

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This **ECONOMIC DEVELOPMENT PROGRAM AGREEMENT** (“**Agreement**”) is made and entered into by and between the **CITY OF FORT WORTH**, a home rule municipal corporation organized under the laws of the State of Texas (“**City**”), and **TOWN CENTER MALL, L.P.**, a Texas limited partnership (“**Developer**”).

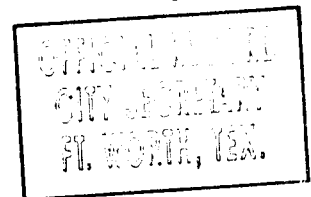
RECITALS

WHEREAS, the City has created an Economic and Community Development Department in order to, among other things, oversee economic development programs authorized by Texas law and approved by the City Council, including those authorized by Chapter 380 of the Texas Local Government Code, to promote state and local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, in accordance with the 2005 Comprehensive Plan adopted by the City Council pursuant to M&C G-14691 on February 22, 2005, the City’s economic development programs are based on a model of custom-designed incentives and partnership programs with private businesses on a case-by-case analysis of individual projects to help ensure the growth and diversification of the local economy; and

WHEREAS, as part of the economic development programs recommended by the 2005 Comprehensive Plan and in accordance with Resolution No. 2704, adopted by the City Council on January 30, 2001, the City has established a program pursuant to which the City will, on a case-by-case basis, offer economic incentive packages authorized by Chapter 380 of the Texas Local Government Code that include monetary loans and grants of public money, as well as the provision of personnel and services of the City, to businesses and entities that the City Council determines will promote state or local economic development and stimulate business and commercial activity in the City in return for verifiable commitments from such businesses or entities to cause specific infrastructure, employment and other public benefits to be made or invested in the City; and

WHEREAS, Developer is the owner of certain real property within the City including La Gran Plaza, formerly Town Center Mall (the “**Center**”), at which the Developer would like to renovate and actively lease at least 900,000 square feet into a multi-purpose cultural center; add approximately 30,000 square feet of new retail space and/or office space, and a new amphitheater for public events at the Center; renovate outparcels within the Center; and develop a central plaza at the Center similar to a Mexican-themed town square (collectively, the “**Project**”); all for the purpose of enticing various businesses to locate in the Center and to otherwise stimulate development elsewhere in the area surrounding the Center; and



WHEREAS, the parties acknowledge that the Center is currently dilapidated, more than fifty percent (50%) vacant, and is insufficient to attract new businesses to the area; and

WHEREAS, in order to encourage Developer's construction, renovation and expansion of the Center and to make the Center more attractive to businesses seeking to relocate their facilities from locations outside the City or to establish new facilities, Developer has requested an economic assistance package from the City under which Developer will be eligible to receive certain economic development grants, thereby making the construction, renovation, and expansion of the Center financially feasible to Developer; and

WHEREAS, the City Council has found and determined that the construction of the Project will foster increased development within the Center and elsewhere in the vicinity of the Center; contribute to job growth in the City; afford residents of the Central City increased employment opportunities; and benefit the local and state economy; and

WHEREAS, the City Council has found and determined that by entering into this Agreement, the potential economic benefits that will accrue to the City under the terms and conditions of this Agreement are consistent with the City's economic development objectives;

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 are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS.

The City Council hereby finds that the recitals set forth above are true and correct and form the basis upon which the City has entered into this Agreement.

2. CONCEPT AND STRUCTURE.

The parties have jointly developed the concept behind the Program outlined in this Agreement. The Program is designed to provide financing to Developer in order to secure the construction, renovation and expansion of the Center. Under the Program, Developer will pay for the construction of the Project Improvements at the Center. In return, the City will provide Developer with annual economic development grants based on (i) the costs of the Project Improvements at the Center; (ii) the amount of revenue received by the City from increased real and personal property taxes and sales tax

attributable to the Center; and (iii) compliance with various commitments that will benefit the City, as further provided in this Agreement.

3. **DEFINITIONS.**

In addition to terms defined in the body of this Agreement, the following terms shall have the definitions set forth below:

Affiliate means all entities, incorporated or otherwise, under common control with, controlled by or controlling Developer. For purposes of this definition, “control” means fifty percent (50%) or more of the ownership determined by either value or vote.

Catch-Up Amount means an amount equal to the difference in (i) the dollar amount of Program Grants that Developer would have otherwise received under this Agreement during any period in which the City charges less than one percent (1%) Available Sales Tax if the City had instead actually charged the full one percent (1%) Available Sales Tax, less (ii) the amount of Program Grants actually received by Developer during such period in which the City charges less than the full one percent (1%) Available Sales Tax.

Central City means the area of the corporate limits of the City within Loop 820 (i) consisting of all Community Development Block Grant (“CDBG”) eligible census block groups; (ii) all state-designated enterprise zones; and (iii) all census block groups that are contiguous by seventy-five percent (75%) or more of their perimeter to CDBG eligible block groups or enterprise zones, as well as any CDBG-eligible block in the corporate limits of the City outside Loop 820, as more specifically depicted in the map of **Exhibit “A”**, attached hereto and hereby made a part of this Agreement for all purposes.

Central City Resident means an individual whose principal place of residence is at a location within the Central City.

Construction Costs means site pre-development and development costs, including construction costs, contractor fees, construction manager and developer fees, engineering costs, governmental permit fees, fees for any required bonds, and the costs of supplies and materials in constructing the Project Improvements.

Director means the director of the City’s Economic and Community Development Department or his or her authorized designee.

Fort Worth Certified M/WBE Company means a minority or woman-owned business that has received certification as either a minority business enterprise (MBE) or a woman business enterprise (WBE) by either the North Texas Regional Certification Agency (NTRCA) or the Texas Department of Transportation (TxDOT), Highway Division, whose principal office for the services being provided is located within the corporate limits of the City.

Fort Worth Company means a business that has a principal office located within the corporate limits of the City and whose principal office for the services being provided is located within the corporate limits of the City.

Fort Worth Resident means an individual whose principal place of residence is located within the corporate limits of the City.

Full-time Job means a job filled by one (1) individual at any respective business or businesses located and operating on the Source Property, including tenants, Developer, management companies, operators, and contractors.

Leasable Square Footage means the leasable retail square footage contained within the Source Property.

Maximum Annual Program Grant Amount means the portion of the Maximum Program Grant Amount payable in any specific Program Year, as set forth on the Annual Cap Schedule attached hereto as **Exhibit "C,"** subject to the addition of any applicable Carry-Over Amount pursuant to Section 6.1.3 or Section 7.1.3 of this Agreement, and subject to the terms of this Agreement.

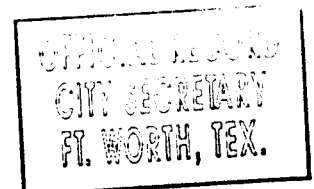
Maximum Program Grant Amount, as set forth in Section 6.9, means Eight Million and No/100 Dollars (\$8,000,000) gross; provided, however, that if and only if Phase II Project Completion is achieved such that the Phase II Completion Date occurs on or before the Phase II Completion Deadline, then the Maximum Program Grant Amount means Forty Two Million Sixty Eight Thousand Seven Hundred Seventy Four and No/100 Dollars (\$42,068,774) gross (which amount is equal to a net present value of \$21,811,309 on the Execution Date of this Agreement, using a discount rate of 6.5%).

Occupied Square Footage means the Leasable Square Footage which is occupied and under a current lease at any given point in time.

Phase I Completion Date means the date on which Phase I Project Completion is achieved.

Phase I Completion Deadline means the date which is twenty-four (24) months following the Execution Date of this Agreement, subject to any extensions agreed to in writing by both the City and Developer.

Phase I Project Completion means the date when each of the following requirements have been fully satisfied: (i) Developer has expended a total amount at least equal to \$16,000,000 (the "**Phase I Project Investment**") in Source Property Project Costs on Phase I Project Improvements during the period beginning on May 1, 2004, and (ii) the Phase I Project Improvements are complete and certified as complete by the City in accordance with Section 5.6.3.



Phase I Project Improvements means, collectively, the following improvements to be constructed and/or renovated on the Source Property, all as approved by the Director pursuant to Section 5.1.1, and the completion of which may be certified the City in accordance with Section 5.6.3: (i) the renovation of the exterior façade and the former Sears Tire Center in a Mexican colonial architecture style, (ii) at least six hundred eighty-one thousand (681,000) square feet of retail space, finished out in either a new or existing building or suite, which will be deemed complete as follows: (a) for occupied space, according to the agreement between the tenant and landlord so that a certificate of occupancy has been issued, except that a new certificate is not required for space that is occupied as of the Execution Date, or (b) for vacant space, completed to whitebox shell space conditions in which the improvements consist of heating/cooling with delivery systems, lighting, electrical switches and outlets, walls that are painted or prepped for painting, and a concrete slab floor, as certified by the Director after receiving written confirmation of completion of such improvements from the City's Development Department, (iii) at least seventy-eight thousand (78,000) square feet of office space, finished out in either a new or existing building or suite, which will be deemed complete as follows: (a) for occupied space, according to the agreement between the tenant and landlord so that a certificate of occupancy has been issued, except that a new certificate is not required for space that is occupied as of the Execution Date, or (b) for vacant space, completed to whitebox shell space conditions in which the improvements consist of heating/cooling with delivery systems, lighting, electrical switches and outlets, a finished ceiling, walls that are painted or prepped for painting, and a carpeted or concrete slab floor, as certified by the Director after receiving written confirmation of completion of such improvements from the City's Development Department, and (iv) at least eighty-two thousand (82,000) square feet of space, finished out for "Mercado" style tenants, with heating/cooling delivery systems, lighting, painting, and a concrete slab floor, as certified by the Director after receiving written confirmation of completion of such improvements from the City's Development Department.

Phase II Completion Date means the date on which Phase II Project Completion is achieved.

Phase II Completion Deadline means the date which is ten (10) years following the Execution Date of this Agreement, subject to any extensions agreed to in writing by both the City and Developer.

Phase II Project Completion means the date when each of the following requirements have been fully satisfied: (i) Developer has expended a total amount at least equal to \$26,000,000 (the "**Total Phase I and II Project Investment**") in Source Property Project Costs on Project Improvements during the period beginning on May 1, 2004, and (ii) the Project Improvements are complete and certified as complete by the City in accordance with Section 5.6.4.

Phase II Project Improvements means, collectively, the following improvements to be constructed and/or renovated on the Source Property, all as approved by the Director pursuant to Section 5.1.1, and the completion of which may be certified

by the City in accordance with Section 5.6.4: (i) renovation of the common area space and interior facades of the shopping mall located on the Source Property in a Mexican colonial architecture style and construction of a central plaza similar to a Mexican town square, (ii) in addition to the 681,000 square feet of retail space described in the definition of Phase I Project Improvements, at least an additional seventy two thousand (72,000) square feet of retail space, finished out in either a new or existing building or suite, which will be deemed complete as follows: (a) for occupied space, according to the agreement between the tenant and landlord so that a certificate of occupancy has been issued, except that a new certificate is not required for space that is occupied as of the Execution Date, or (b) for vacant space, completed to whitebox shell space conditions in which the improvements consist of heating/cooling with delivery systems, lighting, electrical switches and outlets, walls that are painted or prepped for painting, and a concrete slab floor, as certified by the Director after receiving written confirmation of completion of such improvements from the City's Development Department, (iii) if Developer is able to enter a lease with an operator for the rodeo following a good faith effort to enter such a lease, then construction of a fifty two thousand square foot Mexican rodeo arena, as approved by the City and by the Director pursuant to Section 5.1.1, and (iv) if Developer is unable to enter a lease with an operator for the rodeo following a good faith effort to enter such a lease, then any other development items other than Phase I Project Improvements which are approved by the City and by the Director pursuant to Section 5.1.1, completed, and certified as complete by the City in accordance with Section 5.6.4.

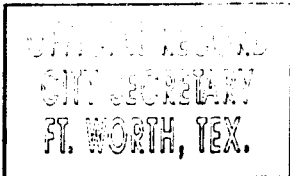
Program means the economic development program authorized by Chapter 380 of the Texas Local Government Code and established and outlined in this Agreement.

Program Grants means the annual economic development grants paid by the City to Developer in accordance with this Agreement and as part of the Program until Developer has received the Maximum Program Grant Amount or this Agreement expires or is terminated.

Program Year means a calendar year in which the City is obligated to pay Developer a Program Grant, beginning with the calendar year following the year in which the Phase I Completion Date occurs (Program Year 1). The Program Grant paid during any Program Year shall be based upon the Source Property Tax Increment and Source Property Sales Tax Increment attributable to the previous calendar year and received as of January 31 of the applicable Program Year.

Project Improvements means, collectively, the Phase I Project Improvements and the Phase II Project Improvements.

Remaining Potential Program Grant Balance means, for any particular point in time, the difference between (i) the Maximum Program Grant Amount, and (ii) the amount of cumulative Program Grant payments that Developer has to that point previously received.



Sales means all sales of merchandise (including gift and merchandise certificates), services and other receipts whatsoever of all business conducted in, on or from the Source Property, whether cash or credit, including sales from temporary booths during outdoor festivals and promotions and including mail, telephone, telefax, telegraph, internet, or catalog orders, received or filled at or from the Source Property, deposits not refunded to purchasers, orders taken, although such orders may be filled elsewhere, sales to employees, sales through vending machines or other devices, and sales by any tenant, sublessee, concessionaire or licensee on the Source Property. Sales will not include, however, any sums collected and paid out for any sales or excise tax imposed by any duly constituted governmental authority, nor will it include the exchange of merchandise between the stores of any tenant where such exchanges are made solely for the convenient operation of the business of such tenant and not for the purpose of consummating a sale which has been made in or from the Source Property, nor the amount of returns to shippers and manufacturers, nor the amount of any cash or credit refund made upon any sale where the merchandise sold, or some part thereof, is thereafter returned by the purchaser and accepted by a tenant, nor sales of any tenant's fixtures.

