

RESOLUTION NO. 44-2025

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 ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT (“AGREEMENT”) FOR SUCH PURPOSES BY AND BETWEEN THE CITY OF MESQUITE (“CITY”) AND SRB MESQUITE, LLC, A TEXAS LIMITED LIABILITY COMPANY (“COMPANY”), AND GRANTING TO THE COMPANY 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 SRB Mesquite, LLC, a Texas limited liability company (“**Company**”), to facilitate the commercial development of an 18.6513-acre parcel of land and redevelopment of an existing building at 1738 North Town East Boulevard, as part of the Town East Mall and formerly occupied by Sears, a copy of said agreement being attached hereto as **EXHIBIT 1** and incorporated herein by reference (the “**Agreement**”); and

WHEREAS, the City Council is also considering approval of Planned Development Zoning for the Property on October 6, 2025, including allowing conference centers, major reception facilities, hotels, parking garages, governmental or municipal sponsored uses, and uses permitted by right in the Commercial Zoning District, which was approved by the Planning and Zoning Commission on September 22, 2025; and

WHEREAS, the Agreement requires the Company to construct a 58,000-square-foot Main Event brand family entertainment business within the former Sears building, opening by December 31, 2026, and with a 10-year lease; and

WHEREAS, the Company plans to develop outparcels on the Property and conduct extensive site redevelopment including pavement, landscaping, lighting, signage, and amenities to create a more aesthetically pleasing and walkable development; and

WHEREAS, the Agreement requires the Company to make a minimum capital investment of \$25M by July 1, 2027, with at least three new outparcel sites prepared for development; and

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WHEREAS, the City will provide an incentive equal to one-cent of the City's sales tax generated by any qualifying businesses built on the tract by December 31, 2030. The Agreement requires that the total sales taxes paid to the City be at least \$100,000 in year one, \$150,000 in year two, and \$200,000 in years three through ten of the Agreement to qualify for the sales tax incentive; and

WHEREAS, a cash grant incentive of up to \$500,000 is also available to the Company, should the Company secure a five-year lease for a minimum 6,000-square-foot Vidorra branded restaurant within the former Sears building by July 1, 2026 and spend at least \$1,000,000 in costs finishing out the Vidorra lease space; 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 **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

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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.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 6th day of October 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

A NEW ECONOMIC DEVELOPMENT CHAPTER 380 PROGRAM AGREEMENT

BETWEEN

THE CITY OF MESQUITE

AND

SRB MESQUITE, LLC

CHAPTER 380 ECONOMIC DEVELOPMENT & PERFORMANCE AGREEMENT

This Chapter 380 Economic Development & Performance Agreement (“**Agreement**”) is made and entered into by and between the City of Mesquite, a Texas home rule municipality (“**City**”), and SRB Mesquite, LLC, a Texas limited liability company (“**Company**”), for the purposes and considerations stated below:

W I T N E S S E T H:

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

WHEREAS, the City and the Company may each hereafter be referred to as a “**Party**,” and may collectively be referred to as the “**Parties**” to this Agreement; and

WHEREAS, the City Council of the City of Mesquite, Texas (“**City Council**”) has investigated and determined that it is in the best interest of the City and its citizens to encourage economic development programs, including programs for making loans and grants of public money, to promote local economic development and stimulate business and commercial activity in the City pursuant to Chapter 380, Texas Local Government Code, as amended (“**Chapter 380**”); and

WHEREAS, Texas Local Government Code Section 380.001 and Article III, Section 52-a, of the Texas Constitution authorizes the City to establish an economic development program and the City hereby establishes such a program whereby, in exchange for Company’s performance of obligations as further described in this Agreement, the City agrees to grant public monies to Company in the form of incentives to advance the public purposes of stimulating business and commercial activity in the City, developing and diversifying the City’s economy, reducing City and State unemployment or underemployment by creating employment opportunities, adding taxable improvements to real property in the City, and expanding commerce to and through the City; and

WHEREAS, Company currently owns an approximately 18.6513 acre parcel of land and improvements situated thereon constituting a part of Town East Mall, an indoor retail mall, located at 1738 N. Town East Blvd., Mesquite, Texas 75150, and being more particularly described and depicted in **Exhibit A** attached hereto and incorporated herein by reference (“**Property**”); and

WHEREAS, the Property includes the former Sears store anchor building and auto repair store at Town East Mall; Sears is now out of business and the buildings have been vacant for the past few years; and

WHEREAS, a major renovation and redevelopment of the Property consisting of substantial improvements and upgrades and additional pad sites is necessary in order to make the Property attractive to new retail and restaurant tenants resulting in increased property values and sales taxes and to improve the overall performance of Town East Mall; and

WHEREAS, the Company is considering making a major renovation and redevelopment of

the Property and intends to materially remodel the Sears Building, demolish the Sears auto building and create new pad sites for additional development on the Property as more particularly described herein; and

WHEREAS, the Company has advised the City that a contributing factor inducing the Company to make the improvements provided herein is the 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 the Property will substantially increase the taxable value of the Property thereby adding value to the City's tax rolls and increasing the ad valorem real property taxes and sales taxes to be collected by the City, along with increasing employment opportunities in the City and improving the overall performance of Town East Mall; and

WHEREAS, the City Council has investigated and determined that the Company's project qualifies for economic development incentives and grants under the Chapter 380 Program established by the City in this Agreement ("**Program**"); and

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

WHEREAS, the City Council finds and determines that the renovation and redevelopment of the Property will benefit the City and its citizens and advance a public purpose of the City because, *inter alia*, the renovation and redevelopment of Town East Mall 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 intersection in the City; (iii) increase the productive life and the taxable value of the building and improvements constituting the Property thereby adding value to the City's tax rolls and increasing the ad valorem taxes to be collected by the City; and (iv) maintain and attract new retail tenants to the Property and Town East Mall which will: (a) increase the taxable value of inventory and business personal property at the Property thereby adding further 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

The foregoing recitals are hereby incorporated into the body of this Agreement 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:

“Additional Municipal Sales Taxes” means all sales taxes now and hereafter authorized, adopted, imposed or collected by or on behalf of the City pursuant to §321.101(b) of the Texas Tax Code, as amended 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 or granting of economic development incentives.

