



**LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION
BOARD OF DIRECTORS**

**Tuesday, January 19, 2021
5:00 pm**

**SPECIAL VIRTUAL MEETING
100 WEST ELDORADO PARKWAY
TOWN OF LITTLE ELM TOWN CENTER**

AGENDA

1. Notice Regarding Public Participation Little Elm EDC Board of Directors and EDC Staff Attendance.

Due to the COVID-19 (coronavirus) public health emergency, and in an effort to reduce in-person meetings that assemble large groups of people, Governor Greg Abbott has granted a temporary suspension of certain rules to allow for (1) board members and employees to participate in meetings via videoconference call or other remote electronic means without a physical quorum of board members being present at the site of the meeting; and (2) the use of videoconferencing and other remote means to allow the public to observe the meeting and, when required, to participate in the public meeting.

In an effort to reduce the spread of the virus, for the October 12, 2020, Economic Development Corporation meeting, individuals will be able to address the Board on any topic through submission of the web form below. Forms received will be recorded into the record and be given to the Board Members.

To access the videoconference online, follow these instructions:

- To join the Zoom meeting, click <https://zoom.us/j/91674961443>

Pursuant to Section 551.007 of the Texas Government Code, individuals wishing to address the Board for items listed as public hearings will be recognized when the public hearing is opened. For individuals wishing to speak on a non-public hearing item, they may address the Board by submitting the online form at the following link:

<https://www.littleelm.org/FormCenter/Administration-5/LE-Town-Council-Presentation-and-Announc-87>.

Note: A physical quorum of the Economic Development Corporation Board may not be present during the meeting as some Board Members may choose to participate in the meeting remotely as permitted by Governor Abbott's suspension of various statutes that may be interpreted to require face-to-face interaction between members of the public and board members.

2. Roll Call and Call to Order of Special Virtual Meeting.

Identification of Quorum and call to order.

3. Discussion and Action to approve Minutes from December 14th, 2020 Regular Virtual Meeting. (Jennette Espinosa, EDC Executive Director)

4. Discussion and Action to approve Financials for FY 2019 - 2020. (Jason Barth, Integrity Accounting & Payroll)

5. Discussion and Action to approve Ground Lease Purchase Agreement for Certain Multi-Family Property in Little Elm, Denton County, Texas. (Jennette Espinosa, EDC Executive Director)

6. Discussion and Action to approve Ground Lease Purchase Agreement for Certain Retail Property in Little Elm, Denton County, Texas. (Jennette Espinosa, EDC Executive Director)

7. Discussion and Action to approve Westside Planning Study Agreement between the Town of Little Elm, Little Elm EDC, and Kimley Horn. (Jennette Espinosa, EDC Executive Director)

8. **BRE/COVID Update** (Natasha Roach, EDC Coordinator)
9. **Director's Report.** (Jennette Espinosa, Executive Director)
10. **Executive Closed Session of the Board of Directors:** The Little Elm EDC will now hold a Closed Session meeting pursuant to the provisions of Chapter 552 of the Texas Government Code accordance with the authority contained in:
 - **Section 551.087** of the Texas Government Code to discuss or deliberate regarding commercial or financial information that the LE EDC has received from a business prospect, and or to deliberate the offer of a financial or other incentive with a business or prospect.
11. **Reconvene into Open Session:** The Little Elm EDC will now reconvene into Regular Session pursuant to the provisions of Chapter 551 of the Texas Government Code in accordance with the authority contained in:
 - Section 551.087 of the Texas Government Code to discuss or deliberate regarding commercial or financial information that the LE EDC has received from a business prospect, and or to deliberate the offer of a financial or other incentive with a business or prospect.
12. **Adjournment.**

Respectfully,

Jennette Espinosa

Executive Director

This is to certify that the above notice was posted on www.littleelm.org, Town of Little Elm website, under Agendas and Minutes prior to 5:00 p.m. this 14th day of January, 2021.



Town Council Meeting

Date: 01/19/2021
Agenda Item #: 3.
Department: Economic Development Corporation
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Discussion and Action to approve Minutes from December 14th, 2020 Regular Virtual Meeting. (Jennette Espinosa, EDC Executive Director)

Attachments

December 14 2020 Minutes



MINUTES
Little Elm Economic Development Corporation
100 W. Eldorado Parkway

Regular Virtual Meeting
Monday, December 14, 2020
6:00 p.m.

Present: Ken Eaken, President; Casey Russell, Vice President; Michael McClellan, Council Liaison; Taylor Girardi, Treasurer; Michel Hambrick, Secretary; Director; Jack Gregg, Director; and Marce Ward, Director.

Town Staff: Jennette Espinosa, Executive Director; Natasha Roach, EDC Coordinator, Jeff Moore, EDC Attorney; and Jason Barth, EDC Accountant

Guests: Stewart Shirey, Kevin Lerner with Government Capital

Absent: none

1. Notice Regarding Public Participation and Town Council/ Little Elm EDC/ EDC Staff and Town Staff Attendance.
2. **Call Order of Regular Virtual Meeting:** President, Ken Eaken called to order at **6:01p.m.**
3. **Discussion and Action to approve the Minutes of the Regular Virtual Meeting of November 9, 2020.** Upon a motion by Casey Russell and a second by Jack Gregg, the members **voted unanimously** to approve the minutes as presented.
4. **Discussion and Action to approve** a Resolution Authorizing the First Amendment to Promissory Note and Loan Agreement No. 6863 and resolving other matters incident and related thereto. Upon a motion by Casey Russell and a second by Jack Gregg, the members **voted unanimously** to approve the amendment as presented.
5. **BRE/COVID Update:** Discussion and update regarding Covid-19 and existing businesses. **No Action Taken,**
7. **Director's Report:** Discuss, update, and action regarding projects, policies, events, activities and calendar pertaining to EDC. **No Action Taken,**
8. **Executive Closed Session of the Board of Directors:** The Little Elm EDC **did not enter in to** a Closed Executive Session meeting pursuant to the provisions of Chapter 551 of the Texas Government Code.

9. **Adjournment:** Meeting was adjourned at 6:30 pm.

Respectfully,

Jennette Espinosa, Executive Director

Passed and approved this _____ day of _____ 2020



Town Council Meeting

Date: 01/19/2021
Agenda Item #: 4.
Department: Economic Development Corporation
Strategic Goal: Maintain operational integrity and viability
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Discussion and Action to approve Financials for FY 2019 - 2020. (Jason Barth, Integrity Accounting & Payroll)

Attachments

FY2019-2020 Financials



LITTLE ELM

Economic Development Corporation

4A Sales Tax

FINANCIAL REPORTS

FY 2019-2020

Board of Directors

Ken Eaken - President

Casey Russell - Vice President

Michael McClellan - Council Liaison

Taylor Girardi - Treasurer

Michel Hambrick - Secretary

Jack Gregg - Board Member

Marce Ward - Board Member

Jennette Espinosa - Executive Director

Natasha Roach - EDC Coordinator

The Little Elm Economic Development Corporation is tasked with bringing much needed commercial, industrial and tourist opportunities to the Town of Little Elm. The mission of the EDC is to advance the economic development in Little Elm while maintaining traditional values and a sense of community. The Little Elm EDC was founded in 1993 and has served the Town since that time. The EDC is made up of six members from the community and a Town Council Liaison.



Economic Development Corporation
BALANCE SHEET
As of 09/30/2020

ASSETS:

Cash - Independent Bank Checking Account	2,370,067
Cash - Escrow Bank Account	75,531
Accounts Receivable-Sales Tax	458,622
Prepaid Expenses	490
Due From/To Other Funds	5,162,220
Total Assets	\$ 8,066,931

LIABILITIES AND FUND BALANCES

Liabilities:

Accounts Payable	\$ 231,471
Accrued Expenses	300,000
Accrued Payroll Liability	2,053
Unearned Revenue	950,947

Total Liabilities	\$ 1,484,471
--------------------------	---------------------

Fund Balance (Assets - Liabilities)	\$ 6,582,460
-------------------------------------	---------------------

Fund Balances:

Reserved for:

Land held for sale	\$ 0
Payables	1,484,471
Unrestricted	5,097,989

Total Fund Balance	\$ 6,582,460
---------------------------	---------------------

Total Liabilities and Fund Balances	\$ 8,066,931
--	---------------------



Economic Development Corporation
Cash and Investment Statement
09/30/2020

Beginning Cash - October, 2019	\$	1,542,474
Activity October 2019 - September 2020		
Inflows (less Interest/Investments)		3,097,335
Interest Inflow*		28,902
Outflows		<u>(2,223,113)</u>
Net Increase/Decrease for period		903,125
EDC Cash Accounts	\$	<u><u>2,445,599</u></u>

*The Interest Inflow received summarizes all investment activity for the Little Elm EDC and is in compliance with EDC Investment Policy and PFIA.



FY 2019-2020 PROFIT & LOSS (Revenues, Expenditures and Change in Fund Balance)

ACCOUNT CODES	ACCOUNT DESCRIPTION	ACTUAL 2017-2018	ACTUAL 2018-2019	BUDGET 2019-2020	ACTUAL Oct 19- Sep 20	4th Qtr Budget	Budget vs. Actual
Revenue and Other Sources						100%	
811-5132-00-00	CITY SALES TAXES	1,999,769	2,173,851	2,221,326	2,526,334	2,221,326	305,008
811-5135-00-00	CONTRA TIRZ #3 LAKEFRONT	(49,043)	(58,317)	(60,000)	(63,535)	(60,000)	(3,535)
811-5136-00-00	CONTRA TIRZ #5 LINCOLN PARK	(797)	(1,689)	-	(4,167)	-	(4,167)
811-5140-00-00	CONTRA HOLT 380 AGREEMENT ('14-'19)	(60,000)	(60,000)	-	-	-	-
811-5141-00-00	CONTRA TEXAS FIRST 380 AGREEMENT ('17-'21)	(6,458)	(15,176)	(21,500)	(14,705)	(21,500)	6,795
811-5142-00-00	CONTRA GOVE/CGRE 380 AGREEMENT ('18-24)	(6,788)	(21,787)	(50,000)	(13,725)	(50,000)	36,275
811-5400-00-00	MISCELLANEOUS REVENUE	9,989	1,900	1,500	9,750	1,500	8,250
811-5611-00-00	INTEREST EARNINGS	27,692	36,701	15,000	28,902	15,000	13,902
811-5678-00-00	CONCESSIONS-HYDROUS	30,000	30,000	30,000	-	30,000	(30,000)
811-5682-00-00	RENTAL FEES	-	-	-	-	-	-
811-5683-00-00	GROUND LEASE INCOME - HULA HUT	15,549	100	-	51,000	-	51,000
811-5684-00-00	INTEREST REVENUE - TEXAS FIRST	136,550	135,382	132,185	132,185	132,185	-
811-5684-00-00	PRINCIPAL REVENUE - TEXAS FIRST	-	70,177	73,374	73,374	73,374	-
811-5802-00-00	INCOME -PALLADIUM PHASE 1	-	145,880	85,813	144,696	85,813	58,883
811-5804-00-00	INTERGOVT. INCOME	-	-	-	100,039	-	100,039
811-8900-00-00	LOAN PROCEEDS	-	-	-	-	-	-
811-8912-00-00	OTHER FINANCING SOURCES - MUSTANG	100,000	100,000	100,000	100,000	100,000	-
Total Revenues and Other Sources		2,655,073	3,146,367	3,151,405	3,070,149	3,151,405	(81,256)
Expenditures							
Principal and Interest on Debt							
811-6004-80-00	PRINCIPAL-LOAN CONSOLIDATION	420,388	435,888	452,623	518,700	452,623	66,077
811-6005-80-00	INTEREST-LOAN CONSOLIDATION	284,327	268,826	252,092	170,909	252,092	(81,182)
811-6009-80-00	PRINCIPAL-LINCOLN PARK PROJECT	97,853	101,238	104,740	104,740	104,740	-
811-6010-80-00	INTEREST-LINCOLN PARK PROJECT	78,077	74,692	71,190	71,190	71,190	-
811-6011-80-00	PRINCIPAL-TEXAS FIRST	-	70,177	73,374	73,374	73,374	-
811-6012-80-00	INTEREST-TEXAS FIRST	136,550	135,382	132,185	132,185	132,185	-
Total Debt Expenditures		1,017,195	1,086,204	1,086,204	1,071,099	1,086,204	(15,105)
Personnel Costs							
811-6108-80-00	SALARIES AND WAGES	250,821	254,197	269,465	258,476	269,465	10,989
811-6114-80-00	TMRS	36,886	36,720	37,759	34,851	37,759	2,908
811-6115-80-00	LONGEVITY PAY	540	660	780	780	780	-
811-6117-80-00	EDUCATION PAY	1,203	1,203	1,200	1,180	1,200	20
811-6118-80-00	CAR ALLOWANCE	6,418	6,418	6,400	6,807	6,400	(407)
811-6141-80-00	SOCIAL SECURITY	16,979	15,475	21,255	16,967	21,255	4,288
811-6142-80-00	GROUP INSURANCE	22,224	22,612	23,227	22,813	23,227	415
811-6143-80-00	WORKERS COMPENSATION	-	-	573	-	573	573
811-6145-80-00	TEXAS EMPLOYMENT COMMISSION	83	-	100	-	100	100
Total Personnel Expenditures		335,155	337,284	360,759	341,872	360,759	18,887
							-



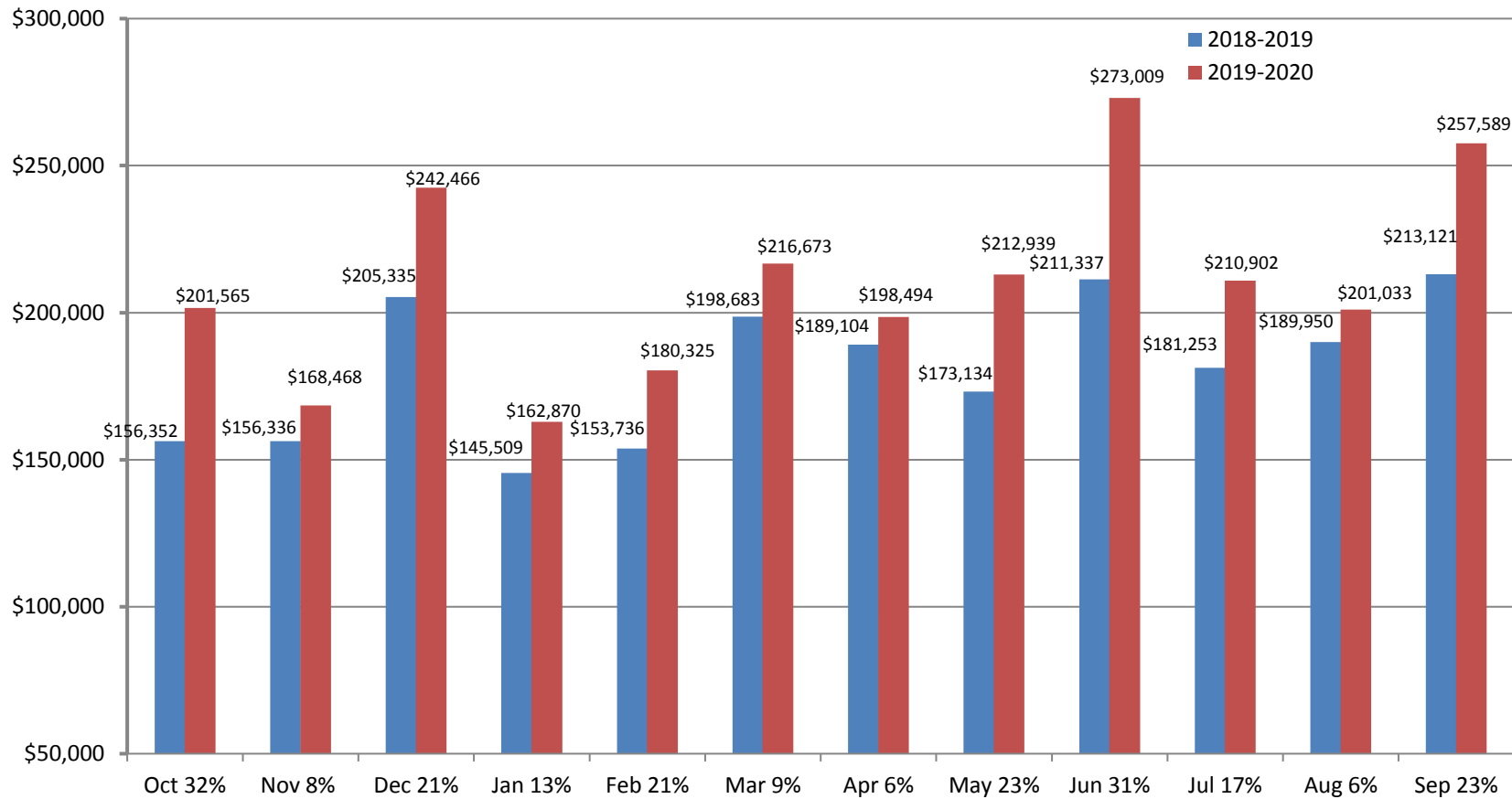
FY 2019-2020 PROFIT & LOSS

(Revenues, Expenditures and Change in Fund Balance)

ACCOUNT CODES	ACCOUNT DESCRIPTION	ACTUAL 2017-2018	ACTUAL 2018-2019	BUDGET 2019-2020	ACTUAL Oct 19- Sep 20	4th Qtr Budget	Budget vs. Actual
Other Operating Costs							-
811-6211-80-00	LEGAL SERVICES (Attorney)	10,531	12,444	30,000	18,324	30,000	11,676
811-6214-80-00	PROFESSIONAL SERVICES	15,005	14,545	26,675	17,243	26,675	9,432
811-6229-80-00	OFFICE DEVELOPMENT	203	23,957	5,250	5,224	5,250	26
811-6231-80-00	CONTRACTED SERVICES	14,535	23,504	603,925	404,424	603,925	199,501
811-6232-80-00	GENERAL ADVERTISING AND WEBSITE	2,100	2,100	2,500	2,100	2,500	400
811-6272-80-00	COMMUNICATIONS	2,620	2,873	3,000	2,952	3,000	48
811-6276-80-00	TUITION REIMBURSEMENT	2,500	2,500	2,500	2,500	2,500	-
811-6278-80-00	LEASE PAYMENTS	10	10	-	10	-	(10)
811-6342-80-00	OFFICE SUPPLIES	1,058	744	1,000	1,208	1,000	(208)
811-6343-80-00	ADVERTISING	65,537	78,591	222,133	219,044	222,133	3,089
811-6344-80-00	PRINTING AND MAILING	655	775	750	2,898	750	(2,148)
811-6347-80-00	TRADE SHOWS EXPENSE	21,930	22,454	40,000	12,069	40,000	27,931
811-6354-80-00	EMPLOYEE & PUBLIC RELATIONS	7,816	5,935	10,000	2,367	10,000	7,633
811-6711-80-00	GASOLINE AND OIL	141	254	500	-	500	500
811-6712-80-00	DUES & MEMBERSHIPS	7,890	7,910	12,502	9,029	12,502	3,473
811-6715-80-00	SCHOOLS AND SEMINARS	17,323	23,629	24,000	3,885	24,000	20,115
811-6719-80-00	UNIFORMS	702	469	1,000	1,147	1,000	(147)
811-6729-80-00	LAND ACQUISITION FOR REDEVELOPMENT	1,501,799	292,461	240,000	-	240,000	240,000
811-6730-80-00	INCENTIVES	200,000	0	290,000	41,556	290,000	248,444
Total Operating Expenditures		2,330,963	1,124,501	2,139,441	745,979	2,139,441	(1,393,463)
Transfers to Other Funds							-
811-6250-80-00	CONTRACT WITH TOWN	30,000	30,000	30,000	30,000	30,000	-
811-6252-80-00	TRANSFER TO TIRZ #1 ROSEBRIAR (KROGER)	82,656	81,006	105,000	94,312	105,000	(10,688)
Total Transfers		112,656	111,006	135,000	124,312	135,000	(10,688)
TOTAL EXPENDITURES		3,795,968	2,658,995	3,721,405	2,283,263	3,721,405	(1,438,142)
EXCESS REVENUES OVER (UNDER) EXPENDITURES		(1,140,896)	487,372	(570,000)	786,886	(570,000)	1,356,886
BEGINNING FUND BALANCE		2,297,480	1,298,348	1,408,258	1,655,574	1,408,258	
ENDING FUND BALANCE		1,298,348	1,655,574	1,408,258	2,442,460	1,408,258	



EDC Sales Tax Revenue Prior Year Comparison '18-'19 vs '19-'20



Oct '18 - Sep '19	\$ 2,173,851
Oct '19 - Sep '20	\$ 2,526,334
	<u>\$ 352,483</u> 16% Increase from previous year

Sales Tax History

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
Jan	\$ 301,085.29	\$ 314,221.39	\$ 366,808.60	\$ 502,277.36	\$ 511,405.44
Feb	\$ 458,319.45	\$ 500,897.94	\$ 562,049.36	\$ 690,672.19	\$ 748,660.19
Mar	\$ 296,586.82	\$ 334,429.13	\$ 349,370.10	\$ 436,109.59	\$ 493,699.86
Apr	\$ 306,062.26	\$ 313,382.60	\$ 354,326.07	\$ 471,891.46	\$ 528,104.67
May	\$ 502,565.73	\$ 463,066.93	\$ 575,093.53	\$ 738,060.96	\$ 701,993.46
Jun	\$ 352,094.06	\$ 375,096.11	\$ 426,107.67	\$ 511,166.65	\$ 551,737.08
Jul	\$ 345,892.22	\$ 378,534.24	\$ 436,425.80	\$ 597,844.11	\$ 593,683.90
Aug	\$ 467,389.00	\$ 488,750.82	\$ 596,320.99	\$ 697,951.39	\$ 692,708.05
Sep	\$ 348,900.78	\$ 396,427.52	\$ 534,441.01	\$ 523,243.51	\$ 567,361.39
Oct	\$ 343,440.35	\$ 378,827.17	\$ 473,294.73	\$ 579,024.86	\$ 579,167.66
Nov	\$ 462,807.12	\$ 509,247.09	\$ 646,723.89	\$ 708,333.28	\$ 728,055.05
Dec	\$ 357,665.01	\$ 384,439.51	\$ 505,923.12	\$ 545,521.96	\$ 571,664.91

EDC Historical Sales Tax Revenue

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
Jan	\$ 74,146.71	\$ 83,607.28	\$ 87,342.53	\$ 109,027.40	\$ 123,424.97
Feb	\$ 76,515.57	\$ 78,345.65	\$ 88,581.52	\$ 117,972.87	\$ 132,026.17
Mar	\$ 125,641.43	\$ 115,766.73	\$ 143,773.38	\$ 184,515.24	\$ 175,498.37
Apr	\$ 88,023.52	\$ 93,774.03	\$ 106,526.92	\$ 127,791.66	\$ 137,934.27
May	\$ 86,473.06	\$ 94,633.56	\$ 109,106.45	\$ 149,461.03	\$ 148,420.98
Jun	\$ 116,847.25	\$ 122,187.71	\$ 149,080.25	\$ 174,487.85	\$ 173,177.01
Jul	\$ 87,225.20	\$ 99,106.88	\$ 133,610.25	\$ 130,810.88	\$ 141,840.35
Aug	\$ 85,860.09	\$ 94,706.79	\$ 118,323.68	\$ 144,756.22	\$ 144,791.92
Sep	\$ 115,701.78	\$ 127,311.77	\$ 161,680.97	\$ 177,083.32	\$ 182,013.76
Oct	\$ 89,416.25	\$ 96,109.88	\$ 126,480.78	\$ 136,380.49	\$ 142,916.23
Nov	\$ 78,555.35	\$ 91,702.15	\$ 125,569.34	\$ 127,851.36	\$ 148,790.66
Dec	\$ 125,224.49	\$ 140,512.34	\$ 172,668.05	\$ 187,165.05	\$ 178,736.05

	<u>2013-2014</u>	<u>2014-2015</u>	<u>2015-2016</u>	<u>2016-2017</u>	<u>2017-2018</u>
Oct 32%	\$ 89,416	\$ 96,110	\$ 126,481	\$ 136,380	\$ 142,916
Nov 8%	\$ 78,555	\$ 91,702	\$ 125,569	\$ 127,851	\$ 148,791
Dec 21%	\$ 125,224	\$ 140,512	\$ 172,668	\$ 187,165	\$ 178,736
Jan 13%	\$ 83,607	\$ 87,343	\$ 109,027	\$ 123,425	\$ 135,229
Feb 21%	\$ 78,346	\$ 88,582	\$ 117,973	\$ 132,026	\$ 129,192
Mar 9%	\$ 115,767	\$ 143,773	\$ 184,515	\$ 175,498	\$ 189,777
Apr 6%	\$ 93,774	\$ 106,527	\$ 127,792	\$ 137,934	\$ 153,006
May 23%	\$ 94,634	\$ 109,106	\$ 149,461	\$ 148,421	\$ 171,766
Jun 31%	\$ 122,188	\$ 149,080	\$ 174,488	\$ 173,177	\$ 196,736
Jul 17%	\$ 99,107	\$ 133,610	\$ 130,811	\$ 141,840	\$ 171,355
Aug 6%	\$ 94,707	\$ 118,324	\$ 144,756	\$ 144,792	\$ 192,342
Sep 23%	\$ 127,312	\$ 161,681	\$ 177,083	\$ 182,014	\$ 189,923
	\$ 1,202,636	\$ 1,426,350.32	\$ 1,740,624.62	\$ 1,810,524.68	\$ 1,999,768.79

\$ 189,244.11
10.45%

<u>2018</u>	<u>2019</u>	<u>2020</u>
\$ 595,162.64	\$ 625,342.96	\$ 673,873.89
\$ 714,944.18	\$ 821,341.08	\$ 969,895.97
\$ 540,915.40	\$ 582,036.11	\$ 651,478.12
\$ 516,768.30	\$ 614,945.43	\$ 720,938.12
\$ 759,109.79	\$ 794,733.08	\$ 866,693.31
\$ 612,022.20	\$ 756,415.85	\$ 793,974.48
\$ 687,064.60	\$ 692,535.64	\$ 851,757.78
\$ 786,944.31	\$ 845,348.53	\$ 1,092,037.73
\$ 685,419.42	\$ 725,010.09	\$ 843,607.11
\$ 769,369.18	\$ 759,800.58	\$ 804,131.79
\$ 759,690.23	\$ 852,485.11	\$ 1,030,357.94
\$ 625,408.90	\$ 806,259.26	

<u>2018</u>	<u>2019</u>	<u>2020</u>
\$ 135,228.85	\$ 145,509.03	\$ 162,869.53
\$ 129,192.08	\$ 153,736.36	\$ 180,324.53
\$ 189,777.45	\$ 198,683.27	\$ 216,673.33
\$ 153,005.55	\$ 189,103.96	\$ 198,493.62
\$ 171,766.15	\$ 173,133.91	\$ 212,939.45
\$ 196,736.08	\$ 211,337.13	\$ 273,009.43
\$ 171,354.86	\$ 181,252.52	\$ 210,901.78
\$ 192,342.30	\$ 189,950.15	\$ 201,032.95
\$ 189,922.56	\$ 213,121.28	\$ 257,589.49
\$ 156,352.23	\$ 201,564.82	
\$ 156,335.74	\$ 168,468.47	
\$ 205,335.27	\$ 242,466.49	

<u>2018-2019</u>	<u>2019-2020</u>	<u>Variance</u>	<u>% Change</u>
\$ 156,352	\$ 201,565	\$ 45,213	32%
\$ 156,336	\$ 168,468	\$ 12,133	8%
\$ 205,335	\$ 242,466	\$ 37,131	21%
\$ 145,509	\$ 162,870	\$ 17,361	13%
\$ 153,736	\$ 180,325	\$ 26,588	21%
\$ 198,683	\$ 216,673	\$ 17,990	9%
\$ 189,104	\$ 198,494	\$ 9,390	6%
\$ 173,134	\$ 212,939	\$ 39,806	23%
\$ 211,337	\$ 273,009	\$ 61,672	31%
\$ 181,253	\$ 210,902	\$ 29,649	17%
\$ 189,950	\$ 201,033	\$ 11,083	6%
\$ 213,121	\$ 257,589	\$ 44,468	23%
\$ 2,173,850.84	\$ 2,526,333.87	\$ 352,483.03	18%



Town Council Meeting

Date: 01/19/2021
Agenda Item #: 5.
Department: Economic Development Corporation
Strategic Goal: Promote and expand Little Elm's identity
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Discussion and Action to approve Ground Lease Purchase Agreement for Certain Multi-Family Property in Little Elm, Denton County, Texas. (Jennette Espinosa, EDC Executive Director)

DESCRIPTION:

This agreement is between the Little Elm Economic Development Corporation (Landlord) and Village at Lakefront, LLC (Ground Lessee)

ChadNic purchased the development from Palladium/NE on December 29th and have requested that we split the retail and multifamily agreement into two separate agreements. Purpose for request is to enable developer to secure separate loans for refinancing. The Multifamily portion will now reflect 6.4 acres.

