

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; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN ECONOMIC DEVELOPMENT PROGRAM CHAPTER 380 AGREEMENT (“380 AGREEMENT”) WITH LF GATEWAY LP, FOR THE CONSTRUCTION AND DEVELOPMENT OF THE PROPERTY LOCATED AT 3201 EAST CARTWRIGHT ROAD, IN THE CITY OF MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO FINALIZE, EXECUTE AND ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

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

WHEREAS, **LF Gateway LP**, a Texas limited partnership (the “**Company**”), currently owns approximately 6.787 acres of unimproved land zoned Planned Development – General Retail pursuant to Ordinance No. 2399 and located at 3201 East Cartwright Road, Mesquite, Texas 75181, being more particularly described in Exhibit A attached hereto and made a part hereof for all purposes (the “**Property**”); and

WHEREAS, the Property is located at a high-profile intersection in the City in an area that is in need of development to serve the existing and near-term residences in the area of the Property; and

WHEREAS, the Company has advised the City that a contributing factor inducing the Company to develop the Property, with enhancements and restrictions desired by the City, is the agreement by the City to provide economic development incentives to the Company under the terms and conditions more fully set forth in a proposed agreement; and

WHEREAS, the development of the Property will substantially increase the taxable value of the Property thereby adding value to the City’s tax rolls and increasing the ad valorem property taxes and sales taxes to be collected by the City, along with increasing employment opportunities in the City and providing much needed services to residents of the area; and

WHEREAS, the City Council has been presented with a proposed agreement providing economic incentives to the Company for the proposed construction and development of the Property, a copy of said agreement being attached hereto as Exhibit B 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 related thereto, the City Council finds that the Agreement will assist in implementing a program promoting local economic development, stimulating business and commercial activity in the City, and benefiting the City and its citizens.

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, a copy of which is attached hereto as Exhibit B and incorporated herein by reference, will benefit the City and will serve 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 as more fully set forth 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 per 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; (iii) approve or deny any matter in the Agreement requiring the consent of the City with the exception of any matter requiring the consent of the City Council pursuant to the terms of the Agreement; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term, or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials, and waivers authorized by this Section 5 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 5 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative functions.

SECTION 6. That the sections, paragraphs, sentences, clauses, and phrases of this Resolution are severable and, if any phrase, clause, sentence, paragraph, or section of this Resolution should be declared invalid, illegal, or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect

the validity, legality, or enforceability of any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal, or unenforceable provision had never been included in this Resolution.


DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 6th day of July 2021.

Bruce Archer
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

Sonja Land
City Secretary



David L. Paschall
City Attorney

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 (“**City**”), and LF Gateway LP, a Texas limited partnership (“**Company**”), for the purposes and considerations stated below:

W I T N E S S E T H:

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

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

WHEREAS, Company currently owns the approximately 6.787 acre unimproved tract of land zoned Planned Development General Retail pursuant to City Ordinance No. 2399 and located at 3201 East Cartwright Road, Mesquite, Texas 75181, being more particularly described in **Exhibit “A”** attached hereto and made a part hereof for all purposes (the “**Property**”); and

WHEREAS, the Property is located at a high profile intersection in the City in an area that is in need of development to serve the existing and near-term residences in the area of the Property; and

WHEREAS, Company is considering developing the Property as more particularly described herein; and

WHEREAS, Company has advised the City that a contributing factor inducing Company to develop the Property, with enhancements and restrictions desired by the City, is the agreement by the City to provide economic development incentives to Company under the terms and conditions more fully set forth in this Agreement; and

WHEREAS, development of the Property will substantially increase the taxable value of the Property thereby adding value to the City’s tax rolls and increasing the ad valorem real property taxes and sales taxes to be collected by the City, along with increasing employment opportunities in the City and providing much needed services to residents of the area; and

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

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

WHEREAS, the City Council finds and determines that development of the Property will benefit the City and its citizens because, *inter alia*, the development will: (i) promote local economic development and stimulate business and commercial activity in the City; (ii) bring much needed services to the residents of the surrounding area; (iii) add value to the City's tax rolls and increasing the ad valorem taxes to be collected by the City; and (iv) attract restaurant and retail tenants to the Property which will: (a) increase the taxable value of inventory and business personal property at Property thereby adding value to the City's tax rolls and increasing the ad valorem personal property taxes to be collected by the City; (b) increase the sales taxes collected by the City; and (c) create new employment opportunities in the City; and

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the granting of the economic development incentives more fully set forth herein on the terms and subject to the conditions more fully set forth herein will benefit the City and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City.

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

ARTICLE I

Incorporation of Recitals

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered a part of the mutual covenants, consideration and promises that bind the Parties.

ARTICLE II

Definitions

As used herein, the following terms shall have the following meanings:

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

"Architectural and Development Standards" shall have the meaning set forth in Article VII.

"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 General Conditions Precedent and Payment Conditions Precedent, as applicable at the time of presentation of the Certificate of Compliance, have been satisfied and are continuing; (ii) that Company has complied with and is in compliance with Company's Additional Covenants provided in Article VI; and (ii) that to the knowledge of Company no default then exists by Company under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a default by Company under the terms of this Agreement. In the event Company contends it is entitled to the increased Maximum Incentive Amount provided in Section 8.5 of this Agreement, the Certificate of Compliance shall also certify the conditions of Section 8.5 have been satisfied and are continuing.

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

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

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

“City Regulations” shall mean all ordinances, rules and regulations of the City, as may be amended from time to time, including, without limitation, City codes, design standards, engineering standards, drainage requirements, uniform and international building and construction codes duly adopted by the City, the zoning, all of which shall be applied to the development of the Property.

“Company” shall mean LF Gateway LP, a Texas limited partnership, its successors and assigns only as permitted by this Agreement.

“Company Representative” shall mean the Chief Executive Officer, Chief Financial Officer, President or any other authorized officer of the Company, currently being Seth Grubstein.

“DCAD” shall mean the Dallas Central Appraisal District.

“Effective Date” shall mean the date the Company and the City execute this Agreement if both 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 two 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.

“Fast Casual Restaurant” shall mean a restaurant with or without drive through that offers higher quality food than fast food restaurants, and that is owned, leased to or operated by or franchised by a national fast casual restaurant brand operating in the United States, including by way of example, but not limited to, national fast casual restaurant brands such as Panda Express, Panera Bread, Chipotle, Jimmy Johns, Five Guys, Starbucks, or Raising Canes.

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

“Incentive Grant” shall have the meaning set forth in Article VIII.

“Improvements” shall have the meaning set forth in Article VII.

“Maximum Incentive Amount” shall mean the maximum amount of economic development incentives payable under the terms of this Agreement. The Maximum Incentive Amount is the collective sum of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00), unless the conditions provided in Section 8.5 are satisfied and continue being satisfied, in which event the Maximum Incentive Amount is the collective sum of SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$600,000.00). Notwithstanding anything to the contrary contained herein, the Maximum Incentive Amount shall not include Roadway Impact Fees, which shall be reimbursable as provided in Article VIII.

“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).

“Off-Site Improvements” shall mean the median break on Cartwright, together with the associated left turn lane, and the third lane of Highschool Drive, all as shown on **Exhibit “B”** attached hereto and made a part hereof for all purposes.

“Party” and “Parties” shall have the meanings set forth in the recitals to this Agreement.

“Payment Conditions Precedent” shall have the meaning set forth in Article VII.

“Payment Request” shall have the meaning set forth in Article VIII.

“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.

“Phase 1 Improvements” shall have the meaning set forth in Article VII.

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

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

“Roadway Impact Fees” mean impact fees charged by the City to generate revenue to fund or recoup all or part of the cost of roadway capital improvements or roadway facility expansions necessitated by and attributable to new development projects pursuant to the City’s Impact Fee Ordinance No. 4756, as now and hereafter amended. Although reimbursable as provide in Article VIII, Roadway Impact Fees are not included in the calculation of the Maximum Incentive Amount.

“Subsequent Improvements” shall have the meaning set forth in Article VII.

“Table Service Restaurant” shall mean a restaurant offering full table service in which a server takes the customer’s order at the table, sends the order to the kitchen, and serves the food to the customer at the table.

“Tax Year” shall mean a period consisting of three hundred and sixty five (365) calendar days [or three hundred and sixty six (366) calendar days for any calendar year that is a leap year] beginning on January 1st of each calendar year during the Term of this Agreement and continuing until and including December 31st of the same calendar year.

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

“Water and Wastewater Impact Fees” mean impact fees charged by the City to generate revenue to fund or recoup all or part of the cost of water and wastewater capital improvements or facility expansions necessitated by and attributable to new development projects pursuant to the City’s Impact Fee Ordinance No. 4756, as now and hereafter amended.

“Undocumented Workers” shall mean individuals who, at the time of employment with the Company, are not: (i) lawfully admitted for permanent residence to the United States or are not authorized under law to be employed in that manner in the United States; and (ii) such other Persons as are included within the definition of undocumented workers pursuant to 8 U.S.C. § 1324a (f) and/or or any other applicable state and/or federal law or regulation.

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 development of the Property will promote local economic development and stimulate business and commercial activity in the City and result in substantial economic benefit to the City as stated in the Recitals and, accordingly, the value of the benefits of this Agreement to the City outweigh the amount of incentives to be paid by the City under this Agreement.

ARTICLE IV

Term

The Term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) July 31, 2031; or (ii) the date this Agreement is terminated by the City or the Company pursuant to a right to terminate as expressly provided herein; or (iii) the City has paid Company the Maximum Incentive Amount (“**Term**”).

ARTICLE V

Company’s Covenants Regarding Undocumented Workers

5.1 Covenant Not to Employ Undocumented Workers. Company hereby certifies that the Company and each branch, division, and department of the Company does not knowingly employ any Undocumented Workers and Company hereby covenants and agrees that Company and each

branch, division and department of Company will not knowingly employ any Undocumented Workers during the Term of this Agreement.

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

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

5.4 Limitation on Incentive Grant Payments. The City shall have no obligation to make any Incentive Grant payments to Company if Company, or any branch, division or department of the Company, is convicted of a violation under 8 U.S.C. § 1324a (f).

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

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

ARTICLE VI

Company's Additional Covenants

6.1 Company's Additional Covenants. In consideration of the City's agreement to make the Incentive Grant payments to the Company as more fully set forth herein, Company covenants and agrees to comply with each and every one of the following covenants during the Term of this Agreement:

1. To complete or cause the completion of the construction of the Improvements on or before the completion dates provided in Article VII;
2. To deliver to the City, within thirty (30) days after written request, copies of such invoices, payment records and other documentation as the City may reasonably request to confirm compliance by the Company with its covenants in this Article;