“Agreement” shall mean this agreement together with all exhibits attached hereto and incorporated herein by reference.

“Capital Improvements” shall mean any redevelopment, renovations, replacements, upgrades and other alterations, changes, modifications, additions and/or physical improvements to the Property commenced after the Effective Date and completed on or before December 31, 2030, including, without limitation, the items more particularly described in **Exhibit B** attached hereto. The term Capital Improvements will not include (1) routine maintenance, costing less than \$10,000.00, and performed as part of a single project, (2) land acquisition costs, or (3) business personal property including, but not limited to, furniture, fixtures and equipment. The term Capital Improvements will include any such Capital Improvements made by or on behalf of any Tenants.

“Capital Investment” shall mean expenditures that are capital in nature and made on Capital Improvements by or on behalf of the Company or Tenants. The term Capital Investment excludes any sums expended by Company in connection with (a) the development and construction of a hotel and/or parking garage on the Property, and (b) development and construction of any City-affiliated uses on the Property. The term Capital Investment also excludes the amount of capital expenditures made by Company for improving the Vidorra lease space for which Company receives the Capital Investment Reimbursement paid by the City to Company.

“Capital Investment Certificate” shall mean a report and certificate in such forms as is reasonably acceptable to the City executed on behalf of the Company by a duly authorized Company Representative certifying to the City the amount of the Capital Investment made by or on behalf of the Company or any Tenants.

“Capital Investment Reimbursement” shall mean the incentive, if any, paid by the City to Company equal to one-half (1/2) of Company’s cost to finish-out the lease space occupied by Vidorra, said incentive amount not to exceed Five Hundred Thousand and 00/100 Dollars (\$500,000) under any circumstances and regardless of whether Company’s costs exceed One Million and 00/100 Dollars (\$1,000,000.00).

“Certificate of Compliance” shall mean a certificate in such form as is reasonably acceptable to the City executed on behalf of the Company by a duly authorized Company Representative certifying to the City: (i) that to the knowledge of the Company all applicable Conditions

Precedent at the time of presentation of the Certificate of Compliance, have been satisfied and are continuing and (ii) 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 of the Company.

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

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

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

“City Manager” shall mean the City Manager of the City.

“City Sales Tax” and “City Sales Taxes” shall mean the municipal sales taxes collected by or on behalf of the City for general fund uses 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 (a) the State of Texas Sales Taxes, and (b) any Additional Municipal Sales Taxes.

“Company” shall mean SRB Mesquite, LLC, a Texas limited liability company, its successors and assigns only as permitted by this Agreement.

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

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

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

“Effective Date” January 1, 2025.

“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 circumstance. An Event of Force Majeure must satisfy each of the above requirements and includes but is not limited to lightning, floods, ice storms, hurricanes, tornadoes, earthquakes, natural disasters, acts of God, explosions, fires, war, terrorism, and civil disturbance. Notwithstanding the foregoing, an Event of Force Majeure does not include any financial or economic hardships, changes in market or economic conditions, 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 Main Event Vacancy” shall have the meaning ascribed in Section 6.6 hereof.

“Excused Vidorra Vacancy” shall have the meaning ascribed in Section 8.5 hereof.

“Incentive Payment” shall mean the actual payment of any Sales Tax Incentive or Capital Investment Reimbursement by the City to the Company as set forth in this Agreement.

“Incentive Tax Period” shall mean the following periods of time during the Term: (a) the period of time occurring between and including the date Main Event is first Open for Business to and including the date that is 364 days thereafter; and (b) each of the nine (9) year periods thereafter, each starting on and including the first day following the end of the period described in subsection (a) of this definition and ending on and including the day that is 364 days (or 365 days during a leap year) thereafter. For clarity, there are ten (10) Incentive Tax Periods that run consecutively for a total of ten (10) years, each Incentive Tax Period consisting of 365 days (or 366 days during a leap year). The first Incentive Tax Period starts the day Main Event is first Open for Business and the last Incentive Tax Period will end on the day that is ten (10) years after the first day of the first Incentive Tax Period.

“Main Event” shall mean an entertainment and restaurant venue branded as “Main Event” (or such other trade name then being used by the Tenant from time to time) being Open for Business and occupying a minimum of 58,000 square feet of the first floor of the Sears Building under a lease with Company with a minimum term of ten (10) years.

“Main Event Vacancy” shall mean any period Main Event is not Open for Business in the Sears Building, excluding (i) temporary closures of the Main Event space during any construction, reconstruction, remodeling and the like of any of the Main Event improvements to the extent it is not commercially practicable for Main Event to be Open for Business; or (ii) an Excused Main Event Vacancy.

“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).

“Minimum Capital Investment” shall have the meaning provided in Section 6.1 of this Agreement.

“Minimum Net City Sales Taxes” means: (a) \$100,000 for the first Incentive Tax Period; (b) \$150,000 for the second Incentive Tax Period; and (c) \$200,000 for each of the remaining eight (8) Incentive Tax Periods.

“Net City Sales Taxes” means the City Sales Taxes collected by or on behalf of the City arising from sales of Taxable Items at or from or on the Property less the collection fee retained by the State Comptroller (currently two percent (2%)) and less any credits for returned items (it being expressly understood that the Net City’s Sales Taxes is being used only as a measurement for the City’s participation through the use of lawfully available funds). “Net City Sales Taxes” must arise from uses that began initial operations on the Property under a Certificate of Occupancy issued by the City on or after January 1, 2025, and on or before December 31, 2030 in compliance with this Agreement. “Net City Sales Taxes” exclude any Sales Tax Collections resulting from (a) operation of a hotel and/or parking garage on the Property, or (b) operation of any City-affiliated uses on the Property.

