentive Grant payment shall be included in any Annual Report after the Annual Report for the Incentive Tax Year ending December 31, 2031; and

3. Subsequent Capital Investment Certificate. The Company shall submit to the City a certificate confirming the amount of any Subsequent Capital Investment (the “**Subsequent Capital Investment Certificate**”) with each Annual Report for any Tax Incentive Year for which the Subsequent Capital Investments have been incurred for which the Company is seeking an Incentive Grant payment.

7.4 Survival. The terms, provisions, covenants, agreements and obligations of the Company and set forth in this Article of this Agreement shall expressly survive the expiration or termination of this Agreement until payment of the final Incentive Grant as provided in Section 8.4 if not yet paid at the expiration or termination of this Agreement.

ARTICLE VIII
Economic Development Incentives

8.1 Initial Incentive Grant. The City hereby approves, subject to satisfaction of the General Conditions Precedent and Initial Payment Conditions Precedent and the covenants and limitations set forth in this Agreement, an economic development grant to the Company in an amount equal to thirty-five percent (35%) of the Initial Capital Investment (the “**Initial Incentive Grant**”). The Initial Incentive Grant shall be calculated and paid during the Term of this Agreement as provided in this Article. By way of illustration only, (i) if the Initial Capital Investment is \$2,100,000.00, the Initial Incentive Grant would equal \$735,000.00, and (ii) if the Initial Capital Investment is \$2,500,000.00, the Initial Incentive Grant would equal \$875,000.00. Notwithstanding the foregoing, the amount of the Initial Incentive Grant payable for any Incentive Tax Year is subject to the limitations contained in items 1 and 2 of Section 8.3, with any unpaid amount carrying forward to the succeeding calendar year(s) for the Term of this Agreement.

8.2 Subsequent Incentive Grants. The City hereby approves, subject to satisfaction of the General Conditions Precedent, Initial Payment Conditions Precedent and Subsequent Payment Conditions Precedent and the covenants and limitations set forth in this Agreement, an economic development grant to the Company in an amount equal to thirty-five percent (35%) of the Subsequent Capital Investments made from time to time (the “**Subsequent Incentive Grants**”); provided, that the aggregate of all payments of the Initial Incentive Grant and the Subsequent Incentive Grants will not exceed the Maximum Incentive Amount. The Subsequent Incentive Grants shall be due and payable annually in installments as herein provided. For any Incentive Tax Year and subject to the limitations herein, the amount of the Subsequent Incentive Grant payable shall equal thirty-five percent (35%) of the Subsequent Capital Investment incurred for such Incentive Tax Year and for prior Incentive Tax Years if a request for an Incentive Grant payment was not previously made for such previous Subsequent Capital Investments. It is understood and agreed that the entire Subsequent Capital Investment is not required to be incurred in order for the Company to earn a Subsequent Incentive Grant, but that such Subsequent Incentive Grant will be payable in installments as the Subsequent Improvements are constructed and the Subsequent Capital Investment incurred. For example, if the Company provides a Subsequent Capital Investment Certificate for 2025 evidencing that a Subsequent Capital Investment of \$1,000,000.00 has been incurred since the date of the last Subsequent Capital Investment Certificate (if any), a Subsequent Incentive Grant payment equal to 35% of \$1,000,000.00, or \$350,000.00, shall be earned after the submission of the Annual Report for 2025 that includes the applicable Subsequent Capital Investment Certificate. The Subsequent Incentive Grant shall be calculated and paid as provided in this Article. Notwithstanding the foregoing, the amount of the Subsequent Incentive Grant payable for any Incentive Tax Year is subject to the limitations contained in items 1 and 2 of Section 8.3 and the Maximum Incentive Amount, with any unpaid amount carrying forward to the succeeding calendar year(s) for the Term of this Agreement.

