

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, ACCEPTING THE DONATION OF A TRACT OF COMMERCIAL PROPERTY COMMONLY KNOWN AS 2129 NORTH GALLOWAY AVENUE, MESQUITE, TEXAS (THE "PROPERTY"), FROM H. ROGER LAWLER; AUTHORIZING THE CITY MANAGER TO RELEASE LIENS AGAINST THE PROPERTY AND AUTHORIZING THE CITY MANAGER TO TAKE ALL ACTIONS AND EXECUTE ALL DOCUMENTS NECESSARY OR ADVISABLE TO COMPLETE THE DONATION, TRANSFER AND CONVEYANCE OF THE PROPERTY TO THE CITY.

WHEREAS, H. Roger Lawler (the "Owner") owns the tract of real property commonly known as 2129 North Galloway Avenue, Mesquite, Texas, and being more fully described in **Exhibit "A"** attached hereto and made a part of this resolution for all purposes (the "Property"); and

WHEREAS, the Property is located within the corporate limits of the City of Mesquite, Texas (the "City") and is zoned Planned Development - Commercial; and

WHEREAS, the fair market value of the Property as determined by the Dallas Central Appraisal District is \$7,230.00; and

WHEREAS, the Property has liens filed by the City against the Property in the amount of approximately \$6,053.48, plus interest to the date of the closing of the purchase and sale of the Property (collectively the "City Liens"); and

WHEREAS, the Property is adjacent to the City's Fire Station No. 5 and the donation of the Property will benefit the City in that the Property will allow for the expansion of the parking lot and/or building at the City's Fire Station No. 5; and

WHEREAS, the Owner has agreed to donate the Property to the City if the City will release the City Liens at closing; and

WHEREAS, the City Council has been presented with a Donation Agreement between the City and the Owner for the donation of the Property, a true and correct copy of which is attached hereto as **Exhibit "B"** and made a part hereof for all purposes (the "Donation Agreement"); and

WHEREAS, the City desires to accept the donation of the Property from the Owner.

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

SECTION 1. That the facts and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct and are incorporated and adopted as part of this resolution for all purposes.

SECTION 2. That the City Council hereby finds that the donation of the Property and the release of the City Liens will serve a public purpose and will benefit the City and its citizens.

SECTION 3. That the City Council accepts the donation of the Property.

SECTION 4. That the City Manager is hereby authorized to execute the Donation Agreement and to administer the Donation Agreement on behalf of the City including, without limitation, to take all actions on behalf of the City permitted or contemplated by the Donation Agreement.

SECTION 5. That the City Manager is further hereby authorized to take all actions and execute all documents necessary or advisable to release the City Liens and to complete the donation, transfer and conveyance of the Property to the City.

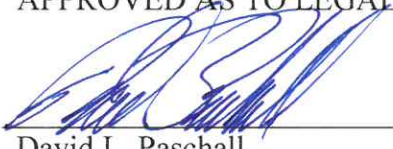
DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 16th day of December 2019.

Bruce Archer
Mayor

ATTEST:

Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

EXHIBIT "A"

Legal Description

Lot 1, Block A, of LAWLER OFFICE PARK, an Addition to the City of Mesquite, Dallas County, Texas, according to the Map thereof recorded in Volume 94120, Page 3192, Map Records, Dallas County, Texas.

SAVE AND EXCEPT:

BEING 1377 square feet of land, a portion of that certain tract of land situated in William Foreman Survey, Abstract No. 486, Dallas County, Texas as conveyed to Lawler Corporation by Deed recorded in Volume 73095, Page 1458, (Tract 1); Deed Records, Dallas County, Texas, and being more particularly described by metes and bounds as follows:

COMMENCING at 1/2 inch iron rod found for the most easterly Southeast corner of a tract of land as conveyed to Lawler Corporation Tract II, by Deed recorded in Volume 73095, Page 1458, Deed Records, Dallas County, Texas, the Northeast corner of a tract of land as conveyed to the City of Mesquite, by Deed recorded in Volume 5765, Page 506, Deed Records, Dallas County, Texas also being in the West right-of-way line of Galloway Avenue (100 foot right-of-way) having N.A.D. 83, Texas State Plane, North Central Zone, Surface Coordinate of North 6,978,261.75, East 2,548,935.85;

