CITY SECRETARY
CONTRACT NO. 44918

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This **ECONOMIC DEVELOPMENT PROGRAM AGREEMENT** (**"Agreement"**) is entered into by and between the **CITY OF FORT WORTH, TEXAS** (the **"City"**), a home rule municipality organized under the laws of the State of Texas, and **SUNDANCE PLAZA, LLC,** a Texas limited liability company, **SUNDANCE PLAZA BUILDINGS, LLC,** a Texas limited liability company, **SUNDANCE MURAL BUILDING, LLC,** a Texas limited liability company, and **CASSIDY BLOCK, LLC**, a Texas limited liability company (collectively, **"Developer"**).

RECITALS

The City and Developer hereby agree that the following statements are true and correct and constitute the basis upon which the City and Developer have entered into this Agreement:

A. Developer owns certain real property in the City's downtown, as more specifically depicted and described in **Exhibit "A"** (the **"Development Property"**), which is attached hereto and hereby made a part of this Agreement for all purposes. Developer intends to cause construction on the Development Property of three (3) new buildings and a pedestrian plaza and to cause the renovation of two existing historic buildings on the Development Property, all as more specifically described and depicted in **Exhibit "B"**, which is hereby made a part of this Agreement for all purposes (the **"Development"**).

B. The 2012 Comprehensive Plan, adopted by the City Council pursuant to Ordinance No. 20085-03-2012 (the **"Comprehensive Plan"**), recommends that the City promote Central City locations in the City for business development; that the City establish incentives to promote the redevelopment or reuse of properties in the Central City's commercial districts; and that the City encourage the development of mixed-use activity centers, emphasizing live/work/play opportunities, including open spaces that are visible and easily accessible, safe and secure, and available for use and inviting to all members of the general public. In addition, the 2003 Downtown Strategic Action Plan, a joint effort by the City, Downtown Fort Worth, Inc., and the Fort Worth Transportation Authority that outlines policy decisions and planning initiatives for the City's downtown for the ten (10)-year period between 2004 and 2013, encourages urban mixed-use developments and the creation of a downtown open space and recreation system that enhances livability for urban residents of all ages and family types, including, specifically, the development of a central plaza in Sundance Square, "which," as the Plan states, "can become a focal point for major public and private events, and also a focal point for the addition of retail and entertainment adjacent to the plaza and adjoining streets."

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C. As recommended by the Comprehensive Plan and in accordance with Resolution No. 3716-03-2009, adopted by the City Council on March 10, 2009, the City has established an economic development program pursuant to which the City will, on a case-by-case basis, offer economic incentive packages authorized by Chapter 380 of the Texas Local Government Code that include monetary loans and grants of public money, as well as the provision of personnel and services of the City, to businesses and entities that the City Council determines will promote state or local economic development and stimulate business and commercial activity in the City in return for verifiable commitments from such businesses or entities to cause specific employment and other public benefits to be made or invested in the City (the **"380 Program"**).

D. The City Council has determined that by entering into this Agreement, the potential economic benefits that will accrue to the City under the terms and conditions of this Agreement are consistent with the City's economic development objectives and that promoting mixed-use and open space development in the City's downtown will further the goals espoused by the Comprehensive Plan for positive growth in the Central City. In addition, the City Council has determined that the 380 Program is an appropriate means to achieve the construction of the Development, which the City Council has determined is necessary and desirable, and that the potential economic benefits that will accrue to the City pursuant the terms and conditions of this Agreement are consistent with the City's economic development objectives as outlined in the Comprehensive Plan. This Agreement is authorized by Chapter 380 of the Texas Local Government Code.

E. The City has determined that the feasibility of the Development, as outlined herein, is contingent on Developer's receipt of the Program Grants, as provided in this Agreement. The City's analysis is specifically based on financial information provided by Developer.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS.

The City Council has found, and the City and Developer hereby agree, that the recitals set forth above are true and correct and form the basis upon which the parties have entered into this Agreement.

2. DEFINITIONS.

In addition to terms defined in the body of this Agreement, the following terms shall have the definitions ascribed to them as follows:

380 Program has the meaning ascribed to it in Recital C.

Affiliate means all entities, incorporated or otherwise, under common control with, controlled by or controlling Developer. For purposes of this definition, "control" means fifty percent (50%) or more of the ownership determined by either value or vote.

Central City means that area in the corporate limits of the City within Loop 820 (i) consisting of all Community Development Block Grant (CDBG) eligible census blocks; (ii) all state-designated enterprise zones; and (iii) all census block groups that are contiguous by seventy-five percent (75%) or more of their perimeter to CDBG-eligible block groups or enterprise zones, as well as any CDBG-eligible block in the corporate limits of the City outside Loop 820, as more specifically depicted in the map of **Exhibit "C"**, attached hereto and hereby made a part of this Agreement for all purposes.

Central City Employment Commitment has the meaning ascribed to it in Section 4.6.

Central City Employment Percentage has the meaning ascribed to it in Section 5.2.1.6.

Central City Resident means an individual whose primary residence is at a location within the Central City.

Certificate of Completion has the meaning ascribed to it in Section 5.1.

Completion Date means the date as of which all of the following have occurred (all of which must be confirmed in the Certificate of Completion issued by the City in accordance with Section 5.1): (i) final inspections have been completed and permits have been issued by the City certifying that all shell space in the New Buildings is safe and acceptably complete in accordance with applicable ordinances, rules and regulations of the City; (ii) certificates of occupancy, whether final or temporary, have been issued by the City for all occupiable space in the Historic Buildings or otherwise remain in effect as of the date of submission by Developer of its final construction report pursuant to and in accordance with Section 4.9.1.2; (iii) all renovations of the Historic Buildings in accordance with this Agreement have been completed; and (iv) construction of the Plaza in accordance with this Agreement has been completed.

Completion Deadline means December 31, 2014.

Comprehensive Plan has the meaning ascribed to it in Recital B.

Construction Costs means actual site development and construction costs, including directly-related contractor fees, costs of supplies and materials, engineering fees, architectural and design fees, consulting fees, project management fees, and permit fees, and specifically excludes property acquisition costs.

M/WBE Construction Percentage has the meaning ascribed to it in Section 5.2.1.3.

M/WBE Supply and Service Percentage has the meaning ascribed to it in Section 5.2.1.8.

M/WBE Supply and Service Spending Commitment has the meaning ascribed to it in Section 4.8.

New Buildings means that portion of the Development comprising three (3) new buildings to be constructed at 407 Throckmorton Street, 425 Houston Street and 420 Commerce Street, as more specifically described and depicted in **Exhibit "B"**.

Overall Construction Percentage has the meaning ascribed to it in Section 5.2.1.1.

Overall Employment Commitment has the meaning ascribed to it in Section 4.4.

Overall Employment Percentage has the meaning ascribed to it in Section 5.2.1.4.

Plaza means that portion of the Development comprising an approximately 55,450 square foot plaza space to be constructed on the Development Property on either side of Main Street between 3rd Street and 4th Street containing a stage, lighting, sound system, landscape, hardscape/paving, fountains, shade structures, public art and public restrooms, as more specifically described and depicted in **Exhibit "B"**.

Program Cap means the maximum number of dollars comprising aggregate Program Grants that the City has paid or is required to pay Developer pursuant to this Agreement, which shall equal Two Million Five Hundred Thousand Dollars ($2,500,000.00), gross, less the aggregate amounts of any reductions factored into the calculation of all Program Grants in accordance with the provisions of Section 5.2.1, et al.

Program Grants means the annual economic development grants paid by the City to Developer in accordance with this Agreement and as part of the 380 Program.

Program Source Funds means an amount of City funds available for inclusion in a Program Grant that is payable in a given Program Year, which shall equal one hundred percent (100%) of the Development Sales Tax Revenues received by the City during the Twelve-Month Period ending in the year in which the respective Program Grant is due.

Program Year means a calendar year in which the City is obligated pursuant to this Agreement to pay Developer a Program Grant, beginning with the first full calendar year following the Completion Date (Program Year 1) (also known as the First Full Operating Year).

Records has the meaning ascribed to it in Section 4.10.

Sales means all sales of merchandise (including gift and merchandise certificates), services and other receipts whatsoever of all business conducted in, on or from the Development Property, whether cash or credit, including mail or telephone orders received or filled at or from the Development Property, deposits not refunded to purchasers, orders taken (although such orders may be filled elsewhere), sales to employees, and sales through vending machines or other devices. Sales will not include (i) any sums collected and paid for any sales or excise tax imposed by any duly constituted governmental authority, (ii) the exchange of merchandise purchased on and returned to the Development Property for a full refund, (iii) the amount of returns to shippers and manufacturers, or (iv) the sale of any Development Property User's fixtures.

