

STATE OF TEXAS       §  
                                  §  
COUNTY OF COLLIN   §

**PROJECT DEVELOPMENT AGREEMENT**

This Project Development Agreement (“Agreement”) is by and among the City of Allen, Texas (“City”), Allen Economic Development Corporation (“AEDC”), and The Farm Development Co., a Texas corporation (“Company”) (collectively “the Parties” and individually as a “Party”), acting by and through their duly authorized representatives.

**RECITALS**

**WHEREAS**, Company owns approximately 135 acres of land located at the southeast corner of Alma Road and State Highway 121 in Allen, Texas, and being further described in **Exhibit “A”** (the “Land”); and

**WHEREAS**, Company intends to develop the Land in phases for a mixed use project consisting of approximately 1,680,000 square feet of office space, approximately 202,000 square feet of retail and dining space, and a hotel containing 150 rooms together with parks, trails, entertainment, office, corporate headquarters, retail, residential, and possibly hotel uses for the enjoyment of the public (collectively the “Project”); and

**WHEREAS**, Company intends to design and construct the Phase 1 Infrastructure (hereinafter defined) for Phase 1 of the Project (hereinafter defined); and

**WHEREAS**, City intends to issue Certificates of Obligation (hereinafter defined) to reimburse Company for the costs of Public Infrastructure (hereinafter defined) pursuant to Texas Local Government Code §212.071; and

**WHEREAS**, Company desires to develop the Land in accordance with the provisions of the Zoning, and other applicable City ordinances; and

**WHEREAS**, Texas Local Government Code §212.071, as amended, authorizes municipalities to participate in the Company's costs of construction of public improvements related to the development of subdivisions within the municipality without compliance with Chapter 252 of the Texas Local Government Code, as amended; and

**WHEREAS**, Company has advised AEDC that a contributing factor that would induce the Company to construct Phase 1 of the Project and the Infrastructure would be an agreement by AEDC to provide an economic development grant to the Company as set forth herein; and

**WHEREAS**, promoting the expansion and maintenance of existing business enterprises within the City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the property tax base and economic vitality of City; and

**WHEREAS**, AEDC has adopted programs for promoting economic development and this Agreement and the economic development incentives set forth herein are given and provided by AEDC pursuant to and in accordance with those programs; and

**WHEREAS**, the Development Corporation Act, Chapters 501-505, Texas Local Government Code (the “Act”), authorizes AEDC to provide economic development grants for projects resulting in the creation and retention of primary jobs (as defined in the Act) and for certain infrastructure found by the board of directors to be required or suitable for new or expanded industrial business enterprises; and

**WHEREAS**, AEDC intends to issue Sales Tax Revenue Bonds (hereinafter defined) to reimburse Company for the costs of Infrastructure (hereinafter defined); and

**WHEREAS**, AEDC has determined that the Grant (hereinafter defined) to be made hereunder is required or suitable to promote or develop new or expanded business enterprises and constitutes a “project”, as that term is defined in the Act; and

**WHEREAS**, AEDC has determined that making the Grant in accordance with this Agreement will further the objectives of AEDC, will benefit City and City’s inhabitants, and will promote local economic development and stimulate business and commercial activity in City;

**NOW THEREFORE**, in consideration of the premises and the mutual covenants contained herein and other valuable consideration the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

## **Article I**

### **Term; Termination**

1.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue until the Parties have fully satisfied all terms and conditions of this Agreement unless sooner terminated as provided herein.

1.2 Termination. This Agreement may be terminated upon any one or more of the following:

- (a) upon the written agreement of the Parties; or
- (b) upon written notice by any Party in the event another Party breaches any of the terms or conditions of this Agreement or a Related Agreement and such breach is not cured within thirty (30) days after written notice thereof, provided however if such breach cannot reasonably be cured within such 30-day period, the time to cure such reach shall be extended for an additional thirty (30) days;
- (c) upon written notice by either City or AEDC to Company, if Company suffers an event of Bankruptcy or Insolvency;
- (d) upon written notice by City or AEDC to Company, if any Impositions owed to City or the State of Texas by Company shall become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such Impositions);

(e) upon written notice, by any Party, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable; or

(f) upon written notice by Company to City and AEDC at any time prior to: (i) Company's receipt of any funds under the City Economic Development and Easement Agreement and funds pursuant to this Agreement; (ii) prior to the date of issuance of the Certificates of Obligation; and (iii) prior to the date issuance of the Sales Tax Revenue Bonds.

1.3 Repayment. In the event this Agreement is terminated by City or AEDC pursuant to Section 1.2 (b), (c), (d) or (e), the Company shall immediately refund to AEDC an amount equal to the Grant paid by AEDC to the Company preceding the date of such termination, plus interest at the rate of interest periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by AEDC) as its prime or base commercial lending rate) from the date on which each Grant is paid by AEDC until each such Grant is refunded by the Company. The repayment obligation of Company set forth in this section shall survive termination.

1.4 Right of Offset. City and/or AEDC may, at their respective options, offset any Grant amounts or other funds due and payable under this Agreement or a Related Agreement against any debt (including taxes) lawfully due to City and/or AEDC from the Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise and regardless of whether or not the debt due AEDC and/or City has been reduced to judgment by a court.

## **Article II Definitions**

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"AEDC" shall mean the Allen Economic Development Corporation, a Texas non-profit corporation organized as a Type A corporation pursuant to the Act.

"ALDC" means the City of Allen Land Development Code, as amended.

"Approved Plans" means the plans and specifications relating to the design and construction of the Public Infrastructure or the Infrastructure, as the case may be, inclusive of any change orders thereto, as approved by the Director of Engineering.

"Bankruptcy or Insolvency" shall mean the dissolution or termination of Company's existence, insolvency, appointment of receiver for any part of Company's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors or the commencement of any proceedings under any bankruptcy or insolvency laws by or against

Company and such proceedings are not dismissed within ninety (90) days after the filing thereof.

“Capital Investment” shall mean Company’s capitalized costs for the design and construction of Phase 1 Infrastructure and Phase 1 of the Project (inclusive of all hard and soft costs), as the case may be. Capital Investment does not include the cost of the Land, or rights-of-way. For purposes of this Agreement, Capital Investment for the total costs of design and construction of the Phase 1 Infrastructure and Phase 1 of the Project may include costs incurred and paid by a Company Affiliate or a subsequent owner of the Garage Site.

“Certificates of Obligation” shall mean certificate(s) of obligation issued by City in the approximate amount of Three Million Dollars (\$3,000,000.00) the sales proceeds from which will in part provide City funding of City Cost Participation for the Public Infrastructure pursuant to this Agreement.

“City” shall mean City of Allen, Texas, acting by and through its City Manager, or designee.

