

RESOLUTION NO. 23-2023

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, EXECUTE, AND ADMINISTER AN ECONOMIC DEVELOPMENT PROGRAM CHAPTER 380 AGREEMENT FOR SUCH PURPOSES WITH FHI TOWNE CROSSING, LP, FOR THE MAJOR RENOVATION AND DEVELOPMENT OF THE PROPERTY LOCATED AT 3600 GUS THOMASSON ROAD IN MESQUITE, TEXAS.

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

WHEREAS, the City Council has been presented with a proposed agreement providing economic incentives to FHI Towne Crossing, LP (the “**Developer**”), for the major renovation and development of 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 at 3600 Gus Thomasson Road in the City of Mesquite, Dallas County, Texas (the “**Property**”), and as more particularly described and/or depicted in Exhibits A and A-1 to the Agreement; and

WHEREAS, the City would like to encourage the development of the Property by granting certain economic development incentives to the Developer; 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 Developer, a copy of which is attached hereto as

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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 Developer and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement.

SECTION 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.

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DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 5th day of June 2023.

DocuSigned by:

Daniel Aleman Jr.

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Daniel Alemán, Jr.
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

DocuSigned by:

Sonja Land

C2518095973F46A...

Sonja Land
City Secretary

DocuSigned by:

David Paschall

666E18891208434...

David L. Paschall
City Attorney

EXHIBIT 1

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

**Between the City of Mesquite and
FHI Towne Crossing, LP**

(to be attached)

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
(Chapter 380 Agreement)

This Economic Development Program Agreement (“**Agreement**”) is made and entered into by and between the City of Mesquite, a Texas home rule municipality (“**City**”), and FHI Towne Crossing, LP, a Delaware limited partnership (“**Company**”), (each hereinafter may be referred to as a “**Party**,” and collectively as the “**Parties**”), for the purposes and considerations stated below:

WITNESSETH:

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

WHEREAS, Company intends to purchase the Land and Buildings comprising Towne Crossing, a retail center, located at 3600 Gus Thomasson Road, Mesquite, Texas 75150 (the Land and Buildings are collectively referred to hereafter as “**Towne Crossing**”); and

WHEREAS, Towne Crossing is located on Gus Thomasson Road in the Gus Thomasson Corridor, identified for continued redevelopment in the City; and

WHEREAS, a major renovation and redevelopment of Towne Crossing consisting of substantial improvements and upgrades to the existing Buildings are necessary in order to make Towne Crossing attractive to existing and new retail tenants which may result in increased property values and sales taxes; and

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

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

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

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

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

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the granting of the economic development incentives more fully set forth herein on the terms and subject to the conditions more fully set forth herein will benefit the

City and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City.

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

ARTICLE I Incorporation of Recitals and Exhibits

The foregoing recitals, exhibits referenced throughout this Agreement, and attached exhibits are hereby incorporated into the body of this Agreement for all purposes and shall be considered a part of the mutual covenants, consideration and promises that bind the Parties.

ARTICLE II Definitions

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

“1st Cash Incentive Grant Payment” shall have the meaning described in Section 8.3.1 of this Agreement.

“2nd Cash Incentive Grant Payment” shall have the meaning described in Section 8.3.2 of this Agreement.

“3rd Cash Incentive Grant Payment” shall have the meaning described in Section 8.3.3 of this Agreement.

“Additional Municipal Sales Taxes” shall mean all sales taxes now and hereafter authorized, adopted, imposed and/or collected by or on behalf of the City pursuant to § 321.101(b) of the Texas Tax Code, as amended and/or replaced, and shall specifically include all Type B Sales Taxes, Property Tax Relief Taxes and all sales taxes now and hereafter prohibited by law from being used for payment of economic development incentives.

“Ad Valorem Taxes” shall mean those real property and tangible personal property taxes authorized, adopted, imposed or collected by or on behalf of the City pursuant to § 11.01 of the Texas Tax Code, as amended or replaced.

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

“Anchor Space” shall mean the building space identified as being occupied by “Kroger” in Exhibit A-1.

“Anchor Investment Minimum” shall have the meaning described in Section 6.1.2 of this Agreement.

“Anchor Space Improvements” shall mean renovations, replacements, upgrades, alterations, changes, modifications, additions and/or physical improvements to the interior and exterior of the Anchor Space, which are commenced after the Effective Date and completed during the Term, as more particularly described and depicted in Exhibit B. The term Anchor Space Improvements will not include routine maintenance. Routine maintenance includes regular preventative or routine maintenance and incidental repairs as are necessary to keep Towne Crossing in good order, operating condition, and repair.

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

“Brand” shall mean the brand name: (i) used to designate the business from other businesses in the same business domain or area; (ii) by which the business is commonly known to the public; (iii) used by the business to market the store; and (iv) used or seen whenever the business puts itself out to the public, such as on business signs, online, or in directories.

“Buildings” shall mean the buildings and other improvements constituting or incidental to the Towne Crossing retail center, located on the Land, and owned by Company as further described and depicted in Exhibit A-1.

“Capital Improvements” shall mean both (i) the Anchor Space Improvements and (ii) the Towne Crossing Improvements. The term Capital Improvement will not include routine maintenance. Routine maintenance includes regular preventative or routine maintenance and incidental repairs as are necessary to keep Towne Crossing in good order, operating condition, and repair.

“Capital Investment” shall mean expenditures on Capital Improvements (excluding land acquisition costs) by the Company. Capital Investment shall not include expenditures on Capital Improvements by tenants, (provided, however, any expenditures on Capital Improvements by Kroger or any other Qualifying Grocery Store shall constitute a Capital Investment), or other occupants of Towne Crossing, including ground lessees, or by third party purchasers of lots or pad-sites in Towne Crossing, and such purchasers’ tenants or occupants.

“Capital Investment Certificate” shall mean 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 each of the Capital Improvements for: (i) Towne Crossing Improvements and (ii) Anchor Space Improvements, as of the date of such certificate and (each a “Capital Investment Certificate”) provided, however, the Parties agree that only expenditures capitalized as capital assets on the books of the Company in accordance with generally accepted accounting principles shall be included in the expenditures reported in each Capital Investment Certificate.

“Cash Incentive Grant” shall have the meaning described in Section 8.1 of this Agreement.

“Cash Incentive Grant Condition(s) Precedent” shall have the meanings set forth in Article VII of this Agreement.

“Cash Incentive Grant Payment” shall mean the actual payment(s) of the Cash Incentive Grant by the City to the Company, as specified in Article VIII of this Agreement, pursuant to the terms and subject to the conditions and limitations set forth in this Agreement.

“Certificate of Compliance” shall mean a certificate in a form substantially similar to that as shown in Exhibit F herein as is reasonably acceptable to the City, executed on behalf of the Company by a duly authorized Company Representative certifying to the City: (i) that all General Conditions Precedent, Cash Incentive Grant Conditions Precedent, and Tax Incentive Grant Conditions Precedent, as applicable at the time of presentation of the Certificate of Compliance, have been satisfied and are continuing; (ii) that Company has complied with and is in compliance with Company’s Additional Covenants provided in Article VI; and (iii) that to the knowledge of the Company no default then exists by the Company under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a default by the Company under the terms of this Agreement. As used in this paragraph the terms “knowledge” or “knowingly” means the actual, then-current knowledge of any officer or employee authorized to execute such on behalf of the Company.

“Certificate of Occupancy” or “CO” shall mean a final certificate of occupancy issued by the City to the applicable company in compliance with the City’s building, health, safety, fire and other codes and authorizing the applicable company to occupy and operate a business from the applicable location in

Towne Crossing.

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

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

“City Default” shall have the meaning set forth in Section 9.2 of this Agreement.

“City Manager” shall mean the City Manager of the City or his authorized designee.