BUDGET IMPACT:

Lease amount and terms remain the same as the original agreement: Rent remains at \$69,696.00 annually of which payments started 12 months after the C.O. was obtained December 5, 2017. Option for "eligible to purchase" is applicable the 8th lease year after obtaining their CO for the amount of \$1,115,000.00.

RECOMMENDED ACTION:

Staff recommends that Council approve the agreement as presented

Attachments

Ground Lease Purchase Agreement for Certain Multi-Family Property

**GROUND LEASE PURCHASE AGREEMENT
FOR CERTAIN MULTI-FAMILY PROPERTY IN LITTLE ELM, DENTON COUNTY,
TEXAS**

THIS GROUND LEASE PURCHASE AGREEMENT (this “Agreement”) is made and entered into on the ____ day of _____, 2021 (the “Effective Date”) by and between **LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation, having its principal address as 100 W. Eldorado Parkway, Little Elm, Texas 75068-5060 (“Landlord” or “Little Elm EDC”), and **VILLAGE AT LAKEFRONT, LLC**, a Texas limited liability company, or its permitted assigns (“Ground Lessee” or “Village at Lakefront”). This Agreement, together with the “Ground Lease Purchase Agreement for Certain Retail Property in Little Elm, Denton County, Texas, dated the same date as this Agreement and made by and between Little Elm EDC and Village at Lakefront (the “Retail Agreement”) together amend and replace the Ground Lease Purchase Agreement dated August 12, 2013, between Little Elm Economic Development Corporation and Palladium USA International, Inc. as amended, and shall take effect only upon execution of both this Agreement and the Retail Agreement.

WITNESSETH:

Subject to the terms, provisions and conditions of this Agreement, and each in consideration of the duties, covenants and obligations of the other hereunder, Landlord does hereby lease, demise, and let the Premises (as hereinafter defined) unto Ground Lessee, and Ground Lessee does hereby lease the Premises from Landlord.

ARTICLE I

CERTAIN DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings respectively indicated:

- 1.1 “**Additional Rent**” is defined in **Section 3.3** of this Agreement.
- 1.2 “**Affiliate**” means: (i) any entity controlled by, controlling or under joint control with an entity or any of the entity’s partners, shareholders or their affiliates; (ii) any entity which is owned in whole or in part, directly or indirectly, by an entity or any of the entity’s partners, shareholders or affiliates, or any entity which is otherwise affiliated with or related to an entity or any of the entity’s partners or shareholders; (iii) any entity which is the successor by merger or otherwise to all or substantially all of an entity’s assets used in connection with the Premises and liabilities including, but not limited to, any merger or acquisition pursuant to any public offering or reorganization to obtain financing and/or growth capital; or (iv) any entity to whom an entity or an Affiliate [per clauses (i) through (iii)] provides development, management, operational, financing and/or leasing services in connection with a project on the Land.

1.3 “**Annual Base Rent**” means an amount for each full Lease Year of the Term determined and paid as follows:

- (i) For the first five (5) years of the Term of the Lease, the Multifamily Development (as defined below), commencing on the Commencement Date, an amount equal to Sixty-Nine Thousand Six Hundred Ninety-Six and no/100 Dollars (\$69,696.00) annually and paid in equal monthly installments of Five Thousand Eight Hundred Eight and no/100 Dollars (\$5,808.00) on the 1st day of each month.
- (ii) Commencing with the sixth (6th) Lease Year and on every fifth (5th) Lease Year thereafter (i.e., 11th, 16th, 21st, etc.), the Annual Rent shall be adjusted, if any, in direct proportion to the increase upon the formula set out below, based on the immediately preceding five (5) Lease Years. Each of the dates on which the Annual Rent is adjusted shall be referred to as an “Adjustment Date.” The adjustment shall be calculated as follows:

For the sixth (6th) through tenth (10th) Lease Years, as to the Multifamily Development alone, the Annual Rent adjustment shall be calculated as the percentage increase in average annual Total Income of the Ground Lessee for such development during the first five (5) year period, over the annualized Total Income calculated in the month the Multifamily Development achieves physical occupancy of at least ninety percent (90%). For the eleventh (11th) through fifteenth (15th) Lease Years, and thereafter after each five (5) year period, escalations, if any shall be calculated as the percentage increase in average annual Total Income of the Ground Lessee for such development during the most recent five (5) year period, over the preceding five (5) year base annual Total Income.

A rental adjustment called for in this section shall never result in a reduction of the Annual Rent from that paid immediately prior to the Adjustment Date.

- 1.4 “**Award**” is defined in **Section 18.1(a)** of this Agreement.
- 1.5 “**Business Days**” means any day other than a Saturday, Sunday or other day on which national banks are required or authorized to be open for business in Dallas, Texas.
- 1.6 “**Commencement Date**” means December 5, 2017, the date the first certificate of occupancy for the Multifamily Development was obtained.
- 1.7 “**Date of Taking**” is defined in **Section 18.1(b)** of this Agreement.
- 1.8 “**Default Rate**” is defined in **Section 3.2** of this Agreement.
- 1.9 “**Effective Date**” shall mean the date specified in the first sentence of this Agreement.

Initial for Identification:

Little Elm EDC

43

Village at Lakefront

- 1.10 “**Event of Default**” means any event or condition designated as an “Event of Default” in **Article XIV** of this Agreement.
- 1.11 “**Hazardous Substances**” is defined in **Section 9.1** of this Agreement.
- 1.12 “**Impositions**” is defined in **Section 8.1(a)** of this Agreement.
- 1.13 “**Imposition Commencement Date**” is defined in **Section 8.1(a)** of this Agreement.
- 1.14 “**Improvements**” means any improvements hereafter developed on the Land by Ground Lessee, or otherwise as authorized by Ground Lessee.
- 1.15 “**Indemnified Parties**” is defined in **Article VII** of this Agreement.
- 1.16 “**Land**” means the approximate 6.4 acres allocated to the multifamily portion of the site, a legal description and/or depiction is attached hereto as **Exhibit A**, and including the following:
- (i) All and singular the rights and appurtenances pertaining to the Land and future Improvements, including, without limitation, all right, title and interest of Landlord in and to adjacent or appurtenant streets, roads, alleys, easements and rights-of-way, open or proposed, and all awards made or to be made in connection therewith (collectively, the “**Appurtenances**”);
 - (ii) If and to the extent the same would not comprise and be considered a part of the Appurtenances described above, all mineral rights, water rights, wastewater rights, utility rights and development rights associated with, or appurtenant to or otherwise allocable to, the Land and/or future Improvements;
 - (iii) All site plans, surveys, soil and substrata studies, water studies, environmental studies or audits, physical inspection reports, asbestos assessments, remedial plans, architectural renderings, plans and specifications, engineering plans and studies, floor plans, landscape plans and other plans diagrams or studies of any kind which relate, in whole or in part, to the Land and the future contemplated Improvements, together with any copyrights thereto; and
 - (iv) All rights, interest, privileges, appurtenances and properties in any way related to the properties described above.

Once the Survey has been obtained and approved by Landlord pursuant to **Section 4.2(b)**, Ground Lessee has the right to substitute the property description contained in the Survey for the property description contained in **Exhibit A**. If any re-subdivision plan(s) of the Land is (are) approved and filed with the Denton County Clerk’s office, Ground Lessee may substitute the platted lots per such approved and recorded subdivision plat(s) for the property description contained in **Exhibit A**.

Initial for Identification:

Little Elm EDC



Village at Lakefront

- 1.17 **“Lease Year”** means a period of twelve (12) months, with the first Lease Year beginning on the Commencement Date and for each subsequent Lease Year, each period of twelve (12) full calendar months thereafter.
- 1.18 **“Monthly Rent”** is as outlined in **Section 1.3 (i) and (ii)** of this Agreement.
- 1.19 **“Person”** means an individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.
- 1.20 **“Pre-Existing Conditions”** is defined in **Section 9.2** of this Agreement.
- 1.21 **“Premises”** means the Land and any and all buildings, utility facilities, drainage facilities, infrastructure, roads, driveways, curbs, paving, landscaping, signage, entrances, exits, surface parking and other improvements that may currently exist or hereafter be installed on the Land.
- 1.22 **“Prime Rate”** means the rate of interest being charged on the date in question by the Wall Street Journal (or its legal successor) as the “prime rate”.
- 1.23 **“Rent”** herein includes all Annual Base Rent and Additional Rent.
- 1.24 **“Taking”** is defined in **Section 18.1(c)** of this Agreement.
- 1.25 **“Term”** is defined in **Section 2.2** of this Agreement.
- 1.26 **“Transfer”** means any conveyance, transfer, sale, assignment, sublease, Mortgage, pledge, encumbrance or the like, to any Person.
- 1.27 **“Transferee”** means any Person to whom a Transfer is made.
- 1.28 **“Unqualified Transferee”** means and refers to any Person:
- (i) Who is listed on a list of terrorists or terrorist organizations published by the United States government (e.g., the United States Secretary of State’s list of Foreign Terrorist Organizations), as the same are amended and supplemented from time to time;
 - (ii) Who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001), or any similar prohibitions contained in the rules and regulations of the Office of Foreign Assets Control, as the same are promulgated and amended from time to time; or

Initial for Identification:

Little Elm EDC


Village at Lakefront

- (iii) Who has been indicted for any offense involving terrorism under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (as it may be amended from time to time, the "USA Patriot Act"), including any Person who commits any crime of conspiracy to commit, or aiding and abetting another Person to commit, a USA Patriot Act offense.

Notwithstanding the foregoing, "Unqualified Transferee" shall not include any Person who:

- (a) Is determined by Ground Lessee, in good faith and upon reasonable inquiry, not to be a Person described in the preceding clauses (i), (ii) or (iii) of this **Section 1.28**; and
- (b) Certifies to Landlord and Ground Lessee in writing that such Person is not a Person described in the preceding clauses (i), (ii) or (iii) of this **Section 1.28**.

In addition, in no event shall any Institutional Investor (as immediately hereinafter defined) be deemed to be an "Unqualified Transferee." As used herein, the term "Institutional Investor" means and refers to any of the following entities and/or their Affiliates: state and/or Federally chartered lending institutions, life insurance companies who are regularly engaged in the making of permanent real estate loans and/or in the acquisition, holding and/or disposition of commercial real estate development projects, real estate investment trusts (i.e. "REIT's"), pension, annuity and/or investment funds (or trustees or managers of such funds), any publicly traded company, and any branch or instrumentality of any one or more of (1) the United States of America, (2) any state comprising the United States of America, or (3) any city or municipality within any such states described in (2) preceding.

ARTICLE II

COMMENCEMENT AND TERM

- 2.1 **Option Payment.** On or before the Effective Date, Ground Lessee shall pay to Landlord a non-refundable payment in the sum of One Hundred Dollars (\$100.00) (such payment referred to herein as the "**Option Payment**").
- 2.2 **Term of Agreement.** The term of the Agreement (the "Term") shall commence on the Effective Date and shall terminate fifty (50) Lease Years after the Commencement Date for the Multifamily Development. This Agreement will terminate without further notice when the Term specified in this **Section 2.2** expires and any holding over by Ground Lessee after the Term expires will not constitute a renewal of this Agreement or give Ground Lessee any rights under the Agreement in or to the Premises. In connection therewith, Ground Lessee shall have the right at Ground Lessee's expense, to examine and copy all books, records, files, documents, reports, and other information of the Landlord relating to the Premises, including all leases, service agreements, insurance policies, and construction

Initial for Identification:

Little Elm EDC

43

Village at Lakefront

and maintenance related documents; provided that such examination and copying shall not interfere with the Landlord's business operations.


ARTICLE III

RENT

- 3.1 **Annual Base Rent.** For each Lease Year of the Term of this Agreement from and after the Commencement Date, Ground Lessee agrees to pay the applicable Annual Base Rent as herein provided, in lawful money of the United States of America, without deduction, offset prior notice or demand, except as herein provided and except as provided by applicable law, and at such place or places as Landlord may from time to time designate. For each twelve (12) month Lease Year (except for the first Lease Year), Ground Lessee shall pay such rent in monthly installments (hereinafter referred to as "**Monthly Rent**") in advance on or before the first (1st) day of each month in an amount equal to one-twelfth (1/12) of the applicable Annual Rent.
- 3.2 **Late Charge.** In the event that Ground Lessee shall fail to pay any portion of any installment of Monthly Rent on the date which is ten (10) days after the day on which such installment is due, there shall be added to such unpaid amount a late charge of ten percent (10%) of the amount owed, in order to compensate Landlord for the extra administrative expenses incurred. In addition, from and after the date which is thirty (30) days after the due date the total amount then due shall bear interest at the annual rate (the "**Default Rate**") which is the Prime Rate, until paid.
- 3.3 **Additional Rent.** All ad valorem taxes, insurance premiums, utility costs and all other sums, liabilities, obligations and other amounts which Ground Lessee is required to pay or discharge pursuant to this Agreement, in addition to Annual Base Rent, together with any interest, penalty, or other sum which may be added for late payment thereof, shall constitute rent hereunder ("Additional Rent"). So long as no Event of Default then exists hereunder, Ground Lessee may pay Additional Rent directly to the person entitled thereto, provided that, Ground Lessee shall provide Landlord with written proof of such direct payment within ten (10) days of such payment.
- 3.4 **Place and Manner of Payment.** Subject to the further provisions hereof, the rent hereunder shall be payable to Landlord at the original or changed address of Landlord set forth in **Section 20.1** hereof or to such other person at such address as Landlord may designate from time to time in writing. In addition to other proper methods of payment, all payments of rent and other sums payable to Landlord by Ground Lessee under this Agreement may be made, and shall be deemed to have been properly made so long as actually received by Landlord, by the delivery to Landlord of Ground Lessee's check, draft or wire transfer in the amount of such payment.
- 3.5 **Payments to Assignees and Third Parties.** If Landlord's interest in this Agreement shall be assigned to a third party or if any sum accrued or to accrue hereunder shall ever be

Initial for Identification:

Little Elm EDC


Village at Lakefront

assigned or if any third party other than Landlord shall ever be entitled to collect such sum, then in any such event written notice shall be given by Landlord to Ground Lessee within thirty (30) days after such assignment.

- (a) If and when Landlord's interest in this Agreement shall be owned by more than one person, firm, corporation or entity, such parties shall arrange among themselves for the joint execution of a notice specifying one party or agents and an address therefor for the receipt of notices to Landlord under this Agreement and to which all payments to Landlord under this Agreement shall be made, and notices delivered and payments made by Ground Lessee in accordance with such jointly executed notice shall constitute notice and payment to all parties included within the term "**Landlord**". Landlord understands that rent payments shall be made to one party as agent for any multiple parties and such will fulfill Ground Lessee's responsibilities for payments hereunder.
- (b) In the event that there is any dispute as to who shall be entitled to receive any sum payment hereunder, Ground Lessee shall, at its option, have the right to pay such sum into the registry of any court of competent jurisdiction located in Denton County, Texas, in connection with a bill of interpleader or similar proceeding filed by Ground Lessee, naming Landlord and such other claimants as parties. The making of such payment in connection with the filing of such proceeding shall discharge Ground Lessee from any further obligation for payment of the installment or rent so paid or deposited and Landlord and such other claimants shall be responsible for all costs of Ground Lessee in such regard, including attorney's fees.
- (c) In the event Landlord shall have given Ground Lessee notice that a third party is entitled to receive payment of any sum and if Ground Lessee thereafter timely pays such sum to the third party named in such notice, such payment to the third party named in the notice shall fully discharge Ground Lessee of any further obligation for such sum.

ARTICLE IV

DELIVERY OF THE PREMISES

- 4.1 **Delivery of the Premises.** Except as otherwise provided in this Agreement, Ground Lessee hereby accepts the Premises from Landlord in its "AS IS", "WHERE IS" condition without any representation or warranty by Landlord and with all faults. The execution of this Agreement by Ground Lessee shall be prima facie evidence that Ground Lessee has inspected the Premises and is or will be thoroughly familiar with its condition, and Ground Lessee hereby accepts the Premises as being in good and satisfactory condition, and suitable for Ground Lessee's intended purpose. THE PROVISIONS OF THIS ARTICLE IV HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION BY LANDLORD OF, AND GROUND LESSEE DOES HEREBY DISCLAIM, ANY AND ALL WARRANTIES BY LANDLORD, EXPRESS

Initial for Identification:

Little Elm EDC

43

Village at Lakefront

OR IMPLIED, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANOTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE SPECIFICALLY PROVIDED HEREIN.


4.2 **Deliveries to Ground Lessee.**

- (a) Within ten (10) days after the Effective Date, Landlord will deliver to Ground Lessee true and correct copies of any contracts that affect or bind the Premises and any and all topographical maps, engineering studies, environmental reports and studies, soils reports, traffic studies and other similar materials, reports and studies that are in Landlord's possession or control. Furthermore, if requested by Ground Lessee, Landlord shall make a good faith effort to obtain an estoppel letter from each of the Ground Lessees under the Existing Leases, if any, which shall be in a form provided by Ground Lessee. Except as otherwise required by law, all information delivered by Landlord to Ground Lessee pursuant to this **Section 4.2(a)** shall be kept confidential, except that Ground Lessee may disclose such information to Ground Lessee's partners, lenders, officers, lawyers, accountants and employees to the extent necessary to evaluate the Premises.
- (b) Within thirty (30) days after the Effective Date, Landlord will deliver to Ground Lessee, at Ground Lessee's cost, for Ground Lessee's review and approval (i) a current on-the-ground metes and bounds survey of the Property (the "Survey"), and (ii) a commitment (the "**Title Commitment**") for a leasehold policy of title insurance from Chicago Title Company, 14755 Preston Road, Attn: Becky Brusilow, Dallas, Texas 75254 (the "**Title Company**"). At the expense of the Ground Lessee, Landlord will cause the Title Company to issue to Ground Lessee a leasehold policy in an amount of at least One Million Three Hundred Seventy-Two Thousand Eight Hundred Seventy-Five Dollars (\$1,372,875.00) effective as of the Commencement Date. Upon approval of the Survey by Ground Lessee and Landlord, the description of the Land contained in the Survey shall replace the property description currently listed on **Exhibit A**. Notwithstanding anything to the contrary contained herein, Landlord shall have an affirmative obligation to cure any of the following title matters within ninety (90) days of the Effective Date: (i) monetary obligations such as mortgages, liens, etc., and (ii) any encumbrances placed upon the Land by (or at the direction of) Landlord subsequent to the Effective Date of this Agreement.
- (c) Within ten (10) days after the Effective Date, Landlord will deliver to Ground Lessee for Ground Lessee's review and approval copies of any notices from any entity relating to relocation of the utilities serving the Premises.

4.3 **Zoning, Easements and Dedications.** From time to time throughout the Term of this Agreement, Landlord shall, upon the reasonable request of Ground Lessee, execute such consents, authorizations, applications, site plans, plats, requests, dedications, easements and other documents and instruments as may be necessary or desirable in connection

Initial for Identification:

Little Elm EDC



Village at Lakefront

with Ground Lessee's development of the Premises, including, without limitation, zoning applications, utility easements, street dedications and closure instruments, site plans and platting instruments; provided, however, the Land shall not be rezoned to any classification other than such zoning classification(s) that permits the development and use of the 6.4 acres of the Premises for multifamily development of at least 239 units without the prior written consent of Landlord. Ground Lessee shall bear all expenses with respect to the matters described in this **Section 4.3** (including application fees, design and consultant costs and fiscal postings), except for the expenses of professionals engaged by Landlord, if any.

- 4.4 **Restrictions.** At the written request of Ground Lessee, Landlord shall, from time to time, execute and deliver or join in the execution and delivery of such documents as Ground Lessee reasonably considers appropriate, necessary or required to impose on the Premises or release the Premises from, as the case may be, such covenants, conditions and restrictions providing for, inter alia, exclusive uses of the Premises, or any part thereof, the establishment of common and parking areas, the establishment of mutual and reciprocal parking rights and the rights of ingress and egress, and other like matters, for the purpose of the orderly development of the Premises, but only so long as such covenants, conditions or restrictions terminate upon the expiration or termination of this Agreement.
- 4.5 **Refusal to Join.** Landlord shall not unreasonably fail or refuse to take any action required or contemplated pursuant to **Section 4.3** or **Section 4.4**. If Landlord unreasonably fails to execute and return to Ground Lessee any documents or to take action required by **Section 4.3** or **Section 4.4** within thirty (30) days of delivery to Landlord of such document or written request for such action, Landlord shall be in breach of this Agreement, whereupon Ground Lessee shall be entitled to exercise any and all remedies allowed to Ground Lessee by law or equity by reason of such failure, including, without limitation, Ground Lessee may recover from Landlord any actual damages suffered by Ground Lessee as a result of such breach. Notwithstanding the provisions of **Section 20.1**, a written request to Landlord to approve or execute a document imposing covenants, conditions or restrictions against the Premises shall not be deemed delivered until (a) the written request is actually received by an officer of Landlord, and (b) such officer or authorized signatory confirms such receipt in writing (or confirmation of receipt is provided by a third party). The Landlord will act in good faith with respect to the receipt of requests.
- 4.6 **Transfer at Termination.** At the termination of this Lease, except for a termination related to the exercise of Ground Lessee's Option to Purchase according to the provisions of **Section 4.8**, Improvements on the Premises shall automatically become the property of Landlord and Ground Lessee shall have no further interest in such Improvements.
- 4.7 **Sale of Land or Assignment of Landlord's Interest in Lease.** Before Landlord has entered into an agreement regarding the sale of all or any portion of the Land or assignment of all or any portion of the Landlord's interest in the Lease, and in any event

Initial for Identification:

Little Elm EDC


Village at Lakefront

prior to any such proposed sale or assignment to a third party that is not an Affiliate of Landlord, Landlord shall give notice to the Ground Lessee of the terms of the proposed sale or assignment (“**Notice of Sale**”) and Ground Lessee shall have an option to purchase the Property on the terms set out in the Purchase Option in **Section 4.8** below, regardless of the price offered by a prospective purchaser or assignee, and regardless of the time restriction in **Section 4.8**. If Ground Lessee does not exercise its option to purchase within fifteen (15) days after delivery of the Notice of Sale, Landlord shall be free to sell the Land or assign landlord’s interest in the Lease on the terms set out in the Notice of Sale, without any requirement of consent on the part of Ground Lessee, but subject to the terms and conditions of this Lease, including Ground Lessee’s option to purchase the Land in accordance with **Section 4.8** below.

4.8 **Ground Lessee’s Option to Purchase.** At any time during the Term of this Agreement if triggered by a Notice of Sale received from Landlord, or, after the first eight (8) Lease Years (the “Lockout Period”) at Ground Lessee’s sole option, Ground Lessee or its successor may, at its option, give written notice to Landlord that Ground Lessee will purchase the Land from Landlord for the price of One Million One Hundred Fifteen Thousand and 00/100 Dollars (\$1,115,000.00), by submitting a real estate sale contract(s) to Landlord containing the usual provisions set forth in the standard State Bar of Texas Real Estate Sale Contract form, including the obligation of Landlord to furnish an Owner’s Title Policy at Closing at Landlord’s expense but expressly excluding any warranty or representation regarding the Premises or Land except the warranty of title. Ground Lessee shall agree to close such purchase within thirty (30) days of the full execution of said contract. Any Base Rent payments made from the time the notice of exercise of the option to purchase is delivered, until the Closing of the acquisition, shall be credited to the purchase price.

4.9 **Release of Landlord.** If Landlord sells or transfers all or part of the Premises and as part of the transaction assigns its interest as Landlord in this Lease, then as of the effective date of the sale, assignment, or transfer, Landlord will have no further liability under this Lease to Ground Lessee, except with respect to liability matters that have accrued and are unsatisfied as of that date. Underlying this release is the parties’ intent that Landlord’s covenants and obligations under this Lease will bind Landlord and its successors and assigns only during and in respect of their respective successive periods of ownership of the fee, provided that Landlord, in such event, complies with the provisions of **Section 4.7** and **Section 4.8** above.

ARTICLE V

INDEPENDENT COVENANTS

It is the intention of the parties hereto that the obligations of Ground Lessee hereunder shall be separate and independent covenants and agreements, that the Annual Base Rent and all other sums payable by Ground Lessee hereunder shall continue to be payable in all events and

Initial for Identification:

Little Elm EDC

43

Village at Lakefront

that the obligations of Ground Lessee hereunder shall continue unaffected, unless the requirement to pay or perform the same shall have been abated, terminated, or modified pursuant to a provision of the Lease.