8.3 Calculation of Payments of Incentives. Provided all General Conditions Precedent and applicable Initial Payments Conditions Precedent and Subsequent Payments Conditions Precedent have been satisfied and are then continuing, and subject to the covenants and limitations set forth in this Agreement including, without limitation, Section 8.5 below, an Incentive Grant payment owed by the City to the Company during the Incentive Period shall be measured according to the following calculations:

1. 85% of the sum paid by the Company or other Persons to the City for ad valorem taxes assessed against the Land and Buildings for the Incentive Tax Year preceding the Annual Report that exceed the Base Year Ad Valorem Taxes; and
2. 85% of the Net City Sales Taxes paid by the Tenants and collected by the City during the Incentive Tax Year preceding the Annual Report relating solely to taxable sales made from the Tenants' locations in Broadmoor Plaza and that exceed the Base Year City Sales Taxes.

If the calculation under 1. and 2. above for any Incentive Tax Year is less than the amount owed to the Company for such Incentive Tax Year (either for the Initial Incentive Grant or any Subsequent Incentive Grants), the unpaid amount shall carry over to the next calendar year(s) during the Term of this Agreement and shall be paid from the amounts calculated under 1. and 2. for the following Incentive Tax Year(s) prior to payment of any Incentive Grant payments owed for the following Incentive Tax Year(s) in order of priority, and likewise any unpaid amounts for the next and succeeding calendar year(s) during the Term of this Agreement. The Parties understand and agree that though an Incentive Grant may be earned, it may not be paid if funding for the Incentive Grant under this section 8.3 is less than the amount of the Incentive Grant earned during the Term of this Agreement.

8.4 Date for Payment of Incentive Grants. Provided all General Conditions Precedent and applicable Initial Payments Conditions Precedent and Subsequent Payments Conditions Precedent have been satisfied and are then continuing, available funding as calculated under Section 8.3 and subject to the covenants and limitations set forth in this Agreement including, without limitation, Section 8.5 below, the Incentive Grants due and payable pursuant to Article VIII shall be paid by the City to the Company on the later of the following: (i) seventy-five (75) days after the submission of the Annual Report for the Incentive Tax Year which the Incentive Grant is payable; or (ii) the date(s) in Section 7.1.4. For example, if the Annual Report for 2023 is provided to the City on June 30, 2023, the Incentive Grant payment shall be due on the later of (i) September 13, 2023 or (ii) the date(s) in Section 7.1.4. The City agrees to use diligent, good faith efforts to cause the satisfaction of any General Conditions Precedent, any applicable Initial Payments Conditions Precedent and/or any applicable Subsequent Payments Conditions Precedent that are within the control of the City or that require information from the State Comptroller. Notwithstanding anything to the contrary contained herein, the City's obligation, if any, to make an Incentive Grant payment for the final Incentive Tax Year shall survive and extend for one (1) year beyond the Term subject to Section 9.4 below.

8.5 Limitation on Incentive Grant payments. Notwithstanding anything contained herein to the contrary:

1. the collective amount of Incentive Grant payments payable under the terms of this Agreement shall not exceed the Maximum Incentive Amount. If the collective amount of Incentive Grant payments equals the Maximum Incentive Amount prior to the end of an Incentive Tax Year, no further Incentive Grant payments will be due or payable for the remainder of such Incentive Tax Year;
2. in the event any Tenant owns and/or operates multiple locations, the portion of any Incentive Grant payment payable under the terms of this Agreement and calculated

under Section 8.3.2 shall be limited only to the percentage stated in Section 8.3.2 above of taxable sales from such Tenant's location in Broadmoor Plaza;

3. no Incentive Grant payment shall be due and payable for any Tax Year prior to 2021 except with respect to Qualifying Improvements work on which commenced between October 15, 2020 and December 31, 2020, which may be included in the initial Annual Report for the initial Incentive Grant payment;
4. no Incentive Grant payment shall be due and payable for any Tax Year after the Incentive Period; and
5. if there is any conflict between this Section 8.5 and any other term or provision of this Agreement, this Section 8.5 shall control.

8.6 Funds Available for Payment of Economic Development Incentives. The grants of economic development incentives payable by the City to the Company as more fully set forth in this Agreement are not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City. All Incentive Grant payments payable hereunder shall be paid only from funds of the City authorized by Article III, Section 52-a, of the Texas Constitution and Texas Local Government Code Chapter 380. Each Incentive Grant payment shall be subject to the City's appropriation of funds for such purpose to be paid in the budget year for which the Incentive Grant payment is to be made.

