

STATE OF TEXAS §
 § **FIFTH AMENDMENT TO ECONOMIC**
 § **DEVELOPMENT AGREEMENT**
COUNTY OF COLLIN §

This Fifth Amendment to Economic Development Agreement ("Fifth Amendment") is made effective as of September 18, 2019 ("Effective Date") by and among the Town of Fairview, Texas, a Texas home rule municipality ("Town"), the Fairview Economic Development Corporation, a Texas non-profit corporation ("FEDC"), the Town of Fairview Community Development Corporation, a Texas non-profit corporation ("TFCDC") (Town, FEDC and TFCDC collectively referred to as "Grantors") and Village FV, LTD., a Texas limited partnership ("Developer"), acting by and through their respective authorized officers and representatives. (Grantors and Developer are referred to as "Parties").

RECITALS:

WHEREAS, Developer is party to that certain Economic Development Agreement by and among Grantors and The Village at Fairview LP ("Fairview LP"), fully executed by said parties as of March 31, 2006 as amended by that certain First Amendment to Economic Development Agreement (the "First Amendment") having an effective date of May 1, 2007, by Grantors and Fairview LP, that certain Second Amendment to Economic Development Agreement (the "Second Amendment") having an effective date of July 8, 2008, by Grantors and Fairview LP, that certain Third Amendment to Economic Development Agreement (the "Third Amendment") having an effective date of July 7, 2009, by Grantors and Fairview LP, and that certain Fourth Amendment to Economic Development Agreement having an effective date of September 4, 2018, by Grantors and Village FV, LTD (the "Fourth Amendment") (collectively, the "Agreement"); and

WHEREAS, the Agreement was assigned pursuant to that certain Assignment and Assumption of Economic Development Agreement dated as of March 28, 2013, by and between Fairview LP and PR Village at Fairview TIF TRS, LLC, a Delaware limited liability company and Village FV, LTD., a Texas limited partnership, as assigned pursuant to that Assignment of Economic Development Agreement dated December 14, 2016, by and between PR Village at Fairview TIF TRS, LLC, a Delaware limited liability company and Developer; and

WHEREAS, the Parties desire to make the amendments to the Agreement as more fully described below.

WHEREAS, there was a dispute between the Parties as to the calculation of certain taxes/fees and to the exact location of the Premises under the Economic Development Agreement, as amended.

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

1. Paragraph 1 of the First Amendment which reads "The Premises as set forth in the Agreement are hereby amended to exclude the Hotel/Conference Center Site" is hereby deleted and is null and void. The properties included in the "Hotel/Conference Center Site", as reflected

on Exhibit "A", are considered to be within the Premises and within the Center and shall be used to calculate the Reimbursement and Grant due the Developer from the effective date of the Second Amendment.

2. The Premises, Center, SFS Site, SFS Pad Site, Fuel Center Site, Town Hall Site, Hotel/Conference Center Site, 560 Multi-Family Units, Future Development Pad, and Marriott Residence Inn are shown and defined on the Site Plan attached hereto as Exhibit "A" and made a part hereof which replaces the site plan in the Third Amendment. Notwithstanding the foregoing or any other provision of this Fifth Amendment or any of its exhibits, all provisions of the Fourth Amendment remain in full force and effect and are not in any way modified by this Fifth Amendment, including without limitation the Parties' agreement that the Tax Receipts generated by all or any part of the property within the Fuel Center Site described in Exhibit "B" attached to the Fourth Amendment shall not be used to pay the Reimbursement, Grant, or Other Incentives and Grantors shall not otherwise be required to provide any portion of such Tax Receipts to Developer.

3. The Town, the FEDC and the TFCDC acknowledge that the parcels currently identified by the Collin County Appraisal District as Property ID 2685589 (i.e. "Noah's") and Property ID 2646299 (i.e. "residential above the retail") are within the Premises and within the Center and shall be used to calculate the Reimbursement and Grant due the Developer from the 2017 Calendar Year.

4. The Town, the FEDC, and the TFCDC agree to pay to Developer \$287,802.19. This payment will reconcile and be deemed to satisfy Grantors' obligations with respect to all Reimbursement, Grant and other Incentive payments and any other sums due from Grantors (or any one of them) to the Developer through June 30, 2019. Such payment shall be made within 20 days of the execution by all Parties of this Agreement.

5. The Parties agree that should Developer seek additional uses not currently allowed under the existing zoning for the Premises and should such uses be approved by the Town, the parcel as identified on Exhibit "A" (currently the "Marriott Residence Inn") shall be considered removed from the Premises and the Center as of the effective date of the approved zoning change and shall no longer be considered in calculating the Reimbursement and Grant due the Developer for the remainder of the Term of the Agreement as such Term is defined in the Agreement.

6. The Developer agrees that any impact or capital recovery fees that have previously been collected by the Town for parcels currently identified by the Collin County Appraisal District as Property ID 2735744, Property ID 2697289, and Property ID 272134 shall be retained by the Town and will not be subject to any future action to collect or recover said fees from the Town.

7. The Developer agrees that Section 3.7 of the Agreement, titled "Permit and Inspection Fee Waiver" is hereby deleted and is null and void and that the Town may collect and retain any fees collected for building permits issued and inspections performed after the effective date of this Amendment for any activity within the Premises, regardless of any other provisions in the Agreement.

8. The Parties agree that Sections 3.4, 3.5, and 3.6 of the Agreement shall not apply to the parcel shown as Future Development Pad on Exhibit "A" as of the effective date of this

Amendment.

9. The Parties agree to fully and finally release each other from all claims and causes of action related to the property tax disputes that are the subject of the letter dated August 15th, 2019, from Matthew Gallo attached as Exhibit "B", whether known or unknown, with each party to bear its own attorney's fees and costs. It is the intention of the Parties to fully and finally resolve all disputes related to the collection/payment/reimbursement of the taxes, fees and all other amounts that are the subject of Exhibit "B".

10. The recitals to this Fifth Amendment are incorporated herein.

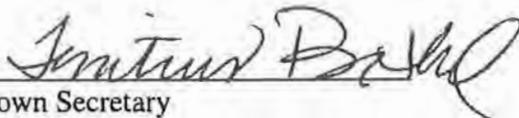
11. The Agreement as amended by this Fifth Amendment is and shall remain in full force and effect as written.

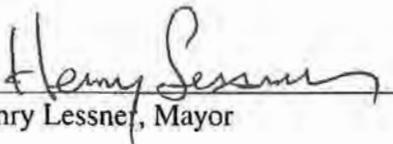
12. The Parties agree that all claims, disputes, and controversies arising out of or in relation to the performance, interpretation, application, or enforcement of the Agreement as amended by this Amendment, including but not limited to breach thereof, shall be referred to mediation before, and as a condition precedent to, the initiation of any adjudicative action or proceeding; provided, however, there shall be no requirement to mediate applicable to a party that provides written notice to the another party of its request to mediate and a mediation is not scheduled within 30 days after the provision of such notice. The cost of the mediation, but not the cost of each Party's legal counsel, shall be shared equally between the Parties.

EXECUTED on this 18th day of September, 2019.

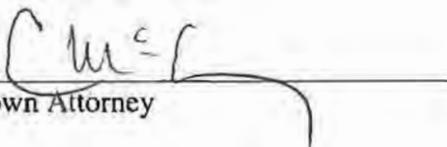
Attest:

TOWN OF FAIRVIEW, TEXAS,
a Texas home rule municipality


Town Secretary


Henry Lessner, Mayor

Approved as to Form:


Town Attorney

TOWN'S ACKNOWLEDGMENT

STATE OF TEXAS §
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COUNTY OF COLLIN §

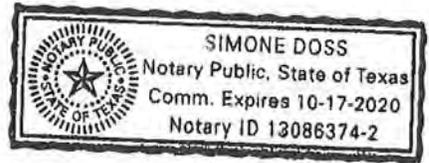
This instrument was acknowledged before me on the 18th day of September, 2019, by Henry Lessner, Town Mayor of the Town of Fairview, Texas, on behalf of said municipality.



Notary Public, State of Texas

My Commission Expires:

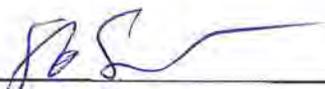
10-17-2020



DEVELOPER:

VILLAGE FV LTD.,
a Texas limited partnership

By: LO GP, INC., a Texas Corporation, its
general partner

By: 
Steve Seitz
Vice President

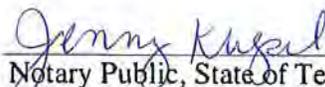
DEVELOPER'S ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF DALLAS §

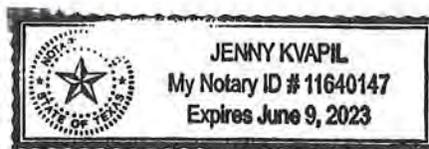
This instrument was acknowledged before me on the 3rd day of October,

2019, by Steve Seitz, Vice President of LO GP, INC., a Texas Corporation, on behalf of said partnership.


Notary Public, State of Texas

My Commission Expires:

06-09-2023



FAIRVIEW ECONOMIC DEVELOPMENT CORPORATION, a Texas non-profit corporation

Sim Israeloff
By: Sim Israeloff, President

FEDC'S ACKNOWLEDGMENT

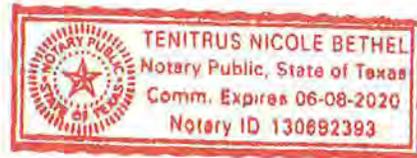
STATE OF TEXAS §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 18th day of September 2019, by Sim Israeloff, President of Fairview Economic Development Corporation, a Texas Nonprofit Corporation, on behalf of said Corporation.

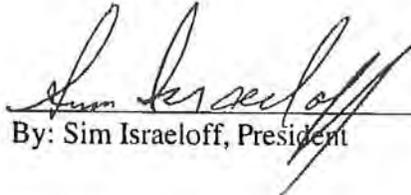
Tenitrus Nicole Bethel
Notary Public, State of Texas

My Commission Expires:

06-08-2020



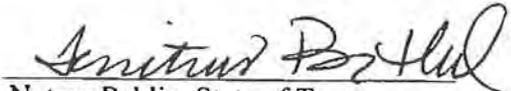
TOWN OF FAIRVIEW COMMUNITY
DEVELOPMENT CORPORATION,
a Texas non-profit corporation


By: Sim Israeloff, President

TFCDC'S ACKNOWLEDGMENT

STATE OF TEXAS §
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COUNTY OF COLLIN §

This instrument was acknowledged before me on the 18th day of September
2019 by Sim Israeloff, President of The Town of Fairview Community Development
Corporation, on behalf of said Corporation.


Notary Public, State of Texas

My Commission Expires:

