

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY OF MESQUITE; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (CHAPTER 380 AGREEMENT) FOR SUCH PURPOSES WITH SKYLINE COMMERCE CENTER OWNER, LP, FOR THE DEVELOPMENT OF TWO INDUSTRIAL BUILDINGS CONSISTING OF A TOTAL OF APPROXIMATELY 197,600 CUMULATIVE SQUARE FEET ON APPROXIMATELY 12.38 ACRES OF REAL PROPERTY LOCATED AT THE SOUTHEAST CORNER OF BUCKNER BOULEVARD AND INTERSTATE HIGHWAY 30 IN MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

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

WHEREAS, the City Council has been presented with a proposed agreement providing economic development incentives to SKYLINE COMMERCE CENTER OWNER, LP, a Delaware limited partnership (the “**Company**”), for the development of two industrial buildings consisting of a total of approximately 197,600 cumulative square feet on approximately 12.38 acres of real property located at the southeast corner of Buckner Boulevard and Interstate Highway 30 in Mesquite, Texas, a copy of said agreement being attached hereto as Exhibit A and incorporated herein by reference (the “**Agreement**”); and

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

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

SECTION 1. That the City Council finds that the terms of the proposed Agreement by and between the City and the Company, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, will benefit the City and its citizens and will accomplish the public purpose of promoting local economic development and stimulating business

and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

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

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

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

SECTION 5. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$50,000.00; (iii) approve or deny any matter in the Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 5 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 5 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative functions.

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

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 19th day of October 2020.

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Bruce Archer  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

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Sonja Land  
City Secretary



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David L. Paschall  
City Attorney

**EXHIBIT A**

**Chapter 380 Agreement between  
City of Mesquite, Texas, and Skyline Commerce Center Owner, LP**

# **ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

## **(Chapter 380 Agreement)**

This Economic Development Program Agreement (“Agreement”) is made and entered into by and between the City of Mesquite, a Texas home rule municipality (the “City”) and Skyline Commerce Center Owner, LP, a Delaware limited partnership (the “Company”).

### **WITNESSETH:**

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

**WHEREAS**, the Company is the owner of that certain tract of real property located in the City of Mesquite, Texas, consisting of approximately 12.38 acres located at the southeast corner of Buckner Boulevard and Interstate 30 in Mesquite, Texas and being more particularly described in **Exhibit “A”** attached hereto and made a part hereof for all purposes (the “Land”); and

**WHEREAS**, the Company plans to develop the Land by constructing two (2) industrial buildings containing approximately 197,600 cumulative square feet on the Land (each sometimes individually referred to as a “Building” and sometimes collectively referred to as the “Buildings” or the “Project”); and

**WHEREAS**, the Company will be making at least TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00) of capital improvements to the Land in connection with the construction of the Buildings; and

**WHEREAS**, the Land and Buildings are hereinafter sometimes collectively referred to as the “Mesquite Facility”; and

**WHEREAS**, the Company intends to lease the Buildings to one or more tenants that will occupy all or part of the Buildings for the purpose of manufacturing, storage and/or distribution of goods and related industrial purposes; and

**WHEREAS**, it is anticipated that employment opportunities will be made available at the Mesquite Facility and the business personal property installed by tenants of the Company at the Mesquite Facility will add value to the City’s tax rolls and increase the ad valorem business personal property taxes to be collected by the City; and

**WHEREAS**, in order to maximize the Project’s economic development impact on the City, it is essential that the Land is developed and the Buildings are constructed in compliance with the Building Façade/Elevation Plans attached hereto as **Exhibit “B”** and made a part hereof for all purposes (collectively the “Building Façade/Elevation Plans”), the Site Plan (as hereinafter defined) and the Landscape Plans attached hereto as **Exhibit “C”** and made a part hereof for all purposes (the “Landscape Plans”); and

**WHEREAS**, the Company has agreed to develop the Land and construct the Buildings in compliance with the Building Façade/Elevation Plans, the Site Plan (as hereinafter defined) and the Landscape Plans; and

**WHEREAS**, the development of the Land and the construction of the Buildings in compliance with the Building Façade/Elevation Plans, the Site Plan (as hereinafter defined) and the Landscape Plans will substantially increase the taxable value of the Land thereby adding value to the City’s tax rolls and maximizing the increase in ad valorem real property taxes to be assessed and collected by the City; and

**WHEREAS**, the Company’s agreement to develop the Land and construct the Buildings in compliance with the Building Façade/Elevation Plans, the Site Plan (as hereinafter defined) and the Landscape Plans is a material consideration for the City’s agreement to grant the Economic Development Incentive under the terms and subject to the conditions set forth in this Agreement; and

**WHEREAS**, the Company has advised the City that the Company will construct the Buildings sooner if the City provides the Economic Development Incentive to the Company under the terms and subject to the conditions more fully set forth in this Agreement; and

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

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

**WHEREAS**, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the Company’s performance of its obligations set forth in this Agreement will promote local economic development in the City, stimulate business and commercial activity in the City and benefit the City and its citizens.

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

## **ARTICLE I**

### **Incorporation of Recitals**

The foregoing recitals (“Recitals”) are incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

## **ARTICLE II**

### **Definitions**

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

“Act” shall have the meaning set forth in Article X, Section 22.

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

“Building” and “Buildings” shall have the meanings set forth in the Recitals of this Agreement.

“Building Façade/Elevation Plans” shall mean the building façade/elevation plans for the Buildings prepared by Ware Malcomb Architects, referenced as permit set dated August 23, 2019, Addendum # 1 dated November 1, 2019, approved by the City on January 24, 2020, and being page(s) A4.1-1, A4.1-2, A5.1-1, A5.1-2, A5.2-1, A5.2-2, A5.3-1 and A5.3-2 of the Site Plan for the Project approved by the City on or about November 26, 2019, a copy of such building façade/elevation plans being attached hereto as **Exhibit “B”** and made a part hereof for all purposes.

“Building Official” shall mean the “Building Official” of the City as defined in Section 202, “Definitions,” of Chapter 2, “Definitions,” of the International Building Code, 2015 Edition, a publication of the International Code Council, adopted and designated as the official building code of the City, as amended or replaced.

“Building Permit” shall mean a written authorization issued, after review and verification of code compliance, by the Building Official, or the Building Official’s designee, to the Company allowing the Company to proceed with construction of a Building on the Land in connection with the Project, and includes any construction-related permit required under Section 105, “Permits,” of Part 2, “Administration and Enforcement,” of Chapter 1, “Scope and Administration,” of the International Building Code, 2015 Edition, a publication of the International Code Council, adopted and designated as the official building code of the City, as amended or replaced.

“Capital Investment” shall have the meaning set forth in Article VI, Section 4 of this Agreement and shall include only expenditures capitalized as capital assets on the books of the Company in accordance with generally accepted accounting principles.

“Capital Investment Certificate” shall have the meaning set forth in Article VI, Section 4 of this Agreement.

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

Conditions Precedent have been satisfied and are then continuing; and (ii) that no Company Default (as hereinafter defined) then exists under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a Company Default under the terms of this Agreement.

“Certificate(s) of Occupancy” shall mean one or more final certificate(s) of occupancy issued by the City to one or more tenant(s) of the Company after the Building(s) have been completed in compliance with the City’s building, health, safety, fire and other codes and authorizing such tenant(s) to occupy one or more spaces(s) within the Building(s).

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

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

“Collateral Assignment” shall have the meaning set forth in Article X, Section 1 of this Agreement.

“Commence Vertical Construction” and “Commenced Vertical Construction” with respect to each Building shall mean: (i) the plans for the Building have been prepared and approved by all applicable governmental authorities; (ii) the Company has obtained all City approvals and the Building Permit required in connection with the construction of the Building; (iii) the foundation of such Building has been poured; and (iv) framing of the Building has commenced.

“Company” shall mean Skyline Commerce Center Owner, LP, a Delaware limited partnership, its successors and assigns only as permitted by Article X, Section 1 of this Agreement.

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

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

“Complete Construction,” “Completed Construction” and “Completion of Construction” with respect to each Building shall mean the construction of the Building is substantially complete as evidenced by the issuance by the City of a final inspection, final green tag, certificate of completion, or other equivalent, confirming completion of the requirements of the Building Permit issued by the City in connection with the construction of such Building.

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

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

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

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

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

“Landscape Plans” shall mean the landscape plans for the Project dated October 29, 2019, prepared by Grubbs Design Group, P.L.L.C., Landscape Architects, approved by the City on January 24, 2020, and being Sheet Numbers L1, L2, L3, L4, and L5 of the Site Plan for the Project, a copy of such landscape plans being attached hereto as **Exhibit “C”** and made a part hereof for all purposes.

“Lease Requirement” shall have the meaning set forth in Article VI, Section 5 of this Agreement.

“Lender” shall have the meaning set forth in Article X, Section 1 of this Agreement.

“Lender Notice of Default” shall have the meaning set forth in Article X, Section 1 of this Agreement.

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

“Mesquite Facility” shall have the meaning set forth in the Recitals of this Agreement.

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

“Parties” shall mean the Company and the City.

“Payment Request” shall mean the written request executed by the Company requesting the payment of the Economic Development Incentive.

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

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

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

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

“Site Plan” shall mean the site plan of the Project dated November 19, 2019, Project Name: Skyline Commerce Park, Project Case Number: SP0619-0115, prepared by Manhard Consulting, Ltd., Brian Bridgewater, P.E., approved by the City on or about November 26, 2019, a copy of the first page of the site plan being attached hereto as **Exhibit “D”** and made a part hereof for all purposes.

