

**CHAPTER 380 ECONOMIC INCENTIVE AND
MASTER DEVELOPMENT AGREEMENT**

by and between

THE CITY OF MCKINNEY, TEXAS,
a municipal corporation

and

COLUMBUS REALTY PARTNERS, LTD.,
a Texas limited partnership

February 16, 2016

CHAPTER 380 ECONOMIC INCENTIVE AND MASTER DEVELOPMENT AGREEMENT

This Chapter 380 Economic Incentive and Master Development Agreement (this "**Agreement**") is entered into as of the 16th day of February, 2016 (the "**Effective Date**") by and among THE CITY OF MCKINNEY, TEXAS, a municipal corporation organized and existing pursuant to the laws of the State of Texas (the "**City**"), and COLUMBUS REALTY PARTNERS, LTD., a Texas limited partnership ("**Developer**").

RECITALS

A. The City and Developer previously executed a Letter of Intent ("**LOI**") effective January 7, 2016, the transactional portions of which were non-binding, whereby the City and Developer agreed to negotiate definitive agreements for the master development, construction and marketing of approximately 8.766 acres of office, ground floor retail, and Class A+ multi-family units (the "**Project**") to be created on land currently owned by the City. The legal description for the property (the "**Property**") constituting the Project is set forth on **Exhibit "A"**; provided, however, such legal description shall be subject to change if a subsequent survey of the Property reveals a discrepancy.

B. Of even date herewith, the City and the Developer have entered into a Purchase and Sale Agreement (the "**Phase One PSA**"), [NTD: **To include a Closing date of May 1, 2016; earnest money deposit in the amount of \$10,000; preliminary budget for Phase One Improvements to be provided by buyer prior to closing; rescission rights to be reserved in the conveyance deed.**] whereby the Developer or an Affiliate of Developer shall purchase the Phase One Property from the City and a second Purchase and Sale Agreement (the "**Office PSA**"), whereby the Developer or an Affiliate of Developer shall purchase the Office Property from the City. [NTD: **Closing date of no later than August 1, 2017, \$100 independent consideration is the purchaser's sole exposure; rescission rights to be reserved in the conveyance deed.**]

C. This Agreement shall govern the development of the Project following acquisition of the Property by a Developer or an Affiliate of Developer.

NOW, THEREFORE, pursuant to the authority granted to the City under all applicable laws, rules and regulations, and in consideration of the foregoing Recitals and the mutual covenants and promises of the parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer hereby agree as follows:

AGREEMENT

ARTICLE 1. DEFINITIONS

“**Affiliate**” means any person or entity directly or indirectly controlling, controlled by or under common control with another referenced person or entity.

“**Agreement**” has the meaning set forth in the Preamble.

“**City**” has the meaning set forth in the Preamble.

“**City Parking Spaces**” has the meaning set forth in Section 2.3

“**Developer**” has the meaning set forth in the Preamble.

“**Developer Sponsored SPE**” shall mean one or more limited partnerships formed for the single purpose of taking title to the Phase One Property and the Office Property and developing the Project hereunder, with the equity interests therein owned solely by Developer or Affiliates of Developer, as general partner and limited partner, and Affiliates of General Electric Pension Trust, as limited partner.

“**Effective Date**” has the meaning set forth in the Preamble.

“**Force Majeure**” means a delay in performance caused by: (i) war, terrorist acts, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, inability to obtain critically required labor or material, or acts of God; (ii) litigation relating to the Project; (iii) a delay in a governmental approval process, save and except City approvals in this Agreement not covered by municipal codes or ordinances and which are in the discretion of the City to approve or not approve, beyond the time period reasonably anticipated for such approval process; or (iv) other causes beyond the reasonable control of the party involved.

“**Infrastructure Installation**” has the meaning set forth in Section 2.3.

“**LOI**” has the meaning set forth in Recital A.

“**Lot 1**” means that portion of Phase One Property shown as Lot 1 on Exhibit "B" hereto.

“**Lot 2**” means that portion of the Phase One Property shown as Lot 2 on Exhibit "B" hereto.

“**Office CC&Rs**” has the meaning set forth in Section 5.2.