04-08-2020

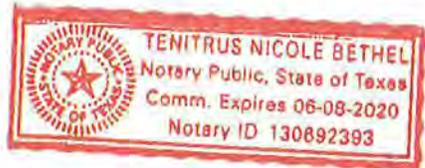
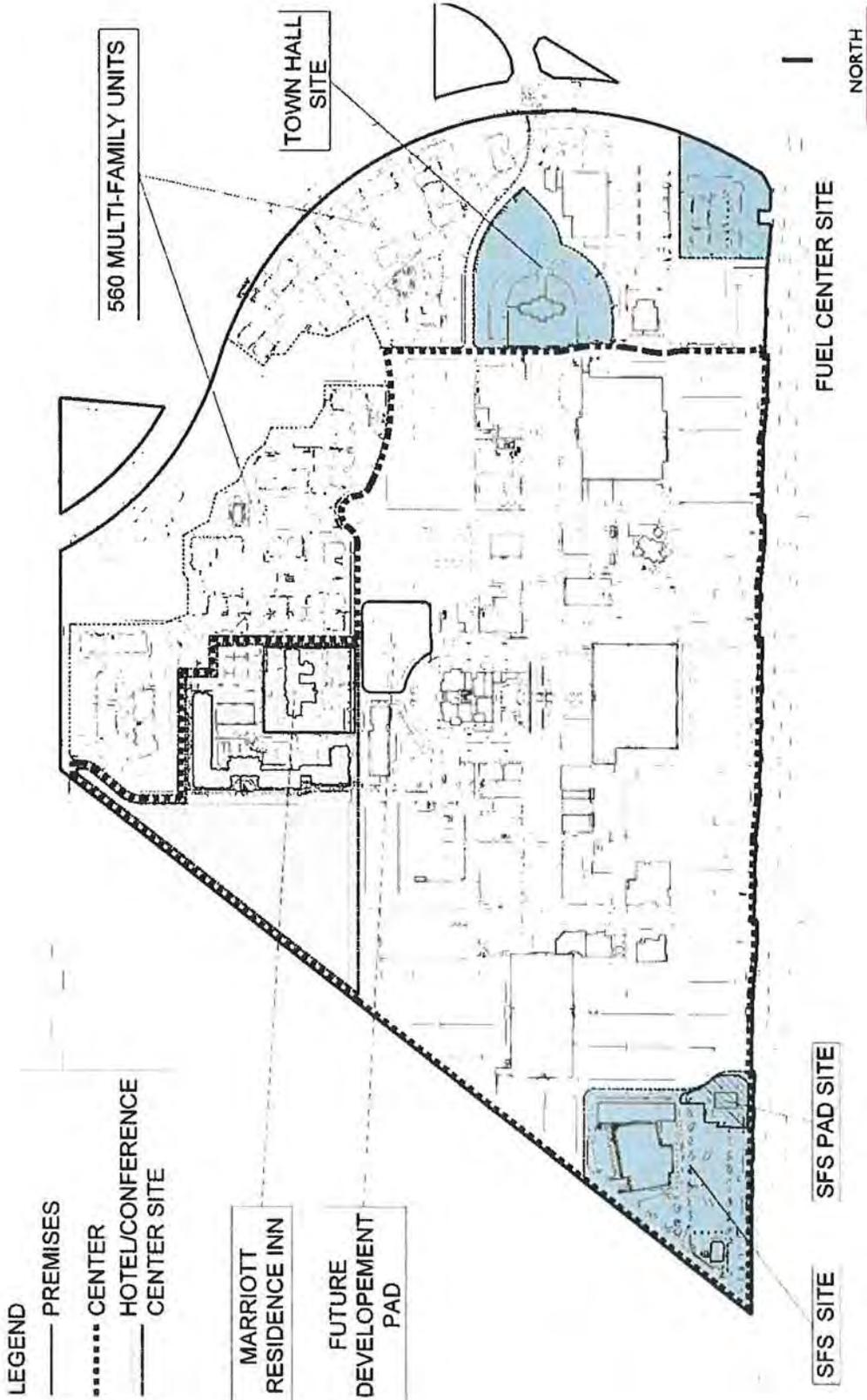


EXHIBIT "A"

Site Plan



SITE PLAN

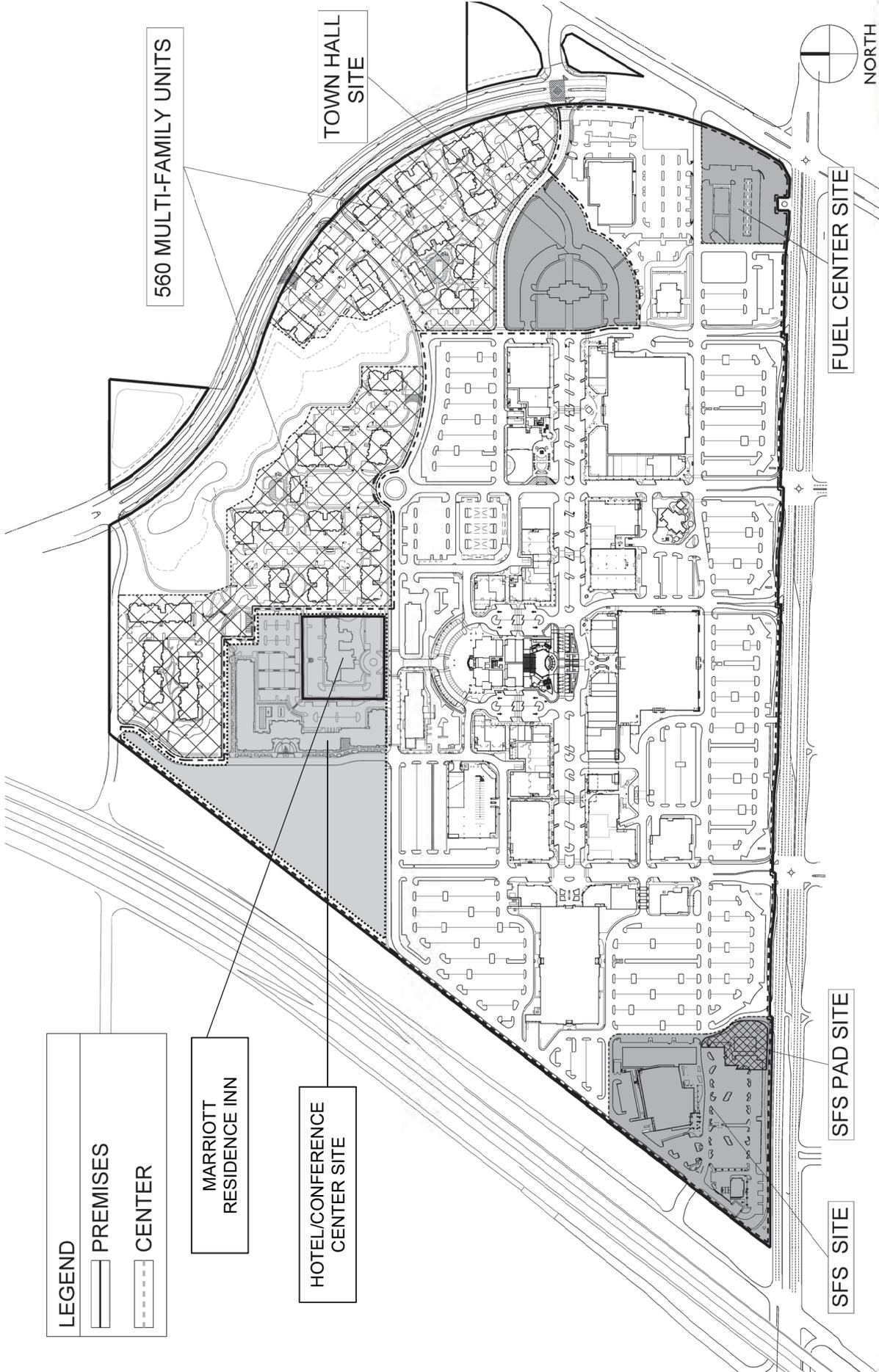
Date: 09.13.19 Scale: Not to Scale

Fairview, TX

Fairview Town Center

LPC

SAME PLAN AS EXHIBIT "A". INCLUDING THIS COPY BECAUSE IT IS CLEARER TO READ.



