

**TOWN OF LITTLE ELM, TEXAS,  
AND  
H-E-B, LP  
THIRD AMENDMENT TO  
CHAPTER 380 ECONOMIC DEVELOPMENT  
PROGRAM AND DEVELOPMENT AGREEMENT**

This **THIRD AMENDMENT TO CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND DEVELOPMENT AGREEMENT** (hereinafter referred to as the “Third Amendment”) is made and entered into by and between the **TOWN OF LITTLE ELM, TEXAS**, a Texas home-rule municipality (“**Town**” or “**Little Elm**”), and **H-E-B, LP**, a Texas limited partnership, formerly known as HEB Grocery Company, LP (“**HEB**”).

**RECITALS:**

**WHEREAS**, on or about **May 17, 2016**, the Town and HEB entered into certain Chapter 380 Economic Development Program and Development Agreement (hereinafter referred to as the “Original Agreement”) pertaining to a certain Project (as defined therein) and a certain Property (as defined therein); and

**WHEREAS**, on or about **June 7, 2018**, the Town and HEB entered into an Amendment to Chapter 380 Economic Development Program and Development Agreement (hereinafter referred to as the “First Amendment”) pertaining the Project; and

**WHEREAS**, on or about **May 11, 2020**, the Town and HEB entered into a Second Amendment to Chapter 380 Economic Development Program and Development Agreement (hereinafter referred to as the “Second Amendment”) pertaining the Project; and

**WHEREAS**, the Town and HEB now desire to amend the Original Agreement, First Amendment, and Second Amendment as set forth in this Third Amendment to better address the mutual obligations of the parties.

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

**SECTION 1. FINDINGS INCORPORATED.**

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

## SECTION 2. AMENDMENT TO ORIGINAL AGREEMENT AND ANY AMENDMENTS.

- (a) **Amendment to Original Agreement.** That Section 4.1(a) of the Original Agreement, as amended by the First Amendment, and Second Amendment is hereby amended to read as follows:
- “(a) **Project Development Condition.** HEB will satisfy the “**Project Development Condition**” if HEB (i) acquires the Property, (ii) obtains a final recorded plat of the Property if required by applicable law, and (iii) commences construction of the Project on or before **June 1, 2029**. Except as otherwise stated in this Agreement, the development of the Project shall be subject to all Little Elm ordinances, rules, regulations, policies, fees and charges. For purposes of this Agreement, “**commence**” or “**commencement**” mean the issuance of permits by Town for site earthwork or utility work.”
- (b) **Amendment to Original Agreement.** Exhibit B of the Original Agreement is hereby replaced for all purposes with **Exhibit “B”** attached to this Third Amendment.
- (c) **Amendment to Original Agreement.** Exhibit D of the Original Agreement is hereby replaced for all purposes with **Exhibit “D”** attached to this Third Amendment and Section 4.1(c) of the Original Agreement, as amended by the First Amendment, and Second Amendment is hereby amended to read as follows:
- “(c) **New Road Construction Condition.** HEB will satisfy the “**New Road Construction Condition**” if (i) HEB designs and constructs the entire width of the New Road at the intersection of the New Road and FM 720 within New Road ROW which shall have been acquired by the Town, and also a portion of the northern one-half of the New Road as depicted in **Exhibit “D”** (together, the “**Northern Half**”); (ii) upon completion of the Northern Half, HEB dedicates the Northern Half to the Town; and (iii) upon completion of the Northern Half, HEB assigns to the Town any contractor warranties related to the construction of the Northern Half that are assignable. Notwithstanding any other provision contained herein, it is expressly understood that HEB shall be relieved of all requirements or conditions hereunder to satisfy the New Road Construction Condition and the New Road Construction Condition shall be deemed satisfied for all purposes hereunder if the entire New Road ROW has not been acquired by Town prior to **May 17, 2025**. Notwithstanding the foregoing, if HEB elects, in its sole discretion, to design and construct portions of the New Road in addition to the Northern Half, then such improvements constructed by HEB shall also be deemed part of the Northern Half for purposes of this Agreement.

