

RESOLUTION NO. 28-2021

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 A MASTER DEVELOPMENT AGREEMENT AND CHAPTER 380 AGREEMENT BETWEEN THE CITY OF MESQUITE, TEXAS, ALCOTT LOGISTICS PARTNERS, LP, A TEXAS LIMITED PARTNERSHIP (THE "DEVELOPER") AND ALCOTT LOGISTICS STATION TRACT D, LP, A DELAWARE LIMITED PARTNERSHIP (THE "TRACT D/CPI DEVELOPER") REGARDING:(I) THE DEVELOPMENT OF APPROXIMATELY 75.01 ACRES OF LAND OWNED BY THE CITY AND BEING GENERALLY LOCATED SOUTH OF E. SCYENE ROAD, WEST OF FAITHON P. LUCAS, SR., BOULEVARD, NORTH OF NEWSOM ROAD AND EAST OF CLAY MATHIS ROAD, LOCATED WITHIN THE CORPORATE LIMITS OF THE CITY OF MESQUITE, DALLAS COUNTY, TEXAS, (THE "PROPERTY"); (II) THE ACQUISITION BY THE TRACT D/CPI DEVELOPER OF APPROXIMATELY 32.34 ACRES OF THE PROPERTY; (III) THE GRANTING TO THE DEVELOPER OF OPTIONS TO PURCHASE AND DESIGNATE DEVELOPMENT ENTITIES TO TAKE TITLE TO AN APPROXIMATELY 17.37 ACRE TRACT AND AN APPROXIMATELY 18.01 ACRE TRACT LOCATED WITHIN THE PROPERTY; AND (IV) THE GRANTING TO THE DEVELOPER OF CERTAIN ECONOMIC DEVELOPMENT INCENTIVES, SAID DEVELOPMENT TO BE A MASTER PLANNED INDUSTRIAL DEVELOPMENT WITH COMMON AMENITIES, DESIGN STANDARDS, AND IN A MANNER CONSISTENT WITH THE OPERATION OF A CLASS A INDUSTRIAL BUSINESS PARK TO BE KNOWN AS "ALCOTT LOGISTICS STATION"; AUTHORIZING THE CITY MANAGER TO TAKE SUCH ACTIONS AND EXECUTE SUCH DOCUMENTS AS ARE NECESSARY OR ADVISABLE TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT; AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY; AND PROVIDING A SEVERABILITY CLAUSE.

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, on April 5, 2021, by City Ordinance No. 4853 ("**Ordinance No. 4853**"), the City created Reinvestment Zone Number Fourteen, City of Mesquite, Texas (Alcott Logistics

Station), a tax increment reinvestment zone created pursuant to Chapter 311 of the Texas Tax Code (the “**Act**”) consisting of approximately 251.8175 acres of land generally located south of E. Scyene Road, west of the Mesquite Metro Airport, north of Berry Road and Newsom Road, and east of Smokey Mountain Trail, being within the corporate limits of the City of Mesquite, Dallas County, Texas, and being more particularly described in Ordinance No. 4853 (the “**TIRZ**”); and

WHEREAS, by City Ordinance No. 4853, the City established a Board of Directors for the TIRZ (the “**TIRZ Board**”); and

WHEREAS, the City created the TIRZ to promote development or redevelopment in such reinvestment zone, in accordance with the Act; and

WHEREAS, the City owns: (i) a tract of land consisting of approximately 50.67364 acres and being more particularly described by metes and bounds in Exhibit 1 attached hereto and made a part hereof for all purposes; and (ii) a tract of land consisting of approximately 23.03668 acres and being more particularly described by metes and bounds in Exhibit 2 attached hereto and made a part hereof for all purposes, both tracts being generally located south of E. Scyene Road, west of Faithon P. Lucas, Sr., Boulevard, north of Newsom Road and east of Clay Mathis Road, within the corporate limits of the City in Dallas County, Texas, (collectively the “**Property**”); and

WHEREAS, the City purchased the Property in 1995; and

WHEREAS, the Property has remained undeveloped during the City’s ownership of the Property; and

WHEREAS, the Property is located within the TIRZ and needs significant development to attract businesses and economic activity to the Property; and

WHEREAS, on May 3, 2021, the TIRZ Board approved a project plan and reinvestment zone financing plan for the TIRZ and recommended approval of such project plan and reinvestment zone financing plan to the City Council for approval; and

WHEREAS, on May 3, 2021, by City Ordinance No. 4857, the City Council approved a project plan and reinvestment zone financing plan for the TIRZ (such project plan and reinvestment zone financing plan, as hereafter amended, being hereinafter referred to as the “**TIRZ Project and Financing Plan**”); and

WHEREAS, the City Council has been presented with a proposed Master Development Agreement and Chapter 380 Agreement between the City, Alcott Logistics Partners, LP, a Texas limited partnership (the “**Developer**”) and Alcott Logistics Station Tract D, LP, a Delaware limited partnership (the “**Tract D/CPI Developer**”) regarding: (i) the development of the Property including, without limitation, the realignment of East Glen Boulevard and the construction and installation of park improvements, a trail system, a water line, drainage and other public improvements on the Property; (ii) the acquisition by the Tract D/CPI Developer of an approximately 32.34 acre tract located within the Property as more particularly described in Exhibit 3 attached hereto and incorporated herein by reference (“**Tract D**”); (iii) the granting to the Developer of the option to purchase and designate a Development Entity to take title to an approximately 17.37 acre tract located within the Property and being more particularly described in Exhibit 4 attached hereto and incorporated herein by reference (“**Tract B**”); (iv) the granting to

the Developer of the option to purchase and designate a Development Entity to take title to an approximately 18.01 acre tract located within the Property and being more particularly described in Exhibit 5 attached hereto and incorporated herein by reference (“**Tract C**”); and (v) the granting to the Developer of certain economic development incentives in connection with the development of the Property, the Property to be developed as a master planned industrial development with common amenities, design standards, and in a manner consistent with the operation of a Class A industrial business park to be known as “Alcott Logistics Station,” a copy of said agreement being attached hereto as Exhibit 6 and incorporated herein by reference (the “**Agreement**”); and

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Agreement; and

WHEREAS, the City desires to have the Property developed under the TIRZ Project and Financing Plan and accordingly, (i) the sale of Tract D to the Tract D/CPI Developer; (ii) the granting of the options to the Developer to purchase Tract B and Tract C and designate Development Entities to take title to Tract B and Tract C; and (iii) the subsequent sale of Tract B and Tract C to such Development Entities, shall be pursuant to V.T.C.A., Local Government Code §272.001(b)(6); and

WHEREAS, the sale and development of Tract B, Tract C, and Tract D are necessary to implement the TIRZ Project and Financing Plan; and

WHEREAS, the sale of Tract D to the Tract D/CPI Developer, the granting of options to the Developer to purchase Tract B and Tract C and designate Development Entities to take title to Tract B and Tract C, and the subsequent sale of Tract B and Tract C to such Development Entities, all for the price(s) and upon such terms and conditions as more particularly set forth in the Agreement, and the granting to the Developer of the economic development incentives more fully set forth in the Agreement, are for the public purpose of creating new employment opportunities in the City, increasing the City’s ad valorem real and personal property tax base, promoting development, and stimulating business and commercial activity in the City, and

WHEREAS, after holding a public hearing and upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council finds: (i) 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; (ii) that the investment of public funds in the development of the Property will secure, among other public benefits, the public purpose of promoting state and local economic development and stimulating business and commercial activity in the City and will result in the development and diversification of the economy of the State of Texas and the development and expansion of commerce in the State of Texas; (iii) that the sale of Tract D to the Tract D/CPI Developer under the terms and subject to the conditions set forth in the Agreement is in the best interest of the City and will benefit the City and its citizens; (iv) that the granting of options to the Developer to purchase Tract B and Tract C and designate Development Entities to take title to Tract B and Tract C; and (v) the subsequent sale of Tract B and Tract C to such Development Entities for such price(s) and upon such terms and provisions as set forth in the Agreement are in the best interest of the City and will benefit the City and its citizens; and (v) that the economic development incentives set forth in the Agreement are in the best interest of the City and will benefit the City and its citizens.

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

SECTION 1. That the facts, findings, and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct and are incorporated and adopted as part of this resolution for all purposes.

SECTION 2. That the City Council finds that the Agreement, a copy of which is attached hereto as Exhibit 6 and incorporated herein by reference, is in the best interest of the City and will benefit the City and its citizens 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 3. 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 Developer 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 4. That the City Council hereby approves the Agreement and hereby authorizes the City Manager to: (i) finalize and execute the Agreement; and (ii) take such actions and execute such documents as are necessary or advisable to consummate the transactions contemplated by the Agreement.

SECTION 5. That the City Council hereby approves the sale of Tract D to the Tract D/CPI Developer for such price and upon the terms and conditions more fully set forth in the Agreement and hereby authorizes the City Manager to: (i) execute a deed transferring Tract D to the Tract D/CPI Developer; and (ii) take such actions and execute such other documents as are necessary or advisable to complete the sale of Tract D to the Tract D/CPI Developer.

SECTION 6. That the City Council hereby approves the grant of options to the Developer to purchase Tract B and Tract C and designate Development Entities to take title to Tract B and Tract C for such price(s) and upon the terms and conditions more fully set forth in the Agreement and hereby authorizes the City Manager to: (i) execute a deed transferring Tract B to the Development Entity designated by the Developer to take title to Tract B; (ii) execute a deed transferring Tract C to the Development Entity designated by the Developer to take title to Tract C; and (iii) take such actions and execute such other documents as are necessary or advisable to complete the sale of Tract B and Tract C to the Development Entities designated by the Developer to take title to Tract B and Tract C.

SECTION 7. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager is granted the authority to: (i) execute and record the Subordination Agreement and a release of the Performance Deed of Trust; (ii) take all actions and approve all matters that by the terms of the Agreement are to be taken or approved by the City Manager; (iii) provide any notices and estoppels required or permitted by the Agreement; (iv) 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 or materially change any terms or provisions of the Agreement, as determined by the City Manager; (v) approve or deny

any matter in the Agreement that requires the consent of the City; (vi) approve or deny the waiver of performance of any covenant, duty, agreement, term, or condition of the Agreement; (vii) exercise any rights and remedies available to the City under the Agreement; and (viii) execute any releases, notices, estoppels, amendments, approvals, consents, denials and waivers authorized by this Section 7, provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 7 shall not include: (a) the authority to take any action or approve any matter that by the terms of the Agreement are to be taken or approved by the City Council; or (b) the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative functions.

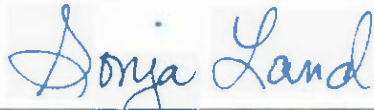
SECTION 8. That the sections, paragraphs, sentences, clauses and phrases of this resolution are severable and, if any phrase, clause, sentence, paragraph or section of this resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, 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 3rd day of May 2021.



Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

TRACT 2:

being all that certain tract or parcel of land situated in the City of Mesquite, Dallas County, Texas, out of the JAMES M. SEWELL SURVEY, ABSTRACT NO. 1358 and the THOMAS J. SEWELL SURVEY, ABSTRACT NO. 1359, and being part of that property conveyed to Phil L. Hudson by Catherine Yates Payne and husband Phillip M. Payne by Deed recorded in Volume 2329, Page 310 of the Deed Records of Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod for corner in the Southerly line of Scyene Road (60 Foot R.O.W.) said point being the Northeast corner of a certain tract of land conveyed by Gertrude Kenney Hudson to Wilburn Leon Ladyman and Mildred B. Ladyman by Deed recorded in Volume 85007, Page 5277 of the Deed Records of Dallas County, Texas;

THENCE South 63 degrees 34 minutes 30 seconds East with said line of Scyene Road, a distance of 2744.65 feet to a 1/2 inch iron rod in the East line of said Hudson tract;

THENCE South 0 degrees 55 minutes 10 seconds West with the East line of said Hudson property, a distance of 660 feet to a 1/2 inch iron rod for the Northeast corner of that certain tract of land conveyed to the County of Dallas Texas, by Deed from Gertrude Kenney Hudson, a widow, recorded in Volume 75112, Page 1271 Deed Records of Dallas County, Texas, said Dallas County tract being known as East Glen Boulevard (100 foot R. O. W.);

THENCE North 89 degrees 45 minutes 51 seconds West with the North line of East Glen Boulevard, a distance of 2732.18 feet to a 1/2 inch iron rod at the Southeast corner of a tract of land conveyed to Wilburn Leon Ladyman and Mildred B. Ladyman by Deed recorded in Volume 85007, Page 5279 Deed Records of Dallas County, Texas;

THENCE North 0 degrees 55 minutes 10 seconds East, a distance of 933.93 feet to the PLACE OF BEGINNING and containing 50.67364 acres of land, more or less.

TRACT 3:

Being all that certain tract or parcel of land situated in the City of Mesquite, Dallas County, Texas, out of the JAMES M. SEWELL SURVEY, ABSTRACT NO. 1358 and the THOMAS J. SEWELL SURVEY, ABSTRACT NO. 1359, and being part of that property conveyed to Phil L. Hudson by Catherine Yates Payne and husband Phillip M. Payne by Deed recorded in Volume 2329, Page 310 of the Deed Records of Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod for corner in the South line of a tract of land conveyed to the County of Dallas, Texas, by Gertrude Kenney Hudson, a widow, by Deed recorded in Volume 75112, Page 1271 of the Deed Records, Dallas County, Texas, said tract being known as East Glen Boulevard (100 foot R.O.W.), said point also being in the East line of a certain tract of land conveyed to Hollis Boone Memorial Post by Deed recorded in Volume 77211, Page 1265 Deed Records, Dallas County, Texas;

THENCE South 89 degrees 45 minutes 51 seconds East with the south line of East Glen Boulevard, a distance of 2931.36 feet to a 1/2 inch iron rod in the East line of said Hudson tract;

THENCE South 0 degrees 55 minutes 10 seconds West with the East line of said Hudson tract, a distance of 720 feet to a "P.K." nail for corner in Newsome Road (variable width R.O.W.) said point being in the common line of the James M. Sewell Survey and the R. W. Rowe Survey, being the southeast corner of said Hudson tract;

THENCE North 89 degrees 43 minutes 15 seconds West with said survey line, a distance of 825.94 feet to a "P.K." nail for corner at the intersection of said Survey line with the Northerly line of a tract of land conveyed to the County of Dallas, September 14, 1939, said tract being known as the Old Terrell Interurban R.O.W.;

THENCE North 77 degrees 33 minutes 40 seconds West with the North line of said Dallas County Tract a distance of 2146.54 feet to a 1/2 inch iron rod at the Southeast corner of said Hollis Boone Memorial Post tract;

THENCE North 0 degrees 55 minutes 10 seconds East with the East line of said Boone tract, a distance of 263.19 feet to the PLACE OF BEGINNING and containing 37.43726 gross acres of land, less 0.40058 acres in Newsome Road, leaving 37.03668 Net Acres of land.

SAVE AND EXCEPT that certain fourteen (14) acre tract of real property legally described as follows:

BEING all that certain tract or parcel of land situated in the City of Mesquite, Dallas County, Texas, out of the James M. Sewell Survey, Abstract No. 1358 and the Thomas J. Sewell Survey, Abstract No. 1359, and being part of that property conveyed to Phil L.

Hudson by Catherine Yates Payne and husband, Phillip M. Payne by Deed recorded in Volume 2329, Page 310, of the Deed Records of Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2" iron rod for corner in the south line of a tract of land conveyed to the County of Dallas, Texas, by Gertrude Kenney Hudson, a widow, by Deed recorded in Volume 75112, Page 1271, of the Deed Records of Dallas County, Texas, said tract being known as East Glen Boulevard (a 100' RCW), said point also being in the East line of a certain tract of land conveyed to Hollis Boone Memorial Post of Deed recorded in Volume 77211, Page 1265, Deed Records of Dallas County, Texas;

THENCE: S 89°45'51" E, with the South line of East Glen Boulevard, a distance of 1447.54 feet to a point for corner;

THENCE: S 00°55'10" W, a distance of 577.46 feet to a point for corner in the Northerly line of a tract of land conveyed to the County of Dallas, September 14, 1939, said tract being known as the Old Terrell Interurban RCW;

THENCE: N 77°33'40" W, with the North line of said Dallas County tract, a distance of 1477.19 feet to a point for corner, being the Southeast corner of said Hollis Boone Memorial Post tract;

THENCE: N 00°55'10" E, with the East line of said Boone tract, a distance of 265.19 feet to the PLACE OF BEGINNING and containing 14.000 acres of land, more or less.

**LEGAL DESCRIPTION
TRACT D**

BEING an 32.34 acre tract of land situated in the Thomas J. Sewell Survey, Abstract Number 1359 in the City of Mesquite, Dallas County, Texas, and being part of a called 50.67364 acre tract of land described as "Tract 2" and part of a called 23.03668 acre tract of land described as "Tract 3" in General Warranty Deed to City of Mesquite, as recorded in Volume 95083, Page 253 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and part of a called 6.73 acre tract of land described as "Tract 1" in Quitclaim Deed to City of Mesquite, as recorded in Instrument Number 202100054586 of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), and being more particularly described as follows:

COMMENCING at the northeast corner of said 50.67364 acre tract and the northwest corner of a called 11.004 acre tract of land described as "Tract One" in Special Warranty Deed to Wintergreen/HS Partners, LTD., as recorded in Instrument Number 202000358596, O.P.R.D.C.T., said corner being on the south right-of-way line of E. Scyene Road (a 60-foot wide right-of-way), from which a 5/8-inch found iron rod with cap stamped "KHA" bears South 84 degrees 32 minutes 03 seconds East, a distance of North 83 degrees 16 minutes 20 seconds West, a distance of 0.51 of a foot;

THENCE South 00 degrees 00 minutes 46 seconds East, with the east line of said 50.67364 acre tract and the west line of said 11.004 acre tract, a distance of 40.18 feet to a corner (not monumented) for the **POINT OF BEGINNING**;

THENCE South 00 degrees 00 minutes 46 seconds East, with the east line of said 50.67364 acre tract, the east line of the aforementioned 23.03668 acre tract, the east line of the aforementioned 6.73 acre tract, and the west line of said 11.004 acre tract, a distance of 1,416.70 feet to a corner (not monumented), said corner being on the south line of said 23.03668 acre tract and the north right-of-way line of Newsome Road (a variable width right-of-way);

THENCE South 89 degrees 20 minutes 49 seconds West, with the south line of said 23.03668 acre tract and the north right-of-way line of said Newsome Road, a distance of 919.27 feet to corner (not monumented), said corner being on the southwest line of said 23.03668 acre tract and the northeast line of a called 42,901 square foot tract of land described in Special Warranty Deed to City of Mesquite, Texas, as recorded in Volume 2001166, Page 93, D.R.D.C.T.;

THENCE North 78 degrees 29 minutes 36 seconds West, departing said north right-of-way line, and with the south line of said 23.03668 acre tract and the northeast line of said 42,901 square foot tract, a distance of 32.12 feet to corner (not monumented);

THENCE North 00 degrees 41 minutes 47 seconds West, departing said north and south lines, and over and across said 23.03668 acre tract, the aforementioned 6.73 acer tract, and the aforementioned 50.67364 acre tract, a distance of 1,513.58 feet to a corner (not monumented);

THENCE South 84 degrees 32 minutes 03 seconds East, over and across said 50.67364 acre tract, a distance of 973.19 feet to the **POINT OF BEGINNING AND CONTAINING** 32.34 acres (1,408,765 square feet) of land, more or less.

**LEGAL DESCRIPTION
TRACT B**

BEING an 17.37 acre tract of land situated in the Thomas J. Sewell Survey, Abstract Number 1359 in the City of Mesquite, Dallas County, Texas, and being part of a called 50.67364 acre tract of land described as "Tract 2" in General Warranty Deed to City of Mesquite, as recorded in Volume 95083, Page 253 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and being more particularly described as follows:

COMMENCING at a 5/8-inch found iron rod with cap stamped "KHA" for the northeast corner of a called 1.417 acre tract of land described in Special Warranty Deed with Vendor's Lien to MCR Logistics, as recorded in Instrument Number 201700126943, of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), and the northwest corner of said 50.67364 acre tract, said corner being on the south right-of-way line of Scyene Road (a 60-foot wide right-of-way);

THENCE South 00 degrees 00 minutes 33 seconds West, departing said south right-of-way line and with the west line of said 50.67364 acre tract and the east line of 2.997 acre tract, a distance of 40.18 feet to the **POINT OF BEGINNING**;

THENCE South 84 degrees 32 minutes 03 seconds East, over and across said 50.67364 acre tract, a distance of 874.66 feet to a corner (not monumented);

THENCE South 00 degrees 41 minutes 47 seconds East, over and across said 50.67364 acre tract, a distance of 817.18 feet to a corner (not monumented), said corner being on the south line of said 50.67364 acre tract and the north right-of-way line of Eastglen Boulevard (a 100-foot wide right-of-way);

THENCE South 89 degrees 18 minutes 13 seconds West, with the south line of said 50.67364 acre tract and the north right-of-way line of said Eastglen Boulevard, a distance of 880.82 feet to a 1/2-inch found iron rod with cap stamped "TXHS" for the southwest corner of said 50.67364 acre tract and the southeast corner of a called 2.997 acre tract of land described in Warranty Deed with Vendor's Lien to Sudi Corporation, as recorded in Instrument Number 201600284293, O.P.R.D.C.T.;

THENCE North 00 degrees 00 minutes 33 seconds East, departing said south line and with the west line of said 50.67364 acre tract and the east line of 2.997 acre tract, a distance of 911.13 feet to the **POINT OF BEGINNING AND CONTAINING** 17.37 acres (756,552 square feet) of land, more or less.

**LEGAL DESCRIPTION
TRACTC**

BEING an 18.01 acre tract of land situated in the Thomas J. Sewell Survey, Abstract Number 1359 in the City of Mesquite, Dallas County, Texas, and being part of a called 50.67364 acre tract of land described as "Tract 2" and part of a called 23.03668 acre tract of land described as "Tract 3" in General Warranty Deed to City of Mesquite, as recorded in Volume 95083, Page 253 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and part of a called 6.73 acre tract of land described as "Tract 1" in Quitclaim Deed to City of Mesquite, as recorded in Instrument Number 202100054586 of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), and being more particularly described as follows:

COMMENCING at the northeast corner of said 50.67364 acre tract and the northwest corner of a called 11.004 acre tract of land described as "Tract One" in Special Warranty Deed to Wintergreen/HS Partners, LTD., as recorded in Instrument Number 202000358596, O.P.R.D.C.T., said corner being on the south right-of-way line of Scyene Road (a 60-foot wide right-of-way), from which a 5/8-inch found iron rod with cap stamped "KHA" bears South 84 degrees 32 minutes 03 seconds East, a distance of North 83 degrees 16 minutes 20 seconds West, a distance of 0.51 of a foot;

THENCE North 84 degrees 32 minutes 03 seconds West, with the north line of said 50.67364 acre tract and the south right-of-way line of said E. Scyene Road, a distance of 973.67 feet to a corner (not monumented);

THENCE South 00 degrees 41 minutes 47 seconds East, departing said north and south lines, and over and across said 50.67364 acre tract, a distance of 40.23 feet to a corner (not monumented) for the **POINT OF BEGINNING**;

THENCE South 00 degrees 41 minutes 47 seconds East, over and across said 50.67364 acre tract, the aforementioned 23.03668 acre tract, and the aforementioned 6.73 acre tract, a distance of 1,513.58 feet to a corner (not monumented), said corner being on the south line of said 23.03668 acre tract and the north line of a called 42,901 square foot tract of land described in Special Warranty Deed to City of Mesquite, Texas, as recorded in Volume 2001166, Page 93, D.R.D.C.T.;

THENCE North 78 degrees 29 minutes 36 seconds West, with the south line of said 23.03668 acre tract and the northeast line of said 42,901 square foot tract, a distance of 544.42 feet to the northwest corner (not monumented) of said 42,901 square foot tract, said corner being on the east line of Lot 1 of Calvary First Baptist Church Addition, an addition to the City of Mesquite, Dallas County, Texas, as recorded in Instrument Number 201000184580, O.P.R.D.C.T.;

THENCE North 00 degrees 05 minutes 20 seconds West, with the east line of said Lot 1, a distance of 577.61 feet to the northeast corner (not monumented) of said Lot 1, said corner being on the south line of the aforementioned 6.73 acre tract;

THENCE South 89 degrees 18 minutes 13 seconds West, with the north line of said Lot 1 and the south line of said 6.73 acre tract, a distance of 276.25 feet to the point of curvature (not monumented) of a non-tangent circular curve to the left, having a radius of 300.00 feet, whose chord bears North 43 degrees 56 minutes 38 seconds East, a distance of 421.62 feet;

THENCE Northeasterly, departing said north and south lines, over and across said 6.73 acre tract and the aforementioned 50.67364 acre tract, and with said curve, through a central angle of 89 degrees 17 minutes 21 seconds, an arc distance of 467.52 feet to a corner (not monumented);

THENCE North 00 degrees 41 minutes 47 seconds West, over and across said 50.67364 acre tract, a distance of 575.55 feet to a corner (not monumented);

THENCE South 84 degrees 32 minutes 03 seconds East, over and across said 50.67364 acre tract, a distance of 508.94 feet to the **POINT OF BEGINNING AND CONTAINING** 18.01 acres (784,706 square feet) of land, more or less.

EXHIBIT 6

**MASTER DEVELOPMENT AGREEMENT AND CHAPTER 380 AGREEMENT
BETWEEN THE CITY OF MESQUITE, TEXAS, AND ALCOTT LOGISTICS
PARTNERS, LP**

(to be attached)

APPROVED BY CITY COUNCIL

DATE 5.3.2021

AGENDA ITEM NO. 27

**MASTER DEVELOPMENT AGREEMENT AND
CHAPTER 380 AGREEMENT**

BETWEEN

ALCOTT LOGISTICS PARTNERS, LP

AND

ALCOTT LOGISTICS STATION TRACT D, LP.

AND

CITY OF MESQUITE

Dated: May 26, 2021

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LIST OF EXHIBITS

Exhibits	Description of Exhibits
Exhibit A	Legal Description of Tract 1 [50.67364 Acre Tract]
Exhibit B	Legal Description of Tract 2 [23.03668 Acre Tract]
Exhibit C	Description of Common Public Improvements
Exhibit D -1 and Exhibit D-2	Legal Description of Tract A [Consisting of that certain 5.06-acre park property described in Exhibit D-1 and that certain 2.23 acre proposed right of way property described in Exhibit D-2]
Exhibit E	Legal Description of Tract B [17.37 Acre Tract]
Exhibit F	Legal Description of Tract C [18.01 Acre Tract]
Exhibit G	Legal Description of Tract D [32.34 Acre Tract]
Exhibit H	Depiction of Tract B, Tract C and Tract D [Tract A is depicted on Exhibit H as the 5.06-acre park property and the 2.23 acre proposed right of way property]
Exhibit I	Boundary Description of Property Located within the TIRZ
Exhibit J	Depiction of Property Located within the TIRZ
Exhibit K	Architectural Standards
Exhibit L	Concept Plan
Exhibit M	Development Standards
Exhibit N	Newsom Road Landscape Buffer
Exhibit O	Memorandum of Purchase Options
Exhibit P	Deed Without Warranty

MASTER DEVELOPMENT AGREEMENT

AND

CHAPTER 380 AGREEMENT

This Master Development Agreement and Chapter 380 Agreement (this “**Agreement**”), dated as of May 26, 2021 (the “**Effective Date**”), is entered into by and between Alcott Logistics Partners, LP, a Texas limited partnership (the “**Developer**”), Alcott Logistics Station Tract D, LP, a Delaware limited partnership (“**Tract D Developer**”), and the City of Mesquite, a Texas home rule municipality (the “**City**”). The Developer, the Tract D Developer, and the City are hereinafter sometimes individually referred to as a “**Party**” and sometimes collectively referred to as the “**Parties**.”

RECITALS:

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

WHEREAS, all exhibits referred to herein are incorporated herein and made a part of this Agreement for all purposes; and

WHEREAS, the City owns the following two (2) tracts of land located within the corporate limits of the City: (i) a tract consisting of approximately 50.67364 acres and being more particularly described by metes and bounds in Exhibit A; and (ii) a tract consisting of approximately 23.03668 acres and being more particularly described by metes and bounds in Exhibit B (collectively the “**Property**”); and

WHEREAS, the City purchased the Property in 1995; and

WHEREAS, the Property has remained undeveloped during the City’s ownership of the Property; and

WHEREAS, the Property needs significant development to attract businesses and economic activity to the Property; and

WHEREAS, the Property is divided by an existing road commonly referred to as “East Glen Boulevard”; and

WHEREAS, the Developer has made a proposal to the City to develop, by and through one or more Development Entities, the Property as a master planned industrial development with common amenities, design standards, and in a manner consistent with the operation of a Class A industrial business park to be known as “Alcott Logistics Station”; and

WHEREAS, in order to facilitate and maximize the development of the Property to its greatest potential, the Developer and Tract D Developer have agreed to relocate East Glen Boulevard and to construct certain public infrastructure and public improvements to benefit the

public and the development of the Property as more fully described in Exhibit C (collectively the “**Common Public Improvements**”); and

WHEREAS, a significant part of the Common Public Improvements includes the removal and realignment of the existing East Glen Boulevard that traverses across Tract D substantially increasing the value of Tract D by increasing the size of the industrial building that can be constructed on Tract D; and

WHEREAS, the Common Public Improvements also include amenities such as park and trail improvements that will set the Project apart from other industrial developments, will attract businesses to the Property, and will increase the value of Tract D; and

WHEREAS, the Tract D Developer is an Affiliate of Developer that is under common control with the Developer and has been formed for the purpose of owning Tract D and constructing or causing the construction of the Common Public Improvements and the Building to be constructed on Tract D; and

WHEREAS, the Developer and the Tract D Developer will benefit, directly or indirectly, through the development of Tract D and the construction of the Common Public Improvements; and

WHEREAS, the Developer and the City desire to divide the Property into the following four (4) tracts: (i) the first tract consisting of all of the Property SAVE AND EXCEPT Tract B, Tract C and Tract D and being that certain approximately 5.06 acre park tract described by metes and bounds in Exhibit D-1 and that certain approximately 2.23 acre right of way tract more particularly described by metes and bounds in Exhibit D-2 (“**Tract A**”); (ii) the second tract consisting of approximately 17.37 acres and being more particularly described by metes and bounds in Exhibit E (“**Tract B**”); (iii) the third tract consisting of approximately 18.01 acres and being more particularly described by metes and bounds in Exhibit F (“**Tract C**”); and (iv) the fourth tract consisting of approximately 32.34 acres and being more particularly described by metes and bounds in Exhibit G (“**Tract D**”); and

WHEREAS, Tract A is the approximately 5.06-acre park tract and the approximately 2.23 acre right of way tract depicted on Exhibit H; and

WHEREAS, Tract B, Tract C, and Tract D, are also depicted on Exhibit H; and

WHEREAS, Tract B, Tract C, and Tract D, are hereinafter sometimes individually referred to as a “**Tract**” and sometimes collectively referred to as the “**Tracts**”; and

WHEREAS, the Tract D Developer has agreed to purchase Tract D upon the terms and subject to the conditions more fully set forth herein; and

WHEREAS, as a condition to undertaking the obligation to develop the Property in the manner specified in and subject to the terms of this Agreement, the Developer has requested that the City grant the Developer an option to purchase Tract B and Tract C upon the terms and subject to the conditions more fully set forth herein; and

WHEREAS, Developer, at the Developer's option and by and through one or more Developer Subsidiaries, may construct additional public infrastructure that will facilitate the development of Tract B, Tract C and/or Tract D as more fully set forth herein; and

WHEREAS, the development of the Property will not occur solely through private investment in the reasonably foreseeable future; and

WHEREAS, on April 5, 2021, by City Ordinance No. 4853, the City created Reinvestment Zone Number Fourteen, City of Mesquite, Texas (Alcott Logistics Station), a tax increment reinvestment zone created pursuant to the TIRZ Act, consisting of approximately 251.8175 acres of land generally located south of E. Scyene Road, west of the Mesquite Metro Airport, north of Berry Road and Newsom Road, and east of Smokey Mountain Trail, being within the corporate limits of the City of Mesquite, Dallas County, Texas, and being the property located within the boundary of the zone described in Exhibit I and depicted in Exhibit J (the "TIRZ"); and

WHEREAS, the Property is located within the TIRZ; and

WHEREAS, on May 3, 2021, the TIRZ Board approved a project plan and reinvestment zone financing plan for the TIRZ identifying the Common Public Improvements as projects eligible for reimbursement by the TIRZ and providing for the development of the Property including, without limitation, the conveyance of Tract B, Tract C and Tract D and recommended approval of such project plan and reinvestment zone financing plan to the City Council for approval; and

WHEREAS, on May 3, 2021, by City Ordinance No. 4857, the City Council approved a project plan and reinvestment zone financing plan for the TIRZ (such project plan and reinvestment zone financing plan, as hereafter amended, being hereinafter referred to as the "TIRZ Project and Financing Plan"); and

WHEREAS, the City intends (upon satisfaction of the conditions and in accordance with the terms of this Agreement), to present to the City Council for consideration an agreement to use a portion of the TIRZ Revenues to reimburse the Tract D Developer for the Common Public Improvements Project Costs up to the Reimbursement Cap in accordance with the TIRZ Act and the TIRZ Project and Financing Plan, all as more specifically provided herein (such reimbursement agreement, if and in the form approved by the City Council, and as hereafter amended, being hereinafter referred to as the "TIRZ Reimbursement Agreement"); and

WHEREAS, the Parties agree that the Common Public Improvements are projects that qualify for reimbursement under the TIRZ Act; and

WHEREAS, the reimbursement of the Common Public Improvements Project Costs shall be solely from TIRZ Revenues as more fully set forth herein and the City shall never be responsible for the cost of the Common Public Improvements from its general fund, its ad valorem taxes or from any other property or revenues of the City; and

WHEREAS, upon the terms and subject to the conditions more fully set forth herein, the City may approve the reimbursement to the Developer or a Developer Subsidiary of the Specific Public Improvements Project Costs from TIRZ Revenues up to a reimbursement cap approved by

the City Council provided, however, that any reimbursement by the City of the Specific Public Improvements Project Costs shall only be for projects that qualify for reimbursement under the TIRZ Act and that are included as projects eligible for reimbursement in an amended project plan and reinvestment zone financing plan for the TIRZ that is approved by the TIRZ Board and the City Council; and

WHEREAS, any reimbursement of the Specific Public Improvements Project Costs shall be solely from TIRZ Revenues as more fully set forth herein and the City shall never be responsible for the costs of the Specific Public Improvements from its general fund, its ad valorem taxes or from any other property or revenues of the City; and

WHEREAS, the Developer has agreed, by and through a Development Entity, to construct Building 1 on Tract D or the First Option Tract; and

WHEREAS, (i) the acquisition of Tract D by the Tract D Developer; (ii) the construction of the Common Public Improvements; (iii) the construction of Building 1, by and through a Development Entity, on Tract D or the First Option Tract; (iv) if Building 1 is constructed on Tract D and the Developer exercises the First Purchase Option, the construction of Building 2, by and through a Development Entity, on the First Option Tract; and (v) if the Developer exercises the Second Purchase Option, the construction of a Building, by and through a Development Entity, on the Second Option Tract, all as more fully set forth herein, is hereinafter collectively referred to as the “**Project**”, and

WHEREAS, the Developer or a Developer Subsidiary will be investing a minimum of FORTY FOUR MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$44,200,000.00) in connection with the Project including, without limitation, the Developer or the Tract D Developer will be investing a minimum of THREE MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,200,000.00) in connection with the construction and installation of the Common Public Improvements; and

WHEREAS, the Property, if built-out to its maximum potential, is anticipated to result in the addition of approximately SIXTY-FOUR MILLION FIVE HUNDRED SEVEN NINE THOUSAND THREE HUNDRED TWENTY AND NO/100 DOLLARS (\$64,579,320.00) of taxable value of improvements on Tract B, Tract C, and Tract D adding value to the City’s tax rolls and substantially increasing the ad valorem real property taxes to be collected by the City; and

WHEREAS, it is anticipated that the Project will attract manufacturing, storage and/or distribution operations to the City resulting in the creation of employment opportunities in the City and substantially increasing the taxable value of business personal property installed and/or located at the Property thereby adding value to the City’s tax rolls and increasing the ad valorem personal property taxes to be collected by the City; and

WHEREAS, the City recognizes the positive impact that the Project will bring to the City and realizes the importance of the use of economic development incentives as a tool to attract new development and to bring new jobs to the City; and

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

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

WHEREAS, to incentivize the development of the Property, to encourage and support economic development within the City, and to promote employment, the City desires to facilitate the development of the Property through the reimbursement of the Common Public Improvements Project Costs and potentially through the reimbursement of the Specific Public Improvements Project Costs and through providing certain economic development incentives and grants, all upon and subject to the terms and conditions more fully set forth herein; and

WHEREAS, the City Council finds and determines that the investment of public funds in the Project will secure, among other public benefits, the public purpose of promoting state and local economic development and stimulating business and commercial activity in the City and will result in the development and diversification of the economy of the State of Texas and the development and expansion of commerce in the State of Texas; and

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program, and will promote local economic development in the City, stimulate business and commercial activity in the City, and benefit the City and its citizens.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, conditions, and obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the Parties hereto agree as follows:

ARTICLE I

INCORPORATION OF RECITALS

The foregoing recitals (“**Recitals**”) are incorporated as part of this Agreement, are true and correct, constitute findings of the Parties, form the basis upon which the Parties have entered into this Agreement and establish the intent of the Parties in entering into this Agreement.

ARTICLE II

DEFINITIONS

Unless the context clearly requires otherwise, the following terms as used in this Agreement shall have the following meanings, to-wit:

“**Act**” shall have the meaning set forth in Section 8.04 of this Agreement.

“**Affiliate**” means any Person directly controlling, or directly controlled by or under direct common control with the Developer. As used in this definition, the term “control,” “controlling”

or “controlled by” shall mean the possession, directly, of the power to direct or cause the direction of management or policies of the Developer, whether through the ownership of voting securities or interests, by contract or otherwise, and which may be subject to “major decisions” approval or veto rights customarily provided to limited partners or non-managing members, excluding in each case, any lender of the Developer or any affiliate of such lender.

“**Agreement**” has the meaning stated in the first paragraph of this Agreement.

“**Alcott Grant Account**” shall mean an account owned and held by the City and designated for the purpose of paying the Tract D Grant, the First Option Tract Grant, and the Second Option Tract Grant and shall not be commingled with the City’s other funds, except as set forth in Section 9.05 and Section 16.06(B) of this Agreement.

“**Applicable Law**” means any statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate or order of all Governmental Authorities, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authorities. Applicable Law includes, but shall not be limited to, the City Regulations.

“**Approved Assignee**” shall have the meaning set forth in Section 17.03(A) of this Agreement.

“**Architectural Standards**” means those architectural standards, exterior finish standards, and building façade/elevation standards set forth in Exhibit K.

“**Bond**” and “**Bonds**” shall have the meanings set forth in Section 11.01(H) of this Agreement.

“**Building**” shall mean each industrial building constructed on Tract B, Tract C, and Tract D, individually, and “**Buildings**” shall mean all buildings constructed on Tract B, Tract C, and Tract D, collectively.

“**Building 1**” shall mean the first Building that the Developer, or a Development Entity, Commences Construction of in connection with the Project and shall be an industrial building consisting of: (i) a minimum of 265,000 square feet if constructed on Tract B; (ii) a minimum of 300,000 square feet if constructed on Tract C; or (iii) a minimum of 540,000 square feet if constructed on Tract D.

“**Building 1 Commencement Date**” shall mean the date the Developer, or a Development Entity, Commences Construction of Building 1.

“**Building 1 Commencement Deadline Date**” shall mean the date that is eighteen (18) months after the Effective Date.

“**Building 1 Completion Date**” shall mean the date that is the earlier of: (i) twenty-four (24) months after the Building 1 Commencement Date; and (ii) forty-two (42) months after the Effective Date.

“Building 2” shall mean the second building that the Developer, or a Development Entity, Commences Construction of in connection with the Project and shall be an industrial building consisting of: (i) a minimum of 265,000 square feet if constructed on Tract B; and (ii) a minimum of 300,000 square feet if constructed on Tract C; or (iii) a minimum of 540,000 square feet if constructed on Tract D.

“Building 2 Commencement Date” shall mean the date the Developer, or a Development Entity, Commences Construction of Building 2.

“Building 2 Commencement Deadline Date” shall mean the date that is the earlier of: (i) twenty-four (24) months after the Building 1 Completion Date; and (ii) sixty-six (66) months after the Effective Date.

“Building 2 Completion Date” shall mean the date that is the earlier of: (i) twenty-four (24) months after the Building 2 Commencement Date; and (ii) ninety (90) months after the Effective Date.

“Building 3” shall mean the third building that the Developer, or a Development Entity, Commences Construction of in connection with the Project and shall be an industrial building consisting of: (i) a minimum of 265,000 square feet if constructed on Tract B; (ii) a minimum of 300,000 square feet if constructed on Tract C; or (iii) a minimum of 540,000 square feet if constructed on Tract D.

“Building Official” shall mean the “Building Official” of the City as defined in Section 202, “Definitions,” of Chapter 2, “Definitions,” of the International Building Code, 2018 Edition, a publication of the International Code Council, adopted and designated as the official building code of the City, as amended or replaced.

“Building Permit” shall mean a written authorization issued, after review and verification of code compliance, by the Building Official, or the Building Official’s designee, to the Developer or Tract D Developer allowing the Developer or Tract D Developer to proceed with construction of the Common Public Improvements, or to the Developer or a Development Entity allowing the Developer or a Development Entity to proceed with construction of a Building on Tract B, Tract C and/or Tract D in connection with the Project, and includes any construction-related permit required under Section 105, “Permits,” of Part 2, “Administration and Enforcement,” of Chapter 1, “Scope and Administration,” of the International Building Code, 2018 Edition, a publication of the International Code Council, adopted and designated as the official building code of the City, as amended or replaced.

“CC&Rs” shall mean the declaration of covenants, conditions and restrictions to be imposed by Developer, the Tract D Developer, or a Development Entity, on Tract B, Tract C and Tract D if and when purchased by the Developer, the Tract D Developer, or Development Entity as more fully set forth in Section 8.03 of this Agreement, which at a minimum shall require that the landscaping installed and the improvements constructed on Tract B, Tract C, and Tract D shall comply with the Architectural Standards, Concept Plan, Development Standards, and the Landscaping Requirements.

“Certificate of Compliance” means a certificate in such form as is reasonably acceptable to the City executed on behalf of the Developer by a Person duly authorized to act on behalf of the Developer certifying to the City: (i) that all General Conditions Precedent have been satisfied and are then continuing; (ii) that with respect to the Payment Request submitted in connection with the Tract D Grant, all Tract D Grant Additional Conditions Precedent have been satisfied and are then continuing; (iii) that with respect to the Payment Request submitted in connection with the First Option Tract Grant, all First Option Tract Grant Additional Conditions Precedent have been satisfied and are then continuing; (iv) that with respect to the Payment Request submitted in connection with the Second Option Tract Grant, that all Second Option Tract Grant Additional Conditions Precedent have been satisfied and are then continuing; (v) that with respect to each Payment Request submitted in connection with the Development Fee Grant, that all Development Fee Grant Additional Conditions Precedent have been satisfied and are then continuing; and (vi) that no Developer Default then exists under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a Developer Default under the terms of this Agreement.

“City” means the City of Mesquite, Texas.

“City Council” means the City Council of the City.

“City Default” shall have the meaning set forth in Section 16.02 of this Agreement.

“City Increment” means, for any given year beginning with the 2022 tax year and continuing during the term of the TIRZ, the tax increment as determined in Ordinance No. 4857 adopted by the City Council on May 3, 2021 approving the TIRZ Project and Financing Plan, calculated on the amount of the ad valorem real property taxes levied and collected by the City for that year on the captured appraised value as defined in the TIRZ Act of real property taxable by the City and located within the TIRZ.

“City Manager” means the City Manager of the City.

“City Manager Approved Extension” shall have the meaning set forth in Section 8.06 of this Agreement.

“City Regulations” mean all ordinances, rules and regulations of the City, as may be amended from time to time, including, without limitation, City codes, design standards, engineering standards, drainage requirements, uniform and international building and construction codes duly adopted by the City, the PD and the Development Standards, all of which shall be applied to the development of the Property.

“City Related Party” means City’s employees, officers, elected officials, agents, representatives, attorneys, and insurers.

“City Representative” means the City Manager or the City Manager’s designee which may include a third-party inspector or representative.

“Collateral Assignment” shall have the meaning set forth in Section 17.03(B) of this Agreement.

“Commence Construction of Building 1”, **“Commences Construction of Building 1”** and **“Commencement of Construction of Building 1”** shall mean that (i) the Plans and Specifications for Building 1 have been prepared and all approvals thereof required by applicable Governmental Authorities have been obtained for the construction of Building 1; and (ii) the Grading Permit necessary for the initiation of construction of Building 1 has been issued by the City.

“Commence Construction of Building 2”, **“Commences Construction of Building 2”** and **“Commencement of Construction of Building 2”** shall mean that (i) the Plans and Specifications for Building 2 have been prepared and all approvals thereof required by applicable Governmental Authorities have been obtained for the construction of Building 2; and (ii) the Grading Permit necessary for the initiation of construction of Building 2 has been issued by the City.

“Commence Construction of the Common Public Improvements,” “Commences Construction of the Common Public Improvements” and **“Commencement of Construction of the Common Public Improvements”** shall mean that (i) the Plans and Specifications for the Common Public Improvements have been prepared and all approvals thereof required by applicable Governmental Authorities have been obtained for construction of the Common Public Improvements; and (ii) the Grading Permit necessary for the initiation of construction of the Common Public Improvements has been issued by the City.

“Commences Construction” with respect to a Building shall mean that (i) the Plans and Specifications for the Building have been prepared and all approvals thereof required by applicable Governmental Authorities have been obtained for the construction of the Building; and (ii) the Grading Permit necessary for the initiation of construction of the Building has been issued by the City.

“Common Public Improvements” means the public infrastructure and public improvements described in Exhibit C to be constructed to benefit the public and all of the Property.

“Common Public Improvements Commencement Date” shall mean the date the Developer, or the Tract D Developer, Commences Construction of the Common Public Improvements.

“Common Public Improvements Commencement Deadline Date” shall mean the date that is eighteen (18) months after the Effective Date.

“Common Public Improvements Completion Date” shall mean the date that is the earlier of: (i) twenty-four (24) months after the Common Public Improvements Commencement Date; and (ii) forty-two (42) months after the Effective Date.

“Common Public Improvements Project Costs” shall have the meaning set forth in Section 12.03 of this Agreement and shall include only such costs as are eligible for reimbursement as project costs pursuant to the TIRZ Act.

“Complete Construction of Building 1” and **“Completion of Construction of Building 1”** shall mean that the construction of the core and shell of Building 1 has been substantially completed in compliance with: (i) the City Regulations as evidenced by the issuance by the City of a Shell Certificate of Occupancy (Shell C.O.), or other equivalent, confirming completion of the requirements of the Building Permit issued by the City in connection with the construction of the core and shell of Building 1; (ii) the Development Standards; (iii) the Concept Plan; (iii) the Architectural Standards; and (iv) the CC&Rs.

“Complete Construction of Building 2” and **“Completion of Construction of Building 2”** shall mean that the construction of the core and shell of Building 2 has been substantially completed in compliance with: (i) the City Regulations as evidenced by the issuance by the City of a Shell Certificate of Occupancy (Shell C.O.), or other equivalent, confirming completion of the requirements of the Building Permit issued by the City in connection with the construction of the core and shell of Building 2; (ii) the Development Standards; (iii) the Concept Plan; (iv) the Architectural Standards; and (v) the CC&Rs.

“Complete Construction of the Common Public Improvements” **“Completes Construction of the Common Public Improvements”** and **“Completion of Construction of the Common Public Improvements”** shall mean that (i) the construction of Common Public Improvements has been substantially completed in accordance with the City Regulations 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 Common Public Improvements; (ii) the Common Public Improvements and any easements or rights of way associated therewith have been dedicated to the City (if applicable); and (iii) the City has accepted the Common Public Improvements in writing as evidenced by a letter of acceptance issued by the City provided, however, that if the City has not issued a letter of acceptance pursuant to subsection (iii) within thirty (30) days after the City has issued 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 Common Public Improvements pursuant to subsection (i), then the Common Public Improvements shall be deemed accepted.

“Completed Construction of a Building” and **“Completion of Construction of a Building”** shall mean that the construction of the core and shell of a Building satisfying the minimum square footage requirement as stated in the section of this Agreement referencing such definition has been substantially completed in compliance with: (i) the City Regulations as evidenced by the issuance by the City of a Shell Certificate of Occupancy (Shell C.O.), or other equivalent, confirming completion of the requirements of the Building Permit issued by the City in connection with the construction of the core and shell of such Building; (ii) the Development Standards; (iii) the Concept Plan; (iv) the Architectural Standards; and (v) the CC&Rs.

“Concept Plan” means that certain conceptual drawing of the development of the Property set forth in Exhibit L.