Sales Per Square Foot means an amount equal to the total Sales from the Occupied Square Footage within the Source Property during a particular Program Year, divided by the total Occupied Square Footage on the Source Property as of December 31 of such Program Year.

Source Property means (i) the real property described in and depicted on **Exhibit "B"**, attached hereto and hereby made a part of this Agreement for all purposes, which real property includes the Center, and (ii) any personal property owned or leased by an entity that is taxable by the City and is located on such real property.

Source Property Project Costs means pre-development and development costs; testing, architectural, design, engineering, landscaping and other consultants' fees and costs; Construction Costs; contractor, construction manager and developer fees; governmental permit fees; fees for any required bonds; and the costs of supplies and materials in constructing the Project Improvements; excluding, however, any real property purchase or acquisition costs.

Source Property Sales Tax Increment for any given year (the "**Subject Year**") means (i) the amount of Source Property Sales Tax Revenue received by the City for the Subject Year, less (ii) Two Hundred Seventy Thousand Seven Hundred Sixty Nine Dollars (\$270,769).

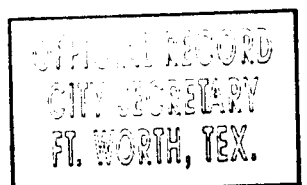
Source Property Sales Tax Revenue means the one percent (1%) available municipal sales tax (the "**Available Sales Tax**"), such as that presently in effect pursuant to Texas Tax Code §§ 321.101(a) and 321.103, resulting from sales tax received by the City and collected by Developer and other tenants and businesses operating on the Source Property on Sales transacted on the Source Property. Source Property Sales Tax Revenue specifically excludes all revenues from (i) the Crime Control District Sales Tax imposed by the City pursuant to Texas Tax Code §323.105 and Local Government Code §363.005

and (ii) the Transit Authority Sales Tax paid to the City by the Fort Worth Transportation Authority under City Secretary Contract No. 19689, as previously or subsequently amended or restated, from the sales tax imposed by the Fort Worth Transportation Authority pursuant to Texas Tax Code Chapter 322. Notwithstanding anything to the contrary, in no event shall the Available Sales Tax used in calculating the Source Property Sales Tax Revenue ever exceed one percent (1%), even if the City at any point in the future charges more than one percent (1%) Available Sales Tax. If the City ever charges less than one percent (1%) Available Sales Tax and then subsequently during the Term adds a sales tax that increases such lower percentage and whose use is not controlled or regulated, in whole or in part, by another governmental entity or authority or dedicated to a specific use by the City, then (x) Source Property Sales Tax Revenue shall be computed to reflect that increased percentage up to a maximum aggregate of one percent (1%), and (xx) the Term of this Agreement shall automatically be extended to allow Developer to recoup all or a portion of the Catch-Up Amount through up to ten (10) additional annual Program Grants (“**Additional Grants**”) following the twentieth (20th) Program Grant, the payment of which Additional Grants shall be subject to the other terms of this Agreement and provided that the total aggregate amount of such Additional Grants shall in no event exceed the Catch-Up Amount. *Notwithstanding anything to the contrary, in no event shall the Source Property Sales Tax Revenue for any Program Year exceed the Available Sales Tax portion of the Verified Aggregate Source Property Sales Tax Payments, as reported by Developer to the City pursuant to Section 5.7.2, subject to verification by the City.*

Source Personal Property Tax Increment for any given year (the “**Subject Year**”) means (i) the amount of personal property tax paid by any entity or entities to the City based on the entire taxable appraised value of the personal property located on the Source Property for the Subject Year (*which amount shall in no event exceed the Verified Aggregate Personal Property Tax Payments for such year, as reported by Developer to the City pursuant to Section 5.7.3, subject to verification by the City*), less (ii) the amount of personal property tax paid by any entity or entities to the City based on the entire taxable appraised value of the personal property located on the Source Property for the 2004 tax year. The taxable appraised value of the personal property located on the Source Property will be established solely by the appraisal district that has jurisdiction over the Source Property at the time. With respect to any leased personal property located on the Source Property, the Source Personal Property Tax Increment will include that portion of annual property tax, prorated on a daily basis, which is attributable to the period during which an entity located on the Source Property was the lessee of such personal property.

Source Property Tax Increment for any given Subject Year means the sum of (i) the Source Real Property Tax Increment for such Subject Year, plus (ii) the Source Personal Property Tax Increment for such Subject Year.

Source Real Property Tax Increment for any Subject Year means (i) the amount of real property tax paid by any entity or entities to the City based on the entire taxable appraised value of the real property located within the Source Property for the



Subject Year, less (ii) the amount of real property tax paid by any entity or entities to the City based on the entire taxable appraised value of the real property located within the Source Property for the 2004 tax year. The taxable appraised value of the real property located within the Source Property will be established solely by the appraisal district that has jurisdiction over the Source Property at the time.

Supply and Service Expenditures means expenditures made for supplies and services provided directly in connection with the operation and maintenance of the Source Property and the business operations conducted thereon.

4. **TERM.**

This Agreement shall be effective as of the date of the Execution Date and shall expire upon the earlier of (i) the date as of which Developer has received the Program Grants in an aggregate amount equal to the Maximum Program Grant Amount, or (ii) the date as of which Developer has received the twentieth (20th) Program Grant payment pursuant to and in accordance with this Agreement, regardless of whether Developer has received the Maximum Program Grant Amount, or (iii) the twenty-first (21st) anniversary of the Phase I Completion Date, regardless of whether Developer has received the Maximum Program Grant Amount (the “**Term**”), unless terminated earlier pursuant to the terms of this Agreement or extended for the purpose of allowing Developer to recoup a Catch-Up Amount as provided in the definition of Source Property Sales Tax Revenue set forth above.

5. **DEVELOPER OBLIGATIONS.**

5.1. **General**

5.1.1. **Approval of Plans.**

All Project Improvements, including without limitation, all facade and site plan improvements, shall be of an architectural style that enhances the Center and the surrounding area. Developer must obtain approval of the facade plans and site plans for the Project Improvements from the Director prior to application to the City for a building permit to initiate work on the Project Improvements or any other permits, excluding any permits that have already been granted by the City. Developer shall submit Façade Plans (defined below) and Site Plans (defined below) for the Project Improvements to the Director, and the Director shall either approve or disapprove (with recommended changes or comments) Developer’s plans within thirty (30) days following the Director’s receipt of the plans. “**Façade Plans**” means the plans for the elevation and appearance of the exterior of the Project. “**Site Plans**” means the plans for the location, exterior, dimensions, and relation of all buildings

included within the Project. If the Director fails to provide its approval or disapproval within such 30-day period, then Developer's Façade Plans and Site Plans shall be deemed approved as submitted. The Director's approval of all Façade Plans and Site Plans for the Project Improvements shall be a condition precedent to Developer's eligibility to receive any of the Program Grants under this Agreement. Tenant improvement work and finish-out are excluded from the approval process contained in this Section 5.1.1. Once Developer's Façade Plans and Site Plans are approved by the Director (the "**Approved Plans**"), no material change may be made to the Approved Plans without providing prior written notice to the Director and obtaining the prior written approval of the Director. The Project Improvements will be completed in phases, and the Director's approval may be requested and granted in phases.

5.1.2. Contracts for Construction of Project Improvements.

Developer will enter into or has entered into a contract or contracts with third party contractors (each a "**Contractor**") for all work on the construction and installation of the Project Improvements (each a "**Project Improvement Contract**"). All Project Improvement Contracts, except those contracts listed on **Exhibit "D"** attached hereto, must meet the requirements of Section 8 of this Agreement.

5.2. Phase I Construction and Spending Commitments.

The following commitments shall apply with respect to Developer's construction of the Phase I Improvements and are tied to the calculation of Program Grants that Developer will be eligible to receive pursuant to Section 6 of this Agreement:

5.2.1. Overall Spending Commitments and Phase I Project Completion.

Developer shall achieve Phase I Project Completion on or before the Phase I Completion Deadline.

5.2.2. Use of Fort Worth Companies.

On or before the Phase I Completion Deadline, and without regard to the actual amount of Source Property Project Costs spent on the Phase I Project Improvements, Developer will spend or cause to be spent with Fort Worth Companies an amount at least equal to the greater of either (i) thirty percent (30%) of the total Source Property Project Costs for the Phase I Project Improvements, or (ii) \$4,800,000 in Source Property Project Costs for the Phase I Project Improvements.

5.2.3. Use of Fort Worth Certified M/WBE Companies.

On or before the Phase I Completion Deadline, and without regard to the actual amount of Source Property Project Costs spent on the Phase I Project Improvements, Developer will spend or cause to be spent with Fort Worth Certified M/WBE Companies an amount at least equal to the greater of either (i) thirty percent (30%) of the total Source Property Project Costs for the Phase I Project Improvements, or (ii) \$4,800,000 in Source Property Project Costs for the Phase I Project Improvements. Dollars spent with Fort Worth Certified M/WBE Companies shall also count as dollars spent with Fort Worth Companies for purposes of the commitment set forth in Section 5.2.2.

5.3. Phase II Construction and Spending Commitments.

The following commitments shall apply with respect to Developer's construction of the Project Improvements, including the Phase II Improvements, and are tied to the calculation of Program Grants that Developer will be eligible to receive pursuant to Section 7 of this Agreement:

5.3.1. Overall Spending Commitments and Phase II Project Completion.

Developer shall achieve Phase II Project Completion on or before the Phase II Completion Deadline.

5.3.2. Use of Fort Worth Companies.

On or before the Phase II Completion Deadline, and without regard to the actual amount of Source Property Project Costs spent on the Phase II Project Improvements, Developer will spend or cause to be spent with Fort Worth Companies an amount at least equal to the greater of either (i) thirty percent (30%) of the total Source Property Project Costs for the Project Improvements, or (ii) \$7,800,000 in Source Property Project Costs for the Project Improvements (which amount includes the \$4,800,000 described in Section 5.2.2 above for Phase I Project Improvements, plus an additional \$3,000,000 for Phase II Project Improvements).

5.3.3. Use of Fort Worth Certified M/WBE Companies.

On or before the Phase II Completion Deadline, and without regard to the actual amount of Source Property Project Costs spent on the Phase II Project Improvements, Developer will spend or cause to be spent with Fort Worth Certified M/WBE Companies an amount at least equal to the greater of either (i) thirty percent (30%) of the total Source Property Project Costs for the Project Improvements, or (ii) \$7,800,000 in Source

Property Project Costs for the Project Improvements (which amount includes the \$4,800,000 described in Section 5.2.3 above for Phase I Project Improvements, plus an additional \$3,000,000 for Phase II Project Improvements). Dollars spent with Fort Worth Certified M/WBE Companies shall also count as dollars spent with Fort Worth Companies for purposes of the commitment set forth in Section 5.3.2.

5.4. Source Property Employment Commitments.

5.4.1. Overall Employment.

Developer shall use its best efforts to ensure that at least three hundred (300) Full-time Jobs are provided in connection with the operation of the Source Property on or before January 1, 2008.

5.4.2. Fort Worth Residents.

Developer shall use its best efforts to ensure that at least one hundred fifty (150) Full-time Jobs provided in connection with the operation of the Source Property are filled by Fort Worth Residents on or before January 1, 2008.

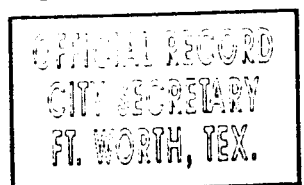
5.4.3. Central City Residents.

Developer shall use its best efforts to ensure that at least seventy-five (75) Full-time Jobs provided in connection with the operation of the Source Property are filled by Central City Residents on or before January 1, 2008. Full-time Jobs held by Central City Residents shall also count as Full-time Jobs held by Fort Worth Residents.

5.5. Supply and Service Expenditure Commitments.

5.5.1. Fort Worth Companies.

Beginning with the calendar year in which the Phase I Completion Date occurs, and in each subsequent year of the term of this Agreement, Developer will spend or cause to be spent an amount at least equal to the greater of (i) twenty-five percent (25%) of its total Supply and Service Expenditures, or (ii) \$35,000 in Supply and Service Expenditures with Fort Worth Companies (the “**Fort Worth Supply and Service Expenditure Commitment**”); provided, however, that if the Phase I Completion Date occurs on a date other than January 1, then only for the calendar year in which the Phase I Completion Date occurs, this commitment shall be reduced to an amount equal to the product of the Fort Worth Supply and Service Expenditure Commitment multiplied by a fraction, the numerator of which is the number of days remaining in such



year after the Phase I Completion Date and the denominator of which is 365.