For purposes hereof, the “**HEB Performance Conditions**” shall mean the Project Development Condition, the US 380 Condition and the New Road Construction

Condition, collectively.”

- (d) **Amendment to Original Agreement.** That Section 4.2(b) of the Original Agreement, as amended by the First Amendment, and Second Amendment is hereby amended to read as follows:

“(b) **Funding of New Road ROW.** If Town acquires the New Road ROW prior to **May 17, 2025**, then HEB shall reimburse Town for the reasonable, out-of-pocket costs actually incurred by the Town to acquire the New Road ROW, including costs for appraisals, surveys and reasonable legal expenses (collectively, the “**ROW Acquisition Costs**”). HEB agrees, in such circumstance, to reimburse Town for its ROW Acquisition Costs within thirty (30) calendar days following on the Town’s acquisition of the New Road ROW, subject to reimbursement under Section 5(c).”

- (e) **Amendment to Original Agreement.** The notice address provided in Section 9(i) of the Original Agreement is hereby amended to read as follows:

“Notices to HEB shall also provide for a copy to:

Golden Steves & Gordon LLP  
Attn: Ami E. Gordon  
200 E. Basse Road, Suite 200  
San Antonio, Texas 78209  
(210) 745-3700”

### **SECTION 3. MISCELLANEOUS PROVISIONS.**

The following miscellaneous provisions are a part of this Third Amendment:

- (a) **Amendments.** This Third Amendment constitutes the entire understanding and agreement of the parties as to the matters set forth in this Third Amendment. No alteration of or amendment to this Third Amendment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Third Amendment shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Third Amendment shall lie in the state district courts of Denton County, Texas.
- (c) **Assignment.** Neither Party shall have the right to assign its rights and/or obligations under this Third Amendment, or any interest herein, without the prior written consent of the other Party.

- (d) **Binding Obligation.** This Third Amendment shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this Third Amendment on behalf of the Town has full authority to execute this Third Amendment and bind the Town to the same. HEB warrants and represents that the individual executing this Third Amendment on HEB's behalf has full authority to execute this Third Amendment and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Third Amendment are for convenience purposes only and are not to be used to interpret or define the provisions of the Third Amendment.
- (f) **Counterparts.** This Third Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Effective Date.** The effective date (the "Effective Date") of this Third Amendment shall be the date of the latter to execute this Third Amendment by and between the Town and HEB.
- (h) **Original Agreement and any Amendments.** All of the terms, conditions, and obligations of the Original Agreement, First Amendment, Second Amendment, and any other amendments remain in full force and effect except where specifically modified by this Third Amendment.
- (i) **Severability.** The provisions of this Third Amendment are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Third Amendment is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Third Amendment shall be enforced as if the invalid provision had never been included.
- (j) **Time is of the Essence.** Time is of the essence in the performance of this Third Amendment.

**[The Remainder of this Page Intentionally Left Blank]**

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

**TOWN:**

**TOWN OF LITTLE ELM, TEXAS,**  
a Texas home-rule municipality,

By: \_\_\_\_\_  
Curtis J. Cornelious, Mayor  
Date Signed: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Caitlan Biggs, Town Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert F. Brown, Town Attorney

<b>STATE OF TEXAS</b>	§
	§
<b>COUNTY OF DENTON</b>	§

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by Curtis J. Cornelious, Mayor of the Town of Little Elm, Texas, a Texas home-rule municipality, on behalf of said Texas municipality.

\_\_\_\_\_  
Notary Public, State of Texas

**HEB:**

**H-E-B, LP,**

a Texas limited partnership,

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

Benjamin R. Scott

Group Vice President of Real Estate and

Shopping Center Development

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

**STATE OF TEXAS**

§

§

**COUNTY OF BEXAR**

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This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by Benjamin R. Scott, Group Vice President of Real Estate and Shopping Center Development of H-E-B, LP, a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas

**Exhibit “B”**

[380 Expansion Area]