“City Sales Tax” and “City Sales Taxes” shall mean the municipal sales taxes collected by or on behalf of the City for general fund authorized pursuant to § 321.101(a) of the Texas Tax Code, as amended and/or replaced, and currently at the rate of one percent (1.0%) pursuant to § 321.103(a) of the Texas Tax Code and specifically not including the State of Texas Sales Taxes and any Additional Municipal Sales Taxes.

“Company” shall mean FHI Towne Crossing, LP, a Delaware limited partnership, its successors and assigns only as permitted by this Agreement.

“Company Default” shall have the meaning set forth in Section 9.1 of this Agreement.

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

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

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

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

“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, a Force Majeure Event does not include any financial or economic hardship, changes in market or economic conditions, pandemics, epidemics, public health crisis, or insufficiency of funds. 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.

“Excused Tenant Vacancy” shall have the meaning set forth in Section 6.1.9 of this Agreement.

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

“Existing Tenants” shall mean the tenants of the Company at Towne Crossing listed on Exhibit D.

“Federal Holidays” shall mean public holidays as established by Federal law, 5 U.S.C. § 6103, as may be amended.

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

“General Investment Minimum” shall have the meaning described in Section 6.1.3 of this Agreement.

“Incentive Grant(s)” shall mean both the Cash Incentive Grant and Tax Incentive Grant.

“Incentive Grant Payment(s) and “Incentive Payment(s)” and shall mean the actual payment(s) of the Incentive Grant(s) by the City to the Company, as specified in Article VIII of this Agreement, pursuant to the terms and subject to the conditions and limitations set forth in this Agreement.

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

“Land” shall mean the real property located at 3600 Gus Thomasson Road, Mesquite, Texas 75150, as further described in Exhibit A.

“Maximum Incentive Amount” shall mean the maximum amount of economic development incentives payable under the terms of this Agreement, which is the collective sum of THREE MILLION AND NO/100 DOLLARS (\$3,000,000.00).

“Maximum Incentive Period” shall mean the period beginning upon the Effective Date and ending upon the earlier of either: (i) the Maximum Incentive Amount being earned by the Company; (ii) Ten (10) years from the date the Company expends the Total Capital Investment Minimum in accordance with this Agreement provided the period does not exceed a total of thirteen (13) years from the Effective Date; or (iii) Termination of this Agreement.

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

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

“Open for Business” shall mean the business is fully operating with a valid CO, open to the public, and serving customers at Towne Crossing for a minimum of seven (7) days a week, ten (10) hours per day except: (i) during Federal Holidays, (ii) during construction of the Anchor Space Improvements to the extent the period of construction does not exceed 365 calendar days; and (iii) during an Event of Force Majeure.

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

“Payment Request(s)” shall have the meaning set forth in Section 7.1.12 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.

“Primary Use” shall mean to the extent not in conflict with applicable law including but not limited to local regulations, goods sold or services provided by a tenant or occupant of leased space in Towne Crossing that generate more than 51% of the total sales of such tenant or occupant on an annual basis.

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

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

“Qualifying Grocery Store” shall mean a grocery store agreed upon by the Parties and meeting the standards further described in Exhibit E.

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

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

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

“Tax Incentive Grant” shall have the meaning provided in Article VIII of this Agreement.

“Tax Incentive Grant Condition(s) Precedent” shall have the meanings provided in Article VII of this Agreement.

“Tax Incentive Grant Payment” shall mean the actual payment(s) of the Tax Incentive Grant by the City to the Company, as specified in Article VIII of this Agreement, pursuant to the terms and subject to the conditions and limitations set forth in this Agreement.

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

“Tenants” shall mean the tenants of Company at Towne Crossing.

“Tenant Vacancy” shall mean any period a Qualified Grocery Store is not Open for Business in the Anchor Space, excluding: (i) temporary closures during construction of the Anchor Space Improvements to the extent the period of construction does not exceed 365 calendar days and it is not commercially

practical for the Qualified Grocery Store to be Open for Business; (ii) an Excused Tenant Vacancy; or (iii) a Force Majeure Event.

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

“Total Capital Investment Minimum” shall have the meaning described in Section 6.1.4 of this Agreement.

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

“Towne Crossing Improvements” shall mean renovations, replacements, upgrades, alterations, changes, modifications, additions and/or physical improvements to the exterior of any portion of Towne Crossing excluding the Anchor Space, which are commenced after the Effective Date and completed during the Term, that make Towne Crossing more attractive to existing and new retail tenants, intended to result in increased property values and sales taxes, as more particularly described and depicted in Exhibit C. The term Towne Crossing Improvements will not include routine maintenance. Routine maintenance includes regular preventative or routine maintenance and incidental repairs as are necessary to keep Towne Crossing in good order, operating condition, and repair.

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

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

ARTICLE III

Authority for Agreement

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

ARTICLE IV

Term

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

ARTICLE V Company’s Covenants Regarding Undocumented Workers

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

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

5.3 Repayment of Incentive Grants in Event of Conviction for Employing Undocumented Workers. If, after receiving any Incentive Grant Payment under the terms of this Agreement, the Company, or a branch, division or department of the Company, is convicted of a violation under 8 U.S.C. § 1324a (f), the Company shall pay to the City, not later than the 240th day after the date the City notifies the Company of the violation, an amount equal to the total amount of all Incentive Grant Payments paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on each such Incentive Grant Payment from the date each such Incentive Grant Payment was paid by the City to the Company until the date repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate.

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

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

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

ARTICLE VI Company’s Additional Covenants

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

1. The Company shall complete the purchase and transfer of 100% ownership of Towne Crossing to the Company on or before **September 1, 2023**:

2. To make a Capital Investment in Anchor Space Improvements in the minimum amount of TWO MILLION SEVEN HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,700,000.00) within three (3) years from the Effective Date of this Agreement ("**Anchor Investment Minimum**");
3. To make a Capital Investment in Towne Crossing Improvements in the minimum amount of TWO MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,300,000.00) within three (3) years from the Effective Date of this Agreement ("**General Investment Minimum**");
4. To make a total Capital Investment at Towne Crossing in the minimum amount of FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) within three (3) years from the Effective Date of this Agreement ("**Total Capital Investment Minimum**");
5. Construction of all Capital Improvements as identified in **Exhibits "B" and "C"** hereto shall be completed within (3) years of the Effective Date. Each improvement shall be considered completed when evidence by the issuance by the City of a Certificate of Occupancy, final inspection, final green tag, certificate of completion, or other equivalent, confirming completion of the requirements of the building permit issued by the City in connection with the construction of each improvements;
6. When calculating any such expenditures, the Parties agree that no expenditure shall be included as part of any Capital Investment unless the expenditure is capital in nature (excluding land acquisition costs). Failure of the Company to make the Total Capital Investment Minimum within three (3) years of the Effective Date will result in automatic termination of this Agreement and forfeiture by Company of any further Incentive Payments under this Agreement. This is addition to any other remedies available to the City under this Agreement or law;
7. To deliver to the City within thirty (30) days after written request, copies of such invoices, payment records and other documentation as the City may reasonably request to confirm compliance by the Company with its covenants in this Agreement;
8. To operate Towne Crossing exclusively for only the uses permitted under the then current zoning applicable to Towne Crossing during the Term of this Agreement. Notwithstanding the foregoing, the Company covenants and agrees that during the Term of this Agreement, the Company will not enter into any oral and/or written leases or otherwise knowingly permit the use of all or any portion of Towne Crossing for any one or more of the following uses as a Primary Use (provided, that, the foregoing shall not apply to Existing Tenants at Towne Crossing as of the Effective Date of this Agreement or to any assignee of or sublessee under any of the Existing Leases, or to any tenant leasing greater than 10,000 square feet of space in Towne Crossing): (a) stores selling electronic cigarettes or other oral devices as a Primary Use that allow users to inhale a vapor of liquid nicotine or other substances including, without limitation, e-cigarettes, e-cigars, e-pipes, e-hookahs, and/or vape pipes; and (b) tobacco stores as a Primary Use (and specifically excluding the ancillary sale thereof in any pharmacy, grocery or convenience store located in Towne Crossing) (collectively, the "**Tobacco Use Restriction**"). The Company further covenants and agrees that during the Term of this Agreement, the Company will not enter into any oral and/or written leases or otherwise knowingly permit the use of all or any portion of Towne Crossing for any one or more of the following uses as a Primary Use (provided, that, the foregoing shall not apply to Existing Tenants at Towne Crossing as of the Effective Date of this Agreement or to any

assignee of or sublessee under any of the Existing Leases, where such uses are not prohibited under the Existing Leases) (the following referred to herein collectively, as the “**Additional Use Restrictions**”):