“Conditions Precedent to the First Purchase Option” shall have the meaning set forth in Section 7.06 of this Agreement.

“Conditions Precedent to the Second Purchase Option” shall have the meaning set forth in Section 7.07 of this Agreement.

“Construction Contract” means each contract for the construction of all or any portion of the Public Improvements and **“Construction Contracts”** means all contracts for the construction of all or any part of the Public Improvements, collectively.

“Developer” means Alcott Logistics Partners, LP, its successors and permitted assigns.

“Developer Default” shall have the meaning set forth in Section 16.01 of this Agreement.

“Developer Related Party” means: (i) the Developer, its partners, officers, employees, agents, representatives, contractors, subcontractors, contractors’ and subcontractors’ employees, agents and representatives; (ii) the Tract D Developer, its partners, officers, employees, agents, representatives, contractors, subcontractors, contractors’ and subcontractors’ employees, agents and representatives; (iii) the Tract B Developer, its partners, officers, employees, agents, representatives, contractors, subcontractors, contractors’ and subcontractors’ employees, agents and representatives; (iv) the Tract C Developer, its partners, officers, employees, agents, representatives, contractors, subcontractors, contractors’ and subcontractors’ employees, agents and representatives; (v) each Developer Subsidiary undertaking the construction of the Specific Public Improvements, its partners, officers, employees, agents, representatives, contractors, subcontractors, contractors’ and subcontractors’ employees, agents and representatives; (vi) each Development Entity performing any construction or other obligations of the Developer under this Agreement, its partners, officers, employees, agents, representatives, contractors, subcontractors, contractors’ and subcontractors’ employees, agents and representatives; and (vii) any Person entering the Property under the express or implied invitation of Developer, Tract D Developer, Tract B Developer, Tract C Developer, any Developer Subsidiary, and any Development Entity.

“Developer Subsidiary” means an Affiliate of Developer.

“Development Entity” means any of Developer, Tract D Developer, any other Developer Subsidiary, or a Third-Party Developer, individually and **“Development Entities”** means more than one Development Entity.

“Development Fee Grant” shall have the meaning set forth in Section 9.06(A) of this Agreement.

“Development Fee Grant Additional Conditions Precedent” shall have the meaning set forth in Section 9.01(E) of this Agreement.

“Development Fees” shall mean all plan review fees, plat review fees, permit fees including, without limitation, Building Permit fees, inspection fees, Roadway Impact Fees and Water and Sewer Impact Fees.

“Development Standards” means the development standards for the Property set forth in Exhibit M.

“Easement” shall have the meaning set forth in Section 5.01 of this Agreement.

“Economic Development Incentive” shall mean each economic development incentive described in Article IX of this Agreement individually and **“Economic Development Incentives”** shall mean all economic development incentives described in Article IX of this Agreement collectively.

“Effective Date” means the date set forth in the first paragraph of this Agreement.

“Environmental Laws” means all environmental laws, rules and regulations with respect to health, the environment, and endangered species and wetlands including, without limitation, (a) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9601, et. seq.), as amended; (b) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901, et. seq.), as amended; (c) the Endangered Species Act (16 U.S.C. §1531, et seq.), as amended; (d) the Hazardous Materials Transportation Act(49 U.S.C. § 5101, et seq.), as amended; (e) the Clean Air Act of 1974 (42 U.S.C. § 7401, et. seq.), as amended; (f) the Clean Water Act, (33 U.S.C. §1251, et. seq.), as amended; (g) the Toxic Substances Control Act (15 U.S.C. §2601, et seq.), as amended; (h) Chapter 361 of the Texas Health & Safety Code, as amended; (i) the Texas Water Code, as amended; (j) the Texas Natural Resource Code, as amended; (k) the Texas Solid Waste Disposal Act, as amended; and (l) all other federal, state and local laws, statutes, ordinances, rules, and regulations now existing and those promulgated in the future, as amended, that regulate the use, storage, treatment, generation, disposal, transportation, discharge, release, threatened release and/or remediation of Hazardous Substances.

“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 East Glen ROW” shall have the meaning set forth in Section 5.01 of this Agreement.

“Fair Market Value” shall mean the fair market value of Tract B, Tract C, or Tract D, as applicable, as determined by a third party, independent real estate broker or appraiser, who shall be licensed in the State of Texas and who specializes in the field of commercial real estate in the Dallas-Fort Worth area and has at least 10 years of experience (a **“Qualified Appraiser”**).

“First Option Period” shall have the meaning set forth in Section 7.04 of this Agreement.

“First Option Tract” shall have the meaning set forth in Section 7.03 of this Agreement.

“First Option Tract Grant” shall have the meaning set forth in Section 9.03(A) of this Agreement.

“First Option Tract Grant Additional Conditions Precedent” shall have the meaning set forth in Section 9.01(C) of this Agreement.

“First Purchase Option” shall have the meaning set forth in Section 7.03 of this Agreement.

“Force Majeure” means a major unforeseeable act or event that: (i) materially and adversely affects the affected Party’s ability to timely perform its obligation(s) under this Agreement; (ii) is beyond the reasonable control of the affected Party; (iii) is not caused by any act or omission on the part of the affected Party or the affected Party’s officers, partners, employees, agents, servants, contractors, subcontractors, or any Person entering the Property under the express or implied invitation of the affected Party; and (iv) could not have been prevented or avoided by the Party who suffers it by the exercise of commercially reasonable efforts. **“Force Majeure”** must satisfy each of the above requirements and shall include (but not be limited to): (a) natural phenomena and acts of God such as lightning, floods, hurricanes, tornadoes, earthquakes; (b) explosions; (c) fires; (d) wars, civil disturbances and terrorism; (e) strikes, labor shortages, or shortage of materials or equipment, that delay construction for a minimum of thirty (30) consecutive days; (f) pandemics, epidemics, public health crises, or other uncontrollable circumstances in which a federal, state or municipal governmental order prevents or materially impedes commercial construction within the Property; (g) abnormal weather based on the 5-year NOAA climatic average weather days for North Texas; (h) delays in the issuance of Building Permits except for delays caused in whole or in part by any act or omission of Developer, Tract D Developer, any Development Entity, or their consultants, contractors or subcontractors; and (i) changes in Applicable Law that materially impact the design or construction of the Project, provided, however, that in no event will **“Force Majeure”** include a governmental order that prevents Developer, Tract D Developer, or a Development Entity, or their contractors or subcontractors, from proceeding with the construction of the Common Public Improvements, Building 1, Building 2, Building 3, or any other improvements on the Property, as a result of the Developer’s, Tract D Developer’s, the Development Entity’s, or their contractors’ or subcontractors’ failure to comply with Applicable Law. Notwithstanding the foregoing, **“Force Majeure”** shall not include: (1) any financial or economic hardship; (2) insufficiency of funds; (3) changes in market or economic conditions; (4) any default or failure (financial or otherwise) of the general contractor or any subcontractor, vendor or supplier of the affected Party; or (5) any delay of the general contractor or any subcontractor, vendor or supplier, except for delay(s) as a result of an act or event defined herein as Force Majeure.

“General Conditions Precedent” shall have the meaning set forth in Section 9.01(A) of this Agreement.

“Governmental Authorities” means all federal, state, and local governmental entities (including any taxing authority), and agencies, courts, tribunals, regulatory commissions or other bodies, whether legislative, judicial or executive (or a combination or permutation thereof) and any arbitrator to whom a dispute has been presented under Applicable Law, pursuant to the terms of this Agreement, or by agreement of the Parties.

“Grading Permit” shall mean a written authorization for the **“Release of Infrastructure Improvements”** issued by the City upon issuance of release stamped construction plans, after review and verification of code compliance, by the City Engineer, or the City Engineer’s designee, to the Developer, the Tract D Developer, or a Development Entity allowing the Developer, the Tract D Developer, or a Development Entity to proceed with the fill, grading, excavation or

otherwise disturb the surface on the Property. The infrastructure improvements shall include, but not be limited to, water, sanitary sewer, storm sewer, and drainage improvements.

“Hazardous Substances” means (i) petroleum and petroleum products; (ii) asbestos and asbestos-containing materials in any form, whether friable or non-friable; (iii) polychlorinated biphenyls; (iv) radon gas; (v) flammables, explosives, radioactive substances; (vi) all substances and materials (whether solid, liquid, or gas) that are classified, defined, or listed as hazardous wastes, hazardous substances or hazardous materials in the Environmental Laws; (vii) pollutants; (viii) toxic materials, toxic substances, toxic waste; and (ix) all other substances, materials and wastes that are now or hereafter prohibited or regulated by the Environmental Laws.

“Landscaping Requirements” shall mean the landscaping standards for the development of the Property established in the PD and the landscape buffer requirements for Newsom Road set forth in Exhibit N.

“Lender” and **“Lenders”** shall have the meaning set forth in Section 17.03(B) of this Agreement.

“Lender Notice of Default” shall have the meaning set forth in Section 17.03(B) of this Agreement.

“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).

“Memorandum of Purchase Options” shall have the meaning set forth in Section 7.35 of this Agreement and shall be in the form attached hereto as Exhibit O.

“New East Glen ROW” shall mean the approximately 2.23-acre right of way tract described by metes and bounds in Exhibit D-2 and depicted on Exhibit H.

“Notice of Exercise of Purchase Option” shall have the meaning set forth in Section 7.10 of this Agreement.

“Notice of Termination of Exercise of Purchase Option” shall have the meaning set forth in Section 7.10 of this Agreement.

“Oncor” shall mean Oncor Electric Delivery Company, LLC, its successors and assigns.

“Payment Request” shall mean a written request executed by the Developer and delivered to the City to the attention of the City’s Director of Finance requesting the payment of all or any portion of the Economic Development Incentives.

“Parties” means the City, the Developer and the Tract D Developer.

“Party” means either the City, the Developer or the Tract D Developer.

“Payment Certificate” shall have the meaning set forth in Section 12.08(A) of this Agreement.

“PD” means City Ordinance No. 4856 approved by the City Council on April 19, 2021, changing the zoning classification on the Property from Planned Development – Industrial No. 1848 and Industrial to Planned Development – Industrial, approving the Development Standards, and establishing the Landscaping Requirements, as amended.

“Performance Deed of Trust” shall have the meaning set forth in Section 6.08 of this Agreement.

“Person” or **“Persons”** shall mean one or more individual(s), 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.

“Plans and Specifications” means engineering and architectural drawings and schematic designs for the construction of the Common Public Improvements, Building 1, Building 2 and Building 3, respectively.

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

“Priority Project Costs” shall have the meaning set forth in Section 12.06(C) of this Agreement.

“Project” shall have the meaning set forth in the Recitals of this Agreement.

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

“Public Improvements” as used herein shall mean the Common Public Improvements provided, however, that if the TIRZ Board and the City Council hereafter: (i) approve an amendment to the TIRZ Project and Financing Plan approving the Specific Public Improvements as projects reimbursable under the TIRZ Project and Financing Plan; and (ii) amend the TIRZ Reimbursement Agreement or enter into a separate agreement with the Developer or a Developer Subsidiary for the reimbursement of all or any portion of the Specific Public Improvements Project Costs, the term “Public Improvements” as used herein shall mean the Common Public Improvements and the Specific Public Improvements which have been approved by the City Council, collectively.

“Purchase Option” and **“Purchase Options”** shall have the meaning set forth in Section 7.01 of this Agreement.

“Qualified Appraiser” shall have the meaning set forth in the definition of Fair Market Value.

“Recitals” shall have the meaning set forth in Article I of this Agreement.

“Reimbursement Cap” means the total maximum amount of reimbursement to the Tract D Developer for the Common Public Improvements Project Costs from any source including,

without limitation, TIRZ Revenues, which amount shall not exceed NINE MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$9,300,000.00).

“Request for Early Exercise of Second Purchase Option” shall have the meaning set forth in Section 7.08 of this Agreement.

“Roadway Impact Fees” mean the fees imposed by the City on new development pursuant to Texas Local Government Code Chapter 395 and the City Regulations, both as may hereafter be amended, to generate revenue to fund or recoup the costs of construction of roadway improvements necessitated by and attributable to the Project provided, however, that in no event shall Roadway Impact Fees include the dedication of rights-of-way or easements for such facilities, or the construction of such improvements imposed pursuant to City Regulations.

“Second Option Period” shall have the meaning set forth in Section 7.05 of this Agreement.

“Second Option Tract” shall have the meaning set forth in Section 7.03 of this Agreement.

“Second Option Tract Grant” shall have the meaning set forth in Section 9.04(A) of this Agreement.

“Second Option Tract Grant Additional Conditions Precedent” shall have the meaning set forth in Section 9.01(D) of this Agreement.

“Second Purchase Option” shall have the meaning set forth in Section 7.03 of this Agreement.

“Senior Lender”, “Senior Loan” and “Senior Deed of Trust” shall have the meaning set forth in Section 6.09 of this Agreement.

“Specific Public Improvements” shall have the meaning set forth in Section 12.04 of this Agreement.

“Specific Public Improvements Project Costs” shall have the meaning set forth in Section 12.04 of this Agreement.

“Subordination Agreement” shall have the meaning set forth in Section 6.09 of this Agreement.

“Third Party Developer” means a Person who is not an Affiliate of Developer to whom a Tract has been conveyed and/or ground leased by Developer and upon which Tract such Person has assumed the obligation to construct a Building.

“Third Party Tract B Developer” shall have the meaning set forth in Section 7.02(C) of this Agreement.

“Third Party Tract C Developer” shall have the meaning set forth in Section 7.02(D) of this Agreement.

“TIRZ” shall have the meaning set forth in the Recitals of this Agreement.

“TIRZ Act” shall mean V.T.C.A., Tax Code, Chapter 311, as amended.

“TIRZ Alcott Subaccount” shall mean the subaccount of the TIRZ Fund established for the deposit of TIRZ Revenues attributable to City Increment collected in connection with (i) Tract B, provided the conditions precedent set forth in Section 12.11(A) have timely occurred; (ii) Tract C, provided the conditions precedent set forth in Section 12.11(B) have timely occurred; and (iii) Tract D, provided the conditions precedent set forth in Section 12.11(C) have timely occurred.

“TIRZ Board” means the Board of Directors of the TIRZ.

“TIRZ Fund” means the fund established by the City pursuant to Ordinance No. 4853 for the deposit of the City Increment in accordance with this Agreement, the TIRZ Act and the TIRZ Project and Finance Plan.

“TIRZ Project and Financing Plan” shall have the meaning set forth in the Recitals of this Agreement.

“TIRZ Reimbursement Agreement” shall have the meaning set forth in the Recitals of this Agreement.

“TIRZ Reimbursement Restrictions” shall have the meaning set forth in Section 12.03 of this Agreement.

“TIRZ Revenues” means the City Increment deposited each calendar year into the TIRZ Fund beginning with the calendar year 2023, reduced by costs and expenses authorized by the TIRZ Act including, but not limited to, the Priority Project Costs.

“Tract A” shall have the meaning set forth in the Recitals of this Agreement.

“Tract B” shall have the meaning set forth in the Recitals of this Agreement.

“Tract B Closing” and **“Tract B Closing Date”** shall have the meanings set forth in Section 7.24 of this Agreement.

“Tract B Deed” shall have the meaning set forth in Section 7.19 of this Agreement and shall be in the form attached hereto as Exhibit P.

“Tract B Developer” shall mean the Developer Subsidiary or Third-Party Developer designated by the Developer to purchase Tract B.

“Tract B Purchase Price” shall have the meaning set forth in Section 7.09 of this Agreement.

“Tract B Survey” shall have the meaning set forth in Section 7.14 of this Agreement.

“Tract B Title Company”, “Tract B Title Commitment”, “Tract B Owner’s Title Policy”, “Tract B Title Exceptions”, and “Tract B Permitted Exceptions” shall have the meaning set forth in Section 7.13 of this Agreement.

“Tract B Right of Entry” shall have the meaning set forth in Section 7.14 of this Agreement.

“Tract C” shall have the meaning set forth in the Recitals of this Agreement.

“Tract C Closing” and **“Tract D Closing Date”** shall have the meanings set forth in Section 7.25 of this Agreement.

“Tract C Deed” shall have the meaning set forth in Section 7.21 of this Agreement and shall be in the form attached hereto as Exhibit P.

“Tract C Developer” shall mean the Developer Subsidiary or Third-Party Developer designated by the Developer to purchase Tract C.

“Tract C Purchase Price” shall have the meaning set forth in Section 7.09 of this Agreement.

“Tract C Right of Entry” shall have the meaning set forth in Section 7.16 of this Agreement.

“Tract C Survey” shall have the meaning set forth in Section 7.16 of this Agreement.

“Tract C Title Company”, “Tract C Title Commitment”, “Tract C Owner’s Title Policy”, “Tract C Title Exceptions”, and “Tract C Permitted Exceptions” shall have the meaning set forth in Section 7.15 of this Agreement.

“Tract D” shall have the meaning set forth in the Recitals of this Agreement.

“Tract D Closing”, “Tract D Title Company” and **“Tract D Closing Date”** shall have the meaning set forth in Section 6.04 of this Agreement.

“Tract D Deed” shall have the meaning set forth in Section 6.13(A) of this Agreement and shall be in the form attached hereto as Exhibit P.

“Tract D Developer” shall mean Alcott Logistics Station Tract D, LP, a Delaware limited partnership.

“Tract D Grant” shall have the meaning set forth in Section 9.02(A) of this Agreement.

“Tract D Grant Additional Conditions Precedent” shall have the meaning set forth in Section 9.01(B) of this Agreement.

“Tract D Right of Entry” shall have the meaning set forth in Section 6.07 of this Agreement.

“Tract D Title Commitment”, “Tract D Owner’s Title Policy”, “Tract D Mortgagee’s Title Policy”, “Tract D Title Exceptions” and “Tract D Permitted Exceptions” shall have the meaning set forth in Section 6.06 of this Agreement.

“Tract D Purchase Price” shall have the meaning set forth in Section 6.02 of this Agreement.

“Tract D Secured Obligations” shall have the meaning set forth in Section 6.08 of this Agreement.

“Tract D Survey” shall have the meaning set forth in Section 6.05 of this Agreement.

“Tract” and “Tracts” shall have the meanings set forth in the Recitals of this Agreement.

“Undocumented Workers” shall mean: (i) individuals who, at the time of employment with the Developer, the Tract D Developer, or any other Developer Subsidiary, are not 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 worker” pursuant to V.T.C.A., Government Code §2264.001 (4), as hereafter amended or replaced.

“Water and Sewer Impact Fees” means the fees imposed by the City on new development pursuant to Texas Local Government Code Chapter 395 and the City Regulations, both as may hereafter be amended, to generate revenue to fund or recoup the costs of construction of water and sewer improvements necessitated by and attributable to the Project provided, however, that in no event shall Water and Sewer Impact Fees include the dedication of rights-of-way or easements for such facilities, or the construction of such improvements imposed pursuant to City Regulations.

ARTICLE III

AUTHORITY FOR AGREEMENT

This Agreement is authorized by Article III, Section 52-a of the Texas Constitution, Chapter 380 of the Texas Local Government Code and the TIRZ Act. The City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the Developer’s performance of its obligations herein will: (i) increase the amount of real and business personal property ad valorem taxes assessed and collected by the City; (ii) result in employment opportunities being created in the City; (iii) promote economic development in the State of Texas and result in the development and diversification of the economy of the State of Texas and the development and expansion of commerce in the State of Texas; (iv) promote local economic development in the City, stimulate business and commercial activity in the City; and (v) benefit the City and its citizens.

ARTICLE IV

TAX INCREMENT REINVESTMENT ZONE

As referenced in the Recitals, the City has created the TIRZ and the TIRZ Board and the City Council have approved the TIRZ Project and Financing Plan. The development of the Property including, without limitation, the sale of Tract D [which includes the portion of East Glen Boulevard currently located within Tract D] and the options to purchase Tract B and Tract C [which includes the portion of East Glen Boulevard currently located within Tract C], all upon the terms and subject to the conditions set forth herein, are necessary to implement the TIRZ Project and Financing Plan.

ARTICLE V

EAST GLEN BOULEVARD

5.01 Abandonment of East Glen Boulevard. East Glen Boulevard is a roadway located within the City, a portion of which traverses across Tract C and Tract D. As more fully set forth in the Recitals, the removal of the portion of East Glen Boulevard currently located within Tract C and Tract D and the reconstruction and realignment of East Glen Boulevard to the New East Glen ROW is essential to maximizing the development potential of the Property. Oncor currently has facilities in, along, under and across the right of way for the portion of East Glen Boulevard located within Tract C, Tract D and the adjacent tract to the east of Tract D (the “**Existing East Glen ROW**”). The City currently owns and maintains a drainage structure in, along, under and across the Existing East Glen ROW. The Developer and Tract D Developer, at their cost and expense (but subject to reimbursement under the terms and conditions of the TIRZ Reimbursement Agreement), agree to: (i) remove and relocate, or cause the removal and relocation, of Oncor’s facilities located in, along, under and across the Existing East Glen ROW to the New East Glen ROW to be dedicated as part of the realigned East Glen Boulevard; and (ii) address and accommodate drainage onto and off the Property as required by and in compliance with City Regulations. On May 3, 2021, the City Council will consider an ordinance abandoning the Existing East Glen ROW expressly subject to the reservation of an easement for the benefit of Oncor to maintain and operate its facilities in, along, under and across the Existing East Glen ROW and for the benefit of the City to maintain and operate the drainage structure in, along, under and across the Existing East Glen ROW (the “**Easement**”) and providing for the release of the Easement after: (a) Oncor’s facilities are reconstructed and operational within the New East Glen ROW; and (b) the Developer complies with this Agreement and City Regulations to address and accommodate drainage onto and off of the Property.

5.02 Legislative Discretion. The approval of the abandonment of the Existing East Glen ROW subject to the Easement is a discretionary, legislative function of the City Council and is subject to future action and determination by the City Council in its sole discretion. The Parties agree that by execution of this Agreement, the City does not waive or surrender any of its governmental powers, immunities or rights and, notwithstanding Section 5.01 above or any other provision of this Agreement, this Agreement does not control, waive, limit or supplant the legislative authority or discretion of the City Council.

5.03 Sale of East Glen Boulevard Located Within Tract D. Provided: (i) the City Council adopts an ordinance abandoning the Existing East Glen ROW, subject to the Easement; and (ii) no Developer Default then exists, or no event exists which, but for notice the lapse of time or both, would constitute a Developer Default, the transfer by the City of Tract D under the terms and subject to the conditions set forth in this Agreement will include the portion of East Glen Boulevard currently located within Tract D.

5.04 Sale of East Glen Boulevard Located Within Tract C. Provided: (i) the City Council adopts an ordinance abandoning the Existing East Glen ROW, subject to the Easement; and (ii) no Developer Default then exists, or no event exists which, but for notice the lapse of time or both, would constitute a Developer Default, and further provided that the Developer has satisfied all conditions precedent to the purchase of Tract C as more fully set forth in Article VII of this Agreement, the transfer by the City of Tract C under the terms and subject to the conditions set forth in this Agreement will include the portion of East Glen Boulevard currently located within Tract C.

5.05 Conditions Precedent to Agreement. The adoption by the City Council of an ordinance abandoning the Existing East Glen ROW subject to the Easement is a condition precedent to the obligations of the Parties pursuant to this Agreement. The Parties agree that any Party hereto may terminate this Agreement by written notice to the other Parties on or before July 31, 2021 in the event the City Council does not adopt an ordinance abandoning the Existing East Glen ROW subject to the Easement on or before July 31, 2021.

ARTICLE VI

TRACT D

Section 6.01 Purchase and Sale. Subject to the terms and conditions set forth herein including, without limitation, the agreement of the Tract D Developer to execute and deliver the Performance Deed of Trust as more fully set forth in Section 6.08 below, the City agrees to sell Tract D to the Tract D Developer and the Tract D Developer agrees to purchase Tract D from the City. The Parties acknowledge that Tract D is located within the TIRZ and the development and sale of Tract D to the Tract D Developer is necessary to implement the TIRZ Project and Financing Plan. Provided this Agreement is not terminated pursuant to Section 5.05, the sale and purchase of Tract D by the City to the Tract D Developer shall be pursuant to V.T.C.A., Local Government Code §272.001(b)(6).

Section 6.02 Purchase Price. The purchase price to be paid by the Tract D Developer to the City for the purchase of Tract D shall be the sum of \$1.20 per gross square foot (i.e. \$1,690,518.00) (the "**Tract D Purchase Price**") which both Parties agree is the current Fair Market Value of Tract D as determined by an independent appraisal obtained by the City.

Section 6.03 Payment of the Tract D Purchase Price. The Tract D Purchase Price shall be payable to the City in immediately available funds acceptable to the City and the Tract D Title Company at the Tract D Closing.

Section 6.04 Closing. Unless this Agreement is sooner terminated as provided herein, the closing of the purchase of Tract D (“**Tract D Closing**”) shall be held at the offices of Chicago Title Insurance Company, 2828 Routh Street, Suite 800, Dallas, Texas 75210 Attn: Pam Medlin (the “**Tract D Title Company**”) (via mail-in escrow) no later than 1:00 p.m., Central Standard Time, on the date that is the later of: (i) thirty (30) days after the City Council adopts an ordinance abandoning the Existing East Glen ROW, subject to the Easement; or (ii) July 30, 2021, or such earlier time and date as the Parties may mutually agree (the “**Tract D Closing Date**”).

Section 6.05 Survey of Tract D. The Developer or the Tract D Developer, at their sole cost and expense, will obtain and provide to the City an on-the-ground survey of Tract D (the “**Tract D Survey**”) at least fifteen (15) days prior to the Tract D Closing Date. The Tract D Survey shall be certified to the City, the Tract D Developer, and the Tract D Title Company. The Tract D Survey shall conform to the current Texas Surveyors Association Standards and Specification Category 1A, Condition II Survey and must be acceptable in form and substance to the Title Company, City, and the Tract D Developer, prior to being deemed finalized.

Section 6.06 Title Commitment for Tract D. The Developer or Tract D Developer has obtained and delivered to the City: (i) a title commitment from the Tract D Title Company covering Tract D (the “**Tract D Title Commitment**”) binding the Tract D Title Company to issue a Texas Owner's Policy of Title Insurance on the standard form of policy prescribed by the Texas Department of Insurance to the Tract D Developer in the full amount of the Tract D Purchase Price (the “**Tract D Owner's Title Policy**”) and at least fifteen (15) days prior to the Tract D Closing Date will obtain and deliver to the City a title commitment binding the Tract D Title Company to issue to the City a Texas Mortgagee's Policy of Title Insurance on the standard form prescribed by the Texas Department of Insurance in the full amount of the Tract D Purchase Price insuring the Performance Deed of Trust as a first and prior lien against Tract D (the “**Tract D Mortgagee's Title Policy**”); and (ii) copies of all instruments referred to in the Tract D Title Commitment as constituting exceptions or restrictions upon the title of the City (the “**Tract D Title Exceptions**”). The Developer and the Tract D Developer have reviewed the Tract D Title Commitment, the Tract D Title Exceptions and a preliminary survey of Tract D. The City shall have no obligation to take any action or expend any funds to cure any matter in the Tract D Survey, Tract D Title Commitment, or Tract D Title Exceptions. Developer and the Tract D Developer are satisfied with all exceptions or restrictions upon the City's title to Tract D and the Tract D Developer hereby agrees to accept such title to Tract D as City is able to convey including, without limitation, Tract D Developer agrees to accept title to Tract D subject to (a) the standard title policy exceptions set forth in the Tract D Title Commitment; (b) the lien for any taxes not due and payable at the Tract D Closing Date; (c) the Tract D Title Exceptions; (d) the Easement; (e) mineral reservations, severances and leases, if any, that affect Tract D; (f) validly existing easements, rights-of-way and prescriptive rights that affect Tract D, whether of record or not; (g) all presently recorded and validly existing restrictions, restrictive covenants, reservations, exceptions, covenants, conditions, interests and instruments that affect Tract D; (h) any discrepancies, conflicts or shortages in area or boundary lines, any encroachments or protrusions and any overlapping of improvements affecting Tract D; (i) taxes and assessments against Tract D from the Tract D Closing Date and for all subsequent years, the payment of which the Tract D Developer assumes; and (j) zoning

regulations and ordinances of municipal and/or other governmental authorities affecting Tract D (including, without limitation, the PD) (collectively the “**Tract D Permitted Exceptions**”).

Section 6.07 Inspection of Tract D. The Developer and Tract D Developer acknowledge that the City and Urban Commercial Realty Partners, LLC, a Texas limited liability company, an Affiliate of the Developer, entered into a Right of Entry agreement dated effective January 11, 2021, relating to the Property including, without limitation, Tract D (the “**Tract D Right of Entry**”). The Developer and the Tract D Developer represent, covenant and agree that prior to the execution of this Agreement the Developer and the Tract D Developer have performed, or have had performed on Developer’s and the Tract D Developer’s behalf, pursuant to the Tract D Right of Entry, all surveys, engineering reports, geotechnical studies, soils tests, environmental tests, and all other studies, tests, inspections and investigations of Tract D as the Developer and the Tract D Developer have determined was necessary or desirable in order for the Developer and the Tract D Developer to make the decision whether or not for the Tract D Developer to purchase Tract D.

Section 6.08 Performance Deed of Trust. At the Tract D Closing, and as a condition to acquiring Tract D, the Tract D Developer will execute and deliver to the City a Performance Deed of Trust in a form mutually approved by the Tract D Developer and the City Manager that is consistent with the terms of this Agreement (the “**Performance Deed of Trust**”). The Performance Deed of Trust will secure the full and timely payment and performance of the obligations of the Developer and the Tract D Developer under the terms of this Agreement including, without limitation, the following (collectively the “**Tract D Secured Obligations**”):

- (i) the obligation of the Tract D Developer to Commence Construction of the Common Public Improvements on or before the Common Public Improvements Commencement Deadline Date or to cause the Commencement of Construction of the Common Public Improvements on or before the Common Public Improvements Commencement Deadline Date; and
- (ii) the obligation of the Tract D Developer to Complete Construction of the Common Public Improvements on or before the Common Public Improvements Completion Date or to cause the Completion of Construction of the Common Public Improvements on or before the Common Public Improvements Completion Date; and
- (iii) the obligation of the Developer under the terms of this Agreement, and/or under the terms of any agreement now or hereafter entered into between the Developer and the Tract D Developer for the Developer to construct the Common Public Improvements on behalf of the Tract D Developer, to: (a) Commence Construction of the Common Public Improvements on or before the Common Public Improvements Commencement Deadline Date or to cause the Commencement of Construction of the Common Public Improvements on or before the Common Public Improvements Commencement Deadline Date; and (b) to Complete Construction of the Common Public Improvements on or before the Common Public Improvements Completion Date or to cause the Completion of Construction of the Common Public Improvements on or before the Common Public Improvements Completion Date; and

- (iv) the obligation of the Tract D Developer to pay to the City all or a portion of the Tract D Grant, and all or a portion of the Development Fee Grant relating to the construction of a Building on Tract D, pursuant to the recapture provision set forth in Section 16.07(B) of this Agreement; and
- (v) the obligation of the Developer to pay to the City all or a portion of the Tract D Grant, and all or a portion of the Development Fee Grant relating to the construction of a Building on Tract D, pursuant to the recapture provision set forth in Section 16.07(A) of this Agreement; and
- (vi) the obligation of the Developer and the Tract D Developer under the terms of this Agreement to pay to the City the sum equal to the actual costs and expenses incurred by the City that are reasonably necessary to Complete Construction of the Common Public Improvements in compliance with the Plans and Specifications approved in writing by the City less amounts recovered by the City through a foreclosure of the Performance Deed of Trust or a recapture of the Tract D Grant under Section 16.06(D) of this Agreement in the event the Developer and/or the Tract D Developer Commences Construction of the Common Public Improvements but fails to Complete Construction of the Common Public Improvements on or before the Common Public Improvements Completion Date and the cost to Complete Construction of the Common Public Improvements exceeds the penal sum of the Bonds issued in connection with the construction of the Common Public Improvements; and
- (vii) Tract D Developer's payment and performance of all covenants, warranties, representations, and obligations of Tract D Developer under the terms of the Performance Deed of Trust.

The Tract D Developer may enter into an agreement with Developer to construct the Common Public Improvements for and on behalf of the Tract D Developer provided: (i) such agreement is in writing and contains terms, provisions, covenants and conditions consistent with the terms of this Agreement including, without limitation, deadlines for the Commencement of Construction of the Common Public Improvements and the Completion of Construction of the Common Public Improvements that are consistent with this Agreement; and (ii) the City is expressly made a third party beneficiary of such agreement with the ability to enforce the terms and provisions of such agreement. The Parties agree that irrespective of the foregoing agreement, the Tract D Developer is, and shall at all times remain, primarily obligated to the City to: (i) Commence Construction of the Common Public Improvements on or before the Common Public Improvements Commencement Deadline Date, or to cause the Commencement of Construction of the Common Public Improvements on or before the Common Public Improvements Commencement Deadline Date; and (ii) Complete Construction of the Common Public Improvements on or before the Common Public Improvements Completion Date, or to cause the Completion of Construction of the Common Public Improvements on or before the Common Public Improvements Completion Date. Developer and Tract D Developer hereby waive any right to receive sums in excess of the Tract D Secured Obligations that are received by the City in connection with a foreclosure of the Performance Deed of Trust.

In the event the Tract D Developer fails to Commence Construction of the Common Public Improvements on or before the Common Public Improvements Commencement Deadline Date or fails to cause the Commencement of Construction of the Common Public Improvements on or before the Common Public Improvements Commencement Deadline Date, the Developer shall Commence Construction of the Common Public Improvements on or before the Common Public Improvements Commencement Deadline Date or shall cause the Commencement of Construction of the Common Public Improvements on or before the Common Public Improvements Commencement Deadline Date. In the event the Tract D Developer fails to Complete Construction of the Common Public Improvements on or before the Common Public Improvements Completion Date or fails to cause the Completion of Construction of the Common Public Improvements on or before the Common Public Improvements Completion Date, the Developer shall Complete Construction of the Common Public Improvements on or before the Common Public Improvements Completion Date or shall cause the Completion of Construction of the Common Public Improvements on or before the Common Public Improvements Completion Date.

Section 6.09 Subordination of Performance Deed of Trust. The Developer and/or Tract D Developer intend to obtain a loan from a construction or permanent lender (the “**Senior Lender**”) for the costs of constructing the Common Public Improvements and at the Developer’s or Tract D Developer’s option, for the costs of constructing a building on Tract D (the “**Senior Loan**”). The Senior Loan may be secured by a deed of trust against Tract D (the “**Senior Deed of Trust**”). In the event the Senior Loan is secured by a Senior Deed of Trust, the Tract D Developer agrees to Commence Construction of the Common Public Improvements, or to cause the Commencement of Construction of the Common Public Improvements, within one hundred and twenty (120) days after closing on the Senior Loan. Contemporaneously with the closing on the Senior Loan, the City, the Tract D Developer, and the Senior Lender will execute a subordination agreement subordinating the Performance Deed of Trust to the Senior Deed of Trust in form and substance acceptable to the City Manager, in his/her sole discretion (the “**Subordination Agreement**”).

Section 6.10 Release of Performance Deed of Trust. Provided: (i) the Developer or the Tract D Developer, as applicable, timely pays and performs the Tract D Secured Obligations; (ii) no default by the Tract D Developer exists under the terms of the Performance Deed of Trust and no event exists which, but for notice the lapse of time, or both, would constitute a default by the Tract D Developer under the terms of the Performance Deed of Trust; and (iii) all conditions precedent to the release of the Performance Deed of Trust as set forth in the Performance Deed of Trust have been satisfied and are then continuing, the City will execute and deliver to the Tract D Developer, at the cost and expense of the Tract D Developer, a release of the Performance Deed of Trust in recordable form within twenty (20) days after a written request from Tract D Developer to the City. Notwithstanding the foregoing, in the event the Tract D Developer Completes Construction of the Common Public Improvements, or causes the Completion of Construction of the Common Public Improvements, prior to any foreclosure of the Performance Deed of Trust and regardless of the existence of a default or if an event exists which, but for notice the lapse of time, or both, would constitute a default under this Agreement or the TIRZ Reimbursement Agreement, the City will execute and deliver to the Tract D Developer, at the cost and expense of the Tract D Developer, a release of the Performance Deed of Trust in recordable form within twenty (20) days after a written request from Tract D Developer to the City; provided, however, that the preceding sentence shall not be deemed a waiver or prohibit the City from exercising its rights and remedies

(i) under the Performance Deed of Trust prior to the Completion of Construction of the Common Public Improvements, or (ii) under this Agreement or the TIRZ Reimbursement Agreement for failure to satisfy the Tract D Secured Obligations. The City Manager is authorized to execute and deliver the release of the Performance Deed of Trust to the Tract D Developer upon satisfaction of all conditions set forth in the Performance Deed of Trust and this Section 6.10.

Section 6.11. Disclaimer of Representations and Warranties; Release; Waiver; Covenants, Agreements, Representations and Warranties – Tract D.

A. Disclaimer of Representations and Warranties – Tract D. City makes no representation or warranty, express or implied or arising by operation of law or otherwise with respect to any matter concerning Tract D, including, without limitation, the following: (i) title to Tract D; (ii) the habitability, marketability, merchantability, or suitability or fitness of Tract D for a particular purpose or use; (iii) the nature and condition of Tract D including, without limitation, water, drainage and grading, soil and geology, zoning, annexation, extraterritorial jurisdiction and other zoning and jurisdictional issues, location of cemeteries, utility availability or hook-up, easement rights, flood plains (or portions of Tract D in a flood plain) and the costs and requirements of same, access to streets, costs of utilities, location of curb cuts and median breaks in streets, sewage facilities (including, without limitation, availability or non-availability of appropriate water and sewer capacity) or other governmental rights or obligations; (iv) the completeness, accuracy or approval of permits, surveys, plats, preliminary plats, pollution abatement plans, subdivision plans or reports concerning Tract D; (v) tax consequences; (vi) the compliance of all or any part of Tract D with applicable Environmental Laws; (vii) the existence of asbestos, oil, arsenic, petroleum or chemical liquids or solids, liquid or gaseous products or Hazardous Substances as those terms and similar terms are defined or used in applicable Environmental Laws; (viii) the nature and extent of access to rights-of-way or utilities, availability of permits to access rights-of-way or utilities on Tract D, other property owned by City, or any land owned by third parties; (ix) easements, mineral interests, encumbrances, licenses, reservations, conditions or other similar matters affecting Tract D; (x) compliance with any law, ordinance or regulation of any governmental entity or body; and/or (xi) claims, demands, or other matters relating to any restrictive covenants encumbering Tract D. The Parties agree that the sale of Tract D will be made on an “AS IS, WHERE IS” and “WITH ALL FAULTS” basis. The Parties agree that the warranties and covenants set forth in Section 5.023 of the Texas Property Code do not apply to the sale and purchase of Tract D and that any warranties arising at common law or implied as a result of Section 5.023 of the Texas Property Code, as amended, or any successor statute, shall be excluded and excepted from the Tract D Deed. The Developer and Tract D Developer acknowledge that the Developer and Tract D Developer have had the full, complete and unfettered right to inspect Tract D to the Developer’s and Tract D Developer’s satisfaction and Developer and Tract D Developer acknowledge that the Tract D Purchase Price is in part based upon the fact that the sale of Tract D by the City to the Tract D Developer shall be without warranty or representation. The Tract D Developer agrees to rely only upon the Tract D Developer’s own investigations, assessments and inspections as to the condition of Tract D, or the Tract D Developer’s

own decision not to inspect any matter and the Tract D Developer agrees that it is not relying on any representation, warranty, statement or non-assertion of City or City's officers, agents, representatives, employees, consultants, or independent contractors in making the Tract D Developer's decision to purchase Tract D. THE TRACT D DEVELOPER ACKNOWLEDGES THAT THE CITY HAS NOT MADE AND IS EXPRESSLY DISCLAIMING ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE TITLE, CONDITION, HABITABILITY, MARKETABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF TRACT D.

- B. Release – Tract D. CITY SHALL NOT BE LIABLE TO THE DEVELOPER OR TRACT D DEVELOPER FOR ANY LATENT OR PATENT DEFECTS OF TRACT D OR FOR ANY ERRORS, OMISSIONS, OR ON ACCOUNT OF ANY OTHER CONDITION AFFECTING TRACT D INCLUDING, BUT NOT LIMITED TO, THOSE MATTERS DESCRIBED IN SECTION 6.11(A)(I) THROUGH AND INCLUDING SECTION 6.11(A)(XI) ABOVE, AND THE DEVELOPER AND TRACT D DEVELOPER, AND ANYONE CLAIMING BY, THROUGH OR UNDER THE DEVELOPER OR TRACT D DEVELOPER, HEREBY FULLY RELEASE CITY AND EACH CITY RELATED PARTY FROM ANY AND ALL CLAIMS AGAINST CITY AND EACH CITY RELATED PARTY FOR ANY COSTS, LOSSES, LIABILITIES, DAMAGES, EXPENSES, DEMANDS, ACTIONS OR CAUSES OF ACTION (INCLUDING, WITHOUT LIMITATION, ANY RIGHTS OF CONTRIBUTION) ARISING FROM OR RELATED TO ANY LATENT OR PATENT DEFECTS OF TRACT D OR FOR ANY ERRORS, OMISSIONS, OR OTHER CONDITIONS AFFECTING TRACT D, INCLUDING, BUT NOT LIMITED TO, THOSE MATTERS DESCRIBED IN SECTION 6.11 (A)(I) THROUGH AND INCLUDING SECTION 6.11 (A)(XI) ABOVE AND ANY ALLEGED NEGLIGENCE OF CITY OR ANY CITY RELATED PARTY. THIS COVENANT RELEASING CITY AND EACH CITY RELATED PARTY SHALL BE SET FORTH IN THE TRACT D DEED AS A COVENANT RUNNING WITH THE TRACT D PROPERTY AND SHALL BE BINDING UPON THE DEVELOPER, THE TRACT D DEVELOPER, AND THEIR SUCCESSORS AND ASSIGNS, AND ALL FUTURE OWNERS OF ALL OR ANY PORTION OF TRACTD.**
- C. Waiver– Tract D. WITH RESPECT TO THE SALE AND PURCHASE OF TRACT D, THE TRACT D DEVELOPER HEREBY WAIVES THE TRACT D DEVELOPER'S RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, SECTION 17.41 ET. SEQ., BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF THE TRACT D DEVELOPER'S OWN SELECTION, THE TRACT D DEVELOPER VOLUNTARILY CONSENTS TO THIS WAIVER.**
- D. Covenants, Agreements, Representations and Warranties of Tract D Developer – Tract D. The Tract D Developer represents and warrants to City that the Tract D Developer is acquiring Tract D for investment, has knowledge and experience in financial and business**

real estate matters that enable the Tract D Developer to evaluate the merits and risks of the transactions herein contemplated, and has bargained for and obtained a purchase price and agreement terms which make the limitations of the Tract D Developer's recourse against City acceptable. The Tract D Developer acknowledges that the limitations of the Tract D Developer's recourse against City as set forth herein is a material part of the consideration for the execution and delivery of the Tract D Deed by the City and is an integral part of the basis of the bargain between the City and the Tract D Developer relating to the sale by the City and the purchase by the Tract D Developer of Tract D.

- E. Survival. Provisions substantially consistent with Section 6.11(A) and Section 6.11(B) shall be set forth in the Tract D Deed. The disclaimers, releases, waivers, representations, warranties, covenants, and agreements set forth in Section 6.11(A), Section 6.11(B), Section 6.11(C), and Section 6.11(D) of this Agreement shall survive the Closing of Tract D and any expiration or termination of this Agreement.

Section 6.12 Closing Costs. All closing costs incurred in connection with the sale and purchase of Tract D including, without limitation, the cost of tax certificates, Tract D Title Company escrow fees, recording fees, the premium for the Tract D Owner's Title Policy, the premium for the Tract D Mortgagee's Title Policy and all title policy endorsements shall be paid at the Tract D Developer's sole cost and expense at the Tract D Closing.

Section 6.13 Tract D Closing.

- A. At the Tract D Closing, provided the Tract D Developer fulfills its obligations under this Agreement, the City shall deliver to the Tract D Developer: (i) a deed without warranty containing the legal description of Tract D reflected on the final Tract D Survey approved by City, the Tract D Developer, and the Tract D Title Company, which deed shall be substantially in the form attached hereto as Exhibit P, subject to the Tract D Permitted Exceptions (the "Tract D Deed"); (ii) a Non-Foreign Affidavit complying with Section 1445 of the Internal Revenue Code; and (iii) all notices, statements, certificates, affidavits and other documents reasonably required by the Tract D Title Company or by law to consummate the sale and purchase of Tract D as contemplated in this Agreement.
- B. At the Tract D Closing, provided the City fulfills its obligations under this Agreement, the Tract D Developer shall deliver to the City: (i) the Tract D Purchase Price in immediately available funds acceptable to the City and the Tract D Title Company; (ii) the Performance Deed of Trust; and (iii) all notices, statements, certificates, affidavits and other documents reasonably required by the Tract D Title Company or by law to consummate the sale and purchase of Tract D as contemplated in this Agreement.
- C. The Tract D Purchase Price will be deposited into the Alcott Grant Account and shall not be commingled with the City's other funds provided, however, that notwithstanding anything contained herein to the contrary, the funds in the Alcott Grant Account shall be released to the City's general fund under the terms and in such manner provided in Section 9.05 and Section 16.06(B) of this Agreement.

Section 6.14 Possession. City will deliver possession of Tract D to the Tract D Developer upon closing and funding of the sale and purchase of Tract D in its present condition, ordinary wear and tear excepted, subject to the Tract D Permitted Exceptions.

Section 6.15. Taxes. Taxes for the year of the Tract D Closing will be prorated and the Tract D Developer shall be responsible for all taxes for Tract D from and after the Tract D Closing Date. The provisions of this Section 6.15 shall expressly survive the Tract D Closing.

Section 6.16 Broker's Commission. City and the Tract D Developer both acknowledge and represent to the other that there are no brokers entitled to a commission in connection with the sale and purchase of Tract D. The City shall be responsible for the payment of any broker's commission claimed by any Person by, through or under the City. The Tract D Developer shall be responsible for the payment of any broker's commission claimed by any Person by, through or under the Tract D Developer.

Section 6.17 Statutory Notices.

- A. Abstract. The Tract D Developer should have an abstract covering Tract D examined by an attorney of the Tract D Developer's selection, or the Tract D Developer should be furnished with or obtain a title policy for Tract D.
- B. Statutory Tax District. If Tract D is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services subject to the provisions of Chapter 49, Section 49.452, Texas Water Code, at or prior to the Tract D Closing, City agrees to give to Tract D Developer and Tract D Developer agrees to give to City the written notice required by Section 49.452 of the Texas Water Code and Tract D Developer agrees to sign and acknowledge the notice to evidence receipt thereof.

ARTICLE VII

OPTION TO PURCHASE TRACT B AND TRACT C

Section 7.01 Grant of Purchase Options. To incentivize the Developer to enter into this Agreement to construct, or to cause the Tract D Developer to construct, the Common Public Improvements, and create a first class development on the Property that will promote economic development within the City and increase the tax base within the TIRZ, the City agrees to grant the Developer the option to purchase Tract B and Tract C under the terms and subject to the conditions set forth in Article VII of this Agreement (individually referred to as a "**Purchase Option**" and collectively referred to as the "**Purchase Options**").

Section 7.02 Sale and Purchase Agreements.

- A. In the event the Developer exercises its Purchase Option to purchase Tract B, the terms and provisions of this Article VII as it relates to Tract B shall constitute the sale and purchase agreement between the City and the Developer relating to the sale and purchase of Tract B. In the event the Developer exercises its Purchase Option to purchase Tract C, the terms and provisions of this Article VII as it relates to Tract C shall constitute the sale

and purchase agreement between the City and the Developer relating to the sale and purchase of Tract C.