3. Except as otherwise provided herein, to operate the Property exclusively for only the uses permitted under the current zoning applicable to the Property during the Term of this Agreement. Notwithstanding the foregoing, Company covenants and agrees that during the Term of this Agreement, Company will not enter into any oral and/or written leases or otherwise knowingly permit the use of all or any portion of the Property for any one or more of the following uses: (a) stores selling electronic cigarettes or other oral devices that allow users to inhale a vapor of liquid nicotine or other substances including, without limitation, e-cigarettes, e-cigars, e-pipes, e-hookahs, and/or vape pipes; (b) paraphernalia shops as defined in the Mesquite Zoning Ordinance; (c) tobacco stores; (d) pawn shops; (d) gifts, novelty or souvenir stores that sell items of a sexually lewd or offensive nature; (e) limited fuel sales; (f) passenger car rental or leasing; (g) car washes, vehicle detail shops or other automotive services; (h) non-depository institutions, including alternative financial institutions, and/or (i) industries, establishments, uses, stores and/or services included within the following industry classifications as established by the North American Industry Classification System (NAICS):
- (i) Classification #812199 – Other Personal Care Services; this U.S. industry comprises establishments primarily engaged in providing personal care services (except hair, nail, facial, nonpermanent makeup or nonmedical diet and weight reducing services). Illustrative examples of establishments within NAICS Classification #812199 include, but are not limited to, depilatory or electrolysis (i.e. hair removal salons), saunas, ear piercing services, steam or Turkish baths, hair replacement (except by offices of physicians) or weaving services, tanning salons (save and except retail establishments such as “Palm Beach Tan”, etc.), massage parlors (save and except retail establishments such as “Massage Envy”, etc.), tattoo parlors and permanent makeup salons;
 - (ii) Classification #813410 – Civic and Social Organizations; this industry comprises establishments primarily engaged in promoting the civic and social interests of their members. Illustrative examples of establishments within NAICS Classification #813410 include, but are not limited to, bars and restaurants operated for members of civic and social organizations, alumni associations, granges, automobile clubs (except travel), parent-teacher associations, booster clubs, scouting organizations, ethnic associations, social clubs, fraternal lodges and veterans’ membership organizations; and
 - (iii) Classification #813110 Religious Organizations; this industry comprises (1) establishments primarily engaged in operating religious organizations, such as churches, religious temples, and monasteries, and/or (2) establishments primarily engaged in administering an organized religion or promoting religions activities. Illustrative examples of establishments within NAICS Classification #813110 include, but are not limited to, churches, religious

shrines, monasteries (except schools), synagogues, religious mosques and religious temples;

4. Covenant Not to Protest, Challenge or Appeal Property Valuations. Company acknowledges that a material consideration for the City's agreement to grant the economic development incentives as set forth herein is the understanding and agreement by Company that the taxable value of the Property as assessed by DCAD will increase over the Term. Company represents and covenants to the City that during the Term, Company shall be the sole Person with the right or option to protest, challenge or appeal property tax valuations with respect to the Property for any Tax Year during the Term. Company hereby covenants and agrees that Company and/or any Person acting on behalf of Company will not protest, challenge or appeal the taxable value of the Property as assessed by DCAD during the Term;
5. To provide the City, it's agents and employees with access to the Property at such times as the City may reasonably request to conduct such inspections as the City reasonably deems necessary upon no less than 48 hours' advance notice to the Company in order to confirm compliance by the Company with the terms and provisions of this Agreement; provided, however, and excepting inspections required by the City's Code of Ordinances, that the City shall not conduct inspections more than once per month;
6. To provide a representative of the Company to accompany the City during all inspections of the Property conducted by the City pursuant to this Article;
7. To timely pay all ad valorem taxes assessed against the Property during the Term of this Agreement prior to the date such taxes become delinquent;
8. To maintain the Property in good repair and condition at all times, which at a minimum shall mean meeting or exceeding all Federal, State and Local laws and regulations, including but not limited to the City's Code of Ordinances and terms of this Agreement, applicable to the Property and the activities thereon;
9. To timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by Company under the terms of this Agreement and all other agreements now or hereafter existing between Company and the City;
10. To comply with all applicable federal, state and local laws and regulations applicable to the Property; and
11. To own the Property from the Effective date and continuing thereafter until this Agreement is terminated.

ARTICLE VII
Conditions Precedent to Payment of Incentive Grant

7.1 General Conditions Precedent to Payment of Each and Any Incentive Grant. Company and the City hereby expressly acknowledge and agree that the City's obligation to pay each and any Incentive Grant shall expressly be conditioned upon the satisfaction of all of the following conditions precedent (individually a "**General Condition Precedent**" and collectively the "**General Conditions Precedent**"):

1. Company shall be in compliance with all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by the Company pursuant to the terms of this Agreement, including but not limited to the Additional Covenants provided in Article VI, and no default by the Company shall then exist beyond any applicable grace or cure period;
2. Company shall have timely paid to the City all impact fees, permit fees, development fees, review fees and inspection fees arising during the Term in connection with the construction of any improvements to or upon the Property, including, without limitation, all Roadway Impact Fees and Water and Wastewater Impact Fees;
3. Company shall have delivered to the City within thirty (30) days after written request, copies of such documentation in Company's possession, custody or control as the City may reasonably request to confirm compliance by the Company with the Conditions Precedent set forth in this Agreement;
4. 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 Company with its obligations herein and the Conditions Precedent;
5. Company shall be in compliance with 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 Company and the City, if any, and no default shall then exist under the terms of such agreement(s) beyond any applicable grace or cure period;
6. The Property and all improvements and activities thereon shall comply in all material respects with the City Regulations as of the date of any Payment Request and the improvements upon the Property shall be in good repair and condition;
7. At the option of the City, the City shall have inspected the Property to confirm Company's compliance with the terms and provisions of this Agreement; and

8. The amount of the Incentive Grant payment being requested, when added to all previous Incentive Grant payments paid pursuant to this Agreement, shall not exceed the Maximum Incentive Amount.

7.2 Payment Conditions Precedent. The Company and the City hereby expressly acknowledge and agree that the City's obligation to pay an Incentive Grant payment to the Company shall expressly be conditioned upon the satisfaction of each and every one of the following conditions precedent (the "**Payment Conditions Precedent**") in addition to the General Conditions Precedent stated above:

1. Construction and Completion of Off-Site Improvements, Phase 1 Improvements and Subsequent Improvements. The Off-Site Improvements identified in **Exhibit "B"** hereto shall have been constructed on or before December 31, 2021. One (1) building on the Property shall be completed on or before December 31, 2023 in compliance with the completion requirements for all Improvements provided below in this section (the "**Phase 1 Improvements**"). Construction of further improvements on the Property (the "**Subsequent Improvements**") as depicted in Exhibit "B" may be constructed thereafter and shall be completed on or before the date ten (10) years after the Effective Date. The Phase 1 Improvements and Subsequent Improvements shall be constructed in compliance with the Architectural and Development Standards attached hereto as **Exhibit "C"** and generally in appearance as depicted in **Exhibit "F"**, and the Off-Site Improvements shall be constructed in accordance with City Regulations. The Phase 1 Improvements and all Subsequent Improvements shall be timely completed, each 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 the Phase 1 Improvements and Subsequent Improvements, and formal acceptance by the governmental entity that will own the Off-Site Improvements. If construction of the Off-Site Improvements, Phase 1 Improvements or construction of the Subsequent Improvements are not timely completed, this Agreement shall automatically terminate and the Parties shall have no further rights or obligations hereunder excepting those that survive termination of this Agreement.
 - a. Notwithstanding the foregoing, Company may request modification of the Improvements. Any such request must be made in writing to the City Manager. The City Manager may, in the City Manager's sole discretion, approve in writing any such request provided the request does not result in (i) reduction of any area of landscaping, (ii) a change in signage requirements provided in this Agreement, (iii) reducing the quality of materials to be used in construction, and (iv) violation of any of the City Regulations. In the event the City Manager rejects any such request and upon thirty (30) days' written notice by Company to the City, Company may terminate this Agreement without penalty and may retain any incentive grant paid by the City to Company subject to Article V.
2. Minimum Square Footage of on-site Improvements. On or before the date ten (10) years after the Effective Date, the buildings constructed on the Property shall have a collective minimum square footage of 42,500. Square footage for the purposes of this section is the area contained within the space occupied by the user(s) of a building. The Company shall have submitted to the City a certificate confirming that the

Company has complied with this Section 7.2 on or before the date ten (10) years after the Effective Date. This minimum square footage requirement is not a condition precedent to Company submitting an Incentive Grant request and the City paying any such request during the period from the Effective Date to ten (10) years thereafter, but is a condition precedent to Company submitting an Incentive Grant request and the City paying any such request for any period subsequent to ten (10) years after the Effective Date, and is further grounds for termination of the Agreement should this condition remain unsatisfied on or before the date ten (10) years after the Effective Date.

ARTICLE VIII

Incentive Grant and Payments

8.1 **Incentive Grant.** The City hereby approves, subject to satisfaction of the General Conditions Precedent and Payment Conditions Precedent and the covenants and limitations set forth in this Agreement and the Maximum Incentive Amount, an economic development grant to be earned by Company in an amount equal to the following (the “**Incentive Grant**”):

1. One hundred percent (100%) of the sum paid by Company or other Persons to the City for ad valorem taxes assessed against the Property for the tax year preceding the Payment Request;
2. One hundred percent (100%) of the Water and Wastewater Impact Fees paid by Company or other Person to the City for development of the Property;
3. One hundred percent (100%) of the Roadway Impact Fees paid by Company or other Person to the City for development of the Property from the Effective Date to and including July 31, 2026; and
4. Fifty percent (50%) of the Roadway Impact Fees paid by Company or other Person to the City for development of the Property from and after August 1, 2026 for the remainder of the Term.

8.2 **Payment Request.** Company shall submit a Payment Request for each Incentive Grant payment owed to Company by the City accompanied by Company’s itemization and basis for each amount included in the Payment Request, along with any required documentation, and as of the date of such Payment Request, all terms of this Agreement, including applicable conditions precedent set forth herein, shall have been satisfied and are then continuing (the “**Payment Request**”). A Payment Request shall be submitted to the City’s Finance Director at 757 N. Galloway, Mesquite, Texas 75149 within thirty (30) days of Company’s entitlement to an Incentive Grant earned herein. The earliest date for submission of the first Payment Request is March 1, 2022 for the Off-Site Improvements if timely constructed. Company shall also be entitled to submit Payment Requests in 2023 for Off-Site Improvements if timely constructed. Thereafter, Company shall be entitled to submit further Payment Requests and receive further Incentive Grant payments provided that the construction of at least one (1) building on the Property is completed

on or before December 31, 2023. Each subsequent Payment Request, if any, shall be submitted on or before July 31 and no earlier than June 1 of any year thereafter during the Term.

8.3 Supporting Documentation Submitted with Payment Request. In addition to any other requirements in this Agreement, each such Payment Request shall be accompanied by a Certificate of Compliance dated effective as of the date of the Payment Request. Additionally, Company shall submit in support of its Payment Request any information reasonably requested by the City to verify compliance of Company with this Agreement.

8.4 Payment of a Payment Request. The City shall issue each payment within thirty (30) days of the Payment Request if the Payment Request was in full compliance with this Agreement and timely received and Company is then in compliance with all terms and conditions of this Agreement. If Company submits a Payment Request more than one year after the applicable Incentive Grant is earned by Company, Company agrees it is an irrevocable waiver of Company's right to request said payment and the City shall not be obligated to pay the Payment Request. Any obligation of City to pay a timely submitted and valid Payment Request shall expressly survive the Term.

8.5 Maximum Incentive Amount. The Maximum Incentive Amount is the collective sum of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00), which amount expressly excludes any amount for Roadway Impact Fees. Provided the following conditions are satisfied, the Maximum Incentive Amount shall increase by ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) to the collective sum of SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$600,000.00). In the event the following conditions are satisfied but one or more such conditions should later cease to exist, the Maximum Incentive Amount shall return to the collective sum of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) provided, however, and subject to the recapture provisions in Sections 5.3 and 9.4 of this Agreement and the City remedies provided in Section 9.3 of this Agreement, that Company shall not be required to refund to the City any Incentive Grant payment received by Company. The following are the conditions for increasing the Maximum Incentive Amount to SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$600,000.00):

1. A Fast Casual Restaurant or Table Service Restaurant, approved in writing by the City Manager, is operating on the Property on or before the date five (5) years after the Effective Date; and
2. The Fast Casual Restaurant or Table Service Restaurant has continuously operated on the Property for a period of no less than one hundred eighty (180) days.