LEGEND
PREMISES
CENTER

MARRIOTT
RESIDENCE INN

HOTEL/CONFERENCE
CENTER SITE

560 MULTI-FAMILY UNITS

TOWN HALL
SITE

SFS SITE

SFS PAD SITE

FUEL CENTER SITE

NORTH

Fairview Town Center
LPC

Fairview, TX

SITE PLAN

Scale: Not to Scale

O'BRIEN
ARCHITECTS

EXHIBIT "B" (1 of 2)

Letter dated August 15th, 2019

CONFIDENTIAL - FOR SETTLEMENT PURPOSES ONLY



Lincoln Property Company Commercial, Inc
2000 McKinney Avenue, Suite 1000
Dallas, Texas 75201 T 214 740 3309

August 15th, 2019

Julie Couch
Town Manager
Town of Fairview
372 Town Place
Fairview, TX 75069

Dear Julie,

In an effort to resolve the dispute regarding the 16-acre tract, please find below our outlined settlement structure. This proposal incorporates all matters outstanding (those in dispute and those not in dispute) in an effort to bring the entire agreement to a current standing.

1. At settlement, Developer will forego the following amounts (Total of \$686,379.10):
 - a. Reimbursement of Town property taxes regarding the following parcel:
 - i. Property ID: 2646299 (Residential over Retail); \$228,728.10 (2009 - 2015); and
 - b. Impact fees paid to the Town of Fairview when the following improvements were developed (such fees were to be waived), these fees total \$457,651.
 - i.

| Location | Property ID | Acct Number |
|---|-------------|----------------|
| 220 Convention (Overture Apartments) | 2735744 | R956300.A2R1A1 |
| 220 Convention (Marriott Residence Inn) | 2697289 | R956300.A02R21 |
| 290 Murray Farm (Home2Suites) | 2721340 | R949600.A5E411 |

2. At settlement, Town pays Developer:
 - a. The applicable Town property taxes related to the two previously unaccounted for properties:
 - Property ID: 2685589 (Noah's)
 - 2018: \$9,031.26 (If applicable Town property taxes have been paid)
 - 2017: \$9,186.85
 - 2016: \$369.97
 - Total: \$18,588.08
 - Property ID: 2646299 (Residential over Retail)
 - 2018: \$38,766.33
 - 2017: \$51,724.72
 - 2016: \$45,641.71
 - Total: \$136,132.76
 - b. The applicable Town property taxes related to the 16-acre tract for tax years 2017-2018 in the following amounts:
 - 2017 Property ID: 2735744: \$29,976.11
 - 2018 Property ID: 2735744: \$106,931.6
 - 2018 Property ID: 2697289: \$27,452.16

EXHIBIT "B" (2 of 2)

Page 2 of 2

- o 2018 Property ID: 2646176 \$15,277.46
 - Total: \$179,637.32

- c. Based on payments received from the Town and a reconciliation of other amounts, the net effect of items #2a and #2b result in a combined net payment of \$287,802.19 from Town to Developer.
3. At settlement, the parties agree that the 16-acre tract is part of the Premises. As such, all Town property taxes applicable to the 16-acre tract shall be applied toward the payment of the Grant for the remainder of the Term of the Agreement.
4. The parties agree that should Developer seek additional uses not currently allowed under the existing zoning and such uses be approved within the Center, the Property ID: 2697289 (Marriott Residence Inn) shall then be removed from the Premises for the remainder of the Term of the Agreement.
5. At settlement, the parties agree that Section 3.7 of the Agreement (Permit and Inspection Fee Waiver) will be deleted and thereafter null and void.
6. The parties shall agree as part of the settlement to fully and finally release each other from all claims and causes of action related to the property/tax disputes that are the subject of this settlement. Each party agrees that it shall bear its own attorney's fees/costs related to negotiating this settlement and that the mutual releases and terms of the settlement shall be set forth in a more comprehensive settlement agreement/amendment to the Agreement should the parties agree to the outlined settlement.

Sincerely,



Matthew Gallo
Senior Vice President