RESOLUTION NO. 61-2021

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 AN ECONOMIC DEVELOPMENT PROGRAM CHAPTER 380 AGREEMENT WITH JACKSON-SHAW COMPANY FOR THE CONSTRUCTION AND DEVELOPMENT OF THE PROPERTY LOCATED AT 2700 EAST SCYENE ROAD IN THE CITY OF MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO FINALIZE, EXECUTE AND ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

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

WHEREAS, under a Master Development Agreement (**"MDA"**) between the City, Alcott Logistics Partners, LP, and Alcott Logistics Station Tract D, LP, and the First Amendment thereto, Alcott Logistics Partners, LP, is entering into a formal agreement to sell Tract C to developer Jackson-Shaw Company to construct Building 3, a proposed 310,000 square foot industrial building, as a build-to-suit for a prospective industrial tenant; and

WHEREAS, Jackson-Shaw Company (hereinafter referred to as the **"Developer"**) intends to purchase and develop approximately 18.01 acres of land located on the south side of Scyene Road and west of Faithon P Lucas, Sr. Boulevard, said land having a street address of 2700 East Scyene Road, Mesquite, Dallas County, Texas, as more particularly described and/or depicted in Exhibit A to the Agreement as defined below (the **"Property"**); and

WHEREAS, the Developer intends to construct a 310,000 square foot industrial building with a construction value of $20 million in real property to be leased to a proposed tenant adding $10 million in business personal property and creating 315 new jobs; and

WHEREAS, the City would like to encourage the development of the Property by granting certain economic development incentives to the Developer; and

WHEREAS, the development of the Property will substantially increase the taxable value of the Property thereby adding value to the City's tax rolls and increasing the ad valorem property taxes and sales taxes to be collected by the City, along with increasing employment opportunities in the City; and

WHEREAS, the City Council has been presented with a proposed agreement providing economic incentives to the Developer for the proposed construction and development of the Property, a copy of said agreement being attached hereto as Exhibit 1 and incorporated herein by reference (the **"Agreement"**); and

WHEREAS, after holding a public hearing and upon full review and consideration of the Agreement and all matters related thereto, the City Council finds that the Agreement will assist in implementing a program promoting local economic development, stimulating business and commercial activity in the City, and benefiting the City and its citizens.

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

SECTION 1. That the City Council finds that the terms of the proposed Agreement, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference, will benefit the City and its citizens and will serve the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

SECTION 2. That the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Developer as more fully set forth in the Agreement.

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

SECTION 4. That the City Manager is hereby authorized to finalize and execute the Agreement and all other documents necessary to consummate the transactions contemplated by the Agreement.

SECTION 5. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of $50,000; (iii) approve or deny any matter in the Agreement requiring the consent of the City with the exception of any matter requiring the consent of the City Council pursuant to the terms of the Agreement; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term, or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials, and waivers authorized by this Section 5 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 5 shall not include the authority to take any action than cannot be delegated by the City Council or that is within the City Council's legislative functions.

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

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 20th day of September 2021.

Bruce Archer
Mayor

ATTEST:

Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:

David L. Paschall
City Attorney

# EXHIBIT 1

## CHAPTER 380 AGREEMENT BETWEEN

## THE CITY OF MESQUITE, TEXAS, AND

## JACKSON-SHAW COMPANY

APPROVED BY CITY COUNCIL
DATE 9.20.2021
AGENDA ITEM NO. 24

**CHAPTER 380 GRANT AGREEMENT**
**(Jackson-Shaw)**

This Chapter 380 Grant Agreement (this "**Agreement**") is executed between Jackson-Shaw Company, a Texas corporation (the "**Developer**") and the City of Mesquite (the "**City**"), a Texas home rule municipality, each a "**Party**" and collectively the "**Parties**" to be effective September 20, 2021 (the "**Effective Date**").

