

STATE OF TEXAS §
§ **ECONOMIC DEVELOPMENT**
§ **AGREEMENT**
COUNTY OF COLLIN §

This Economic Development Agreement ("Agreement") is made by and among the Town of Fairview, Texas, a Texas general law municipality, (the "Town"), the Fairview Economic Development Corporation, a Texas non-profit corporation (the "FEDC"), the Town of Fairview Community Development Corporation, a Texas non-profit corporation, (the "FCDC") (Town, FEDC and FCDC collectively referred to as "Grantors"), and The Village at Fairview, L.P., a Texas limited partnership ("Developer"), acting by and through their respective authorized officers and representatives.

RECITALS:

WHEREAS, Developer desires to develop, construct, operate and maintain a retail lifestyle shopping center consisting of at least 750,000 gross leasable square feet of floor area for retail shopping known as The Village at Fairview ("Center") which is centerpiece of a planned 1,000,000 or more square foot mixed use development of residential, retail, office and other commercial space and more fully described in submittals filed by Developer and approved by the Town from time to time on an approximately 192 acre tract of land and improvements thereon located at the northeast corner of US Highway 75 and Stacy Road in Fairview, Texas and being further described in Exhibit "A" attached hereto and made a part hereof (the "Premises"); and

WHEREAS, Town desires an environmentally-friendly mixed use development to be built consistent with Town approval for the Center and the Premises pursuant to the process outlined in its Commercial Planned Development District ordinance and comprehensive plan, and further desires the restoration of its old elevated storage tank on Stacy Road; and

WHEREAS, Developer and the Grantors have determined that certain street and other infrastructure improvements further described herein need to be constructed both on and off the Premises in conjunction with the Center; and

WHEREAS, Town, with Collin County and City of Allen participation in the costs, intends to design and construct Stacy Road as a six lane divided thoroughfare from US Highway 75 through the State Highway 5 intersection; and

WHEREAS, Developer has agreed to advance funds to the Town for the Town's share of the cost to construct its share of Stacy Road from US Highway 75 through the State Highway 5 intersection and the Town has agreed to reimburse Developer for such funding as provided herein; and

WHEREAS, Developer has agreed to advance funds for the cost of the design, acquisition of right-of-way and construction of Fairview Parkway from Stacy Road to and connecting with Ridgeview Road for that portion of Fairview Parkway that is not funded by other parties prior to construction, and the Town has agreed to acquire the necessary right-of-way and reimburse Developer for such funding as provided herein; and

WHEREAS, the development and construction of the Center will promote economic development, stimulate business and commerce, create additional employment opportunities and generate tax revenue; and

WHEREAS, Developer has advised Grantors that a contributing factor that would induce Developer to develop the Center would be an agreement by Grantors to provide an economic development grant to Developer to defray a portion of the costs to be incurred by Developer as a consequence of developing and constructing the Center; and

WHEREAS, Grantors are authorized by Article III, Section 52-a of the Texas Constitution, Chapter 380 of the TEX. LOC. GOV'T CODE, and the Development Corporation Act, Article 5190.6, TEX. REV. CIV. STAT. to establish economic development programs; and

WHEREAS, the FEDC has concluded that the roadway improvements and other infrastructure for the Center are necessary to promote or develop new or expanded business enterprises and constitute a "project", as that term is defined in Article 5190.6, TEX. REV. CIV. STAT., and is willing to provide Developer with economic assistance hereinafter set forth for the roadway improvements and infrastructure; and

WHEREAS, the FCDC finds the Center to be suitable for use for entertainment and tourist purposes and constitutes a "project" as defined in Section 4B of Article 5190.6, TEX. REV. CIV. STAT.; and

WHEREAS, the taxes from the Center and the Premises will provide the necessary revenue to fund the grant and infrastructure improvements outlined in this Agreement and no new or additional taxes will be imposed on the properties within the balance of the Town outside of the Premises to support the Center, nor will any tax revenues of any type generated in any area outside of the Premises be used to satisfy the financial obligations of the Grantors contained in this Agreement; and

WHEREAS, Grantors have determined that providing economic development incentives will further the public purposes and economic development goals of the Town;

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

ARTICLE I THE CENTER

1.1 **Construction.** Developer agrees without cost to the Grantors to design, construct, operate and manage or cause to be designed, constructed, operated and managed the Center. The approximate location of the Center will be as shown on the site plan ("Site Plan") attached hereto as Exhibit "B". The Center will be similar in quality to Eastern Shore Centre in Spanish Fort, Alabama. The Center shall open with a minimum of 750,000 square feet of retail space which shall include a minimum of two anchor tenants which shall be Dillards, Macys/Foleys, or JC Penney (the "Anchor Stores").