Second Full Operating Year means the second full calendar year following the calendar year in which the Completion Date occurs.

Supply and Service Expenditures means all expenditures by Developer, whether pursuant to a written contract or on an ad hoc basis, expended directly for the operation and maintenance of the Development, including amounts paid to third parties for the provision of personnel services, but excluding amounts paid for electric, gas, water and any other utility services.

Term has the meaning ascribed to it in Section 3.

Twelve-Month Period means the period between February 1 of a given year and January 31 of the following year.

3. TERM.

This Agreement shall be effective as of the date of execution by all parties (the **"Effective Date"**) and, unless terminated earlier in accordance with this Agreement, shall expire on the earlier of (i) the date as of which the City has paid all Program Grants required hereunder or (ii) the date as of which the amount of aggregate Program Grants paid by the City hereunder equals the applicable Program Cap (the **"Term"**).

4. DEVELOPER OBLIGATIONS, GOALS AND COMMITMENTS.

4.1. Real Property Improvements.

In accordance with the terms and conditions of this Agreement, by the Completion Date Developer shall have expended at least Sixty-five Million Dollars ($65,000,000.00) in Construction Costs for the Development. The Completion Date must occur on or before the Completion Deadline.

4.2. Construction Spending Commitment for Fort Worth Companies.

By the Completion Date, Developer shall have expended or caused to be expended with Fort Worth Companies the greater of at least (i) Nineteen Million Five Hundred Thousand Dollars ($19,500,000.00) in Construction Costs for the Development or (ii) thirty percent (30%) of all Construction Costs for the Development, regardless of the total amount of such Construction Costs (the **"Fort Worth Construction Commitment"**).

4.3. Construction Spending Commitment for Fort Worth Certified M/WBE Companies.

By the Completion Date, Developer shall have expended or caused to be expended with Fort Worth Certified M/WBE Companies the greater of at least (i) Sixteen Million Two Hundred Fifty Thousand Dollars ($16,250,000.00) in Construction Costs for the Development or (ii) twenty-five percent (25%) of all Construction Costs for the Development, regardless of the total amount of such Construction Costs (the **"M/WBE Construction Commitment"**). Dollars spent with Fort Worth Certified M/WBE Companies shall also count as dollars spent with Fort Worth Companies for purposes of measuring attainment of the Fort Worth Construction Commitment outlined in Section 4.2.

4.4. Overall Employment Commitment.

In the First Full Operating Year and each calendar year thereafter, Developer will, at a minimum, provide and fill or cause to be provided and filled five (5) Full-time Jobs on the Development Property (the **"Overall Employment Commitment"**). Determination of compliance with the Overall Employment Commitment shall be based on the employment data of Developer or employment data provided to Developer as of September 30 of the First Full Operating Year and of each calendar year thereafter.

4.5. Fort Worth Employment Commitment.

In the First Full Operating Year and each calendar year thereafter, Developer will, at a minimum, provide and fill or cause to be provided and filled with Fort Worth Residents the greater of (i) two (2) Full-time Jobs on the

Development Property or (ii) forty percent (40%) of all Full-time Jobs provided or caused to be provided by Developer on the Development Property, regardless of the total number of such Full-time Jobs (the **"Fort Worth Employment Commitment"**). Determination of compliance with the Fort Worth Employment Commitment shall be based on the employment data of Developer or employment data provided to Developer as of September 30 of the First Full Operating Year and of each calendar year thereafter. Full-time Jobs held by Fort Worth Residents shall also count as Full-time Jobs for purposes of measuring attainment of the Overall Employment Commitment outlined in Section 4.4.

4.6. Central City Employment Commitment.

In the First Full Operating Year and each calendar year thereafter, Developer will, at a minimum, provide and fill or cause to be provided and filled with Central City Residents the greater of (i) one (1) Full-time Job on the Development Property or (ii) twenty percent (20%) of all Full-time Jobs provided or caused to be provided by Developer on the Development Property, regardless of the total number of such Full-time Jobs (the **"Central City Employment Commitment"**). Determination of compliance with the Central City Employment Commitment shall be based on the employment data of Developer or employment data provided to Developer as of September 30 of the First Full Operating Year and of each calendar year thereafter. Full-time Jobs held by Central City Residents shall also count as Full-time Jobs for purposes of measuring attainment of the Overall Employment Commitment outlined in Section 4.4 and the Fort Worth Employment Commitment outlined in Section 4.5.

4.7. Supply and Service Spending Commitments for Fort Worth Companies.

In the First Full Operating Year and in each calendar year thereafter, Developer shall spend at least Two Hundred Thousand Dollars ($200,000.00) in annual Supply and Service Expenditures with Fort Worth Companies (the **"Fort Worth Supply and Service Spending Commitment"**).

4.8. Supply and Service Spending Commitment for Fort Worth Certified M/WBE Companies.

In the First Full Operating Year and in each calendar year thereafter, Developer shall spend at least One Hundred Thousand Dollars ($100,000.00) in annual Supply and Service expenditures with Fort Worth Certified M/WBE Companies (the **"M/WBE Supply and Service Spending Commitment"**). Dollars spent with Fort Worth Certified M/WBE Companies shall also count as dollars spent with Fort Worth Companies for purposes of the Fort Worth Supply and Service Spending Commitment outlined in Section 4.7.

4.9. Reports and Filings.

4.9.1. Construction Spending Reports.

4.9.1.1. Monthly Reports.

From the Effective Date until the Completion Date, Developer will provide the Director with a monthly report in a form reasonably acceptable to the City that specifically outlines the then-current aggregate Construction Costs expended by and on behalf of Developer for the Development as well as the then-current aggregate Construction Costs expended by and on behalf of Developer for the Development with Fort Worth Companies and with Fort Worth Certified M/WBE Companies.

4.9.1.2. Final Construction Report.

Once Developer believes that the Completion Date has occurred, in order for the City to assess whether Developer satisfied the requirements of Section 4.1 and the extent to which Developer met the Fort Worth Construction Commitment and the M/WBE Construction Commitment, Developer will provide the Director with a report in a form reasonably acceptable to the City that specifically outlines (i) the total Construction Costs expended by and on behalf of Developer for the Development, (ii) the total Construction Costs expended with Fort Worth Companies by and on behalf of Developer for the Development, and (iii) the total Construction Costs expended with Fort Worth Certified M/WBE Companies by and on behalf of Developer for the Development together with supporting invoices and other documents necessary to demonstrate that such amounts were actually paid by Developer, including, without limitation, final lien waivers signed by Developer's general contractor. Developer must submit such report to the City not later than sixty (60) days following the Completion Deadline.

4.9.2. Annual Employment Report.

On or before February 1 of the Second Full Operating Year and of each calendar year thereafter, in order for the City to assess the degree to which Developer met the Overall Employment Commitment, the Fort Worth Employment Commitment and the Central City Employment Commitment in the previous calendar year, Developer shall provide the Director with a report in a form reasonably acceptable to the City that sets forth the total number of individuals, Fort Worth Residents, and Central City Residents who held Full-time Jobs provided or caused to be provided on the Development Property, all as of September 30 of the previous year, together with reasonable supporting documentation.

4.9.3. Quarterly Supply and Service Spending Report.

Beginning with the first calendar quarter of the Second Full Operating Year, within thirty (30) calendar days following the end of each calendar quarter, Developer will provide the Director with a report in a form reasonably acceptable to the City that sets forth the then-aggregate Supply and Service Expenditures made during such calendar quarter as well as the then-aggregate Supply and Service Expenditures made during such calendar quarter with Fort Worth Companies and with Fort Worth Certified M/WBE Companies. The City will use each year's fourth quarter report to assess the degree to which Developer met the Fort Worth Supply and Service Spending Commitment and the M/WBE Supply and Service Spending Commitment for that year.

4.10. Audits.

The City will have the right throughout the Term to audit the financial and business records of Developer that relate to the Development and any other documents necessary to evaluate Developer's compliance with this Agreement or with the commitments set forth in this Agreement, including, but not limited to construction documents and invoices (collectively **"Records"**). Developer shall make all Records available to the City on the Development Property or at another location in the City acceptable to both parties following reasonable advance notice by the City and shall otherwise cooperate fully with the City during any audit. However, Developer shall not be required to make its Records available for City audit after the expiration of three years after the calendar year for which the Records relate.