“Open for Business” shall mean the business is fully operating with a valid CO, open to the public during its normal business hours, and serving customers at the Property except (i) during Federal Holidays, (ii) during construction, reconstruction, remodeling and the like of any improvements, and (iii) during an Excused Main Event Vacancy.

“Party” and “Parties” shall have the meanings set forth in the Recitals to 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 goods sold or services provided by a Tenant of leased space on the Property that generate more than forty percent (40%) of the total sales of such Tenant on an annual basis.

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

“Property” shall mean the real property and improvements described and depicted in **Exhibit A** attached hereto and made a part hereof for all purposes.

“Property Tax Relief Taxes” means 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.

“Request for Payment” means written correspondence addressed to the City at the notice address provided herein identifying the Incentive Payment requested and the Tax Incentive Year.

“Sales Tax Collections” means the amount of Net City Sales Taxes the City actually recovers from the Texas Comptroller of Public Accounts, generated by Tenants on the Property during any Incentive Tax Period as provided in this Agreement.

“Sales Tax Incentive” means the City’s qualifying Incentive Payment to Company for the amount of Sales Tax Collections occurring during an Incentive Tax Period as provided in this Agreement.

“Sears Building” means the currently vacant two-story building on the Property and connected to Town East Mall.

“State of Texas Sales Taxes” means 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 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.

“Suitable Replacement Tenant” shall mean (a) with respect Main Event a national and/or regional tenant(s), (1) occupying and operating as a single user within a minimum of 58,000 square feet in the Sears Building, and (2) for a use that is consistent with uses found at other first-class shopping centers in Texas, including, but not limited to, retail sale of hard and soft goods, entertainment uses, health clubs and fitness uses, recreational uses, and restaurants and food uses, but excluding all other service providers, and (b) with respect to Vidorra a table service restaurant (i.e., not fast food nor fast casual, but instead a restaurant where patrons are seated, provided a menu, orders are made from where the patrons are seated and food is delivered to the patron’s seating area) occupying and operating as a single user within a minimum of 6,000 square feet in the Sears Building.

“Taxable Item” shall have the same meaning assigned by §151.010 and §151.0101 of the Texas Tax Code, as may be amended.

“Tenants” shall mean any tenants or other owners/occupants on the Property under lease, license, deed, or other written agreement.

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

“Texas Comptroller” or “CPA” means the comptroller of public accounts of the State of Texas whose duties include the collection and disbursement of sales and use taxes in accordance with Ch. 403 of the Texas Government Code.

“Type B Sales Taxes” means the municipal sales taxes authorized, adopted, imposed or collected by or on behalf of the City pursuant to §321.101(b) of the Texas Tax Code, as amended 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 or replaced, and shall also include any other sales taxes now or hereafter authorized, adopted, imposed or collected by or on behalf of the City for use by any other Type B economic development corporation hereafter created by 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.

“Vidorra” shall mean a restaurant branded as “Vidorra” being Open for Business on or before July 1, 2027 and occupying a minimum of 6,000 square feet of the first floor of the Sears Building under a lease with Company with a minimum term of five (5) years. For illustration purposes only, Vidorra’s current business operations are described in more detail on its website: <https://vidorracocina.com/>.

“Vidorra Vacancy” shall mean any period Vidorra is not Open for Business in the Sears Building, excluding (i) temporary closures of the Vidorra space during any construction, reconstruction, remodeling and the like of any of the Vidorra improvements to the extent it is not commercially practicable for Vidorra to be Open for Business; or (ii) an Excused Vidorra Vacancy.

ARTICLE III

Authority for Agreement and Available Funds

3.1 Authority. 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 the Property because, among other things, such renovation and redevelopment 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 restaurant and retail area in the City; (iii) increase the productive life and the taxable value of the Sears Building thereby adding value to the City’s tax rolls and increasing the ad valorem taxes to be collected by the City; and (iv) attract new tenants to the Property and Town East Mall which will: (a) increase the taxable value of inventory and business personal property at the Property and Town East Mall 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.

3.2 Funds Available for Incentive Payment. The Incentive Payments 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. Any Incentive Payment 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(s) is to be made.

ARTICLE IV

Term

The Term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) ten (10) years after the date Main Event is first Open for Business; (ii) the date of the City’s payment of the final Incentive Payment owed to Company under this Agreement; or (iii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein (“**Term**”). Notwithstanding the foregoing, in the event this Agreement is not fully executed within sixty (60) days after approval by the City Council, then

this Agreement shall be null and void and shall have no effect on either Party. This Agreement may be terminated by the City if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement, or any material part thereof, invalid, illegal or unenforceable. Company shall notify City in writing of the date Main Event is first Open for Business.

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 Payments in Event of Conviction for Employing Undocumented Workers. If, after receiving any Incentive 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 120th day after the date the City notifies the Company of the violation, an amount equal to the total amount of all Incentive Payment 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 Payment from the date each such Incentive 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 Payment Payments. The City shall have no obligation to make any Incentive Payment 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 Payment or termination of this Agreement.

ARTICLE VI

Conditions Precedent to Payment of Sales Tax Incentive

The City and Company each agree that as a condition precedent to the receipt by Company of any Sales Tax Incentive pledged by the City, Company covenants, warrants and agrees that each and every of the following performance requirements and conditions which represent material obligations of this Agreement must have timely occurred and, if applicable, be then existing (each a “**Condition Precedent**” and collectively the “**Conditions Precedent**”):

6.1 Minimum Capital Investment. “**Minimum Capital Investment**” shall mean that on or before July 1, 2027, Company shall have made or cause to be made at least a Twenty-Five Million and No/100 Dollars (\$25,000,000.00) Capital Investment in the Capital Improvements. Thereafter, Company shall file a Capital Investment Certificate with the City demonstrating that it made or caused to be made the Minimum Capital Investment. Failure of the Company to make or cause to be made the Minimum Capital Investment on or before July 1, 2027 will result in automatic termination of this Agreement and forfeiture by Company of any further Incentive Payment under this Agreement.