“**Office Commencement**” shall mean (a) the issuance of all permits necessary to commence the Office Improvements, (b) the commencement of visible construction, including the disturbance of the land surface of the Office Property (beyond demolition and site clearance),

and (c) the delivery by the Developer to the City copies of (i) the GMAX Construction contract or contracts for completion of the Office Improvements, and (ii) evidence of commitments from lenders or equity providers to fund 100% of the costs payable under such contracts.

“Office Improvements” shall mean the improvements to be constructed on the Office Property of no less than 45,000 square feet of Class A office space, with surface parking of approximately 125 spaces with free public access between the hours of 5:30 p.m. and 7:30 a.m. weekdays, and all day on weekends as to be provided in the Office CC&Rs, and all necessary onsite, horizontal infrastructure therefor.

“Office Property” means that certain portion of the Property subject to the Office PSA.

“Office PSA” has the meaning set forth in Recital B.

“Office Purchase Note” has the meaning set forth in Section 4.1.

“Phase One CC&Rs” has the meaning set forth in Section 5.1.

“Phase One Commencement” shall mean (a) the issuance of all permits necessary to commence the Phase One Improvements, (b) the commencement of visible construction, including the disturbance of the land surface of the Phase One Land (beyond demolition and site clearance), and (c) the delivery by the Developer to the City of copies of (i) a GMAX Construction contract or contracts for completion of the Phase One Improvements, and (ii) evidence of commitments from lenders or equity providers to fund 100% of the costs payable under such contracts.

“Phase One Improvements” means the Infrastructure Installation, Residential/Retail Improvements and the Street Parking Spaces.

“Phase One Property” means that certain portion of the Property subject to the Phase One PSA.

“Phase One PSA” has the meaning set forth in Recital B.

“Phase One Purchase Note” has the meaning set forth in Section 2.1.

“Project” means the Phase One Improvements, the Office Improvements and other development and construction activities on the Property.

“Property” has the meaning set forth in Recital A.

“Representatives” has the meaning set forth in Section 6.2.

“Residential/Retail Improvements” has the meaning set forth in Section 2.3.

ARTICLE 2.
PHASE ONE DEVELOPMENT

2.1. Funding of Phase One Acquisition. The purchase price for the Phase One Property pursuant to the Phase One PSA shall be represented by Purchaser's promissory note in the principal amount of \$ _____ [to be **\$11.523 per square foot of the Phase One Property, net of public streets and rights-of-way**] (being the City's appraised value of the Phase One Property) (the "**Phase One Purchase Note**"), secured by a first lien deed of trust against the Phase One Property, delivered to the City at the Closing under the Phase One PSA. The Phase One Purchase Note shall be non-recourse to Developer, except (1) to the extent of any penalty applicable under Section 2.5, or (2) in the event the owner of the Phase One Property files any petition for relief pursuant to the United States Bankruptcy Court which stays enforcement of the deed of trust securing payment of the Phase One Purchase Note.

2.2. Design and Platting. Developer shall prepare design plans for the Residential/Retail Improvements sufficient to enable public presentations to the City Council between March 1, 2016 and May 1, 2016. City, at Developer's expense, shall plat or replat the Phase One Property and the Office Property prior to Closing under the Phase One PSA.

2.3. Phase One Construction. No later than January 15, 2017, Developer or the Developer Sponsored SPE shall cause Phase One Commencement to occur and proceed with (i) the horizontal infrastructure work for all of the Project and the Property, e.g., streets, utilities (including new construction and relocation of existing public and franchise utilities), drainage, grading, landscaping, signage, signalization and lighting per the specifications set forth on Exhibit "E" hereto (the "**Infrastructure Installation**"), and (ii) the construction on the Phase One Property of (A) not less than 320 multi-family Class A+ residential units, (B) at least 20,000 square feet of ground floor retail space, (C) a structured parking garage located on Lot 1 containing (i) one (1) parking space for each bedroom in the multi-family units to be constructed on Lot 1, (ii) 50 parking spaces at street level and 50 spaces (each 9' x 18') on the second level to be conveyed as a condominium unit to the City (the "**City Parking Spaces**"), and (iii) an additional 50 spaces on the street level and 50 spaces (each 9' x 18') on the second level which will be owned by the Developer Sponsored SPE, but available for parking to the public at no charge (the "**Public Access Spaces**"), (A, B, and C collectively, the "**Residential/Retail Improvements**"), and (D) at least 119 public street parking spaces ("**Street Parking Spaces**"). The obligations of Developer to proceed and continue with construction shall be subject to the funding by the City of the economic incentive payments specified in Article 3 hereof. The Residential/Retail Improvements shall be consistent with the site plan and façade plan approved by the City.