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

“Undocumented Workers” shall mean: (i) individuals who, at the time of employment with the Company, are not lawfully admitted for permanent residence to the United States or are not authorized under law to be employed in that manner in the United States; and (ii) such other persons as are included within the definition of “Undocumented worker” pursuant to V.T.C.A., Government Code §2264.001(4), as hereafter amended or replaced.

“Water and Wastewater Impact Fees” shall mean water and wastewater impact fees imposed on new development by the City pursuant to City Ordinance No. 4756, as amended or replaced, to generate revenue to fund or recoup all or part of the costs of capital improvements or facility expansion necessitated by and attributable to the Project provided, however, in no event shall Water and Wastewater Impact Fees include the dedication of rights-of-way or easements for such facilities, or the construction of such improvements imposed pursuant to the City’s zoning or subdivision regulations.

### ARTICLE III

#### Authority for Agreement

This Agreement is authorized by Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code. The City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the Company’s performance of its obligations herein will: (i) increase the amount of real and business personal property ad valorem taxes assessed and collected by the City; (ii) result in employment opportunities being created in the City; (iii) promote local economic development in the City, stimulate business and commercial activity in the City; and (iv) benefit the City and its citizens.

## ARTICLE IV

### Term

The term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) the fulfillment of all of the Parties' obligations under this Agreement; (ii) December 31, 2024; or (iii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein (the "Term").

## ARTICLE V

### Company's Covenant Not to Employ Undocumented Workers

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

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

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

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

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

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

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

## ARTICLE VI

### Company's Additional Covenants

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

1. Development of the Project. The Company will develop the Land in compliance with the Site Plan, the Building Façade/Elevation Plans and the Landscape Plans;

2. Commence Vertical Construction. The Company will Commence Vertical Construction of both Buildings on or before December 31, 2020;

3. Complete Construction. The Company will Complete Construction of both Buildings on or before December 31, 2023;

4. Capital Investment. On or before December 31, 2023, the Company will make expenditures in the amount of at least TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00) in connection with the acquisition of the Land, the planning and construction of the Buildings and all improvements related to the Project, including without limitation, tenant improvements constructed in accordance with tenant leases at the Project (the "Capital Investment"). On or before the earlier of: (i) February 28, 2024; (ii) sixty (60) days after Completion of Construction of both Buildings; or (iii) the date the Company submits the Payment Request to the City, the Company shall submit to the City a certificate in such form as is reasonably acceptable to the City executed by a Company Representative certifying the amount of expenditures made by the Company in connection with the construction of the Buildings as of Completion of Construction of both Buildings (the "Capital Investment Certificate"). When calculating the expenditures required under this Article VI, Section 4, the Parties agree that no expenditure shall be included as part of the Capital Investment unless the expenditure is capitalized as a capital asset on the books of the Company in accordance with generally accepted accounting principles;

5. Lease of Improvements. On or before December 31, 2023, the Company shall lease at least 98,800 cumulative square feet of the Buildings to one or more tenant(s) for manufacturing, storage and/or distribution of goods or other lawful industrial uses for a primary term of at least three (3) years with a commencement date of no later than December 31, 2023 (the "Lease Requirement") and shall provide a copy of such lease executed by the Company and such tenant(s) to the City no later than December 31, 2023;

6. Landscaping. The Company shall install the landscaping on the Land in compliance with the Landscape Plans on or before the earlier of: (i) the one hundred twentieth (120<sup>th</sup>) day after Completion of Construction of the first Building constructed on the Land; or (ii) December 31, 2023;

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

8. Records and Reports. During the Term of this Agreement, the Company shall deliver to the City within sixty (60) days after written request, copies of such invoices, paid receipts, payment records, and other documentation as the City may reasonably request to confirm compliance by the Company with the representations, covenants and agreements set forth in this Article VI;

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

10. Representative of Company to Accompany Inspections. The Company shall provide a representative of the Company to accompany the City during all inspections of the Mesquite Facility conducted by the City pursuant to Article VI, Section 9 above;

11. Timely Payment of Taxes. The Company shall timely pay all ad valorem taxes assessed against the Mesquite Facility during the Term of this Agreement prior to the date such taxes become delinquent;

12. Maintenance Obligations. The Company shall comply with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City at all times during the Term of this Agreement and shall, at the Company's sole cost and expense, maintain the Mesquite Facility in good repair at all times during the Term of this Agreement;

13. Compliance with Laws. The Company shall comply with all federal, state and local laws, ordinances and regulations relating to the ownership and operation of the Mesquite Facility during the Term of this Agreement;

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

15. Performance of Other Agreements. The Company shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of all other agreements now or hereafter existing between the Company and the City during the Term of this Agreement; and

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

## ARTICLE VII

### Conditions Precedent to Payment of the Economic Development Incentive

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

1. Development of the Project. The Company shall have developed the Land by constructing two (2) industrial buildings on the Land consisting of at least 197,600 cumulative square feet substantially as described and/or depicted on the Site Plan and the Building Façade/Elevation Plans on or before December 31, 2023;

2. Payment Request. The Company shall have submitted a Payment Request for the Economic Development Incentive to the City to the attention of the City's Director of Finance accompanied by a Certificate of Compliance dated effective as of the date of such Payment Request;

3. Satisfaction of Conditions. All Conditions Precedent shall have been satisfied and are then continuing as of the date of the Payment Request and as of the date of the payment of the Economic Development Incentive;

4. Capital Investment. The Company shall have satisfied the Capital Investment requirement and shall have submitted the Capital Investment Certificate to the City to the attention of the City's Finance Director;

5. Commenced Vertical Construction of the Buildings. The Company shall have Commenced Vertical Construction of both Buildings on or before December 31, 2020;

6. Completed Construction of the Buildings. The Company shall have Completed Construction of both Buildings on or before December 31, 2023;

7. Compliance with Development Standards. The Buildings shall have been constructed in compliance with the Building Façade/Elevation Plans including, without limitation (i) the Buildings shall have been constructed in compliance with the elevations, material percentages, color percentages, materials overlay, composition overlay, scale overlay, proportion overlay, rhythm overlay, transparency overlay, articulation overlay, expression overlay, color overlay, and aesthetic methods set forth on the Building Façade/Elevation Plan; and (ii) the paint colors, building products and materials used and/or installed in connection with the construction of the Buildings shall comply with the Building Façade/Elevation Plan;

8. Lease of Buildings. The Company shall have leased at least 98,800 cumulative square feet of one or both of the Buildings to one or more tenant(s) for manufacturing, storage and/or distribution of goods or other lawful industrial purposes for primary term(s) of at least three (3) years with a commencement date of no later than December 31, 2023 and shall have provided a copy of such lease executed by the Company and such tenant(s) to the City no later than December 31, 2023;

9. Certificate(s) of Occupancy. Certificate(s) of Occupancy shall have been issued to one or more tenant(s) of the Company on or before December 31, 2023 authorizing such tenant(s) to occupy at least 98,800 cumulative square feet of one or both Buildings for the manufacturing, storage and/or distribution of goods or other lawful industrial purposes;

10. Landscaping. The Company shall have installed the landscaping on the Land in compliance with the Landscape Plans on or before the earlier of: (i) the one hundred twentieth (120<sup>th</sup>) day after Completion of Construction of the first Building constructed on the Land; or (ii) December 31, 2023;

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

12. Maintenance Obligations. The Mesquite Facility shall comply with all building codes, zoning ordinances and all other codes, ordinances and regulations of the City as of the date of the Payment Request and as of the date of payment for the Economic Development Incentive and the Buildings shall be in good repair and condition;

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

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

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

16. Performance by the Company of other Agreements. The Company shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company under the terms of all other agreement(s) now and hereafter existing between the Company and the City and no default shall then exist under the terms of such agreement(s) and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default by the Company under the terms of such agreement(s);

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

18. Representative of Company to Accompany Inspection. The Company shall have provided a representative of the Company to accompany the City during all inspections of the Buildings conducted by the City pursuant to Article VII, Section 17 above; and

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

## ARTICLE VIII

### Economic Development Incentive

1. Economic Development Incentive. The City hereby approves, subject to the Conditions Precedent and the covenants and limitations set forth in this Agreement, an economic development grant to the Company in the amount equal to the lesser of: (i) the Water and Wastewater Impact Fees paid by the Company to the City in connection with the Project; or (ii) ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) (the "Economic Development Incentive").

2. Payment of Economic Development Incentive. Provided all Conditions Precedent have been satisfied and are then continuing, and subject to the covenants and limitations set forth in this Agreement, the City will pay the Economic Development Incentive to the Company in one (1) installment within sixty (60) days after the date all Conditions Precedent including, without limitation, the issuance of Certificate(s) of Occupancy to one or more tenant(s) of the Company for the occupancy by such tenant(s) of at least 98,800 cumulative square feet of one or both of the Buildings for the manufacturing, storage and/or distribution of goods or other lawful industrial purposes, have been satisfied and are then continuing.

3. Funds Available for Payment of Economic Development Incentive. The Economic Development Incentive payable by the City to the Company as more fully set forth in this Agreement is not secured by a pledge of ad valorem taxes, financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City or payable from the Water and Wastewater Impact Fees paid by the Company to the City. The Economic Development Incentive payable hereunder shall be paid only from funds of the City authorized by Article III, Section 52-a, of the Texas Constitution and Texas Local Government Code Chapter 380. The Parties agree no other source of funds of the City is subject to the payment of the Economic Development Incentive. The Economic Development Incentive is subject to the City's appropriation of funds for such purpose to be paid in the budget year for which the Economic Development Incentive is to be paid. This Article VIII, Section 3 shall expressly survive the expiration or termination of this Agreement. In the event of any conflict between the terms and provisions of this Article VIII, Section 3 and any other term or provision of this Agreement, the terms and provisions of this Article VIII, Section 3 shall control. This Article VIII, Section 3 shall expressly survive the expiration or termination of this Agreement.