6.2 Completion of the Capital Improvements. Notwithstanding the immediately preceding Section 6.1, Company shall complete the Capital Improvements described in **Exhibit B** by the applicable deadlines provided for each Capital Improvement in **Exhibit B**. Capital Improvements shall be considered completed when evidenced by the issuance by the City of a final inspection, final green tag, certificate of completion, CO, or other equivalent, confirming completion of the Capital Improvements and the requirements of the building permit issued by the City in connection with the construction of the Capital Improvements. If constructed, the Capital Improvements must be constructed in substantial conformity and compliance with the building standards provided in **Exhibit C** hereto and incorporated herein for all purposes, the City’s Code of Ordinances and other applicable laws, and zoning for the Property as shown in Ordinance No. [] attached hereto as **Exhibit D** and incorporated herein for all purposes, and as may be amended. Failure of the Company to make or cause to be made the Capital Improvements described in **Exhibit B** by the applicable deadlines provided for each Capital Improvement in **Exhibit B** will result in automatic termination of this Agreement and forfeiture by Company of any further Incentive Payment under this Agreement.

6.3 Minimum Net City Sales Taxes. Company covenants, warrants and agrees that a Condition Precedent to City’s payment of an Incentive Payment to Company is that the Minimum Net City Sales Taxes for the corresponding Incentive Tax Period must be collected by the City. In the event that the Minimum Net City Sales Taxes is not generated for a particular Incentive Tax Period, then this Agreement shall continue in full force and effect, but Company shall not earn an Incentive Payment for that particular Incentive Tax Period. The Company may continue earning future Incentive Payments during the Term provided all applicable Conditions Precedent are met, including, but not limited to, the City’s collection of the Minimum Net City Sales Taxes for the Incentive Tax Period for which an Incentive Payment is sought by Company. For clarity, nothing in this Agreement extends an Incentive Tax Period nor allows a future recovery of a potential Incentive Payment not earned due to the Minimum Net City Sales Tax not being met for an Incentive Tax Period.

6.4 Main Event Lease. Company covenants, warrants and agrees that Company shall use

commercially reasonable efforts to enter into at least a ten (10) year lease with Main Event to occupy and conduct its business in a minimum of 58,000 square feet of the first floor of the Sears Building on or before December 31, 2026. Following execution, Company shall provide City with a copy of said lease, redacted if necessary to remove proprietary or confidential information. Failure of Company to enter into said lease with Main Event by December 31, 2026, will result in automatic termination of this Agreement and forfeiture by Company of any further Incentive Payment under this Agreement.

6.5 Issuance of Certificate of Occupancy for Main Event. Subject to an Event of Force Majeure and any Tenant delays, Company covenants, warrants and agrees that Company shall use commercially reasonable efforts to complete or cause to be completed finish out of a minimum of 58,000 square feet of the first floor of the Sears Building for occupation by Main Event and obtain from the City a Certificate of Occupancy for occupancy of said space and operation of its business by Main Event by December 31, 2026. Failure of Company to complete finish out of the Tenant Main Event space or Tenant Main Event to obtain a Certificate of Occupancy by December 31, 2026, subject in all events to an Event of Force Majeure and any Tenant delays, will result in automatic termination of this Agreement and forfeiture by Company of any further Incentive Payment under this Agreement.

6.6 Continuous Operation of Main Event. Main Event shall remain fully Open for Business from the time after it is first Open for Business until the date the City issues the final Incentive Payment due under this Agreement unless caused by a permitted Main Event Vacancy. Further, a vacancy by Main Event shall be permitted if the Company notifies the City in writing within seven (7) business days of the first day of the occurrence of such vacancy and within 365 calendar days of the Company providing the City with the aforementioned written notice, the Company provides evidence to the City's reasonable satisfaction that either: (i) Main Event has resumed operations and is Open for Business in the Sears Building, or (ii) a Suitable Replacement Tenant is Open for Business in the Sears Building (collectively, an "**Excused Main Event Vacancy**"). The Parties hereby agree that an Excused Main Event Vacancy shall not be a default by the Company under this Agreement, but that during an Excused Main Event Vacancy the City shall have no obligation to pay any Incentive Payment hereunder; provided, however, the Sales Tax Incentive shall continue to accrue hereunder and all such accrued Incentive Payments shall be made to the Company once the Excused Main Event Vacancy ceases to exist. A Main Event Vacancy that is not caused by a permitted Main Event Vacancy (including, without limitation, an Excused Main Event Vacancy) is subject to Section 9.1 of this Agreement; provided, however, City's sole and exclusive remedy for any such default shall be as set forth in Section 9.3 below.

6.7 Minimum Net City Sales Taxes. The Minimum Net City Sales Taxes shall have been generated and collected by the City for the applicable Incentive Tax Period. The City shall have obtained from the Texas Comptroller a confidential information report confirming at a minimum the total amount of sales and use taxes paid by the Tenants at the Property to the Texas Comptroller relating only to taxable sales from such Tenants' locations at the Property during the previous Incentive Tax Period (which report the City agrees to use diligent, good faith efforts to timely obtain), and 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 Tenants' locations at the Property for the Incentive Tax Period for which the Request for Payment 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 the Property, the State Comptroller will not disclose information regarding the actual sales taxes paid by Tenants without permission of those persons doing business on the Property. As such, the Company covenants and agrees to use good faith, commercially reasonable efforts to include as a condition in its future leases or lease renewals or amendments at the Property language that requires the Company and future lessees to provide a release to the City that will allow the Texas Comptroller, if so required by the Disclosure Statute, to disclose to the City aggregated sales tax information relating to any business generating sales tax at the Property for any Incentive Tax Period during the Term. The Parties agree that no Sales Tax Incentive payment shall be due or payable for any Incentive Tax Period during the Term if the Company fails to provide written permission from the Company and each Tenant allowing the State Comptroller to provide the City with applicable information relating to the amount of City Sales Taxes paid by such Tenants to the City during such Incentive Tax Period and such information is not separately made available to the City by the State Comptroller.