8.7 Revenue Sharing Agreement. The Parties designate this Agreement as a revenue sharing agreement, thereby entitling the City to request sales tax information from the State Comptroller, pursuant to the Disclosure Statute.

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

ARTICLE IX

Defaults

Remedies

9.1 Company Default. The Company shall be in default of this Agreement: (i) upon the occurrence of an Event of Bankruptcy or Insolvency of the Company; (ii) upon the failure of the Company to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by Company under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the City to the Company, provided that no default may be found to have occurred if performance has commenced to the reasonable satisfaction of the City within sixty (60) days of the receipt of such notice, and is being diligently pursued using commercially reasonable efforts to complete performance; or (iii) upon failure of the Company to maintain Broadmoor Plaza in good repair and condition at all times (effects of casualty and normal wear and tear excepted), which at a minimum shall mean meeting or exceeding all Federal, State and Local laws and regulations, including but not limited to the City's Code of Ordinances and terms of this Agreement, applicable to Broadmoor Plaza and the activities thereon and such failure continues for sixty (60) days after written notice by the City to the Company, provided that no default may be found to have occurred if performance has commenced to the

reasonable satisfaction of the City within sixty (60) days of the receipt of such notice, and is being diligently pursued using commercially reasonable efforts to complete performance

9.2 City Default. The City shall be in default of this Agreement upon the failure of the City to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the City under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the Company to the City, provided that no default may be found to have occurred if performance has commenced to the reasonable satisfaction of the Company within sixty (60) days of the receipt of such notice, and is being diligently pursued using commercially reasonable efforts to complete performance. Notwithstanding the foregoing, in the event the City fails to timely pay any Incentive Grant payment, the Company shall provide written notice of such failure to the City and the City shall have sixty (60) days to make such Incentive Grant payment before a City default exists.

9.3 City Remedies. In the event of a Company default that has continued uncured beyond any applicable grace or cure period, the City shall have no obligation to pay any future Incentive Grant payment to the Company and the City shall have the right as its sole remedies to: (i) recapture a portion of the Incentive Grant payment last paid by the City to the Company as more fully set forth in Section 9.4 below; and (ii) terminate this Agreement by written notice to the Company in which event neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement. Notwithstanding anything to the contrary contained herein, in no event will the City be entitled to the recovery of attorneys' fees (except in the event of the exercise of the City of the remedies set forth in Chapter 2264 of the Texas Government Code] or consequential, punitive, exemplary or speculative damages.

9.4 Recapture of Incentive Grant Payments. In the event this Agreement is terminated by the City, the City shall have no obligation to make any further Incentive Grant payments to the Company and the Company shall immediately pay to the City, at the City's address set forth herein, or such other address as the City may hereafter notify the Company in writing, the sum equal to the lesser of (A) \$50,000.00 or (B) fifty percent (50%) of the last Incentive Grant payment paid by the City to the Company under the terms of this Agreement, minus any unpaid Incentive Grant payment then earned and owed by the City, plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest to be calculated on the percentage of the Incentive Grant payment being recaptured from the date such Incentive Grant payment was paid by the City to the Company until the date the said sum 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.

9.5 Company Remedies. Upon the occurrence of a City default that has continued uncured beyond any applicable grace or cure period, the Company shall have the right as its sole remedies to (a) terminate this Agreement by written notice to the City in which event neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement, and (b) recover from the City the amount of any Incentive Grant payments then earned and owed by the City as damages in accordance with the following provisions. The City and the Company acknowledge and agree that this Agreement is a contract for goods or services and the City's immunity from suit is waived pursuant to Subchapter I of Chapter 271, V.T.C.A., Local Government Code, as amended. The Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement or otherwise to recover damages:

1. the total amount of damages, if any, awarded against the City shall be limited to actual damages in an amount of the Incentive Grant earned by the Company, not to exceed the amount of the Maximum Incentive Amount, less the amount of all Incentive Grant payments previously paid by the City to the Company;
2. any Incentive Grant payment past due and not paid following the required notice and cure period shall accrue interest at the lesser of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum beginning the day after expiration of the cure period until paid, and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate; and
3. the recovery of damages against the City shall not include attorneys' fees or consequential, punitive, exemplary, or speculative damages including, but not limited to, lost profits.