- B. If Developer timely exercises a Purchase Option to purchase Tract B or Tract C, the Developer may designate a Developer Subsidiary to take title to Tract B or Tract C, as applicable, provided (i) the Developer notifies the City of the name of the Developer Subsidiary contemporaneously with the Notice of Exercise of Purchase Option relating to Tract B or Tract C, as applicable, provided, however, that Developer shall be responsible for the performance by the Developer Subsidiary of all obligations set forth in this Agreement relating to the Tract B Closing or the Tract C Closing, as applicable; and (ii) such Developer Subsidiary executes an acknowledgement in a form and substance acceptable to the City that (a) the Developer Subsidiary is purchasing Tract B or Tract C, as applicable, expressly subject to the terms, provisions, and conditions of this Agreement relating to Tract B or Tract C, as applicable; (b) the Developer Subsidiary is assuming the obligations of Developer with respect to Tract B or Tract C, as applicable, (c) the Developer Subsidiary will impose the CC&Rs on Tract B or Tract C, as applicable, and record the CC&Rs against Tract B or Tract C, as applicable, in the Official Public Records of Dallas County, Texas in accordance with Section 8.03(D) and Section 8.03(E), as applicable, and will agree to not release or make any modifications to the CC&Rs with respect to the Architectural Standards, Development Standards, the Concept Plan [except for such minor modifications permitted by Section 8.03(A)], and Landscaping Requirements included as part of the CC&Rs without the prior written consent of the City, which may be withheld in the City's sole discretion; and (d) the Developer Subsidiary will design and construct a Building on Tract B consisting of a minimum of 265,000 square feet or a Building on Tract C consisting of a minimum of 300,000 square feet in compliance with the renderings, paint colors, building products, building materials, building elevations, materials overlay, composition overlay, scale overlay, proportion overlay, rhythm overlay, transparency overlay, articulation overlay, expression overlay, color overlay, and aesthetic methods more fully set forth in the Architectural Standards attached hereto as Exhibit K, including, without limitation, (1) the Building constructed on Tract B or Tract C, as applicable, shall be constructed with concrete tilt-wall or other masonry materials with exterior metal being permitted as an accent material; (2) the Building constructed on Tract B or Tract C, as applicable, shall use the colors and exterior finishes identified in the design standards graphic as shown in Exhibit K; and (3) each Building elevation on Tract B or Tract C, as applicable that faces a public street shall include vertical articulation as shown in Exhibit K. The City Manager is authorized to execute all documents and take all actions necessary to consummate the sale of Tract B or Tract C, as applicable to Developer or a Developer Subsidiary.
- C. If the Developer timely exercises its Purchase Option to purchase Tract B, the Developer may designate a Third-Party Developer to take title to Tract B (the "**Third-Party Tract B Developer**") provided: (i) the Developer notifies the City of the name of the Third-Party Tract B Developer contemporaneously with the Notice of Exercise of Purchase Option relating to Tract B provided, however, that Developer shall be responsible for the performance by the Third-Party Tract B Developer of all obligations set forth in this Agreement relating to the Tract B Closing; and (ii) the Third-Party Tract B Developer executes and delivers to the City at least twenty (20) days prior to the Tract B Closing

Date, a copy of the purchase and sale agreement executed by Developer and Third-Party Tract B Developer relating to the sale of Tract B (which may be redacted to exclude commercial terms which are not otherwise required to be contained in such purchase and sale agreement as provided herein), providing for the sale and purchase of Tract B to the Third-Party Tract B Developer containing substantially the same terms and provisions as this Article VII including, without limitation: (1) the sale to the Third-Party Tract B Developer is subject to Developer's satisfaction of the conditions set forth herein with respect to the exercise of its Purchase Option; (2) provisions consistent with Section 7.13, Section 7.14 and Section 7.17 relating to the title commitment, survey and title policy for Tract B; (3) a provision consistent with Section 7.18(A) relating to the inspection of Tract B; (4) a provision consistent with Section 7.19 agreeing that a Deed Without Warranty in the form attached hereto as Exhibit P will be delivered to the Developer at the Tract B Closing and Developer's deed to the Third-Party Tract B Developer may be similarly limited; (5) provisions consistent with Section 7.20(A) acknowledging the disclaimer of representations and warranties by the City relating to Tract B, and provisions containing the releases, waivers, covenants, agreements, representations and warranties of the Third-Party Tract B Developer consistent with Section 7.20(B), Section 7.20(C) and Section 7.20(D) and a survival provision consistent with Section 7.20(E); and (6) provisions consistent with Section 7.23 relating to taxes, Section 7.24 relating to closing costs, Section 7.26 relating to delivery of possession to Tract B, and Section 7.27 relating to statutory notices. Such purchase and sale agreement shall further include the acknowledgement and agreement of the Third-Party Tract B Developer that (a) the Third-Party Tract B Developer is purchasing Tract B expressly subject to the terms, provisions, and conditions of this Agreement relating to Tract B; (b) the Third-Party Tract B Developer will impose the CC&Rs on Tract B and record the CC&Rs against Tract B in the Official Public Records of Dallas County, Texas in accordance with Section 8.03(D) and will agree to not release or make any modifications to the CC&Rs with respect to the Architectural Standards, Development Standards, the Concept Plan [except for such minor modifications permitted by Section 8.03(A)], and Landscaping Requirements included as part of the CC&Rs without the prior written consent of the City, which may be withheld in the City's sole discretion; and (c) the Third-Party Tract B Developer will design and construct a Building on Tract B consisting of a minimum of 265,000 square feet in compliance with the renderings, paint colors, building products, building materials, building elevations, materials overlay, composition overlay, scale overlay, proportion overlay, rhythm overlay, transparency overlay, articulation overlay, expression overlay, color overlay, and aesthetic methods more fully set forth in the Architectural Standards attached hereto as Exhibit K, including, without limitation, (1) the Building constructed on Tract B shall be constructed with concrete tilt-wall or other masonry materials with exterior metal being permitted as an accent material; (2) the Building constructed on Tract B shall use the colors and exterior finishes identified in the design standards graphic as shown in Exhibit K; and (3) each Building elevation on Tract B that faces a public street shall include vertical articulation as shown in Exhibit K. The City Manager is authorized to execute all documents and take all actions necessary to consummate the sale of Tract B to Developer for the purpose of conveying the same to the Third-Party Tract B Developer.

D. If the Developer timely exercises its Purchase Option to purchase Tract C, the Developer may designate a Third-Party Developer to take title to Tract C (the “**Third-Party Tract C Developer**”) provided: (i) the Developer notifies the City of the name of the Third-Party Tract C Developer contemporaneously with the Notice of Exercise of Purchase Option relating to Tract C provided, however, that Developer shall be responsible for the performance by the Third-Party Tract C Developer of all obligations set forth in this Agreement relating to the Tract C Closing; and (ii) the Third-Party Tract C Developer executes and delivers to the City at least twenty (20) days prior to the Tract C Closing Date, a copy of the purchase and sale agreement executed by Developer and Third-Party Tract C Developer relating to the sale of Tract C (which may be redacted to exclude commercial terms which are not otherwise required to be contained in such purchase and sale agreement as provided herein), providing for the sale and purchase of Tract C to the Third-Party Tract C Developer containing substantially the same terms and provisions as this Article VII including, without limitation: (1) the sale to Third-Party Tract C Developer is subject to Developer’s satisfaction of the conditions set forth herein with respect to the exercise of its Purchase Option; (2) provisions consistent with Section 7.15, Section 7.16 and Section 7.17 relating to the title commitment, survey and title policy for Tract C; (3) a provision consistent with Section 7.18(B) relating to the inspection of Tract C; (4) a provision consistent with Section 7.21 agreeing that a Deed Without Warranty in the form attached hereto as Exhibit P will be delivered to the Developer at the Tract C Closing and Developer’s deed to the Third-Party Tract C Developer may be similarly limited; (5) provisions consistent with Section 7.22(A) acknowledging the disclaimer of representations and warranties by the City relating to Tract C, and provisions containing the releases, waivers, covenants, agreements, representations and warranties of the Third-Party Tract C Developer consistent with Section 7.22(B), Section 7.22(C) and Section 7.22(D) and a survival provision consistent with Section 7.22(E); and (6) provisions consistent with Section 7.23 relating to taxes, Section 7.25 relating to closing costs, Section 7.26 relating to delivery of possession of Tract C, and Section 7.27 relating to statutory notices. Such purchase and sale agreement shall further include the acknowledgement and agreement of the Third-Party Tract C Developer that (a) the Third-Party Tract C Developer is purchasing Tract C expressly subject to the terms, provisions, and conditions of this Agreement relating to Tract C; (b) the Third-Party Tract C Developer will impose the CC&Rs on Tract C and record the CC&Rs against Tract C in the Official Public Records of Dallas County, Texas in accordance with Section 8.03(E) and will agree to not release or make any modifications to the CC&Rs with respect to the Architectural Standards, Development Standards, the Concept Plan [except for such minor modifications permitted by Section 8.03(A)], and Landscaping Requirements included as part of the CC&Rs without the prior written consent of the City, which may be withheld in the City’s sole discretion; and (c) the Third-Party Tract C Developer will design and construct a Building on Tract C consisting of a minimum of 300,000 square feet in compliance with the renderings, paint colors, building products, building materials, building elevations, materials overlay, composition overlay, scale overlay, proportion overlay, rhythm overlay, transparency overlay, articulation overlay, expression overlay, color overlay, and aesthetic methods more fully set forth in the Architectural Standards attached hereto as Exhibit K, including, without limitation, (1) the Building constructed on Tract C shall be constructed with concrete tilt-wall or other masonry materials with

exterior metal being permitted as an accent material; (2) the Building constructed on Tract C shall use the colors and exterior finishes identified in the design standards graphic as shown in Exhibit K; and (3) each Building elevation on Tract C that faces a public street shall include vertical articulation as shown in Exhibit K. The City Manager is authorized to execute all documents and take all actions necessary to consummate the sale of Tract C to Developer for the purpose of conveying the same to the Third-Party Tract C Developer.

Section 7.03 Option Tracts. The Purchase Options must be exercised separately meaning that the Developer shall not exercise both Purchase Options at the same time. The Developer may exercise the first Purchase Option (the “**First Purchase Option**”) to purchase either Tract B or Tract C (the “**First Option Tract**”). The tract remaining after the Developer exercises the Purchase Option to purchase the First Option Tract shall be referred to herein as the “**Second Option Tract**”. The Purchase Option to purchase the Second Option Tract shall be referred to herein as the “**Second Purchase Option.**” By way of example only, if the Developer exercises the Purchase Option to purchase Tract C first, the “**First Purchase Option**” as used herein would refer to the Purchase Option to purchase Tract C; the “**Second Purchase Option**” as used herein would refer to the Purchase Option to purchase Tract B; the “**First Option Tract**” as used herein would refer to Tract C and the “**Second Option Tract**” as used herein would refer to Tract B.

Section 7.04 First Purchase Option. Provided all Conditions Precedent to the First Purchase Option have been satisfied and are then continuing, the Developer shall have the option to purchase the First Option Tract by delivering a Notice of Exercise of Purchase Option to the City during the period commencing on the date that is the later of: (i) the Effective Date; or (ii) thirty (30) days after the date the City Council adopts an ordinance abandoning the Existing East Glen ROW, subject to the Easement, and continuing until the earlier of: (a) five (5) years after the Effective Date; or (b) the date this Agreement is terminated by the City or the Developer pursuant to a right to terminate set forth herein (the “**First Option Period**”). If the Developer exercises the First Purchase Option, the Developer agrees to cause a Development Entity to design and construct an industrial building on the First Option Tract consisting of a minimum of 265,000 square feet if Tract B is the First Option Tract, or a minimum of 300,000 square feet if Tract C is the First Option Tract.

Section 7.05 Second Purchase Option. Provided all Conditions Precedent to the Second Purchase Option have been satisfied and are then continuing, the Developer shall have the option to purchase the Second Option Tract by delivering a Notice of Exercise of Purchase Option to the City during the period commencing on the date that is thirty (30) days after the satisfaction of all Conditions Precedent to the Second Purchase Option, or such earlier time and date as the City and Developer may mutually agree pursuant to Section 7.08 below and continuing until the earlier of: (i) five (5) years after the Effective Date if the Developer fails to timely exercise the First Purchase Option within the First Option Period; (ii) seven (7) years after the Effective Date; or (iii) the date this Agreement is terminated by any Party pursuant to a right to terminate set forth herein (the “**Second Option Period**”). The Parties agree that if the Developer fails to timely exercise the First Purchase Option by delivering a Notice of Exercise of Purchase Option to purchase the First Option Tract within the First Option Period, the Second Purchase Option shall automatically terminate and be of no further force or effect immediately upon the expiration of the First Option Period. If the Developer exercises the Second Purchase Option, the Developer agrees to cause a

Development Entity to design and construct an industrial building on the Second Option Tract consisting of a minimum of 265,000 square feet if Tract B is the Second Option Tract, or a minimum of 300,000 square feet if Tract C is the Second Option Tract.

Section 7.06 Conditions Precedent to First Purchase Option. The Developer and the City hereby expressly acknowledge and agree that the First Purchase Option shall expressly be conditioned upon the satisfaction of the following conditions precedent as of: (i) the date of the exercise by the Developer of the First Purchase Option; and (ii) the closing of the purchase of the First Option Tract (collectively the “**Conditions Precedent to the First Purchase Option**”), to-wit:

- A. The City Council has adopted an ordinance approving the abandonment of the Existing East Glen ROW, subject to the Easement; and
- B. The Developer shall have timely delivered a Notice of Exercise of Purchase Option with respect to the First Purchase Option to the City within the First Option Period; and
- C. No Developer Default shall then exist, and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Developer Default under the terms of this Agreement; and
- D. No default by the Tract D Developer shall then exist under the Performance Deed of Trust, and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default by the Tract D Developer under the Performance Deed of Trust; and
- E. No default by the Tract D Developer shall then exist under the TIRZ Reimbursement Agreement and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default by the Tract D/CPI Developer under the TIRZ Reimbursement Agreement); and
- F. This Agreement shall not have expired or been terminated by any Party hereto pursuant to a right to terminate expressly set forth in this Agreement.

Section 7.07 Conditions Precedent to the Second Purchase Option. The Developer and the City hereby expressly acknowledge and agree that the Second Purchase Option shall expressly be conditioned upon the satisfaction of the following conditions precedent as of: (i) the date of the exercise by the Developer of the Second Purchase Option; and (ii) the closing of the purchase of the Second Option Tract (collectively the “**Conditions Precedent to the Second Purchase Option**”), to-wit:

- A. The City Council has adopted an ordinance approving the abandonment of the Existing East Glen ROW, subject to the Easement; and
- B. The Developer shall have timely exercised the First Purchase Option and the closing on the First Option Tract shall have closed and funded; and
- C. The Developer shall have timely delivered a Notice of Exercise of Purchase Option with respect to the Second Purchase Option to the City within the Second Option Period; and

- D. Commencement of Construction of the Common Public Improvements shall have occurred on or before the Common Public Improvements Commencement Deadline Date and Completion of Construction of the Common Public Improvements shall have occurred on or before the Common Public Improvements Completion Date; and
- E. Commencement of Construction of Building 1 shall have occurred on or before the Building 1 Commencement Deadline Date and Completion of Construction of Building 1 shall have occurred on or before the Building 1 Completion Date; and
- F. Commencement of Construction of Building 2 shall have occurred on or before the Building 2 Commencement Deadline Date and the foundation of Building 2 has been completed, inspected and approved by the City in writing; and
- G. No Developer Default shall then exist, and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Developer Default under the terms of this Agreement; and
- H. If the Performance Deed of Trust has not been released under Section 6.10, no default by the Tract D Developer shall then exist under the Performance Deed of Trust, and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default by the Tract D Developer under the Performance Deed of Trust; and
- I. No default by the Tract D Developer shall then exist under the TIRZ Reimbursement Agreement and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default by the Tract D Developer under the TIRZ Reimbursement Agreement; and
- J. This Agreement shall not have expired or been terminated by any Party hereto pursuant to a right to terminate expressly set forth in this Agreement.

Section 7.08 Early Exercise of Second Purchase Option. Notwithstanding anything contained in this Article VII to the contrary, in the event (A) the Developer either (i) identifies a potential user for a building on the Second Option Tract, or (ii) obtains a market report prepared by an independent third party assessing the demand industrial market that includes a finding that sufficient demand exists for the construction of a speculative industrial building consisting of a minimum of 265,000 square feet if Tract B is the Second Option Tract, or a minimum of 300,000 square feet if Tract C is the Second Option Tract; and (B) the Developer desires to exercise the Second Purchase Option prior to the satisfaction of the Conditions Precedent to the Second Purchase Option set forth in Section 7.07(D), Section 7.07(E) and Section 7.07(F) above, Developer may submit a written request to the City Manager requesting approval by the City Manager to exercise the Second Purchase Option prior to the satisfaction of the Conditions Precedent to the Second Purchase Option set forth in Section 7.07(D), Section 7.07(E) and Section 7.07(F) (the “**Request for Early Exercise of Second Purchase Option**”). Developer shall further submit with the Request for Early Exercise of Second Purchase Option, information identifying the potential user or a copy of the demand study referenced in Section 7.08(A)(ii) above and such additional information as the City Manager deems necessary to allow the City Manager to evaluate the Developer’s request. If the City Manager, in the City Manager’s sole

discretion, determines that the early exercise by the Developer of the Second Purchase Option is in the best interest of the City, the City Manager may agree on behalf of the City that the Developer may exercise the Second Purchase Option prior to the satisfaction of the Conditions Precedent to the Second Purchase Option set forth in Section 7.07(D), Section 7.07(E) and Section 7.07(F) of this Agreement. The decision of the City Manager shall be final, and the Developer shall not have the right to appeal or request a review of the City Manager's decision. In the event the City Manager, in the City Manager's sole discretion, agrees to allow the Developer to exercise the Second Purchase Option early, the Developer agrees that the Second Option Tract Grant shall not be paid to the Developer unless and until after the later of: (i) all Conditions Precedent to the Second Purchase Option including, without limitation, the Conditions Precedent to the Second Purchase Option set forth in Section 7.07(D), Section 7.07(E) and Section 7.07(F), have been timely satisfied; and (ii) all General Conditions Precedent and all Second Option Tract Grant Additional Conditions Precedent have been timely satisfied.

Section 7.09 Purchase Price. If the Developer timely exercises a Purchase Option to purchase Tract B, the purchase price shall be the Fair Market Value of Tract B on the date the Developer exercises the Purchase Option to purchase Tract B (the "**Tract B Purchase Price**"). If the Developer timely exercises a Purchase Option to purchase Tract C, the purchase price shall be the Fair Market Value of Tract C on the date the Developer exercises the Purchase Option to purchase Tract C (the "**Tract C Purchase Price**"); provided, however, that the City and the Developer agree that if the Developer or a Developer Subsidiary closes on the purchase of Tract C on or before October 2, 2021, or causes a Third-Party Developer to close on the purchase of Tract C on or before October 2, 2021, the Tract C Purchase Price shall be \$1.20 per gross square foot (i.e., \$941,647.20), which the City and the Developer agree is the Fair Market Value of Tract C based on an appraisal obtained by the City dated effective October 2, 2020. For all other Purchase Options, the Fair Market Value shall initially be determined by a Qualified Appraiser chosen by the City, at the Developer's cost and expense. In the event Developer, in good faith, disputes the determination of Fair Market Value by the Qualified Appraiser chosen by the City, the Developer, at the Developer's sole cost and expense, may engage a Qualified Appraiser to prepare a separate valuation of the Fair Market Value of Tract B or Tract C, as applicable. In the event Developer's appraisal is within ten percent (10%) of the City's appraisal, the final valuation will be the average of the Developer's appraisal and the City's appraisal. In the event Developer's appraisal and City's appraisal differ by more than ten percent (10%) and the City and Developer cannot mutually agree upon the valuation, the City and Developer shall mutually select a third Qualified Appraiser who shall review and select either the Developer's appraisal or the City's appraisal, such valuation which shall be binding upon the City and the Developer.

Section 7.10 Notice of Exercise of Purchase Option(s). The Developer shall give the City at least (a) thirty (30) days prior written notice of Developer's intent to exercise the First Purchase Option; and (b) sixty (60) days prior written notice of Developer's intent to exercise the Second Purchase Option (the "**Notice of Exercise of Purchase Option**"). Notwithstanding anything contained herein to the contrary: (i) if the Notice of Exercise of Purchase Option identifies a Third-Party Tract B Developer as required under Section 7.02(C), the Developer may withdraw a Notice of Exercise of Purchase Option at any time prior to twenty (20) days before the Tract B Closing Date by delivering written notice of the same to the City accompanied by evidence that the purchase and sale agreement between the Developer and the Third-Party Tract C Developer has been terminated; or (ii) if the Notice of Exercise of Purchase Option identifies a

Third-Party Tract C Developer as required under Section 7.02(D), the Developer may withdraw a Notice of Exercise of Purchase Option at any time prior to twenty (20) days before the Tract C Closing Date by delivering written notice of the same to the City accompanied by evidence that the purchase and sale agreement between the Developer and the Third-Party Tract C Developer has been terminated (each a **“Notice of Termination of Exercise of Purchase Option”**). If Developer delivers a Notice of Termination of Exercise of Purchase Option, Developer shall retain the right, subject to the Conditions Precedent to the First Purchase Option, to exercise the First Purchase Option during the remainder of the First Option Period, and shall retain the right, subject to the Conditions Precedent to the Second Purchase Option, to exercise the Second Purchase Option during the remainder of the Second Option Period by delivering a subsequent Notice of Exercise of Purchase Option in accordance with the terms of this Section 7.10.

Section 7.11 Sale and Purchase of Tract B and Tract C. The Parties acknowledge that: (i) Tract B and Tract C are located within the TIRZ; and (ii) the development and sale of Tract B and Tract C to the Developer or a Development Entity is necessary to implement the TIRZ Project and Financing Plan. Provided this Agreement is not terminated pursuant to a right to terminate set forth herein, the sale and purchase of Tract B and Tract C by the City to Developer or a Development Entity shall be pursuant to V.T.C.A., Local Government Code §272.001(b)(6).

Section 7.12 Easement. In the event the Developer exercises the Purchase Option to purchase Tract C, the Parties agree that the conveyance of Tract C will be subject to the Easement unless the Easement has been released pursuant to Section 5.01 of this Agreement.

Section 7.13 Title Commitment for Tract B. If Developer exercises its Purchase Option to purchase Tract B, the Developer shall obtain and deliver to the City, contemporaneously with the Notice of Exercise of Purchase Option relating to Tract B: (i) a title commitment from a title company acceptable to the City, the Developer, and the Tract B Developer (the **“Tract B Title Company”**) covering Tract B (the **“Tract B Title Commitment”**) binding the Tract B Title Company to issue a Texas Owner's Policy of Title Insurance on the standard form of policy prescribed by the Texas Department of Insurance to the Developer or Tract B Developer in the full amount of the Tract B Purchase Price (the **“Tract B Owner's Title Policy”**); and (ii) copies of all instruments referred to in the Tract B Title Commitment as constituting exceptions or restrictions upon the title of the City (the **“Tract B Title Exceptions”**). The Developer will review, and will cause the Tract B Developer to review, the Tract B Survey, the Tract B Title Commitment, and the Tract B Title Exceptions prior to delivering the Notice of Exercise of Purchase Option relating to Tract B to the City. The City shall have no obligation to take any action or expend any funds to cure any matter in the Tract B Survey, Tract B Title Commitment or Tract B Title Exceptions that are objectionable or unacceptable to Developer or the Tract B Developer. In the event the Developer exercises the Purchase Option to purchase Tract B, the Developer and Tract B Developer shall be deemed to have accepted such title to Tract B as City is able to convey including, without limitation, Developer agrees to accept, and to cause the Tract B Developer to accept, title to Tract B subject to (a) the standard title policy exceptions set forth in the Tract B Title Commitment; (b) the lien for any taxes not due and payable at the Tract B Closing Date; (c) the Tract B Title Exceptions; (d) mineral reservations, severances and leases, if any, that affect Tract B; (e) validly existing easements, rights-of-way and prescriptive rights that affect Tract B, whether of record or not; (f) all presently recorded and validly existing restrictions, restrictive covenants, reservations, exceptions, covenants, conditions, interests and instruments that affect

Tract B; (g) any discrepancies, conflicts or shortages in area or boundary lines, any encroachments or protrusions and any overlapping of improvements affecting Tract B; (h) taxes and assessments against Tract B from the Tract B Closing Date and for all subsequent years, the payment of which the Developer or Tract B Developer will assume; and (i) zoning regulations and ordinances of municipal and/or other governmental authorities affecting Tract B (including, without limitation, the PD) (collectively the **“Tract B Permitted Exceptions”**).

Section 7.14 Tract B Survey; Access Agreement. Within fifteen (15) days after written request by the Developer, Developer and City will enter into a right of entry agreement substantially in the form of the Tract D Right of Entry to permit Developer to commence site investigation on Tract B and prepare the Tract B Survey (the **“Tract B Right of Entry”**). If the Developer exercises its Purchase Option to purchase Tract B, the Developer, at Developer’s sole cost and expense, will obtain and provide to the City, contemporaneously with the Notice of Exercise of Purchase Option delivered to the City in connection with the exercise of the Purchase Option for Tract B, an on-the-ground survey of Tract B (the **“Tract B Survey”**). The Tract B Survey shall be certified to the City, the Developer or Tract B Developer, and the Tract B Title Company. The Tract B Survey shall conform to the current Texas Surveyors Association Standards and Specification Category 1A, Condition II Survey and must be acceptable in form and substance to the Tract B Title Company, Developer or Tract B Developer, and City prior to being deemed finalized.

Section 7.15 Title Commitment for Tract C. If Developer exercises its Purchase Option to purchase Tract C, the Developer shall obtain and deliver to the City, contemporaneously with the Notice of Exercise of Purchase Option relating to Tract C: (i) a title commitment from a title company acceptable to the City, the Developer and the Tract C Developer (the **“Tract C Title Company”**) covering Tract C (the **“Tract C Title Commitment”**) binding the Tract C Title Company to issue a Texas Owner’s Policy of Title Insurance on the standard form of policy prescribed by the Texas Department of Insurance to the Developer or the Tract C Developer in the full amount of the Tract C Purchase Price (the **“Tract C Owner’s Title Policy”**); and (ii) copies of all instruments referred to in the Tract C Title Commitment as constituting exceptions or restrictions upon the title of the City (the **“Tract C Title Exceptions”**). The Developer will review, and will cause the Tract C Developer to review, the Tract C Survey, the Tract C Title Commitment, and the Tract C Title Exceptions prior to delivering the Notice of Exercise of Purchase Option relating to Tract C to the City. The City shall have no obligation to take any action or expend any funds to cure any matter in the Tract C Survey, Tract C Title Commitment or Tract C Title Exceptions that are objectionable or unacceptable to Developer or the Tract C Developer. In the event the Developer exercises the Purchase Option to purchase Tract C, the Developer and Tract C Developer shall be deemed to have accepted such title to Tract C as City is able to convey including, without limitation, Developer agrees to accept, and to cause the Tract C Developer to accept, title to Tract C subject to (a) the standard title policy exceptions set forth in the Tract C Title Commitment; (b) the lien for any taxes not due and payable at the Tract C Closing Date; (c) the Tract C Title Exceptions; (d) the Easement (unless the Easement has been released pursuant to Section 5.01 of this Agreement); (e) mineral reservations, severances and leases, if any, that affect Tract C; (f) validly existing easements, rights-of-way and prescriptive rights that affect Tract C, whether of record or not; (g) all presently recorded and validly existing restrictions, restrictive covenants, reservations, exceptions, covenants, conditions, interests and instruments that affect Tract C; (h) any discrepancies, conflicts or shortages in area or boundary

lines, any encroachments or protrusions and any overlapping of improvements affecting Tract C; (i) taxes and assessments against Tract C from the Tract C Closing Date and for all subsequent years, the payment of which the Developer, or Tract C Developer, will assume; and (j) zoning regulations and ordinances of municipal and/or other governmental authorities affecting Tract C (including, without limitation, the PD) (collectively the “**Tract C Permitted Exceptions**”).

Section 7.16 Tract C Survey; Access Agreement. Within fifteen (15) days after written request by the Developer, Developer and City will enter into a right of entry agreement substantially in the form of the Tract D Right of Entry to permit Developer to commence site investigation on Tract C and prepare the Tract C Survey (the “**Tract C Right of Entry**”). If the Developer exercises its Purchase Option to purchase Tract C, the Developer, at Developer’s sole cost and expense, will obtain and provide to the City, contemporaneously with the Notice of Exercise of Purchase Option delivered to the City in connection with the exercise of the Purchase Option for Tract C, an on-the-ground survey of Tract C (the “**Tract C Survey**”). The Tract C Survey shall be certified to the City, the Developer or Tract C Developer, and the Tract C Title Company. The Tract C Survey shall conform to the current Texas Surveyors Association Standards and Specification Category 1A, Condition II Survey and must be acceptable in form and substance to the Tract C Title Company, Developer or Tract C Developer, and City prior to being deemed finalized.

Section 7.17 Title Policies. In the event the Developer exercises its Purchase Option to purchase Tract B, Developer or Tract B Developer shall obtain the Tract B Owner’s Title Policy at Developer’s or Tract B Developer’s sole cost and expense within thirty (30) days after the closing on Tract B. In the event the Developer exercises its Purchase Option to purchase Tract C, Developer or Tract C Developer shall obtain the Tract C Owner’s Title Policy at Developer’s or Tract C Developer’s sole cost and expense within thirty (30) days after the closing on Tract C.

Section 7.18 Inspection of Tract B and Tract C.

- A. Inspection of Tract B. The Developer represents, covenants and agrees that prior to delivering to the City a Notice of Exercise of Purchase Option relating to Tract B, the Developer will have performed, or had performed on Developer’s and Tract B Developer’s behalf, pursuant to the Tract B Right of Entry, all surveys, engineering reports, geotechnical studies, soils tests, environmental tests, and all other studies, tests, inspections and investigations of Tract B as the Developer and Tract B Developer have determined were necessary or desirable in order for the Developer and Tract B Developer to make its decision whether to purchase Tract B. The Developer agrees, and will cause the Tract B Developer to agree, that the purchase of Tract B shall be based solely upon the Developer’s and Tract B Developer’s own independent examinations, studies, inspections, and knowledge of Tract B and the Developer’s and Tract B Developer’s determination of the value of Tract B and the uses for which Tract B may be developed, and in purchasing Tract B the Developer shall not rely, and shall cause the Tract B Developer to agree not to rely, on any representations, disclosures, information or warranties, either express or implied, of any kind by the City. **THE DEVELOPER ACKNOWLEDGES, AND WILL CAUSE THE TRACT B DEVELOPER TO ACKNOWLEDGE, THAT THE CITY HAS NOT MADE AND IS EXPRESSLY DISCLAIMING ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE TITLE,**

CONDITION, HABITABILITY, MARKETABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF TRACT B. The provisions of this Section 7.18(A) shall survive the closing of the transfer of Tract B by the City to the Developer or the Tract B Developer.

- B. Inspection of Tract C. The Developer represents, covenants and agrees that prior to delivering to the City a Notice of Exercise of Purchase Option relating to Tract C, the Developer will have performed, or had performed on Developer's and Tract C Developer's behalf, pursuant to the Tract C Right of Entry, all surveys, engineering reports, geotechnical studies, soils tests, environmental tests, and all other studies, tests, inspections and investigations of Tract C as the Developer and Tract C Developer have determined were necessary or desirable in order for the Developer and Tract C Developer to make its decision whether to purchase Tract C. The Developer agrees, and will cause the Tract C Developer to agree, that the purchase of Tract C shall be based solely upon the Developer's and Tract C Developer's own independent examinations, studies, inspections, and knowledge of Tract C and the Developer's and Tract C Developer's determination of the value of Tract C and the uses for which Tract C may be developed, and in purchasing Tract C the Developer shall not rely, and shall cause the Tract C Developer to agree not to rely, on any representations, disclosures, information or warranties, either express or implied, of any kind by the City. **THE DEVELOPER ACKNOWLEDGES, AND WILL CAUSE THE TRACT C DEVELOPER TO ACKNOWLEDGE, THAT THE CITY HAS NOT MADE AND IS EXPRESSLY DISCLAIMING ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE TITLE, CONDITION, HABITABILITY, MARKETABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF TRACT C.** The provisions of this Section 7.18(B) shall survive the closing of the transfer of Tract C by the City to the Developer or the Tract C Developer.

Section 7.19 Transfer of Tract B. In the event the Developer exercises its Purchase Option to purchase Tract B, Tract B will be transferred to the Developer or the Tract B Developer by Deed Without Warranty substantially in the form attached hereto as Exhibit P, subject to the Tract B Permitted Exceptions (the "Tract B Deed").

Section 7.20 Disclaimer of Representations and Warranties; Release; Waiver; Covenants, Agreements; Representations and Warranties – Tract B.

- A. Disclaimer of Representations and Warranties – Tract B. In the event the Developer exercises its Purchase Option to purchase Tract B, the conveyance of Tract B by the City to the Developer or Tract B Developer shall be "AS IS" and "WITH ALL FAULTS" and "WITHOUT WARRANTY, EITHER EXPRESS OR IMPLIED". City makes no representation or warranty, express or implied or arising by operation of law or otherwise with respect to any matter concerning Tract B, including, without limitation, the following: (i) title to Tract B; (ii) the habitability, marketability, merchantability, or suitability or fitness of Tract B for a particular purpose or use; (iii) the nature and condition of Tract B including, without limitation, water, drainage and grading, soil and geology, zoning, annexation, extraterritorial jurisdiction and other zoning and jurisdictional issues, location of cemeteries, utility availability or

hook-up, easement rights, flood plains (or portions of Tract B in a flood plain) and the costs and requirements of same, access to streets, costs of utilities, location of curb cuts and median breaks in streets, sewage facilities (including, without limitation, availability or non-availability of appropriate water and sewer capacity) or other governmental rights or obligations; (iv) the completeness, accuracy or approval of permits, surveys, plats, preliminary plats, pollution abatement plans, subdivision plans or reports concerning Tract B; (v) tax consequences; (vi) the compliance of all or any part of Tract B with applicable Environmental Laws; (vii) the existence of asbestos, oil, arsenic, petroleum or chemical liquids or solids, liquid or gaseous products or Hazardous Substances as those terms and similar terms are defined or used in applicable Environmental Laws; (viii) the nature and extent of access to rights-of-way or utilities, availability of permits to access rights-of-way or utilities on Tract B, other property owned by City, or any land owned by third parties; (ix) easements, mineral interests, encumbrances, licenses, reservations, conditions or other similar matters affecting Tract B; (x) compliance with any law, ordinance or regulation of any governmental entity or body; and/or (xi) claims, demands, or other matters relating to any restrictive covenants encumbering Tract B. The City and the Developer agree, and the Developer shall cause the Tract B Developer to agree, that the sale of Tract B will be made on an "AS IS, WHERE IS" and "WITH ALL FAULTS" basis. The City and the Developer agree, and the Developer shall cause the Tract B Developer to agree, that the warranties and covenants set forth in Section 5.023 of the Texas Property Code do not apply to the sale and purchase of Tract B and that any warranties arising at common law or implied as a result of Section 5.023 of the Texas Property Code, as amended, or any successor statute, shall be excluded and excepted from the Tract B Deed. The Developer acknowledges, and shall cause the Tract B Developer to acknowledge, that the Developer and Tract B Developer have had the full, complete and unfettered right to inspect Tract B to the Developer's and Tract B Developer's satisfaction and that the Tract B Purchase Price is in part based upon the fact that the sale of Tract B by the City to the Developer or Tract B Developer shall be without warranty or representation. The Developer agrees to rely, and shall cause the Tract B Developer to rely, only upon the Developer's and Tract B Developer's own investigations, assessments and inspections as to the condition of Tract B, or the Developer's or Tract B Developer's decision not to inspect any matter, and the Developer agrees, and shall cause the Tract B Developer to agree, that the Developer and Tract B Developer are not relying on any representation, warranty, statement or non-assertion of City or City's officers, agents, representatives, employees, consultants, or independent contractors in making the decision to purchase Tract B. THE DEVELOPER ACKNOWLEDGES AND SHALL CAUSE THE TRACT B DEVELOPER TO ACKNOWLEDGE THAT THE CITY HAS NOT MADE AND IS EXPRESSLY DISCLAIMING ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE TITLE, CONDITION, HABITABILITY, MARKETABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF TRACT B. AS MORE FULLY SET FORTH IN SECTION 7.02(B) AND SECTION 7.02(C), PRIOR TO THE TRACT B CLOSING, THE DEVELOPER SHALL CAUSE THE TRACT B DEVELOPER TO EXECUTE AND DELIVER TO THE CITY AN

ACKNOWLEDGMENT OF THE CITY'S DISCLAIMERS OF REPRESENTATIONS AND WARRANTIES SUBSTANTIALLY CONSISTENT WITH THIS SECTION 7.20(A).

- B. Release – TRACT B. CITY SHALL NOT BE LIABLE TO THE DEVELOPER OR THE TRACT B DEVELOPER FOR ANY LATENT OR PATENT DEFECTS OF TRACT B OR FOR ANY ERRORS, OMISSIONS, OR ON ACCOUNT OF ANY OTHER CONDITION AFFECTING TRACT B INCLUDING, BUT NOT LIMITED TO, THOSE MATTERS DESCRIBED IN SECTION 7.20(A)(I) THROUGH AND INCLUDING SECTION 7.20(A)(XI) ABOVE, AND THE DEVELOPER, AND ANYONE CLAIMING BY, THROUGH OR UNDER THE DEVELOPER, HEREBY FULLY RELEASES CITY AND EACH CITY RELATED PARTY FROM ANY AND ALL CLAIMS AGAINST CITY AND EACH CITY RELATED PARTY FOR ANY COSTS, LOSSES, LIABILITIES, DAMAGES, EXPENSES, DEMANDS, ACTIONS OR CAUSES OF ACTION (INCLUDING, WITHOUT LIMITATION, ANY RIGHTS OF CONTRIBUTION) ARISING FROM OR RELATED TO ANY LATENT OR PATENT DEFECTS OF TRACT B OR FOR ANY ERRORS, OMISSIONS, OR OTHER CONDITIONS AFFECTING TRACT B, INCLUDING, BUT NOT LIMITED TO, THOSE MATTERS DESCRIBED IN SECTION 7.20(A)(I) THROUGH AND INCLUDING SECTION 7.20(A)(XI) ABOVE AND ANY ALLEGED NEGLIGENCE OF CITY OR ANY CITY RELATED PARTY. THIS COVENANT RELEASING CITY AND EACH CITY RELATED PARTY SHALL BE SET FORTH IN THE TRACT B DEED AS A COVENANT RUNNING WITH THE TRACT B PROPERTY AND SHALL BE BINDING UPON THE DEVELOPER, THE TRACT B DEVELOPER, THE DEVELOPER'S AND TRACT B DEVELOPER'S SUCCESSORS AND ASSIGNS, AND ALL FUTURE OWNERS OF ALL OR ANY PORTION OF TRACT B. AS MORE FULLY SET FORTH IN SECTION 7.02 (B) AND SECTION 7.02 (C), PRIOR TO THE TRACT B CLOSING, THE DEVELOPER SHALL CAUSE THE TRACT B DEVELOPER TO EXECUTE AND DELIVER TO THE CITY A RELEASE SUBSTANTIALLY CONSISTENT WITH THIS SECTION 7.20(B).**
- C. Waiver– Tract B. WITH RESPECT TO THE SALE AND PURCHASE OF TRACT B, THE DEVELOPER HEREBY WAIVES THE DEVELOPER'S RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, SECTION 17.41 ET. SEQ., BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF THE DEVELOPER'S OWN SELECTION, THE DEVELOPER VOLUNTARILY CONSENTS TO THIS WAIVER. AS MORE FULLY SET FORTH IN SECTION 7.02(B) AND SECTION 7.02 (C), PRIOR TO THE TRACT B CLOSING, THE DEVELOPER SHALL CAUSE THE TRACT B DEVELOPER TO EXECUTE AND DELIVER TO THE CITY A WAIVER SUBSTANTIALLY CONSISTENT WITH THIS SECTION 7.20(C).**
- D. Covenants, Agreements, Representations and Warranties of Developer – Tract B. The Developer represents and warrants to City that the Developer is acquiring Tract B for**

investment, has knowledge and experience in financial and business real estate matters that enable the Developer to evaluate the merits and risks of the transactions herein contemplated, and has bargained for and obtained a purchase price and agreement terms which make the limitations of the Developer's recourse against City acceptable. The Developer acknowledges that the limitations of the Developer's recourse against City as set forth herein is a material part of the consideration for the execution and delivery of the Tract B Deed by the City and is an integral part of the basis of the bargain between the City and the Developer relating to the sale by the City and the purchase by the Developer of Tract B. As more fully set forth in Section 7.02(B) and Section 7.02 (C), prior to the Tract B Closing, the Developer shall cause the Tract B Developer to execute and deliver to the City covenants, agreements, representations, and warranties substantially consistent with this Section 7.20(D).

- E. Survival. Provisions substantially consistent with Section 7.20(A) and Section 7.20(B) shall be set forth in the Tract B Deed. The disclaimers, releases, waivers, representations, warranties, covenants, and agreements set forth in Section 7.20(A), Section 7.20(B), Section 7.20(C), and Section 7.20(D) and the disclaimers, releases, waivers, representations, warranties, covenants, and agreements made by the Tract B Developer pursuant to Section 7.02(B) or Section 7.02(C) shall survive the closing of Tract B and any expiration or termination of this Agreement.

Section 7.21 Transfer of Tract C. In the event the Developer exercises its Purchase Option to purchase Tract C, Tract C will be transferred to the Developer or Tract C Developer by Deed Without Warranty substantially in the form attached hereto as Exhibit P, subject to the Tract C Permitted Exceptions (the "Tract C Deed").

Section 7.22 Disclaimer of Representations and Warranties; Release; Waiver; Covenants, Agreements; Representations and Warranties – Tract C.

- A. Disclaimer of Representations and Warranties – Tract C. In the event the Developer exercises its Purchase Option to purchase Tract C, the conveyance of Tract C by the City to the Developer or Tract C Developer shall be "AS IS" and "WITH ALL FAULTS" and "WITHOUT WARRANTY, EITHER EXPRESS OR IMPLIED". City makes no representation or warranty, express or implied or arising by operation of law or otherwise with respect to any matter concerning Tract C, including, without limitation, the following: (i) title to Tract C; (ii) the habitability, marketability, merchantability, or suitability or fitness of Tract C for a particular purpose or use; (iii) the nature and condition of Tract C including, without limitation, water, drainage and grading, soil and geology, zoning, annexation, extraterritorial jurisdiction and other zoning and jurisdictional issues, location of cemeteries, utility availability or book-up, easement rights, flood plains (or portions of Tract C in a flood plain) and the costs and requirements of same, access to streets, costs of utilities, location of curb cuts and median breaks in streets, sewage facilities (including, without limitation, availability or non-availability of appropriate water and sewer capacity) or other governmental rights or obligations; (iv) the completeness, accuracy or approval of permits, surveys, plats, preliminary plats, pollution abatement plans, subdivision plans or reports concerning Tract C; (v) tax consequences; (vi) the compliance of all

or any part of Tract C with applicable Environmental Laws; (vii) the existence of asbestos, oil, arsenic, petroleum or chemical liquids or solids, liquid or gaseous products or Hazardous Substances as those terms and similar terms are defined or used in applicable Environmental Laws; (viii) the nature and extent of access to rights-of-way or utilities, availability of permits to access rights-of-way or utilities on Tract C, other property owned by City, or any land owned by third parties; (ix) easements, mineral interests, encumbrances, licenses, reservations, conditions or other similar matters affecting Tract C; (x) compliance with any law, ordinance or regulation of any governmental entity or body; and/or (xi) claims, demands, or other matters relating to any restrictive covenants encumbering Tract C. The City and the Developer agree, and the Developer shall cause the Tract C Developer to agree, that the sale of Tract C will be made on an "AS IS, WHERE IS" and "WITH ALL FAULTS" basis. The City and the Developer agree, and the Developer shall cause the Tract C Developer to agree, that the warranties and covenants set forth in Section 5.023 of the Texas Property Code do not apply to the sale and purchase of Tract C and that any warranties arising at common law or implied as a result of Section 5.023 of the Texas Property Code, as amended, or any successor statute, shall be excluded and excepted from the Tract C Deed. The Developer acknowledges, and shall cause the Tract C Developer to acknowledge, that the Developer and Tract C Developer have had the full, complete and unfettered right to inspect Tract C to the Developer's and Tract C Developer's satisfaction and that the Tract C Purchase Price is in part based upon the fact that the sale of Tract C by the City to the Developer or Tract C Developer shall be without warranty or representation. The Developer agrees to rely, and shall cause the Tract C Developer to agree to rely, only upon the Developer's and Tract C Developer's own investigations, assessments and inspections as to the condition of Tract C, or the Developer's or Tract C Developer's decision not to inspect any matter and the Developer agrees, and shall cause the Tract C Developer to agree, that the Developer and Tract C Developer are not relying on any representation, warranty, statement or non-assertion of City or City's officers, agents, representatives, employees, consultants, or independent contractors in making the decision to purchase Tract C. THE DEVELOPER ACKNOWLEDGES AND SHALL CAUSE THE TRACT C DEVELOPER TO ACKNOWLEDGE THAT THE CITY HAS NOT MADE AND IS EXPRESSLY DISCLAIMING ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE TITLE, CONDITION, HABITABILITY, MARKETABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF TRACT C. AS MORE FULLY SET FORTH IN SECTION 7.02(B) AND SECTION 7.02(D), PRIOR TO THE TRACT C CLOSING, THE DEVELOPER SHALL CAUSE THE TRACT C DEVELOPER TO EXECUTE AND DELIVER TO THE CITY AN ACKNOWLEDGMENT OF THE CITY'S DISCLAIMERS OF REPRESENTATIONS AND WARRANTIES SUBSTANTIALLY CONSISTENT WITH THIS SECTION 7.22(A).

- B. Release – Tract C. CITY SHALL NOT BE LIABLE TO THE DEVELOPER OR THE TRACT C DEVELOPER FOR ANY LATENT OR PATENT DEFECTS OF TRACT C OR FOR ANY ERRORS, OMISSIONS, OR ON ACCOUNT OF ANY OTHER CONDITION AFFECTING TRACT C INCLUDING, BUT NOT LIMITED

TO, THOSE MATTERS DESCRIBED IN SECTION 7.22(A)(I) THROUGH AND INCLUDING SECTION 7.22(A)(XI) ABOVE, AND THE DEVELOPER, AND ANYONE CLAIMING BY, THROUGH OR UNDER THE DEVELOPER, HEREBY FULLY RELEASES CITY AND EACH CITY RELATED PARTY FROM ANY AND ALL CLAIMS AGAINST CITY AND EACH CITY RELATED PARTY FOR ANY COSTS, LOSSES, LIABILITIES, DAMAGES, EXPENSES, DEMANDS, ACTIONS OR CAUSES OF ACTION (INCLUDING, WITHOUT LIMITATION, ANY RIGHTS OF CONTRIBUTION) ARISING FROM OR RELATED TO ANY LATENT OR PATENT DEFECTS OF TRACT C OR FOR ANY ERRORS, OMISSIONS, OR OTHER CONDITIONS AFFECTING TRACT C, INCLUDING, BUT NOT LIMITED TO, THOSE MATTERS DESCRIBED IN SECTION 7.22(A)(I) THROUGH AND INCLUDING SECTION 7.22(A)(XI) ABOVE AND ANY ALLEGED NEGLIGENCE OF CITY OR ANY CITY RELATED PARTY. THIS COVENANT RELEASING CITY AND EACH CITY RELATED PARTY SHALL BE SET FORTH IN THE TRACT C DEED AS A COVENANT RUNNING WITH THE TRACT C PROPERTY AND SHALL BE BINDING UPON THE DEVELOPER, THE TRACT C DEVELOPER, THE DEVELOPER'S AND TRACT C DEVELOPER'S SUCCESSORS AND ASSIGNS, AND ALL FUTURE OWNERS OF ALL OR ANY PORTION OF TRACT C. AS MORE FULLY SET FORTH IN SECTION 7.02(B) AND SECTION 7.02(D), PRIOR TO THE TRACT C CLOSING, THE DEVELOPER SHALL CAUSE THE TRACT C DEVELOPER TO EXECUTE AND DELIVER TO THE CITY A RELEASE SUBSTANTIALLY CONSISTENT WITH THIS SECTION 7.22(B).

- C. Waiver– Tract C. WITH RESPECT TO THE SALE AND PURCHASE OF TRACT C, THE DEVELOPER HEREBY WAIVES THE DEVELOPER'S RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES - CONSUMER PROTECTION ACT, SECTION 17.41 ET. SEQ., BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF THE DEVELOPER'S OWN SELECTION, THE DEVELOPER VOLUNTARILY CONSENTS TO THIS WAIVER. AS MORE FULLY SET FORTH IN SECTION 7.02(B) AND SECTION 7.02(D), PRIOR TO THE TRACT C CLOSING, THE DEVELOPER SHALL CAUSE THE TRACT C DEVELOPER TO EXECUTE AND DELIVER TO THE CITY A WAIVER SUBSTANTIALLY CONSISTENT WITH THIS SECTION 7.22 (C).**
- D. Covenants, Agreements, Representations and Warranties of Developer –Tract C. The Developer represents and warrants to City that the Developer is acquiring Tract C for investment, has knowledge and experience in financial and business real estate matters that enable the Developer to evaluate the merits and risks of the transactions herein contemplated, and has bargained for and obtained a purchase price and agreement terms which make the limitations of the Developer's recourse against City acceptable. The Developer acknowledges that the limitations of the Developer's recourse against City as set forth herein is a material part of the consideration for the execution and delivery of the Tract C Deed by the City and is an integral part of the basis of the bargain between the City and the Developer relating to the sale by the City and the purchase by the Developer of**

Tract C. As more fully set forth in Section 7.02(B) and Section 7.02(D), prior to the Tract C Closing, the Developer shall cause the Tract C Developer to execute and deliver to the City covenants, agreements, representations and warranties substantially consistent with this Section 7.22(D).