5. CITY OBLIGATIONS.

5.1. Issuance of Certificate of Completion for Development.

Within ninety (90) calendar days following receipt by the City of the final construction spending report for the Development, as required by Section 4.9.1.2, and assessment by the City of the information contained therein pursuant to Section 4.10, if the City is able to verify that Developer expended at least Sixty-five Million Dollars ($65,000,000.00) in Construction Costs for the Development by the Completion Date and that the Completion Date occurred on or before the Completion Deadline, the Director will issue Developer a certificate stating the aggregate amount of Construction Costs expended on the Development, including amounts expended specifically with Fort Worth Companies and Fort Worth

Certified M/WBE Companies, and certifying the Completion Date (the **"Certificate of Completion"**).

5.2. <u>Program Grants</u>.

Subject to the terms and conditions of this Agreement, provided that Developer expended at least Sixty-five Million Dollars ($65,000,000.00) in Construction Costs for the Development by the Completion Date and that the Completion Date occurred on or before the Completion Deadline, Developer will be entitled to receive from the City up to fifteen (15) annual Program Grants. The amount of each Program Grant shall equal a percentage of the Program Source Funds available for that Program Grant, which percentage shall be based on the extent to which Developer met the various construction, employment and operational expenditures for the Development, and calculated as more specifically set forth in Section 5.2.1. Notwithstanding anything to the contrary herein, aggregate Program Grants payable under this Agreement shall be subject to and shall not exceed the applicable Program Cap, as defined in Section 2.

5.2.1. <u>Calculation of Each Program Grant Amount</u>.

Subject to the terms and conditions of this Agreement, the amount of a given Program Grant shall equal the sum of the Overall Construction Percentage, the Fort Worth Construction Percentage, the M/WBE Construction Percentage, the Overall Employment Percentage, the Fort Worth Employment Percentage, the Central City Employment Percentage, the Fort Worth Supply and Service Percentage, and the M/WBE Supply and Service Percentage, as defined in Sections 5.2.1.1, 5.2.1.2, 5.2.1.3, 5.2.1.4, 5.2.1.5, 5.2.1.6, 5.2.1.7 and 5.2.1.8, respectively (the total of which shall not exceed eighty-five percent (85%)), multiplied by the Program Source Funds, as defined in Section 2, available for that Program Grant.

5.2.1.1. <u>Completion of Development (35%)</u>.

If Developer expended or caused to be expended at least Sixty-five Million Dollars ($65,000,000.00) in Construction Costs for the Development by the Completion Date and the Completion Date occurred on or before the Completion Deadline, as confirmed by the City in the Certificate of Completion issued in accordance with Section 5.1, each annual Program Grant shall automatically include a percentage of the percentage of Program Source Funds equal to thirty-five percent (35%) (the **"Overall Construction Percentage"**). Notwithstanding anything to the contrary herein, if Developer failed to expend or cause to be expended at least Sixty-five Million Dollars ($65,000,000.00) in Construction Costs for the Development by the Completion Date, or if the Completion Date did not occur by the Completion Deadline, an Event of Default, as more specifically set forth in Section 6.1, will occur and the City shall have the right to terminate this Agreement without the obligation to pay Developer any Program Grants hereunder.

5.2.1.2. Fort Worth Construction Cost Spending (Up to 20%).

Each annual Program Grant shall include an amount that is based on the percentage by which the Fort Worth Construction Commitment, as outlined in Section 4.2, was met (the **"Fort Worth Construction Percentage"**). The Fort Worth Construction Percentage for each Program Grant payable hereunder will equal the product of twenty percent (20%) multiplied by the percentage by which the Fort Worth Construction Commitment was met, which will be calculated by dividing the actual Construction Costs expended for the Development by the Completion Date with Fort Worth Companies by the number of dollars comprising the Fort Worth Construction Commitment, as determined in accordance with Section 4.2. For example, if the Fort Worth Construction Commitment is $19,500,000.00 and only $15,600,000.00 in Construction Costs were expended with Fort Worth Companies by the Completion Date, the Fort Worth Construction Percentage for each Program Grant payable hereunder would be 16% instead of 20% (or .20 x [$15.6 million/$19.5 million], or .20 x .80, or .16). Notwithstanding anything to the contrary herein, if the Fort Worth Construction Commitment is met or exceeded, the Fort Worth Construction Percentage for each Program Grant payable hereunder will be twenty percent (20%).

5.2.1.3. Fort Worth M/WBE Construction Cost Spending (Up to 5%).

Each annual Program Grant shall include an amount that is based on the percentage by which the M/WBE Construction Commitment, as outlined in Section 4.3, was met (the **"M/WBE Construction Percentage"**). The M/WBE Construction Percentage for each Program Grant payable hereunder will equal the product of five percent (5%) multiplied by the percentage by which the M/WBE Construction Commitment was met, which will be calculated by dividing the actual Construction Costs expended for the Development by the Completion Date with Fort Worth Certified M/WBE Companies by the number of dollars comprising the M/WBE Construction Commitment, as determined in accordance with Section 4.3. For example, if the M/WBE Construction Commitment is $16,250,000.00 and only $11,375,000.00 in Construction Costs were expended with Fort Worth Certified M/WBE Companies by the Completion Date, the M/WBE Construction Percentage for each Program Grant payable hereunder would be 3.5% instead of 5% (or .05 x [$16.25 million/$11.375 million], or .05 x .70, or .035). Notwithstanding anything to the contrary herein, if the M/WBE Construction Commitment is met or exceeded, the M/WBE Construction Percentage for each Program Grant payable hereunder will be five percent (5%).

5.2.1.4. Overall Employment (Up to 5%).

Each annual Program Grant shall include an amount that is based on the percentage by which the Overall Employment Commitment, as outlined in Section 4.4, was met (the **"Overall Employment Percentage"**). The Overall Employment Percentage will equal the product of five percent (5%) multiplied by the percentage by which the Overall Employment Commitment was met, which will be calculated by dividing the actual number of Full-time Jobs provided and filled or caused to be provided and filled by Developer on the Development Property in the previous calendar year by the number of Full-time Jobs comprising the applicable Overall Employment Commitment. For example, if the Overall Employment Commitment in a given year is five (5) Full-time Jobs, and Developer only provided and filled or caused to be provided and filled four (4) Full-time Jobs on the Development Property in the previous calendar year, the Overall Employment Percentage payable in the following Program Year would be 4% instead of 5% (or .05 x [4/5]), or .05 x .80, or .04. Notwithstanding anything to the contrary herein, if the Overall Employment Commitment is met or exceeded in any given year, the Overall Employment Percentage payable in the following Program Year will be five percent (5%).

5.2.1.5. Fort Worth Employment (Up to 5%).

Each annual Program Grant shall include an amount that is based on the percentage by which the Fort Worth Employment Commitment, as outlined in Section 4.5, was met (the **"Fort Worth Employment Percentage"**). The Fort Worth Employment Percentage will equal the product of five percent (5%) multiplied by the percentage by which the Fort Worth Employment Commitment was met, which will be calculated by dividing the actual number of Full-time Jobs on the Development

Property that Developer provided and filled or caused to be provided and filled in the previous calendar year with Fort Worth Residents by the number of Full-time Jobs comprising the applicable Fort Worth Employment Commitment. For example, if the Fort Worth Employment Commitment in a given year is two (2) Full-time Jobs, and Developer only provided and filled or caused to be provided and filled one (1) Full-time Job on the Development Property in the previous calendar year with a Fort Worth Resident, the Fort Worth Employment Percentage payable in the following Program Year would be 2.5% instead of 5% (or .05 x [2/4]), or .05 x .50, or .025. Notwithstanding anything to the contrary herein, if the Fort Worth Employment Commitment is met or exceeded in any given year, the Fort Worth Employment Percentage payable in the following Program Year will be five percent (5%).

5.2.1.6. <u>Central City Employment (Up to 5%)</u>.

Each annual Program Grant shall include an amount that is based on the percentage by which the Central City Employment Commitment, as outlined in Section 4.6, was met (the **"Central City Employment Percentage"**). The Central City Employment Percentage will equal the product of five percent (5%) multiplied by the percentage by which the Central City Employment Commitment was met, which will be calculated by dividing the actual number of Full-time Jobs on the Development Property that Developer provided and filled or caused to be provided and filled in the previous calendar year with Central City Residents by the number of Full-time Jobs comprising the applicable Central City Employment Commitment. For example, if in a given year Developer provided and filled or caused to be provided and filled a total of twelve (12) Full-time Jobs on the Development Property, the Central City Employment Commitment in that year will be two (2) Full-time Jobs (rounded down from 2.4). If in that year, Developer only provided and filled or caused to be provided and filled one (1) Full-time Job on the Development Property in the previous calendar year with a Central City Resident, the Central Employment Percentage payable in the following Program Year would be 2.5% instead of 5% (or .05 x [1/2]), or .05 x .50, or .025. Notwithstanding anything to the contrary herein, if the Central City Employment Commitment is met or exceeded in any given year, the Central City Employment Percentage payable in the following Program Year will be five percent (5%).

5.2.1.7. **<u>Fort Worth Supply and Service Spending (Up to 5%)</u>.**

Each annual Program Grant shall include an amount that is based on the percentage by which the Fort Worth Supply and Service Spending Commitment, as outlined in Section 4.7, was met (the **"Fort Worth Supply and Service Percentage"**). The Fort Worth Supply and Service Percentage will equal the product of five percent (5%) multiplied by the percentage by which the Fort Worth Supply and Service Spending Commitment was met, which will be calculated by dividing the actual Supply and Service Expenditures made in the previous calendar year with Fort Worth Companies by $200,000.00, which is the number of dollars comprising the Fort Worth Supply and Service Spending Commitment. For example, if only $160,000.00 in Supply and Service Expenditures were made with Fort Worth Companies in the previous calendar year, the Fort Worth Supply and Service Percentage for the Program Grant payable in the following Program Year would be 4% instead of 5% (or .05 x [$160,000/$200,000], or .05 x .80, or .04). Notwithstanding anything to the contrary herein, if the Fort Worth Supply and Service Spending Commitment is met or exceeded in any given year, the Fort Worth Supply and Service Percentage for the Program Grant payable in the following Program Year will be five percent (5%).

5.2.1.8. **<u>Fort Worth M/WBE Supply and Service Spending (Up to 5%)</u>.**

Each annual Program Grant shall include an amount that is based on the percentage by which the M/WBE Supply and Service Spending Commitment, as outlined in Section 4.8, was met (the **"M/WBE Supply and Service Percentage"**). The M/WBE Supply and Service Percentage will equal the product of five percent (5%) multiplied by the percentage by which the M/WBE Supply and Service Spending Commitment was met, which will be calculated by dividing the actual Supply and Service Expenditures made in the previous calendar year with Fort Worth Certified M/WBE Companies by $100,000.00, which is the number of dollars comprising the M/WBE Supply and Service Spending Commitment. For example, if only $90,000.00 in Supply and Service Expenditures were made with Fort Worth Certified M/WBE Companies in the previous calendar year, the M/WBE Supply and Service Percentage for the Program Grant payable in the following Program Year would be 4.5% instead of 5% (or .05 x [$90,000/$100,000], or .05 x .90, or .045). Notwithstanding anything to the contrary herein, if the M/WBE Supply and Service Spending Commitment is met or exceeded in any given year, the M/WBE Supply and Service Percentage for the Program Grant payable in the following Program Year will be five percent (5%).

5.2.1.9. <u>No Offsets</u>.

A deficiency in attainment of one commitment may not be offset by the exceeding attainment in another commitment. For example, if in a given year Developer failed to meet the M/WBE Supply and Service Spending Commitment by $5,000.00, but exceeded the Fort Worth Supply and Service Spending Commitment by $5,000.00, all Program Grants payable in the following year would still be reduced in accordance with Section 5.2.1.8 on account of Developer's failure to meet the M/WBE Supply and Service Spending Commitment.

5.2.2. <u>Program Cap</u>.

Notwithstanding anything to the contrary herein, once the City has paid Developer aggregate Program Grants equal to the applicable Program Cap, as set forth in Section 2, this Agreement will terminate. If in any Program Year the amount of a Program Grant would cause the aggregate Program Grants paid by the City pursuant to this Agreement to exceed the Program Cap, the amount of the Program Grant payable in that Program Year shall equal the difference between the aggregate of all Program Grants paid by the City as of the previous Program Year and the Program Cap, and this Agreement shall terminate upon payment of such Program Grant.

5.2.3. <u>Deadline for Payments and Source of Funds</u>.

The first Program Grant payable hereunder (in other words, the Program Grant payable for Program Year 1) shall be paid by the City on or before June 1 of the Second Full Operating Year. Each subsequent annual Program Grant payment will be made by the City to Developer on or before June 1 of the Program Year in which such payment is due. It is understood and agreed that all Program Grants paid pursuant to this Agreement shall come from currently available general revenues of the City and not directly from Development Sales Tax Revenues. Developer understands and agrees that any revenues of the City other than those dedicated for payment of a given annual Program Grant pursuant to this Agreement may be used by the City for any lawful purpose that the City deems necessary in the carrying out of its business as a home rule municipality and will not serve as the basis for calculating the amount of any future Program Grant or other obligation to Developer.

6. DEFAULT, TERMINATION AND FAILURE BY DEVELOPER TO MEET VARIOUS DEADLINES AND COMMITMENTS.

6.1. Failure to Complete Development.

If (i) Developer fails to expend or cause to be expended at least Sixty-five Million Dollars ($65,000,000.00) in Construction Costs for the Development by the Completion Date or (ii) the Completion Date does not occur by the Completion Deadline, the City shall have the right to terminate this Agreement immediately by providing written notice to Developer without further obligation to Developer hereunder.

6.2. Failure to Pay City Taxes.

An event of default shall occur under this Agreement if any City taxes on the Development Property or taxable tangible personal property located on the Development Property and owed by Developer or an Affiliate become delinquent and Developer or the Affiliate does not either pay such taxes or properly follow the legal procedures for protest and/or contest of any such taxes. In this event, the City shall notify Developer in writing and Developer shall have thirty (30) calendar days to cure such default. If the default has not been fully cured by such time, the City shall have the right to terminate this Agreement immediately by providing written notice to Developer and shall have all other rights and remedies that may be available to it under the law or in equity.

6.3. Violations of City Code, State or Federal Law.

An event of default shall occur under this Agreement if any written citation is issued to Developer or an Affiliate due to the occurrence of a violation of a material provision of the City Code on the Development Property or on or within any improvements thereon (including, without limitation, any violation of the City's Building or Fire Codes and any other City Code violations related to the environmental condition of the Development Property; the environmental condition other land or waters which is attributable to operations on the Development Property; or to matters concerning the public health, safety or welfare) and such citation is not paid or the recipient of such citation does not properly follow the legal procedures for protest and/or contest of any such citation. An event of default shall occur under this Agreement if the City is notified by a governmental agency or unit with appropriate jurisdiction that Developer or an Affiliate, or any successor in interest thereto; any third party with access to the Development Property pursuant to the express or implied permission of Developer or an Affiliate, or any successor in interest thereto; or the City (on account of the Development or the act or omission of any party other than the City on or after the effective date of this Agreement) is in violation of any material state or federal law, rule or regulation on account of the Development Property, improvements on the Development Property or any operations thereon (including, without limitation, any violations related to the environmental condition of the Development Property; the environmental condition other land or waters which is attributable to operations on the Development Property; or to matters concerning the public health, safety or welfare). Upon the occurrence of such default, the City shall notify Developer in writing and Developer shall have (i) thirty (30) calendar days to cure such default or (ii) if Developer has diligently pursued cure of the default but such default is not reasonably curable within thirty (30) calendar days, then such amount of time that the City reasonably agrees is necessary to cure such default. If the default has not been fully cured by such time, the City shall have the right to terminate this Agreement immediately by providing written notice to Developer and shall have all other rights and remedies that may be available to under the law or in equity.

6.4. Knowing Employment of Undocumented Workers.

Developer acknowledges that effective September 1, 2007, the City is required to comply with Chapter 2264 of the Texas Government Code, enacted by House Bill 1196 (80th Texas Legislature), which relates to restrictions on the use of certain public subsidies. ***Developer hereby certifies that Developer, and any branches, divisions, or departments of Developer, does not and will not knowingly employ an undocumented worker, as that term is defined by Section 2264.001(4) of the Texas Government Code. In the event that Developer, or any branch, division, or department of Developer, is convicted of a violation under 8 U.S.C. Section 1324a(f) (relating to federal criminal penalties and injunctions for a pattern or practice of employing unauthorized aliens):***

- ***if such conviction occurs during the Term of this Agreement, this Agreement shall terminate contemporaneously upon such conviction (subject to any appellate rights that may lawfully be available to and exercised by Developer) and Developer shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the City, the aggregate amount of all Program Grants paid by the City hereunder, if any, plus Simple Interest at a rate of four percent (4%) per annum based on the amount of each Program Grant paid in each previous Program Year as of the date on which each such Program Grant was paid; or***

- ***if such conviction occurs after expiration or termination of this Agreement, subject to any appellate rights that may lawfully be available to and exercised by Developer, Developer shall repay, within one hundred twenty (120) calendar days following receipt of written demand from the City, , the aggregate amount of all Program Grants paid by the City hereunder, if any, plus Simple Interest at a rate of four percent (4%) per annum based on the amount of each Program Grant paid in each***

previous Program Year as of the date on which each such Program Grant was paid.

For the purposes of this Section 6.4, **"Simple Interest"** is defined as a rate of interest applied only to an original value, in this case the aggregate amount of a Program Grant. This rate of interest can be applied each year, but will only apply to the aggregate amount of a particular Program Grant and is not applied to interest calculated. For example, if the aggregate amount of a Program Grant is $10,000 and it is required to be paid back with four percent (4%) interest five years later, the total amount would be $10,000 + [5 x ($10,000 x 0.04)], which is $12,000. This Section 6.4 does not apply to convictions of any Affiliate of Developer, any franchisees of Developer, any person or entity with whom Developer contracts, or to any Developer Property User other than Developer itself and any branches, divisions, or departments of Developer. Notwithstanding anything to the contrary herein, this Section 6.4 shall survive the expiration or termination of this Agreement.

6.5. Failure to Meet Construction Cost Spending, Supply and Service Spending and/or Employment Commitments.

If the Fort Worth Construction Commitment or the M/WBE Construction Commitment are not met, or if the Overall Employment Commitment, the Fort Worth Employment Commitment, the Central City Employment Commitment, the Fort Worth Supply and Service Spending Commitment, or the M/WBE Supply and Service Spending Commitment are not met in any given year, such event shall not constitute a default hereunder or provide the City with the right to terminate this Agreement, but, rather, shall only cause the amount of the Program Grants that the City is required to pay pursuant to this Agreement to be reduced in accordance with this Agreement.

6.6. Failure to Submit Reports.

Without limiting the application of Section 6.7, if Developer fails to submit any report required by and in accordance with Section 4.9, the City's obligation to pay any Program Grants at the time, if any, shall be suspended until Developer has provided all required reports.

6.7. General Breach.

Unless stated elsewhere in this Agreement, Developer shall be in default under this Agreement if Developer breaches any term or condition of this Agreement. In the event that such breach remains uncured after thirty (30) calendar days following receipt of written notice from the City referencing this Agreement (or, if Developer has diligently and continuously attempted to cure following receipt of such written notice but reasonably requires more than thirty (30) calendar days to cure, then such additional amount of time as is reasonably necessary to effect cure, as determined by both parties mutually and in good faith), the City shall have the right to terminate this Agreement immediately by providing written notice to Developer.

7. INDEPENDENT CONTRACTOR.

It is expressly understood and agreed that Developer shall operate as an independent contractor in each and every respect hereunder and not as an agent, representative or employee of the City. Developer shall have the exclusive right to control all details and day-to-day operations relative to the Development Property and any improvements thereon and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees. Developer acknowledges that the doctrine of *respondeat superior* will not apply as between the City and Developer, its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. Developer further agrees that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the City and Developer.

8. INDEMNIFICATION.

DEVELOPER, JOINTLY AND SEVERALLY AND AT NO COST TO THE CITY, AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS SERVANTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO DEVELOPER'S BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY RELATE TO, ARISE OUT OF OR BE OCCASIONED BY (i) DEVELOPER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF DEVELOPER, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS (OTHER THAN THE CITY) OR SUBCONTRACTORS, RELATED TO THE DEVELOPMENT, ANY OPERATIONS OR ACTIVITIES ON THE DEVELOPMENT PROPERTY, OR THE PERFORMANCE OF THIS AGREEMENT. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH DEVELOPER AND THE CITY, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER OF THE CITY'S GOVERNMENTAL IMMUNITY AS FURTHER PROVIDED BY THE LAWS OF TEXAS.

9. NOTICES.

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

City:

City of Fort Worth
Attn: City Manager
1000 Throckmorton
Fort Worth, TX 76102

Developer:

c/o Sundance Square Management, L.P.
Attn: Johnny Campbell
201 Main St., Suite 700
Fort Worth, TX 76102

***with copies to*:**

the City Attorney and
Housing/Economic Development Dept.
Director at the same address

10. ASSIGNMENT AND SUCCESSORS.

Developer may at any time assign, transfer or otherwise convey any of its rights or obligations under this Agreement to an Affiliate without the approval of the City so long as Developer, the Affiliate and the City first execute an agreement under which the Affiliate agrees to assume and be bound by all covenants and obligations of Developer under this Agreement. Developer may also assign its rights and obligations under this agreement to a financial institution or other lender for purposes of granting a security interest in the Development and/or Development Property, provided that such financial institution or other lender first executes a written agreement with the City governing the rights and obligations of the City, Developer and the financial institution or other lender with respect to such security interest. Otherwise, Developer may not assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any other person or entity without the prior consent of the City Council, which consent shall not be unreasonably withheld, conditioned on (i) the prior approval of the assignee or successor and a finding by the City Council that the proposed assignee or successor is financially capable of meeting the terms and conditions of this Agreement and (ii) prior execution by the proposed assignee or successor of a written agreement with the City under which the proposed assignee or successor agrees to assume and be bound by all covenants and obligations of Developer under this Agreement. Any attempted assignment without the City Council's prior consent shall constitute a breach of this Agreement. In the event that such breach remains uncured after thirty (30) calendar days following receipt of written notice from the City referencing this Agreement, the City shall have the right to terminate this Agreement immediately by providing written notice to Developer. Any lawful assignee or successor in interest of Developer of all rights under this Agreement shall be deemed "Developer" for all purposes under this Agreement.

11. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.

This Agreement will be subject to all applicable federal, state and local laws, ordinances, rules and regulations, including, but not limited to, all provisions of the City's Charter and ordinances, as amended.

12. GOVERNMENTAL POWERS.

It is understood that by execution of this Agreement, the City does not waive or surrender any of it governmental powers or immunities.

13. SEVERABILITY.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. NO WAIVER.

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

15. VENUE AND JURISDICTION.

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division. This Agreement shall be construed in accordance with the laws of the State of Texas.

16. NO THIRD PARTY RIGHTS.

The provisions and conditions of this Agreement are solely for the benefit of the City and Developer, and any lawful assign or successor of Developer, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

17. FORCE MAJEURE.

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, or 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 circumstance is 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 design or construction requirement shall be extended for a period of time equal to the period such party was delayed. Notwithstanding anything to the contrary herein, it is specifically understood and agreed that Developer's failure to obtain adequate financing to complete the Development by the Completion Deadline shall not be deemed to be an event of force majeure and that this Section 17 shall not operate to extend the Completion Deadline in such an event.

18. INTERPRETATION.

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

19. CAPTIONS.

Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

20. ENTIRETY OF AGREEMENT.

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Developer, and any lawful assign and successor of Developer, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. Notwithstanding anything to the contrary herein, this Agreement shall not be amended unless executed in writing by both parties and approved by the City Council of

EXHIBIT A | DESCRIPTION & MAP DEPICTING THE DEVELOPMENT PROPERTY

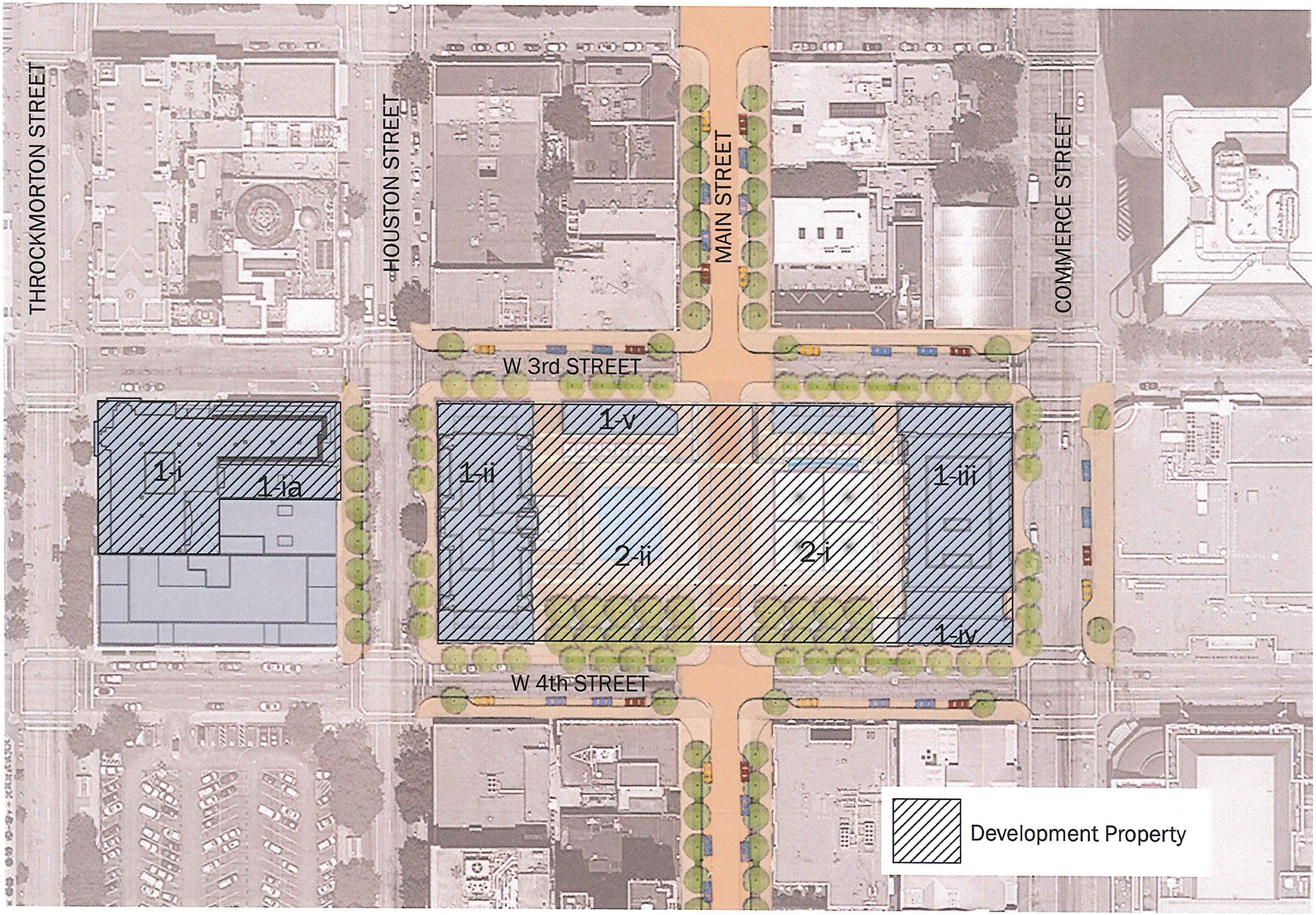


Exhibit A
(Key)

1 Buildings:

i. 407 Throckmorton– New 101,067 SF six-story building with 17,504 SF of retail on the ground level, 66,940 SF of Class A office space on floors two through five and six penthouse style apartments on the sixth story totaling 16,643 SF

a. 404 Houston – Approximately 1,600 SF of existing ground level retail space contemplated to adjoin a portion of the new ground level retail of the building described in 1.i. above

ii. 425 Houston (West Plaza Building) – New 93,290 SF six-story building with 16,395 SF of retail on the first floor and Class A office space featuring magnificent balconies on floors two through six totaling 72,829 SF

iii. 420 Commerce (East Plaza Building) – New 79,857 SF five-level building adjoining the existing Land Title Building to the north with first-floor retail of 16,204 SF and 63,657 SF of Class A office space on levels two through five

iv. Reconditioning of historic building at 111 E. 4th Street (Existing Land Title Building).

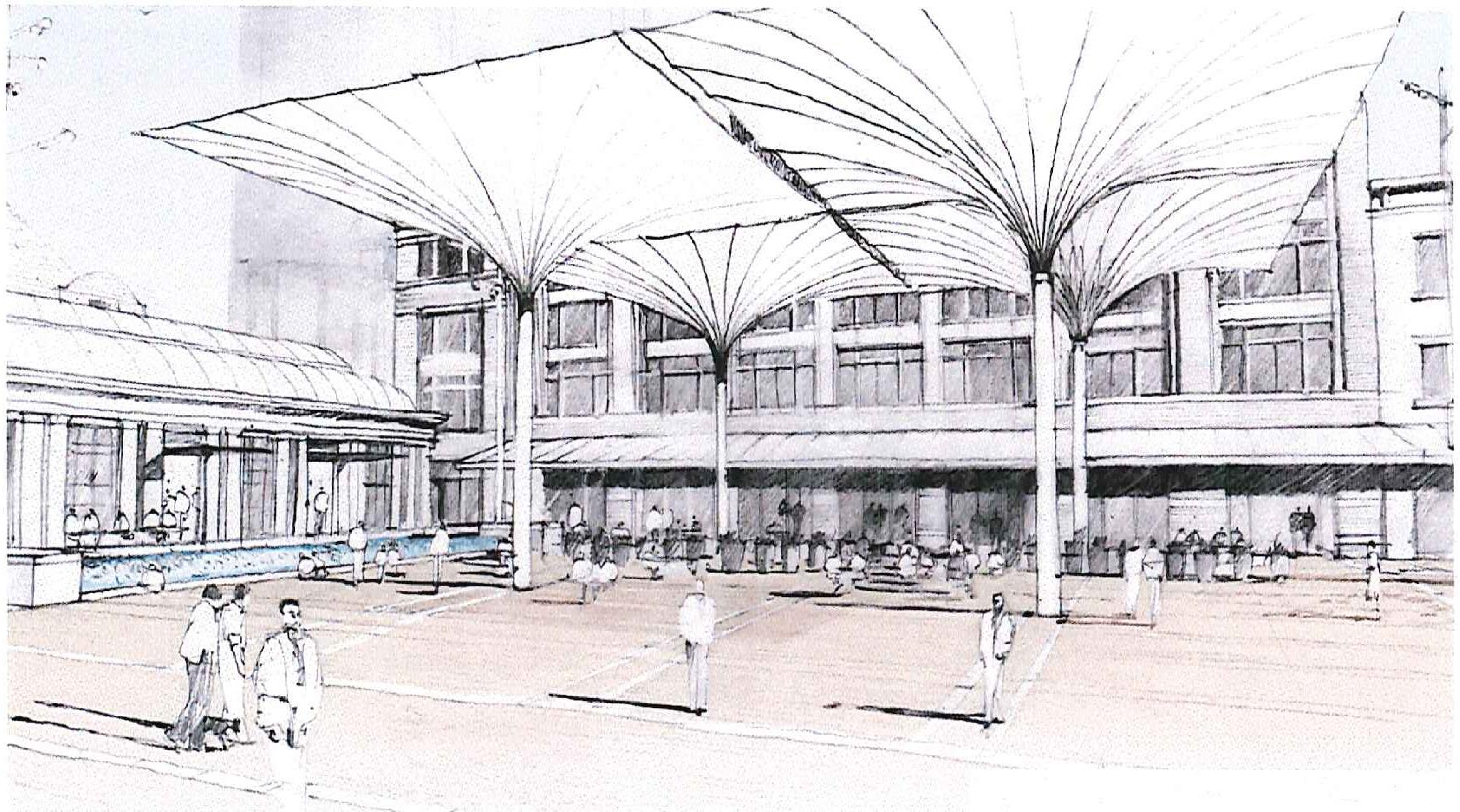
v. Reconditioning of historic building at 115 W 3rd Street (Existing Jett Building with Chisholm Trail mural).

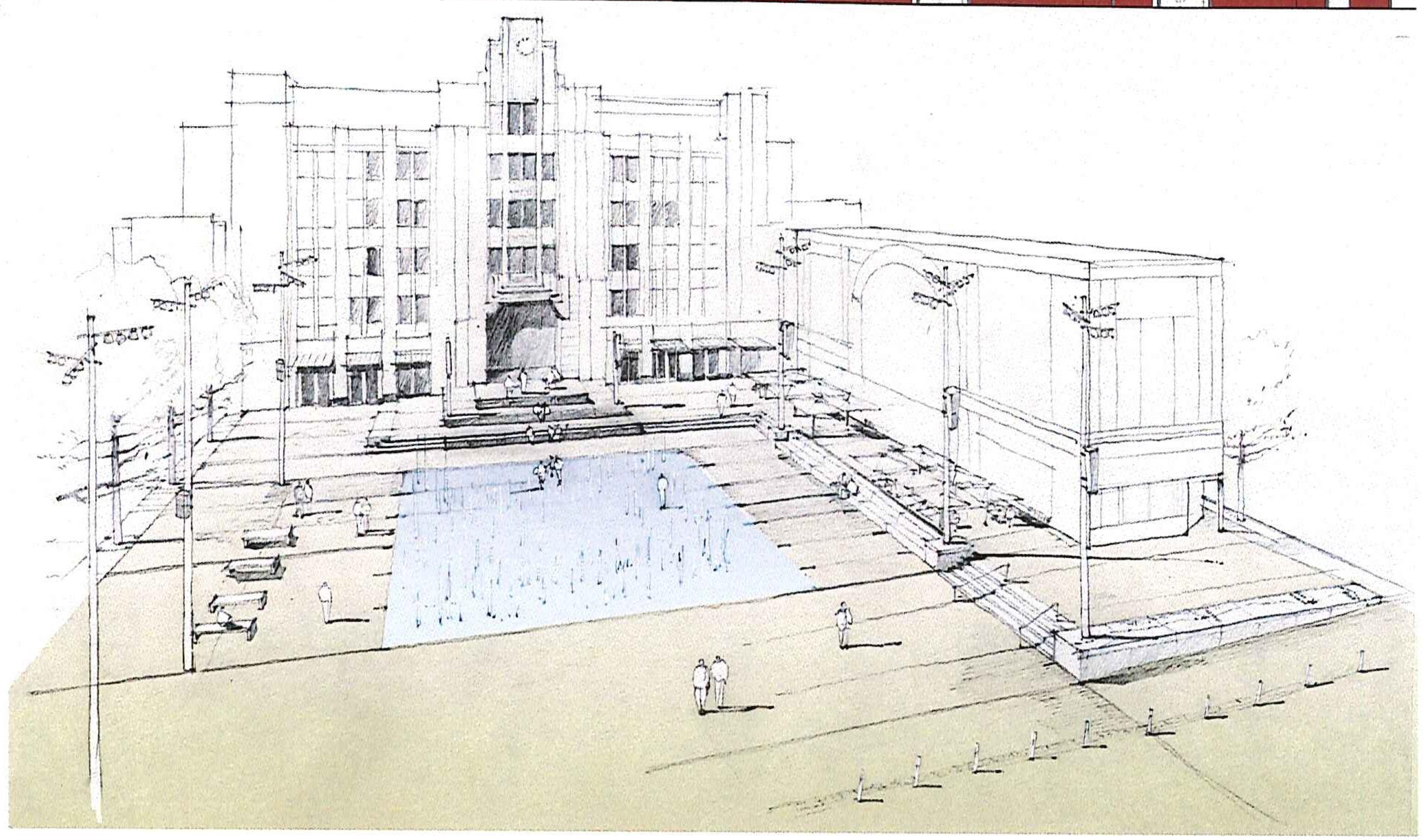
2 Plaza: An approximately 55,450 SF of improved plaza space with stage, lighting, sound, landscape, hardscape/paving, fountains, shade structures, public art and public restrooms constructed on the following sites:

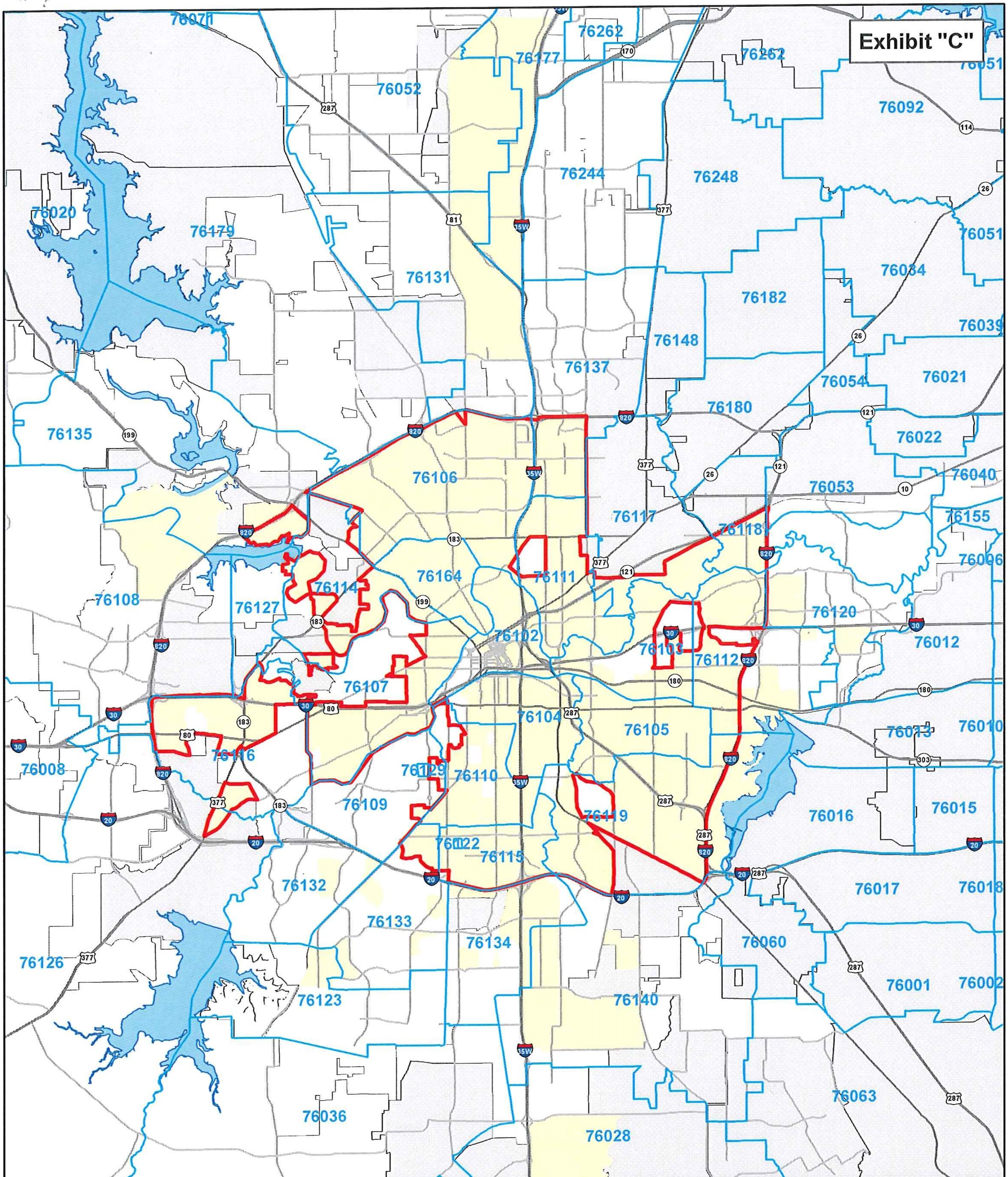
i. Approx. ½ Block East of Main St. between 3rd & 4th Streets

ii. Approx. ½ Block West of Main St. between 3rd & 4th Streets

EXHIBIT B | DEPICTION & DESCRIPTION OF REQUIRED IMPROVEMENTS







Legend

- Zip Codes
- Central City Boundary
- CDBG Eligible Area
- City Limit

Updated 08/09/2011

FORT WORTH

Housing and Economic Development

CDBG Eligible Areas & Central City

City of Fort Worth, Texas

Mayor and Council Communication

COUNCIL ACTION: Approved on 5/1/2012

DATE: Tuesday, May 01, 2012 **REFERENCE NO.:** C-25591

LOG NAME: 17EDPASUNDANCE

SUBJECT:

Authorize Execution of a Fifteen Year Economic Development Program Agreement with Sundance Square or Any Affiliated Entity in the Amount Not to Exceed $2,500,000.00 for the Construction of Three New Mixed Use Buildings, the Reconditioning of Two Historic Buildings and the Construction of a Central Plaza in Downtown Fort Worth and Authorize Waiver of Certain Related Development Fees (COUNCIL DISTRICT 9)