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

ARTICLE X Miscellaneous Provisions

10.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, notwithstanding anything contained herein to the contrary, this Agreement and the rights and obligations of the Company hereunder may not be assigned or transferred by the Company to any Person other than a transferee of all or any portion of Broadmoor Plaza without the prior written consent of the City, which consent will not be unreasonably withheld, conditioned or delayed. 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 consent will not be unreasonably withheld, conditioned or delayed; provided, that the foregoing requirement for consent shall not apply to transfers or assignments of this Agreement (i) by the Company to any affiliate, subsidiary or parent of the Company or (ii) to any transfers of direct or indirect ownership interests in the Company. The City agrees to execute any such reasonable consents or estoppels requested by any purchaser of Broadmoor Plaza and/or the Company's or its assignee's lender in connection with any collateral assignment of this Agreement. 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. Upon any transfer of this Agreement in connection with the sale of Broadmoor Plaza to an assignee that assumes all duties, liabilities and the obligations of the Company under this Agreement, the transferor shall thereafter be released and discharged from all duties, liabilities and obligations hereunder. Otherwise, the consent by the City to any assignment of this Agreement shall not relieve the Company or any approved assignee from any duties, liabilities or obligations of the Company or any approved assignee under the terms of this Agreement unless the written consent of the City expressly states otherwise. 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 except as provided above, which consent shall not be unreasonably withheld, conditioned or delayed. No assignment of this Agreement shall contain any terms in contravention of any provisions of this Agreement. No assignment of this Agreement shall be effective unless: (i) the assignment is in writing signed by the assignor and the assignee; (ii) the assignee assumes the assignor's obligation to timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations of the assignor under the terms of this Agreement; (iii) a true and correct copy of such assignment has been provided to the City; and (iv) with respect to any assignment for which the City's consent is required as provided above, the City has consented to such assignment in writing, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment in violation of the terms and provisions of this Agreement shall be void and of no force or effect and shall constitute a material breach of this Agreement by the Company. The Company may also retain the benefits of this Agreement and not assign it to any successor owner of Broadmoor Plaza. Nothing contained in this Section or any other terms of this Agreement shall restrict or limit the Company's right to sell, transfer or encumber all or any portion of Broadmoor Plaza from time to time.

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

COMPANY: Broadmoor Plaza Retail, LLC
 c/o Centennial Real Estate Company
 8750 N. Central Expressway, Suite 1740
 Dallas, Texas 75231
 Attn: President and Oliver Robinson

With a Copy to: Michael R. McDoniel
 Attorney at Law
 405 N. Lamar, Suite 200
 Austin, Texas 78703

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

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

10.3 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.

10.4 Remedies Cumulative. Except as expressly limited herein, 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.

10.5 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.

10.6 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.

10.7 Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for nor against any Party.

10.8 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.

10.9 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. .

10.10 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.

10.11 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.

10.12 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.

10.13 No Acceleration. All amounts due pursuant to this Agreement and any remedies under this Agreement are not subject to acceleration.

10.14 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.

10.15 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.

10.16 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.

10.17 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.

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

10.19 Usury Savings Clause. The Company and City intend to conform strictly to all applicable usury laws. All agreements of the City and the Company are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no event shall any interest contracted for, charged, received, paid or collected under the terms of this Agreement exceed the Maximum Lawful Rate or amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under applicable law. If, from any possible development of any document, interest would otherwise be payable to City in excess of the Maximum Lawful Rate, any such construction shall be subject to the provisions of this Section 10.18 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.