THENCE South 08 degrees 08 minutes 48 seconds West, 210.29 feet along the West right-of-way line of Galloway Avenue to the Northeast corner of said Lawler Corporation tract and the Southeast corner of a 60 foot wide street dedication as of Lawler Corporation, Deed recorded in Volume 73095, Page 1458, Deed Records, Dallas County, Texas, also being the POINT OF BEGINNING having N.A.D. 83, Texas State Plane, North Central Zone, Surface Coordinate of North 6,978,053.58, East 2,548,906.05;

1) THENCE South 08 degrees 45 minutes 01 second West, 105.42 feet with said existing West right-of-way line of Galloway Avenue, to a point in the common line of said Lawler Corporation tract and a tract of land as conveyed to Mesquite Masonic Lodge No. 928, A.F. & A.M., by Deed recorded in Volume 355, Page 1471, Deed Records, Dallas County, Texas;

2) THENCE North 45 degrees 27 minutes 03 seconds West, 22.77 feet with said common line to a 5/8 inch iron rod with cap stamped "ANA" set, having N.A.D. 83, Texas State Plane, North Central Zone, Surface Coordinate of North 6,977,965.36, East 2,548,873.79, also being in the proposed West right-of-way line of Galloway Avenue (variable width right-of-way);

3) THENCE North 08 degrees 30 minutes 13 seconds East, 5.10 feet with said proposed West right-of-way line of Galloway Avenue to a 5/8 inch iron rod with cap stamped "ANA" set;

4) THENCE North 15 degrees 31 minutes 15 seconds East, 87.60 feet, to a 5/8 inch iron rod with cap stamped "ANA" set in the North line of said Lawler Corporation tract and the beginning of a curve to the right;

5) THENCE 8.16 feet along the arc of said curve to the right and North line of said Lawler Corporation tract through a central angle of 00 degrees 50 minutes 48 seconds with a radius of 552.31 feet, a tangent length of 4.08 feet and a chord which bears South 81 degrees 20 minutes 20 seconds East, 8.16 feet to the POINT OF BEGINNING and CONTAINING 1377 square feet or 0.032 of an acre of land, more or less.

EXHIBIT "B"

DONATION AGREEMENT

THIS DONATION AGREEMENT (this "Agreement"), is made by and between Roger Lawler a/k/a H. Roger Lawler acting by and through his agent and attorney-in-fact, STEPHEN A. THOMPSON, specially constituted as such by power of attorney dated October 21, 2019 and recorded in the Official Public Records of Dallas County, Texas (collectively "DONOR") and the **CITY OF MESQUITE**, a Texas home rule municipality (the "CITY"). DONOR and the CITY are hereinafter sometimes individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS:

A. **WHEREAS**, DONOR is the owner of a tract of land located at 2129 North Galloway Avenue, Mesquite, Texas and being more particularly described in **Exhibit "A"** attached hereto and made a part hereof for all purposes, together with all improvements located thereon, all fixtures attached thereto and all rights, privileges, hereditaments and appurtenances pertaining thereto including, without limitation, all right, title and interest of DONOR in and to adjacent streets and roadways, easements, rights-of-way, oil, gas and other minerals, water rights, timber and strips and gores (collectively the "Property"); and

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

C. **WHEREAS**, DONOR desires to donate, transfer and convey the Property to CITY and CITY desires to accept the donation, transfer and conveyance of the Property from DONOR subject to and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth herein, the Parties agree as follows:

1. **Donation.** DONOR hereby agrees to donate, transfer and convey the Property to CITY and CITY agrees to accept the donation, transfer and conveyance of the Property from DONOR subject to and upon the terms and conditions more fully set forth in this Agreement. The Parties agree that the acceptance of the donation of the Property shall be sufficient consideration for the transfer and conveyance of the Property.

2. **Closing Date.** Unless this Agreement is sooner terminated as provided herein, the closing ("Closing") of this Agreement shall be held at the offices of Reunion Title, 200 W. Davis Street, Mesquite, TX, 75149 (the "Title Company") at 10:00 a.m., Central Standard Time, on December 30, 2019, or such earlier time and date as may be mutually agreed to by the Parties (the "Closing Date").

3. **Title Policy; Survey; Phase I Environmental Assessment and Title Review Period.**

A. **Title Policy.** DONOR shall furnish to CITY, at CITY expense, an owner's policy of title insurance in the standard form of policy prescribed by the Texas Department of Insurance (the "Title Policy") issued by the Title Company in the amount of \$7,230.00, dated at or after the Closing Date, insuring CITY against loss under the provisions of the Title Policy, subject to the promulgated exclusions, the standard printed exceptions, and exceptions otherwise permitted by this Agreement or as may be approved by CITY in writing. Notwithstanding the foregoing, if new survey(s) are obtained of the Property, the standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements will be amended to read "shortages in area" at the option and expense of CITY.

