

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 A TIRZ NO. 8 REIMBURSEMENT AGREEMENT AND CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT FOR SUCH PURPOSES WITH THE BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER 8, JOHN BRIAN HUTCHESON, AGGIE CHICK & FEED STORE, INC., AND MESQUITE FEED & HARDWARE, INC., FOR THE CONSTRUCTION OF A NEW RETAIL BUILDING AND REDEVELOPMENT OF A RETAIL CENTER LOCATED AT 4401, 4407, AND 4415 GUS THOMASSON ROAD IN MESQUITE, TEXAS; AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

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

WHEREAS, the City Council has been presented with a proposed agreement providing economic incentives to John Brian Hutcheson, Aggie Chick & Feed Store, Inc. (“**ACFS**”), and Mesquite Feed & Hardware, Inc. (“**MFH**”) (collectively the “**Developers**”), owners of three adjacent tracts located at the northwest corner of Gus Thomasson Road and Moon Drive in the Gus Thomasson Corridor and within Tax Increment Reinvestment Zone No. Eight, for the construction of a new retail building and redevelopment of a retail center in the City, a copy of said agreement being attached hereto as Exhibit 1 and incorporated herein by reference (the “**Agreement**”); and

WHEREAS, the properties are located on approximately 1.4 acres and tracts of land located in the John Hardin Survey, Abstract No. 545, in the City of Mesquite, Dallas County, Texas, as more particularly described and/or depicted in the Agreement and Exhibits A and C to the Agreement and having street addresses of 4401, 4407, and 4415 Gus Thomasson Road, Mesquite, Texas 75150 (collectively the “**Property**”); and

WHEREAS, the City would like to encourage the development and redevelopment of the Property by granting certain economic development incentives to the Developers; and

WHEREAS, the development and redevelopment of the Property will increase the taxable value of the Property thereby adding value to the City’s tax rolls and increasing the ad valorem property taxes and sale taxes to be collected by the City, along with increasing employment opportunities in the City; and

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

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

SECTION 1. That the City Council finds that the terms of the proposed Agreement by and between the City and the Developers, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference, will benefit the City and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

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

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

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

SECTION 5. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$50,000; (iii) approve or deny any matter in the Agreement that requires the consent of the City including but not limited to a Developer's assignment of the Agreement to another person or entity; (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 1st day of November 2021.

Bruce Archer
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

Sonja Land
City Secretary



David L. Paschall
City Attorney

**TIRZ NO. 8 REIMBURSEMENT AGREEMENT
AND
CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AND AGREEMENT**

This **TIRZ NO. 8 REIMBURSEMENT AGREEMENT AND CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** (hereinafter referred to as the “**Agreement**”) is made and entered into by and between the **CITY OF MESQUITE, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the “**City**”); **BOARD OF DIRECTORS OF GUS THOMASSON REINVESTMENT ZONE NUMBER 8, CITY OF MESQUITE, TEXAS** (hereinafter referred to as the “**Board**”); **JOHN BRIAN HUTCHESON (“Hutcheson”)**, **AGGIE CHICK & FEED STORE, INC. (“ACFS”)** and **MESQUITE FEED & HARDWARE, INC. (“MFH”)** (each a “**Party**” and collectively the “**Parties**”), for the purposes and considerations stated below:

WHEREAS, Hutcheson is the owner of an approximately 0.5894-acre tract of land located in the John Hardin Survey, Abstract No. 545, Tract 6, City of Mesquite, Dallas County, Texas, as more particularly described and/or depicted in ***Exhibit A*** of this Agreement, which is attached hereto and incorporated herein for all purposes, and generally located at 4401 Gus Thomasson Road, Mesquite, Dallas County, Texas (hereinafter referred to as the “**Car Wash Property**”); and

WHEREAS, Hutcheson agrees to construct or cause to be constructed on the Car Wash Property a minimum 10,000 square foot retail building, as depicted and described in ***Exhibit B*** of this Agreement, which is attached hereto and incorporated herein for all purposes (hereinafter referred to as the “**Retail Building**”); and

WHEREAS, ACFS is the owner of an approximately 0.3984-acre or 17,356.3 square feet of land located in the John Hardin Survey, Abstract No. 545, City of Mesquite, Dallas County, Texas, and generally located at 4407 Gus Thomasson Road, Mesquite, Dallas County, Texas, as more particularly described and/or depicted in ***Exhibit C*** of this Agreement, which is attached hereto and incorporated herein for all purposes (the “**4407 GT Property**”); and

WHEREAS, MFH is the owner of an approximately 0.4357 acres or 18,980.0 square feet of land consisting of Block A, Lot 8 of the Casa View Heights 16 Addition, and addition to the City of Mesquite, Dallas County, Texas, and generally located at 4415 Gus Thomasson Road, Mesquite, Dallas County, Texas, as more particularly described and/or depicted in ***Exhibit C*** of this Agreement (the “**4415 GT Property**”); and

WHEREAS, the 4407 GT Property and 4415 GT Property are collectively referenced herein as the “**Ace Hardware Property**”, the Ace Hardware Property and the Car Wash Property are collectively referenced herein as the “**Property**”, and Hutcheson, ACFS and MFH are collectively referenced herein as the “**Developers**”; and

WHEREAS, ACFS and MFH agree to construct or cause to be constructed on the ACE Hardware Property those expenditures consisting of the following: (1) construction of a unified

façade and uniform signage improvements on the existing buildings as depicted and described in **Exhibit D** of this Agreement, which is attached hereto and is incorporated herein for all purposes; and (2) replacement and resurfacing of the existing parking lot located on the 4415 GT Property; and (3) repair of the existing parking lot located on the 4407 GT Property, all to be performed to current City standards as provided herein; (hereinafter collectively referred to as the “**ACE Hardware Property Qualified Expenditures**”); and

WHEREAS, Hutcheson, ACFS and MFH desire to enter into this Agreement pursuant to Chapter 380 of the Texas Local Government Code; and

WHEREAS, the City desires to provide, pursuant to Chapter 380 of the Texas Local Government Code, an incentive to Developers to develop the Property as defined below; and

WHEREAS, the City possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of Mesquite, Texas; and

WHEREAS, the City has determined that a grant of funds to the Developers will serve the public purpose of promoting local economic development, with the development and diversification of the economy of the State and City, will eliminate unemployment and underemployment in the State and City, and will enhance business and commercial activity within the City of Mesquite, Texas; and

WHEREAS, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Mesquite, Texas, and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, and further, is in the best interests of the City and the Developers; and

WHEREAS, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Mesquite, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution by assisting in the development and diversification of the economy of the State, by eliminating unemployment or underemployment in the State, and by the development or expansion of commerce within the State; and

WHEREAS, in accordance with the provisions of the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code, the City Council of the City previously adopted Ordinance No. 4530 which among other things, (i) created, established, and designated an area within the corporate limits of the City as “Gus Thomasson Reinvestment Zone Number Eight, City of Mesquite, Texas” (the “**Reinvestment Zone**”), (ii) created a Board of Directors for the Reinvestment Zone, and (iii) established a tax increment fund for the Reinvestment Zone; and

WHEREAS, Section 311.010(b) of the Act provides that the Board of Directors of TIRZ # 8 (hereinafter referred to as the “**Board**”) may enter into agreements as the Board considers necessary or convenient to implement the Project and Financing Plan and achieve its purposes; and

WHEREAS, Section 311.010(h) of the Act authorizes the Board subject to the approval of the City Council of the City, “to implement the project plan and reinvestment zone financing plan and achieve their purposes, may establish and provide for the administration of one or more programs for the public purposes of developing and diversifying the economy of the zone, eliminating unemployment and underemployment in the zone, and developing or expanding transportation, business, and commercial activity in the zone, including programs to make grants and loans from the tax increment fund of the zone in an aggregate amount not to exceed the amount of the tax increment produced by the municipality and paid into the tax increment fund for the zone for activities that benefit the zone and stimulate business and commercial activity in the zone. For purposes of this subsection, on approval of the municipality or county, the board of directors of the zone has all the powers of a municipality under Chapter 380, Local Government Code. The approval required by this subsection may be granted in an ordinance, in the case of a zone designated by a municipality, or in an order, in the case of a zone designated by a county, approving a project plan or reinvestment zone financing plan or approving an amendment to a project plan or reinvestment zone financing plan”; and

WHEREAS, the Car Wash Property and the ACE Hardware Property are located within the boundaries of the Reinvestment Zone; and

WHEREAS, the Board has concluded and hereby finds that this Agreement clearly promotes economic development in the City of Mesquite, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution and Section 311.010(h) of the Act by assisting in the development and diversification of the economy of the State of Texas and the City, by eliminating unemployment or underemployment in the State of Texas, and the City, and by the development or expansion of commerce within the State of Texas, and the City.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, the Board, and Developers agree as follows:

SECTION 1. FINDINGS INCORPORATED.