10.20 Non-Collusion. The Company represents and warrants that neither Company nor anyone on the Company's behalf has given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any employee, agent, representative or official of the City as an inducement to or in order to obtain the benefits to be provided by the City under this Agreement.

10.21 Form 1295 Certificate. The Company agrees to comply with Texas Government Code, Section 2252.908 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 and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

10.22 Reservation of Legislative Authority. Notwithstanding any provision in this Agreement, this Agreement does not control, waive, limit or supplant the City Council's legislative authority or discretion.


10.23 [Intentionally Deleted]

10.24 Development Standards. The Parties acknowledge that in the last legislative session, the Texas Legislature passed HB 2439, to be codified in V.T.C.A., Texas Government Code, Chapter 3000, Governmental Action Affecting Residential and Commercial Construction, regarding the regulation by municipalities of building products, materials, and aesthetic methods for residential and commercial buildings. The Company acknowledges and agrees that, notwithstanding V.T.C.A., Texas Government Code, Chapter 3000, to construct the Initial Improvements and any Subsequent Improvements in accordance with the standards provided herein and/or as may be agreed upon in writing. The Parties acknowledge that such agreement is material to the City's agreement to grant the economic development incentives provided herein and is a bargained for consideration between the Parties. The Parties further acknowledge and agree that the terms, provisions, covenants, and agreements contained in this Agreement regarding construction of the Initial Improvements and any Subsequent Improvements are covenants that touch and concern the Land and that it is the intent of the Parties that such terms, provisions, covenants, and agreements shall run with the Land and shall be binding upon the Parties hereto, their successors and assigns, and all subsequent owners of the Property.

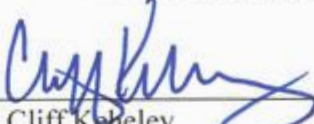
10.25 Time is of the Essence. The Parties agree that time is of the essence of this Agreement.

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

ATTEST:

By: 
Sonja Land
City Secretary
Date: 11.12.2020

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

By: 
Name: Cliff Kehley
Title: City Manager
Date: 11-12-2020


APPROVED AS TO LEGAL FORM:


David L. Paschall, City Attorney

COMPANY:

**Broadmoor Plaza Retail, LLC,
a Texas limited liability company**

By: Broadmoor Plaza Manager, LLC,
its Managing Member

By: 
Name: Oliver Robinson
Title: Authorized Signatory

Date: 11/5/2020

EXHIBIT "A"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Legal Description of Land

- (i) That certain property commonly known as Broadmoor Plaza located at 500 N. Galloway Avenue, Mesquite, Texas 75149, and being more particularly described as follows:

Lot 1R1 as shown on the Replat of Lot 1-R, Block A of Broadmoor Plaza Shopping Center, a subdivision in the City of Mesquite, Dallas County, Texas, according to the map or plat thereof recorded under Document No. 201900211995 of the Real Property Records of Dallas County, Texas.

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

Initial Improvements

Company shall redevelop the property materially in accordance with the attached renderings, replace and repair the parking lot lights and will enhance landscaping around the periphery of the property similar to the renderings in Exhibit B-1. The Initial Improvements shall not include the two single tenant outparcel buildings as users have not yet been identified, but shall include the multitenant outparcel building.

EXHIBIT "B-1"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Initial Improvements Renderings



01 FRONT ELEVATION

1" = 20'-0"



Broadmoor Plaza

MESQUITE TEXAS
 VILLE REAL ESTATE

PRELIMINARY PLAN NOT FOR CONSTRUCTION
ELEV1
JOB NO: 18-074 ISSUE DATE: 12/03/2019 SCALE: AS NOTED

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

List of Existing Tenants of Broadmoor Plaza

Bestway Rental #111, Inc.
Cesar Ruiz and Kathlyn Rogers
Dollar Tree Stores, Inc.
Donnie Pyle
Family Dollar
Fashion Park Cleaners
H&R Block
Hung Michael Ta
Leva Investments, LLC
Marcos Ramirez
Metro PCS
Moon Jung Lee
Quality Furniture
Reginald Brown and Ira Brown
Rent-A-Center #04692X
Watermill Express, LLC