2.4. Zoning and Site Plans Submittals. Any necessary rezoning of the Property and any necessary site plan and facade plan approvals for Residential/Retail Improvements shall be applied for by Developer in a timely manner so that such applications can be acted on by the City on or before September 1, 2016. In the event of the denial by the City of any such submittals, the Developer Sponsored SPE shall have the right, without approval of or action by the City, to reconvey the Phase One Property to the City by special warranty deed in satisfaction and cancellation of the Phase One Note, subject to no encumbrances other than those existing as of

the conveyance of the Phase One Property from the City to the Developer Sponsored SPE and those imposed in anticipation of development of the Phase One Improvements, upon thirty (30) days' prior written notice, at the sole cost of the Developer Sponsored SPE.

2.5. Failure to Commence Phase One Construction. In the event Developer Sponsored SPE does not exercise its rights under Section 2.4 above, but the Phase One Commencement nevertheless does not occur on or before January 15, 2017 (subject to Force Majeure), then the City shall have the right to reacquire the Phase One Property by special warranty deed from the Developer Sponsored SPE in satisfaction and cancellation of the Phase One Note except a portion thereof equal to the penalty described in this Section 2.5 below, subject to no encumbrances other than those existing as of the conveyance of the Phase One Property from the City to the Developer Sponsored SPE and those imposed in anticipation of development of the Phase One Improvements, upon thirty (30) days' prior written notice, at the sole cost of the Developer, and the Developer shall pay a penalty to the City in the amount of \$100,000.00 in satisfaction of the remainder of the Phase One Note.

2.6. Incentive Payment. Upon the conveyance by Developer Sponsored SPE of the City Parking Spaces to the City, but in no event sooner than the public components of the Infrastructure Installation are completed for public vehicular passage and parking and a final temporary certificate of occupancy is issued for all of the Residential/Retail Improvements on Lot 1, the City shall pay to the Developer Sponsored SPE the economic incentive payment described in Section 3.2.2 hereinafter.

2.7. Assignment of Design/Engineering Documents. In connection with any reconveyance of the Phase One Property to the City pursuant to Sections 2.4 or 2.5, Developer and the Developer Sponsored SPE shall assign and deliver to the City any construction and engineering drawings owned by the Developer or the Developer Sponsored SPE, for the Infrastructure Installation or the Residential/Retail Improvements, but the City shall not be required to assume any obligations thereunder.

2.8. Failure to Complete Phase One Construction. Subject to Force Majeure, if the Phase One Construction is not completed to the point that the public components of the Infrastructure Installation are accepted for maintenance by the City and a final temporary certificate of occupancy is issued for the Residential/Retail Improvements prior to January 15, 2019, or such longer period as may be agreed by the City, the incentive fees payable pursuant to Section 3.2.2 shall be reduced by a penalty equal to \$104,167 per full or partial month from January 15, 2019, until the completion of the Phase One Improvements or until such monthly amounts total \$1,250,000.00, whichever first occurs plus, if acceptance for maintenance by the City of the public components of the Infrastructure Installation and issuance of a final temporary certificate of occupancy for all of the Residential/Retail Improvements has not occurred on January 15, 2020, all roadway, water and sewer impact fees provisionally waived under Section 3.3 with respect to the Residential/Retail Construction shall become immediately due and payable. To the extent the Incentive Payment under Section 3.2.2 has already been made, such penalty shall be remitted by Developer to the City.

2.9. Lease Back of Annex B Prior to Commencement of Construction. The Developer shall lease the building and parking area required for Annex B back to the City for no consideration under a Commercial Lease agreement attached hereto as Exhibit "C". The Commercial Lease shall terminate upon thirty (30) days written notice to City; however, in no event shall notice be given by Developer prior to Developer's submission of its initial application for a building/ground disturbance permit for the Phase One Improvements.

