

RESOLUTION NO. 16-2023

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) FOR SUCH PURPOSES WITH WILLIAM C. CHRISTENSEN III, INDEPENDENT EXECUTOR ON BEHALF OF THE ESTATE OF BETTY C. BOWIE, FOR THE CONSTRUCTION AND DEVELOPMENT OF THE PROPERTY LOCATED AT 19400 INTERSTATE HIGHWAY 635, THE 2100 THROUGH 2300 BLOCKS OF ORLANDO AVENUE, 2443 AND 2501 WESTWOOD AVENUE, AND A PORTION OF ORLANDO AVENUE IN THE CITY OF MESQUITE, DALLAS COUNTY, 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, the City Council has been presented with a proposed agreement between the City and William C. Christensen III, Independent Executor on behalf of the Estate of Betty C. Bowie (the “**Company**”), to provide economic incentives to the Company for the purchase of land and development of real property, a copy of said agreement being attached hereto as Exhibit 1 and incorporated herein by reference (the “**Agreement**”); and

WHEREAS, the proposed development is located on approximately 14.25 acres of real property, as more particularly described and/or depicted in Exhibits A and B to the Agreement, and generally located at 19400 Interstate Highway 635, the 2100 through 2300 blocks of Orlando Avenue, 2443 and 2501 Westwood Avenue, and a portion of Orlando Avenue in the City of Mesquite, Dallas County, Texas (collectively, the “**Property**”); and

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

WHEREAS, development of the Property will 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, after holding a public hearing and upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement will assist in implementing a program whereby local economic development will be promoted, and business and commercial activity will be stimulated in the City.

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

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

SECTION 2. That the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Company and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement.

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

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

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

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

Economic Development / Masterplan 380 Agreement / April 17, 2023

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DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 17th day of April 2023.

DocuSigned by:

Daniel Aleman Jr.

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Daniel Alemán, Jr.
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

DocuSigned by:

Sonja Land

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Sonja Land
City Secretary

DocuSigned by:

David Paschall

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David L. Paschall
City Attorney

EXHIBIT 1

**ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
(Chapter 380 Agreement)**

**Between the City of Mesquite and
William C. Christensen III,
Independent Executor on behalf of the Estate of Betty C. Bowie**

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
(Chapter 380 Agreement)

This Economic Development Program Agreement (“Agreement”) is made and entered into by and between the City of Mesquite, a Texas home rule municipality (the “City”) and William C. Christensen III, Independent Executor on behalf of the Estate of Betty C. Bowie (the “Company”).

WITNESSETH:

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

WHEREAS, the City desires to convey any interest it may own in a certain tract of real property located in the City of Mesquite, Texas, commonly known as the Orlando Avenue Right-of-Way and being more particularly described in **Exhibit A** (the “ROW”); and

WHEREAS, the City advertised a Request for Proposals No. 2022-124 (“RFP”) for the ROW which closed on August 18, 2022; and

WHEREAS, the Company responded to the City’s RFP and made an offer to purchase the ROW for \$181,082.16 (the “Fair Market Value”) and the City awarded the RFP to Company on December 5, 2022; and

WHEREAS, the Company owns the surrounding approximately 12.78 acres surrounding the ROW and located at 19400 Interstate Highway 635 as more particularly described in **Exhibit B** (collectively with the ROW, hereafter referred to as the “Land”); and

WHEREAS, the Company desires to acquire the ROW and intends to construct an industrial building consisting of at least 200,000 square feet, on the Land (the “Building”), as depicted in the Conceptual Site Plan, **Exhibit C**; and

WHEREAS, the Company further intends to construct associated parking for the Building on the Land (the “Parking”) and to make additional landscaping improvements along the service road (the “Landscaping”), as depicted in the Conceptual Site Plan, **Exhibit C**; and

WHEREAS, the Building, Landscaping, and Parking are hereinafter sometimes collectively referred to as the “Mesquite Development”; and

WHEREAS, the Company also intends to improve the Orlando Avenue road at the entrance from US Highway 80 to Mariposa Drive (the “Road Project”) as depicted in the Conceptual Site Plan, **Exhibit C**; and

WHEREAS, the Company will be making at least FIFTEEN MILLION AND 00/100 DOLLARS (\$15,000,000.00) of capital improvements to the Land in connection with the construction of the Mesquite Development; and

WHEREAS, the Mesquite Development will substantially increase the taxable value of the Land thereby adding value to the City’s tax rolls and increasing the ad valorem real property taxes to be collected by the City; and

WHEREAS, the Company has advised the City that the Company will construct the Mesquite Development sooner if the City provides the Economic Development Incentive to the Company under the terms and subject to the conditions more fully set forth in this Agreement; 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 Company desires to participate in the Program by entering into this Agreement; and

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the Company’s performance of its obligations set forth in this Agreement 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, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties agree as follows:

ARTICLE I
Incorporation of Recitals and Exhibits

The foregoing recitals (“Recitals”) are incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties. All exhibits specifically referenced in the recitals or body of this Agreement, and attached hereto, are hereby incorporated for all purposes.

ARTICLE II
Definitions

As used herein, the following terms shall have the following meanings, to-wit:

“Affiliate” shall mean any entity, individual, firm, or corporation, directly or indirectly, through one or more intermediaries, solely owned and controlled by LOVETT INDUSTRIAL, LLC.

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

“Capital Investment” shall have the meaning set forth in Article VII, Section 7 of this Agreement and shall include only expenditures capitalized as capital assets on the books of the Company in accordance with generally accepted accounting principles.

“Capital Investment Certificate” shall have the meaning set forth in Article VII, Section 8 of this Agreement.

“Certificate of Compliance” shall mean a certificate in such form as is reasonably acceptable to the City executed on behalf of the Company by a duly authorized Company Representative certifying to the City: (i) that all Conditions Precedent have been satisfied and are then continuing; and (ii) that no Company Default (as hereinafter defined) 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 Company Default under the terms of this Agreement.

“Certificate of Occupancy” shall mean a final certificate of occupancy issued by the City to the Company after the Mesquite Development has been completed in compliance with the City’s building, health, safety, fire and other codes and authorizing Company to occupy and operate a business from at least 200,000 square feet of the Building.

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

“City Default” shall have the meaning set forth in Article IX, Section 4 of this Agreement.

“City Regulation(s)” shall mean any federal, state, or local provision, statute, ordinance, rule, regulation, standard, policy, order, or guideline adopted by the City, state entity, or federal entity as amended and as are applicable including but not limited to the Mesquite City Code of Ordinances, the City of Mesquite’s Engineering Design Manual.

“Company” shall mean William C. Christensen III, Independent Executor on behalf of the Estate of Betty C. Bowie, its successors and assigns only as permitted by Article X, Section 1 of this Agreement.

“Company Default” shall have the meaning set forth in Article IX, Section 1 of this Agreement.

“Company Representative” shall mean any duly authorized officer or individual of the Company acting on behalf of the Company.

“Commence Construction” or “Commencement of Construction” shall mean with respect to the Building: (i) all Building plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained to begin construction of the Building (ii) all necessary permits to begin construction of the Building have been issued by the applicable governmental authorities; and (iii) actual pouring of the Building foundation has commenced. “Commence Construction” or “Commencement of Construction” shall mean with respect to each of the

Road Project, Parking, or Landscaping, that: (i) plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained to begin construction of the applicable improvement (ii) necessary permits to begin construction of the applicable improvement have been issued by the applicable governmental authorities; and (iii) actual horizontal construction of the applicable improvement has commenced.

“Completion of Construction” or “Complete Construction” with respect to the Building shall mean the Company must obtain from the City a Certificate of Occupancy or equivalent as determined by the City for the shell of the Building, which shall be constructed as provided herein. “Completion of Construction” or “Complete Construction” with respect to each of the Landscaping, Parking, or Road Project shall mean (i) actual construction of the applicable improvement is complete (ii) the applicable improvement complies with the terms and conditions of this Agreement, and (ii) the City and other applicable government agencies have inspected, approved, and accepted the applicable improvement.

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

“Economic Development Incentive” shall mean an incentive described in Article VIII of this Agreement.

“Effective Date” shall mean the date the Company and the City execute this Agreement if the Company and the City execute this Agreement on the same date. If the Company and the City execute this Agreement on different dates, any reference to the “Effective Date” shall mean the later of the dates this Agreement is executed by the Company and the City.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of a receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, the voluntary commencement of any proceeding under any bankruptcy or insolvency laws by any Party, or the involuntary commencement of any proceeding against any Party under any bankruptcy or insolvency laws and such involuntary proceeding is not dismissed within ninety (90) days after the filing thereof.

“Fair Market Value” shall have the meaning set forth in the Recitals to this Agreement.

“Incentive Payment” shall have the meaning set forth in Article VIII of this Agreement.

“Land” shall have the meaning set forth in the Recitals to this Agreement.

“Landscaping” shall have the meaning set forth in the Recitals to 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).

“Mesquite Development” shall have the meaning set forth in the Recitals to this Agreement.

“Parking” shall have the meaning set forth in the Recitals to this Agreement.

“Party” shall mean either the Company or the City.

“Parties” shall mean the Company and the City.

“Payment Request” shall mean the written request executed by the Company requesting the payment of the Economic Development Incentive as further described in Article VII of this Agreement.

“Payment Request Deadline” shall have the meaning set forth in Article VII of this Agreement.

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

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

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

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

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

“Undocumented Workers” shall mean: (i) individuals who, at the time of employment with the Company, 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, Wastewater, and Roadway Impact Fees” shall mean water, wastewater and roadway impact fees imposed by the City pursuant to City Ordinance No. 4366, as amended or replaced, to generate revenue to fund or recoup all or part of the costs of capital improvements or Development expansion necessitated by and attributable to the improvements provided, however, in no event shall Water, Wastewater and Roadway Impact Fees include the dedication of rights-of-way or easements for such facilities, or the construction of such improvements imposed pursuant to the City’s zoning or subdivision regulations.

ARTICLE III Authority for Agreement

This Agreement is authorized by Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code. The City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the Company’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 local economic development in the City, stimulate business and commercial activity in the City; and (iv) benefit the City and its citizens.

ARTICLE IV Term

The Term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) **December 31, 2025**; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein (the “Term”).

ARTICLE V Company’s Covenant Not to Employ Undocumented Workers

1. Covenant Not to Employ Undocumented Workers. The Company hereby certifies that the Company and each branch, division, and department of the Company does not employ any Undocumented Workers and the Company hereby covenants and agrees that the Company and each branch, division and department of the Company will not knowingly employ any Undocumented Workers during the Term of this Agreement.