ARTICLE VI

USE

- 6.1 **Permitted Uses.** The Premises may be used and occupied by Ground Lessee (and its permitted assignees and sub-ground Lessees) for any lawful use or purpose within the zoning requirements for such Land, excluding the following uses: body art or tattoo establishment; retail tobacco store; gaming establishment; sexually oriented business; and full service sit-down restaurant use for the retail/commercial building to be located on the Land.
- 6.2 **Compliance with Laws, etc.** Ground Lessee shall, at Ground Lessee's sole cost and expense, comply with all federal, state, county and municipal laws, ordinances, orders, rule and regulations applicable to the use, condition, structure or occupancy of the Premises. Ground Lessee may not use all or any part of the Premises or any building situated on them for any use or purpose that violates any valid and applicable law, regulation, or ordinance of the United States, the State of Texas, the County of Denton, the Town of Little Elm, or other lawful authority with jurisdiction over the Premises. Ground Lessee is not considered to have violated this provision unless:
- a. Landlord has notified Ground Lessee in a writing specifying the alleged violation;
 - b. There has been a final adjudication by a court of competent jurisdiction that the Ground Lessee has violated the law, regulation, or ordinance specified in the notice;
 - c. The specified law, regulation, or ordinance is valid and applies to the premises; and
 - d. Ground Lessee failed to cure the specified violation within a reasonable period of time.

ARTICLE VII

INDEMNITY

Ground Lessee shall indemnify, protect and save Landlord, its successors and assigns, shareholders, trustees, directors, employees, and officers ("**Indemnified Parties**"), harmless from and against, and shall reimburse such parties for all liabilities, obligations, losses, claims, damages, penalties, costs, charges, judgments and expenses including without limitation, reasonable attorneys' fees and expenses which may be imposed upon or incurred or

Initial for Identification:

Little Elm EDC

43

Village at Lakefront

paid by or asserted against such Indemnified Parties by reason of or in connection with any of the following occurring during the Term of this Agreement (except to the extent caused by the negligence or misconduct of such Indemnified Parties):

- (a) any accident, injury, death or damage to any person or property occurring in, on or about the Premises;
- (b) all construction and any changes, alterations, repairs and anything done in, on or about the Premises or any part thereof in connection with such changes, alterations and repairs;
- (c) any negligent act on the part of Ground Lessee or any of its agents, contractors, servants, employees, sub-Ground Lessees, licenses or invitees;
- (d) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof; or
- (e) the condition of the Premises, or of any buildings or other structures now or hereafter situated thereon, or the fixtures or personal property thereon or therein.

ARTICLE VIII


IMPOSITIONS, UTILITIES, MAINTENANCE, CONSTRUCTION

8.1 Impositions.

- (a) Subject to Ground Lessee's right to contest such charges pursuant to **Section 8.1 (c)** below, from and after the Commencement Date (hereinafter referred to as the "**Imposition Commencement Date**"), Ground Lessee shall pay all real estate taxes, assessments for local improvements, water, and storm and sanitary sewer rates and charges (other than ordinary charges for utility services as provided in **Section 8.2**), licenses and permit fees, and other governmental levies and charges, which are assessed, levied, confirmed, imposed, or become a lien upon the Premises (or any portion thereof), or become payable during the Term of this Agreement (the "**Impositions**"), payment thereof to be made before any fine, penalty, interest, or cost may be added thereto for the nonpayment thereof; provided, however, that any Imposition relating to a fiscal period of the taxing authority a portion of which is included within the Term hereof and a portion of which is included in a period of time before the Imposition Commencement Date or after the expiration of the Term (for reasons other than Ground Lessee's default hereunder) shall be adjusted between Landlord and Ground Lessee as of the date for payment of Impositions occurring during the first Lease Year or such expiration date, as applicable. If Ground Lessee does not timely pay such Impositions (or contest such payment pursuant to **Section 8.1 (c)** below) Landlord may pay the same and such amount so paid shall be due and payable to Landlord as Additional

Initial for Identification:

Little Elm EDC



Village at Lakefront

Rent upon written demand therefor by Landlord. Ground Lessee shall provide Landlord with written evidence of its payment of any Impositions within fifteen (15) days after request from Landlord.

- (b) Nothing hereinabove contained shall require Ground Lessee to pay any franchise, estate, inheritance, succession, capital levy, stamp levy, stamp tax, margin tax, or transfer tax of Landlord or any income, excess profits, or revenue tax, or any other tax, assessment, charge, or levy based on or measured by the gross income or capital stock of Landlord or upon any rental payable by Ground Lessee under this Agreement. To the extent received by Landlord, Landlord covenants to forward promptly to Ground Lessee any and all notices or statements relating to taxes, assessments, fees, water, sewer, or other rent rate or charge, excise, levy license fee, permit fee, inspection fee, or other authorization fee. Ground Lessee shall furnish to Landlord copies of receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Landlord evidencing payment of the Impositions before any fine, penalty, interest or cost may be added thereto for nonpayment thereof. The certificate, advice or bill of nonpayment of any Imposition from the appropriate official designated by law to make or issue the same or to receive payment of any Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice, or bill of nonpayment.
- (c) So long as there is then no uncured default hereunder, Ground Lessee may contest the collection or assessment of any Imposition, tax, assessment, fee, water or sewer charge or rate, excise, or levy by legal proceedings or other appropriate action. If Ground Lessee so elects to contest such amounts, Ground Lessee shall, prior to the prosecution or defense of any such claim, notify Landlord in writing of its decision to pursue such contest and, to the extent procedurally required, Ground Lessee shall pay the amount in question prior to initiating the contest or otherwise shall provide adequate security to Landlord prior to initiating the contest.

8.2 **Utilities.** From and after the Commencement Date, Ground Lessee shall be responsible for and promptly pay all charges incurred for all utility services to the Premises, including, but not limited to, telephone service, sanitary and storm sewer, water, natural gas, light, power, heat, steam, communications services, garbage collection, and electricity arising out of Ground Lessee's use, occupancy, and possession of the Premises during the Term of this Agreement. Ground Lessee shall also pay for all maintenance upon such utilities. In no event shall Landlord be liable for any interruption or failure of utility service to the Premises, except to the extent caused by Landlord's negligent acts or omissions.

8.3 **Maintenance Repairs.** From and after the Commencement Date, subject to the provisions of **Article XVII** (Destruction and Severability) and **Article XVIII** (Condemnation) below relating to destruction of or damage to the Premises, Ground Lessee agrees that at its own expense it will keep and maintain the Premises, including, without limiting the generality of the foregoing, all improvements and landscaping (including mowing of grass and care of shrubs), in good, clean, condition and repair. Prior to the expiration or termination of

Initial for Identification:

Little Elm EDC

43

Village at Lakefront

this Agreement, Ground Lessee may remove from the Premises all of the personal property and equipment located thereon.

8.4 **Rules Governing Construction, Additions, and Alterations.** The following rules govern construction, additions, and alterations of buildings or other improvements on the Premises:

- a. Ground Lessee and any Sublessee must, at its own expense, engage a licensed architect or engineer to prepare plans and specifications for constructing any building or improvements or additions or alterations to any buildings or improvements and submit the same to the Landlord for approval in advance of any such construction, which such approval shall not be unreasonably withheld or delayed.
- b. The following items do not require submission to, and approval by Landlord:
 - (i) Minor repairs and alterations necessary to maintain existing structures and improvements in a useful state of repair and operation.
 - (ii) Changes and alterations required by an authorized public official with authority or jurisdiction over the buildings or improvements, to comply with legal requirements.

ARTICLE IX

HAZARDOUS SUBSTANCES

- 9.1 **Environmental Laws.** For purposes of this Article IX, “Environmental Laws” means the State and Federal laws which regulate Hazardous Substances (as hereinafter defined), and material, waste, or pollutants, in quantities or concentrations the generation, storage, disposal, handling, release (or threatened release), treatment, discharge, or emission of which is regulated, prohibited, or limited under: (i) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended (“RCRA”) (42 U.S.C. Sections 6901 et seq.), (ii) the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, as now or hereafter amended (“CERCLA”), (42 U.S.C. Sections 9601 et seq.), (iii) the Clean Water Act, as now or hereafter amended (“CWA”) (33 U.S.C. Sections 1251 et seq.), (iv) Toxic Substances and Control Act, as now or hereafter amended (“TSCA”) (15 U.S.C. Section 2601 et seq.), (v) the Clean Air Act, as now or hereafter amended (“CAA”) (42 U.S.C. Section 7401 et seq.), (RCRA, CERCLA, CWA, TSCA and CAA are collectively referred to herein as the “Federal Toxic Waste Laws”), (vi) any local, state or foreign law, statute, regulation, or ordinance analogous to any of the Federal Toxic Waste Laws, and (vii) any other federal, state, local, or foreign law (including any common law), statute, regulation, or ordinance regulating, prohibiting, or otherwise restricting the placement, discharge, release,

Initial for Identification:

Little Elm EDC



Village at Lakefront

threatened release, generation, treatment, or disposal upon or into any environmental media of any substance, pollutant, or waste which is now or hereafter classified or considered to be hazardous or toxic. All of the laws, statutes, regulations and ordinances referred to in subsections (vi) and (vii) above, together with the Federal Toxic Waste Laws are collectively referred to herein as "**Toxic Waste Laws**". The term "**Hazardous Substances**" shall also include, without limitation the following in quantities or concentrations which are regulated by State of Federal Environmental Laws, (a) gasoline, diesel fuel, fuel oil, motor oil, waste oil, and any other petroleum hydrocarbons, including any additives or other by-products associated therewith, (b) asbestos and asbestos-containing materials in any form, (c) polychlorinated biphenyls, and (d) any substance the presence of which on the Premises: (x) requires reporting or remediation under any Toxic Waste law; (y) causes or threatens to cause a nuisance on the Premises or poses or threatens to pose a hazard to the health or safety of persons on the Premises; or (z) which, if it emanated or migrated from the Premises, could constitute a trespass, nuisance or health or safety hazard to persons on adjacent property.

- 9.2 **Hazardous Substances on Premises Prohibited.** Ground Lessee shall not conduct, permit, or authorize Hazardous Substances on the Premises without prior written authorization by Landlord, except for such quantities which are routinely utilized in connection with the lawful use of the Premises, all of which are to be stored, used, handled, and disposed of in full compliance with all Toxic Waste Laws. Nothing contained herein shall be construed as imposing upon Ground Lessee any responsibility for any Hazardous Substances located in, on, or under the Land on or prior to the Effective Date (the "**Pre-Existing Conditions**"). If Ground Lessee discovers any Pre-Existing Conditions after the Effective Date, Ground Lessee shall have the option of either remediating such Pre-Existing Condition to the extent required by the Toxic Waste Laws and offsetting the cost thereof (including costs of investigations, reports, studies and consultants) against the Annual Base Rent, or terminating this Agreement by giving Landlord at least thirty (30) days prior written notice of such termination. However, in no event will Landlord have any direct responsibility to Ground Lessee for any unknown Pre-Existing Condition.

9.3 **Compliance with Toxic Waste Laws.**

- (a) Ground Lessee shall, at its sole cost and expense, comply with all applicable Toxic Waste Laws, provided that nothing contained herein shall be construed as imposing upon Ground Lessee any responsibility for compliance with applicable Toxic Waste Laws in respect of Pre-Existing Conditions.
- (b) Notwithstanding anything contained herein to the contrary, Ground Lessee shall indemnify and hold harmless Landlord from any and all liabilities, claims, causes of action, penalties, fines, costs, expenses, reasonable attorneys' fees, remedial or response costs, investigatory costs and other similar expenses arising out of or otherwise attributable to any violation by Ground Lessee or the Premises of any Toxic Waste Law, unless such violation is the result of Pre-Existing Conditions, or has migrated to the Land from somewhere other than the Land or its

Initial for Identification:

Little Elm EDC

43

Village at Lakefront

improvements. Such indemnity obligation shall survive any termination or expiration of this Agreement.

- 9.4 **Landlord's Warranties.** Except for pre-existing conditions generated at 111 Main Street, Little Elm, Texas and referenced in a Reed Engineering Report, dated May 22, 2013, Landlord further represents and warrants that to the best of Landlord's actual knowledge: (i) no leak, spill, discharge, emission or disposal of hazardous or toxic substances has occurred on or about the Land; (ii) the soil, groundwater, soil vapor on or under the Premises is free of toxic or hazardous substances as of the date hereof; and (iii) that there has been no violation of any Toxic Waste Law.

ARTICLE X

INSURANCE

10.1 **Ground Lessee's Insurance.**

- (a) Ground Lessee shall, at its sole cost and expense, obtain and maintain insurance upon and relating to the Premises by "broad peril" form of insurance policy(ies) in amounts equal to 80% of the full insurable replacement value of the improvements located on the Land. The requirement for broad peril coverage shall be met through "builder's risk" insurance coverage during the period of construction of improvements on the Land. All such policies of insurance shall insure Ground Lessee, Landlord, and Ground Lessee's mortgagee, as their interests may appear. Ground Lessee may meet its obligations hereunder if a Sublessee supplies such insurance meeting the requirements of this subsection at its sole cost and expense.
- (b) Ground Lessee shall, at its sole cost and expense, obtain and maintain a commercial General Liability Insurance policy and in the event that construction is commenced on the Premises, Construction Liability Insurance, insuring Landlord, Ground Lessee's mortgagee and Ground Lessee against all claims, demand, or actions arising out of or in connection with injury to or death of a person or persons and for damage to or destruction of property occasioned by or arising out of or in connection with the use or occupancy of the Premises, the limits of such policy or policies to be in such amounts as may be reasonable and customary in Denton County, Texas for similar properties with the same type of improvements as may from time to time be situated upon the Land but not less than \$500,000.00 for property damage, \$1,000,000.00 for one person and \$2,000,000 for one accident for personal injury. Ground Lessee may meet its obligations hereunder if a Sublessee supplies such insurance meeting the requirements of this subsection at its sole cost and expense.
- (c) All policies of insurance shall be issued by an insurance company or companies having a General policyholder's rating of not less than A as stated in the most

Initial for Identification:

Little Elm EDC



Village at Lakefront

current available Best's insurance reports (or comparable rating service if Best's reports are not currently being published), licensed to do business in the State of Texas. All policies of insurance shall be in form and substance reasonably satisfactory to Landlord. Ground Lessee shall deliver to Landlord certificates or copies of all policies of required insurance fifteen (15) days prior to the expiration of each of policies required hereunder. Ground Lessee shall furnish Landlord with a certificate of insurance in force or replacement coverage and meeting the standards hereinabove provided, all as required by this Agreement. All such policies shall contain a provision that such policies will not be canceled or materially amended, including any reduction in the scope or limits of coverage, without ten (10) days' prior written notice to Landlord. In the event Ground Lessee fails to maintain, or cause to be maintained, or deliver and furnish to Landlord certified copies of policies of insurance required by this Agreement, Landlord may procure such insurance for the benefit only of Landlord for such risks covering Landlord's interests, and Ground Lessee will pay all premiums thereon within thirty (30) days after demand by Landlord. In the event Ground Lessee fails to pay such premiums (or reimburse Landlord) upon demand the amount of all such premiums shall bear interest at the Default Rate.

- 10.2 **Waiver of Subrogation.** Notwithstanding anything contained in this Agreement to the contrary, each party hereto hereby waives any and every claim which arises or may arise in its favor and against the other party hereto, or anyone claiming through or under them, by way of subrogation or otherwise, during the Term for any and all loss of, or damage to, any of its property (whether or not such loss or damage is caused by the fault or negligence of the other party or anyone for whom such other party may be responsible), which loss or damage is covered, or is required by this Agreement to be covered, by valid and collectible fire and extended coverage insurance policies (but not as to loss or damage covered by self-insurance as permitted hereby). Such waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Agreement with respect to any loss or damage to property of the parties hereto.

ARTICLE XI

ASSIGNMENT AND SUBLETTING

- 11.1 **Right to Sublet.** Ground Lessee may from time to time sublet (or sub-ground lease) the Premises in whole or in part at any time and from time to time, without Landlord's consent. The making of any such sublease or ground lease shall not release Ground Lessee from, or otherwise affect in any manner, any of Ground Lessee's obligations hereunder.

Notwithstanding anything contained herein to the contrary, Ground Lessee may at any time assign this Agreement to an Affiliate without the prior written consent of Landlord.

- 11.2 **Right to Transfer.** Ground Lessee may, without the prior written consent of Landlord, Transfer its interest in and under this Agreement, in whole or in part, for any use permitted

Initial for Identification:

Little Elm EDC


Village at Lakefront

under Section 6.1 above, provided however Ground Lessee may not transfer to an Unqualified Transferee. Ground Lessee shall not be relieved of liability for the performance of its obligations under this Agreement by reason of any such Transfer, with respect to the interest Transferred unless Ground Lessee delivers to Landlord a written instrument, in recordable form, pursuant to which the Transferee assumes, from and after the effective date of the Transfer, all of the obligations of Ground Lessee in respect of the interest Transferred; provided, however, that in the event the Transfer occurs by way of the foreclosure of a Deed of Trust, Ground Lessee shall thereupon be relieved of any further liabilities or obligations accruing from and after the date of foreclosure, regardless of whether the Deed of Trust (or other Person acquiring Ground Lessee's interest in and under this Agreement) assumes Ground Lessee's obligations hereunder. In the event of any transfer by Ground Lessee hereunder, the Transferee shall be entitled to the notices and rights conferred on the Ground Lessee under **Section 4.7** and **4.8** and shall be burdened by the obligations provided to the Landlord under **Section 4.9**.

- 11.3 **Transfer Restrictions.** Ground Lessee shall not, without first obtaining the prior written consent of Landlord, transfer its interest in or under this Agreement, in whole or in part, to any Unqualified Transferee as defined in **Section 1.28**.

ARTICLE XII

QUIET ENJOYMENT

- 12.1 **Quiet Enjoyment.** Provided Ground Lessee pays the rent payable hereunder as and when due and payable and keeps and fulfills all of the terms, covenants, agreements and conditions to be performed or observed by Ground Lessee hereunder, Ground Lessee shall at all times during the Term have quiet and peaceable enjoyment of the Premises.
- 12.2 **Warranty of Title.** Landlord represents and warrants that Landlord is the sole owner of fee simple title in and to the Land, subject only to the matters set forth in the Title Commitment, and that Landlord, subject to Town Council of the Town of Little Elm, alone has the full and sole right to lease the Premises to Ground Lessee without the consent or joinder of any other party (which consent or joinder will have been obtained at the time of execution of this Ground Lease Purchase Agreement).


ARTICLE XIII

HOLDOVER

Upon the termination of this Agreement (whether by the expiration of the Term of this Agreement or otherwise) Ground Lessee must immediately vacate the Premises, but if Ground Lessee fails to do so then, without the execution of a new lease by Landlord and Ground Lessee, Ground Lessee, at the option of Landlord, shall immediately become a holdover month-to-month Ground Lessee of the Premises at one hundred fifty percent (150%) of the Monthly Rent effective in the month immediately preceding the termination of this Agreement,

Initial for Identification:

Little Elm EDC



Village at Lakefront

plus all Additional Rent and other sums payable by Ground Lessee hereunder, and under all other terms, conditions, provisions, and obligations of this Agreement.

ARTICLE XIV

DEFAULT AND REMEDIES

14.1 **Events of Default.** The occurrence of one or more of the following events shall constitute an event of default (each being referred to as an “**Event of Default**”) pursuant to the terms of this Agreement:


- (a) The failure of Ground Lessee to comply with or to observe any terms, provisions, or conditions of this Agreement performable by and obligatory upon Ground Lessee, excluding the rent and other payment provisions hereof, within thirty (30) days after written notice by Landlord plus such additional time as is needed to cure the same so long as Ground Lessee (or its mortgagee) has commenced such cure within such 30-day period and such cure thereafter is continuously and diligently undertaken by Ground Lessee (or its mortgagee);
- (b) From the Commencement Date, the failure of Ground Lessee to pay when due any portion of any installment of Monthly Rent or any other monetary charge due from Ground Lessee hereunder and such failure continues for thirty (30) days after written notice thereof from Landlord; provided, however, Landlord shall not be required to give such 30 day notice, and Ground Lessee shall not be entitled to same, more than two (2) times during any twelve (12) month period, and any subsequent failure of Ground Lessee to pay a monetary charge hereunder during such 12-month period shall be an Event of Default upon the occurrence thereof without any further notice whatsoever to Ground Lessee;
- (c) The taking of all of Ground Lessee’s leasehold estate by execution or other process of law other than as provided in **Article XVIII**.

14.2 **Landlord Remedies.** Upon the occurrence of any Events of Default enumerated in **Section 14.1** hereof, but subject to the rights of mortgagees and their designees as provided in **Article XV** hereof, Landlord shall have the right to pursue and enforce any and all rights and remedies available to Landlord hereunder or at law or equity, including, without limitation, (i) the right to terminate this Agreement by written notice to Ground Lessee and the expiration of any applicable cure periods as provided in this Ground Lease, and (ii) the right to terminate Ground Lessee’s right of possession of the Premises (without terminating this Agreement).

14.3 **No Waiver by Landlord.** Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law or equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions, and covenants herein contained.

Initial for Identification:

Little Elm EDC



Village at Lakefront

Landlord's acceptance of rent following an Event of Default hereunder shall not be construed as Landlord's waiver of any future Event of Default. No waiver by Landlord of any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of such default.

14.4 **Attorney's Fees.** In any case where Landlord or Ground Lessee employs attorneys to protect or enforce its rights hereunder and prevails, then the non-prevailing party agrees to pay the other party reasonable attorney's fees and costs of suit incurred by the prevailing party.

14.5 **Bankruptcy of Ground Lessee.** The bankruptcy or insolvency of Ground Lessee, an assignment by Ground Lessee for the benefit of Ground Lessee's creditors, the appointment of a trustee, liquidator or receiver for Ground Lessee, reorganization by Ground Lessee, an admission by Ground Lessee of its inability to pay its debts as the same become due and/or the inability to pay its debts as the same become due and/or the seeking or granting of any order of relief in any proceeding commenced by or against Ground Lessee under any present or future federal or state bankruptcy, insolvency or creditors' relief statute shall not affect this Agreement so long as all covenants of Ground Lessee are continued in performance by Ground Lessee or its successors or legal representatives. Furthermore, with respect to the rights of a mortgagee, all notice of default and the periods for curing the same shall be extended for such period of time as Ground Lessee and/or its interest under this Agreement are involved in any bankruptcy, receivership, custodial or other legal proceeding which prevents such mortgagee from curing any such default and/or obtaining title to the interest of Ground Lessee under this Agreement and/or actual possession of the Premises, provided that during such interim period the mortgagee under a mortgage of the leasehold estate, or its designee, shall pay/or cause to be paid all rents, taxes, assessments, and insurance premiums provided for hereunder as and when they become due under the terms of this Agreement.

14.6 **Default of Landlord.** To the extent Landlord has obligations under this Ground Lease, if Landlord defaults in its obligations, Ground Lessee shall provide Landlord with thirty (30) days' notice within which to cure such default. In the event Landlord has not cured such default within the applicable time, then Ground Lessee shall have the right to pursue and enforce any and all rights and remedies available to Ground Lessee hereunder, or at law or equity, including specific performance.

ARTICLE XV

FINANCING

15.1 **Right to Finance.** Ground Lessee shall from time to time and at any time have the right to encumber by one or more mortgages, deeds of trust, security agreements, or other instruments in the nature thereof, as security for one or more loans, indebtednesses or obligations, Ground Lessee's right to use and occupy the Premises, the leasehold estate created hereby, all right, title and interest in and to any improvements at any

Initial for Identification:

Little Elm EDC


_____
Village at Lakefront

time located on or partially on the Premises, and any other property so affixed to said land, buildings or improvements as to be a part thereof. Any such indebtedness or obligation and any such mortgage, deed of trust or security agreement securing same shall be for such amount and on such other terms and conditions as Ground Lessee may agree to in its sole discretion; provided that any such mortgage, deed of trust, or security agreement shall at all times be subject to the terms and provisions of this Agreement and the rights, titles and interest of Landlord arising by virtue of this Agreement. **IN NO EVENT WILL LANDLORD BE REQUIRED TO "SUBORDINATE" LANDLORD'S FEE SIMPLE ESTATE IN THE LAND FOR FINANCING OBTAINED BY GROUND LESSEE UNDER THIS SECTION 15.1, (I.E., LANDLORD WILL NOT EXECUTE ANY DEED OF TRUST SECURING ANY INDEBTEDNESS OF GROUND LESSEE).**

- 15.2 **Notice to Mortgagee.** If at any time after execution and recordation in Denton County, Texas, of any such mortgage, deed of trust, or other instrument in the nature thereof, Ground Lessee or the mortgagee therein shall notify Landlord in writing that any such mortgage or deed of trust has been given and executed by Ground Lessee, and shall furnish Landlord with the address to which such mortgagee desires copies of notices to be mailed (or designate some person or corporation as the agent and/or representative of such mortgagee for the purpose of receiving copies of notices), Landlord hereby agrees that Landlord will thereafter, in addition to any other notice Landlord shall be required by this Agreement to deliver to such mortgagee, mail to each such mortgagee or agent thereof, at the address so given, by registered mail, postage prepaid, return receipt requested, and at the same time that such notice is placed in the mail or otherwise delivered to Ground Lessee, duplicate copies of any and all notices in writing which Landlord may from time to time give or serve upon Ground Lessee under and pursuant to the terms and provisions of this Agreement, including, but not by way of limitation, any notices of default required to be sent by virtue of **Article XIV** hereof. Landlord shall also notify each such mortgagee of any proposed action requiring the prior approval of such mortgagee hereunder and any casualty or condemnation loss.
- 15.3 **Right to Cure.** Any such mortgagee, at the option of such mortgagee, acting either directly or indirectly through a designee, may pay any of the rents due hereunder or may affect any insurance, or may pay any taxes and assessments, or may make any repairs and improvements, or may make any deposits, or may do any other act or thing or make any other payment required of Ground Lessee by the terms of this Agreement, or may do any act or thing which may be necessary and proper to be done in the observance of the covenants and conditions of this Agreement, or to prevent the forfeiture of this Agreement; and all payments so made and all things so done and performed by such mortgagee or designee shall be effective to prevent a forfeiture of the rights of Ground Lessee hereunder as the same would have been if timely done and performed by Ground Lessee instead of by any such mortgagee or designee. The mortgagee shall be given a separate fifteen (15) day written notice of Ground Lessee's failure to cure an Event of Default after any notice and period to cure, during which fifteen (15) day period the mortgagee shall have the right to cure and monetary default, and if any non-monetary

Initial for Identification: _____

Little Elm EDC


Village at Lakefront

default cannot reasonably be cured in this fifteen (15) day period, the right to commence and thereafter diligently and continuously pursue the required cure to completion.

15.4 **Option for New Lease.** Upon termination of this Agreement, for any reason, other than expiration of its Term, Landlord shall deliver written notice of such termination to any mortgagee about which Landlord has been notified pursuant to Section 15.2 hereof and such mortgagee or its designee shall have the option, within forty-five (45) days after receipt of written notice of such termination, to elect to receive from Landlord a new lease of the Premises for the unexpired balance of the Lease Term, or any renewal and extension hereof, on the same terms and conditions as in this Agreement set forth, and Landlord agrees to execute such new lease provided such mortgage holder or designee:

- (a) shall forthwith cure any monetary default of Ground Lessee;
- (b) shall undertake forthwith to remedy any non-monetary default of Ground Lessee, excluding those which by their nature are incapable of cure by any other person or corporation; and
- (c) shall thereafter observe and perform all covenants and conditions in such Lease contained on the part of Ground Lessee to be observed and performed (including the payment of rents hereunder).

