

RESOLUTION NO. 09-2025

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 A CHAPTER 380 PERFORMANCE AGREEMENT (“AGREEMENT”) FOR SUCH PURPOSES BY AND BETWEEN THE CITY OF MESQUITE (“CITY”) AND TOWN EAST MALL, LLC (“DEVELOPER”), AND GRANTING TO THE DEVELOPER CERTAIN ECONOMIC DEVELOPMENT INCENTIVES; AND AUTHORIZING THE CITY MANAGER TO TAKE SUCH ACTIONS AND EXECUTE SUCH DOCUMENTS AS ARE NECESSARY OR ADVISABLE TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT, AND ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

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

WHEREAS, the City Council has been presented with a proposed agreement providing economic incentives to Town East Mall, LLC, a Delaware limited liability company (“Developer”), owner of Town East Mall located at the southeast corner of Town East Blvd. and Interstate 635, to facilitate maintaining the Macy’s department store in their current location and capacity as a big box anchor to Town East Mall, a copy of said agreement being attached hereto as Exhibit 1 and incorporated herein by reference (the “Agreement”); and

WHEREAS, the City would like to encourage the Macy’s department store to remain at Town East Mall by granting certain economic development incentives to the Developer; and

WHEREAS, retaining the Macy’s department store at Town East Mall will increase the taxable value of Town East Mall and surrounding properties thereby adding value to the City’s tax rolls and increase the ad valorem property taxes to be collected by the City, retain jobs within the City and increase the collection of sales taxes generated at Town East Mall by the Macy’s department store and other tenants of Town East Mall; 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.

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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 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 \$100,000; (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

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and effect and shall be construed and enforced as if the invalid, illegal, or unenforceable provision had never been included in this Resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 3rd day of March 2025.

Signed by:

Daniel Alemán, Jr.

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Daniel Alemán, Jr.

Mayor

ATTEST:

DocuSigned by:

Sonja Land

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Sonja Land

City Secretary

APPROVED AS TO LEGAL FORM:

Signed by:

David L. Paschall

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David L. Paschall

City Attorney

EXHIBIT 1

ECONOMIC DEVELOPMENT

CHAPTER 380 PERFORMANCE AGREEMENT

BETWEEN

THE CITY OF MESQUITE, TEXAS

AND

TOWN EAST MALL, LLC

CHAPTER 380 ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT TOWN EAST MALL

This Chapter 380 Economic Development Performance Agreement (this “Agreement”) is entered into this ____ day of _____, 2025 (the “Effective Date”) between the City of Mesquite, Texas, a municipal corporation organized and existing pursuant to the laws of the State of Texas (“City”) and Town East Mall, LLC, a Delaware limited liability company (“Developer”) (each a “Party” and collectively the “Parties”), each acting by and through its duly authorized representatives.

RECITALS

WHEREAS, Developer is the owner of the real property depicted in Exhibit “A”, which consists of an approximately 32.65± acre tract of land (the “Property”) in Mesquite, Dallas County, Texas, (“City”) generally located at the southeast corner of the intersection of Interstate 635 and Town East Blvd.; and

WHEREAS, Macy’s Retail Holdings, LLC (“Company”) is the owner of the real property depicted in Exhibit “B”, which consists of an approximately 16.36± acre tract of land (the “Macy’s Tract”) in Mesquite, Dallas County, Texas, generally located at the southeast corner of the intersection of Interstate 635 and Town East Blvd.; and

WHEREAS, the Property and the Macy’s Tract are both part of a regional retail shopping center commonly known as Town East Mall; and

WHEREAS, Town East Mall is a shopping center where Developer currently owns and operates an approximate 468,000± square feet of retail space, primarily consisting of the entirety of the mall, excluding four anchor sites, that includes a junior anchor, general retail tenants, retail service tenants, restaurants, and other ancillary facilities, such as required driveway entrances, parking, lighting and landscaping, (the “Facility”); and

WHEREAS, Town East Mall is a shopping center where Company owns one of the four anchor sites and other ancillary facilities, such as required parking, lighting and landscaping, which anchor site contains a 193,866± square foot Macy’s department store operated by Company (“Macy’s Store”); and

WHEREAS, Company or its affiliates are closing several Macy’s department store locations in the Dallas-Fort Worth region, and Developer has requested an economic development incentive to assist Developer with its agreements with Company for the Macy’s Store to remain open and operate on the Macy’s Tract in the same manner as it has historically; and

WHEREAS, concurrently with this Agreement, Developer and Macy’s are entering into a Mall Improvement Agreement (the “Macy’s Agreement”), providing, among other things, for payment to Macy’s of all proceeds of Annual Sales Tax Grants (as hereinafter defined); and

WHEREAS, City finds that retaining the Macy's Store will promote local economic development and result in stimulating business and commercial activity in the City limits, as authorized in Texas Local Government Code, Chapter 380 (the "Act") and Article 3, Section 52-a of the Texas Constitution; and

WHEREAS, pursuant to the Act, City is willing to provide Developer with a Chapter 380 program of economic development assistance as set forth herein and Developer is willing to accept the terms and conditions stated in this Agreement; and

WHEREAS, City has determined that granting economic development program incentives in accordance with this Agreement will further the objectives of City, will benefit City and the City's inhabitants, will promote local economic development, and retain employment, business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the parties agree as follows:

1. Definitions.

Some words and phrases may be defined in other sections of this Agreement. For purposes of this Agreement, each of the following words and phrases shall have the meaning set forth herein unless the context clearly indicates otherwise:

"Act" shall have the meaning ascribed in the Recitals above.