1.2 **Center Construction Timeframe.** Developer agrees to use reasonable commercial efforts to: (i) have the plans prepared and all approvals thereof required by applicable governmental authorities obtained; (ii) have all necessary permits for grading to be issued by all applicable governmental authorities; (iii) have grading pursuant to the respective plans therefore commenced; and (iv) have all necessary permits for construction pursuant to the respective plans therefore to have been issued by all applicable governmental authorities ("Commencement of Construction") of the Center no later than one calendar year after the Effective Date of this Agreement, and subject to events of Force Majeure to cause (i) substantially completed in accordance with the approved plans; (ii) a certificate of substantial completion has been issued by the architect(s); and (iii) certificates of occupancy have been issued for two Anchor Stores and a minimum of 200,000 square feet of retail space in the Center to occur on or before the expiration of three years after Commencement of Construction (the "Opening Date"). The Center may be constructed in separate phases.

1.3 **Lease Space.** Developer in consideration of this Agreement does hereby agree to lease to the City a maximum of 1,000 square feet of space in the Center for the purpose of a police department substation ("Lease Space") the location of which is to be mutually agreed upon by the parties; provided however, the parties agree that such Lease Space shall be a ground-floor location, but shall not be a retail store front location.

(a) **Term.** The term of such lease for the Lease Space shall be for a period of five (5) years commencing on the Opening Date and shall automatically renew for subsequent five (5) year terms thereafter unless the Town gives written notice of termination to Developer prior to the expiration of the then current lease term. The Town shall continuously occupy the Lease Space during the lease term. The lease will terminate without further notice if it is not occupied within six months of the Opening Date or a six month period during the lease term or five years after this Agreement terminates.

(b) **Rent.** Town shall pay to Developer without offset or deduction annual rent in the amount of One Dollar (\$1.00) for the Lease Space, each payment of annual rent being due and payable on the first day of the first calendar month of each lease year. All installments of rent hereunder, when and as the same become due and payable, shall be paid in lawful money in the United States at the time to Developer at such location as Developer may designate from time to time.

(c) **Utilities, Insurance and Taxes.** In addition to annual rent, Town shall pay or cause to be paid all charges for water, heat, gas, electricity, sewer and other utilities used in the Lease Space throughout the lease term or any renewals thereof. Town shall pay the prorated portion of insurance for the Lease Space. Town shall also pay all taxes assessed, levied, charged or imposed upon or against the Lease Space as a result of the Town's use thereof, if any.

1.4 **Maintenance of Infrastructure.** The Developer shall have sole responsibility for and shall bear all costs for the maintenance of all surface infrastructure on the Premises, including internal roads, fountains, landscaping, open space, streetlights, sidewalks, and parking lots. Grantors shall be responsible for operation and maintenance of Town owned and operated utilities.

ARTICLE II
STACY ROAD AND FAIRVIEW PARKWAY IMPROVEMENTS

2.1 **Stacy Road Funding.** Developer agrees pursuant to this section to fund the Town's actual share of the costs for the construction of Stacy Road as a six lane divided thoroughfare within 120 feet of right-of-way from US Highway 75 to State Highway 5 including the intersections at U.S. Highway 75 and State Highway 5 including signalization, landscaping, irrigation, signage, lighting and other customary road improvements ("Stacy Road Project") for Town's share of the cost of participation in the Stacy Road Project. The participation in the Stacy Road Project is twenty-five percent (25%) by the Town and anticipated to be 25% by the City of Allen and fifty percent (50%) by Collin County through tax increment financing or other means negotiated by the parties. The Town shall use best efforts to obtain Collin County and Allen participation in the Stacy Road project. Town shall fund its portion of the design costs of Stacy Road to a maximum amount of \$175,000. Prior to the City of Allen's award of any construction contract(s) for the Stacy Road Project, Developer shall deliver to Town, at Developer's option, a cash escrow or an irrevocable letter of credit with an effective date concurrent with the contract(s) commencement date ("Letter of Credit") for the Town's portion of the construction amount and the amount, if any, that the design cost exceeds \$175,000. Upon delivery to the Town of the cash escrow or Letter of Credit, the Town will promptly execute the contract(s) agreeing to pay its portion for the Stacy Road Project. After the execution of the construction contracts for the Stacy Road Project and Commencement of Construction pursuant to that contract(s), the Town will make periodic payments to the contractor(s). Upon delivery to the Town of the engineer's approval of a contractor draw request of a portion of the construction amount, the Town shall deliver to the bank and Developer written notification, via facsimile using the form set forth in Exhibit "C" attached hereto and made a part hereof, to fund the approved contractor draw request from Developer's account and reduce the aggregate amount available for drawing under the Letter of Credit by the amount of the draw request without the necessity of amending the Letter of Credit. Town and Developer shall use reasonable commercial efforts to cooperate with and encourage the City of Allen to cause the Stacy Road Project to be completed on or before May 31, 2008. Upon completion of the Stacy Road Project and acceptance thereof by the Town, the Town shall promptly notify Developer and the bank to cancel and terminate the Letter of Credit. All risk of loss in connection with the letter of credit shall be the sole responsibility of Developer.