In the event that more than one (1) mortgagee or designee shall exercise the foregoing option for a new lease, Landlord shall enter into a new lease with the mortgagee, or the designee of such mortgagee, having the highest priority among those mortgagees which exercised the option.


15.5 **No Liability.** No such mortgagee of the rights or interests of the Ground Lessee or its designee hereunder shall be or become liable to Landlord as an assignee of this Agreement or otherwise, unless such mortgagee or designee expressly assumes by written instrument such liability, and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such mortgage or deed of trust or other instrument or from a conveyance from Ground Lessee pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Ground Lessee under the terms of this Agreement.

15.6 **Modifications.**

- (a) Landlord shall not accept any surrender of or agree to any termination of or enter into any modification or amendment of this Agreement without the prior written consent thereto by any such mortgagee, and any attempt to do so without such written consent shall be void and of no force and effect.
- (b) Landlord agrees to modify this Agreement from time to time for the purpose of incorporating therein such additional mortgagee protective provisions as may be

Initial for Identification:

Little Elm EDC



Village at Lakefront

reasonably requested by any such mortgagee, provided such modifications are reasonably acceptable to Landlord and not inconsistent with the basic transaction agreed to by the parties, including, without limitation, any of the monetary terms of this Agreement, provided that **IN NO EVENT WILL LANDLORD BE REQUIRED TO "SUBORDINATE" LANDLORD'S FEE SIMPLE ESTATE IN THE LAND FOR FINANCING OBTAINED BY GROUND LESSEE UNDER THIS SECTION 15.6, (I.E., LANDLORD WILL NOT EXECUTE ANY DEED OF TRUST SECURING ANY INDEBTEDNESS OF GROUND LESSEE).**

- 15.7 **Rights Cumulative.** All rights of a leasehold mortgagee under this Agreement shall be cumulative.
- 15.8 **Landlord's Right to Finance.** Landlord may at any time, without the prior written consent of Ground Lessee, encumber by mortgage, deed of trust, security agreement or other instrument in the nature thereof, any of Landlord's right, title or interest in the Land and this Agreement; provided that any such mortgage, deed of trust or other instrument in the nature thereof shall at all times be, and shall expressly state that it is, subject and subordinate to this Agreement and the rights, titles and interests of Ground Lessee and any mortgagee of Ground Lessee arising by virtue of this Agreement.

ARTICLE XVI

ESTOPPEL CERTIFICATES

Landlord and Ground Lessee will, at any time and from time to time, upon not less than thirty (30) days' prior written request by the other party, execute, acknowledge and deliver to each other or to any person whom the requesting party may designate, a certificate, certifying as follows: (i) that this Agreement is unmodified and in full effect (or setting forth any modifications and that this Agreement is in full effect as modified); (ii) the Annual Base Rent payable and the dates to which the Annual Base Rent has been paid and whether other sums, including Additional Rent payable hereunder, have been paid; (iii) any default of which such party may have knowledge; (iv) the commencement and expiration dates of this Agreement; and (v) such other matters as may reasonably be requested by either of the parties hereto. Any such certificate may be relied upon by any mortgagee or prospective purchaser or prospective mortgagee of the Premises.


ARTICLE XVII

DESTRUCTION AND SEVERABILITY

- 17.1 **Casualty.** In the event the Premises shall be wholly or partially damaged or destroyed by fire or other casualty, Ground Lessee may, at its option and expense (utilizing proceeds of the insurance policies carried by Ground Lessee pursuant to Article X hereof), cause such damage to be repaired or restored to the condition of the Premises which existed immediately prior to such casualty or construct other new improvements on the Land. In

Initial for Identification:

Little Elm EDC



Village at Lakefront

the event that Ground Lessee elects not to restore the damaged improvements or build new improvements, Ground Lessee shall demolish the remaining portions of the damaged structure as necessary or appropriate and remove all debris destruction from the Premises within nine (9) months after the appropriate governmental authorities have consented to the removal of the debris. During the period of repair or restoration, Annual Base Rent shall not be reduced, but Ground Lessee may use proceeds of rent insurance to pay Annual Base Rent. In the event Ground Lessee elects not to restore the damaged improvements or build new improvements, Ground Lessee shall have the option to continue to pay the Annual Base Rent during the remaining Term of the Ground Lease, or may provide written notice to Landlord that Ground Lessee elects to terminate the Ground Lease, at which point the Ground Lease shall terminate.

ARTICLE XVIII

CONDEMNATION

18.1 Definitions. For purposes of this **Article XVIII**, the following terms shall have the respective meanings set forth below:

- (a) **“Award”** means the amount of any award made, consideration paid, or damages ordered as a result of a Taking less any reasonable costs in obtaining such award, such as reasonable legal fees and costs, consultant fees, appraisal costs.
- (b) **“Date of Taking”** means the date upon which title to the Premises, or a portion thereof, passes to or vests in the condemnor or the effective date of any order for possession if issued prior to the date title vests in the condemnor.
- (c) **“Taking”** means a taking of the Premises or any damage related to the exercise of the power of eminent domain and including a voluntary conveyance to any agency, authority, public utility, person, or corporate entity empowered to condemn property in lieu of court proceedings.

18.2 **Total Condemnation.** If the entire Premises shall be taken as the result of a Taking, this Agreement shall terminate and expire as of the Date of Taking.

18.3 **Partial Condemnation.** If a portion of the Premises should be taken as a result of a Taking, and the remaining part of the Premises is unsuitable, in Ground Lessee’s reasonable opinion, for the continued economic conduct of Ground Lessee’s business, Ground Lessee shall have the right to terminate this Agreement by giving Landlord written notice thereof no later than thirty (30) days after the Date of Taking, whereupon Annual Base Rent, Additional Rent and all other charges shall be terminated as to the unexpired portion of this Agreement, effective as of the Date of Taking.

If Ground Lessee does not exercise its right to terminate as set forth above or if such partial Taking does not, in Ground Lessee’s discretion, render the remaining part of the Premises unsuitable for the continued economic conduct of Ground Lessee’s business, this

Initial for Identification:

Little Elm EDC



Village at Lakefront

Agreement shall not terminate; however, the Annual Base Rent payable hereunder during the unexpired portion of this Agreement shall be reduced in proportion to the area of the Land taken, effective as of the Date of Taking; further provided, however, that if Landlord and Ground Lessee do not agree on the proportionate amount of reduction of Annual Base Rent, such amount shall be determined in accordance with the appraisal procedures described in **Section 18.5**. Following such partial Taking, Ground Lessee shall make all necessary repairs or alterations necessary to make the Premises an architectural whole, if Ground Lessee has not elected to terminate this Agreement.

18.4 **Condemnation Proceeds.** All Awards shall be paid to Landlord and Ground Lessee in the following shares:

- (i) Ground Lessee shall receive those portions of the Award that are specifically attributable to (a) the value of, and paid as compensation for, Ground Lessee's interest in the Premises, including all Improvements hereafter constructed by Ground Lessee thereon and any of Ground Lessee's personal property taken, (b) removal and relocation of Ground Lessee's personal and trade fixtures, (c) anticipated or lost profits or damages caused to Ground Lessee's business or any special damages to Ground Lessee, (d) the bonus value of Ground Lessee's leasehold estate, and (e) any severance damages awarded by reason of the partial Taking of any Improvements.
- (ii) Landlord shall receive from the Award those portions of the Award that are attributable to (a) the value of, and paid as compensation for, its fee interest in the Land (as encumbered by the Lease), and (b) the reversionary interest in any Improvements located on the Land; and
- (iii) Ground Lessee shall use whatever portion of the Award it receives by reason of a partial taking of Improvements to pay the cost of enclosing any Improvements that are not taken if the partial taking caused such Improvements to be no longer fully enclosed.

In the event of a dispute between Landlord and Ground Lessee as to the fair market value of the Land and any Improvements before or after the Taking, or as to the proper allocation of any Award as required herein, then either Landlord or Ground Lessee may submit the issue to determination by appraisers pursuant to **Section 18.5**, and such determination shall be binding upon the parties.

18.5 **Appraisal.** Not more than thirty (30) days after any Taking, Landlord and Ground Lessee shall each appoint one independent MAI appraiser to determine the value of the interest of Landlord or Ground Lessee, or both, as the case may be, and notice of such appointment shall be given to the other party. Such appraisers shall be appointed and such appraisals shall be made in the following manner: Landlord and Ground Lessee shall each select an independent, experienced and duly licensed MAI real estate appraiser and the two (2) appraisers shall thereupon be instructed to select and designate a third (3rd) appraiser, who shall be engaged by both Landlord and Ground Lessee. If either party shall fail to so designate an appraiser, the other party shall have the right to petition

Initial for Identification:

Little Elm EDC



Village at Lakefront

the District Court for the County of Denton, Texas to appoint such an appraiser on behalf of the defaulting party, which appraiser shall act on behalf of such party and at such party's sole cost and expense. In the event that such appraisers shall fail to agree on an appraised value of the interest, Landlord and Ground Lessee agree that the value of the interest shall be established as the average price represented by the two (2) appraisal reports most closely in agreement as to the value of the interests.

- 18.6 **Voluntary Conveyance.** Nothing in this article prohibits Landlord from voluntarily conveying all or part of the premises to a public utility agency, or authority under threat of a taking under the power of eminent domain. Any such voluntary conveyance will be treated as a taking within the meaning of this article.

ARTICLE XIX

EXISTING LEASES

- 19.1 **Assignment of Existing Leases.** As of the Effective Date, Landlord shall assign the Existing Leases, if any, to Ground Lessee; provided, however, prior to the Commencement Date, Landlord shall continue to operate, collect rents and pay expenses with respect to the Existing Leases (but only to the extent that such Existing Leases have not theretofore terminated). Furthermore, from and after the Effective Date, Landlord shall not, without the prior written consent of Ground Lessee (which consent may be granted or withheld in Ground Lessee's sole and absolute discretion), enter into any new leases or amend, terminate or extend any of the Existing Leases. Any termination/buyout fees to be paid to terminate any Existing Lease shall be paid by Ground Lessee. Any rental amounts under the Existing Leases shall be pro-rated as of the Commencement Date. Landlord shall transfer to Ground Lessee all security deposits held by the Landlord as respects any Existing Lease on the Commencement Date.

ARTICLE XX

GENERAL PROVISIONS

- 20.1 **Notice.** Any notice, request, or other communication (hereinafter severally and collectively called "Notice") in this Agreement provided for or permitted to be given, made or accepted by either party to the other must be in writing, and may, unless otherwise in this Agreement expressly provided, be given or be served by depositing the same in the United States mail, postpaid and certified and addressed to the party to be notified, with return receipt requested. Notice given in any manner as provided in this **Section 20.1** shall (a) as to notice given to or served by depositing the same in the United States mail, as aforesaid, shall be effective three (3) days after depositing the same in a regularly maintained receptacle for pickup and delivery of United States mail and (b) as to Notice given or served by any other method, shall be effective only if and when received by the party to be notified. The following shall be prima facie evidence of the date of actual receipt of Notice by the addressee: (a) if hand delivered, by a delivery receipt signed by the addressee or the addressee's agent or representative, (b) written evidence by the

Initial for Identification:

Little Elm EDC



Village at Lakefront

carrier of such Notice of the date of attempted delivery at the address of the addressee if such delivery is refused, or (c) a return telecopy sent from a fax machine or office of the addressee or other confirmation from the office of the addressee indicating that any telecopied notice has been received.

For purposes of Notice, the addresses of the parties shall, until changed as herein provided, be as follows:

Landlord: Little Elm Economic Development Corporation
100 W. Eldorado Parkway
Little Elm, Denton County, Texas 75068-5060

With a copy to: Brown and Hofmeister, LLP
740 East Campbell Road, Suite 800
Richardson, Texas 75081
Attn: Jeff Moore, Esq.

Ground Lessee: Village at Lakefront, LLC
14109 Inwood Road
Farmers Branch, Texas 75244-8232
Attn: John L. Bailey

With a copy to: _____

Attn: _____

However, the parties hereto and their representative heirs, successors, legal representatives, and assigns shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least ten (10) days' written notice to the other party.

20.2 **Captions.** The title captions appearing in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement, or any provisions hereof, or in connection with the duties, obligations, or liabilities of the respective parties hereto, or in ascertaining intent, if any question of intent exists.

20.3 **Entire Contract; Amendment.** It is expressly agreed by both parties that this Agreement, and the Exhibits attached hereto is the entire agreement of the parties with respect to the subject matter hereof, and that there are, and have been, no verbal representations, understandings, stipulations, agreements, or promises pertaining to this Agreement. It is likewise agreed that this Agreement may not be altered, amended, or extended except by an instrument in writing signed by both Landlord and Ground Lessee.

Initial for Identification: _____
Little Elm EDC



Village at Lakefront

- 20.4 **Severability.** If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- 20.5 **Successor and Assigns.** All covenants and obligations as contained within this Agreement shall bind and extend and inure to the benefit of the successors and permitted assigns of each of Landlord and Ground Lessee.
- 20.6 **Personal Pronouns.** All personal pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine, or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.
- 20.7 **No Merger.** There shall be no merger of this Agreement or of the leasehold estate created by this Agreement with the fee or any other estate or interest in the Premises by reason of the fact that the same person owns or hold, directly or indirectly, all such estates and interests or any combination thereof.
- 20.8 **Short Form Lease.** Upon the complete execution hereof, the parties hereto shall execute and record a memorandum of this Agreement in the Real Property Records of Denton County, Texas which also identifies Ground Lessee's option to purchase (in general terms and not listing any specific price therein).
- 20.9 **Legal Interpretation.** This Agreement and the rights and obligations of the parties hereto shall be interpreted, construed, and enforced in accordance with the laws of the State of Texas.
- 20.10 **No Mortgage or Joint Venture.** Ground Lessee and Landlord acknowledge and agree that this Agreement is, in fact, a lease arrangement, and does not constitute a loan or a joint venture, and that Ground Lessee has been represented by experienced legal counsel, who has advised Ground Lessee of the rights and duties of Ground Lessee. Ground Lessee will not assert that the transaction evidenced hereby is a loan or a joint venture if Landlord or Landlord's mortgagee subsequently seeks to enforce its legal rights as a landlord.
- 20.11 **Brokers.** Ground Lessee warrants that it has had no dealings with any broker or agent in connection with the negotiation or execution of this Agreement and Ground Lessee agrees to indemnify Landlord and hold Landlord harmless from and against any and all costs, expenses, or liability for commissions or other compensation or charges claimed by any parties claiming by, through, or under Ground Lessee with respect to this Agreement. Landlord warrants that it has had no dealings with any broker or agent in connection with the negotiation or execution of this Agreement and Landlord agrees to the extent allowed by law to indemnify Ground Lessee and hold Ground Lessee harmless from and against any and all costs, expenses, or liability for commissions or other compensation or charges

Initial for Identification:

Little Elm EDC


Village at Lakefront

claimed by any parties claiming by, through, or under landlord with respect to this Agreement.

20.12 **Waiver of Landlord's Lien; Fixtures.** Landlord hereby waives any contractual, statutory or other Landlord's lien on the furniture, fixtures, supplies, equipment, inventory or other personalty of Ground Lessee or any sublessee of Ground Lessee. Ground Lessee may, at any time while it occupies the Premises, or within a reasonable time thereafter, remove any furniture, machinery, equipment, or other trade fixtures owned or placed by Ground Lessee, its subtenant or licensees, in, under, or on the Premises, or acquired by Ground Lessee, whether before or during the Term of this Agreement. Before this Agreement terminates, Ground Lessee must repair any damage to any buildings or improvements on the Premises resulting from such removal described in this section. Notwithstanding any other term or provision of this Agreement, any such items not removed by the lease termination date will become Landlord's property on that date.

20.13 **Authority to Execute.**

(a) Ground Lessee represents and warrants that Ground Lessee is duly formed and validly existing under the laws of the State of its organization, has full right, power, and authority to enter into this Agreement and that the party(ies) executing this Agreement on behalf of Ground Lessee has (have) full right, power, and authority to execute this Agreement on behalf of Ground Lessee, as reflected on the Secretary's certificate, furnished to Landlord on or prior to the Effective Date.

(b) Landlord represents and warrants that Landlord is duly formed and validly existing under the laws of the State of its organization, has full right, power, and authority to enter into this Agreement and that the party(ies) executing this Agreement on behalf of Landlord has (have) full right, power, and authority to execute this Agreement on behalf of Landlord, as reflected on the Secretary's certificate, furnished to Ground Lessee on or prior to the Effective Date.

20.14 **Force Majeure.** Whenever a period of time is herein prescribed for action to be taken by Landlord or Ground Lessee (except as to payment of rent or other sums due by either party hereunder), neither Landlord nor Ground Lessee, as applicable, shall be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays (collectively, "Force Majeure") due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations, or restrictions.

20.15 **Mechanic's Liens.** Ground Lessee will not cause or permit any mechanic's liens or other liens to be filed against the fee of the Premises or against Ground Lessee's leasehold interests (excluding any leasehold mortgage) in the Land or any building or improvements on the premises by reason of any work, labor, services, or materials supplied or claimed to have been supplied to Ground Lessee or anyone holding the Premises or any part of them through or under Ground Lessee. If such a mechanic's lien or materialman's lien is recorded against the Premises or any buildings or improvement on them, Ground Lessee must either cause it to be removed or, if Ground Lessee in good faith wishes to contest

Initial for Identification:

Little Elm EDC

43

Village at Lakefront

the lien, Ground Lessee will indemnify Landlord and hold it harmless from all liability for damages occasioned by the lien or the lien contest and will, in the event of a judgment of foreclosure on the lien, cause the lien to be discharged and removed before the judgment is executed.

- 20.16 **Right of Entry.** Ground Lessee must permit Landlord or its agents, representatives, or employee to enter the Premises for the purposes of inspection; determining whether or not Ground Lessee is complying with this Agreement; maintaining, repairing or altering the Premises; or showing the Premises to prospective Ground Lessees, purchasers, mortgagees, or beneficiaries under trust deeds.
- 20.17 **No Partnership or Joint Venture.** The relationship between Landlord and Ground Lessee is at all times solely that of landlord and Ground Lessee and may not be deemed a partnership or a joint venture.
- 20.18 **Prior Agreements Superseded/Rule of Construction.** This Agreement constitutes the parties' sole agreement and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter. The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party, regardless of the party supplying this Agreement.
- 20.19 **Delivery Does Not Constitute Offer.** The submission of this Agreement for examination by one party does not constitute an offer capable of acceptance and Ground Lessee shall have no rights with respect to this Agreement or the Premises until Landlord shall execute the Agreement and deliver the same to Ground Lessee. A binding agreement may only be formed by the execution of a written agreement duly signed by both parties.
- 20.20 **Rights and Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and either party's using any right or remedy will not preclude or waive its right to use any other remedy. The rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.
- 20.21 **Chamber of Commerce Membership.** Ground Lessee covenants and agrees to maintain during the Term of this Agreement the equivalent of a platinum membership or higher, with the Little Elm Chamber of Commerce.

[The Remainder of this Page Intentionally Left Blank]

Initial for Identification:

Little Elm EDC

43

Village at Lakefront

EXECUTED IN MULTIPLE ORIGINAL COUNTERPARTS, which constitute but one and the same instrument, as of the day and year first above written. Upon the final execution hereof by Landlord and Ground Lessee, the last to sign of such parties shall complete the date on the first page thereof.

LANDLORD:

**LITTLE ELM ECONOMIC
DEVELOPMENT CORPORATION**

a Texas non-profit corporation

By: _____
Ken Eaken, President

Date: _____

STATE OF TEXAS

§

§

COUNTY OF DENTON

§

This instrument was acknowledged before me on the ____ day of _____, 2021, by Ken Eaken, President of the Little Elm Economic Development Corporation, a Texas non-profit corporation, on behalf of said non-profit corporation.

Notary Public, State of Texas

Initial for Identification: _____
Little Elm EDC



Village at Lakefront

GROUND LESSEE:

VILLAGE AT LAKEFRONT, LLC,
a Texas limited liability company,

By: Village Management, Inc.,
a Texas corporation, Manager

By: John L. Bailey
John L. Bailey, President of Manager

STATE OF TEXAS

§

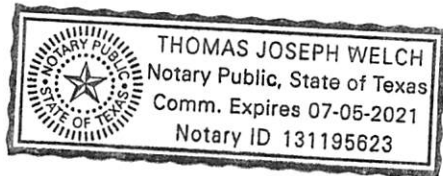
§

COUNTY OF DALLAS

§

This instrument was acknowledged before me on the 14 day of January, 2021,
by John L. Bailey, President of Village Management, Inc., as Manager of Village at Lakefront,
LLC, a Texas limited liability company, on behalf of said Texas company.

Thomas Joseph Welch
Notary Public, State of Texas



Initial for Identification: Little Elm EDC

Village at Lakefront

Exhibit A

LAND

Initial for Identification:

Little Elm EDC


Village at Lakefront

MINOR PLAT
PALLADIUM ADDITION
LOTS 1R-1 & 1R-2, BLOCK A
7.22 ACRES SITUATED IN THE RICHARD
HENSWORTH SURVEY, ABSTRACT NO. 377 AND
THE MATTHEW JONES SURVEY, ABSTRACT NO.
687, DENTON COUNTY, TEXAS.

1. ☐ **1. Name**
 2. ☐ **2. Address**
 3. ☐ **3. Phone**
 4. ☐ **4. E-mail**
 5. ☐ **5. Fax**
 6. ☐ **6. Other**
 7. ☐ **7. Comments**
 8. ☐ **8. Signature**
 9. ☐ **9. Date**
 10. ☐ **10. Initials**
 11. ☐ **11. Title**
 12. ☐ **12. Organization**
 13. ☐ **13. Department**
 14. ☐ **14. Position**
 15. ☐ **15. Other**
 16. ☐ **16. Comments**
 17. ☐ **17. Signature**
 18. ☐ **18. Date**
 19. ☐ **19. Initials**
 20. ☐ **20. Title**
 21. ☐ **21. Organization**
 22. ☐ **22. Department**
 23. ☐ **23. Position**
 24. ☐ **24. Other**
 25. ☐ **25. Comments**
 26. ☐ **26. Signature**
 27. ☐ **27. Date**
 28. ☐ **28. Initials**
 29. ☐ **29. Title**
 30. ☐ **30. Organization**
 31. ☐ **31. Department**
 32. ☐ **32. Position**
 33. ☐ **33. Other**
 34. ☐ **34. Comments**
 35. ☐ **35. Signature**
 36. ☐ **36. Date**
 37. ☐ **37. Initials**
 38. ☐ **38. Title**
 39. ☐ **39. Organization**
 40. ☐ **40. Department**
 41. ☐ **41. Position**
 42. ☐ **42. Other**
 43. ☐ **43. Comments**
 44. ☐ **44. Signature**
 45. ☐ **45. Date**
 46. ☐ **46. Initials**
 47. ☐ **47. Title**
 48. ☐ **48. Organization**
 49. ☐ **49. Department**
 50. ☐ **50. Position**
 51. ☐ **51. Other**
 52. ☐ **52. Comments**
 53. ☐ **53. Signature**
 54. ☐ **54. Date**
 55. ☐ **55. Initials**
 56. ☐ **56. Title**
 57. ☐ **57. Organization**
 58. ☐ **58. Department**
 59. ☐ **59. Position**
 60. ☐ **60. Other**
 61. ☐ **61. Comments**
 62. ☐ **62. Signature**
 63. ☐ **63. Date**
 64. ☐ **64. Initials**
 65. ☐ **65. Title**
 66. ☐ **66. Organization**
 67. ☐ **67. Department**
 68. ☐ **68. Position**
 69. ☐ **69. Other**
 70. ☐ **70. Comments**
 71. ☐ **71. Signature**
 72. ☐ **72. Date**
 73. ☐ **73. Initials**
 74. ☐ **74. Title**
 75. ☐ **75. Organization**
 76. ☐ **76. Department**
 77. ☐ **77. Position**
 78. ☐ **78. Other**
 79. ☐ **79. Comments**
 80. ☐ **80. Signature**
 81. ☐ **81. Date**
 82. ☐ **82. Initials**
 83. ☐ **83. Title**
 84. ☐ **84. Organization**
 85. ☐ **85. Department**
 86. ☐ **86. Position**
 87. ☐ **87. Other**
 88. ☐ **88. Comments**
 89. ☐ **89. Signature**
 90. ☐ **90. Date**
 91. ☐ **91. Initials**
 92. ☐ **92. Title**
 93. ☐ **93. Organization**
 94. ☐ **94. Department**
 95. ☐ **95. Position**
 96. ☐ **96. Other**
 97. ☐ **97. Comments**
 98. ☐ **98. Signature**
 99. ☐ **99. Date**
 100. ☐ **100. Initials**
 101. ☐ **101. Title**
 102. ☐ **102. Organization**
 103. ☐ **103. Department**
 104. ☐ **104. Position**
 105. ☐ **105. Other**
 106. ☐ **106. Comments**
 107. ☐ **107. Signature**
 108. ☐ **108. Date**
 109. ☐ **109. Initials**
 110. ☐ **110. Title**
 111. ☐ **111. Organization**
 112. ☐ **112. Department**
 113. ☐ **113. Position**
 114. ☐ **114. Other**
 115. ☐ **115. Comments**
 116. ☐ **116. Signature**
 117. ☐ **117. Date**
 118. ☐ **118. Initials**
 119. ☐ **119. Title**
 120. ☐ **120. Organization**
 121. ☐ **121. Department**
 122. ☐ **122. Position**
 123. ☐ **123. Other**
 124. ☐ **124. Comments**
 125. ☐ **125. Signature**
 126. ☐ **126. Date**
 127. ☐ **127. Initials**
 128. ☐ **128. Title**
 129. ☐ **129. Organization**
 130. ☐ **130. Department**
 131. ☐ **131. Position**
 132. ☐ **132. Other**
 133. ☐ **133. Comments**
 134. ☐ **134. Signature**
 135. ☐ **135. Date**
 136. ☐ **136. Initials**
 137. ☐ **137. Title**
 138. ☐ **138. Organization**
 139. ☐ **139. Department**
 140. ☐ **140. Position**
 141. ☐ **141. Other**
 142. ☐ **142. Comments**
 143. ☐ **143. Signature**
 144. ☐ **144. Date**
 145. ☐ **145. Initials**
 146. ☐ **146. Title**
 147. ☐ **147. Organization**
 148. ☐ **148. Department**
 149. ☐ **149. Position**
 150. ☐ **150. Other**
 151. ☐ **151. Comments**
 152. ☐ **152. Signature**
 153. ☐ **153. Date**
 154. ☐ **154. Initials**
 155. ☐ **155. Title**
 156. ☐ **156. Organization**
 157. ☐ **157. Department**
 158. ☐ **158. Position**
 159. ☐ **159. Other**
 160. ☐ **160. Comments**
 161. ☐ **161. Signature**
 162. ☐ **162. Date**
 163. ☐ **163. Initials**
 164. ☐ **164. Title**
 165. ☐ **165. Organization**

[illegible]



Town Council Meeting

Date: 01/19/2021
Agenda Item #: 6.
Department: Economic Development Corporation
Strategic Goal: Promote and expand Little Elm's identity
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Discussion and Action to approve Ground Lease Purchase Agreement for Certain Retail Property in Little Elm, Denton County, Texas. (Jennette Espinosa, EDC Executive Director)

DESCRIPTION:

This is a Ground Lease Purchase Agreement between Little ELm Economic Development Corporation (Landlord) and Village at Lakefront, LLC (Ground Lessee).