“City Cost Participation” shall mean City reimbursement to Company for thirty percent (30%) of Eligible Costs for Public Infrastructure, not to exceed the Maximum Public Infrastructure Amount.

“City Council” means the City Council of the City of Allen, Texas.

“City Economic Development and Easement Agreement” shall mean that certain economic development and easement agreement by and between City and Company dated approximate date herewith.

“Commencement of Construction” shall mean (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of Phase 1 Infrastructure or Phase 1 of the Project, as the case may be; (ii) all necessary permits for the construction of Phase 1 Infrastructure or Phase 1 of the Project, as the case may be, have been issued by the applicable governmental authorities; and (iii) grading of the Land or construction of buildings and/or the Phase 1 Infrastructure has commenced.

“Company” shall mean The Farm Development Co., a Texas corporation.

“Company Affiliate” shall mean any entity that is directly or indirectly controlled by or is under common control with Company.

“Company Investment” shall mean Company (or Company Affiliate) has incurred, paid and expended at least at least Eleven Million Five Hundred Eighty-Five Thousand Dollars (\$11,585,000.00) in Eligible Costs for the design and construction of the Phase 1 Infrastructure. For purposes of this Agreement, Company Investment includes Eligible

Costs incurred by Company Affiliates or others in the design and construction of Infrastructure and Public Infrastructure for townhome development on behalf of Company.

“Company’s Construction Lender” shall mean one or more lenders selected by Company (in its sole discretion) to provide a construction loan to construct the Phase I Infrastructure.

“Company’s Lender” shall mean Company’s Construction Lender or Company’s Permanent Lender, as applicable at the time.

“Company’s Permanent Lender” shall mean one or more lenders selected by Company (in its sole discretion) to provide permanent financing for the Infrastructure.

“Completion of Construction” means (i) the Public Infrastructure or the Infrastructure, as the case may be, have been substantially completed in accordance with the Approved Plans; and (ii) the Public Infrastructure has been accepted in writing by City, or in the case of Infrastructure City has verified completion thereof in accordance with the Approved Plans.

“Contractor” shall mean the person or firm engaged by Company to construct the Phase 1 Infrastructure.

“Development Regulations” shall collectively mean the ordinances, regulations, and policies, adopted by City, as presently in effect and as adopted or amended after the Effective Date, which are applicable to the development and use of the Land, including, but not limited to, applicable provisions of City’s Code of Ordinances, as amended, the ALDC, as amended, and the PD 134 Ordinance, as amended.

“Director of Engineering” shall mean the person employed by City in the position of Director of Engineering, or such other City employee designated by the City Manager to perform the duties of City’s Director of Engineering.

“Effective Date” means the last date of execution hereof.

“Eligible Costs” shall mean with respect to the Infrastructure and the Public Infrastructure, respectively, the costs incurred and paid by Company for the design and construction of the Phase 1 Infrastructure, not including costs for legal fees, permit fees, innsurance, the costs of the Land, interest, finance, the cost of financing, management fees, right-of-way, or easements. Eligible Costs for the Public Infrastructure shall not include costs reimbursed or paid by AEDC to Company through the Grant for the Infrastructure. Eligible Costs for the Infrastructure shall not include costs reimbursed or paid by City to Company for City Cost Participation for the Public Infrastructure.

“Force Majeure” shall mean that upon the occurrence of any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, government or de facto

governmental action, restrictions or interferences (unless caused by the intentional acts or omissions of the Party), fires, explosions, floods or other inclement weather, strikes, slowdowns or work stoppages, incidence of disease or other illness that reaches outbreak, epidemic, or pandemic proportions or similar causes affecting the area in which the Project is located that result in a reduction of labor force or work stoppage in order to comply with local, state, or national disaster orders, construction delays, shortages or unavailability of supplies, materials or labor, necessary condemnation proceedings, or any other circumstances which are reasonably beyond the control of the Party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstances are similar to any of those enumerated or not, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or performance shall be extended for a period of time equal to the period such Party was delayed, provided the Party whose performance is delayed provides written notice to the other Party not later than fifteen (15) business days after occurrence of the event(s) or condition(s) causing the delay or the date the Party whose performance has been delayed becomes aware or should have reasonably known of the event, describing such event(s) and/or condition(s) and the date on which such event(s) and/or condition(s) occurred.

“Grant” shall mean an economic development grant to be paid by AEDC to Company in the amount equal to the costs incurred and paid by Company for Eligible Costs for Infrastructure not to exceed the Maximum Grant Amount, as verified by AEDC, to be paid in installments as set forth herein. The Grant shall not include City Cost Participation for reimbursement of Eligible Costs for Public Infrastructure paid by City to Company pursuant to this Agreement.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Company or any property or any business owned by Company within City.

“Infrastructure” shall mean the non-public infrastructure to be constructed in accordance with the Approved Plans, generally consisting of private streets, trails, parks, irrigation, landscaping, and open space areas as described in **Exhibit “B”**.

“Land” means the real property described in **Exhibit “A”**.

“Masonry Building Materials” shall include, but not be limited to, stone, brick, tiles, concrete masonry units, cast concrete, concrete stucco, or similar material as determined by City’s Building Official and City’s Director of Community Development.

“Maximum Grant Amount” shall mean the Maximum Reimbursement Amount less the Maximum Public Infrastructure Amount.

“Maximum Public Infrastructure Amount” shall mean the lesser of: (i) the amount of the Certificates of Obligation; and (ii) thirty percent (30%) of the total actual Eligible Costs incurred and paid by Company for Public Infrastructure, as verified by City.

“Maximum Reimbursement Amount” shall mean Five Million Dollars (\$5,000,000.00).

“Payment Request” means: (i) with respect to the Grant, a written request from Company to AEDC for payment of the applicable installment of the Grant, accompanied by the applicable written application for payment, copies of invoices, bills, receipts, and such other information, as may reasonably be requested by AEDC, evidencing the Eligible Costs incurred and paid by Company for the Infrastructure, and the required Capital Investment; and (ii) with respect to City Cost Participation, a written request from Company to City for payment of the applicable installment of City Cost Participation, accompanied by the applicable written application for payment, copies of invoices, bills, receipts, and such other information, as may reasonably be requested by City, evidencing the Eligible Costs incurred and paid by Company for the Public Infrastructure, to be paid for the work completed on construction of the Public Infrastructure, inclusive of details of the types and quantities of materials installed and the costs related thereto, labor costs, such other information, as may reasonably be requested by City, evidencing the Eligible Costs incurred and paid by Company for the Public Infrastructure, and the required Capital Investment.

“PD-134 Ordinance” shall mean City of Allen, Texas, Ordinance No. 3761-7-20 adopted July 14, 2020, creating and adopting the development and use regulations of Planned Development “PD” No. 134, and all subsequent amendments to such ordinance as may be enacted from time to time.