B. **Title Commitment.** Within ten (10) calendar days after the Effective Date, DONOR shall furnish to CITY a commitment for title insurance (the "Title Commitment") and, at CITY's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Title Commitment (the "Exception Documents") other than the standard printed exceptions. DONOR authorizes the Title Company to deliver the Title Commitment and the Exception Documents to CITY at CITY's address shown in Section 9 of this Agreement.

C. **Survey.** Within ten (10) calendar days after the Effective Date, DONOR shall deliver to the CITY all existing surveys of the Property, if any, in DONOR's possession and/or under DONOR's control. Surveys of the Property conducted by or on behalf of DONOR by engineers, consultants and/or other third parties shall be considered

to be within DONOR's possession and/or control even if copies of such surveys are only maintained at the offices of the engineers, consultants or other third parties who conducted such surveys. If the legal description of the Property as provided in this Agreement is not acceptable to the Title Company, or if the Title Company requires a new survey of the Property as a condition to issuance of the Title Policy, the DONOR shall obtain a survey of the Property by a registered professional land surveyor acceptable to the City and the Title Company at CITY's expense. If a new survey is obtained, the legal description of the Property in the Closing Documents (as hereinafter defined) shall be the legal descriptions set forth on such survey.

D. **Title Review Period.** CITY shall have five (5) business days after the later of the following dates: (i) the actual receipt of the Title Commitment; and (ii) the actual receipt of the survey if a new survey is required by the Title Company, to review the Title Commitment and the survey and to deliver in writing to DONOR such objections as CITY may have to any matters contained therein (the "Title Review Period"). If CITY timely objects in writing to any matters in the Title Commitment or survey within the Title Review Period, DONOR may, at DONOR's sole election, attempt to satisfy CITY's objections within the earlier of: (i) three (3) business days after DONOR receives the objections or three (3) business days prior to the Closing Date (the "Title Cure Period"). DONOR shall not be required to expend any funds to cure CITY's objections. If DONOR fails to cure CITY's objections by the end of the Title Cure Period, CITY may either (A) waive such objections and accept such title as DONOR is able to convey, or (B) terminate this Agreement by written notice to DONOR, which written notice to terminate shall be provided to DONOR on or before the Closing Date. If the CITY terminates this Agreement pursuant to this Section 3(D), the DONOR shall retain the Option Fee (as hereinafter defined) and neither Party hereto shall have any further rights or obligations under this Agreement except for those, if any, that expressly survive the termination of this Agreement. Notwithstanding anything contained herein, DONOR must satisfy all requirements set forth in Schedule C of the Title Commitment and all matters in Schedule C of the Title Commitment are not waived by the CITY's failure to timely object to such matters.

E. **Environmental Assessment.** Within ten (10) calendar days after the Effective Date, DONOR shall deliver to the CITY all existing environmental assessments, geotechnical reports and other similar studies, if any, relating to the Property in DONOR's possession and/or under DONOR's control. Environmental assessments of the Property conducted by or on behalf of DONOR by engineers, consultants and/or other third parties shall be considered to be within DONOR's possession and/or control even if copies of such environmental assessments are only maintained at the offices of the engineers, consultants or other third parties who conducted such environmental assessments.

4. **Property Inspection.**

A. **Inspections, Studies or Assessments.** Beginning on the Effective Date and continuing thereafter until five (5) calendar days before the Closing Date (the "Inspection Period"), CITY and CITY's agents, representatives, employees, consultants, contractors, inspectors, engineers and soil testing personnel (collectively "CITY's Agents"), shall have the right, at CITY's expense, to conduct such inspections and assessments of the Property as CITY deems necessary, including, without limitation, environmental assessments and soil analysis studies (collectively "CITY's Inspections"). During the Inspection Period, DONOR shall permit access to the Property to CITY and CITY's Agents at reasonable times and upon reasonable prior notice to conduct CITY's Inspections. If this Agreement fails to close and the condition of the Property is altered as a result of CITY's Inspections, CITY will restore the Property to its condition existing before the CITY's Inspections.

B. **Termination Option.** For nominal consideration, the receipt of which is hereby acknowledged by DONOR, and CITY's agreement to pay DONOR ONE HUNDRED AND NO/100 DOLLARS (\$100.00) (the "Option Fee"), within five (5) business days after the Effective Date of this Agreement, DONOR grants CITY the unrestricted right to terminate this Agreement during the Inspection Period by giving written notice of termination to DONOR prior to the expiration of the Inspection Period. If CITY gives notice of termination of this Agreement during the Inspection Period, this Agreement shall terminate, DONOR shall retain the Option Fee and neither Party hereto shall have any further rights or obligations hereunder except for those, if any, that expressly survive the termination of this Agreement.