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

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date of this Agreement, and shall

continue thereafter until (1) **March 31, 2035**; or (2) upon payment of the Maximum Amount (as defined herein) and payment of the incentives provided in Section 6(a) of this Agreement, whichever is sooner, unless terminated sooner under the provisions hereof. In the event this Agreement is not fully executed within sixty (60) days after approval by the City Council of the City of Mesquite, Texas, then this Agreement shall be null and void, and shall have no effect on either party. This Agreement may be terminated by the City and/or Board if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement, or any part thereof, invalid, illegal or unenforceable.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **ACE Hardware Property.** The words “ACE Hardware Property” mean collectively the 4407 GT Property and 4415 GT Property, both properties are more particularly described and/or depicted in *Exhibit C* of this Agreement.
- (b) **ACE Hardware Property Qualified Expenditures.** The words “ACE Hardware Property Qualified Expenditures” mean those capital expenditures made to the ACE Hardware Property consisting of the following: (1) construction of a unified façade and uniform signage improvements on the existing buildings as depicted and described in *Exhibit D* of this Agreement, which is attached hereto and is incorporated herein for all purposes; and (2) replacement and resurfacing of the existing parking lot located on the 4415 GT Property; and (3) repair of the existing parking lot located on the 4407 GT Property, all to be performed to current City standards as provided herein. The words “ACE Hardware Property Qualified Expenditures” excludes any fees paid to the City in connection with the ACE Hardware Property or construction thereon.
- (c) **ACFS.** The term “ACFS” means Aggie Chick & Feed Store, Inc., a Texas corporation.
- (d) **Agreement.** The word “Agreement” means this TIRZ No. 8 Reimbursement Agreement and Chapter 380 Economic Development Program and Agreement, authorized by Chapter 380 of the Texas Local Government Code, and Chapter 311 of the Texas Tax Code, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (e) **Board.** The word “Board” means the Board of Directors of TIRZ # 8 authorized by Section 311.009 of the Act. For the purposes of this Agreement, Board’s address is 1515 N. Galloway, Mesquite, Texas 75149.
- (f) **Capital Investment Certificate.** The words “Capital Investment Certificate” means a certificate in such form as is reasonably acceptable to the City executed by the Developers certifying the amount of expenditures made by a Developer in connection with the

construction of the Retail Building and ACE Hardware Property Qualified Expenditures as of the date of such certificate (each a “**Capital Investment Certificate**”) provided, however, the Parties agree that only expenditures capitalized as capital assets on the books of a Developer in accordance with generally accepted accounting principles shall be included in the expenditures reported in each Capital Investment Certificate. The Capital Investment Certificate shall exclude any fees paid to the City in connection with the Car Wash Property and ACE Hardware Property or construction thereon and shall include documentation supporting the capital expenditures.

- (g) **Car Wash Property.** The words “Car Wash Property” mean the approximately 0.5894-acre tract of land located in the John Hardin Survey, Abstract No. 545, Tract 6, City of Mesquite, Dallas County, Texas, as more particularly described and or depicted in ***Exhibit A*** of this Agreement, and generally located at 4401 Gus Thomasson Road, Mesquite, Dallas County, Texas.
- (h) **Car Wash Property Qualified Expenditures.** The words “Car Wash Property Qualified Expenditures” mean those capital expenditures made to the Car Wash Property consisting of the following: construction of a minimum 10,000 square foot retail building, as depicted and described in ***Exhibit B*** of this Agreement. The words “Car Wash Property Qualified Expenditures” excludes any fees paid to the City in connection with the ACE Hardware Property or construction thereon.
- (i) **City.** The word “City” means the City of Mesquite, Texas, a Texas home-rule municipality. For the purposes of this Agreement, City’s address is 1515 N. Galloway, Mesquite, Texas 75149.
- (j) **Clean Site.** The words “Clean Site” mean removal of any and all improvements, both horizontal and vertical, leaving bare earth only.
- (k) **Commence Construction.** The words “Commence Construction” mean obtain from the City a building permit for the Car Wash Property and obtaining all required permits for erection of new signage for the Ace Hardware Property.
- (l) **Completion of Construction.** The words “Completion of Construction” or “Complete Construction” with respect to the Car Wash Property Qualified Expenditures mean obtain from the City a shell certificate of occupancy for the Retail Building which shall be constructed as provided herein. The words “Completion of Construction” or “Complete Construction” with respect to the ACE Hardware Property Qualified Expenditures mean the City has inspected and approved the installation of new signage at the Ace Hardware Property as depicted in ***Exhibit D***.
- (m) **Developers.** The word “Developers” means collectively John Brian Hutcheson, whose address for the purposes of this Agreement is 301 Dalview Court, Forney, Texas 75126-6681,

Aggie Chick & Feed Store, Inc., whose address for the purposes of this Agreement is 9105 C. F. Hawn Frwy., Dallas, Texas 75217 and Mesquite Feed & Hardware, Inc., whose address for the purposes of this Agreement is 4415 Gus Thomasson Road, Mesquite, Texas 75150.

- (n) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this Agreement by and between the City, the Board, and Developers, but in no event any later than sixty (60) days after approval by the City Council of the City of Mesquite.
- (o) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth in the section entitled “Events of Default” in this Agreement.
- (p) **Existing Tenants.** The words “Existing Tenants” mean the following entities having current leases for use of space at the Ace Hardware Property: Stihl, Ace Metroplex Cleaning Supply, T-Mobile and Montenegro Automotive.
- (q) **Hutcheson.** The word “Hutcheson” means the individual John Brian Hutcheson.
- (r) **Maximum Lawful Rate.** The words “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).
- (s) **MFH.** The term “MFH” means Mesquite Feed & Hardware, Inc., a Texas corporation.
- (t) **Retail Building.** The words “Retail Building” mean a minimum 10,000 square foot Class A retail building to be constructed on the Car Wash Property, as depicted and described in *Exhibit B* of this Agreement. The construction of the Retail Building shall comply with all City, county, state and federal development standards, architectural standards, and applicable law, including City’s zoning ordinance, landscape plan requirements, concept plans, and elevations.
- (u) **Roadway Impact Fees.** The words “Roadway Impact Fees” mean the impact fees charged by the City to the Developers to fund or recoup all or part of the cost of roadway capital improvements or roadway facility expansions necessitated by and attributable to the construction of the Retail Building located on the Car Wash Property and the ACE Hardware Property Qualified Expenditures pursuant to the City’s Impact Fee Ordinance Nos. 4366 and 4756, as now and hereafter amended.
- (v) **Sewer Impact Fees.** The words “Sewer Impact Fees” mean the impact fees charged by the City to the Developers to fund or recoup all or part of the cost for wastewater or sewer facilities necessitated by and attributable to the construction of the Retail Building located on the Car Wash Property and the ACE Hardware Property Qualified Expenditures

pursuant to the City's Impact Fee Ordinance Nos. 4366 and 4756, as now and hereafter amended.