“Phase 1 Infrastructure” shall collectively mean: (i) the design and construction of the Infrastructure; and (ii) the design and construction of Public Infrastructure and streetscape elements (irrigation, landscape, sidewalks, and lighting), for Phase 1 of the Project pursuant to this Agreement as described in **Exhibit “B”**.

“Phase 1 of the Project” shall mean that portion of the Project consisting of the Parking Garage (as defined in the City Economic Development and Easement Agreement), an office building of at least three (3) stories in height containing a minimum of 100,000 square feet of gross rentable office space, and a minimum of 50,500 square feet of rentable retail and restaurant space, to be constructed on the Land.

“Project” shall have the meaning assigned in the Recitals.

“Public Infrastructure” means public infrastructure to be constructed in accordance with the Approved Plans consisting of public streets, sanitary sewer mains, storm drainage facilities, sidewalks along public streets, water mains, and other public improvements associated with the development of Phase 1 of the Project as described in **Exhibit “B”**.

“Related Agreements” shall mean any agreement (other than this Agreement) by and between (i) City and/or AEDC and Company or any of Company’s affiliated or related entities; (ii) Tax Increment Zone No. 3 Agreement; and (iii) the City Economic Development and Easement Agreement.

“Sales Tax Revenue Bonds” shall mean sales tax revenue bonds to be issued by AEDC in the approximate amount of Two Million Dollars (\$2,000,000.00) the sales proceeds from which will in part provide AEDC funding of the costs for infrastructure pursuant to this Agreement.

“Tax Increment Zone No. 3 Agreement” shall mean that certain agreement by and between City and Company providing for the payment of City tax increment for the maintenance, repair and replacement of certain Project infrastructure dated of approximate date herewith.

“Zoning” shall mean the PD-134 Ordinance, as amended, the applicable provisions of the ALDC, as amended, and the zoning ordinance approved by City for the development of the Land, as amended.

### **Article III**

#### **Design and Construction**

##### **3.1     Phase 1 Infrastructure.**

(a)     Subject to the terms and conditions set forth herein, Company agrees to cause the Commencement of Construction and Completion of the Construction of the Phase 1 Infrastructure in substantial compliance with the Approved Plans, the Development Regulations, and City's most current version of its standard design and construction specifications applicable to public street construction, including, but not limited to, engaging all professionals and contractors necessary to accomplish the foregoing.

(b)     Design and Construction. Prior to Commencement of Construction of the Phase 1 Infrastructure, Company shall make, or cause to be made, application for any necessary permits and approvals that are customarily required by City ordinances and any applicable governmental authorities to be issued for the construction of the Phase 1 Infrastructure.

(c)     Quality Control and Testing. Company shall comply and shall cause the Contractor and sub-Contractor(s) to comply with the following:

Quality control testing of materials used in construction shall be in accordance with the requirements of the Standard Specifications for Public Works Construction-North Central Texas and shall be performed by a local qualified accredited laboratory which has been certified as having met the basic requirements of ASTM E 329 “Standard Recommended Practice for Inspection and Testing Agencies for Concrete, Steel and Bituminous Materials as Used in Construction.” The laboratory shall be approved by City, which approval shall not be unreasonably withheld, conditioned or delayed, and the costs of such testing shall be paid by the Developer as



Eligible Costs hereunder. All test results and reports of quality control testing in connection with the Project shall be made available to the City Engineer in a timely fashion.

3.2 Project Inspection. City shall have the right to inspect the Phase 1 Infrastructure to determine whether the Phase 1 Infrastructure construction is in accordance with the Approved Plans, the requirements of this Agreement and applicable City standards, ordinances, and regulations.

3.3 Cleaning the Project Site. During the construction of the Phase 1 Infrastructure, Company will use reasonable efforts to keep the area within which the Phase 1 Infrastructure work is being constructed free and clear of any trash or debris, and compliant with the City's stormwater management ordinance (i.e. City of Allen Code of Ordinances Chapter 6, Art. VII, as amended). Upon final completion of the Phase 1 Infrastructure work, Company shall cause the sites within which the Phase 1 Infrastructure work is located to be cleaned and cause the removal of all waste, rubbish, temporary structures, and other materials. Company shall cause the disposal of all refuse at Type I Municipal Solid Waste a landfill permitted by the Texas Commission for Environmental Quality. Any City property that is damaged by Company or its Contractor during the construction of the Phase 1 Infrastructure work shall be restored to its condition that existed prior to such damage. No additional payment shall be made by City for such work.

3.4 Indemnification.

CITY AND AEDC SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE ACTS OR OMISSIONS OF THE COMPANY OR ITS CONTRACTORS PURSUANT TO THIS AGREEMENT. COMPANY HEREBY WAIVES ALL CLAIMS AGAINST CITY AND/OR AEDC, THIER COUNCIL, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO AS THE "CITY REPRESENTATIVES") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL ACT OF THE CITY REPRESENTATIVES ARISING FROM THE ACTS OR OMISSIONS OF THE COMPANY OR ITS CONTRACTORS PURSUANT TO THIS AGREEMENT. COMPANY DOES HEREBY INDEMNIFY AND SAVE HARMLESS THE CITY REPRESENTATIVES FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON, OR DAMAGE TO OR LOSS OF PROPERTY ARISING FROM COMPANY'S BREACH OF ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR BY REASON OF ANY ACT OR OMISSION ON THE PART OF COMPANY, ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUB-CONTRACTOR(S), LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS IN THE PERFORMANCE OF THIS AGREEMENT (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL ACT OF THE CITY REPRESENTATIVES). NOTWITHSTANDING THE FOREGOING IN THE EVENT OF JOINT

OR CONCURRENT NEGLIGENCE OF BOTH THE CITY REPRESENTATIVES AND COMPANY, THE RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY REPRESENTATIVES AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THE COMPANY'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY COMPANY UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT

### 3.5 Records and Audits.

(a) Company shall maintain, and shall require the Contractor to maintain, all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement for two (2) years following Completion of Construction of the Phase 1 Infrastructure. Company shall make, and cause the Contractor to make, such materials available to AEDC and/or City for review and inspection during the term of this Agreement and for a period of two (2) years from the date of Final Acceptance of the Phase 1 Infrastructure, or until any pending litigation or claims are resolved, whichever is later.

(b) Upon not less than 72- hours' prior written notice by City and/or AEDC, Company shall provide, and shall require the Contractor to provide, to AEDC and/or City, during normal business hours for the purpose of making audits, examinations, excerpts, and transcriptions access to all Phase 1 Infrastructure records that are applicable to this Agreement at a location designated by Company within Collin County, Texas, provided any such audit must be initiated not later than two (2) years following Final Acceptance of the Phase 1 Infrastructure.