- E. Survival. Provisions substantially consistent with Section 7.22(A) and Section 7.22(B) shall be set forth in the Tract C Deed. The disclaimers, releases, waivers, representations, warranties, covenants, and agreements set forth in Section 7.22(A), Section 7.22(B), Section 7.22(C), and Section 7.22(D) and the disclaimers, releases, waivers, representations, warranties, covenants, and agreements made by the Tract C Developer pursuant to Section 7.02(B) or Section 7.02(D) shall survive the closing of Tract C and any expiration or termination of this Agreement.

Section 7.23 Taxes. If Developer exercises its Purchase Option to purchase Tract B, Developer or Tract B Developer shall be responsible for and shall pay all taxes assessed against Tract B from and after the Tract B Closing Date. This provision shall expressly survive the closing of the sale and purchase of Tract B. If Developer exercises its Purchase Option to purchase Tract C, Developer or Tract C Developer shall be responsible for and shall pay all taxes assessed against Tract C from and after the Tract C Closing Date. This provision shall expressly survive the closing of the sale and purchase of Tract C.

Section 7.24 Closing and Closing Costs for Tract B. Provided the Developer has timely exercised its Purchase Option to purchase Tract B, and further provided all conditions precedent to the exercise of the Purchase Option for Tract B have been satisfied [i.e. if Tract B is the first Purchase Option exercised by the Developer, all Conditions Precedent to the First Option have been satisfied and are then continuing or if Tract B is the second Purchase Option exercised by the Developer, all Conditions Precedent to the Second Option have been satisfied and are then continuing], the closing of the purchase of Tract B (the “Tract B Closing”) shall take place at the Tract B Title Company no later than 1:00 p.m., Central Standard Time, on the date that is no earlier than sixty (60) days after City’s receipt of the Notice of Exercise of Purchase Option relating to Tract B (provided, however, that if Tract B is the First Option Tract, such date will be no earlier than thirty (30) days after City’s receipt of the Notice of Exercise of Purchase Option related to Tract B) and no later than one hundred twenty (120) days after City’s receipt of the Notice of Exercise of Purchase Option relating to Tract B, or at such earlier time and date as may be mutually agreed to between Developer, Tract B Developer, and City (the “Tract B Closing Date”). At the Tract B Closing: (i) Developer or Tract B Developer shall deliver the Tract B Purchase Price to City in immediately available funds acceptable to the City and the Tract B Title Company; (ii) City shall deliver: (a) a Deed without Warranty containing the legal description of Tract B reflected on the final Tract B Survey approved by City, the Developer or Tract B Developer, and the Tract B Title Company, which deed shall be substantially in the form attached hereto as Exhibit P, transferring Tract B to the Developer or Tract B Developer subject to the Tract B Permitted Exceptions; and (b) a Non-Foreign Affidavit complying with Section 1445 of the Internal Revenue Code; and (iii) City and Developer or Tract B Developer will execute and deliver all notices, statements, certificates, affidavits and other documents reasonably required by the Tract B Title Company or by law to consummate the sale and purchase of Tract B by the City to the Tract B Developer. Developer shall be responsible for and shall pay (or shall cause the Tract B Developer to pay) all closing costs relating to the Tract B Closing including, without limitation, attorney’s

fees incurred on behalf of the Developer and Tract B Developer, all survey fees, title company escrow fees and all premiums and endorsements for the Tract B Owner's Title Policy, but excluding any attorney's fees incurred on behalf of City which shall be at City's sole cost and expense. City and Developer represent and warrant to each other that they have not, and Developer will cause the Tract B Developer to represent and warrant to City that it has not, and will not work with any broker relative to the sale and purchase of Tract B and that no brokerage commission is or will be due and payable in connection with the sale and purchase of Tract B by the City to the Developer or the Tract B Developer.

Section 7.25 Closing and Closing Costs for Tract C. Provided the Developer has timely exercised its Purchase Option to purchase Tract C, and further provided all conditions precedent to the exercise of the Purchase Option for Tract C have been satisfied [i.e. if Tract C is the first Purchase Option exercised by the Developer, all Conditions Precedent to the First Option have been satisfied and are then continuing or if Tract C is the second Purchase Option exercised by the Developer, all Conditions Precedent to the Second Option have been satisfied and are then continuing], the closing of the purchase of Tract C (the "Tract C Closing") shall take place at the Tract C Title Company no later than 1:00 p.m., Central Standard Time, on the date that is no earlier than sixty (60) days after City's receipt of the Notice of Exercise of Purchase Option relating to Tract C (provided, however, that if Tract C is the First Option Tract, such date will be no earlier than thirty (30) days after City's receipt of the Notice of Exercise of Purchase Option related to Tract C) and no later than one hundred twenty (120) days after City's receipt of the Notice of Exercise of Purchase Option relating to Tract C, or at such earlier time and date as may be mutually agreed to between Developer, the Tract C Developer and City (the "Tract C Closing Date"). At the Tract C Closing: (i) Developer or Tract C Developer shall deliver the Tract C Purchase Price to City in immediately available funds acceptable to the City and the Tract C Title Company; (ii) City shall deliver: (a) a Deed without Warranty containing the legal description of Tract C reflected on the final Tract C Survey approved by City, the Developer or Tract C Developer, and the Tract C Title Company, which deed shall be substantially in the form attached hereto as Exhibit P, transferring Tract C to the Developer or the Tract C Developer subject to the Tract C Permitted Exceptions; and (b) a Non-Foreign Affidavit complying with Section 1445 of the Internal Revenue Code; and (iii) City and the Developer or Tract C Developer will execute and deliver all notices, statements, certificates, affidavits and other documents reasonably required by the Tract C Title Company or by law to consummate the sale and purchase of Tract C by the City to the Developer or Tract C Developer. Developer shall be responsible for and shall pay (or shall cause the Tract C Developer to pay) all closing costs relating to the Tract C Closing including, without limitation, attorney's fees incurred on behalf of the Developer and Tract C Developer, all survey fees, title company escrow fees and all premiums and endorsements for the Tract C Owner's Title Policy, but excluding any attorney's fees incurred on behalf of City which shall be at City's sole cost and expense. City and Developer represent and warrant to each other that they have not, and the Developer shall cause the Tract C Developer to represent and warrant to the City that is has not, and will not work with any broker relative to the sale and purchase of Tract C and that no brokerage commission is or will be due and payable in connection with the sale and purchase of Tract C by the City to the Developer or the Tract C Developer.

Section 7.26 Possession. City will deliver possession of Tract B to the Developer or the Tract B Developer upon closing and funding of the sale of Tract B in the condition existing as of the date of the exercise by the Developer of its Purchase Option to purchase Tract B, ordinary wear

and wear excepted, subject to all matters contained in the Tract B Deed including, without limitation, the Tract B Permitted Exceptions. City will deliver possession of Tract C to the Developer or the Tract C Developer upon closing and funding of the sale of Tract C in the condition existing as of the date of the exercise by the Developer of its Purchase Option to purchase Tract C, ordinary wear and tear excepted, subject to all matters contained in the Tract C Deed including, without limitation, the Tract C Permitted Exceptions.

Section 7.27 Statutory Notices.

- A. Abstracts. If the Developer exercises its Purchase Option to purchase Tract B, the Developer and Tract B Developer should have an abstract covering Tract B examined by an attorney of the Developer's or Tract B Developer's selection, or the Developer and Tract B Developer should be furnished with or obtain a title policy for Tract B. If the Developer exercises its Purchase Option to purchase Tract C, the Developer and Tract C Developer should have an abstract covering Tract C examined by an attorney of the Developer's or Tract C Developer's selection, or the Developer and Tract C Developer should be furnished with or obtain a title policy for Tract C.
- B. Statutory Tax District for Tract B. If Tract B is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services subject to the provisions of Chapter 49, Section 49.452, Texas Water Code, at or prior to the Tract B Closing, City agrees to give to Developer and the Tract B Developer and Developer agrees to give to City, and to cause the Tract B Developer to give to the City, the written notice required by Section 49.452 of the Texas Water Code and Developer agrees to sign and acknowledge, and to cause the Tract B Developer, to sign and acknowledge, the notice to evidence receipt thereof.
- C. Statutory Tax District for Tract C. If Tract C is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services subject to the provisions of Chapter 49, Section 49.452, Texas Water Code, at or prior to the Tract C Closing, City agrees to give to Developer and the Tract C Developer and Developer agrees to give to City, and to cause the Tract C Developer to give to the City, the written notice required by Section 49.452 of the Texas Water Code and Developer agrees to sign and acknowledge, and to cause the Tract C Developer to sign and acknowledge, the notice to evidence receipt thereof

Section 7.28 Deposit of Purchase Price for First Option Tract. If Tract B is the First Option Tract, the Tract B Purchase Price will be deposited into the Alcott Grant Account upon receipt by the City, or if Tract C is the First Option Tract, the Tract C Purchase Price will be deposited into the Alcott Grant Account upon receipt by the City provided, however, that notwithstanding anything contained herein to the contrary, the funds in the Alcott Grant Account shall be released to the City's general fund under the terms and in such manner provided in Section 9.05 and Section 16.06(B) of this Agreement.

Section 7.29 Second Option Tract Grant Account. If Tract B is the Second Option Tract, the Tract B Purchase Price will be deposited in to the Alcott Grant Account upon receipt by the City, or if Tract C is the Second Option Tract, the Tract C Purchase Price will be deposited into

the Alcott Grant Account upon receipt by the City provided, however, that notwithstanding anything contained herein to the contrary, the funds in the Alcott Grant Account shall be released to the City's general fund under the terms and in such manner provided in Section 9.05 and Section 16.06(B) of this Agreement.

Section 7.30 Failure to Exercise Purchase Option(s). If Developer does not timely exercise the First Purchase Option in accordance with the terms and conditions set forth herein within the First Option Period, the option and right of Developer to purchase both Tract B and Tract C will automatically and immediately terminate without notice and without any Party hereto taking any actions or executing or delivering any documents. If Developer timely exercises the First Purchase Option in accordance with the terms and conditions set forth herein within the First Option Period but fails to timely exercise the Second Purchase Option within the Second Option Period, the Second Purchase Option shall automatically and immediately terminate without notice and without any Party hereto taking any actions or executing or delivering any documents and whichever of Tract B or Tract C not purchased in connection with the First Purchase Option shall be free of any option rights granted herein. Developer's failure to exercise a Purchase Option shall not constitute a Developer Default but shall result in the termination of the Purchase Option(s) in accordance with this Section 7.30.

Section 7.31 Time of the Essence. The Parties agree that time is of the essence with respect to the timely exercise by the Developer of the First Purchase Option and the Second Purchase Option and notwithstanding anything contained herein to the contrary, no event of Force Majeure shall extend the time within which the Developer shall have the right to exercise any Purchase Option. In the event of any conflict between the terms and provisions of this Section 7.31 and Section 16.03, the Parties agree that this Section 7.31 shall control.

Section 7.32 Assignment of Purchase Options. Notwithstanding any provision in this Agreement including, without limitation, Section 17.03 of this Agreement, the Purchase Options are personal to the Developer and are not assignable to any Person or any lender including, without limitation, the Lenders, without the prior written consent of the City which may be withheld in the City's sole discretion; provided, however, that Developer may designate a Development Entity to take title to Tract B or Tract C in accordance with Section 7.02(B), Section 7.02(C) and Section 7.02(D) of this Agreement.

Section 7.33 Effect of Termination of Agreement. Notwithstanding any provision in this Agreement to the contrary, in the event this Agreement expires or is terminated by any Party pursuant to a right to terminate expressly set forth in this Agreement, any Purchase Option not exercised at the time of the expiration or termination of this Agreement shall automatically terminate effective immediately as of the expiration or termination of this Agreement without the need for any further action or documentation on behalf of any Party hereto. In the event of a conflict between the terms and provisions of this Section 7.33 and the terms and provisions of any other Section in this Agreement, this Section 7.33 shall control. This Section 7.33 shall expressly survive the expiration or termination of this Agreement.

Section 7.34 Effect of Termination of TIRZ Reimbursement Agreement. Notwithstanding any provision in this Agreement to the contrary, in the event the TIRZ Reimbursement Agreement expires or is terminated by the City or the Developer pursuant to a

right to terminate expressly set forth in the TIRZ Reimbursement Agreement, any Purchase Option not exercised at the time of the expiration or termination of the TIRZ Reimbursement Agreement shall automatically terminate effective immediately as of the expiration or termination of the TIRZ Reimbursement Agreement without the need for any further action or documentation on behalf of any Party hereto. In the event of a conflict between the terms and provisions of this Section 7.34 and the terms and provisions of any other Section in this Agreement or the TIRZ Reimbursement Agreement, this Section 7.34 shall control. This Section 7.34 shall expressly survive the expiration or termination of this Agreement.

Section 7.35 Memorandum of Purchase Options. Concurrently with the execution of this Agreement, the Parties shall execute and deliver a memorandum of Purchase Options in the form attached hereto as Exhibit O with respect to Tract B and Tract C, respectively (the “**Memorandum of Purchase Options**”). Developer may, at its sole cost and expense, record the Memorandum of Purchase Options in the Official Public Records of Dallas County, Texas and shall provide a copy of the same to the City promptly after recording of the same. The Developer agrees to execute and deliver to the City a partial release of the Memorandum of Purchase Options in recordable form as to Tract B at the Tract B Closing and a partial release of the Memorandum of Purchase Options in recordable form as to Tract C at the Tract C Closing. If the Developer fails to timely exercise the First Purchase Option, the Developer agrees to execute and deliver to the City a release of the Memorandum of Purchase Options in recordable form as to both Tract B and Tract C within ten (10) days after the expiration of the First Option Period. If the Developer timely exercise the First Purchase Option but fails to timely exercise the Second Purchase Option, the Developer agrees to execute and deliver to the City a release of the Memorandum of Purchase Options in recordable form as to Tract B, if Tract C is the First Option Tract, or as to Tract C if Tract B is the First Option Tract, within ten (10) days after the expiration of the Second Option Period. The Developer further agrees to execute and deliver to the City a release of the Memorandum of Purchase Options as to any then unexercised Purchase Option(s) within ten (10) days after: (i) the termination of this Agreement by any Party pursuant to a right to terminate provided herein; (ii) the expiration of this Agreement; and (iii) the expiration or termination of any Purchase Option(s) pursuant to any provision of this Agreement including, without limitation, Section 7.30 of this Agreement. The provisions of this Section 7.35 shall expressly survive the expiration or termination of this Agreement.

ARTICLE VIII

DEVELOPER AND TRACT D DEVELOPER COVENANTS

Section 8.01 Full Compliance with City Standards. Development and use of the Property, including, without limitation, the construction, installation, maintenance, repair, and replacement of the Common Public Improvements, Building 1, Building 2, Building 3, and all other buildings, improvements and facilities of any kind whatsoever on and within the Property, shall be in compliance with the applicable City Regulations in effect on the Effective Date of this Agreement, as amended from time to time by the City.

Section 8.02 Zoning of the Property. On April 19, 2021, by City Ordinance No. 4856, the City Council zoned the Property as a Planned Development – Industrial district and approved

the Development Standards and established the Landscaping Requirements for the development of the Property.

Section 8.03 Development Standards and CC&Rs.

- A. As consideration for the City's obligations under this Agreement and as an inducement to the City to enter into this Agreement and the TIRZ Reimbursement Agreement: (i) the Developer and the Tract D Developer agree to design, construct and install the Common Public Improvements in compliance with the PD, the Concept Plan, the Development Standards, the Architectural Standards, the Landscaping Requirements and the CC&Rs; (ii) the Developer agrees to design and construct, or cause a Development Entity to design and construct, Building 1 and all other buildings, improvements and facilities of any kind whatsoever constructed by Developer or any Development Entity on and within the Property in compliance with the PD, the Concept Plan, the Development Standards, the Architectural Standards, the Landscaping Requirements, and the CC&Rs and (iii) if the Tract D Developer constructs a building on Tract D, the Tract D Developer agrees to design and construct an industrial building consisting of a minimum of 540,000 square feet on Tract D in compliance with the PD, the Concept Plan, the Development Standards, the Architectural Standards, the Landscaping Requirements, and the CC&Rs provided, however, that Developer shall be permitted to make minor changes, amendments or modifications to the Concept Plan that do not materially deviate from the Concept Plan and that meet the following criteria:
1. The change is necessary because of natural features of the site that were not foreseen by the Developer or the City prior to approval of the PD site plan; and
 2. The change will not have the effect of significantly reducing any area of landscaping, open space, natural area or parking; and
 3. The change, including all cumulative additions or expansions, will not increase the gross floor area of any non-residential structure by more than 20 percent; and
 4. The change will not result in any structure or circulation being moved significantly in any direction; and
 5. The change will not reduce any approved setback or the height of any structure by more than 10 percent; and
 6. The change will not have the effect of altering the type or maximum size of signage, reducing amenities or connectivity, or reducing the quality of materials to be used in construction; and
 7. The change does not violate any City Regulation.

The Parties agree all other changes, amendments or modifications must be approved in writing by the City Manager, in the City Manager's sole discretion.

- B. The CC&Rs at a minimum will restrict the development of Tract D and all other portions of the Property purchased by the Developer or a Development Entity to ensure that the landscaping installed on such property and any building or other improvements constructed on such property will comply with the Development Standards, the Concept Plan [with such minor modifications permitted pursuant to Section 8.03(A)], the Architectural Standards and the Landscaping Requirements. The CC&Rs will recite that the City is a prior owner of the property subject to the restrictions, is an owner of property adjacent to or near the property subject to the restrictions, that the City has provided economic development incentives to the Developer to ensure that the property subject to the restrictions is developed in compliance with the Development Standards, the Concept Plan [with such minor modifications permitted by Section 8.03(A)], the Architectural Standards, and the Landscaping Requirements, and that the City has an interest in the development of the property subject to the restrictions. The CC&Rs shall provide that the CC&Rs are covenants running with the land and shall provide that the City shall have the right to enforce the CC&Rs by proceedings at law or in equity.
- C. The Tract D Developer agrees to impose the CC&Rs on Tract D, and shall record the CC&Rs as covenants, conditions and restrictions against Tract D in the Official Public Records of Dallas County, Texas, upon the earlier of: (i) ten (10) days after the closing of the purchase of Tract D; or (ii) prior to the conveyance by the Tract D Developer of Tract D to any Person including, without limitation, a Development Entity. The Tract D Developer shall provide the City with a copy of the CC&Rs that have been recorded against Tract D within ten (10) days after such CC&Rs have been recorded in the Official Public Records of Dallas County, Texas.
- D. The Developer shall impose, or if Tract B is purchased by the Tract B Developer, shall cause the Tract B Developer to impose, the CC&Rs on Tract B and shall record, or cause the Tract B Developer to record, the CC&Rs as covenants, conditions and restrictions against Tract B in the Official Public Records of Dallas County, Texas, upon the earlier of: (i) ten (10) days after the closing of the purchase of Tract B; or (ii) prior to the conveyance by the Developer or the Tract B Developer of Tract B to any Person including, without limitation, another Development Entity. Developer shall provide, or shall cause the Tract B Developer to provide, the City with a copy of the CC&Rs that have been recorded against Tract B within ten (10) days after such CC&Rs have been recorded in the Official Public Records of Dallas County, Texas.
- E. The Developer shall impose, or if Tract C is purchased by the Tract C Developer, shall cause the Tract C Developer to impose, the CC&Rs on Tract C and shall record, or cause the Tract C Developer to record, the CC&Rs as covenants, conditions and restrictions against Tract C in the Official Public Records of Dallas County, Texas, upon the earlier of: (i) ten (10) days after the closing of the purchase of Tract C; or (ii) prior to the conveyance by the Developer or the Tract C Developer of Tract C to any Person including, without limitation, another Development Entity. Developer shall provide, or shall cause the Tract C Developer to provide, the City with a copy of the CC&Rs that have been recorded against Tract C within ten (10) days after such CC&Rs have been recorded in the Official Public Records of Dallas County, Texas.

F. Developer and Tract D Developer shall not make any changes to the Development Standards or the Architectural Standards without the prior written consent of the City, which may be withheld in the City's sole discretion and shall not release or make any modifications to the CC&Rs with respect to the Architectural Standards, Development Standards, the Concept Plan [unless permitted pursuant to Section 8.03(A)], and the Landscaping Requirements included as part of the CC&Rs, without the prior written consent of the City, which may be withheld in the City's sole discretion. The Tract D Developer covenants and agrees: (i) to develop Tract D in compliance with the Architectural Standards, Development Standards, the Concept Plan [with such minor modifications permitted by Section 8.03(A)], the Landscaping Requirements, and the CC&Rs; and (ii) to not release or make any modifications to the CC&Rs with respect to the Architectural Standards, Development Standards, the Concept Plan [except for such minor modifications permitted by Section 8.03(A)], and Landscaping Requirements included as part of the CC&Rs without the prior written consent of the City, which may be withheld in the City's sole discretion. Developer shall cause the Tract B Developer and Tract C Developer to contractually agree: (i) to develop Tract B and Tract C, respectively, in compliance with the Architectural Standards, Development Standards, the Concept Plan [with such minor modifications permitted by Section 8.03(A)], the Landscaping Requirements, and the CC&Rs; and (ii) to not release or make any modifications to the CC&Rs with respect to the Architectural Standards, Development Standards, the Concept Plan [except for such minor modifications permitted by Section 8.03(A)], and Landscaping Requirements included as part of the CC&Rs without the prior written consent of the City, which may be withheld in the City's sole discretion. The Developer agrees to enforce any failure by the Tract D Developer, the Tract B Developer, the Tract C Developer and/or any other Development Entity to develop the Property in compliance with the Architectural Standards, the Development Standards, the Concept Plan [except for such minor modifications permitted by Section 8.03(A)], and the Landscaping Requirements. The PD, Development Standards and Landscaping Requirements may be amended pursuant to the City Regulations.

Section 8.04 Building Materials and Aesthetics. The Parties acknowledge that effective September 1, 2019, the Legislature of the State of Texas enacted HB 2439, codified at V.T.C.A., Government Code, Title 10, Subtitle Z "*Miscellaneous Provisions Prohibiting Certain Government Actions*", 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 "Act"). Specifically, §3000.002 of the Act prohibits cities from adopting or enforcing a rule, charter provision, ordinance, order, building code or other regulation that prohibits or limits the use or installation of certain building products or materials or that establishes certain standards for building products, materials or aesthetic methods. The Developer and the Tract D Developer agree that, notwithstanding the Act, in consideration of the agreement of the City to pay the Economic Development Incentives to the Developer under the terms and subject to the conditions set forth in this Agreement and to induce the City to enter into this Agreement and the TIRZ Reimbursement Agreement, the Developer and the Tract D Developer are contractually agreeing to design and construct, or cause the design and construction, of the Common Public Improvements, Building 1, and all other buildings, improvements and facilities constructed by the Developer, the Tract D Developer, and any Development Entity on any portion of the Property in compliance with the renderings, paint colors,

building products, building materials, building elevations, materials overlay, composition overlay, scale overlay, proportion overlay, rhythm overlay, transparency overlay, articulation overlay, expression overlay, color overlay, and aesthetic methods more fully set forth in the Architectural Standards attached hereto as Exhibit K, including, without limitation, (i) all Buildings shall be constructed with concrete tilt-wall or other masonry materials with exterior metal being permitted as an accent material; (ii) all Buildings shall use the colors and exterior finishes identified in the design standards graphic as shown in Exhibit K; and (iii) each Building elevation that faces a public street shall include vertical articulation as shown in Exhibit K. The Parties acknowledge that the provisions of this Section 8.04 are material to the City's agreement to grant the Economic Development Incentives and, if the TIRZ Reimbursement Agreement is approved, to enter into the TIRZ Reimbursement Agreement, and is a bargained for consideration between the Parties.

Section 8.05 Landscaping. The Developer shall install, or shall cause a Development Entity to install, the landscaping on the Property in compliance with the Landscaping Requirements. The Tract D Developer shall install the landscaping on Tract D in compliance with the Landscaping Requirements.

Section 8.06 Construction Covenants. In consideration for the City's obligations under this Agreement, and as an inducement to the City to enter into this Agreement and the TIRZ Reimbursement Agreement, the Developer and the Tract D Developer covenant and agree as follows:

- A. Tract D Developer will Commence Construction of the Common Public Improvements on or before the Common Public Improvements Commencement Deadline Date, or will cause the Commencement of Construction of the Common Public Improvements on or before the Common Public Improvements Commencement Deadline Date; and
- B. Tract D Developer will Complete Construction of the Common Public Improvements on or before the Common Public Improvements Completion Date, or will cause the Completion of Construction of the Common Public Improvements on or before the Common Public Improvements Completion Date; and
- C. Tract D Developer will construct or will cause the construction of the Common Public Improvements in accordance with Plans and Specifications approved in writing by the City and in compliance with the PD, the Concept Plan, the Development Standards, the Landscaping Requirements, the Architectural Standards, the CC&Rs and all City Regulations provided, however, in the event the Tract D Developer fails to timely construct or cause the construction of the Common Public Improvements as required by this Section 8.06(C), the Developer will construct or will cause the construction of the Common Public Improvements in accordance with Plans and Specifications approved in writing by the City and in compliance with the PD, the Concept Plan, the Development Standards, the Landscaping Requirements, the Architectural Standards, the CC&Rs and all City Regulations; and
- D. The Tract D Developer will make, or will cause to be made, an aggregate minimum investment in the amount of THREE MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,200,000.00) in connection with the construction of the Common

Public Improvements during the period commencing with the Effective Date and continuing thereafter until and including the Common Public Improvements Completion Date provided, however, in the event the Tract D Developer fails to timely make the aggregate minimum investment required by this Section 8.06(D), or fails such cause such aggregate minimum investment to be timely made, the Developer will make an aggregate minimum investment in the amount of THREE MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,200,000.00) in connection with the construction of the Common Public Improvements during the period commencing with the Effective Date and continuing thereafter until and including the Common Public Improvements Completion Date; and

- E. In the event the Tract D Developer Commences Construction of the Common Public Improvements or causes the Commencement of Construction of the Common Public Improvements but fails to Complete Construction of the Common Public Improvements on or before the Common Public Improvements Completion Date, or fails to cause the Completion of Construction of the Common Public Improvements on or before the Common Public Improvements Completion Date, and the cost to Complete Construction of the Common Public Improvements exceeds the penal sum of the Bonds issued in connection with the same, the Tract D Developer shall pay to the City the sum reasonably necessary to Complete Construction of the Common Public Improvements in compliance with the Plans and Specifications for the Common Public Improvements approved in writing by the City; and
- F. Developer will construct or will cause the Tract D Developer, the Tract B Developer, or the Tract C Developer to construct Building 1 on either Tract D or the First Option Tract; and
- G. Developer will construct or will cause the Tract D Developer, the Tract B Developer, or the Tract C Developer to construct Building 1, and install the landscaping on the Tract where Building 1 is constructed, in accordance with Plans and Specifications approved in writing by the City and in compliance with the PD, the Concept Plan, the Development Standards, the Landscaping Requirements, the Architectural Standards, the CC&Rs and all City Regulations; and
- H. Developer will Commence Construction of Building 1 on or before the Building 1 Commencement Deadline Date or will cause the Tract D Developer, Tract B Developer, or Tract C Developer to Commence Construction of Building 1 on or before the Building 1 Commencement Deadline Date; and
- I. Developer will Complete Construction of Building 1 on or before the Building 1 Completion Date, or will cause the Tract D Developer, Tract B Developer, or Tract C Developer to Complete Construction of Building 1 on or before the Building 1 Completion Date; and
- J. If the Tract D Developer constructs a Building on Tract D, the Tract D Developer will install landscaping on Tract D in compliance with the Landscaping Requirements and will design and construct an industrial building consisting of a minimum of 540,000 square feet

on Tract D in accordance with Plans and Specifications approved in writing by the City and in compliance with the PD, the Concept Plan, the Development Standards, the Architectural Standards, the CC&Rs and all City Regulations; and

- K. If Building 1 is constructed on Tract D and the Developer exercises the First Purchase Option, the Developer will cause the Tract B Developer [if Tract B is the First Option Tract] or the Tract C Developer [if Tract C is the First Option Tract] to install landscaping on the First Option Tract in compliance with the Landscaping Requirements and will cause a Development Entity to design and construct Building 2 on the First Option Tract in accordance with Plans and Specifications approved in writing by the City and in compliance with the PD, the Concept Plan, the Development Standards, the Architectural Standards, the CC&Rs and all City Regulations; and
- L. If Building 1 is constructed on Tract D and the Developer exercises the First Purchase Option, the Developer will cause the Tract B Developer [if Tract B is the First Option Tract] or the Tract C Developer [if Tract C is the First Option Tract] to Commence Construction of Building 2 on the First Option Tract on or before the Building 2 Commencement Deadline Date; and
- M. If Building 1 is constructed on Tract D and the Developer exercises the First Purchase Option, the Developer will cause the Tract B Developer [if Tract B is the First Option Tract] or the Tract C Developer [if Tract C is the First Option Tract] to Complete Construction of Building 2 on the First Option Tract on or before the Building 2 Completion Date; and
- N. If the Developer exercises the Second Purchase Option, the Developer will cause its Developer Subsidiary or the Tract B Developer [if Tract B is the Second Option Tract] or the Tract C Developer [if Tract C is the Second Option Tract] to install landscaping on the Second Option Tract in compliance with the Landscaping Requirements and will cause the Tract B Developer [if Tract B is the Second Option Tract] or the Tract C Developer [if Tract C is the Second Option Tract] to design and construct a Building consisting of a minimum of 265,000 square feet on Tract B if Tract B is the Second Option Tract or a minimum of 300,000 square feet on Tract C if Tract C is the Second Option Tract in compliance with the PD, the Concept Plan, the Development Standards, the Architectural Standards, and the CC&Rs, within twenty-four (24) months after closing on the purchase of the Second Option Tract.

Notwithstanding the foregoing deadlines, the City Manager may, in the City Manager's sole discretion, extend one or more of the deadlines set forth in this Section 8.06 up to a maximum of twelve (12) months if the City Manager determines, in the City Manager's sole discretion, that a Development Entity is diligently pursuing the development of the Project but is unable to perform within one or more of the timelines set forth in this Section 8.06 as the result of events or circumstances which are outside the Development Entity's control (the "**City Manager Approved Extension**"). Any extension of the deadline(s) set forth in this Section 8.06 by the City Manager must be in writing to be effective.

Section 8.07 Environmental Covenants. Developer and Tract D Developer each covenant and agree to comply strictly and in all respects and to cause each Developer Related Party to comply strictly and in all respects with the requirements of all Environmental Laws and agrees to notify the City immediately upon acquiring knowledge of the presence of any Hazardous Substances on the Property with a full description thereof. Developer and Tract D Developer each represent and warrant to the City that neither Developer, Tract D Developer, or any Developer Related Party will use, store, treat, generate, dispose of, transport or release any Hazardous Substances in, at, on, under, near or from the Property during the term of this Agreement. Developer will comply and will cause each Developer Related Party to comply, with all Environmental Laws at Developer's sole cost and expense. Tract D Developer will comply with all Environmental Laws at its sole cost and expense. **DEVELOPER AND TRACT D DEVELOPER HEREBY INDEMNIFY AND AGREE TO HOLD THE CITY AND THE CITY RELATED PARTIES HARMLESS FROM ANY AND ALL LIABILITIES (INCLUDING STRICT LIABILITY), CLAIMS, DEMANDS, SUITS, ACTIONS, DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES TO OR LOSS OF USE OF PROPERTY AND DAMAGES FOR INJURY TO OR DEATH OF ANY PERSON), PENALTIES, FINES, COSTS, EXPENSES, LITIGATION EXPENSES, ATTORNEY'S FEES, AND LIABILITIES NOW OR HEREAFTER INCURRED BY CITY AND THE CITY RELATED PARTIES IN CONNECTION WITH OR ARISING OUT OF ANY USE, STORAGE, TREATMENT, GENERATION, DISPOSAL, TRANSPORTATION OR RELEASE BY DEVELOPER, TRACT D DEVELOPER, OR ANY DEVELOPER RELATED PARTY OF ANY HAZARDOUS SUBSTANCES IN, AT, ON, UNDER, NEAR OR FROM THE PROPERTY OR THE AIR ABOVE THE PROPERTY OR THE GROUNDWATER UNDERNEATH THE PROPERTY.** Developer and Tract D Developer, at the sole cost and expense of the Developer and the Tract D Developer, will comply with all Environmental Laws requiring the removal, treatment or disposal of any Hazardous Substances released in, at, on, under, near or from the Property by Developer, Tract D Developer, or any Developer Related Party and shall discharge any assessments which may be established on or against the Property as a result thereof and shall provide City with satisfactory evidence of such compliance. Developer, Tract D Developer, and each Developer Related Party shall not cause or suffer any liens to be recorded against the Property as a consequence of, or in any way related to, the presence, remediation or disposal of Hazardous Substances in or about the Property, including any state, federal or local so-called "Superfund" lien relating to such matters. The Developer and Tract D Developer agree to: (a) give notice to City immediately upon acquiring knowledge of the presence of any Hazardous Substances on the Property or of any environmental contamination of the Property with a full description thereof; and (b) promptly, at Developer's and Tract D Developer's sole cost and expense, comply with all Environmental Laws requiring the removal, treatment or disposal of such Hazardous Substances and provide City with satisfactory evidence of such compliance. The City and the City Related Parties shall be entitled to recover their reasonable attorneys' fees, court costs, investigation and expert witness fees incurred in enforcing the indemnification provisions set forth in this Section 8.07.

Section 8.08 Covenant Not to Employ Undocumented Workers.

- A. Covenant Not to Employ Undocumented Workers. The Developer and Tract D Developer hereby certify that the Developer, the Tract D Developer, and each branch, division, and

department of the Developer and Tract D Developer, do not employ any Undocumented Workers and the Developer and Tract D Developer hereby covenant and agree that the Developer, and Tract D Developer, and each branch, division and department of the Developer and Tract D Developer will not knowingly employ any Undocumented Workers during the Term of this Agreement.

- B. Covenant to Notify City of Conviction for Undocumented Workers. The Developer and Tract D Developer further hereby covenant and agree to provide the City with written notice of any conviction of the Developer, the Tract D Developer, or any branch, division or department of the Developer or Tract D Developer, of a violation under 8 U.S.C. §1324a (f) within thirty (30) days from the date of such conviction.
- C. Repayment of Economic Development Incentives in Event of Conviction for Employing Undocumented Workers. If, after receiving all or any portion of the Economic Development Incentives under the terms of this Agreement, the Developer, the Tract D Developer, or a branch, division or department of the Developer or Tract D Developer, is convicted of a violation under 8 U.S.C. §1324a (f), the Developer and Tract D Developer shall pay to the City, not later than the 120th day after the date the City notifies the Developer or Tract D Developer of the violation, an amount equal to the Economic Development Incentive payments previously paid by the City to the Developer 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 Economic Development Incentive payment being recaptured from the date each Economic Development Incentive payment was paid by the City to the Developer until the date such payment is repaid by the Developer or the Tract D Developer to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate.
- D. Limitation on Economic Development Incentives. The City shall have no obligation to pay any Economic Development Incentive to the Developer if the Developer, the Tract D Developer, or any branch, division or department of the Developer or Tract D Developer is convicted of a violation under 8 U.S.C. §1324a (f).
- E. Remedies. The City shall have the right to exercise all remedies available by law to collect any sums due by the Developer or Tract D Developer to the City pursuant to this Section 8.08 including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.
- F. Limitation. The Developer and Tract D Developer are not liable for a violation of Section 8.08 of this Agreement by a subsidiary, affiliate, or franchisee of the Developer or Tract D Developer, or by a person with whom the Developer or Tract D Developer contracts.

Section 8.09 Miscellaneous Covenants. In consideration for the City's obligations under this Agreement, and as an inducement to the City to enter into this Agreement and the TIRZ Reimbursement Agreement, the Developer and the Tract D Developer covenant and agree as follows:

- A. Payment of Fees for Common Public Improvements and Tract D. The Tract D Developer shall timely pay, or shall cause the timely payment to the City all Development Fees in connection with the construction of the Common Public Improvements. The Tract D Developer shall timely pay to the City all Development Fees in connection with any Building constructed on Tract D, and any other improvements constructed on the Property by the Tract D Developer; and
- B. Payment of Fees for Tract B, Tract C, and the Specific Public Improvements. The Developer shall timely pay, or shall cause the Tract B Developer, Tract C Developer, or Developer Subsidiary undertaking the construction of the Specific Public Improvements, to timely pay to the City all Development Fees in connection with the construction of Building 1, Building 2 [if constructed], Building 3 [if constructed], the Specific Public Improvements [if constructed] and all other improvements constructed by Developer, the Tract B Developer, Tract C Developer, any Developer Subsidiary, or any other Development Entities on all or any portions of the Property; and
- C. Records and Reports. The Developer and the Tract D Developer shall deliver to the City within thirty (30) days after written request, copies of such invoices, paid receipts, payment records, lien waivers, bills paid affidavits and such other documentation as the City may reasonably request to confirm the actual costs incurred in connection with the construction of the Common Public Improvements and to confirm compliance by the Developer and the Tract D Developer with the representations, covenants, and agreements of the Developer and Tract D Developer set forth in this Agreement. The Developer shall further deliver to the City, or cause its Developer Subsidiary undertaking construction of the Specific Public Improvements, to deliver to the City within thirty (30) days after written request, copies of such invoices, paid receipts, payment records, lien waivers, bills paid affidavits and such other documentation as the City may reasonably request to confirm the actual costs incurred in connection with the construction of the Specific Public Improvements and to confirm compliance by the Developer with the representations, covenants, and agreements of the Developer set forth in this Agreement; and
- D. Inspection. The Developer and Tract D Developer shall provide, and shall cause the Tract B Developer and the Tract C Developer to provide, the City, its agents, representatives, employees, independent contractors, and consultants, with access to the Property at such times as the City may reasonably request to conduct such inspections as the City deems necessary in order to confirm compliance by the Developer and the Tract D Developer with the representations, covenants, and agreements of the Developer and Tract D Developer set forth in this Agreement provided the City has given the Developer and Tract D Developer at least seventy-two (72) hours prior written notice of such inspection; and
- E. Representative of Developer to Accompany Inspections. The Developer shall provide a representative of the Developer to accompany the City during all inspections of the Property conducted by the City pursuant to Section 8.09(D) above; and
- F. Timely Payment of Taxes. The Tract D Developer shall timely pay all ad valorem taxes assessed against all property owned by the Tract D Developer in the City prior to the date such taxes become delinquent. The Developer shall timely pay all ad valorem taxes

assessed against all property owned by the Developer in the City prior to the date such taxes become delinquent and shall cause all Developer Subsidiaries to timely pay all ad valorem taxes assessed against all property owned by all Developer Subsidiaries in the City prior to the date such taxes become due; and

- G. Maintenance Obligations. The Tract D Developer shall comply with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City at all times during the term of this Agreement and shall, at the Tract D Developer's sole cost and expense, maintain Tract D in good repair at all times during the term of this Agreement. The Developer shall comply and shall cause all Developer Subsidiaries to comply with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City at all times during the Term of this Agreement and shall, at the Developer's sole cost and expense, maintain all portions of the Property owned by the Developer or a Developer Subsidiary in good repair at all times during the Term of this Agreement; and
- H. Compliance with Laws. The Tract D Developer shall comply with all federal, state, and local laws, ordinances and regulations relating to the ownership and operation of Tract D during the Term of this Agreement. The Developer shall comply with all federal, state, and local laws, ordinances and regulations relating to the ownership and operation of all portions of the Property owned by the Developer during the Term of this Agreement and shall cause all Developer Subsidiaries to comply with all federal, state, and local laws, ordinances and regulations relating to the ownership and operation of all portions of the Property owned by Developer Subsidiaries during the Term of this Agreement; and
- I. Performance of Agreement by Developer. The Developer shall timely keep and perform all terms, provisions, agreements, covenants, conditions, and obligations to be kept or performed by the Developer or a Developer Subsidiary under the terms of this Agreement; and
- J. Performance of Agreement by Tract D Developer. The Tract D Developer shall timely keep and perform all terms, provisions, agreements, covenants, conditions, and obligations to be kept or performed by the Tract D Developer under the terms of this Agreement; and
- K. Performance of Other Agreements by Developer. The Developer shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Developer or a Developer Subsidiary under the terms of all other agreements now or hereafter existing between the Developer or a Developer Subsidiary and the City during the Term of this Agreement including, without limitation, the TIRZ Reimbursement Agreement; and
- L. Performance of Other Agreements by Tract D Developer. The Tract D Developer shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Tract D Developer under the terms of all other agreements now or hereafter existing between the Tract D Developer and the City during the Term of this Agreement including, without limitation, the TIRZ Reimbursement Agreement.

Section 8.10 Survival The terms, provisions, covenants, agreements, obligations and indemnities of the Developer and Tract D Developer and the rights and remedies of the City set forth in Article VIII of this Agreement shall survive the expiration or termination of this Agreement.

ARTICLE IX

ECONOMIC DEVELOPMENT INCENTIVES

Section 9.01 Conditions Precedent to Economic Development Incentives.

- A. General Conditions Precedent. The Developer and the City hereby expressly acknowledge and agree that the payment of each Economic Development Incentive by the City to the Developer shall expressly be conditioned upon the satisfaction of the following conditions precedent: (i) as of the date of the Payment Request submitted in connection with such payment; and (ii) as of the date of such payment (the “**General Conditions Precedent**”), to-wit:
1. Performance of this Agreement by Developer. The Developer shall have timely kept and performed all terms, provisions, agreements, covenants, conditions, and obligations to be kept or performed by the Developer or a Developer Subsidiary under the terms of this Agreement and no Developer Default shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Developer Default under the terms of this Agreement; and
 2. Performance of this Agreement by Tract D Developer. The Tract D Developer shall have timely kept and performed all terms, provisions, agreements, covenants, conditions, and obligations to be kept or performed by the Tract D Developer under the terms of this Agreement and no Developer Default shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Developer Default under the terms of this Agreement; and
 3. Performance of other Agreements by Developer. The Developer shall have timely kept and performed all terms, provisions, agreements, covenants, conditions, and obligations to be kept or performed by the Developer or a Developer Subsidiary under the terms of all other agreement(s) now and hereafter existing between the Developer and the City including, without limitation, the TIRZ Reimbursement Agreement, and no default shall then exist under the terms of such agreement(s) and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default by the Developer or a Developer Subsidiary under the terms of such agreement(s); and
 4. Performance of other Agreements by Tract D Developer. The Tract D Developer shall have timely kept and performed all terms, provisions, agreements, covenants, conditions, and obligations to be kept or performed by the Tract D Developer under the terms of all other agreement(s) now and hereafter existing between the Tract D Developer and the City including, without limitation, the TIRZ Reimbursement Agreement, and no default shall then exist under the terms of such agreement(s) and no event shall exist which, but for notice, the lapse of time, or both, would

constitute a default by the Tract D Developer under the terms of such agreement(s); and

5. Records and Reports. The Developer and the Tract D Developer shall have delivered to the City or shall have caused the Tract B Developer and the Tract C Developer to deliver 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 Developer and the Tract D Developer with the terms, provisions, agreements, covenants, and conditions of this Agreement; and
 6. Inspection. The Developer and the Tract D Developer shall have provided the City, its agents, representatives, employees, independent contractors, and consultants, with access to any portion of the Property then owned by Developer or the Tract D Developer, and the Developer shall have caused the Tract B Developer and the Tract C Developer to provide the City, its agents, representatives, employees, independent contractors and consultants, with access to any portion of the Property then owned by the Tract B Developer or the Tract C Developer, at such times as the City may reasonably request to conduct such inspections as the City deems necessary in order to confirm compliance by the Developer and the Tract D Developer with the terms, provisions, agreements, covenants and conditions of this Agreement provided the City has given the Developer and Tract D Developer at least seventy-two (72) hours prior written notice of such inspection, and the Developer shall have provided a representative of the Developer to accompany the City during such inspection; and
 7. Payment of Taxes. The Developer, the Tract D Developer and each Developer Subsidiary that has purchased Tract B or Tract C shall have timely paid all ad valorem taxes then due and payable by the Developer, the Tract D Developer or Developer Subsidiary to the City provided, however, that this provision shall not affect the right of the Developer, the Tract D Developer or any Developer Subsidiary to protest such taxes; and
 8. Payment of Development Fees. The Developer and the Tract D Developer shall have timely paid, and the Developer shall have caused the Tract B Developer and Tract C Developer to have timely paid, to the City all Development Fees then due by the Developer, the Tract D Developer, Tract B Developer, and Tract C Developer to the City in connection with the development of the Property and the City shall have confirmed receipt of all such fees; and
 9. No Conviction for Undocumented Workers. The Developer and Tract D Developer shall not have been convicted by a court of competent jurisdiction of knowingly employing Undocumented Workers to work for the Developer, the Tract D Developer, or any other branch, division, or department of the Developer or Tract D Developer.
- B. Tract D Grant Additional Conditions Precedent. The Developer and the City hereby expressly acknowledge and agree that the payment of the Tract D Grant shall expressly be

conditioned upon the satisfaction of all of the General Conditions Precedent and the satisfaction of the following additional conditions precedent: (i) as of the date of the Payment Request submitted in connection with the Tract D Grant; and (ii) as of the date of payment of the Tract D Grant (the “**Tract D Grant Additional Conditions Precedent**”), to-wit:

1. Payment Request. The Developer shall have submitted to the City’s Finance Director at 757 N. Galloway, Mesquite, Texas 75149, a Payment Request for the payment of the Tract D Grant accompanied by a Certificate of Compliance dated effective as of the date of such Payment Request; and
2. Closing on Tract D. The sale by the City of Tract D to the Tract D Developer shall have closed and funded on or before the Tract D Closing Date and good funds in the amount of the Tract D Purchase Price shall have been paid to and received by the City; and
3. Performance Deed of Trust. The Tract D Developer shall have executed and delivered the Performance Deed of Trust to the City and the Tract D Title Company shall have committed to issue the Tract D Mortgagee’s Title Policy to the City insuring the lien created or described in the Performance Deed of Trust as a first and prior lien against Tract D.

C. First Option Tract Grant Additional Conditions Precedent. The Developer and the City hereby expressly acknowledge and agree that the payment of the First Option Tract Grant shall expressly be conditioned upon the satisfaction of all of the General Conditions Precedent and the satisfaction of the following additional conditions precedent: (i) as of the date of the Payment Request submitted in connection with the First Option Tract Grant; and (ii) as of the date of payment of the First Option Tract Grant (the “**First Option Tract Grant Additional Conditions Precedent**”), to-wit:

1. Payment Request. The Developer shall have submitted to the City’s Finance Director at 757 N. Galloway, Mesquite, Texas 75149, a Payment Request for the payment of the First Option Tract Grant accompanied by a Certificate of Compliance dated effective as of the date of such Payment Request; and
2. Timely Exercise of First Purchase Option. The Developer shall have timely exercised the First Purchase Option within the First Option Period; and
3. Conditions Precedent to First Purchase Option. All Conditions Precedent to the First Purchase Option shall have been timely satisfied; and
4. Closing on the First Option Tract. The sale and purchase of the First Option Tract shall have closed and funded on or before the Tract B Closing Date, if Tract B is the First Option Tract, or shall have closed and funded on or before the Tract C Closing Date, if Tract C is the First Option Tract, and good funds in the amount of the Tract B Purchase Price shall have been paid to and received by the City, if Tract B is the First Option Tract, or good funds in the amount of the Tract C Purchase

Price shall have been paid to and received by the City, if Tract C is the First Option Tract; and

5. Completion of Construction of the Common Public Improvements. Completion of Construction of the Common Public Improvements shall have occurred on or before the Common Public Improvements Completion Date; and
6. Construction of Building 1. (i) Commencement of Construction of Building 1 shall have occurred on or before the Building 1 Commencement Deadline Date; (ii) the Landscaping Requirements shall have been satisfied with respect to the Tract where Building 1 is being constructed; and (iii) if Building 1 is constructed by the Developer, the foundation of Building 1 shall have been completed, inspected, and approved in writing by the City or, if Building 1 is constructed by a Developer Subsidiary or a Third-Party Developer: (a) Completion of Construction of Building 1 shall have occurred on or before the Building 1 Completion Date; and (b) Building 1 shall have been constructed in compliance with the Plans and Specifications approved in writing by the City and in compliance with the PD, the Concept Plan, the Development Standards, the Architectural Standards, the CC&Rs and all City Regulations.