- (i) Steam or Turkish baths, massage parlors, excluding first-class operators such as Massage Envy, and tattoo and/or piercing parlors, excluding retailers offering piercing services such as Claire’s, or otherwise offer piercing on an incidental basis;
- (ii) Bars and restaurants owned and/or operated by civic and social organizations, alumni associations, granges, automobile clubs (except travel), parent-teacher associations, booster clubs, scouting organizations, social clubs, fraternal lodges and veterans’ membership organizations;
- (iii) Churches, religious shrines, monasteries (except schools), synagogues, religious mosques and religious temples;
- (iv) Gifts, novelty or souvenir stores that as a Primary Use sell items of a sexually lewd or offensive nature, or of paraphernalia intended to be used with illegal drugs; and
- (v) Pawn shops (but specifically excluding consignment, second-hand and vintage stores).

Notwithstanding the foregoing, a violation of the foregoing uses shall only exist if the certificate of occupancy issued for the applicable premises specifically permits one or more of the prohibited uses listed above by name, and not for example by a description such as “retail store”. For the sake of clarity, the existence of a tenant operating all or a portion of its business for the Tobacco Use Restriction or the Additional Use Restrictions, such use of such space at Towne Crossing by such tenant shall not constitute a Company Default under this Agreement, but Company acknowledges that any sales taxes derived from the Tobacco Use Restriction or any Additional Use Restriction must be excluded from the sales submitted by the Company to qualify for the incentives hereunder.

9. For a period of no less than ten (10) years from the Effective Date, the Company shall maintain a Qualifying Grocery Store Open for Business in the Anchor Space;

A Tenant Vacancy shall constitute a Company Default under this Agreement. However, a Tenant Vacancy shall be excused and shall not constitute a Company Default under this Agreement if the Company notifies the City in writing within 7 calendar days of the first day of occurrence of a Tenant Vacancy and within 240 calendar days of the Company providing the City with the aforementioned written notice, the Company provides evidence to the City’s satisfaction that either: (i) the Qualifying Grocery Store has resumed operations and is Open for Business in the Anchor Space or (ii) a new Qualifying Grocery Store is Open for Business in the Anchor Space (“**Excused Tenant Vacancy**”). For the sake of clarity, the periods of construction to complete the Anchor Space Improvements shall not trigger a Company Default pursuant to this Section 6.1.9 so long as said period does not exceed 365 calendar days, the Qualifying Grocery Store is Open for Business promptly after completion of such construction, and otherwise comply with the operating requirements of this Section 6.1.9;

10. To provide the City, it’s agents and employees with access to Towne Crossing at such times as the City may reasonably request to conduct such inspections as the City reasonably deems necessary in order to confirm compliance by the Company with the terms and provisions of this Agreement;

11. Upon reasonable advanced written notice to the Company, the Company shall if commercially reasonable for Company to do so, provide a representative of the Company to accompany the City during all inspections of Towne Crossing conducted by the City;
12. To timely pay all Ad Valorem Taxes assessed against the Land and Buildings during the Term of this Agreement prior to the date such taxes become delinquent; provided, that the Company may in good faith protest any such taxes in accordance with normal and customary procedures;
13. To maintain Towne Crossing in good repair and condition at all times, which at a minimum shall mean meeting or exceeding all Federal, State and Local laws and regulations, including but not limited to the City's Code of Ordinances and terms of this Agreement, applicable to Towne Crossing and the activities thereon;
14. To keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of this Agreement and all other agreements now or hereafter existing between the Company and the City;
15. To comply with all applicable federal, state and local laws and regulations applicable to Towne Crossing; and
16. 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.

ARTICLE VII
Conditions Precedent to Payment of Incentive Grants

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

1. *Purchase of Towne Crossing.* The Company shall complete the purchase and transfer of 100% ownership of Towne Crossing to the Company on or before **September 1, 2023**;
2. *Maximum Incentive Period.* Subject to all other limitations contained herein, the full Incentive Payment being requested must have been for Incentive Grant(s) earned during the Maximum Incentive Period;
3. *Qualifying Grocery Store.* Subject to an Excused Tenant Vacancy, a Qualifying Grocery Store must be Open for Business in the Anchor Space for the full preceding calendar year, at the time each Payment Request is submitted to the City, and at the time of payment of each Incentive Grant;
4. *Payment of Taxes.* The Company shall have timely paid all Ad Valorem Taxes assessed against the Land and Buildings for the Incentive Tax Year for which the Annual Report is submitted and for all previous Tax Years during the Term of this Agreement, except for any such taxes as are being contested in good faith (or have accrued but are not yet due and payable);
5. *Payment of Fees.* The Company shall have timely paid to the City all impact fees, permit fees, development fees, review fees and inspection fees arising during the Term of this Agreement in connection with the construction of any improvements to or upon Towne Crossing, including, without limitation, all Roadway Impact Fees (if applicable);

6. *Required Documentation.* The Company shall have submitted an Annual Report to the City at the time of request for the first Incentive Grant Payment under this Agreement and by June 30th for each calendar year thereafter until the calendar year immediately following the expiration of the Term; provided, that the Company shall not be required to file an Annual Report for any Incentive Tax Year for which the Company is not requesting an Incentive Grant Payment. Each such Annual Report shall be accompanied by a Certificate of Compliance dated effective as of the date of the Annual Report, a list of all Tenants during the Incentive Tax Year for which the Annual Report is submitted and a Capital Investment Certificate. With respect to each Tax Incentive Grant Payment: (i) the Company shall have submitted to the City an Annual Report; and (ii) the City shall have obtained from the State Comptroller a confidential information report confirming at a minimum the total amount of City Sales Taxes paid by the Tenants to the State Comptroller relating only to taxable sales from such Tenants' locations in Towne Crossing during the previous Incentive Tax Year (which report the City agrees to use diligent, good faith efforts to timely obtain); and (iii) the City shall have verified that it has received payment in full of all City Sales Taxes payable by the Tenants relating to taxable sales from the Company's Tenants' locations in Towne Crossing for the Incentive Tax Year for which the Annual Report is submitted, and the City agrees to use diligent, good faith efforts to promptly verify such information. Notwithstanding the foregoing, pursuant to the Disclosure Statute, the State Comptroller is to disclose the sales taxes paid during the current or prior year without disclosing individual sales tax account information. However, if there are fewer than three (3) sales tax accounts at Towne Crossing, the State Comptroller will not disclose information regarding the actual sales taxes paid by Tenants without permission of those persons doing business at Towne Crossing. As such, the Company covenants and agrees to use good faith, commercially reasonable efforts to include as a condition in its future leases at Towne Crossing, language which requires the Company and future lessees to provide a release to the City that will allow the State Comptroller, if so required by the Disclosure Statute, to disclose to the City aggregated sales tax information relating to any business generating sales tax within Towne Crossing for any Incentive Tax Year during the Term. Provided all applicable General Conditions Precedent, Tax Incentive Grant Conditions Precedent, and Cash Incentive Grant Conditions Precedent have been satisfied and are then continuing, the City shall, following the end of each Incentive Tax Year and within thirty (30) days after receiving an Annual Report from Company, make a request to the State Comptroller pursuant to Subsection (b) of the Disclosure Statute, will use diligent, good faith efforts to cause the State Comptroller to promptly provide the City Sales Tax information. The City and the Company agree reports received by the City from the State Comptroller, if requested, reflecting City Sales Taxes paid by the Tenants relating to taxable sales made from the Tenants' locations in Towne Crossing as accurate and definitive for purposes of this Agreement, and the City shall have no right to review or audit records of the Company or its successors, assigns or lessees. The Company acknowledges that sales tax information, records and reports are confidential under the laws of the State of Texas and accordingly, the Company agrees that it shall have no right to review or audit any sales tax information, records or reports in the possession of the City including, without limitation, any confidential information reports obtained by the City pursuant to this Agreement and the Disclosure Statute. In the event the Disclosure Statute is hereafter amended or a new law is enacted requiring additional consents and/or information to obtain any information necessary for the City to calculate the amount of any Incentive Grant Payment payable pursuant to Article VIII of this Agreement, no sums payable pursuant to Article VIII of this Agreement shall be due or payable unless and until the Company provides the City with such additional consents and/or information; provided, (A) that the City will pay such amounts as it may be able to determine from the information so provided, with the balance to be paid in accordance with this Agreement when such additional consents and/or information is provided, and (B) any change in law shall not impact the City's obligation to make payment of any Incentive Grant Payments previously earned and owed by the City to the extent not prohibited by applicable law. Notwithstanding anything contained herein to the contrary, the Parties acknowledge that the City's obligation to pay any Tax Incentive Grant