3.6 Work by Disbarred Person. Company and the Contractor shall not knowingly contract with any person or entity that is suspended, debarred, proposed for disbarment, declared ineligible or voluntarily excluded from covered transactions by any federal agency or that is debarred or suspended by the State of Texas.

### 3.7 Approval of Construction Documents.

(a) No approval of designs, plans, and specifications by City shall be construed as representing or implying that the improvements built in accordance therewith shall be free of defects, and any such approvals shall in no event be construed as representing or guaranteeing that any improvements built in accordance therewith will be designed or built in a good and workmanlike manner. Neither City nor its elected officials, officers, employees, contractors, and/or agents shall be responsible or liable in damages or otherwise to anyone submitting plans and specifications for approval by City for any defects in any plans or specifications submitted, revised, or approved, any loss or damages to any person arising out of approval or disapproval or failure to

approve or disapprove any plans or specifications, any loss or damage arising from the noncompliance of such plans or specifications with any governmental ordinance or regulation, nor any defects in construction undertaken pursuant to such plans and specifications.

(b) Approval by the Director of Engineering or other City employee, officer, or consultant of any plans, designs or specifications submitted by Company under this Agreement shall not constitute or be deemed to be a release of the responsibility and liability of Company, its engineers, contractors, employees, officers, or agents for the accuracy and competency of their design and specifications. Such approval shall not be deemed to be an assumption of such responsibility or liability by City for any defect in the design and specifications prepared by Company's consulting engineer, its officers, agents, servants, or employees, it being the intent of the Parties that approval by the Director of Engineering or other City employee, officer or consultant signifies City approval of only the general design concept of the improvements to be constructed.

(c) For a period of three (3) years following Completion of Construction of the Phase 1 Infrastructure, Company shall indemnify, defend and hold harmless City, its officers, agents, and employees, from any loss, damage, liability or expense on account of damage to property and injuries, including death, to any and all persons which may arise directly out of any defect or deficiency in the Phase 1 Infrastructure directly related to the designs and specifications set forth in the Approved Plans, but only to the extent prepared or caused to be prepared by Company and incorporated into any improvements constructed by Company in accordance therewith, and Company shall defend at Company's own expense any suits or other proceedings brought against City, its officers, agents, employees, or any of them, on account thereof, to pay all reasonable expenses and satisfy all judgments which may be incurred by or rendered against them, collectively or individually, personally or in their official capacity, in connection herewith.

3.8 Completion of Construction; Withhold Certificates of Occupancy. Company acknowledges and agrees that the Public Infrastructure is to be constructed in conjunction with the construction of other public improvements required to be constructed pursuant to the provisions of the Zoning in association with the development of the Land. Company further acknowledges and agrees that City may withhold the issuance of certificates of occupancy for any buildings constructed on the Land prior to completion of construction and acceptance of the Public Infrastructure by the Director of Engineering on behalf of City.

3.9 Phase 1 Infrastructure Construction. Company shall subject to events of Force Majeure cause Commencement of Construction of the Phase 1 Infrastructure to occur on or before April 1, 2021, and subject to events of Force Majeure cause Completion of Construction of the Phase 1 Infrastructure to occur on or before December 31, 2022.

3.10 Capital Investment for Phase 1 Infrastructure. The Capital Investment for the Phase 1 Infrastructure shall be Sixteen Million Five Hundred Thousand Dollars (\$16,500,000.00) as of the date of Completion of Construction of the Phase 1 Infrastructure. Company shall, within thirty (30) days after Completion of Construction of Phase 1 Infrastructure deliver to City copies of invoices, bills, receipts and such other information as may be reasonably requested by City to document compliance with the required Capital Investment.

3.11 Construction of Phase 1 of the Project. Company shall, subject to events of Force Majeure, cause Completion of Construction of Phase 1 of the Project to occur on or before December 31, 2023.

3.12 Maximum Reimbursement Amount. The aggregate payment of the installments of the Grant paid by City to Company and City Cost Participation through reimbursement of Eligible Costs for the Public Infrastructure paid by City to Company shall not exceed the Maximum Reimbursement Amount.

3.13 City Cost Participation. The maximum amount of City Cost Participation through reimbursement of Eligible Costs for the Public Infrastructure paid by City to Company shall not exceed the Maximum Public Infrastructure Amount.

3.14 Company Investment. Company shall within fifteen (15) business days after the date Company has achieved the Company Investment provide City written notice of the date of achievement of Company Investment accompanied by copies of invoices, bills, receipts, and such other information, as may reasonably be requested by City, evidencing the Eligible Costs incurred and paid by Company for the Phase 1 Infrastructure.

#### **Article IV Economic Development Grant**

##### **4.1 Grant.**

(a) Subject to the continued satisfaction of all the terms and conditions of this Agreement by Company and the obligation of Company to repay the Grant pursuant to Article I hereof in the event of termination of this Agreement as provided by Section 1.3, AEDC agrees to provide the Grant, not to exceed the Maximum Grant Amount, to be paid by AEDC to Company in monthly installments as set forth herein.

(b) Following the Completion of Construction of the Infrastructure, Company shall provide AEDC the final Payment Request, accompanied by a final written accounting of the total expenditures constituting Eligible Costs for the Infrastructure.

(c) Company shall be responsible for payment of all costs relating to the design and construction of the Infrastructure in excess of the Grant.

(d) Company shall provide AEDC on a monthly-basis a written progress report and a monthly Payment Request to include an itemized statement specifying the Eligible Costs for the Infrastructure that have been incurred to date and supporting copies of invoices from the Contractor and copies of all payments made to the Contractor until Completion of Construction of the Infrastructure.

(e) Based upon the Company's monthly Payment Requests and the written applications for payment submitted to AEDC, AEDC shall make progress installment payments to Company

of the Grant based on Eligible Costs for the Infrastructure not to exceed the Maximum Grant Amount. On or before the tenth (10th) day of each month after Commencement of Construction of the Infrastructure following the date Company has achieved Company Investment, Company shall submit a Payment Request to AEDC which shall include a written application for payment for the period ending the last day of the previous month in such form and manner, and with such supporting data and content, as AEDC may reasonably require. AEDC will review the application for payment and may also review the Infrastructure work to determine whether the quantity and/or quality of the Infrastructure work is as represented in the application for payment. AEDC shall make installment payments of the Grant to Company, not to exceed the Maximum Grant Amount, of the amounts requested by Company not later than fifteen (150 business days following AEDC's receipt and approval of each Payment Request and application for payment.

(f) Company warrants that upon submittal of each Payment Request, all Infrastructure work for which progress payments have been received from AEDC shall be free and clear of liens, claims, security interest or other encumbrances in favor of Company or any other person or entity whatsoever.