- (w) **Sales and Use Tax.** The words "Sales and Use Tax" or "Sales and Use Taxes" mean the City's municipal sales and use tax, at the rate of one percent (1.0%), pursuant to section 321.103(a) of the Texas Tax Code, as amended.
- (x) **State Comptroller.** The words "State Comptroller" mean the Office of the Texas Comptroller of Public Accounts, or any successor agency.
- (y) **Term.** The word "Term" means the term of this Agreement as specified in Section 2 of this Agreement.
- (z) **Water Impact Fees.** The words "Water Impact Fees" mean the impact fees charged by the City to the Developers to fund or recoup all or part of the cost for water facilities necessitated by and attributable to the construction of the Retail Building located on the Car Wash Property and the ACE Hardware Property Qualified Expenditures pursuant to the City's Impact Fee Ordinance Nos. 4366 and 4756, as now and hereafter amended.
- (aa) **4407 GT Property.** The term "4407 GT Property" means the approximately 0.3984-acre or 17,356.3 square feet of land located in the John Hardin Survey, Abstract No. 545, City of Mesquite, Dallas County, Texas, as more particularly described and/or depicted in **Exhibit C** of this Agreement, which is attached hereto and incorporated herein for all purposes, and generally located at 4407 Gus Thomasson Road, Mesquite, Dallas County, Texas.
- (bb) **4415 GT Property.** The term "4415 GT Property" means the approximately 0.4357 acres or 18,980.0 square feet of land consisting of Block A, Lot 8 of the Casa View Heights 16 Addition, and addition to the City of Mesquite, Dallas County, Texas, as more particularly described and/or depicted in **Exhibit C** of this Agreement, which is attached hereto and incorporated herein for all purposes, and generally located at 4415 Gus Thomasson Road, Mesquite, Dallas County, Texas.

SECTION 4. AFFIRMATIVE OBLIGATIONS OF DEVELOPERS.

The Developers covenant and agree with City and Board that, while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Retail Building Constructed on Car Wash Property.** Hutcheson covenants and agrees to remove all existing structures, walls, and pavement located on the Car Wash Property making the Car Wash Property a Clean Site within six (6) months of the Effective Date of this Agreement. Further, Hutcheson covenants and agrees to construct or cause to be constructed the Retail Building located on the Car Wash Property. Said Retail Building

shall be constructed to a tenant finish-out ready condition with mechanical, plumbing, and interior drywall installed and as depicted and described in **Exhibit B**. The signage on the Retail Building shall be uniform in design and appearance to the new signage to be installed on the Ace Hardware Property. Hutcheson covenants and agrees to Commence Construction of the Retail Building within nine (9) months of the Effective Date of this Agreement (the “**Commencement Date**”). In addition, Hutcheson covenants and agrees to Complete Construction and submit to the City a Capital Investment Certificate in a form acceptable to the City for expenditures made towards the construction of the Retail Building in the minimum amount of **One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00)** within one (1) year of the Commencement Date.

- (b) **Certificate of Occupancy for Retail Building.** Hutcheson covenants and agrees to obtain or cause to be obtained from the City a Shell Certificate of Occupancy for the Retail Building within one (1) year of the Commencement Date.
- (c) **Timely Payment of City Development Fees; Submission of Capital Investment Certificate.** The Developers covenant and agree to timely pay to the City all impact fees, permit fees, development fees, review fees and inspection fees, including, without limitation, all Roadway Impact Fees, Sewer Impact Fees, and Water Impact Fees, in connection with this Agreement. On or before ninety (90) days after Completion of Construction of the Car Wash Property Qualified Expenditures and ACE Hardware Property Qualified Expenditures consistent with Section 4(a) and 4(d) of this Agreement, the Developers covenant and agree to submit proof of payment of said fees along with any information reasonably requested by the City to verify compliance of Developers with this Agreement, and the Capital Investment Certificate to the City for payment of the economic development grant provided for in Section 5(b) of this Agreement (the “**Reimbursement Request**”). Said Reimbursement Request shall be due on or before sixty (60) days after Completion of Construction of the Car Wash Property Qualified Expenditures and ACE Hardware Property Qualified Expenditures. Failure to timely submit constitutes waiver of the right to any incentive related to the project and this Agreement.
- (d) **ACE Hardware Property Qualified Expenditures.** ACFS and MFH jointly covenant and agree to construct or cause to be constructed on the ACE Hardware Property the ACE Hardware Property Qualified Expenditures. Developers covenant and agree to Commence Construction of the ACE Hardware Property Qualified Expenditures within three (3) months of completion of the Retail Building located on the Car Wash Property as required by Section 4(a) of this Agreement (the “**ACE Hardware Property Commencement Date**”). In addition, ACFS and MFH covenant and agree to Complete Construction and submit to the City a Capital Investment Certificate in a form acceptable to the City for the ACE Hardware Property Qualified Expenditures in the minimum amount of **Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00)** within one (1) year of the ACE Hardware Property Commencement Date (the “**ACE Hardware Property Completion Date**”).

- (e) **Reporting of Sales and Use Taxes from ACE Hardware Property.** ACFS and MFH jointly covenant and agree to provide to the City, on an annual basis for a ten (10) year period commencing on **November 1, 2024**, for the reporting period of October 1, 2023 to September 30, 2024, and annually thereafter until **November 1, 2033**, for the reporting period of October 1, 2032 to September 30, 2033, a copy of the financial report that is being submitted to the State Comptroller relating to the remission of all local sales and use taxes collected at the ACE Hardware Property as a result of the operation of the retail or commercial establishments located on the Property (“**Sales Tax Report**”). Said Sales Tax Report shall be due on or before November 1st of each year. Failure to timely submit said Sales Tax Report constitutes waiver of the right to any incentive for the applicable year. The sales and uses taxes to be included within said Sales Tax Report include the Sales and Use Tax collected at the Property at the current rate of one percent (1.0%), and remitted by the State Comptroller to the City. Additionally, ACFS and MFH will obtain any third party’s consent for the State Comptroller’s office to release the annual reported figures along with any State audit adjustments to the City. The City hereby agrees to keep this information “Confidential” consistent with the Section 321.3022(f) of the Texas Tax Code, and to the extent allowed by law.
- (f) **Prohibited Uses.** Developers covenant and agree to operate the Car Wash Property and Ace Hardware Property (collectively the “**Properties**” for the purpose of this subsection) exclusively for only the uses permitted under the current zoning applicable to the Properties during the Term of this Agreement including, without limitation, retail, restaurant, professional office, medical office, medical services and personal services, except as provided herein. Notwithstanding the foregoing, the Developers covenant and agree that during the Term of this Agreement, the Developers will not enter into any oral and/or written leases or otherwise knowingly permit the use of all or any portion of the Properties for any one or more of the following uses (provided, that, the foregoing shall not apply to Existing Tenants at the Properties as of the Effective Date of this Agreement):
- (1) 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;
 - (2) tobacco stores (specifically excluding the ancillary sale thereof in any pharmacy, grocery or convenience store located in the Properties);
 - (3) steam or Turkish baths, massage parlors that exist for reasons beyond therapeutic massage (i.e., lascivious purposes), and tattoo and/or piercing parlors;
 - (4) 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;
 - (5) churches, religious shrines, monasteries (except schools), synagogues, religious mosques and religious temples;

- (6) paraphernalia Shops, Gifts, novelty or souvenir stores that sell items of a sexually lewd or offensive nature, or of paraphernalia intended to be used with illegal drugs; and
 - (7) pawn shops (and specifically excluding consignment, second-hand and vintage stores).
- (g) **Variances.** Developers covenant and agree to not seek any variances to the City's Code of Ordinances, including but not limited to the Zoning Ordinance and City of Mesquite Engineering Design Manual, or other City regulations for anything relating to this Agreement and the ACE Hardware Property and the Car Wash Property.
 - (h) **Performance.** Developers covenant and agree to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the City, Board, and/or Developers.
 - (i) **Inspection.** The Developers shall provide the City, its agents and employees with access to the Car Wash Property and Ace Hardware Property at such times as the City may reasonably request to conduct such inspections as the City deems necessary in order to confirm compliance by the Developers with the representations, covenants and agreements of the Developers as set forth in this Agreement. This section is not meant to alter or change the City's right to inspect for other reasons, including but not limited to building inspections done through the permitting process.
 - (j) **No Goods or Services.** The Developers agree the performance of any or all obligations of the Developers under the terms of this Agreement does not constitute the provision of goods or services to the City.

SECTION 5. AFFIRMATIVE OBLIGATIONS OF THE CITY.