ARTICLE 3.
ECONOMIC INCENTIVE PAYMENTS

3.1. Purpose and Legal Authorization. Developer has represented to the City, and the City acknowledges that it has been informed, that the development and construction of the Infrastructure Installation and the Project, and specifically the structured public parking garage improvements, as described in this Agreement can only occur with the use of economic incentive payments in amounts equal to the Incentive Amounts. The Incentive Amounts shall be payable by the City for the implementation of Article III, Section 52-a of the Texas Constitution or any other economic development or financing programs by statute or the home rule powers of the City under the Texas Local Government Code and other applicable Texas law. The City hereby finds and affirms that the City has the authority under Chapter 380 of the Texas Local Government Code to provide economic development incentives in the form of loans or grants of public funds to support the expansion of local business activity, employment and development. Additionally, the City hereby finds and affirms that for the public purpose of promoting economic development and diversity, increasing employment, reducing unemployment and under employment, expanding commerce and stimulating business and commercial activity in the State of Texas, the County of Collin, and the City, the City desires to enter into this Chapter 380 Economic Development and Incentive Agreement program and agreement, which is hereby included and incorporated herein, through which the City shall offer the incentives and grants as are more particularly described in this Agreement.

3.2. Payment of Incentive Amounts. So long as the Developer's obligations are satisfied in accordance with this Agreement, the following Incentive Amounts shall be payable by the City to the Developer in the amounts and for the purposes set forth below:

3.2.1. Upon the occurrence of Phase One Commencement (with the exception that, for this purpose only, clause (b) in the definition of "Phase One Commencement" shall be disregarded), an amount sufficient to discharge the Phase One Purchase Note, except to the extent of any penalty payable pursuant to Section 2.5 above. Upon payment of the Phase One Purchase Note in full, the City shall release all liens securing payment thereof.

3.2.2. \$1,250,000.00 reduced by penalty, if any, payable under Section 2.8 upon completion of the public components of the Infrastructure Installation for public vehicular passage and parking and the issuance of a final temporary certificate of occupancy for all of the Residential/Retail Improvements on Lot 1.

3.2.3. If the Office Building Note is delivered at Closing under the PSA, then upon Office Commencement, an amount sufficient to discharge the Office Purchase Note, except

to the extent of any penalty payable pursuant to Section 4.4 below. Alternatively if the purchase price for the Office Property is paid in cash at the closing under the Office PSA, at the closing under the Office PSA, an equivalent amount.

3.2.4. \$250,000.00 reduced by any penalty payable under Section 4.5 upon the issuance of a final temporary certificate of occupancy for the Office Improvements.

3.3. Impact Fee Waiver. All roadway, water, and sewer impact fees due to the City under applicable ordinances to enable the Residential/Retail Improvements and the Office Improvements shall be provisionally waived as an additional economic incentive, subject to potential deferred collection under Section 2.8, in connection with the Residential/Retail Improvements and under Section 4.4, in connection with the Office Improvements.

ARTICLE 4. OFFICE BUILDING DEVELOPMENT

4.1. Funding of Office Acquisition. The purchase price for the Office Property pursuant to the Office PSA shall be, at Developer's option, paid in cash at the closing pursuant to the Office PSA or represented by Purchaser's promissory note in the principal amount of \$_____ [to be **\$11.523 per square foot of the Office Property, net of public streets and rights-of-way**], being the City's appraised value of the Office Property (the "**Office Purchase Note**"), secured by a first lien deed of trust against the Office Property, delivered to the City at the Closing under the Office PSA. The Office Purchase Note shall be non-recourse to Developer, except (1) to the extent of any penalty applicable under Section 4.4 or 4.5, or (2) in the event the owner of the Office Property files any petition for relief under the United States Bankruptcy Code which stays enforcement of the deed of trust securing payment of the Office Purchase Note.

4.2. Option to Purchase Office Property. For and in consideration of the agreements herein, the Developer or a Developer Sponsored SPE shall have the option to purchase the Office Property pursuant to the Office PSA so long as Developer is not in default under Article 2 above.

4.3. Office Improvements. Assuming the Office Property is acquired by the Development Sponsored SPE on or before August 1, 2017 pursuant to the Office PSA, but in any event not later than February 1, 2018, Developer or the Developer Sponsored SPE shall cause Office Commencement to occur.