2. Covenant to Notify City of Conviction for Undocumented Workers. The Company further hereby covenants and agrees to provide the City with written notice of any conviction of the Company, or any branch, division or department of the Company, of a violation under 8 U.S.C. §1324a (f) during the Term of this Agreement, within thirty (30) days from the date of such conviction.

3. Repayment of Economic Development Incentives in Event of Conviction for Employing Undocumented Workers. If, after receiving any Economic Development Incentive under the terms of this Agreement, the Company, or a branch, division or department of the Company, is convicted of a violation under 8 U.S.C. §1324a (f), the Company shall pay to the City, not later than the 120th day after the date the City notifies the Company of the violation, an amount equal to the total Economic Development Incentive previously paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on the amount of the Economic Development Incentive being recaptured from the date the Economic Development Incentive was paid by the City to the Company until the date repaid by the

Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate.

4. Limitation on Economic Development Incentives. The City shall have no obligation to pay any Economic Development Incentive to the Company if the Company, or any branch, division or department of the Company is convicted of a violation under 8 U.S.C. §1324a (f) during the Term of this Agreement.

5. Remedies. The City shall have the right to exercise all remedies available by law to collect any sums due by the Company to the City pursuant to this Article V including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.

6. Limitation. The Company is not liable for a violation of Article V of this Agreement by a subsidiary, affiliate, or franchisee of the Company, or by a person with whom the Company contracts.

7. Survival. The terms, provisions, covenants, agreements and obligations of the Company and the rights and remedies of the City set forth in Article V of this Agreement shall expressly survive the expiration or termination of this Agreement.

ARTICLE VI Company's Additional Covenants

In consideration of the City's agreement to grant the Economic Development Incentive to the Company upon the terms and conditions more fully set forth herein, the Company represents, covenants and agrees as follows, to-wit:

1. Timely Payment of Development Fees. The Company shall timely pay to the City all impact fees, permit fees, development fees, review fees and inspection fees in connection with the Mesquite Development, Road Project, and Land including, without limitation, all Water, Wastewater and Roadway Impact Fees;

2. Records and Reports. During the Term of this Agreement, the Company shall deliver to the City within thirty (30) days after written request, copies of such invoices, paid receipts, payment records, and other documentation as the City may reasonably request to confirm compliance by the Company with this Agreement;

3. Inspection. The Company shall provide the City, its agents and employees with access to the Mesquite Development, Land, and Road Project at such times as the City may reasonably request during the Term of this Agreement to conduct such inspections as the City deems necessary in order to confirm compliance by the Company with the representations, covenants and agreements of the Company as set forth in this Agreement provided the City has given the Company at least seventy-two (72) hours prior written notice of such inspection;

4. Representative of Company to Accompany Inspections. The Company shall provide a representative of the Company to accompany the City during all inspections of the Mesquite Development, Land, and Road Project conducted by the City pursuant to Article VI, Section 3 above;

5. Timely Payment of Taxes. The Company shall timely pay all applicable taxes assessed against the Mesquite Development and Land, during the Term of this Agreement prior to the date such taxes become delinquent;

6. Maintenance Obligations. The Company shall comply with all City Regulations at all times during the Term of this Agreement and shall, at the Company's sole cost and expense, maintain the Mesquite Development, Road Project, and Land in good repair at all times during the Term of this Agreement;

7. Compliance with Laws. The Company shall comply with all federal, state and local laws, ordinances and regulations relating to the ownership, construction, and operation of the Mesquite Development, Road Project, and Land during the Term of this Agreement;

8. Performance of Agreement. The Company shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of this Agreement;

9. Performance of Other Agreements. The Company shall timely keep and perform all terms, provisions, agreements, covenants, and obligations to be kept or performed by the Company under the

terms of all other agreements now or hereafter existing between the Company and the City during the Term of this Agreement;

10. No Goods or Services. The Company agrees the performance of any or all obligations of the Company under the terms of this Agreement does not constitute the provision of goods or services to the City;

11. Construction of the Road Project.

- a. The Parties agree that the construction of the Road Project was not a condition of approval of the Mesquite Development but is (as is described herein) only a condition precedent to the payment of the economic development incentive pursuant to this Agreement and accordingly V.T.C.A., Local Government Code §212.904 and V.T.C.A., Local Government Code §395.023 do not apply provided, however, in the event a court of competent jurisdiction determines that V.T.C.A., Local Government Code §212.904 and/or V.T.C.A., Local Government Code §395.023 apply, the Parties agree that payment by the City to the Company of said economic development incentive shall satisfy all requirements under V.T.C.A., Local Government Code §212.904 and V.T.C.A., Local Government Code §395.023.
- b. The Company shall have: (i) submitted to the City unit prices for the work to be performed pursuant to the construction contract(s) for the Road Project and the City shall have approved such unit prices in writing as being reasonable; (ii) submitted to the City a payment bond and a performance bond in form reasonably acceptable to the City Attorney in the amount equal to one hundred percent (100%) of the contract amount for the construction of the Road Project; (iii) complied in all respects with the Closeout and Acceptance Requirements set forth in **Exhibit G** attached hereto and made a part hereof for all purposes (the "Closeout and Acceptance Requirements"); (iv) complied in all respects with the Requirements for Record Drawings and Plats for Private Development Projects attached hereto as **Exhibit H** and made a part hereof for all purposes (the "Record Drawings and Plat Requirements"); and (v) paid in full all contractors, subcontractors, suppliers, laborers and materialmen for all labor and materials in connection with the construction of the Road Project.
- c. Prior to Commencement of Construction of any improvements as to the Road Project, the Company 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 improvements and shall obligate each general contractor, architect, and consultants performing work in connection with such improvements to obtain all applicable permits, licenses or approvals as required by City Regulations. Company shall require or cause the design, inspection, and supervision of the construction of the improvements to be undertaken with respect to the Road Project to be in accordance with all City Regulations.
- d. Prior to Commencement of Construction of the Road Project, the Company shall cause the contractors and subcontractors performing work in connection with the construction of such improvements to purchase and maintain payment, performance and two-year maintenance bonds (the "Bonds") in the penal sum of 100% of the amount set forth in each construction contract for the improvements. The Bonds shall be written on forms approved for use by the City and satisfactory to the City Attorney. Any surety Company through which a bond is written shall be a surety Company duly authorized to conduct an insurance business in the State of Texas and licensed to issue surety bonds in the State of Texas, provided that the City Attorney has the right to reject any surety Company regardless of such Company's authorization to do business in Texas. 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 Company furnish additional or substitute surety through an approved surety Company satisfactory to the City Attorney; 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 improvements shall be delivered to the City prior to the commencement of construction of the improvements.

- e. Company shall design and construct or cause the design and construction of the Road Project, 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 improvements that are not to be constructed on land owned by the City.
- f. Company shall comply, or shall use commercially reasonable efforts to cause its contractors to comply, with City Regulations regarding the design and construction of the Road Project.
- g. The following requirements apply to construction contracts for the Road Project:
 - a. Plans and specifications for the Road Project shall comply with all City Regulations. Such plans and specifications shall be subject to the review and approval of the City prior to the issuance of any permits; and
 - b. Each construction contract as to the Road Project 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
 - c. Each construction contract as to the Road Project shall provide that the contractor shall indemnify the City and City related parties for any costs or liabilities thereunder and for the negligent acts or omissions of the contractor and the contractor's agents.
- h. Company shall ensure at all times during construction that access and use of surrounding roads are maintained for the public and emergency responders and that such access complies with all City Regulations.
- i. Upon Completion of Construction of the Road Project, Company shall provide the City with a final cost summary of the improvements project costs incurred and paid in connection with the construction of the 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 Company and/or its contractors with regard to the improvements.
- j. Company shall provide the City with reasonable advance notice of any regularly-scheduled construction meetings regarding the 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.
- k. Unless otherwise approved in writing by the City, all improvements shall be constructed and dedicated to the City in accordance with City Regulations. Company agrees the improvements shall not have a lien or cloud on title upon their dedication and acceptance by the City.
- l. With respect to the Road Project, to the extent fee title is owned by Company, Company shall dedicate or convey by final plat or separate instrument, without cost to the City and in accordance with City Regulations, the rights-of-way and easements necessary for the construction, operation, and maintenance of the road, water, drainage and sewer improvements constructed by Company at the Completion of Construction of such improvements and upon acceptance by the City. To the extent fee title is owned by the City or any other third party, Company will reasonably cooperate in causing the foregoing to occur.
- m. It is understood and agreed by and among the Parties that Company is acting independently in the design, construction and development of the Road Project and the City assumes no responsibility or liability to any third parties or Company in connection with Company's obligations hereunder. Company shall cause all of its contractors, architects, engineers, and consultants to agree in writing that they will look solely to Company, not to the City, for payment of all costs and claims associated with construction of the Road Project.

12. Purchase of ROW. Within 30 days of the Effective Date of this Agreement, the Company shall complete the purchase of the ROW from the City including but not limited to: promptly paying the City the Fair Market Value of the ROW and promptly executing any documents requested by the City to ensure the Quitclaim transfer of the ROW is made effective and recorded in the Dallas County Official Deed Records;

13. Right of First Refusal Agreement. The Company shall execute the attached Right of First Refusal Agreement, **Exhibit D**, at the time the ROW Quitclaim (as hereafter defined) is executed by the City and the Company shall promptly execute any documents requested by the City to ensure the Right of First Refusal Agreement is made effective and recorded in the Dallas County Official Deed Records; and

14. Option to Purchase Agreement. The Company shall execute the attached Option to Purchase Agreement, **Exhibit E**, at the time the ROW Quitclaim is executed by the City. The Company shall promptly execute any documents requested by the City to ensure the Option to Purchase Agreement is made effective and recorded in the Dallas County Official Deed Records.

ARTICLE VII

Conditions Precedent to Payment of the Economic Development Incentive

The Company and the City hereby expressly acknowledge and agree that the City's obligation to pay the Economic Development Incentive to the Company shall expressly be conditioned upon the satisfaction of each and every one of the following conditions precedent (the "Conditions Precedent"), to-wit:

1. Execution of Agreements. The Company shall have executed the Right of First Refusal Agreement and Option to Purchase Agreement, and provided all documents and assistance requested by the City to ensure the Right of First Refusal Agreement and Option to Purchase Agreement have been properly recorded in the Dallas County Official Deed Records.