5. **Closing Documents, Closing Costs and Taxes.**

A. **DONOR's Deliveries at Closing.** At the Closing, provided the CITY fulfills the CITY's obligations under this Agreement, DONOR shall deliver to the CITY: (i) a Special Warranty Deed substantially in the

form attached hereto as **Exhibit "B"** conveying good and indefeasible title to the Property to the CITY free and clear of all liens, encumbrances and exceptions other than those permitted under Section 3 of this Agreement (the "Deed"); (ii) a Non-Foreign Affidavit complying with Section 1445 of the Internal Revenue Code; and (iii) all other notices, statements, certificates, affidavits and other documents reasonably required by the Title Company or by law to consummate this transaction (the "DONOR's Closing Documents").

B. **CITY's Deliveries at Closing.** At the Closing, provided DONOR fulfills DONOR's obligations under this Agreement, the CITY shall deliver to DONOR: (i) evidence reasonably acceptable to the Title Company that the person executing this Agreement is legally capable and authorized to bind the CITY and has authority to enter into the transactions contemplated by this Agreement; and (ii) all other notices, statements, certificates, affidavits and other documents reasonably required by the Title Company or by law to consummate this transaction (the "CITY's Closing Documents").

C. **Closing Documents.** The DONOR's Closing Documents, and the CITY's Closing Documents are collectively referred to herein as the "Closing Documents."

D. **Closing Costs.** All closing costs shall be paid by CITY provided, however, DONOR shall pay all sums to pay off and/or release any liens against the Property, except for the liens to be released by CITY pursuant to Section 5G below, and DONOR shall pay all past due taxes and DONOR's pro-rata portion of taxes for the current year as more fully set forth in Section 5(E) of this Agreement.

E. **Taxes.** Taxes for the year of Closing will be prorated through the Closing Date. DONOR agrees to pay DONOR's pro-rata share of all ad valorem taxes and assessments against the Property for the calendar year of Closing and agrees to pay all past due ad valorem taxes, penalties, interest and assessments for all prior years. If taxes for the year of Closing are not available on the Closing Date, taxes will be prorated based on taxes assessed against the Property for the previous calendar year. The actual amount of taxes assessed against the Property for the year of Closing will be determined when tax statements for the Property for the year of Closing are available. If taxes for the year of Closing vary from the amount prorated at Closing, the Parties shall adjust the proration when tax statements for the year of Closing are available. The obligations of the DONOR pursuant to this Section 5(E) shall expressly survive the Closing.

F. **Rollback Taxes.** If this transaction or CITY's use of the Property after Closing results in the assessment of additional taxes, penalties or interest ("Rollback Assessments") for periods prior to Closing, the Rollback Assessments will be the obligation of DONOR. If Rollback Assessments are imposed because of DONOR's use or change in use of the Property prior to Closing, the Rollback Assessments will be the obligation of DONOR. The obligations of the DONOR pursuant to this Section 5(F) shall expressly survive the Closing.

G. **Waiver of Mowing Liens.** The fair market value of the Property as determined by the Dallas Central Appraisal District is \$7,230.00. The Property is adjacent to the City's Fire Station No. 5 and the donation of the Property will benefit the City in that the Property will allow the City to expand the parking lot and/or building at the City's Fire Station No. 5. In consideration of the donation of the Property to the City, the City agrees to release all mowing, trash/junk/nuisance and other liens filed by the City against the Property at Closing. If this Agreement is not terminated by the City as more fully set forth herein, the City Council authorizes the City Manager to execute and deliver to the DONOR at Closing a release of all mowing, trash/junk/nuisance and other liens filed by or on behalf of the City against the Property.

6. **Default and Remedies.**

A. **DONOR'S Remedies.** If CITY fails to timely keep or perform any term, provision, covenant, condition, obligation or agreement to be kept or performed by CITY under the terms of this Agreement, CITY shall be in default and DONOR, as DONOR's sole remedy, may terminate this Agreement and receive the Option Fee as liquidated damages.

B. **CITY's Remedy for DONOR's Failure to Timely Provide Title Commitment.** If DONOR is unable to deliver the Title Commitment within the time allowed, CITY may either: (1) terminate this Agreement as CITY's sole remedy; or (2) extend the time for DONOR to provide the Title Commitment and extend the Closing Date up to a maximum of fifteen (15) days.