ChadNic purchased the development from Palladium/NE on December 29th and have requested that we split the retail and multifamily agreement into two separate agreements. Purpose for request is to enable developer to secure separate loans for refinancing. The Retail portion will now reflect 0.74 acres.

BUDGET IMPACT:

Lease amount and terms remain the same as the original agreement: Rent remains at \$16,117.00 annually of which payments start 12 months after the C.O. is obtained from tenant. Option for "eligible to purchase" is applicable the 8th lease year after tenant obtains the CO for the amount of \$257,875.00.

RECOMMENDED ACTION:

Staff recommends that Council approve the agreement as presented

Attachments

Ground Lease Purchase Agreement for Certain Retail Property

**GROUND LEASE PURCHASE AGREEMENT
FOR CERTAIN RETAIL PROPERTY IN LITTLE ELM, DENTON COUNTY, TEXAS**

THIS GROUND LEASE PURCHASE AGREEMENT (this “**Agreement**”) is made and entered into on the ____ day of _____, 2021 (the “**Effective Date**”) by and between **LITTLE ELM ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation, having its principal address as 100 W. Eldorado Parkway, Little Elm, Texas 75068-5060 (“**Landlord**” or “**Little Elm EDC**”), and **VILLAGE AT LAKEFRONT, LLC**, a Texas limited liability company, or its permitted assigns (“**Ground Lessee**” or “**Village at Lakefront**”). This Agreement, together with the “Ground Lease Purchase Agreement for Certain Multi-Family Property in Little Elm, Denton County, Texas, dated the same date as this Agreement and made by and between Little Elm EDC and Village at Lakefront (the “Multi-Family Agreement”) together amend and replace the Ground Lease Purchase Agreement dated August 12, 2013, between Little Elm Economic Development Corporation and Palladium USA International, Inc. as amended, and shall take effect only upon execution of both this Agreement and the Multi-Family Agreement.

WITNESSETH:

Subject to the terms, provisions and conditions of this Agreement, and each in consideration of the duties, covenants and obligations of the other hereunder, Landlord does hereby lease, demise, and let the Premises (as hereinafter defined) unto Ground Lessee, and Ground Lessee does hereby lease the Premises from Landlord.

ARTICLE I

CERTAIN DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings respectively indicated:

- 1.1 “**Additional Rent**” is defined in **Section 3.3** of this Agreement.
- 1.2 “**Affiliate**” means: (i) any entity controlled by, controlling or under joint control with an entity or any of the entity’s partners, shareholders or their affiliates; (ii) any entity which is owned in whole or in part, directly or indirectly, by an entity or any of the entity’s partners, shareholders or affiliates, or any entity which is otherwise affiliated with or related to an entity or any of the entity’s partners or shareholders; (iii) any entity which is the successor by merger or otherwise to all or substantially all of an entity’s assets used in connection with the Premises and liabilities including, but not limited to, any merger or acquisition pursuant to any public offering or reorganization to obtain financing and/or growth capital; or (iv) any entity to whom an entity or an Affiliate [per clauses (i) through (iii)] provides development, management, operational, financing and/or leasing services in connection with a project on the Land.

1.3 “**Annual Base Rent**” means an amount for each full Lease Year of the Term determined and paid as follows:

- (i) For the first five (5) years of the Term of the Lease, for the Retail/Commercial Development (as defined below), commencing on the Commencement Date, an amount equal to Sixteen Thousand One Hundred Seventeen and no/100 Dollars (\$16,117.00) and paid in equal monthly installments of One Thousand Three Hundred Forty-Three and 08/100 dollars (\$1,343.08) on the first day of each month.
- (ii) Commencing with the sixth (6th) Lease Year and on every fifth (5th) Lease Year thereafter (i.e., 11th, 16th, 21st, etc.), the Annual Rent shall be adjusted, if any, in direct proportion to the increase upon the formula set out below, based on the immediately preceding five (5) Lease Years. Each of the dates on which the Annual Rent is adjusted shall be referred to as an “Adjustment Date.” The adjustment shall be calculated as follows:

For the sixth (6th) through tenth (10th) Lease Years, as to the Retail/Commercial Development alone, the Annual Rent adjustment shall be calculated as the percentage increase in average annual Total Income of the Ground Lessee for such development during the first five (5) year period, over the annualized Total Income calculated in the month the Retail/Commercial Development achieves physical occupancy of at least eighty percent (80%). For the eleventh (11th) through fifteenth (15th) Lease Years, and thereafter after each five (5) year period, escalations, if any shall be calculated as the percentage increase in average annual Total Income of the Ground Lessee for such development during the most recent five (5) year period, over the preceding five (5) year base annual Total Income.

A rental adjustment called for in this section shall never result in a reduction of the Annual Rent from that paid immediately prior to the Adjustment Date.

- 1.4 “**Award**” is defined in **Section 18.1(a)** of this Agreement.
- 1.5 “**Business Days**” means any day other than a Saturday, Sunday or other day on which national banks are required or authorized to be open for business in Dallas, Texas.
- 1.6 “**Commencement Date**” means individually the date the certificate of occupancy for the Retail/Commercial Development is obtained.
- 1.7 “**Date of Taking**” is defined in **Section 18.1(b)** of this Agreement.
- 1.8 “**Default Rate**” is defined in **Section 3.2** of this Agreement.
- 1.9 “**Effective Date**” shall mean the date specified in the first sentence of this Agreement.

Initial for Identification:

Little Elm EDC




Village at Lakefront

- 1.10 “**Event of Default**” means any event or condition designated as an “Event of Default” in **Article XIV** of this Agreement.
- 1.11 “**Hazardous Substances**” is defined in **Section 9.1** of this Agreement.
- 1.12 “**Impositions**” is defined in **Section 8.1(a)** of this Agreement.
- 1.13 “**Imposition Commencement Date**” is defined in **Section 8.1(a)** of this Agreement.
- 1.14 “**Improvements**” means any improvements hereafter developed on the Land by Ground Lessee, or otherwise as authorized by Ground Lessee.
- 1.15 “**Indemnified Parties**” is defined in **Article VII** of this Agreement.
- 1.16 “**Land**” means the approximate the 0.74 acres allocated to the retail/commercial portion of the site, a legal description and/or depiction is attached hereto as **Exhibit A**, and including the following:
- (i) All and singular the rights and appurtenances pertaining to the Land and future Improvements, including, without limitation, all right, title and interest of Landlord in and to adjacent or appurtenant streets, roads, alleys, easements and rights-of-way, open or proposed, and all awards made or to be made in connection therewith (collectively, the “**Appurtenances**”);
 - (ii) If and to the extent the same would not comprise and be considered a part of the Appurtenances described above, all mineral rights, water rights, wastewater rights, utility rights and development rights associated with, or appurtenant to or otherwise allocable to, the Land and/or future Improvements;
 - (iii) All site plans, surveys, soil and substrata studies, water studies, environmental studies or audits, physical inspection reports, asbestos assessments, remedial plans, architectural renderings, plans and specifications, engineering plans and studies, floor plans, landscape plans and other plans diagrams or studies of any kind which relate, in whole or in part, to the Land and the future contemplated Improvements, together with any copyrights thereto; and
 - (iv) All rights, interest, privileges, appurtenances and properties in any way related to the properties described above.

Once the Survey has been obtained and approved by Landlord pursuant to **Section 4.2(b)**, Ground Lessee has the right to substitute the property description contained in the Survey for the property description contained in **Exhibit A**. If any re-subdivision plan(s) of the Land is (are) approved and filed with the Denton County Clerk’s office, Ground Lessee may substitute the platted lots per such approved and recorded subdivision plat(s) for the property description contained in **Exhibit A**.

Initial for Identification:

Little Elm EDC



Village at Lakefront

- 1.17 **"Lease Year"** means a period of twelve (12) months, with the first Lease Year beginning on the Commencement Date and for each subsequent Lease Year, each period of twelve (12) full calendar months thereafter.
- 1.18 **"Monthly Rent"** is as outlined in **Section 1.3 (i) and (ii)** of this Agreement.
- 1.19 **"Person"** means an individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.
- 1.20 **"Pre-Existing Conditions"** is defined in **Section 9.2** of this Agreement.
- 1.21 **"Premises"** means the Land and any and all buildings, utility facilities, drainage facilities, infrastructure, roads, driveways, curbs, paving, landscaping, signage, entrances, exits, surface parking and other improvements that may currently exist or hereafter be installed on the Land.
- 1.22 **"Prime Rate"** means the rate of interest being charged on the date in question by the Wall Street Journal (or its legal successor) as the "prime rate".
- 1.23 **"Rent"** herein includes all Annual Base Rent and Additional Rent.
- 1.24 **"Taking"** is defined in **Section 18.1(c)** of this Agreement.
- 1.25 **"Term"** is defined in **Section 2.2** of this Agreement.
- 1.26 **"Transfer"** means any conveyance, transfer, sale, assignment, sublease, Mortgage, pledge, encumbrance or the like, to any Person.
- 1.27 **"Transferee"** means any Person to whom a Transfer is made.
- 1.28 **"Unqualified Transferee"** means and refers to any Person:
- (i) Who is listed on a list of terrorists or terrorist organizations published by the United States government (e.g., the United States Secretary of State's list of Foreign Terrorist Organizations), as the same are amended and supplemented from time to time;
 - (ii) Who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001), or any similar prohibitions contained in the rules and regulations of the Office of Foreign Assets Control, as the same are promulgated and amended from time to time; or

Initial for Identification:

Little Elm EDC



Village at Lakefront

- (iii) Who has been indicted for any offense involving terrorism under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (as it may be amended from time to time, the "USA Patriot Act"), including any Person who commits any crime of conspiracy to commit, or aiding and abetting another Person to commit, a USA Patriot Act offense.

Notwithstanding the foregoing, "Unqualified Transferee" shall not include any Person who:

- (a) Is determined by Ground Lessee, in good faith and upon reasonable inquiry, not to be a Person described in the preceding clauses (i), (ii) or (iii) of this **Section 1.28**; and
- (b) Certifies to Landlord and Ground Lessee in writing that such Person is not a Person described in the preceding clauses (i), (ii) or (iii) of this **Section 1.28**.

In addition, in no event shall any Institutional Investor (as immediately hereinafter defined) be deemed to be an "Unqualified Transferee." As used herein, the term "Institutional Investor" means and refers to any of the following entities and/or their Affiliates: state and/or Federally chartered lending institutions, life insurance companies who are regularly engaged in the making of permanent real estate loans and/or in the acquisition, holding and/or disposition of commercial real estate development projects, real estate investment trusts (i.e. "REIT's"), pension, annuity and/or investment funds (or trustees or managers of such funds), any publicly traded company, and any branch or instrumentality of any one or more of (1) the United States of America, (2) any state comprising the United States of America, or (3) any city or municipality within any such states described in (2) preceding.

ARTICLE II

COMMENCEMENT AND TERM

- 2.1 **Option Payment.** On or before the Effective Date, Ground Lessee shall pay to Landlord a non-refundable payment in the sum of One Hundred Dollars (\$100.00) (such payment referred to herein as the "**Option Payment**").
- 2.2 **Term of Agreement.** The term of the Agreement (the "Term") shall commence on the Effective Date and shall terminate fifty (50) Lease Years after the Commencement Date for the Retail/Commercial Development. This Agreement will terminate without further notice when the Term specified in this **Section 2.2** expires and any holding over by Ground Lessee after the Term expires will not constitute a renewal of this Agreement or give Ground Lessee any rights under the Agreement in or to the Premises. In connection therewith, Ground Lessee shall have the right at Ground Lessee's expense, to examine and copy all books, records, files, documents, reports, and other information of the Landlord relating to the Premises, including all leases, service agreements, insurance policies, and

Initial for Identification:

Little Elm EDC

43

Village at Lakefront

construction and maintenance related documents; provided that such examination and copying shall not interfere with the Landlord's business operations.

Initial for Identification: _____
Little Elm EDC

 _____
Village at Lakefront

ARTICLE III

RENT

- 3.1 **Annual Base Rent.** For each Lease Year of the Term of this Agreement from and after the Commencement Date (except the first Lease Year), Ground Lessee agrees to pay the applicable Annual Base Rent as herein provided, in lawful money of the United States of America, without deduction, offset prior notice or demand, except as herein provided and except as provided by applicable law, and at such place or places as Landlord may from time to time designate. For each twelve (12) month Lease Year (except for the first Lease Year), Ground Lessee shall pay such rent in monthly installments (hereinafter referred to as “**Monthly Rent**”) in advance on or before the first (1st) day of each month in an amount equal to one-twelfth (1/12) of the applicable Annual Rent.
- 3.2 **Late Charge.** In the event that Ground Lessee shall fail to pay any portion of any installment of Monthly Rent on the date which is ten (10) days after the day on which such installment is due, there shall be added to such unpaid amount a late charge of ten percent (10%) of the amount owed, in order to compensate Landlord for the extra administrative expenses incurred. In addition, from and after the date which is thirty (30) days after the due date the total amount then due shall bear interest at the annual rate (the “**Default Rate**”) which is the Prime Rate, until paid.
- 3.3 **Additional Rent.** All ad valorem taxes, insurance premiums, utility costs and all other sums, liabilities, obligations and other amounts which Ground Lessee is required to pay or discharge pursuant to this Agreement, in addition to Annual Base Rent, together with any interest, penalty, or other sum which may be added for late payment thereof, shall constitute rent hereunder (“**Additional Rent**”). So long as no Event of Default then exists hereunder, Ground Lessee may pay Additional Rent directly to the person entitled thereto, provided that, Ground Lessee shall provide Landlord with written proof of such direct payment within ten (10) days of such payment.
- 3.4 **Place and Manner of Payment.** Subject to the further provisions hereof, the rent hereunder shall be payable to Landlord at the original or changed address of Landlord set forth in **Section 20.1** hereof or to such other person at such address as Landlord may designate from time to time in writing. In addition to other proper methods of payment, all payments of rent and other sums payable to Landlord by Ground Lessee under this Agreement may be made, and shall be deemed to have been properly made so long as actually received by Landlord, by the delivery to Landlord of Ground Lessee’s check, draft or wire transfer in the amount of such payment.
- 3.5 **Payments to Assignees and Third Parties.** If Landlord’s interest in this Agreement shall be assigned to a third party or if any sum accrued or to accrue hereunder shall ever be assigned or if any third party other than Landlord shall ever be entitled to collect such sum, then in any such event written notice shall be given by Landlord to Ground Lessee within thirty (30) days after such assignment.

Initial for Identification:

Little Elm EDC

43

Village at Lakefront

- (a) If and when Landlord's interest in this Agreement shall be owned by more than one person, firm, corporation or entity, such parties shall arrange among themselves for the joint execution of a notice specifying one party or agents and an address therefor for the receipt of notices to Landlord under this Agreement and to which all payments to Landlord under this Agreement shall be made, and notices delivered and payments made by Ground Lessee in accordance with such jointly executed notice shall constitute notice and payment to all parties included within the term "**Landlord**". Landlord understands that rent payments shall be made to one party as agent for any multiple parties and such will fulfill Ground Lessee's responsibilities for payments hereunder.
- (b) In the event that there is any dispute as to who shall be entitled to receive any sum payment hereunder, Ground Lessee shall, at its option, have the right to pay such sum into the registry of any court of competent jurisdiction located in Denton County, Texas, in connection with a bill of interpleader or similar proceeding filed by Ground Lessee, naming Landlord and such other claimants as parties. The making of such payment in connection with the filing of such proceeding shall discharge Ground Lessee from any further obligation for payment of the installment or rent so paid or deposited and Landlord and such other claimants shall be responsible for all costs of Ground Lessee in such regard, including attorney's fees.
- (c) In the event Landlord shall have given Ground Lessee notice that a third party is entitled to receive payment of any sum and if Ground Lessee thereafter timely pays such sum to the third party named in such notice, such payment to the third party named in the notice shall fully discharge Ground Lessee of any further obligation for such sum.

ARTICLE IV

DELIVERY OF THE PREMISES

- 4.1 **Delivery of the Premises.** Except as otherwise provided in this Agreement, Ground Lessee hereby accepts the Premises from Landlord in its "AS IS", "WHERE IS" condition without any representation or warranty by Landlord and with all faults. The execution of this Agreement by Ground Lessee shall be prima facie evidence that Ground Lessee has inspected the Premises and is or will be thoroughly familiar with its condition, and Ground Lessee hereby accepts the Premises as being in good and satisfactory condition, and suitable for Ground Lessee's intended purpose. THE PROVISIONS OF THIS ARTICLE IV HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION BY LANDLORD OF, AND GROUND LESSEE DOES HEREBY DISCLAIM, ANY AND ALL WARRANTIES BY LANDLORD, EXPRESS OR IMPLIED, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANOTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE SPECIFICALLY PROVIDED HEREIN.

Initial for Identification:

Little Elm EDC



Village at Lakefront


4.2 **Deliveries to Ground Lessee.**

- (a) Within ten (10) days after the Effective Date, Landlord will deliver to Ground Lessee true and correct copies of any contracts that affect or bind the Premises and any and all topographical maps, engineering studies, environmental reports and studies, soils reports, traffic studies and other similar materials, reports and studies that are in Landlord's possession or control. Furthermore, if requested by Ground Lessee, Landlord shall make a good faith effort to obtain an estoppel letter from each of the Ground Lessees under the Existing Leases, if any, which shall be in a form provided by Ground Lessee. Except as otherwise required by law, all information delivered by Landlord to Ground Lessee pursuant to this **Section 4.2(a)** shall be kept confidential, except that Ground Lessee may disclose such information to Ground Lessee's partners, lenders, officers, lawyers, accountants and employees to the extent necessary to evaluate the Premises.
- (b) Within thirty (30) days after the Effective Date, Landlord will deliver to Ground Lessee, at Ground Lessee's cost, for Ground Lessee's review and approval (i) a current on-the-ground metes and bounds survey of the Property (the "Survey"), and (ii) a commitment (the "**Title Commitment**") for a leasehold policy of title insurance from Chicago Title Company, 14755 Preston Road, Attn: Becky Brusilow, Dallas, Texas 75254 (the "**Title Company**"). At the expense of the Ground Lessee, Landlord will cause the Title Company to issue to Ground Lessee a leasehold policy in an amount of at least One Million Three Hundred Seventy-Two Thousand Eight Hundred Seventy-Five Dollars (\$1,372,875.00) effective as of the Commencement Date. Upon approval of the Survey by Ground Lessee and Landlord, the description of the Land contained in the Survey shall replace the property description currently listed on **Exhibit A**. Notwithstanding anything to the contrary contained herein, Landlord shall have an affirmative obligation to cure any of the following title matters within ninety (90) days of the Effective Date: (i) monetary obligations such as mortgages, liens, etc., and (ii) any encumbrances placed upon the Land by (or at the direction of) Landlord subsequent to the Effective Date of this Agreement.
- (c) Within ten (10) days after the Effective Date, Landlord will deliver to Ground Lessee for Ground Lessee's review and approval copies of any notices from any entity relating to relocation of the utilities serving the Premises.

4.3 **Zoning, Easements and Dedications.** From time to time throughout the Term of this Agreement, Landlord shall, upon the reasonable request of Ground Lessee, execute such consents, authorizations, applications, site plans, plats, requests, dedications, easements and other documents and instruments as may be necessary or desirable in connection with Ground Lessee's development of the Premises, including, without limitation, zoning applications, utility easements, street dedications and closure instruments, site plans and platting instruments; provided, however, the Land shall not be rezoned to any

Initial for Identification:

Little Elm EDC




Village at Lakefront

classification other than such zoning classification(s) that permits the development and use of the 0.74 acres of the Premises for retail/commercial development without the prior written consent of Landlord. Ground Lessee shall bear all expenses with respect to the matters described in this **Section 4.3** (including application fees, design and consultant costs and fiscal postings), except for the expenses of professionals engaged by Landlord, if any.

- 4.4 **Restrictions.** At the written request of Ground Lessee, Landlord shall, from time to time, execute and deliver or join in the execution and delivery of such documents as Ground Lessee reasonably considers appropriate, necessary or required to impose on the Premises or release the Premises from, as the case may be, such covenants, conditions and restrictions providing for, inter alia, exclusive uses of the Premises, or any part thereof, the establishment of common and parking areas, the establishment of mutual and reciprocal parking rights and the rights of ingress and egress, and other like matters, for the purpose of the orderly development of the Premises, but only so long as such covenants, conditions or restrictions terminate upon the expiration or termination of this Agreement.
- 4.5 **Refusal to Join.** Landlord shall not unreasonably fail or refuse to take any action required or contemplated pursuant to **Section 4.3** or **Section 4.4**. If Landlord unreasonably fails to execute and return to Ground Lessee any documents or to take action required by **Section 4.3** or **Section 4.4** within thirty (30) days of delivery to Landlord of such document or written request for such action, Landlord shall be in breach of this Agreement, whereupon Ground Lessee shall be entitled to exercise any and all remedies allowed to Ground Lessee by law or equity by reason of such failure, including, without limitation, Ground Lessee may recover from Landlord any actual damages suffered by Ground Lessee as a result of such breach. Notwithstanding the provisions of **Section 20.1**, a written request to Landlord to approve or execute a document imposing covenants, conditions or restrictions against the Premises shall not be deemed delivered until (a) the written request is actually received by an officer of Landlord, and (b) such officer or authorized signatory confirms such receipt in writing (or confirmation of receipt is provided by a third party). The Landlord will act in good faith with respect to the receipt of requests.
- 4.6 **Transfer at Termination.** At the termination of this Lease, except for a termination related to the exercise of Ground Lessee's Option to Purchase according to the provisions of **Section 4.8**, Improvements on the Premises shall automatically become the property of Landlord and Ground Lessee shall have no further interest in such Improvements.
- 4.7 **Sale of Land or Assignment of Landlord's Interest in Lease.** Before Landlord has entered into an agreement regarding the sale of all or any portion of the Land or assignment of all or any portion of the Landlord's interest in the Lease, and in any event prior to any such proposed sale or assignment to a third party that is not an Affiliate of Landlord, Landlord shall give notice to the Ground Lessee of the terms of the proposed sale or assignment ("**Notice of Sale**") and Ground Lessee shall have an option to purchase

Initial for Identification:

Little Elm EDC



Village at Lakefront

the Property on the terms set out in the Purchase Option in **Section 4.8** below, regardless of the price offered by a prospective purchaser or assignee, and regardless of the time restriction in **Section 4.8**. If Ground Lessee does not exercise its option to purchase within fifteen (15) days after delivery of the Notice of Sale, Landlord shall be free to sell the Land or assign landlord's interest in the Lease on the terms set out in the Notice of Sale, without any requirement of consent on the part of Ground Lessee, but subject to the terms and conditions of this Lease, including Ground Lessee's option to purchase the Land in accordance with **Section 4.8** below.

- 4.8 **Ground Lessee's Option to Purchase.** At any time during the Term of this Agreement if triggered by a Notice of Sale received from Landlord, or, after the first eight (8) Lease Years (the "Lockout Period") at Ground Lessee's sole option, Ground Lessee or its successor may, at its option, give written notice to Landlord that Ground Lessee will purchase the Land from Landlord for the price of Two Hundred Fifty-Seven Thousand Eight Hundred Seventy-Five and 00/100 Dollars (\$257,875.00), by submitting a real estate sale contract(s) to Landlord containing the usual provisions set forth in the standard State Bar of Texas Real Estate Sale Contract form, including the obligation of Landlord to furnish an Owner's Title Policy at Closing at Landlord's expense but expressly excluding any warranty or representation regarding the Premises or Land except the warranty of title. Ground Lessee shall agree to close such purchase within thirty (30) days of the full execution of said contract. Any Base Rent payments made from the time the notice of exercise of the option to purchase is delivered, until the Closing of the acquisition, shall be credited to the purchase price.
- 4.9 **Release of Landlord.** If Landlord sells or transfers all or part of the Premises and as part of the transaction assigns its interest as Landlord in this Lease, then as of the effective date of the sale, assignment, or transfer, Landlord will have no further liability under this Lease to Ground Lessee, except with respect to liability matters that have accrued and are unsatisfied as of that date. Underlying this release is the parties' intent that Landlord's covenants and obligations under this Lease will bind Landlord and its successors and assigns only during and in respect of their respective successive periods of ownership of the fee, provided that Landlord, in such event, complies with the provisions of **Section 4.7** and **Section 4.8** above.

Initial for Identification:

Little Elm EDC


Village at Lakefront

ARTICLE V

INDEPENDENT COVENANTS

It is the intention of the parties hereto that the obligations of Ground Lessee hereunder shall be separate and independent covenants and agreements, that the Annual Base Rent and all other sums payable by Ground Lessee hereunder shall continue to be payable in all events and that the obligations of Ground Lessee hereunder shall continue unaffected, unless the requirement to pay or perform the same shall have been abated, terminated, or modified pursuant to a provision of the Lease.

ARTICLE VI

USE

- 6.1 **Permitted Uses.** The Premises may be used and occupied by Ground Lessee (and its permitted assignees and sub-ground Lessees) for any lawful use or purpose within the zoning requirements for such Land, excluding the following uses: body art or tattoo establishment; retail tobacco store; gaming establishment; sexually oriented business; and full service sit-down restaurant use for the retail/commercial building to be located on the Land.
- 6.2 **Compliance with Laws, etc.** Ground Lessee shall, at Ground Lessee's sole cost and expense, comply with all federal, state, county and municipal laws, ordinances, orders, rule and regulations applicable to the use, condition, structure or occupancy of the Premises. Ground Lessee may not use all or any part of the Premises or any building situated on them for any use or purpose that violates any valid and applicable law, regulation, or ordinance of the United States, the State of Texas, the County of Denton, the Town of Little Elm, or other lawful authority with jurisdiction over the Premises. Ground Lessee is not considered to have violated this provision unless:
- a. Landlord has notified Ground Lessee in a writing specifying the alleged violation;
 - b. There has been a final adjudication by a court of competent jurisdiction that the Ground Lessee has violated the law, regulation, or ordinance specified in the notice;
 - c. The specified law, regulation, or ordinance is valid and applies to the premises; and
 - d. Ground Lessee failed to cure the specified violation within a reasonable period of time.