payment due under the terms of Article VIII of this Agreement shall be deferred if the State Comptroller fails, after written request by the City, to provide the City with the information necessary to: (i) verify the amount of sales taxes paid by the Tenants relating to taxable sales made from such Tenants' locations in Towne Crossing; and (ii) calculate the amount of such Tax Incentive Grant Payment; provided, that (A) the City will continue to use diligent, good faith efforts to cause the Comptroller to provide the City the necessary information, (B) the City will provide updates to the Company upon request of the status of obtaining the necessary information, (C) the City will pay any portion of the applicable Tax Incentive Grant Payment for which it has received the necessary information and (D) the due date for payment to the Company of the applicable Tax Incentive Grant Payment (or the balance thereof if a portion has been paid under the previously clause (C)) shall be extended until such time as the necessary information is received by the City, at which point the payment will be made in accordance with the other terms of this Agreement, and this obligation shall survive the expiration of this Agreement;

The Company shall have delivered to the City within thirty (30) calendar days after written request, copies of such documentation in the Company's possession, custody or control as the City may reasonably request to confirm compliance by the Company with this Agreement;

The Company shall have delivered to the City copies of such invoices, paid receipts, payment records and such other documentation as the City may reasonably request to confirm compliance by the Company with its obligations herein;

7. *Compliance with Agreement.* The Company shall be in compliance with all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company pursuant to the terms of this Agreement and all other agreement(s) now and hereafter existing between the Company and the City, and no default by the Company shall then exist under the terms of such agreements(s) beyond any applicable grace or cure period;
8. *City Regulations.* Towne Crossing and all and activities thereon shall comply with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City as of the date of any Annual Report and Towne Crossing shall be in good repair and condition (effects of casualty, periods of construction of the Capital Improvements and normal wear and tear excepted);
9. *Inspections.* At the option of the City, the City shall have inspected Towne Crossing to confirm the Company's compliance with the terms and provisions of this Agreement;
10. *Undocumented Workers.* As of the date of the Annual Report, and at all times during the Term of this Agreement prior to the Annual Report, the Company shall not have knowingly employed Undocumented Workers to work for the Company or any branch, division or department of the Company;
11. *Maximum Incentive.* The amount of the Incentive Grant Payment being requested, when added to all previous Incentive Grant Payments (both the Cash Incentive Grant and Tax Incentive Grant combined) paid pursuant to this Agreement, shall not exceed the Maximum Incentive Amount; and
12. *Incentive Payment Request.* The Company shall have submitted to the City a written request for each Incentive Payment ("**Payment Request**") with the Annual Report submitted for the applicable Incentive Tax Year.

7.2 Conditions Precedent to Cash Incentive Grant Payments. The Company and the City hereby expressly acknowledge and agree that the City's obligation to pay each Cash Incentive Grant Payment shall

be expressly conditioned upon the satisfaction of both the General Conditions Precedent and the following conditions precedent (the following conditions hereafter individually a “**Cash Incentive Grant Condition Precedent**” and collectively the “**Cash Incentive Grant Conditions Precedent**”):

1. *Completion of Towne Crossing Improvements.* Construction of all Towne Crossing Improvements as identified in **Exhibit “C”** hereto must be completed within (3) years of the Effective Date and prior to any Payment Request being submitted to the City for a Cash Incentive Grant. Towne Crossing Improvements shall be considered completed when evidence by the issuance by the City of a Certificate of Occupancy, final inspection, final green tag, certificate of completion, or other equivalent, confirming completion of the requirements of the building permit issued by the City in connection with the construction of the improvements:
2. *General Investment Minimum.* Prior to requesting a Cash Incentive Grant Payment under this Agreement, the Company shall have incurred the General Investment Minimum within (3) three years of the Effective Date:
3. *2nd Cash Incentive Grant Additional Requirement.* At both the time of requesting and payment of the 2nd Cash Incentive Grant Payment, the Company shall be actively and continuously constructing the Anchor Space Improvements as demonstrated by: (i) an active building permit for any portion of the Anchor Space Improvements; (ii) a City inspection of Anchor Space Improvements within the last 180 calendar days; (iii) having submitted required plans to the City for Anchor Space Improvements in the last 180 calendar days; or (iv) actual construction of the Anchor Space Improvements which can be visibly confirmed by the City is taking place without pause, interruption, or suspension greater in duration than (30) calendar days.
4. *3rd Cash Incentive Grant Payment Additional Requirement.* Prior to requesting the 3rd Cash Incentive Grant Payment the Company shall have also satisfied the Tax Incentive Grant Conditions Precedent provided below.

7.3 Conditions Precedent to Tax Incentive Grant Payments. The Company and the City hereby expressly acknowledge and agree that the City’s obligation to pay each Tax Incentive Grant Payment shall be expressly conditioned upon the satisfaction of : (i) the General Conditions Precedent; (ii) the Cash Incentive Grant Conditions Precedent; and (iii) and the following conditions precedent (the following conditions hereafter individually a “**Tax Incentive Grant Condition Precedent**” and collectively the “**Tax Incentive Grant Conditions Precedent**”):

1. *Completion of Anchor Space Improvements.* Construction of all Anchor Space Improvements as identified in **Exhibit “B”** hereto must be completed within (3) years of the Effective Date and prior to any Payment Request being submitted to the City for a Tax Incentive Grant. Anchor Space Improvements shall be considered completed when evidence by the issuance by the City of a Certificate of Occupancy, final inspection, final green tag, certificate of completion, or other equivalent, confirming completion of the requirements of the building permit issued by the City in connection with the construction of the improvements:
2. *Anchor Investment Minimum.* Prior to requesting a Tax Incentive Grant Payment under this Agreement, the Company shall have incurred the Anchor Investment Minimum within (3) three years of the Effective Date:
3. *Total Capital Investment Minimum.* Prior to requesting a Tax Incentive Grant Payment under this Agreement, the Company shall have incurred the Total Capital Investment Minimum within (3) three years of the Effective Date:

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

ARTICLE VIII Economic Development Incentive Grant

8.1 Economic Development Incentive Grants. Provided all General Conditions Precedent, Cash Incentive Grant Conditions Precedent, and Tax Incentive Grant Conditions Precedent, as applicable, have been satisfied and are then continuing, and subject to the limitations set forth in this Agreement, the City shall pay Incentive Payments to the Company during the Term: (i) an amount equal to one hundred percent (100%) of the Net City Sales Taxes paid by the Company's Tenants to the City during the Maximum Incentive Period relating solely to taxable sales made from the Company's Tenants' locations at Towne Crossing for each applicable year of the Term of this Agreement during the Maximum Incentive Period (the "**Tax Incentive Grant**"); and (ii) an economic development cash grant to the Company in the amount of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) for the economic development provided in this Agreement (the "**Cash Incentive Grant**").

8.2 Payment Dates for Tax Incentive Grant Payments. Provided all General Conditions Precedent, Cash Incentive Grant Conditions Precedent, and Tax Incentive Grant Conditions Precedent have been satisfied and are then continuing including, without limitation, the Maximum Incentive Amount has not been satisfied, the Tax Incentive Grant Payments due and payable pursuant to Section 8.1 of this Agreement shall be paid by the City to the Company by the later of either: (i) during the calendar year following the Incentive Tax Year for which the Tax Incentive Grant Payment is payable or (ii) 90 days of receipt of a valid and complete Payment Request from the Company. Notwithstanding anything herein to the contrary, if a sales tax protest is filed for any Incentive Tax Year, the payment date for any Incentive Payment payable pursuant to Section 8.1 above shall be delayed until sixty (60) days after all applicable General Conditions Precedent, Cash Incentive Grant Conditions Precedent, and Tax Incentive Grant Conditions Precedent have been satisfied. Any Incentive Payment delayed as a result of the filing of a sales tax protest shall no longer be due and payable in the event the Maximum Incentive Amount is satisfied before the delayed payment date for such Incentive Payment. Notwithstanding the foregoing, and in addition to all other remedies set forth in this Agreement, in the event the City fails to timely pay any Incentive Payment, the Company shall provide written notice of such failure to the City and the City shall have ninety (90) days from the receipt of the written notice to make such Incentive Payment. In the event that the City does not make the Incentive Payment within such ninety (90) day cure period, the Incentive Payment shall accrue interest at the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum beginning the day after such ninety (90) day cure period until paid, and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate provided it does not exceed five percent (5%).

8.3 Payment Dates for Cash Incentive Grant Payments. The Cash Incentive Grant shall be paid in three annual payments by City to Company as follows:

1. *1st Cash Incentive Grant Payment*: upon satisfaction of all General Conditions Precedent, Cash Incentive Grant Conditions Precedent, and the Company submitting to the City a Payment Request in compliance with this Agreement, the City will pay Company FOUR HUNDRED SIXTY THOUSAND AND 00/100 DOLLARS (\$460,000.00) in accordance with Section 8.3.4 and this Agreement (the "**1st Cash Incentive Grant Payment**").
2. *2nd Cash Incentive Grant Payment*: upon satisfaction of all General Conditions Precedent, Cash Incentive Grant Conditions Precedent, and the Company submitted to the City a Payment Request

in compliance with this Agreement, the City will pay Company TWO HUNDRED SEVENTY THOUSAND AND 00/100 DOLLARS (\$270,000.00) (the “**2nd Cash Incentive Grant Payment**”).

3. *3rd Cash Incentive Grant Payment*: the Incentive Tax Year after the City has issued payment for the 2nd Cash Incentive Grant Payment, provided satisfaction of all General Conditions Precedent, Cash Incentive Grant Conditions Precedent, and Tax Incentive Grant Conditions Precedent are still existing, and the Company submitted to the City a Payment Request in compliance with this Agreement, the City will pay Company TWO HUNDRED SEVENTY THOUSAND AND 00/100 DOLLARS (\$270,000.00) (the “**3rd Cash Incentive Grant Payment**”).

Upon receiving a valid Payment Request and verifying Company is in full compliance with the applicable requirements of this Agreement, the City shall issue each Cash Incentive Grant Payment within 90 days following receipt of each valid Payment Request, as applicable. However, in no event shall the Company: (i) receive a Cash Incentive Grant Payment prior to or during the 2023 Incentive Tax Year or (ii) receive more than one Cash Incentive Grant Payment during any Incentive Tax Year. In the event a Payment Request is not received during the Term of this Agreement the Company’s rights to the applicable Cash Incentive Grant Payment shall be deemed waived and the City shall have no duty or liability to pay the applicable Cash Incentive Grant Payment. The Cash Incentive Grant is not payable from the actual Water, Wastewater and Roadway Impact Fees paid by the Company to the City and shall rather be paid from the City’s general revenues.

8.4 Limitation on Incentive Payments. Notwithstanding anything contained herein to the contrary: (i) the maximum amount of Incentive Payments (both the Cash Incentive Grant Payments and Tax Incentive Grant Payments combined) payable under the terms of this Agreement is THREE MILLION AND NO/100 DOLLARS (\$3,000,000.00); (ii) if the collective amount of Incentive Payments (both the Cash Incentive Grant Payments and Tax Incentive Grant Payments combined) equal \$3,000,000.00 prior to the end of an Incentive Tax Year, no further Incentive Payments will be due or payable for the remainder of such Incentive Tax Year; (iii) in the event any of the Tenants owns and/or operates multiple locations, the Incentive Payments payable under the terms of this Agreement shall be limited only to the percentage of taxable sales from such tenant’s location in Towne Crossing; (iv) no Incentive Payments shall be due and payable for any Tax Year prior to 2023; (v) no Incentive Payments shall be due and payable for Net City Sales Taxes paid by the Company’s Tenants to the City prior to the Effective Date or after the Maximum Incentive Period; and (v) no Incentive Payments shall be due and payable for any Tax Year after the Term. If there is any conflict between this Section 8.4 and any other term or provision of this Agreement, this Section 8.4 shall control.

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

8.6 Revenue Sharing Agreement. The Parties designate this Agreement as a revenue sharing agreement, thereby entitling the City to request sales tax information from the State Comptroller, pursuant to § 321.3022 of the Texas Tax Code (the “**Disclosure Statute**”), as amended and/or replaced.

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

ARTICLE IX

Defaults Remedies

9.1 Company Default. The Company shall be in default of this Agreement: (i) upon the occurrence of an Event of Bankruptcy or Insolvency of the Company; (ii) except in the event of an Excused Tenant Vacancy, upon failure of the Company to maintain a Qualifying Grocery Store Open for Business in the Anchor Space a minimum of ten (10) years from the Effective Date in compliance with this Agreement (iii) upon the failure of the Company to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by Company under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the City to the Company, provided that no default may be found to have occurred if performance has commenced to the reasonable satisfaction of the City within sixty (60) days of the receipt of such notice, and is being diligently pursued using commercially reasonable efforts to complete performance; or (iv) upon failure of the Company to maintain Towne Crossing in good repair and condition at all times (effects of casualty, periods of construction of the Capital Improvements and normal wear and tear excepted), which at a minimum shall mean meeting or exceeding all Federal, State and Local laws and regulations, including but not limited to the City's Code of Ordinances and terms of this Agreement, applicable to Towne Crossing and the activities thereon and such failure continues for sixty (60) days after written notice by the City to the Company, provided that no default may be found to have occurred if performance has commenced to the reasonable satisfaction of the City within sixty (60) days of the receipt of such notice, and is being diligently pursued using commercially reasonable efforts to complete performance ("**Company Default**").

9.2 City Default. The City shall be in default of this Agreement upon the failure of the City to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the City under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the Company to the City, provided that no default may be found to have occurred if performance has commenced to the reasonable satisfaction of the Company within sixty (60) days of the receipt of such notice, and is being diligently pursued using commercially reasonable efforts to complete performance ("**City Default**"). Notwithstanding the foregoing, in the event the City fails to timely pay any Incentive Grant payment, the Company shall provide written notice of such failure to the City and the City shall have ninety (90) days to make such Incentive Grant payment before a City default exists.