4.4. Failure to Commence Office Improvements. If, following the acquisition of the Office Property pursuant to the Office PSA, the Office Commencement does not occur on or before February 1, 2018, subject to Force Majeure, then the City shall have the right to reacquire the Office Property from the Developer Sponsored SPE in satisfaction and cancellation of any indebtedness under the Office Purchase Note, but for no other consideration, subject to no encumbrances other than those existing as of the conveyance of the Office Property from the City to the Developer Sponsored SPE, upon 30 days' prior written notice, at the sole cost of Developer and/or the Developer Sponsored SPE and Developer shall pay a penalty to the City in the amount of \$15,000.00.

4.5. Failure to Complete Office Improvement. Subject to Force Majeure, following the acquisition of the Office Property pursuant to the Office PSA, if the Office Improvements are not completed to the point that a final temporary certificate of occupancy is issued for the Office Improvements prior to January 15, 2020, or such longer period as may be agreed by the City, the incentive fees payable pursuant to Section 3.2.4 shall be reduced by a penalty equal to \$20,833.00 per full or partial month from January 15, 2020, until the completion of the Office Building Construction or until such monthly amounts total \$250,000.00, whichever first occurs first plus, if the Office Building Construction is not completed on January 15, 2021, all road, water, and sewer impact fees provisionally waived under Section 2.3 with respect to the Office Construction shall become immediately due and payable.

4.6. Assignment of Design/Engineering Documents. In connection with any reconveyance of the Office Property to the City pursuant to Section 4.3, Developer and the Developer Sponsored SPE shall assign and deliver to the City construction and engineering drawings owned by the Developer of the Developer Sponsored SPE, for the Office Improvements, but the City shall not be required to assume any obligations thereunder.

ARTICLE 5. DESIGN AND CONSTRUCTION MATTERS

5.1. Phase One CC&Rs. Covenants, conditions and restrictions for the Public Access Spaces (“**Phase One CC&Rs**”) will be prepared by Developer, approved by the City which require the public parking uses described in Section 2.3 above. The Phase One CC&Rs will be executed and delivered to the City at the time of the conveyance of the Phase One Property to Developer Sponsored SPE to be held by the City until the recordation of the condominium declaration to be placed on Lot 1 which creates the condominium regime in which the City Parking Spaces and the Public Access Spaces will be condominium units. During the term of this Agreement, the Phase One CC&Rs shall not be further amended or restated without the prior mutual written consent of Developer Sponsored SPE and the City.

5.2. Office CC&Rs. Covenants, conditions and restrictions for the surface parking lot which is intended to be a portion of the Office Improvements (the “**Office CC&Rs**”) will be prepared by Developer, approved by the City and filed on the conveyance of the Office Property to the Developer Sponsored SPE, which will require the public parking uses described in the definition of Office Improvements.

5.3. Building Height. Unless express written consent from the City is granted, all buildings on Lot 1 shall have a minimum height of four (4) floors and all buildings on Lot 2 shall have a minimum height of three (3) floors.

5.4. Development Review. The City shall provide expedited development review of the Project, consistent with its review of development under other economic incentive development agreements.

5.5. Marketing. Developer Sponsored SPE will aggressively market all phases of the Project owned by Developer Sponsored SPE for lease to secure appropriate residential, retail, restaurant, and office tenants.

ARTICLE 6.
PROJECT OPERATIONS

6.1. Owners Association and Project Maintenance. Developer or an Affiliate shall organize, operate and manage the Condominium Association established for Lot 1. For and in consideration of the incentive payments described above, the Condominium Unit comprising the City Parking Spaces shall be conveyed to the City upon the issuance of a certificate of occupancy for the Residential/Retail Improvements. For a period of five (5) years thereafter, the owners of all other units in the condominium regime shall pay the costs of electric service to and maintenance of the City Parking Spaces. The City or its successor owners of the City Parking Spaces shall have no responsibility for condominium assessments prior to conveyance of the City Parking Spaces to the City and the costs of electric service and maintenance provided above shall not be passed through to the unit comprising the City Park Spaces as assessments.