2. Purchase of ROW. The Company shall have completed the purchase of the ROW from the City for ONE HUNDRED EIGHTY-ONE THOUSAND EIGHTY-TWO AND 16/100 DOLLARS) (the "Purchase Price");

- a. Title Policy. Company, may at its sole expense may obtain a title policy in connection with the closing of the purchase of the ROW.
- b. Survey. The City has obtained a survey and will provide it to the Company. However, in the event the survey is not sufficient for title or closing purposes, the Company shall obtain any additional survey at their sole expense.
- c. Transfer of the ROW. At the time of sale, the *ROW* will be transferred to the Company by a quitclaim, in the form attached hereto as **Exhibit C** (the "Quitclaim").

D. AS IS CONVEYANCE. THE CONVEYANCE OF THE ROW BY CITY TO COMPANY SHALL BE "AS IS" AND "WITH ALL FAULTS" AND "WITHOUT WARRANTY, EITHER EXPRESS OR IMPLIED" AND THE QUITCLAIM TO BE DELIVERED BY CITY TO COMPANY SHALL BE IN SUCH FORM AND CONTAIN SUCH TERMS AS ARE ACCEPTABLE TO CITY IT ITS SOLE DISCRETION INCLUDING, WITHOUT LIMITATION, SUCH DISCLAIMERS OF REPRESENTATIONS AND WARRANTIES AS ARE ACCEPTABLE TO CITY. THE COMPANY AGREES THAT PRIOR TO PURCHASE OF THE ROW, COMPANY WILL HAVE HAD THE OPPORTUNITY TO EXAMINE AND INVESTIGATE THE ROW AND THAT COMPANY'S DECISION TO PURCHASE THE ROW SHALL BE BASED SOLELY UPON ITS OWN INDEPENDENT EXAMINATION, STUDY, INSPECTION, AND KNOWLEDGE OF THE ROW AND THE COMPANY'S DETERMINATION OF THE VALUE OF THE ROW AND USES FOR WHICH THE ROW MAY BE OCCUPIED, AND IN PURCHASING THE ROW THE COMPANY SHALL NOT RELY ON ANY REPRESENTATIONS, DISCLOSURES, INFORMATION OR WARRANTIES, EITHER EXPRESS OR IMPLIED, OF ANY KIND BY THE CITY. THE COMPANY 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 THE PROPERTY. THE PROVISIONS OF THIS ARTICLE SHALL SURVIVE THE TRANSFER OF THE PROPERTY BY THE CITY TO THE COMPANY.

- e. *Taxes.* Company shall be responsible for and shall pay all taxes assessed against the ROW from and after the date of closing on the purchase of the ROW. This provision shall expressly survive the closing of the purchase of the ROW.
- f. *Transfer of Funds.* No later than (30) thirty days after the execution of this Agreement by the City, the Company shall deliver the Fair Market Value to the City in immediately available funds per the method and manner requested by the City; and (ii) City shall deliver the Quitclaim to the Company quitclaiming the ROW to Company. City and Company shall each be responsible for all costs and expenses incurred by or on behalf of such Party in connection with the sale and purchase of the ROW, including such Party's attorney's fees. City and Company represent and warrant to each other that they have not and will not work with any broker relative to the sale and purchase of the ROW and that no brokerage commission is or will be due and payable in connection with the sale and purchase of the ROW by the City to the Company.
- g. *Failure to Purchase ROW.* If Company does not purchase the ROW in accordance with the terms and conditions set forth herein, this Agreement will automatically and immediately terminate without notice.
- h. *Time of the Essence.* Time is of the essence with respect to the purchase of the ROW.

3. Commencement of Construction of the Mesquite Development. On or before **December 31, 2024** the Company shall have Commenced Construction of the Building on the Land consisting of at least 200,000 square feet, substantially as depicted in the Conceptual Site Plan, **Exhibit C**;

4. Completion of the Road Project. On or before **December 31, 2025**, the Company shall have Completed Construction of the Road Project, substantially as depicted in the Conceptual Site Plan, **Exhibit C**;

5. Completion of the Mesquite Development. On or before **December 31, 2025**, the Company shall have Completed Construction of the Mesquite Development, substantially as depicted in the Conceptual Site Plan, **Exhibit C**;

6. Compliance with Development Standards for the Mesquite Development. The Mesquite Development shall have been constructed in substantial compliance with the Exterior Finish Plan attached hereto as **Exhibit F**, including, without limitation (i) the Mesquite Development shall have been constructed in substantial compliance with the elevations, materials overlay, composition overlay, scale overlay, proportion overlay, rhythm overlay, transparency overlay, articulation overlay, expression overlay, color overlay, and aesthetic methods set forth in the Exterior Finish Plan; and (ii) the paint colors, building products and materials used and/or installed in connection with the construction of the Mesquite Development shall substantially comply with the Exterior Finish Plan;

7. Capital Investment. The Company shall have made expenditures in the collective amount of at least FIFTEEN MILLION AND NO/100 DOLLARS (\$15,000,000.00) in connection with the Mesquite Development on or before **December 31, 2025** (the "Capital Investment"). Costs associated with the purchase of the Land or ROW, real estate closing for the Land or ROW, or for any subsequent transfer of any portion of the Land or ROW shall not be considered a Capital Investment. When calculating such expenditures, the Parties agree that no expenditure shall be included as part of the Capital Investment unless the expenditure is capitalized as a capital asset on the books of the Company in accordance with generally accepted accounting principles;

8. Capital Investment Certificate. On or before **December 31, 2025** the Company shall have submitted to the City a certificate in such form as is reasonably acceptable to the City executed by a Company Representative certifying the amount of expenditures made by the Company in connection with the construction of the Mesquite Development as of **December 31, 2025** (the "Capital Investment Certificate") and such Capital Investment Certificate shall confirm that the Company has satisfied the Capital Investment requirement set forth in Article VII, Section 7 above;

9. Dedication of Road Project and Easements to the City. Within 14 days of the Completion of Construction of the Road Project, the Company shall timely execute any and all documents requested by the City to transfer title to and/or dedicate the Road Project, easements and surrounding land as indicated in Green in the Conceptual Site Plan, **Exhibit C**, to the City and to record said dedication in the Official Deed Records of Dallas County, Texas.

10. Payment of Fees. The Company shall have timely paid to the City all impact fees, permit fees, development fees, review fees and inspection fees in connection with the Mesquite Development and Land including, without limitation, all Water, Wastewater and Roadway Impact Fees and the City shall have confirmed receipt of all such impact fees, permit fees, development fees, review fees and inspection fees;

11. Maintenance Obligations. The Mesquite Development, Land, and Road Project shall be in compliance with all City Regulations as of the date of the Payment Request for the Economic Development Incentive and the Mesquite Development, Road Project, and Land shall be in good repair and condition;

12. Certificate of Occupancy. A Certificate of Occupancy shall have been issued for the Building;

13. Records and Reports. The Company shall have delivered to the City copies of such invoices, paid receipts, payment records and such other documentation as the City may reasonably request to confirm compliance by the Company with this Agreement;

14. Taxes. The Company shall have timely paid all ad valorem taxes assessed against the Mesquite Development and Land as of the date of the Payment Request;

15. Performance of this Agreement. The Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of this Agreement and no Company Default shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Company Default under the terms of this Agreement;

16. Performance by the Company of other Agreements. The Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of all other agreement(s) now and hereafter existing between the Company and the City 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 Company under the terms of such agreement(s);

17. Inspection. At the option of the City, the City shall have inspected the Mesquite Development, Land and Road Project to confirm the Company's compliance with the terms and provisions of this Agreement;

18. No Conviction for Undocumented Workers. As of the date of the execution by the Company of the Certificate of Compliance and as of the date of the payment by the City to the Company of the Economic Development Incentive (hereinafter defined) the Company shall not have been convicted by a court of competent jurisdiction of knowingly employing Undocumented Workers to work for the Company at the Mesquite Development or at any other branch, division or department of the Company;

19. Payment Request. The Company shall submit an individual Payment Request to the City's Finance Director at 757 N. Galloway, Mesquite, Texas 75149, for the Incentive Payment under this Agreement on or before **December 31, 2025** ("Payment Request Deadline"). The City shall issue the payment within 45 days of the Payment Request if the Payment Request was in full compliance with this Agreement and timely received. If the Company submits a Payment Request after the Payment Request Deadline, the City's payment deadline shall be extended to forty-five (45) days after the City's receipt of the Payment Request. If the Company submits a Payment Request more than one year after the Payment Request Deadline, the Company agrees it is an irrevocable waiver of their right to request said payment and the City shall not be obligated to pay the Payment Request.

a. Supporting Documentation Submitted with Payment Request. The Payment Request shall be accompanied by a Certificate of Compliance dated effective as of the date of the Payment Request. Additionally, the Company shall submit in support of its Payment Request a listing identifying the following information in connection with such Payment Request:

i. a Certificate of Compliance dated effective as of the date of such Payment Request; and

- ii. a signed statement verifying and attesting all Conditions Precedent set forth herein have been satisfied and are then continuing;
- iii. and a Capital Investment Certificate.

20. Notwithstanding the foregoing deadlines in this Article VII, the City Manager may, in the City Manager's sole discretion, extend one or more of the deadlines set forth in this Article VII up to a maximum of six (6) months if the City Manager determines, in the City Manager's sole discretion, that a Company is diligently pursuing the development of the Road Project and Building but is unable to perform within one or more of the timelines set forth in this Article VII as the result of events or circumstances which are outside the Company's control (the "City Manager Approved Extension"). Any extension of the deadline(s) set forth in this Article VII by the City Manager must be in writing and signed by the City Manager to be effective.

ARTICLE VIII Economic Development Incentive

1. Economic Development Incentive. The City hereby approves, subject to the Conditions Precedent and the covenants and limitations set forth in this Agreement, an economic development grant to the Company in the amount equal to the amount paid by the Company to the City for the purchase of the ROW, up to a maximum amount of ONE HUNDRED EIGHTY-ONE THOUSAND EIGHTY-TWO AND 16/100 DOLLARS (\$181,082.16) (the "Economic Development Incentive"). The Economic Development Incentive shall be paid out in one payment ("Incentive Payment") Under no circumstances shall the City's obligations under this Article VIII, be deemed to create any debt within the meaning of any constitutional or statutory provision and shall in no way be construed as being secured by ad valorem taxes or financed by debt. The Economic Development Incentive made hereunder shall be paid solely from lawfully available funds and shall be subject to the City's appropriation of funds for such purpose to be paid in the budget year for which the Incentive Payment is to be made.

2. Incentive Payment. The Incentive Payment by the City to the Company shall be made in accordance with this Agreement and expressly be conditioned upon satisfaction of the Conditions Precedent in Article VII: (i) as of the date of the Payment Request submitted in connection with such payment; and (ii) as of the date of such payment.