8.6 Limitation on Incentive Grant payments. Notwithstanding anything contained herein to the contrary:

1. the collective amount of Incentive Grant payments payable under the terms of this Agreement shall not exceed the Maximum Incentive Amount plus the Roadway Impact Fees. If the collective amount of Incentive Grant payments equals the Maximum Incentive Amount plus the Roadway Impact Fees prior to the end of

termination of this Agreement, no further Incentive Grant payments will be due or payable under this Agreement and this Agreement shall terminate (by way of example: (a) if Company has no qualifying restaurant on site in year 2029 and has been paid \$450,000 in Incentive Grant payments prior to 2029, then the maximum Incentive Grant that could be earned for year 2029 would be \$50,000 plus the Roadway Impact Fees; (b) if Company has a qualifying restaurant on site in year 2029, has been paid \$450,000 in Incentive Grant payments, then Company may continue earning and receiving Incentive Grant payments for the Term up to the amount of \$600,000 plus the Roadway Impact fees so long as the qualifying restaurant continues in operation; and (c) if Company has a qualifying restaurant on site in year 2029, has earned \$525,000 in Incentive Grant payments, but the qualifying restaurant ceases operation, then the Agreement will terminate, but Company will not have to repay the Incentive Grant amount above \$500,000 except as provided in Section 8.5);

2. no Incentive Grant payment shall be due and payable for any Tax Year prior to 2022;
3. no Incentive Grant payment shall be due and payable for any Tax Year after the Term; and
4. if there is any conflict between this Section 8.5 and any other term or provision of this Agreement, this Section 8.5 shall control.

8.7 Funds Available for Payment of Incentive Grants. The grants of economic development incentives payable by the City to the Company as more fully set forth in this Agreement are not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City. All Incentive Grant payments payable hereunder shall be paid only from funds of the City authorized by Article III, Section 52-a, of the Texas Constitution and Texas Local Government Code Chapter 380. Each Incentive Grant payment shall be subject to the City's appropriation of funds for such purpose to be paid in the budget year for which the Incentive Grant payment is to be made. Under no circumstances shall the City's obligations under this Article be deemed to create any debt within the meaning of any constitutional or statutory provision.

ARTICLE IX

Defaults Remedies

9.1 Company Default. Company shall be in default of this Agreement: (i) upon the occurrence of an Event of Bankruptcy or Insolvency of the Company; (ii) upon the failure of the Company to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by Company under the terms of this Agreement and such failure continues for thirty (30) days after written notice by the City to Company.

9.2 City Default. The City shall be in default of this Agreement upon the failure of the City

to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the City under the terms of this Agreement and such failure continues for thirty (30) days after written notice by Company to the City.

9.3 City Remedies. In the event of a Company default that has continued uncured beyond any applicable grace or cure period, the City shall have no obligation to pay any future Incentive Grant payment to Company and the City shall have the right as its sole remedies to: (i) recapture the Incentive Grant payment last paid by the City to the Company as more fully set forth in Section 9.4 below; and (ii) terminate this Agreement by written notice to the Company in which event neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement.

9.4 Recapture of Incentive Grant Payments. In the event this Agreement is terminated by the City or automatically terminates, the City shall have no obligation to make any further Incentive Grant payments to the Company and the Company shall immediately pay to the City, at the City's address set forth herein, or such other address as the City may hereafter notify the Company in writing, the sum equal to the greater of (A) \$100,000.00 or (B) one hundred percent (100%) of the last Incentive Grant payment paid by the City to the Company under the terms of this Agreement, minus any unpaid Incentive Grant payment then earned, owed and unpaid by the City, plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest to be calculated on the percentage of the Incentive Grant payment being recaptured from the date such Incentive Grant payment was paid by the City to Company until the date the said sum is repaid by Company to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate. Notwithstanding the foregoing, Company shall not be required to reimburse the City for any portion of the first Incentive Grant payment for completion of the Off-Site Improvements except as required by Article V.

9.5 Company Remedies. Upon the occurrence of a City default that has continued uncured beyond any applicable grace or cure period, Company shall have the right as its sole remedies to (a) terminate this Agreement by written notice to the City in which event neither Party hereto shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement, and (b) recover from the City the amount of any Incentive Grant payments then earned, owed and unpaid by the City as damages in accordance with the following provisions. The City and 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 or otherwise to recover damages:

1. the total amount of damages, if any, awarded against the City shall be limited to actual damages in an amount of the Incentive Grant earned by the Company and owed and unpaid by City, not to exceed the amount of the Maximum Incentive Amount;
2. any Incentive Grant payment past due and not paid following the required notice and cure period shall accrue interest at the lesser of: (i) the Maximum Lawful Rate; or (ii) five

percent (5%) per annum beginning the day after expiration of the cure period until paid, and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate; and

3. the recovery of damages against the City shall not include attorneys' fees or consequential, punitive, exemplary, or speculative damages including, but not limited to, lost profits.

9.6 Attorney's Fees. Neither Party hereto shall be entitled to seek or recover attorney's fees (except in the event of the exercise by the City of the remedies set forth in Chapter 2264 of the Texas Government Code).

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

ARTICLE X

Miscellaneous Provisions

10.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, notwithstanding anything contained herein to the contrary, this Agreement and the rights and obligations of Company hereunder may not be assigned or transferred by Company without the prior written consent of the City, which may be withheld in the City's sole discretion. Furthermore, neither Company nor any approved assignee or their legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of Company or any approved assignee under this Agreement, without obtaining the City's prior written consent, which may withheld in the City's sole discretion. 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. 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 Company and in the event Company attempts to assign this Agreement in violation of this Article, the City shall have the right to terminate this Agreement with Company by written notice to Company.

10.2 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, three (3) 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. 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: LF Gateway, LP
5952 King William Drive
Plano, Texas 75093
Attention: Seth Grubstein

With a Copy to: Holmes Firm PC
14241 Dallas Parkway, Suite 800
Dallas, Texas 75254
Attention: Ron Holmes

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

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

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

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

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

10.6 Modification. This Agreement may only be revised, modified or amended by a written

document signed by the City and the Company. Oral revisions, modifications or amendments are not permitted.

10.7 Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for nor against any Party.

10.8 Waivers. All waivers, to be effective, must be in writing and signed by the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party upon a Default of this Agreement shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring. This Agreement is expressly made subject to City's governmental immunity, including but not limited to the Texas Civil Remedies Code and all applicable state and federal law. The Parties expressly agree that no provision of the Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that the City has by operation of law.

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

10.10 **WAIVER OF CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES.** COMPANY AGREES THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, COMPANY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES INCLUDING BUT NOT LIMITED TO LOST PROFITS.

10.11 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.

10.12 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.

10.13 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.

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

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

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

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

10.18 Authority. Company represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. Each Party represents and warrants to each other Party that this Agreement has been duly authorized by such Party and that each Party has the full power and authority to enter into and fulfill its obligations under this Agreement. Each Person signing this Agreement represents that such Person has the authority to sign this Agreement on behalf of the Party indicated.

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

10.20 Usury Savings Clause. The Company and City intend to conform strictly to all applicable usury laws. All agreements of the City and the Company are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no event shall any interest contracted for, charged, received, paid or collected under the terms of this Agreement exceed the Maximum Lawful Rate or amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under applicable law. If, from any possible development of any document, interest would otherwise be payable to City in excess of the Maximum Lawful Rate, any such construction shall be subject to the provisions of this Section and such document shall be automatically reformed and the interest payable to the City shall be automatically reduced to the Maximum Lawful Rate, without the necessity of execution of any amendment or new document. If the City shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Lawful Rate, an amount equal to the amount which would have been excessive interest shall at the option of the City be refunded to Company or applied to the reduction of the principal amount owing under this Agreement or such document

in the inverse order of its maturity and not to the payment of interest. The right to accelerate any indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and City does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to the City shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Lawful Rate.

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

10.22 Form 1295 Certificate. Company agrees to comply with Texas Government Code, § 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, § 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.

10.23 Reservation of Legislative Authority. Notwithstanding any provision in this Agreement, this Agreement does not control, waive, limit or supplant the City Council's legislative authority or discretion.

10.24 Anti-Boycott Verification. If Texas Government Code Chapter 2271 is applicable to this Agreement, by signing below, Company hereby represent, verify, and warrant that their company does not boycott Israel and will not boycott Israel during the term of the Agreement.

10.25 Iran, Sudan and Foreign Terrorist Organizations. If § 2252.153 of the Texas Government Code is applicable to this Agreement, by signing below Company hereby represents, verifies, and warrants that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under § 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a "foreign terrorist organization" as defined in § 2252.151 of the Texas Government Code.

10.26 Development Standards. The Parties acknowledge that in the last legislative session, the Texas Legislature passed HB 2439, codified in V.T.C.A., Texas Government Code, Chapter 3000, Governmental Action Affecting Residential and Commercial Construction, regarding the regulation by municipalities of building products, materials, and aesthetic methods for residential and commercial buildings. Company acknowledges and agrees that, notwithstanding V.T.C.A., Texas Government Code, Chapter 3000, to construct the Improvements in accordance with the standards provided herein and/or as may be agreed upon in writing. The Parties acknowledge that such agreement is material to the City's agreement to grant the economic development incentives provided herein and is a bargained for consideration between the Parties. The Parties further

acknowledge and agree that the terms, provisions, covenants, and agreements contained in this Agreement regarding construction of the Improvements are covenants that touch and concern the Property and that it is the intent of the Parties that such terms, provisions, covenants, and agreements shall run with the Property and shall be binding upon the Parties hereto, their successors and assigns, and all subsequent owners of the Property.

10.27 Time is of the Essence. The Parties agree that time is of the essence of this Agreement.

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
Date:

Name: Cliff Keheley
Title: City Manager
Date:

APPROVED AS TO LEGAL FORM:

David L. Paschall, City Attorney

COMPANY:

**LF Gateway LP,
a Texas limited partnership**

By: LF Gateway GP, LLC,
a Texas limited liability company
its General Partner

By: _____
Name: Seth Grubstein
Title: Manager

Date: _____

**EXHIBIT “A”
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

Legal Description of Property

That certain property located at 3201 East Cartwright Road, Mesquite, Texas 75181, and being an approximately 6.787 acre tract more particularly described as follows:

BEING a 6.787 acre tract of land situated in the John P. Anderson Survey Abstract No. 1, City of Mesquite, Dallas County, Texas and being a portion of a tract of land described in a deed to Walmart Stores East Inc. recorded in Volume 2000066, Page 603, Official Public Records, Dallas County, Texas (OPRDCT) and being more particularly described as follows:

BEGINNING at a capped iron rod found for corner in the southeast line of Faithon P. Lucas Sr. Drive (Mercury Road) a variable width right of way and being the northerly corner of Lot 1, Block A of Dr. John D. Horn High School an addition to the City of Mesquite according to the plat recorded in Volume 2000213, Page 2399 (OPRDCT);

THENCE along the southeast line of said Faithon P. Lucas Sr. Drive (Mercury Road) as follows:

NORTH 44°38'10" EAST a distance of 235.93 feet to a point for corner and being the beginning of a curve to the right having a radius of 235.00 feet and a chord bearing of NORTH 49°31'30" EAST;

Along said curve through a central angle of 09°46'45" for an arc length of 40.11 feet to a point for corner and being the beginning of a reverse curve to the left having a radius of 265.00 feet and a chord bearing of NORTH 49°35'37" EAST;

Along said curve through a central angle of 09°38'27" for an arc length of 44.59 feet to a point for corner;

NORTH 44°46'21" EAST a distance of 80.66 feet to a point for corner and being the beginning of a non-tangent curve to the right having a radius of 165.00 feet and a chord bearing of NORTH 52°28'44" EAST;

THENCE along said curve through a central angle of 15°24'01" for an arc length of 44.35 feet to a point for corner in the southwest line of Cartwright Road a variable width right of way and being the beginning of a compound curve to the right having a radius of 50.00 feet and a chord bearing of NORTH 89°27'59" EAST;

THENCE along the southwest line of said Cartwright Road as follows:

Along said curve through a central angle of 58°35'26" for an arc length of 51.13 feet to a point for corner and being the beginning of a compound curve to the right having a radius of 165.00 feet and a chord bearing of SOUTH 53°32'26" EAST;

Along said curve through a central angle of 15°24'01" for an arc length of 44.35 feet to a point for corner;

SOUTH 46°02'46" EAST a distance of 523.57 feet to a point for corner at a northeast corner of said Lot 1, Block A;

THENCE along the northwest line of said Lot 1, Block A, SOUTH 44°37'55" WEST a distance of 484.58 feet to a capped iron rod found for corner at an interior ell corner of said Lot 1, Block A;

THENCE along the northeast line of said Lot 1, Block A, NORTH 46°02'45" WEST a distance of 615.36 feet to the POINT OF BEGINNING;

CONTAINING 6.787 acres or 295,642 square feet of land more or less.