(g) Prior to Final Acceptance, no installment of the Grant (progress payment), nor any use or occupancy of the Infrastructure, shall be interpreted to constitute an acceptance of any Infrastructure work not constructed in strict accordance with the Approved Plans for the Infrastructure. AEDC shall have no obligation to pay any portion of the Grant during the occurrence of a breach of a term or condition of this Agreement on the part of Company, but AEDC may do so; provided, however, if AEDC elects to pay any such installment, no such payment shall be deemed a waiver of any remedies AEDC may have in respect to such breach.

(h) AEDC may decline to make Grant payments, may withhold funds, and, if necessary, may demand the return of some or all amounts previously paid to Company for defective Infrastructure work, to protect AEDC from loss or damage because of:

(1) Defective Infrastructure work, not remedied by Company or, in the reasonable opinion of AEDC, not likely to be remedied by Company; and/or

(2) Failure by Company to pay or otherwise satisfy Contractor or others under contract with Company with respect to the Infrastructure for amounts due in a prompt and timely manner.

4.2 Current Revenue. The Grant shall be paid solely from the Sales Tax Revenue Bonds or from such other funds of AEDC as may be legally set aside for such purpose. Under no circumstances shall the obligations of AEDC hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision; provided; however, AEDC agrees during the term of this Agreement to make a good faith effort to appropriate funds each year to pay the installments of the Grant for the then ensuing fiscal year.

4.3 Grant Limitations. AEDC shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Company. None of the obligations of AEDC under this Agreement shall be pledged or otherwise encumbered by the

Company in favor of any commercial lender and/or similar financial institution except for a collateral assignment pursuant to Section 7.1.

#### 4.4 Conditions to Grant.

(a) The obligation of AEDC to pay the Grant shall be conditioned upon the compliance and satisfaction by the Company of the terms and conditions of this Agreement and each of the conditions set forth in this Section.

(b) Payment Request. Company shall, as a condition precedent to the payment of the Grant, timely provide AEDC with the applicable Payment Request.

(c) Good Standing. The Company shall not have an uncured breach or default of this Agreement, or a Related Agreement.

(d) Phase 1 Infrastructure Construction. Company shall subject to events of Force Majeure cause Commencement of Construction of the Phase 1 Infrastructure to occur on or before March 1, 2021, and subject to events of Force Majeure cause Completion of Construction of the Phase 1 Infrastructure to occur on or before February 28, 2022.

(e) Capital Investment for Phase 1 Infrastructure. The Capital Investment for the Phase 1 Infrastructure shall be Sixteen Million Five Hundred Thousand Dollars (\$16,500,000.00) as of the date of Completion of Construction of the Phase 1 Infrastructure. Company shall, within thirty (30) days after Completion of Construction of Phase 1 Infrastructure deliver to City copies of invoices, bills, receipts and such other information as may be reasonably requested by City to document compliance with the required Capital Investment.

(f) Capital Investment for Phase 1 of the Project. The Capital Investment for Phase 1 of the Project shall be Forty Nine Million Dollars (\$49,000,000.00) as of the date of Completion of Construction of Phase 1 of the Project. Company shall, within thirty (30) days after Completion of Construction of Phase 1 of the Project deliver to City copies of invoices, bills, receipts and such other information as may be reasonably requested by City to document compliance with the required Capital Investment.

(g) Construction of Phase 1 of the Project. Company shall, subject to events of Force Majeure, cause Completion of Construction of Phase 1 of the Project to occur on or before December 31, 2023.

### **Article V**

#### **City Cost Participation; Public Infrastructure**

5.1 City Cost Participation. Subject to the continued satisfaction of all the terms and conditions of this Agreement by Company and the obligation of Company to repay the Grant pursuant to Article IV hereof, City agrees to reimburse Company for Eligible Costs for Public Infrastructure, not to exceed the Maximum Infrastructure Amount, to be paid by City to Company in monthly installments as set forth herein.

5.2 Bonds. Prior to Company commencing construction of the Public Infrastructure Project, Company shall cause the Contractor to provide payment bonds and performance bonds for the construction of the Public Infrastructure to ensure completion of the Public Infrastructure in accordance with Chapter 2253, Texas Government Code, in forms reasonably satisfactory to City. Company shall cause the Contractor to provide maintenance bonds (for a period of two (2) years following completion of the Public Infrastructure and acceptance by City in favor of City for the Public Infrastructure in accordance with City's standard requirements and regulations pertaining to maintenance bonds for public improvements.

5.3 Final Accounting. Following the Completion of Construction of the Public Infrastructure, Company shall provide City the final Payment Request, accompanied by a final written accounting of the total expenditures constituting Eligible Costs for the Public Infrastructure.

5.4 Costs Exceeding Maximum Public Infrastructure Amount. Company shall be responsible for payment of all costs relating to the design and construction of the Public Infrastructure in excess of the Maximum Public Infrastructure Amount.

5.5 Monthly Progress Reports and Payment Requests. Company shall provide City on a monthly-basis a written progress report and a monthly Payment Request to include an itemized statement specifying the Eligible Costs for the Public Infrastructure that have been incurred to date and supporting copies of invoices from the Contractor and copies of all payments made to the Contractor until Completion of Construction of the Public Infrastructure.

5.6 City Cost Participation Payment. Based upon the Company's monthly Payment Requests and the written applications for payment submitted to City, City shall make progress payments of Eligible Costs for the Public Infrastructure to Company in installments of City Cost Participation not to exceed the Maximum Public Infrastructure Amount. For each installment of the Cost Participation Amount (limited to thirty percent (30%) of the then Eligible Costs for Public Infrastructure) City may retain ten percent (10%) of such amount to be held by City as retainage ("Retainage") and paid to Company in the final installment of City Cost Participation. The amount of Retainage by the City shall not take into consideration any amounts retained by Company from its Contractor ("Company Retainage"). On or before the tenth (10th) day of each month after Commencement of Construction of the Public Infrastructure following the date Company has achieved Company Investment, Company shall submit a Payment Request which shall include a written application for payment to City in such form and manner, and with such supporting data and content, as City may reasonably require. City will review the application for payment and may also review the Public Infrastructure work to determine whether the quantity and/or quality of the Public Infrastructure work is as represented in the application for payment. City shall make installment payments of City Cost Participation not to exceed the Maximum Public Infrastructure Amount, to Company of the amounts requested by Company not later than fifteen (15) business days following City's receipt and approval of each Payment Request and application for payment.

5.7 Inspection and Acceptance of the Public Infrastructure.

(a) The inspection and approval of the Public Infrastructure by City shall be conducted in the same manner as inspection and acceptance of other public improvements constructed and/or installed in association with the development of property in the City of Allen, Texas, pursuant to the ALDC, as amended, and the current policies and procedures of the City's Engineering and Community Development Departments.