3. Limitation of Economic Development Incentive. Notwithstanding anything contained in this Agreement to the contrary, the Parties agree that the maximum collective amount of the Economic Development Incentive payable under the terms of this Agreement is the sum of ONE HUNDRED EIGHTY-ONE THOUSAND EIGHTY-TWO AND 16/100 DOLLARS (\$181,082.16). If there is any conflict between this Article VIII, Section 3 and any other term or provision of this Agreement, this Article VIII Section 3, shall control.

4. Funds Available for Payment of Economic Development Incentive. The Economic Development Incentive payable by the City to the Company as more fully set forth in this Agreement is not secured by a pledge of ad valorem taxes, financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City or payable from the Water, Wastewater and Roadway Impact Fees paid by the Company to the City. The Economic Development Incentive payable hereunder shall be paid only from funds of the City authorized by Article III, Section 52-a, of the Texas Constitution and Texas Local Government Code Chapter 380. The Parties agree no other source of funds of the City is subject to the payment of the Economic Development Incentive. The Economic Development Incentive is subject to the City's appropriation of funds for such purpose to be paid in the budget year for which the Economic Development Incentive is to be paid. This Article VIII, Section 4 shall expressly survive the expiration or termination of this Agreement.

ARTICLE IX Defaults and Remedies

1. Company Default. The Company shall be in default of this Agreement: (i) upon the occurrence of an Event of Bankruptcy or Insolvency of the Company; (ii) upon any assignment of this Agreement by the Company in violation of Article X, Section 1 of this Agreement; or (iii) if the Company fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the Company under the terms of this Agreement and such failure continues for thirty (30) days after written notice by the City to the Company (each a "Company Default").

2. City Remedies.

(i) *Company Default.* In the event of a Company Default, the City shall have no obligation to pay the Economic Development Incentive to the Company and the City shall have the right to: (i) immediately terminate this Agreement by written notice to the Company; (ii) recapture all of the Economic Development Incentive previously paid by the City to the Company plus interest as more fully set forth in Article IX, Section 3 below; (iii) obtain specific performance and/or injunctive relief; and (iv) exercise any and/or all other rights and/or remedies available to the City pursuant to this Agreement and the laws of the State of Texas.

(ii) *Right of First Refusal.* The Company grants the City a first right of refusal to purchase the ROW (the "ROFR") which shall terminate on the earlier of (a) the Company's Completion of Construction of the Mesquite Development and Road Project or (b) five (5) years after the Effective Date. If the Company receives an acceptable bona fide third party offer to purchase the ROW (the "Offer") from a party other than an approved assignee, the Company shall deliver to the City written notice containing all material terms of the Offer (the "ROFR Notice"). During the thirty (30) business days following receipt of the ROFR Notice (the "ROFR Exercise Period"), the City shall have the option to purchase the ROW for a total purchase price equal to the Company's original purchase price of ONE HUNDRED EIGHTY-ONE THOUSAND EIGHTY-TWO AND 16/100 DOLLARS (\$181,082.16). During the ROFR Exercise Period, the City may exercise the ROFR by sending written notice to the Company (the "ROFR Exercise Notice"). The completion of the sale and transfer of the ROW shall be within sixty (60) days from the date of the ROFR Exercise Notice. The Company shall not be entitled to interest, fees, tax refunds, lost profits or any other economic costs or other items in excess of the original purchase price of ONE HUNDRED EIGHTY-ONE THOUSAND EIGHTY-TWO AND 16/100 DOLLARS (\$181,082.16) The exercise of the ROFR, or the City's failure to exercise, will not release, abate, reduce or otherwise affect any other obligation of the Company under this Agreement or the remedies of the City under this Agreement.

(iii) *Failure to Develop ROW.* In addition to the City's ROFR, if Completion of Construction of the Mesquite Development and Road Project does not occur by **December 31, 2025**, the City will have the option to purchase the ROW as provided below (the "Purchase Option"). The City may exercise the Purchase Option by sending the written notice at any time after **December 31, 2026**, (the "Option Exercise Notice"). The purchase price of the ROW under the Purchase Option shall be equal to the Company's original purchase price of ONE HUNDRED EIGHTY-ONE THOUSAND EIGHTY-TWO AND 16/100 DOLLARS (\$181,082.16). The purchase and transfer of the sale of the ROW shall be within sixty (60) days from the date of the Option Exercise Notice. The Company shall not be entitled to interest, fees, tax refunds, lost profits or any other economic costs or other items in excess of the original purchase price of ONE HUNDRED EIGHTY-ONE THOUSAND EIGHTY-TWO AND 16/100 DOLLARS (\$181,082.16). The exercise of the Purchase Option, or the City's failure to exercise, will not release, abate, reduce or otherwise affect any other obligation of the Company under this Agreement or the remedies of the City under this Agreement.

3. Recapture of Economic Development Incentive. In the event of a Company Default, the Company shall immediately pay to the City, the amount equal to one hundred percent (100%) of the Economic Development Incentive previously paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the lesser of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on the Economic Development Incentive being recaptured from the date the Economic Development Incentive was paid by the City to the Company until the date repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate. In the event the Company fails to timely pay any sums due by the Company to the City pursuant to this Article IX, Section 3, the Company shall be in material breach of this Agreement and the City shall have the right, without further demand or notice to the Company, to exercise any and/or all rights and/or remedies available to the City pursuant to the laws of the State of Texas including, without limitation, institution of a suit in a court of competent jurisdiction, to collect such sums.

4. City Default. The City shall be in default of this Agreement: (i) upon the occurrence of an Event of Bankruptcy or Insolvency of the City; or (ii) 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 this Agreement and such failure continues for sixty (60) days after written notice by the Company to the City (a "City Default").

5. Company Remedies. Upon the occurrence of a City Default, the Company shall have the right to

terminate this Agreement by written notice to the City. The City and the Company acknowledge and agree that this Agreement is not a contract for goods or services and the City's immunity from suit is not waived pursuant to Subchapter I of Chapter 271, V.T.C.A., Local Government Code, as amended. Alternatively, if and only in the event a court of competent jurisdiction determines the City's immunity from suit is waived under Subchapter I of Chapter 271, V.T.C.A., Local Government Code, the Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement:

- (i) the total amount of damages, if any, awarded against the City shall be limited to actual damages in an amount not to exceed TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00);
- (ii) the recovery of damages against the City shall not include consequential, punitive, exemplary, or speculative damages;
- (iii) the Parties shall not recover attorney's fees or court costs; and
- (iv) the Company shall not be entitled to specific performance or injunctive relief against the City.

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

ARTICLE X

Miscellaneous Provisions

1. Force Majeure. The date for performance of any non-monetary obligation or for satisfaction of a condition precedent under this Agreement shall be extended for the duration of an Event of Force Majeure. An "Event of Force Majeure" shall mean a major unforeseeable act or event that: (a) prevents a Party from performing its obligations under this Agreement; (b) is beyond the control of the Party; (c) is not caused by any act or omission on the part of the Party; and (d) could not have been prevented or avoided by the exercise by the Party of such diligence and reasonable care as would be exercised by a prudent person under similar circumstances. An Event of Force Majeure must satisfy each of the above requirements and includes but is not limited to lightning, floods, ice storms, hurricanes, tornadoes, earthquakes, natural disasters, acts of God, explosions, fires, war, terrorism, and civil disturbance. Notwithstanding the foregoing, an Event of Force Majeure does not include any financial or economic hardship, changes in market or economic conditions, insufficiency of funds, pandemics, epidemics, or public health crisis. This Event of Force Majeure clause does not excuse the performance by the Company if the Company could have prevented or avoided the event or impact on this Agreement, or if the Company contributed to or caused the event by any act or omission

2. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, notwithstanding anything contained herein to the contrary, this Agreement and the rights and obligations of the Company may not be assigned or transferred by the Company without the prior written consent of the City, which may be withheld in the City's sole discretion. Notwithstanding anything herein to the contrary, the City agrees this Agreement may be assigned or transferred by Company to **LOVETT INDUSTRIAL, LLC** or an Affiliate of **LOVETT INDUSTRIAL, LLC**, so long as the Company provides the City with written notice within seven (7) business days of the effective date of said transfer or assignment. For purposes of this agreement, **LOVETT INDUSTRIAL, LLC** or an Affiliate of **LOVETT INDUSTRIAL, LLC**, along with any assignee approved by the City shall be considered approved assignees. In the event the Company is a real estate investment trust, a corporation or limited liability company, the sale, transfer or assignment of a controlling interest in the real estate investment trust, or the sale, transfer or assignment of a controlling interest in the shares of the Company, or the sale, transfer or assignment of a controlling interest in the membership interests of the Company shall constitute an assignment of this Agreement and the failure of the Company to obtain the prior written consent of the City prior to such sale, transfer or assignment shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Company. In the event the Company is a partnership, the sale, transfer or assignment of a controlling interest in the shares of a corporation or the membership interests of a limited liability company or the partnership interests of a partnership that is the Company's general or managing partner shall constitute an assignment of this Agreement and the failure of the Company to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares, membership interests or partnership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Company. Furthermore, neither the Company nor

any approved assignee or their legal representatives or successors in interest shall, by operation of law or otherwise, collaterally assign, mortgage, pledge, encumber or otherwise transfer any interest in any receivables under this Agreement or any part hereof, or the interest of the Company or any approved assignee under this Agreement, without obtaining the City's prior written consent, which may withheld in the City's sole discretion. Any consent by the City to any assignment of this Agreement shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. No assignment of this Agreement shall contain any terms in contravention of any provisions of this Agreement. No assignment of this Agreement shall be effective unless: (i) the assignment is in writing signed by the assignor and the assignee; (ii) the assignee assumes the assignor's obligation to timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations of the assignor under the terms of this Agreement; (iii) a true and correct copy of such assignment has been provided to the City; and (iv) the City has approved such assignment in writing. Every assignee shall be subject to and bound by all the provisions, covenants, and conditions of this Agreement and shall be required to obtain the prior written consent of the City with respect to any future or further assignment. Any attempted assignment in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement by the Company and in the event the Company attempts to assign this Agreement in violation of this Article X, Section 1, the City shall have the right to terminate this Agreement by written notice to the Company.

3. 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). Notices mailed by certified mail as set forth above shall be effective and deemed delivered, whether actually received or not, one (1) business day after deposit in the United States mail. 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) business day after deposit with the nationally recognized courier service. Notices given in any other manner shall be effective and deemed delivered only if and when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that any Party shall have the right to change such Party's address for notice purposes by giving the other Party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

COMPANY:	Estate of Betty C. Bowie
CITY:	City of Mesquite 1515 N. Galloway Avenue Mesquite, TX 75149 Attention: City Manager
With a copy to:	Director of Economic Development City of Mesquite 1515 N. Galloway Ave. Mesquite, Texas 75149
With a copy to:	City Attorney City of Mesquite 1515 N. Galloway Ave. Mesquite, Texas 75149

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

5. Remedies Cumulative. The Parties hereby agree that each right and remedy of the Parties provided for in this Agreement shall be cumulative.

6. Captions. The descriptive captions of this Agreement are for convenience of reference only and shall in no way define, describe, limit, expand or affect the scope, terms, conditions, or intent of this Agreement.

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

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

9. Waivers. All waivers, to be effective, must be in writing and signed by the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party 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. This Agreement is expressly made subject to City's governmental immunity, including but not limited to the Texas Civil Remedies Code and all applicable state and federal law. The Parties expressly agree that no provision of the Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that the City has by operation of law.

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

11. **WAIVER OF CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES. THE COMPANY AGREES THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, THE COMPANY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES.**

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

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

14. No Third Party Beneficiaries. The Parties to this Agreement do not intend to create any third party beneficiaries of the contract rights contained herein. This Agreement shall not create any rights in any individual or entity that is not a signatory hereto. No Person who is not a party to this Agreement may bring a cause of action pursuant to this Agreement as a third party beneficiary.

15. Number and Gender. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

16. Counterparts. This Agreement may be executed in any number of original, facsimile or electronically-scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument.

17. Entire Agreement. This Agreement together with the referenced Exhibits, sets forth the entire

agreement between the Parties with respect to the subject matter hereof, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature are entirely superseded hereby and extinguished by the execution of this Agreement. There are no oral agreements between the Parties.

18. Authority. The Company represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. The Company 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 Company has the authority to sign this Agreement on behalf of the Company.

19. Anti-Boycott Verification. If this Agreement is construed to be subject to Texas Government Code Chapter 2271, by signing below, the Company hereby represents, verifies, and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

20. Iran, Sudan and Foreign Terrorist Organizations. If this Agreement is construed to be subject to Section 2252.153 of the Texas Government Code, Company hereby represents, verifies, and warrants that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a "foreign terrorist organization" as defined in Section 2252.151 of the Texas Government Code.

21. Firearm Discrimination. If this Agreement is construed to be subject to Texas Government Code Chapter 2274 and unless the Company is otherwise exempt, if the Company employs at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the governmental entity, the Company represents that: (i) the Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) the Company will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

22. Energy Boycott. If this Agreement is construed to be subject to Texas Government Code Chapter 2274 and unless the Company is otherwise exempt, if the Company employs at least ten (10) or more full-time employees and this Agreement has value of at least \$100,000 or more that is paid wholly or partly from public funds of the governmental entity, the Company represents that: (i) the Company does not boycott energy companies; and (ii) will not boycott energy companies during the term of this Agreement.

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

24. Usury Savings Clause. The Company and the City intend to conform strictly to all applicable usury laws. All agreements of the City and the Company are hereby limited by the provisions of this Article X, Section 19 which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no event shall any interest contracted for, charged, received, paid or collected under the terms of this Agreement exceed the Maximum Lawful Rate or amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under applicable law. If, from any possible development of any document, interest would otherwise be payable to City in excess of the Maximum Lawful Rate, any such construction shall be subject to the provisions of this Article X, Section 19 and such document shall be automatically reformed and the interest payable to the City shall be automatically reduced to the Maximum Lawful Rate, without the necessity of execution of any amendment or new document. If the City shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Lawful Rate, an amount equal to the amount which would have been excessive interest shall at the option of the City be refunded to Company or applied to the reduction of the principal amount owing under this Agreement or such document in the inverse order of its maturity and not to the payment of interest. The right to accelerate any indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and City does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to the City shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Lawful Rate.

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

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

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

27. Execution of Agreement by Parties. If this Agreement is not executed by the Company and the City on or before 60 days after approval by the Mesquite City Council, this Agreement will be null and void and of no force or effect.

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.

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

ATTEST:


CITY OF MESQUITE

By: 
Sonja Land, City Secretary

By: 
Cliff Keheley, City Manager

Date: 4.24.2023

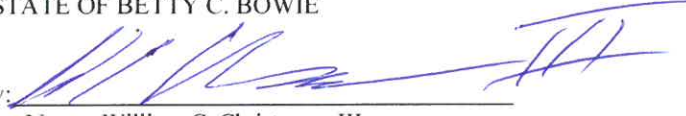
Date: 4-24-23

APPROVED AS TO FORM:
David L. Paschall, City Attorney
By: 
Sr. Assistant City Attorney

[SIGNATURES CONTINUE ON NEXT PAGE]

COMPANY:

ESTATE OF BETTY C. BOWIE

By: 

Name: William C. Christensen III

Title: Independent Executor

Date: 4-24-2023

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 24 day of April, 2023, by William C. Christensen III, Independent Executor on behalf of the Estate of Betty C. Bowie



Notary Public in and for the State of Texas

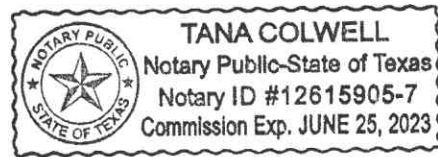


EXHIBIT "A"
Legal Description of ROW

BEING A 1.467 ACRE TRACT OF LAND SITUATED IN THE DANIEL TANNER SURVEY, ABSTRACT NUMBER 1462, IN THE CITY OF MESQUITE, DALLAS COUNTY, TEXAS, AND BEING ALL OF ORLANDO AVENUE AS DEPICTED ON BLOCK 1, HILHOME GARDENS, SECOND SECTION ADDITION, AN ADDITION TO THE CITY OF MESQUITE, DALLAS COUNTY, TEXAS ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7, PAGE 291, DEED RECORDS, DALLAS COUNTY, TEXAS (D.R.D.C.T.) AND BEING THE REMAINING PORTION OF ORLANDO AVENUE AS DEPICTED ON BLOCK 1, HILHOME GARDENS FIRST SECTION ADDITION, AN ADDITION TO THE CITY OF MESQUITE, DALLAS COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7, PAGE 259, (D.R.D.C.T.). AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, (BEARINGS AND DISTANCES ARE BASED ON THE STATE PLANE COORDINATE SYSTEM, TEXAS NORTH CENTRAL ZONE (4202) NORTH AMERICAN DATUM 83 (NAD83)(US FOOT) WITH A COMBINED SCALE FACTOR OF 1.000136506):

BEGINNING AT A 5/8-INCH REBAR CAPPED "TX00T " FOUND FOR THE EAST CORNER OF THAT SAME TRACT OF LAND DESCRIBED AS "PARCEL 13" TO THE STATE OF TEXAS BY DEED RECORDED IN DOCUMENT NUMBER 202100323627 (O.P.R.D.C.T.), SAID POINT LYING ON THE EAST LINE OF LOT 6, OF SAID BLOCK 1, HILHOME GARDENS FIRST SECTION ADDITION, AND LYING AT THE INTERSECTION OF THE WEST RIGHT- OF- WAY LINE OF SAID ORLANDO AVENUE (50 FOOT RIGHT- OF- WAY) WITH THE NORTH RIGHT- OF- WAY LINE OF U.S. HIGHWAY 80 (VARIABLE WIDTH RIGHT-OF-WAY):

THENCE NORTH 05 DEGREES 07 MINUTES 02 SECONDS WEST, WITH THE WEST RIGHT- OF- WAY LINE OF SAID ORLANDO AVENUE AND THE NORTHEAST LINE OF SAID BLOCK 1, HILHOME GARDENS FIRST SECTION ADDITION AND THE NORTHEAST LINE OF SAID BLOCK 1, HILHOME GARDENS SECOND SECTION ADDITION, A DISTANCE OF 450.71 FEET TO A 1/2-INCH REBAR CAPPED "WINDROSE" FOUND FOR CORNER AND BEING THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 145.75 FEET, A CENTRAL ANGLE OF 39 DEGREES 37 MINUTES 38 SECONDS AND A CHORD BEARING AND DISTANCE OF NORTH 26 DEGREES 19 MINUTES 27 SECONDS WEST, WITH A CHORD LENGTH OF 98.81 FEET;

THENCE IN A NORTHWESTERLY DIRECTION, WITH THE SOUTHWEST RIGHT-OF-WAY LINE OF SAID ORLANDO AVENUE, ALONG SAID CURVE TO THE LEFT, AN ARC LENGTH OF 100.81 FEET, TO A 1/2-INCH REBAR CAPPED " WINDROSE" FOUND FOR THE NORTH CORNER OF LOT 11 AND THE EAST CORNER OF LOT 12 OF SAID BLOCK 1, HILHOME GARDENS SECOND SECTION ADDITION;

THENCE NORTH 45 DEGREES 30 MINUTES 24 SECONDS WEST, WITH THE SOUTHWEST RIGHT-OF-WAY LINE OF SAID ORLANDO AVENUE AND THE NORTHEAST LINE OF SAID BLOCK 1, HILHOME GARDENS SECOND SECTION ADDITION, A DISTANCE OF 699.87 FEET TO A 1/2-INCH REBAR CAPPED WINDROSE FOUND FOR THE NORTH CORNER OF LOT 18 OF SAID BLOCK 1, HILHOME GARDENS SECOND SECTION ADDITION AND THE NORTHWEST CORNER OF SAID ORLANDO AVENUE;

THENCE NORTH 44 DEGREES 37 MINUTES 32 SECONDS EAST, WITH THE NORTHWEST LINE OF SAID ORLANDO AVENUE A DISTANCE OF 50.00 FEET TO A 1/2-INCH REBAR FOUND FOR THE NORTHERNMOST CORNER OF SAID ORLANDO AVENUE AND THE WEST CORNER OF LOT 14, BLOCK 5, OF SAID SECOND SECTION ADDITION;

THENCE SOUTH 45 DEGREES 30 MINUTES 24 SECONDS EAST, WITH THE NORTHEAST RIGHT-OF-WAY LINE OF SAID ORLANDO AVENUE AND THE SOUTHWEST LINE OF SAID BLOCK 5, PASSING AT A DISTANCE OF 500.00 FEET A 1/ 2- INCH REBAR CAPPED WINDROSE FOUND FOR THE SOUTH CORNER OF LOT 18 OF SAID BLOCK 5 AND CONTINUING FOR A TOTAL DISTANCE OF 700.00 FEET TO A 1/2-INCH REBAR FOUND FOR THE SOUTH CORNER OF LOT 20 OF SAID

BLOCK 5 AND THE WEST CORNER OF LOT 4, HILHOME GARDENS SECOND SECTION ADDITION, AN ADDITION TO THE CITY OF MESQUITE, DALLAS COUNTY, TEXAS ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 84055, PAGE 1278 (D.R.D.C.T.) AND BEING THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 195.72 FEET, A CENTRAL ANGLE OF 39 DEGREES 35 MINUTES 25 SECONDS, A CHORD BEARING AND DISTANCE OF SOUTH 26 DEGREES 06 MINUTES 45 SECONDS EAST, 132.56 FEET;

THENCE IN A SOUTHEASTERLY DIRECTION, WITH THE NORTHEAST RIGHT-OF- WAY LINE OF SAID ORLANDO AVENUE, ALONG SAID CURVE TO THE RIGHT, AN ARC LENGTH OF 135.24 FEET TO A POINT FOR CORNER;

THENCE SOUTH 05 DEGREES 07 MINUTES 02 SECONDS EAST, WITH THE EAST RIGHT-OF-WAY LINE OF SAID ORLANDO AVENUE, PASSING AT A DISTANCE OF 91.00 FEET A 1/2-INCH REBAR FOUND FOR THE SOUTHWEST CORNER OF LOT 3 OF SAID THIRD REFERENCED HILHOME GARDENS ADDITION AND PASSING AT A DISTANCE OF 284.99 FEET A 1/2-INCH REBAR CAPPED •5310• FOUND FOR THE SOUTHWEST CORNER OF LOT 27 OF SAID BLOCK 5, AND CONTINUING WITH THE EAST RIGHT-OF-WAY LINE OF SAID ORLANDO AVENUE AND THE WEST LINE OF SAID BLOCK 2. FOR A TOTAL DISTANCE OF 469.92 FEET TO A POINT FOR CORNER, SAID POINT LYING ON THE NORTH RIGHT-OF-WAY LINE OF SAID U.S. HIGHWAY 80 (VARIABLE WIDTH RIGHT-OF-WAY);

THENCE NORTH 74 DEGREES 39 MINUTES 56 SECONDS WEST, WITH THE NORTH RIGHT-OF-WAY LINE OF SAID U.S. HIGHWAY 80. A DISTANCE OF 53.36 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.467 ACRES OR 63,914 SQUARE FEET, MORE OR LESS.

EXHIBIT "B"
Legal Description of Land

PROPERTY DESCRIPTION:

TRACT I:

TITLE COMMITMENT "TRACT 1", "TRACT 2", "TRACT 3", "TRACT 4", & "TRACT 5":

BEING A 10.711 ACRE TRACT OF LAND SITUATED IN THE DANIEL TANNER SURVEY, ABSTRACT NO. 1462, IN THE CITY OF MESQUITE, DALLAS COUNTY, TEXAS, AND BEING ALL OF LOTS 8 THROUGH 17 AND THE REMAINDER OF LOT 18, BLOCK 1, HILHOME GARDENS, SECOND SECTION ADDITION, AN ADDITION TO THE CITY OF MESQUITE, DALLAS COUNTY, TEXAS ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7, PAGE 291 DEED RECORDS DALLAS COUNTY, TEXAS (D.R.D.C.T.) AND THE REMAINDER OF LOT 6 AND THE REMAINDER OF LOT 7, BLOCK 1, HILHOME GARDENS FIRST SECTION ADDITION, AN ADDITION TO THE CITY OF MESQUITE, DALLAS COUNTY, TEXAS ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7, PAGE 259 (D.R.D.C.T.) AND THE REMAINDER OF THAT SAME TRACT OF LAND DESCRIBED AS "TRACT 1" TO BETTY C. BOWIE BY WARRANTY DEED RECORDED IN DOCUMENT NUMBER 201700340774 OF THE OFFICIAL PUBLIC RECORDS DALLAS COUNTY, TEXAS (O.P.R.D.C.T.) AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS (BEARINGS AND DISTANCES ARE BASED ON THE STATE PLANE COORDINATE SYSTEM, TEXAS NORTH CENTRAL ZONE (4202) NORTH AMERICAN DATUM OF 1983 (NAD 83)(US FOOT) WITH A COMBINED SCALE FACTOR OF 1.000136506):

BEGINNING AT A 5/8-INCH REBAR CAPPED "TXDOT" FOUND FOR THE EAST CORNER OF THAT SAME TRACT OF LAND DESCRIBED AS "PARCEL 13" TO THE STATE OF TEXAS BY DEED RECORDED IN DOCUMENT NUMBER 202100323627 (O.P.R.D.C.T.), SAID POINT LYING ON THE EAST LINE OF SAID LOT 6, FIRST SECTION AND LYING ON THE WEST RIGHT-OF-WAY LINE OF ORLANDO AVENUE (50' RIGHT-OF-WAY);

THENCE NORTH 74 DEGREES 39 MINUTES 56 SECONDS WEST, WITH THE NORTHEAST LINE OF SAID "PARCEL 13", PASSING AT A DISTANCE OF 95.39 FEET A 5/8-INCH REBAR CAPPED "TXDOT" FOUND FOR THE NORTH CORNER OF SAID "PARCEL 13" AND THE EAST CORNER OF THAT SAME TRACT OF LAND DESCRIBED AS "PARCEL 12" TO THE STATE OF TEXAS BY DEED RECORDED IN DOCUMENT NUMBER 202100323650 (O.P.R.D.C.T.) AND CONTINUING WITH THE NORTHEAST LINE OF SAID "PARCEL 12", PASSING AT A DISTANCE OF 116.99 FEET A 5/8-INCH REBAR FOUND CAPPED "TXDOT" FOR THE NORTH CORNER OF SAID "PARCEL 12" AND THE NORTHEAST CORNER OF THAT SAME TRACT OF LAND DESCRIBED AS "PARCEL 11" TO THE STATE OF TEXAS BY DEED RECORDED DOCUMENT NUMBER 202100323599 AND 202100323598 (O.P.R.D.C.T.) AND CONTINUING WITH THE NORTHEAST LINE OF SAID "PARCEL 11" FOR A TOTAL DISTANCE OF 314.28 FEET TO A 5/8-INCH REBAR CAPPED "TXDOT" FOUND FOR THE NORTHWEST CORNER OF SAID "PARCEL 11" AND A SOUTHEAST CORNER OF SAID "TRACT 1", SAID POINT LYING ON THE NORTHEAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY 80 (VARIABLE WIDTH RIGHT-OF-WAY);

THENCE NORTH 53 DEGREES 58 MINUTES 43 SECONDS WEST, WITH A SOUTHWEST LINE OF SAID "TRACT 1" AND THE NORTHEAST RIGHT-OF-WAY LINE OF SAID U.S. HIGHWAY 80, A DISTANCE OF 457.77 FEET TO A CONCRETE MONUMENT FOUND FOR CORNER;

THENCE NORTH 22 DEGREES 12 MINUTES 10 SECONDS WEST, WITH A SOUTHWEST LINE OF SAID "TRACT 1" AND CONTINUING WITH THE NORTHEAST RIGHT-OF-WAY LINE OF SAID U.S. HIGHWAY 80, PASSING AT DISTANCE OF 370.49 FEET A 5/8-INCH REBAR CAPPED "TXDOT" FOUND FOR THE SOUTH CORNER OF THAT SAME TRACT OF LAND DESCRIBED TO THE STATE OF TEXAS BY DEED RECORDED IN VOLUME 690, PAGE 413 (D.R.D.C.T.) AND CONTINUING WITH THE NORTHEAST LINE OF SAID FOURTH REFERENCED STATE OF TEXAS TRACT FOR A TOTAL DISTANCE OF 446.53 FEET TO A POINT FOR THE NORTH CORNER OF SAID FOURTH REFERENCED STATE OF TEXAS TRACT, SAID POINT LYING ON THE NORTHWEST LINE OF SAID LOT 18, BLOCK 1, AND FROM WHICH A 1/2-INCH REBAR FOUND FOR REFERENCE BEARS SOUTH 37 DEGREES 58 MINUTES, 3.8 FEET;

THENCE NORTH 44 DEGREES 37 MINUTES 32 SECONDS EAST, WITH THE NORTHWEST LINE OF SAID LOT 18, BLOCK 1, A DISTANCE OF 368.44 FEET TO A 1/2-INCH REBAR CAPPED "WINDROSE" SET FOR THE NORTH CORNER OF SAID LOT 18, BLOCK 1, SAID POINT LYING ON THE SOUTHWEST RIGHT-OF-WAY LINE OF SAID ORLANDO AVENUE;

THENCE SOUTH 45 DEGREES 30 MINUTES 24 SECONDS EAST, WITH THE NORTHEAST LINE OF SAID LOT 18 THROUGH LOT 14, BLOCK 1, AND THE SOUTHWEST RIGHT-OF-WAY LINE OF SAID ORLANDO AVENUE, A DISTANCE OF 699.87 FEET TO A 1/2-INCH REBAR CAPPED "WINDROSE" SET FOR THE NORTHEAST CORNER OF SAID LOT 12, BLOCK 1 AND THE NORTHERNMOST CORNER OF SAID LOT 11, BLOCK 1, SAID POINT LYING ON THE SOUTHWEST RIGHT-OF-WAY LINE OF SAID ORLANDO AVENUE AND BEING THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 145.72 FEET, A CENTRAL ANGLE OF 39 DEGREES 38 MINUTES 11 SECONDS AND A CHORD BEARING AND DISTANCE OF SOUTH 26 DEGREES 19 MINUTES 35 SECONDS EAST, 98.81 FEET;

THENCE IN A SOUTHERLY DIRECTION, WITH THE CURVING SOUTHWEST RIGHT-OF-WAY LINE OF SAID ORLANDO AVENUE, ALONG SAID NON-TANGENT CURVE TO THE RIGHT, AN ARC LENGTH OF 100.81 FEET, TO A 1/2-INCH REBAR CAPPED "WINDROSE" SET FOR CORNER ON THE EAST LINE OF SAID LOT 11, BLOCK 1;

THENCE SOUTH 05 DEGREES 07 MINUTES 02 SECONDS EAST, WITH THE EAST LINE OF SAID LOT 10 THROUGH LOT 6, AND THE WEST RIGHT-OF-WAY LINE OF SAID ORLANDO AVENUE, A DISTANCE OF 450.71 FEET TO THE POINT OF BEGINNING AND CONTAINING 10.711 ACRES OR 466,556 SQUARE FEET OF LAND, MORE OR LESS.