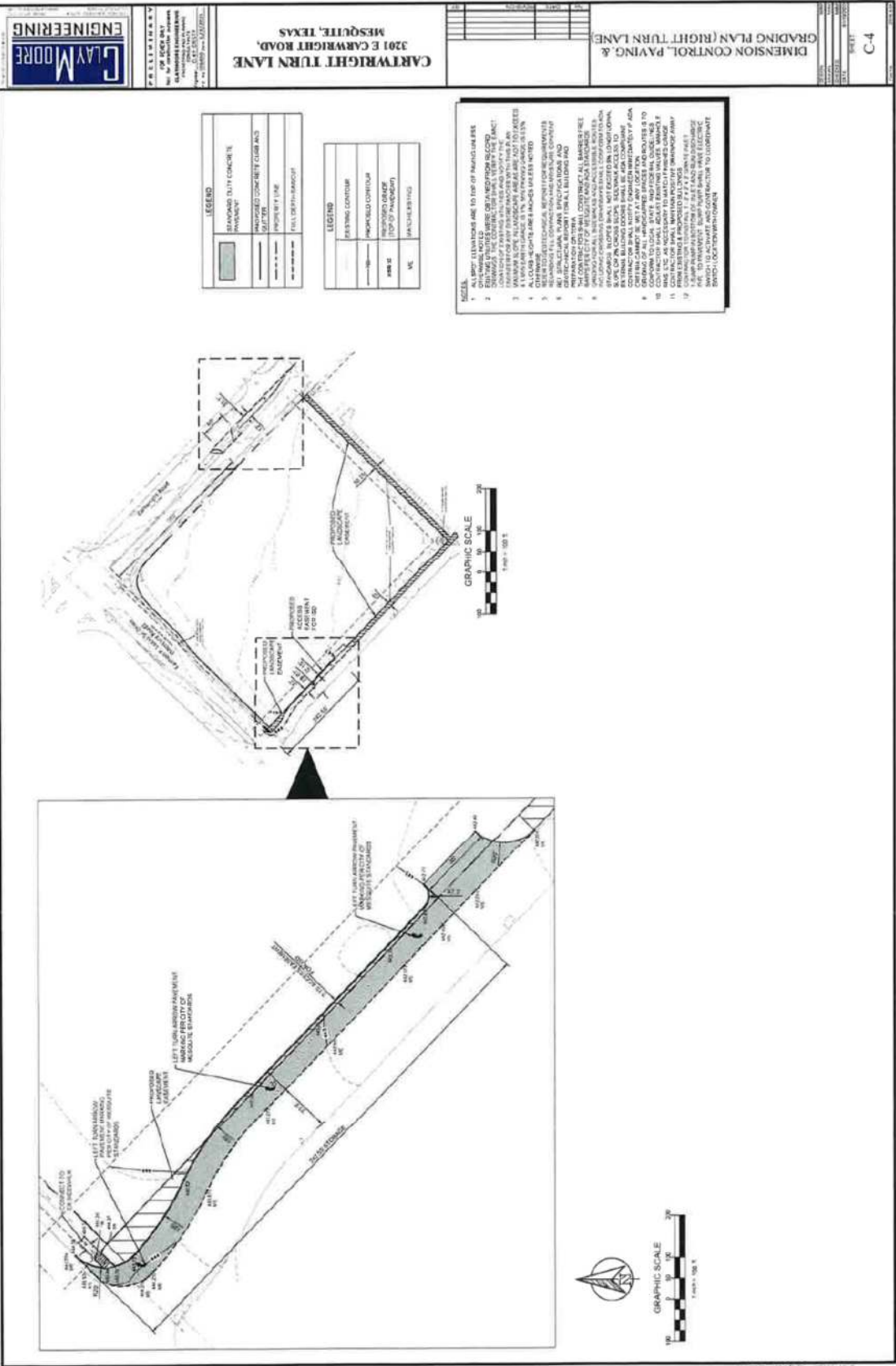
**EXHIBIT “B”
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

Improvements

Company shall develop the Property and construct Off-Site Improvements materially in accordance with the following Concept Plan. The site plan for the Property shall conform substantially to the Concept Plan. In no event shall the number of lots on the Property exceed six or be fewer than five. Permissible Building Area (“**PBA**”) sizes and locations shown the Concept Plan may be modified provided that parking and other development standards are met. In the event of a conflict between the provisions of the Concept Plan and the Agreement, the provisions of the Agreement control.

The Off-Site Improvements, Phase 1 Improvements and Subsequent Improvements are as defined in the Agreement, depicted on the following two (2) pages and on **Exhibit “E”** and **Exhibit “F”**.

Attached as **Exhibits “B-1” and “B-2”**, respectively, are Turn Lane Construction Agreement and Temporary Construction Agreement, and Landscape Easement and Maintenance Agreement between Company and the Mesquite ISD, which form part of this Agreement. The work by Company as described therein forms a portion of the Off-Site Improvements.



**EXHIBIT “B-1”
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

Turn Lane Construction Agreement and Temporary Construction Agreement

After recording, please return to:

Holmes Firm PC
Attn: Brian A. Fisher
International Plaza III
14241 Dallas Parkway
Suite 800
Dallas, Texas 75254
Email: brian@theholmesfirm.com

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

**TURN LANE CONSTRUCTION AGREEMENT,
TEMPORARY CONSTRUCTION EASEMENT AND PERMAMENT ACCESS EASEMENT**

THIS TURN LANE CONSTRUCTION AGREEMENT, TEMPORARY CONSTRUCTION EASEMENT AND ACCESS EASEMENT (this "**Agreement**") is made and entered into as of the ____ day of June, 2021, by and between **LF GATEWAY LP**, a Texas limited partnership ("**Gateway**"), and the **MESQUITE INDEPENDENT SCHOOL DISTRICT**, (the "**MISD**").

W I T N E S S E T H:

WHEREAS, Gateway owns the real property legally described on **Exhibit “A”** and depicted on **Exhibit “A-1”** (the "**Civil Plans**"), each attached hereto and made a part hereof for all purposes (the "**Gateway Property**");

WHEREAS, the MISD owns the real property legally described on **Exhibit “B”** (the "**City Property**"), a portion of which is depicted as the variable width shaded area on the Civil Plans between the southwest boundary line of the Gateway Property and the northeast boundary line of the private drive known as Highschool Drive (the "**MISD Turn Lane Property**");

WHEREAS, Gateway and the MISD desire for Gateway to construct a turn lane (the "**Turn Lane**") (i) on the MISD Turn Lane Property and (ii) on the 2.15 feet wide portion of the Gateway Property marked in shaded cross-hatch on the Civil Plans (the "**Gateway Turn Lane Property**"); together with a curb-cut (the "**Curb-Cut**") on the portions of the Gateway Property and MISD Property as denoted on the Civil Plans (collectively, the "**Improvements**"); and

WHEREAS, MISD will (i) grant and convey to Gateway a temporary non-exclusive construction easement for the purpose of constructing the Improvements and (ii) upon completion, accept a Special Warranty Deed from Gateway to MISD of the Improvements.

WHEREAS, MISD will also grant to Gateway a perpetual, non-exclusive vehicular access easement over, across and upon the MISD Turn Lane Property and, upon acceptance of the aforesaid Special Warranty Deed by MISD, the Gateway Turn Lane Property.

NOW, THEREFORE, Gateway and MISD, for and in consideration of the recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

1. Temporary Construction Easement. MISD does hereby grant and convey to Gateway and any contractor hired by Gateway (“**Gateway’s Contractor**”), subject to all matters of record, a temporary, non-exclusive easement over, upon, across, and through the MISD Turn Lane Property for the sole purpose of Gateway and Gateway’s Contractor constructing the Improvements.

2. Improvements. MISD approves Gateway’s construction of the Improvements. Gateway shall construct the Improvements in accordance with the specifications attached hereto and made a part hereof as Exhibit “A-1” and in compliance with all applicable statutes, laws, rules, codes, ordinances, regulations and permits of any Federal, state, or local governmental authority (collectively, “Applicable Laws”) and shall complete construction of the Improvements by no later than August 11, 2021 as determined by MISD in its reasonable judgment.

3. MISD’s Right of Access. MISD and its agents and employees may enter the MISD Property at any time in response to an emergency or a perceived emergency without prior notice to Gateway, and at other reasonable times upon reasonable prior notice to Gateway, to inspect the Improvements.

4. Clean Up Obligations. Upon completion of the Improvements, or the termination of this Agreement (whichever is the earliest to occur), Gateway shall remove from the MISD Turn Lane Property all rubbish, tools, equipment, unused construction materials and other associated materials.

5. Deed to MISD. Upon completion of the Improvements, as determined by MISD using its commercially reasonable judgment, Gateway shall convey to the MISD by Special Warranty Deed and the City shall accept such conveyance of (and assume the obligations to repair, maintain and replace) (i) the Improvements and (ii) that portion of the Gateway Turn Lane Property on which the Improvements are constructed (the “Conveyance”).

6. Insurance Requirements. During the term of the easement granted hereunder, Gateway shall obtain and maintain, or cause Gateway’s Contractor to obtain and maintain, commercial general liability insurance of not less than One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate, on an “occurrence” form. Such insurance shall be primary and any other coverage maintained by MISD shall be non-contributing with the coverage provided by the policy. Prior to Gateway’s exercise of any of its rights granted hereunder, Grantee shall provide certificates of insurance from the insurer evidencing the required coverages. Such insurance policies shall be issued by insurance companies with a rating of not less than A-VIII by A.M. Best, and shall name MISD as and additional insured.

7. Access Easements. MISD hereby grants and conveys to Gateway a perpetual, non-exclusive easement for vehicular access over, across and upon the MISD Turn Lane Property and Gateway hereby grants and conveys to MISD a temporary, non-exclusive easement for vehicular access over, upon

and across the Gateway Left Turn Lane until the Conveyance. MISD also hereby grants and conveys to Gateway, effective upon the Conveyance, a perpetual, non-exclusive easement for vehicular access over, upon and across the Gateway Left Turn Property.

8. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all Applicable Laws. If any provision of this Agreement, or the application thereof to any person or circumstance, shall, for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

9. Counterparts. This Agreement may be executed in two (2) or more counterparts, and it is not necessary that any one of the counterparts be executed by all of the parties hereto. Each fully or partially executed counterpart of this Agreement constitutes an original, and all such counterparts taken together constitute but one and the same instrument. Notwithstanding any law or presumption or anything in this Agreement to the contrary, this Agreement may be executed electronically or by scan/email transmission (including, without limitation, scan/email of "pdfs") of signatures and each party has the right to rely upon an electronic, email, scan or "pdf" counterpart of this Agreement signed by the other party to the same extent as if such party had received an original counterpart, and such counterpart of this Agreement shall be deemed valid and binding and admissible by either party against the other as if same were an original ink signature..

10. Term. This Agreement shall terminate and end upon the Dedication (the "**Term**"). During the Term, the easement under this Agreement shall be appurtenant to the Gateway Property and the terms, covenants, and conditions herein contained shall be covenants running with the Gateway Property and the MISD Property, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the parties hereto, and shall be enforceable by each of the owners of the Gateway Property and the MISD Property.