2.2 **Fairview Parkway Construction.** Upon acquisition of the necessary right-of-way by the Town, Developer shall cause the construction of Fairview Parkway as a four-lane divided thoroughfare within 80 feet of right-of-way from Stacy Road to the north boundary of the Premises and as a two lane roadway within 80 feet of right-of-way from the Premises to and including the temporary connection to Ridgeview Road ("Fairview Parkway"). The Town shall use reasonable commercial efforts to provide the remainder of the right-of-way for Fairview Parkway through property donation or condemnation on or before December 31, 2006. Developer shall use reasonable commercial efforts to cause Fairview Parkway to be completed on or before May 31, 2008 with priority given to the four lane portion of Fairview Parkway. Developer shall coordinate the construction of Fairview Parkway with other property owners abutting Fairview Parkway. Developer's cost for Fairview Parkway shall be reduced by any cost participation by abutting property owners prior to construction. Developer shall fund the cost of

right-of-way, design and construction of Fairview Parkway that is not funded by other property owners prior to construction.

ARTICLE III REIMBURSEMENT, GRANT AND OTHER INCENTIVES

3.1 **Stacy Road and Fairview Parkway Reimbursement.** Grantors agree to reimburse Developer the funds advanced by Developer for the Town's share of the design and actual costs for the Stacy Road Project and Developer's costs for the right-of-way, design and construction of Fairview Parkway plus interest on all of the above from the date funds are expended (collectively, the "Reimbursement").

3.2 **Grant.** The Grantors shall, upon the Opening Date, provide Developer with an economic development grant equal to \$40,000,000 plus interest (the "Grant") to offset Developer's cost of development of the Center, including but not limited to the cost of providing anchor tenant incentives, internal streets, fountains, utilities, landscaping, streetlights, sidewalks, land, parking lots, and other open space. The Grant shall be reduced by the amount Grantors pay Developer for that portion of Fairview Parkway right-of-way located within the Premises. Developer shall provide the Town manager with the cost of public infrastructure constructed within the Premises which is included in the Grant. Developer shall allow the Town manager to inspect the documentation to confirm the amount of the anchor tenant incentives. In the event that one or more of the three contemplated Anchor Stores is not opened by date of substantial completion under Section 1.2, then the Grant will be reduced by an amount equal to the incentive offered by Developer to such Anchor Store(s).

3.3 **Rollback Taxes.** The Town will and hereby does waive any agricultural rollback taxes due to the Town for the Premises. In the event Developer is required to pay any Town agricultural rollback taxes for the Premises, the Town shall provide an economic development grant and rebate to Developer in a timely manner (but not later than 30 days following receipt thereof by the Town) in an amount identical to the agricultural rollback taxes paid to the Town by Developer.

3.4 **Impact Fee Waiver.** The Town will and hereby does waive all thoroughfare, water and sewer impact fees for the Center.

3.5 **Capital Recovery Fee Waiver.** The Town will and hereby does waive any capital recovery fees imposed against the Center.

3.6 **Road or Utility Assessment Waiver.** The Town will and hereby does waive any road or utility assessments for the construction of any of the improvements provided in this Agreement; however, the Developer shall work with the Town in a good faith effort to develop a Public Improvement District for Premises (excluding the Center) and other neighboring properties for the maintenance, repair and periodic replacement of the Fairview Parkway landscaping and streetscape improvements.

3.7 **Permit and Inspection Fee Waiver.** The Town will and hereby does waive any building permit and inspection fees related to the Center, Stacy Road Project and Fairview

Parkway. Developer shall reimburse the Town for the Town's cost of out source inspection and plan review services for the Center.

3.8 Sales Taxes on Construction Materials. To the extent allowed by Texas law, Developer shall establish the Premises as the situs for sales tax purposes, and Town agrees to rebate to Developer 50% of the sales taxes on construction materials for the Premises. Failure to establish the situs for sales tax purposes is not a default under this Agreement.

3.9 Other Chapter 380 Incentives. To the extent the rebate of the agricultural rollback tax rebate or the impact fee, capital recovery fee, road or utility assessment, building inspection fee or sales taxes on construction materials are not otherwise permitted, Town agrees to provide an economic development grant (the "Other Incentives") in accordance with this Agreement and pursuant to Chapter 380 of the Texas Local Government Code in the amount of the Other Incentive.

ARTICLE IV PAYMENT OF REIMBURSEMENT, GRANT AND OTHER INCENTIVES

4.1 Payments Through Tax Receipts. Grantors shall pay the Reimbursement, Grant and Other Incentives as provided herein from the Grantors' receipts from the collection of sales tax imposed by: (i) the FEDC pursuant to Section 4A of Article 5190.6 TEX. REV. CIV. STAT.; (ii) the FCDC pursuant to Section 4B of Article 5190.6 TEX. REV. CIV. STAT.; and (iii) the Town pursuant to Chapter 321 of the Texas Tax Code, attributed to the sale of Taxable Items (as that term is assigned by Chapter 151, TEX. TAX CODE, as amended) for storage, use or consumption by Retailers (as that term is assigned by Chapter 151, TEX. TAX CODE, as amended) at or within the Premises (the Town, 4A and 4B sales and use taxes collectively referenced herein as "Tax Receipts"). The Reimbursement and that portion of the Grant used to pay for public infrastructure will be made solely from the FEDC's Tax Receipts for the duration of the Agreement or until paid in full. If FEDC's Tax Receipts are insufficient to pay for the Reimbursement, the Reimbursement will be made from the Tax Receipts of first the FCDC and then the Town. Grantors' obligation to provide the Reimbursement shall be solely from and only to the extent of Grantors' Tax Receipts from the Premises. Grantors' obligation to provide the Reimbursement, any Grant payments, Other Incentives and any interest thereon shall be limited to the extent of lawfully available funds from Grantors' collection of Tax Receipts from the Premises. Under no circumstances shall Grantors be obligated to provide any Grant or Grant payments and any applicable interest unless there is available Tax Receipts from the Premises. Grantors shall provide each Grant in quarterly payments beginning on the last day of the first full calendar quarter immediately following the Opening Date and continuing on the last day of each succeeding calendar quarter until the earlier of (i) the Agreement is terminated and (ii) payment in full of the accumulated Reimbursement Grant and Other Incentives and accrued interest, unless the payments are sooner terminated. Any Grantor may pay all or a portion of the Reimbursement, Grant or Other Incentives at any time without penalty subject to the terms of this Agreement.