6.2. Representatives of the Party Groups. Each of the parties, i.e., (i) the City and (ii) Developer and its Affiliates, shall designate and maintain one or more representatives (the “**Representatives**”) who shall be deemed to be authorized by their respective groups to grant consents or approvals, to make elections, to modify or extend time deadlines, or to take other action on behalf of their respective party as may be necessary or appropriate; however, subject to the requirements of state law and any corporate bylaws requiring the action of a party. The Representatives may be changed or supplemented by either party by written notice to the other party. The initial Representative(s) for the City shall be Tom Muehlenbeck, Interim City Manager and the initial Representative(s) for Developer and its Affiliates shall be either Robert Shaw or Richard Reupke.

ARTICLE 7.
REPRESENTATIONS AND WARRANTIES

7.1. City Representations and Warranties. In order to induce Developer to develop the Project, the City makes the following representations and warranties, each of which shall survive the execution of this Agreement:

7.1.1. Corporate Authority. The City represents and warrants that:

7.1.2. The City is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Texas.

7.1.3. The City has all necessary power and authority to own, use and transfer its properties (including the Project), as applicable, and to transact the business in which it is engaged, and has full power and authority to enter into this Agreement, to execute and deliver the documents required of the City herein, and to perform its obligations hereunder.

7.1.3.1. The City is duly authorized to execute, deliver and perform this Agreement and all documents and instruments and transactions contemplated hereby or incidental thereof.

7.1.3.2. The individuals executing this Agreement on behalf of the City are authorized to do so and, upon executing this Agreement, this Agreement shall be binding and enforceable upon the City in accordance with its terms.

7.1.4. Commissions. The City has not dealt with any broker, finder or any other person in connection with the Project in a manner that might give rise to any claim for commission against the Property, Developer or an Affiliate.

7.1.5. Litigation. To the City's actual knowledge, there are no claims, actions, suits, condemnation actions or other proceedings pending or threatened against the City which affect the Property or the Project.

7.1.6. No Violations of Laws. To the City's actual knowledge, there are no current violations of any applicable law affecting the Property or the Project.

7.1.7. No Option. The City has not granted any options or rights of first refusal to lease or purchase with respect to the Property.

7.1.8. Tenancies. There are no tenancies or occupancies affecting the Property or persons in possession of any part thereof which will not be terminated on or before closing of any sale, save and except the Lease Back described in Section 2.10 above. There are no persons or entities with whom the City or its agents have negotiated with regard to prospective leases of the Property that in any manner might give rise to a claim by such persons or entities against the City or the Property.

7.1.9. Operating Agreements. There are no service, supply, maintenance, leasing or management agreements affecting the Property or the operation of any part thereof which will be binding after the conveyance thereof to the Developer Sponsored SPE.

7.1.10. Real Estate Taxes. Real estate taxes are not and shall not be assessed against the Property during any period that any City is the owner of the Property.

7.1.11. Environmental. To the City's actual knowledge, the Property has been and is in compliance in all material respects with all applicable Environmental Laws (as hereinafter defined), and there has been no Release (as hereinafter defined) of Hazardous Materials (as hereinafter defined) at the Property.

7.2. Knowledge. As used herein and throughout this Agreement, references to the "knowledge" of the City shall refer to the actual knowledge of the Interim City Manager, and shall not be construed, by imputation or otherwise, to refer to the knowledge of the City, or any council member, to any current or former employee of the City or any affiliate thereof, or to impose upon the Interim City Manager any duty to investigate the matter to which such actual knowledge, or the absence thereof, pertains.

7.3. Developer Representations and Warranties. In order to induce the City to convey the Property, Developer makes the following representations and warranties, each of which is true and correct on the date hereof and will be true and correct on (and restated as of) the date of each closing, and each of which shall survive the execution of this Agreement:

7.3.1. Developer is a limited partnership duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to transact business in the State of Texas, and Developer is duly authorized to execute, deliver and perform this Agreement and all documents and instruments and transactions contemplated hereby or incidental hereto.

7.3.2. Developer's general partner is a Texas limited liability company, duly organized, validly existing and in good standing under the laws of its state of organization and is authorized to transact business in the state of Texas and is authorized to bind Developer to this Agreement.

7.3.3. Developer has dealt with no broker, finder or any other person in connection with the Project in a manner that might give rise to any claim for commission against the Property or the City.