TRACT II:

TITLE COMMITMENT "TRACT 6":

BEING ALL OF LOTS 7, 8, 19 AND 20, BLOCK 5 OF HILHOME GARDENS SECOND SECTION, AN ADDITION TO THE CITY OF MESQUITE AS RECORDED IN VOLUME 7, PAGE 291, MAP RECORDS, DALLAS COUNTY, TEXAS.

EXHIBIT "D"
Right of First Refusal Agreement

Date:

Grantor:

Grantor's Address:

Grantee: City of Mesquite, Texas

Grantee's Address:

Property: _____, being more particularly described in **Exhibit "A"** attached hereto and made a part hereof for all purposes

Term: 5 years from the above Date of this Agreement unless otherwise terminated pursuant to the terms of the ECONOMIC DEVELOPMENT PROGRAM AGREEMENT between the City of Mesquite, Texas and _____ executed on _____ and on file with the City of Mesquite, Texas City Secretary's Office, and incorporated herein by reference (the "380 Contract").

A. Grant

A.1. In consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00) and other valuable consideration provided by Grantee in the 380 Contract, Grantor grants to Grantee a right of first refusal to acquire the Property.

A.2. During the Term, if Grantor receives an acceptable bonafide offer for the sale or other transfer of the Property or any portion thereof or interest therein for any form of consideration from an entity other than an approved assignee of the ECONOMIC DEVELOPMENT PROGRAM AGREEMENT that Grantor wishes to accept, Grantor agrees to notify Grantee in writing before accepting the offer (the "ROFR Notice"). The notice will state the identity of the proposed transferee and the complete terms of the proposed transfer. If the proposed consideration for the transfer is other than cash, the notice will also state the cash equivalent reasonably determined by the Grantor for the noncash consideration. The right of first refusal granted herein also applies if Grantor desires to transfer the Property by gift, devise, descent, or another transaction that does not involve the payment of consideration in any form.

A.3. During the thirty (30) business days following receipt of the ROFR Notice (the "ROFR Exercise Period"), the Grantee shall have the option to purchase the Property for a total purchase price equal to the Grantor's original purchase price of ONE HUNDRED EIGHTY-ONE THOUSAND EIGHTY-TWO AND 16/100 DOLLARS (\$181,082.16). During the ROFR Exercise Period, the Grantee may exercise the ROFR by sending written notice to the Grantor (the "ROFR Exercise Notice"). The completion of the transfer and sale of the Property shall be within sixty (60) days from the date of the ROFR Exercise Notice. The Grantor shall not be entitled to interest, fees, tax refunds, lost profits or any other economic costs or other items in excess of the original purchase price of ONE HUNDRED EIGHTY-ONE THOUSAND EIGHTY-TWO AND 16/100 DOLLARS (\$181,082.16).

A.4. If Grantee does not affirmatively exercise its right within the ROFR Exercise Period, Grantor may transfer the Property to the party and on the terms described in Grantor's notice to Grantee within the 180 day period following the expiration of the ROFR Exercise Period. If a transfer is not consummated within the 180 day period, Grantor may not transfer the Property without again complying with the provisions of this Agreement. If Grantor wishes to affect a transfer on terms that are less favorable to Grantor than those described in Grantor's notice, Grantor must repeat the process set forth in this Agreement by giving a new notice to Grantee setting forth the new terms. If Grantor timely consummates a transfer, this Agreement will automatically terminate when the Property is conveyed to the party named in Grantor's notice to Grantee.

A.5. If an offer received by Grantor calls for delivery of a promissory note or other deferred payment obligation, the promissory note or other deferred payment obligation of Grantee will be deemed equivalent to those offered.

A.6. If any offer provides for noncash consideration, Grantee disputes Grantor's determination of the value of the noncash consideration set forth in Grantor's notice, and Grantor and Grantee cannot resolve the dispute within five business days after Grantee gives notice of the dispute to Grantor, the matter will be submitted to binding arbitration in Mesquite, Texas, under the Commercial Arbitration Rules of the American Arbitration Association by a single arbitrator, and the determination of such arbitrator shall be binding on both parties. The ROFR Exercise Period for exercise of Grantee's rights will be tolled during the period the arbitration proceeding is pending.

A.7. The rights granted in this Agreement expire at the end of the Term.

B. Recordation

Grantee may record this Agreement or a memorandum of this Agreement in the real property records of Dallas County, Texas. Grantee will, on request, execute and record a release of this Agreement following its expiration or termination.

D. Assignment

Grantee may assign its rights under this Agreement.

E. Notices

Any notice required or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may be also given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

[Signatures on following pages]

COMPANY

By: _____

Title: _____

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 202____, by _____, of _____, its _____.

Notary Public in and for the State of Texas

City of Mesquite, Texas

By: _____

Cliff Keheley, City Manager

ATTEST:

By: _____

Sonja Land, City Secretary

APPROVED AS TO FORM:
David L. Paschall, City Attorney

By: _____

Sr. Assistant City Attorney

After Recording Return To:
City of Mesquite
Attn: City Attorney
1515 N. Galloway Avenue
Mesquite, Texas 75149

EXHIBIT "E"
Option to Purchase Agreement
Option to Purchase

Date:

Buyer: City of Mesquite, Texas

Buyer's Address: 1515 N. Galloway Ave., Mesquite, Texas 75149

Seller:

Seller's Address:

Property: _____, being more particularly described in **Exhibit "A"** attached hereto and made a part hereof for all purposes

Option Fee: Ten Dollars (\$10.00)

Expiration Date: Until terminated in writing by the Buyer under the terms of the ECONOMIC DEVELOPMENT PROGRAM AGREEMENT between the City of Mesquite, Texas and _____ executed on _____ and on file with the City of Mesquite, Texas City Secretary's Office, and incorporated herein by reference.

Contract: ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Purchase Price: ONE HUNDRED EIGHTY-ONE THOUSAND EIGHTY-TWO AND 16/100 DOLLARS (\$181,082.16)

In consideration of the Option Fee and other valuable consideration provided to Seller by Buyer in the Contract, Seller grants to Buyer the exclusive and irrevocable option to purchase the Property on the following terms and conditions:

1. *Application of Option Fee.* The Option Fee will be applied to the Purchase Price.
2. *Exercise of Option.* To exercise the option as specified by the Contract, Buyer must execute and deliver to Seller written notice at any time after **December 31, 2026**. Within 30 business days of receiving Buyer's written notice and Purchase Price, Seller must execute and deliver the quitclaim to the Buyer.
3. *Termination of Option.* If Buyer does not exercise the option by the Expiration Date, the option terminates, Seller retains the Option Fee, and Buyer will execute and deliver to Seller a recordable release of the option. Furthermore, if the Buyer complies with all terms and conditions of the Contract prior to the Expiration Date, the Buyer will execute and deliver to Seller a recordable release of the option.
4. *Seller's Default.* If Buyer exercises the option but Seller does not timely execute and deliver the Contract, Buyer has all applicable remedies, including specific performance.

[Signatures on following pages]

COMPANY

By: _____

Title: _____

STATE OF TEXAS

§
§
§

COUNTY OF DALLAS

This instrument was acknowledged before me on the _____ day of _____, 202_, by _____, of _____ its _____.

Notary Public in and for the State of Texas

City of Mesquite, Texas

By: _____

Cliff Keheley, City Manager

ATTEST:

By: _____

Sonja Land, City Secretary

APPROVED AS TO FORM:
David L. Paschall, City Attorney

By: _____

Sr. Assistant City Attorney

EXHIBIT "F"
Exterior Finish Plan



LOVETT
INDUSTRIAL

This conceptual design is based upon a preliminary zoning/development agreement and is intended and publicly accessible site and/or building information, and a material review to assist in reviewing the project prior to construction. It is not intended to be used for construction or other purposes. All colors shown are for representation purposes only. Refer to contract conditions for further information.

SC01 PERSPECTIVE VIEW - WEST
LOVETT INDUSTRIAL - MESQUITE
MESQUITE, TX - DAL22-0112-00

WARE MALCOMB

04.01.2022

1

EXHIBIT "G"
Closeout and Acceptance Requirements

City of Mesquite - Engineering Acceptance of Civil Construction:

June 30, 2015

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

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

EXHIBIT "H"
Record Drawings and Plat Requirements

Interoffice
MEMORANDUM

Updated: March 5, 2015

To: Private Developers, Consulting Engineers, Contractors and Engineering Division Staff
From: Matthew Holzapfel, P.E. - City Engineer
Subject: Requirements for Record Drawings and Plats for Private Development Projects

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

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

Record Drawings (As-Builts):

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

Plats:

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

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

EXHIBIT "I"
QUITCLAIM

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.

QUITCLAIM

**THE STATE OF TEXAS §
COUNTY OF DALLAS §
THESE PRESENTS:**

KNOW ALL PERSONS BY

THAT the City of Mesquite, Texas, a home-rule municipal corporation of the State of Texas, (hereinafter "Grantor"), for the sum of ONE HUNDRED EIGHTY-ONE THOUSAND EIGHTY-TWO AND 16/100 DOLLARS (\$181,082.16) and in consideration in hand paid to Grantor, quitclaims to _____ a Texas _____, ("Grantee") for private use, releases, and surrenders, such title or interest as Grantors may have acquired, if any, by virtue of Court Order No.2022-0778, approved by the Dallas County Commissioners Court on August 2, 2022, as shown by the quitclaim deed recorded in Instrument No.202200216183, of the Official Public Record of Dallas County, Texas, does hereby dedicate, release, quitclaim and surrender, subject to the terms, conditions, provisions, and restrictions herein set forth unto the Grantee herein, all Grantors right, title and interest, if any, save and except any interest not acquired by said quitclaim; any and all easements, rights-of-way, and prescriptive rights, whether of record or not of record, including but not limited to those in favor of Grantors, all presently recorded instruments that affect the property, all encroachments, zoning, regulations, and ordinances of municipal and/or other governmental authorities, if any, which affect the property being conveyed herein, and subsequent taxes and assessments for prior years due to changes in land usage, ownership, or both, the payment of which Grantee assumes in and to the following described real property situated in Dallas County, Texas ("Property"), to wit:

That certain tract or parcel of land situated in the City of Mesquite, Dallas County, Texas and being the unimproved Orlando Avenue right-of-way shown in **Exhibit "I"** conveyed to the County of Dallas by plat and dedication of the Hillhome Gardens Addition Second Section, an Addition to the City of Mesquite, Dallas County, Texas, approved and adopted by the Dallas County Commissioner's Court on October 20, 1941, and recorded in Volume 7 Page 291 of the County Deed Records, and more particularly described by metes and bounds in **Exhibit "A"** attached hereto and incorporated herein for all purposes.