4.2 Minimum Annual Tax Revenue to Town. Beginning on the Opening Date, the Town shall receive an amount annually equal to the greater of (i) an amount equal to \$1,000,000 from the Town property taxes from the Premises and the Tax Receipts to the extent necessary,

net of costs paid by Town annually on any portion of the incentives provided hereunder which is refinanced by the Town under Section 4.6, or (ii) an amount equal to 20 percent (20%) of the sum of the Tax Receipts and Town property taxes from the Premises. The Town shall receive and retain all Town property taxes generated by the Premises. If the Town property taxes from the Premises are insufficient to meet the formula above, the requisite amount of the Tax Receipts shall be used to make up the difference and meet the minimum annual tax revenue. If the Town property taxes from the Premises are greater than \$1,000,000, the Town shall retain the total amount of the Town property taxes and the condition of subparagraph (i) shall have been met.

4.3 **Interest.** The Reimbursement shall bear interest of 7.5% compounded annually commencing on the date of the deposit of the cash escrow or the Town first withdraws the funds provided to the Town by Developer through an irrevocable letter of credit for the Town's participation in the cost of construction of Stacy Road Project or any portion thereof or the date of expenditure of funds by Developer for Fairview Parkway. The unpaid portion of the Grant and Other Incentives shall bear interest commencing on the Opening Date at the rate of 7.5% compounded annually.

4.4 **Sales Tax Receipts Certificate.** During the term hereof, Developer or the then owners or tenants on the Premises shall provide the Grantors, no later than thirty (30) days following the end of each calendar quarter a certificate or other statement in a form reasonably acceptable to the Grantors setting forth the sales tax imposed and collected for the sale of Taxable Items for storage, use or consumption by Retailers at or within the Premises (including Developer, any tenant, subtenant, lessee, licensee, concessionaire, retailer, merchant, or business, at or within the Premises) for the previous calendar quarter which are to be used to determine Developer's eligibility for payments to Developer from lawfully available funds from Tax Receipts, together with such supporting documentation as Grantors may reasonably request ("Sales Tax Receipts Certificate"). To the maximum extent possible, Grantors shall obtain confirmation of the Tax Receipts from the Premises pursuant to Section 321.3022 of the Texas Tax Code which shall constitute the Sales Tax Receipts Certificate. The Grantors shall calculate the Tax Receipts and determine Developer's entitlement to any Reimbursement, Grant or Other Incentives, and pay any Reimbursement, Grant or Other Incentives payments during the term of this Agreement based on the Sales Tax Receipts Certificates provided to Grantors. At the request of the Grantors, Developer shall provide such additional documentation as may be reasonably requested by the Grantors to evidence, support and establish the sales tax attributable to the sale of Taxable Items by Retailers at the Premises and the Tax Receipts.

4.5 **Collective Payments.** The sum of required Grants, Reimbursement and Other Incentives payments shall be aggregated and collectively paid by the Grantors from the Tax Receipts, to the extent available. Except for the FEDC Tax Receipts which shall be used exclusively for public infrastructure, the available Tax Receipts shall be applied on a prorata basis in payment of any Grants, Reimbursement and Other Incentives then existing based on the unpaid portion of such Grant, Reimbursement or Other Incentive, plus interest, as the case maybe, to the sum total of the Grant, Reimbursement and Other Incentives.

4.6 **Alternative Public Financing.** The Developer shall reasonably cooperate with the Town in identifying and securing alternative forms of project financing that will result in lower discount rates to the Town, including but not limited to Tax Increment Financing.

Developer agrees to support creation of a public improvement district pursuant to Chapter 372 of the Texas Local Government Code ("PID") to fund Fairview Parkway construction if requested by Town prior to commencement of construction of Fairview Parkway so long as (a) the PID does not include retail areas of the Center and (b) this Agreement is amended if necessary so that the PID does not change the net economic results to Developer under this Agreement as originally executed.

ARTICLE V MISCELLANEOUS

5.1 **Termination.** This Agreement terminates upon the following:

- (a) by written mutual agreement of all parties;
- (b) by any Grantor, if Developer defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured;
- (c) the earlier of (i) the expiration of twenty-two (22) years following the Opening Date, and (ii) singular or collective payment of the Grant, Reimbursement and Other Incentives by Grantors to Developer;
- (d) by any Grantor, if any taxes owed to any Grantor by Developer (provided Developer retains the right to timely and properly protest and contest any such taxes); or
- (e) by any Grantor if Developer fails to continuously operate and maintain the Center as a lifestyle retail shopping center.