C. **CITY's Other Remedies.** Except as provided by Section 6(B), if DONOR fails to timely keep or perform any term, provision, covenant, condition, obligation or agreement to be kept or performed by DONOR under the terms of this Agreement, DONOR shall be in default and CITY may: (1) terminate this Agreement; or (2) enforce this Agreement by specific performance.

D. **Survival.** The covenants, agreements, obligations, rights and remedies of the Parties pursuant to Section 6 of this Agreement shall expressly survive the expiration or termination of this Agreement.

7. **Representations and Warranties.**

A. **CITY's Representations and Warranties.** CITY represents, warrants and covenants that as of the Effective Date and as of the Closing Date, CITY has the right and capacity or the power and authority to enter into this Agreement and to perform CITY's obligations under this Agreement.

B. **DONOR's Representations and Warranties.** DONOR represents, warrants and covenants that as of the Effective Date and as of the Closing Date: (i) DONOR has the right and capacity or the power and authority to enter into and to perform DONOR's obligations under this Agreement; (ii) no litigation, judicial proceeding or administrative action is pending against the DONOR or the Property and to DONOR's knowledge, no litigation, judicial proceeding or administrative action is being threatened against DONOR or the Property; (iii) there is no bankruptcy proceedings pending, being contemplated by DONOR, or threatened against DONOR or the Property; (iv) there are no oral or written leases affecting all or any portion of the Property; (v) DONOR has no knowledge of any wetlands, as defined by federal or state law or regulation, affecting the Property; and (vi) DONOR has no knowledge of any threatened or endangered species or their habitat affecting the Property.

C. **Definition of "Environmental Laws" and "Hazardous Substances."** "Environmental Laws" as used herein shall mean (a) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), as amended ("CERCLA"); (b) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.), as amended ("RCRA"); (c) the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et. seq., as amended ("HMTA"); (d) the Clean Air Act of 1974, 42 U.S.C. § 7401, et. seq., as amended ("CAA"); (e) Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), as amended ("TSCA"); (f) Chapter 361 of the Texas Health & Safety Code, as amended ("TSWDA"); (g) Chapter 26 of the Texas Water Code, as amended ("TWC"); (h) the Texas Asbestos Health Protection Act, Vernon's Texas Civil Statutes, Title 71, Art. 4477-3a, as amended ("TAHPA"); and (i) all other federal, state, and local laws, statutes, ordinances, rules, and regulations now existing and those promulgated in the future, as amended, that regulate the use, storage, treatment, generation, disposal, transportation, discharge, release, threatened release and/or remediation of Hazardous Substances (as hereinafter defined). "Hazardous Substances" as used herein shall mean: (i) gasoline, diesel fuel, oil and other petroleum hydrocarbons; (ii) asbestos and asbestos-containing materials in any form, whether friable or non-friable; (iii) polychlorinated biphenyls; (iv) radon gas; (v) radioactive substances; (vi) all substances and materials (whether solid, liquid, or gas) that are classified, defined, or listed as hazardous materials, hazardous wastes, hazardous substances, extremely hazardous wastes, regulated substances, toxic substances or words of similar meaning or regulatory effect under the Environmental Laws; (vii) pollutants; (viii) toxic materials, toxic substances, toxic waste; and (ix) all other substances and materials that are regulated by the Environmental Laws or that are required to be reported, investigated or remediated by the Environmental Laws.

D. **DONOR's Environmental Representations and Warranties.** DONOR represents and warrants to CITY that neither DONOR, or any employee, agent, representative, independent contractor or other person or entity acting on DONOR's behalf, has used, stored, treated, generated, disposed of, transported or released any Hazardous Substances in, at, on, under, near or from the Property. DONOR further represents and warrants to CITY that DONOR has no knowledge of: (i) the existence of any Hazardous Substances in, at, on, under or near the Property; (ii) the release of any Hazardous Substances into the environment at or from the Property, the air above the Property or the groundwater underneath the Property; or (iii) any actual or threatened investigation, inquiry, proceeding, litigation, or claim of any kind by any person or governmental authority relating to the violation of any Environmental Laws or the environmental contamination of the Property. To DONOR's knowledge, no portion of the Property is being used or has been used at any previous time for the generation, storage, handling, or disposing of any Hazardous Substances and to DONOR's knowledge, no underground storage tanks, dumpsites or landfills are located on the Property or were previously located on the Property and subsequently removed and filled. The representations and warranties of DONOR in this Section 7(D) shall be true and correct as of the Effective Date and as of the Closing Date. **DONOR AGREES TO HOLD THE CITY HARMLESS FROM AND INDEMNIFY THE CITY AGAINST ALL**