D. Second Option Tract Grant Additional Conditions Precedent. The Developer and the City hereby expressly acknowledge and agree that the payment of the Second Option Tract Grant shall expressly be conditioned upon the satisfaction of all of the General Conditions Precedent and the satisfaction of the following additional conditions precedent: (i) as of the date of the Payment Request submitted in connection with the Second Option Tract Grant; and (ii) as of the date of payment of the Second Option Tract Grant (the “**Second Option Tract Grant Additional Conditions Precedent**”), to-wit:

1. Payment Request. The Developer shall have submitted to the City’s Finance Director at 757 N. Galloway, Mesquite, Texas 75149, a Payment Request for the payment of the Second Option Tract Grant accompanied by a Certificate of Compliance dated effective as of the date of such Payment Request; and
2. Timely Exercise of First Purchase Option. The Developer shall have timely exercised the First Purchase Option within the First Option Period; and
3. Timely Exercise of Second Purchase Option. The Developer shall have timely exercised the Second Purchase Option within the Second Option Period; and
4. Conditions Precedent to Second Purchase Option. All Conditions Precedent to the Second Purchase Option shall have been timely satisfied; and
5. Closing on the Second Option Tract. The sale and purchase of the Second Option Tract shall have closed and funded on or before the Tract B Closing Date, if Tract B is the Second Option Tract, or shall have closed and funded on or before the Tract C Closing Date, if Tract C is the Second Option Tract, and good funds in the amount of the Tract B Purchase Price shall have been paid to and received by the City, if Tract B is the Second Option Tract, or good funds in the amount of the Tract C

Purchase Price shall have been paid to and received by the City, if Tract C is the Second Option Tract; and

6. Completion of Construction of the Common Public Improvements. Completion of Construction of the Common Public Improvements has occurred on or before the Common Public Improvements Completion Date; and
7. Completion of Construction of Building 1. (i) Commencement of Construction of Building 1 shall have occurred on or before the Building 1 Commencement Deadline Date; (ii) Completion of Construction of Building 1 shall have occurred on or before the Building 1 Completion Date; (iii) the Landscaping Requirements shall have been satisfied with respect to the Tract where Building 1 has been constructed; and (iv) Building 1 shall have been constructed in compliance with the Plans and Specifications approved in writing by the City, the PD, the Concept Plan, the Development Standards, the Architectural Standards, the CC&Rs and all City Regulations; and
8. Construction of Building 2. (i) Commencement of Construction of Building 2 shall have occurred on or before the Building 2 Commencement Deadline Date; (ii) the Landscaping Requirements shall have been satisfied with respect to the Tract where Building 2 is being constructed; and (iii) if Building 2 is constructed by the Developer, the foundation of Building 2 shall have been completed, inspected, and approved in writing by the City, or if Building 2 is constructed by a Developer Subsidiary or a Third-Party Developer: (a) Completion of Construction of Building 2 shall have occurred on or before the Building 2 Completion Date; and (b) Building 2 shall have been constructed in compliance with the Plans and Specifications approved in writing by the City and in compliance with the PD, the Concept Plan, the Development Standards, the Architectural Standards, the CC&Rs and all City Regulations.

E. Development Fee Grant Additional Conditions Precedent. The Developer and the City hereby expressly acknowledge and agree that the payment of the Development Fee Grant shall expressly be conditioned upon the satisfaction of all of the General Conditions Precedent and the satisfaction of the following additional conditions precedent: (i) as of the date of each Payment Request submitted in connection with the Development Fee Grant; and (ii) as of the date of each payment of the Development Fee Grant (the “**Development Fee Grant Additional Conditions Precedent**”), to-wit:

1. Payment Request. The Developer shall have submitted to the City’s Finance Director at 757 N. Galloway, Mesquite, Texas 75149, a Payment Request for the payment of all or any portion of the Development Fee Grant accompanied by a Certificate of Compliance dated effective as of the date of such Payment Request; and
2. Completion of Construction of the Common Public Improvements. Completion of Construction of the Common Public Improvements shall have occurred on or before the Common Public Improvements Completion Date; and

3. Construction of Improvements.

- (i) With respect to any portion of the Development Fee Grant relating to the development by the Developer or a Developer Subsidiary of Tract B, the Developer or Developer Subsidiary shall have Completed Construction of a Building on Tract B consisting of a minimum of 265,000 square feet; and
- (ii) With respect to any portion of the Development Fee Grant relating to the development by the Developer or a Developer Subsidiary of Tract C, the Developer or Developer Subsidiary shall have Completed Construction of a Building on Tract C consisting of a minimum of 300,000 square feet; and
- (iii) With respect to any portion of the Development Fee Grant relating to the development by the Developer or a Developer Subsidiary of Tract D, the Developer or Developer Subsidiary shall have Completed Construction of a Building on Tract D consisting of a minimum of 540,000 square feet,

Section 9.02 Tract D Grant.

A. Tract D Grant. Pursuant to the terms and subject to the conditions set forth in this Agreement including, without limitation, the timely satisfaction of the General Conditions Precedent and the Tract D Grant Additional Conditions Precedent, the City hereby approves an economic development grant to the Developer in the amount equal to the Tract D Purchase Price (the “**Tract D Grant**”). The City acknowledges that upon receipt of the Tract D Grant, Developer may utilize the same for costs and expenses related to infrastructure and other public improvements constructed within Tract D.

B. Payment of Tract D Grant. Provided all General Conditions Precedent and all Tract D Grant Additional Conditions Precedent have been satisfied and are continuing as of the date of the Payment Request submitted for the Tract D Grant and as of the date of payment of the Tract D Grant, the City will pay the Tract D Grant to the Developer from the Alcott Grant Account within thirty (30) days after consummation of the closing on Tract D and the receipt by the City of good funds equal to the Tract D Purchase Price.

Section 9.03 First Option Tract Grant.

A. First Option Tract Grant. Pursuant to the terms and subject to the conditions set forth in this Agreement including, without limitation, the timely satisfaction of the General Conditions Precedent and the First Option Tract Grant Additional Conditions Precedent, the City hereby approves an economic development grant to the Developer in the amount equal to the Tract B Purchase Price if Tract B is the First Option Tract, or the Tract C Purchase Price, if Tract C is the First Option Tract (the “**First Option Tract Grant**”). The City acknowledges that upon receipt of the First Option Tract Grant, Developer may utilize the same for costs and expenses related to infrastructure and other public improvements constructed within Tract B or Tract C, as applicable.

B. Payment of First Option Tract Grant. Provided all General Conditions Precedent and all First Option Tract Grant Additional Conditions Precedent have been satisfied and are continuing as of the date of the Payment Request submitted for the First Option Tract Grant and as of the date of the payment of the First Option Tract Grant, the City will pay the First Option Tract Grant to the Developer from the Alcott Grant Account within thirty (30) days after the later of the following: (i) the consummation of the closing on the First Option Tract and the receipt by the City of good funds equal to the Tract B Purchase Price if Tract B is the First Option Tract or equal to the Tract C Purchase Price if Tract C is the First Option Tract; (ii) the date Completion of Construction of the Common Public Improvements has timely occurred; and (iii) (a) if Building 1 is constructed by the Developer, the date the foundation of Building 1 has been completed, inspected and approved by the City in writing; or (b) if Building 1 is constructed by a Developer Subsidiary or a Third-Party Developer, the date Completion of Construction of Building 1 has timely occurred.

Section 9.04 Second Option Tract Grant.

A. Second Option Tract Grant. Pursuant to the terms and subject to the conditions set forth in this Agreement including, without limitation, the timely satisfaction of the General Conditions Precedent and the Second Option Tract Grant Additional Conditions Precedent, the City hereby approves an economic development grant to the Developer in the amount equal to the Tract B Purchase Price if Tract B is the Second Option Tract, or the Tract C Purchase Price if Tract C is the Second Option Tract (the “**Second Option Tract Grant**”). The City acknowledges that upon receipt of the Second Option Tract Grant, Developer may utilize the same for costs and expenses related to infrastructure and other public improvements constructed within Tract B or Tract C, as applicable.

B. Payment of Second Option Tract Grant. Provided all General Conditions Precedent and all Second Option Tract Grant Additional Conditions Precedent have been satisfied and are continuing as of the date of the Payment Request submitted for the Second Option Tract Grant and as of the date of the payment of the Second Option Tract Grant, the City will pay the Second Option Tract Grant to the Developer from the Alcott Grant Account within thirty (30) days after the later of the following: (i) the consummation of the closing on the Second Option Tract and the receipt by the City of good funds equal to the Tract B Purchase Price if Tract B is the Second Option Tract or equal to the Tract C Purchase Price if Tract C is the Second Option Tract; (ii) the date Completion of Construction of the Common Public Improvements has timely occurred; (iii) the date Completion of Construction of Building 1 timely occurs; and (iv) (a) if Building 2 is constructed by the Developer, the date the foundation of Building 2 has been completed, inspected and approved by the City in writing; or (b) if Building 2 is constructed by a Developer Subsidiary or a Third-Party Developer, the date Completion of Construction of Building 2 has timely occurred.

Section 9.05 Release of Funds from Alcott Grant Account. Upon the occurrence of a Developer Default under the terms of this Agreement and/or in the event the Tract D Developer is in default under the terms of the TIRZ Reimbursement Agreement beyond any applicable cure period provided to the Tract D Developer under the terms of the TIRZ Reimbursement Agreement, any funds then remaining in the Alcott Grant Account shall be immediately released from such account and shall be deposited into the City’s general fund and shall no longer be available, set

aside or designated for payment of the Tract D Grant, the First Option Tract Grant and the Second Option Tract Grant and the City shall have the right to use such funds for all lawful purposes. In the event of a conflict between the terms and provisions of this Section 9.05 and the terms and provisions of any other Section in this Agreement, this Section 9.05 shall control. This Section 9.05 shall expressly survive the expiration or termination of this Agreement.

Section 9.06 Development Fee Grant.

- A. Development Fee Grant. Subject to the annual appropriation of funds and pursuant to the terms and subject to the conditions and limitations set forth in this Agreement including, without limitation, the timely satisfaction of the General Conditions Precedent and the Development Fee Grant Additional Conditions Precedent, the City hereby approves an economic development grant to the Developer calculated by the amount of Development Fees paid by the Developer or a Developer Subsidiary to the City in connection with the development of Tract B, Tract C, and Tract D provided, however, notwithstanding the foregoing, the Parties specifically agree that the amount of the Development Fee Grant shall be calculated based only on Development Fees actually paid by the Developer or a Developer Subsidiary to the City in connection with the development of Tract B, Tract C, and Tract D and shall not include any Development Fees paid by any Third-Party Developer in connection with the development of any portion of the Property (the “**Development Fee Grant**”). The City acknowledges that upon receipt of the Development Fee Grant for Tract B, Tract C and/or Tract D, Developer may utilize the same for costs and expenses related to infrastructure and other public improvements constructed within Tract B, Tract C and/or Tract D, as applicable.
- B. Payment of Development Fee Grant. Subject to the annual appropriation of funds and provided all General Conditions Precedent and all Development Fee Grant Additional Conditions Precedent have been satisfied and are continuing: (i) as of the date of each Payment Request submitted for the payment of all or any portion of the Development Fee Grant; and (ii) as of the date of the payment of all or any portion of the Development Fee Grant, the City will pay the Development Fee Grant to the Developer as follows:
1. Tract B. If the Developer or a Developer Subsidiary develops Tract B, the portion of the Development Fee Grant calculated based on Development Fees paid by the Developer or Developer Subsidiary to the City for the development of Tract B shall be paid by the City to the Developer within thirty (30) days after the Developer or Developer Subsidiary has Completed Construction of a Building consisting of a minimum of 265,000 square feet on Tract B; and
 2. Tract C. If the Developer or a Developer Subsidiary develops Tract C, the portion of the Development Fee Grant calculated based on Development Fees paid by the Developer or Developer Subsidiary to the City for the development of Tract C shall be paid by the City to the Developer or Developer Subsidiary within thirty (30) days after the Developer or Developer Subsidiary has Completed Construction of a Building consisting of a minimum of 300,000 square feet on Tract C; and

3. Tract D. If the Developer or a Developer Subsidiary develops Tract D, the portion of the Development Fee Grant calculated based on Development Fees paid by the Developer or Developer Subsidiary to the City for the development of Tract D shall be paid by the City to the Developer or Developer Subsidiary within thirty (30) days after the Developer or Developer Subsidiary has Completed Construction of a Building consisting of a minimum of 540,000 square feet on Tract D.

Section 9.07 Funds Available for Payment of Economic Development Incentives. The Economic Development Incentives payable by the City to the Developer 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. The Economic Development Incentives including, without limitation, the Development Fee Grant are not payable from the Roadway Impact Fees or the Water and Sewer Impact Fees paid by the Developer, the Tract D Developer or any other Developer Subsidiary. The Economic Development Incentives payable hereunder shall be paid only from funds of the City authorized by Article III, Section 52-a, of the Texas Constitution, the Texas Local Government Code and the TIRZ Act. The Parties agree no other source of funds of the City is subject to the payment of the Economic Development Incentives. The Economic Development Incentives are subject to the City's appropriation of funds for such purpose to be paid in the budget year for which each payment of the Economic Development Incentives is to be paid. In the event of any conflict between the terms and provisions of this Section 9.07 and any other term or provision of this Agreement, the terms and provisions of this Section 9.07 shall control. This Section 9.07 shall expressly survive the expiration or termination of this Agreement.

ARTICLE X

DEVELOPMENT CHARGES; IMPACT FEES

Section 10.01 Plat Review Fees. The development of the Property shall be subject to payment to the City of the reasonable fees and charges applicable to the City's preliminary and final plat review and approval process according to the fee schedule adopted by the City Council and in effect at the time of platting. Such fees shall be paid at the time and in the manner required by City Regulations.

Section 10.02 Plan Review and Permit Fees. The development of the Property shall be subject to payment to the City of the reasonable fees and charges applicable to the City's review of plans and specifications and issuance of permits (including building permits) according to the fee schedule adopted by the City Council at the time of plan review and permit issuance. Such fees shall be paid at the time and in the manner required by City Regulations.

Section 10.03 Inspection Fees. The development of the Property shall be subject to the payment to the City of reasonable inspection fees according to the fee schedule adopted by the City Council at the time of inspection.

Section 10.04 Other Development Fees and Charges. The development of the Property shall be subject to the payment to the City of all other reasonable development fees and charges adopted by the City Council according to the fee schedule at the time of the development of all or

any portion of the Property. Such fees and charges shall be paid at the time and in the manner required by the City Regulations.

Section 10.05 Roadway, Water and Sewer Impact Fees. The development of the Property shall be subject to Roadway Impact Fees and Water and Sewer Impact Fees in effect pursuant to City Regulations at the time of development of all or any portion of the Property and shall be paid at the time and in the manner required by Texas Local Government Code Chapter 395 and the City Regulations.

ARTICLE XI

CONSTRUCTION OF PUBLIC IMPROVEMENTS

Section 11.01 Construction of the Public Improvements.

- A. The Tract D Developer shall submit, or shall cause the Developer to submit, the design and construction plans for the park and trail system to be constructed as part of the Common Public Improvements, including a landscape plan for the park and trail system, to the City Manager and receive approval of such plans by the City Manager, in the City Manager's sole discretion, in writing prior to Commencement of Construction of the Common Public Improvements. Compliance with this Section 11.01(A) prior to Commencement of Construction of the Common Public Improvements is a condition precedent to any reimbursement under the TIRZ Reimbursement Agreement for any costs related to the construction of the park and trail system to be constructed as part of the Common Public Improvements.
- B. The realignment of East Glen Boulevard shall consist of a four lane divided roadway substantially equivalent to or exceeding the width and design of the existing East Glen Boulevard and shall be subject to and shall meet all City Regulations including, without limitation, all City engineering standards. Tract D Developer shall submit, or shall cause the Developer to submit, the design and construction plans for the realignment of East Glen Boulevard to be constructed as part of the Common Public Improvements to the City Manager and receive approval of such plans by the City Manager, in the City Manager's sole discretion, in writing prior to Commencement of Construction of the Common Public Improvements. The construction of the new East Glen Boulevard shall also be subject to the approval of Plans and Specifications for the construction of such road which have been approved in writing by the City. Compliance with this Section 11.01(B) prior to Commencement of Construction of the Common Public Improvements is a condition precedent to any reimbursement under the TIRZ Reimbursement Agreement for any costs related to the realignment of East Glen Boulevard to be constructed as part of the Common Public Improvements.
- C. Prior to construction of any Public Improvements, Developer, the Tract D Developer, and any Developer Subsidiary constructing all or any part of the Specific Public Improvements, shall make, or cause to be made, application for any necessary permits and approvals required by the City and any other applicable Governmental Authorities to be issued for the construction of the Public Improvements to be constructed and shall obligate each

general contractor, architect, and consultants performing work in connection with such Public Improvements to obtain all applicable permits, licenses or approvals as required by Applicable Law. The Developer, the Tract D Developer, and any Developer Subsidiary constructing all or any part of the Specific Public Improvements, shall require or cause the design, inspection, and supervision of the construction of the Public Improvements to be undertaken in accordance with all City Regulations.

- D. The Developer, the Tract D Developer, and any Developer Subsidiary constructing all or any part of the Specific Public Improvements, shall design and construct or cause the design and construction of the Public Improvements, together with and including the acquisition, at its sole cost, of any and all easements or fee simple title to land necessary to provide for and accommodate the Public Improvements that are not to be constructed on land owned by the City. City acknowledges and agrees that the Developer shall have no obligation to obtain additional property or right of way for the park and trail system that are part of the Common Public Improvements shown on the Concept Plan except for easements or rights of way necessary to provide for and accommodate the trail system to be constructed as part of the Common Public Improvements on Tract B, Tract C and Tract D.
- E. Developer, Tract D Developer, and any Developer Subsidiary constructing all or any part of the Specific Public Improvements shall comply, and shall cause Developer's, Tract D Developer's and such other Developer Subsidiary's contractors to comply, with all local and state laws and regulations regarding the design and construction of the Public Improvements including, but not limited to, the requirement for payment, performance and two-year maintenance bonds for the Public Improvements.
- F. Upon Completion of Construction of the Common Public Improvements, Developer and Tract D Developer shall provide the City with a final cost summary of all Common Public Improvements Project Costs incurred and paid in connection with the construction of the Common Public Improvements and provide proof that all amounts owing to contractors and subcontractors have been paid in full evidenced by "all bills paid" affidavits executed by Developer, Tract D Developer and/or their contractors with regard to the Common Public Improvements. Evidence of payment to contractors and subcontractors shall be provided prior to the payment or reimbursement of the costs of any portion of the Common Public Improvements pursuant to any TIRZ Reimbursement Agreement.
- G. Upon completion of construction of the Specific Public Improvements, Developer shall provide, or shall cause the Developer Subsidiary that constructed the Specific Public Improvements to provide, the City with a final cost summary of all Specific Public Improvements Project Costs incurred and paid in connection with the construction of the Specific Public Improvements and provide proof that all amounts owing to contractors and subcontractors have been paid in full evidenced by "all bills paid" affidavits executed by Developer and the Developer Subsidiary that constructed the Specific Public Improvements and/or their contractors with regard to the Specific Public Improvements. Evidence of payment to contractors and subcontractors shall be provided prior to the payment or reimbursement of the costs of any portion of the Specific Public Improvements pursuant to any TIRZ reimbursement agreement.

- H. Prior to Commencement of Construction of the Common Public Improvements, and prior to commencing construction of any Specific Public Improvements, Developer, the Tract D Developer, and any Developer Subsidiary constructing all or any part of the Specific Public Improvements, respectively, shall cause the contractors and subcontractors performing work in connection with the construction of such Public Improvements to purchase and maintain payment, performance and two-year maintenance bonds (singularly a “**Bond**” and collectively the “**Bonds**”) in the penal sum of 100% of the amount set forth in each Construction Contract for the Public Improvements. The Bonds shall be written on forms approved for use by the City and satisfactory to the City Attorney. The Bonds are to be provided by a surety duly authorized to conduct insurance business in Texas and licensed to issue surety bonds in Texas. The Bonds and the sureties through which the Bonds are issued shall comply with and shall satisfy all requirements of Chapter 2253 of the Texas Government Code and Chapter 3503 of the Texas Insurance Code. Should it appear to the City that, at any time during the existence of this Agreement, the surety on the Bonds has become insolvent, bankrupt, or otherwise financially unable to perform its obligations under the Bonds, the City may demand that the Developer, the Tract D Developer, and any Developer Subsidiary constructing all or any part of the Specific Public Improvements, respectively, furnish additional or substitute surety through an approved surety company that meets the requirements set forth in this Section 11.01(H); the act of the City with reference to demanding additional or substitute surety shall never be construed to relieve the original surety of its obligations under the Bonds. The Bonds issued with respect to the construction of the Common Public Improvements shall be delivered to the City prior to the Commencement of Construction of the Common Public Improvements. Bonds issued with respect to the construction of the Specific Public Improvements shall be delivered to the City prior to commencing construction of the Specific Public Improvements.
- I. Unless otherwise approved in writing by the City: (i) all Common Public Improvements shall be constructed and dedicated to the City in accordance with Applicable Law; and (ii) if the TIRZ Board and the City Council approve an amendment to the TIRZ Project and Financing Plan and the TIRZ Reimbursement Agreement or enter into a separate agreement for the reimbursement to the Developer or any Developer Subsidiary of all or a portion of Specific Public Improvements Project Costs pursuant to the Developer’s request as more fully set forth in Section 12.04 of this Agreement, the City shall designate in writing which of the Specific Public Improvements, if any, are to be dedicated to and owned by the City in which event the Developer or Developer Subsidiary undertaking the construction of the Specific Public Improvements shall dedicate to the City the portion of the Specific Public Improvements as the City agrees to accept in writing.
- J. The Developer shall dedicate or convey, and shall cause each Developer Subsidiary undertaking the construction of all or any part of the Public Improvements and all Development Entities that own all or any part of the Property where the Public Improvements are located to dedicate or convey, by final plat or separate instrument, without cost to the City and in accordance with Applicable Law, the rights-of-way and easements necessary for the construction, operation, and maintenance of the road, water, drainage, sewer, trails, and other Public Improvements constructed by Developer or Developer Subsidiary at the completion of construction of such Public Improvements and

upon acceptance by the City. The Tract D Developer shall dedicate or convey, by final plat or separate instrument, without cost to the City and in accordance with Applicable Law, the rights-of-way and easements necessary for the construction, operation, and maintenance of the road, water, drainage, sewer, trails, and other Common Public Improvements constructed by the Tract D Developer at the completion of construction of such Common Public Improvements and upon acceptance by the City.

- K. It is understood and agreed by and among the Parties that the Developer, Tract D Developer, and any Developer Subsidiary that constructs the Specific Public Improvements is acting independently in the design, construction and development of the Public Improvements and the City assumes no responsibility or liability to any third parties in connection with the Developer's, the Tract D Developer's, or any Developer Subsidiary's obligations with respect to the design and construction and development of the Public Improvements.

Section 11.02 Construction Contracts.

- A. The Construction Contracts for the Common Public Improvements shall be let in the name of the Tract D Developer, or in the name of the Developer if the Tract D Developer and the Developer enter into an agreement for the Developer to construct the Common Public Improvements for and on behalf of the Tract D Developer. The Construction Contracts for the Specific Public Improvements shall be let in the name of the Developer or the Developer Subsidiary undertaking the construction of the Specific Public Improvements. The Developer's, Tract D Developer's, or such other Developer Subsidiary's engineers shall prepare, or cause the preparation of, and provide all contract specifications and necessary related documents. The Developer, Tract D Developer, or other Developer Subsidiary constructing all or any part of the Public Improvements, shall provide all construction documents for the Public Improvements and shall acknowledge that the City has no obligations and liabilities thereunder. The Developer and Tract D Developer shall include a provision in the construction documents for the Common Public Improvements, and the Developer shall cause any Developer Subsidiary undertaking the construction of all or any part of the Public Improvements to include a provision in the construction documents for the Public Improvements that the contractor will indemnify the City and the City Related Parties against any costs or liabilities thereunder. The Tract D Developer shall administer the Construction Contracts relating to the Common Public Improvements or shall cause the Developer to administer the Construction Contracts relating to the Common Public Improvements on behalf of the Tract D Developer. The Developer or the Developer Subsidiary constructing all or any part of the Specific Public Improvements shall administer the Construction Contracts relating to the Specific Public Improvements.
- B. The Tract D Developer shall pay, or cause to be paid, the Common Public Improvements Project Costs and provided the TIRZ Board and the City Council approve the TIRZ Reimbursement Agreement, all or a portion of such costs shall be eligible for reimbursement to the Tract D Developer pursuant to the terms and conditions of this Agreement and the TIRZ Reimbursement Agreement. The Developer will pay the Common Public Improvements Project Costs in the event the Tract D Developer fails to pay, or cause to be paid, the Common Public Improvements Project Costs.

- C. The Specific Public Improvements Project Costs shall be paid by the Developer, or caused to be paid by the Developer or a Developer Subsidiary and, if the TIRZ Board and the City Council approve an amendment to the TIRZ Project Plan and the TIRZ Reimbursement Agreement or enter into a separate agreement for the reimbursement to the Developer or a Developer Subsidiary of all or a portion of the Specific Public Improvements Project Costs pursuant to the Developer's request as more fully set forth in Section 12.04 of this Agreement, all or a portion of such costs may be eligible for reimbursement to the Developer or a Developer Subsidiary undertaking the construction of the Specific Public Improvements pursuant to the terms and conditions of such amendment to the TIRZ Project and Financing Plan and the TIRZ Reimbursement Agreement or pursuant to a separate TIRZ reimbursement agreement approved by the TIRZ Board and the City Council.
- D. The following requirements apply to Construction Contracts for the Public Improvements:
1. All Plans and Specifications for the Public Improvements shall comply with all Applicable Law and shall be subject to the review and approval of the City prior to the issuance of any permits; and
 2. Each Construction Contract shall provide that the contractor is an independent contractor, independent of and not the agent of the City and that the contractor is responsible for retaining, and shall retain, the services of necessary and appropriate architects and engineers; and
 3. Each Construction Contract shall provide that the contractor shall indemnify the City and the City Related Parties for any costs or liabilities thereunder and for the negligent acts or omissions of the contractor and the contractor's agents and employees.
- E. The City shall have no responsibility for the costs of planning, design, engineering construction, furnishing and/or equipping the Public Improvements except to the extent of the reimbursement of any of such costs pursuant to any TIRZ Reimbursement Agreement hereafter approved by the TIRZ Board and the City Council. The Developer and the Tract D Developer will not hold, and the Developer will cause all Development Entities to agree not to hold, the City responsible for any costs of the Public Improvements other than the reimbursements, if any, pursuant to any TIRZ reimbursement agreements approved by the TIRZ Board and the City Council. The City shall have no liability for any claims that may arise out of design or construction of the Public Improvements, and the Developer shall cause all Development Entities and their contractors, architects, engineers, and consultants to agree in writing that they will look solely to the Developer, the Tract D Developer and any other Developer Subsidiary that constructs all or any part of the Public Improvements, not to the City, for payment of all costs and claims associated with construction of the Public Improvements.

Section 11.03 Project Scope Verification.

The Developer and the Tract D Developer will from time to time, as reasonably requested by the City Representative, verify to the City Representative, and Developer will cause the Developer Subsidiary undertaking the construction of the Public Improvements to verify to the City Representative, that the Public Improvements are being constructed substantially in accordance with the Plans and Specifications approved by the City. To the extent the City has concerns about such verification that cannot be answered by the Developer, Tract D Developer, or such other Developer Subsidiary to the City's reasonable satisfaction, the Developer, Tract D Developer and such other Developer Subsidiary will cause the appropriate architect, engineer or general contractor to consult with the Developer, Tract D Developer, such other Developer Subsidiary and the City regarding such concerns.

Section 11.04 Joint Cooperation; Access for Planning and Development.

During the planning, design, development and construction of the Public Improvements, the Parties agree to cooperate and coordinate with each other, and to assign appropriate, qualified personnel to this Project. To facilitate a timely review process: (i) the Developer and the Tract D Developer shall use commercially reasonable efforts to cause their architects, engineers, and other design professionals to attend City meetings if requested by the City; and (ii) the Developer shall use commercially reasonable efforts to cause any Developer Subsidiary undertaking the construction of the Specific Public Improvements to cause its architect, engineer, and other design professionals to attend City meetings if requested by the City.

Section 11.05 City Not Responsible.

By performing the functions described in this Article XI, the City shall not, and shall not be deemed to, assume the obligations or responsibilities of the Developer, the Tract D Developer, any Developer Subsidiary that undertakes the construction of the Specific Public Improvements, or any Development Entity, whose obligations under this Agreement and under Applicable Law shall not be affected by the City's exercise of the functions described in this Article XI. The City's review of any Plans and Specifications is solely for the City's own purposes, and the City does not make any representation or warranty concerning the appropriateness of any such Plans and Specifications for any purpose. The City's approval of (or failure to disapprove) any such Plans and Specifications, including any plans submitted with such Plans and Specifications and any revisions thereto, shall not render the City liable for same, and the Developer, Tract D Developer, any Developer Subsidiary that undertakes the construction of the Specific Public Improvements, and other Development Entity assumes and shall be responsible for any and all claims arising out of or from the use of such Plans and Specifications.

Section 11.06 Construction Standards and Inspection.

The Public Improvements will be installed on City owned property or within the public right-of-way or in easements granted to the City. Such easements on any portion of the property owned by the Developer and the Tract D Developer may be granted at the time of final platting in the final plat or by separate instrument. If any easements are necessary in connection with the Common Public Improvements, such easements on any portion of the property owned by a

Developer Subsidiary, Development Entity, or any other Person, shall be obtained by the Developer and the Tract D Developer, at their sole cost and expense and shall be delivered to the City prior to the Commencement of Construction of the Common Public Improvements by separate instrument in recordable form acceptable to the City. If any easements are necessary in connection with the Specific Public Improvements, such easements on any portion of the property owned by a Developer Subsidiary, Development Entity, or any other Person, shall be obtained by the Developer or the Developer Subsidiary undertaking the construction of the Specific Public Improvements at their sole cost and expense and shall be delivered to the City prior to commencing construction of the Specific Public Improvements by separate instrument in recordable form acceptable to the City. The Public Improvements shall be constructed and inspected in accordance with applicable state law, City ordinances, building codes, and all other applicable development requirements, including those imposed by any other governing body or entity with jurisdiction over the Public Improvements.

Section 11.07 Public Improvements to be Owned by the City – Title Evidence.

The Developer and the Tract D Developer shall furnish to the City, and the Developer shall cause the Developer Subsidiary undertaking the construction of the Specific Public Improvements to furnish to the City, a preliminary title report for land with respect to the Public Improvements, including any related rights-of-way, easements, and open spaces if any, to be acquired and accepted by the City from the Developer, Tract D Developer, or Developer Subsidiary undertaking the construction of the Specific Public Improvements and not previously dedicated or otherwise conveyed to the City, for review and approval at least thirty (30) calendar days prior to the transfer of title of any Public Improvements to the City, provided, however, that the preliminary title report and any transfer of title of any Public Improvements to the City shall be subject to the approval of the City Representative. The City Representative shall approve the preliminary title report unless it reveals a matter which, in the reasonable judgment of the City, could materially affect the City's use and enjoyment of any part of the property or easement covered by the preliminary title report. In the event the City Representative does not approve the preliminary title report, the City shall not be obligated to accept title to the Public Improvements until the Developer, the Tract D Developer, or the Developer Subsidiary undertaking the construction of the Specific Public Improvements, have cured such objections to title to the satisfaction of the City Representative.

Section 11.08 Common Public Improvements Constructed on the Property.

If any Common Public Improvements are to be constructed on land owned by the City, the City hereby grants to the Developer and the Tract D Developer, for use and benefit of the Developer and Tract D Developer, a temporary easement to enter upon such land for purposes related to construction (and maintenance pending acquisition and acceptance) of such Common Public Improvements. If the Common Public Improvements are constructed on land owned by the Developer or a Developer Subsidiary, the Developer shall dedicate or cause such Developer Subsidiary to dedicate easements by plat or shall execute and deliver to the City or shall cause such Developer Subsidiary to execute and deliver to the City such access and maintenance easements as the City may reasonably require in recordable form, and the Developer hereby grants to the City a permanent access and maintenance easement to enter upon such land for purposes related to inspection and maintenance of such Common Public Improvements. If the Common Public Improvements are constructed on land owned by the Tract D Developer, the Tract D

Developer shall dedicate easements by plat or shall execute and deliver to the City such access and maintenance easements as the City may reasonably require in recordable form, and the Tract D Developer hereby grants to the City a permanent access and maintenance easement to enter upon Tract D for purposes related to inspection and maintenance of such Common Public Improvements. If the Common Public Improvements are constructed on land owned by a Development Entity, the Developer and Tract D Developer shall obtain and deliver to the City at Developer's and Tract D Developer's sole cost and expense, and prior to the Commencement of Construction of the Common Public Improvements, such permanent access and maintenance easements to enter upon such land for purposes related to inspection and maintenance of such Common Public Improvements as the City may reasonably require in recordable form containing such terms and provisions as are acceptable to the City. The grant of the permanent easements shall not relieve the Developer or the Tract D Developer of any obligation to grant the City title to property and/or easements related to the Common Public Improvements or to cause any Development Entity to grant the City easements related to the Common Public Improvements as required by this Agreement or as should in the City's reasonable judgment be granted to provide for convenient access to and routine and emergency maintenance of such Common Public Improvements. The provisions for inspection and acceptance of such Common Public Improvements otherwise provided herein shall apply.

Section 11.09 Ownership of Public Improvements. All Public Improvements shall be constructed within the public rights-of-way or within property owned by the City or dedicated to the City in fee or within public easements. All public roadway, water and wastewater infrastructure improvements located within a public street, alley, easement, fee or other right-of-way belonging to the City shall become the sole property of the City upon completion of each improvement in accordance with the Plans and Specifications approved by the City and acceptance of the infrastructure improvements by the City in writing. Upon final acceptance by the City in writing, the City shall take the public infrastructure improvements free from any liens or encumbrances thereon.

Section 11.10 Additional Requirements. In connection with the design and construction of the Public Improvements, the Developer and Tract D Developer shall take or cause the following entities or persons to take the following actions and to undertake the following responsibilities:

- A. The Developer, Tract D Developer, and any Developer Subsidiary undertaking the construction of the Specific Public Improvements, shall provide to the City copies (both hard copy and electronic format, to the extent the Developer, the Tract D Developer or such Developer Subsidiary has both formats), of the Plans and Specifications for the Public Improvements (including revisions) as such Plans and Specifications are currently in existence and as completed after the date hereof and shall provide the City one complete set of record drawings (hard copy and electronic format, to the extent the Developer, Tract D Developer, or such Developer Subsidiary has both formats) for the Public Improvements, in accordance with Applicable Law; and
- B. In accordance with the requirements between the Developer, the Tract D Developer, and the City with regard to the development and construction of the Public Improvements, the Developer, the Tract D Developer, or such person selected by and contracting with the

Developer or Tract D Developer, shall provide the City with a copy of the detailed construction schedule outlining the major items of work of each major construction contractor, and any revisions to such schedule; and

- C. The Developer and Tract D Developer shall provide, and the Developer shall provide or cause the Developer Subsidiary undertaking the construction of the Specific Public Improvements to provide, construction documents, including the Plans and Specifications to the City, signed and sealed by one or more registered professional architects or engineers licensed in the State of Texas at the time the construction documents are submitted to the City for approval; and
- D. The Developer and Tract D Developer shall provide, and the Developer shall provide or shall cause the Developer Subsidiary undertaking the construction of the Specific Public Improvements to provide, the City with reasonable advance notice of any regularly-scheduled construction meetings regarding the Public Improvements, and shall permit the City to attend and observe such meetings as the City so chooses in order to monitor the Project, and shall provide the City with copies of any construction schedules as are discussed and reviewed at any such regularly-scheduled construction meeting; and
- E. The Developer and Tract D Developer shall comply with and shall cause all contractors constructing the Common Public Improvements, and such contractor's agents and subcontractors, to comply with all Environmental Laws. The Developer shall comply with, and shall cause the Developer Subsidiary undertaking the construction of the Specific Public Improvements, to cause its contractor's, and such contractor's agents and subcontractors, to comply with all Environmental Laws; and
- F. The Developer, the Tract D Developer, and the Developer Subsidiary undertaking the construction of the Specific Public Improvements, or any general contractor shall notify and obtain the City's approval for all field changes that directly result in material changes to the portion of the Plans and Specifications for the Public Improvements that describe the connection of such improvements with City streets, storm sewers and utilities; and
- G. Upon notice from the City, the Developer and the Tract D Developer shall promptly repair, restore or correct, or shall cause the general contractor constructing all or any portion of the Common Public Improvements, to promptly repair, restore or correct, on a commercially reasonable basis, all damage caused by the general contractor or its subcontractors to property or facilities of the City during construction of the Common Public Improvements and to reimburse the City for out-of-pocket costs actually incurred by the City that are directly related to the City's necessary emergency repairs of such damage; and
- H. Upon notice from the City, the Developer and the Developer Subsidiary constructing all or any portion of the Specific Public Improvements shall promptly repair, restore or correct, or shall cause the general contractor constructing all or any portion of the Specific Public Improvements, to promptly repair, restore or correct, on a commercially reasonable basis, all damage caused by the general contractor or its subcontractors to property or facilities of the City during construction of the Specific Public Improvements and to reimburse the

City for out-of-pocket costs actually incurred by the City that are directly related to the City's necessary emergency repairs of such damage; and

- I. Upon notice from the City, the Developer and the Tract D Developer shall promptly cause the correction of defective work relating to the Common Public Improvements and shall cause such work to be corrected in accordance with the Construction Contracts for the Common Public Improvements; and
- J. Upon notice from the City, the Developer shall cause, or shall cause the Developer Subsidiary undertaking construction of the Specific Public Improvements to cause, the correction of defective work relating to the Specific Public Improvements and shall cause such work to be corrected in accordance with the Construction Contracts for the Specific Public Improvements; and
- K. If the Developer, the Tract D Developer, or the Developer Subsidiary undertaking the construction of the Specific Public Improvements performs any soils, construction and materials testing during construction of the Public Improvements, the Developer, the Tract D Developer and such Developer Subsidiary shall make available to the City copies of the results of all such tests; and
- L. If any of the foregoing entities or persons shall fail in a material respect to perform any of its obligations described above (or elsewhere under this Agreement), the Developer shall use commercially reasonable efforts to enforce such obligations against such entities or persons; and
- M. The Developer and the Tract D Developer shall provide to the City any other information, documentation, or services required by the City Regulations or this Agreement and the Developer shall cause the Developer Subsidiary undertaking the construction of the Specific Public Improvements to provide to the City any other information, documentation, or services required by the City Regulations or this Agreement; and
- N. The Developer and the Tract D Developer shall allow and the Developer shall cause the Developer Subsidiary undertaking the construction of the Specific Public Improvements to allow, the City Representative to conduct a reasonable pre-final and final inspection of the Public Improvements. Upon acceptance by the City of the Public Improvements, the City shall become responsible for the maintenance of the Public Improvements, subject to any applicable maintenance bond period.

Section 11.11. City Police Powers.

The Developer and the Tract D Developer recognize the authority of the City under its charter and ordinances to exercise its police powers in accordance with Applicable Law to protect the public health, safety, and welfare. The City retains its police powers over the Developer's, the Tract D Developer's, all other Developer Subsidiary's, and their general contractor's construction activities on or at the Property, and the Developer and the Tract D Developer recognize the City's authority to take appropriate enforcement action in accordance with Applicable Law to provide such protection. Whenever, in the City's judgment such action is required, the City shall immediately notify the Developer and Tract D Developer to resolve the situation. No lawful action

taken by the City pursuant to these police powers shall subject the City to any liability under this Agreement, including without limitation liability for costs incurred by any general contractor, the Tract D Developer, any other Developer Subsidiary, or the Developer, and as between the Developer, the Tract D Developer, all other Developer Subsidiaries, and the City, any such costs shall be the sole responsibility of the Developer, the Tract D Developer and any of their general contractors.

Section 11.12 Title and Mechanic's Liens.

- A. Title. The Developer and Tract D Developer agree that the Public Improvements shall not have a lien or cloud on title upon their dedication to and acceptance by the City.
- B. Mechanic's Liens. Developer and Tract D Developer shall not create nor allow or permit any liens, encumbrances, or charges of any kind whatsoever against the Common Public Improvements arising from any work performed by any contractor by or on behalf of the Developer or the Tract D Developer. The Developer and Tract D Developer agree that the Developer and Tract D Developer will not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Common Public Improvements for work or materials furnished to the Developer or the Tract D Developer in connection with any construction, improvements, renovation, maintenance or repair thereof made by the Developer, the Tract D Developer or any contractor, agent or representative of the Developer or Tract D Developer. The Developer and Tract D Developer shall cause any such claim of lien to be fully discharged no later than thirty (30) days after the Developer's or Tract D Developer's receipt of written notice of the filing thereof. Developer shall not create nor allow or permit any liens, encumbrances, or charges of any kind whatsoever against the Specific Public Improvements arising from any work performed by any contractor by or on behalf of the Developer or the Developer Subsidiary undertaking the construction of the Specific Public Improvements. The Developer agrees that the Developer will not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Specific Public Improvements for work or materials furnished to the Developer or any Developer Subsidiary in connection with any construction, improvements, renovation, maintenance or repair thereof made by the Developer, any Developer Subsidiary or any contractor, agent or representative of the Developer or any Developer Subsidiary. The Developer shall cause any such claim of lien to be fully discharged no later than thirty (30) days after the Developer's receipt of written notice of the filing thereof.

Section 11.13 Right of the City to Make Inspection.

- A. At any time, the City shall have the right to enter the Property for the purpose of inspecting the progress of construction of the Public Improvements; provided, however, that the City Representative shall comply with reasonable restrictions generally applicable to all visitors to any portion of the Property that is owned by Developer or the Tract D Developer and that are imposed by the Developer, the Tract D Developer, or their general contractor or subcontractors.

- B. Inspection of the construction of all Public Improvements shall be by the City Representative or his/her designee and third-party inspectors chosen by the City. The Developer and the Tract D Developer shall pay the City's costs for the retention of a third-party inspector for inspections of the Common Public Improvements. The Developer shall pay the City's costs for the retention of a third-party inspector for inspections of the Specific Public Improvements.
- C. City may enter the Property in accordance with customary City procedures to make any repairs or perform any maintenance of Public Improvements which the City has accepted for maintenance. If the Developer or Tract D Developer are in default under this Agreement beyond any applicable cure period or in the event of an emergency which is not being timely addressed, the City may enter the Property to make any repairs to the Public Improvements that have not been accepted for maintenance by the City, of every kind or nature, which the Developer or Tract D Developer are obligated under this Agreement to repair or maintain but which the Developer or Tract D Developer have failed to perform after reasonable notice (other than in the case of an emergency in which notice is impossible or impractical). The Developer and Tract D Developer shall be obligated to reimburse the City the reasonable costs incurred by the City for any such repairs. Nothing contained in this paragraph shall be deemed to impose on the City any obligation to make repairs or alterations on behalf of the Developer or Tract D Developer.
- D. City Inspections. The Developer and Tract D Developer acknowledge and agree that all inspections of the Common Public Improvements conducted by the City, the City's agents, representatives, employees, engineers and/or independent contractors, shall be for the sole benefit and protection of the City and shall not be for the benefit or protection of the Developer, the Tract D Developer, or any other Person. The Developer and the Tract D Developer acknowledge that the Developer, the Tract D Developer, or their duly authorized agents, will make their own inspections of the Common Public Improvements and that the Developer and the Tract D Developer will not rely on any inspections made by the City, the City's agents, representatives, employees, engineers and/or independent contractors. The Developer acknowledges and agrees that all inspections of the Specific Public Improvements conducted by the City, the City's agents, representatives, employees, engineers and/or independent contractors, shall be for the sole benefit and protection of the City and shall not be for the benefit or protection of the Developer, the Developer Subsidiary undertaking the construction of the Specific Public Improvements, or any other Person. The Developer acknowledges that the Developer, or Developer's duly authorized agents, will make its own inspections of the Specific Public Improvements and that the Developer will cause the Developer Subsidiary undertaking the construction of the Specific Public Improvements to make its own inspections of the Specific Public Improvements, and the Developer will not rely, and will cause the Developer Subsidiary undertaking the construction of the Specific Public Improvements to not rely, on any inspections made by the City, the City's agents, representatives, employees, engineers and/or independent contractors.

ARTICLE XII

REIMBURSEMENT OF PUBLIC IMPROVEMENTS

Section 12.01 Common Public Improvements. The Common Public Improvements are included as projects in the TIRZ Project and Financing Plan and, if the TIRZ Board and the City Council approve the TIRZ Reimbursement Agreement, will be eligible for reimbursement pursuant to the TIRZ Reimbursement Agreement.

Section 12.02 TIRZ Reimbursement Agreement.

- A. TIRZ Reimbursement Agreement. The City, in exercising its powers under the TIRZ Act, intends (upon satisfaction of the conditions and in accordance with the terms of this Agreement) to present to the City Council for consideration an agreement to dedicate a portion of the TIRZ Revenues collected within the TIRZ and deposited to the TIRZ Alcott Subaccount for the reimbursement to the Tract D Developer of all or a portion of the Common Public Improvements Project Costs up to the Reimbursement Cap, all as more specifically provided herein and, if such agreement is approved by the City Council, the terms, provisions and conditions of such reimbursement shall be set forth in the TIRZ Reimbursement Agreement.
- B. Legislative Discretion. The approval by the City of the agreement referenced in Section 12.02(A) is a discretionary, legislative function of the City Council and is subject to future action and determination by the City Council in its sole discretion. The Parties agree that by execution of this Agreement, the City does not waive or surrender any of its governmental powers, immunities or rights and, notwithstanding Section 12.01 and Section 12.02(A) above or any other provision of this Agreement, this Agreement does not control, waive, limit or supplant the legislative authority or discretion of the City Council.
- C. Conditions Precedent to Agreement. The approval by the TIRZ Board and the City Council of the agreement referenced in Section 12.02(A) above containing terms, provisions and conditions acceptable to the TIRZ Board, the City and the Tract D Developer is a condition precedent to this Agreement. The Parties agree that any Party hereto may terminate this Agreement by written notice to the other Parties on or before the Tract D Closing Date in the event the TIRZ Board and the City Council do not approve an agreement referenced in Section 12.02(A) above containing terms, provisions and conditions acceptable to the TIRZ Board, the City and the Tract D Developer on or before the Tract D Closing Date.

Section 12.03 Common Public Improvements Project Costs. When the Plans and Specifications for the Common Public Improvements have been finalized and approved by the City, and prior to the Commencement of Construction of the Common Public Improvements, the Tract D Developer (or Developer, if Developer has agreed to construct the Common Public Improvements on behalf of the Tract D Developer) shall provide the City with an itemization of the costs of construction of the Common Public Improvements. The itemization of the costs of construction of the Common Public Improvements shall be subject to the review and approval of

the City Manager, and the Developer and Tract D Developer shall not Commence Construction of the Common Public Improvements unless and until the City Manager has approved the itemized list of the costs of construction of the Common Public Improvements in writing (the itemized list of the costs of construction of the Common Public Improvements in the form approved in writing by the City Manager shall hereinafter be referred to as the “**Common Public Improvements Project Costs**”). The Tract D Developer (or the Developer, if the Developer has agreed to construct the Common Public Improvements on behalf of the Tract D Developer and the Developer obtains the prior written consent to such change by the Tract D Developer) may make necessary changes to any line item included in the Common Public Improvements Project Costs provided any increase for any line item does not exceed ten percent (10%) of the estimated amount for that item. Any increase exceeding ten percent (10%) must be approved in writing by the Tract D Developer (if the Developer has agreed to construct the Common Public Improvements on behalf of the Tract D Developer) and must be submitted to the City Manager and is not eligible for reimbursement under the TIRZ Reimbursement Agreement unless the City Manager has approved such increase in writing. All costs and expenses included within the Common Public Improvements Project Costs shall be reasonable when compared to projects of similar size and scope as the Project, must be eligible project costs under the TIRZ Act, must be included as project costs in the TIRZ Project and Financing Plan and must be necessary and reasonable for the development of the Property and for the construction of the Common Public Improvements. Common Public Improvements Project Costs may include: (1) costs incurred by or on behalf of the Developer or the Tract D Developer for the design, planning, financing, administration/management, acquisition, installation, construction and/or implementation of the Common Public Improvements provided, however, the reimbursement of any interest paid by the Developer or the Tract D Developer on any loan for the construction of the Common Public Improvements shall not exceed the lesser of: (a) actual interest paid by the Developer or the Tract D Developer; or (b) five percent (5%) per annum; (2) actual fees paid by the Developer or the Tract D Developer for obtaining permits, licenses, or other governmental approvals for the construction of the Common Public Improvements; (3) developer or construction management fees not exceeding four percent (4%) of the hard costs included in the Common Public Improvements Project Costs; (4) actual fees and costs incurred by or on behalf of the Developer or the Tract D Developer for external professional costs, such as engineering, geotechnical, surveying, land planning, architectural landscapers, appraisals, legal, accounting, and similar professional services in connection with the Common Public Improvements; and (5) all labor, bonds, and materials, including equipment and fixtures, by contractors, builders, and materialmen in connection with the acquisition, construction, and implementation of the Common Public Improvements (the “**TIRZ Reimbursement Restrictions**”).