## ARTICLE I
## RECITALS

**WHEREAS**, certain capitalized terms used herein are defined herein; and

**WHEREAS**, the Developer intends to purchase and develop approximately 18.01 acres of land, more or less, located on the South side of Scyene Road, West of Faithon P. Lucas Sr. Boulevard, said land being generally depicted on **Exhibit A** (the "**Property**"); and

**WHEREAS**, Alcott Logistics Partners, LP and the City have entered into that certain Master Development Agreement and Chapter 380 Agreement approved by City Resolution No. 28-2021 dated May 3, 2021 (the "**MDA**"); and

**WHEREAS,** the Property is subject to and will be developed in accordance with the MDA and the PD; and

**WHEREAS**, the Developer intends to construct a 310,000 square-foot industrial building with construction costs of $20,000,000 on the Property and the City would like to encourage the development of the Property by granting certain economic development incentives to the Developer; and

**WHEREAS,** the development of the Property will have a positive impact on the local economy, and will substantially increase the taxable value of the Property thereby adding value to the City's tax rolls; and

**WHEREAS**, the grant provided to the Developer under this Agreement is for the public purposes of: (i) developing and diversifying the economy of the state; (ii) eliminating unemployment and underemployment in the state; (iii) developing and expanding commerce in the state; (iv) stimulating business and commerce within the City; and (v) promoting development within the City; and

**WHEREAS**, the City has an interest in creating jobs and expanding the tax base which accomplishes a public purpose; and

**WHEREAS**, the City has ensured that the public will receive benefits for the grant provided by imposing on the Developer conditions and performance standards that are prerequisites to the Developer receiving any grant; and

**WHEREAS**, the City has established an Economic Development 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**, 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 this Agreement 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 sum of TEN AND NO/100 DOLLARS ($10.00), the mutual covenants of the Parties set forth in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are acknowledged and agreed by the Parties, the Parties agree as follows:

## ARTICLE II
## CHAPTER 380 GRANT

2.1 Grant.

(a) Subject to the terms, provisions and conditions set forth in this Agreement, the City shall: (i) pay to the Developer an amount equal to fifty percent (50%) of the Local Sales/Use Taxes paid by Developer and actually received by the City on taxable purchases for items utilized in or incorporated into construction of the Industrial Building prior to Completion of Construction as set forth in the Texas Direct Payment Returns submitted by Developer to the Comptroller and verified by the City ("**Grant 1**"); (ii) pay the Developer an amount equal to one hundred percent (100%) of the Impact Fees (as hereinafter defined) collected by the City in connection with each building permit issued for a building to be constructed on the Property and one hundred percent (100%) of the development fees, other than Impact Fees, collected by the City in connection with permits for improvements to be constructed on the Property ("**Grant 2**"); and (iii) pay the Developer an amount equal to fifty percent (50%) of real property taxes collected, excluding any interest, penalties or fees, from the Property on the value that is in excess of the base value of the Property in Reinvestment Zone Number Fourteen for ten (10) years beginning the first full calendar year after Completion of Construction of the Industrial Building ("**Grant 3**")(collectively Grant 1, Grant 2 and Grant 3 are the "**Grant**").

(b) Subject to the terms, provisions and conditions set forth in this Agreement, and receipt of a Payment Request, Grant 1 payments will be made by the City to the Developer once each calendar quarter on March 31st, June 30th, September 30th and December 31st of each year starting the first calendar quarter after the first building permit is issued for the construction of the Industrial Building (a "**Due Date**"). The Payment Request for Grant 1 shall include documents to verify the condition in Section 2.2(c) has been satisfied. If at the time the City verifies that Developer has completed and satisfied of all the terms, conditions, requirements and conditions precedent to a quarterly Grant 1 payment in this Agreement, the City has not received the Local Sales/Use Taxes eligible to be included in the Grant calculation and reflected on Grantee's Texas

Direct Payment Return from the Comptroller, the City may withhold that portion of the Grant payment until the fifteenth (15th) business day after receipt of such Local Sales/Use Taxes from the Comptroller.

(c) Subject to the terms, provisions and conditions set forth in this Agreement, and receipt of a Payment Request, the Grant 2 payment will be made by the City to the Developer on or before the thirtieth (30th) day after Completion of Construction of the Industrial Building (a "**Due Date**"). The Payment Request for Grant 2 shall include the Capital Investment Certificate and documents to verify the conditions listed in Section 2.2 (a) and (b) have been satisfied.