5.2 **Default.** In the event a party fails to comply with the terms of this Agreement and the party fails to cure such failure within 30 days after written notice from the other party describing such failure or if such failure cannot be cured within such 30 day period and the exercise of all due diligence, then if a party fails to commence such cure within 30 day period or fails to continuously thereafter diligently pursue the cure of such failure, the other party may pursue any remedy available at law or in equity and any legal proceedings brought to enforce the terms of this Agreement, the prevailing party may recover its reasonable and necessary attorney's fees from the nonprevailing party as permitted by Section 271.159 of the Texas Local Government Code, effective on December 1, 2005 or as it may be subsequently amended, or in accordance with any means available at law or in equity.

5.3 **Force Majeure.** Whenever a period of time is herein prescribed for action to be taken by a party, such party shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to force majeure, which term shall include strikes, riots, acts of God, shortages of labor or materials, war, governmental approvals, laws, regulations, or restrictions, or any other cause of any kind whatsoever which is beyond the reasonable control of the parties.

5.4 **Representations of the Grantors.** The Grantors hereby represent and warrant that they have full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the duties and obligations of this Agreement and all of

the foregoing have been or will be duly and validly authorized and approved by all necessary proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the Grantors, enforceable in accordance with its terms.

5.5 Representations of the Developer. Developer hereby represents and warrants that Developer has full power to execute and deliver and perform the terms, duties, and obligations of this Agreement and all of the foregoing has been duly and validly authorized by all necessary proceedings. This Agreement constitutes the legal, valid and binding obligations of Developer, enforceable in accordance with its terms.

5.6 Eminent Domain. If all or substantially all of the Center and Premises is taken under power of eminent domain (which term as used in this Agreement shall include any conveyance in avoidance or settlement of condemnation or eminent domain proceedings) or other similar proceeding, then this Agreement shall terminate as of the date of taking of possession by the condemning authority; provided however, Developer shall be compensated by the condemning authority for the value of this Agreement. Grantor and Developer agree that if less than all or substantially all of the Center and Premises is taken under power of eminent domain or other similar proceeding, then this Agreement shall nevertheless continue in effect as to the remainder of the Center and Premises; provided, however, that if Grantors and Developer both agree within thirty (30) days following the taking that so much of the Center and Premises has been taken or condemned as to make it economically unsound to attempt to use the remainder thereof for the conduct of Developer's business thereon, then this Agreement shall terminate upon possession of such portion of the Premises by the condemning authority; provided however, Developer shall be compensated by the condemning authority for the value of this Agreement.

5.7 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto.

5.8 Limitation on Liability. It is understood and agreed by the parties that Developer, in the development of the Center and satisfying the conditions of this Agreement, is acting independently, and the Grantors assume no responsibilities or liabilities to third parties in connection with these actions.

5.9 No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The Grantors, past, present and future officers, elected officials, employees and agents of the Grantors do not assume any responsibilities or liabilities to any third party in connection with the development of the Center or the design, construction or operation of the Center.

5.10 Access to Center. Developer further agrees that the Grantors and their agents and employees shall have a right to reasonable access to the Center, upon reasonable advance written notice and subject to any security requirements, if any, to inspect the Center in order to insure that the construction of the Center is in accordance with this Agreement and all applicable Federal, State, and local laws and regulations.

5.11 **Assignment.** Developer, its legal representatives or successors in interest shall not assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of Developer under this Agreement, without obtaining the prior written consent of Grantors, which shall not be unreasonably withheld or delayed. Notwithstanding anything contained herein to the contrary, Developer may assign this Agreement, without the consent of Grantors, provided Developer retains more than fifty percent (50%) of the ownership interests in the Center (whether by stock, partnership or otherwise). In addition, without the consent of Grantors, Developer may assign this Agreement to any construction lender ("Construction Lender") providing a construction loan to Developer to pay the costs of constructing the Center, and Construction Lender shall be entitled to succeed to Developer's rights under this Agreement, if Construction Lender obtains title to the Premises by foreclosure or deed in lieu of foreclosure. Construction Lender may assign any rights so acquired to a purchaser of the Premises from Construction Lender following any such foreclosure or deed in lieu of foreclosure (a "Subsequent Owner"); provided, however, that such assignment by Construction Lender to a Subsequent Owner shall be subject to Grantors' consent, which consent shall not be unreasonably withheld or delayed. As a condition to the exercise by Construction Lender or any Subsequent Owner of Developer's rights under this Agreement, Construction Lender or Subsequent Owner, as applicable, must satisfy all of Developer's obligations under this Agreement which are conditions to the exercise of any such rights.

5.12 **Notice.** Any notice required or permitted to be delivered hereunder shall be upon receipt sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below, by facsimile or by courier or other hand delivery.