6.8 Annual Filings for Payment of Sales Tax Incentives. The Company shall have submitted to the City the following documents in connection with each and every request to the City for an Incentive Payment: (a) a written Request for Payment; (b) a Certificate of Compliance; and (c) a list of current Tenants. If Company submits a Request for Payment more than one (1) year after the applicable Sales Tax Incentive is earned by Company, Company agrees it is an irrevocable waiver of Company's right to request said Sales Tax Incentive and the City shall not be obligated to pay the Request for Payment. Any obligation of City to pay a timely submitted and valid Request for Payment shall expressly survive the Term.

6.9 Documentation. Company shall use commercially reasonable efforts 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 Article.

6.10 Ongoing Operation. Company shall operate the Property exclusively for only the uses permitted under the current zoning applicable to the Property 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 the Property for any one or more of the following uses as a Primary Use:

- (a) stores selling electronic cigarettes or other oral devices 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;
- (b) tobacco stores (and specifically excluding the ancillary sale thereof in any pharmacy, grocery or convenience store located at the Property). 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 the Property for any one or more of the following uses as a Primary Use:

- (c) steam or Turkish baths, massage parlors that exist for reasons beyond therapeutic massage (i.e., lascivious purposes), and tattoo and/or piercing parlors (excluding retailers of goods that offer as an accessory use piercing services such as Claire's);
- (d) bars and restaurants operated for members of civic and social organizations, alumni associations, granges, automobile clubs (except travel), parent-teacher associations, booster clubs, scouting organizations, ethnic associations, social clubs, fraternal lodges and veterans' membership organizations;
- (e) churches, religious shrines, monasteries (except schools), synagogues, religious mosques and religious temples;
- (f) 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;
- (g) pawn shops; and
- (h) 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".

6.11 Inspections. Company shall provide the City, its agents and employees with access to the Property 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, subject to the rights of Tenants.

6.12 Company Representative. Company shall provide a representative of the Company to accompany the City during all inspections of the Property conducted by the City.

6.13 Payment of Taxes. Subject to the Company's and/or Tenant's right to file a protest and contest ad valorem taxes, all ad valorem taxes assessed against the Property actually owned and controlled by Company during the Term of this Agreement shall be paid prior to the date such taxes become delinquent regardless of whether owed or paid by Company, Tenants or others. If any ad valorem taxes assessed against portions of the Property not actually owned and controlled by Company shall not be paid prior to the date such taxes become delinquent during the Term of this Agreement, then the Sales Tax Collections generated from such unowned and controlled portions of the Property shall not be included in the calculation of the Sales Tax Incentive owed to Company during such period of delinquency.

6.14 Compliance with Applicable Laws. To maintain the Property 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 the Property and the activities thereon.

6.15 Other Agreements. Company shall 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.

6.16 Identification of Tax Situs. Company agrees to identify Town East as the tax situs for all construction materials for construction on the Property.

ARTICLE VII

City's Financial Obligations For Sales Tax Incentives

7.1. Economic Development Incentives. Provided all applicable Conditions Precedent have been satisfied and are then continuing and Company has complied with all obligations under this Agreement, then for each Incentive Tax Period during the Term, the City agrees to provide Company with an annual Sales Tax Incentive that pays to Company an amount equal to the Net City Sales Taxes generated by the Tenants for the respective Incentive Tax Period.

7.2 Sales Tax Incentive Payment. Provided all applicable Conditions Precedent have been satisfied and are then continuing and subject to Company's compliance with all obligations under this Agreement, the City shall, following the end of each Incentive Tax Period and within thirty (30) days after receiving a Request for Payment from Company, make a request to the State Comptroller pursuant to Subsection (b) of the Disclosure Statute, and will use diligent, good faith efforts to cause the State Comptroller to promptly provide the City Sales Tax information, and within seventy-five (75) days after receiving such information will calculate and, provided all Conditions Precedent are satisfied, pay to the Company the Sales Tax Incentive payment for such Incentive Tax Period.

7.3 Verification of City Sales Tax. The City and the Company agree that reports received by the City from the Texas Comptroller, if requested, reflecting City Sales Taxes paid by Tenants relating to taxable sales made from the Tenants' locations are 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 Tenants. 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 Sales Tax Incentive payment payable pursuant to Section 7.2 of this Agreement, no sums payable pursuant Section 7.2 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 Sales Tax Incentive 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 Sales Tax Incentive payment due under the terms of Section 7.2 of this Agreement shall be deferred if the Texas 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; and (ii) calculate the amount of such Sales Tax Incentive payment; provided, that (A) the City will continue to use diligent, good faith efforts to cause the Texas 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 Sales Tax Incentive payment for which it has received the necessary information and (D) the due date for payment to the Company of the applicable Incentive 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.

7.4 Accrued Sales Tax Incentive Survival. Except as otherwise provided herein, including, without limitation, the survival of the City's obligation to pay Company any Sales Tax Incentive earned by Company and owed by City but not yet paid by City, the City's obligation to provide the Sales Tax Incentive to Company shall terminate on the expiration of the Term.

7.5 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 VIII

City's Financial Obligation For Capital Investment Reimbursement

8.1. Conditional Nature of the Parties' Obligations. The purpose of the Capital Investment Reimbursement is for the City to incentivize the opening of Vidorra. This Agreement does not obligate Company, and Company does not agree, to take any actions to cause the opening of Vidorra or otherwise comply with the provisions of this Article VIII. In the event that Company does cause the opening of Vidorra as provided herein, then Company will earn and be paid by the City the Capital Investment Reimbursement. If the Company earns and the City pays the Capital Investment Reimbursement, then Company agrees the provisions of sections 8.3, 8.4 and 8.5 become obligations of Company subject to Article IX of this Agreement. For clarity, if Vidorra does open on the Property on or before December 31, 2030, then the Net City Sales Taxes generated by Vidorra qualify for the Sales Tax Incentive.