ARTICLE 8.
NOTICES

8.1. Delivery of Notices. All notices, statements, demands, consents and other communications ("**Notices**") required or permitted to be given by any party to another party pursuant to this Agreement or pursuant to any applicable law or requirement of public authority shall be properly given only if the Notice is (a) made in writing (whether or not so stated elsewhere in this Agreement); (b) given by one of the methods prescribed in Section 8.2; and (c) sent to the party to which it is addressed at the address set forth below or at such other address as such party may hereafter specify by at least five (5) calendar days prior written notice:

If to the City:

City of McKinney
222 N. Tennessee Street
McKinney, Texas 75069
Attention: Tom Muehlenbeck, Interim City
Manager

With a copy to:

Brown & Hofmeister, LLP
740 E. Campbell Road, Suite 800
Richardson, Texas 75081
Attention: Mark Houser, Esq.

If to Developer or
Developer Sponsored SPE:

Columbus Realty Partners, Ltd.
8343 Douglas, Suite 360
Dallas, Texas 75225
Attention: Robert Shaw

With copies to:

Winstead PC
500 Winstead Building
2728 N. Harwood St.
Dallas, Texas 75201
Attention: Mike C. McWilliams, Esq.

and

Stutzman, Bromberg, Esserman & Plifka
2323 Bryan St., Suite 2200
Dallas TX 75201-2689
Attention: John E. Bromberg, Esq.

8.2. Methods of Delivery. All Notices required or permitted to be given hereunder shall be deemed to be duly given: (a) at the time of delivery, if such Notice is personally delivered; or (b) on the third business day after mailing, if such Notice is deposited with the United States Postal Service, postage prepaid, for mailing via certified mail, return receipt requested; or (c) on the next business day, if such Notice is sent by a nationally recognized overnight courier which maintains evidence of receipt. If any Notice is not received or cannot be delivered due to a change in address of the receiving Party, of which notice was not properly given to the sending Party, or due to a refusal to accept by the receiving Party, such Notice shall be effective on the date delivery is attempted.

ARTICLE 9. GENERAL PROVISIONS

9.1. Negation of Partnership. The parties specifically acknowledge that no party is acting as the agent of any other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties in the business of Developer, the affairs of the City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended and shall not be construed to create any third party beneficiary rights in any person or entity who is not a party or a transferee except as may be expressly stated herein; and nothing in this Agreement shall limit or waive any rights Developer may have or acquire against any third party with respect to the terms, covenants or conditions of this Agreement.

9.2. Not a Public Dedication. Except as shown on any approved final or record plat of the Property or in the Condominium Declaration, nothing herein contained shall be deemed to be a gift or dedication of the Property or any buildings or improvements constructed in the Project,

to the general public, for the general public, or for any public use or purpose whatsoever (except those public benefits described in Article 3 which accrue to the City through the conveyance of the parking garage condominium unit, development of local business activity, employment and development, none of which in any way entitle the City or any other governmental or quasi-governmental entity to any gift or dedication of the Property as private property), it being the intention and understanding of the parties that this Agreement be strictly limited to and for the purposes herein expressed for the development of the Property as private property.

9.3. Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person or entity, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or entity or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

9.4. Exhibits. The Exhibits to which reference is made herein are attached hereto and deemed incorporated into this Agreement in their entirety.

9.5. Amendment and Termination. Except as expressly provided in this Agreement, this Agreement may be terminated, modified or amended only by the written consent of the parties. Upon the issuance of a certificate of occupancy for the Residential/Retail Improvements, this Agreement shall terminate as to the Phase One Property. Upon the issuance of a certificate of occupancy for the Office Improvements, this Agreement shall terminate in its entirety. This Agreement shall automatically terminate upon the reconveyance of the Phase One Property from Developer Sponsored SPE to the City pursuant to Section 2.4.

9.6. Entire Agreement. This Agreement contains all the representations and the entire agreement among the parties with respect to the subject matter hereof. Upon execution of this Agreement, any prior or contemporaneous correspondence, memoranda, agreements, warranties or representations, including without limitation the LOI, are superseded in total by this Agreement. Neither the conduct nor actions of the parties, nor the course of dealing or other custom or practice between the parties, shall constitute a waiver or modification of any term or provision of this Agreement. This Agreement may be modified or amended only in the manner specified in this Agreement.