RECOMMENDATION:

It is recommended that the City Council:

1. Authorize the City Manager to execute a Fifteen Year Economic Development Program Agreement with Sundance Square or any affiliated entity in the amount not to exceed $2,500,000.00, as authorized by Chapter 380, Texas Local Government Code, conditioned on the construction of three new mixed use buildings the reconditioning of two historic buildings and the construction of a central plaza in the Sundance Square area of downtown Fort Worth; and

2. Authorize the waiver of certain related development fees.

DISCUSSION:

The Housing and Economic Development Department is proposing an Economic Development Program Agreement (EDPA) with Sundance Square (Company) or any affiliated entity pursuant to which the City will pay the Company up to 15 annual economic development program grants conditioned on the construction of three new mixed use buildings, the reconditioning of two historic buildings and the construction of a central plaza in the Sundance Square area of downtown Fort Worth. The amount of each annual grant will equal 85 percent of the City of Fort Worth's (City) available $0.01 sales tax on sales conducted in the new and reconditioned historic buildings as well as temporary kiosks located within the Central Plaza as addressed in the Agreement. The aggregate amount of all grants will be capped at $2,500,000.00.

Project:

Company plans to expend or cause to be expended at least $65 million (exclusive of property acquisition costs) in development and construction costs, including directly related contractor fees, costs of supplies and materials, engineering fees, architectural and design fees, consulting fees, project management fees and permit fees for the following improvements:

1. Construction of a new 101,067 square foot, six story mixed use building at 407 Throckmorton Street with 17,504 square feet of retail on the ground level, 66,940 square feet of Class A office space on floors two through five and six penthouse style apartments on the sixth story totaling 16,643 square feet;

2. Construction of a new 93,290 square foot, six story mixed use building at 425 Houston Street with 16,395 square feet of retail on the first floor and Class A office space featuring balconies on floors two through six totaling 72,829 square feet;

3. Construction of a new 79,857 square foot, five story mixed use building at 420 Commerce Street adjoining the existing Land Title Building to the north with 16,204 square feet of retail on the first floor and 63,657 square feet of Class A office space on floors two through five;

4. Reconditioning of the historic building at 111 E. 4th Street (existing Land Title Building);

5. Reconditioning the historic building at 115 W. 3rd Street (existing Jett Building with Chisholm Trail mural); and

6. Construction of an improved plaza space of approximately 55,450 square feet with stage, lighting, sounds, landscape, paving, fountains, shade structures, public art and public restrooms approximately half a block east of Main Street between 3rd and 4th Streets, and half a block west of main Street between 3rd and 4th Streets.

Failure to expend at least $65,000,000.00 for the real property improvements as outlined above or failure to complete the real property improvements by December 31, 2014 is a condition of default and will result in immediate termination of the Agreement.

Utilization of Fort Worth Companies and Fort Worth M/WBE Businesses (Real Property Improvements):

Company will be required to spend the greater of 30 percent or $19,500,000.00 of all construction costs in making real property improvements with contractors that are Fort Worth companies. Company will also be required to spend the greater of 25 percent or $16,250,000.00 of all such construction costs with contractors that are certified Fort Worth M/WBE companies (with the understanding that dollars spent with certified Fort Worth M/WBE companies will also count as dollars spent with Fort Worth companies).

Employment Commitments:

Company will be required to employ a minimum of five Full-Time Employees (FTEs) on the property by September 30, 2015. The greater of 40 percent of all FTEs or 2 FTEs must be Fort Worth residents and the greater of 20 percent of all FTEs or 1 FTE must be Fort Worth Central City residents (with an understanding that employment of Fort Worth Central City residents will also count as employment of Fort Worth residents).

Utilization of Fort Worth Companies and Fort Worth M/WBE Businesses (Supply & Services):

Company will be required to spend at least $200,000.00 in annual discretionary service and supply expenditures with contractors that are Fort Worth contractors and a minimum of $100,000.00 in annual discretionary service and supply expenditures with contractors that are certified Fort Worth M/WBE companies (with an understanding that dollars spent with certified Fort Worth M/WBE companies will also count as dollars spent with Fort Worth companies). These commitments apply to all years in which the City participates in the project. Discretionary Service and Supply Contracts shall include all expenditures, whether under written contract or ad hoc purchases, other than for electric, gas and water utilities related to the operation and maintenance of the development including amounts paid to eligible companies or contractors for personnel.

City Commitments:

The City will provide for annual grant payments up to a maximum 85 percent of the City's $0.01 annual sales tax generated from the sale of taxable items within the buildings to be constructed at 407 Throckmorton Street, 425 Houston Street and 420 Commerce Street; within the historic reconditioned buildings at 111 E. 4th Street and 115 W. 3rd Street; and in and the Central Plaza, as defined above. The Agreement will expire upon the earlier of (i) payment of the 15th annual grant or (ii) such time as aggregate grant payments total $2,500,000.00. Except for cases of default, the failure to meet a commitment will result in a reduction of the corresponding component of the grant for that year proportional to the amount that the commitment was not met, or in the case of construction spending commitments, for the duration of the Agreement, as allocated in the following chart:

Company Commitment	Grant Component
Completion of Required Improvements by Completion Deadline	35 percent
Construction Spending with Fort Worth Companies	20 percent
Construction Spending with Fort Worth M/WBE Companies	5 percent
Overall Employment	5 percent
Employment of Fort Worth Residents	5 percent
Employment of Central City Residents	5 percent
Supply and Service Spending with Fort Worth Companies	5 percent
Supply and Service Spending with Fort Worth M/WBE Companies	5 percent
Total	***85 percent***

Fee Waivers:

The City will waive the following fees related to the required improvements that would otherwise be charged by the City at any time prior to the completion deadline of December 31, 2014: (i) all building permit, plan review, inspection and re-inspection fees; (ii) all zoning fees; (iii) all temporary encroachment fees; (iv) all platting fees; and (v) all fire, sprinkler and alarm permit fees. The City will also agree to waive street/sidewalk rental permit fees up to a cap of $100,000.00. The Company will be responsible for all street/sidewalk rental fees above that amount.

All other fees charged or assessed by the City in accordance with applicable federal, state and local laws, ordinances, rules and regulations, including, but not limited to, transportation impact fees, water and sewer impact fees, and parking removal permits are not waived and shall be fully payable.

The project is located in COUNCIL DISTRICT 9.

FISCAL INFORMATION / CERTIFICATION:

The Financial Management Services Director certifies that this action will have no material effect on City funds.

FUND CENTERS:

TO Fund/Account/Centers **FROM Fund/Account/Centers**

CERTIFICATIONS:

	Fernando Costa (6122)
Originating Department Head:	Jay Chapa (5804)
Additional Information Contact:	Robert Sturns (8003)

ATTACHMENTS

No attachments found.

the City in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

21. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

EXECUTED as of the last date indicated below:

CITY OF FORT WORTH:

By: Fernando Costa
Fernando Costa
Assistant City Manager

Date: 10/1/13

APPROVED AS TO FORM AND LEGALITY:

By: Peter Vaky
Peter Vaky
Deputy City Attorney

M&C: C-25591 05-01-12

Attested by:
Mary J. Kayser, City Secretary

CITY OF FORT WORTH TEXAS

OFFICIAL RECORD
CITY SECRETARY
FT. WORTH, TX

DEVELOPER:

SUNDANCE PLAZA, LLC,
a Texas limited liability company
By Fine Line Diversified Realty, Inc.,
its sole member

By:____________________
Name: Johnny Campbell
Title: Vice President

SUNDANCE PLAZA BUILDINGS, LLC,
a Texas limited liability company
By Fine Line Diversified Realty, Inc.,
ts sole member

By:____________________
Name: Johnny Campbell
Title: Vice President

SUNDANCE MURAL BUILDING, LLC,
a Texas limited liability company
By Fine Line Diversified Realty, Inc.,
its sole member

By:____________________
Name: Johnny Campbell
Title: Vice President

CASSIDY BLOCK, LLC,
a Texas limited liability company
By Fine Line Diversified Realty, Inc.,
its sole member

By:____________________
Name: Johnny Campbell
Title: Vice President

EXHIBITS

"A" –Description and Map Depicting the Development Property

"B" – Depiction and Description of Development

"C" – Map of Central City