"Agreement" shall have the meaning ascribed in the introductory paragraph above.

"Annual Sales Tax Grants" shall have the meaning ascribed in Section 2.A. below.

"Event of Bankruptcy or Insolvency" means (i) an assignment by Developer for the benefit of creditors, (ii) the filing by Developer of a voluntary petition in bankruptcy, or Developer's collusion or cooperation with any third party to commence any bankruptcy or insolvency proceedings against Developer, (iii) Developer is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) Developer consents to or files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, (v) Developer fails to have dismissed within sixty (60) days after the commencement thereof, any proceeding against Developer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, (vi) Developer fails to have vacated or stayed within ninety (90) days after the appointment thereof without Developer's consent or acquiescence, a trustee, receiver or liquidator of Developer or of all or any substantial part of its properties, or within ninety (90) days after the expiration of any such stay, fails to have the appointment vacated or (vii) Developer takes any action in furtherance of any of the foregoing.

“Certificate of Compliance” shall mean a certificate in such form as is reasonably acceptable to City executed on behalf of Developer by a duly authorized Developer representative certifying to City: (i) that all Conditions Precedent at the time of presentation of the Certificate of Compliance, have been satisfied and are continuing; (ii) that Developer timely paid to Company the full amount of the prior year’s Annual Sales Tax Grant to Company less any amounts offset pursuant to Section 14 (the foregoing requirement is not a requirement of the Certificate of Compliance for the first Payment Request) and will timely pay to Company the full amount of the Annual Sales Tax Grant for which the Payment Request is being filed less any offsets pursuant to Section 14; and (iii) that to the knowledge of Developer no default then exists by Developer of 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 Developer under the terms of this Agreement. For the first Payment Request, Developer shall additionally provide to City a written verification from Company satisfactory to the City that evidences Company will operate a Macy’s Store on the Macy’s Tract for a minimum of five (5) years from the Effective Date. As used in this paragraph the terms “knowledge” or “knowingly” means the actual, then-current knowledge of any officer or employee of Company.

“City” shall have the meaning ascribed in the introductory paragraph above.

“City Sales Tax” shall have the meaning ascribed in Section 2.A. below.

“Claim” shall have the meaning ascribed in Section 4. below.

“Company” shall have the meaning ascribed in the Recitals above.

“Comptroller” shall mean the Comptroller for the State of Texas.

“Comptroller Challenge” shall have the meaning ascribed in Section 2.F below.

“Conditions Precedent” shall have the meaning ascribed in Section 5 below.

“Consummated” is defined in Section 321.203, Texas Tax Code, as amended.

“Developer” shall have the meaning ascribed in the introductory paragraph above.

“Effective Date” shall have the meaning ascribed in the introductory paragraph above.

“Expiration Date” shall mean July 31, 2035, unless terminated earlier.

“Facility” shall have the meaning ascribed in the Recitals above.

“Force Majeure” shall mean a major unforeseeable act or event that: (i) materially and adversely affects the affected Party’s ability to timely perform its obligation(s) under this Agreement; (ii) is beyond the reasonable control of the affected Party; (iii) is not caused by any

act or omission on the part of the affected Party or the affected Party's officers, partners, employees, agents, servants contractors, subcontractors, or any person entering the Property under the express or implied invitation of the affected Party; and (iv) could not have been prevented or avoided by the Party who suffers it by the exercise of commercially reasonable efforts. "Force Majeure" must satisfy each of the above requirements and shall include (but not be limited to): (a) natural phenomena and acts of God such as lighting, floods, hurricanes, tornadoes, earthquakes; (b) explosions; (c) fires; (d) wars, civil disturbances and terrorism; (e) strikes, labor shortages, or shortage of materials or equipment, that delay the Project for a minimum of thirty (30) consecutive days; (f) pandemics, epidemics, public health crises, or other uncontrollable circumstances in which a federal, state or municipal governmental order prevents or materially impedes commercial construction within the Property; and (g) abnormal weather based on the 5-year NOAA climatic average weather days for North Texas. Notwithstanding the forgoing, "Force Majeure" shall not include: (1) any financial or economic hardship; (2) insufficiency of funds; (3) changes in market or economic conditions; (4) any default or failure (financial or otherwise) of a general contractor or any subcontractor, vendor or supplier of the affected Party; or (5) any delay of any general contractor or any subcontractor, vendor or supplier, except for delay(s) as a result of an act or event defined herein as Force Majeure.

"Impositions" shall mean all taxes, assessments, charges, excises, license and permit fees, liens and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by the State of Texas, City, or any political subdivision of either of them, on Developer, Company, the Property, or the Macy's Tract.

"Macy's Tract" shall have the meaning ascribed in the Recitals above.

"Party" shall have the meaning ascribed in the introductory paragraph above.

"Parties" shall have the meaning ascribed in the introductory paragraph above.

"Payment Request" shall mean a written request from Developer to City for payment of an Annual Sales Tax Grant accompanied by the Sales Tax Certificate for the applicable Sales Tax Reporting Period containing the Sales Tax Reports and Tax Information required by Sections 2.G. and 5.I. below, and a Certificate of Compliance.

"Property" shall have the meaning ascribed in the Recitals above.

"Property" shall have the meaning ascribed in the Recitals above.