5.5.2. Fort Worth Certified M/WBE Companies.

Beginning with the calendar year in which the Phase I Completion Date occurs, and in each subsequent year of the term of this Agreement, Developer will spend or cause to be spent an amount at least equal to the greater of (i) twenty-five percent (25%) of its total Supply and Service Expenditures, or (ii) \$35,000 in Supply and Service Expenditures with Fort Worth Certified M/WBE Companies (the “**Fort Worth M/WBE Supply and Service Expenditure Commitment**”); provided, however, that if the Phase I Completion Date occurs on a date other than January 1, then only for the calendar year in which the Phase I Completion Date occurs, this commitment shall be reduced to an amount equal to the product of the Fort Worth M/WBE Supply and Service Expenditure Commitment multiplied by a fraction, the numerator of which is the number of days remaining in such year after the Phase I Completion Date and the denominator of which is 365. *Dollars spent with Fort Worth M/WBE Certified Companies pursuant to the Fort Worth M/WBE Supply and Service Expenditure Commitment shall be in addition to, and shall not count as, dollars spent with Fort Worth Companies pursuant to the Fort Worth Supply and Service Expenditure Commitment, as set forth in Section 5.5.1.*

5.6. Construction Inspections, Monthly Reports, and Certificates of Completion.

5.6.1. Inspections.

At any time during normal office hours and following reasonable notice to Developer, the City and any authorized designee shall have, and Developer shall provide, access to the Source Property so that the City and any authorized designee can inspect the Project Improvements in order to ascertain Developer’s compliance with the Approved Plans and other provisions of this Agreement. In addition, the City and any authorized designee shall have the right to inspect all work undertaken on the Project Improvements in order for the City or any authorized designee to inspect and evaluate such work for compliance with any permit, code or other requirements. Developer shall cooperate fully with the City and any authorized designee during any such inspection and/or evaluation.

5.6.2. Monthly Certificates.

Developer shall submit monthly certificates to the City in a form reasonably acceptable to the City and signed by an officer of Developer

and Developer's general contractor, that state, as of a date certain, (i) the specific work on the Project Improvements that has been completed since the last monthly report; (ii) the total amount of money that Developer has paid for completion of such work and that Developer intends to claim as a Source Property Project Cost; and (iii) Developer's calculation of the estimated remaining Source Property Project Costs necessary to complete the Phase I Project Improvements or the Phase II Project Improvements, as applicable. Upon receipt of any such certificate, the City shall have ten (10) calendar days to notify Developer in writing of any objection that it may have as to the nature of the work, the amount of money that Developer has paid or as to Developer's calculation of the estimated remaining cost to complete the Phase I Project Improvements or the Phase II Project Improvements, as applicable. The grounds for any such objection shall be limited, respectively, to a good faith determination by the City that the amount of money paid or to be paid by Developer does not qualify as a Source Property Project Cost under this Agreement. If Developer disagrees with such objection, the City and Developer shall diligently work in good faith to resolve the dispute. If resolution is not achieved, Developer may petition the City Council to make a determination, which determination shall be final.

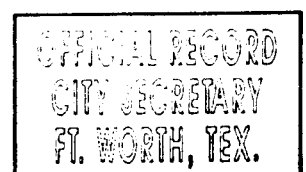
5.6.3. Phase I Certificate of Completion.

Within sixty (60) days following the later of the Phase I Completion Date or the Phase I Completion Deadline, Developer shall submit to the City a final certificate ("**Phase I Completion Report**"), signed by an officer of Developer and Developer's general contractor, in a form reasonably acceptable to the City, that specifically sets forth (i) the specific Project Improvements, or portions thereof, that have been completed, (ii) the specific Project Improvements that have received shell space, temporary or final certificates of occupancy, if applicable, (iii) the specific Project Improvements that are leased and those which are open for business; (iv) the actual overall amount of Source Property Project Costs expended by or on behalf of Developer for construction of the Phase I Project Improvements, together with supporting invoices and other documents necessary to demonstrate that such amounts were actually paid by or on behalf of Developer, including, without limitation, lien waivers signed by Developer's general contractors, (v) the actual amount of Source Property Project Costs expended by or on behalf of Developer for construction of the Phase I Project Improvements with Fort Worth Companies and with Fort Worth Certified M/WBE Companies, together with supporting invoices and other documents necessary to demonstrate that such amounts were actually paid by or on behalf of Developer to such companies, and (vi) the total Leasable Square Footage within the Source Property as of the Phase I Completion Date, and (vii) the total Occupied Square Footage within the Source Property as of the Phase I Completion

Date. In the event that Developer fails to meet any of its commitments, the Phase I Completion Report shall include a written statement signed by an officer or authorized representative of the Developer that explains what steps it took to fulfill such commitments and why it believes that the commitments were not met. Within thirty (30) days after the City receives Developer's Phase I Completion Report, the City will issue a certificate ("**Phase I Certificate of Completion**") setting forth (i) whether Developer has earned the Phase I Overall Spending and Completion Percentage as set forth in Section 6.2 by satisfying the commitment set forth in Section 5.2.1 to achieve Phase I Project Completion so that the Phase I Completion Date occurs on or before the Phase I Completion Deadline, (ii) whether Developer has earned the Phase I Fort Worth Company Spending Percentage as set forth in Section 6.3 by satisfying the commitment set forth in Section 5.2.2 to expend the required amount of Source Property Project Costs for construction of the Phase I Project Improvements with Fort Worth Companies, and (iii) whether Developer has earned the Phase I Fort Worth Certified M/WBE Company Spending Percentage as set forth in Section 6.4 by satisfying the commitment set forth in Section 5.2.3 to expend the required amount of Source Property Project Costs for construction of the Phase I Project Improvements with Fort Worth Certified M/WBE Companies.

5.6.4. Phase II Certificate of Completion.

Within sixty (60) days following the later of the Phase II Completion Date or the Phase II Completion Deadline, Developer shall submit to the City a final certificate ("**Phase II Completion Report**"), signed by an officer of Developer and Developer's general contractor, in a form reasonably acceptable to the City, that specifically sets forth (i) the specific Project Improvements, or portions thereof, that have been completed, (ii) the specific Project Improvements that have received shell space, temporary or final certificates of occupancy, if applicable, (iii) the specific Project Improvements that are leased and those which are open for business; (iv) the actual overall amount of Source Property Project Costs expended by or on behalf of Developer for construction of the Phase II Project Improvements, together with supporting invoices and other documents necessary to demonstrate that such amounts were actually paid by or on behalf of Developer, including, without limitation, lien waivers signed by Developer's general contractors, (v) the actual amount of Source Property Project Costs expended by or on behalf of Developer for construction of the Phase II Project Improvements with Fort Worth Companies and with Fort Worth Certified M/WBE Companies, together with supporting invoices and other documents necessary to demonstrate that such amounts were actually paid by or on behalf of Developer to such companies, and (vi) the total Leasable Square Footage within the Source Property as of the Phase II Completion Date, and (vii) the total Occupied



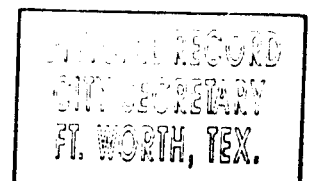
Square Footage within the Source Property as of the Phase II Completion Date. In the event that Developer fails to meet any of its commitments, the Phase II Completion Report shall include a written statement signed by an officer or authorized representative of the Developer that explains what steps it took to fulfill such commitments and why it believes that the commitments were not met. Within thirty (30) days after the City receives Developer's Phase II Completion Report, the City will issue a certificate ("**Phase II Certificate of Completion**") setting forth (i) whether Developer has earned the Project Improvement Overall Spending and Completion Percentage as set forth in Section 7.2 by satisfying the commitment set forth in Section 5.3.1 to achieve Phase II Project Completion so that the Phase II Completion Date occurs on or before the Phase II Completion Deadline, (ii) whether Developer has earned the Phase II Fort Worth Company Spending Percentage as set forth in Section 7.3 by satisfying the commitment set forth in Section 5.3.2 to expend the required amount of Source Property Project Costs for construction of the Phase II Project Improvements with Fort Worth Companies, and (iii) whether Developer has earned the Phase II Fort Worth Certified M/WBE Company Spending Percentage as set forth in Section 7.4 by satisfying the commitment set forth in Section 5.3.3 to expend the required amount of Source Property Project Costs for construction of the Phase II Project Improvements with Fort Worth Certified M/WBE Companies.

5.7. Annual Reports.

On or before the February 1 next following the Phase I Completion Date, and each February 1 thereafter throughout the Term, Developer will provide the City with the following reports in a form reasonably acceptable to the City in order for the City to assess the degree to which the commitments set forth in Sections 5.4.1, 5.4.2, 5.4.3, 5.5.1, and 5.5.2 were met during the previous calendar year and to determine the amount of the Program Grant that will be payable hereunder during such year:

5.7.1. Employment Report.

Developer shall provide the City with a report that sets forth the number of Full-time Jobs on the Source Property as of December 31 of the previous calendar year (i) overall, (ii) that were held by Fort Worth Residents, and (iii) that were held by Central City Residents, together with the zip codes of residency of each such employee (provided, however, that if any of the reported zip codes cover areas both within and outside of the City limits or the Central City, as the case may be, then Developer shall also provide reasonable additional documentation to assist the City in determining whether the employees within those zip codes are Fort Worth Residents or Central City Residents, as applicable), which report shall be based on employment data as of December 31 of the previous calendar



year or such other date as may be reasonably acceptable to the City. In the event that any of the employment commitments were not met, the report shall include a written statement signed by an officer or authorized representative of the Developer that explains what steps it took to fulfill the commitments and why it believes that the commitments were not met. Notwithstanding anything to the contrary, Developer shall no longer be required to provide the City with the employment report described in this Section 5.7.1 for any calendar year beginning after the fifth anniversary of the Phase I Completion Date.

5.7.2. Sales Tax and Sales Per Square Foot Report.

To the extent reasonably possible, Developer shall require any third party that purchases or leases all or any portion of the Source Property to provide Developer with annual Sales data sufficient for Developer to complete the annual report to the City, as required by this Section 5.7.2. Developer shall provide the City with a report that sets forth (i) the total amount of Sales generated from the Occupied Square Footage on the Source Property during the previous calendar year, (ii) the total Leasable Square Footage and the total Occupied Square Footage on the Source Property as of December 31 of the previous calendar year, (iii) the Sales Per Square Foot for the Occupied Square Footage on the Source Property during the previous calendar year, (iv) the aggregate amount of sales tax paid to the State Comptroller by Developer and all other entities located on the Source Property during the previous year (the “**Aggregate Source Property Sales Tax Payments**”), (v) the portion of the Aggregate Source Property Sales Tax Payments for which Developer has obtained and possesses copies of the corresponding sales tax reports filed with the State Comptroller (“**Comptroller Reports**”) by Developer and any tenant or other entity located on the Source Property, (vi) a list of the separate amounts of sales tax shown on each respective Comptroller Report to have been paid by Developer and by each individual tenant or other entity located on the Source Property, and (vii) a list of those tenants or other entities located on the Source Property for which Developer did not obtain a Comptroller Report relating to such year. Developer shall keep and maintain copies of all Comptroller Reports that Developer obtains from tenants or other entities on the Source Property for at least seven (7) years following the end of the year to which such Comptroller Reports relate, and shall make such Comptroller Reports available to the City pursuant to Section 5.9 below for purposes of verification by the City. Notwithstanding anything to the contrary, the portion of the Aggregate Source Property Sales Tax Payments for which Developer obtains copies of the corresponding Comptroller Reports (and subject to additional verification by the City) is referred to herein as the “**Verified Aggregate Source Property Sales Tax Payments**”. Aggregate Source Property Sales Tax Payments in excess of Verified Aggregate Source Property

Sales Tax Payments will not be considered in calculating the Source Property Sales Tax Revenue or the Source Property Sales Tax Increment.

5.7.3. Personal Property Tax Report.

Developer shall provide the City with a report that sets forth (i) the total aggregate amount of personal property tax paid by any entity or entities to the City (or to the State Comptroller for the benefit of the City) based on the entire taxable appraised value of the personal property located on the Source Property during the previous calendar year (the “**Aggregate Personal Property Tax Payments**”), and (ii) including copies of the personal property tax assessments issued by the appraisal district that has jurisdiction over the Source Property at the time to Developer and each tenant or other entity located on the Source Property during the previous calendar year. The portion of the Aggregate Personal Property Tax Payments which is verified by Developer by providing to the City copies of the corresponding personal property tax bills issued by the appraisal district with jurisdiction over the Source Property (and subject to additional verification by the City) is referred to herein as the “**Verified Aggregate Personal Property Tax Payments**”.

5.7.4. Lists of Tenants and Other Users.

Developer shall provide the City with a list of all tenants, licensees, and other users on the Source Property during the previous calendar year.

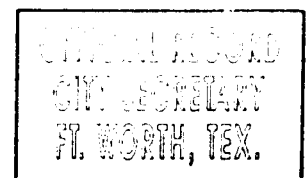
5.8. Other Reports and Filings.

5.8.1. Plan for Use of Fort Worth Certified M/WBE Companies.

Within sixty (60) days after the Execution Date of this Agreement, Developer shall file a plan with the City as to how the goals for the use of Fort Worth Certified M/WBE Companies outlined in this Agreement will be attained. Developer agrees to meet with the City’s M/WBE Office and Minority and Women Business Enterprise Advisory Committee as reasonably necessary (as determined by the City in the City’s sole discretion) for assistance in implementing such plan and to address any concerns that the City may have with such plan.

5.8.2. Monthly Spending Reports.

From the date that is sixty (60) days after the Execution Date of this Agreement until the Phase II Completion Date, in order to enable the City to assist Developer in meeting its goal for construction spending with Fort Worth Companies and with Fort Worth Certified M/WBE



Companies, Developer shall submit monthly certificates to the City in a form reasonably acceptable to the City and signed by an officer of Developer and Developer's general contractor, that state, as of a date certain, (i) the then-current aggregate Source Property Project Costs expended by and on behalf of Developer with Fort Worth Companies for construction of the Project Improvements, and (ii) the then-current aggregate Source Property Project Costs expended by and on behalf of Developer with Fort Worth Certified M/WBE Companies for construction of the Project Improvements.