Section 12.04 Specific Public Improvements and Specific Public Improvements Project Costs. As more fully set forth herein, the Common Public Improvements will benefit the development of the Property as a whole. After completion of the Common Public Improvements, the Developer may provide the City with a list of certain public infrastructure consisting of water, sewer, utility improvements, and other eligible projects pursuant to the TIRZ Act, which are necessary for the development of Tract B, Tract C and/or Tract D (the “**Specific Public Improvements**”), together with estimates of the costs to construct the Specific Public Improvements (the “**Specific Public Improvements Project Costs**”), and may request that: (i) the TIRZ Project and Financing Plan be amended to include the Specific Public Improvements as TIRZ projects eligible for reimbursement from TIRZ Revenues; and (ii) the TIRZ Board and the

City Council approve an amendment to the TIRZ Reimbursement Agreement or enter into a separate agreement for the reimbursement to the Developer or the Developer Subsidiary undertaking the construction of the Specific Public Improvements of all or a portion of the Specific Public Improvements Project Costs from TIRZ Revenue. The reimbursement of all or any portion of the Specific Public Improvements Project Costs shall be in the sole discretion of the City, shall be upon such terms and provisions as are acceptable to the TIRZ Board and the City Council including, without limitation, the establishment of a reimbursement cap and shall further be subject to such costs being eligible for reimbursement under the TIRZ Act and the TIRZ Reimbursement Restrictions. The Parties agree that any amendment of the TIRZ Project and Financing Plan to include the Specific Public Improvements as project costs and any agreement to reimburse the Developer or the Developer Subsidiary undertaking the construction of the Specific Public Improvements for all or any portion of the Specific Public Improvements Project Costs are discretionary, legislative functions of the City Council subject to future action and determination by the City Council in its sole discretion. The Parties agree that by execution of this Agreement, the City does not waive or surrender any of its governmental powers, immunities or rights and, notwithstanding this Section 12.04 or any other provision of this Agreement, this Agreement does not control, waive, limit or supplant the legislative authority or discretion of the City Council of the City.

Section 12.05 TIRZ Fund. Subject to Section 12.11 below, the City Increment collected in connection with Tract B, Tract C, and Tract D shall be deposited annually into the TIRZ Alcott Subaccount for the period commencing with the City Increment collected in connection with Tract B, Tract C, and Tract D for the tax year 2022 [which increment will be deposited into the TIRZ Alcott Subaccount in 2023] and continuing thereafter until the earlier of (i) the date the City satisfies its obligations under the TIRZ Reimbursement Agreement; (ii) the date the TIRZ Reimbursement Agreement is terminated by the City pursuant to a right to terminate provided in the TIRZ Reimbursement Agreement; (iii) the date this Agreement is terminated by the City, the Developer, or the Tract D Developer pursuant to a right to terminate provided herein; (iv) the date the cumulative amount of City Increment placed into the TIRZ Alcott Subaccount allocated to the reimbursement of the Common Public Improvements Project Costs equals the Reimbursement Cap; and (v) the expiration of the term of the TIRZ. Notwithstanding anything contained herein to the contrary, in no event shall the Developer or Tract D Developer be reimbursed for Common Public Improvements Project Costs in an amount exceeding the Reimbursement Cap.

Section 12.06 Limitation on Reimbursement.

- A. The City shall not be obligated to provide funds for the reimbursement of any Common Public Improvements Project Costs except from TIRZ Revenues deposited into the TIRZ Alcott Subaccount pursuant to the TIRZ Reimbursement Agreement, if approved by the TIRZ Board and the City Council, such reimbursement, if approved, to be subject to the terms and conditions set forth herein and in the TIRZ Reimbursement Agreement. The City makes no warranty, either express or implied, that any TIRZ Revenues in the TIRZ Alcott Subaccount available for the reimbursement of the Common Public Improvements Project Costs will be sufficient for the construction or acquisition of the Common Public Improvements. Any costs of the Common Public Improvements exceeding any TIRZ Revenues in the TIRZ Alcott Subaccount available for reimbursement pursuant to the TIRZ Reimbursement Agreement shall be the sole responsibility of the Developer and the Tract

D Developer. The Developer and Tract D Developer acknowledge and agree that the Developer and Tract D Developer shall be responsible to construct or to cause the construction of the Common Public Improvements irrespective of the possibility that the TIRZ Revenues in the TIRZ Alcott Subaccount may be insufficient to reimburse the Common Public Improvements Project Costs.

- B. The TIRZ Reimbursement Agreement shall provide that the City's reimbursement of the Common Public Improvements Project Costs shall not exceed the lesser of: (i) the actual costs and expenses incurred by the Developer or the Tract D Developer in connection with the construction of the Common Public Improvements; (ii) the Common Public Improvements Project Costs, plus (a) any increase of ten percent (10%) or less in any line item included in the Common Public Improvements Project Costs provided such increase has been approved in writing by the Tract D Developer if the Developer has agreed to construct the Common Public Improvements on behalf of the Tract D Developer; and (b) any increase exceeding ten percent (10%) in any line item included in the Common Public Improvements Project Costs that has been approved in writing by the City Manager provided such increase has also been approved in writing by the Tract D Developer if the Developer has agreed to construct the Common Public Improvements on behalf of the Tract D Developer; and (iii) the Reimbursement Cap.
- C. The Parties agree that the costs and expenses of establishing and administering the TIRZ and the costs and expenses of repairing, reconstructing, and maintaining the park, trail system, drainage, detention, signage, lighting, landscaping and irrigation within the TIRZ shall be priority project costs under the TIRZ Project and Financing Plan (collectively the "Priority Project Costs") and shall be paid from the City Increment deposited into the TIRZ Fund before any funds in the TIRZ Fund are allocated or deposited to the TIRZ Alcott Subaccount.
- D. If the TIRZ Board, the City, and the Tract D Developer enter into the TIRZ Reimbursement Agreement, the Parties agree that the City's obligation to reimburse all or any portion of the Common Public Improvements Project Costs pursuant to the TIRZ Reimbursement Agreement shall be payable solely from TIRZ Revenues deposited in the TIRZ Alcott Subaccount pursuant to and under the terms and conditions and as provided in the TIRZ Reimbursement Agreement. Developer and the Tract D Developer agree to look solely to the TIRZ Alcott Subaccount, not the City's general fund or any other revenues, taxes, income, property, or other funds of the City for the reimbursement of the Common Public Improvements Project Costs. Developer and Tract D Developer further agree the City shall not be required to issue bonds or other debt instruments to fund the reimbursement of the Common Public Improvements Project Costs. Nothing in this Agreement or in the TIRZ Reimbursement Agreement shall obligate the City to pay the Developer or the Tract D Developer for Common Public Improvements Project Costs in the event there are insufficient funds in the TIRZ Alcott Subaccount or in the event the TIRZ terminates prior to reimbursement of all of the Common Public Improvements Project Costs. Upon the termination of the TIRZ Reimbursement Agreement pursuant to a right to terminate expressly set forth therein, or upon the expiration of the term of the TIRZ, any Common Public Improvements Project Costs that remain un-reimbursed due to lack of availability of funds in the TIRZ Alcott Subaccount shall no longer be considered project costs or

obligations of the TIRZ, and any obligation of the City to provide reimbursement payments to the Developer or the Tract D Developer for Common Public Improvements Project Costs shall automatically expire and terminate on such date.

- E. The City shall have no responsibility whatsoever to the Developer or the Tract D Developer with respect to the investment of any funds held in the TIRZ Fund, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment. Any such loss may diminish the amounts available in the TIRZ Alcott Subaccount to reimburse the Common Public Improvements Project Costs.

Section 12.07 Other TIRZ Projects.

The Parties acknowledge that the TIRZ includes properties other than the Property and that there is the potential that other projects could be identified that would benefit the TIRZ and be necessary to implement the TIRZ Project and Financing Plan. The Parties agree this Agreement does not prevent the City from entering into separate reimbursement agreements with other developers providing for reimbursement of project costs for other projects eligible under the TIRZ Act and the TIRZ Project and Financing Plan and in such event the TIRZ Revenues will be: (i) apportioned to identify the City Increment generated by each project; and (ii) allocated and deposited into subaccounts for each developer, all as more fully set forth in the TIRZ Project and Financing Plan.

Section 12.08 Procedure for Reimbursement.

- A. Payment Certificate. The Tract D Developer shall submit a payment certificate to the City (no more frequently than annually) in the form attached to the TIRZ Reimbursement Agreement (the “**Payment Certificate**”) for each payment under the terms of the TIRZ Reimbursement Agreement. The City shall review the sufficiency of each Payment Certificate with respect to compliance with this Agreement, the TIRZ Reimbursement Agreement, Applicable Law, and the Plans and Specifications. The reimbursement of the Common Public Improvements Project Costs is subject to the City Engineer’s review and acceptance of the Common Public Improvements being reimbursed.
- B. Supporting Documentation. The Tract D Developer shall submit with each Payment Certificate such documentation as the City may reasonably request to support the payment requested by the Payment Certificate including, without limitation, copies of such invoices, paid receipts, payment records, lien waivers, bills paid affidavits and such other documentation as the City may reasonably request to confirm the actual costs incurred and paid by the Tract D Developer (or paid by the Developer on behalf of the Tract D Developer) in connection with the construction of the Common Public Improvements.
- C. Review and Payment of Payment Certificate. The City shall review each Payment Certificate within thirty (30) days after receipt thereof. If a Payment Certificate is approved only in part, the City shall specify the extent to which the Payment Certificate is approved. Payment for approved amounts shall be made to the Tract D Developer (or its assignee(s) if and as permitted under the terms of the TIRZ reimbursement Agreement) pursuant to the terms of the TIRZ Reimbursement Agreement, within thirty (30) days after approval provided sufficient funds for such payment are available in the TIRZ Alcott Subaccount.

- D. Additional Documentation. If the City requires additional documentation, timely disapproves or questions the correctness or authenticity of the Payment Certificate, the City shall deliver a detailed notice to the Tract D Developer within fifteen (15) days of receipt thereof, and payment with respect to disputed portion(s) of the Payment Certificate shall not be made until the Tract D Developer and the City have jointly settled such dispute or additional information has been provided to the City's reasonable satisfaction.
- E. Payment of Reimbursement. Payments under the TIRZ Reimbursement Agreement shall be made from funds available in the TIRZ Alcott Subaccount under the TIRZ Reimbursement Agreement in the manner set forth in the TIRZ Reimbursement Agreement.
- F. Limitation on Costs Eligible for Reimbursement. Provided the TIRZ Reimbursement Agreement is approved by the TIRZ Board and the City Council, the Common Public Improvements are the only public improvements eligible for reimbursement from the TIRZ Alcott Subaccount unless the TIRZ Project and Financing Plan is amended to include the Specific Public Improvements and the TIRZ Board, the City, and the Developer or Developer Subsidiary undertaking the construction of the Specific Public Improvements enter into a reimbursement agreement for the reimbursement of all or any portion of the Specific Public Improvements Project Costs. No other public improvements constructed by the Developer, the Tract D Developer, the Developer Subsidiary undertaking the construction of the Specific Public Improvements, or any Development Entity, and dedicated to the City pursuant to this Agreement, shall be eligible for reimbursement under the terms of this Agreement.

Section 12.09 Audit.

- A. Rights to Audit. The City shall have the right, during normal business hours and upon ten (10) days' prior written notice, to audit, at the City's expense, the records of the Developer and the Tract D Developer with respect to the expenditure of funds to pay the Common Public Improvements Project Costs. Upon written request by the City, the Developer and the Tract D Developer shall give the City or its agent or independent consultant, access to those certain records controlled by, or in the direct or indirect possession of, the Developer and the Tract D Developer with respect to the expenditure of Common Public Improvements Project Costs, and permit the City to review such records in connection with conducting a reasonable audit of such fund and account. The Developer and the Tract D Developer shall make these records available to the City electronically or at a location within Dallas County that is reasonably convenient for City's staff and consultants.
- B. Maintenance of Records. The Developer and Tract D Developer shall maintain proper books of record and account relating to the construction of the Common Public Improvements and all costs related thereto for three (3) years after Completion of Construction of the Common Public Improvements. If the TIRZ Project and Financing Plan and the TIRZ Reimbursement Agreement are amended to include the reimbursement of all or any portion of the Specific Public Improvements Project Costs, the Developer shall maintain, and shall cause the Developer Subsidiary undertaking the construction of the Specific Public Improvements to maintain, proper books of record and account relating to

the construction of the Specific Public Improvements and all costs related thereto for three (3) years after completion of construction of the Specific Public Improvements.

- C. Annual Report. Within ten (10) days after written request by the City, the Developer and the Tract D Developer shall provide the City with such information as the City may reasonably request for purposes of the City submitting the annual report for the TIRZ to the Comptroller of the State of Texas as required by the TIRZ Act.

Section 12.10 Conditions Precedent to Payments under the TIRZ Reimbursement Agreement. Any TIRZ Reimbursement Agreement approved by the TIRZ Board and the City Council and entered into by the TIRZ Board, the City, and the Tract D Developer shall include a provision that all payments under the terms of the TIRZ Reimbursement Agreement are expressly conditioned on the satisfaction of the following conditions precedent, to-wit:

- A. The Commencement of Construction of the Common Public Improvements shall have occurred on or before the Common Public Improvements Commencement Deadline Date; and
- B. The Completion of Construction of the Common Public Improvements shall have occurred on or before the Common Public Improvements Completion Date; and
- C. The Commencement of Construction of Building 1 shall have occurred on or before the Building 1 Commencement Deadline Date; and
- D. The Completion of Construction of Building 1 shall have occurred on or before the Building 1 Completion Date, the Landscaping Requirements shall have been satisfied with respect to the Tract where Building 1 has been constructed, and Building 1 shall have been constructed in compliance with the Plans and Specifications approved in writing by the City, the PD, the Concept Plan, the Development Standards, the Architectural Standards, the CC&Rs and all City Regulations; and
- E. No Developer Default shall then exist under the terms of this Agreement or no event shall exist which, but for notice, the lapse of time, or both, would constitute a Developer Default under the terms of this Agreement; and
- F. No default by the Tract D Developer shall exist under the terms of the TIRZ Reimbursement Agreement or no event shall exist which, but for notice, the lapse of time, or both, would constitute a default by the Tract D Developer under the terms of the TIRZ Reimbursement Agreement; and
- G. This Agreement shall not have been terminated by any Party hereto pursuant to a right to terminate expressly set forth herein; and
- H. The TIRZ Reimbursement Agreement shall not have been terminated by the City or the Tract D Developer pursuant to a right to terminate expressly provided therein.

Section 12.11 City Increment Relating to Tract B, Tract C and Tract D.

- A. Tract B. The Parties agree that the City Increment collected in connection with Tract B shall only be deposited into the TIRZ Alcott Subaccount and available for reimbursement payments under the TIRZ Reimbursement Agreement upon satisfaction of the following conditions precedent, to-wit:
1. The Tract B Developer has timely closed on the purchase of Tract B and the Tract B Purchase Price has been paid to the City; and
 2. Completion of Construction of a Building consisting of a minimum of 265,000 square feet on Tract B has timely occurred; and
 3. Landscaping has been installed on Tract B in compliance with the Landscaping Requirements and the Building constructed on Tract B has been constructed in compliance with the Plans and Specifications approved in writing by the City and in compliance with the PD, the Concept Plan, the Development Standards, the Architectural Standards, the CC&Rs and all City Regulations.
- B. Tract C. The Parties agree that the City Increment collected in connection with Tract C shall only be deposited into the TIRZ Alcott Subaccount and available for reimbursement payments under the TIRZ Reimbursement Agreement upon satisfaction of the following conditions precedent, to-wit:
1. The Tract C Developer has timely closed on the purchase of Tract C and the Tract C Purchase Price has been paid to the City; and
 2. Completion of Construction of a Building consisting of a minimum of 300,000 square feet on Tract C has timely occurred; and
 3. Landscaping has been installed on Tract C in compliance with the Landscaping Requirements and the Building constructed on Tract C has been constructed in compliance with the Plans and Specifications approved in writing by the City and in compliance with the PD, the Concept Plan, the Development Standards, the Architectural Standards, the CC&Rs and all City Regulations.
- C. Tract D. The Parties agree that the City Increment collected in connection with Tract D shall only be deposited into the TIRZ Alcott Subaccount and available for reimbursement payments under the TIRZ Reimbursement Agreement upon satisfaction of the following conditions precedent:
1. The Tract D Developer has timely closed on the purchase of Tract D and the Tract D Purchase Price has been paid to the City; and
 2. If a Building is constructed on Tract D, landscaping has been installed on Tract D in compliance with the Landscaping Requirements and the Building constructed on Tract D shall consist of a minimum of 540,000 square feet and shall have been

constructed in compliance with the Plans and Specifications approved in writing by the City and in compliance with the PD, the Concept Plan, the Development Standards, the Architectural Standards, the CC&Rs and all City Regulations.

ARTICLE XIII

INSURANCE AND INDEMNIFICATION

Section 13.01 General Provisions. With no intent to limit the Developer's, the Tract D Developer's, or any contractor's liability or obligation for indemnification, the Developer and Tract D Developer shall obtain and maintain, or cause to be obtained and maintained, by the contractor(s) constructing the Common Public Improvements, the types of coverage and the amounts of insurance set forth herein in full force and effect at all times during construction of all or any portion the Common Public Improvements, such insurance to contain such terms and provisions as more fully set forth herein. With no intent to limit the Developer's or any contractor's liability or obligation for indemnification, the Developer shall obtain and maintain, or cause the Developer Subsidiary undertaking the construction of the Specific Public Improvements and/or the contractor(s) constructing the Specific Public Improvements to obtain and maintain, the types of coverage and the amounts of insurance set forth herein in full force and effect at all times during construction of all or any portion the Specific Public Improvements, such insurance to contain such terms and provisions as more fully set forth herein

Section 13.02 Insurance Requirements. The Developer, the Tract D Developer and any Developer Subsidiary that undertakes the construction of the Specific Public Improvements shall obtain and maintain, in full force and effect at their expense, or shall cause each contractor constructing all or any part of the Public Improvements to obtain and maintain at their expense, the following policies of insurance and coverage at all times during construction of all or any portion of the Public Improvements:

- A. Commercial general liability insurance insuring the City, the contractor, the Developer, the Tract D Developer, and each Developer Subsidiary undertaking the construction of the Public Improvements against liability for injury to or death of a person or persons and for damage to property occasioned by or arising out of the activities of Developer, the Tract D Developer, and each Developer Subsidiary undertaking the construction of the Public Improvements, the contractor and the City, and their respective officers, partners, directors, agents, contractors, and employees, in the amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per occurrence, TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) general aggregate bodily injury and property damage. The Developer, the Tract D Developer, and any Developer Subsidiary undertaking the construction of the Specific Public Improvements, shall cause the contractor(s) constructing all or any part of the Public Improvements to obtain and maintain endorsements to the commercial general liability insurance required herein providing for protection of any portion of the Property where the Public Improvements are to be constructed from pollution liability at limits of not less than ONE MILLION AND NO/1 00 DOLLARS (\$1,000,000.00) per incident AND TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) in the aggregate and providing for related clean-up of any affected property at limits of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per occurrence and TWO MILLION

AND NO/100 DOLLARS (\$2,000,000.00) in the aggregate and ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) products/completed operations aggregate. The commercial general liability insurance must include coverage for premises and operations, products and completed operations, contractual liability, independent contractors, broad form property damage, and personal/advertising injury. The contractor may procure and maintain a master or controlled insurance policy to satisfy the requirements of this Section 13.02(A), which may cover other property or locations of the contractor and its affiliates, so long as the coverage required in this Section 13.02(A) is separate; and

- B. Worker's Compensation insurance providing statutory coverage limits (provided, however, that this coverage may be waived if the named insured does not have any employees); and
- C. Business automobile insurance covering all operations of the contractor pursuant to the contract(s) for the construction of all or any part of the Public Improvements involving the use of motor vehicles, including all owned, non-owned and hired vehicles with minimum limits of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) combined single limit for bodily injury, death and property damage liability; and
- D. Employer's liability insurance affording protection of not less than ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) for bodily injury by accident (each accident), not less than ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) for bodily injury by disease (each employee) and not less than ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) in the aggregate provided, however, that this coverage may be waived if the named insured does not have any employees.

Section 13.03 Waiver of Subrogation. The commercial general liability, worker's compensation, business auto and employer's liability insurance required pursuant to this Agreement shall be endorsed to provide that the insurer waives all rights of subrogation against the City. Blanket Endorsements are acceptable in meeting this requirement if copies of the endorsements are provided along with the certificate. If using a form that has specific boxes labeled for waiver of subrogation, checking those specific boxes is acceptable in meeting this requirement as well.

Section 13.04 City as Additional Insured and Primary and Noncontributory for the Developer. Each policy of insurance, except for worker's compensation and professional liability, shall be endorsed to include and name the City (including its former, current, and future officers, directors, agents, and employees) as additional insureds using additional insured endorsements that provide the most comprehensive coverage to the City under Texas law including products/completed operations. Blanket endorsements are acceptable in meeting this requirement if copies of the endorsements are provided along with the certificate. If using a form that has specific boxes labeled for additional insured, checking those specific boxes is acceptable in meeting this requirement as well. Prior to the commencement of construction of all or any portion of the Public Improvements the Developer and the Tract D Developer will provide, or will cause each Developer Subsidiary undertaking the construction of the Public Improvements to provide, a certificate of insurance to the City that shall list the City as an additional insured and that shall confirm that the coverage is primary and noncontributory for the Developer, the Tract D Developer

and each Developer Subsidiary undertaking the construction of the Public Improvements. The Developer's, the Tract D Developer's, and each Developer Subsidiary's insurance policy must pay before other applicable policies (primary) and without seeking contribution from other policies that also claim to be primary (noncontributory).

Section 13.05 Written Notice of Cancellation, Termination or Material Change in Coverage. Each policy of insurance, except for worker's compensation and professional liability, shall be endorsed to provide the City thirty (30) days' written notice prior to any cancellation, termination, or material change of coverage. In addition, the Developer and the Tract D Developer shall provide, and shall cause each Developer Subsidiary undertaking the construction of the Public Improvements to provide, the City with thirty (30) days' written notice prior to any cancellation, non-renewal, or material change in coverage for any of the insurance required by this Article XIII.

Section 13.06 Policies, Endorsements and Certificates of Insurance. The Developer and the Tract D Developer shall provide to the City, or shall cause each Developer Subsidiary undertaking the construction of the Public Improvements and each contractor constructing all or any portion of the Public Improvements, to deliver to the City, the policies, policy endorsements and certificates of insurance evidencing the insurance coverage required by this Agreement, before the commencement of construction of all or any portion of the Public Improvements, and at such other times within ten (10) days after written request by the City. The delivery of the policies, policy endorsements and certificates of insurance as required herein is a condition precedent to: (i) the payment of any Economic Development Incentives by the City to the Developer under the terms of this Agreement; and (ii) the payment of any sum due by the City to the Developer or the Tract D Developer under the terms of the TIRZ Reimbursement Agreement.

Section 13.07 Insurance Renewals. Within ten (10) days before the expiration of any insurance coverage required by this Agreement, the Developer and the Tract D Developer shall provide to the City, or shall cause each Developer Subsidiary undertaking the construction of the Public Improvements and each contractor constructing all or any portion of the Public Improvements to deliver to the City, policies, policy endorsements and certificates of insurance evidencing the renewal of all insurance coverage required herein and evidencing the payment of all renewal premiums. The delivery of renewal policies, policy endorsements and certificates of insurance as required herein is a condition precedent to (i) the payment of any Economic Development Incentives by the City to the Developer under the terms of this Agreement; and (ii) the payment of any sum due by the City to the Developer or the Tract D Developer under the terms of the TIRZ Reimbursement Agreement.

Section 13.08 Carriers. All policies of insurance required to be obtained by the Developer, the Tract D Developer, and each Developer Subsidiary undertaking the construction of the Public Improvements, and their contractors pursuant to this Agreement shall be maintained with insurance carriers meeting the conditions required herein that are satisfactory to and reasonably approved by the City, and lawfully authorized to issue insurance in the state of Texas for the types and amounts of insurance required herein. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the City. All insurance coverage required

herein shall be evidenced by insurance policies, policy endorsements and certificates of insurance submitted by the Developer's, the Tract D Developer's and their contractors' insurer or broker or by the insurer or broker of each Developer Subsidiary undertaking the construction of the Public Improvements. Insurance policies, policy endorsements and certificates of insurance received from any other source will be rejected.

Section 13.09 RELEASE AND INDEMNIFICATION.

CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE ACTS OR OMISSIONS OF THE DEVELOPER, THE TRACT D DEVELOPER, OR ANY DEVELOPER RELATED PARTY PURSUANT TO THIS AGREEMENT. DEVELOPER AND TRACT D DEVELOPER HEREBY WAIVE AND RELEASE ALL CLAIMS AGAINST CITY AND EACH CITY RELATED PARTY FOR DAMAGES TO ANY PROPERTY OR INJURIES TO, OR DEATH OF, ANY PERSON ARISING OUT OF, SUSTAINED IN CONNECTION WITH, OR INCIDENTAL TO THE PERFORMANCE OF THIS AGREEMENT. THE DEVELOPER AND THE TRACT D DEVELOPER HEREBY INDEMNIFY AND AGREE TO SAVE THE CITY HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF ANY PROPERTY ARISING FROM THE DEVELOPER'S AND/OR THE TRACT D DEVELOPER'S BREACH OF ANY OF THE TERMS, COVENANTS AND CONDITIONS OF THIS AGREEMENT, OR BY REASON OF ANY ACT OR OMISSION OF THE DEVELOPER, THE TRACT D DEVELOPER, OR ANY DEVELOPER RELATED PARTY IN THE PERFORMANCE OF THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THE CONSTRUCTION OF THE PUBLIC IMPROVEMENTS (EXCEPT WHEN SUCH LIABILITIES, CLAIMS, SUITS, COSTS, INJURIES, DEATH OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY OR A CITY RELATED PARTY). IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF BOTH CITY OR ANY CITY RELATED PARTY AND DEVELOPER, THE TRACT D DEVELOPER, OR ANY DEVELOPER RELATED PARTY, THE RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY AND ANY CITY RELATED PARTY AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. NOTHING CONTAINED IN THIS SECTION 13.09 SHALL CONSTITUTE A WAIVER OF ANY GOVERNMENTAL IMMUNITY OR DEFENSE AVAILABLE TO THE CITY OR ANY CITY RELATED PARTY UNDER TEXAS LAW. IF ANY ACTION OR PROCEEDING IS BROUGHT BY OR AGAINST CITY OR ANY CITY RELATED PARTY, DEVELOPER AND TRACT D DEVELOPER SHALL BE REQUIRED, ON NOTICE FROM CITY, TO DEFEND SUCH ACTION OR PROCEEDING AT DEVELOPER'S AND TRACT D DEVELOPER'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO CITY. THE PROVISIONS OF THIS SECTION 13.09 ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON. IF ANY PART OF THIS INDEMNITY IS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE

INVALID OR UNENFORCEABLE FOR ANY REASON, THE REMAINING PORTION OF THIS INDEMNITY SHALL CONTINUE IN FULL FORCE AND EFFECT. THE PROVISIONS OF THIS SECTION 13.09 SHALL EXPRESSLY SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

Section 13.10 Contractors' Release and Indemnities. Developer and Tract D Developer shall require, or shall cause each Developer Subsidiary undertaking the construction of the Public Improvements to require, all contractors and subcontractors constructing all or any portion of the Public Improvements to include provisions in their Construction Contracts releasing and indemnifying the City in substantially the same form as Section 13.09 above.

ARTICLE XIV

REPRESENTATIONS AND WARRANTIES

Section 14.01 Representations and Warranties of City.

The City makes the following representations and warranties for the benefit of the Developer:

- A. Due Authority; No Conflict. This Agreement has been approved by official action of the City Council in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act). The City has all requisite power and authority to execute this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by the City. The consummation by the City of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any of the terms of any agreement or instrument to which the City is a party, or by which the City is bound. In addition, and notwithstanding any provision in this Agreement, this Agreement does not control, waive, limit, or supplant the City Council's legislative authority or discretion.
- B. Litigation. To the knowledge of the City, no litigation is pending or threatened in any court to restrain or enjoin the construction of the Public Improvements, or otherwise contesting the powers of the City or the authorization of this Agreement or any agreements contemplated herein.

Section 14.02 Representations and Warranties of Developer.

The Developer makes the following representations and warranties for the benefit of the City:

- A. Due Organization and Ownership. The Developer is a Texas limited partnership validly existing under the laws of the State of Texas and is duly qualified to do business in the State of Texas, all consents or approvals required to enter into this Agreement have been obtained by the Developer, and the Person executing this Agreement on behalf of the Developer is authorized to enter into this Agreement on behalf of the Developer.

- B. Due Authority: No Conflict. The Developer has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by the Developer. The consummation by the Developer of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any term or provision of the organizational documents of the Developer, or any of the terms of any agreement or instrument to which the Developer is a party, or by which the Developer is bound.
- C. Litigation. To the knowledge of the Developer, after reasonable inquiry, there are no pending or threatened, judicial or administrative proceedings or judgments which might affect the Developer's ability to consummate the transactions contemplated hereby, nor is there a preliminary or permanent injunction or other order, decree, or ruling issued by any Governmental Authorities that is in effect which restrains, enjoins or prohibits the consummation of the transactions contemplated by this Agreement.
- D. Legal Proceedings. There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of the Developer, threatened against or affecting the Developer, any of the principals of the Developer and any key person or their respective affiliates and representatives the outcome of which would (a) materially and adversely affect the validity or enforceability of this Agreement, or which would materially and adversely affect the authority or ability of the Developer to perform its obligations under this Agreement, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of the Developer or on the ability of the Developer to conduct its business as presently conducted or as proposed or contemplated to be conducted.

Section 14.03 Representations and Warranties of Tract D Developer.

The Tract D Developer makes the following representations and warranties for the benefit of the City:

- A. Due Organization and Ownership. The Tract D Developer is a Delaware limited partnership validly existing under the laws of the state of its formation and is duly qualified to do business in the State of Texas, all consents or approvals required to enter into this Agreement have been obtained by the Tract D Developer, and the Person executing this Agreement on behalf of the Tract D Developer is authorized to enter into this Agreement on behalf of the Tract D Developer.
- B. Due Authority: No Conflict. The Tract D Developer has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by the Tract D Developer. The consummation by the Tract D Developer of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any term or provision of the organizational documents of the Tract D Developer, or any of the terms of any

agreement or instrument to which the Tract D Developer is a party, or by which the Tract D Developer is bound.

- C. Litigation. To the knowledge of the Tract D Developer, after reasonable inquiry, there are no pending or threatened, judicial or administrative proceedings or judgments which might affect the Tract D Developer's ability to consummate the transactions contemplated hereby, nor is there a preliminary or permanent injunction or other order, decree, or ruling issued by any Governmental Authorities that is in effect which restrains, enjoins or prohibits the consummation of the transactions contemplated by this Agreement.
- D. Legal Proceedings. There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of the Tract D Developer, threatened against or affecting the Tract D Developer, any of the principals of the Tract D Developer and any key person or their respective affiliates and representatives the outcome of which would (a) materially and adversely affect the validity or enforceability of this Agreement, or which would materially and adversely affect the authority or ability of the Tract D Developer to perform its obligations under this Agreement, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of the Tract D Developer or on the ability of the Tract D Developer to conduct its business as presently conducted or as proposed or contemplated to be conducted.

Section 14.04 Survival. The representations and warranties of the Parties set forth in this Article XIV shall expressly survive the consummation of the transactions contemplated in this Agreement and the expiration or termination of this Agreement. The Developer's and Tract D Developer's representations and warranties contained herein are made by the Developer and the Tract D Developer as an inducement to City to pay the Economic Development Incentives as provided herein and to induce the City to enter into the TIRZ Reimbursement Agreement and Developer and the Tract D Developer understand that City is relying on such representations and warranties and that such representations and warranties shall survive any (a) bankruptcy proceedings involving the Developer, the Tract D Developer, all or any portion of the Property, or the Project, or (b) foreclosure of the Performance Deed of Trust, or (c) conveyance of title to all or any portion of Tract D in lieu of foreclosure of the Performance Deed of Trust. Acceptance of all or any portion of any Economic Development Incentives under this Agreement and/or a reimbursement payment under the TIRZ Reimbursement Agreement constitutes reaffirmation, as of the date of such acceptance, of the representations and warranties in this Agreement, on which City shall rely in making such payments.

ARTICLE XV

TERM

This Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) the date on which the City, the Developer, and the Tract D Developer have discharged all of their obligations under the terms of this Agreement and the TIRZ Reimbursement Agreement including, without limitation, (a) the Developer and Tract D Developer have satisfied the Developer's and Tract D Developer's obligation to Complete Construction of the Common Public

Improvements; and (b) the Developer, or a Development Entity, has satisfied the Developer's obligations to: (1) Complete Construction of Building 1; (2) Complete Construction of Building 2 (if Building 2 is required to be constructed pursuant to this Agreement); and (3) Complete Construction of a Building on the Second Option Tract (if the Developer exercises the Second Purchase Option); (c) the Economic Development Incentives have been paid by the City to the Developer; and (d) the Common Public Improvements Project Costs have been reimbursed to the Tract D Developer under the terms and subject to the conditions set forth in this Agreement and the TIRZ Reimbursement Agreement up to the Reimbursement Cap; (ii) the expiration of the term of the TIRZ; and (iii) the date this Agreement is terminated by the City, the Developer, or the Tract D Developer pursuant to a right to terminate expressly provided under the terms of this Agreement.

ARTICLE XVI

DEFAULT AND REMEDIES

Section 16.01 Default by Developer and Tract D Developer. The Developer and the Tract D Developer shall both be in default of this Agreement upon the occurrence of any one of the following (each a "**Developer Default**"):

- A. upon the occurrence of an Event of Bankruptcy or Insolvency of the Developer or the Tract D Developer; or
- B. upon any assignment of this Agreement by the Developer or the Tract D Developer in violation of Section 17.03 of this Agreement; or
- C. if any statement, warranty, or representation of Developer or Tract D Developer in this Agreement is materially false as of the date such statement, warranty or representation was made provided, however, if such misstatement was not intentional and is susceptible to being cured, Developer or Tract D Developer, as applicable, shall have thirty (30) days from written notice from City to correct such misstatement and further provided, such cure period may be extended by the City Manager for up to an additional sixty (60) days provided the Developer or Tract D Developer, as applicable, in the City Manager's discretion, is using diligent efforts to cure such misstatement; or
- D. (i) if the Developer or the Tract D Developer fails to timely pay the Tract D Purchase Price to the City as and when due; or (ii) if the Developer fails to timely pay any other monetary sum to be paid by the Developer to the City under the terms of this Agreement as and when such sum becomes due and payable and such failure continues for thirty (30) days after written notice by the City to the Developer; or (iii) if the Tract D Developer fails to timely pay any other monetary sum to be paid by the Tract D Developer to the City under the terms of this Agreement as and when such sum becomes due and payable and such failure continues for thirty (30) days after written notice by the City to the Tract D Developer; or
- E. if the Developer or the Tract D Developer fails to obtain and maintain the Bonds, or if the Developer fails to cause the Developer Subsidiary that is undertaking the construction of the Specific Public Improvements to obtain and maintain the Bonds, as required by this Agreement; or

- F. if the Developer or the Tract D Developer fails to obtain and maintain the insurance as required by this Agreement, or if the Developer fails to cause any Developer Subsidiary that is undertaking the construction of the Specific Public Improvements to obtain and maintain the insurance as required by this Agreement, or if Developer's, the Tract D Developer's, or any Developer Subsidiary's contractors fail to obtain and maintain the insurance as required by this Agreement; or
- G. if the Developer, the Tract D Developer, or any other Developer Subsidiary fails to timely pay any ad valorem or other taxes which are due and payable by the Developer, the Tract D Developer, or any other Developer Subsidiary to the City (provided, however, that nothing contained herein shall restrict or prohibit Developer, the Tract D Developer, or any other Developer Subsidiary from contesting or protesting any ad valorem taxes which are imposed on property owned by the Developer, the Tract D Developer, or any other Developer Subsidiary; or
- H. if the Developer fails to timely keep or perform any non-monetary term, provision, agreement, covenant, condition or obligation to be kept or performed by the Developer under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the City to the Developer provided, however, such cure period may be extended in writing by the City Manager for up to an additional sixty (60) days if the City Manager determines, in the City Manager's sole discretion, that the Developer is using diligent efforts to cure such default; or
- I. if the Tract D Developer fails to timely keep or perform any non-monetary term, provision, agreement, covenant, condition or obligation to be kept or performed by the Tract D Developer under the terms of this Agreement including, without limitation, if the Tract D Developer fails to: (i) Commence Construction of the Common Public Improvements on or before the Common Public Improvements Commencement Deadline Date, or cause the Commencement of Construction of the Common Public Improvements on or before the Common Public Improvements Commencement Deadline Date; or (ii) Complete Construction of the Common Public Improvements on or before the Common Public Improvements Completion Date, or cause the Completion of Construction of the Common Public Improvements on or before the Common Public Improvements Completion Date, and such failure continues for sixty (60) days after written notice by the City to the Tract D Developer provided, however, such cure period may be extended in writing by the City Manager for up to an additional sixty (60) days if the City Manager determines, in the City Manager's sole discretion, that the Tract D Developer is using diligent efforts to cure such default; or
- J. if the Developer fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the Developer under the terms of any other agreement between the Developer and the City and such failure continues past any applicable notice and cure period provided to the Developer pursuant to the terms of such agreement; or
- K. if the Tract D Developer fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the Tract D Developer under

the terms of any other agreement between the Tract D Developer and the City and such failure continues past any applicable notice and cure period provided to the Tract D Developer pursuant to the terms of such agreement; or

- L. if the Tract D Developer fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the Tract D Developer under the terms of the Performance Deed of Trust and such failure continues past any applicable notice and cure period provided to the Tract D Developer pursuant to the Performance Deed of Trust; or
- M. if the Tract D Developer fails to timely keep or perform any term, provision, agreement, covenant, condition, or obligation to be kept or performed by the Tract D Developer under the terms of the TIRZ Reimbursement Agreement between the Tract D Developer, the City and the TIRZ Board and such failure continues past any applicable notice and cure period provided to the Tract D Developer pursuant to the terms of such reimbursement agreement.

Section 16.02 City Default. The City shall be in default of this Agreement upon the occurrence of any of the following (each a “City Default”):

- A. if any statement, warranty, or representation of the City in this Agreement is materially false as of the date such statement, warranty or representation was made; provided, however, if such misstatement was not intentional and is susceptible to being cured, City shall have thirty (30) days from written notice from Developer or Tract D Developer to correct such misstatement and provided further that such cure period may be extended by the Developer or Tract D Developer for up to an additional sixty (60) days provided the City, in the Developer’s or Tract D Developer’s discretion, is using diligent efforts to cure such misstatement; or
- B. if the City fails to timely pay any monetary sum to be paid by the City to the Developer or the Tract D Developer under the terms of this Agreement as and when such sum shall become due and payable and such failure continues for thirty (30) days after written notice by the Developer or Tract D Developer to the City; or
- C. if the City fails to timely keep or perform any non-monetary 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 Developer or the Tract D Developer to the City provided, however, such cure period may be extended in writing by the Developer or Tract D Developer for up to an additional sixty (60) days if the Developer or Tract D Developer determines, in the Developer’s or Tract D Developer’s sole discretion, that the City is using diligent efforts to cure such default; or
- D. if the City fails 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 any other agreement between the City and the Developer and such failure continues past any applicable notice and cure period provided to the City pursuant to the terms of the such agreement; or

- E. if the City fails 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 any other agreement between the City and the Tract D Developer and such failure continues past any applicable notice and cure period provided to the City pursuant to the terms of the such agreement; or
- F. if the City fails 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 the TIRZ Reimbursement Agreement and such failure continues past any applicable notice and cure period provided to the City pursuant to the terms of the TIRZ Reimbursement Agreement.

Section 16.03 Force Majeure. Notwithstanding any provision in this Agreement to the contrary, except for the timely exercise by the Developer of the First Purchase Option and the Second Purchase Option which shall not be extended by any event of Force Majeure, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed by Force Majeure, the time for performance of such covenant or obligation shall be extended by the number of days of any delay directly caused by and relating to such Force Majeure. The Party claiming delay of performance as a result of any event of Force Majeure shall deliver written notice of the commencement of any such delay resulting from such Force Majeure event and the length the Force Majeure event is reasonably expected to last not later than thirty (30) days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of the occurrence of a Force Majeure event causing such delay, the claiming Party shall not be entitled to avail itself of the provisions for the extension of performance contained in this Section 16.03. The number of days a Force Majeure event is in effect shall be determined by the City Manager based upon commercially reasonable standards.

Section 16.04 Maximum Days for Extension of Performance. The Parties agree that notwithstanding anything contained in this Agreement to the contrary including, without limitation, Section 16.03 of this Agreement, the performance by the Developer or the Tract D Developer of any term, provision, covenant, condition, or obligation to be performed by the Developer or Tract D Developer pursuant to this Agreement shall not be extended (including any extension by the City Manager pursuant to Section 8.06 of this Agreement and any extension pursuant to an event of Force Majeure pursuant to Section 16.03 of this Agreement) for more than eighteen (18) months, collectively.

Section 16.05 Developer Remedies. In the event of a City Default, the Developer and Tract D Developer shall have the right to exercise any one more of the following remedies as the Developer's and Tract D Developer's sole and exclusive remedies, such remedies being expressly cumulative:

- A. terminate this Agreement by written notice to the City; and
- B. specific performance, provided however, the Parties agree specific performance may not be asserted with respect to: (i) any action to enforce the City to cure any title defects relating to Tract B, Tract C, and/or Tract D; or (ii) any actions that are within the legislative discretion of the City Council; and provided further, that in the event the City Default is the failure to timely pay an Economic Development Incentive and a court of competent

jurisdiction does not award specific performance for the payment of such incentive, Developer may seek actual damages in an amount not to exceed the amount of any unpaid Economic Development Incentives that are then due and payable and for which all conditions precedent to the payment of such incentive(s) have been timely satisfied and are then continuing. The Parties specifically agree that the recovery of damages against the City shall not include consequential, punitive, exemplary, or speculative damages or attorney's fees.

Section 16.06 City Remedies. In the event of a Developer Default, the City shall have no obligation to pay any future Economic Development Incentives to the Developer and the City shall have the right to exercise any one more of the following remedies as the City's sole and exclusive remedies, such remedies being expressly cumulative:

- A. terminate this Agreement including, without limitation, any then un-exercised Purchase Options, by written notice to the Developer and the Tract D Developer; and
- B. release all funds then remaining in the Alcott Grant Account from such account and deposit such funds in the City's general fund in which event such funds shall no longer be available, set aside or designated for payment of the Tract D Grant, the First Option Tract Grant, and the Second Option Tract Grant and the City shall have the right to use such funds for all lawful purposes; and
- C. terminate the TIRZ Reimbursement Agreement by written notice to the Developer and the Tract D Developer; and
- D. recapture all or a portion of the Economic Development Incentives previously paid by the City to the Developer as more fully set forth in Section 16.07 below; and
- E. provided the Performance Deed of Trust has not been released pursuant to Section 6.10 of this Agreement, and further provided the Developer Default is an event of default under the Performance Deed of Trust, exercise any and/or all rights and remedies available to the City pursuant to the Performance Deed of Trust and the Subordination Agreement; and
- F. exercise and enforce any and all rights and remedies with respect to the Bonds; and
- G. in the event Developer or Tract D Developer have Commenced Construction of the Common Public Improvements but have failed to Complete Construction of the Common Public Improvements on or before the Common Public Improvements Completion Date and the City has been unable to enforce the rights and remedies under the Bonds to cause the Completion of Construction of the Common Public Improvements, then City shall be entitled to recover from the Developer and the Tract D Developer, jointly and severally, the sum equal to the actual costs and expenses incurred by the City that are reasonably necessary to Complete Construction of the Common Public Improvements in compliance with the Plans and Specifications approved in writing by the City less amounts recovered by the

City through a foreclosure of the Performance Deed of Trust or a recapture of the Tract D Grant under Section 16.06(D).

Section 16.07 Recapture of Economic Development Incentives.

- A. In the event of a Developer Default, the Developer shall pay to the City within ten (10) days after written notice by the City, at the City's address set forth in Section 17.02 of this Agreement, or such other address as the City may hereafter notify the Developer in writing, the amount equal to the Economic Development Incentives previously paid by the City to the Developer under the terms of this Agreement in accordance with the schedule below plus interest at the rate equal to the lesser of: (a) the Maximum Lawful Rate; or (b) three percent (3%) per annum, such interest rate to be calculated on each Economic Development Incentive being recaptured from the date such Economic Development Incentive was paid by the City until the date repaid by the Developer to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate.
- B. In the event of a Developer Default resulting from any act or omission of the Tract D Developer including, without limitation: (i) the failure of the Tract D Developer to obtain and maintain the Bonds and insurance required under the terms of this Agreement; or (ii) the failure of the Tract D Developer to Commence Construction of the Common Public Improvements on or before the Common Public Improvements Commencement Deadline Date, or to cause the Commencement of Construction of the Common Public Improvements on or before the Common Public Improvements Commencement Deadline Date; or (iii) the failure of the Tract D Developer to Complete Construction of the Common Public Improvements on or before the Common Public Improvements Completion Date, or to cause the Completion of Construction of the Common Public Improvements, on or before the Common Public Improvements Completion Date, or (iv) in the event of a default by the Tract D Developer under the terms of the Performance Deed of Trust and such default continues past any applicable notice and cure period provided to the Tract D Developer under the terms of the Performance Deed of Trust, the Tract D Developer shall pay to the City within ten (10) days after written notice by the City, at the City's address set forth in Section 17.02 of this Agreement, or such other address as the City may hereafter notify the Tract D Developer in writing, the amount equal to the Tract D Grant, and the Development Fee Grant related to the construction of a Building on Tract D, previously paid by the City to the Developer under the terms of this Agreement in accordance with the schedule below plus interest at the rate equal to the lesser of: (a) the Maximum Lawful Rate; or (b) three percent (3%) per annum, such interest rate to be calculated on the incentive being recaptured from the date the incentive was paid by the City to the Developer until the date the Developer or the Tract D Developer repay such incentive to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate.
- C. The Developer and the Tract D Developer acknowledge and agree that the obligations set forth in Section 16.07(A) and Section 16.07(B) are joint and several.

[Grants Subject to Recapture	Status of Project as of the Date of a Developer Default	Percentage of Economic Development Incentive Payments Previously Paid by the City to the Developer to be Recaptured
Tract D Grant and Development Fee Grant related to the construction of a Building on Tract D		
	If a Developer Default occurs prior to the Completion of Construction of the Common Public Improvements	100%
	If a Developer Default occurs after the Completion of Construction of the Common Public Improvements but prior to the earlier of: (i) Completion of Construction of Building 1; or (ii) Completion of Construction of a Building on Tract D consisting of a minimum of 540,000 square feet	50%
	If a Developer Default occurs after the Completion of Construction of the Common Public Improvements and after either: (i) Completion of Construction of Building 1; or (ii) Completion of Construction of a Building on Tract D consisting of a minimum of 540,000 square feet	0%
Tract C Grant and Development Fee Grant related to the construction of a Building on Tract C		
	If a Developer Default occurs after Developer exercises a Purchase Option to purchase Tract C and prior to the Completion of Construction of a Building on Tract C consisting of a minimum of 300,000 square feet	100%
	If a Developer Default occurs within one (1) year after the Completion of Construction of a Building on Tract C consisting of a minimum of 300,000 square feet	50%

	If a Developer Default occurs more than one (1) year after the Completion of Construction of a Building on Tract C consisting of a minimum of 300,000 square feet	0%
Tract B Grant and Development Fee Grant related to the construction of a Building on Tract B		
	If a Developer Default occurs after Developer exercises a Purchase Option to purchase Tract B and prior to the Completion of Construction of a Building on Tract B consisting of a minimum of 265,000 square feet	100%
	If a Developer Default occurs within one (1) year after the Completion of Construction of a Building on Tract B consisting of a minimum of 265,000 square feet	50%
	If a Developer Default occurs more than one (1) year after the Completion of Construction of a Building on Tract B consisting of a minimum of 265,000 square feet	0%

Section 16.08 Attorney's Fees. No Party hereto shall be entitled to seek or recover attorney's fees from any other Party hereto (except in the event of the exercise by the City of the remedies set forth in Chapter 2264 of the Texas Government Code).

Section 16.09 Waiver of Actual, Consequential, Punitive, Exemplary and Speculative Damages. The Parties agree that, in connection with any action, suit or proceeding arising from or relating to this Agreement and/or the TIRZ Reimbursement Agreement, each Party mutually waives to the fullest extent permitted by Applicable Law, all rights to sue each other Party for actual, consequential, punitive, exemplary or speculative damages. The provisions of this Section 16.09 shall expressly survive the closing of the purchase of Tract D, the First Option Tract, the Second Option Tract, and the expiration or termination of this Agreement.

Section 16.10 Survival. All terms, provisions, agreements, covenants, conditions, obligations, rights, and remedies of each Party pursuant to this Article XVI shall expressly survive the expiration or termination of this Agreement.

ARTICLE XVII

GENERAL PROVISIONS

Section 17.01 Date for Performance. In computing the number of days for purposes of this Agreement, all days will be counted including Saturdays, Sundays and legal holidays, however, if the final day of any time period under this Agreement falls on a Saturday, Sunday or legal holiday, the time for performance shall automatically be extended through the close of business on the next regularly scheduled business day.