8.2 Economic Development Incentive. Provided (a) Conditions Precedent 6.1, 6.2, 6.4, 6.5, 6.6, 6.9, 6.10, 6.11, 6.12, 6.13, 6.14, 6.15 and 6.16 have been satisfied and are then continuing, and (b) Company has provided City with a Capital Investment Certificate and Certificate of Compliance, and (c) Company has satisfied the then applicable conditions provided in sections 8.3, 8.4 and 8.5 below, and (d) Company has complied with all then applicable obligations under this Agreement, then the City agrees to pay Company the Capital Investment Reimbursement to be paid within thirty (30) days of Company's satisfaction of the foregoing conditions.

8.3 Vidorra Lease. Company shall enter into at least a five (5) year lease with Vidorra to

occupy and conduct its business in a minimum of 6,000 square feet of the first floor of the Sears Building on or before July 1, 2027. Following execution, Company shall provide City with a copy of said lease, redacted if necessary to remove proprietary or confidential information.

8.4 Issuance of Certificate of Occupancy for Vidorra. Company shall cause to be completed finish out of a minimum of 6,000 square feet of the first floor of the Sears Building for occupation by Vidorra and obtain from the City a Certificate of Occupancy for occupancy of said space and operation of its business by July 1, 2027.

8.5 Continuous Operation of Vidorra. Vidorra shall remain fully Open for Business for a period of five (5) years from the time after it is first Open for Business unless caused by a permitted Vidorra Vacancy. Further, a vacancy by Vidorra shall be permitted if the Company notifies the City in writing within seven (7) business days of the first day of the occurrence of such vacancy and within 365 calendar days of the Company providing the City with the aforementioned written notice, the Company provides evidence to the City's reasonable satisfaction that either: (i) Vidorra has resumed operations and is Open for Business in the Sears Building, or (ii) a Vidorra Suitable Replacement Tenant is Open for Business in the Sears Building (collectively, an "**Excused Vidorra Vacancy**"). The Parties hereby agree that an Excused Vidorra Vacancy shall not be a default by the Company under this Agreement. A Vidorra Vacancy that is not caused by a permitted Vidorra Vacancy (including, without limitation, an Excused Vidorra Vacancy) is subject to Section 9.1 of this Agreement; provided, however, City's sole and exclusive remedy for any such default shall be as set forth in Section 8.6 below.

8.6 Recapture of Portion of Capital Investment Reimbursement. In the event of a Company default under this Article VIII that has continued uncured beyond any applicable grace or cure period, the Company shall immediately pay to the City the sum equal to fifty percent (50%) of the Capital Investment Reimbursement 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 from the date such Capital Investment Reimbursement 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.

ARTICLE IX Defaults and 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) 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 thirty (30) 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 City within thirty (30) days of the receipt of such notice, and is being diligently pursued using commercially reasonable efforts to complete performance; or (iii) upon failure of the Company to maintain or cause to be maintained the Property and improvements thereon in good repair and condition at all times as determined by the City (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 the Property and the activities thereon and such failure continues for thirty (30) 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 City within thirty (30) days of the receipt of such notice, and is being diligently pursued using commercially reasonable efforts to complete performance.

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 thirty (30) 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 thirty (30) days of the receipt of such notice, and is being diligently pursued using commercially reasonable efforts to complete performance. Notwithstanding the foregoing, 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 thirty (30) days to make such Incentive 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 then-owed or future Incentive Payment to the Company and the City shall have the right as its sole and exclusive remedies to: (i) recapture a portion of the individual Incentive Payment most recently 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 anything to the contrary contained herein, in no event will the City be entitled to the recovery of any damages at law or in equity, attorneys' fees (except in the event of the exercise of the City of the remedies set forth in Chapter 2264 of the Texas Government Code) or consequential, punitive, exemplary or speculative damages.

9.4 Recapture of Incentive Payment(s). 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 make any then-owed or future Incentive Payment to the Company, and the Company shall immediately pay to the City the sum equal to fifty percent (50%) of the most recent individual Incentive Payment 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 from the date such Incentive 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.

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 Payment then earned and owed by the City as damages in accordance with the following provisions. The City and the

Company acknowledge and agree that this Agreement is not a contract for goods or services and the City's immunity from suit is not waived pursuant to Subchapter I of Chapter 271, V.T.C.A., Local Government Code, as amended. Alternatively, if and only in the event a court of competent jurisdiction determines the City's immunity from suit is waived under Subchapter I of Chapter 271, V.T.C.A., Local Government Code, or otherwise, 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 Payment then earned by the Company and due and payable by the City under this Agreement, but no other actual damages at law or in equity;
2. any Incentive 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, and shall not include any Incentive Payment not earned by the Company and not owed by the City to the Company at the time an action is filed.

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, their respective successors and permitted assigns; provided, however, this Agreement and the rights and obligations of the Parties hereunder may not be assigned or transferred to any Person without the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, (i) Company may assign its rights and obligations hereunder to any Person which is related or affiliated with or a subsidiary of the Company without City consent and (ii) the City hereby consents to the Company's collateral assignment to a lending institution of all of the Company's rights and obligations hereunder as security for repayment of one or more loans to finance the construction of improvements and/or ownership of the Property from time to time. Any assignment requiring the consent of a Party shall require the assigning Party and each assignee(s) to be jointly and severally liable with the assigning Party for all agreements, covenants, obligations and liabilities of the assigning Party under this Agreement. Any consent by a Party to an assignment of this Agreement shall apply only to the specific transaction authorized and shall not constitute a waiver of the consent for any subsequent assignment. Any purported assignment in violation of this Agreement shall be void and of no force or effect.