If intended for the Town:

Attn: Town Manager
Town of Fairview
500 S. Highway 5
Fairview, TX 75069
972-562-0522
972-548-0268 FAX

If intended for the FEDC:

Attn: President
Fairview Economic Development Corporation
500 S. Highway 5
Fairview, TX 75069
972-562-0522
972-548-0268 FAX

If intended for the FCDC:

Attn: President
Town of Fairview Community Development Corporation
500 S. Highway 5
Fairview, TX 75069
972-562-0522
972-548-0268 FAX

If intended for the Developer:

Attn: President
The MG Herring Property Group LLC
5710 LBJ Freeway
Suite 450
Dallas, Texas 75240-6399
972-448-0200
972-448-0248 FAX

With Copies to:

Attn: Barry R. Knight
Winstead Sechrest & Minick P.C.
5400 Renaissance Tower
Dallas, Texas 75270
214-745-5400
214-745-5390 FAX

5.13 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided in the Exhibits attached hereto.

5.14 **Governing Law.** This Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas.

5.15 **Amendment.** This Agreement may be amended by the mutual written agreement of the parties affected.

5.16 **Legal Construction.** In the event any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

5.17 **No Conflicts of Interest.** The Grantors represent and warrant that the Premises upon which the Center is to be located is not owned by any officer or employee of the Grantors.

5.18 **Recitals.** The recitals to this Agreement are incorporated herein.

5.19 **Gender.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

5.20 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

5.21 **Effectiveness of Agreement.** This Agreement shall not become effective unless Developer acquires fee simple title to the Premises on or before December 31, 2006. Developer shall provide Grantors written confirmation of its acquisition of the Premises within ten (10) days after closing the acquisition of the Premises. If Developer does not acquire fee simple title to the Premises on or before December 31, 2006, this Agreement shall be null and void and of no further effect.

EXECUTED on this _____ day of _____, 2006.

Attest:

TOWN OF FAIRVIEW, TEXAS

Carolyn Jones, Town Secretary

By: _____
Sim Israeloff, Mayor

Approved as to Form:

Town Attorney

EXECUTED on this _____ day of _____, 2006.

FAIRVIEW ECONOMIC DEVELOPMENT
CORPORATION

By: _____
Jim Smith, President

EXECUTED on this _____ day of _____, 2006.

**TOWN OF FAIRVIEW COMMUNITY
DEVELOPMENT CORPORATION**

By: _____
Jim Smith, President

EXECUTED on this _____ day of _____, 2006.

**THE VILLAGE AT FAIRVIEW LP,
a Texas limited partnership**

By: Herring Village at Fairview GP Inc.,
a Texas corporation, its general partner

By: _____
M.G. Herring, III,
President

TOWN'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2006, by Sim Israeloff, Town Mayor of the Town of Fairview, Texas, on behalf of said municipality.

Notary Public, State of Texas

My Commission Expires:

FEDC'S ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2006, by Jim Smith, President of Fairview Economic Development Corporation, a Texas Nonprofit Corporation, on behalf of said corporation.

Notary Public, State of Texas

My Commission Expires:

FCDC'S ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2006, by Jim Smith, President of The Town of Fairview Community Development Corporation, on behalf of said corporation.

Notary Public, State of Texas

My Commission Expires:

DEVELOPER'S ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____, 2006, by M.G. Herring, III, President of Herring Village at Fairview GP Inc., a Texas corporation, in its capacity as general partner of The Village at Fairview LP, a Texas limited partnership, on behalf of said partnership.

Notary Public, State of Texas

My Commission Expires:

EXHIBIT "A"

LEGAL DESCRIPTION OF PREMISES

NORTHERN TRACT ONE

BEING nine tracts of land situated in the John A. Taylor Survey, Abstract No. 909, the Joseph Dixon Survey, Abstract No. 276 and the George Phillips Survey, Abstract No. 701, City of Fairview, Collin County, Texas, and being all of the following tracts: a tract of land conveyed to Greenville Stacy, L.P., by deed recorded in Volume 5737, Page 2503, Deed Records of Collin County, Texas (D.R.C.C.T.), and filed in County Clerk's File No. 2004-0125020, a tract of land conveyed to Russell Edward Schmidt and filed under County Clerk's File No. 95-0087628, a tract of land (Tract 4) conveyed to Sloan Creek, L.P., by deed recorded in Volume 5058, Page 5734, D.R.C.C.T., and filed under County Clerk's File No. 2001-0154958, a tract of land conveyed to PLF, Ltd., by deed recorded in Volume 4764, Page 2677, D.R.C.C.T., and filed under County Clerk's File No. 2000-0107008, a tract of land conveyed to D-F Pacific No. 2, Inc., by deed recorded in Volume 3967, Page 1271, D.R.C.C.T., and filed under County Clerk's File No. 97-0062262, a tract of land conveyed to Big Horn Partnership Fund, Ltd., and filed under County Clerk's File No. 96-0001759, a tract of land conveyed to Big Horn Partnership Fund, Ltd., by deed recorded in Volume 4561, Page 2379, D.R.C.C.T., and filed under County Clerk's File No. 99-0149985 and a tract of land (Tract 1) conveyed to Sloan Creek, L.P., by deed recorded in Volume 5058, Page 5734, D.R.C.C.T., and filed under County Clerk's File No. 2001-0154958, and also being a portion of a tract of land conveyed to Little Big Horn Partnership Fund, Ltd., by deed recorded in Volume 4409, Page 2864, D.R.C.C.T., and filed under County Clerk's File No. 99-0056058 and a portion of a tract of land conveyed to Fairview Hwy. 5, Ltd., by deed recorded in Volume 5518, Page 3312, D.R.C.C.T., and filed under County Clerk's File No. 2003-0201548, and being more particularly described as follows:

BEGINNING at a 5/8" iron rod set for corner at the intersection of the northwesterly right-of-way line of the D.A.R.T. rail (100' R.O.W. at this point) and the north right-of-way line of FM 2786 (Stacy Road, 120' R.O.W.), said iron rod also being the southwesterly corner of said Big Horn Partnership Fund, Ltd., tract (Vol. 4561, Pg. 2379);

THENCE N37°51'57"E, leaving the northwesterly right-of-way line of said D.A.R.T. rail and along the northwesterly line of said Big Horn tract, a distance of 948.98 feet to a 5/8" iron rod set for corner at the northwesterly corner of said Big Horn tract;

THENCE S89°01'57"E, along the north line of said Big Horn tract, a distance of 125.05 feet to a capped iron rod found for corner, said capped iron rod being in the southeasterly right-of-way line of said D.A.R.T. rail and the northwesterly corner of aforementioned Big Horn Partnership Fund, Ltd. tract (CC# 96-0001759) and the southwesterly corner of aforementioned D-F Pacific No. 2, Inc. tract;

THENCE N37°51'57"E, along the southeasterly right-of-way line of said D.A.R.T. rail, a distance of 2276.61 feet to a capped iron rod found for corner at the northwesterly corner of aforementioned Sloan Creek, L.P. tract (Tract 1);

THENCE N89°58'23"E, leaving the southeasterly R.O.W. line of said D.A.R.T. rail and along the north line of said Sloan Creek, L.P. tract (Tract 1), a distance of 1364.83 feet to a 5/8" iron rod set for corner in the west line of a tract of land conveyed to Geer Balance, Ltd. by deed recorded in Volume 5516, Page 5636, D.R.C.C.T.;

THENCE S05°10'21"W, along the west line of said Geer Balance tract and the east line of said Sloan Creek tract (Tract 1), a distance of 430.19 feet to a 5/8" iron rod set for corner at the beginning of a non-tangent curve to the left having a radius of 1000.00 feet, said iron rod also being in the west line of a tract of land conveyed to Fairview Hwy. 5 Ltd., by deed recorded in Volume 5518, Page 3312, D.R.C.C.T., and being the proposed centerline of relocated State Highway 5;

THENCE, leaving the west line of said Fairview Hwy. 5 tract and along said non-tangent curve to the left, an arc distance of 198.58 feet through a central angle of 11°22'41" and a chord bearing and distance of S66°38'37"E, 198.26 feet to a 5/8" iron rod set for corner and the beginning of a reverse curve to the right having a radius of 1405.00 feet;

THENCE along said reverse curve to the right, an arc distance of 1295.93 feet, through a central angle of 52°50'53" and a chord bearing and distance of S45°54'30"E, 1250.48 feet to a 5/8" iron rod set for corner in the north line of aforementioned Greenville Stacy, L.P. tract and the south line of aforementioned Fairview Hwy. 5, Ltd. tract;

THENCE S89°41'27"E, along said common line between said Fairview Hwy. 5 tract and the north line of aforementioned Greenville Stacy, L.P. tract, a distance of 457.43 feet to a 1/2" iron rod found for corner in the northwesterly right-of-way line of State Highway 5, said 1/2" iron rod also being the southeast corner of said Fairview Hwy. 5 tract and the northeast corner of said Greenville Stacy tract, and being the beginning of a non-tangent curve to the right having a radius of 1860.08 feet;

THENCE along the northwesterly right-of-way line of said State Highway 5, the easterly line of said Greenville Stacy tract and said non-tangent curve to the right, an arc distance of 483.73, through a central angle of 14°54'01" and a chord bearing and distance of S23°38'51"W, 482.37 feet to a concrete highway monument found for corner;

THENCE S31°07'19"W, continuing along said Highway right-of-way line and the east line of said Greenville Stacy tract, a distance of 883.68 feet to a 1/2" iron rod found for corner at a southerly corner of aforementioned Little Big Horn Partnership Fund, Ltd. tract;

THENCE S62°13'24"W, continuing along said Highway right-of-way line and along the south line of said Little Big Horn tract, a distance of 86.62 feet to a 5/8" iron rod set for corner in the north right-of-way line of aforementioned FM 2786 (Stacy Road);

THENCE N87°48'06"W, continuing along the south line of said Little Big Horn tract and the north line of said FM 2786, a distance of 74.42 feet to a 5/8" iron rod set for corner at the southeast corner of a tract of land conveyed to the Town of Fairview by deed recorded in Volume 660, Page 184, D.R.C.C.T.;