(b) As each component of Public Infrastructure is completed Company shall provide to City the following prior to City written acceptance of the same:

- (i) An executed affidavit stating that all payrolls, invoices for materials and equipment, and other liabilities connected with the Public Infrastructure for which City, or City's property, might be responsible, have been fully paid or otherwise satisfied;
- (ii) An executed Contractor affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Public Infrastructure for which City, or City's property, might be responsible, have been fully paid or otherwise satisfied;
- (iii) A Consent of Surety;
- (iv) One set of reproducible As-Built Record Drawings;
- (v) A full set of digital As-Built Records drawing;
- (vi) Delivery of a bill of sale conveying the Public Infrastructure to City;
- (vii) Delivery of all warranties or assignment of warranties; and

5.8 No Liens. Company warrants that upon submittal of each Payment Request and application for payment, all Public Infrastructure work for which progress payments have been received from City shall be free and clear of liens, claims, security interest or other encumbrances in favor of City or any other person or entity whatsoever. Company shall promptly pay, or cause the Contractor performing work on the Public Infrastructure for amounts due and upon request by City provide proof to City that such Contractor has been paid, or otherwise satisfied for the amounts due.

5.9 City Withholding Payments. Prior to Final Acceptance, no installment of City Cost Participation, nor any use or occupancy of the Public Infrastructure, shall be interpreted to constitute an acceptance of any Public Infrastructure work not constructed in strict accordance with the Approved Plans for the Public Infrastructure. City shall have no obligation to pay any portion of City Cost Participation during the occurrence of a breach of a term or condition of this Agreement on the part of Company, but City may do so; provided, however, if City elects to pay any such installment, no such payment shall be deemed a waiver of any remedies City may have in respect to such breach.

5.10 City may decline to make City Cost Participation payments, may withhold funds, and, if necessary, may demand the return of some or all amounts previously paid to Company for



defective Public Infrastructure work, to protect City from loss or damage because of: (a) Defective Public Infrastructure work, not remedied the Company or, in the reasonable opinion of City, not likely to be remedied by Company; and/or (b) Failure by Company to pay or otherwise satisfy Contractor or others under contract with Company with respect to the Public Infrastructure for amounts due in a prompt and timely manner.

5.11 Final Payment. City shall not be required to make the final payment of the Retainage until after receipt of a Payment Request accompanied by (i) an affidavit from Company's contractor(s) that states that all bills have been paid to subcontractors, suppliers, and any others who provided goods and/or services with respect to the construction of the Public Infrastructure and releasing and indemnifying City for any claims arising out of failure to pay such goods and services and (ii) the final as-built drawings showing the actual manner in which the Public Infrastructure were constructed.

5.12 Maximum Participation. In no case shall City Cost Participation for the Public Infrastructure exceed the Maximum Public Infrastructure Amount.

5.13 Rights-of-Way and General Utility Easement. Prior to Commencement of Construction of the Public Infrastructure, Company without cost to City, shall dedicate by plat or convey by separate instrument, in a form reasonably acceptable to City, all rights-of-way and easements necessary for the public street components of the Public Infrastructure and for the construction of Ridgeview Drive and Alma Drive adjacent to the Project. Company shall dedicate to City by plat or by separate instrument signing in recordable form and delivering to City a public street right-of-way and general utility easement in a form acceptable to the Director of Engineering and the City Attorney conveying to City the public street right-of-way for the location of the Public Infrastructure. As it pertains to Ridgeview Drive and Alma Drive, public street right-of-way shall be sufficient to provide a total right-of-way width with not less than a sixty-foot (60) from centerline at mid-block and seventy-foot (70) right-of-way width at major intersections as required by the ALDC.

5.14 Agreement Not Authorization to Work in City Right of Way. This Agreement does not authorize Company, its' officers, employees, agents, or Contractor, to perform any work within City's easements or rights of way or on any property leased, owned, or otherwise controlled by City. Company, its officers, employees, agents, or Contractor shall at all times comply with City's ordinances and regulations regarding performance of work on City property or within City's easements and rights-of-way, including, but not limited to, compliance with Chapter 13 of City's Code of Ordinances, as amended.

## **Article VI**

### **Building Materials Standards**

6.1 Additional Consideration. As additional consideration for this Agreement Company agrees that buildings and other structures shall be designed and constructed in accordance with the exterior design and materials standards set forth in this Article VI. The Parties acknowledge and agree the provisions of this Article are contractual in nature, have been negotiated as part of an arms-length transaction, and are supported by an exchange of good and

valuable consideration by the Parties, the receipt and sufficiency of which the Parties each acknowledge.

6.2 Building Materials Standards. Company agrees the buildings and structures constructed on the Land shall be designed and constructed in accordance with the following exterior building materials standards:

(a) In the Tollway Character District, Neighborhood-North Character District, Neighborhood-South Character District, Creek Character District, the following buildings used for the following identified purposes shall be designed and constructed as follows:

(1) *Retail and Restaurant.* All main building exterior wall construction materials for retail or restaurant uses in a mixed-use building or in a stand-alone building (excluding doors and windows) that are exposed shall be constructed as follows:

(i) Not less than eighty-five percent (85%) of the exterior building façade must consist of Masonry Building Materials;

(ii) Metal, wood and cementitious board with a minimum 50-year life warranty may be used in any combination over an area not greater than fifteen percent (15%) of the surface area of the exterior building façade; and

(iii) Synthetic stucco (such as exterior finish and insulation system (EFIS)) may be installed as an architectural accent material on an area not greater than ten percent (10%) of the surface area of the exterior building façade.

(2) *Office.* With respect to office uses, all main building exterior wall construction materials (excluding doors and windows) that are exposed shall be constructed subject to the following:

(i) Not less than eighty-five percent (85%) of the surface area of the exterior building façade must consist of Masonry Building Materials or architectural composite panel;

(ii) Metal, wood, and cementitious board (with a minimum 50-year life warranty), may be used in any combination over an area not greater than fifteen percent (15%) of the exterior surface of the building façade; and

(iii) Synthetic stucco (such as exterior finish and insulation system (EFIS)) may be installed as an architectural accent material, not greater than ten percent (10%) of the surface area of the exterior building façade.

(3) *Hotel.* With respect to hotel uses, all main building exterior wall construction materials (excluding doors and windows) that are exposed shall be constructed subject to the following:

(i) Not less than seventy-five percent (75%) of the surface area of the exterior building façade shall consist of Masonry Building Materials;

(ii) Metal, composite panel, wood and cementitious board with a minimum 50-year life warranty, may be used in any combination over an area not greater than twenty-five percent (25%) of the surface area of the exterior building façade; and

(iii) Synthetic stucco (such as exterior finish and insulation system (EFIS)) may be installed as an architectural accent material over an area not to exceed ten percent (10%) of the surface area of the exterior building façade.