DAMAGES, LOSSES, COSTS, EXPENSES, PENALTIES, LIABILITIES AND REASONABLE ATTORNEY'S FEES INCURRED BY CITY AS A RESULT OF ANY USE, STORAGE, TREATMENT, GENERATION, DISPOSAL, TRANSPORTATION OR RELEASE OF ANY HAZARDOUS SUBSTANCES IN, AT, ON, UNDER, NEAR OR FROM THE PROPERTY, THE AIR ABOVE THE PROPERTY OR THE GROUNDWATER UNDERNEATH THE PROPERTY PRIOR TO THE CLOSING DATE. The representations, warranties, indemnities and other provisions contained in this Section 7(D) shall expressly survive the Closing of the Property and the execution and delivery of the Deed by the DONOR to the CITY.

E. **Survival.** The representations, warranties, covenants, agreements, obligations and indemnities of the Parties contained in Section 7 of this Agreement shall expressly survive the Closing and shall not merge into the Deed.

8. **Possession.** If this transaction closes, DONOR shall deliver possession of the Property to the CITY upon Closing of this Agreement.

9. **Notices.** Any notice or communication required or permitted hereunder shall be in writing and shall be deemed to be delivered, (i) whether actually received or not, on the date deposited in the United States mail, postage fully prepaid, registered or certified mail, addressed to the intended recipient at the address set forth below, or (ii) when received via local hand courier service, or (iii) the next business day after deposit by the sender with a national delivery service such as Federal Express or United Parcel Service. Any address for notice may be changed by written notice delivered as provided herein.

If Intended for CITY:

City of Mesquite
Attention: City Manager
1515 North Galloway
Mesquite, Texas 75149

With a copy to:

City Attorney
City of Mesquite
1515 North Galloway
Mesquite, Texas 75149

If Intended for DONOR:

Mr. Roger Lawler a/k/a Mr. H. Roger Lawler
c/o Mr. Stephen A. Thompson
6317 Miller Road
Krum, Texas 76249
Sthompson2750@gmail.com

10. **Applicable Law.** This Agreement shall be construed under and in accordance with the laws of the state of Texas and all obligations of the Parties created hereunder are performable in the county where the Property is located. Venue for any cause of action arising out of or in connection with this Agreement shall exclusively lie in a State court of competent jurisdiction in Dallas County, Texas.

11. **Time of 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.

12. **Binding Effect.** This Agreement shall inure to the benefit of and is binding upon the Parties and their permitted successors and assigns.

13. **Entire Agreement.** This Agreement and all attached exhibits shall constitute the entire agreement between DONOR and the CITY with respect to the matters set forth herein and shall supersede any other written or

oral agreements between DONOR and CITY. There are no oral agreements between the Parties. This Agreement may be modified only in writing signed by DONOR and the CITY.

14. **Broker's Fees.** DONOR and the CITY both acknowledge and represent to the other that there are no brokers entitled to a commission in connection with the transfer and conveyance of the Property by DONOR to the CITY.

15. **Effective Date.** If the DONOR and the CITY execute this Agreement on the same date, any reference to the "Effective Date" or the "date of this Agreement" shall mean the date this Agreement is signed by both DONOR and CITY. If the DONOR and the CITY execute this Agreement on different dates, any reference to "Effective Date" or the "date of this Agreement" shall refer to the later of the two dates this Agreement is signed by the DONOR and the CITY.

16. **Date for Performance.** If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday, legal or CITY holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

17. **Severability.** A final determination by a court of competent jurisdiction that any provision of this Agreement is invalid shall not affect the validity of any other provision, 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 this Agreement.

18. **Captions.** The section captions herein are for reference purposes only and are not a part of this Agreement and in no way define, describe, extend, or limit the scope or intent of this Agreement, or the intent of any provision hereof. The words "herein," "hereof," "hereto," "herewith," or "hereunder" as used in this Agreement shall refer to this Agreement in its entirety and not merely to the clause, sentence or Section in which such word is used.

19. **Counterparts.** This Agreement may be executed in any number of original or electronically scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument. DONOR and the CITY agree that this Agreement, the Closing Documents and all transactions contemplated herein shall be subject to the Texas Uniform Electronic Transactions Act.