"Related Agreement" shall mean any agreement (other than this Agreement) to which City and Developer or Company are a party.

"Sales Tax Certificate" shall mean one or more Sales Tax Area Reports or a report provided by the Comptroller to City in accordance with Section 321.3022, Texas Tax Code (or other applicable provision of the Texas Tax Code), which lists the amount of City Sales Tax

collected (including any refunds, credits or adjustments) for the Sales Tax Reporting Period paid by Company and received by City from the Comptroller from the sale of Taxable Items Consummated by Company at the Macy's Store and, in turn, paid by the Comptroller to City; or, if such a report is not available, then a certificate or statement in a form reasonably approved by City, setting forth the collection of City Sales Tax (including any refunds, credits or adjustments) by Company received by City from the Comptroller, from the sale of Taxable Items by Company Consummated at the Macy's Store, including supporting documentation, to be provided by Company that provides the same or similar information, as such other information as City may reasonably require from time to time.

"Sales Tax Incentive" shall have the meaning ascribed in Section 2.A. below.

"Sales Tax Receipts" shall mean City's receipt of City Sales Tax from the Comptroller from Company's sale of Taxable Items for the Sales Tax Reporting Period Consummated at the Macy's Store (it being expressly understood that City's use of the sales and use tax receipts are being used only as a measurement for its use of general funds to make a grant for economic development purposes).

"Sales Tax Reporting Period" shall mean a calendar year, with the calendar year ending December 31.

"Sales Tax Reports" shall have the meaning ascribed in Section 2.G. below.

"Taxable Items" are defined by Chapter 151.010, Texas Tax Code, as amended.

"Tax Information" shall have the meaning ascribed in Section 2.G. below.

2. Economic Development Program Grant for Generating Sales Tax.

A. Grant Amount. City collects a two percent sales and use tax on taxable sales and uses within City ("City Sales Tax"). Subject to the terms, covenants, and conditions of this Agreement, City agrees to provide economic development program grant payments to Developer on an annual basis in an amount equal to fifty percent (50%) of the annual City Sales Tax generated by sales of Taxable Items Consummated at the Macy's Store, remitted to the State of Texas by Company and, in turn, received by City from the Comptroller ("Annual Sales Tax Grants"), not to exceed a cumulative total of Two Million Five Hundred Thousand Dollars (\$2,500,000) ("Sales Tax Incentive"), for a period of time which shall be the shorter of (i) until December 31, 2034, (ii) the date on which the cumulative amount of the Annual Sales Tax Grants paid to Developer by City equals Two Million Five Hundred Thousand Dollars (\$2,500,000) (it being expressly understood and agreed that the amount of City Sales Tax is being used only as a measurement for its use of general funds to make a grant for economic development purposes), or (iii) termination of this Agreement. If during any Sales Tax Reporting Period the total sales of Taxable Items Consummated at the Macy's Store is less than Fifteen Million Dollars (\$15,000,000), then City shall not pay the Annual Sales Tax Grant for such calendar year. Should the total sales of Taxable Items Consummated at the Macy's Store

be less than Fifteen Million Dollars (\$15,000,000) for two (2) consecutive Sales Tax Reporting Period, then this Agreement shall automatically terminate without further action of the Parties. If during a calendar year, the Macy's Store ceases operations or fails to operate in the manner described by Section 5.G., below, then this Agreement shall automatically terminate without further action of the Parties and no Annual Sales Tax Grant shall be paid for such calendar year.

B. Grant Payments. Subject to the continued satisfaction of all the terms and conditions of this Agreement by Developer, City agrees to provide Developer with ten (10) Annual Sales Tax Grants, not to exceed the total Sales Tax Incentive in the aggregate. The first Annual Sales Tax Grant will be for the 2025 Sales Tax Reporting Period. The Annual Sales Tax Grants shall be paid within ninety (90) days after receipt of a complete and timely Payment Request. Each Payment Request shall be submitted to City not later than December 31 of the calendar year immediately following the end of the applicable Sales Tax Reporting Period, beginning with the first Sales Tax Reporting Period. Failure to timely submit a Payment Request for a given Sales Tax Reporting Period shall operate as a forfeiture of the Annual Sales Tax Grant for such Sales Tax Reporting Period, but Developer's right to Annual Sales Tax Grants for subsequent periods shall not be affected. City shall notify Developer if a Payment Request is incomplete or if other information is necessary to approve a Payment Request, and Developer shall promptly supply any missing or necessary additional information. It shall be Developer's responsibility to obtain all information needed from Company for Developer to submit a complete and timely Payment Request. For illustration purposes, for the 2025 Sales Tax Reporting Period, the Payment Request must be submitted to City by Developer not later than December 31, 2026 and the first Annual Sales Tax Grant would be paid within ninety (90) days after receipt of a complete Payment Request. Developer acknowledges that a purpose of City's payment of the Annual Sales Tax Grants is to incentivize the continued operation of the Macy's Store. Developer shall pay the full amount of the Annual Sales Tax Grants Developer receives from City to Company within thirty (30) days of Developer's receipt of any Annual Sales Tax Grant payment.

C. Final Payment. Notwithstanding the timing for payment of Annual Sales Tax Grants by City in Section 2.B. above, the final Annual Sales Tax Grant payment may be reasonably delayed by City to confirm that all City Sales Taxes relating to the Annual Sales Tax Grants that form the basis for the Sales Tax Incentive have been distributed to City by the Comptroller and to confirm the amount of City Sales Tax actually received by City from the Comptroller.