(4) *Urban Residential.* With respect to building constructed for Urban Residential uses, all main building exterior wall construction materials (excluding doors and windows) that are exposed shall be subject to the following:

(i) Not less than eighty-five percent (85%) of the surface area of the exterior building façade shall consist of Masonry Building Materials;

(ii) Metal and cementitious fiber board (with a minimum 50-year life warranty), may be installed in any combination over an area not greater than fifteen percent (15%) of the surface area of the exterior building façade; and

(iii) Synthetic stucco (such as exterior finish and insulation system (EFIS)) may be installed as an architectural accent material over an area not greater than ten percent (10%) of the surface area of the exterior building façade.

(5) *Townhomes.* With respect to townhome uses, all main building exterior wall construction materials (excluding doors and windows) that are exposed shall be constructed subject to the following:

(i) Not less than eighty-five percent (85%) of the surface area of the exterior building façade shall consist of Masonry Building Materials, or cementitious fiber board (with a minimum 50-year life warranty); and

(ii) Synthetic stucco (such as exterior finish and insulation system (EFIS)) may be installed as an architectural accent material over an area not greater than fifteen percent (15%) of the surface area of the exterior building façade.

(b) The exterior façades of buildings constructed in the Central Character District, regardless of use, shall be designed and constructed subject to the following:

(1) Not less than fifty percent (50%) of the non-glazed area of the surface of the exterior building façade may consist of Masonry Building Materials, cast and/or pre-cast concrete, and/or three coat stucco;

(2) Metal panels (including composite metal panels, corrugated metal panels, flat metal sheet) may be installed on an area not greater than fifty percent (50%) of the non-glazed wall area of the exterior building façade;

(3) Exposed metal structure shall be allowed for an area not to greater than ten percent (10%) of the non-glazed wall area of the exterior building façade;

(4) Composite/cementitious board with a minimum 50-year life warranty may be installed on an area not greater than fifty percent (50%) of non-glazed wall area of the exterior building façade;

(5) Natural wood, consisting only of treated wood, cedar, and/or redwood species may be used as siding or as exposed structure, boards and shingle forms, may be installed on an area not greater than fifty percent (50%) of non-glazed wall area of the exterior building façade; and

(6) Synthetic stucco (such as exterior insulation and finish system – EIFS) may be installed solely as architectural accents over an area not to not greater than ten percent (10%) of the non-glazed exterior wall area of the exterior building façade.

The percentages noted above regarding exterior materials for the Central Character District apply to all buildings within the Central Character District on a cumulative basis. The amounts of each material on an individual building may vary from the percentages indicated. The Company shall maintain a summary tabulation of the exterior wall material amounts and percentages for the Central Character District and submit on an annual basis to the City's Director of Community Development.

(c) Accessory buildings in all character districts shall be constructed of materials that complement the main structure.

(d) In all character districts, rear façades visible from adjoining properties and/or a public right-of-way shall be of a finished quality and consist of colors and materials that blend with the remainder of the building's primary facade(s).

(e) The percentage of building façade materials required herein may be increased by up to ten percent (10%) by approval of the City of Allen Planning and Zoning Commission. No zoning ordinance amendment is required for such approval.

(f) The provisions of this Section of this Agreement shall remain in effect and not be affected by any future change as it relates to exterior building materials made to the Allen Land Development Code.

### 6.3 Calculation of Building Material Areas.

(a) Except as provided in Section 6.3(b), below, for purposes of determining compliance with Section 6.2, above, any exterior building façade must will be permitted to be reduced by 50% of the minimum building materials requirements, provided that the cumulative percentage of building materials is satisfied for all façades. For purposes of an example to illustrate this regulation, an office building in the Tollway Character District that permits a minimum of 85% masonry building materials, will be permitted to reduce this minimum for any façade to be 42.5%, provided that the remaining facades of the building cumulatively provide excess in minimum building materials to meet that overall deficit. In the cases where the remaining facades are not of ample area to compensate for the deficit, then it may not be practical to reduce this requirement by the full 50% noted.

(b) Only for buildings constructed in the Central Character District, the percentages stated as a maximum allowance in Section 6.2 (b) shall be determined on a cumulative percentage of materials on all exterior façades of the building.

6.4 Relationship of Article VI to Zoning Regulations. The Parties acknowledge and agree, by virtue of their contractual nature, the provisions of this Article VI do not constitute the adoption of zoning or other regulations by City that are otherwise prohibited and void as a matter of law under Chapter 3000 of the Texas Government Code and shall be enforceable solely as a provision of this Agreement. The provisions of this Article VI may not be amended or superseded by the unilateral adoption of any resolution or ordinance of the City Council after the Effective Date. For purposes of this Article VI, the Parties' only remedies shall be as follows:

(a) City may withhold building permit(s) with respect to a building the plans and drawings for which indicate that the exterior materials to be installed fail to comply with the provisions of Section 6.2; and

(b) City may withhold issuance of a certificate of occupancy, conduct a final inspection, or authorize the provision of public utilities for a building which, when constructed, does not comply with the provisions of Section 6.2, unless and until such building is modified to comply with Section 6.2; and

(c) Company may file a mandamus to enforce the provisions of Section 6.2 if City does not issue a building permit or a certificate of occupancy based on an allegation the building fails to comply with Section 6.2 if such building in fact does comply with Section 6.2.

Neither Party shall have the right to seek damages in any form for a breach of this Article VI, nor shall a breach by either Party of any provision of this Article VI constitute a breach of this Agreement as a whole such that either Party would have the right to suspend the Party's performance under this Agreement or seek termination of this Agreement.

**6.5 City Manager Authority to Vary Percentages.** The City Manager, may, at the City Manager's sole discretion and upon a finding that such change will be in the spirit of this Agreement and the intent of the Zoning:

(a) In the case of a provision of Section 6.2 that requires a minimum percentage of a type of building material (i.e. "not less than..."), reduce by no more than ten percent (10%) the minimum percentage of that type of building material required to be installed on the exterior façade of the building; and

(b) In the case of a provision of Section 6.2 that allows only a maximum percentage of a type of building material (i.e. "not greater than..."), increase by no more than ten percent (10%) the maximum percentage of that type of building material allowed to be installed on the exterior façade of the building.

Any request to the City Manager to vary the percentages set forth in Section 6.2 shall be on a building-by-building basis and be supported by detailed drawings, materials specifications, and, if requested by the City Manager material samples that provide sufficient detail to the City Manager on the exterior design and construction of the proposed building. The grant of a variance of the percentages by the City Manager pursuant to this Section 6.5 shall not constitute an amendment to this Agreement. Nothing in this Section 6.5 shall be construed as prohibiting Company from seeking approval from the City Council to a requested variance from the provisions of Section 6.2 if the City Manager fails to grant such request.