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: SRB Mesquite, LLC
c/o Elm Creek Real Estate
5473 Blair Road, Suite 100
PMB 91303
Dallas TX 75231

With a copy to: Greenberg Traurig, LLP
2200 Ross Avenue, Suite 5200
Dallas, Texas 75201
Attention: Ashley Aten

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

With a copy to: City of Mesquite
1515 N. Galloway Ave.
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 matter hereof, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature are entirely superseded hereby and extinguished by the execution of this Agreement. There are no oral agreements between the Parties.

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 9.19 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 Ethics Disclosure. Company represents that it has completed a Texas Ethics Commission (“TEC”) Form 1295 (“**Form 1295**”) generated by the TEC’s electronic filing application in accordance with the provisions of Texas Government Code 2252.908 and the rules promulgated by the TEC. The Parties agree that, with the exception of the information identifying the City and the contract identification number, the City is not responsible for the information contained in the Form 1295. The information contained in Form 1295 has been provided solely by the Company and the City has not verified such information. City agrees to acknowledge receipt of Form 1295 on the Texas Ethics Commission website within 30 days of receipt of Form 1295 from Company.

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 Property and that it is the intent of the Parties that such terms, provisions, covenants, and agreements shall run with the Property and shall be binding upon the Parties hereto, their successors and assigns, and all subsequent owners of the Property.

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

10.25 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.

10.26 INDEMNITY. COMPANY AGREES THAT THE CITY AND ANY OFFICER, OFFICIAL, EMPLOYEE, OR AGENT SHALL NOT BE LIABLE FOR ANY INJURY TO PERSONS OR PROPERTY OCCASIONED BY REASON OF THE ACTS OR OMISSIONS OF COMPANY, ITS AGENTS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS IN THE CONSTRUCTION ON OR IMPROVEMENTS OF THE PROPERTY. COMPANY FURTHER AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS OFFICERS, OFFICIALS, BOARDS AND

COMMISSIONS, AND MEMBERS THEREOF, AGENTS AND EMPLOYEES, CONTRACTORS AND SUBCONTRACTORS FOR ALL CLAIMS, DEMANDS, CAUSES OF ACTIONS, LIABILITY, OR LOSS BECAUSE OF, OR ARISING OUT OF, IN WHOLE OR IN PART, PERTAINING TO INJURY TO PERSON OR DAMAGE TO PROPERTY DUE TO THE DESIGN OR CONSTRUCTION ON OR IMPROVEMENTS OF THE PROPERTY BY OR FOR COMPANY, BUT NOT FOR SUCH CLAIMS, DEMAND, CAUSES OF ACTION, LIABILITY, OR LOSS ARISING OUT OF THE NEGLIGENCE OF THE CITY AND ITS OFFICIALS, BOARDS, COMMISSIONS, THE MEMBERS THEREOF, AGENTS, AND EMPLOYEES.

10.27 Dispute Resolution. Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any Party unless the institution of such legal or equitable proceeding is necessary to avoid the running of an applicable statute of limitation. The Parties shall endeavor to resolve their claims by non-binding mediation for a period not to exceed sixty (60) days from the date of the claim. City and Company shall share the costs of mediation equally. The mediation shall be held in Dallas County, Texas, unless another location is mutually agreed upon.

10.28 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 the Company pursuant thereto. The 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 the City reserves all rights and defenses against any such assertion.

10.29 Statutory Verifications. Company makes the following representation and covenants to enable the City to comply with Chapters 2252, 2271, 2274, and 2276, Texas Government Code, as heretofore amended (the “**Government Code**”), in entering into this Agreement. As used in such verifications, “affiliate” means an entity that controls, is controlled by, or is under common control with the Company within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit. Liability for breach of any such verification during the Term of this Agreement shall survive until barred by the applicable statute of limitations and shall not be liquidated or otherwise limited by any provision of this Agreement, notwithstanding anything in this Agreement to the contrary.

a. Not a Sanctioned Company. Company represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Government Code. The foregoing representation excludes the Company and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanction’s regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

b. No Boycott of Israel. Company hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do

not boycott Israel and will not boycott Israel during the term of this Agreement. As used in the foregoing verification, “boycott Israel” has the meaning provided in Section 2271.001, Government Code.

c. No Discrimination Against Firearm Entities. Company hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” has the meaning provided in Section 2274.001(3), Government Code.

d. No Boycott of Energy Companies. Company hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. As used in the foregoing verification, “boycott energy companies” has the meaning provided in Section 2276.001(1), Government Code.

10.30 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same, including:

Exhibit A:	Description and Depiction of Property
Exhibit B:	Capital Improvements
Exhibit C:	Building Standards
Exhibit D:	Zoning Ordinance

10.31 **WAIVER OF CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES.** THE COMPANY AND THE 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.

10.32 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).

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

10.34 Date for Performance. If a deadline or date falls on a Saturday, Sunday, legal or City holiday, then such time period shall be automatically extended through the close of the next business day.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE ON FOLLOWING PAGE]

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

ATTEST:

CITY OF MESQUITE:
a Texas home rule municipality

By: _____
Name: Sonja Land
Title: City Secretary
Date: _____

By: _____
Name: Cliff Keheley
Title: City Manager
Date: _____

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

By: _____
City Attorney

COMPANY:

SRB Mesquite, LLC
a Texas limited liability company

By: _____
Name: _____
Title: _____

Date: _____

STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on _____, 2025 by _____, Managing Member of SRB Mesquite, LLC, a Texas limited liability company, on behalf of the said limited liability company.