Section 17.02 Notices. Any notice and/or certificate or statement required or permitted to be given to any Party under the terms of this Agreement shall be in writing and shall be deemed properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Party at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Except as set forth herein: (i) notices mailed by certified mail as set forth above shall be effective and deemed delivered, whether actually received or not, one (1) day after deposit in the United States mail; (ii) notices sent by a nationally recognized courier service as set forth above shall be effective and deemed delivered, whether actually received or not, one (1) day after deposit with the nationally recognized courier service; and (iii) notices given in any other manner shall be effective and deemed delivered only if and when received by the addressee. Notwithstanding anything contained herein to the contrary, a Lender Notice of Default shall not be deemed effective or delivered until received by the Director of Finance, the City Manager, or the City Attorney of the City. 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:

To the City:	City of Mesquite PO Box 850137 Mesquite, TX 75185-0137 Attention: City Manager
With a copy to:	City of Mesquite PO Box 850137 Mesquite, TX 75185-0137 Attention: City Attorney
To the Developer:	Alcott Logistics Partners, LP 5440 Harvest Hill Road Suite 240 E Dallas, Texas 75230 Attention: Mr. Jason Nunley

With a copy to:

Munsch, Hardt, Kopf & Harr, P.C.
500 N. Akard Street, Suite 3800
Dallas, TX 75201
Attention: Mr. Ian Fairchild

To the Tract D Developer:

Alcott Logistics Station Tract D, LP
5440 Harvest Hill Road
Suite 240 E
Dallas, Texas 75230
Attention: Mr. Jason Nunley

With a copy to:

Munsch, Hardt, Kopf & Harr, P.C.
500 N. Akard Street, Suite 3800
Dallas, TX 75201
Attention: Mr. Ian Fairchild

Section 17.03 Assignment.

A. Assignment of Agreement and TIRZ Reimbursement Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns and the TIRZ Reimbursement Agreement shall be binding upon and inure to the benefit of the City and the Tract D Developer and their respective successors and permitted assigns provided, however, that notwithstanding anything contained herein to the contrary, except as expressly set forth in this Section 17.03(A), this Agreement and the TIRZ Reimbursement Agreement and the rights and obligations of the Developer and the Tract D Developer under the terms of this Agreement and the TIRZ Reimbursement Agreement including, without limitation, the obligations, requirements and covenants of the Developer and the Tract D Developer to construct, or cause the construction, of the Common Public Improvements and Building 1 as set forth in this Agreement may not be assigned or transferred by the Developer or the Tract D Developer without the prior written consent of the City, which may be withheld in the City's sole discretion provided, however that this provision shall not prohibit the Developer from satisfying its construction obligations through a Development Entity and shall not prevent the Developer from satisfying its covenant to invest a minimum of THREE MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,200,000.00) in connection with the construction of the Common Public Improvements through the Tract D Developer as expressly set forth herein. Any assignee approved by the City shall hereinafter be referred to as an "Approved Assignee". In the event the Developer, the Tract D Developer, or any Approved Assignee is a corporation or limited liability company, the sale, transfer or assignment of a controlling interest in the shares of the Developer, the Tract D Developer, or Approved Assignee, or the sale, transfer or assignment of a controlling interest in the membership interests of the Developer, the Tract D Developer, or Approved Assignee shall constitute an assignment of this Agreement and the TIRZ Reimbursement Agreement and the failure of the Developer, the Tract D Developer, or Approved Assignee to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares or membership interests shall be an attempted assignment of this Agreement and the TIRZ Reimbursement Agreement in violation of this Agreement and the TIRZ Reimbursement Agreement and shall constitute a breach of this Agreement and the TIRZ Reimbursement Agreement by the Developer, the Tract D Developer, or Approved Assignee provided, however,

that any third party investor in Developer, the Tract D Developer, or any Developer Subsidiary, that is not an Affiliate of Developer may exercise its right to remove and replace the manager or managing member of Developer, the Tract D Developer, or a Developer Subsidiary without the prior consent of the City and, after such removal and replacement of such manager or managing member, the City will give the third party investor a copy of any notices of default to be provided to the Developer or Tract D Developer under the terms of this Agreement and the third party investor will have the same cure rights provided to the Developer and Tract D Developer under the terms of this Agreement provided the third party investor has given the City prior written notice of the removal and replacement of such manager or managing member and the name and address of the third party investor. In the event the Developer, the Tract D Developer, or Approved Assignee is a partnership, the sale, transfer or assignment of a controlling interest in the shares of a corporation or the membership interests of a limited liability company or the partnership interests of a partnership that is the Developer's, the Tract D Developer's, or Approved Assignee's general or managing partner shall constitute an assignment of this Agreement and the TIRZ Reimbursement Agreement and the failure of the Developer, the Tract D Developer, or Approved Assignee to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares, membership interests or partnership interests shall be an attempted assignment of this Agreement and the TIRZ Reimbursement Agreement in violation of this Agreement and the TIRZ Reimbursement Agreement and shall constitute a breach of this Agreement and the TIRZ Reimbursement Agreement by the Developer or Approved Assignee provided, however, that any third party investor in Developer, the Tract D Developer, or any Developer Subsidiary, that is not an Affiliate of Developer may exercise its right to remove and replace the manager or managing member of Developer, the Tract D Developer, or a Developer Subsidiary without the prior consent of the City and, after such removal and replacement of such manager or managing member, the City will give the third party investor a copy of any notices of default to be provided to the Developer or Tract D Developer under the terms of this Agreement and the third party investor will have the same cure rights provided to the Developer and Tract D Developer under the terms of this Agreement provided the third party investor has given the City prior written notice of the removal and replacement of such manager or managing member and the name and address of the third party investor.

B. Collateral Assignment of Receivables. The Developer, the Tract D Developer, and any Approved Assignee, shall have the right to collaterally assign, mortgage, pledge, grant a lien or security interest in, or otherwise encumber any receivables or other sums due under the terms of this Agreement and the Tract D Developer shall have the right to collaterally assign, mortgage, pledge, grant a lien or security interest in, or otherwise encumber any receivables or other sums due under the terms of this Agreement and the TIRZ Reimbursement Agreement (each a "Collateral Assignment") to up to a maximum of two (2) lender(s) of the Developer, the Tract D Developer, or Approved Assignee, providing financing for the development and construction of the Project (individually a "Lender" and collectively the "Lenders") provided: (i) the Developer, the Tract D Developer, or Approved Assignee provides written notice of such Collateral Assignment to the City within ten (10) days from the effective date of such assignment; (ii) if there is more than one Lender, the notice of Collateral Assignment is executed by both Lender(s) and identifies the percentage of each payment to be made to each Lender upon a default by the Developer, the Tract D Developer or Approved Assignee to such Lender(s); and (iii) the Collateral Assignment provides that the City shall have the right to pay any Economic Development Incentives and any other sums owed under the terms of this Agreement and the TIRZ

Reimbursement Agreement to the Developer, the Tract D Developer, or any Approved Assignee until the City is in actual receipt of a written notice by each Lender that the Developer, the Tract D Developer, or Approved Assignee is in default of its obligations to such Lender (each a “**Lender Notice of Default**”). The Parties agree that the Tract D Developer may assign any receivables or other sums due under the terms of the TIRZ Reimbursement Agreement to the Developer without the consent of the City provided the Tract D Developer has not assigned, mortgaged, pledged, granted a lien or security interest in, or otherwise encumbered such receivables or other sums to any Lender(s). Upon any such assignment to the Developer, the Tract D Developer shall no longer have the right to collaterally assign, mortgage, pledge, grant a lien or security interest in, or otherwise encumber any receivables or other sums due under the terms of the TIRZ Reimbursement Agreement to any Lender(s). The Parties agree that in no event shall the City be required to make partial payments due under the terms of this Agreement and the TIRZ Reimbursement Agreement to more than two (2) Lenders and in no event shall the City be required to approve or consent to any Collateral Assignment. Neither the Developer, the Tract D Developer, nor any Approved Assignee shall, by operation of law or otherwise, collaterally assign, mortgage, pledge, grant a lien or security interest in, or otherwise encumber any interest in any receivables or other sums due under this Agreement to any Person other than a Lender without obtaining the City’s prior written consent, which may be withheld in the City’s sole discretion. Neither the Tract D Developer nor any Approved Assignee shall, by operation of law or otherwise, collaterally assign, mortgage, pledge, grant a lien or security interest in, or otherwise encumber any interest in any receivables or other sums due under the TIRZ Reimbursement Agreement to any Person other than a Lender or the Developer without obtaining the City’s prior written consent, which may be withheld in the City’s sole discretion. If the Tract D Developer assigns its interest in any receivables or other sums due under the TIRZ Reimbursement Agreement to the Developer, the Developer shall not further assign, mortgage, pledge, grant a lien or security interest in, or otherwise encumber any receivables or other sums due under the TIRZ Reimbursement Agreement to any Person other than a maximum of two (2) Lenders without obtaining the City’s prior written consent, which may be withheld in the City’s sole discretion. A Collateral Assignment shall not obligate any Lender to perform any obligation or incur any liability under this Agreement unless the Lender agrees in writing to perform such obligations or incur such liability provided, however, notwithstanding the foregoing, no Person including, without limitation, a Lender, acquiring an interest in this Agreement through the foreclosure or exercise of any rights of a Lender pursuant to a Collateral Assignment, whether judicial or non-judicial, shall be entitled to any Economic Development Incentives, any other sums due under the terms of this Agreement or the TIRZ Reimbursement Agreement, or any other rights or benefits under this Agreement or the TIRZ Reimbursement Agreement, unless and until: (i) all defaults under this Agreement and the TIRZ Reimbursement Agreement have been cured; and (ii) such Person has provided the City with an agreement executed by such Person agreeing to assume and timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations of the Developer, the Tract D Developer, or Approved Assignee under the terms of this Agreement and the TIRZ Reimbursement Agreement.

C. General Conditions to Assignment. Any consent by the City to any assignment of this Agreement and the TIRZ Reimbursement 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. No assignment of this Agreement or the TIRZ Reimbursement Agreement shall contain any terms in contravention of any provisions of this Agreement or the

TIRZ Reimbursement Agreement. No assignment by Developer, the Tract D Developer, or any Approved Assignee shall release Developer, the Tract D Developer, or any Approved Assignee from any liability that resulted from an act or omission by Developer, the Tract D Developer, or any Approved Assignee that occurred prior to the effective date of the assignment unless the City approves the release in writing. No assignment of this Agreement or the TIRZ Reimbursement Agreement other than a Collateral Assignment under the terms set forth above 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 and the TIRZ Reimbursement Agreement; (iii) a true and correct copy of such assignment has been provided to the City; and (iv) the City has consented to such assignment in writing. Each Approved Assignee shall be considered a "Party" and the "Developer" under the terms of this Agreement and the TIRZ Reimbursement Agreement, shall be subject to and bound by all the provisions, covenants, and conditions of this Agreement and the TIRZ Reimbursement Agreement, and shall be required to obtain the prior written consent of the City with respect to any future or further assignment. Provided the City has been given a copy of a Collateral Assignment creating a Lender's interest, including notice information for the Lender, then that Lender shall have the right, but not the obligation, to cure any default under this Agreement or the TIRZ Reimbursement Agreement that by the express terms of this Agreement or the TIRZ Reimbursement Agreement is curable by the Developer or Tract D Developer within thirty (30) days after written notice to the Lender as if offered by the Developer or Tract D Developer. A Lender is not a party to this Agreement or the TIRZ Reimbursement Agreement unless this Agreement and the TIRZ Reimbursement Agreement is amended, with the consent of the Lender, to add the Lender as a Party. Notwithstanding the foregoing, however, this Agreement shall continue to bind the Property and shall survive any transfer, conveyance, or assignment occasioned by the exercise of foreclosure or other rights by a Lender, whether judicial or non-judicial. Any purchaser from or successor owner through a Lender of any portion of the Property shall be bound by this Agreement and shall not be entitled to the rights and benefits of this Agreement or the TIRZ Reimbursement Agreement until all defaults under this Agreement and the TIRZ Reimbursement Agreement have been cured. Any attempted assignment in violation of the terms and provisions of this Agreement or the TIRZ Reimbursement Agreement shall be void and shall constitute a material breach of this Agreement and the TIRZ Reimbursement Agreement by the Developer, the Tract D Developer, or any Approved Assignee and in the event the Developer, the Tract D Developer, or any Approved Assignee attempts to assign this Agreement or the TIRZ Reimbursement Agreement in violation of Section 17.03 of this Agreement, the City shall have the right to terminate this Agreement and the TIRZ Reimbursement Agreement by written notice to the Developer, the Tract D Developer, or Approved Assignee.

D. Assignment of Purchase Options. Notwithstanding anything contained herein to the contrary, the Parties agree that the Purchase Options are personal to the Developer and in no event shall the Developer have the right to assign either or both Purchase Options to any Person including, without limitation, any Lender, without the prior written consent of the City, which may be withheld in the City's sole discretion provided, however, that the Developer shall be permitted to designate a Development Entity to acquire title to Tract B and/or Tract C in accordance with the terms of Article VII.

Section 17.04 Right to Offset. The City shall have the right to offset any amounts due and payable by the City under this Agreement and/or the TIRZ Reimbursement Agreement against any debt (including taxes) lawfully due and owing by the Developer and/or the Tract D Developer to the City, regardless of whether the amount due arises pursuant to the terms of this Agreement, the TIRZ Reimbursement Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

Section 17.05 Estoppel Certificates. From time to time within thirty (30) days after written request by the Developer or the Tract D Developer, and upon the payment of a \$100.00 fee to the City, the City Manager is authorized, in his official capacity and to his reasonable knowledge and belief, to execute a written estoppel certificate in form approved by the City Attorney, identifying any obligations of the Developer and the Tract D Developer under this Agreement that are in default.

Section 17.06 Limited Recourse. No elected official, officer, director, partner, employee, agent, attorney, or representative of the Developer, the Tract D Developer, or the City shall be deemed to be a Party to this Agreement or shall incur any liability hereunder in their individual capacities by reason of this Agreement, the TIRZ Reimbursement Agreement, or their acts or omissions under this Agreement.

Section 17.07 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes.

Section 17.08 No Acceleration. Any amounts due pursuant to this Agreement and the TIRZ Reimbursement Agreement and any remedies under this Agreement and the TIRZ Reimbursement Agreement are not subject to acceleration.

Section 17.09 Captions. The titles of the articles and the headings and 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.

Section 17.10 Modification. This Agreement may only be revised, modified, or amended by a written document signed by the City, the Developer and the Tract D Developer. Oral revisions, modifications or amendments of this Agreement are not permitted.

Section 17.11 Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.

Section 17.12 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 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.

Section 17.13 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 and the Parties agree to submit to the personal and subject matter jurisdiction of such courts.

Section 17.14 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.

Section 17.15 No Partnership or Joint Venture. Nothing contained in this Agreement, the TIRZ Reimbursement Agreement, or any other agreement between the City, the Developer and/or the Tract D Developer, is intended by the Parties to create a partnership or joint venture between the Developer, the Tract D Developer, any Development Entity, and the City. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint any Party as an agent of any other Party for any purpose whatsoever. This Agreement shall not 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.

Section 17.16 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.

Section 17.17 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.

Section 17.18 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.

Section 17.19 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.

Section 17.20 Authority. The Developer 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. The Developer represents that it has the full power and authority to enter into and fulfill its obligations under this Agreement and that the Person signing this Agreement on behalf of the Developer has the authority to sign this Agreement on behalf of the

Developer. The Tract D Developer 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. The Tract D Developer represents that it has the full power and authority to enter into and fulfill its obligations under this Agreement and that the Person signing this Agreement on behalf of the Tract D Developer has the authority to sign this Agreement on behalf of the Tract D Developer.

Section 17.21 City Council Authorization. This Agreement was authorized by resolution of the City Council approved at a City Council meeting.

Section 17.22 Usury Savings Clause. The Developer, the Tract D Developer, and the City intend to conform strictly to all applicable usury laws. All agreements of the City, the Developer and the Tract D Developer are hereby limited by the provisions of this Section 17.22 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 17.22 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 the Developer or the Tract D Developer or applied to the reduction of any amount owing by the Developer or the Tract D Developer to the City under this Agreement 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.

Section 17.23 Anti-Boycott Verification. The Developer and the Tract D Developer each hereby verify that it and its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, if and to the extent this Agreement is construed to be a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, but only to the extent such section is applicable, and to the extent such section does not contravene applicable federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Developer and the Tract D Developer understand "affiliate" as used in this Section 17.23 to mean an entity that controls, is controlled

by, or is under common control with the Developer or the Tract D Developer and exists to make a profit.

Section 17.24 Iran, Sudan and Foreign Terrorist Organizations. The Developer and the Tract D Developer represent that neither the Developer, the Tract D Developer, nor their parent company, wholly-or majority-owned subsidiaries, and other affiliates are a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such section does not contravene applicable federal law and excludes the Developer, the Tract D Developer and each of the Developer's and the Tract D Developer's parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Developer and the Tract D Developer understands "affiliate" as used in this Section 17.24 to mean any entity that controls, is controlled by, or is under common control with the Developer or the Tract D Developer and exists to make a profit.

Section 17.25 Form 1295 Certificate. The Developer and the Tract D Developer each represent that it has complied with Texas Government Code, Section 2252.908 and in connection therewith, the Developer and the Tract D Developer have completed a Texas Ethics Commission Form 1295 Certificate generated by the Texas Ethics Commission's electronic filing system and in accordance with the rules promulgated by the Texas Ethics Commission. The Developer and the Tract D Developer 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. The Parties agree that, except for the information identifying the City and the contract identification number, the City is not responsible for the information contained in the Form 1295 completed by the Developer and the Tract D Developer. The information contained in the Form 1295 completed by the Developer and the Tract D Developer has been provided solely by the Developer and the Tract D Developer and the City has not verified such information. The Developer further agrees to cause any Development Entity that purchases Tract B, and any Development Entity that purchases Tract C, to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Developer agrees to cause such Development Entities to: (i) complete a Texas Ethics Commission Form 1295 Certificate generated by the Texas Ethics Commission's electronic filing system and in accordance with the rules promulgated by the Texas Ethics Commission; and (ii) 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 Tract B Closing and Tract C Closing, as applicable, a duly executed completed Form 1295 Certificate.

Section 17.26 Legislative Discretion. The Parties agree that by execution of this Agreement, the City does not waive or surrender any of its governmental powers, immunities or

rights and, notwithstanding any provision of this Agreement, this Agreement does not control, waive, limit or supplant the legislative authority or discretion of the City Council.

Section 17.27 Execution of Agreement by Parties. If this Agreement is not executed by the Parties on or before July 2, 2021, this Agreement will be null and void and of no force or effect.

Section 17.28 Time is of the Essence. THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH AND EVERY PROVISION OF THIS AGREEMENT AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

City:

CITY OF MESQUITE,
a Texas home rule municipality


By: 
Name: Cliff Keheley
Title: City Manager

Executed the 29 day of June 2021

ATTEST:


Sonja Land, City Secretary

APPROVED AS TO LEGAL FORM:


Name: David L. Paschall
Title: City Attorney

STATE OF TEXAS §

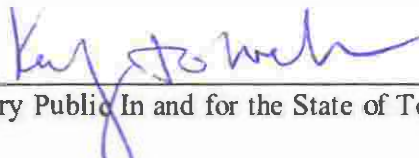
COUNTY OF DALLAS §

Before me, the undersigned officer, on this day personally appeared Cliff Keheley, City Manager of the City of Mesquite, a Texas home rule municipality, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this 29 day of June 2021.

SEAL




Notary Public In and for the State of Texas

[SIGNATURES CONTINUE ON NEXT PAGE]

Developer:

ALCOTT LOGISTICS PARTNERS, LP
a Texas limited partnership

By: Alcott Logistics Partners GP, LLC,
a Texas limited liability company
Its general partner

By: Urban Commercial Realty Partners,
LLC,
a Texas limited liability company,
Its manager

By: *[Signature]*
Name: Adam Herrin
Title: Manager

Executed the 23 day of June 2021

STATE OF TEXAS §

COUNTY OF DALLAS §

Before me, the undersigned officer, on this day personally appeared Adam Herrin, manager of Urban Commercial Realty Partners, LLC, a Texas limited liability company, manager of Alcott Logistics Partners GP, LLC, a Texas limited liability company, general partner of ALCOTT LOGISTICS PARTNERS, LP, a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this 23rd day of June 2021.

SEAL



Kellie Drayovitch
Notary Public In and for the State of Texas

Tract D Developer:

ALCOTT LOGISTICS STATION TRACT D, LP
a Delaware limited partnership

By: Alcott Logistics Station Tract D GP, LLC,
a Texas limited liability company,
Its general partner

By: Urban Commercial Realty Partners,
LLC,
a Texas limited liability company,
Its manager

By: 
Name: Adam Herrin
Title: Manager

Executed the 23 day of June 2021

STATE OF TEXAS §

COUNTY OF DALLAS §

Before me, the undersigned officer, on this day personally appeared Adam Herrin, Manager of Urban Commercial Realty Partners, LLC, a Texas limited liability company, manager of Alcott Logistics Station Tract D GP, LLC, a Texas limited liability company, general partner of Alcott Logistics Station Tract D, LP, a Delaware limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this 23rd day of June 2021.

SEAL





Notary Public In and for the State of Texas

EXHIBIT A
Legal Description of Tract I
[50.67364 Acre Tract]

Being all that certain tract or parcel of land situated in the City of Mesquite, Dallas County, Texas, out of the JAMES M. SEWELL SURVEY, ABSTRACT NO. 1358 and the THOMAS J. SEWELL SURVEY, ABSTRACT NO. 1359, and being part of that property conveyed to Phil L. Hudson by Catherine Yates Payne and husband Phillip M. Payne by Deed recorded in Volume 2329, Page 310 of the Deed Records of Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod for corner in the Southerly line of Scyene Road (60 Foot R.O.W.) said point being the Northeast corner of a certain tract of land conveyed by Gertrude Kenney Hudson to Wilburn Leon Ladyman and Mildred B. Ladyman by Deed recorded in Volume 85007, Page 5277 of the Deed Records of Dallas County, Texas;

THENCE South 83 degrees 34 minutes 30 seconds East with said line of Scyene Road, a distance of 2744.65 feet to a 1/2 inch iron rod in the East line of said Hudson tract;

THENCE South 0 degrees 55 minutes 10 seconds West with the East line of said Hudson property, a distance of 660 feet to a 1/2 inch iron rod for the Northeast corner of that certain tract of land conveyed to the County of Dallas Texas, by Deed from Gertrude Kenney Hudson, a widow, recorded in Volume 75112, Page 1271 Deed Records of Dallas County, Texas, said Dallas County tract being known as East Glen Boulevard (100 foot R. O. W.);

THENCE North 88 degrees 45 minutes 51 seconds West with the North line of East Glen Boulevard, a distance of 2732.18 feet to a 1/2 inch iron rod at the Southeast corner of a tract of land conveyed to Wilburn Leon Ladyman and Mildred B. Ladyman by Deed recorded in Volume 85007, Page 5279 Deed Records of Dallas County, Texas;

THENCE North 0 degrees 55 minutes 10 seconds East, a distance of 955.93 feet to the PLACE OF BEGINNING and containing 50.67364 acres of land, more or less.

EXHIBIT B
Legal Description of Tract 2
[23.03668 Acre Tract]

Being all that certain tract or parcel of land situated in the City of Mesquite, Dallas County, Texas, out of the JAMES M. SEWELL SURVEY, ABSTRACT NO. 1358 and the THOMAS J. SEWELL SURVEY, ABSTRACT NO. 1359, and being part of that property conveyed to Phil L. Hudson by Catherine Yates Payne and husband Phillip M. Payne by Deed recorded in Volume 2329, Page 310 of the Deed Records of Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod for corner in the South line of a tract of land conveyed to the County of Dallas, Texas, by Gertrude Kenney Hudson, a widow, by Deed recorded in Volume 75112, Page 1271 of the Deed Records, Dallas County, Texas, said tract being known as East Glen Boulevard (100 foot R.O.W.), said point also being in the East line of a certain tract of land conveyed to Hollis Boone Memorial Post by Deed recorded in Volume 77211, Page 1265 Deed Records, Dallas County, Texas;

THENCE South 89 degrees 45 minutes 51 seconds East with the South line of East Glen Boulevard, a distance of 2931.36 feet to a 1/2 inch iron rod in the East line of said Hudson tract;

THENCE South 0 degrees 55 minutes 10 seconds West with the East line of said Hudson tract, a distance of 720 feet to a "P.K." nail for corner in Newsome Road (variable width R.O.W.) said point being in the common line of the James M. Sewell Survey and the R. W. Rowe Survey, being the Southeast corner of said Hudson tract;

THENCE North 89 degrees 43 minutes 15 seconds West with said survey line, a distance of 825.94 feet to a "P.K." nail for corner at the intersection of said Survey line with the Northerly line of a tract of land conveyed to the County of Dallas, September 14, 1939, said tract being known as the Old Terrell Interurban R.O.W.;

THENCE North 77 degrees 33 minutes 40 seconds West with the North line of said Dallas County Tract a distance of 2146.54 feet to a 1/2 inch iron rod at the Southeast corner of said Hollis Boone Memorial Post tract;

THENCE North 0 degrees 55 minutes 10 seconds East with the East line of said Boone tract, a distance of 265.19 feet to the PLACE OF BEGINNING and containing 37.41726 gross acres of land, less 0.40058 acres in Newsome Road, leaving 37.01668 Net Acres of land.

SAVE AND EXCEPT that certain fourteen (14) acre tract of real property legally described as follows:

BEING all that certain tract or parcel of land situated in the City of Mesquite, Dallas County, Texas, out of the James M. Sewell Survey, Abstract No. 1358 and the Thomas J. Sewell Survey, Abstract No. 1359, and being part of that property conveyed to Phil L.

Hudson by Catherine Yates Payne and husband, Phillip M. Payne by Deed recorded in Volume 2329, Page 310, of the Deed Records of Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2" iron rod for corner in the South line of a tract of land conveyed to the County of Dallas, Texas, by Gertrude Kenney Hudson, a widow, by Deed recorded in Volume 75112, Page 1271, of the Deed Records of Dallas County, Texas, said tract being known as East Glen Boulevard (a 100' RCW), said point also being in the East line of a certain tract of land conveyed to Hollis Boone Memorial Post of Deed recorded in Volume 77211, Page 1263, Deed Records of Dallas County, Texas;

THENCE: S 89°45'51" E, with the South line of East Glen Boulevard, a distance of 1447.54 feet to a point for corner;

THENCE: S 00°55'10" W, a distance of 577.46 feet to a point for corner in the Northerly line of a tract of land conveyed to the County of Dallas, September 14, 1939, said tract being known as the Old Terrell Interurban RCW;

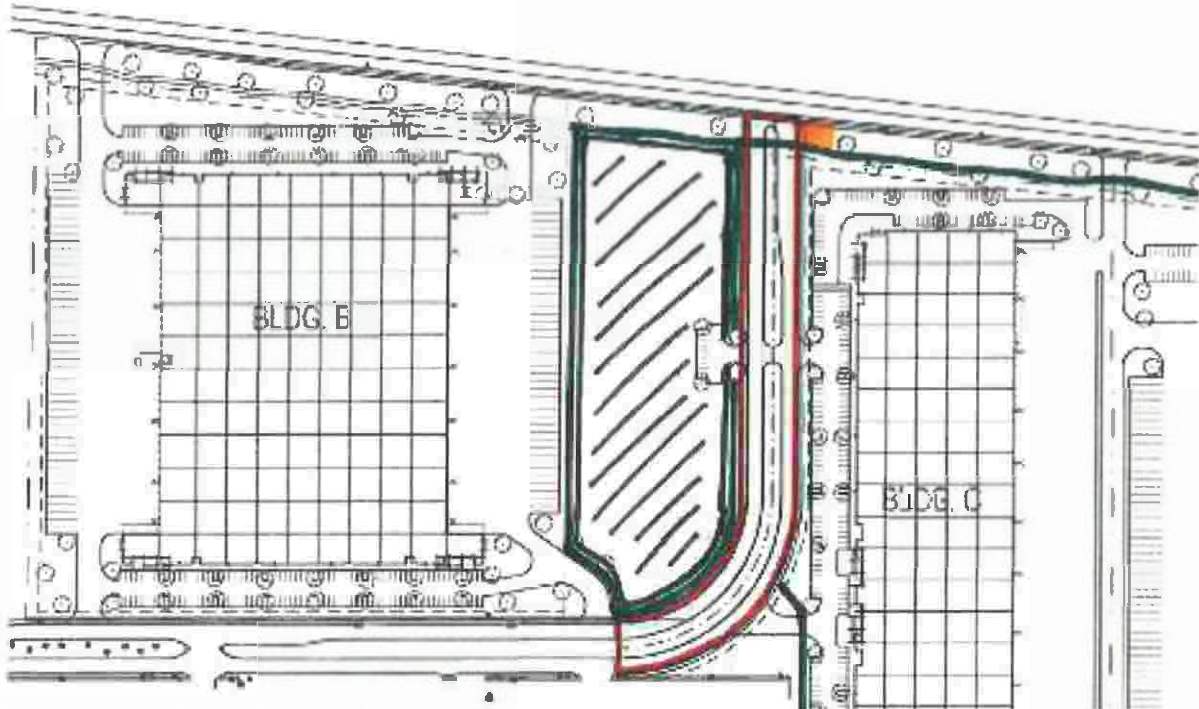
THENCE: N 77°33'40" W, with the North line of said Dallas County tract, a distance of 1477.19 feet to a point for corner, being the Southeast corner of said Hollis Boone Memorial Post tract;

THENCE: N 00°55'10" E, with the East line of said Boone tract, a distance of 265.19 feet to the PLACE OF BEGINNING and containing 14.000 acres of land, more or less.

EXHIBIT C

Description of Common Public Improvements

Estimated Project Cost	
Description	Cost
Storm Drainage and Detention	240,000
Franchise Utilities	80,000
Mass Grading	160,000
East Glen Removal	240,000
East Glen Realignment (Paving, water line, drainage)	800,000
Trail	320,000
Park	400,000
Landscaping/ Irrigation	120,000
Monument / Wayfinding Signage	40,000
Contingency, Interest, Soft Cost, Pre Dev, Dev Fee	800,000
Total	3,200,000



*concept intended to be a graphic representation. Final plans will be approved by the City prior to construction.

**LEGAL DESCRIPTION
PARK TRACT**

BEING an 5.06 acre tract of land situated in the Thomas J. Sewell Survey, Abstract Number 1359 in the City of Mesquite, Dallas County, Texas, and being part of a called 50.67364 acre tract of land described as "Tract 2" in General Warranty Deed to City of Mesquite, as recorded in Volume 95083, Page 253 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and being more particularly described as follows:

COMMENCING at a 5/8-inch found iron rod with cap stamped "KHA" for the northeast corner of a called 1.417 acre tract of land described in Special Warranty Deed with Vendor's Lien to MCR Logistics, as recorded in Instrument Number 201700126943, of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), and the northwest corner of said 50.67364 acre tract, said corner being on the south right-of-way line of Scyene Road (a 60-foot wide right-of-way);

THENCE South 84 degrees 32 minutes 03 seconds East, with the north line of said 50.67364 acre tract and the south right-of-way line of said Scyene Road, a distance of 874.16 feet to a corner (not monumented);

THENCE over and across said 50.67364 acre tract, the following bearings and distances:

South 00 degrees 41 minutes 47 seconds East, departing said north and south lines, a distance of 40.23 feet to the **POINT OF BEGINNING**;

South 84 degrees 32 minutes 03 seconds East, a distance of 287.17 feet to a corner (not monumented);

South 00 degrees 41 minutes 47 seconds East, departing said north and south lines, a distance of 586.35 feet to the point of curvature (not monumented) of a tangent circular curve to the right, having a radius of 200.00 feet, whose chord bears South 43 degrees 45 minutes 44 seconds West, a distance of 280.21 feet;

Southwesterly, with said curve, through a central angle of 88 degrees 56 minutes 13 seconds, an arc distance of 310.45 feet to the northwest corner (not monumented) of a called 6.73 acre tract of land described as "Tract 1" in Quitclaim Deed to City of Mesquite, as recorded in Instrument Number 202100054586, O.P.R.D.C.T., said corner being on the south line of said 50.67364 acre tract, and the north right-of-way line of Eastglen Boulevard (a 100-foot wide right-of-way);

THENCE South 89 degrees 18 minutes 13 seconds West, with the south line of said 50.67364 acre tract and the north right-of-way line of said Eastglen Boulevard, a distance of 89.26 feet to a corner (not monumented);

THENCE North 00 degrees 41 minutes 47 seconds West, departing said north and south lines and over and across said 50.67364 acre tract, a distance of 817.18 feet to the **POINT OF BEGINNING AND CONTAINING** 5.06 acres (220,336 square feet) of land, more or less.

LEGAL DESCRIPTION

R.O.W.

BEING an 2.23 acre tract of land situated in the Thomas J. Sewell Survey, Abstract Number 1359 in the City of Mesquite, Dallas County, Texas, and being part of a called 50.67364 acre tract of land described as "Tract 2" in General Warranty Deed to City of Mesquite, as recorded in Volume 95083, Page 253 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and part of a called 6.73 acre tract of land described as "Tract 1" in Quitclaim Deed to City of Mesquite, as recorded in Instrument Number 202100054586 of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), and being more particularly described as follows:

COMMENCING at a 5/8-inch found iron rod with cap stamped "KHA" for the northeast corner of a called 1.417 acre tract of land described in Special Warranty Deed with Vendor's Lien to MCR Logistics, as recorded in Instrument Number 201700126943 of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), and the northwest corner of said 50.67364 acre tract, said corner being on the south right-of-way line of Scyene Road (a 60-foot wide right-of-way);

THENCE South 84 degrees 32 minutes 03 seconds East, with the north line of said 50.67364 acre tract and the south right-of-way line of said Scyene Road, a distance of 1,161.33 feet to a corner (not monumented);

THENCE over and across said 50.67364 acre tract, the following bearings and distances:

South 00 degrees 41 minutes 47 seconds East, departing said north and south lines, a distance of 40.23 feet to the **POINT OF BEGINNING**;

South 84 degrees 32 minutes 03 seconds East, a distance of 100.58 feet to a corner (not monumented);

South 00 degrees 41 minutes 47 seconds East, a distance of 575.55 feet to the point of curvature (not monumented) of a tangent circular curve to the right, having a radius of 300.00 feet, whose chord bears South 43 degrees 56 minutes 38 seconds West, a distance of 421.62 feet;

Southwesterly, over and across said 50.67364 acre tract, and the aforementioned 6.73 acre tract, and with said curve, through a central angle of 89 degrees 17 minutes 21 seconds, an arc distance of 467.52 feet to the southwest corner (not monumented) of said 6.73 acre tract, said corner being on the south right-of-way line of Eastglen Boulevard (a 100-foot wide public right-of-way);

THENCE North 00 degrees 41 minutes 46 seconds West, with the west line of said 6.73 acre tract and over and across said Eastglen Boulevard, a distance of 100.00 feet to the northwest corner (not monumented) of said 6.73 acre tract, said corner being on the south line of said 50.67364 acre tract, the north right-of-way line of said Eastglen Boulevard, and the point of curvature of a non-tangent circular curve to the left, having a radius of 200.00 feet, whose chord bears North 43 degrees 45 minutes 44 seconds East, a distance of 280.21 feet;

THENCE Northeasterly, departing said north and south lines, over and across said 50.67364 acre tract, and with said curve, through a central angle of 88 degrees 56 minutes 13 seconds, an arc distance of 310.45 feet to a corner (not monumented);

THENCE North 00 degrees 41 minutes 47 seconds West, continuing over and across said 50.67364 acre tract, a distance of 586.35 feet to the **POINT OF BEGINNING AND CONTAINING 2.23 acres (96,991 square feet)** of land, more or less.

EXHIBITE
Legal Description of Tract B
[17.37 Acre Tract]

**LEGAL DESCRIPTION
TRACT B**

BEING an 17.37 acre tract of land situated in the Thomas J. Sewell Survey, Abstract Number 1359 in the City of Mesquite, Dallas County, Texas, and being part of a called 50.67364 acre tract of land described as "Tract 2" in General Warranty Deed to City of Mesquite, as recorded in Volume 95083, Page 253 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and being more particularly described as follows:

COMMENCING at a 5/8-inch found iron rod with cap stamped "KHA" for the northeast corner of a called 1.417 acre tract of land described in Special Warranty Deed with Vendor's Lien to MCR Logistics, as recorded in Instrument Number 201700126943, of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), and the northwest corner of said 50.67364 acre tract, said corner being on the south right-of-way line of Scyene Road (a 60-foot wide right-of-way);

THENCE South 00 degrees 00 minutes 33 seconds West, departing said south right-of-way line and with the west line of said 50.67364 acre tract and the east line of 2.997 acre tract, a distance of 40.18 feet to the **POINT OF BEGINNING**;

THENCE South 84 degrees 32 minutes 03 seconds East, over and across said 50.67364 acre tract, a distance of 874.66 feet to a corner (not monumented);

THENCE South 00 degrees 41 minutes 47 seconds East, over and across said 50.67364 acre tract, a distance of 817.18 feet to a corner (not monumented), said corner being on the south line of said 50.67364 acre tract and the north right-of-way line of Eastglen Boulevard (a 100-foot wide right-of-way);

THENCE South 89 degrees 18 minutes 13 seconds West, with the south line of said 50.67364 acre tract and the north right-of-way line of said Eastglen Boulevard, a distance of 880.82 feet to a 1/2-inch found iron rod with cap stamped "TXHS" for the southwest corner of said 50.67364 acre tract and the southeast corner of a called 2.997 acre tract of land described in Warranty Deed with Vendor's Lien to Sudi Corporation, as recorded in Instrument Number 201600284293, O.P.R.D.C.T.;

THENCE North 00 degrees 00 minutes 33 seconds East, departing said south line and with the west line of said 50.67364 acre tract and the east line of 2.997 acre tract, a distance of 911.13 feet to the **POINT OF BEGINNING AND CONTAINING** 17.37 acres (756,552 square feet) of land, more or less.

**LEGAL DESCRIPTION
TRACT C**

BEING an 18.01 acre tract of land situated in the Thomas J. Sewell Survey, Abstract Number 1359 in the City of Mesquite, Dallas County, Texas, and being part of a called 50.67364 acre tract of land described as "Tract 2" and part of a called 23.03668 acre tract of land described as "Tract 3" in General Warranty Deed to City of Mesquite, as recorded in Volume 95083, Page 253 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and part of a called 6.73 acre tract of land described as "Tract 1" in Quitclaim Deed to City of Mesquite, as recorded in Instrument Number 202100054586 of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), and being more particularly described as follows:

COMMENCING at the northeast corner of said 50.67364 acre tract and the northwest corner of a called 11.004 acre tract of land described as "Tract One" in Special Warranty Deed to Wintergreen/HS Partners, LTD., as recorded in Instrument Number 202000358596, O.P.R.D.C.T., said corner being on the south right-of-way line of Scyene Road (a 60-foot wide right-of-way), from which a 5/8-inch found iron rod with cap stamped "KHA" bears South 84 degrees 32 minutes 03 seconds East, a distance of North 83 degrees 16 minutes 20 seconds West, a distance of 0.51 of a foot;

THENCE North 84 degrees 32 minutes 03 seconds West, with the north line of said 50.67364 acre tract and the south right-of-way line of said E. Scyene Road, a distance of 973.67 feet to a corner (not monumented);

THENCE South 00 degrees 41 minutes 47 seconds East, departing said north and south lines, and over and across said 50.67364 acre tract, a distance of 40.23 feet to a corner (not monumented) for the **POINT OF BEGINNING**;

THENCE South 00 degrees 41 minutes 47 seconds East, over and across said 50.67364 acre tract, the aforementioned 23.03668 acre tract, and the aforementioned 6.73 acre tract, a distance of 1,513.58 feet to a corner (not monumented), said corner being on the south line of said 23.03668 acre tract and the north line of a called 42,901 square foot tract of land described in Special Warranty Deed to City of Mesquite, Texas, as recorded in Volume 2001166, Page 93, D.R.D.C.T.;

THENCE North 78 degrees 29 minutes 36 seconds West, with the south line of said 23.03668 acre tract and the northeast line of said 42,901 square foot tract, a distance of 544.42 feet to the northwest corner (not monumented) of said 42,901 square foot tract, said corner being on the east line of Lot 1 of Calvary First Baptist Church Addition, an addition to the City of Mesquite, Dallas County, Texas, as recorded in Instrument Number 201000184580, O.P.R.D.C.T.;

THENCE North 00 degrees 05 minutes 20 seconds West, with the east line of said Lot 1, a distance of 577.61 feet to the northeast corner (not monumented) of said Lot 1, said corner being on the south line of the aforementioned 6.73 acre tract;

THENCE South 89 degrees 18 minutes 13 seconds West, with the north line of said Lot 1 and the south line of said 6.73 acre tract, a distance of 276.25 feet to the point of curvature (not monumented) of a non-tangent circular curve to the left, having a radius of 300.00 feet, whose chord bears North 43 degrees 56 minutes 38 seconds East, a distance of 421.62 feet;

THENCE Northeasterly, departing said north and south lines, over and across said 6.73 acre tract and the aforementioned 50.67364 acre tract, and with said curve, through a central angle of 89 degrees 17 minutes 21 seconds, an arc distance of 467.52 feet to a corner (not monumented);

THENCE North 00 degrees 41 minutes 47 seconds West, over and across said 50.67364 acre tract, a distance of 575.55 feet to a corner (not monumented);

THENCE South 84 degrees 32 minutes 03 seconds East, over and across said 50.67364 acre tract, a distance of 508.94 feet to the **POINT OF BEGINNING AND CONTAINING** 18.01 acres (784,706 square feet) of land, more or less.

**LEGAL DESCRIPTION
TRACT D**

BEING an 32.34 acre tract of land situated in the Thomas J. Sewell Survey, Abstract Number 1359 in the City of Mesquite, Dallas County, Texas, and being part of a called 50.67364 acre tract of land described as "Tract 2" and part of a called 23.03668 acre tract of land described as "Tract 3" in General Warranty Deed to City of Mesquite, as recorded in Volume 95083, Page 253 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and part of a called 6.73 acre tract of land described as "Tract 1" in Quitclaim Deed to City of Mesquite, as recorded in Instrument Number 202100054586 of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), and being more particularly described as follows:

COMMENCING at the northeast corner of said 50.67364 acre tract and the northwest corner of a called 11.004 acre tract of land described as "Tract One" in Special Warranty Deed to Wintergreen/HS Partners, LTD., as recorded in Instrument Number 202000358596, O.P.R.D.C.T., said corner being on the south right-of-way line of E. Scyene Road (a 60-foot wide right-of-way), from which a 5/8-inch found iron rod with cap stamped "KHA" bears South 84 degrees 32 minutes 03 seconds East, a distance of North 83 degrees 16 minutes 20 seconds West, a distance of 0.51 of a foot;

THENCE South 00 degrees 00 minutes 46 seconds East, with the east line of said 50.67364 acre tract and the west line of said 11.004 acre tract, a distance of 40.18 feet to a corner (not monumented) for the **POINT OF BEGINNING**;

THENCE South 00 degrees 00 minutes 46 seconds East, with the east line of said 50.67364 acre tract, the east line of the aforementioned 23.03668 acre tract, the east line of the aforementioned 6.73 acre tract, and the west line of said 11.004 acre tract, a distance of 1,416.70 feet to a corner (not monumented), said corner being on the south line of said 23.03668 acre tract and the north right-of-way line of Newsome Road (a variable width right-of-way);

THENCE South 89 degrees 20 minutes 49 seconds West, with the south line of said 23.03668 acre tract and the north right-of-way line of said Newsome Road, a distance of 919.27 feet to corner (not monumented), said corner being on the southwest line of said 23.03668 acre tract and the northeast line of a called 42,901 square foot tract of land described in Special Warranty Deed to City of Mesquite, Texas, as recorded in Volume 2001166, Page 93, D.R.D.C.T.;

THENCE North 78 degrees 29 minutes 36 seconds West, departing said north right-of-way line, and with the south line of said 23.03668 acre tract and the northeast line of said 42,901 square foot tract, a distance of 32.12 feet to corner (not monumented);

THENCE North 00 degrees 41 minutes 47 seconds West, departing said north and south lines, and over and across said 23.03668 acre tract, the aforementioned 6.73 acer tract, and the aforementioned 50.67364 acre tract, a distance of 1,513.58 feet to a corner (not monumented);

THENCE South 84 degrees 32 minutes 03 seconds East, over and across said 50.67364 acre tract, a distance of 973.19 feet to the **POINT OF BEGINNING AND CONTAINING** 32.34 acres (1,408,765 square feet) of land, more or less.

EXHIBITH

Depiction of Tract B, Tract C and Tract D

**Tract A is depicted on Exhibit H as the 5.06 Acre Park Tract
and the 2.23 Acre Right of Way (R.O.W.) Tract**

EXHIBIT I

Boundary Description of Reinvestment Zone Number Fourteen, City of Mesquite, Texas (Alcott Logistics Station)

Beginning at the southeast corner of Paragon Park Blk 1 Lot 1 RA, thence:

Northerly along the east property line of Paragon Park Blk 1 Lot 1 RA and departing said property line with a parallel line continuing over and across E. Scyene Road to a point where said line reaches the north ROW line of E. Scyene Road, thence:

Easterly along the north ROW line of E. Scyene Road to a point where said ROW line is parallel to the east property line of Thomas F. McKinney & Samuel M. Williams Survey, ABST 1026 PG 525 Tract 1, thence:

Southerly over and across E. Scyene Road ROW and continuing along the east property line of Thomas F. McKinney & Samuel M. Williams Survey, ABST 1026 PG 525 Tract 1 to a point where said property line intersects the south property line of said Tract 1 for the southeast corner of said Tract 1, thence:

Westerly along the south property line of Thomas F. McKinney & Samuel M. Williams Survey, ABST 1026 PG 525 Tract 1 to a point where said property line intersects with the common east property line of said Tract 1 and Thomas F. McKinney & Samuel M. Williams Survey, ABST 1026 PG 525 Tract 1.3, thence:

Southerly along the common east property line of Thomas F. McKinney & Samuel M. Williams Survey, ABST 1026 PG 525 Tract 1 and Tract 1.3 to a point where said common property line intersects the south property line of said Tract 1.3 for the southeast corner of Tract 1.3, thence:

Westerly along the south property line of Thomas F. McKinney & Samuel M. Williams Survey, ABST 1026 PG 525 Tract 1.3 and departing said property line with a parallel line continuing over and across Faithon P. Lucas, Sr. Boulevard to a point where said line reaches the west ROW line of Faithon P. Lucas, Sr. Boulevard, thence:

Northerly along the west ROW line of Faithon P. Lucas, Sr. Boulevard until said ROW line intersects the south ROW line of Newsom Road, thence:

Westerly along the south ROW line of Newsom Road to the northeast corner of Creek Crossing Estates 15 PH (A) Blk A Lot 1, thence:

Northerly over and across Newsom Road and continuing along the east property line of Calvary First Baptist Church Lot 1 to a point where said property line intersects the abandoned south ROW line of East Glen Boulevard, thence:

Westerly along the abandoned south ROW line of East Glen Boulevard to a point of commencement of the south ROW line of East Glen Boulevard and continuing along said ROW line to a point where said ROW line is parallel to the east property line of Paragon Park Blk 2 Lot 1, thence:

Northerly over and across East Glen Boulevard and continuing along the east property line of Paragon Park Blk 2 Lot 1 to a point where said line intersects the north property line of said Lot 1 for the northeast corner of Lot 1, thence:

Westerly along the north property line of Paragon Park Blk 2 Lot 1 to a point where said line reaches the southeast corner of Paragon Park Blk 1 Lot 1 RA, which is the point of beginning.