## ARTICLE IX

### Defaults Recapture of Incentives Remedies

1. Company Default. The Company shall be in default of this Agreement: (i) upon the occurrence of an Event of Bankruptcy or Insolvency of the Company; (ii) upon any assignment of this Agreement by the Company in violation of Article X, Section 1 of this Agreement; or (iii) if the Company fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the Company under the terms of this Agreement and such failure continues for one hundred and twenty (120) days after written notice by the City to the Company (each a "Company Default").

2. City Remedies. In the event of a Company Default, the City shall have no obligation to pay the Economic Development Incentive to the Company and the City shall have the right to: (i) terminate this Agreement by written notice to the Company; (ii) recapture one hundred percent (100%) of any Economic Development Incentive previously paid by the City to the Company plus interest as more fully set forth in Article IX, Section 3 below; and (iii) exercise any and/or all other rights and/or remedies available to the City pursuant to the laws of the State of Texas, provided however, the City shall not be entitled to the recovery of attorneys' fees or consequential, punitive, exemplary or speculative damages.

3. Recapture of Economic Development Incentive. In the event of a Company Default, the Company shall immediately pay to the City, at the City's address set forth in Article X, Section 2 of this Agreement, or such other address as the City may hereafter notify the Company in writing, the amount equal to one hundred percent (100%) of the Economic Development Incentive previously paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on the Economic Development Incentive being recaptured from the date the Economic Development Incentive was paid by the City to the Company until the date repaid by the Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate. In the event the Company fails to timely pay any sums due by the Company to the City pursuant to this Article IX, Section 3, the Company shall be in breach of this Agreement and the City shall have the right, without further demand or notice to the Company, to exercise any and/or all rights and/or remedies available to the City pursuant to the laws of the State of Texas including, without limitation, institution of a suit in a court of competent jurisdiction, to collect such sums.

4. City Default. The City shall be in default of this Agreement: (i) upon the occurrence of an Event of Bankruptcy or Insolvency of the City; or (ii) if the City fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the City under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the Company to the City (a “City Default”).

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

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

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

## **ARTICLE X**

### **Miscellaneous Provisions**

1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, notwithstanding anything contained herein to the contrary, except as expressly set forth in this Article X, Section 1, this Agreement and the rights and obligations of the Company may not be assigned or transferred by the Company without the prior written consent of the City, which may be withheld in the City’s sole discretion. In the event the Company is a corporation or limited liability company, the sale, transfer or assignment of a controlling interest in the shares of the Company, or the sale, transfer or assignment of a controlling interest in the membership interests of the Company shall constitute an assignment of this Agreement and the failure of the Company to obtain the prior written consent of the City prior to such sale, transfer or assignment shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Company. In the event the Company is a partnership, the sale, transfer or assignment of a controlling interest in the shares of a corporation or the membership interests of a limited liability company or the partnership interests of a partnership that is the Company’s general or managing partner shall constitute an assignment of this Agreement and the failure of the Company to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares, membership interests or partnership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Company. From and after the date of this Agreement, the Company, or any approved assignee, shall have the right to collaterally assign, mortgage, pledge, grant a lien or security interest in, or otherwise encumber any receivables under this Agreement (a “Collateral Assignment”) to any lender of the Company or any approved assignee providing financing for the acquisition of the Land and the construction of the Project (“Lender”) provided: (i) the Lender, the Company, or approved assignee, provides written notice of such Collateral Assignment to the City within ten (10) days from the effective date of such assignment; and (ii) the Collateral Assignment provides that the City shall have the right to pay the Economic Development Incentive to the Company or any approved assignee until the City is in actual receipt of a written notice by the Lender that the Company or approved assignee is in default of its obligations to the Lender (“Lender Notice of Default”). Neither the Company nor any approved assignee shall, by operation of law or otherwise, collaterally assign, mortgage, pledge, grant a lien or security interest in, or otherwise encumber any interest in any receivables under this Agreement or the interest of the Company or any approved assignee under this Agreement, to any Person other than a Lender without obtaining the City’s prior written consent, which may be withheld in the City’s sole discretion. A Collateral Assignment shall not obligate any Lender to perform any obligation

or incur any liability under this Agreement unless the Lender agrees in writing to perform such obligations or incur such liability provided, however, notwithstanding the foregoing, no Person including, without limitation, a Lender, acquiring an interest in this Agreement through the foreclosure or exercise of any rights of a Lender pursuant to a Collateral Assignment, whether judicial or non-judicial, shall be entitled to any Economic Development Incentive, rights or benefits under this Agreement until: (i) all defaults under this Agreement have been cured; and (ii) such Person has provided the City with an agreement executed by such Person agreeing to assume and timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations of the Company under the terms of this Agreement. Any consent by the City to any assignment of this Agreement shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. No assignment of this Agreement shall contain any terms in contravention of any provisions of this Agreement. Except as expressly set forth in this Agreement, no assignment of this Agreement shall be effective unless: (i) the assignment is in writing signed by the assignor and the assignee; (ii) the assignee assumes the assignor's obligation to timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations of the assignor under the terms of this Agreement; (iii) a true and correct copy of such assignment has been provided to the City; and (iv) the City has approved such assignment in writing. Every assignee shall be subject to and bound by all the provisions, covenants, and conditions of this Agreement and shall be required to obtain the prior written consent of the City with respect to any future or further assignment. Any attempted assignment in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement by the Company and in the event the Company attempts to assign this Agreement in violation of this Article X, Section 1, the City shall have the right to terminate this Agreement by written notice to the Company.

2. Notices. Any notice and/or certificate or statement required or permitted to be given to any Party under the terms of this Agreement shall be in writing and shall be deemed properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Party at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective and deemed delivered, whether actually received or not, one (1) business day after deposit in the United States mail. Notices sent by a nationally recognized courier service as set forth above shall be effective and deemed delivered, whether actually received or not, one (1) business day after deposit with the nationally recognized courier service. Notices given in any other manner shall be effective and deemed delivered only if and when received by the addressee. Notwithstanding anything contained herein to the contrary, a Lender Notice of Default shall not be deemed effective or delivered until actually received by the Director of Finance, the City Manager, or the City Attorney of the City. For purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that any Party shall have the right to change such Party's address for notice purposes by giving the other Party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

COMPANY: Skyline Commerce Center Owner, LP  
2030 Main Street, Suite 450  
Irvine, California 92614  
Attn: John Dobrott  
Phone: 949-253-2401

With a copy to: Griffin Harris PLLC  
8144 Walnut Hill Lane, Suite 1080  
Dallas, Texas 75231  
Attention: J. Atwood Jeter  
Phone: 214-420-1545

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

With a copy to: Director of Economic Development  
City of Mesquite  
1515 N. Galloway Ave.  
Mesquite, Texas 75149

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Authority. The Company represents that: (i) it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas; (ii) all actions have been taken and all consents have been obtained authorizing the Company and the person signing on behalf of the Company to enter into this Agreement; (iii) the Company has the full power and authority to enter into and fulfill its obligations under this Agreement; and (iv) Daniel P. McShane has authority to sign this Agreement on behalf of the Company, as Secretary of McShane Development Holdings Corp., a Delaware corporation, as sole member of Conor Commercial Real Estate, LLC, a Delaware limited liability company, as sole member of Conor Skyline Partner, LLC, a Delaware limited liability company, as managing member of Skyline Commerce Center, LLC, a Delaware limited liability company, as sole member of Skyline Commerce Center GP, LLC, a Delaware limited liability company, as general partner of the Company.

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

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

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

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

22. Development Standards. The Parties acknowledge that effective September 1, 2019, the Legislature of the State of Texas enacted HB 2439, codified at V.T.C.A., Government Code, Title 10, Subtitle Z "*Miscellaneous Provisions Prohibiting Certain Government Actions*", Chapter 3000 "*Governmental Action Affecting Residential and*

*Commercial Construction*, regarding the regulation by municipalities of building products, materials, and aesthetic methods for residential and commercial buildings (the “Act”). Specifically, §3000.002 of the Act prohibits cities from adopting or enforcing a rule, charter provision, ordinance, order, building code or other regulation that prohibits or limits the use or installation of certain building products or materials or that establishes certain standards for building products, materials or aesthetic methods. The Company acknowledges that, notwithstanding the Act, in consideration of the agreement of the City to pay the Economic Development Incentive to the Company under the terms and subject to the conditions set forth in this Agreement, the Company is contractually agreeing: (i) to construct the Buildings in compliance with the Building Façade/Elevation Plans including, without limitation, the Company agrees: (a) to use and install the paint colors, building products and materials as set forth in the Building Façade/Elevation Plans; and (b) to comply with the elevations, material percentages, color percentages, materials overlay, composition overlay, scale overlay, proportion overlay, rhythm overlay, transparency overlay, articulation overlay, expression overlay, color overlay, and aesthetic methods as set forth in the Building Façade/Elevation Plans. The Parties acknowledge that the provisions of this Article X, Section 22 is material to the City’s agreement to grant the Economic Development Incentive and is a bargained for consideration between the Parties.

23. Execution of Agreement by Parties. If this Agreement is not executed by the Company and the City on or before November 20, 2020, this Agreement will be null and void and of no force or effect.

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

[end of document; signature page follows]

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

**ATTEST:**

**CITY OF MESQUITE,  
a Texas home rule municipality**

By: \_\_\_\_\_

By: \_\_\_\_\_

Sonja Land  
City Secretary

Name: Cliff Keheley  
Title: City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney or his Designee

**COMPANY:**

**SKYLINE COMMERCE CENTER OWNER, LP,**  
a Delaware limited partnership

By: Skyline Commerce Center GP, LLC,  
a Delaware limited liability company,  
its general partner

By: Skyline Commerce Center, LLC,  
a Delaware limited liability company,  
its sole member

By: Conor Skyline Partner LLC,  
a Delaware limited liability company,  
its managing member

By: Conor Commercial Real Estate LLC,  
a Delaware limited liability company,  
its sole member

By: McShane Development Holdings Corp.,  
a Delaware corporation  
Its sole member

By:   
Daniel P. McShane  
Secretary

**EXHIBIT "A"**

**Legal Description of Land**

BEING a 12.38 acres tract of land situated in the Cities of Mesquite and Dallas, Dallas County, Texas, being situated in the Isaac Beeman Survey, Abstract Number 82, and being parts of those tracts of land described in deeds to the Buckner Orphans Home, recorded in Volume 2595, Page 436 and Volume 653, Page 137, Deed Records of Dallas County, Texas, (D.R.D.C.T.), said 12.38 acre tract of land being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with yellow plastic cap stamped "GEONAV" (hereinafter referred to as "with cap") set for the northwest corner of Lot 1, Block 1 of Samuel Boulevard Business Park, an addition to the City of Mesquite, as recorded in Volume 2002241, Page 72, D.R.D.C.T.;

THENCE South 00 degrees 01 minute 22 seconds West, along the west line of said Lot 1, Block 1, a distance of 193.67 feet to a 1/2-inch set iron rod with cap set for the southeast corner of the herein described tract and the common northwest corner of Lot 1, Block 2 of Samuel Boulevard Business Park, an addition to the City Mesquite as recorded in Document Number 200600316537 of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.);

THENCE North 83 degrees 31 minute 04 seconds West, departing said west line and along the north line of said Lot 1, Block 2, passing at a distance of 910.73 feet a 1/2-inch iron rod with cap stamped "HALFF" found and continuing in all a total distance of 936.13 to a 1/2-inch iron rod with cap set for corner on the easterly line of a tract of land described in a right-of-way deed dedicated to the State of Texas, recorded in Volume 5110, Page 319, D.R.D.C.T., and also being the northeasterly corner of that tract of land described in deed to Prologis First US Properties, as recorded in Document Number 20070304191, O.P.R.D.C.T.;

THENCE North 28 degrees 19 minutes 41 seconds West, along the easterly line of said dedication, a distance of 35.78 feet to a 1/2-inch iron rod with cap set for the beginning of a non-tangent circular curve to the right having a radius of 511.00 feet and whose chord bears North 32 degrees 49 minutes 20 seconds West, a distance of 79.39 feet;

THENCE Northwesterly, continuing along said easterly line and along said circular curve to the right, through a central angle of 8 degrees 54 minutes 39 seconds, for an arc distance of 79.47 feet to a 5/8-inch iron rod with cap stamped "TXDOT" found for corner on the easterly right-of-way line of U.S. Highway 80 (a variable width right-of-way), and being the most southerly corner of said tract of land described in deed to the State of Texas in Volume 76140, Page 1661, D.R.D.C.T.;

THENCE North 27 degrees 10 minutes 57 seconds East, along said easterly right-of-way line, a distance of 133.85 feet to found brass TXDOT monument with an X cut in concrete for the point of curvature of a tangent circular curve to the left having a radius of 790.20 feet and whose chord bears North 21 degrees 29 minutes 26 seconds East, a distance of 156.74 feet;

THENCE Northeasterly, continuing along said easterly right-of-way line and along said circular curve to the left, through a central angle of 11 degrees 23 minutes 02 seconds, for an arc distance of 157.00 feet to a found brass TXDOT monument with an X cut in concrete for corner;

THENCE North 45 degrees 45 minutes 37 seconds East, continuing along said easterly right-of-way line, a distance of 168.27 feet to 1/2-inch iron rod with cap stamped "HALFF" for corner on the south right-of-way line of U.S. Highway 80 (a variable width right-of-way) as described in said deed recorded in Volume 76140, Page 1661, D.R.D.C.T.;

THENCE North 76 degrees 01 minute 02 seconds East, along said south right-of-way line of U.S. Highway 80, a distance of 25.89 feet to a found brass TXDOT monument with an X cut in broken concrete for the point of curvature of a tangent circular curve to the right having a radius of 2,849.79 feet and whose chord bears North 78 degrees 18 minutes 59 seconds East, a distance of 228.65 feet;

THENCE Northeasterly, continuing along said south right-of-way line and along said circular curve to the right, through a central angle of 04 degrees 35 minutes 54 seconds, for an arc distance of 228.71 feet to 5/8-inch found iron rod for corner;

THENCE North 80 degrees 36 minutes 56 seconds East, continuing along said south right-of-way line, a distance of 170.26 feet to the stem of a brass TXDOT monument in concrete for the point of curvature of a tangent circular curve to the left having a radius of 5,780.58 feet and whose chord bears North 79 degrees 11 minutes 39 seconds East a distance of 286.81 feet;

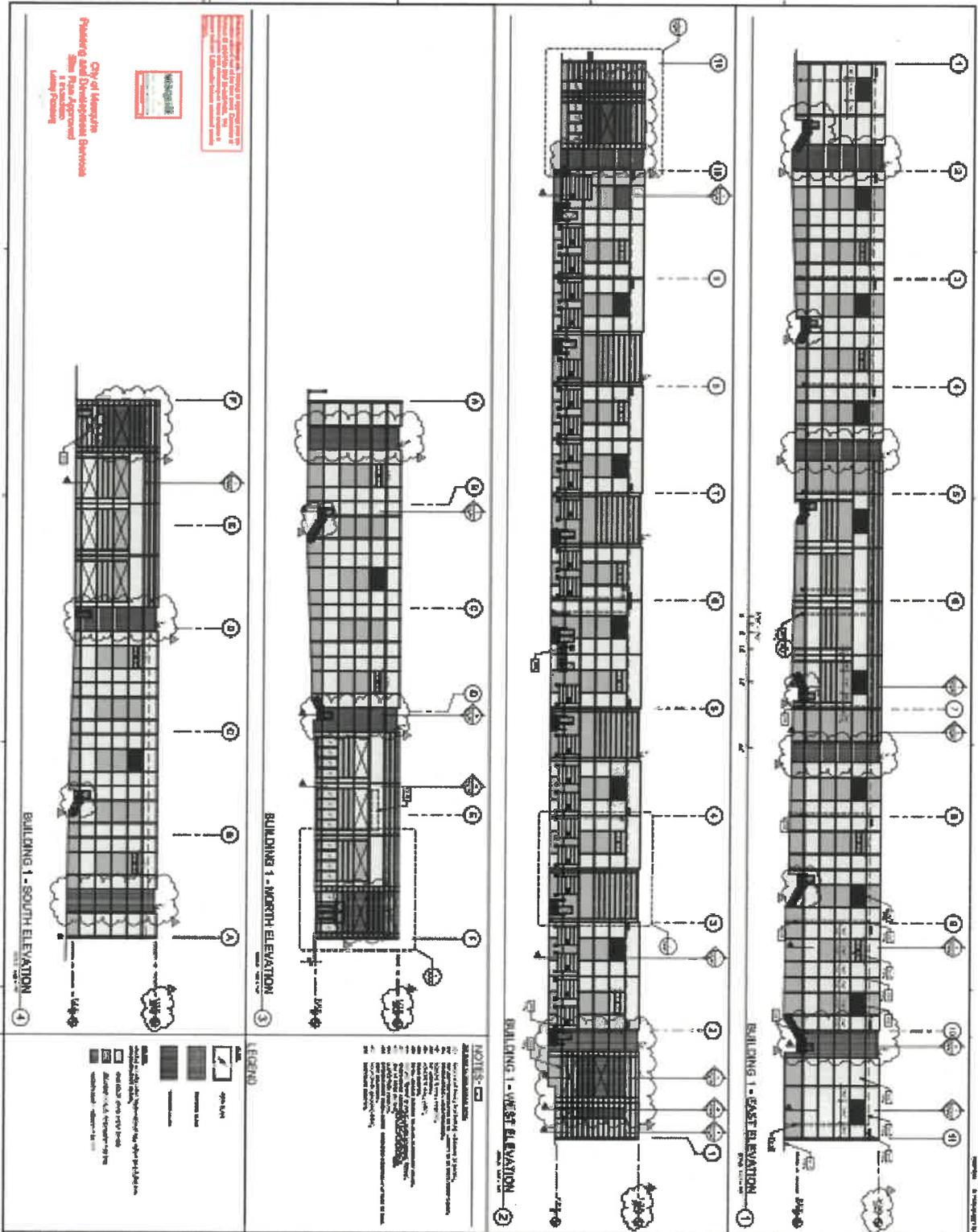
THENCE Northeasterly, continuing along said south right-of-way line and along said circular curve to the left, through a central angle of 02 degrees 50 minutes 35 seconds for an arc distance of 286.84 feet to a point for corner from which a found TXDOT aluminum disk bears South 52 degrees 49 minutes 41 seconds West, a distance of 0.33 feet;

THENCE North 77 degrees 46 minutes 21 seconds East, continuing along said south right-of-way line, a distance of 53.81 feet to an "X"-Cut set in concrete for corner;

THENCE South 00 degrees 01 minute 22 seconds West, departing said south right-of-way line, a distance of 538.02 feet to the POINT OF BEGINNING AND CONTAINING 539,269 square feet or 12.38 acres of land, more or less.

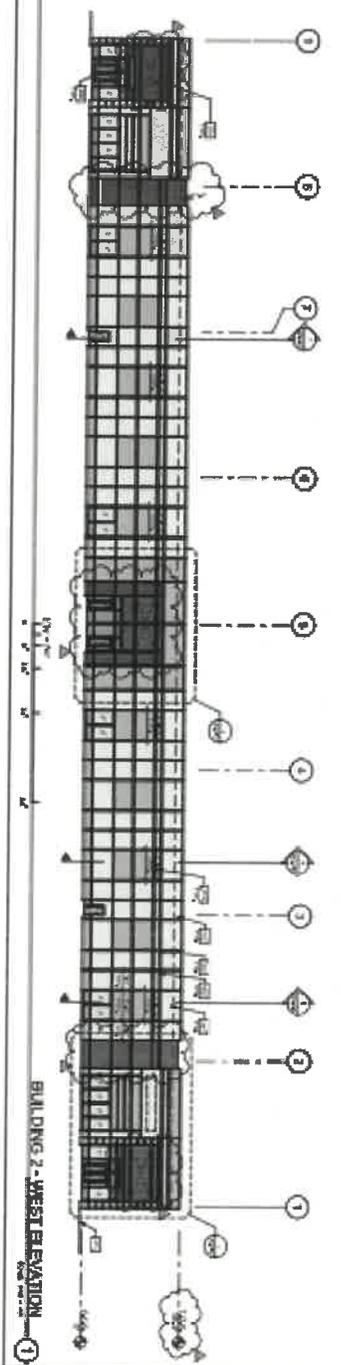
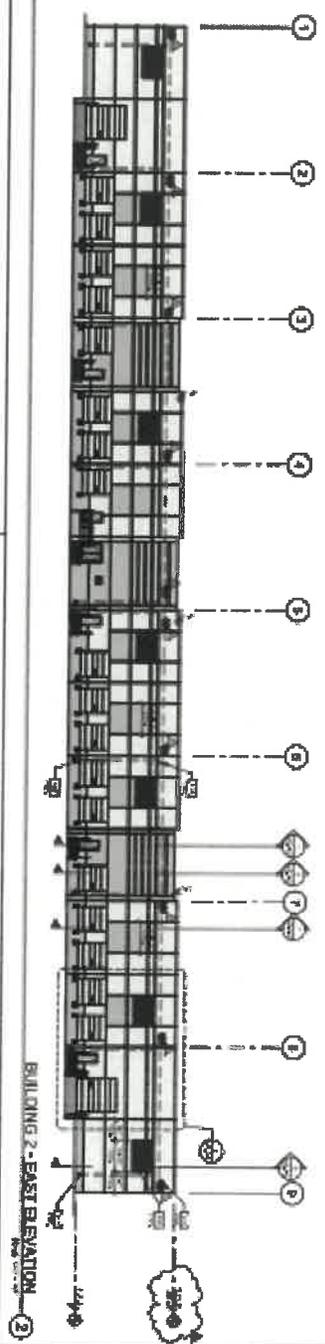
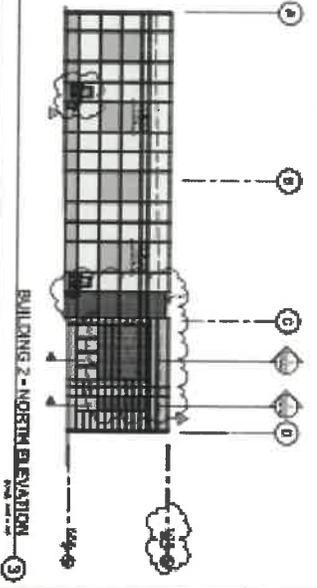
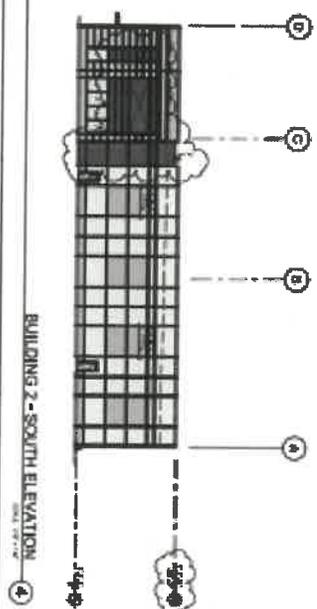
# EXHIBIT "B"

## Building Façade/Elevation Plans



<p><b>A4.1-1</b></p>	<p><b>BUILDING 1 - EXTERIOR ELEVATIONS</b></p>	<p><b>SKYLINE COMMERCE PARK</b>  <b>BUILDING 1</b>          1-30 AND 9 BUCKNER BLVD          MESQUITE, TEXAS 75228</p>		<p><b>WARE MALCOMB</b>          ARCHITECTS</p>
----------------------	--	--	--	--

City of Mesquite  
 Planning and Development Services  
 The City Engineer  
 A. J. ...  
 License Number: ...



**LEGEND**

[Symbol]	Roof
[Symbol]	Window
[Symbol]	Door
[Symbol]	Column
[Symbol]	Beam
[Symbol]	Foundation

**NOTES**

1. All elevations are based on a finished floor elevation of 100.00.
2. All dimensions are in feet and inches.
3. All materials are to be as specified in the contract documents.
4. All work is to be in accordance with the applicable building codes.
5. All work is to be in accordance with the applicable standards of practice.
6. All work is to be in accordance with the applicable industry standards.
7. All work is to be in accordance with the applicable best practices.
8. All work is to be in accordance with the applicable state-of-the-art.
9. All work is to be in accordance with the applicable current practices.
10. All work is to be in accordance with the applicable industry standards.

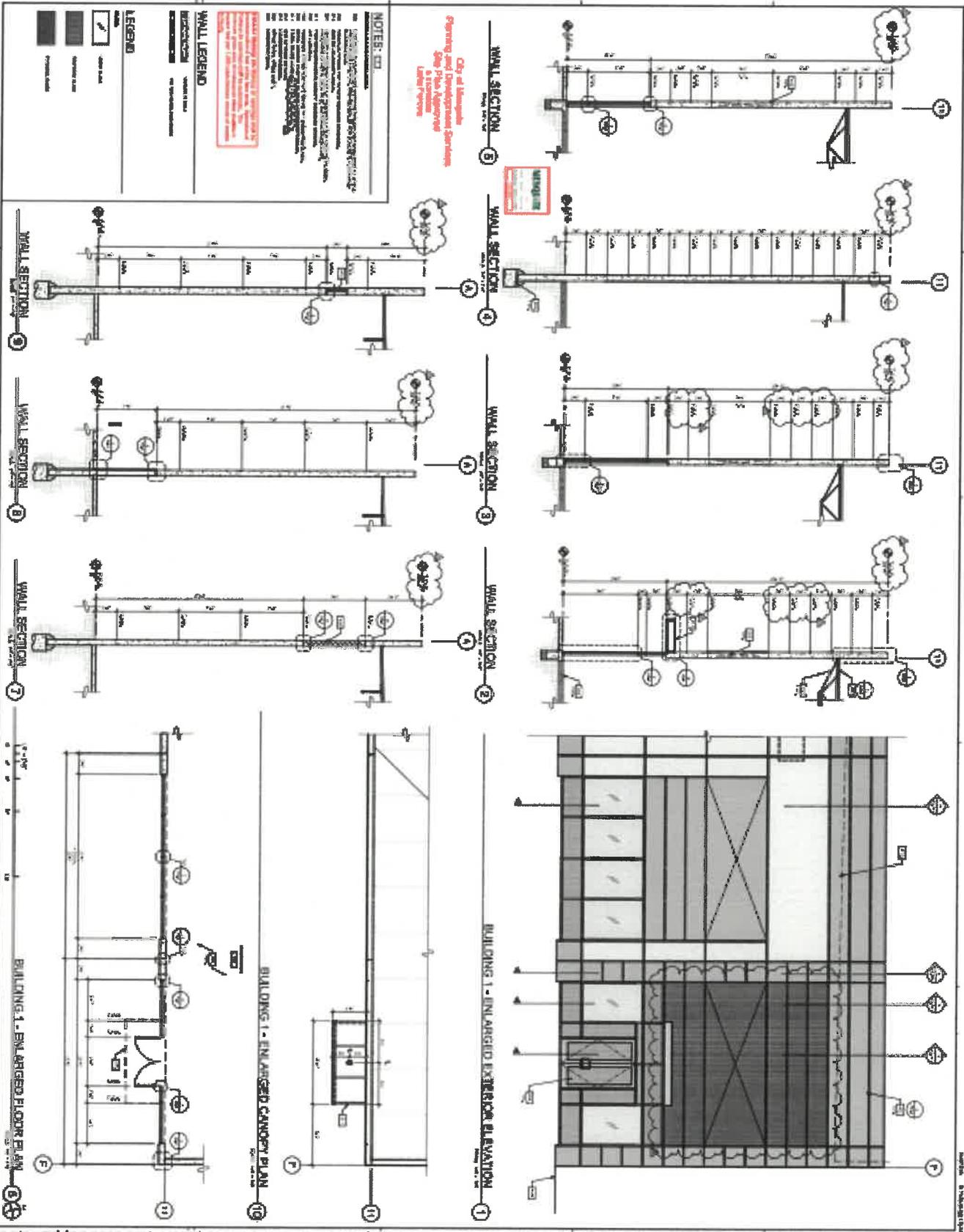
**BUILDING 2 - EXTERIOR ELEVATIONS**

NO.	DESCRIPTION	DATE	BY	CHKD.

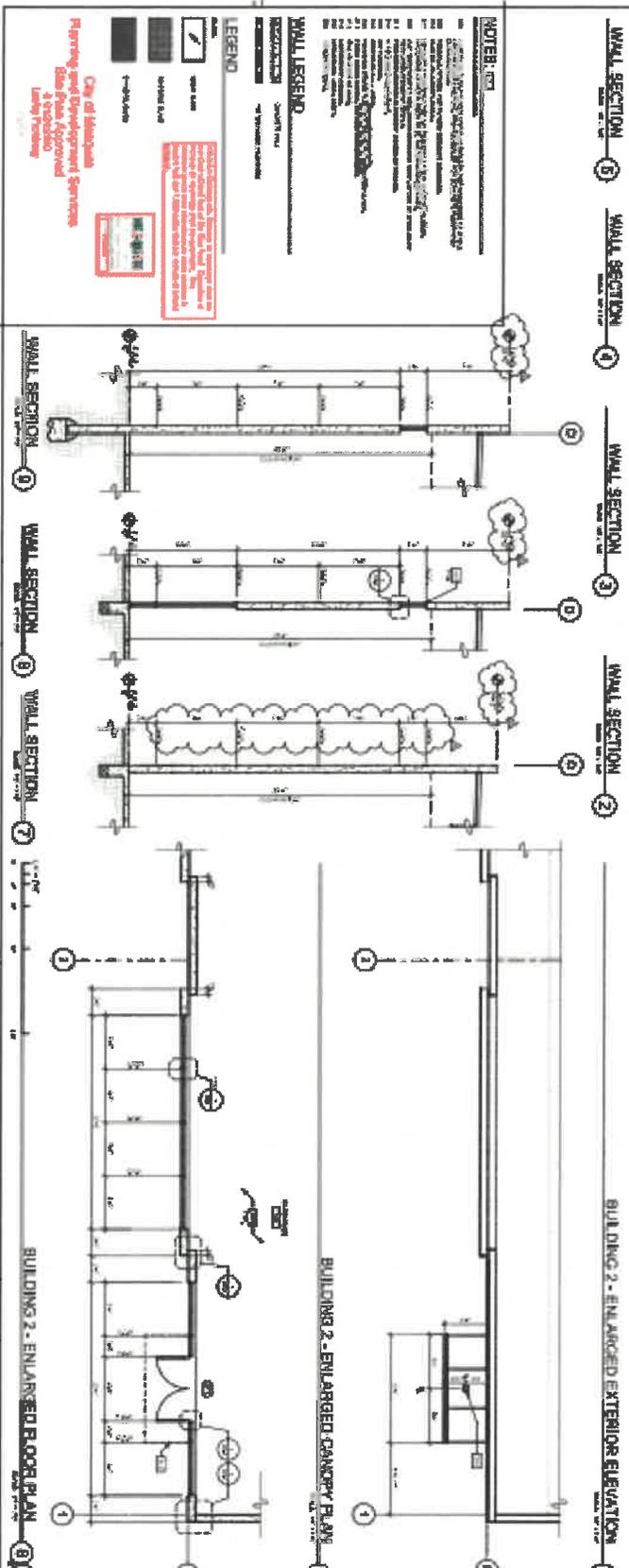
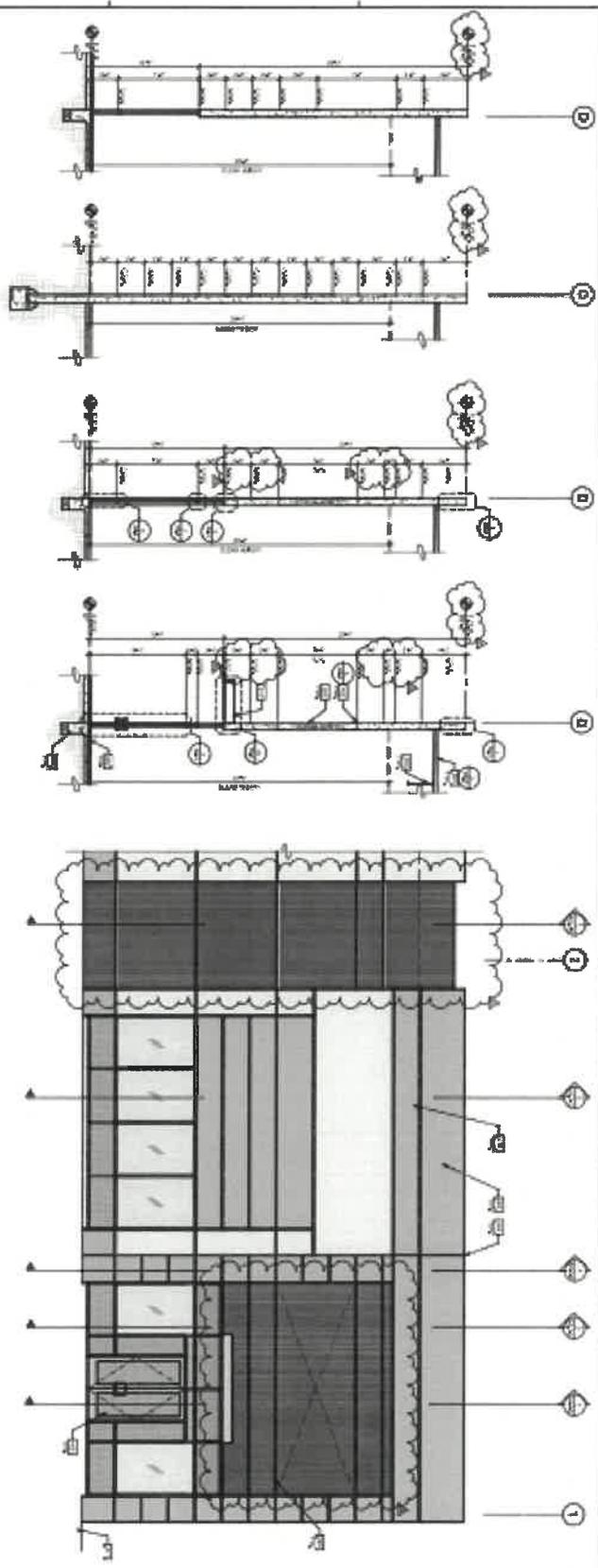
**SKYLINE COMMERCE PARK**  
**BUILDING 2**  
 1-30 AND 8 BUCKNER BLVD  
 MESQUITE, TEXAS 75228



**WARE MALCOMB**  
 ARCHITECTS



<p><b>AS 1-1</b></p>	<p><b>BUILDING 1 - ENLARGED ELEVATION, PLAN AND WALL SECTION</b></p>	<p><b>SKYLINE COMMERCE PARK</b>  <b>BUILDING 1</b>          130 AND 8 BUCKNER BLVD          MESQUITE, TEXAS 75228</p>		<p><b>WARE MALCOMB</b>          ARCHITECTS, P.C.</p>
	<p>DATE: 08/15/2018</p> <p>SCALE: AS SHOWN</p> <p>PROJECT: SKYLINE COMMERCE PARK</p> <p>CLIENT: CITY OF MESQUITE</p> <p>DESIGNER: WARE MALCOMB ARCHITECTS, P.C.</p> <p>DATE: 08/15/2018</p>			



**NOTES:**

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE INTERNATIONAL RESIDENTIAL CODE (IRC).
2. ALL MATERIALS SHALL BE APPROVED BY THE ARCHITECT AND THE CITY OF HOUSTON.
3. ALL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE CITY OF HOUSTON.
4. ALL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE ARCHITECT.
5. ALL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE ARCHITECT AND THE CITY OF HOUSTON.
6. ALL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE ARCHITECT AND THE CITY OF HOUSTON.
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9. ALL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE ARCHITECT AND THE CITY OF HOUSTON.
10. ALL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE ARCHITECT AND THE CITY OF HOUSTON.

**LEGEND:**

- 1. 1/2" POLYSTYRENE INSULATION
- 2. 1/2" POLYSTYRENE INSULATION
- 3. 1/2" POLYSTYRENE INSULATION
- 4. 1/2" POLYSTYRENE INSULATION
- 5. 1/2" POLYSTYRENE INSULATION
- 6. 1/2" POLYSTYRENE INSULATION
- 7. 1/2" POLYSTYRENE INSULATION
- 8. 1/2" POLYSTYRENE INSULATION
- 9. 1/2" POLYSTYRENE INSULATION
- 10. 1/2" POLYSTYRENE INSULATION

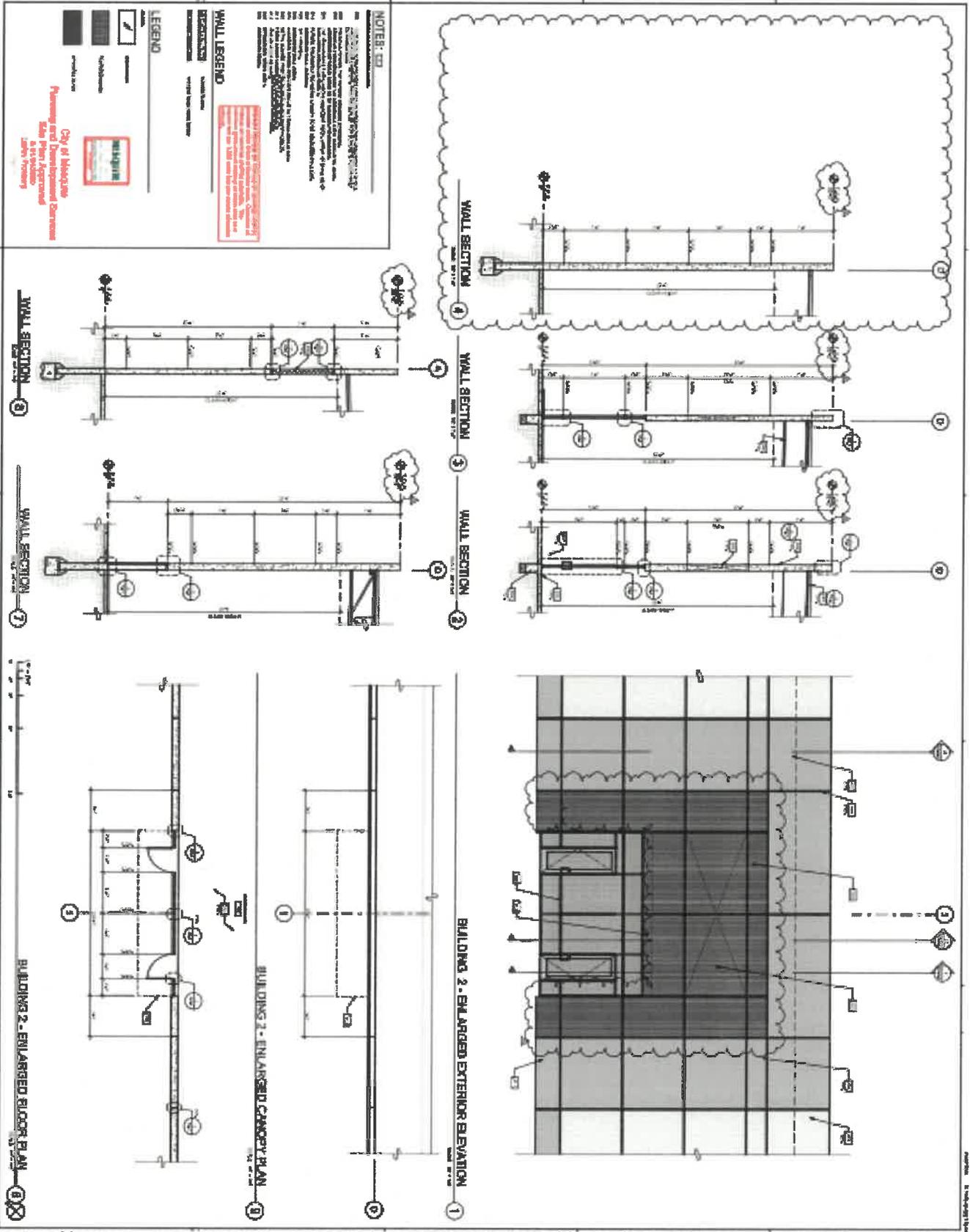
**WALL LEGEND:**

- 1. 1/2" POLYSTYRENE INSULATION
- 2. 1/2" POLYSTYRENE INSULATION
- 3. 1/2" POLYSTYRENE INSULATION
- 4. 1/2" POLYSTYRENE INSULATION
- 5. 1/2" POLYSTYRENE INSULATION
- 6. 1/2" POLYSTYRENE INSULATION
- 7. 1/2" POLYSTYRENE INSULATION
- 8. 1/2" POLYSTYRENE INSULATION
- 9. 1/2" POLYSTYRENE INSULATION
- 10. 1/2" POLYSTYRENE INSULATION

**City of Houston Planning and Development Services**  
 Permit Fee Approved  
 Fee Paid Approved  
 4/20/2024  
 Lately P. [Signature]

<b>AS 1-2</b> SHEET NO.	<b>BUILDING 2 - ENLARGED ELEVATION, PLAN AND WALL SECTIONS</b>	<b>SKYLINE COMMERCE PARK</b> <b>BUILDING 2</b> 130 AND S BUCKNER BLVD MESQUITE, TEXAS 75228		<b>WARE MALCOMB</b> ARCHITECTS & ENGINEERS
	PROJECT NO. _____ DATE _____ DRAWN BY _____ CHECKED BY _____			



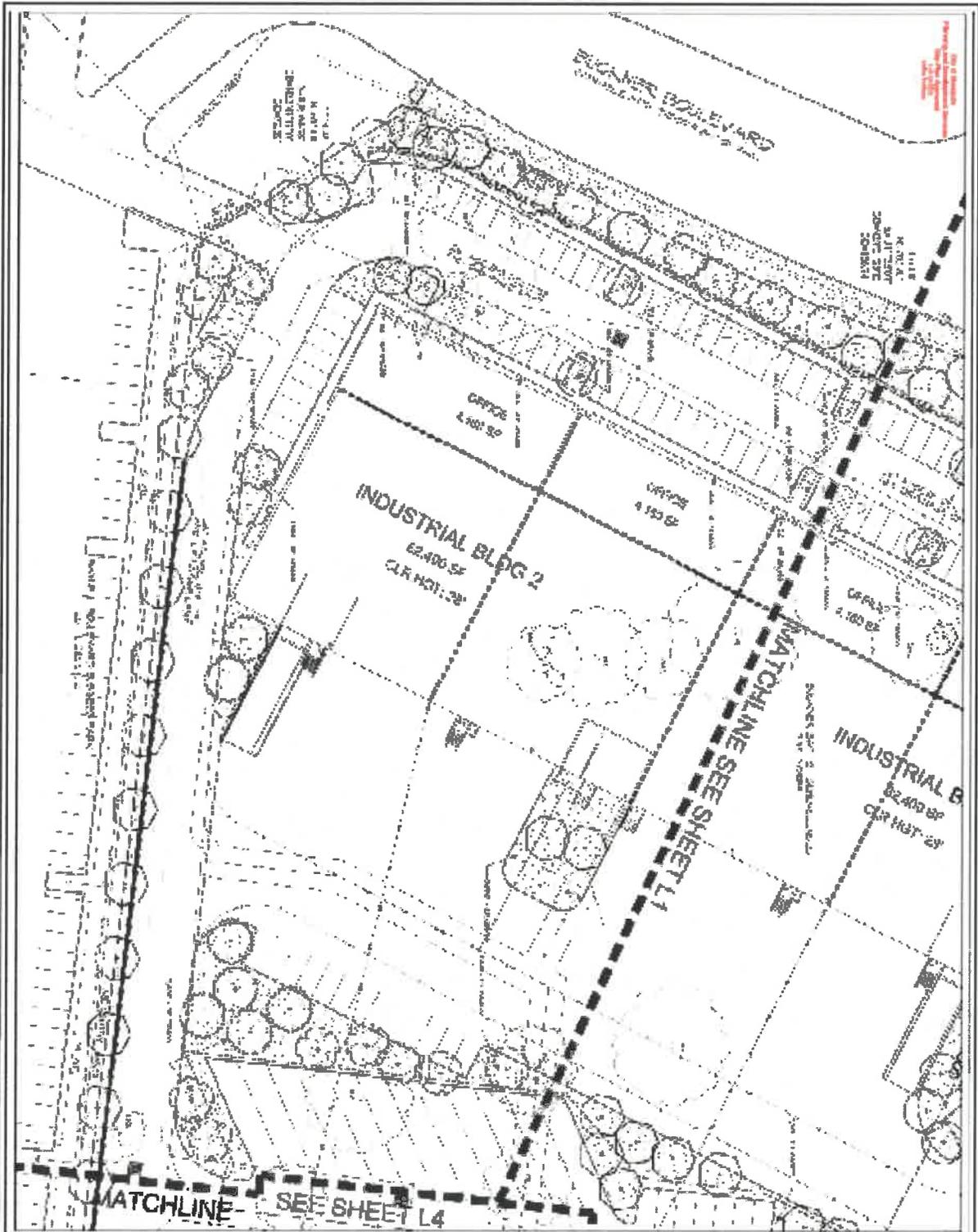


<b>AS 2-2</b> <small>DATE: _____</small> <small>SCALE: _____</small>	<b>BUILDING 2 - ENLARGED ELEVATION, PLAN AND WALL SECTION</b> <small>NO. _____</small> <small>DATE _____</small> <small>BY _____</small> <small>CHECKED BY _____</small> <small>APPROVED BY _____</small>	<b>SKYLINE COMMERCE PARK</b> <b>BUILDING 2</b> 130 AND 9 BUCKNER BLVD MESQUITE, TEXAS 75228		<b>WARE MALCOMB</b> <small>Architectural &amp; Engineering Services</small>
	<small>PROJECT NO. _____</small> <small>DATE _____</small> <small>BY _____</small> <small>CHECKED BY _____</small> <small>APPROVED BY _____</small>	<small>NO. _____</small> <small>DATE _____</small> <small>BY _____</small> <small>CHECKED BY _____</small> <small>APPROVED BY _____</small>	<small>NO. _____</small> <small>DATE _____</small> <small>BY _____</small> <small>CHECKED BY _____</small> <small>APPROVED BY _____</small>	<small>NO. _____</small> <small>DATE _____</small> <small>BY _____</small> <small>CHECKED BY _____</small> <small>APPROVED BY _____</small>









Scale: 1" = 10'-0"

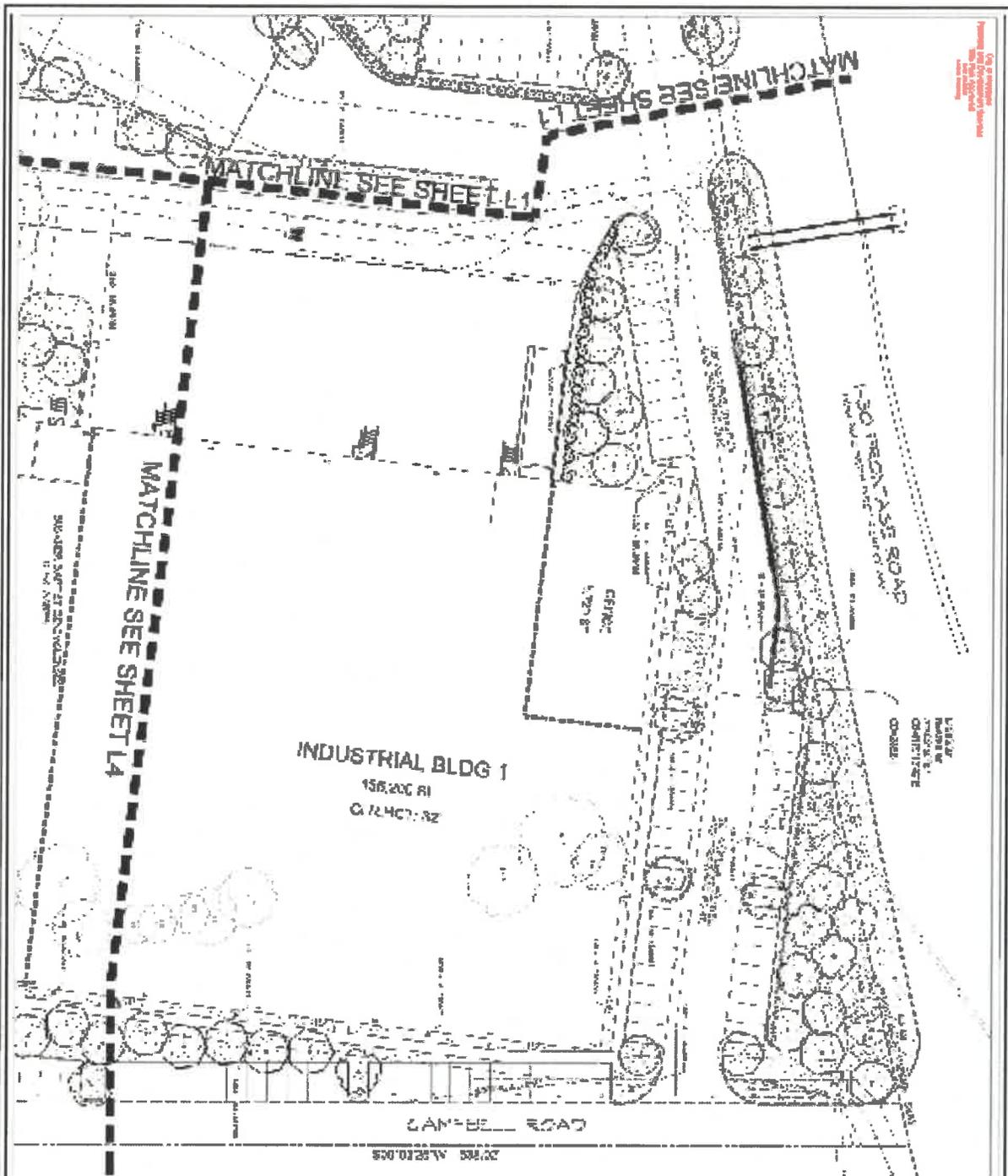
Legend:

- Planting (various tree and shrub symbols)
- Site Access
- Site Elevation
- Site Boundary
- Site Area

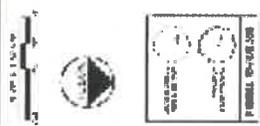
Project Name: **Landscapes Plan**

Site: **IH 30 & Buckner Blvd Industrial**  
Mesquite Texas

Grubbs Design Group, P.L.L.C. - 403 South Tennessee Street - McKinney, Texas 75069 - Phone (972) 848-8020

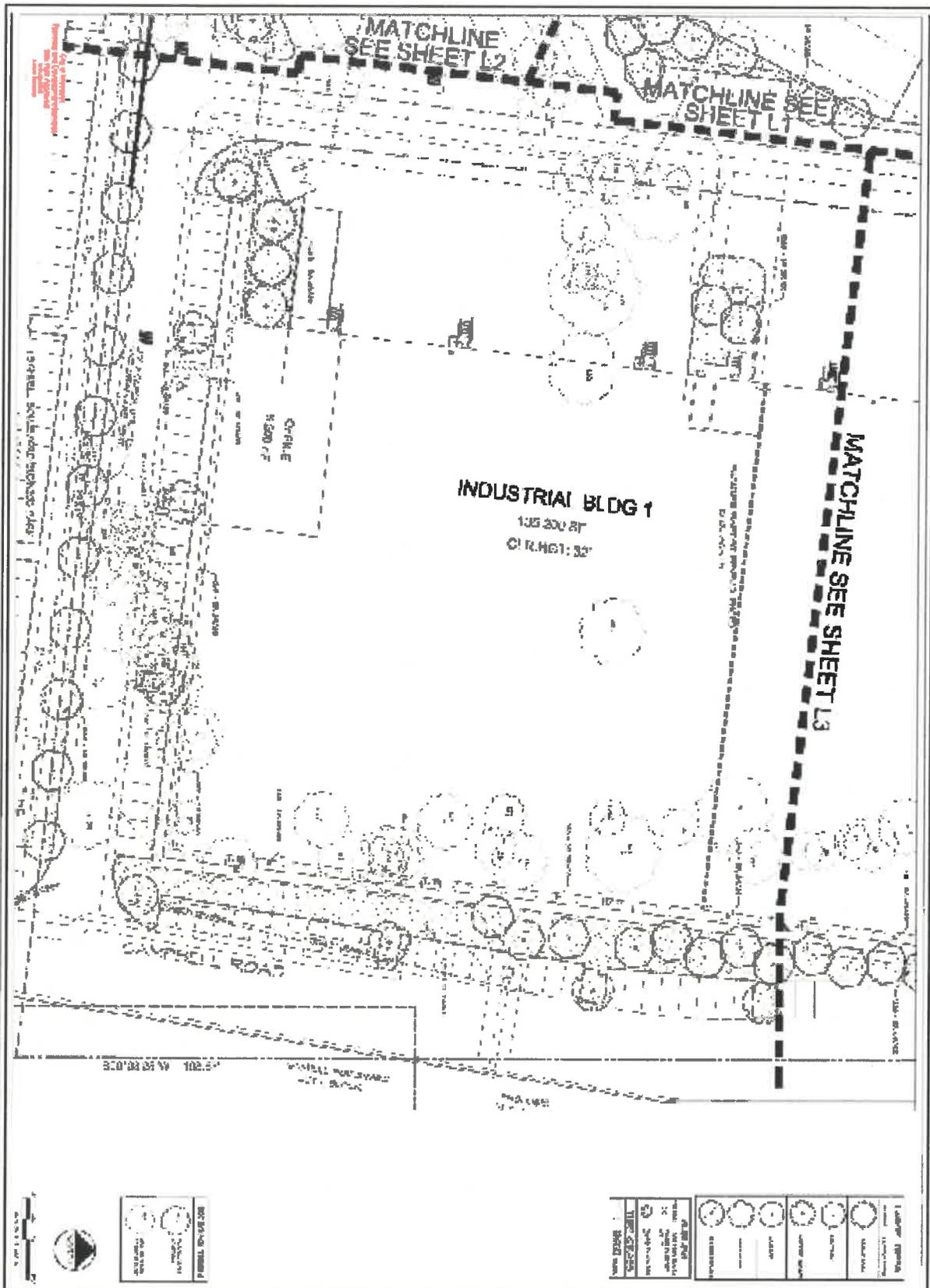


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 McKinney, Texas 75068  
 Phone (972) 548-8020



PLANT 1 PLANT 2 PLANT 3 PLANT 4 PLANT 5 PLANT 6 PLANT 7 PLANT 8 PLANT 9 PLANT 10 PLANT 11 PLANT 12 PLANT 13 PLANT 14 PLANT 15 PLANT 16 PLANT 17 PLANT 18 PLANT 19 PLANT 20 PLANT 21 PLANT 22 PLANT 23 PLANT 24 PLANT 25 PLANT 26 PLANT 27 PLANT 28 PLANT 29 PLANT 30 PLANT 31 PLANT 32 PLANT 33 PLANT 34 PLANT 35 PLANT 36 PLANT 37 PLANT 38 PLANT 39 PLANT 40 PLANT 41 PLANT 42 PLANT 43 PLANT 44 PLANT 45 PLANT 46 PLANT 47 PLANT 48 PLANT 49 PLANT 50 PLANT 51 PLANT 52 PLANT 53 PLANT 54 PLANT 55 PLANT 56 PLANT 57 PLANT 58 PLANT 59 PLANT 60 PLANT 61 PLANT 62 PLANT 63 PLANT 64 PLANT 65 PLANT 66 PLANT 67 PLANT 68 PLANT 69 PLANT 70 PLANT 71 PLANT 72 PLANT 73 PLANT 74 PLANT 75 PLANT 76 PLANT 77 PLANT 78 PLANT 79 PLANT 80 PLANT 81 PLANT 82 PLANT 83 PLANT 84 PLANT 85 PLANT 86 PLANT 87 PLANT 88 PLANT 89 PLANT 90 PLANT 91 PLANT 92 PLANT 93 PLANT 94 PLANT 95 PLANT 96 PLANT 97 PLANT 98 PLANT 99 PLANT 100
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**Grubbs Design**  
**Landscape Plan**  
**IH 30 & Buckner Blvd Industrial**  
 Mesquite Texas  
 Grubbs Design Group, P.L.L.C. - 403 South Tennessee Street - McKinney, Texas 75068 - Phone (972) 548-8020



Sheet Title <b>Landscape Plan</b> L4		<b>IH 30 &amp; Buckner Blvd Industrial</b> Mesquite Texas	Date: _____ Scale: _____	
			Designer: _____ Checker: _____	Date: _____ Scale: _____

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