20. **Assignment.** This Agreement may not be assigned by either Party without the prior written consent of the other Party which be withheld in the sole discretion of the other Party.

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

22. **Exhibits.** All exhibits attached to this Agreement are incorporated herein and made a part of this Agreement. Any blanks contained in any exhibits hereto shall be completed at Closing in accordance with the terms of this Agreement and any exhibits referenced in the exhibits attached hereto shall be attached at Closing.

23. **Conditions Precedent.** CITY's obligations under this Agreement are conditioned upon and subject to the following: (i) the City Council of the CITY authorizing the City Manager to execute this Agreement and the City's Closing Documents; and (ii) the City Manager accepting the donation of the Property by executing and delivering the City's Closing Documents at the Closing. In the event any of such conditions precedent are not satisfied by the Closing Date, CITY may terminate this Agreement by written notice to the DONOR in which event neither Party hereto shall have any further rights or obligations hereunder except for those rights and obligations, if any, that expressly survive the termination of this Agreement.

24. **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.

25. **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 or entity who is not a party to this Agreement may bring a cause of action pursuant to this Agreement as a third-party beneficiary.

26. **Execution.** Within three (3) business days after the execution of this Agreement (or counterparts) by the Title Company, the Title Company shall deliver a copy of such fully executed Agreement (with counterpart execution pages, if applicable) to DONOR and CITY, at their respective addresses for notice as set forth in this Agreement.

27. **Notices:**

A. CITY should have an abstract covering the Property examined by an attorney of CITY's selection, or CITY should be furnished with or obtain a title policy.

B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires DONOR to deliver and CITY to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this Agreement.

C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in the Recitals of this Contract.

D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included as part of this Agreement.

E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this Agreement.

F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, CITY should contact all municipalities located in the general proximity of the Property for further information.

G. If apartments or other residential units are on the Property and the units were built before 1978, federal law requires a lead-based paint and hazard disclosure statement to be made part of this Agreement.

H. Section 1958.154, Occupations Code requires DONOR to provide CITY a copy of any mold remediation certificate issued for the Property during the 5 years preceding the date the DONOR conveys the Property.

I. **NOTICE OF WATER LEVEL FLUCTUATIONS:** If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, DONOR hereby notifies CITY: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

IN WITNESS WHEREOF, DONOR and CITY have executed this Agreement as of the day and year set forth below.

DONOR:

Roger Lawler a/k/a H. Roger Lawler

By _____
Stephen A. Thompson, Agent and Attorney-in-Fact

DONOR's Address: P. O. Box 369
Frisco, Texas 75034

Execution Date by DONOR: December ____, 2019

CITY:

CITY OF MESQUITE,
a Texas home rule municipality

By: _____
Name: Cliff Keheley
Title: City Manager

Execution Date by CITY: December ____, 2019

CITY's Address: CITY of Mesquite,
a Texas home rule municipality
1515 N. Galloway
Mesquite, Texas 75149
Attention: City Manager

APPROVED AS TO FORM

CITY Attorney or his Designee

EXHIBIT "A"

Legal Description

Lot 1, Block A, of LAWLER OFFICE PARK, an Addition to the City of Mesquite, Dallas County, Texas, according to the Map thereof recorded in Volume 94120, Page 3192, Map Records, Dallas County, Texas.

SAVE AND EXCEPT:

BEING 1377 square feet of land, a portion of that certain tract of land situated in William Foreman Survey, Abstract No. 486, Dallas County, Texas as conveyed to Lawler Corporation by Deed recorded in Volume 73095, Page 1458, (Tract 1); Deed Records, Dallas County, Texas, and being more particularly described by metes and bounds as follows:

COMMENCING at 1/2 inch iron rod found for the most easterly Southeast corner of a tract of land as conveyed to Lawler Corporation Tract II, by Deed recorded in Volume 73095, Page 1458, Deed Records, Dallas County, Texas, the Northeast corner of a tract of land as conveyed to the City of Mesquite, by Deed recorded in Volume 5765, Page 506, Deed Records, Dallas County, Texas also being in the West right-of-way line of Galloway Avenue (100 foot right-of-way) having N.A.D. 83, Texas State Plane, North Central Zone, Surface Coordinate of North 6,978,261.75, East 2,548,935.85;

THENCE South 08 degrees 08 minutes 48 seconds West, 210.29 feet along the West right-of-way line of Galloway Avenue to the Northeast corner of said Lawler Corporation tract and the Southeast corner of a 60 foot wide street dedication as of Lawler Corporation, Deed recorded in Volume 73095, Page 1458, Deed Records, Dallas County, Texas, also being the POINT OF BEGINNING having N.A.D. 83, Texas State Plane, North Central Zone, Surface Coordinate of North 6,978,053.58, East 2,548,906.05;