9.3 City Remedies. In the event of a Company Default that has continued uncured beyond any applicable grace or cure period, the City shall have no obligation to pay any future Incentive Grant payment to the Company and the City shall have the right to: (i) recapture all of the Incentive Grant Payments paid by the City to the Company in the last year Incentive Grant Payments were paid by the City to the Company as more fully set forth in Section 9.4 below; and (ii) terminate this Agreement by written notice to the Company in which event neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement. Notwithstanding the foregoing, in the event of a Company Default under only Section 9.1(ii), the City shall not terminate the Agreement, so long as the Company is in full compliance with the remainder of the Agreement; provided, however, the City shall have no obligation to make any further Incentive Grant Payments to the Company until such default under Section 9.1(ii) is cured.

9.4 Recapture of Incentive Grant Payments. In the event this Agreement is terminated by the City, the City shall have no obligation to make any further Incentive Grant payments to the Company and the Company shall immediately pay to the City, at the City's address set forth herein, the sum equal to the total Incentive Grant Payments paid by the City to the Company in the last year Incentive Grant Payments were 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 to be calculated on the percentage of the Incentive Grant Payments being recaptured from the date(s) each Incentive Grant Payment was paid by the City to the Company until the date the said sum is repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the

Maximum Lawful Rate.

Notwithstanding anything to the contrary herein, if the City terminates this Agreement due to a Company Default, the City shall not recapture any Incentive Grant Payments if the Company is in full compliance with Sections 6.1.2, 6.1.3, 6.1.4, 6.1.5, 6.1.6 at the time of termination.

9.5 Company Remedies. Upon the occurrence of a City Default that has continued uncured beyond any applicable grace or cure period, the Company shall have the right as its sole remedies to (a) terminate this Agreement by written notice to the City in which event neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement, and (b) recover from the City the amount of any Incentive Grant Payments then earned and owed by the City as damages in accordance with the following provisions. The Parties hereby acknowledge and agree that in a suit against the City for breach of this Agreement or otherwise to recover damages:

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

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

ARTICLE X Miscellaneous Provisions

10.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, notwithstanding anything contained herein to the contrary, **with the exception of an assignment/transfer to FHI Towne Crossing, LP to which the parties hereby consent**, this Agreement and the rights and obligations of the Company hereunder may not be assigned or transferred by the Company to any Person without the prior written consent of the City, which consent will not be unreasonably withheld, conditioned or delayed. The foregoing requirement to obtain the consent of the City shall not apply in the event of a transfer by the Company of all of Towne Crossing to a third-party Person, which in such event the Company shall be permitted to assign its interest in this Agreement to such third-party Person without the consent of the City, provided that notice shall be provided to the City of such transfer. Furthermore, neither the Company nor any approved assignee or their legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of the Company or any approved assignee under this Agreement, without obtaining the City's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed; provided, that the foregoing requirement for consent shall not apply to transfers or assignments of this Agreement (i) by the Company to any affiliate, subsidiary or parent of the Company or (ii) to any transfers of direct or indirect ownership interests in the Company. The City agrees to execute any such reasonable consents or estoppels requested by any purchaser of Towne Crossing and/or the Company's or its assignee's lender in connection with any collateral assignment of this Agreement. Any consent by the City to any assignment of this Agreement shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such

consent to any subsequent assignment. Upon any transfer of this Agreement in connection with the sale of Towne Crossing to an assignee that assumes all duties, liabilities and the obligations of the Company under this Agreement, the transferor shall thereafter be released and discharged from all duties, liabilities and obligations hereunder. Otherwise, the consent by the City to any assignment of this Agreement shall not relieve the Company or any approved assignee from any duties, liabilities or obligations of the Company or any approved assignee under the terms of this Agreement unless the written consent of the City expressly states otherwise. Every assignee shall be subject to and be bound by all the provisions, covenants, and conditions of this Agreement and shall be required to obtain the prior written consent of the City with respect to any future or further assignment except as provided above, which consent shall not be unreasonably withheld, conditioned or delayed. No assignment of this Agreement shall contain any terms in contravention of any provisions of this Agreement. No assignment of this Agreement shall be effective unless: (i) the assignment is in writing signed by the assignor and the assignee; (ii) the assignee assumes the assignor's obligation to timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations of the assignor under the terms of this Agreement; (iii) a true and correct copy of such assignment has been provided to the City; and (iv) with respect to any assignment for which the City's consent is required as provided above, the City has consented to such assignment in writing, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment in violation of the terms and provisions of this Agreement shall be void and of no force or effect and shall constitute a material breach of this Agreement by the Company. The Company may also retain the benefits of this Agreement and not assign it to any successor owner of Towne Crossing. Nothing contained in this Section or any other terms of this Agreement shall restrict or limit the Company's right to sell, transfer or encumber all or any portion of Towne Crossing from time to time. Notwithstanding anything to the contrary contained herein, the Company may obtain funding through a lender, which would not be a Company Default.

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

COMPANY: FHI Towne Crossing, LP
c/o Flying Horse Investments, LLC
1901 Avenue of the Stars, Suite 630
Los Angeles, CA 90067
Attention: Joe Spicer

With a copy to: Legal Services

Greenberg Traurig, LLP
2200 Ross Avenue, Suite 5200
Dallas, Texas 75201
Attention: Bud Doxey

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

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

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

10.4 Remedies Cumulative. Except as expressly limited herein, each right and remedy of the Parties provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas shall be cumulative and concurrent and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas.

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

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

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

10.8 Waivers. All waivers, to be effective, must be in writing and signed by the waiving party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party upon a default of this Agreement shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring.

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

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

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

10.12 No Third Party Beneficiaries. The Parties to this Agreement do not intend to create any third party beneficiaries of the contract rights contained herein. This Agreement shall not create any rights in

any individual or entity that is not a signatory hereto. No person who is not a party to this Agreement may bring a cause of action pursuant to this Agreement as a third party beneficiary.

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

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

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

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

10.17 Authority. The Company represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. Each Party represents and warrants to each other Party that this Agreement has been duly authorized by such Party and that each Party has the full power and authority to enter into and fulfill its obligations under this Agreement. Each Person signing this Agreement represents that such Person has the authority to sign this Agreement on behalf of the Party indicated.

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

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

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

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

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

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

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

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

10.25 Execution of Agreement. This Agreement is fully null and void if not executed by both parties within (60) days after the date the Mesquite City Council passes a resolution authorizing this Agreement.


REMAINDER OF PAGE INTENTIONALLY BLANK

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.

**CITY OF MESQUITE
(CITY)**

**FHI TOWNE CROSSING, LP
(COMPANY)**

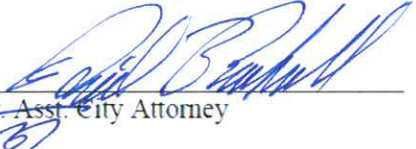
By: 
Cliff Keheley, City Manager

By: 
Printed Name: ERIC SHULMAN

ATTEST:
By: 
Sonja Land, City Secretary

Printed Title: AUTHORIZED PERSON

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

By: 
Sr. Asst. City Attorney

COUNTY OF _____)
STATE OF TEXAS)

The foregoing instrument was acknowledged before me on _____, 2023, by _____ as _____ of FHI TOWNE CROSSING, LP a duly authorized representative of FHI TOWNE CROSSING, LP a Delaware limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal on the date and year above-mentioned.