Initial for Identification:

Little Elm EDC



Village at Lakefront

ARTICLE VII

INDEMNITY

Ground Lessee shall indemnify, protect and save Landlord, its successors and assigns, shareholders, trustees, directors, employees, and officers ("**Indemnified Parties**"), harmless from and against, and shall reimburse such parties for all liabilities, obligations, losses, claims, damages, penalties, costs, charges, judgments and expenses including without limitation, reasonable attorneys' fees and expenses which may be imposed upon or incurred or paid by or asserted against such Indemnified Parties by reason of or in connection with any of the following occurring during the Term of this Agreement (except to the extent caused by the negligence or misconduct of such Indemnified Parties):

- (a) any accident, injury, death or damage to any person or property occurring in, on or about the Premises;
- (b) all construction and any changes, alterations, repairs and anything done in, on or about the Premises or any part thereof in connection with such changes, alterations and repairs;
- (c) any negligent act on the part of Ground Lessee or any of its agents, contractors, servants, employees, sub-Ground Lessees, licenses or invitees;
- (d) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof; or
- (e) the condition of the Premises, or of any buildings or other structures now or hereafter situated thereon, or the fixtures or personal property thereon or therein.

ARTICLE VIII

IMPOSITIONS, UTILITIES, MAINTENANCE, CONSTRUCTION

8.1 Impositions.

- (a) Subject to Ground Lessee's right to contest such charges pursuant to **Section 8.1 (c)** below, from and after the Commencement Date (hereinafter referred to as the "**Imposition Commencement Date**"), Ground Lessee shall pay all real estate taxes, assessments for local improvements, water, and storm and sanitary sewer rates and charges (other than ordinary charges for utility services as provided in **Section 8.2**), licenses and permit fees, and other governmental levies and charges, which are assessed, levied, confirmed, imposed, or become a lien upon the Premises (or any portion thereof), or become payable during the Term of this Agreement (the "**Impositions**"), payment thereof to be made before any fine, penalty, interest, or cost may be added thereto for the nonpayment thereof;

Initial for Identification:

Little Elm EDC



Village at Lakefront

provided, however, that any Imposition relating to a fiscal period of the taxing authority a portion of which is included within the Term hereof and a portion of which is included in a period of time before the Imposition Commencement Date or after the expiration of the Term (for reasons other than Ground Lessee's default hereunder) shall be adjusted between Landlord and Ground Lessee as of the date for payment of Impositions occurring during the first Lease Year or such expiration date, as applicable. If Ground Lessee does not timely pay such Impositions (or contest such payment pursuant to **Section 8.1 (c)** below) Landlord may pay the same and such amount so paid shall be due and payable to Landlord as Additional Rent upon written demand therefor by Landlord. Ground Lessee shall provide Landlord with written evidence of its payment of any Impositions within fifteen (15) days after request from Landlord.

- (b) Nothing hereinabove contained shall require Ground Lessee to pay any franchise, estate, inheritance, succession, capital levy, stamp levy, stamp tax, margin tax, or transfer tax of Landlord or any income, excess profits, or revenue tax, or any other tax, assessment, charge, or levy based on or measured by the gross income or capital stock of Landlord or upon any rental payable by Ground Lessee under this Agreement. To the extent received by Landlord, Landlord covenants to forward promptly to Ground Lessee any and all notices or statements relating to taxes, assessments, fees, water, sewer, or other rent rate or charge, excise, levy license fee, permit fee, inspection fee, or other authorization fee. Ground Lessee shall furnish to Landlord copies of receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Landlord evidencing payment of the Impositions before any fine, penalty, interest or cost may be added thereto for nonpayment thereof. The certificate, advice or bill of nonpayment of any Imposition from the appropriate official designated by law to make or issue the same or to receive payment of any Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice, or bill of nonpayment.
- (c) So long as there is then no uncured default hereunder, Ground Lessee may contest the collection or assessment of any Imposition, tax, assessment, fee, water or sewer charge or rate, excise, or levy by legal proceedings or other appropriate action. If Ground Lessee so elects to contest such amounts, Ground Lessee shall, prior to the prosecution or defense of any such claim, notify Landlord in writing of its decision to pursue such contest and, to the extent procedurally required, Ground Lessee shall pay the amount in question prior to initiating the contest or otherwise shall provide adequate security to Landlord prior to initiating the contest.

8.2 **Utilities.** From and after the Commencement Date, Ground Lessee shall be responsible for and promptly pay all charges incurred for all utility services to the Premises, including, but not limited to, telephone service, sanitary and storm sewer, water, natural gas, light, power, heat, steam, communications services, garbage collection, and electricity arising out of Ground Lessee's use, occupancy, and possession of the Premises during the Term of this Agreement. Ground Lessee shall also pay for all maintenance upon such utilities. In no

Initial for Identification:

Little Elm EDC



Village at Lakefront

event shall Landlord be liable for any interruption or failure of utility service to the Premises, except to the extent caused by Landlord's negligent acts or omissions.

- 8.3 **Maintenance Repairs.** From and after the Commencement Date, subject to the provisions of **Article XVII** (Destruction and Severability) and **Article XVIII** (Condemnation) below relating to destruction of or damage to the Premises, Ground Lessee agrees that at its own expense it will keep and maintain the Premises, including, without limiting the generality of the foregoing, all improvements and landscaping (including mowing of grass and care of shrubs), in good, clean, condition and repair. Prior to the expiration or termination of this Agreement, Ground Lessee may remove from the Premises all of the personal property and equipment located thereon.
- 8.4 **Rules Governing Construction, Additions, and Alterations.** The following rules govern construction, additions, and alterations of buildings or other improvements on the Premises:
- a. Ground Lessee and any Sublessee must, at its own expense, engage a licensed architect or engineer to prepare plans and specifications for constructing any building or improvements or additions or alterations to any buildings or improvements and submit the same to the Landlord for approval in advance of any such construction, which such approval shall not be unreasonably withheld or delayed.
 - b. The following items do not require submission to, and approval by Landlord:
 - (i) Minor repairs and alterations necessary to maintain existing structures and improvements in a useful state of repair and operation.
 - (ii) Changes and alterations required by an authorized public official with authority or jurisdiction over the buildings or improvements, to comply with legal requirements.

ARTICLE IX

HAZARDOUS SUBSTANCES

- 9.1 **Environmental Laws.** For purposes of this **Article IX**, "**Environmental Laws**" means the State and Federal laws which regulate Hazardous Substances (as hereinafter defined), and material, waste, or pollutants, in quantities or concentrations the generation, storage, disposal, handling, release (or threatened release), treatment, discharge, or emission of which is regulated, prohibited, or limited under: (i) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended ("**RCRA**") (42 U.S.C. Sections 6901 et seq.), (ii) the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, as now or hereafter amended

Initial for Identification:

Little Elm EDC


Village at Lakefront

("CERCLA"), (42 U.S.C. Sections 9601 et seq.), (iii) the Clean Water Act, as now or hereafter amended ("CWA") (33 U.S.C. Sections 1251 et seq.), (iv) Toxic Substances and Control Act, as now or hereafter amended ("TSCA") (15 U.S.C. Section 2601 et seq.), (v) the Clean Air Act, as now or hereafter amended ("CAA") (42 U.S.C. Section 7401 et seq.), (RCRA, CERLA, CWA, TSCA and CAA are collectively referred to herein as the "**Federal Toxic Waste Laws**"), (vi) any local, state or foreign law, statute, regulation, or ordinance analogous to any of the Federal Toxic Waste Laws, and (vii) any other federal, state, local, or foreign law (including any common law), statute, regulation, or ordinance regulating, prohibiting, or otherwise restricting the placement, discharge, release, threatened release, generation, treatment, or disposal upon or into any environmental media of any substance, pollutant, or waste which is now or hereafter classified or considered to be hazardous or toxic. All of the laws, statutes, regulations and ordinances referred to in subsections (vi) and (vii) above, together with the Federal Toxic Waste Laws are collectively referred to herein as "**Toxic Waste Laws**". The term "**Hazardous Substances**" shall also include, without limitation the following in quantities or concentrations which are regulated by State of Federal Environmental Laws, (a) gasoline, diesel fuel, fuel oil, motor oil, waste oil, and any other petroleum hydrocarbons, including any additives or other by-products associated therewith, (b) asbestos and asbestos-containing materials in any form, (c) polychlorinated biphenyls, and (d) any substance the presence of which on the Premises: (x) requires reporting or remediation under any Toxic Waste law; (y) causes or threatens to cause a nuisance on the Premises or poses or threatens to pose a hazard to the health or safety of persons on the Premises; or (z) which, if it emanated or migrated from the Premises, could constitute a trespass, nuisance or health or safety hazard to persons on adjacent property.

- 9.2 **Hazardous Substances on Premises Prohibited.** Ground Lessee shall not conduct, permit, or authorize Hazardous Substances on the Premises without prior written authorization by Landlord, except for such quantities which are routinely utilized in connection with the lawful use of the Premises, all of which are to be stored, used, handled, and disposed of in full compliance with all Toxic Waste Laws. Nothing contained herein shall be construed as imposing upon Ground Lessee any responsibility for any Hazardous Substances located in, on, or under the Land on or prior to the Effective Date (the "**Pre-Existing Conditions**"). If Ground Lessee discovers any Pre-Existing Conditions after the Effective Date, Ground Lessee shall have the option of either remediating such Pre-Existing Condition to the extent required by the Toxic Waste Laws and offsetting the cost thereof (including costs of investigations, reports, studies and consultants) against the Annual Base Rent, or terminating this Agreement by giving Landlord at least thirty (30) days prior written notice of such termination. However, in no event will Landlord have any direct responsibility to Ground Lessee for any unknown Pre-Existing Condition.

9.3 **Compliance with Toxic Waste Laws.**

- (a) Ground Lessee shall, at its sole cost and expense, comply with all applicable Toxic Waste Laws, provided that nothing contained herein shall be construed as

Initial for Identification:

Little Elm EDC

43

Village at Lakefront

imposing upon Ground Lessee any responsibility for compliance with applicable Toxic Waste Laws in respect of Pre-Existing Conditions.

- (b) Notwithstanding anything contained herein to the contrary, Ground Lessee shall indemnify and hold harmless Landlord from any and all liabilities, claims, causes of action, penalties, fines, costs, expenses, reasonable attorneys' fees, remedial or response costs, investigatory costs and other similar expenses arising out of or otherwise attributable to any violation by Ground Lessee or the Premises of any Toxic Waste Law, unless such violation is the result of Pre-Existing Conditions, or has migrated to the Land from somewhere other than the Land or its improvements. Such indemnity obligation shall survive any termination or expiration of this Agreement.

- 9.4 **Landlord's Warranties.** Except for pre-existing conditions generated at 111 Main Street, Little Elm, Texas and referenced in a Reed Engineering Report, dated May 22, 2013, Landlord further represents and warrants that to the best of Landlord's actual knowledge: (i) no leak, spill, discharge, emission or disposal of hazardous or toxic substances has occurred on or about the Land; (ii) the soil, groundwater, soil vapor on or under the Premises is free of toxic or hazardous substances as of the date hereof; and (iii) that there has been no violation of any Toxic Waste Law.

ARTICLE X

INSURANCE

10.1 **Ground Lessee's Insurance.**

- (a) Ground Lessee shall, at its sole cost and expense, obtain and maintain insurance upon and relating to the Premises by "broad peril" form of insurance policy(ies) in amounts equal to 80% of the full insurable replacement value of the improvements located on the Land. The requirement for broad peril coverage shall be met through "builder's risk" insurance coverage during the period of construction of improvements on the Land. All such policies of insurance shall insure Ground Lessee, Landlord, and Ground Lessee's mortgagee, as their interests may appear. Ground Lessee may meet its obligations hereunder if a Sublessee supplies such insurance meeting the requirements of this subsection at its sole cost and expense.
- (b) Ground Lessee shall, at its sole cost and expense, obtain and maintain a commercial General Liability Insurance policy and in the event that construction is commenced on the Premises, Construction Liability Insurance, insuring Landlord, Ground Lessee's mortgagee and Ground Lessee against all claims, demand, or actions arising out of or in connection with injury to or death of a person or persons and for damage to or destruction of property occasioned by or arising out of or in connection with the use or occupancy of the Premises, the limits of such policy or policies to be in such amounts as may be reasonable

Initial for Identification:

Little Elm EDC



Village at Lakefront

and customary in Denton County, Texas for similar properties with the same type of improvements as may from time to time be situated upon the Land but not less than \$500,000.00 for property damage, \$1,000,000.00 for one person and \$2,000,000 for one accident for personal injury. Ground Lessee may meet its obligations hereunder if a Sublessee supplies such insurance meeting the requirements of this subsection at its sole cost and expense.

- (c) All policies of insurance shall be issued by an insurance company or companies having a General policyholder's rating of not less than A as stated in the most current available Best's insurance reports (or comparable rating service if Best's reports are not currently being published), licensed to do business in the State of Texas. All policies of insurance shall be in form and substance reasonably satisfactory to Landlord. Ground Lessee shall deliver to Landlord certificates or copies of all policies of required insurance fifteen (15) days prior to the expiration of each of policies required hereunder. Ground Lessee shall furnish Landlord with a certificate of insurance in force or replacement coverage and meeting the standards hereinabove provided, all as required by this Agreement. All such policies shall contain a provision that such policies will not be canceled or materially amended, including any reduction in the scope or limits of coverage, without ten (10) days' prior written notice to Landlord. In the event Ground Lessee fails to maintain, or cause to be maintained, or deliver and furnish to Landlord certified copies of policies of insurance required by this Agreement, Landlord may procure such insurance for the benefit only of Landlord for such risks covering Landlord's interests, and Ground Lessee will pay all premiums thereon within thirty (30) days after demand by Landlord. In the event Ground Lessee fails to pay such premiums (or reimburse Landlord) upon demand the amount of all such premiums shall bear interest at the Default Rate.

- 10.2 **Waiver of Subrogation.** Notwithstanding anything contained in this Agreement to the contrary, each party hereto hereby waives any and every claim which arises or may arise in its favor and against the other party hereto, or anyone claiming through or under them, by way of subrogation or otherwise, during the Term for any and all loss of, or damage to, any of its property (whether or not such loss or damage is caused by the fault or negligence of the other party or anyone for whom such other party may be responsible), which loss or damage is covered, or is required by this Agreement to be covered, by valid and collectible fire and extended coverage insurance policies (but not as to loss or damage covered by self-insurance as permitted hereby). Such waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Agreement with respect to any loss or damage to property of the parties hereto.

Initial for Identification:

Little Elm EDC



Village at Lakefront

ARTICLE XI

ASSIGNMENT AND SUBLETTING

- 11.1 **Right to Sublet.** Ground Lessee may from time to time sublet (or sub-ground lease) the Premises in whole or in part at any time and from time to time, without Landlord's consent. The making of any such sublease or ground lease shall not release Ground Lessee from, or otherwise affect in any manner, any of Ground Lessee's obligations hereunder.

Notwithstanding anything contained herein to the contrary, Ground Lessee may at any time assign this Agreement to an Affiliate without the prior written consent of Landlord.

- 11.2 **Right to Transfer.** Ground Lessee may, without the prior written consent of Landlord, Transfer its interest in and under this Agreement, in whole or in part, for any use permitted under Section 6.1 above, provided however Ground Lessee may not transfer to an Unqualified Transferee. Ground Lessee shall not be relieved of liability for the performance of its obligations under this Agreement by reason of any such Transfer, with respect to the interest Transferred unless Ground Lessee delivers to Landlord a written instrument, in recordable form, pursuant to which the Transferee assumes, from and after the effective date of the Transfer, all of the obligations of Ground Lessee in respect of the interest Transferred; provided, however, that in the event the Transfer occurs by way of the foreclosure of a Deed of Trust, Ground Lessee shall thereupon be relieved of any further liabilities or obligations accruing from and after the date of foreclosure, regardless of whether the Deed of Trust (or other Person acquiring Ground Lessee's interest in and under this Agreement) assumes Ground Lessee's obligations hereunder. In the event of any transfer by Ground Lessee hereunder, the Transferee shall be entitled to the notices and rights conferred on the Ground Lessee under **Section 4.7** and **4.8** and shall be burdened by the obligations provided to the Landlord under **Section 4.9**.
- 11.3 **Transfer Restrictions.** Ground Lessee shall not, without first obtaining the prior written consent of Landlord, transfer its interest in or under this Agreement, in whole or in part, to any Unqualified Transferee as defined in **Section 1.28**.

ARTICLE XII

QUIET ENJOYMENT

- 12.1 **Quiet Enjoyment.** Provided Ground Lessee pays the rent payable hereunder as and when due and payable and keeps and fulfills all of the terms, covenants, agreements and conditions to be performed or observed by Ground Lessee hereunder, Ground Lessee shall at all times during the Term have quiet and peaceable enjoyment of the Premises.
- 12.2 **Warranty of Title.** Landlord represents and warrants that Landlord is the sole owner of fee simple title in and to the Land, subject only to the matters set forth in the Title Commitment, and that Landlord, subject to Town Council of the Town of Little Elm, alone has the full and sole right to lease the Premises to Ground Lessee without the consent or

Initial for Identification:

Little Elm EDC

43

Village at Lakefront

joinder of any other party (which consent or joinder will have been obtained at the time of execution of this Ground Lease Purchase Agreement).

ARTICLE XIII

HOLDOVER

Upon the termination of this Agreement (whether by the expiration of the Term of this Agreement or otherwise) Ground Lessee must immediately vacate the Premises, but if Ground Lessee fails to do so then, without the execution of a new lease by Landlord and Ground Lessee, Ground Lessee, at the option of Landlord, shall immediately become a holdover month-to-month Ground Lessee of the Premises at one hundred fifty percent (150%) of the Monthly Rent effective in the month immediately preceding the termination of this Agreement, plus all Additional Rent and other sums payable by Ground Lessee hereunder, and under all other terms, conditions, provisions, and obligations of this Agreement.

ARTICLE XIV

DEFAULT AND REMEDIES

14.1 **Events of Default.** The occurrence of one or more of the following events shall constitute an event of default (each being referred to as an “**Event of Default**”) pursuant to the terms of this Agreement:

- (a) The failure of Ground Lessee to comply with or to observe any terms, provisions, or conditions of this Agreement performable by and obligatory upon Ground Lessee, excluding the rent and other payment provisions hereof, within thirty (30) days after written notice by Landlord plus such additional time as is needed to cure the same so long as Ground Lessee (or its mortgagee) has commenced such cure within such 30-day period and such cure thereafter is continuously and diligently undertaken by Ground Lessee (or its mortgagee);
- (b) From the Commencement Date, the failure of Ground Lessee to pay when due any portion of any installment of Monthly Rent or any other monetary charge due from Ground Lessee hereunder and such failure continues for thirty (30) days after written notice thereof from Landlord; provided, however, Landlord shall not be required to give such 30 day notice, and Ground Lessee shall not be entitled to same, more than two (2) times during any twelve (12) month period, and any subsequent failure of Ground Lessee to pay a monetary charge hereunder during such 12-month period shall be an Event of Default upon the occurrence thereof without any further notice whatsoever to Ground Lessee;
- (c) The taking of all of Ground Lessee’s leasehold estate by execution or other process of law other than as provided in **Article XVIII**.

Initial for Identification:

Little Elm EDC

43

Village at Lakefront

- 14.2 **Landlord Remedies.** Upon the occurrence of any Events of Default enumerated in **Section 14.1** hereof, but subject to the rights of mortgagees and their designees as provided in **Article XV** hereof, Landlord shall have the right to pursue and enforce any and all rights and remedies available to Landlord hereunder or at law or equity, including, without limitation, (i) the right to terminate this Agreement by written notice to Ground Lessee and the expiration of any applicable cure periods as provided in this Ground Lease, and (ii) the right to terminate Ground Lessee's right of possession of the Premises (without terminating this Agreement).
- 14.3 **No Waiver by Landlord.** Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law or equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions, and covenants herein contained. Landlord's acceptance of rent following an Event of Default hereunder shall not be construed as Landlord's waiver of any future Event of Default. No waiver by Landlord of any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of such default.
- 14.4 **Attorney's Fees.** In any case where Landlord or Ground Lessee employs attorneys to protect or enforce its rights hereunder and prevails, then the non-prevailing party agrees to pay the other party reasonable attorney's fees and costs of suit incurred by the prevailing party.
- 14.5 **Bankruptcy of Ground Lessee.** The bankruptcy or insolvency of Ground Lessee, an assignment by Ground Lessee for the benefit of Ground Lessee's creditors, the appointment of a trustee, liquidator or receiver for Ground Lessee, reorganization by Ground Lessee, an admission by Ground Lessee of its inability to pay its debts as the same become due and/or the inability to pay its debts as the same become due and/or the seeking or granting of any order of relief in any proceeding commenced by or against Ground Lessee under any present or future federal or state bankruptcy, insolvency or creditors' relief statute shall not affect this Agreement so long as all covenants of Ground Lessee are continued in performance by Ground Lessee or its successors or legal representatives. Furthermore, with respect to the rights of a mortgagee, all notice of default and the periods for curing the same shall be extended for such period of time as Ground Lessee and/or its interest under this Agreement are involved in any bankruptcy, receivership, custodial or other legal proceeding which prevents such mortgagee from curing any such default and/or obtaining title to the interest of Ground Lessee under this Agreement and/or actual possession of the Premises, provided that during such interim period the mortgagee under a mortgage of the leasehold estate, or its designee, shall pay/or cause to be paid all rents, taxes, assessments, and insurance premiums provided for hereunder as and when they become due under the terms of this Agreement.

Initial for Identification:

Little Elm EDC



Village at Lakefront

- 14.6 **Default of Landlord.** To the extent Landlord has obligations under this Ground Lease, if Landlord defaults in its obligations, Ground Lessee shall provide Landlord with thirty (30) days' notice within which to cure such default. In the event Landlord has not cured such default within the applicable time, then Ground Lessee shall have the right to pursue and enforce any and all rights and remedies available to Ground Lessee hereunder, or at law or equity, including specific performance.

ARTICLE XV

FINANCING

- 15.1 **Right to Finance.** Ground Lessee shall from time to time and at any time have the right to encumber by one or more mortgages, deeds of trust, security agreements, or other instruments in the nature thereof, as security for one or more loans, indebtednesses or obligations, Ground Lessee's right to use and occupy the Premises, the leasehold estate created hereby, all right, title and interest in and to any improvements at any time located on or partially on the Premises, and any other property so affixed to said land, buildings or improvements as to be a part thereof. Any such indebtedness or obligation and any such mortgage, deed of trust or security agreement securing same shall be for such amount and on such other terms and conditions as Ground Lessee may agree to in its sole discretion; provided that any such mortgage, deed of trust, or security agreement shall at all times be subject to the terms and provisions of this Agreement and the rights, titles and interest of Landlord arising by virtue of this Agreement. **IN NO EVENT WILL LANDLORD BE REQUIRED TO "SUBORDINATE" LANDLORD'S FEE SIMPLE ESTATE IN THE LAND FOR FINANCING OBTAINED BY GROUND LESSEE UNDER THIS SECTION 15.1, (I.E., LANDLORD WILL NOT EXECUTE ANY DEED OF TRUST SECURING ANY INDEBTEDNESS OF GROUND LESSEE).**
- 15.2 **Notice to Mortgagee.** If at any time after execution and recordation in Denton County, Texas, of any such mortgage, deed of trust, or other instrument in the nature thereof, Ground Lessee or the mortgagee therein shall notify Landlord in writing that any such mortgage or deed of trust has been given and executed by Ground Lessee, and shall furnish Landlord with the address to which such mortgagee desires copies of notices to be mailed (or designate some person or corporation as the agent and/or representative of such mortgagee for the purpose of receiving copies of notices), Landlord hereby agrees that Landlord will thereafter, in addition to any other notice Landlord shall be required by this Agreement to deliver to such mortgagee, mail to each such mortgagee or agent thereof, at the address so given, by registered mail, postage prepaid, return receipt requested, and at the same time that such notice is placed in the mail or otherwise delivered to Ground Lessee, duplicate copies of any and all notices in writing which Landlord may from time to time give or serve upon Ground Lessee under and pursuant to the terms and provisions of this Agreement, including, but not by way of limitation, any notices of default required to be sent by virtue of **Article XIV** hereof. Landlord shall also notify each such mortgagee of any proposed action requiring the prior approval of such mortgagee hereunder and any casualty or condemnation loss.

Initial for Identification:

Little Elm EDC

43

Village at Lakefront

15.3 **Right to Cure.** Any such mortgagee, at the option of such mortgagee, acting either directly or indirectly through a designee, may pay any of the rents due hereunder or may affect any insurance, or may pay any taxes and assessments, or may make any repairs and improvements, or may make any deposits, or may do any other act or thing or make any other payment required of Ground Lessee by the terms of this Agreement, or may do any act or thing which may be necessary and proper to be done in the observance of the covenants and conditions of this Agreement, or to prevent the forfeiture of this Agreement; and all payments so made and all things so done and performed by such mortgagee or designee shall be effective to prevent a forfeiture of the rights of Ground Lessee hereunder as the same would have been if timely done and performed by Ground Lessee instead of by any such mortgagee or designee. The mortgagee shall be given a separate fifteen (15) day written notice of Ground Lessee's failure to cure an Event of Default after any notice and period to cure, during which fifteen (15) day period the mortgagee shall have the right to cure and monetary default, and if any non-monetary default cannot reasonably be cured in this fifteen (15) day period, the right to commence and thereafter diligently and continuously pursue the required cure to completion.

15.4 **Option for New Lease.** Upon termination of this Agreement, for any reason, other than expiration of its Term, Landlord shall deliver written notice of such termination to any mortgagee about which Landlord has been notified pursuant to Section 15.2 hereof and such mortgagee or its designee shall have the option, within forty-five (45) days after receipt of written notice of such termination, to elect to receive from Landlord a new lease of the Premises for the unexpired balance of the Lease Term, or any renewal and extension hereof, on the same terms and conditions as in this Agreement set forth, and Landlord agrees to execute such new lease provided such mortgage holder or designee:

- (a) shall forthwith cure any monetary default of Ground Lessee;
- (b) shall undertake forthwith to remedy any non-monetary default of Ground Lessee, excluding those which by their nature are incapable of cure by any other person or corporation; and
- (c) shall thereafter observe and perform all covenants and conditions in such Lease contained on the part of Ground Lessee to be observed and performed (including the payment of rents hereunder).

In the event that more than one (1) mortgagee or designee shall exercise the foregoing option for a new lease, Landlord shall enter into a new lease with the mortgagee, or the designee of such mortgagee, having the highest priority among those mortgagees which exercised the option.

15.5 **No Liability.** No such mortgagee of the rights or interests of the Ground Lessee or its designee hereunder shall be or become liable to Landlord as an assignee of this Agreement or otherwise, unless such mortgagee or designee expressly assumes by written instrument such liability, and no assumption shall be inferred from or result from

Initial for Identification:

Little Elm EDC

43

Village at Lakefront

foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such mortgage or deed of trust or other instrument or from a conveyance from Ground Lessee pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Ground Lessee under the terms of this Agreement.