5.8.3. Quarterly Supply and Service Spending Report.

Beginning on the Phase I Completion Date and for the remainder of the Term, within thirty (30) days following the end of each calendar quarter, Developer shall provide the City with a report in a form reasonably acceptable to the City that sets forth the aggregate amounts of Supply and Service Expenditures actually expended during such calendar year by the Developer (i) overall, (ii) with Fort Worth Companies, and (iii) with Fort Worth Certified M/WBE Companies, together with supporting invoices and other documents necessary to demonstrate that such amounts were actually paid by Developer to such companies. The City will use each year's fourth quarter report to assess the degree to which Developer met the Supply and Service Expenditure commitments set forth in Section 5.5.1 and 5.5.2 during such year. In the event that Developer fails to meet its commitments during any year, the report shall include a written statement signed by an officer or authorized representative of the Developer that explains what steps it took to fulfill such commitments and why it believes that the commitments were not met.

5.9. Audits.

Developer agrees that the City will have the right, at the City's expense, to audit the financial and business records in the possession of Developer, any third party who purchases or leases all or any portion of the Source Property, or any property owners' association covering any portion of the Source Property (collectively, the "**Developer Records**") that relate to (i) the construction of the Project Improvements and the Source Property Project Costs spent by Developer, (ii) the residency and number of Full-time Jobs held on the Source Property at any time during the Term of this Agreement, (iii) Developer's Supply and Service Expenditures at any time during the Term of this Agreement, and (iv) the Sales on the Source Property at any time during the Term of this Agreement, in order to determine compliance with this Agreement. All Developer Records, including any Comptroller Reports, shall be made available to the City on property located within the Source Property or at another location in the City acceptable to the City following reasonable advance notice by the City and the Developer and such other third parties shall otherwise cooperate fully with the City during any audit.

5.10. Exclusive Incentive.

Developer understands and agrees that the Program Grants paid by the City pursuant to this Agreement are intended to be the exclusive incentive that the City will offer with respect to the Source Property so long as this Agreement is in effect. Accordingly, Developer hereby agrees that during the Term of this Agreement Developer and any affiliate thereof shall not request, lead, or encourage any other third party to request any further incentives from the City with respect to the Source Property, including, but not limited to, tax abatements, tax exemptions, economic development grants and fee waivers, whether for the benefit of Developer and/or an affiliate thereof or a third party purchaser or lessee, or potential purchaser or lessee, of any portion of the Source Property.

6. PROGRAM GRANTS.

In each Program Year commencing prior to the Phase II Completion Date, subject to Section 6.9, and unless otherwise provided in this Agreement, the City will pay to Developer annual Program Grants, calculated in accordance with this Section 6. Notwithstanding the foregoing, the Program Grants payable in all Program Years commencing after the Phase II Completion Date shall be calculated as set forth in Section 7 below instead of as set forth in Section 6, subject to Section 6.9. The maximum amount of any annual Program Grant shall be as set forth in Section 6.1 below. The actual amount of each annual Program Grant shall be based on (i) whether the Phase I Completion commitment and the Source Property Project Cost spending commitments for the Phase I Project Improvements, as outlined in Sections 5.2.1, 5.2.2 and 5.2.3, were met; (ii) whether the Supply and Service Expenditure commitments, as outlined in Sections 5.5.1 and 5.5.2, were met in the previous calendar year, (iii) whether the Sales per Square Foot were above \$89.00 per square foot and the Occupied Square Footage was at least 187,000 for the previous year, as outlined in Section 9.2.4, and (iv) as otherwise provided in this Agreement. Notwithstanding anything to the contrary, in no event shall the aggregate amount of Program Grants paid under this Agreement exceed the Maximum Program Grant Amount. A deficiency in attainment of one commitment in one year may not be offset by exceeding another commitment in that same year. If the Term of this Agreement expires prior to Developer's receipt of the Maximum Program Grant Amount, the City's obligation to pay Developer any Remaining Potential Program Grant Balance, any Carry-over Amount, or any other sum shall automatically be extinguished.

6.1. Base Amount of Each Program Grant.

The base amount of each annual Program Grant (the "**Base Amount**") shall be calculated as follows:

6.1.1. For Program Years 1 through 3.

The Base Amount for Program Years 1 through 3 shall equal the sum of (i) fifty percent (50%) of the Source Property Tax Increment received by the City in the one year period prior to February 1 of the respective Program Year, plus (ii) one hundred percent (100%) of the Source Property Sales Tax Increment received by the City during the previous calendar year.

6.1.2. For Program Years 4 through 10.

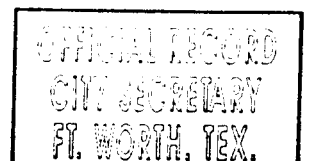
The Base Amount for Program Years 4 through 10 shall equal the sum of (i) fifty percent (50%) of the Source Property Tax Increment received by the City in the one year period prior to February 1 of the respective Program Year, plus (ii) eighty percent (80%) of the Source Property Sales Tax Increment received by the City during the previous calendar year. The Base Amount for Program Years following Program Year 10 shall be governed by Section 7, if applicable.

6.1.3. Maximum Base Amount.

Notwithstanding the foregoing, in no event shall the Base Amount for any Program Year exceed the Maximum Annual Program Grant Amount for that Program Year as shown on the Annual Cap Schedule attached hereto as **Exhibit “C”**, which is hereby made a part of this Agreement for all purposes; provided, however, that if the Base Amount for any Program Year is less than the Maximum Annual Program Grant Amount for that Program Year as shown on **Exhibit “C,”** then the difference (the **“Carry-over Amount”**) shall be carried forward to future years and added to the Maximum Annual Program Grant Amounts shown on **Exhibit “C”** for such future years.

6.2. Component Based on Overall Phase I Construction Spending and Phase I Project Completion (60%).

Sixty percent (60%) of the Base Amount (the **“Phase I Overall Spending and Completion Percentage”**) for each annual Program Grant payable hereunder will be earned by Developer if Developer satisfies the commitment set forth in Section 5.2.1 by achieving Phase I Project Completion on or before the Phase I Completion Deadline. Whether the Phase I Overall Spending and Completion Percentage is earned shall be calculated as of the Phase I Completion Date, shall be set forth in the Phase I Certificate of Completion, and this percentage shall remain constant throughout the Program, subject to Section 6.9. The Phase I Overall Spending and Completion Percentage is all-or-nothing, and if Developer fails to satisfy the overall Phase I spending and completion commitments set forth



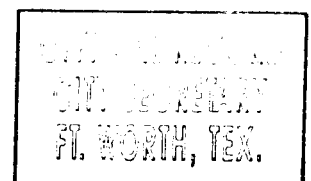
in Section 5.2.1 on or before the Phase I Completion Deadline, the City will have the right to terminate this Agreement in accordance with Section 9.2.1.

6.3. Component Based on Phase I Spending with Fort Worth Companies (20%).

Twenty percent (20%) of the Base Amount (the “**Phase I Fort Worth Company Spending Percentage**”) for each annual Program Grant payable hereunder will be earned by Developer if Developer satisfies the commitment set forth in Section 5.2.2 by spending with Fort Worth Companies on or before the Phase I Completion Deadline an amount of the Source Property Project Costs at least equal to the greater of either (i) thirty percent (30%) of the total Source Property Project Costs for the Phase I Project Improvements, or (ii) \$4,800,000 in Source Property Project Costs for Phase I Project Improvements. Whether the Phase I Fort Worth Company Spending Percentage is earned shall be calculated as of the Phase I Completion Date, shall be set forth in the Phase I Certificate of Completion, and this percentage shall remain constant throughout the Program, subject to Section 6.9. The Phase I Fort Worth Company Spending Percentage is all-or-nothing, and the Developer will forfeit any right to twenty percent (20%) of the Base Amount for all Program Years if Developer fails to satisfy the Phase I Fort Worth Company spending commitment set forth in Section 5.2.2 on or before the Phase I Completion Deadline.

6.4 Component Based on Phase I Spending with Fort Worth Certified M/WBE Companies (20%).

Twenty percent (20%) of the Base Amount (the “**Phase I Fort Worth Certified M/WBE Company Spending Percentage**”) for each annual Program Grant payable hereunder will be earned by Developer if Developer satisfies the commitment set forth in Section 5.2.3 by spending with Fort Worth Certified M/WBE Companies on or before the Phase I Completion Deadline an amount of the Source Property Project Costs at least equal to the greater of either (i) thirty percent (30%) of the total Source Property Project Costs for the Phase I Project Improvements, or (ii) \$4,800,000 in Source Property Project Costs for Phase I Project Improvements. Whether the Phase I Fort Worth Certified M/WBE Company Spending Percentage is earned shall be calculated as of the Phase I Completion Date, shall be set forth in the Phase I Certificate of Completion, and this percentage shall remain constant throughout the Program, subject to Section 6.9. The Phase I Fort Worth Certified M/WBE Company Spending Percentage is all-or-nothing, and the Developer will forfeit any right to twenty percent (20%) of the Base Amount for all Program Years if Developer fails to satisfy the Phase I Fort Worth Certified M/WBE Company spending commitment set forth in Section 5.2.3 on or before the Phase I Completion Deadline.



6.5. Failure to Meet Annual Commitments.

6.5.1. Failure to Meet Fort Worth Company Supply and Service Expenditure Commitment.

If in any calendar year less than the required amount set forth in Section 5.5.1 is spent with Fort Worth Companies, the amount of the Program Grant for the following year shall be reduced by an amount equal to the number of dollars by which such commitment was missed (the “**Fort Worth Company Supply and Service Expenditure Reduction**”).

6.5.2. Failure to Meet Fort Worth Certified M/WBE Company Supply and Service Expenditure Commitment.

If in any calendar year less than the required amount set forth in Section 5.5.2 is spent with Fort Worth Certified M/WBE Companies, the amount of the Program Grant for the following year shall be reduced by an amount equal to the number of dollars by which such commitment was missed (the “**Fort Worth Certified M/WBE Company Supply and Service Expenditure Reduction**”).

6.5.3. No Offsets.

A deficiency in attainment of any of the commitments set forth in Sections 5.5.1, and/or 5.5.2 may not be offset by exceeding any of the other commitments.

6.6. Calculation of Program Grant.

As stated in the introductory paragraph of this Section 6, subject to Section 6.9 and in accordance with the provisions of Sections 6.1 through 6.5, each annual Program Grant shall be equal to:

- (i) the product of the applicable Base Amount for such Program Year,
- (ii) multiplied by the sum of:
 - (a) the Phase I Overall Spending and Completion Percentage applicable to that Program Year (only if earned by Developer pursuant to Section 6.2), plus
 - (b) the Phase I Fort Worth Company Spending Percentage applicable to that Program Year (only if earned by Developer pursuant to Section 6.3), plus
 - (c) the Phase I Fort Worth Certified M/WBE Company Spending Percentage applicable to that Program Year (only if earned by Developer pursuant to Section 6.4),

- (iii) then less the following amounts applicable to that Program Year (if any):
 - (a) the Fort Worth Company Supply and Service Expenditure Reduction, and
 - (b) Fort Worth Certified M/WBE Company Supply and Service Expenditure Reduction.

6.7. Source of Program Grant Payments.

Notwithstanding anything that may be interpreted to the contrary herein, all Program Grants payable by the City under this Agreement shall come from then-currently available general revenues of the City and not directly from the Source Property Tax Increment or the Source Property Sales Tax Increment received by the City.

6.8. Deadline for Payment.

Annual Program Grants will be paid to Developer on or before September 1 of the year following the year in which the Phase I Completion Date occurs, and on or before June 1 of each subsequent calendar year during the Term. Each annual Program Grant payment made by the City shall be accompanied by an accounting showing the City's calculation of such payment.

6.9. Effect of Phase II Completion on Calculation of Program Grants.

6.9.1. Maximum Program Grant Amount Prior to Phase II Completion.

Notwithstanding anything to the contrary, in no event shall the Maximum Program Grant Amount exceed \$8,000,000 gross unless Developer achieves Phase II Project Completion on or before the Phase II Completion Deadline. If the total aggregate amount of Program Grants received by Developer under this Agreement reaches \$8,000,000 gross before the Phase II Completion Deadline, but before the Phase II Completion Date, then (i) Developer will receive no additional Program Grants unless and until Developer qualifies for additional Program Grants pursuant to Section 7 of this Agreement, and (ii) no additional Carry-over Amount will accrue during any year between the year as of which Developer received an aggregate of \$8,000,000 gross in Program Grants and the year in which the City is obligated to resume paying Developer additional Program Grants in accordance with Section 7, if any; provided that any Carry-over Amount for prior years in which Developer received a Program Grant may be carried over to future Program Years if the Phase II Completion Date does occur prior to the Phase II Completion Deadline.

6.9.2. Calculation of Program Grants Following Phase II Completion Date.

Notwithstanding the foregoing, in the event that Developer satisfies the commitment set forth in Section 5.3.1 by achieving Phase II Project Completion on or before the Phase II Completion Deadline (in addition to achieving Phase I Project Completion on or before the Phase I Completion Deadline), then the Program Grants payable in all Program Years following the Phase II Completion Date shall be calculated as set forth in Section 7 below instead of as set forth in Section 6.