D. Notification of Adjustments. Developer shall enter into an agreement with Company that requires Company to promptly notify Developer and City in writing of any adjustments found, determined or made by Company, the Comptroller, or by an audit which results, or will result, in either a refund or reallocation of Sales Tax Receipts or the payment of City Sales Tax or involving amounts reported by Company and subject to this Agreement. Such notification shall also include the amount of any such adjustment in City Sales Tax or Sales Tax Receipts. Developer's agreement with Company shall require Company to notify Developer and City in writing within ten (10) days after receipt of notice of the intent of the Comptroller to audit Company. Such notification shall also include the period of such audit or investigation.

E. Adjustments. In the event Company files an amended sales and use tax return or report with the Comptroller, or if additional City Sales Tax is due and owing by Company to the Comptroller or a refund or adjustment is owed to Company, as determined, or approved by the Comptroller affecting Sales Tax Receipts for a previous Sales Tax Reporting Period, then the Annual Sales Tax Grant payment to Developer for the Sales Tax Reporting Period that includes such Comptroller approved amendment shall be adjusted accordingly (i.e., up or down, depending on the facts) provided City has received or been required to pay (including as an offset to other Impositions due to City) Sales Tax Receipts attributed to such adjustment. As a condition precedent to payment of such adjustment, Developer shall provide City with a copy of any such amended sales and use tax report or return of Company and the approval thereof by the Comptroller made available to Developer under the Macy's Agreement. Copies of any amended sales and use tax return or report or notification from the Comptroller that additional City Sales Tax is due and owing by Company to the Comptroller or from the Comptroller to Company, as determined by the Comptroller, affecting Sales Tax Receipts for a previous Sales Tax Reporting Period made available to Developer under the Macy's Agreement shall be provided by Developer to City with the Payment Request from Developer for the Sales Tax Reporting Period in which Company pays or receives such amounts.

F. Termination or Suspension of Grant Payments. In the event the Comptroller seeks to invalidate Company's Macy's Store as a place of business where City Sales Tax was properly remitted to the Comptroller (the "Comptroller Challenge"), the payment of Annual Sales Tax Grants by City to Developer hereunder shall be suspended until such Comptroller Challenge is resolved in whole favorably to City. The payment of the Annual Sales Tax Grants shall terminate on the effective date of determination by the State of Texas or other appropriate agency or court of competent jurisdiction that the Macy's Store is not a place of business resulting in City Sales Tax being due City from the sale of Taxable Items by Company at the Macy's Store. In such event, Developer shall not be required to return or refund Annual Sales Tax Grants previously received from City provided Company is actively defending against and/or contesting the Comptroller Challenge and Company promptly informs City in writing of such Company actions and with copies of all documents and information related thereto. If, as a result of a Controller Challenge, Sales Tax Receipts previously paid or remitted to City relating to the Macy's Store are reversed and required to be repaid to the State of Texas, then Developer shall refund to City all amounts required to be repaid to the State within sixty (60) days after the date that the Comptroller Challenge required City to repay Sales Tax Receipts.

G. Sales Tax Reports. City and Developer agree that the Property and the Macy's Tract are located in a reinvestment zone created under Chapter 311 of the Texas Tax Code and also designate this Agreement as a "revenue sharing agreement", thereby entitling City to request annual sales and use tax information from the Comptroller, pursuant to Section 321.3022 of the Texas Tax Code, as amended. City shall request in writing that the Comptroller issue sales tax reports pursuant to Section 321.3022 for total sales of Taxable Items Consummated at the Macy's Store by Company and the payment of City Sales Tax (the "Sales Tax Reports") for each Sales Tax Reporting Period during the term hereof. If for any

reason the Comptroller is unwilling or unable to provide City with a Sales Tax Report for any Sales Tax Reporting Period, then Developer shall provide to City all sales tax returns Company filed with the Comptroller during such Sales Tax Reporting Period and evidence of filing and payment of the amount owed to the Comptroller ("Tax Information") and all information require by Section 5.H. below as made available to Developer under the Macy's Agreement.

H. Limitation on Grants. Under no circumstances shall the obligations of City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by Developer and/or Company. None of the obligations of City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

I. Recapture of Annual Sales Tax Grants. In the event Developer fails to timely pay the full amount of any Annual Sales Tax Grant to Company, (i) Developer shall repay to City the amount of such Annual Sales Tax Grant that was not paid to Company, and (ii) City may immediately terminate this Agreement. Said repayment shall occur within thirty (30) days of Developer's failure to timely make said payment to Company and said repayment obligation shall survive termination of this Agreement.