15.6 **Modifications.**

- (a) Landlord shall not accept any surrender of or agree to any termination of or enter into any modification or amendment of this Agreement without the prior written consent thereto by any such mortgagee, and any attempt to do so without such written consent shall be void and of no force and effect.
- (b) Landlord agrees to modify this Agreement from time to time for the purpose of incorporating therein such additional mortgagee protective provisions as may be reasonably requested by any such mortgagee, provided such modifications are reasonably acceptable to Landlord and not inconsistent with the basic transaction agreed to by the parties, including, without limitation, any of the monetary terms of this Agreement, provided that **IN NO EVENT WILL LANDLORD BE REQUIRED TO "SUBORDINATE" LANDLORD'S FEE SIMPLE ESTATE IN THE LAND FOR FINANCING OBTAINED BY GROUND LESSEE UNDER THIS SECTION 15.6, (I.E., LANDLORD WILL NOT EXECUTE ANY DEED OF TRUST SECURING ANY INDEBTEDNESS OF GROUND LESSEE).**

15.7 **Rights Cumulative.** All rights of a leasehold mortgagee under this Agreement shall be cumulative.

15.8 **Landlord's Right to Finance.** Landlord may at any time, without the prior written consent of Ground Lessee, encumber by mortgage, deed of trust, security agreement or other instrument in the nature thereof, any of Landlord's right, title or interest in the Land and this Agreement; provided that any such mortgage, deed of trust or other instrument in the nature thereof shall at all times be, and shall expressly state that it is, subject and subordinate to this Agreement and the rights, titles and interests of Ground Lessee and any mortgagee of Ground Lessee arising by virtue of this Agreement.

ARTICLE XVI

ESTOPPEL CERTIFICATES

Landlord and Ground Lessee will, at any time and from time to time, upon not less than thirty (30) days' prior written request by the other party, execute, acknowledge and deliver to each other or to any person whom the requesting party may designate, a certificate, certifying as follows: (i) that this Agreement is unmodified and in full effect (or setting forth any modifications and that this Agreement is in full effect as modified); (ii) the Annual Base Rent payable and the dates to which the Annual Base Rent has been paid and whether other sums, including Additional Rent payable hereunder, have been paid; (iii) any default of which such

Initial for Identification:

Little Elm EDC

43

Village at Lakefront

party may have knowledge; (iv) the commencement and expiration dates of this Agreement; and (v) such other matters as may reasonably be requested by either of the parties hereto. Any such certificate may be relied upon by any mortgagee or prospective purchaser or prospective mortgagee of the Premises.

ARTICLE XVII

DESTRUCTION AND SEVERABILITY

17.1 **Casualty.** In the event the Premises shall be wholly or partially damaged or destroyed by fire or other casualty, Ground Lessee may, at its option and expense (utilizing proceeds of the insurance policies carried by Ground Lessee pursuant to Article X hereof), cause such damage to be repaired or restored to the condition of the Premises which existed immediately prior to such casualty or construct other new improvements on the Land. In the event that Ground Lessee elects not to restore the damaged improvements or build new improvements, Ground Lessee shall demolish the remaining portions of the damaged structure as necessary or appropriate and remove all debris destruction from the Premises within nine (9) months after the appropriate governmental authorities have consented to the removal of the debris. During the period of repair or restoration, Annual Base Rent shall not be reduced, but Ground Lessee may use proceeds of rent insurance to pay Annual Base Rent. In the event Ground Lessee elects not to restore the damaged improvements or build new improvements, Ground Lessee shall have the option to continue to pay the Annual Base Rent during the remaining Term of the Ground Lease, or may provide written notice to Landlord that Ground Lessee elects to terminate the Ground Lease, at which point the Ground Lease shall terminate.

ARTICLE XVIII

CONDEMNATION

18.1 **Definitions.** For purposes of this **Article XVIII**, the following terms shall have the respective meanings set forth below:

- (a) **“Award”** means the amount of any award made, consideration paid, or damages ordered as a result of a Taking less any reasonable costs in obtaining such award, such as reasonable legal fees and costs, consultant fees, appraisal costs.
- (b) **“Date of Taking”** means the date upon which title to the Premises, or a portion thereof, passes to or vests in the condemnor or the effective date of any order for possession if issued prior to the date title vests in the condemnor.
- (c) **“Taking”** means a taking of the Premises or any damage related to the exercise of the power of eminent domain and including a voluntary conveyance to any agency, authority, public utility, person, or corporate entity empowered to condemn property in lieu of court proceedings.

Initial for Identification:

Little Elm EDC

43

Village at Lakefront

18.2 **Total Condemnation.** If the entire Premises shall be taken as the result of a Taking, this Agreement shall terminate and expire as of the Date of Taking.

18.3 **Partial Condemnation.** If a portion of the Premises should be taken as a result of a Taking, and the remaining part of the Premises is unsuitable, in Ground Lessee's reasonable opinion, for the continued economic conduct of Ground Lessee's business, Ground Lessee shall have the right to terminate this Agreement by giving Landlord written notice thereof no later than thirty (30) days after the Date of Taking, whereupon Annual Base Rent, Additional Rent and all other charges shall be terminated as to the unexpired portion of this Agreement, effective as of the Date of Taking.


If Ground Lessee does not exercise its right to terminate as set forth above or if such partial Taking does not, in Ground Lessee's discretion, render the remaining part of the Premises unsuitable for the continued economic conduct of Ground Lessee's business, this Agreement shall not terminate; however, the Annual Base Rent payable hereunder during the unexpired portion of this Agreement shall be reduced in proportion to the area of the Land taken, effective as of the Date of Taking; further provided, however, that if Landlord and Ground Lessee do not agree on the proportionate amount of reduction of Annual Base Rent, such amount shall be determined in accordance with the appraisal procedures described in **Section 18.5**. Following such partial Taking, Ground Lessee shall make all necessary repairs or alterations necessary to make the Premises an architectural whole, if Ground Lessee has not elected to terminate this Agreement.

18.4 **Condemnation Proceeds.** All Awards shall be paid to Landlord and Ground Lessee in the following shares:

- (i) Ground Lessee shall receive those portions of the Award that are specifically attributable to (a) the value of, and paid as compensation for, Ground Lessee's interest in the Premises, including all Improvements hereafter constructed by Ground Lessee thereon and any of Ground Lessee's personal property taken, (b) removal and relocation of Ground Lessee's personal and trade fixtures, (c) anticipated or lost profits or damages caused to Ground Lessee's business or any special damages to Ground Lessee, (d) the bonus value of Ground Lessee's leasehold estate, and (e) any severance damages awarded by reason of the partial Taking of any Improvements.
- (ii) Landlord shall receive from the Award those portions of the Award that are attributable to (a) the value of, and paid as compensation for, its fee interest in the Land (as encumbered by the Lease), and (b) the reversionary interest in any Improvements located on the Land; and
- (iii) Ground Lessee shall use whatever portion of the Award it receives by reason of a partial taking of Improvements to pay the cost of enclosing any Improvements that are not taken if the partial taking caused such Improvements to be no longer fully enclosed.

Initial for Identification:

Little Elm EDC



Village at Lakefront

In the event of a dispute between Landlord and Ground Lessee as to the fair market value of the Land and any Improvements before or after the Taking, or as to the proper allocation of any Award as required herein, then either Landlord or Ground Lessee may submit the issue to determination by appraisers pursuant to **Section 18.5**, and such determination shall be binding upon the parties.

- 18.5 **Appraisal.** Not more than thirty (30) days after any Taking, Landlord and Ground Lessee shall each appoint one independent MAI appraiser to determine the value of the interest of Landlord or Ground Lessee, or both, as the case may be, and notice of such appointment shall be given to the other party. Such appraisers shall be appointed and such appraisals shall be made in the following manner: Landlord and Ground Lessee shall each select an independent, experienced and duly licensed MAI real estate appraiser and the two (2) appraisers shall thereupon be instructed to select and designate a third (3rd) appraiser, who shall be engaged by both Landlord and Ground Lessee. If either party shall fail to so designate an appraiser, the other party shall have the right to petition the District Court for the County of Denton, Texas to appoint such an appraiser on behalf of the defaulting party, which appraiser shall act on behalf of such party and at such party's sole cost and expense. In the event that such appraisers shall fail to agree on an appraised value of the interest, Landlord and Ground Lessee agree that the value of the interest shall be established as the average price represented by the two (2) appraisal reports most closely in agreement as to the value of the interests.
- 18.6 **Voluntary Conveyance.** Nothing in this article prohibits Landlord from voluntarily conveying all or part of the premises to a public utility agency, or authority under threat of a taking under the power of eminent domain. Any such voluntary conveyance will be treated as a taking within the meaning of this article.

ARTICLE XIX

EXISTING LEASES

- 19.1 **Assignment of Existing Leases.** As of the Effective Date, Landlord shall assign the Existing Leases, if any, to Ground Lessee; provided, however, prior to the Commencement Date, Landlord shall continue to operate, collect rents and pay expenses with respect to the Existing Leases (but only to the extent that such Existing Leases have not theretofore terminated). Furthermore, from and after the Effective Date, Landlord shall not, without the prior written consent of Ground Lessee (which consent may be granted or withheld in Ground Lessee's sole and absolute discretion), enter into any new leases or amend, terminate or extend any of the Existing Leases. Any termination/buyout fees to be paid to terminate any Existing Lease shall be paid by Ground Lessee. Any rental amounts under the Existing Leases shall be pro-rated as of the Commencement Date. Landlord shall transfer to Ground Lessee all security deposits held by the Landlord as respects any Existing Lease on the Commencement Date.

Initial for Identification:

Little Elm EDC



Village at Lakefront

ARTICLE XX

GENERAL PROVISIONS

- 20.1 **Notice.** Any notice, request, or other communication (hereinafter severally and collectively called "Notice") in this Agreement provided for or permitted to be given, made or accepted by either party to the other must be in writing, and may, unless otherwise in this Agreement expressly provided, be given or be served by depositing the same in the United States mail, postpaid and certified and addressed to the party to be notified, with return receipt requested. Notice given in any manner as provided in this **Section 20.1** shall (a) as to notice given to or served by depositing the same in the United States mail, as aforesaid, shall be effective three (3) days after depositing the same in a regularly maintained receptacle for pickup and delivery of United States mail and (b) as to Notice given or served by any other method, shall be effective only if and when received by the party to be notified. The following shall be prima facie evidence of the date of actual receipt of Notice by the addressee: (a) if hand delivered, by a delivery receipt signed by the addressee or the addressee's agent or representative, (b) written evidence by the carrier of such Notice of the date of attempted delivery at the address of the addressee if such delivery is refused, or (c) a return telecopy sent from a fax machine or office of the addressee or other confirmation from the office of the addressee indicating that any telecopied notice has been received.

For purposes of Notice, the addresses of the parties shall, until changed as herein provided, be as follows:

Landlord: Little Elm Economic Development Corporation
100 W. Eldorado Parkway
Little Elm, Denton County, Texas 75068-5060

With a copy to: Brown and Hofmeister, LLP
740 East Campbell Road, Suite 800
Richardson, Texas 75081
Attn: Jeff Moore, Esq.

Ground Lessee: Village at Lakefront, LLC
14109 Inwood Road
Farmers Branch, Texas 75244-8232
Attn: John L. Bailey

With a copy to: _____

Attn: _____

Initial for Identification: _____
Little Elm EDC



Village at Lakefront

However, the parties hereto and their representative heirs, successors, legal representatives, and assigns shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least ten (10) days' written notice to the other party.

- 20.2 **Captions.** The title captions appearing in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement, or any provisions hereof, or in connection with the duties, obligations, or liabilities of the respective parties hereto, or in ascertaining intent, if any question of intent exists.
- 20.3 **Entire Contract; Amendment.** It is expressly agreed by both parties that this Agreement, and the Exhibits attached hereto is the entire agreement of the parties with respect to the subject matter hereof, and that there are, and have been, no verbal representations, understandings, stipulations, agreements, or promises pertaining to this Agreement. It is likewise agreed that this Agreement may not be altered, amended, or extended except by an instrument in writing signed by both Landlord and Ground Lessee.
- 20.4 **Severability.** If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- 20.5 **Successor and Assigns.** All covenants and obligations as contained within this Agreement shall bind and extend and inure to the benefit of the successors and permitted assigns of each of Landlord and Ground Lessee.
- 20.6 **Personal Pronouns.** All personal pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine, or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.
- 20.7 **No Merger.** There shall be no merger of this Agreement or of the leasehold estate created by this Agreement with the fee or any other estate or interest in the Premises by reason of the fact that the same person owns or hold, directly or indirectly, all such estates and interests or any combination thereof.
- 20.8 **Short Form Lease.** Upon the complete execution hereof, the parties hereto shall execute and record a memorandum of this Agreement in the Real Property Records of Denton County, Texas which also identifies Ground Lessee's option to purchase (in general terms and not listing any specific price therein).
- 20.9 **Legal Interpretation.** This Agreement and the rights and obligations of the parties hereto shall be interpreted, construed, and enforced in accordance with the laws of the State of Texas.

Initial for Identification:

Little Elm EDC



Village at Lakefront

- 20.10 **No Mortgage or Joint Venture.** Ground Lessee and Landlord acknowledge and agree that this Agreement is, in fact, a lease arrangement, and does not constitute a loan or a joint venture, and that Ground Lessee has been represented by experienced legal counsel, who has advised Ground Lessee of the rights and duties of Ground Lessee. Ground Lessee will not assert that the transaction evidenced hereby is a loan or a joint venture if Landlord or Landlord's mortgagee subsequently seeks to enforce its legal rights as a landlord.
- 20.11 **Brokers.** Ground Lessee warrants that it has had no dealings with any broker or agent in connection with the negotiation or execution of this Agreement and Ground Lessee agrees to indemnify Landlord and hold Landlord harmless from and against any and all costs, expenses, or liability for commissions or other compensation or charges claimed by any parties claiming by, through, or under Ground Lessee with respect to this Agreement. Landlord warrants that it has had no dealings with any broker or agent in connection with the negotiation or execution of this Agreement and Landlord agrees to the extent allowed by law to indemnify Ground Lessee and hold Ground Lessee harmless from and against any and all costs, expenses, or liability for commissions or other compensation or charges claimed by any parties claiming by, through, or under landlord with respect to this Agreement.
- 20.12 **Waiver of Landlord's Lien; Fixtures.** Landlord hereby waives any contractual, statutory or other Landlord's lien on the furniture, fixtures, supplies, equipment, inventory or other personalty of Ground Lessee or any sublessee of Ground Lessee. Ground Lessee may, at any time while it occupies the Premises, or within a reasonable time thereafter, remove any furniture, machinery, equipment, or other trade fixtures owned or placed by Ground Lessee, its subtenant or licensees, in, under, or on the Premises, or acquired by Ground Lessee, whether before or during the Term of this Agreement. Before this Agreement terminates, Ground Lessee must repair any damage to any buildings or improvements on the Premises resulting from such removal described in this section. Notwithstanding any other term or provision of this Agreement, any such items not removed by the lease termination date will become Landlord's property on that date.
- 20.13 **Authority to Execute.**
- (a) Ground Lessee represents and warrants that Ground Lessee is duly formed and validly existing under the laws of the State of its organization, has full right, power, and authority to enter into this Agreement and that the party(ies) executing this Agreement on behalf of Ground Lessee has (have) full right, power, and authority to execute this Agreement on behalf of Ground Lessee, as reflected on the Secretary's certificate, furnished to Landlord on or prior to the Effective Date.
- (b) Landlord represents and warrants that Landlord is duly formed and validly existing under the laws of the State of its organization, has full right, power, and authority to enter into this Agreement and that the party(ies) executing this Agreement on behalf of Landlord has (have) full right, power, and authority to execute this

Initial for Identification:

Little Elm EDC



Village at Lakefront

Agreement on behalf of Landlord, as reflected on the Secretary's certificate, furnished to Ground Lessee on or prior to the Effective Date.

- 20.14 **Force Majeure.** Whenever a period of time is herein prescribed for action to be taken by Landlord or Ground Lessee (except as to payment of rent or other sums due by either party hereunder), neither Landlord nor Ground Lessee, as applicable, shall be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays (collectively, "Force Majeure") due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations, or restrictions.
- 20.15 **Mechanic's Liens.** Ground Lessee will not cause or permit any mechanic's liens or other liens to be filed against the fee of the Premises or against Ground Lessee's leasehold interests (excluding any leasehold mortgage) in the Land or any building or improvements on the premises by reason of any work, labor, services, or materials supplied or claimed to have been supplied to Ground Lessee or anyone holding the Premises or any part of them through or under Ground Lessee. If such a mechanic's lien or materialman's lien is recorded against the Premises or any buildings or improvement on them, Ground Lessee must either cause it to be removed or, if Ground Lessee in good faith wishes to contest the lien, Ground Lessee will indemnify Landlord and hold it harmless from all liability for damages occasioned by the lien or the lien contest and will, in the event of a judgment of foreclosure on the lien, cause the lien to be discharged and removed before the judgment is executed.
- 20.16 **Right of Entry.** Ground Lessee must permit Landlord or its agents, representatives, or employee to enter the Premises for the purposes of inspection; determining whether or not Ground Lessee is complying with this Agreement; maintaining, repairing or altering the Premises; or showing the Premises to prospective Ground Lessees, purchasers, mortgagees, or beneficiaries under trust deeds.
- 20.17 **No Partnership or Joint Venture.** The relationship between Landlord and Ground Lessee is at all times solely that of landlord and Ground Lessee and may not be deemed a partnership or a joint venture.
- 20.18 **Prior Agreements Superseded/Rule of Construction.** This Agreement constitutes the parties' sole agreement and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter. The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party, regardless of the party supplying this Agreement.
- 20.19 **Delivery Does Not Constitute Offer.** The submission of this Agreement for examination by one party does not constitute an offer capable of acceptance and Ground Lessee shall have no rights with respect to this Agreement or the Premises until Landlord shall execute the Agreement and deliver the same to Ground Lessee. A binding agreement may only be formed by the execution of a written agreement duly signed by both parties.

Initial for Identification:

Little Elm EDC


Village at Lakefront

- 20.20 **Rights and Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and either party's using any right or remedy will not preclude or waive its right to use any other remedy. The rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.
- 20.21 **Chamber of Commerce Membership.** Ground Lessee covenants and agrees to maintain during the Term of this Agreement the equivalent of a platinum membership or higher, with the Little Elm Chamber of Commerce.

[The Remainder of this Page Intentionally Left Blank]

Initial for Identification:

Little Elm EDC



Village at Lakefront

EXECUTED IN MULTIPLE ORIGINAL COUNTERPARTS, which constitute but one and the same instrument, as of the day and year first above written. Upon the final execution hereof by Landlord and Ground Lessee, the last to sign of such parties shall complete the date on the first page thereof.

LANDLORD:

**LITTLE ELM ECONOMIC
DEVELOPMENT CORPORATION**

a Texas non-profit corporation

By: _____
Ken Eaken, President

Date: _____

STATE OF TEXAS

§

§

COUNTY OF DENTON

§

This instrument was acknowledged before me on the ____ day of _____, 2021, by Ken Eaken, President of the Little Elm Economic Development Corporation, a Texas non-profit corporation, on behalf of said non-profit corporation.

Notary Public, State of Texas

Initial for Identification:

Little Elm EDC



Village at Lakefront

GROUND LESSEE:

VILLAGE AT LAKEFRONT, LLC,
a Texas limited liability company,

By: Village Management, Inc.,
a Texas corporation, Manager

By: John L. Bailey
John L. Bailey, President of Manager

STATE OF TEXAS

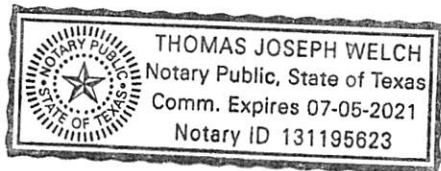
§

§

COUNTY OF DALLAS

§

This instrument was acknowledged before me on the 14 day of January, 2021,
by John L. Bailey, President of Village Management, Inc., as Manager of Village at Lakefront,
LLC, a Texas limited liability company, on behalf of said Texas company.



Thomas Joseph Welch
Notary Public, State of Texas

Initial for Identification:

Little Elm EDC

VB
Village at Lakefront

Exhibit A

LAND

Initial for Identification:

Little Elm EDC

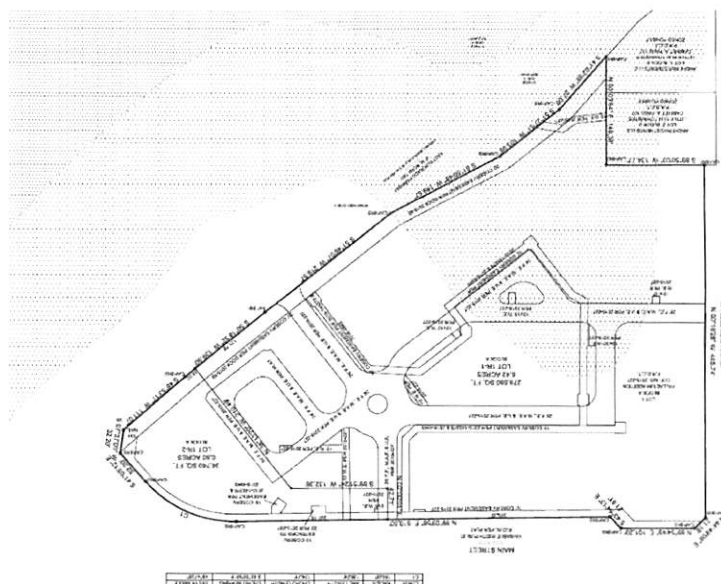
43

Village at Lakefront

K&S Surveying, Inc.
 18815 S. 10th Street, Suite 100
 Overland Park, Kansas 66207
 Phone: 913.241.1234
 Fax: 913.241.1235
 Email: info@ksurveying.com
 Website: www.ksurveying.com



- GENERAL NOTES**
1. All survey measurements were taken with a Leica Total Station.
 2. Station 1+00.00 is the beginning of the project.
 3. The proposed road is 20 feet wide.
 4. The proposed road is 20 feet wide.
 5. The proposed road is 20 feet wide.
 6. The proposed road is 20 feet wide.
 7. The proposed road is 20 feet wide.
 8. The proposed road is 20 feet wide.
 9. The proposed road is 20 feet wide.
 10. The proposed road is 20 feet wide.



The undersigned, K&S Surveying, Inc., a Kansas corporation, do hereby certify that the foregoing is a true and correct copy of the original survey as shown to the undersigned by the owner of the land shown on the map.

K&S Surveying, Inc.
 18815 S. 10th Street, Suite 100
 Overland Park, Kansas 66207

PALLADIUM PLAT
MINOR PLAT
 LOTS 18-1 & 18-2, BLOCK A
 THE RICHARDSON SURVEY, ABSTRACT NO. 877 AND
 THE RICHARDSON SURVEY, ABSTRACT NO. 878

The undersigned, K&S Surveying, Inc., a Kansas corporation, do hereby certify that the foregoing is a true and correct copy of the original survey as shown to the undersigned by the owner of the land shown on the map.

K&S Surveying, Inc.
 18815 S. 10th Street, Suite 100
 Overland Park, Kansas 66207

K&S SURVEYING

18815 S. 10th Street, Suite 100
Overland Park, Kansas 66207
Phone: 913.241.1234
Fax: 913.241.1235
Email: info@ksurveying.com
Website: www.ksurveying.com

Initial for Identification:

Little Elm EDC

Village at Lakewood



Town Council Meeting

Date: 01/19/2021
Agenda Item #: 7.
Department: Economic Development Corporation
Strategic Goal: Promote and expand Little Elm's identity
Staff Contact: Jennette Espinosa, EDC Executive Director

AGENDA ITEM:

Discussion and Action to approve Westside Planning Study Agreement between the Town of Little Elm, Little Elm EDC, and Kimley Horn. (Jennette Espinosa, EDC Executive Director)

DESCRIPTION:

Over the past few years the Town has been experiencing an increased interest in the undeveloped property on the west side of Town (*see attachment of the area*). With the addition of the newly built Walker Middle School and the transportation and improvements made by the Town and TXDOT, this area is prime for development. Knowing this, Town staff felt the need to be proactive and make sure we have a plan both from a planning and economic perspective. Towns today strive to be places where their residents can work and live in a comfortable manner. They attempt, through planning, to improve residents' quality of life with providing parks, roadway infrastructure, pedestrian opportunities to shop, a sense of community, and a sense of place or identity.

The area is within Area 8 of the Comprehensive Plan and the most undesirable uses for this area are mixed-use, big box commercial and additional lakefront homes (*see attachment from the Comp. Plan*). This initiative also supports the Strategic Plan goal of promote and expand Little Elm's identity.

Promote and expand Little Elm's identity: Maintain Little Elm's distinctive look and high development standards that provide vibrant, high-quality neighborhoods and development. Create a sense of place and brand identity that extends beyond our borders.

This planning study will allow the Town to steer development that will have the highest and best uses from a planning and economic development standpoint. This study will also develop concepts and a strategic implementation plan for the west side of the Town, generally around the intersection of West Eldorado Parkway and Oak Grove Parkway. In addition, the purpose of this process is to determine the best practices for planning and economic development so that the west side area is not competitive with other centers in the Town, such as the Lakefront District. Another focus of this initiative will be to create a preferred framework for development, optimal mix of land uses and provide recommendations for implementation of a strategic plan for the area. The Town staff and consultant leading the process proposed to have a steering committee that will be composed of two members from each that represents the Council, Planning and Zoning Commission and the Economic Development Corporation. This will ensure we capture all the input and insight from the different perspective of each board and commission. This process will be broken up into phases below, however we are just concentrating on phase 1 at this time. The first phase will concentrate on

the items below:

Phase 1 — Concept and Strategic Plan

- Review all adopted plans and studies
- 2 evening day workshops
- Visioning and Round Table Discussions (Virtually)
- Areas of interest
- Zoning and Sub code evaluation
- Potential Catalytic projects
- Recommendations and strategies
- Market research to understand basic conditions of market potential
- Recruitment strategies based on current market trend and Town Vision
- Conceptual Plans
- Implementation/Next Step Plans

Phase 2 — Implementation of Strategic Plan

- Phase two will be an initiative to support the implementation of recommended strategies that are set in Phase 1. This will involve updating any ordinances, zoning map, land uses and economic plans. If the Council wishes to move forward with the update then we will have an agenda item to discuss the scope based off the recommendations from Phase 1.