Notary Public

please see attached

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Los Angeles }

On 6/8/2023 before me, Tina Kristine Serrano, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Eric Shulman
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____
Document Date: _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____
 Corporate Officer – Title(s): _____ Corporate Officer – Title(s): _____
 Partner – Limited General Partner – Limited General
 Individual Attorney in Fact Individual Attorney in Fact
 Trustee Guardian or Conservator Trustee Guardian or Conservator
 Other: _____ Other: _____
Signer is Representing: _____ Signer is Representing: _____

EXHIBIT "A"
LEGAL DESCRIPTION OF LAND

That certain property commonly known as Towne Crossing located at 3600 Gus Thomasson Road, Mesquite, Texas 75150, and being more particularly described as follows:

TRACT 1: (Fee Simple)

BEING all that tract of land in the City of Mesquite, Dallas County, Texas, a part of the J. Hardin Survey, Abstract No. 545, a part of the T. Thomas Survey, Abstract No. 1461, a part of the I. Thomas Survey, Abstract No. 1501, and being all of Lot 1, Block C, Towne Crossing, an Addition to the City of Mesquite as recorded in Volume 84229, Page 840, Dallas County Deed Records, and being further described as follows:

BEGINNING at a one-half inch iron rod found at the Northeast corner of said Lot 1, said point being the Northwest corner of Lot 2, Block C, Crossroads Place, an addition to the City of Mesquite as recorded in Volume 84083, Page 5304, Dallas County Deed Records, said point also being in the South line of Driftwood Drive (a variable width right-of-way);

THENCE along the East line of said Lot 1 and along the West line of said Lot 2 as follows:

South 00 degrees 31 minutes 03 seconds East, 52.20 feet to a one-half inch iron rod found for corner;

South 17 degrees 13 minutes 00 seconds East, 605.88 feet to a one-half inch iron rod set for corner;

South 09 degrees 19 minutes 55 seconds East, 159.75 feet to a one-half inch iron rod set for corner;

South 07 degrees 22 minutes 02 seconds West, 243.61 feet to a one-half inch iron rod set for corner;

South 09 degrees 19 minutes 55 seconds East, 138.56 feet to a one-half inch iron rod set for corner;

South 05 degrees 35 minutes 55 seconds East, 213.74 feet to a one-half inch iron rod set at the most Easterly Southeast corner of said Lot 1, said point being the Northeast corner of Lot 5, Block A, Treasury Addition, an Addition to the City of Mesquite as recorded in Volume 78018, Page 2, Dallas County Deed Records;

THENCE along the South line of said Lot 1 as follows:

South 80 degrees 56 minutes 25 seconds West, 222.21 feet to a PK nail set at the Northwest corner of Lot 4, Block A, Treasury Addition, an Addition to the City of Mesquite as recorded in Volume 77146, Page 1053, Dallas County Deed Records;

South 09 degrees 03 minutes 35 seconds East, 200.00 feet to a one-half inch iron rod set at the Southwest corner of said Lot 4, said point being in the North line of Town East Boulevard (a variable width right-of-way);

South 80 degrees 56 minutes 25 seconds West, 50.00 feet along the West line of Twin East Boulevard to an "X" set in concrete at the most Southerly Southwest corner of said Lot 1, said point being the Southeast corner of Lot 7B, Block A, Treasury Addition, an addition to the City of Mesquite as recorded in Volume 84240, Page 3231, Dallas County Deed Records;

THENCE along the West line of said Lot 1 as follows:

North 09 degrees 03 minutes 35 seconds West, 173.50 feet to an "X" set in concrete at the Northeast corner of said Lot 7B;

South 81 degrees 18 minutes 57 seconds West, 85.34 feet along the North line of said Lot 7B to an "X" set in concrete at the Southeast corner of Lot 9, Block A, Treasury Addition, an addition to the City of Mesquite as recorded in Volume 81001, Page 977, Dallas County Deed Records;

North 08 degrees 41 minutes 03 seconds West, 173.00 feet to a one-half inch iron rod set at the Northeast corner of said Lot 9, said point being in the South line of Lot 6, Block A, Treasury Addition, an addition to the City of Mesquite as recorded in Volume 78088, Page 2696, Dallas County Deed Records;

North 81 degrees 18 minutes 57 seconds East, 55.00 feet to a one-half inch iron rod found at the Southeast corner of said Lot 6;

North 08 degrees 41 minutes 03 seconds West, 180.00 feet to an "X" found in concrete at the Northeast corner of Lot 8, Block A, Treasury Addition, an addition to the City of Mesquite as recorded in Volume 80128, Page 817, Dallas County Deed Records;

South 81 degrees 18 minutes 57 seconds West, 50.00 feet along the North line of said Lot 8 to a one-half inch iron rod found at the Southeast corner of Lot 10, Block A, Treasury Addition, an addition to the City of Mesquite as recorded in Volume 82116, Page 618, Dallas County Deed Records;

North 08 degrees 41 minutes 03 seconds West, 75.00 feet to a one-half inch iron rod set at the Northeast corner of said Lot 10;

South 81 degrees 18 minutes 57 seconds West, 200.00 feet along the North line of said Lot 10 to a one-half inch iron rod set for corner in the East line of Gus Thomasson Road (a 140 foot wide right-of-way);

North 08 degrees 41 minutes 03 seconds West, 207.50 feet along the East line of Gus Thomasson Road to a one inch iron rod found for corner;

Northwesterly, 321.79 feet along a curve to the left in the East line of Gus Thomasson Road, said curve having a central angle of 23 degrees 35 minutes 42 seconds, a radius of 781.40 feet, and a tangent of 163.21 feet, and whose chord bears North 20 degrees 28 minutes 54 seconds West, 319.52 feet to a one-half inch iron rod found for corner;

North 36 degrees 47 minutes 03 seconds East, 165.97 feet to an "X" found in concrete for corner;

North 45 degrees 03 minutes 19 seconds West, 140.00 feet to a one-half inch iron rod found at the most Northerly Northwest corner of said Lot 1, said point being in the South line of Driftwood Drive;

THENCE along the North line of said Lot 1 and along the South line of Driftwood Drive as follows:

North 44 degrees 56 minutes 41 seconds East, 55.06 feet to a one-half inch iron rod set for corner;

North 34 degrees 01 minute 44 seconds East, 71.29 feet to a one-half inch iron rod found for corner;

Northeasterly, 347.12 feet along a curve to the right which has a central angle of 27 degrees 50 minutes 19 seconds, a radius of 770.00 feet, and a tangent of 190.83 feet, and whose chord bears North 58 degrees 51 minutes 50 seconds East, 370.45 feet to a one-half inch iron rod found for corner;

North 72 degrees 47 minutes 00 seconds East, 141.92 feet to the POINT OF BEGINNING and containing 705,672 square feet or 16.200 acres of land, more or less.

Parcel Identification Number: 38-216-00-00C-001-0000 (for informational purposes only)

TRACT 2: (Easement Estate)

Non-exclusive easement rights for pedestrian and vehicular ingress and egress as set forth in that certain Agreement Creating Mutual Easements dated November 1, 1984 and recorded January 7, 1985 in Volume 85004, Page 5848, in, to, upon and through the following described real estate:

BEING a metes and bounds description of a Cross-Access Agreement lying in the T. Thomas Survey, Abstract No. 1461, Dallas County, Texas, and being more particularly described as follows:

BEGINNING at the intersection of the East line of Gus Thomasson Road (140 foot right-of-way) and the South line of Driftwood Drive (87 foot right-of-way) as widened;

THENCE North 44 degrees 56 minutes 41 seconds East, 145.00 feet along the South line of said Driftwood Drive to a point;

THENCE South 45 degrees 03 minutes 19 seconds East, 34.68 feet to a point;

THENCE North 41 degrees 47 minutes 40 seconds East, 9.63 feet to a point;

THENCE South 48 degrees 12 minutes 20 seconds East, 127.08 feet to a point;

THENCE South 41 degrees 47 minutes 40 seconds West, 154.00 feet to a point;

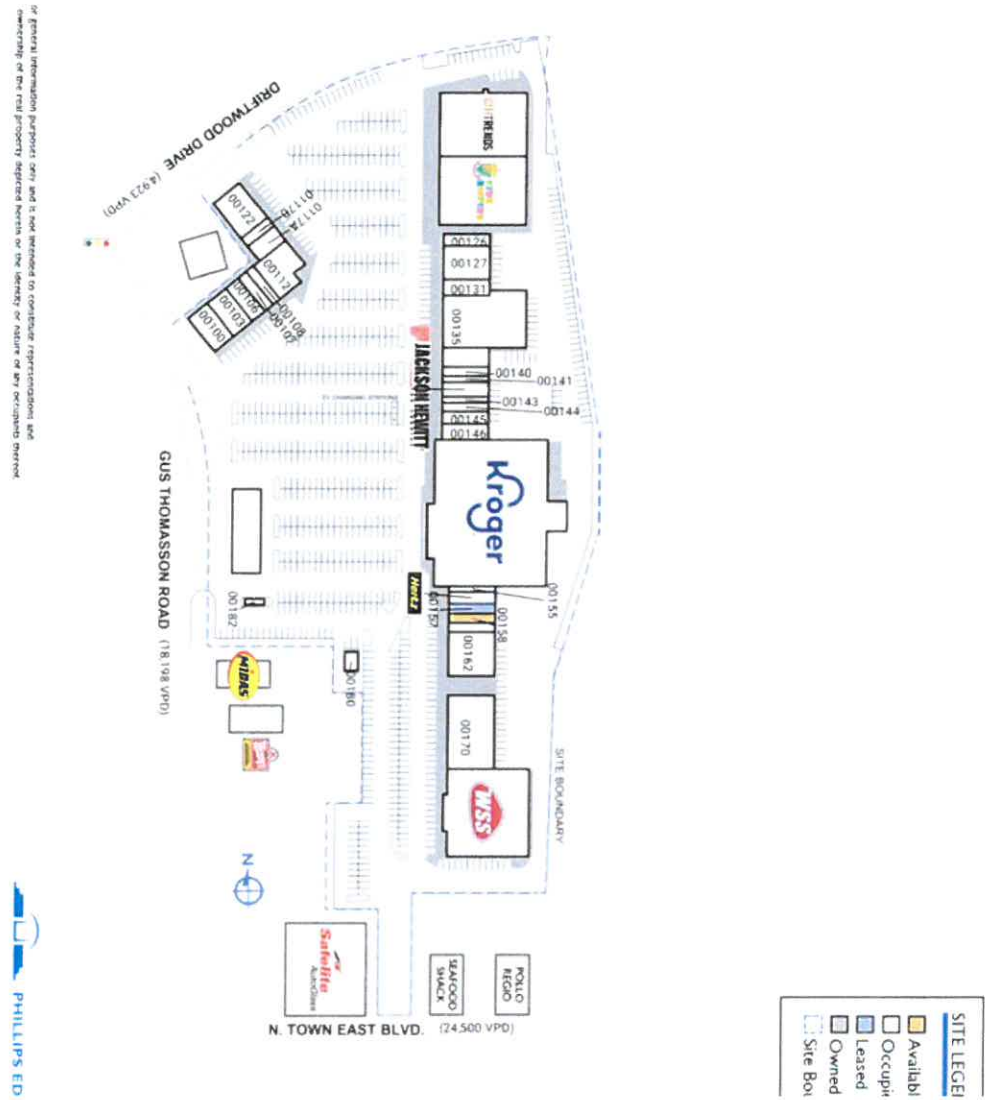
THENCE North 48 degrees 12 minutes 20 seconds West, 9.77 feet to a point;

THENCE South 36 degrees 47 minutes 03 seconds West, 26.86 feet to a point on a curve in the East line of said Gus Thomasson Road;

THENCE along the East line of said Gus Thomasson Road, with a curve to the left, having a central angle of 12 degrees 05 minutes 55 seconds, a radius of 781.40 feet, a tangent of 82.81 feet, and an arc distance of 165.00 feet to the POINT OF BEGINNING, containing 26,731.11 square feet or 0.6137 acres of land, more or less.

EXHIBIT "A-1"
DEPICTION OF BUILDINGS AND OTHER IMPROVEMENTS EXISTING ON LAND

CROSSING SHOPPING CENTER
 3600 Gus Thomasson Road | Ma



of general information purposes only and is not intended to constitute representations and warranties of the real property depicted herein or the identity or nature of any depicted element.



EXHIBIT "B"
ANCHOR SPACE IMPROVEMENT
REQUIREMENTS AND RENDERINGS



Representative Rendering of Kroger Storefront Renovation

*Refer to Exhibit E for Qualifying Grocery Store Minimum Standards

EXHIBIT "C"
TOWNE CROSSING IMPROVEMENT
REQUIREMENTS AND RENDERINGS



Towne Crossing Improvements shall include at a minimum: Painting the exterior, improving/replacing/upgrading lighting, improving the parking lot, adding/improving landscaping, replacing aged roofs, and improving/replacing/upgrading signage.

EXHIBIT "D"
LIST OF COMPANY'S EXISTING TENANTS OF TOWNE CROSSING (CURRENT AS OF
2/3/2023)

1. Dental Zania
2. CSL Plasma
3. Discount Cigarettes
4. Solar Nails
5. Pepper's Café
6. Hertz
7. Army Marine Office
8. Citi Trends
9. A-Affordable Insurance Agency
10. Jackson Hewitt
11. Pepper's Taco
12. Dentistry for Children
13. Kroger
14. Eyebrow Mantra
15. Indio Products
16. Regional Finance
17. Kids Empire
18. Starlite Media
19. XL Staffing
20. Volta Charging LLC
21. Foot Reflexology
22. Staff Force
23. Mocha Creations
24. Texas Nail Bar
25. Shoe Game
26. Lopez Auto Insurance
27. Healing Hands Medical Clinic
28. Mattress for Less
29. WSS
30. Taco City Y Mas
31. The Loc'd Bar
32. Look Media
33. Kunooz Furniture
34. Phone Repair Zone

EXHIBIT "E"
QUALIFYING GROCERY STORE MINIMUM STANDARDS

During the during the Term of this Agreement, to be considered a Qualifying Grocery Store, a grocery store establishment must meet the following minimum criteria:

- The primary activity of the grocery store shall have an official North American Industry Classification System Industry Code assigned by the U.S. Census Bureau of 445110 - Supermarkets and Other Grocery Retailers (except Convenience Retailers).
- The grocery store shall occupy a minimum of 75% of the total tenant Anchor Space (total tenant space is 45,528, so 75% is 34,146).
- The grocery store shall, at a minimum, offer standard grocery store products including fresh and perishable produce, meat, and dairy.
- The grocery store shall be one of the following Brands:
 - Kroger, Tom Thumb, Albertsons, Safeway, H-E-B, Central Market, Natural Foods, Meijer, Hy-Vee, Sprouts, Costco, Sam's Club, El Rio Grande, Fiesta Mart, Brookshires, Wal-Mart Neighborhood Market, El Rancho Supermercado; or
 - Any other Brand grocery store meeting the above criteria and agreed to by both parties in writing prior to the grocery store occupying the Anchor Space.

EXHIBIT "F"
FORM OF CERTIFICATE OF COMPLIANCE

CERTIFICATE OF COMPLIANCE

April 13, 2022

City of Mesquite
Jimmy Martin
Director of Finance
PO Box 850137
Mesquite TX 75185-0137

RE: Request for 380 Agreement Incentive Payment as set forth in [Article VIII] of the agreement between the City of Mesquite and [COMPANY] executed on [June 1, 2001].

Please accept this letter as our Certificate of Compliance of all applicable terms and conditions relating to the construction and completion of capital improvements. Please have an incentive payment to [COMPANY] in the amount of \$[1] mailed to [ADDRESS, Dallas, TX 75000.]

Please contact us should you have any questions.

Thank you,

[SIGNATURE]

[NAME]
President
[COMPANY]

Attachments: w-9