City covenants and agrees with Developers and Board that, while this Agreement is in effect and conditioned on Developers' timely performance of their obligations herein, it shall comply with the following terms and conditions:

- (a) **Program Grant Payments for ACE Hardware Property.**
 - (1) Sales and Use Tax. The City covenants and agrees to pay MFH, subject to the annual appropriation of funds, a sum equal to the amount of one hundred percent (100%) of the Sales and Use Tax reported in the Sales Tax Report, for the reporting period of **December 1, 2024**, through **November 30, 2034**, provided by the ACFS and MFH to the City consistent with Section 4(e) of this Agreement. Such payments shall be made annually upon reviewing the Sales Tax Report described in Section 4(e) of this Agreement, and confirming its accuracy with the State Comptroller, including any audit adjustments and its payment to City for the applicable year. The

City covenants and agrees to make the payment to Developers within thirty (30) days following the timely receipt of the latter of: (1) the Sales Tax Report specified in Section 4(e) of this Agreement for each year; and (2) the Sales and Use Tax revenue from the State Comptroller's office for the applicable period. Nothing in this Agreement shall require the City to make payment from revenue sources other than from the Sales and Use Tax. The total aggregate payments by City to the MFH pursuant to this Section 5(a)(1), combined with the grants in Section 5(a)(2) and Section 5(a)(3) of this Agreement, shall not exceed **Five Hundred Thousand and No/100 Dollars (\$500,000.00)** (the "**Maximum Amount**").

- (2) Property Tax. In addition, the City shall make, subject to the annual appropriation of funds, a Program Grant Payment to MFH for the City ad valorem taxes paid by ACFS and MFH to the City for the ACE Hardware Property for a ten (10) year period. The City's payment to MFH shall be made within thirty (30) days of the Developers' timely payment of the City ad valorem taxes for the ACE Hardware Property or March 1st of the applicable year, whichever is later. The first year of the Program Grant Payment pursuant to this Section 5(a)(2) of this Agreement shall be made by **March 1, 2026**, and annually thereafter for the ten (10) year period through **March 1, 2035**. The total aggregate payments by City to the MFH pursuant to this Section 5(a)(2), combined with the grants in Section 5(a)(1) and Section 5(a)(3) of this Agreement, shall not exceed the Maximum Amount.
- (3) **Water, Sewer, and Roadway Impact Fee Grant**. The City covenants and agrees to provide MFH, subject to the annual appropriation of funds, an economic development grant in the amount of **one hundred percent (100%)** of the Water Impact Fees, Sewer Impact Fees, and Roadway Impact Fees imposed by the City and paid by the Developers pursuant to the City policy, and Chapter 395 of the Texas Local Government Code for the ACE Hardware Property Qualified Expenditures and Car Wash Property Qualified Expenditures. The foregoing grant to be paid by the City to MFH pursuant to this Section 5(a)(3), combined with the grants in Section 5(a)(1) and Section 5(a)(2) of this Agreement, shall not exceed the Maximum Amount. The City covenants and agrees, subject to the annual appropriation of funds, to pay MFH said economic development grant within thirty (30) days of timely receipt of said Reimbursement Request consistent with Section 4(c) of this Agreement. The economic development incentive is calculated based on Water Impact Fees, Sewer Impact Fees, and Roadway Impact Fees paid by the Developers to the City but is not payable from the Water Impact Fees, Sewer Impact Fees, and Roadway Impact Fees paid by the Developers to the City. The grant of Economic Development Incentive payable by the City to MFH as more fully set forth in this Agreement is 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 but is payable only from funds of the City authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380.

The payment of the economic development incentive is subject to the City's appropriation of funds for such purpose to be paid in the budget year for which such installment is to be paid.

- (b) **Monument Sign.** Within six (6) months after Developers achieve the Clean Site on the Car Wash Property, as required by Section 4(a) of this Agreement, the City shall commence installation and erection of a new monument sign on either the Car Wash Property or Ace Hardware Property at a location agreed upon by the City and Developers. The signage shall be of a size necessary for advertising the businesses located on the Car Wash Properties and Ace Hardware Properties and of a quality and appearance similar to other monument signs in the Reinvestment Zone. The Developers shall have final approval of the sign design. Upon completion of installation of the monument sign, the City shall remove the pole signs from the Ace Hardware Property. Excepting the signage on the Retail Building and buildings on the Ace Hardware Property, the monument sign installed by the City shall be the only other signage allowed on the Ace Hardware Property.
- (c) **Performance.** Conditioned on Developers' timely performance of their obligations herein, the City agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements by and between the Developers, the Board, and City.

SECTION 6. AFFIRMATIVE OBLIGATIONS OF THE BOARD.

Board covenants and agrees with Hutcheson and City that, while this Agreement is in effect and conditioned on Developers' timely performance of their obligations herein, it shall comply with the following terms and conditions:

- (a) **Financial Incentive for Car Wash Property.** The Board covenants and agrees to pay Hutcheson for expenditures made by Hutcheson towards the construction of the Retail Building located on the Car Wash Property as follows:
 - (1) the sum of **Fifty Thousand and No/100 Dollars (\$50,000.00)** upon Hutcheson removing all existing structures, walls, and pavement located on the Car Wash Property making the Car Wash Property a Clean Site consistent with Section 4(a) of this Agreement; and
 - (2) the sum of **Three Hundred Fifty Thousand and No/100 Dollars (\$350,000.00)** upon the issuance of a Shell Certificate of Occupancy for the Retail Building consistent with Sections 4(a) and (b) of this Agreement.
- (b) **Performance.** Conditioned on Developers' timely performance of their obligations herein, the Board agrees to perform and comply with all terms, conditions, and provisions set forth

in this Agreement and in all other instruments and agreements by and between the Developers and Board.

SECTION 7. CESSATION OF ADVANCES.

If City or Board has made any commitment to make any financial assistance to the Developers, whether under this Agreement or under any other agreement, the City and Board shall have no obligation to disburse any financial assistance specified in Sections 5 and 6 of this Agreement if: (i) any one or more of the Developers become insolvent, file a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

SECTION 8. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of any one or more of the Developers, Board, or City to comply with or to timely perform any term, obligation, covenant or condition contained in this Agreement, or failure of any one or more of the Developers, Board, or City to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developers, Board, and City is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to the City or Board by or on behalf of Developers under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (c) **Insolvency.** Insolvency, appointment of receiver for any part of a Developers property, any assignment for the benefit of creditors of any of the Developers, any type of creditor workout for any of the Developers, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against any of the Developers is an Event of Default.
- (d) **Ad Valorem Taxes.** Any one or more of the Developers allow its ad valorem taxes owed to the City to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from City and/or Dallas County Central Appraisal District is an Event of Default.
- (e) **Permits.** If any applicable building permits or other permits required for the Car Wash Property Qualified Expenditures or Ace Hardware Property Qualified Expenditures and issued by the City are revoked or expire, and any of the Developers fail to make reasonable efforts to obtain new building permits or other permits, as determined by the City or Board, and such default is not cured by the Developers within thirty (30) days after written notice thereof; or

- (f) **Litigation.** Upon the filing by any one or more of the Developers of any lawsuit against the City or Board.

SECTION 9. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 8 of this Agreement, the non-defaulting party shall give written notice to the other Party or Parties of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured, the non-defaulting party shall have the right to terminate this Agreement and, subject to the limitations herein, maintain a cause of action for damages caused by the event(s) of default.

(a) **City Remedies.** In the event any of the Developers defaults and is unable or unwilling to cure said default within the prescribed time period, all amounts paid by the City to all of the Developers pursuant to Section 5 of this Agreement, shall become immediately due and payable by the Developers, jointly and severally, to the City, One Hundred percent (100%) of the financial incentive provided by the City to all of the Developers pursuant to Section 5 of this Agreement shall be repaid immediately to the City for an Event of Default under this Agreement plus interest at the rate equal to the lesser of: (a) the Maximum Lawful Rate; or (b) five percent (5%) per annum, such interest rate to be calculated on each incentive grant being recaptured from the date such incentive grant was paid by the City until the date repaid by the Developers to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate. The City shall have the right to exercise all remedies available by law to collect any sums due by the Developers to the City including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.

(b) **Board Remedies.** In the event any of the Developers defaults and is unable or unwilling to cure said default within the prescribed time period, all amounts paid by the Board to all of the Developers pursuant to Section 6 of this Agreement, shall become immediately due and payable by the Developers, jointly and severally, to the Board. One Hundred percent (100%) of the financial incentive provided by the Board to all of the Developers pursuant to Section 6 of this Agreement shall be repaid immediately to the Board for an Event of Default under this Agreement plus interest at the rate equal to the lesser of: (a) the Maximum Lawful Rate; or (b) five percent (5%) per annum, such interest rate to be calculated on each incentive grant being recaptured from the date such incentive grant was paid by the Board until the date repaid by the Developers to the Board and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate. The Board shall have the right to exercise all remedies available by law to collect any sums due by the Developers to the Board including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.