7. CALCULATION OF PROGRAM GRANTS FOLLOWING PHASE II PROJECT COMPLETION.

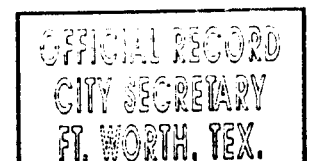
Subject to Section 6.9, in each Program Year following the Phase II Completion Date (and provided that Developer achieved Phase I Project Completion on or before the Phase I Completion Deadline), and unless otherwise provided in this Agreement, the City will pay to Developer annual Program Grants, calculated in accordance with this Section 7. The maximum amount of any annual Program Grant shall be as set forth in Section 7.1 below. The actual amount of each annual Program Grant following the Phase II Completion Date, shall be based on (i) whether the Phase II Completion commitment and the Source Property Project Cost spending commitments for the Project Improvements, as outlined in Sections 5.3.1, 5.3.2 and 5.3.3, were met; (ii) whether the Supply and Service Expenditure commitments, as outlined in Sections 5.5.1 and 5.5.2, were met in the previous calendar year, (iii) whether the Sales per Square Foot were above \$89.00 per square foot and the Occupied Square Footage was at least 187,000 for the previous year, as outlined in Section 9.2.4, and (iv) as otherwise provided in this Agreement. Notwithstanding anything to the contrary, in no event shall the aggregate amount of Program Grants paid under this Agreement exceed the Maximum Program Grant Amount. A deficiency in attainment of one commitment in one year may not be offset by exceeding another commitment in that same year. If the Term of this Agreement expires prior to Developer's receipt of the Maximum Program Grant Amount, the City's obligation to pay Developer any Remaining Potential Program Grant Balance, any Carry-over Amount, or any other sum shall automatically be extinguished.

7.1. Base Amount of Each Program Grant.

The Base Amount of each annual Program Grant shall be calculated as follows:

7.1.1. For Program Years 1 through 3.

The Base Amount for Program Years 1 through 3 shall equal the sum of (i) fifty percent (50%) of the Source Property Tax Increment received by the City in the one year period prior to February 1 of the



respective Program Year, plus (ii) one hundred percent (100%) of the Source Property Sales Tax Increment received by the City during the previous calendar year.

7.1.2. For Program Years 4 through 20.

The Base Amount for Program Years 4 through 20 shall equal the sum of (i) fifty percent (50%) of the Source Property Tax Increment received by the City in the one year period prior to February 1 of the respective Program Year, plus (ii) eighty percent (80%) of the Source Property Sales Tax Increment received by the City during the previous calendar year.

7.1.3. Maximum Base Amount.

Notwithstanding the foregoing, in no event shall the Base Amount for any Program Year exceed the Maximum Annual Program Grant Amount for that Program Year as shown on the Annual Cap Schedule attached hereto as **Exhibit “C”**; provided, however, that if the Base Amount for any Program Year is less than the Maximum Annual Program Grant Amount for that Program Year as shown on **Exhibit “C”**, then the Carry-over Amount shall be carried forward to future years and added to the Maximum Annual Program Grant Amounts shown on **Exhibit “C”** for such future years.

7.2. Component Based on Overall Phase II Construction Spending and Phase II Project Completion (60%).

Sixty percent (60%) of the Base Amount (the “**Project Improvement Overall Spending and Completion Percentage**”) for each annual Program Grant payable following the Phase II Completion Date will be earned by Developer if Developer satisfies the commitment set forth in Section 5.3.1 by achieving Phase II Project Completion so that the Phase II Completion Date occurs on or before the Phase II Completion Deadline. Whether the Phase II Overall Spending and Completion Percentage is earned shall be calculated as of the Phase II Completion Date, shall be set forth in the Phase II Certificate of Completion, and this percentage shall remain constant throughout the remainder of the Program. The Project Improvement Overall Spending and Completion Percentage is all-or-nothing; if Developer fails to satisfy the overall Phase II spending and completion commitments set forth in Section 5.3.1 on or before the Phase II Completion Deadline, Section 6.9.1 will apply.

7.3. Component Based on Phase II Spending with Fort Worth Companies (20%).

Twenty percent (20%) of the Base Amount (the “**Project Improvement Fort Worth Company Spending Percentage**”) for each annual Program Grant payable following the Phase II Completion Date will be earned by Developer if Developer satisfies the commitment set forth in Section 5.3.2 by spending with Fort Worth Companies on or before the Phase II Completion Deadline an amount of the Source Property Project Costs at least equal to the greater of either (i) thirty percent (30%) of the total Source Property Project Costs for the Project Improvements, or (ii) \$7,800,000 in Source Property Project Costs for Project Improvements (which amount includes the \$4,800,000 described in Section 5.2.2 for Phase I Project Improvements, plus an additional \$3,000,000 for Phase II Project Improvements). Whether the Project Improvement Fort Worth Company Spending Percentage is earned shall be calculated as of the Phase II Completion Date, shall be set forth in the Phase II Certificate of Completion, and this percentage shall remain constant for the remainder of the Program. The Project Improvement Fort Worth Company Spending Percentage is all-or-nothing, and the Developer will forfeit any right to twenty percent (20%) of the Base Amount for all remaining Program Years if Developer fails to satisfy the Project Improvement Fort Worth Company spending commitment set forth in Section 5.3.2 on or before the Phase II Completion Deadline.

7.4 Component Based on Phase II Spending with Fort Worth Certified M/WBE Companies (20%).

Twenty percent (20%) of the Base Amount (the “**Project Improvement Fort Worth Certified M/WBE Company Spending Percentage**”) for each annual Program Grant payable following the Phase II Completion Date will be earned by Developer if Developer satisfies the commitment set forth in Section 5.3.3 by spending with Fort Worth Certified M/WBE Companies on or before the Phase II Completion Deadline an amount of the Source Property Project Costs at least equal to the greater of either (i) thirty percent (30%) of the total Source Property Project Costs for the Project Improvements, or (ii) \$7,800,000 in Source Property Project Costs (which amount includes the \$4,800,000 described in Section 5.2.3 for Phase I Project Improvements, plus an additional \$3,000,000 for Phase II Project Improvements). Whether the Project Improvement Fort Worth Certified M/WBE Company Spending Percentage is earned shall be calculated as of the Phase II Completion Date, shall be set forth in the Phase II Certificate of Completion, and this percentage shall remain constant for the remainder of the Program. The Project Improvement Fort Worth Certified M/WBE Company Spending Percentage is all-or-nothing, and the Developer will forfeit any right to twenty percent (20%) of the Base Amount for all remaining Program Years if Developer fails to satisfy the Project Improvement Fort Worth Certified M/WBE

Company spending commitment set forth in Section 5.3.3 on or before the Phase II Completion Deadline.

7.5. Failure to Meet Annual Commitments.

7.5.1. Failure to Meet Fort Worth Company Supply and Service Expenditure Commitment.

If in any calendar year less than the required amount set forth in Section 5.5.1 is spent with Fort Worth Companies, the amount of the Program Grant for the following year shall be reduced by an amount equal to the number of dollars by which such commitment was missed (the “**Fort Worth Company Supply and Service Expenditure Reduction**”).

7.5.2. Failure to Meet Fort Worth Certified M/WBE Company Supply and Service Expenditure Commitment.

If in any calendar year less than the required amount set forth in Section 5.5.2 is spent with Fort Worth Certified M/WBE Companies, the amount of the Program Grant for the following year shall be reduced by an amount equal to the number of dollars by which such commitment was missed (the “**Fort Worth Certified M/WBE Company Supply and Service Expenditure Reduction**”).

7.5.3. No Offsets.

A deficiency in attainment of any of the commitments set forth in Sections 5.5.1, and/or 5.5.2 may not be offset by exceeding any of the other commitments.

7.6. Calculation of Program Grant.

As stated in the introductory paragraph of this Section 7, subject to Section 6.9 and in accordance with the provisions of Sections 7.1 through 7.5, each annual Program Grant payable following the Phase II Completion Date shall be equal to:

- (i) the product of the applicable Base Amount for such Program Year,
- (ii) multiplied by the sum of:
 - (a) the Project Improvement Overall Spending and Completion Percentage applicable to that Program Year (only if earned by Developer pursuant to Section 7.2), plus
 - (b) the Project Improvement Fort Worth Company Spending Percentage applicable to that Program Year (only if earned by Developer pursuant to Section 7.3), plus

- (c) the Project Improvement Fort Worth Certified M/WBE Company Spending Percentage applicable to that Program Year (only if earned by Developer pursuant to Section 7.4),
- (iii) then less the following amounts applicable to that Program Year (if any):
 - (a) the Fort Worth Company Supply and Service Expenditure Reduction, and
 - (b) Fort Worth Certified M/WBE Company Supply and Service Expenditure Reduction.

7.7. Source of Program Grant Payments.

Notwithstanding anything that may be interpreted to the contrary herein, all Program Grants payable by the City under this Agreement shall come from then-currently available general revenues of the City and not directly from the Source Property Tax Increment or the Source Property Sales Tax Increment received by the City.

7.8. Deadline for Payment.

Annual Program Grants following the Phase II Completion Date will be paid to Developer on or before September 1 of the year following the year in which the Phase II Completion Date occurs, and on or before June 1 of each subsequent calendar year during the Term. Each annual Program Grant payment made by the City shall be accompanied by an accounting showing the City's calculation of such payment.

8. LIABILITY AND INDEMNIFICATION.

DEVELOPER SHALL BE LIABLE FOR AND HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH, PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT MAY ARISE OUT OF OR BE OCCASIONED BY DEVELOPER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT ACT OR OMISSION OF DEVELOPER, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS (OTHER THAN THE CITY) OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE UNDERTAKING OF ANY OF THE PROJECT IMPROVEMENTS; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND

IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH DEVELOPER AND THE CITY, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

In addition, Developer will cause any Project Improvement Contract to contain an indemnification provision, in substantially the same form as that set forth above, under which the Contractor and any subcontractors involved in any work on the Project Improvements agree to indemnify and hold harmless the City for any negligent acts or omissions or intentional misconduct of the Contractor or any subcontractors, their officers, agents, servants and employees that is related to or arises from work on the Project Improvements.

9. DEFAULT, TERMINATION AND FAILURE TO MEET VARIOUS OBLIGATIONS.

9.1. Termination by Developer.

Developer may terminate this Agreement at any time by providing written notice to the City; provided, however, that Section 8 of this Agreement shall survive any termination of this Agreement.

9.2 Termination by the City.

9.2.1. Failure to Reach Phase I Project Completion on or before the Phase I Completion Deadline.

Notwithstanding anything to the contrary, if all of the requirements have not been satisfied for Phase I Project Completion to have occurred by the Phase I Completion Deadline, then the City shall have the right to terminate this Agreement at any time following the Phase I Completion Deadline by providing written notice of such intent to Developer, and regardless of whether the City exercises such right to terminate, the City shall owe no Program Grants or any other sums to Developer.

9.2.2. Failure to Reach Phase II Project Completion on or before the Phase II Completion Deadline.

Notwithstanding anything to the contrary, if all of the requirements have not been satisfied for Phase II Project Completion to have occurred by the Phase II Completion Deadline, then the City shall have the right to terminate this Agreement at any time following the Phase II Completion Deadline by providing written notice of such intent to Developer, and regardless of whether the City exercises such right to terminate, the City shall owe no additional Program Grants or any other sums to Developer.

9.2.3. Failure to Pay City Taxes.

An event of default shall occur under this Agreement if any ad valorem taxes or sales taxes on any portion of the Source Property that is owned by Developer or arising on account of operations on any portion of the Source Property, excluding amounts owed by tenants, that is owned by Developer and owed to the City become delinquent and Developer does not properly follow the legal procedures for protest and/or contest of any such taxes. Upon the occurrence of such default, the City shall notify Developer in writing and Developer shall (i) have thirty (30) calendar days to cure such default or (ii) if Developer has diligently pursued cure of the default but such default is not reasonably curable within thirty (30) calendar days, then such amount of time that the City reasonably agrees is necessary to cure such default. If the default has not been fully cured by such time, the City shall have the right to terminate this Agreement immediately by providing written notice to Developer and shall have all other rights and remedies that may be available to it under the law or in equity. The City shall owe no Program Grants or any other sums to Developer following such termination.

9.2.4. Failure to Maintain Sales Per Square Foot and Occupancy.

Notwithstanding anything to the contrary contained herein, if either (i) Sales Per Square Foot for the Occupied Square Footage on the Source Property during any Program Year is less than \$89 per square foot, or (ii) the Occupied Square Footage within the Source Property is less than 187,000 square feet as of December 31 of any year, then Developer shall receive no Program Grant during the following Program Year, but the City shall have no right to terminate this Agreement unless otherwise provided in this Agreement. The City shall have the right to terminate this Agreement immediately by providing written notice of such intent to Developer in the event that either (x) the average annual Sales Per Square Foot for the Occupied Square Footage on the Source Property is less than \$85.00 per square foot per year for any period of at least five (5) consecutive Program Years, or (xx) the Occupied Square Footage within the Source Property is less than 179,000 square feet on December 31 of at least five (5) consecutive Program Years. The City shall owe no Program Grants or any other sums to Developer following such termination.

9.2.5. Sale or Conveyance of Source Property by Developer.

In the event that Developer sells or conveys all or any portion of the Source Property to a third party (a “Conveyance”) within five (5) years following the date this Agreement is executed on behalf of the City, the City shall have the right to terminate this Agreement immediately by

providing written notice of such intent to Developer. The City shall owe no Program Grants or any other sums to Developer following such termination. Notwithstanding anything to the contrary, in no event shall a lease be deemed a Conveyance for purposes of this Section 9.2.5.