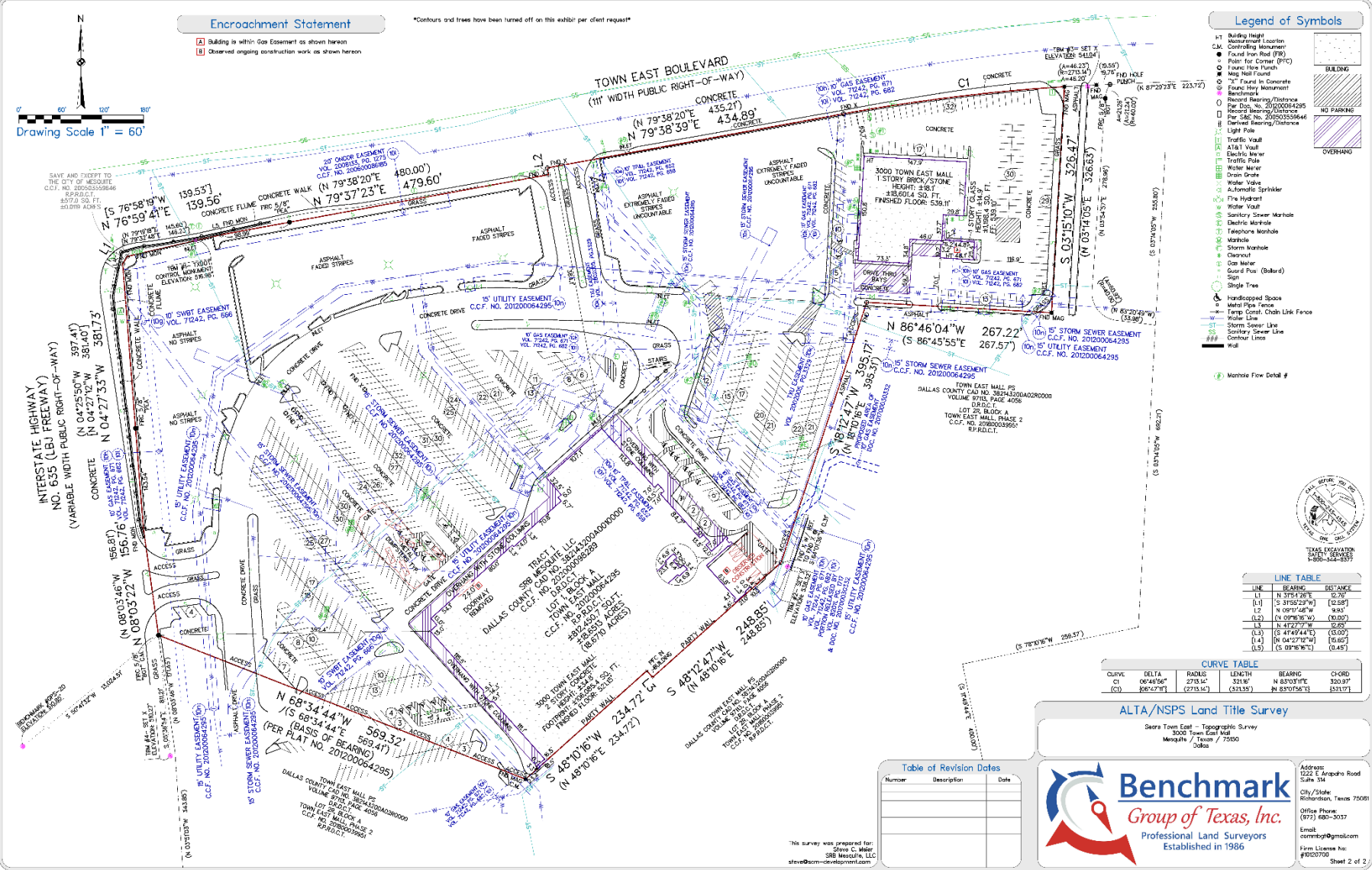
Notary Public, State of Texas

**EXHIBIT A
TO
CHAPTER 380 ECONOMIC DEVELOPMENT & PERFORMANCE AGREEMENT**

Description and Depiction of Property

TRACT 1:

Lot 1, Block A, of Town East Mall, an addition to the City of Mesquite, Dallas County, Texas, according to the Plat thereof recorded under Clerk's file No. 201200064295, Real Property Records, Dallas County, Texas, and Correction recorded as Clerk's File No. 201400082891, Real Property Records, Dallas County, Texas; SAVE AND EXCEPT all that certain land conveyed to the City of Mesquite by deed recorded under Clerk's File No. 200503559646, Real Property Records, Dallas County, Texas.



**EXHIBIT B
TO
CHAPTER 380 ECONOMIC DEVELOPMENT & PERFORMANCE AGREEMENT**

Capital Improvements

<u>Capital Improvement Description</u>	
1. Remodel, redevelop, and enhance a minimum of 58,000 sq. ft. of the first floor of the Sears Building to make ready for occupancy and use by Tenant Main Event to be completed on or before December 31, 2026.	
2. Exterior work on both floors of the Sears Building to be completed on or before December 31, 2026.	
3. Enhance the remainder of the first floor of the Sears Building not occupied by Main Event so that the non-concrete block perimeter walls are sheet rocked, taped and bedded, and painted, and concrete floors cleaned of debris, on or before December 31, 2026.	
4. All site work to the parking lot and ring road on the Property to be completed on or before December 31, 2026.	
5. Landscaping required by the Zoning Ordinance, Ex. B., section 2.a.(ii) to be completed as provided therein; all remaining landscaping enhancements on the Property to be completed on or before July 1, 2027.	
6. Make ready at least three (3) additional pad sites on the Property to be completed on or before July 1, 2027.	

EXHIBIT C
TO
CHAPTER 380 ECONOMIC DEVELOPMENT & PERFORMANCE AGREEMENT
Building Standards for Capital Improvements

**EXHIBIT D
TO
CHAPTER 380 ECONOMIC DEVELOPMENT & PERFORMANCE AGREEMENT**

Zoning Ordinance Applicable to the Property