3. Current Revenue. The Sales Tax Incentive, consisting of Annual Sales Tax Grants made hereunder shall be paid solely from lawfully available funds pursuant to Texas Constitution Article II, Section 52-a, and Texas Local Government Code Chapter 380. Consequently, notwithstanding any other provision of this Agreement, City shall have no obligation or liability to pay any Annual Sales Tax Grants except as allowed by law. The City shall not be required to pay any Annual Sales Tax Grants if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

4. Indemnification. THE DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD CITY AND ITS RESPECTIVE OFFICERS, OFFICIALS, REPRESENTATIVES, CONSULTANTS, AGENTS AND EMPLOYEES (COLLECTIVELY FOR THE PURPOSE OF THIS SECTION, THE "CITY") HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEYS' FEES, COSTS, EXPENSES, AND DEMANDS BY THE STATE OF TEXAS THAT THE CITY HAS BEEN PAID ERRONEOUSLY, OVER-PAID OR INCORRECTLY ALLOCATED SALES TAX RECEIPTS ATTRIBUTED TO THE SALE OF TAXABLE ITEMS BY COMPANY CONSUMMATED AT THE MACY'S STORE FOR ANY PERIOD DURING THE TERM OF THIS AGREEMENT OR DURING ANY SALES TAX REPORTING PERIOD (COLLECTIVELY, A "CLAIM") IT BEING THE INTENTION OF THE PARTIES THAT DEVELOPER SHALL BE RESPONSIBLE FOR THE REPAYMENT OF ANY ANNUAL SALES TAX GRANTS PAID TO DEVELOPER HEREIN BY CITY THAT INCLUDES SALES TAX RECEIPTS THAT THE STATE OF TEXAS HAS DETERMINED WERE PAID ERRONEOUSLY, COLLECTED, DISTRIBUTED, OR ALLOCATED TO THE CITY. THIS INDEMNIFICATION SHALL NOT APPLY TO ANY

LIABILITY RESULTING SOLELY FROM THE ERRORS OR OMISSIONS OF THE CITY OR THE STATE OF TEXAS. THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND DO NOT CREATE ANY OBLIGATIONS FROM OR GRANT ANY CONTRACTUAL OR OTHER RIGHTS TO ANY OTHER PERSON OR ENTITY, OTHER THAN OBLIGATIONS, IF ANY, OF DEVELOPER TO CITY TO PERFORM OBLIGATIONS CREATED BY THIS SECTION.

5. City's Obligation to Pay. In addition to, and notwithstanding, any other requirements stated in this Agreement, City's obligation to pay any Annual Sales Tax Grant is also expressly contingent upon the following material terms (collectively the "Conditions Precedent"):

- A. The City shall not have sent notice to Developer of a default under this Agreement or any Related Agreement that remains uncured beyond any applicable cure period; and
- B. No Event of Bankruptcy or Insolvency shall have occurred; and
- C. The City Sales Tax generated by the Macy's Store is actually received by City from the State of Texas as needed to provide such Annual Sales Tax Grant; and
- D. Developer shall timely submit complete Payments Requests to City; and
- E. No uncured default of this Agreement shall be pending at the time such payment is to be made; and
- F. Developer shall be in compliance with each covenant of Developer listed in Section 6 below; and
- G. During the term of this Agreement, the Macy's Store (i) shall not be used for any purpose other than a retail, first-class department store known as "Macy's" that is open to the public for shopping at least fifty-three (53) hours each week, (ii) shall not be an outlet store, including but not limited to Macy's Backstage, and (iii) the operation and occupancy of the Macy's Store as a retail, first-class department store shall not cease for more than thirty (30) consecutive days except in connection with, and to the extent of an event of a casualty to the Macy's Store preventing use as a retail, first-class department store, or a temporary cessation to remodel or modernize the Macy's Store; and
- H. As a condition to the payment of each Annual Sales Tax Grant hereunder, City shall have received a Sales Tax Certificate for the applicable Sales Tax Reporting Period for which payment of an Annual Sales Tax Grant is requested. City shall have no duty to calculate the Sales Tax Receipts or determine the entitlement of Developer to any Annual Sales Tax Grant, or pay any Annual Sales Tax Grant

during the term of this Agreement until such time as the Comptroller, Developer or Company have provided a Sales Tax Certificate and Developer has provided a Payment Request for the applicable Sales Tax Reporting Period. City may, but is not required to, provide Developer and/or Company with a form for the Sales Tax Certificate required herein in the event the Comptroller does not provide a Sales Tax Certificate. At the request of City, Developer shall cause Company to provide such additional documentation as may be reasonably requested by City to evidence, support and establish the Sales Tax Receipts (including City Sales Tax paid directly to the State of Texas pursuant to a direct payment permit) received by City from the State of Texas. The Sales Tax Certificate and Payment Request shall at a minimum contain, include or be accompanied by the following:

- i. Schedules which show the amount of total sales and purchases of Taxable Items by Company Consummated at the Macy's Store for the applicable Sales Tax Reporting Period, and the amount of City Sales Tax collected and paid to the State of Texas as a result of the sale or purchase of Taxable Items by Company Consummated at the Macy's Store for the applicable Sales Tax Reporting Period; and
- ii. A copy of all Tax Information, returns and reports, sales and use tax prepayment returns, direct payment permits and reports, including amended sales and use tax returns or reports, filed by Company for the applicable Sales Tax Reporting Period showing the City Sales Tax collected or paid (including sales and use tax paid directly to the State of Texas pursuant to a direct payment certificate) by Company for the sale or purchase of Taxable Items Consummated at the Macy's Store; and
- iii. A copy of all direct payment and self-assessment returns, if any, including amended returns, filed by Company for the applicable Sales Tax Reporting Period showing the City Sales Tax paid for the sale or purchase of Taxable Items Consummated at the Macy's Store; and
- iv. Information concerning any refund or credit received by Company of the City Sales Taxes paid or collected by Company which has previously been reported by Company as Sales Tax Receipts.