9.2.6. Violations of City Code, State or Federal Law.

An event of default shall occur under this Agreement if any written citation is issued due to the occurrence of a material violation of a provision of the City Code on the Source Property or on or within any improvements thereon (including, without limitation, any material violation of the City's Building or Fire Codes and any other City Code violations related to the environmental condition of the Source Property; the environmental condition of other land or waters which is attributable to operations on the Source Property; or to matters concerning the public health, safety or welfare) and such citation is not paid or the recipient of such citation does not properly follow the legal procedures for protest and/or contest of any such citation. An event of default shall occur under this Agreement if the City is notified by a governmental agency or unit with appropriate jurisdiction that the City; Developer; a successor in interest; or any third party with access to the Source Property pursuant to the express or implied permission of Developer or a successor in interest is in violation of any material or criminal state or federal law, rule or regulation on account of the Source Property, improvements on the Source Property or any operations thereon (including, without limitation, any material violations related to the environmental condition of the Source Property; the environmental condition of other land or waters which is attributable to operations on the Source Property; or to matters concerning the public health, safety or welfare). Upon the occurrence of an event of default under this Section 9.2.6, the City shall notify Developer in writing and Developer shall have (i) thirty (30) calendar days to cure such default or (ii) if Developer has diligently pursued cure of the default but such default is not reasonably curable within thirty (30) calendar days, then such amount of time that the City agrees is reasonably necessary to cure such default. If the default has not been fully cured by such time, the City, as its sole and exclusive remedy under this Agreement, shall have the right to terminate this Agreement immediately by providing written notice to Developer and shall have all other rights and remedies that may be available to the City under the law with respect to such violation of the City Code, state or federal law, rule or regulation, as the case may be.

9.3. Failure by Developer to Meet Project Improvement Commitments, Source Property Improvement Commitments and/or Employment Commitments.

Subject to Section 9.2, Developer's failure in any given year to meet any or all of the commitments set forth in Sections 5.2.2, 5.2.3, 5.4.1, 5.4.2, 5.4.3, 5.5.1, and 5.5.2 shall not place Developer in default hereunder or provide the City with the right to terminate this Agreement, but, rather, shall only be weighed against the amount of the Program Grants that the City is required to pay Developer in accordance with this Agreement.

9.4. Estoppel Certificates.

Upon written request by Developer to the City, no more frequently than once per year, the City shall provide Developer with a certificate stating, as of the date of the certificate, (i) whether this Agreement is in full force and effect and, if Developer is in breach of this Agreement, the nature of that breach; (ii) the aggregate amount of Program Grants that the City has previously paid to Developer; and (iii) the remaining balance of Program Grants anticipated to be paid to Developer.

10. INDEPENDENT CONTRACTOR.

It is expressly understood and agreed that Developer shall operate as an independent contractor as to all rights and privileges granted herein, and not as an agent, representative or employee of the City. Developer shall have the exclusive right to control the details of all work on the Project Improvements and of all operations and activities undertaken by Developer on the Source Property and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, patrons, licensees and invitees. Developer acknowledges that the doctrine of *respondeat superior* shall not apply as between the City and Developer, its officers, agents, employees, contractors and subcontractors. Developer further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between the City and Developer.

11. MUTUAL ASSISTANCE AND FAST-TRACK DEVELOPMENT APPROVALS.

The City and Developer will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions. In addition, the City will use reasonable efforts to provide a procedure to expedite all Development Department and Transportation/Public Works Department approvals directly related to the construction and acceptance by the City of the Project Improvements. However,

Developer understands and agrees that the City has entered into development agreements for several other major projects in the City and that expedited approvals will be reasonably subject to the then-current workloads and staffing capacity of such Departments.

12. REPRESENTATIONS AND WARRANTIES.

The City represents and warrants to Developer that the Program and this Agreement are within the scope of its authority and the provisions of the Charter and Code of the City and that it is duly authorized and empowered to establish the Program and enter into this Agreement. Developer represents and warrants to the City that it has the requisite authority to enter into this Agreement.

13. SUCCESSORS AND ASSIGNS.

Developer may not assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any party without the prior written consent of the City, which consent shall not unreasonably be withheld or delayed, conditioned on (i) the prior approval of the assignee or successor and a finding by the City Council that the proposed assignee or successor is financially and otherwise capable of meeting the terms and conditions of this Agreement and (ii) prior execution by the proposed assignee or successor of a written agreement with the City under which the proposed assignee or successor agrees to assume all covenants and obligations of Developer under this Agreement, in which case such assignee or successor shall thereafter be deemed "Developer" for all purposes under this Agreement. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

14. NOTICES.

All written notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid, or by hand delivery:

City:

City of Fort Worth
Attn: Director
Economic & Community Dev. Dept.
1000 Throckmorton
Fort Worth, TX 76102

Developer:

Town Center Mall, L.P.
Attn: Andrew Segal
2650 Fountainview, Suite 400
Houston, Texas 77005

with copies to:

the City Manager
and the City Attorney at:
1000 Throckmorton
Fort Worth, TX 76102

with copies to:

Jose Legaspi
La Gran Plaza
4200 South Freeway
Fort Worth, Texas 76115

15. INTERPRETATION.

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

16. VENUE AND JURISDICTION.

This Agreement shall be construed in accordance with the laws of the State of Texas and applicable ordinances, rules, regulations or policies of the City. Venue for any action under this Agreement shall lie in the State District Court of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.

17. GOVERNMENTAL POWERS.

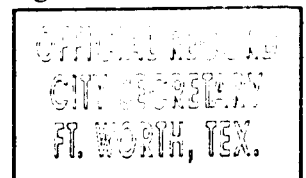
It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers.

18. NO THIRD PARTY RIGHTS.

The provisions and conditions of this Agreement are solely for the benefit of the City and Developer, and any lawful assign or successor of Developer, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

19. FORCE MAJEURE.

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, unreasonable delays by the City in issuing any permits or certificates of occupancy or conducting any inspections of or with respect to the Project Improvements (based on the amount of time that the City customarily requires in undertaking such activities and based on the then-current workload of the City department(s) responsible for undertaking such



activities), or delays caused by unforeseen construction or site issues, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

20. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS; ALL GRANTS SUBJECT TO APPROPRIATION.

This Agreement is subject to all applicable federal, state and local laws, ordinances, rules and regulations, including, but not limited to, all provisions of the City's Charter and ordinances, as amended, and violation of same shall constitute a default under this Agreement. Notwithstanding anything to the contrary herein, all obligations of the City to pay Program Grants to Developer shall be subject to annual appropriation by the City Council. The City's staff shall use best efforts to include in each annual budget, for consideration and approval by the City Council (such approval, however, being solely within the discretion of the City Council), such amounts as would be sufficient to satisfy all of the City's obligations to Developer under this Agreement during the forthcoming City fiscal year.

21. SEVERABILITY.

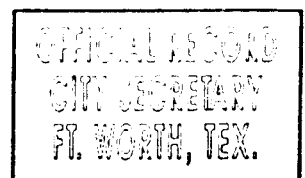
If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

22. COUNTERPARTS.

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

23. CAPTIONS.

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.



24. ENTIRETY OF AGREEMENT.

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Developer, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. This Agreement shall not be amended unless executed in writing by both parties and approved by the City in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

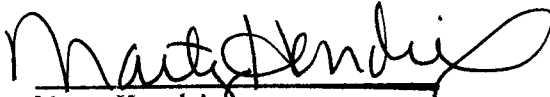
EXECUTED to be effective as of the last date indicated below (the "Execution Date"):

CITY OF FORT WORTH:

DEVELOPER:

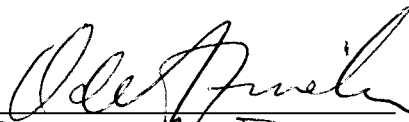
TOWN CENTER MALL, L.P.,
a Texas limited partnership

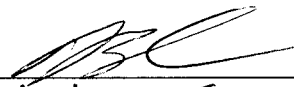
Attested By:


Marty Hendrix
City Secretary

By: Town Center Property, L.L.C.,
a Texas limited liability company,
its general partner

By: LGP Property, L.L.C.,
a Texas limited liability company,
its managing member

By: 
Name: DALE A. FISSELER
Title: ASSISTANT CITY MANAGER

By: 
Name: Andrew Segal
Title: Manager

Date: 8/2/05

Date: 7/6/05

APPROVED AS TO FORM AND LEGALITY:

By: 
Peter Vaky
Assistant City Attorney

M&C: C-20783 6-7-05

EXHIBITS

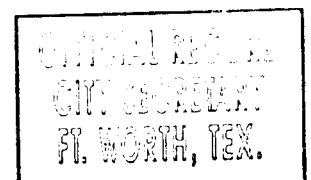
“A” – Map of the Central City

“B” – Map and Description of Source Property

“C” - Annual Cap Schedule

“D” - List of Existing Contracts

EXHIBIT "A"
MAP OF CENTRAL CITY



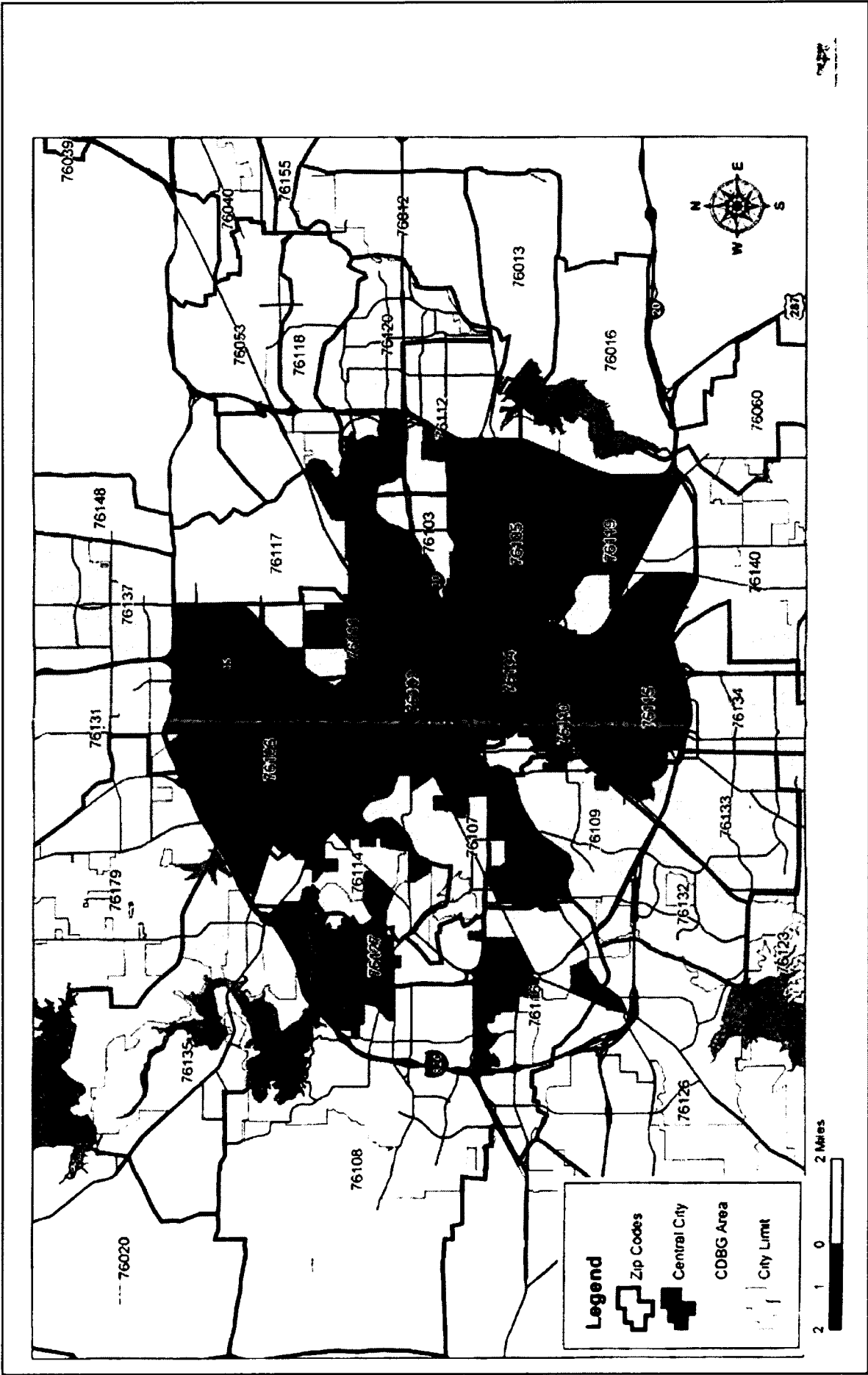
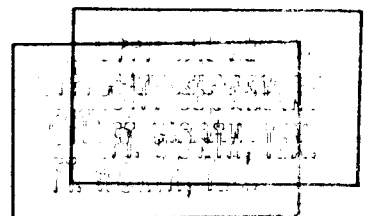
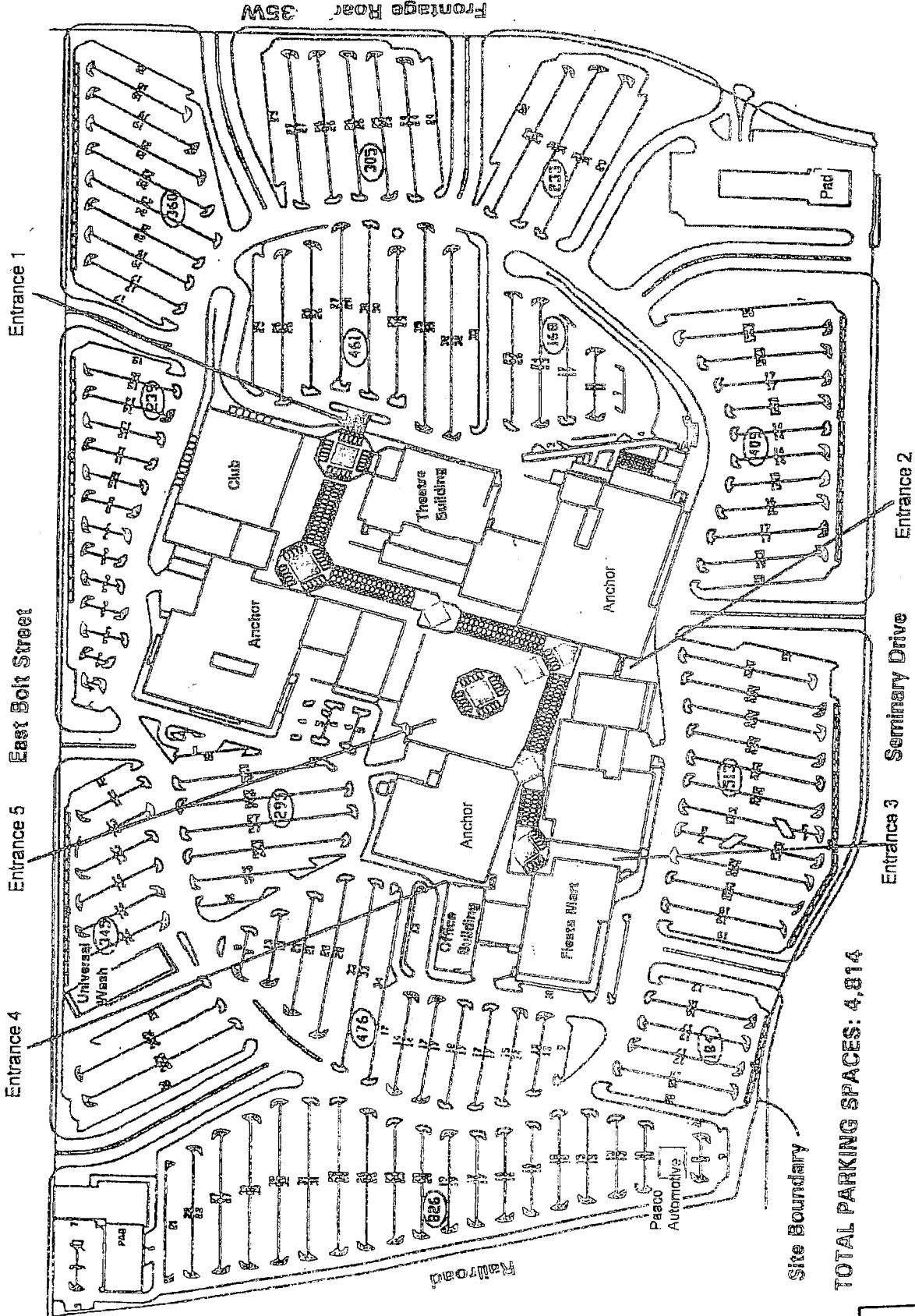