11. Time of Essence. Time is of the essence of this Agreement.

12. Notice. Any notice or communication required or permitted under this Agreement shall be given in writing, sent by (a) electronic mail, (b) personal delivery; (c) expedited delivery service with proof of delivery; or (d) United States mail, postage prepaid, registered or certified mail; addressed as follows:

To Gateway: c/o Seth Grubstein
5952 King William Drive
Plano, Texas 75093
[\(214\) 558-0800](tel:(214)558-0800)
seth.grubstein@icloud.com

With copies to: Holmes Firm PC
Attn: Ronald L. Holmes, Esq.
International Plaza III
14241 Dallas Parkway
Suite 800
Dallas, Texas 75254
ron@theholmesfirm.com

To MISD:

Attn: _____

Mesquite, Texas _____

@ _____

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or transmission by electronic mail, or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein.

13. Miscellaneous. This Agreement shall be governed in accordance with the laws of the State of Texas. The exclusive venue for any legal proceeding arising out of this Contract shall be Dallas County, Texas. The paragraph headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

GATEWAY:

LF GATEWAY LP,
a Texas limited partnership

Date of Execution by the Grantee:

_____, 20__

By: **LF GATEWAY GP LLC**
a Texas limited liability company
Its: General Partner

By: _____
Seth Grubstein, Manager

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me this ____ day of _____, 20__, by Seth Grubstein, as Manager of LF Gateway GP LLC, on behalf of said limited liability company.

My Commission Expires:

Notary Public, State of Texas

Printed Name of Notary Public

MISD:

**MESQUITE INDEPENDENT SCHOOL
DISTRICT,**

a _____

Date of Execution by the Grantor:

_____, 20__

By: _____

Name: _____

Its: _____

STATE OF TEXAS)

)

COUNTY OF _____)

This instrument was acknowledged before me this ____ day of _____, 20__, by
_____, as _____ of Mesquite Independent School District, on behalf
of said _____.

My Commission Expires:

Notary Public, State of Texas

Printed Name of Notary Public

Exhibit "A"

BEING a 6.787 acre tract of land situated in the John P. Anderson Survey Abstract No. 1, City of Mesquite, Dallas County, Texas and being a portion of a tract of land described in a deed to Walmart Stores East Inc. recorded in Volume 2000066, Page 603, Official Public Records, Dallas County, Texas (OPRDCT) and being more particularly described as follows:

BEGINNING at a capped iron rod found for corner in the southeast line of Faithon P. Lucas Sr. Drive (Mercury Road) a variable width right of way and being the northerly corner of Lot 1, Block A of Dr. John D. Horn High School an addition to the City of Mesquite according to the plat recorded in Volume 2000213, Page 2399 (OPRDCT);

THENCE along the southeast line of said Faithon P. Lucas Sr. Drive (Mercury Road) as follows:

NORTH 44°38'10" EAST a distance of 235.93 feet to a point for corner and being the beginning of a curve to the right having a radius of 235.00 feet and a chord bearing of NORTH 49°31'30" EAST;

Along said curve through a central angle of 09°46'45" for an arc length of 40.11 feet to a point for corner and being the beginning of a reverse curve to the left having a radius of 265.00 feet and a chord bearing of NORTH 49°35'37" EAST;

Along said curve through a central angle of 09°38'27" for an arc length of 44.59 feet to a point for corner;

NORTH 44°46'21" EAST a distance of 80.66 feet to a point for corner and being the beginning of a non-tangent curve to the right having a radius of 165.00 feet and a chord bearing of NORTH 52°28'44" EAST;

THENCE along said curve through a central angle of 15°24'01" for an arc length of 44.35 feet to a point for corner in the southwest line of Cartwright Road a variable width right of way and being the beginning of a compound curve to the right having a radius of 50.00 feet and a chord bearing of NORTH 89°27'59" EAST;

THENCE along the southwest line of said Cartwright Road as follows:

Along said curve through a central angle of 58°35'26" for an arc length of 51.13 feet to a point for corner and being the beginning of a compound curve to the right having a radius of 165.00 feet and a chord bearing of SOUTH 53°32'26" EAST;

Along said curve through a central angle of 15°24'01" for an arc length of 44.35 feet to a point for corner;

SOUTH 46°02'46" EAST a distance of 523.57 feet to a point for corner at a northeast corner of said Lot 1, Block A;

THENCE along the northwest line of said Lot 1, Block A, SOUTH $44^{\circ}37'55''$ WEST a distance of 484.58 feet to a capped iron rod found for corner at an interior ell corner of said Lot 1, Block A;

THENCE along the northeast line of said Lot 1, Block A, NORTH $46^{\circ}02'45''$ WEST a distance of 615.36 feet to the POINT OF BEGINNING;

CONTAINING 6.787 acres or 295,642 square feet of land more or less.

Exhibit “A-1”

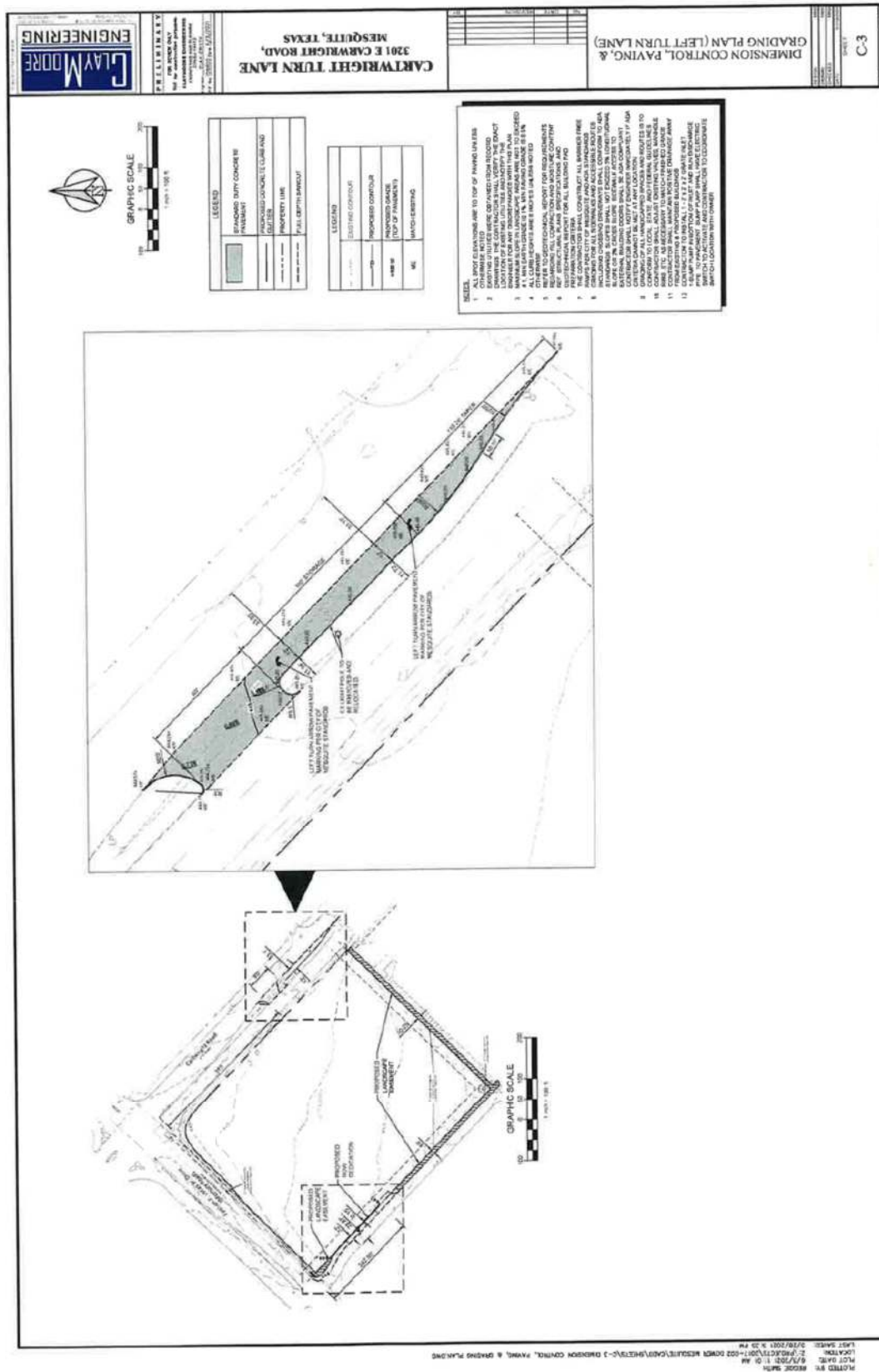
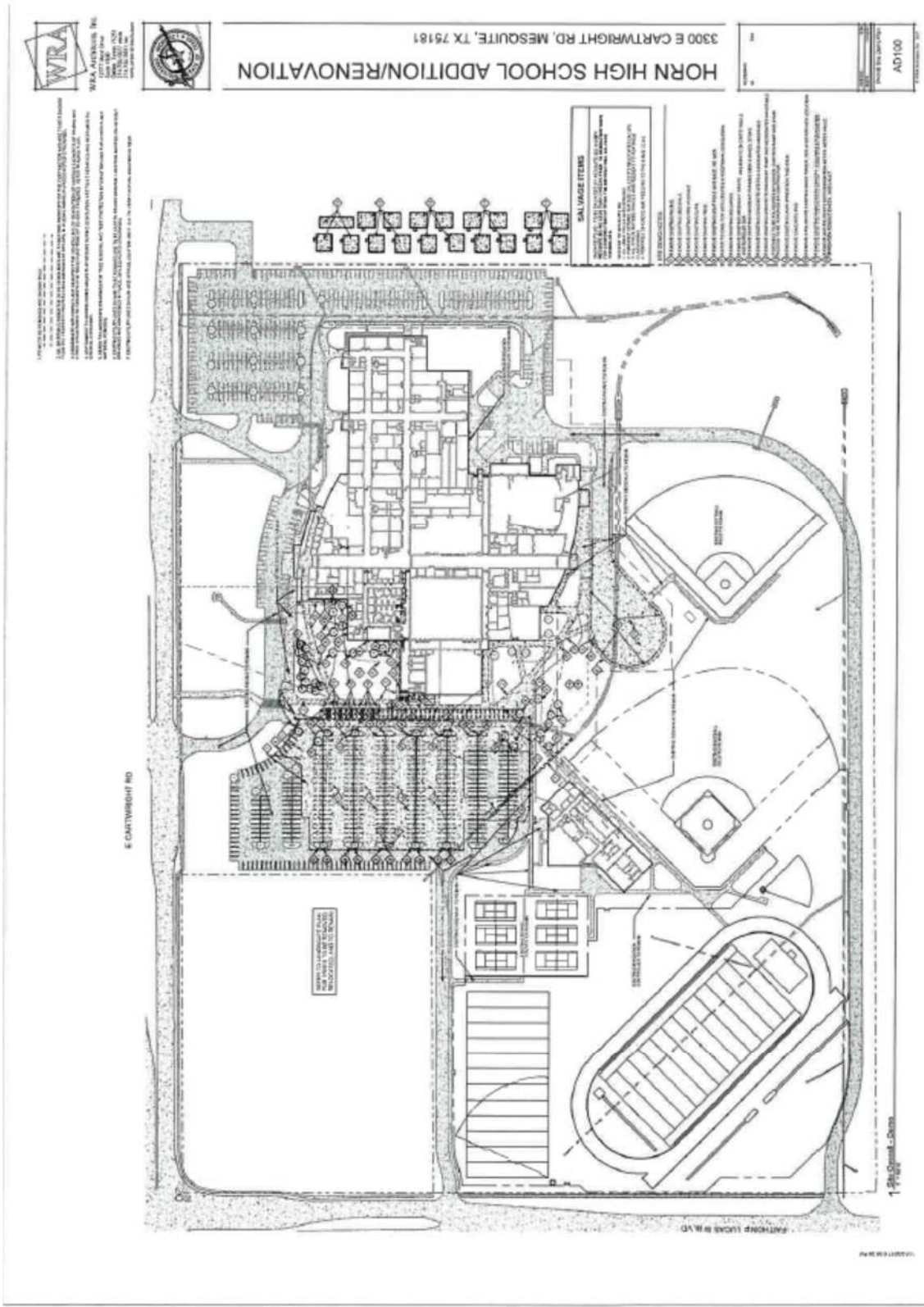


Exhibit “B”



**EXHIBIT “B-2”
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

Landscape Easement and Maintenance Agreement

AFTER RECORDATION RETURN TO:

Holmes Firm PC
Attn: Brian A. Fisher
International Plaza III
14241 Dallas Parkway
Suite 800
Dallas, Texas 75254
Email: brian@thefirm.com

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

LANDSCAPE EASEMENT AND MAINTENANCE AGREEMENT

THIS LANDSCAPE EASEMENT AND MAINTENANCE AGREEMENT (this “Agreement”) made and entered into as of the ____ day of _____, 2021, is by and between **LF GATEWAY LP**, a Texas limited partnership (“**Grantee**”), and **MESQUITE INDEPENDENT SCHOOL DISTRICT**, a _____ (the “**Grantor**”).

RECITALS

A. Grantee is the owner of a tract of land situated in Mesquite, Dallas County, Texas, and being more particularly described on **Exhibit “A”** attached hereto and made a part hereof for all purposes and depicted on **Exhibit “A-1”** (the “**Civil Plans**”) attached hereto and made a part hereof (the “**Grantee’s Property**”).

B. Grantor is the owner of a tract of land situated in Mesquite, Dallas County, Texas, being located adjacent to Grantee’s Property and legally described in **Exhibit “B”** attached hereto and made a part hereof, the portion thereof depicted on the Site Plan and being the (i) ten and one-fourth feet (10.25’) feet in width adjacent to and along the eastern boundary line of Grantor’s Property and (ii) a variable width adjacent to and along the southern boundary line of Grantee’s Property to the northern curb of Highschool Drive, including the to be constructed third lane thereof, all as marked in cross-hatch (\\\\\\) and depicted on the Civil Plans is herein called “**Grantor’s Property**”.

C. Grantee has requested that Grantor, and Grantor has agreed to, grant a landscaping easement across Grantor’s Property upon the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained Grantor and Grantee, for themselves and their successive owners and occupants of Grantee's Property and Grantor's Property, do hereby covenant and agree, as follows:

1. Easement. Grantor does hereby GRANT, BARGAIN, SELL and CONVEY to Grantee, its successors and assigns, a non-exclusive, perpetual easement (the "**Easement**") for the purposes described in Section 2 below, in, upon, over and across Grantor's Property (the "**Easement Area**") TO HAVE AND TO HOLD the Easement across the Easement Area, belonging unto Grantee, its successors and assigns, and Grantor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND all and singular the Easement Area unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

2. Purpose of Easement. The Easement may be used for installing, maintaining, removing and replacing general landscaping (including trees and bushes), landscape irrigation and fencing, as contemplated by that certain Economic Development Program Agreement ("**Chapter 380 Agreement**") between Grantee and Grantor, dated _____, 2021 (collectively, the "**Landscaping Improvements**"). Trees will be planted outside the fencing up to one foot (1') from the curb of Highschool Drive, and bushes inside the fencing. The fencing shall consist of a six feet (6') high wrought iron fence.

3. Maintenance. Grantee shall cause the Easement Area to be maintained, at Grantee's sole cost, in a neat and clean condition.

4. Non-Exclusiveness of Easement. The Easement is nonexclusive. Grantor reserves for itself and its successors and assigns the right to use the Easement Area, and to convey the same or other rights and/or easements within the Easement Area to others (a "**Permitted Easement User**"), so long as such use does not damage any Landscaping Improvement or unreasonably interfere with Grantee's Property's use of the Easement Area as specified herein. The City shall promptly repair any damage to the Landscaping Improvements caused by the City or any Permitted Easement User.

5. Equitable Rights of Enforcement. In the event of any interference or threatened interference with the Easement, such Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting such interference and commanding compliance hereof, which restraining orders and injunctions shall be obtainable upon proof of the existence of such interference or threatened interference, and without the necessity of proof of inadequacy of legal remedies or irreparable harm or posting of a bond, and shall be obtainable only by the parties hereto or those benefited hereby; provided, however, nothing herein shall be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

6. Covenants Run with the Land. The Easement and covenants herein shall run with the land (i.e., Grantor's Property and Grantee's Property), shall be appurtenant to and for the benefit of Grantee's Property, and shall be for the benefit of Grantee, all future owners of Grantee's

Property and their successors and assigns. The Easement and covenants herein shall be binding upon Grantor, all future owners of Grantor's Property and their successors and assigns.

7. Governing Law/Place of Performance. This Agreement shall be construed in accordance with the laws of the State of Texas, excluding any conflicts-of-law rule or principle that might refer the construction or interpretation of this Agreement to the laws of another state. All obligations hereunder are performable in Dallas County, Texas.

8. Attorneys' Fees. The prevailing party in any litigation with respect to this Agreement or the Easement shall be entitled to recover from the non-prevailing party all costs of such litigation, including, without limitation, reasonable attorneys' fees and court costs.

9. Amendment of Easement. This Agreement may be amended or modified only by an instrument in writing executed by the then record owners of Grantor's Property and Grantee's Property.

10. Notices. Any notice or communication required or permitted under this Agreement shall be given in writing, sent by (a) electronic mail, (b) personal delivery; (c) expedited delivery service with proof of delivery; or (d) United States mail, postage prepaid, registered or certified mail; addressed as follows:

To Gateway: c/o Seth Grubstein
5952 King William Drive
Plano, Texas 75093
[\(214\) 558-0800](tel:(214)558-0800)
seth.grubstein@icloud.com

With copies to: Holmes Firm PC
Attn: Ronald L. Holmes, Esq.
International Plaza III
14241 Dallas Parkway
Suite 800
Dallas, Texas 75254
ron@theholmesfirm.com

To MISD: Attn: _____

Mesquite, Texas _____

_____@_____

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or transmission by electronic mail, or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein.

11. Integration. This Agreement contains the complete agreement between the parties and cannot be varied except by the written agreement of the parties. The parties agree that there are no oral agreements, understandings, representations or warranties which are not expressly set forth herein.

12. Legal Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Article and Section headings appearing in this Agreement are for convenient reference only and are not intended, to any extent or for any purpose, to restrict or define the text of any Article or Section. This Agreement shall not be construed more or less favorably between the parties by reason of authorship or origin of language.

13. Counterparts. This Agreement may be executed in two (2) or more counterparts, and it is not necessary that any one of the counterparts be executed by all of the parties hereto. Each fully or partially executed counterpart of this Agreement constitutes an original, and all such counterparts taken together constitute but one and the same instrument. Notwithstanding any law or presumption or anything in this Agreement to the contrary, this Agreement may be executed electronically or by scan/email transmission (including, without limitation, scan/email of “pdfs”) of signatures and each party has the right to rely upon an electronic, email, scan or “pdf” counterpart of this Agreement signed by the other party to the same extent as if such party had received an original counterpart, and such counterpart of this Agreement shall be deemed valid and binding and admissible by either party against the other as if same were an original ink signature.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, this Agreement is executed to be effective on the date set forth above.

GRANTEE:

LF GATEWAY LP,
a Texas limited partnership

By: **LF GATEWAY GP LLC**
a Texas limited liability company
Its: General Partner

By: _____
Seth Grubstein, Manager

Date of Execution by the Grantee:

_____, 20__

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me this ____ day of _____, 20__, by Seth Grubstein, as Manager of LF Gateway GP LLC, on behalf of said limited liability company.

My Commission Expires:

Notary Public, State of Texas

Printed Name of Notary Public

GRANTOR:

**MESQUITE INDEPENDENT SCHOOL
DISTRICT,**

a _____

By: _____

Name: _____

Title: _____

Date of Execution by the City:

STATE OF TEXAS)
) SS
COUNTY OF _____)

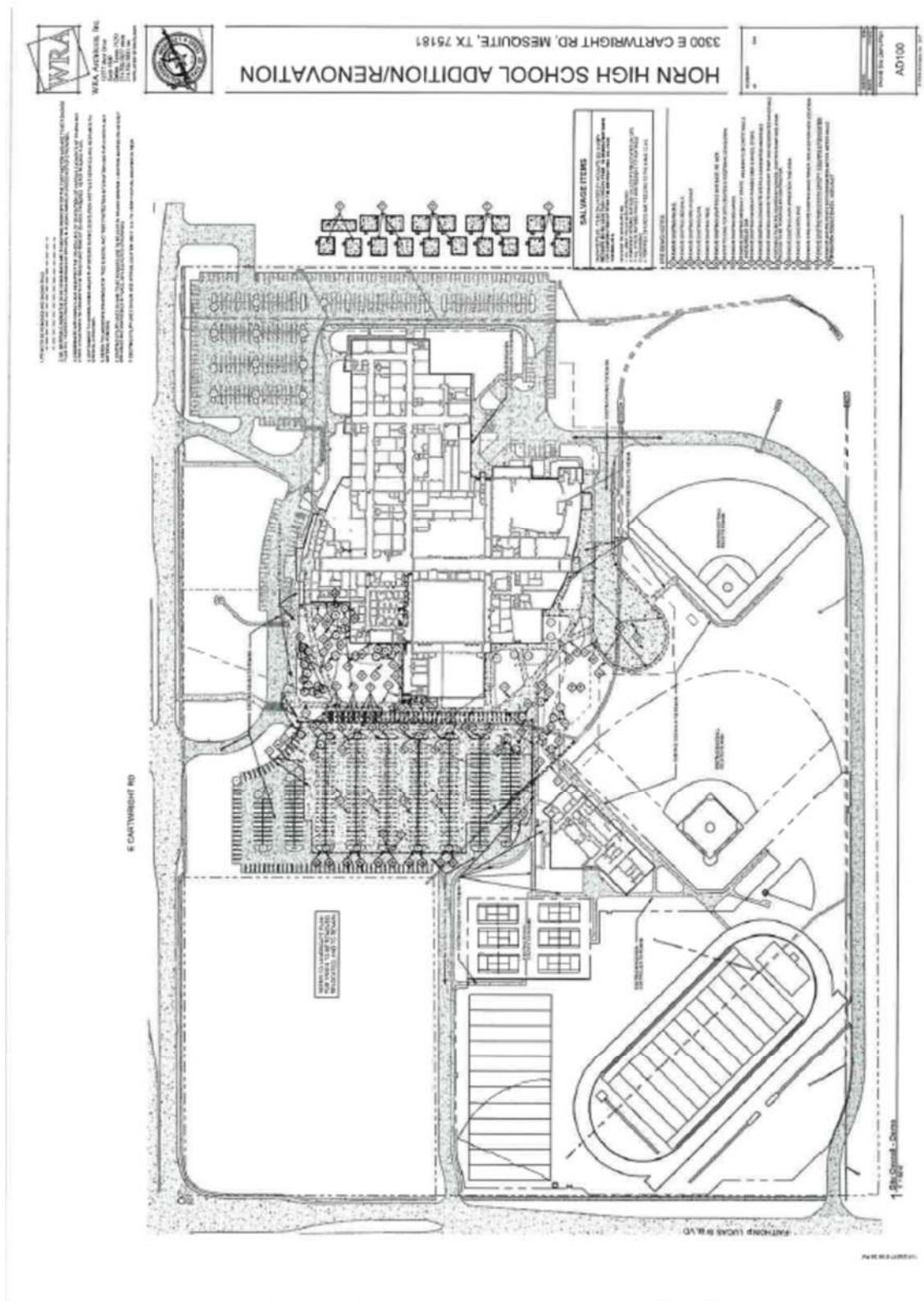
This instrument was acknowledged before me this ____ day of _____, 2021, by _____, as _____ of Mesquite Independent School District, on behalf of said _____.