NOTICE OF PURCHASE OPTION AND RIGHT OF FIRST REFUSAL:

IN ADDITION TO OTHER RESERVATIONS MADE HEREIN, THIS QUITCLAIM IS ALSO MADE SUBJECT TO A RIGHT OF FIRST REFUSAL AND AN OPTION TO PURCHASE, BOTH FO THE SAME DATE AS THIS QUITCLAIM AND RECORDED IN THE OFFICIAL PUBLIC RECORDS OF DALLAS COUNTY, TEXAS.

GRANTEE FURTHER ACCEPTS THE PROPERTY IN "AS IS" CONDITION, WITH ALL ITS FAULTS AND PENALTIES, IF ANY. GRANTEE RELEASES ALL CLAIMS AND CAUSES OF ACTION, AT LAW OR IN EQUITY, GRANTEE MAY HAVE AGAINST GRANTORS, THEIR OFFICERS, ELECTED OFFICIALS, AGENTS, AND EMPLOYEES, IN CONNECTION WITH

THIS TRANSACTION. FURTHER, GRANTEE RELEASES GRANTORS, THEIR OFFICERS, ELECTED OFFICIALS, AGENTS, AND EMPLOYEES, FROM ANY AND ALL CLAIMS AND CAUSES OF ACTION IN CONNECTION WITH THE BIDDING, TERMS, CONDITIONS, AND SALE OF THIS PROPERTY. THIS RELEASE IS BINDING ON GRANTEE'S SUCCESSORS, HEIRS, AND ASSIGNS.

GRANTEE IS NOT RELYING ON ANY REPRESENTATIONS OR DISCLOSURES BY GRANTORS IN CONNECTION WITH THE PURCHASE OF THE PROPERTY. GRANTEE EXPRESSLY ASSUMES RESPONSIBILITY FOR ANY ENVIRONMENTAL, HAZARDOUS OR REGULATED MATERIAL PROBLEMS ON OR WITH THE PROPERTY AND ANY PUBLIC NUISANCES OR HEALTH, SAFETY OR FIRE HAZARDS.

TO HAVE AND TO HOLD, subject to the aforesaid, all of our right, title and interest, if any, in and to the above described property and premises, unto the said Grantee, its successors, and assigns forever, so that Grantor's and all other relevant taxing authorities, their legal representatives, successors, and assigns shall not have, claim or demand any right or interest in the aforesaid property, premises, or appurtenances, or any part thereof, subject to the exceptions and reservations herein stated.

Executed this _____ day of _____ 2023.

CITY OF MESQUITE

By: _____
Cliff Keheley, City Manager

ATTEST:

By: _____
Sonja Land, City Secretary

RETURN TO:

Grantors Address:
1515 N. Galloway Avenue
Mesquite, Texas 75149

Grantees Address:

EXHIBIT "A"

PROPERTY DESCRIPTION:

BEING A 1.467 ACRE TRACT OF LAND SITUATED IN THE DANIEL TANNER SURVEY, ABSTRACT NUMBER 1462, IN THE CITY OF MESQUITE, DALLAS COUNTY, TEXAS, AND BEING ALL OF ORLANDO AVENUE AS DEPICTED ON BLOCK 1, HILHOME GARDENS, SECOND SECTION ADDITION, AN ADDITION TO THE CITY OF MESQUITE, DALLAS COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7, PAGE 291, DEED RECORDS, DALLAS COUNTY, TEXAS (D.R.D.C.T.) AND BEING THE REMAINING PORTION OF ORLANDO AVENUE AS DEPICTED ON BLOCK 1, HILHOME GARDENS FIRST SECTION ADDITION, AN ADDITION TO THE CITY OF MESQUITE, DALLAS COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7, PAGE 259, (D.R.D.C.T.), AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, (BEARINGS AND DISTANCES ARE BASED ON THE STATE PLANE COORDINATE SYSTEM, TEXAS NORTH CENTRAL ZONE (4202) NORTH AMERICAN DATUM 83 (NAD83)(US FOOT) WITH A COMBINED SCALE FACTOR OF 1.000136506):

BEGINNING AT A 5/8-INCH REBAR CAPPED 'TXDOT' FOUND FOR THE EAST CORNER OF THAT SAME TRACT OF LAND DESCRIBED AS 'PARCEL 13' TO THE STATE OF TEXAS BY DEED RECORDED IN DOCUMENT NUMBER 202100323627 (O.P.R.D.C.T.), SAID POINT LYING ON THE EAST LINE OF LOT 6, OF SAID BLOCK 1, HILHOME GARDENS FIRST SECTION ADDITION, AND LYING AT THE INTERSECTION OF THE WEST RIGHT-OF-WAY LINE OF SAID ORLANDO AVENUE (50 FOOT RIGHT-OF-WAY) WITH THE NORTH RIGHT-OF-WAY LINE OF U.S. HIGHWAY 80 (VARIABLE WIDTH RIGHT-OF-WAY);

THENCE NORTH 05 DEGREES 07 MINUTES 02 SECONDS WEST, WITH THE WEST RIGHT-OF-WAY LINE OF SAID ORLANDO AVENUE AND THE NORTHEAST LINE OF SAID BLOCK 1, HILHOME GARDENS FIRST SECTION ADDITION AND THE NORTHEAST LINE OF SAID BLOCK 1, HILHOME GARDENS SECOND SECTION ADDITION, A DISTANCE OF 450.71 FEET TO A 1/2-INCH REBAR CAPPED "WINDROSE" FOUND FOR CORNER AND BEING THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 145.75 FEET, A CENTRAL ANGLE OF 39 DEGREES 37 MINUTES 38 SECONDS AND A CHORD BEARING AND DISTANCE OF NORTH 26 DEGREES 19 MINUTES 27 SECONDS WEST, WITH A CHORD LENGTH OF 98.81 FEET;

THENCE IN A NORTHWESTERLY DIRECTION, WITH THE SOUTHWEST RIGHT-OF-WAY LINE OF SAID ORLANDO AVENUE, ALONG SAID CURVE TO THE LEFT, AN ARC LENGTH OF 100.81 FEET, TO A 1/2-INCH REBAR CAPPED "WINDROSE" FOUND FOR THE NORTH CORNER OF LOT 11 AND THE EAST CORNER OF LOT 12 OF SAID BLOCK 1, HILHOME GARDENS SECOND SECTION ADDITION;

THENCE NORTH 45 DEGREES 30 MINUTES 24 SECONDS WEST, WITH THE SOUTHWEST RIGHT-OF-WAY LINE OF SAID ORLANDO AVENUE AND THE NORTHEAST LINE OF SAID BLOCK 1, HILHOME GARDENS SECOND SECTION ADDITION, A DISTANCE OF 699.87 FEET TO A 1/2-INCH REBAR CAPPED "WINDROSE" FOUND FOR THE NORTH CORNER OF LOT 18 OF SAID BLOCK 1, HILHOME GARDENS SECOND SECTION ADDITION AND THE NORTHWEST CORNER OF SAID ORLANDO AVENUE;

THENCE NORTH 44 DEGREES 37 MINUTES 32 SECONDS EAST, WITH THE NORTHWEST LINE OF SAID ORLANDO AVENUE, A DISTANCE OF 50.00 FEET TO A 1/2-INCH REBAR FOUND FOR THE NORTHERNMOST CORNER OF SAID ORLANDO AVENUE AND THE WEST CORNER OF LOT 14, BLOCK 5, OF SAID SECOND SECTION ADDITION;

THENCE SOUTH 45 DEGREES 30 MINUTES 24 SECONDS EAST, WITH THE NORTHEAST RIGHT-OF-WAY LINE OF SAID ORLANDO AVENUE AND THE SOUTHWEST LINE OF SAID BLOCK 5, PASSING AT A DISTANCE OF 500.00 FEET A 1/2-INCH REBAR CAPPED "WINDROSE" FOUND FOR THE SOUTH CORNER OF LOT 18 OF SAID BLOCK 5 AND CONTINUING FOR A TOTAL DISTANCE OF 700.00 FEET TO A 1/2-INCH REBAR FOUND FOR THE SOUTH CORNER OF LOT 20 OF SAID BLOCK 5 AND THE WEST CORNER OF LOT 4, HILHOME GARDENS SECOND SECTION ADDITION, AN ADDITION TO THE CITY OF MESQUITE, DALLAS COUNTY, TEXAS ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 84055, PAGE 1278 (D.R.D.C.T.) AND BEING THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 195.72 FEET, A CENTRAL ANGLE OF 39 DEGREES 35 MINUTES 25 SECONDS, A CHORD BEARING AND DISTANCE OF SOUTH 26 DEGREES 06 MINUTES 45 SECONDS EAST, 132.56 FEET;

THENCE IN A SOUTHEASTERLY DIRECTION, WITH THE NORTHEAST RIGHT-OF-WAY LINE OF SAID ORLANDO AVENUE, ALONG SAID CURVE TO THE RIGHT, AN ARC LENGTH OF 135.24 FEET TO A POINT FOR CORNER;

THENCE SOUTH 05 DEGREES 07 MINUTES 02 SECONDS EAST, WITH THE EAST RIGHT-OF-WAY LINE OF SAID ORLANDO AVENUE, PASSING AT A DISTANCE OF 91.00 FEET A 1/2-INCH REBAR FOUND FOR THE SOUTHWEST CORNER OF LOT 3 OF SAID THIRD REFERENCED HILHOME GARDENS ADDITION AND PASSING AT A DISTANCE OF 284.99 FEET A 1/2-INCH REBAR CAPPED "S310" FOUND FOR THE SOUTHWEST CORNER OF LOT 27 OF SAID BLOCK 5, AND CONTINUING WITH THE EAST RIGHT-OF-WAY LINE OF SAID ORLANDO AVENUE AND THE WEST LINE OF SAID BLOCK 2, FOR A TOTAL DISTANCE OF 469.92 FEET TO A POINT FOR CORNER, SAID POINT LYING ON THE NORTH RIGHT-OF-WAY LINE OF SAID U.S. HIGHWAY 80 (VARIABLE WIDTH RIGHT-OF-WAY);

THENCE NORTH 74 DEGREES 39 MINUTES 56 SECONDS WEST, WITH THE NORTH RIGHT-OF-WAY LINE OF SAID U.S. HIGHWAY 80, A DISTANCE OF 53.36 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.467 ACRES OR 63,914 SQUARE FEET, MORE OR LESS.

EXHIBIT 1 TO QUITCLAIM