EXHIBIT "B"
MAP AND DESCRIPTION OF SOURCE PROPERTY

Economic Development Program Agreement
between City of Fort Worth and Town Center Mall, L.P.





TOTAL PARKING SPACES: 4,814



La Gran Plaza Site Plan

CITY OF FORT WORTH

 PLANNING DEPARTMENT

 FORT WORTH, TEX.

TRACT 1:

Being a tract of land situated in the J.F. Ellis Survey, Abstract Number 490, the John Thornhill Survey, Abstract Number 1519, and the Lewis Wetmore Survey, Abstract Number 1649, all of Tarrant County, Texas, also being all of that certain tract of land known as Lot 2, Block 1, Fort Worth Town Center and recorded in Cabinet "A", Slide 3776, Plat Records, Tarrant County, Texas, and being all of Block 1, Fort Worth Town Center, and recorded in Plat Volume 388/217, Page 7, Plat Records, Tarrant County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod found for the intersection of the southerly right of way line of East Bolt Street with the westerly right of way line of Interstate Highway 35W;

THENCE along the westerly right of way line of said Interstate Highway 35W, the following courses and distances:

S 00°26'49" W, 446.76 feet to a 5/8 inch iron rod found;

S 00°49'25" E, 225.77 feet to a 5/8 inch iron rod found;

S 00°00'50" W, 147.70 feet to a 5/8 inch iron rod found, the beginning of a curve to the right;

Along the arc of said curve to the right, through a central angle of 30°05'00", a radius of 660.07 feet, an arc length of 346.57 feet and a long chord of S 15°03'20" W, 342.60 feet to a 5/8 inch iron rod found;

S 30°05'50" W, 138.52 feet to a 5/8 inch iron rod with cap stamped "Carter & Burgess" found, the beginning of a curve to the left;

Along the arc of said curve to the left, through a central angle of 25°09'06", a radius of 407.97 feet, an arc length of 179.09 feet and a long chord of S 17°31'17" W, 177.66 feet to an "X" cut found;

THENCE S 47°15'16" W, 8.37 feet to an "X" cut in concrete found at the southeast corner of said Block 1, Fort Worth Town Center, said point also being in the northerly right of way line of Seminary Drive and the westerly right of way line of Interstate Highway 35W;

THENCE along the northerly right of way line of said Seminary Drive the following courses and distances:

N 89°37'00" W, 1279.29 feet to a 5/8 inch iron rod found, the beginning of a curve to the right;

Along the arc of said drive to the right, through a central angle of 27°48'00", a radius of 460.90 feet, an arc length of 223.63 feet and a long chord of N 75°43'00" W, 221.44 feet to a 5/8 inch iron rod with cap stamped "Carter & Burgess" found;

N 61°49'00" W, 60.21 feet to a 5/8 inch iron rod with cap stamped "Carter & Burgess" found, the beginning of a curve to the left;

Along the arc of said curve to the left, through a central angle of 26°30'17", a radius of 838.94 feet, an arc length of 388.09 feet and a long chord of N 75°04'09" W, 384.64 feet to a 5/8 inch iron rod with cap stamped "Carter & Burgess" found;

N 75°45'52" W, 52.83 feet to a 5/8 inch iron rod found;

N 79°46'13" W, 136.82 feet to a 5/8 inch iron found in the east line of Missouri, Kansas and Texas Railroad right of way;

THENCE along the east line of the said railroad right of way, the following courses and distances:

N 13°30'03" W, 663.71 feet to a 5/8 inch iron rod found, the beginning of a curve to the right;

Along the arc of said curve to the right through a central angle of 05°52'20", a radius of 5679.65 feet, an arc length of 582.10 feet, and a long chord of N 10°33'53" W, 581.85 feet to a 5/8 inch iron rod found in the south right of way line of the aforementioned East Bolt Street;

THENCE N 89°59'12" E, along the said south line of East Bolt Street, 2584.43 feet to the POINT OF BEGINNING and containing 77.087 acres of land, more or less, save and except tracts 2, and 4 as follows:

"TEXAS THRIFT" TRACT:

8.9226 acres of land being Lot 3, Block 1, Fort Worth Town Center, an addition to the City of Fort Worth, Tarrant County, Texas according to the plat recorded in cabinet a slide 7102, Plat Records, Tarrant County, Texas, said Lot 3 being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch L&A found (1/2 inch iron rod found with plastic cap stamped "Landes & Assoc.", hereinafter all 1/2 inch L&A found are so marked) for the northwest corner of said Lot 3, said iron also being in the south right of way (R.O.W.) line of East Bolt Street;

THENCE N 89°59'12"E, 73.24 feet along said north line of said Lot 3, and said south R.O.W. line of said East Bolt Street to a 1/2 inch L&A found in an asphalt parking lot;

THENCE S 00°00'48"E, 36.69 feet to a 1/2 inch L&A found in asphalt;

THENCE S 29°57'49"E, 302.92 feet to a 1/2 inch L&A found in asphalt at the beginning of a non-tangent curve to the right whose radius is 713.00 feet and whose long chord bears N 65°59'06"E, 219.48 feet;

THENCE along said curve to the right in a northeasterly direction through a central angle of $17^{\circ}42'27''$ an arc length of 220.36 feet to a 1/2 inch L&A found at the end of said curve;

THENCE N $30^{\circ}10'42''$ W, 192.58 feet to a 1/2 inch L&A found;

THENCE N $00^{\circ}00'48''$ W, 43.38 feet to a 1/2 inch L&A found once again in the north line of Lot 3 and the south R.O.W. line of East Bolt Street;

THENCE N $89^{\circ}59'12''$ E, 849.83 feet along said north line and along said south R.O.W. line to a 1/2 inch L&A found;

THENCE S $00^{\circ}00'48''$ E, 35.09 feet to a 1/2 inch L&A found in an asphalt parking lot;

THENCE S $17^{\circ}06'28''$ W, at 160.33 feet passing the most northerly corner of a concrete and brick face wall of the Fort Worth Town Center Mall and continuing in all 185.10 feet to a building corner;

THENCE N $72^{\circ}45'02''$ W, 25.03 feet along the face of said building to a building corner;

THENCE S $17^{\circ}01'41''$ W, 70.36 feet to an "x" cut found in a concrete cap of the parapet wall on the roof of the mall building;

THENCE S $72^{\circ}58'19''$ E, 25.32 feet to an "x" cut found as before;

THENCE S $17^{\circ}15'00''$ W, 107.72 feet to an angle point;

THENCE S $27^{\circ}44'25''$ E, 6.01 feet to an angle point;

THENCE S $62^{\circ}15'35''$ W, 40.00 feet to an angle point;

THENCE S $17^{\circ}16'00''$ W, 60.02 feet to an "x" cut found;

THENCE N $72^{\circ}44'00''$ W, 100.37 feet to an "x" cut found;

THENCE S $17^{\circ}01'50''$ W, 1.60 feet to an "x" cut found marked as before;

THENCE N $73^{\circ}03'00''$ W at 0.44 feet pass the concrete and brick corner of the "Penny Building And The Mall Building" and continue in all 82.80 feet along the southerly face of said "Penney Building" to a "v" cut in the concrete foundation of the building below the brick ledge;

THENCE S $17^{\circ}53'53''$ W, 14.63 feet to a 1/2 inch L&A found;

THENCE N $72^{\circ}54'18''$ W, 12.35 feet to a "mag" nail found;

THENCE S $17^{\circ}06'36''$ W, 139.02 feet crossing a drive and then along the back of curb to a "mag" nail found at the beginning of a curve to the right whose radius is 2.87 feet and whose long chord bears S $60^{\circ}54'13''$ W, 4.15 feet;

THENCE along said curve to the right through a central angle of a $92^{\circ}44'45''$ an arc length of 4.64 feet to a "mag" nail found at the end of curve;

THENCE $N 72^{\circ}43'25''W$, 127.00 feet to a 1/2 inch L&A found at the beginning of a non-tangent curve to the left whose radius is 150.00 feet and whose long chord bears $N 88^{\circ}04'03''W$, 157.75 feet;

THENCE along said curve to the left in a northwesterly direction through a central angle of $63^{\circ}26'48''$ an arc length of 166.10 feet to a 1/2 inch L&A found at the end of said curve and at the back of a concrete curb;

THENCE $N 31^{\circ}35'46''W$, 282.23 feet along said back of curb and continuing into an asphalt drive to a 1/2 inch L&A found at the beginning of a non-tangent curve to the left whose radius is 675.00 feet and whose long chord bears $S 58^{\circ}58'33''W$, 209.92 feet;

THENCE along said curve to the left in a southwesterly direction through a central angle of $17^{\circ}53'27''$ an arc length of 210.77 feet to a 1/2 inch L&A found in asphalt at the end of said curve;

THENCE $N 30^{\circ}01'04''W$, 355.55 feet to a 1/2 inch L&A found in asphalt;

THENCE $N 00^{\circ}00'48''W$, 72.79, feet to the POINT OF BEGINNING and containing 388,668 square feet or 8.9226 acres of land, more or less

TRACT 4 ("PAD SITE"):

Being a tract of land situated in the J.F. Ellis Survey, Abstract Number 490, and the John Thornhill Survey, Abstract Number 1519, Tarrant County, Texas, also being a part of that certain tract of land known as Lot 2, Block 1, Fort Worth Town Center and recorded in Cabinet "A", Slide 3776, Plat Records, Tarrant County, Texas, and being all of Block 1, Fort Worth Town Center, and recorded in Plat Volume 388/217, Page 7, Plat Records, Tarrant County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at an "X" cut in concrete found at the southeast corner of said Block 1, Fort Worth Town Center, said point also being in the northerly right of way line of Seminary Drive and the westerly right of way line of Interstate Highway 35W;

THENCE $N 89^{\circ}37'00''W$, 179.96 feet along the northerly right of way line of said Seminary Drive to a 5/8 inch iron rod with yellow cap stamped "Carter & Burgess" set;

THENCE $N 00^{\circ}23'00''E$, 86.73 feet to a 5/8 inch iron rod with yellow cap stamped "Carter & Burgess" set;

THENCE $N 89^{\circ}37'00''W$, 3.22 feet to a 5/8 inch iron rod with yellow cap stamped "Carter & Burgess" set;

THENCE N 00°23'00"E, 36.83 feet to a 5/8 inch iron rod with yellow cap stamped "Carter & Burgess" set;

THENCE N 89°37'00"W, 11.21 feet to a 5/8 inch iron rod with yellow cap stamped "Carter & Burgess" set;

THENCE N 00°23'00"E, 161.70 feet to a 5/8 inch iron rod with yellow cap stamped "Carter & Burgess" set;

THENCE N 89°37'00"W, 4.38 feet to a 5/8 inch iron rod with yellow cap stamped "Carter & Burgess" set;

THENCE N 00°23'00"E, 17.77 feet to a 5/8 inch iron rod with yellow cap stamped "Carter & Burgess" set;

THENCE S 89°37'00"E, 17.59 feet to a 5/8 inch iron rod with yellow cap stamped "Carter & Burgess" set;

THENCE N 00°23'00"E, 30.36 feet to a 5/8 inch iron rod with yellow cap stamped "Carter & Burgess" set;

THENCE N 45°38'48"E, 42.23 feet to a 5/8 inch iron rod with yellow cap stamped "Carter & Burgess" set;

THENCE S 89°37'00"E, 138.53 feet to a 5/8 inch iron rod with yellow cap stamped "Carter & Burgess" set;

THENCE S 00°23'00"W, 18.78 feet to a 5/8 inch iron rod with yellow cap stamped "Carter & Burgess" set at the beginning of a curve to the right;

THENCE 78.54 feet along the arc of said curve to the right, through a central angle of 90°00'00", having a radius of 50.00 feet, and a long chord which bears S 44°37'00"E, 70.71 feet to a 5/8 inch iron rod with yellow cap stamped "Carter & Burgess" set;

THENCE S 00°23'00"W, 161.42 feet to a 5/8 inch iron rod with yellow cap stamped "Carter & Burgess" set on the westerly right of way line of said Interstate Highway 35W, said point also being the beginning of a curve to the left;

THENCE 131.54 feet along the arc of said curve to the left, and with said right-of-way, through a central angle of 18°28'27", having a radius of 407.97 feet, and a long chord which bears S 14°10'56"W, 130.97 feet to a 5/8 inch iron rod with yellow cap stamped "Carter & Burgess" set;

THENCE S 47°15'16"W, 8.37 feet to the POINT OF BEGINNING and containing 77,200 square feet or 1.772 acres of land more or less, which tracts 2, and 4 contain 10.695 acres of land, leaving 66.392 acres net in Tract 1.

**TOGETHER WITH THE RIGHTS AND BENEFITS OF THE FOLLOWING
EASEMENT ESTATES:**

Easement estate created by Reciprocal Easement and Operating Agreement dated December 28, 2001, executed by and between Town Mall, Ltd., a Texas limited partnership and Ronald L. Giles and wife, Martha B. Giles, recorded in Volume 15364, Page 46, Deed Records, Tarrant County, Texas.

Easement estate created by Easement Agreement dated September 18, 1997, executed by and between Town Mall, Ltd., a Texas limited partnership and Sequoia/Chen Joint Venture, a Florida general partnership, recorded in Volume 12917, Page 78, Deed Records, Tarrant County, Texas.

EXHIBIT "C"
ANNUAL CAP SCHEDULE

YEAR	MAXIMUM PROGRAM GRANT AMOUNT PAYABLE
1	\$769,155
2	\$1,365,335
3	\$2,276,801
4	\$1,881,738
5	\$1,919,373
6	\$1,957,761
7	\$1,996,916
8	\$2,036,854
9	\$2,077,591
10	\$2,119,143
11	\$2,161,526
12	\$2,204,756
13	\$2,248,852
14	\$2,293,829
15	\$2,339,705
16	\$2,386,499
17	\$2,434,229
18	\$2,482,914
19	\$2,532,572
20	\$2,583,224

EXHIBIT "D"
LIST OF EXISTING CONTRACTS

EXHIBIT "D"
LIST OF EXISTING CONTRACTS AND VENDORS

A-1 Copier Tec, Inc.
Ace Termite and Pest Control
Advanced Maintenance Supply, Co.
American Society of Composers Auth.& Pub.
APS Advanced Protection Systems Co.
The Araya Group, Inc.
Astex Enviromental Svcs., Inc.
ATMOS Energy
AT&T Wireless
AVL Elevator Company, Inc
BAC Education Foundation
Bagby Elevator Company, Inc.
Bluebonnet Waste Control, Inc.
Bowen Research & Development, Inc.
Building Concepts of Dallas, Inc.
C & C Engineering, Inc. Total
Carter Burgess, Inc.
Cingular Wireless
City of Fort Worth Water Department
Forth Worth Public Health Dept.
CLM Lawn Services
Collins Window Cleaning
Dallas Business Journal
Dallas Morning News, L.P.
David Hidalgo Architects, Inc.
Dependable Lawn Care Inc.
DHL Express (USA), Inc.
Dixie Staffing Services
ICI Delux Paint Center
Duncan Disposal
Excel Group Inc.
Federal Express
Fikes Services, Inc.
General Roofing
Geoscience-Engineering & Testing, Inc. Total
GideonToal
Gille Reprographics, Inc.
GMAC Commercial
Goes Sales of Texas, Inc.
HBC Terracon, Inc.
Home Depot/GECF
Horizon Electrical Service Inc.
Initial Tropical Plants
Johnson Controls Inc.
K 2 Chem, Inc.

Lone Star Overnight
Matheson Tri-Gas, Inc.
Muzak - Mid Continent Region
National Abatement Services, Inc.
N & S Acoustics
Oakmark Builders, Inc.
Pacesetter Personnel SVC., Inc.
Pitney Bowes Purchase Power
Red News
RoofMaster Maintenance & Roofing, Inc.
Salesforce.com, Inc.
Sam's Club
Sand Trap Service Co. Inc.
Scribor Texas, LLC
Shanghai Key Import Export Co.
Siemens Cerberus Div
Simplex Grinnell L.P.
Star Uniform Co.
Strategic Energy
STS Door Services
Summit Roofing
Southwestern Bell
Teletrac, Inc.
Terminix Processing Center
TFA Texas Fire Alarm, Inc.
TruGreen LandCare
TXU Energy
TXU Gas
Univision Radio Brdcst Tx Lp
United Rentals
Verizon Wireless
VMC Landscape Services
Wells Fargo Financial Leasing
WW Britain Co.

City of Fort Worth, Texas
Mayor and Council Communication

COUNCIL ACTION: Approved on 6/7/2005

DATE: Tuesday, June 07, 2005

LOG NAME: 17EDALAGRAN

REFERENCE NO.: C-20783

SUBJECT:

Authorize the Execution of an Economic Development Program Agreement with Town Center Mall, L.P. for the Development of La Gran Plaza on the Former Town Center Mall Site

RECOMMENDATION:

It is recommended that the City Council:

1. Authorize the City Manager to execute the attached Economic Development Program Agreement (subject to non-material final changes agreed to by the parties) with Town Center Mall, L.P. related to the development of the La Gran Plaza formally known as Town Center Mall (the Property); and
2. Find that the terms and conditions of the agreement, as outlined below, constitute a custom-designed economic development program, as recommended by the 2005 Comprehensive Plan and authorized by Chapter 380 of the Texas Local Government Code.

DISCUSSION:

Under the proposed Economic Development Program Agreement (Agreement), Town Center Mall, L.P. (Developer) has committed to (i) expend up to \$26,000,000 on Project Improvements within 10 years of execution of the contract, (ii) complete a renovation of the facade of the former Town Center Mall and (iii) make available for lease up to 900,000 square feet of retail space.

The project investment has been split into two distinct phases which will allow Town Center Mall, L.P. to make the overall \$26,000,000 of improvements and minimize the financial risk to the City of Fort Worth. In Phase One of the Agreement, the Developer will be required to make at least \$16,000,000 in property investment (exclusive of land purchase costs but inclusive of hard and soft costs, site development and expenditures spent since May 1, 2004) on the site within 24 months.

The real property improvements in Phase One will consist of:

- Capital repairs to the existing property, including, but not limited, to repairs and improvements to HVAC, parking lot, plumbing, electrical and structural;
- Finish out into "leasable condition" of approximately 80% of the Leasable space (549,000 square feet of vacant retail space, 132,000 square feet of currently leased retail space with leases coming due before project completion and 78,000 square feet of office space);
- Renovate the exterior facade and former Sears Tire Center in a Mexican colonial architectural style; and
- Build-out of approximately 82,000 square feet of space of retail space.

In order to obtain the maximum benefit under Phase One of the Agreement, Developer will be required to spend (i) the greater of 30% or \$4,800,000 of its construction costs with Fort Worth companies and (ii) the greater of 30% or \$4,800,000 of its construction costs with Fort Worth certified M/WBE companies. Expenditures with Fort Worth certified M/WBE companies will also count as expenditures with Fort Worth companies.

In addition, the Developer has committed to make a good faith effort to ensure that at least 300 full-time jobs are provided in connection with the operation of the Property on or before January 1, 2008. Of these jobs, the Developer will make a good faith effort to ensure that at least 150 or 50% of all jobs on the Property will be filled by Fort Worth residents and at least 75 or 25% of all jobs on the property will be filled by central city residents. Moreover, the Developer has committed to spend the greater of 25% or \$35,000 per year in local discretionary funds for supplies and services with Fort Worth companies and the greater of 25% or \$35,000 with Fort Worth certified M/WBE companies. The dollars spent for supply and service expenditures with Fort Worth M/WBE certified companies shall be in addition to the Developer's commitment to spend certain amounts for supply and service expenditures with Fort Worth companies.

In return for the redevelopment of the Property, Town Center Mall, L.P. will be eligible to receive up to 20 annual economic development program grants as authorized by Chapter 380 of the Texas Local Government Code. The amount of the program grant in years one through three will equal 50% of the real and personal property incremental taxes and up to 100% of the City's 1% sales tax incremental revenues attributable to the Property. The amount of the program grant in years 4–20 will be equal to 50% of the real and personal property incremental taxes and up to 80% of the City's 1% sales tax incremental revenues attributable to the Property.

If the Developer completes only Phase One of the project, the total amount of all program grants shall not exceed \$8,000,000 in gross dollars and the agreement will expire after 10 years. The Developer will receive additional grants only if Phase Two of the project is completed and the additional investment of \$10,000,000 is made during the first 10 years of the Agreement. If the Developer reaches a cumulative incentive of \$8,000,000 before the end of the 10 year period and prior to the additional investment of \$10,000,000, the Developer will receive no additional incentive payments until the additional investment of \$10 million is made.

Each annual program grant will be capped in accordance with the table attached to the Agreement as Exhibit C (Maximum Annual Program Grants). If any annual program grant is less than the Maximum Annual Program Grant for that year (excluding reductions caused by Developer's failure to meet one or more of its commitments, as explained below), the difference shall be added, with no interest, to the next year's Maximum Annual Program Grant amount.

The actual amount of each annual program grant in Phase One will depend upon the extent to which Developer has met its construction and construction spending commitments for Phase One, as outlined above and allocated as follows:

- An amount equal to 60% of the Maximum Annual Program Grant if Developer expends at least \$16,000,000 in improvements to the Property within 24 months. Failure to meet this condition is an event of default;
- An amount equal to 20% of the Maximum Annual Program Grant if Developer spends the greater of 30% or \$4,800,000 of its construction costs with Fort Worth Companies; and
- An amount equal to 20% of the Maximum Annual Program Grant if Developer spends the greater of 30% or \$4,800,000 of its construction costs with Fort Worth Certified M/WBE Companies.

Program grants will be subject to reduction by an amount equal to the number of dollars by which Developer missed any of its supply and service expenditure commitments.

The real property improvements in Phase Two will consist of:

- Construction of an additional 72,000 square feet of retail space;
- Renovation to the common area space and interior facades of the shopping mall space in a Mexican colonial architectural style;
- Develop a central plaza similar to a Mexican town square; and
- Construction of a 52,000 square foot Rodeo Arena.

In order to obtain the maximum benefit under Phase Two of the Agreement, Town Center Mall, L.P. will be required to spend (i) the greater of 30% or \$3,000,000 of construction costs with Fort Worth companies and (ii) the greater of 30% or \$3,000,000 of construction costs with Fort Worth certified M/WBE companies. Expenditures with Fort Worth certified M/WBE companies will also count as expenditures with Fort Worth companies.

The total amount of all program grants for the 20-year period shall not exceed \$42,068,773 in gross dollars. The actual amount of each annual program grant in Phase Two will depend upon the extent to which Developer has met its construction and construction spending commitments for Phase Two, as outlined above and allocated as follows:

- An amount equal to 60% of the Maximum Annual Program Grant if Developer expends an additional \$10,000,000 in improvements to the Property within 10 years;
- An amount equal to 20% of the Maximum Annual Program Grant if Developer spends the greater of 30% or \$3,000,000 of its additional construction costs with Fort Worth companies; and
- An amount equal to 20% of the Maximum Annual Program Grant if Developer spends the greater of 30% or \$3,000,000 of its additional construction costs with Fort Worth Certified M/WBE Companies.

Again, program grants will be subject to reduction by an amount equal to the number of dollars by which Developer missed any of its supply and service expenditure commitments.

If either (i) sales per square foot for the occupied square footage on the Property during any year is less than \$89 per square foot, or (ii) the occupied square footage within the Property is less than 187,000 square feet as of December 31 of any year, then Developer shall receive no Program Grant in the following year.

In the event that either (i) the average annual sales per square foot for the occupied square footage on the Property is less than \$85.00 per square foot per year for any period of at least five consecutive years, or (ii) the occupied square footage within the Property is less than 179,000 square feet as of December 31 of at least five consecutive years, the City may terminate the Agreement.

The Agreement is authorized by Chapter 380 of the Texas Local Government Code and is consistent with the City's commitment to use custom-designed incentives on a case-by-case basis to help ensure the growth and diversification of the local economy, as stated in the 2005 Comprehensive Plan adopted by City Council on February 22, 2005, (M&C G-14691).

The proposed Project is located in COUNCIL DISTRICT 9.

FISCAL INFORMATION/CERTIFICATION:

The Finance Director certifies that this action will require no direct expenditure from the City funds in the current fiscal year.

TO Fund/Account/Centers

FROM Fund/Account/Centers

Submitted for City Manager's Office by:

Dale A. Fisseler (6266)

Originating Department Head:

Tom Higgins (6192)

Additional Information Contact:

Robert Sturns (8634)