(c) **Developers Remedies.** Upon the occurrence of a City or Board default that has continued uncured beyond any applicable grace or cure period, Developers shall have the right as their sole remedy the right to terminate this Agreement by written notice to the City and Board in which event the Parties hereto shall have any further rights or obligations hereunder except for those that expressly

survive the termination of this Agreement. Further, the City, Board, and Developers 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 and that Developers can maintain a claim for damages, 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 provided in Section 5 of this Agreement earned by the Developers and owed and unpaid by City;
2. any incentive payment past due and not paid following the required notice and cure period shall accrue interest at the lesser of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum beginning the day after expiration of the cure period until paid, and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate; and
3. the recovery of damages against the City shall not include attorneys' fees or consequential, punitive, exemplary, or speculative damages including, but not limited to, lost profits.

SECTION 10. MUTUAL REPRESENTATIONS.

By execution hereof, each signatory warrants and represents that they have the requisite authority to execute this Agreement and the related documents and that the representations made herein, and in the related documents, are true and accurate in all respects.

SECTION 11. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Dallas County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Dallas County, Texas.

- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
- (d) **Authority.** ACFS and MFH represent that each of them 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. The Developers represent that each has the full power and authority to enter into and fulfill their obligations under this Agreement and that the Person signing this Agreement on behalf of each Developer has the authority to sign this Agreement on behalf of the Developers.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Development Standards.** The Parties acknowledge that effective September 1, 2019, the Legislature of the State of Texas enacted HB 2439, codified at V.T.C.A., Government Code, Title 10, Subtitle Z “Miscellaneous Provisions Prohibiting Certain Government Actions”, Chapter 3000 “Governmental Action Affecting Residential and Commercial Construction, regarding the regulation by municipalities of building products, materials, and aesthetic methods for residential and commercial buildings (the “Act”). Specifically, § 3000.002 of the Act prohibits cities from adopting or enforcing a rule, charter provision, ordinance, order, building code or other regulation that prohibits or limits the use or installation of certain building products or materials or that establishes certain standards for building products, materials or aesthetic methods. The Developers acknowledge that, notwithstanding the Act, in consideration of the agreement of the City to pay the economic development incentives to the Developers under the terms and subject to the conditions set forth in this Agreement, the Developers are contractually agreeing: (i) to construct the Retail Building and ACE Hardware Property Qualified Expenditures in compliance with this Agreement including, without limitation, the Developers agree: (a) to use and install the paint colors, building products and materials as set forth in exhibits attached to this Agreement; and (b) to comply with the elevations, materials overlay, composition overlay, scale overlay, proportion overlay, rhythm overlay, transparency overlay, articulation overlay, expression overlay, color overlay, and aesthetic methods as set forth in the Façade/Elevation Plan. The Parties acknowledge that the provisions of this Section 10(g) are material to the City’s agreement to grant the economic development incentives and is a bargained for consideration between the Parties.
- (h) **Entire Agreement.** This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

- if to the City: City of Mesquite, Texas
1515 N. Galloway
Mesquite, Texas 75149
Attn: City Manager
Phone Number: (972) 216-6293
- And copy to: City of Mesquite, Texas
1515 N. Galloway
Mesquite, Texas 75149
Attn: City Attorney
Phone Number: (972) 216-6272

if to the Board: Gus Thomasson Reinvestment Zone Number Eight,
City of Mesquite
1515 N. Galloway
Mesquite, Texas 75149
Attn: City Manager
Phone Number: (972) 216-6293

if to the Brian Hutcheson: Brian Hutcheson
301 Dalview Court
Forney, Texas 75126-668
Phone Number: _____
E-mail: _____

if to ACFS: Aggie Chick & Feed Store, Inc.
9105 Hawn Freeway
Dallas, Texas 75217
Attn: _____
Phone Number: _____
E-mail: _____

if to MFH: Mesquite Feed & Hardware, Inc.
9105 Hawn Freeway
Dallas, Texas 75217
Attn: _____
Phone Number: _____
E-mail: _____

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. 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.

- (l) **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.
- (m) **Revenue Sharing Agreement.** The City designates this Agreement as a revenue sharing agreement, thereby entitling the City to request Sales and Use Tax information from the State Comptroller, pursuant to section 321.3022 of the Texas Tax Code, as amended.

- (n) **Right to Offset.** The City shall have the right to offset any amounts due and payable to any of the Developers by the City under this Agreement against any debt (including taxes) lawfully due and owing by any of the Developers 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.
- (o) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.
- (p) **Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign or governmental immunity by virtue of its execution hereof.
- (q) **Time is of the Essence.** THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS AGREEMENT AND OF EACH AND EVERY PROVISION OF THIS AGREEMENT AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.
- (r) **Waivers.** All waivers, to be effective, must be in writing and signed by the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring.
- (s) **WAIVER OF CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES. THE DEVELOPERS AND THE CITY AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, EACH PARTY MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECULATIVE DAMAGES.**
- (t) **Form 1295 Certificate.** The Developers agree to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Developers agree to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agree to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of

this Agreement, a duly executed completed Form 1295 Certificate for each of the Developers.

- (u) **Undocumented Workers Provision.** The Developers certify that Developers do not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, any of the Developers are convicted of a violation under 8 U.S.C. § 1324a(f), all of the Developers shall repay the amount of any public subsidy provided under this Agreement to any of the Developers plus six percent (6.0%), not later than the 120th day after the date the City notifies Developers of the violation. The terms, provisions, covenants, agreements and obligations of the Developers and the rights and remedies of the City set forth in this subsection shall expressly survive the expiration or termination of this Agreement.
- (v) **Non-Boycott of Israel Provision.** In accordance with Chapter 2270 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2270 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless Developers are not subject to Chapter 2270 of the Texas Government Code for the reasons stated herein, the signatory executing this Agreement on behalf of Developers verify that Developers do not boycott Israel and will not boycott Israel during the Term of this Agreement.
- (w) **Iran, Sudan and Foreign Terrorist Organizations.** If § 2252.153 of the Texas Government Code is applicable to this Agreement, by signing below Developers hereby represent, verify and warrant 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.
- (x) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Developers are not on a list maintained by the State Comptroller’s office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.
- (y) **Report Agreement to Comptroller’s Office.** City covenants and agrees to report this Agreement to the State Comptroller’s office within fourteen (14) days of the Effective Date of this Agreement, in accordance with Section 380.004 of the Texas Government Code, as added by Texas House Bill 2404, 87th Tex. Reg. Session (2021) (effective September 1, 2021).

- (z) **Verification Against Discrimination of Firearm or Ammunition Industries.** Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 19, 87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Developers employ at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the Developers represents that: (1) the Developers do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Developers will not discriminate during the Term of the Agreement against a firearm entity or firearm trade association.
- (aa) **Reservation of Legislative Authority.** Notwithstanding any provision in this Agreement, this Agreement does not control, waive, limit or supplant the City Council's or Board's legislative authority or discretion.
- (bb) **Provision of Documentation.** Developers will 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 Developers with its covenants in this Agreement.
- (cc) **No Partnership or Joint Venture.** It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.
- (dd) **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.
- (ee) **No Acceleration.** All amounts due pursuant to this Agreement and any remedies under this Agreement are not subject to acceleration.
- (ff) **No Third-Party Beneficiaries.** The Parties to this Agreement do not intend to create any third-party beneficiaries of this Agreement. 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.
- (gg) **Funds Available for Payment of Grants.** The incentive grants payable by the City and Board to Developers 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, Section 52-a, of the Texas Constitution and Texas Local Government Code Chapter 380 or paid from funds

authorized by the Board pursuant to state law. Each incentive grant payment shall be subject to the City's and/or Board'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 or Board's obligations under this Article be deemed to create any debt within the meaning of any constitutional or statutory provision.

- (hh) **Remedies Cumulative.** The Parties hereby agree that each right and remedy of the Parties provided for in this Agreement shall be cumulative.

[The Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

CITY:

CITY OF MESQUITE, TEXAS,
A Texas home-rule municipality

Cliff Keheley
City Manager

ATTEST:

APPROVED AS TO LEGAL FORM:

Sonja Land
City Secretary

David L. Paschall
City Attorney

STATE OF TEXAS

§

§

COUNTY OF DALLAS

§

This instrument was acknowledged before me on the ____ day of _____, 2021, by Cliff Keheley, City Manager of the City of Mesquite, Texas, a Texas home-rule municipality, on behalf of said municipality.

Notary Public, State of Texas

TIRZ # 8:

**GUS THOMASSON REINVESTMENT ZONE
NUMBER EIGHT, CITY OF MESQUITE
TEXAS,**

By: _____

, Chairperson

Date Signed: _____

STATE OF TEXAS

§

§

COUNTY OF DALLAS

§

This instrument was acknowledged before me on the ____ day of _____
_____, 2021, by _____, Chairperson of the Gus Thomasson Reinvestment
Zone Number Eight, City of Mesquite, Texas, on behalf of said Reinvestment Zone.

Notary Public, State of Texas

DEVELOPERS:

JOHN BRIAN HUTCHESON

By: _____

Date Signed: _____

STATE OF TEXAS

§

§

COUNTY OF DALLAS

§

This instrument was acknowledged before me on the ____ day of _____
, 2021, by John Brian Hutcheson.

Notary Public, State of Texas

AGGIE CHICK & FEED STORE, INC.,
A Texas corporation,

By: _____

Date Signed: _____

STATE OF TEXAS

§

§

COUNTY OF DALLAS

§

This instrument was acknowledged before me on the ____ day of _____
, 2021, by _____, _____ of Aggie Chick & Feed Store,
Inc., a Texas corporation, on behalf of said corporation.

Notary Public, State of Texas

MESQUITE FEED & HARDWARE, INC.,
A Texas corporation,

By: _____
Date Signed: _____

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the ____ day of _____
, 2021, by _____, _____ of Mesquite Feed &
Hardware, Inc., a Texas corporation, on behalf of said corporation.

Notary Public, State of Texas

Exhibit A

Legal Description and/or Depiction
of the Car Wash Property

[4401 Gus Thomasson Road]

EXHIBIT "A"

BEING a tract of land out of the John Hardin Survey, Abstract No. 545, Dallas County, Texas, and being an overall survey of two tracts of land, a 100 foot by 169.9 foot tract and a 0.19 acre tract out of a 1.60 acre tract conveyed to Grande State Corp. Warren R. Miller, Sr., by deed recorded in Volume 4230 at Page 566 of the Deed Records of Dallas County, Texas, and being more particularly described as follows:

BEGINNING at the West corner of intersection of Gus Thomasson Road (a 120 foot ROW) and Moon Drive, (a 50 foot ROW) an iron stake located for corner;

THENCE South 47 deg. 56 min. West with Moon Drive ROW 170.26 feet to a "+" cut in concrete for corner;

THENCE North 45 deg. 15 min. West, with said 100 foot tract and 0.19 acre tract parallel with Gus Thomasson Road 145.0 feet to iron stake for corner;

THENCE North 44 deg. 36 min. East with said 100 foot by 169.99 foot tract 169.199 feet to iron stake set in ROW of Gus THomasson Road for corner;

THENCE South 45 deg. 15 min. East with Gus THomasson Road ROW line 154.90 feet to **PLACE OF BEGINNING** and containing 25, 489 square feet of land, more or less.

LESS AND EXCEPT

BEING a tract of land situated in the John Hardin Survey, Abstract No. 545, City of Mesquite, Dallas County, Texas and being a portion of that certain tract of land conveyed to James G. Jones and Ophelia O. Jones, dba Wash and Go by General Warranty Deed recorded in Volume 2004126, Page 752, Deed Records, Dallas County, Texas and being more particularly described as follows:

BEGINNING at a point for corner at the intersection of the Southwest ROW line of Gus THomasson Road (a 120' ROW) with the Northwest ROW line of Moon Drive (a 50' ROW), being at the East corner of said Jones tract;

THENCE: South 47 degrees 03 minutes 43 seconds West, along the Northwest ROW lien of Moon Drive and the SOutheast line of said Jones tract, a distance of 40.61 feet to a point for corner;

THENCE: North 42 degrees 56 minutes 17 seconds West, departing the Northwest ROW line of Moon Drive and the Southeast line of said Jones tract, a distance of 4.74 feet to a point for corner;

THENCE: North 21 degrees 38 minutes 46 seconds East, a distance of 43.51 feet to a point for corner in the Southwest ROW line of Gus THomasson Road and the Northeast line of said Jones tract;

THENCE: South 46 degrees 07 minutes 52 seconds East, along the Southwest ROW line of Gus Thomasson Road and the Northeast line of said Jones tract, a distance of 23.45 feet to the **PLACE OF BEGINNING** and containing 569 square feet of land, more or less.

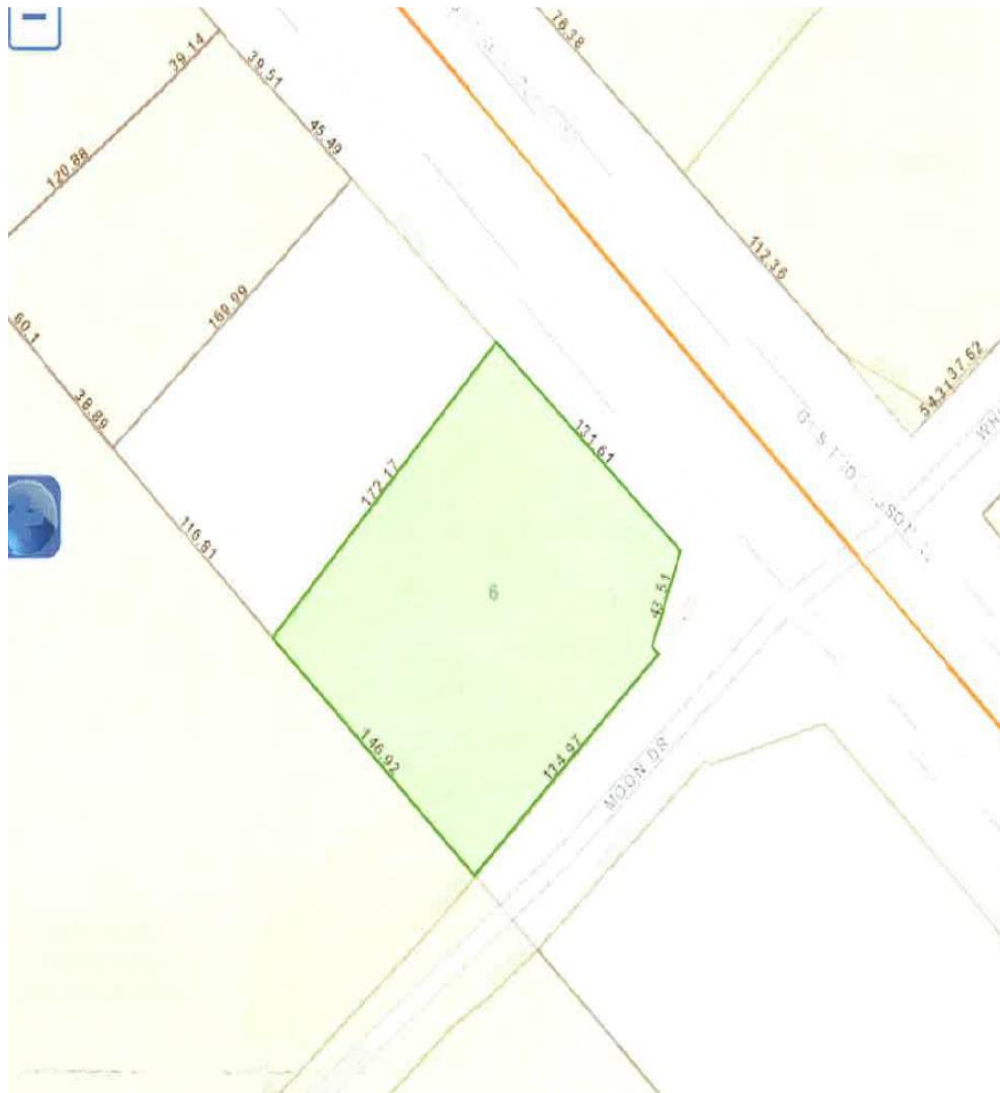
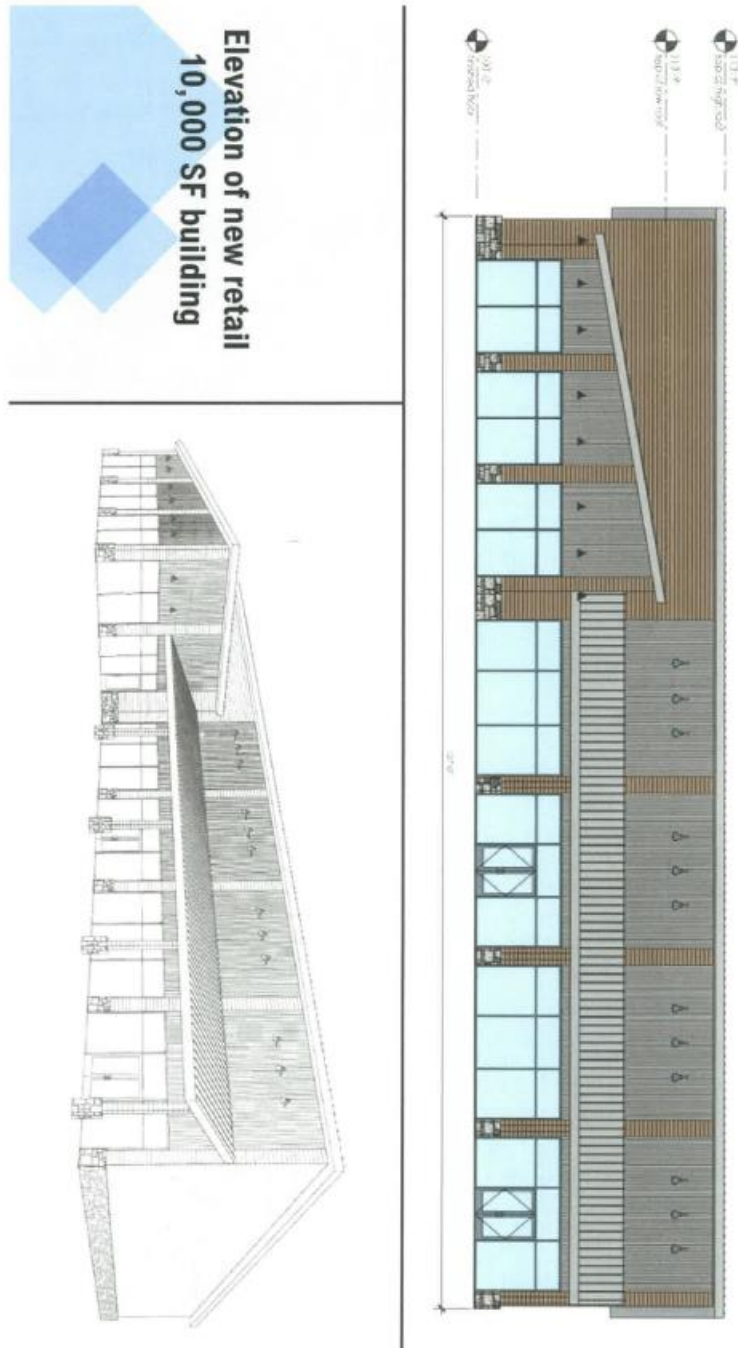
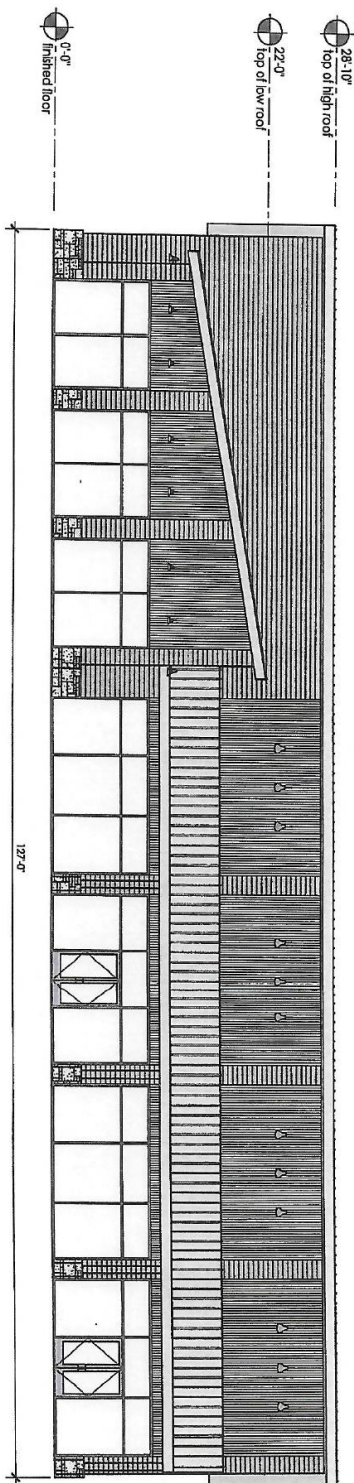


Exhibit B

[Depiction of Retail Building]



- Materials:**
- Corrugated Barn Metal, Mill Color
 - Reclaimed Cedar Siding
 - Regions, Light Tan Color



Front Elevation (Gus Thompson Rd.)
 Biron Hutchinson / Mesquite Ace Hardware Retail
 Scale: 1" = 10'

MCCARTHY ARCHITECTURE

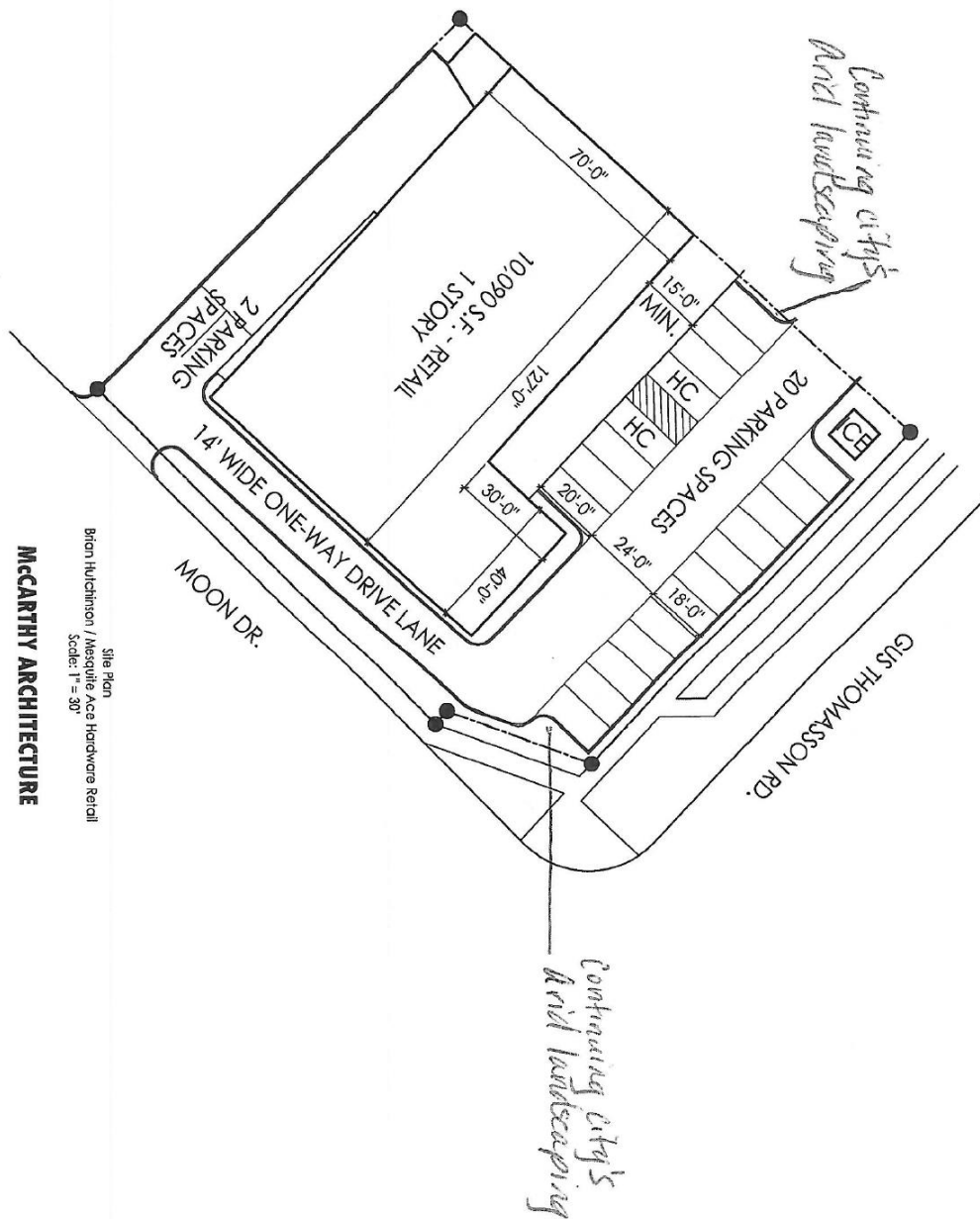


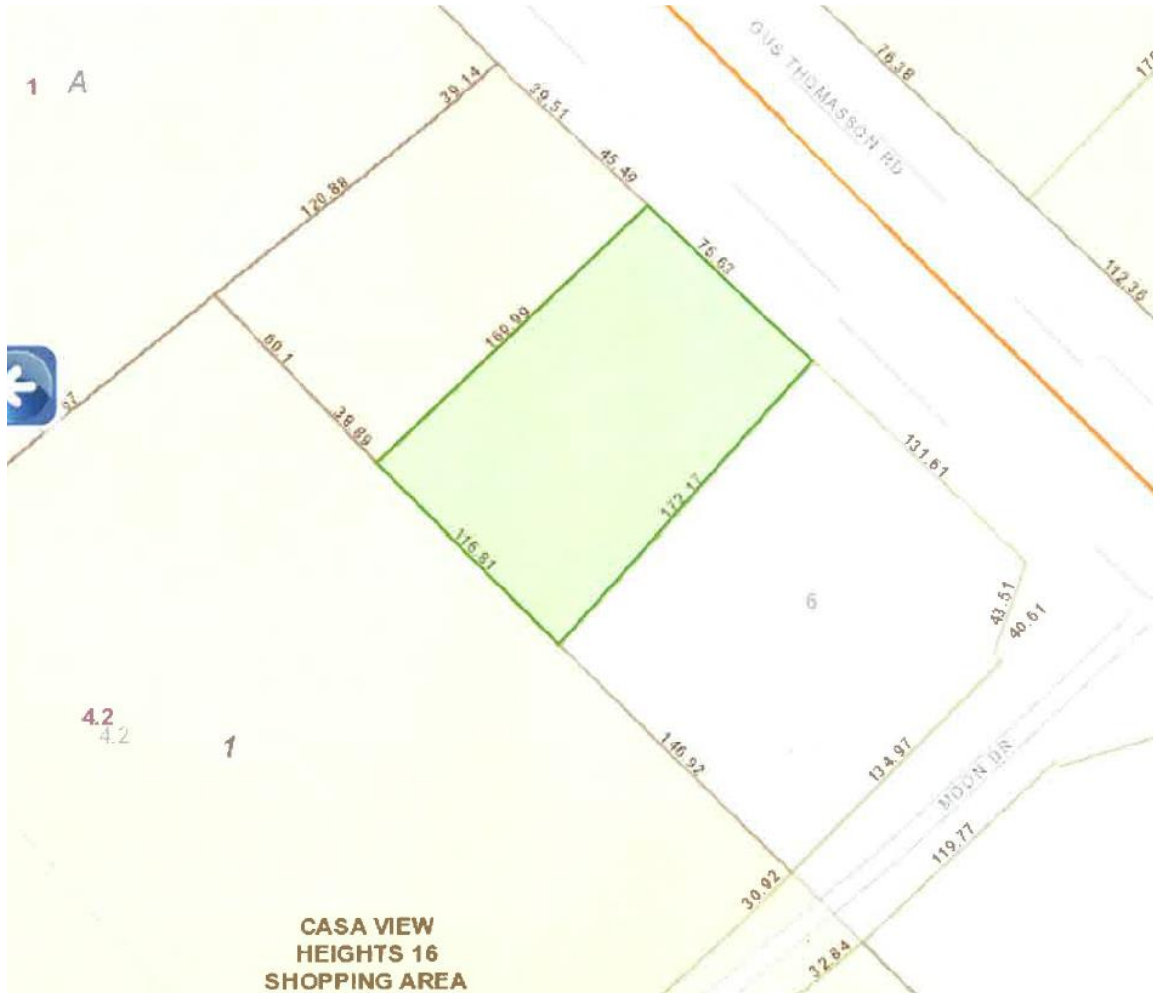
Exhibit C

**Legal Description and/or Depiction
of the ACE Hardware Property**

[4407 GT Property and 4415 GT Property]

4407 GT Property:

0.3984-acre or 17,356.3 square feet of land located in the John Hardin Survey, Abstract No. 545, City of Mesquite, Dallas County, Texas



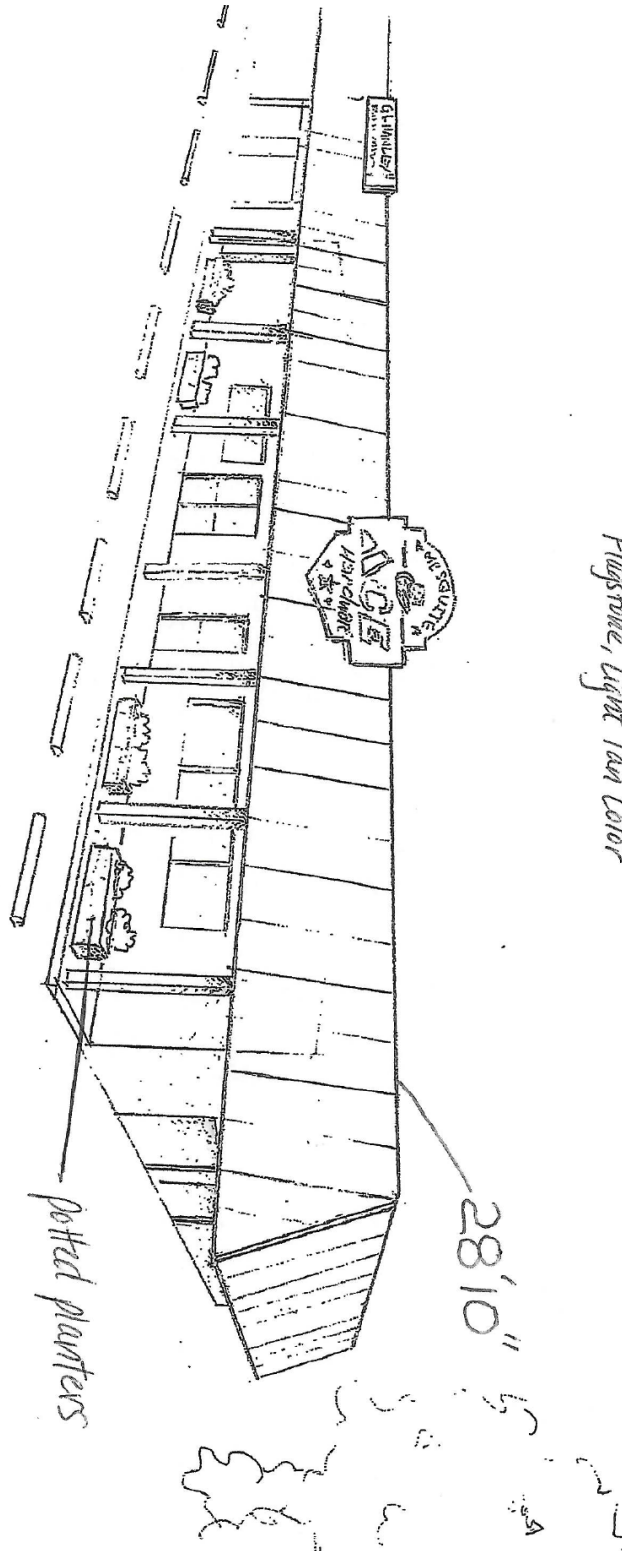
4415 GT Property:

0.4357 acres or 18,980.0 square feet of land consisting of Block A,
Lot 8 of the Casa View Heights 16 Addition, and addition to the City
of Mesquite, Dallas County, Texas,



Exhibit D

[Depiction of the ACE Hardware Property Qualified Expenditures]



Materials:
 Formulated Barn Metal, Mill Color
 Redwood Cedar
 Fluorstone, Light Tan Color

potted planters

28'10"