My Commission Expires:

Notary Public, State of Texas

Type or Print Name

GRANTEE'S PROPERTY



CIVIL PLAN

CARTWRIGHT TURN LANE

CIVIL PLANS

3201 E CARTWRIGHT ROAD
MESQUITE, TEXAS

191 FAUDREE TURN LANE - NEC TX191 & FAUDREE, ODESSA, TX

SHEET LIST TABLE

SHEET NUMBER	DATE	DESCRIPTION
1-1	10/1/2021	PRELIMINARY
1-2	10/1/2021	FINAL
1-3	10/1/2021	FINAL
1-4	10/1/2021	FINAL
1-5	10/1/2021	FINAL
1-6	10/1/2021	FINAL
1-7	10/1/2021	FINAL
1-8	10/1/2021	FINAL
1-9	10/1/2021	FINAL
1-10	10/1/2021	FINAL

VICINITY MAP
11/2

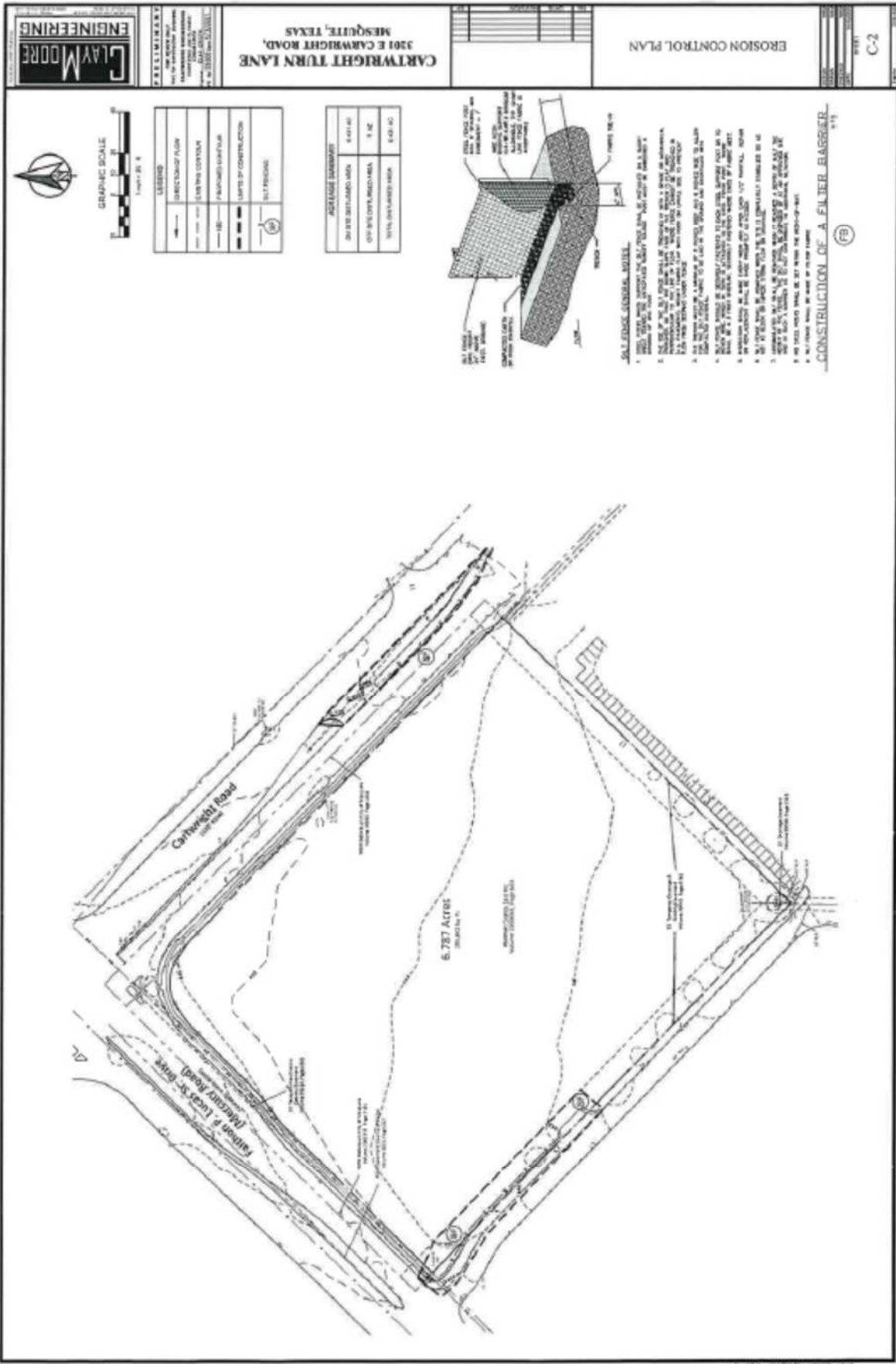
PROJECT NAME	BLAN SUBMITTAL LOG
PROJECT LOCATION	JANUARY 2021
PROJECT TYPE	NEW

ENGINEER
CLAYMORE
ENGINEERING
10000 WEST 10TH AVE
SUITE 100
FORT WORTH, TX 76116
TEL: 817.335.1111
FAX: 817.335.1112
WWW.CLAYMOREENGINEERING.COM

JUNE 2021

STOP!
CALL BEFORE YOU DIG

C-0



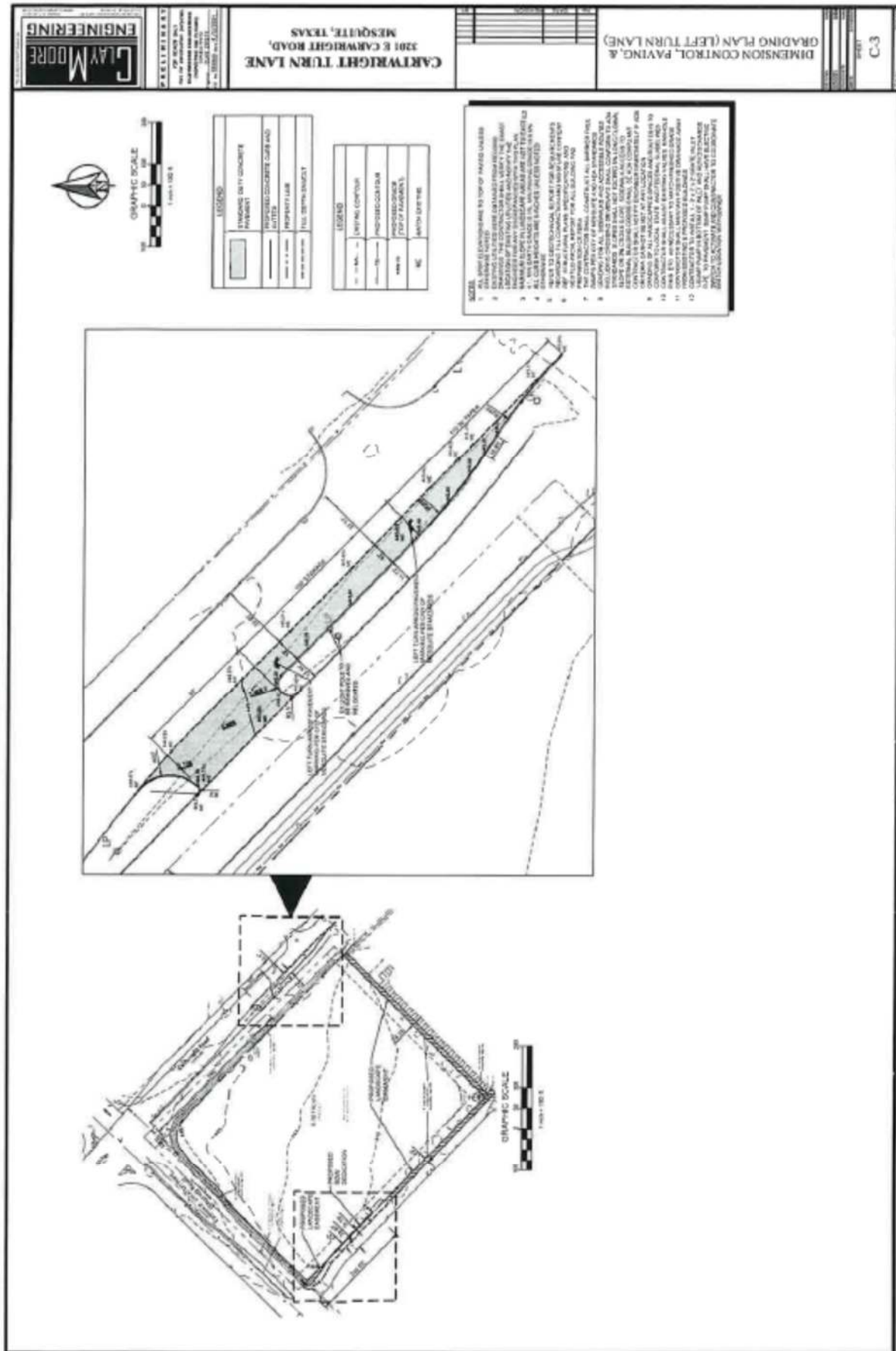
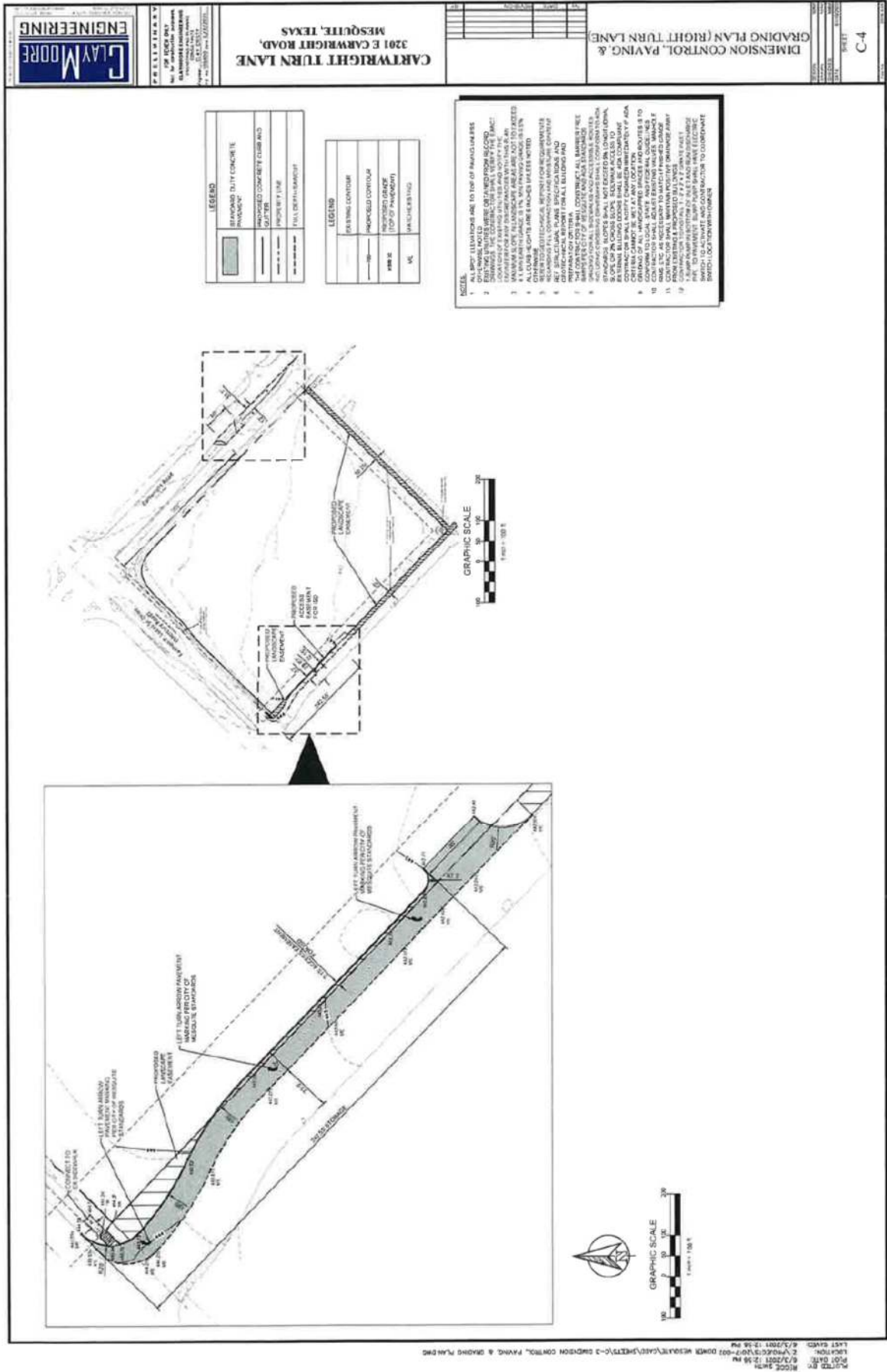