1) THENCE South 08 degrees 45 minutes 01 second West, 105.42 feet with said existing West right-of-way line of Galloway Avenue, to a point in the common line of said Lawler Corporation tract and a tract of land as conveyed to Mesquite Masonic Lodge No. 928, A.F. & A.M., by Deed recorded in Volume 355, Page 1471, Deed Records, Dallas County, Texas;

2) THENCE North 45 degrees 27 minutes 03 seconds West, 22.77 feet with said common line to a 5/8 inch iron rod with cap stamped "ANA" set, having N.A.D. 83, Texas State Plane, North Central Zone, Surface Coordinate of North 6,977,965.36, East 2,548,873.79, also being in the proposed West right-of-way line of Galloway Avenue (variable width right-of-way);

3) THENCE North 08 degrees 30 minutes 13 seconds East, 5.10 feet with said proposed West right-of-way line of Galloway Avenue to a 5/8 inch iron rod with cap stamped "ANA" set;

4) THENCE North 15 degrees 31 minutes 15 seconds East, 87.60 feet, to a 5/8 inch iron rod with cap stamped "ANA" set in the North line of said Lawler Corporation tract and the beginning of a curve to the right;

5) THENCE 8.16 feet along the arc of said curve to the right and North line of said Lawler Corporation tract through a central angle of 00 degrees 50 minutes 48 seconds with a radius of 552.31 feet, a tangent length of 4.08 feet and a chord which bears South 81 degrees 20 minutes 20 seconds East, 8.16 feet to the POINT OF BEGINNING and CONTAINING 1377 square feet or 0.032 of an acre of land, more or less.

EXHIBIT "B"

Form of Special Warranty Deed

Grantee's Mailing Address:

City of Mesquite
1515 N. Galloway
Mesquite, Texas 75149
Attention: Sonja Land, City Secretary

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

SPECIAL WARRANTY DEED

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

THAT I, ROGER LAWLER a/k/a H. ROGER LAWLER, acting by and through my agent and attorney-in-fact, STEPHEN A. THOMPSON, specially constituted as such by my power of attorney dated October 21, 2019 and recorded in the Official Public Records of Dallas County, Texas ("Grantor"), not joined herein by my spouse as the property described herein does not constitute all or any part of our homestead, for and in consideration of the gift and donation of the herein described property by the Grantor to the City of Mesquite, a Texas home rule municipality (the "Grantee"), have GRANTED, TRANSFERRED, SOLD AND CONVEYED and by these presents do GRANT, TRANSFER, SELL AND CONVEY unto Grantee, the following described real property situated in Dallas County, Texas, to-wit:

BEING that certain tract of land commonly known as 2129 North Galloway Avenue, Mesquite, Texas and being more particularly described by metes and bounds in **Exhibit "A"** attached hereto and made a part hereof for all purposes, together with all improvements located thereon, all fixtures attached thereto and all rights, privileges, hereditaments and appurtenances pertaining thereto including, without limitation, all right, title and interest of Grantor in and to adjacent streets and roadways, easements, rights-of-way, oil, gas and other minerals, water rights, timber and strips and gores (collectively the "Property").

This conveyance is made and accepted subject to the permitted exceptions listed on **Exhibit "B"** attached hereto and made a part hereof for all purposes (hereinafter collectively the "Permitted Exceptions").

TO HAVE AND TO HOLD the Property, together with, all and singular, the rights and appurtenances thereto in anywise belonging, unto Grantee, and Grantee's successors and assigns

forever; and Grantor does hereby bind Grantor and Grantor's heirs, executors, administrators, legal representatives, successors and assigns, to WARRANT AND FOREVER DEFEND, all and singular, the Property unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part hereof, by, through or under Grantor, but not otherwise subject, however, to the Permitted Exceptions.

EXECUTED this the ____ day of December __, 2019.

Roger Lawler a/k/a H. Roger Lawler

By _____
Stephen A. Thompson, Agent and
Attorney-in-Fact

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on _____, 2019, by Stephen A. Thompson as attorney-in-fact on behalf of Roger Lawler a/k/a H. Roger Lawler.

NOTARY PUBLIC, State of Texas

My Commission Expires:

Notary Seal

EXHIBIT "A"

Legal Description

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EXHIBIT “B”

Permitted Exceptions