9.7. Construction of Agreement. All of the provisions of this Agreement have been negotiated at arms-length among the parties and after advice by counsel and other representatives chosen by each party, and the parties are fully informed with respect thereto. Therefore, this Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provisions hereof, or by reason of the status of any party. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions hereof, in order to achieve the objectives and purpose of the parties hereunder. The captions preceding the text of each Article and Section are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

9.8. Further Assurances; Covenant to Sign Documents. Each party shall take all reasonable actions and do all reasonable things, and execute, with acknowledgment or affidavit if required, any and all reasonable documents and writings, which may be necessary or proper to achieve the purposes and objectives of this Agreement.

9.9. Governing Law. This Agreement, and the rights and obligations of the parties, shall be governed by and interpreted in accordance with the laws of the State of Texas.

9.10. Signature Pages. For convenience, the signatures of the parties to this Agreement may be executed and acknowledged on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.

9.11. Recording. The parties agree that this Agreement shall not be recorded. In lieu thereof, the parties shall prepare a separate Memorandum of Agreement, a form of which is attached hereto as Exhibit "D", to be recorded in the Land Records of Collin County, Texas. The parties agree to execute a release of such Memorandum of Agreement to be recorded in the Land Records of Collin County, Texas, upon termination of this Agreement.

9.12. Time. Time is of the essence of this Agreement and of each and every term and condition hereof.

9.13. No Personal Liability. No member, officer, director or employee of Developer, Developer Sponsored SPE or any of their Affiliates shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement. The City shall look solely to the assets of Developer, the Developer Sponsored SPE, and any Affiliate which has assumed the obligations under this Agreement for the payment of any claim against Developer and any such Affiliate under this Agreement.

9.14. Performance on Business Days. If any date for the occurrence of an event or act under this Agreement falls on a Saturday or Sunday or legal holiday in the State of Texas, then the time for the occurrence of such event or act shall be extended to the next succeeding business day.

9.15. Estoppel. Upon the request of Developer, a Developer Sponsored SPE or a lender providing financing for any portion of the Project, the City shall, at Developer's expense not to exceed \$500.00, within fifteen (15) days after request, provide an estoppel certificate confirming the status of matters relating to this Agreement including (i) that the Agreement is in full force and effect, or if not, indicating the date of termination, (ii) indicating that neither Developer or a Developer Sponsored SPE is in compliance with their obligations pursuant to this Agreement, or specifying specific instances of non-compliance, or (iii) confirming or negating the existence of any amendments of this Agreement.

9.16. Assumption and Release. Upon the acquisition of the Phase One Property by an Affiliate of Developer and/or by a Developer Sponsored SPE and the assumption by such Affiliate and/or a Developer Sponsored SPE of the rights and obligations of Developer pursuant

to this Agreement with respect to the Phase One Property, Developer will have no further liability pursuant to this Agreement with respect to the Phase One Property. Upon the acquisition of the Office Property by the Developer Sponsored SPE and the assumption by an Affiliate of Developer and/or a Developer Sponsored SPE of the rights and obligations of Developer pursuant to this Agreement with respect to the Office Property, Developer will have no further liability pursuant to this Agreement.

9.17. Permitted Assignments. Developer's rights under this Agreement with respect to either the Phase One Property or the Office Property or both may be assigned to an Affiliate of Developer or a Developer Sponsored SPE as referenced in Section 9.16 above and may be collaterally assigned to a lender providing financing for the Phase One Improvements or the Office Improvements or both.

[Signatures Appear on Next Pages]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement to be effective as of the Effective Date.

CITY:

THE CITY OF MCKINNEY, TEXAS,
a municipal corporation

By: _____

Name: Tom Muehlenbeck

Title: Interim City Manager

DEVELOPER:

COLUMBUS REALTY PARTNERS, LTD.,
a Texas limited partnership

By: Columbus G.P., LLC,
a Texas limited liability company,
General Partner

By: _____

Name: _____

Title: _____

EXHIBIT "A"

Lot 1, Block 1, Collin County Governmental Complex, according to plat thereof recorded in Volume 12, Page 61, Map Records of Collin County, Texas

EXHIBIT "B"

Depiction of Lot 1, Lot 2 and Office Property

EXHIBIT "C"

Commercial Lease

EXHIBIT "D"

Memorandum of Agreement

EXHIBIT "E"

Infrastructure Specifications

4837-2300-4461v.2 20547-171