Company may redact from any document provided to the Developer for submission to the City as part of a Sales Tax Certificate or Payment Request any information that is not relevant or related to the Sales Tax Receipts; and

- I. Company shall have and maintain a certificate of occupancy for the Macy's Store; and
- J. Company shall operate the Macy's Store as required herein and in accordance with all applicable ordinances of the City; and

- K. No Impositions owed by Developer or Company, and no Impositions owed for the Property or Macy's Tract, shall be in arrears other than by reason of pending appeals; and
- L. Company shall timely file all sales tax returns required under Texas law to be filed with the Comptroller and timely pay all amounts due as reflected on such tax returns; and
- M. Neither Developer nor Company shall have received (i) a notice of violation of the City's Code of Ordinances for which the remedy or repair of the code violation was not completed by the deadline stated in the notice of violation, or (ii) a citation for violation of the City's Code of Ordinances and failed to remedy or repair the code violation within fifteen (15) days from the date the citation was issued, unless Developer and/or Company was found not guilty of the cited offense in court; and
- N. Developer shall have provided City a complete Certificate of Compliance for the Annual Sales Tax Grant payment sought.

Developer acknowledges and agrees that the above material terms must be met for City to pay each Annual Sales Tax Grant, even though some items are contingent on Company, as a third-party and not a Party to this Agreement, which Developer does not control.

6. Covenants of Developer. Developer covenants and agrees with City that, while this Agreement is in effect, Developer will comply or cause compliance with the following terms and conditions, which are material terms to this Agreement:

- A. Developer shall not have an uncured breach of this Agreement or a Related Agreement; and
- B. The City shall not have sent notice to Developer of a default under this Agreement or any Related Agreement that remains uncured after the applicable cure period; and
- C. No Impositions owed by Developer shall be in arrears other than by reason of pending appeals; and
- D. No Impositions owed for the Property shall be in arrears other than by reason of pending appeals; and
- E. No Impositions owed for the Macy's Tract shall be in arrears other than by reason of pending appeals; and

- F. Developer shall maintain the Property in compliance with the City's Code of Ordinances; and
- G. Developer shall provide each year's Annual Sales Tax Grant received by Developer to Company within thirty (30) days of Developer's receipt of such Annual Sales Tax Grant payment; and
- H. Developer shall use commercially reasonable efforts to enforce all material provisions of the Macy's Agreement.
- I. Developer shall not have an Event of Bankruptcy or Insolvency.

7. **Materials and Supplies Purchase.** Although not a condition to this Agreement, City requests that Developer use commercially reasonable efforts, when feasible, to purchase materials, supplies and services from Mesquite merchants and businesses.

8. **Termination and Events of Default.** This Agreement terminates on the Expiration Date, and may, prior to the Expiration Date, be terminated, either immediately or after the required notice, upon any one or more of the following:

A. **Events of Default.**

(i) Developer defaults or breaches any of the terms, covenants, or conditions of this Agreement or a Related Agreement and such default or breach is not cured within thirty (30) days after written notice thereof or, if such default or breach cannot reasonably be cured with a thirty-day period, Developer shall not have commenced such cure with such thirty-day period and thereafter diligently prosecuted such cure to completion in a commercially reasonable manner;

(ii) any Impositions shall have become delinquent (provided, however, Developer and Company each retain the right to timely and properly protest and contest any such Impositions, and no Imposition shall be considered delinquent during the period of any dispute resolution process) and remain delinquent for more than fifteen (15) days after City sends a notice of termination; and

(iii) an Event of Bankruptcy or Insolvency shall have occurred.

B. **Other Terminations**

(i) by mutual written agreement of the Parties;

(ii) by any Party if any subsequent Federal or State of Texas legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable;

(iii) by City immediately if any false documentation is submitted by Developer with any Payment Request;

(iv) by City, if at any time during the term of this Agreement: (a) the Macy's Store shall be used for any purpose other than a retail, first-class department store known as "Macy's" that is open to the public for shopping at least fifty-three (53) hours each week, (b) the Macy's Store shall be an outlet store, including but not limited to Macy's Backstage, (c) the operation and occupancy of the Macy's Store as a retail, first-class department store shall cease for more than thirty (30) consecutive days except in connection with, and to the extent of an event of a casualty to the Macy's Store preventing use as a retail, first-class department store, or a temporary cessation to remodel or modernize the Macy's Store, (d) the Macy's Store has any applicable certificates of occupancy revoked or expired, or (e) the Macy's Store is not operated in accordance with all applicable City ordinances.

(v) by the City immediately upon the filing by Developer or Company of any lawsuit against the City, excluding a lawsuit to enforce this Agreement.

9. Existence; Authority.

A. Developer represents and warrants that: (1) it has sufficient legal authority to conduct business in the State of Texas; (2) it has full capacity and authority to grant all rights and assume all obligations that it has granted and assumed under this Agreement; and (3) that the person or persons executing this Agreement on its behalf has been duly authorized to do so.

B. City represents and warrants that it has full capacity and authority to grant all rights and assume all obligations that it has granted and assumed under this Agreement; and that the person or persons executing this Agreement on its behalf has been duly authorized to do so.

10. Force Majeure. Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Agreement, and time shall be of the essence in such performance; however, in the event a Party is unable, due to Force Majeure, to perform its obligations under this Agreement, then the obligations affected by the Force Majeure shall be temporarily suspended. Within ten (10) days after the occurrence of a Force Majeure, the Party claiming the right to temporarily suspend its performance, shall give notice to all the Parties that includes a detailed explanation of the Force Majeure, a description of the action that will be taken to remedy the Force Majeure and resume full performance at the earliest possible time, and the length of time needed to resume full performance. Any other Party may object in writing to the length of time claimed to be needed to resume performance by the Party suffering the event of Force Majeure if it provides a commercially reasonable explanation regarding how full performance could be reasonably resumed at an earlier date, in which case full performance shall resume at the earlier date.