BUDGET IMPACT:

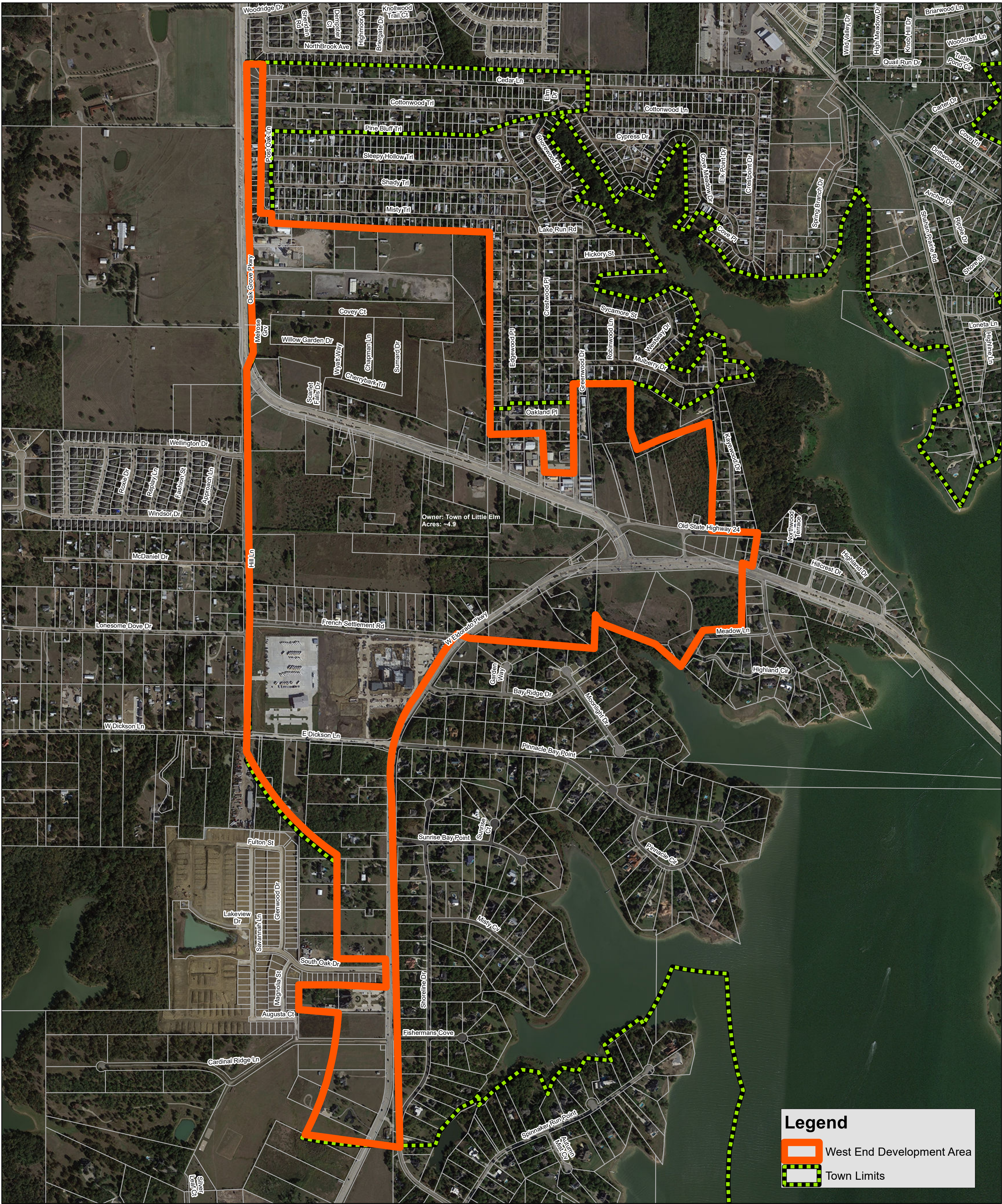
This project was approved in the 2020/2021 budget.

RECOMMENDED ACTION:



This project was approved in the 2020/2021 budget.

Attachments

West End Development
West End Zoning
West End FLUP
Comp Plan
Professional Services Agreement
2021 Concept/Strategic Plan



Legend

-  West End Development Area
-  Town Limits



Date: 1/12/2021
Town of Little Elm
Denton County, Tx

West End Planning Initiative

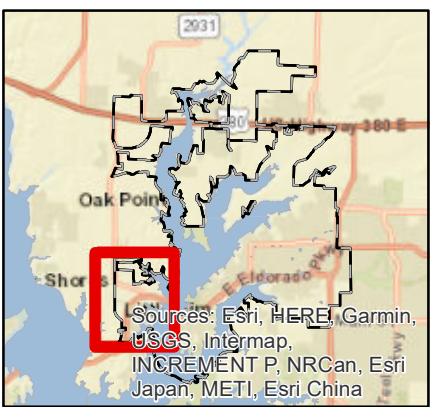


0.175

0.35

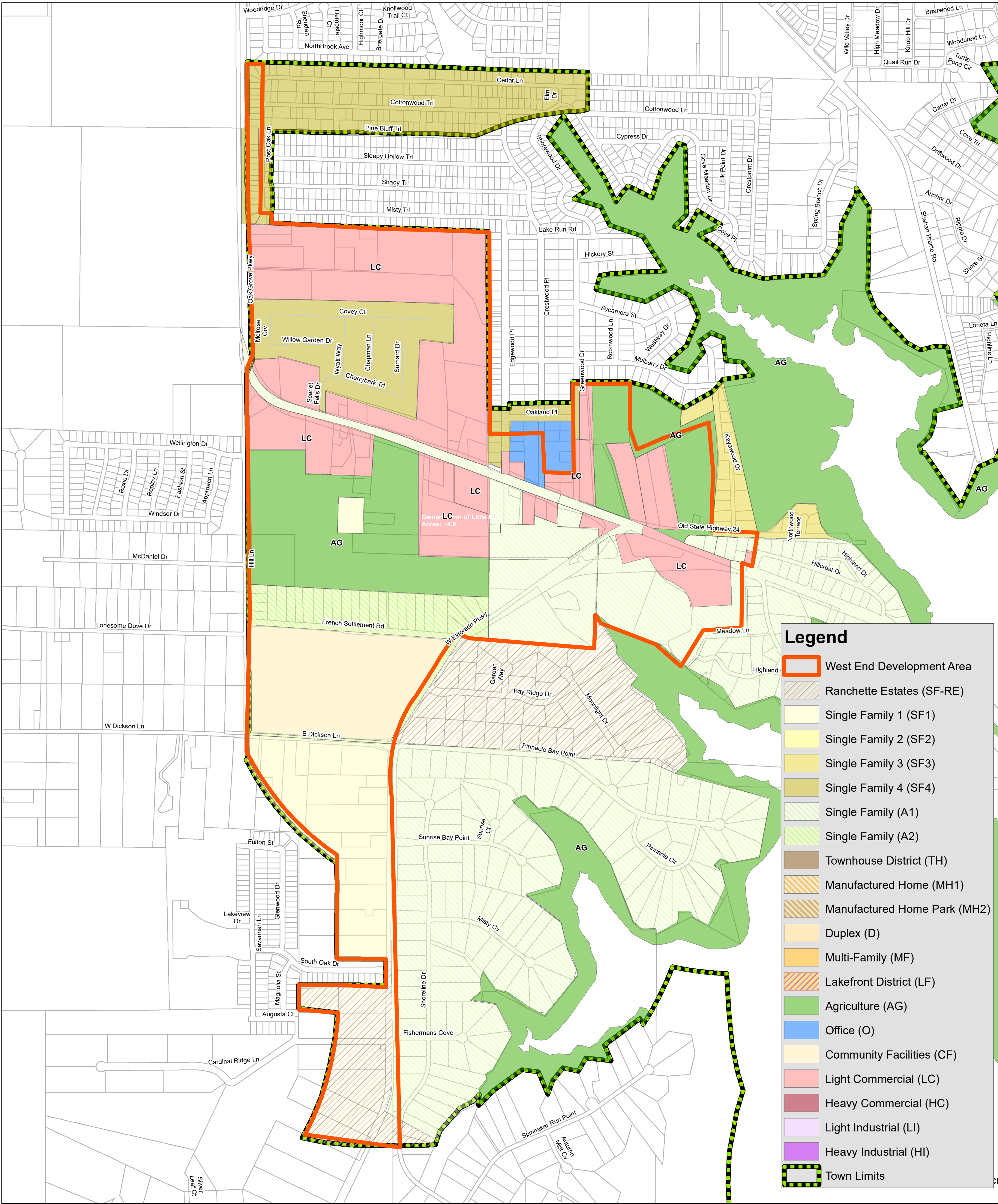
Miles

Location Map



This map is the property of the Town of Little Elm, and is not to be reproduced by any means, mechanical or digital, without written consent of the Town.

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



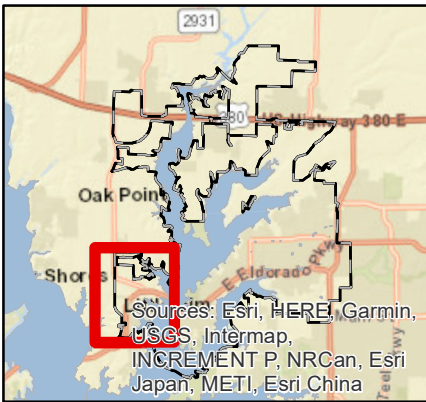
LITTLE ELM
Date: 12/16/2020
Town of Little Elm
Denton County, Tx

West End Planning Initiative



0.175 0.35
Miles

Location Map



This map is the property of the Town of Little Elm, and is not to be reproduced by any means, mechanical or digital, without written consent of the Town.

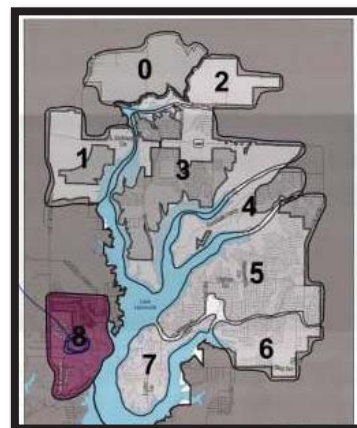
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Area 8 Visual Character Survey (VCS) Results Summary

Summary

The VCS results shows similar results for Area 7 and Area 8, however some typical single-family development is also desirable.

The most undesirable uses for this area are mixed use, big-box commercial and additional lakefront homes. This area is perceived to be of historical value.



Desirable

The following images received the votes from the majority as desirable land use.



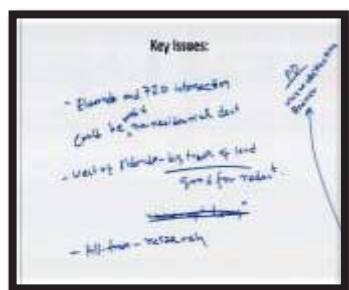
Undesirable

The following images received the votes from the majority as undesirable land use.



VCS Results

Board Results



Key Points

Eldorado and 720 Intersection for non-residential

Big chunk of land west of Eldorado

Planned Development

Unique destination

Opportunity for Redevelopment

Town of Little Elm, Texas

Standard Professional Services Agreement

This Agreement is made by and between the Town of Little Elm, Texas, a Texas home-rule municipality (hereinafter referred to as the "Owner") and Kimley-Horn and Associates, Inc., (hereinafter referred to as the "Consultant") for Westside Planning Study, (hereinafter referred to as the "Project"). In consideration of the premises, covenants and mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and the Consultant hereby agree as follows:

ARTICLE I: CONTRACT & CONTRACT DOCUMENTS

1.1 THE CONTRACT

The Contract between the Owner and the Consultant, of which this Agreement is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last Party to execute it.

1.2. THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the Solicitation, Requirements and Instructions to Bidders/Proposers, the Specifications, terms and conditions, Attachments, Maps, Drawings, Scope of Service, Time Line, all Change Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):

Documents not enumerated in this Paragraph 1.2.1 are not Contract Documents and do not form part of this Agreement.

ARTICLE 2: RECITALS

- 2.1 The Town desires to have the Consultant develop the program and provide necessary services to develop the same ("PROJECT"); and
- 2.2 The Consultant has the knowledge, ability and expertise to provide such services; and
- 2.3 The Town desires to engage the services of Consultant, as an independent Consultant and not as an employee, to provide services as set forth herein and in Exhibit A: Scope of Services and Exhibit B: Time Line/Milestone which is attached hereto and incorporated herein.

ARTICLE 3: TERM / TERMINATION

3.1 TERM

The term of this Agreement shall begin on the date of its execution by all Parties. This Agreement shall continue until Consultant completes the services required herein to the satisfaction of the Town, unless sooner terminated as provided herein.

3.2 TERMINATION

This Agreement may be suspended or terminated by either Party with or without cause at any time by giving written notice to the other Party. In the event suspension or termination is without cause, payment to the Consultant, in accordance with the terms of this Agreement, will be made on the basis of services reasonably determined by Town to be satisfactorily performed to the date of suspension or termination. Such payment will be due upon delivery of all instruments of service to Town.

In the event that the Town requires a modification of this Agreement with Consultant, and in the event the Parties fail to agree upon a modification of this Agreement, the Parties shall have the option of terminating this Agreement. Payment to Consultant shall be made by the Town in accordance with the

terms of this Agreement, for the services mutually agreed upon by the Parties to be properly performed by the Consultant prior to such termination date.

ARTICLE 4: SCOPE OF SERVICES

4.1 SCOPE

The following services, when authorized in writing by a Notice to Proceed from the Town, shall be performed by Consultant in accordance with the Town's requirements and as set forth in the attached Exhibit A, Scope of Services:

Planning workshop, stakeholder engagement, concept plans and implementation strategy per Exhibit A.

If there is a conflict between the above quoted subjects and Exhibit A or B, then such conflict shall be resolved pursuant to the provisions of Section 10.9, below.

4.2 AUTHORIZED AGENT

All work performed by the Consultant will be performed under this Agreement, signed by a duly authorized agent of the Town as approved by resolution of the Town Council of the Town of Little Elm, Texas, and the designated authorized agent for the Consultant.

ARTICLE 5: COMPENSATION / PAYMENT TERMS AND CONDITIONS

5.1 Compensation for the performance of Professional Services described herein shall be paid to Consultant by the Town in a total amount not to exceed **Forty Thousand** dollars (\$40,000) which shall accrue and be payable as provided in Sections 5.1 and 5.2 hereof.

5.2 Work will be performed at the rates set forth in Exhibit B – Cost Proposal and Fee Schedule, which is attached hereto and incorporated herein by reference, or as otherwise provided in negotiated fee schedules approved within this Agreement, if any.

5.3 Consultant payment for work under this Agreement shall be made in installments billed not more frequently than once each month upon receipt of invoices from the Consultant. If the Town fails to make any payment due the Consultant within thirty (30) days after receipt of Consultant's invoice, the amounts due the Consultant will be increased at the rate of 1.5% per month from said thirtieth day, unless there is a good faith refusal by the Town to pay. Payment shall be remitted to Consultant by Town as instructed on invoices.

ARTICLE 6: TIME FOR COMPLETION

6.1 The Consultant's services and compensation under this Agreement have been agreed to in anticipation of orderly and continuous progress of the Assigned Project(s) through completion of the project(s). Specific periods of time for rendering services are set forth in Exhibit B to this Agreement, by which times defined services are to be completed. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control.

6.2 If the Town fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, the Consultant shall be entitled to equitable adjustment of rates and amounts of compensations to reflect reasonable costs incurred by Consultant as a result of the delay or changes in the various elements that comprise such rates of compensation, but in no event shall such compensation exceed the scope of services schedule of maximum payment unless a written amendment to this Agreement is executed between the Parties.

ARTICLE 7: INDEMNIFICATION

7.1 **THE CONSULTANT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD HARMLESS THE TOWN, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES (HEREINAFTER COLLECTIVELY REFERRED TO AS "INDEMNITEES") FROM AND AGAINST SUITS, ACTIONS, CLAIMS, LOSSES, ANY DAMAGE,**

LIABILITY, AND FROM AND AGAINST ANY COSTS AND EXPENSES, INCLUDING, IN PART, ATTORNEY'S FEES INCIDENTAL TO THE DEFENSE OF SUCH SUITS, ACTIONS CLAIMS, LOSSES, DAMAGES OR LIABILITY ON ACCOUNT OF INJURY, DISEASE, SICKNESS, INCLUDING DEATH, TO ANY PERSON OR DAMAGE TO PROPERTY INCLUDING, IN PART, THE LOSS OF USE RESULTING THEREFROM, ARISING FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OF THE CONSULTANT, ITS OFFICERS, EMPLOYEES, SERVANTS, AGENTS OR SUBCONTRACTORS, OR ANYONE ELSE UNDER THE CONSULTANT'S DIRECTION AND CONTROL, AND ARISING OUT OF, RESULTING FROM, OR CAUSED BY THE NEGLIGENT PERFORMANCE OR FAILURE OF PERFORMANCE OF ANY WORK OR SERVICES UNDER THIS AGREEMENT, OR FROM CONDITIONS CREATED BY THE NEGLIGENT PERFORMANCE OR NON-PERFORMANCE OF SAID WORK OR SERVICES. IN THE EVENT ONE OR MORE OF THE INDEMNITEES IS DETERMINED BY A COURT OF LAW TO BE JOINTLY OR DERIVATIVELY NEGLIGENT OR LIABLE FOR SUCH DAMAGE OR INJURY, THE CONSULTANT SHALL BE OBLIGATED TO INDEMNIFY INDEMNITEES AS PROVIDED HEREIN ON A PROPORTIONATE BASIS IN ACCORDANCE WITH THE FINAL JUDGMENT, AFTER ALL APPEALS ARE EXHAUSTED, DETERMINING SUCH JOINT OR DERIVATIVE NEGLIGENCE OR LIABILITY. THIS INDEMNIFICATION IS SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE, § 271.904(A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002(B), AS SAME MAY BE APPLICABLE TO CONSULTANT AS A MATTER OF LAW.

7.02 NOTHING CONTAINED HEREIN SHALL CONSTITUTE A WAIVER OF GOVERNMENTAL IMMUNITY IN FAVOR OF ANY PARTY.

7.03 CONSULTANT AGREES THAT IT IS AN INDEPENDENT CONTRACTOR AND NOT AN AGENT OF THE TOWN, AND THAT CONSULTANT IS SUBJECT, AS AN EMPLOYER, TO ALL APPLICABLE UNEMPLOYMENT COMPENSATION STATUTES, SO FAR AS TO RELIEVE THE TOWN OF ANY RESPONSIBILITY OR LIABILITY FROM TREATING CONSULTANT'S EMPLOYEES AS EMPLOYEES OF TOWN FOR THE PURPOSE OF KEEPING RECORDS, MAKING REPORTS OR PAYMENTS OF UNEMPLOYMENT COMPENSATION TAXES OR CONTRIBUTIONS. CONSULTANT FURTHER AGREES TO INDEMNIFY AND HOLD THE TOWN HARMLESS AND REIMBURSE IT FOR ANY EXPENSES OR LIABILITY INCURRED UNDER SAID STATUTES IN CONNECTION WITH EMPLOYEES OF CONSULTANT.

7.04 CONSULTANT SHALL DEFEND AND INDEMNIFY AND HOLD THE TOWN HARMLESS FROM ANY AND ALL CLAIMS, SUITS OR LIENS BASED UPON OR ALLEGED TO BE BASED UPON THE NON-PAYMENT OF LABOR, TOOLS, MATERIALS, EQUIPMENT, SUPPLIES, TRANSPORTATION AND MANAGEMENT COSTS INCURRED BY CONSULTANT IN PERFORMING THIS AGREEMENT.

ARTICLE 8: INSURANCE

8.1 Insurance

The Consultant shall provide and maintain insurance as listed in the insurance requirements document.

ARTICLE 9: DEFAULT

In the event Consultant fails to comply or becomes disabled and unable to comply with the provisions of this Agreement as to the quality or character of the service or time of performance, and the failure is not corrected within thirty (30) days after written notice by Town to Consultant, Town may, at its sole discretion without prejudice to any other right or remedy.

- (a) Terminate this Agreement and be relieved of the payment of any further consideration to Consultant except for all work determined by the Town to be satisfactorily completed prior to termination. Payment for work satisfactorily completed shall be for actual costs, including reasonable salaries and travel expenses of Consultant to and from meetings called by the Town at which Consultant is required to attend, but shall not include any loss of profit of Consultant. In the event of such termination, the Town may proceed to complete the services in any manner deemed proper by the Town, either by the use of its own forces or by resubmitting to others. Consultant agrees that any costs incurred to complete the services herein provided for may be deducted and paid by the Town out of such monies as may be due or that may thereafter become due to Consultant under and by virtue of this Agreement.

- (b) The Town may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at the expense of Consultant.

ARTICLE 10: MISCELLANEOUS

10.1 Reuse of Documents:

All documents including Maps, Plans and Specifications provided or furnished by the Consultant pursuant to this Agreement are instruments of service; and Consultant shall retain ownership and property interest therein whether or not the work is completed. The Town may make and retain copies of any plans or specifications provided under this Agreement for the use by Town and others; such documents are not intended or suitable for reuse by Town or others on extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the Town's sole risk and without liability to the Consultant.

10.2 Entire Agreement.

This Agreement constitutes the sole and only Agreement of the Parties and supersedes any prior understandings or written or oral agreements between the Parties with respect to this subject matter.

10.3 Assignment.

Neither this Agreement nor any duties or obligations under it shall be assignable by Consultant without the prior written consent of the Town. In the event of an assignment by Consultant to which the Town has consented, the assignee or the assignee's legal representative shall agree in writing with the Town to personally assume, perform, and be bound by all the covenants, obligations, and agreements contained in this Agreement.

10.4 Adjustments in Services/Amendment.

This Agreement may be amended by the mutual written agreement of the Parties. Consultant shall not make any claims for extra services, additional services or changes in the services without a written agreement with the Town prior to the performance of such services.

10.5 Governing law.

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in Denton County, Texas.

10.6 Notices.

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

Town of Little Elm

Purchasing
100 W. Eldorado Pkwy.
Little Elm, TX 75068
214-975-0411
purchasing@littleelm.org

Company

Brad Lonberger, Project Manager
801 Cherry Street #1300
Fort Worth, TX 76102
817-612-9364
brad.lonberger@kimley-horn.com

10.7 Legal construction.

In the event any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

10.8 Successors and Assigns.

- (a) The Town and Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns of Town and Consultant are hereby bound to the other Party to this Agreement and to the partners, successors, executors, administrators, legal representatives and assigns of such other Party in respect of all covenants and obligations of this Agreement.
- (b) Neither the Town nor the Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other Party, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- (c) Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Consultant, subcontractor, supplier, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than the Town and the Consultant.

10.9 Conflict.

If a conflict exists between this Agreement, and an Exhibit, the Solicitation, and/or the Response, then such conflicts shall be resolved as follows:

- (a) If a conflict exists between this Agreement and an Exhibit, the Solicitation, or the Response, then this Agreement shall control.
- (b) If a conflict exists between the Response and an Exhibit, the Exhibit shall control.
- (c) If a conflict exists between the Response and the Solicitation, the Solicitation shall control.

10.10 Severability

Any provision or part of this Agreement that is held to be void or unenforceable under any law or regulation or by a court of competent jurisdiction shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the Town and the Consultant, who agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.11 Captions

The captions used in this Agreement are for convenience only and shall not affect in any way the meaning or interpretations of the provisions set forth herein.

10.12 Counterparts

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on this the ____ day of _____, 2021.

TOWN OF LITTLE ELM

CONSULTANT

Matt Mueller, Town Manager

Scott Arnold, Vice President

Exhibit A: Specification and Response
Exhibit B: Cost Proposal & Fee Schedule

Town of Little Elm Westside Planning Initiative

Scope of Services

Exhibit A

The Owner is looking to develop concepts and a strategic implementation plan for the westside of the Town, generally around the intersection of West Eldorado Parkway and Oak Grove Parkway. This process is broken into two phases, where the first phase is categorized in this scope of services. The purpose of this process is to determine the best practices for planning and economic development so that this westside area is not competitive with other centers in the Town, such as the Lakefront District. The focus of this initiative will be to create a preferred framework for development, optimal mix of land uses and provide recommendations for implementation of a strategic plan for the area. Phase two will be an initiative to support the implementation of recommended strategies and the scope and fee will be determined after the strategic plan recommendations are developed.

The Consultant has identified the following tasks to develop concepts and a strategic plan in this westside area.

Task 1 – Develop Work Session Agenda and Preparation (End of January)

The Consultant will develop an outline for a 2-evening work session agenda that includes a breakdown of activities and prescribed steering committee attendees for each activity. The Consultant will review the agenda with Town staff via virtual meeting prior to the work session.

The Consultant will review applicable documents and draft a summary memo for use in the work session. The following documents/items that will be reviewed:

- Town Comprehensive Plan
- Any Economic Development Strategic Plans
- Recent roadway improvements
- Parks and Trails Plans
- Existing bike and street network
- Current projects in design or development
- Town Zoning and Subdivision Ordinance
- Town Strategic Plan

The Consultant will develop area maps in preparation for the work session.

Task 2 – Attend and lead Work Session (February)

The Consultant will have two employees present during a two-day work session. In addition, up to two employees with certain experience, identified as subject matter experts during Task 1, will be available for virtual participation during key work session items. Town staff will support the team by managing attendance of the steering committee and Town staff participants and providing a location with wi-fi, projection systems and room for appropriate social distancing for the work session. The work session is anticipated to consist of the following activities that will be finalized during Task 1:

- Site Visits/Observational Tours
 - Walking tour of successful projects and new developments in the area
 - Walking tour of the subject site

- Potential Work Session Meetings
 - Block, Street and Infrastructure Framework
 - Code Evaluation – Zoning audit/development process
 - Potential Catalytic Projects
 - Steering Committee Round Table Discussion
- Wrap-Up and Visioning
 - Outline topline recommendations and strategies
 - Review conceptual framework to be further developed
 - Discuss next steps
- EDC Components
 - Market research to understand basic conditions of market potential
 - Recruitment strategies based on current market trend and Town Vision

Task 3 – Follow-Up Interviews (February-March)

Up to three one- hour phone calls to cover outstanding questions that were not resolved during the work session.

Task 4 – Deliverables (March-April)

4.1 – Concept Plan: The Consultant will produce up to two (2) draft plans from the work session event that will be reviewed by Town staff and Steering Committee members. Comments and feedback will be received to produce a final conceptual plan that will be the basis for recommendations in the final slide deck.

4.2 – Implementation Slide Deck: The Consultant will prepare a slide deck (PowerPoint) that outlines the results of the work session and list implementation items to begin the revitalization process in these study areas. Strategies may include recommendations for zoning updates, CIP updates or other necessary relationship strategies to support the vision. This slide deck is anticipated to be future projects or actions that should be completed that are outside the scope of the work session event. One (1) round of edits will be provided after the draft slide deck is provided to Town staff and Steering Committee for review.

Town of Little Elm Westside Planning Initiative

Fee Schedule

Exhibit B

The following fee is proposed per phase and task of this Westside Planning Initiative:

Phase 1 – Concept and Strategic Plan

Task 1 – Develop Work Session Agenda and Preparation	5,000
Task 2 – Attend and lead Work Session	12,000
Task 3 – Follow-Up Interviews	3,000
Task 4 – Deliverables	20,000
Total Phase 1 Fee	\$40,000

Phase 2 – Implementation of Strategic Plan

Tasks and fees to be determined after strategic plan recommendations are created.