**6.6 Restrictive Covenant.** The provisions of this Article VI and the restrictions, covenants, and conditions set forth herein are for the purpose of protecting the value and desirability of the Land and accomplishing City's public purposes and, consequently, shall run with the Land and be binding on Company and all parties having all right, title, or interest in the Land, in whole or in part, and their heirs, successors and assigns. The covenants, conditions and restrictions set forth in this Article shall be for the benefit of the City. Article VI of this Agreement is binding upon Company and each and every subsequent owner, tenant, subtenant, licensee, manager, and occupant of all or any portion of the Land but only during the term of such party's ownership, tenancy, license, management or occupancy of the Land, for which such party shall remain liable and shall be binding upon and inure to the benefit of City and its successors and assigns. It is expressly understood and agreed that acceptance of title to all or a portion of the Land shall automatically, and without further acknowledgement or confirmation from such owner,

constitute such owner's assumption of the obligations of Company with respect to this Article VI of this Agreement.

6.7 Company Adoption of Covenants. Company agrees to require, through the adoption of private restrictive covenants applicable to the Land, that successors in title to the Land or any portion thereof comply with all provisions of this Article VI, which provisions (i) may be enforced by City and (ii) shall not be amended or terminated without the written consent of City.

## **Article VII Miscellaneous**

7.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto. This Agreement may not be assigned without the prior written consent of the City Manager; provided however Company may collaterally assign or pledge Company's rights under this Agreement to Company's Lender as security for a loan for the Infrastructure. Notwithstanding the foregoing Company may assign this Agreement to a Company Affiliate without the consent of City provided: (i) Company provides thirty (30) days prior written notice thereof to City; and (ii) the assignee assumes all of the rights and obligations of Company in writing in a form reasonably approved by City.

7.2 Limitation on Liability. It is understood and agreed between the Parties that the Company, in satisfying the conditions of this Agreement, has acted independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions. The Company agrees to indemnify and hold harmless the City from all such claims, suits, and causes of actions, liabilities and expenses of any nature whatsoever by a third party arising out of the Company's failure to perform its obligations under this Agreement.

7.3 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 a partnership or joint venture among the Parties.

7.4 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

7.5 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day received if sent by courier or otherwise hand delivered.

**If intended for City, to:**

City Manager  
City of Allen, Texas  
305 Century Parkway  
Allen, Texas 75013

**With Copies to:**

Director of Engineering  
City of Allen, Texas  
305 Century Parkway  
Allen, Texas 75013

Peter G. Smith  
City Attorney  
Nichols, Jackson, Dillard,  
Hager & Smith, LLP  
1800 Ross Tower  
500 N. Akard  
Dallas, Texas 75201

**If intended for AEDC, to**

Daniel Bowman  
Executive Director/CEO  
Allen Economic Development  
Corporation  
900 W. Bethany Drive, Suite 280  
Allen, Texas 75013

**With a Copy to:**

Peter G. Smith  
General Counsel  
Nichols, Jackson, Dillard,  
Hager & Smith, L.L.P.  
1800 Ross Tower  
500 North Akard  
Dallas, Texas 75201

**If intended for Company, to:**

Robert J. Johnson, Jr., Director  
The Farm Development Co.  
2095 N Collins Blvd., 200  
Richardson, Texas 75080-75080

**With a Copy to:**

Bruce Heller  
JaRyCo Development LLC  
714 S. Greenville, Suite 120  
Allen, Texas 75002

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

7.7 Governing Law. The Agreement shall be governed by the laws of the State of Texas without regard to any conflict of law rules. Exclusive venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

7.8 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

7.9 Legal Construction. In the event any one or more of the provisions contained in this 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 shall 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.



7.10 Recitals. The recitals to this Agreement are incorporated herein.

7.11 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.

7.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination

7.13 Employment of Undocumented Workers. During the term of this Agreement the Company agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), the Company shall repay the amount of the Grant and any other funds received by the Company from City as of the date of such violation within one hundred twenty (120) days after the date the Company is notified by City of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid. The Company is not liable for a violation of this section in relation to any workers employed by a subsidiary, affiliate, or franchisee of the Company or by a person with whom the Company contracts.

7.14 Conditions Precedent. The following are conditions precedent to this Agreement and the obligations of the Parties pursuant to this Agreement are expressly subject to the following: (i) the execution of the Tax Increment Zone No 3. Agreement; (ii) the execution of AEDC Economic Development and Easement Agreement; (iii) the issuance of the Sales Tax Revenue Bonds; and (iv) the issuance of the Certificates of Obligation.

7.15 Recording. This Agreement shall be recorded in the Official Public Records of Collin County, Texas.

7.16 Prohibition of Boycott Israel. Company verifies that it does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended. This section does not apply if Company is a sole proprietor, a non-profit entity or a governmental entity; and only applies if: (i) the Company has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

*Signature Page to Follow*

***City's Signature Page***

**SIGNED AND AGREED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**CITY OF ALLEN, TEXAS**

By: \_\_\_\_\_  
Eric Ellwanger, City Manager

**ATTEST:**

\_\_\_\_\_  
Shelley B. George, TRMC, MMC  
City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Peter G. Smith, City Attorney

**STATE OF TEXAS           §**  
  **§**  
**COUNTY OF DALLAS     §**

Acknowledged be me, the undersigned authority, this \_\_\_\_ day of \_\_\_\_\_, 2020,  
by Eric Ellwanger, City Manager of the City of Allen, a Texas home rule municipality, for and on  
behalf of said municipality.

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

*AEDC Signature Page*

**SIGNED AND AGREED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**ALLEN ECONOMIC DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Daniel Bowman, Executive Director/CEO

**STATE OF TEXAS           §**  
                                      **§**  
**COUNTY OF DALLAS     §**

Acknowledged be me, the undersigned authority, this \_\_\_\_ day of \_\_\_\_\_, 2020,  
by Daniel Bowman, Executive Director/CEO of the Allen Economic Development Corporation, a  
Texas non-profit corporation, for and on behalf of said corporation.

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

*Company's Signature Page*

**SIGNED AND AGREED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**THE FARM DEVELOPMENT CO.**

By: \_\_\_\_\_  
Robert J. Johnson, Jr., Director

**STATE OF TEXAS           §**  
  **§**  
**COUNTY OF COLLIN     §**

Acknowledged be me, the undersigned authority, this \_\_\_\_ day of \_\_\_\_\_, 2020,  
by Robert J. Johnson, Jr., Director of The Farm Development Co., a Texas corporation, for and on  
behalf of said corporation.

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

**EXHIBIT “A”**  
**Description of the Land**

**EXHIBIT “B”**  
**Description of Phase I Infrastructure**