11. Limitation of Liability. Upon the occurrence of a City default that has continued uncured beyond any applicable grace or cure period, Developer shall have the right as its sole remedies to (a) terminate this Agreement by written notice to 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 City the amount of any Annual Sales Tax Grants or City's cost participation for the Project then earned and owed by City as damages in accordance with the following provisions. The City and Developer acknowledge and agree that this Agreement is not a contract for goods or services and City's immunity from suit is not waived pursuant to Subchapter I of Chapter 271, V.T.C.A., Local Government Code, as amended. Alternatively, if and only in the event a court of competent jurisdiction determines City's immunity from suit is waived under Subchapter I of Chapter 271, V.T.C.A., Local Government Code, or otherwise, the Parties hereby acknowledge and agree that in a suit against City for breach of this Agreement or otherwise to recover damages:

- A. the total amount of damages, if any, awarded against City shall be limited to actual damages in an amount of the Annual Sales Tax Grants or City's cost participation for the Project earned by Developer and due and payable by City under this Agreement, not to exceed the maximum amount of the Sales Tax Incentive and City's cost participation for the Project, less the amount of all Annual Sales Tax Grants or City's cost participation for the Project payments previously paid by City to Developer;
- B. any Annual Sales Tax Grants or City's cost participation for the Project past due and not paid following the required notice and cure period shall accrue interest at the rate of four percent (4%) per annum beginning the day after expiration of the cure period until paid; and
- C. the recovery of damages against City shall not include attorneys' fees or consequential, punitive, exemplary, or speculative damages including, but not limited to, lost profits.

12. Binding Agreement; Assignment. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, affiliates, administrators, executors, and permitted assigns of the respective Parties. This Agreement may not be assigned by any Party, except Developer may assign this Agreement to Company. Each such assignment shall be in writing executed by Developer and Company and shall obligate Company to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title or interests being assigned to Company and shall prohibit the further assignment of this Agreement by Company without the written consent of City. No assignment by Developer shall release Developer from any liability that resulted from an act or omission by Developer that occurred prior to the effective date of the assignment unless the City approves the release in writing. Developer shall maintain written records of all assignments made by Developer to Company, including a copy of each executed assignment and Company's notice information as required by this Agreement, and, upon written request from City, shall provide a copy of such records to City. Notwithstanding all of the foregoing, Developer's covenants and obligations provided in Sections 6.A., B., C., D., F., H. and I of this Agreement cannot be assigned to Company and remain binding upon Developer and enforceable under this Agreement in the event of any assignment to Company.

This Agreement is not intended to benefit any third party, including but not limited to Company, and no third-party beneficiary is established hereunder.

13. Employment of Undocumented Workers.

- A. Covenant Not to Employ Undocumented Workers. Developer hereby certifies that Developer and each branch, division, and department of Developer does not employ any Undocumented Workers and Developer hereby covenants and agrees that Developer and each branch, division, and department of Developer will not knowingly employ any Undocumented Workers during the term of this Agreement.
- B. Covenant to Notify City of Conviction for Undocumented Workers. Developer further hereby covenants and agrees to provide City with written notice of any conviction of Developer, or a branch, division, and department of Developer, of a violation under 8 U.S.C. §1324a(f) within thirty (30) days from the date of such conviction.
- C. Repayment of Economic Development Incentives in Event of Conviction for Employing Undocumented Workers. If, after receiving the Annual Sales Tax Grants under the terms of this Agreement, Developer, or a branch, division, and department of Developer, is convicted of a violation under 8 U.S.C. §1324a(f), Developer shall pay to City, not later than the 120th day after the date City notifies Developer of the violation, an amount equal to the amount of the Annual Sales Tax Grants previously paid by City to Developer under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the maximum lawful rate; or (ii) five percent (5%) per annum, such interest rate to be compounded annually and calculated on the amount of the Annual Sales Tax Grants being recaptured from the date each payment of the Annual Sales Tax Grants was paid by City to Developer until the date repaid by Developer to City and such interest rate shall adjust periodically as of the date of any change in the maximum lawful rate.
- D. Limitation on Economic Development Incentives. City shall have no obligation to pay any of the Annual Sales Tax Grants, or to perform any other obligations hereunder, to Developer if Developer, or a branch, division, and department of Developer, is convicted of a violation under 8 U.S.C. §1324a(f).
- E. Remedies. City shall have the right to exercise all remedies available by law to collect any sums due by Developer to City pursuant to this Section 13 including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.
- F. Limitation. Developer is not liable for a violation of Section 13 of this Agreement by a subsidiary, affiliate, or franchisee of Developer, or by a person with whom Developer contracts.

- G. Survival. The terms, provisions, covenants, agreements and obligations of Developer and the rights and remedies of City set forth in Section 13 of this Agreement shall expressly survive the expiration or termination of this Agreement.

14. Offsets. If Developer is in default under this Agreement beyond any applicable notice and cure periods, City may, at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from Developer or Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement, or otherwise, and regardless of whether or not the debt due City has been reduced to judgment by a court. If City exercises this right of offset, City shall provide Developer with a detailed accounting of funds setting forth: (i) the amounts due under this Agreement, (ii) what portion of those amounts due under this Agreement were used to pay other debts due and payable to City, and (iii) what other debts were paid and in what amounts. As conditions precedent to the exercise of any right of offset, (i) City shall provide Developer notice at least thirty (30) days prior to offsetting any debt determined to be due to City from Developer or Company and stating that City intends to offset amounts due and payable under this Agreement against such debts; (ii) Developer shall have an opportunity to resolve or pay such debt to City within thirty (30) days after receipt of notice before any offset to amounts payable under this Agreement may occur; and (iii) Developer retains all rights to timely and properly contest whether or in what amount any debt is owed to City; and City may not offset any asserted amount of debt owed by Developer or Company against amounts due and owing under this Agreement during any period during which Developer or Company is timely and properly contesting whether such amount of debt is due and owing; provided, however, City may withhold any Annual Sales Tax Grant payment otherwise owing to Developer at such time, to the extent of the debt then being contested by Developer, until a final determination has been rendered in such contest (at which time such Annual Sales Tax Grant payment shall be offset and/or paid to Developer, as appropriate pursuant to this paragraph).

15. Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received as sent by courier or otherwise hand delivered. The City shall send to Company a copy of any notice that City is required to send to Developer pursuant to this Agreement.

If to City:	City Manager City of Mesquite 1515 N. Galloway Ave. Mesquite, Texas 75149
and to:	City Attorney City of Mesquite 1515 N. Galloway Ave. Mesquite, Texas 75149
and to:	Julie Fort Messer Fort, PLLC 6371 Preston Rd., Ste. 200 Frisco, TX 75034
If to Developer:	Town East Mall, LLC c/o Brookfield Properties 350 North Orleans Street – Suite 300 Chicago, Illinois 60654 Attention: Legal Real Estate

16. Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the Sales Tax Incentives. Other than any Related Agreements, there are no other collateral oral or written Agreement among the Parties that in any manner relates to the subject matter of this Agreement.

17. Governing Law. The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and exclusive venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. Developer and Company each agree to submit to the personal and subject matter jurisdiction of said court.

18. Amendment. This Agreement may be amended by the mutual written agreement of the Parties.

19. Recitals. The recitals to this Agreement are incorporated as if fully set forth herein and relied upon by the Parties in deciding to enter into this Agreement.

20. Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

21. **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.

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

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

24. **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.

25. **Sovereign Immunity.** No Party hereto waives any statutory or common law right to sovereign or governmental immunity by virtue of its execution hereof.

26. **No Permit.** This Agreement does not constitute a permit pursuant to Chapter 245 of the Texas Local Government Code and/or any City code or regulation and does not vest any rights to Developer pursuant thereto. City does not, by entering into this Agreement, concede or agree that there are any Developer rights or obligations arising under Chapter 245 of the Texas Local Government Code and City reserves all rights and defenses against any such assertion.

27. **WAIVER OF CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES.** DEVELOPER AND CITY AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, EACH PARTY MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS. THIS SUBSECTION SHALL EXPRESSLY SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

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

29. **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

30. Anti-Boycott Verification. Developer hereby verifies that it and its parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, if and to the extent this Agreement is constructed to be a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, but only to the extent such section is applicable, and to the extent such section does not contravene applicable federal law. As used in foregoing verification, ‘boycott Israel’ means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Developer understands “affiliate” as used in this Section 30 to mean an entity that controls, is controlled by, or is under common control with Developer and exists to make a profit.

31. Iran, Sudan and Foreign Terrorist Organizations. Developer represents that neither Developer, nor its parent company, wholly-or majority-owned subsidiaries, and other affiliates are a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>,
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such section does not contravene applicable federal law and excludes Developer and each of Developer’s parent company, wholly-or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. Developer understands “affiliate” as used in this Section 31 to mean any entity that controls, is controlled by, or is under common control with Developer and exists to make a profit.

32. Firearms. Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if Developer employs at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the governmental entity, Developer represents that: (1) Developer does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) Developer will not discriminate during the term of the Agreement against a firearm entity or firearm trade association.

33. Energy Boycott. Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if Developer is a company with at least ten (10) or more full-time employees and this Agreement has a value of at least \$100,000 or more that is paid wholly or partly from public funds of the governmental entity, Developer represents that: (1) Developer does not

boycott energy companies; and (2) will not boycott energy companies during the term of the Agreement.

34. Form 1295 Certificate. Developer represents that it has complied with Texas Government Code, Section 2252.908 and in connection therewith, Developer has completed a Texas Ethics Commission Form 1295 Certificate generated by the Texas Ethics Commission's electronic filing system in accordance with the rules promulgated by the Texas Ethics Commission. Developer further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to City at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate. The Parties agree that, except for the information identifying City and the contract identification number, City is not responsible for the information contained in the Form 1295 completed by Developer. The information contained in the Form 1295 completed by Developer has been provided solely by Developer, and City has not verified such information.

IN WITNESS WHEREOF, the Parties hereby have executed this Agreement as of the day and year first set forth above.

CITY:

THE CITY OF MESQUITE, TEXAS,
a municipal corporation

By: _____
Name: _____
Its: _____

DEVELOPER:

TOWN EAST MALL, LLC,
a Delaware limited liability company

By: _____
Authorized Signatory

EXHIBIT A

Developer Owned Property at Town East Mall Depicted in Green



EXHIBIT B

Macy's Tract at Town East Mall Property Depicted in Green