(d) Subject to the terms, provisions and conditions set forth in this Agreement, and receipt of a Payment Request, Grant 3 payments will be made by the City to the Developer annually on or before the sixtieth (60th) day after the date the City actually receives the annual real property taxes assessed against the Property starting the first calendar year after Completion of Construction of the Industrial Building (a "**Due Date**") during the term of this Agreement. Developer shall not submit a Payment Request for a Grant 3 payment until the Payment Request for Grant 2 has been approved by the City.

(e) The Parties agree that the City's obligation to pay any portion of the Grant under the terms of this Agreement shall be conditioned upon the Developer submitting a written request to the City to the attention of the City's Director of Finance at 757 N. Galloway, Mesquite, Texas or such other address as the City may hereafter notify the Developer in writing, for each Grant payment payable pursuant to this Agreement (each a "**Payment Request**") at least forty-five (45) days prior to the applicable Due Date. If the Developer submits a Payment Request less than forty-five (45) days prior to the applicable Due Date, the payment due under the Payment Request shall be made within forty-five (45) days of receipt of the Payment Request, provided, however, notwithstanding anything contained herein to the contrary, if the Developer submits a Payment Request more than one year after the applicable Due Date, the City shall not be obligated to pay that Payment Request. Each such Payment Request shall be accompanied by a Certificate of Compliance (as hereinafter defined) dated effective as of the date of the Payment Request. It shall be a condition to the payment of each Payment Request that the Developer shall not have been convicted by a court of competent jurisdiction of knowingly employing Undocumented Workers to work for the Developer. City shall notify Developer if a Payment Request is incomplete or if other information is necessary to complete and approve a Payment Request within thirty (30) calendar days of receipt of a Payment Request and Developer shall promptly supply any missing or necessary additional information.

(f) Developer agrees to obtain a Texas Direct Payment Permit prior to purchasing any materials to be used in construction of the Industrial Building that Developer wants to include in the Grant calculation, and to thereafter pay Local Sales/Use Taxes using Texas Direct Payment Returns. Developer shall only enter into "separated contracts", and not "lump-sum contracts", as those terms are defined in Texas Administrative Code, Title 34, Chapter 3, Subchapter O, Rule Section 3.291(a)(3) and (13), for construction of the Industrial Building. Developer acknowledges and understands that: (i) the materials utilized in or incorporated into construction of the Industrial Building are required by state law to be purchased for Developer's own use and not resold; and (ii) labor is not taxable, so the contract(s) entered by Developer, and desired by Developer to be included in the calculation of the Grant, must be "separated contracts" rather than "lump-sum

contracts" in order for the Local Sales/Use Tax to be eligible for payment on Texas Direct Payment Returns and included in the Grant calculations.

(g) Building Materials and Development Standards. *As consideration for the Grant provided by the City herein, Developer has consented to and requested, and the Parties agree, that all building material regulations and development standards contained in the PD, the MDA, and the City's building material regulations contained in the zoning ordinance and in other City ordinances, all as subsequently amended, apply to the Property, and Developer voluntarily agrees to burden the Property with their applicability, despite Texas Government Code Chapter 3000, effective September 1, 2019, as it presently exists or may be subsequently amended. The Parties further acknowledge and agree that the terms, provisions, covenants, ordinances, contracts, and agreements contained in, or referenced in, this paragraph are covenants that touch and concern the Property and that it is the intent of the Parties that such terms, provisions, covenants, ordinances, contracts, and agreements shall run with the Property and shall be binding upon the Parties hereto, their successors and assigns, and all subsequent owners of the Property. Should any amendment to the building material regulations and/or development standards contained in the zoning ordinance and in other city ordinances be held to be invalid by a court of competent jurisdiction, the Parties agree that the building material regulations and/or development standards in effect on August 1, 2019 shall then touch and concern the Property and be binding upon the Property. The Parties agree and acknowledge that the covenants, conditions and restrictions previously filed in the county land records evidence consent to this paragraph. The Parties acknowledge that the provisions of this Section 2.1(g) are material to the City's agreement to provide the Grant and are bargained for consideration between the Parties.*

2.2 Additional Conditions to Grant. The Parties agree that the City's obligation to pay any portion of the Grant under the terms of this Agreement shall further be conditioned upon satisfaction of the following conditions by the Developer:

(a) The Developer shall timely finish Completion of Construction of the Industrial Building;

(b) The Industrial Building shall comply with all requirements of the planned development zoning established by Ordinance No. 4856 on April 19, 2021 (the "**PD**") and with all requirements of the MDA, including but not limited to the architectural standards, the building material regulations, landscaping standards, the perimeter trail requirements, and the drainage improvements;

(c) Developer shall provide City a copy of Developer's Texas Direct Payment Returns, with evidence of timely filing and timely payment of amounts reflected thereon, which reflect an amount to be included in the calculation of the Grant payment, and City shall have received the Local Sales/Uses Taxes reflected on Developer's Texas Direct Payment Return from the Comptroller; and

(d) The Developer shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Developer under the terms of this Agreement and no Event of Default (as hereinafter defined) by the Developer shall then

exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute an Event of Default (as hereinafter defined) by the Developer under the terms of this Agreement.

2.3 Legislative or Judicial Changes. In the event of any legislative change or judicial interpretation that limits or restricts the City's ability to pay the Grant, then the Grant will cease as of the effective date of such limitation or restriction and be of no further force or effect in which event the City shall be under no further obligation to pay any Grant payments to the Developer as of the effective date of such limitation or restriction.

## ARTICLE III
## ADDITIONAL PROVISIONS

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

3.2 Definitions. As used in this Agreement, the following terms shall have the following meanings, to-wit:

(a) "Affiliate" shall mean any Person that directly controls, is directly controlled by, or is under direct common control with the Developer. As used in this definition, the term "controls," "controlled by" or "common control" shall mean that: (i) the Developer owns fifty-one percent (51%) or more of the shares or membership interests of the Person and has the power to direct and control the management and policies of the Person; (ii) the Developer owns fifty-one percent or more of the shares or membership interests of the general partner of the Person and has the power to direct and control the management and policies of the Person; or (iii) the Person owns fifty-one percent (51%) or more of the membership interests of the Developer and has the power to direct or control the management and policies of the Developer.

(b) "Capital Investment Certificate" shall mean a certificate in such form as is reasonably acceptable to the City executed by the Developer certifying the amount of expenditures made by Developer in connection with the construction of the Industrial Building is Twenty Million and No/100 Dollars ($20,000,000) before the deadline for Completion of Construction, which expenditures shall have been capitalized as a capital asset on the books of Developer in accordance with generally accepted accounting principles.

(c) "Certificate of Compliance" shall mean a certificate in such form as is reasonably acceptable to the City executed by a duly authorized representative of the Developer certifying to the City: (i) that all conditions to the payment of the Grant payment to be satisfied as of the date of the Payment Request have been satisfied and are then continuing; and (ii) that no Event of

Default (as hereinafter defined) then exists by the Developer under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute an Event of Default by the Developer under the terms of this Agreement.

(d) "Completion of Construction" shall mean that on or before December 31, 2022: (i) construction of the Industrial Building in compliance with Section 2.1(g) has been substantially completed, and (ii) the City has inspected the Industrial Building and issued a final certificate of occupancy for the Industrial Building.

(e) "Comptroller" shall mean the Texas Comptroller of Public Accounts.

(f) "Impact Fees" means all fees charged in accordance with Texas Local Government Code Chapter 395 and the City Regulations in effect from time to time and collected by the City at the time of building permit application.

(g) "Impositions" shall mean all taxes, assessments, use and occupancy taxes, Local Sales/Use Taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary, and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Developer or any property or any business owned by the developer or any of its Affiliates or related entities.

(h) "Industrial Building" means a 310,000 square-foot industrial building, or larger, to be constructed by the Developer on the Property and which receives a certificate of occupancy from the City no later than December 31, 2022, in compliance with (i) all applicable MDA requirements, the architectural standards, the building material regulations, landscaping standards, the perimeter trail requirements, and the drainage improvements (ii) all PD requirements, and (iii) meeting the requirements for a Capital Investment Certificate to be certified by the Developer.

(i) "Local Sales/Use Taxes" means the one percent (1%) tax rate for municipal sales and use taxes collected by or on behalf of the City authorized pursuant to the Texas Tax Code, as amended and/or replaced, that is allocated to the City's general fund.

(j) "Person" means an individual, corporation, general or limited partnership, limited liability company, trust, estate, unincorporated business, organization, association or any other entity of any kind.

(k) "Texas Direct Payment Permit" means a permit issued by the Comptroller allowing payment of Local Sales/Use Taxes directly to the Comptroller, instead of the seller collecting the Local Sales/Use Taxes, as authorized by Texas Administrative Code, Title 34, Chapter 3, Subchapter O, Rule Section 3.288, which is received by filing a qualifying Texas Application for Direct Payment Permit, Form AP-101 of the Comptroller.

(l) "Texas Direct Payment Return" means Form 01-119, as amended, of the Comptroller used for reporting and paying Local Sales/Use Taxes directly to the Comptroller under a Texas Direct Payment Permit, or other form used for this purpose that may be required by the Comptroller in the future.

(m) "Undocumented Workers" shall mean (i) individuals who, at the time of employment with the Developer, 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, or any other applicable law or regulation.

3.3 Term. The term of this Agreement commences on the Effective Date and continues for eleven (11) years following the issuance by the City of a certificate of occupancy for the Industrial Building unless earlier terminated pursuant to an Event of Default (as hereinafter defined).

3.4 Events of Default. The following shall be Events of Default (each an "Event of Default") pursuant to this Agreement:

(a) *Events of Default by Developer.* Subject to the notice and cure provisions of Section 3.5, each of the following shall be an Event of Default by the Developer under this Agreement:

(i) The Developer fails to comply in any material respect with any term, provision or covenant of this Agreement or any other agreement by and between the Developer and City;

(ii) The filing by Developer of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors, rights;

(iii) The consent by Developer to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;

(iv) The entering of an order for relief against Developer or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Developer in any involuntary proceeding, and the continuation of such order, judgment or degree unstayed for any period of ninety (90) consecutive days;

(v) With respect to the Property, the failure by Developer or any Affiliate to pay the amount of any Impositions when due as required by law; or

(vi) Any representation or warranty confirmed or made in this Agreement by the Developer was untrue in any material respect as of the Effective Date.

(b) *Events of Default by the City.* Subject to the notice and cure provisions of Section 3.5, each of the following shall be an Event of default by the City under this Agreement:

(i) Subject to the terms, provisions and conditions of this Agreement and so long as the Developer has complied with the terms and provisions of this Agreement, the City shall fail to pay to the Developer any monetary sum hereby required of it; or

(ii) The City shall fail to comply in any material respect with any term, provision or covenant of this Agreement, other than the payment of money.

3.5 Notice and Cure. Before any event described in Section 3.4 of this Agreement shall be deemed to be an Event of Default and a breach of this Agreement, the Party claiming such Event of Default shall notify, in writing, the Party alleged to have failed to perform the alleged Event of Default and shall demand performance. No Event of Default or breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice, with completion of performance within thirty (30) days.

3.6 Remedies. Upon the occurrence of any Event of Default, the non-defaulting Party may pursue specific performance and/or termination of this Agreement as its sole and exclusive remedies; provided, however, that (i) specific performance may not be asserted with respect to governmental or legislative actions by the City, and (ii) neither Party shall have the right to terminate this Agreement unless the non-defaulting Party sends a second notice which expressly provides that the non-defaulting Party will terminate this Agreement if the Event of Default is not cured by the defaulting Party within thirty (30) days after the second notice. An Event of Default by any Party shall not entitle any nondefaulting Party to seek or recover consequential, exemplary or punitive damages or attorneys' fees.

3.7 Suspension of Payment during Event of Default. Upon the occurrence of an Event of Default by the Developer, or upon the occurrence of an event which, but for notice, the lapse of time or both would constitute an Event of Default by the Developer, no payments shall be made to the Developer pursuant to this Agreement until such time as the Event of Default by the Developer, or the event which, but for notice, the lapse of time or both, would constitute an Event of Default by the Developer, is cured to the satisfaction of the City or the Agreement is terminated.

3.8 Effect of Termination. Upon termination of this Agreement as a result of an Event of Default, all payments to Developer pursuant to this Agreement shall cease from the date of termination forward.

3.9 Limitation on Damages. **IN NO EVENT SHALL ANY PARTY HAVE ANY LIABILITY UNDER THIS AGREEMENT FOR ANY SPECIAL, INCIDENTAL, SPECULATIVE, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES AND THE PARTIES HEREBY MUTUALLY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY CLAIM FOR SUCH DAMAGES.** In a suit against the City for breach of this Agreement, the total amount of money awarded is limited to actual damages in an amount not to exceed the Grant balance due and owed by the City under this Agreement.

3.10 Assignment. The Developer shall have the right, from time to time to assign this Agreement, in whole or in part, including any obligation, right, title, or interest of the Developer under this Agreement, to (a) any Person or entity that is or will become an owner of all or a portion of the Property with the prior written consent of the City, and (b) any Affiliate of the Developer without consent of the City but upon written notice to the City, provided, however, that notwithstanding the above, the City shall not be required to make partial payments to more than a total of two Persons at any time as a result of any assignment(s) of this Agreement and (c) in the

limited case of an assignment of just the Grant payments under this Agreement, to any other Person or entity without consent of the City, but upon written notice to the City, provided, however, that notwithstanding the above, the City shall not be required to make partial payments to more than a total of two Persons at any time as a result of any assignment(s) of just the Grant payment. Each assignment shall be in writing executed by the Developer and the assignee and shall obligate the assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. A copy of each assignment shall be provided to the City within 15 days after execution. No assignment by Developer shall release the Developer from any liability that resulted from an act or omission by Developer that occurred prior to the effective date of the assignment unless the City approves the release in writing. From and after such assignment and notwithstanding anything to the contrary in this Agreement, the City agrees to look solely to the assignee for the performance of all obligations assigned to the assignee and agrees that the Developer shall be released from subsequently performing the assigned obligations and from any liability that results from the assignee's failure to perform the assigned obligations; provided, however, if a copy of the assignment is not received by the City within 15 days after execution, the Developer shall not be released until the City receives such assignment and further provided that all conditions to the payment of the Grant shall continue notwithstanding any assignment. An assignee pursuant to (a) and (b) above, shall be considered the "Developer" and a "Party" for the purposes of this Agreement. The City may rely on any notice of assignment received from the Developer without obligation to investigate or confirm the validity or occurrence of such assignment. The Developer waives all rights or claims against the City for any funds provided to an assignee as a result of receipt of a notice of assignment from the Developer, and the Developer's sole remedy shall be to seek the funds directly from the assignee. The City shall not be required to execute any document or make any representations as a result of an assignment by the Developer.

3.11 Encumbrance by Developer and Assignees. The Developer and assignees permitted under the terms of this Agreement have the right, from time to time, to collaterally assign, pledge, grant a lien or security interest in, or otherwise encumber any of their respective rights, title, or interest under this Agreement for any loan in connection with the development of the Property for the benefit of their respective lenders without the consent of, but with written notice to, the City. The collateral assignment, pledge, grant of lien or security interest, or other encumbrance shall not, however, obligate any lender to perform any obligations or incur any liability under this Agreement unless the lender agrees in writing to perform such obligations or incur such liability. Provided the City has been given a copy of the documents creating the lender's interest, including notice information for the lender, then that lender shall have the right, but not the obligation, to cure any Event of Default by the Developer or any permitted assignee under this Agreement and shall be given thirty (30) days to do so in addition to the cure periods otherwise provided to the defaulting Party by this Agreement; and the City agrees to accept a timely cure offered by the lender as if offered by the defaulting Party. A lender is not a Party to this Agreement unless this Agreement is amended, with the consent of the lender, to add the lender as a Party. No collateral assignment shall relieve the Developer or any permitted assignee from any obligations or liabilities under this Agreement. No collateral assignment to a lender shall require the City to execute any document or make any representations.

3.12 Inspection. The City, its agents and employees, shall have the right to access the Property to conduct such inspections as deemed reasonably necessary by the City for the purpose

of confirming that the Developer is in compliance with the terms, provisions and conditions of this Agreement.

3.13 Force Majeure. Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Agreement, and time shall be of the essence in such performance; however, in the event a Party is unable, due to force majeure, to perform its obligations under this Agreement, then the obligations affected by the force majeure shall be temporarily suspended. Within ten business days after the occurrence of a force majeure, the Party claiming the right to temporarily suspend its performance, shall give notice to all the Parties, including a detailed explanation of the force majeure and a description of the action that will be taken to remedy the force majeure and resume full performance at the earliest possible time. The term "force majeure" shall include events or circumstances that are not within the reasonable control of the Party whose performance is suspended and that could not have been avoided by such Party with the exercise of good faith, due diligence and reasonable care, including, but not limited to, the occurrence of a pandemic such as COVID-19.

3.14 Notice. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received (i) three (3) days after sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below; (ii) one (1) business day after deposit with 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 of United Parcel Service (UPS); or (iii) on the day actually received if sent by courier or otherwise hand delivered. 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.

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| To the City: | City of Mesquite, Texas<br>Attn: City Manager<br>1515 N. Galloway Ave.<br>Mesquite, TX 75149 |
| With a copy to: | City of Mesquite, Texas<br>Attn: City Attorney<br>1515 N. Galloway Ave.<br>Mesquite, TX 75149 |
| And a copy to: | Attn: Julie Fort<br>Messer, Fort, & McDonald PLLC<br>6371 Preston Road, Suite 200<br>Frisco, Texas 75034 |
| To the Developer: | Jackson-Shaw Company<br>4890 Alpha Road, Suite 100<br>Dallas, Texas 75244<br>Attention: John Stone<br>Telephone: (972) 628-7450<br>Email: jstone@jacksonshaw.com |

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

And a copy to: Andrews & Barth, PC
8235 Douglas Avenue, Suite 1120
Dallas, Texas 75225
Attention: Justin K. Tonick
Telephone: (214) 346-1185
Email: jktonick@andrews-barth.com

3.15 Interpretation. The Parties acknowledge that each of them has been actively involved in negotiating this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this Agreement. In the event of any dispute over the meaning or application of any provision of this Agreement, the provision will be interpreted fairly and reasonably and neither more strongly for or against any Party, regardless of which Party originally drafted the provision.

3.16 Authority and Enforceability; Binding Effect. The City represents and warrants that this Agreement has been approved by resolution duly adopted by the City Council in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been duly authorized to do so. Developer represents and warrants that this Agreement has been approved by appropriate action of Developer, and that the individual executing this Agreement on behalf of Developer has been duly authorized to do so. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

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

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

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

3.20 Anti-Boycott Verification. The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other Affiliates, if any, do not boycott Israel 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 understands 'Affiliate' includes an entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

3.21 Iran, Sudan and Foreign Terrorist Organizations. The Developer represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other Affiliates is 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 and each of its 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 understands "Affiliate" includes any entity that controls, is controlled by, or is under common control with the Developer and exists to make a profit.

3.22 Ethics Disclosure. Developer represents that it has completed a Texas Ethics Commission ("TEC") form 1295 ("Form 1295") generated by the TEC's electronic filing application in accordance with the provisions of Texas Government Code 2252.908 and the rules promulgated by the TEC. The Parties agree that, with the exception of the information identifying the City and the contract identification number, the City is not responsible for the information contained in the Form 1295. The information contained in the Form 1295 has been provided solely by the Developer and the City has not verified such information.

3.23 Employment of Undocumented Workers. The Developer hereby certifies that the Developer and each branch, division and department of the Developer does not employ and Undocumented Workers and, the Developer agrees that the Developer and each branch, division and department of the Developer will not knowingly employ any Undocumented Workers during the term of this Agreement and, if the Developer or any branch, division or department of the Developer is convicted of a violation under 8 U.8.C. Section 1324a (f), the Developer shall repay the incentives granted herein within 120 days after the date the Developer is notified by the City of such violation, plus interest at the rate equal to the lesser of (i) the maximum rate allowed by law; or (ii) six percent (6%) per annum, such interest rate to be calculated on the amount of each Grant payment being recaptured from the date each such Grant payment was paid by the City to the Developer 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. Pursuant to Section 2264.101 (c), Texas Government Code, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a Person with whom the business contracts. The Developer agrees to provide the City with written notice of any conviction of the Developer, or any branch, division or department of the Developer, of a violation under 8 W.S.C. Section 1324a (f) during the term of this Agreement, within thirty (30) days from the date of such conviction. This provision shall expressly survive the expiration of termination of this Agreement.

3.24 Obligations Payable Only from Identified Sources of Funds. The Grant payable by the City to the Developer as more fully set forth in this Agreement is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City. The Grant shall be paid only from funds of the City authorized by the Texas Constitution and the Texas Local Government Code. The Parties agree no other source of funds of the City is subject to payment of the Grant. The Grant payments are subject to the City's appropriation of funds for such purpose to be paid in the budget year for which each Grant payment is to be paid. The obligations of the City under this Agreement are non-recourse, and such obligations do not create a debt or other obligation payable from any other City revenues, taxes, income or property other than the identified sources of funds. Neither the City nor any of its appointed or elected officials or any of their officers or employees shall incur any liability hereunder to the Developer, any assignee or any other Person, entity or party in their individual capacities by reason of this Agreement or their acts or omissions under this Agreement.

3.25 Other Agreements and Remedies. Nothing in this Agreement is intended to constitute a waiver by the City of any remedy the City may have outside this Agreement against Developer or any assignee. The obligations of the Developer hereunder shall be those as a Party hereto and not solely as an owner of the Property. Nothing herein shall be construed, nor is intended, to affect the City's or the Developer's rights and duties to perform obligations under other agreements, regulations and ordinances.

3.26 No Waiver of Governmental Powers and Immunities. The City does not waive or surrender any of its governmental powers, immunities or rights and, notwithstanding any provision in this Agreement, this Agreement does not control, waive, limit or supplant the legislative authority or discretion of the City Council of the City.

3.27 Recapture of Incentives. Unless otherwise provided in this Agreement, in the event of an uncured Event of Default by the Developer or any assignee of the Developer, the

Developer shall immediately pay to the City, at the City's address set forth in Section 3.14 of this Agreement, or such other address as the City may hereafter notify the Developer in writing, the amount equal to all Grant payments previously paid by the City to the Developer pursuant to this Agreement, together with 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 Grant payment being recaptured from the date each such Grant payment was paid by the City to the Developer 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.

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

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

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

3.31 Exhibits. The following exhibit is attached to this Agreement and incorporated herein for all purposes:

Exhibit A Metes and Bounds Description of the Property

3.32 Execution of Agreement by Parties. If this Agreement is not executed by the Developer and the City on or before sixty (60) days after the date of the City resolution approving this Agreement, this Agreement will be null and void and of no force or effect.

3.33 Modification. This Agreement may only be revised, modified or amended by a written document duly signed by the City and Developer. Oral revisions, modifications or amendments are not permitted.

3.34 No Partnership or Joint Venture. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of partnership or joint venture between the Parties.

3.35 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.

3.36 Non-Collusion. The Developer represents and warrants that neither the Developer nor anyone on the Developer's behalf has given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any

employee, agent, representative or official of the City as an inducement to or in order to obtain the benefits to be provided by the City under this Agreement.

3.37 Report Agreement to Comptroller's Office. City covenants and agrees to report this Agreement to the State of Texas Comptroller's office within fourteen (14) days of the Effective Date of this Agreement, in accordance with Section 380.004 of the Texas Government Code, as added by Texas House Bill 2404, 87th Tex. Reg. Session (2021) (effective September 1, 2021).

3.38 Time is of the Essence. Time is of the essence in the performance of this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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

**CITY:**

**CITY OF MESQUITE, TEXAS**

ATTEST:

Name: Sonja Land
Title: City Secretary

By:
Name: Cliff Keheley
Title: City Manager

APPROVED AS TO FORM:

Name: David L. Paschall
Title: City Attorney

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on this 28 day of September 2021, by Cliff Keheley, City Manager of the City of Mesquite, Texas, on behalf of said municipality.

[SEAL]

KEELY JO WELLS
Notary Public-State of Texas
Notary ID #580792-3
Commission Exp. JUNE 17, 2025

Notary Public, State of Texas

**DEVELOPER**

**JACKSON-SHAW COMPANY**,
a Texas corporation

By: _____
Name: Michele Wheeler
Title: President

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on this 24th day of September 2021, by Michele Wheeler, President of Jackson-Shaw Company, a Texas corporation, on behalf of said corporation.

[SEAL]

HOLLI GRIER
Notary Public, State of Texas
Comm. Expires 04-01-2025
Notary ID 2582155

_____
Notary Public, State of Texas

# EXHIBIT A
# PROPERTY DESCRIPTION