EXHIBIT J

Map Depiction of Reinvestment Zone Number Fourteen, City of Mesquite, Texas (Alcott Logistics Station)

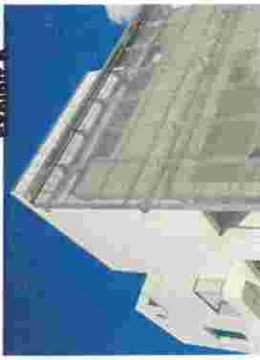


MDA - Alcott Logistics
Exhibit K



gsr | andrade
ARCHITECTS

MDA - Alcott Logistics Exhibit K



PERFORATED WALL PANEL



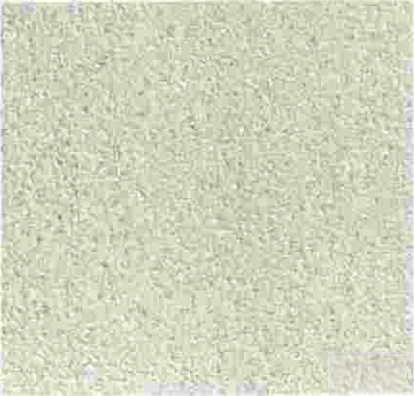
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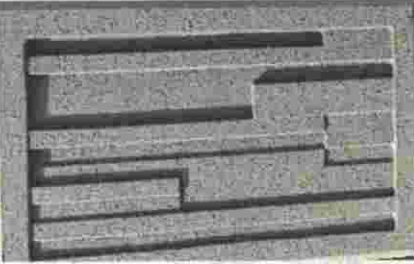
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**MDA - Alcott Logistics
Exhibit K**

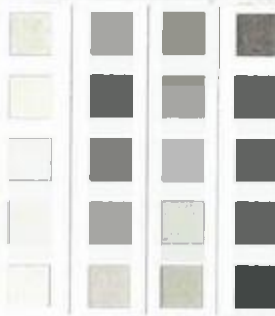


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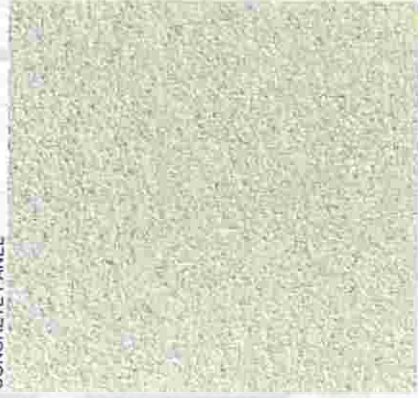
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**MDA - Alcott Logistics
Exhibit K**



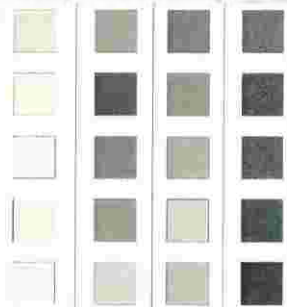
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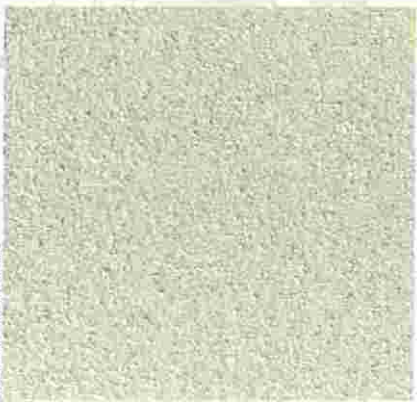
ALUMINUM COMPOSITE PANEL

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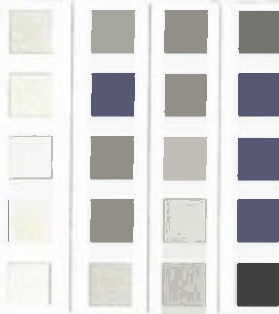


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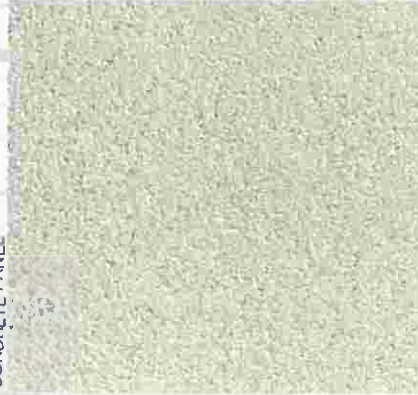


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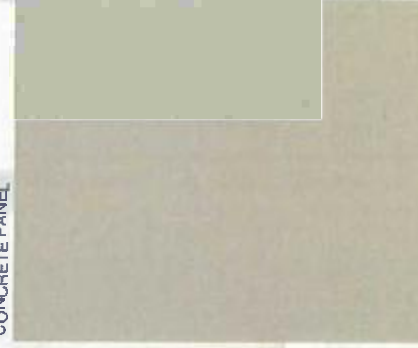
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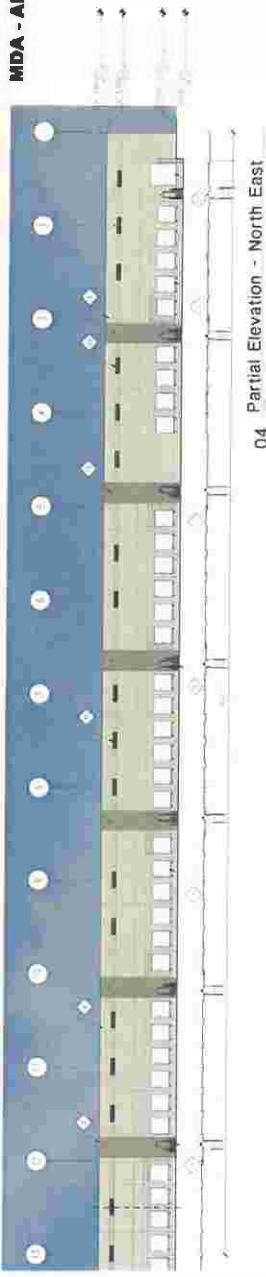
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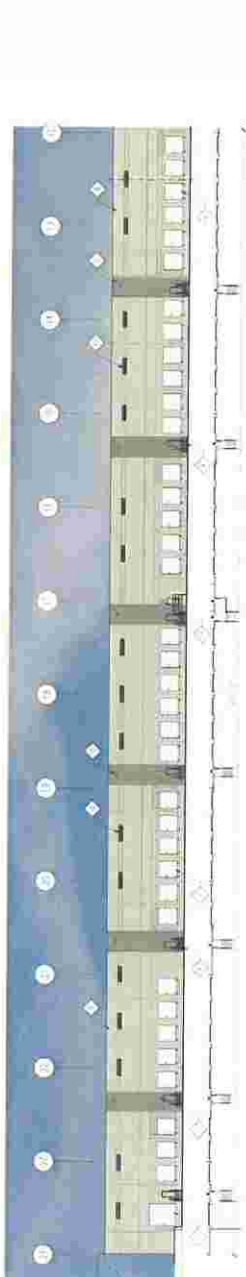
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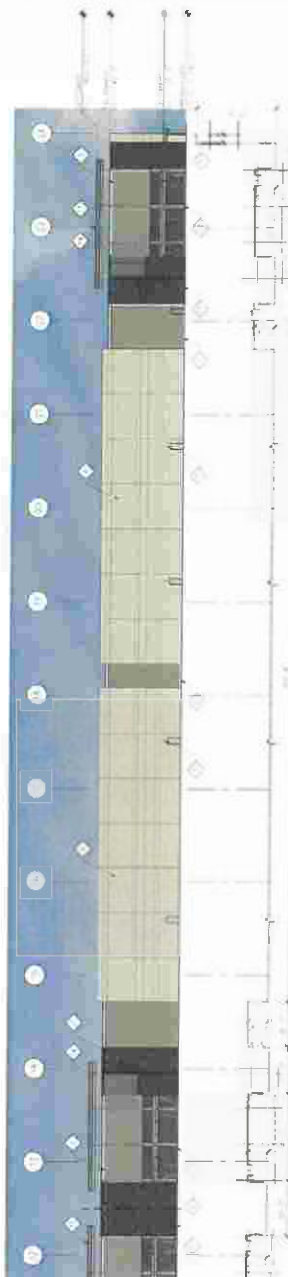
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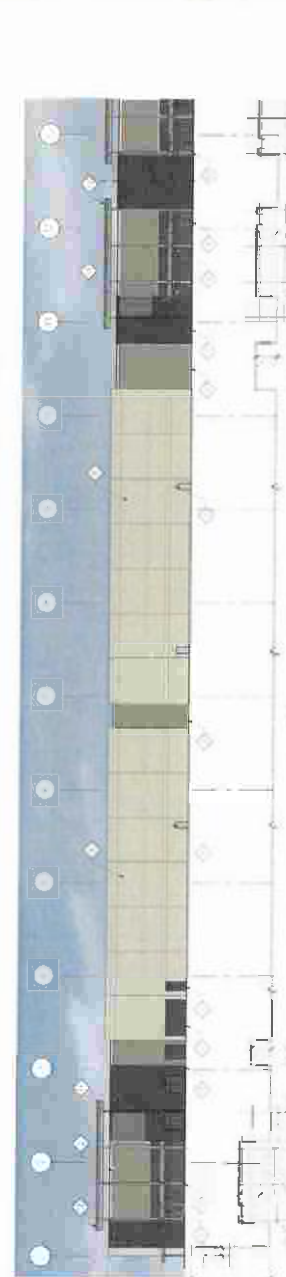
04 Partial Elevation - North East



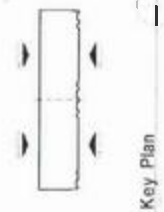
03 Partial Elevation - South East



02 Partial Elevation - South West

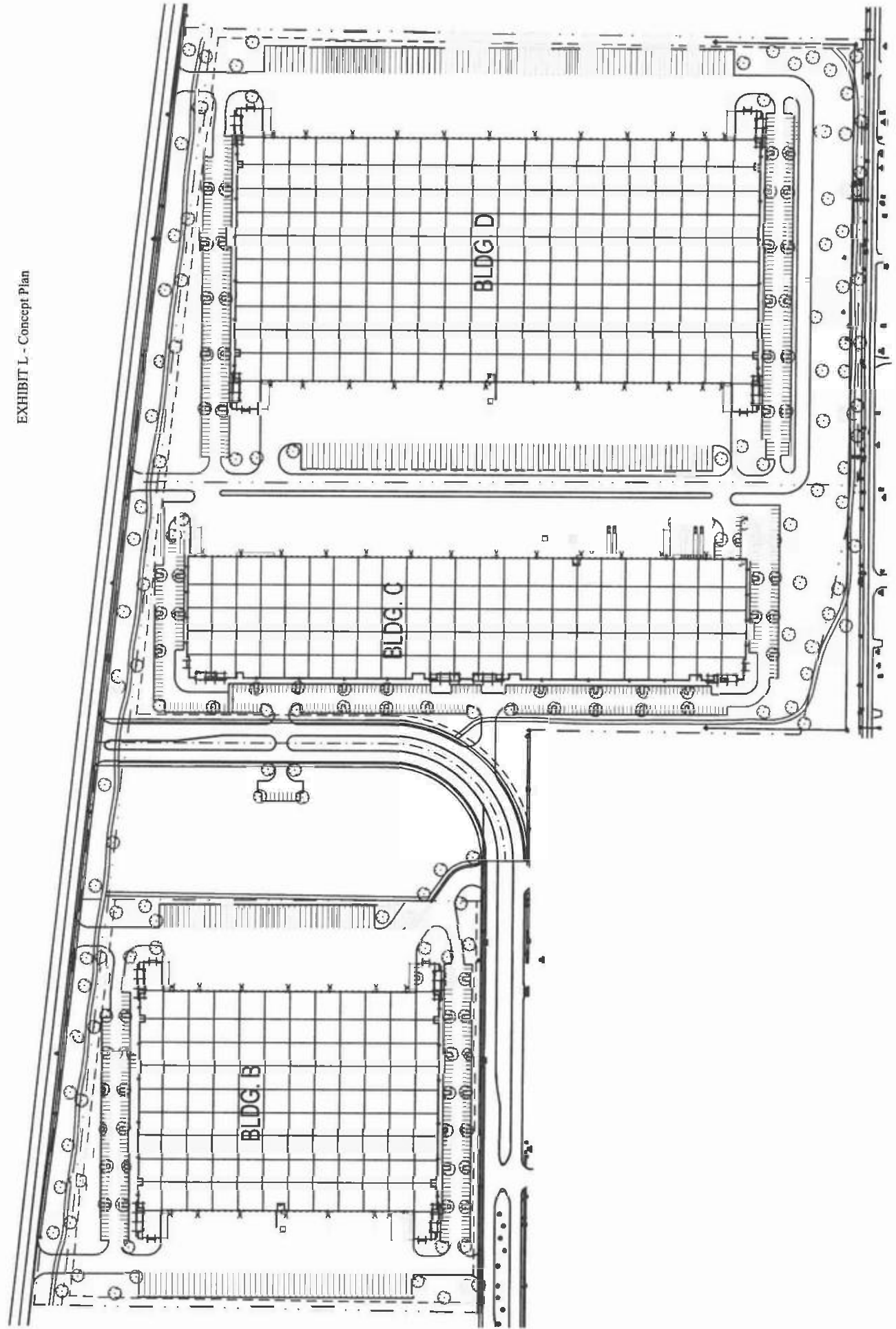


01 Partial Elevation - North West



Key Plan

EXHIBIT L - Concept Plan



Z0321-0182
EXHIBIT "B"-PD Development Standards
Page 1 of 6

1. All uses permitted in the Mesquite Zoning Ordinance's Industrial District classification ("Industrial District") are allowed on the Property except as modified in Subsections "a" of this paragraph. The uses permitted in the Industrial District are subject to the same requirements applicable to the uses in the Industrial District, as set out in the Mesquite Zoning Ordinance. For example, a use permitted in the Industrial District only by conditional use permit ("CUP") is permitted in the district only by CUP.
 - a. The following uses are prohibited on the property:
 - SIC Code 32a: Concrete Batch Plants
 - SIC Code 40: Railroad Passenger Terminal
 - SIC Code 61: Alternative Financial Institutions
 - SIC Code 593: Used Merchandise
 - SIC Code 593a: Pawnshops
 - SIC Code 5993: Tobacco Stores
 - SIC Code 7299a: Massage Parlors, Turkish and Steam Baths
2. The overnight parking of heavy load vehicles and/or unmounted trailers is permitted as defined in Section 3-600 of the Mesquite Zoning Ordinance, in areas designated on the site plan, if it is associated with tenant(s) or owner(s) use of the property.
3. The minimum number of off-street parking spaces shall be provided per Section 3-400 of the Mesquite Zoning Ordinance, except as provided herein: Uses allowed in the Industrial District and uses classified as distribution, data center, fulfillment, warehousing, or storage shall provide 20 spaces plus one space per 5,000-square feet. Reduction in this requirement may be provided by meeting requirements in Section 3-405 of the Mesquite Zoning Ordinance.
4. When adjacent to a public right-of-way or park, a truck court and/or outdoor storage (including heavy load vehicle parking, overhead doors or loading docks) shall be screened with a solid masonry wall or a solid landscape hedge pursuant to Mesquite Zoning Ordinance's Section 1A-303.D, and further defined below in 4(a). Wood or chain link screening is prohibited. Said screening shall be provided constructed prior to the issuance of a Certificate of Occupancy.

A Solid Landscape Hedge under Mesquite Zoning Ordinance's Section 1A-303.D shall consist of a large evergreen shrub or small ornamental evergreen tree a minimum eight feet (8') in height at time of planting. These shrubs/ornamental screening plants shall be planted a maximum of eight feet (8') on center and be full to the ground. Mature plant growth should provide continuous screening. Acceptable Screening species include, but are not limited to, Magnolias, Hollies, Cedars, or Junipers.
5. The setbacks, screening and buffer zones shall include the following.
 - a. Along Newsom Road:

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EXHIBIT "B"-PD Development Standards

Page 2 of 6

- i. The landscape buffer shall substantially conform to the Newsom Road Landscape Buffer Exhibit attached hereto as Exhibit "C."
- ii. The minimum building setback from the Newsom Road right-of-way is 200 feet to face of any building (the "Building Setback").
- iii. The minimum setback from Newsom Road right-of-way for parking or a vehicle travel path shall be at least 100 feet in width and may be entirely inside the Building Setback area (the "Newsom Landscape Buffer").
- iv. The Newsom Landscape Buffer identified in a. iii above shall include the following:
 1. A four-foot (4') high wrought iron fence or anchor fence, or a product similar in nature.
 2. A three foot (3') high earthen berm:
 - a. Where practically feasible, the earthen berm may be disrupted by the below mentioned 8' wide trail in order to allow the trail to meander.
 - b. The back side of the Earthen Berm may be constructed as a wall as part of any detention basin or pond.
 3. A landscape hedge being evergreen shrubs installed at a minimum of 3-gallon in size, 24 inches in height (or taller) at the time of planting and planted at a maximum 3-feet on center. Shrubs shall be selected from the Mesquite Zoning Ordinance Section 1A-500-2 Shrub Schedule
 4. A minimum of two rows of trees shall be provided. Each row of trees shall include one tree for each 35 linear feet of non-paved areas, and the trees shall be planted no more than 35 feet apart (on center). The two rows of trees shall be planted in a staggered pattern to create a visual barrier. At least one row of trees may be planted within the Newsom Landscape Buffer, or the green space, or easement within the immediately adjacent right of way.
 5. Trees in the Newsom Landscape Buffer shall be selected from the following Approved Shade Trees. A variety of species is required such that no single species shall exceed 25% of the total number of trees.

Common Name	Scientific Name
Texas Walnut	<i>Juglans microcarpa</i>
Pecan	<i>Carya illinoensis</i>
Caddo Maple	<i>Acer saccharum</i> var. <i>caddo</i>
Cedar Elm	<i>Ulmus crassifolia</i>
Chinquapin Oak	<i>Quercus muhlenbergii</i>
Live Oak	<i>Quercus virginiana</i>
Texas Red Oak	<i>Quercus texana</i>
Shantung Maple	<i>Acer truncatum</i>
Lacebark Elm	<i>Ulmus parvifolia</i>

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EXHIBIT "B" - PD Development Standards

Page 3 of 6

6. Trees required for screening or buffering may be located in the green space within the immediately adjacent Right of Way.
7. Detention for the site shall be allowed to be located within the Landscape Buffer.

b. Along East Glen Blvd and Clay Mathis Road:

- i. A 13-foot wide landscape buffer (the 13 Foot Landscape Buffer) shall be established along the property line parallel to the street; provided that when located across the street from a residential district, the buffer shall be 25 feet in width with a parking screen. A buffer tree line shall be established in the 13 Foot Landscape Buffer.
- ii. Within the 13 Foot Landscape Buffer, or the green space within the immediately adjacent right of way, one tree shall be provided for each 35 linear feet and trees shall be planted no more than 35 feet apart (on center).
- iii. Trees in the 13 Foot Landscape Buffer shall be selected from the following Approved Shade Trees. A variety species shall be required such that no single species shall exceed 25% of the total number of trees.

Common Name	Scientific Name
Texas Walnut	Juglans microcarpa
Pecan	Carya illinoensis
Caddo Maple	Acer saccharum var. caddo
Cedar Elm	Ulmus crassifolia
Chinquapin Oak	Quercus muhlenbergii
Live Oak	Quercus virginiana
Texas Red Oak	Quercus texana
Shantung Maple	Acer truncatum
Lacebark Elm	Ulmus parvifolia

- iv. Trees required for screening or buffering may be located in green space within the immediately adjacent Right of Way.

c. Along E. Scyene Road and Faithon P. Lucas Blvd:

- i. A 15-foot wide landscape buffer shall be established along the property line parallel to the street (the "15 Foot Landscape Buffer") a buffer tree line shall be established within the 15 Foot Landscape Buffer.
- ii. Within the 15 Foot Landscape Buffer, or the green space within the immediately adjacent right of way or the easement one tree shall be provided for each 40 linear feet, and trees shall be planted no more than 40 feet apart (on center).
- iii. Trees in the 15 Foot Landscape Buffer shall be selected from the following Approved Shade Trees. A variety species shall be required such that no single species shall exceed 25% of the total number of trees.

Common Name	Scientific Name
Texas Walnut	Juglans microcarpa

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Pecan	<i>Carya illinoensis</i>
Caddo Maple	<i>Acer saccharum</i> var. <i>caddo</i>
Cedar Elm	<i>Ulmus crassifolia</i>
Chinquapin Oak	<i>Quercus muhlenbergii</i>
Live Oak	<i>Quercus virginiana</i>
Texas Red Oak	<i>Quercus texana</i>
Shantung Maple	<i>Acer truncatum</i>
Lacebark Elm	<i>Ulmus parvifolia</i>

- iv. Trees required for screening or buffering may be located in the green space within the immediately adjacent Right of Way.

6. The term, "Landscape Buffers" refers to all three, and collectively, the Newsom Landscape Buffer, and the 13 Foot Landscape Buffer, and the 15 Foot Landscape Buffer. Trees and landscaping installed in the Landscape Buffers or the green space within the immediately adjacent right of way, or the easement may be used to fulfill the tree requirement in Mesquite Zoning Ordinance's Section 1A-202.A.2 or in other documents. The truck court and building size areas shall be excluded from the calculation for the required landscaping area. The minimum installation size of each tree shall be a minimum of 3 caliper-inches. The maintenance and replacement of trees and landscaping installed in the right-of-way are the responsibility of the adjacent property owner.

7. The quantities of trees required to meet the Mesquite Zoning Ordinance are based on each tree having a minimum caliper-inch of 3-inches. As an option, the total number of required trees planted on a lot may be decreased by increasing the tree caliper-inch, only if the total caliper-inches required are matched. For example, if 100 trees are required per ordinance (100 trees x 3-inches = 300 caliper-inches), the Property may elect to plant 75 trees if each tree is 4 caliper-inches (75 trees x 4 inches = 300 caliper-inches). However, this option cannot be used to reduce the number of trees required in the Landscape Buffers.

8. At a minimum, an 8-foot wide concrete trail shall be installed along the entire perimeter of the property covered by this Planned Development ordinance. A Certificate of Occupancy for a building shall not be issued until the portion of the trail located on the property on which said building sits has been installed. Any lot adjacent to a park or open space shall provide a trail connection to the park or open space. When the trail is located on private property, a pedestrian easement shall be provided on the plat.

9. Identification and informational signage pertaining to the trail, and safety of the public, shall be allowed within the trail boundaries, trail connections and pedestrian easements on private property regardless of proximity to property lines.

10. Upon approval of the City of Mesquite's Director of Planning and Development Services, up to 10% of the required trees for each site (but not trees required for screening) may be planted within the open space/park area(s) located within the boundary of this Planned Development.

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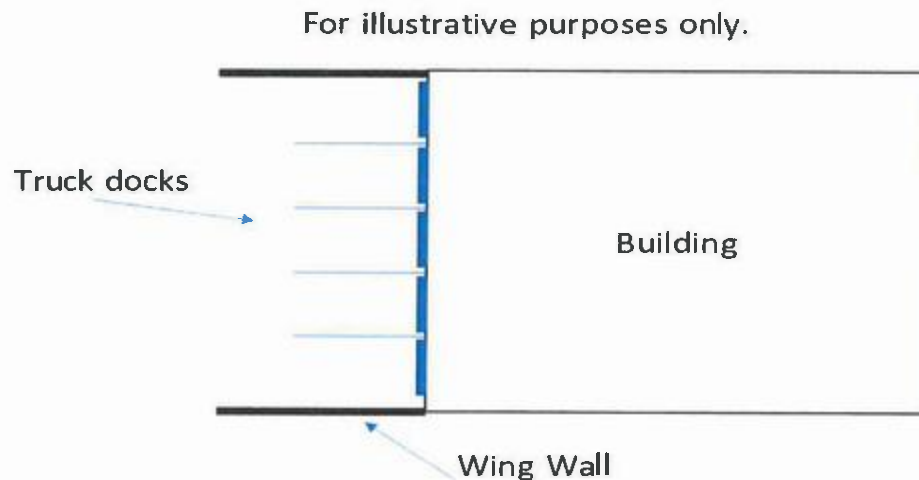
11. District identification and directional signage for the entire area covered by this Planned Development that is to be placed in a maintenance easement dedicated to the City of Mesquite shall be installed under the following parameters:
 - a. All district identification and directional signage shall have the same architectural design and material as permitted by the Mesquite Sign Ordinance. The district identification or directional sign shall match the design and materials of the first district identification or directional sign installed within the PD. be built per the development's approved design specifications as established the first district.
 - b. District identification and directional signage to be located a minimum of 30 feet from adjoining private property lines and shall not obstruct the vision of traffic within a triangular area formed by the intersection of adjacent curb lines from a point on each curb line 20 feet from the intersection. District identification and directional signage shall be installed at some or all of the following locations:
 - i. Southeast corner of Clay Mathis Road and E. Scyene Blvd.
 - ii. Northeast corner of Clay Mathis Road and East Glen Blvd.
 - iii. Southeast corner of E. Scyene Blvd and East Glen Blvd.
 - iv. Southwest corner of E. Scyene Blvd and East Glen Blvd.
 - v. Southwest corner of Faithon P. Lucas Blvd and E. Scyene Blvd.
 - c. District identification and directional signage shall be installed by the developer of the property where a sign is to be located as detailed in 11.b. After installation and acceptance, the City will maintain the district identification sign. The sign shall be placed in a maintenance easement dedicated to the City of Mesquite.
 - d. District identification and directional signage shall conform to the sign standards in the Mesquite Sign Ordinance; provided that the district identification signs shall not count towards the number of monument signs permitted on a property.
12. Pole signs shall be prohibited.
13. Exterior lighting is not required except for purposes of public safety. However, if installed, all exterior lighting shall meet the following design standards.
 - a. Light sources shall be concealed or shielded with luminary shielding, skirts, or cut-offs with an angle not exceeding 90 degrees ("cutoff angle") if without said concealment or shielding, there would be potential for glare and unnecessary diffusion on adjacent property over one foot-candle additional illumination levels at any point off-site. For purposes of this provision, "cutoff angle" is further defined as the angle formed by a line drawn from the direction of light rays at the light source or reflector, and a line perpendicular to the ground from the light source above from which no light is emitted.

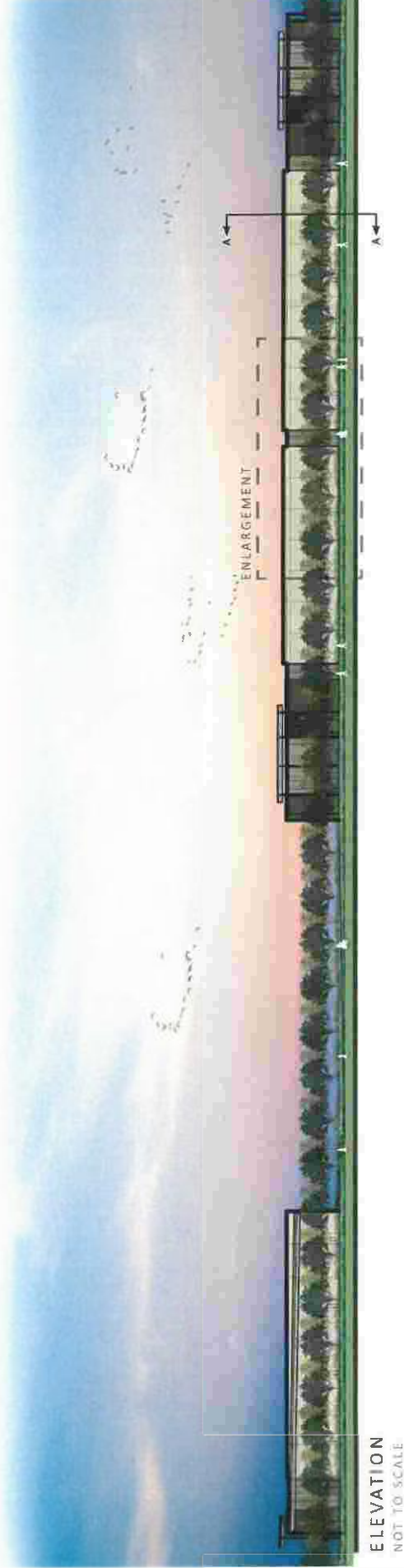
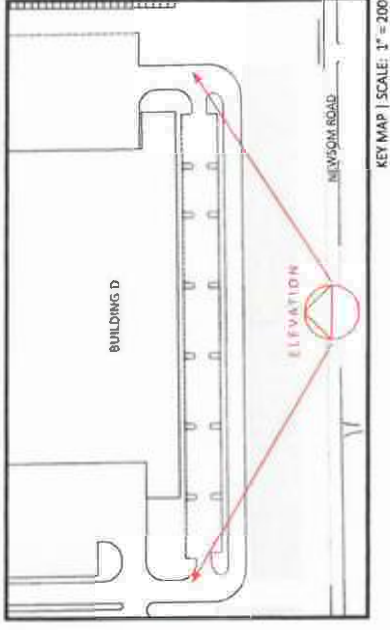
Z0321-0182

EXHIBIT "B"-PD Development Standards

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- b. In no case shall exterior lighting add more than one foot-candle to illumination levels at any point off-site.
 - c. All outdoor site light not necessary for security purposes shall be reduced, activated by motion sensor detectors, or turned off during non-operating hours.
 - d. Light fixtures used to illuminate flags, statues, or any other objects mounted on a pole, pedestal, or platform shall use a narrow cone beam of light that will not extend beyond the illuminated object.
 - e. For upward-directed architectural, landscape, and decorative lighting, direct light emissions shall not be visible above the building roof line.
 - f. No flickering or flashing lights shall be permitted, except for temporary decorative seasonal lighting.
14. No access to Newsom Rd shall be permitted.
15. A wing wall shall be installed to screen the truck docks (see illustration). The wing wall height may exceed 8-ft in height, with the final size to be determined during the site plan review process.





MEMORANDUM OF PURCHASE OPTIONS

THIS MEMORANDUM OF PURCHASE OPTIONS (this "**Memorandum**") is made and entered into effective the 26th day of May, 2021 (the "**Effective Date**"), by and between CITY OF MESQUITE, a Texas home rule municipality ("**City**"), and ALCOTT LOGISTICS PARTNERS, LP, a Texas limited partnership ("**ALS**").

W I T N E S S E T H:

1. **Purchase Options.** In connection with the development of certain real property in Dallas County, Texas known as "Tract B" and "Tract C" more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Tracts**" and each being a "**Tract**"), City, ALS and ALCOTT LOGISTICS STATION TRACT D, LP, have entered into that certain Master Development Agreement and Chapter 380 Agreement dated as of even date herewith (the "**Development Agreement**"), pursuant to which City granted to ALS an option to purchase each Tract upon the terms and subject to the conditions set forth in the Development Agreement. The purchase options and this Memorandum shall terminate and be released on such dates and under such terms and conditions as set forth in the Development Agreement. Notwithstanding the foregoing, if not sooner released, this Memorandum shall automatically be released as of the date which is eighty four (84) months after the Effective Date.

2. **Incorporation of Development Agreement.** This Memorandum is for informational purposes only and is intended to provide record notice of the purchase options set forth in the Development Agreement. Nothing contained herein shall be deemed in any way to modify or otherwise affect any of the terms and conditions of the Development Agreement, the terms of which Development Agreement are incorporated herein by reference. This instrument is merely a memorandum of the Development Agreement and is subject to all of the terms, provisions and conditions of the Development Agreement. In the event of any inconsistency between the terms of the Development Agreement and this Memorandum, the terms of the Development Agreement shall govern and control. Capitalized terms which are used herein, but which are not defined herein shall have the respective meaning ascribed to such terms in the Development Agreement.

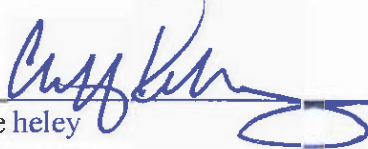
3. **Counterpart Execution.** This Memorandum may be executed in any number of counterparts, each of which shall constitute an original, and is intended to be recorded in the Official Public Records of Real Property of Dallas County, Texas.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, City and ALS have caused this Memorandum to be executed effective as of the Effective Date.

CITY:

CITY OF MESQUITE,
a Texas home rule municipality

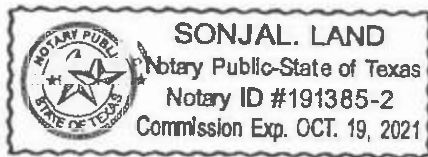
By: 
Cliff Keheley
City Manager

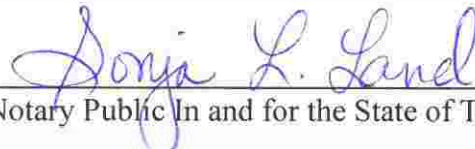
STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Before me, the undersigned officer, on this day personally appeared Cliff Keheley, City Manager of the City of Mesquite, a Texas home rule municipality, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this 29 day of June 2021.

SEAL




Notary Public In and for the State of Texas

[signatures continue on following page]


IN WITNESS WHEREOF, City and ALS have caused this Memorandum to be executed effective as of the Effective Date.

ALS:

ALCOTT LOGISTICS PARTNERS, LP,
a Texas limited partnership

By: Alcott Logistics Partners GP, LLC,
a Texas limited liability company,
its general partner

By: Urban Commercial Realty Partners, LLC,
a Texas limited liability company
Its manager

By: 
Name: Adam Herrin
Title: Manager

ACKNOWLEDGEMENT(S)

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Before me, the undersigned officer, on this day personally appeared Adam Herrin, the Manager of Urban Commercial Realty Partners, LLC, a Texas limited liability company, the Manager of Alcott Logistics Partners GP, LLC, a Texas limited liability company, the general partner of Alcott Logistics Partners, LP, a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this 23rd day of June 2021

SEAL



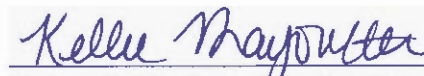

Notary Public In and for the State of Texas

EXHIBIT "A"

LEGAL DESCRIPTION OF TRACTS

**LEGAL DESCRIPTION
TRACTB**

BEING an 17.37 acre tract of land situated in the Thomas J. Sewell Survey, Abstract Number 1359 in the City of Mesquite, Dallas County, Texas, and being part of a called 50.67364 acre tract of land described as "Tract 2" in General Warranty Deed to City of Mesquite, as recorded in Volume 95083, Page 253 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and being more particularly described as follows:

COMMENCING at a 5/8-inch found iron rod with cap stamped "KHA" for the northeast corner of a called 1.417 acre tract of land described in Special Warranty Deed with Vendor's Lien to MCR Logistics, as recorded in Instrument Number 201700126943, of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), and the northwest corner of said 50.67364 acre tract, said corner being on the south right-of-way line of Scyene Road (a 60-foot wide right-of-way);

THENCE South 00 degrees 00 minutes 33 seconds West, departing said south right-of-way line and with the west line of said 50.67364 acre tract and the east line of 2.997 acre tract, a distance of 40.18 feet to the **POINT OF BEGINNING**;

THENCE South 84 degrees 32 minutes 03 seconds East, over and across said 50.67364 acre tract, a distance of 874.66 feet to a corner (not monumented);

THENCE South 00 degrees 41 minutes 47 seconds East, over and across said 50.67364 acre tract, a distance of 817.18 feet to a corner (not monumented), said corner being on the south line of said 50.67364 acre tract and the north right-of-way line of Eastglen Boulevard (a 100-foot wide right-of-way);

THENCE South 89 degrees 18 minutes 13 seconds West, with the south line of said 50.67364 acre tract and the north right-of-way line of said Eastglen Boulevard, a distance of 880.82 feet to a 1/2-inch found iron rod with cap stamped "TXHS" for the southwest corner of said 50.67364 acre tract and the southeast corner of a called 2.997 acre tract of land described in Warranty Deed with Vendor's Lien to Sudi Corporation, as recorded in Instrument Number 201600284293, O.P.R.D.C.T.;

THENCE North 00 degrees 00 minutes 33 seconds East, departing said south line and with the west line of said 50.67364 acre tract and the east line of 2.997 acre tract, a distance of 911.13 feet to the **POINT OF BEGINNING AND CONTAINING 17.37 acres (756,552 square feet) of land, more or less.**

**LEGAL DESCRIPTION
TRACT C**

BEING an 18.01 acre tract of land situated in the Thomas J. Sewell Survey, Abstract Number 1359 in the City of Mesquite, Dallas County, Texas, and being part of a called 50.67364 acre tract of land described as "Tract 2" and part of a called 23.03668 acre tract of land described as "Tract 3" in General Warranty Deed to City of Mesquite, as recorded in Volume 95083, Page 253 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), and part of a called 6.73 acre tract of land described as "Tract 1" in Quitclaim Deed to City of Mesquite, as recorded in Instrument Number 202100054586 of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), and being more particularly described as follows:

COMMENCING at the northeast corner of said 50.67364 acre tract and the northwest corner of a called 11.004 acre tract of land described as "Tract One" in Special Warranty Deed to Wintergreen/HS Partners, LTD., as recorded in Instrument Number 202000358596, O.P.R.D.C.T., said corner being on the south right-of-way line of Scyene Road (a 60-foot wide right-of-way), from which a 5/8-inch found iron rod with cap stamped "KHA" bears South 84 degrees 32 minutes 03 seconds East, a distance of North 83 degrees 16 minutes 20 seconds West, a distance of 0.51 of a foot;

THENCE North 84 degrees 32 minutes 03 seconds West, with the north line of said 50.67364 acre tract and the south right-of-way line of said E. Scyene Road, a distance of 973.67 feet to a corner (not monumented);

THENCE South 00 degrees 41 minutes 47 seconds East, departing said north and south lines, and over and across said 50.67364 acre tract, a distance of 40.23 feet to a corner (not monumented) for the **POINT OF BEGINNING**;

THENCE South 00 degrees 41 minutes 47 seconds East, over and across said 50.67364 acre tract, the aforementioned 23.03668 acre tract, and the aforementioned 6.73 acre tract, a distance of 1,513.58 feet to a corner (not monumented), said corner being on the south line of said 23.03668 acre tract and the north line of a called 42,901 square foot tract of land described in Special Warranty Deed to City of Mesquite, Texas, as recorded in Volume 2001166, Page 93, D.R.D.C.T.;

THENCE North 78 degrees 29 minutes 36 seconds West, with the south line of said 23.03668 acre tract and the northeast line of said 42,901 square foot tract, a distance of 544.42 feet to the northwest corner (not monumented) of said 42,901 square foot tract, said corner being on the east line of Lot 1 of Calvary First Baptist Church Addition, an addition to the City of Mesquite, Dallas County, Texas, as recorded in Instrument Number 201000184580, O.P.R.D.C.T.;

THENCE North 00 degrees 05 minutes 20 seconds West, with the east line of said Lot 1, a distance of 577.61 feet to the northeast corner (not monumented) of said Lot 1, said corner being on the south line of the aforementioned 6.73 acre tract;

THENCE South 89 degrees 18 minutes 13 seconds West, with the north line of said Lot 1 and the south line of said 6.73 acre tract, a distance of 276.25 feet to the point of curvature (not monumented) of a non-tangent circular curve to the left, having a radius of 300.00 feet, whose chord bears North 43 degrees 56 minutes 38 seconds East, a distance of 421.62 feet;

THENCE Northeasterly, departing said north and south lines, over and across said 6.73 acre tract and the aforementioned 50.67364 acre tract, and with said curve, through a central angle of 89 degrees 17 minutes 21 seconds, an arc distance of 467.52 feet to a corner (not monumented);

THENCE North 00 degrees 41 minutes 47 seconds West, over and across said 50.67364 acre tract, a distance of 575.55 feet to a corner (not monumented);

THENCE South 84 degrees 32 minutes 03 seconds East, over and across said 50.67364 acre tract, a distance of 508.94 feet to the **POINT OF BEGINNING AND CONTAINING** 18.01 acres (784,706 square feet) of land, more or less.

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

DEED WITHOUT WARRANTY

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF DALLAS §

THAT, the City of Mesquite, a Texas home rule municipality ("**Grantor**"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, paid to Grantor by _____, having an address at _____ ("**Grantee**"), has GRANTED and by these presents does hereby GRANT unto Grantee, **WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW OR OTHERWISE**, (a) all of Grantor's right, title and interest, if any, in and to that certain land (the "**Land**") situated in Dallas County, Texas, more particularly described in Exhibit A attached hereto and incorporated herein by reference for all purposes, together with any improvements situated thereon, and (b) all of Grantor's right, title and interest, if any, in and to any minerals in, on or under the Land (Grantor's right, title and interest, if any, in and to the Land and improvements situated thereon together with Grantor's right, title and interest, if any, in and to any minerals in, on or under the Land are hereinafter collectively referred to as the "**Property**");

SUBJECT, HOWEVER, AND WITHOUT LIMITING THE FOREGOING DISCLAIMER OF WARRANTY, to those certain encumbrances, easements and other matters more particularly described in Exhibit B attached hereto and incorporated herein by reference (the "**Permitted Exceptions**"), but only to the extent that such Permitted Exceptions are valid, subsisting and, in fact, affect the Property;

AND FURTHER SUBJECT, HOWEVER, to taxes and assessments for the year _____ [*the year of closing*] and subsequent years, and by acceptance of this deed, Grantee assumes the obligation for payment of such taxes and assessments; and

GRANTOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW OR OTHERWISE WITH RESPECT TO ANY MATTER CONCERNING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE FOLLOWING: (i) TITLE TO THE PROPERTY; (ii) THE HABITABILITY, MARKETABILITY, MERCHANTABILITY, OR SUITABILITY OR FITNESS OF THE PROPERTY FOR A PARTICULAR PURPOSE OR USE; (iii) THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, WATER, DRAINAGE AND GRADING, SOIL AND GEOLOGY, ZONING, ANNEXATION, EXTRATERRITORIAL JURISDICTION AND OTHER ZONING AND JURISDICTIONAL

ISSUES, LOCATION OF CEMETERIES, UTILITY AVAILABILITY OR HOOK-UP, EASEMENT RIGHTS, FLOOD PLAINS (OR PORTIONS OF THE PROPERTY IN A FLOOD PLAIN) AND THE COSTS AND REQUIREMENTS OF SAME, ACCESS TO STREETS, COSTS OF UTILITIES, LOCATION OF CURB CUTS AND MEDIAN BREAKS IN STREETS, SEWAGE FACILITIES (INCLUDING, WITHOUT LIMITATION, AVAILABILITY OR NON-AVAILABILITY OF APPROPRIATE WATER AND SEWER CAPACITY) OR OTHER GOVERNMENTAL RIGHTS OR OBLIGATIONS; (iv) THE COMPLETENESS, ACCURACY OR APPROVAL OF PERMITS, SURVEYS, PLATS, PRELIMINARY PLATS, POLLUTION ABATEMENT PLANS, SUBDIVISION PLANS OR REPORTS CONCERNING THE PROPERTY; (v) TAX CONSEQUENCES; (vi) THE COMPLIANCE OF ALL OR ANY PART OF THE PROPERTY WITH APPLICABLE ENVIRONMENTAL LAWS, RULES AND REGULATIONS WITH RESPECT TO HEALTH, THE ENVIRONMENT, AND ENDANGERED SPECIES AND WETLANDS (COLLECTIVELY, THE "ENVIRONMENTAL LAWS") INCLUDING, WITHOUT LIMITATION, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 (42 U.S.C. §9601, ET. SEQ.), AS AMENDED, THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 (42 U.S.C. §6901, ET. SEQ.), AS AMENDED, THE ENDANGERED SPECIES ACT (16 U.S.C. §1531, ET SEQ.), AS AMENDED, THE HAZARDOUS MATERIALS TRANSPORTATION ACT (49 U.S.C. § 5101, ET. SEQ.), AS AMENDED, THE CLEAN AIR ACT OF 1974 (42 U.S.C. §7401, ET. SEQ.), AS AMENDED, THE CLEAN WATER ACT, (33 U.S.C. §1251, ET. SEQ.), AS AMENDED, THE TOXIC SUBSTANCES CONTROL ACT (15 U.S.C. § 2601, ET SEQ.), AS AMENDED, CHAPTER 361 OF THE TEXAS HEALTH & SAFETY CODE, AS AMENDED, THE TEXAS WATER CODE, AS AMENDED, THE TEXAS NATURAL RESOURCE CODE, AS AMENDED, AND THE TEXAS SOLID WASTE DISPOSAL ACT, AS AMENDED; (vii) THE EXISTENCE OF ASBESTOS, OIL, ARSENIC, PETROLEUM OR CHEMICAL LIQUIDS OR SOLIDS, LIQUID OR GASEOUS PRODUCTS OR HAZARDOUS SUBSTANCES AS THOSE TERMS AND SIMILAR TERMS ARE DEFINED OR USED IN APPLICABLE ENVIRONMENTAL LAWS; (viii) THE NATURE AND EXTENT OF ACCESS TO RIGHTS-OF-WAY OR UTILITIES, AVAILABILITY OF PERMITS TO ACCESS RIGHTS-OF-WAY OR UTILITIES ON THE PROPERTY, OTHER PROPERTY OWNED BY GRANTOR, OR ANY LAND OWNED BY THIRD PARTIES; (ix) EASEMENTS, MINERAL INTERESTS, ENCUMBRANCES, LICENSES, RESERVATIONS, CONDITIONS OR OTHER SIMILAR MATTERS AFFECTING THE PROPERTY; (x) COMPLIANCE WITH ANY LAW, ORDINANCE OR REGULATION OF ANY GOVERNMENTAL ENTITY OR BODY; AND/OR (xi) CLAIMS, DEMANDS, OR OTHER MATTERS RELATING TO ANY RESTRICTIVE COVENANTS ENCUMBERING THE PROPERTY. THE SALE OF THE PROPERTY BY GRANTOR TO GRANTEE IS MADE ON AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" BASIS. GRANTEE ACKNOWLEDGES THAT GRANTEE HAS HAD THE FULL, COMPLETE AND UNFETTERED RIGHT TO INSPECT THE PROPERTY TO GRANTEE'S SATISFACTION AND THAT THE PURCHASE PRICE PAID FOR THE PROPERTY WAS IN PART BASED UPON THE FACT THAT THE TRANSFER OF THE PROPERTY BY GRANTOR TO GRANTEE IS WITHOUT WARRANTY OR REPRESENTATION. BY ACCEPTANCE OF THIS DEED, GRANTEE ACKNOWLEDGES THAT GRANTEE HAS RELIED ONLY UPON GRANTEE'S OWN INVESTIGATIONS,

ASSESSMENTS AND INSPECTIONS AS TO THE CONDITION OF THE PROPERTY, OR GRANTEE'S OWN DECISION NOT TO INSPECT ANY MATTER AND GRANTEE ACKNOWLEDGES THAT GRANTEE DID NOT RELY ON ANY REPRESENTATION, WARRANTY, STATEMENT OR NON-ASSERTION OF GRANTOR OR GRANTOR'S OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, CONSULTANTS, OR INDEPENDENT CONTRACTORS IN MAKING GRANTEE'S DECISION TO PURCHASE THE PROPERTY. IN ADDITION, BY ACCEPTANCE OF THIS DEED, GRANTEE AND ANYONE CLAIMING BY, THROUGH OR UNDER GRANTEE, HEREBY FULLY RELEASES GRANTOR, AND GRANTOR'S EMPLOYEES, OFFICERS, ELECTED OFFICIALS, AGENTS, REPRESENTATIVES, ATTORNEYS AND INSURERS (EACH A **"GRANTOR RELATED PARTY"**) FROM ANY AND ALL CLAIMS AGAINST GRANTOR AND EACH GRANTOR RELATED PARTY FOR ANY COSTS, LOSSES, LIABILITIES, DAMAGES, EXPENSES, DEMANDS, ACTIONS OR CAUSES OF ACTION (INCLUDING, WITHOUT LIMITATION, ANY RIGHTS OF CONTRIBUTION) ARISING FROM OR RELATED TO ANY LATENT OR PATENT DEFECTS OF THE PROPERTY OR FOR ANY ERRORS, OMISSIONS, OR OTHER CONDITIONS AFFECTING THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THOSE MATTERS DESCRIBED IN CLAUSES (i) THROUGH (xi) ABOVE AND ANY ALLEGED NEGLIGENCE OF GRANTOR OR ANY GRANTOR RELATED PARTY. THIS COVENANT RELEASING GRANTOR AND EACH GRANTOR RELATED PARTY SHALL BE A COVENANT RUNNING WITH THE PROPERTY AND SHALL BE BINDING UPON GRANTEE, GRANTEE'S SUCCESSORS AND ASSIGNS, AND ALL FUTURE OWNERS OF ALL OR ANY PORTION OF THE PROPERTY.

BY ACCEPTANCE OF THIS DEED, THE GRANTEE ACKNOWLEDGES THAT THE GRANTOR HAS NOT MADE AND IS EXPRESSLY DISCLAIMING ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE TITLE, CONDITION, HABITABILITY, MARKETABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF THE PROPERTY.

BY ACCEPTANCE OF THIS DEED, GRANTEE ACKNOWLEDGES THAT ANY AND ALL WARRANTIES OF GRANTOR THAT MIGHT ARISE BY COMMON LAW OR OTHERWISE, AND THE IMPLIED COVENANTS OR WARRANTIES IN TEXAS PROPERTY CODE SECTION 5.023, AS NOW AND HEREAFTER AMENDED OR REPLACED, ARE EXCLUDED AND EXCEPTED FROM THIS DEED AND ARE FOREVER WAIVED AND RELINQUISHED BY GRANTEE.

TO HAVE AND TO HOLD the Property, subject to the foregoing, unto Grantee and Grantee's successors and assigns forever.

EXECUTED to be effective as of the ____ day of _____ 2 0 2 .

GRANTOR:

CITY OF MESQUITE,
a Texas home rule municipality

By: _____
Cliff Kebeley
City Manager

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Before me, the undersigned officer, on this day personally appeared Cliff Kebeley, City Manager of the City of Mesquite, a Texas home rule municipality, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this ____ day of _____ 202__.

SEAL

Notary Public In and for the State of Texas

AFTER RECORDING, SEND TO:

SEND TAX NOTICES TO:

[Insert Name and Address of Grantee]

[Insert Name and Address of Grantee]

Attention: _____

Attention: _____

Exhibit A – Legal Description
Exhibit B– Permitted Exceptions

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B

PERMITTED EXCEPTIONS

[The Tract B Deed shall list the Tract B Permitted Exceptions]

[The Tract C Deed shall list the Tract C Permitted Exceptions]

[The Tract D Deed shall list the Tract D Permitted Exceptions]