EXHIBIT “B”
EASEMENT AREA



**EXHIBIT “C”
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

Architectural and Development Standards

The Improvements shall be constructed in accordance with the following standards:

1. Except as provided in this section 1, drive through windows shall not face a public right-of-way. For the building to be located in the southwest corner of the Property, at the corner of Faithon P. Lucas Sr. Blvd. and Highschool Drive, one drive through window may face Highschool Drive.
2. Screening shall be provided in compliance with Stipulation No. 3. Building setbacks shall be provided as shown on the Concept Plan.
3. Landscaping shall be provided that creates a harmonious streetscape edge containing native plant materials and drought tolerant shrubs and trees and consistent with the Landscape Plan attached hereto as **Exhibit “E”**.
 - a. Along the shared property line with Horn High School on the southeastern side of the Property, (i) a wrought iron fence of six feet in height, (ii) 100 gallon live oak trees (or evergreen trees selected from Section 1A-500 of the Mesquite Zoning Ordinance) on the exterior of the fence and (iii) evergreen hedges (selected from Section 1A-500 of the Mesquite Zoning Ordinance) on the interior of the fence shall be installed on the Property to effectively create a visual screen. The installation of (i), (ii), and (iii) shall be prior to the completion of Building IV (as shown on **Exhibit “E”**).
 - b. Along the shared property line with Horn Highschool Drive on the southwestern side of the Property (e.g., adjacent to Buildings I and V, as shown on **Exhibit “E”**), (i) a wrought iron fence of six feet in height, (ii) 100 gallon live oak trees (or evergreen trees selected from Section 1A-500 of the Mesquite Zoning Ordinance) on the exterior of the fence adjacent to Building V and 65 gallon live oak trees (or evergreen trees selected from Section 1A-500 of the Mesquite Zoning Ordinance) on the exterior of the fence adjacent to Building I (as shown on **Exhibit “E”**), and (iii) evergreen hedges (selected from Section 1A-500 of the Mesquite Zoning Ordinance) on the interior of the fence to effectively create a visual screen. The installation of (i), (ii), and (iii) shall be prior to the completion of either Building I or V (as shown on **Exhibit “E”**).
4. A cross access easement shall be provided on each lot at the time of development. Cross access easements will assure cross access through all lots in the development and assure that all lots have access to the Highschool Drive main entrance and the entrance on Cartwright Road.
5. A Traffic Impact Analysis (“**TIA**”) is required. The TIA shall include recommended measures to minimize and/or mitigate the anticipated impacts and determine the adequacy of the development’s planned access points. Mitigation measures must be approved by the City Engineer and may include, but are not limited to, the following: an access management plan; transportation demand management measures; street improvements on or off site; placement of pedestrian, bicycle or transit facilities on or off the site; or other capital improvements projects such as traffic

calming infrastructure or capacity improvements. The developer is responsible for making improvements recommended by the TIA and approved by the City that are necessitated by and proportional to the development. Company has provided the required TIA. The mitigation measures approved by the City Engineer are reflected on Exhibit “B”.

6. Pole signs are prohibited. Multi-tenant monument signage is permitted in the locations shown on Exhibit “E” and described in Exhibit “D” and in accordance with the design specified in Exhibit “D”, or as otherwise approved.

7. Architectural Design Requirements.

a. Transparency. Ground level retail and restaurant shall incorporate transparent features over a minimum of 50 percent of one primary façade. Additional primary façades and secondary façades shall incorporate 20 percent transparency. One rear-facing secondary façade shall be allowed with no fenestration. Transparency, as defined in the Mesquite Community Appearance Manual, shall be measured within the first 10 feet of the building wall, measured vertically at street level. All ground level windows shall provide direct views to the building’s interior or a lit display area extending a minimum of three feet behind the window.

b. Color and material. To provide unity throughout the development, the exterior of all buildings shall incorporate the brick and stone material and color as shown on the Material and Color board attached as Exhibit “C” on 80 percent of the primary façades (excluding windows, doors, roofs and curtain walls). The remainder of the wall area shall incorporate other fire-resistive materials such as, but not limited to, stucco, EIFS and cement board provided that such materials are complimentary/compatible with materials and colors shown in Exhibit “F.” Additional accent materials or colors associated with established corporate identity are allowed on the remainder of the wall area.

c. Mechanical equipment. All mechanical equipment shall be screened from view at a point six feet above ground level at the property line. Screening for roof-mounted units shall be incorporated with the building façade.

EXHIBIT “D”
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

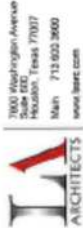
Signage Design And Materials

DESIGN CONCEPT | street level view



(2) MONUMENT SIGNS @ HARD CORNER
MAXIMUM 50 S.F. SIGN FACE; HEIGHT NOT TO EXCEED 10'-0"

(4) MONUMENT SIGNS OFF HARD CORNER
APPROX. 20 S.F. SIGN FACE

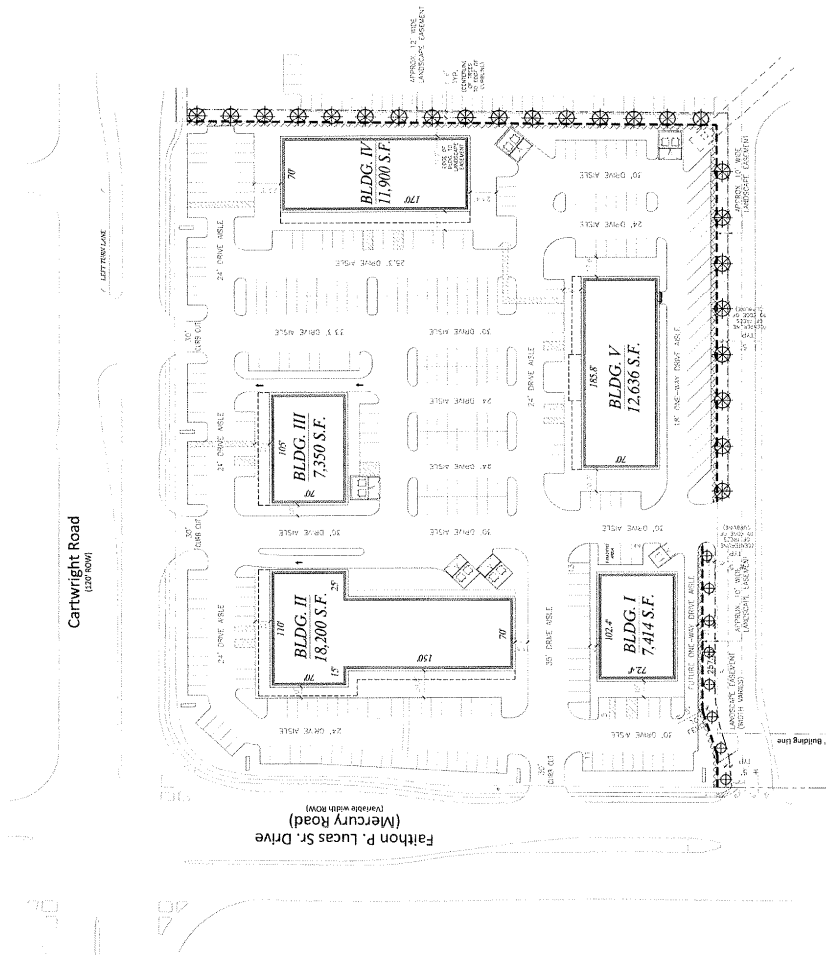


7000 Washington Avenue
Suite 200
Houston, Texas 77037
Main: 713.933.3000
www.laarch.com

SHADOW CREEK CROSSING
CONCEPTUAL MONUMENT SIGN DESIGNS
E CARTWRIGHT RD. & FAITHON LUCAS BLVD, MESQUITE, TEXAS
Project Number: 2020-174.001
June 21, 2021

TRIA Ventures
5952 King William Drive
Plano, Texas 75093
(214) 558-0800

Site and Landscape Plan









TRIA Ventures
5952 King William Drive
Plano, Texas 75093
(214) 558-0800



PRELIMINARY SITEPLAN
E CARTWRIGHT RD. & FAITHON LUCAS BLVD
MESQUITE, TEXAS

2020-174.001 SP34 JUNE 21, 2021

Gross Building Area:	57,500 S.F.
Total Parking Provided:	352 spaces
Parking Ratio Provided:	6.1 /1000

	LANDSCAPE EASEMENT
	HEDGES (EVERGREEN SHRUB OR COMPARABLE PLANTING MAY BE APPROVED)
	FENCE LINE
	65 GAL. TREE (LIVE OAK OR COMPARABLE EVERGREEN TREE MAY BE APPROVED)
	100 GAL. TREE (LIVE OAK OR COMPARABLE EVERGREEN TREE MAY BE APPROVED)
	PROPOSED MULTI-TENANT MONUMENT SIGN (OR SINGLE-TENANT SIGN MAY BE APPROVED LATER)

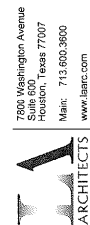


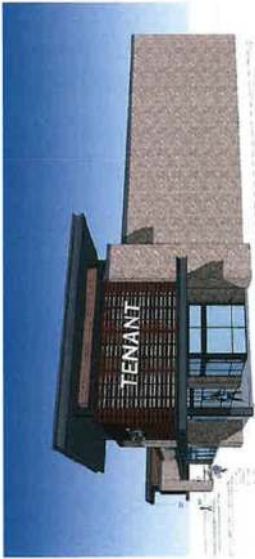
EXHIBIT “F”
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Materials and Colors Palette

DESIGN CONCEPT | street level view



FRONT ELEVATION



SIDE ELEVATION

PROPOSED MATERIALS LIST:

BRICK MIX (Sign Band, Pilasters & Tower Columns):
to be similar in color pattern (combination using Rockwell, Brookstone, & Old Savannah Clinker); to be approved

PAINTED STEEL MEMBERS (at Towers):
to be charcoal gray or comparable color; to be approved

BAND @ TOP OF TOWERS:
Nichita Vintagewood or comparable material; to be approved

ALUMINUM GRILLE @ CORNER TOWERS:
Aluminum Grille or comparable material for slat wall with wood look; to be approved

STOREFRONT SYSTEM:
Aluminum/glass or steel/glass storefront with tinted glass; to be charcoal gray or comparable color; to be approved



LA
ARCHITECTS
7800 Washington Avenue
Suite 600
Houston, Texas 77027
Main 713.600.3600
www.laac.com

SHADOW CREEK CROSSING
CONCEPTUAL EXTERIOR ELEVATION DESIGN
E CARTWRIGHT RD. & FAITHON LUCAS BLVD, MESQUITE, TEXAS
Project Number: 2020-174.001
June 21, 2021

TRIA Ventures
5952 King William Drive
Plano, Texas 75093
(214) 558-0800