THENCE N00°57'20"E, along the east line of said Town of Fairview tract, a distance of 43.42 feet to a 5/8" iron rod set for corner at the northeast corner of said Town of Fairview tract;

THENCE S89°13'40"W, along the north line of said Town of Fairview tract, a distance of 50.12 feet to a 5/8" iron rod set for corner at the northwest corner of said Town of Fairview tract;

THENCE S00°20'25"W, along the west line of said Town of Fairview tract, a distance of 43.53 feet to a 5/8" iron rod set for corner at the southwest corner of said Town of Fairview tract, said 5/8" iron rod also being in the north right-of-way line of aforementioned FM 2786 (Stacy Road);

THENCE N88°49'57"W, along the north right-of-way line of said FM 2786 (Stacy Road), a distance of 3520.94 feet to a concrete highway monument found for corner and the beginning of a curve to the left having a radius of 5789.58 feet;

THENCE continuing along the north right-of-way line of said FM 2786 (Stacy Road) and said curve to the left, an arc distance of 122.43 feet through a central angle of 01°12'42" and a chord bearing and distance of N89°26'18"W, 122.43 feet to a 1/2" iron rod found for corner;

THENCE S89°57'21"W, continuing along the north right-of-way line of said FM 2786 (Stacy Road), a distance of 475.03 feet to the POINT OF BEGINNING and containing 8,271,236 square feet or 189.881 acres of land.

NORTHERN TRACT TWO

BEING two tracts of land situated in the G. Phillips Survey, Abstract No. 701 and the Joseph Dixon Survey, Abstract No. 276, City of Fairview, Collin County, Texas, and being all of the same tract of land conveyed to Sloan Creek, L.P. (Tract 2) and all of the same tract of land conveyed to Sloan Creek, L.P. (Tract 3) by deed recorded in Volume 5058, Page 5734, Deed Records of Collin County, Texas (D.R.C.C.T.), and being more particularly described as follows:

BEGINNING at a 5/8" iron set in the east right of way line of U. S. Highway 75 and inadvertently described in the previous document as being in the south line of the G. Phillips Survey. Abst. #701 and the middle of Murray Road;

THENCE North 26°26'25" East, with said east right-of-way line, a distance of 35.27 feet to a wood right-of-way post found for corner;

THENCE North 30°50'44" West, with said east right-of-way line, a distance of 53.05 feet to a wood right-of-way post found for corner;

THENCE North 26°08'16" East, with said east right-of-way line, a distance of 86.23 feet to a 5/8" iron rod set for corner;

THENCE North 19°04'16" East, with said east right-of-way line, a distance of 103.50 feet to a 5/8" iron rod set for corner;

THENCE North 23°10'22" East, with said east right-of-way line, a distance of 170.61 feet to a 5/8" iron rod set for the most northerly corner of this tract;

THENCE South 00°28'12" West, leaving said east right-of-way line, a distance of 409.10 feet to a 5/8" iron rod set for corner;

THENCE North 89°56'53" East, a distance of 20.57 feet to a 5/8" iron rod set for corner in the northwesterly right-of-way line of the D.A.R.T. rail (100' R.O.W.);

THENCE South 37°51'57" West, along the northwesterly right-of-way line of said D.A.R.T. rail, a distance of 764.47 feet to a 5/8" iron rod set for corner, said iron rod also being in the east right-of-way line of aforementioned U.S. Highway 75;

THENCE North 17°08'28" East, along the east right-of-way line of said U.S. Highway 75, a distance of 223.53 feet to a 5/8" iron rod set and the beginning of a curve to the left having a radius of 5889.58 feet;

THENCE continuing along said east right-of-way and said curve to the left, an arc distance of 204.58 feet through a central angle of 01°59'25" and a chord bearing and distance of North 28°55'57" East, 204.57 feet to a 5/8" iron rod set for corner;

THENCE North 27°11'29" East, continuing along said east right-of-way line, a distance of 153.30 feet to a 3/8" iron rod found for corner;

THENCE North 59°54'57" East, continuing along said east right-of-way line, a distance of 85.46 feet to a wood right-of-way post found for corner;

THENCE North 26°30'47" East, continuing along said right-of-way line, a distance of 35.25 feet to the POINT OF BEGINNING and containing 96,406 square feet or 2.213 acres of land.

EXHIBIT "B"

CONCEPTUAL SITE PLAN OF THE CENTER

[TO BE ATTACHED]

EXHIBIT "C"

[TOWN OF FAIRVIEW, TEXAS LETTERHEAD]

_____, 2006

[bank]
Letter of Credit Department
[bank address]

RE: Letter of Credit No. _____; issued _____, 2006 ("Letter of Credit")

Dear Sir:

Pursuant to the enclosed written approval of the contractor draw request executed by the Town, you are hereby instructed to wire transfer \$_____ ("Draw Amount") to [Town of Fairview Bank Account] for payment of the contractor in accordance with the construction contract between the Town of Fairview, Texas and _____ [Contractor's Name], dated _____, 2006. You are hereby notified that the aggregate amount available for drawing under the Letter of Credit is reduced by the Draw Amount without amending the Letter of Credit.

Sincerely,

TOWN OF FAIRVIEW, TEXAS

By: