ORDINANCE NO.

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, APPROVING A FOURTH AMENDED ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT WITH ALLEGIANCE HILLVIEW, L.P. (ALLEGIANCE) DATED MARCH 29, 2017 BETWEEN THE CITY OF DENTON AND ASSIGNEES OF ALLEGIANCE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City and Allegiance entered into an original Economic Development Program Grant Agreement with Allegiance Hillview, L.P. dated June 15, 2010 for the development of "Rayzor Ranch" ("Original Agreement"), generally located East of IH35W and West of N Bonnie Brae St and on the North and South sides of W University Drive between W Windsor Drive and Scripture Street ("the development"), which was amended under a First, Second, and Third Amendment, with the last amendment being adopted November 10, 2015; and

WHEREAS, Allegiance subsequently assigned its interests in Phase II of the development to DB Denton II LLC and its interests in Phase I of the development to Allegiance GL LLC and Rayzor Ranch 380 Associates, LLC (the "Assignees"); and

WHEREAS, the City and the Assignees desire to amend the Original Agreement under a Fourth Amended Economic Development Program Grant Agreement with Allegiance Hillview L.P., attached to this Ordinance and incorporated herein along with its Exhibits 1-4 (the "Fourth Amended Agreement") in order to memorialize the Third Assignment as defined therein, revise the definition of "Initial Retail Improvements in Phase II" in the Third Amended Agreement, extend the substantial completion deadline for the same, and other changes as defined therein; and

WHEREAS, the City Council of the City of Denton, Texas hereby finds that the Fourth Amended Agreement is in the best interests of the citizens of the City of Denton; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or his designee, is hereby authorized to execute the Fourth Amended Economic Development Program Grant Agreement with Allegiance Hillview, L.P. ("Fourth Amended Agreement"), in substantially the form attached hereto with Exhibits 1-4 and made a part of this Ordinance for all purposes.

SECTION 2. The City Manager, or his designee, is authorized to exercise the City of Denton's rights and duties as set forth in the Fourth Amended Agreement.

SECTION 3. This Ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED THIS THE _____ DAY OF _____, 2017.

CHRIS WATTS, MAYOR

ATTEST: JENNIFER WALTERS, CITY SECRETARY

BY:_____

APPROVED AS TO LEGAL FORM: AARON LEAL, INTERIM CITY ATTORNEY

Deputy City attorney forme BY:

FOURTH AMENDED ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT WITH ALLEGIANCE HILLVIEW, L.P.

This Fourth Amended Economic Development Program Grant Agreement (this "Fourth Amended Agreement") is made and entered into by and between Allegiance Hillview, L.P., a New York Limited Partnership ("Allegiance"), by and through its assignees, Allegiance GL, LLC., a Delaware Limited Liability Company ("Allegiance GL"), and Rayzor Ranch 380 Associates, LLC., a Texas Limited Liability Company ("Rayzor"), along with DB Denton II LLC., a Delaware Limited Liability Company ("DB"), and the City of Denton, Texas, a Texas home-rule municipal corporation (the "City"), for the purposes and considerations stated below. The foregoing parties are sometimes individually referred to as a "Party" and collectively as the "Parties."

WHEREAS, on or about June 15, 2010, the City and Allegiance entered into that certain Economic Development Program Grant Agreement with Allegiance Hillview, L.P., for the development of "Rayzor Ranch" generally located East of IH-35 W and West of N Bonnie Brae St and on the North and South sides of W University Drive between W Windsor Drive and Scripture Street (the "Development"), which agreement was approved under Ordinance No. 2010-142, and is attached as <u>Exhibit 1</u> hereto, and incorporated by reference herein (the "Original Agreement"); and

WHEREAS, Allegiance entered into that certain Assignment and Assumption Agreement dated as of July 30, 2010 with DB, assigning to DB all of the right, title, interest, and obligations of Allegiance regarding Phase II of the Original Agreement, as amended (the "First Assignment"); and

WHEREAS, on or about September 14, 2010, Allegiance, DB, and the City entered into that certain First Amendment to Economic Development Program Grant Agreement with Allegiance Hillview, L.P., to memorialize the First Assignment, and release Allegiance from obligations regarding Phase II, which first amendment was approved under Ordinance No. 2010-210, and is attached as <u>Exhibit 2</u> hereto, and incorporated by reference herein (the "First Amended Agreement"); and

WHEREAS, on or about May 13, 2014, Allegiance, DB, and the City entered into that certain Second Amendment to Economic Development Program Grant Agreement with Allegiance Hillview, L.P., to amend the Original Agreement and First Amended Agreement, which Second Amendment was approved under Ordinance No. 2014-143, and is attached as <u>Exhibit 3</u> hereto, and incorporated by reference herein (the "Second Amended Agreement"); and

WHEREAS, Allegiance, through its general partner TH GP, LLC. d/b/a TH Denton GP. LLC., entered into that certain Assignment and Assumption Agreement as of April 1, 2015, with Allegiance GL, assigning to Allegiance GL all of the rights, title, interest, and obligations of

Allegiance regarding Phase I of the Original Agreement, as amended (the "Second Assignment"); and

WHEREAS, on November 10, 2015, Allegiance, DB, and the City entered into that certain Third Amendment to Economic Development Program Grant Agreement with Allegiance Hillview, L.P., in order to memorialize the Second Assignment, and facilitate the development of a Hotel and Convention Center in Phase II of the Development, which third amendment was approved under Ordinance No. 2015-331, and is attached as <u>Exhibit 4</u> hereto, and incorporated by reference herein (the "Third Amended Agreement"); and

WHEREAS, Allegiance GL entered into that certain Assignment and Assumption Agreement on or about November 1, 2016, with Rayzor through its sole member FidCal, LLC., a Delaware Limited Liability Company, assigning to Rayzor all of the rights, title, interest, and obligations of Allegiance GL regarding Phase I of the Original Agreement, as amended (the "Third Assignment"); and

WHEREAS, the Parties now desire to memorialize the Third Assignment, revise the "Initial Retail Improvements in Phase II" definition of the Third Amended Agreement, extend the substantial completion deadline for the same, and other changes as identified herein.

NOW, THEREFORE, for good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. <u>Incorporation of Preamble</u>. All matters and recitations stated in the preamble to this Fourth Amended Agreement are true, and correct, and are hereby incorporated by reference into the provisions of this Fourth Amended Agreement for all purposes.

2. <u>Conflicts</u>. The terms set forth in the Original Agreement, First Amended Agreement, Second Amended Agreement, Third Amended Agreement, (Exhibits 1-4), and this Fourth Amended Agreement are continuing in force and effect to the extent that they do not conflict. In the event of a conflict, the document executed later in time controls. All references in the Original Agreement, First Amended Agreement, Second Amended Agreement, and Third Amended Agreement to a deadline for the construction of the Initial Retail Improvements in Phase II, or the Required Infrastructure for the Initial Retail Improvements in Phase II shall be amended to reflect a deadline of April 1, 2018, subject to extension to July 1, 2018, as provided by this Fourth Amended Agreement.

3. <u>Section 1.b. of the Third Amended Agreement</u> (Section 2 of the Original Agreement which was changed from "Retail Improvements in Phase II" to "Initial Retail Improvements in Phase II" and "Additional Retail Improvements in Phase II" definitions in the Second Amended Agreement) shall be amended to read as underlined:

b. Initial Retail Improvements in Phase II means a minimum of 300,000 gross square feet (as measured to the exterior building wall) of retail or commercial shopping center buildings located in Phase II, comprised of <u>any combination of the following</u>: (i) the Town Center (as described by the zoning applicable to the Property); (ii) the ground floor of the hotel and the convention center space that is part of, or planned to be part of the Hotel and Convention Center Project whether or not the Hotel and Convention Center Project has a certificate of occupancy by <u>April 1, 2018, (subject to extension to July 1, 2018, as provided by this Fourth Amended Agreement)</u>; and (iii) other retail or commercial shopping center buildings located in Phase II.

At the time of this Fourth Amended Agreement, the City has determined that approximately 227,582 gross square feet (approximately 75% of Initial Retail Improvements in Phase II) of retail, or commercial shopping center buildings located in Phase II have received a Certificate of Occupancy, or are under construction (applied for and received a permit and began work). If the gross square footage of the Initial Retail Improvements in Phase II does not meet the minimum 300,000 gross square feet by April 1, 2018, DB shall deliver to the City a Certificate of Compliance, which is attached as Exhibit 5 hereto, (including documentation) that establishes the amount of gross square footage which has received a Certificate of Occupancy, or has a completed foundation approved by the Building Official as of April 1, 2018. The City Manager or his designee, shall have the authority to administratively approve an extension of this deadline to July 1, 2018, for all purposes of this Fourth Amended Agreement, provided that at least 270,000 gross square feet (approximately 90% of the Initial Retail Improvements in Phase II) of retail, or commercial shopping center buildings located in Phase II have received a Certificate of Occupancy, or have completed foundations approved by the Building Official, as determined by the City and attested to in the Certificate of Compliance by April 1,2018.

4. <u>Section 2.a. of the Third Amended Agreement</u> (Section 3.2 of the Original Agreement) shall be amended to read as underlined:

3.2 <u>Program Grant for Phase II</u>. This Agreement shall be effective as of the date executed by both parties. At any time following execution of this Agreement and following Substantial Completion of the Required Infrastructure for Initial Retail Improvements in Phase II, (but not later than April 1, 2018, or as otherwise extended to July 1, 2018, as provided in this Fourth Amended Agreement), DB may designate the first day of any month to be the Program Effective Date for Phase II by providing written notice to the City at least 60 days prior to the designated Program Effective Date for Phase II. The City will begin making Program Grant for Phase II monthly installment payments on the designated Program Effective Date for Phase II, and shall continue to make such monthly installment payments for 300 consecutive months as provided by this Agreement. This Agreement will terminate with respect to the Program Grant for Phase II upon the earlier to occur of (i) the date DB has been paid for the full amount of the Eligible Phase II Costs, or (ii) 300 months after the Program Effective Date for Phase II regardless of whether DB has been paid the full amount of the Eligible Phase II Costs.

Additional Program Grant for Hotel and Convention Center Project, as depicted in Exhibit A. The City will begin making Additional Program Grant for the Hotel and Convention Center Project monthly installment payments commencing the first month following receipt of the certificate of occupancy of the Hotel and Convention Center Project, and following the commencement of Phase II Grant Payments, and paid monthly until DB has received \$5,000,000 as consideration for lost revenue in Phase II as a result of the Hotel and Convention Center Project.

5. <u>Section 4.1 of the Original Agreement shall be amended as underlined:</u>

4.1. Program Grant for Phase I. For each month during the term of the Program Grant for Phase I, the City agrees, subject to the conditions contained in this Agreement, to make a Program Grant for Phase I installment payment to Rayzor on or before thirty days following the City's receipt from the State Comptroller of the Monthly Sales Tax Report indicating Total Taxable Sales from the businesses located in Phase I. The Program Grant for Phase I installment payments shall be calculated as provided in Section 5.1 of this Agreement. Issuance of the first certificate of occupancy by the City to any tenant within Phase I shall be a condition precedent to the initiation of Program Grant for Phase I installment payments. Program Grant for Phase I installment payments may be withheld at any time if there are delinquent property taxes on any property owned by Rayzor, and located in the City, and such installment payments will not be resumed until such delinquency is cured, at which time withheld payments shall be paid to Rayzor. Notwithstanding anything contained herein to the contrary, if Substantial Completion of the Retail Improvements in Phase I has not occurred on or before January 1, 2013, the City, in its sole discretion, may cease the Program Grant for Phase I installment payments and terminate this Agreement as to the Program Grant for Phase I, and Rayzor will refund to the City all Program Grant for Phase I installment payments previously made. In addition, the City, in its sole discretion, may terminate this Agreement as to the Program Grant for Phase I if Substantial Completion of the Required Infrastructure for Phase I has not occurred on or before January 1, 2013.

6. <u>Section 5.b. of the Second Amended Agreement</u> (Section 4.2 of the Original Agreement) shall be amended to read as underlined:

b. <u>Program Grant for Phase II</u>. For each month during the term of the Program Grant for Phase II, the City agrees, subject to the conditions contained in this Agreement, to make a Program Grant for Phase II installment payment to DB on, or before thirty days following

the City's receipt from the State Comptroller of the Monthly Sales Tax Report indicating Total Taxable Sales from the preceding month that are allocable to Phase II. The Program Grant for Phase II installment payments shall be calculated as provided in Section 5.2 of this Agreement. Issuance of the first certificate of occupancy by the City to any tenant within Phase II shall be a condition precedent to the initiation of Program Grant for Phase II installment payments. Program Grant for Phase II installment payments may be temporarily withheld at any time, if there are delinquent property taxes, or assessments on any property owned by DB, and located in the City, and such installment payments will not be resumed until such delinquency is cured, at which time withheld payments shall be paid to DB. The 300 month term for payment of Program Grant for Phase II shall not be suspended, or extended if installment payments are withheld pursuant to the prior sentence. Notwithstanding anything contained herein to the contrary, the Program Grant for Phase II installment payments will cease, this Agreement will automatically terminate as to the Program Grant for Phase II, and DB will refund to the City all Program Grant for Phase II installment payments previously made if Substantial Completion of the Initial Retail Improvements in Phase II has not occurred on or before April 1, 2018, (subject to extension to July 1, 2018, as provided by this Fourth Amended Agreement). In addition, the City, in its sole discretion, may terminate this Agreement as to the Program Grant for Phase II if Substantial Completion of the Required Infrastructure for Phase II for the Initial Retail Improvements in Phase II has not occurred on or before April 1, 2018, (subject to extension to July 1, 2018, as provided by this Fourth Amended Agreement.)

7. <u>Section 2.b of the Third Amended Agreement</u> (Section 5.2 of the Original Agreement) is revised to read as underlined:

Program Grant for Phase II. Program Grant for Phase II monthly installment 5.2. payments during the term of the Program Grant for Phase II shall be calculated as 50% of the 1.5% sales tax collected by the City with respect to the Total Taxable Sales allocable to Phase II during the preceding month as established by the most recent State Comptroller's Monthly Sales Tax Report. The City's obligation to make such payments is contingent upon the City's receipt of the sales taxes from the Texas State Comptroller, and the Monthly Sales Tax Report; provided, however, if the State Comptroller ceases to issue Monthly Sales Tax Reports, the City and the Parties shall cooperate to arrive at a reasonably equivalent and mutually agreeable alternative method of computing the Program Grant for Phase II monthly installment payments. Payments of the Program Grant for Phase II monthly installment payments will be used to repay DB for Eligible Phase II Costs not otherwise paid with Program Grant for Phase I payments up to a maximum of \$21,000,000.00 upon Substantial Completion of the Initial Retail Improvements in Phase II and up to an additional \$27,000,000.00 upon Substantial Completion of the Additional Retail Improvements in Phase II.

Additional Program Grant for Hotel and Convention Center Project. Program Grant for Hotel and Convention Center Project shall be calculated as 15% of the 1.5% sales tax collected by the City with respect to the Total Taxable Sales allocable to Phase I and Phase II during the preceding month as established by the most recent State Comptroller's Monthly Sales Tax Report. The City's obligation to make such payments is contingent upon the City's receipt of the sales taxes from the Texas State Comptroller and the Monthly Sales Tax Report; provided, however if the State Comptroller ceases to issue Monthly Sales Tax Reports, the Parties shall cooperate to arrive at a reasonably equivalent and mutually agreeable alternative method of computing the Program Grant for the Hotel and Convention Center Project monthly installment payments. Notwithstanding any provision of the Second Assignment, or Third Assignment to the contrary, all payments of the Program Grant for the Hotel and Convention Center Project shall be made monthly to DB until DB has received \$5,000,000 as consideration for lost revenue in Phase II as a result of the Hotel and Convention Center Project.

8. <u>Section 6 of the Second Amended Agreement</u> (Section 8 of the Original Agreement) is amended in its entirety to read as follows to include omissions and as underlined:

6. Default. If a Party fails to perform any of its obligations under this Agreement, and such failure is not cured within 30 days after written notice, the failure of the nonperforming Party to cure within such 30 day period (or to commence to cure if the nature of the failure cannot reasonably be cured within 30 days) shall constitute a default under this Agreement and shall entitle the non-defaulting party to all remedies available at law, or in equity (including injunctive relief, specific performance, and suspending, or withholding Program Grant for Phase I or Program Grant for Phase II payments); PROVIDED, HOWEVER, NOTWITHSTANDING THE FOREGOING: (i) MONETARY DAMAGES SHALL BE LIMITED TO THE AMOUNT NECESSARY TO ENFORCE SPECIFIC PERFORMANCE OF THE FAILED OBLIGATION; (ii) THE CITY CANNOT TERMINATE THIS AGREEMENT AS TO PHASE I; (iii) THE CITY CANNOT TERMINATE THIS AGREEMENT AS TO PHASE II UNLESS: (1) SUBSTANTIAL COMPLETION OF THE INITIAL RETAIL **IMPROVEMENTS IN PHASE II DOES NOT OCCUR ON, OR BEFORE APRIL 1,** 2018, (SUBJECT TO EXTENSION TO JULY 1, 2018, AS PROVIDED BY THIS FOURTH AMENDED AGREEMENT), OR (2) SUBSTANTIAL COMPLETION OF **RETAIL** THE **REQUIRED INFRASTRUCTURE** FOR THE INITIAL IMPROVEMENTS IN PHASE II DOES NOT OCCUR ON, OR BEFORE APRIL 1, 2018, (SUBJECT TO EXTENSION TO JULY 1, 2018, AS PROVIDED BY THIS FOURTH AMENDED AGREEMENT); AND (iv) THE CITY MAY NOT TERMINATE, WITHHOLD, OR SUSPEND PAYMENTS, OR TAKE ANY OTHER **REMEDY WITH RESPECT TO PROGRAM GRANT FOR PHASE I PAYMENTS,** OR OTHERWISE RELATED TO PHASE I EXCEPT FOR DEFAULTS RELATED

TO PHASE I, AND THE CITY MAY NOT TERMINATE, WITHHOLD, OR SUSPEND PAYMENTS, OR TAKE ANY OTHER REMEDY WITH RESPECT TO PROGRAM GRANT FOR PHASE II PAYMENTS, OR OTHERWISE RELATED TO PHASE II EXCPET FOR DEFAULTS RELATED TO PHASE II.

9. <u>Section 9 of the Second Amended Agreement</u> is amended in its entirety to read as underlined: <u>Public Improvement District Financing of Eligible Improvements</u>. If the City levies public improvement district assessments to pay any portion of DB's costs of the Eligible Improvements shown on Exhibit A <u>of the Second Amended Agreement</u>, the amount levied and collected from DB shall be reimbursable costs under this Fourth Amended Agreement so long as the total of such assessments and other Eligible Phase II costs do not exceed <u>the maximum amount</u> <u>of \$68,000,000.00 as reflected in Exhibit A of the Second Amended Agreement</u>.

10. <u>Binding Effect</u>. This Fourth Amended Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns. This Fourth Amended Agreement shall not inure to the benefit or give rights or obligations to third party beneficiaries.

11. <u>Counterparts</u>. This Fourth Amended Agreement may be executed in one or more counterpart copies, all of which will constitute and be deemed an original, but all of which together will constitute one and the same instrument binding on the Parties. Delivery by facsimile or electronic mail of this Fourth Amended Agreement, or an executed counterpart hereof will be deemed a good and valid execution and delivery thereof.

12. <u>Authority</u>. Each Party represents that the below individuals have the full authority and capacity to execute this Fourth Amended Agreement on behalf of its respective Party.

EXECUTED and effective as of the _____ day of _____, 2017.

CITY OF DENTON, DENTON, TEXAS A TEXAS MUNICIPAL CORPORATION

TODD HILEMAN, CITY MANAGER

ATTEST: JENNIFER WALTERS, CITY SECRETARY BY: _____

APPROVED AS TO LEGAL FORM: AARON LEAL, INTERIM CITY ATTORNEY

Janon BY:

STATE OF TEXAS § COUNTY OF DENTON §

This instrument was acknowledged before me on the ____ day of _____, 2017, by Todd Hileman, City Manager, **City of Denton, Texas**, on behalf of said city.

Notary Public, in and for the State of Texas

My Commission expires:

ALLEGIANCE GL LLC, a Delaware Limited Liability Company (as Assignee from Allegiance Hillview, L.P.)

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Andrew Osborne, Authorized Signatory

STATE OF TEXAS § COUNTY OF DENTON §

This instrument was acknowledged before me on the <u>3</u> day of <u>MAPCH</u>, 2017, by Andrew Osborne, of Allegiance GL, LLC., its Authorized Signatory on behalf of said entity.



Notary Public, in and for the State of Texas

My Commission expires:

DB DENTON II LLC, a Delaware Limited Liability Company

By: DB Denton Holdings LLC, A Delaware Limited Liability Company

Its: Sole Member

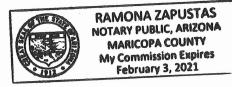
- By: RED Rayzor Ranch, LLC, A Delaware Limited Liability Co
- Its: Managing Member

By:

Michael Ebert Its: Vice President and Principal

STATE OF DEXAS § COUNTY OF DENTON §

This instrument was acknowledged before me on the <u>Sh</u> day of <u>Mauch</u> 2017, by Michael Ebert, of **DB Denton II, LLC.**, its Vice President and Principal on behalf of said entity.



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Notary Public, in and for the State of Texas ARIZEKA-

My Commission expires: 2.3.2

RAYZOR RANCH 380 ASSOCIATES, LLC, a Texas Limited Liability Company (as Assignee from Allegiance GL LLC)

By: FidCal, LLC,

A Delaware Limited Liability Company Its Sole Member

By: FRP FidCal, LLC A Texas Limited Liability Company

Its: Manager

By:

Richard Coe Its: Executive Vice President

STATE OF TEXAS § COUNTY OF DENTON § DALLAS

This instrument was acknowledged before me on the 20 day of Morch, 2017, by Richard Coe, of Rayzor Ranch 380 Associates, LLC., its Executive Vice President on behalf of said entity.

ANGELA PACE Notary Public, State of Texas Comm. Expires 09-02-2018 Notary ID 56327-8

9-2-2018

Notary Public, in and for the State of Texas

My Commission expires:

EXHIBIT 1

ORDINANCE NO. 2010-142

AN ORDINANCE APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT GRANT AGREEMENT WITH ALLEGIANCE HILLVIEW, LP; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Allegiance Hillview, LP ("Allegiance") has made a request of the City of Denton ("City") to establish an economic development program under Chapter 380 of the Texas Local Government ("Chapter 380") to stimulate the development of commercial property within the City of Denton; and

WHEREAS, on May 15, 2007, the City Council adopted Ordinance No. 2007-113 which included an Economic Development Grant Agreement (the "Original Agreement") establishing an economic development program under Chapter 380; and

WHEREAS, on March 10, 2009, the City Council adopted Ordinance No. 2009-064 which amended the Original Agreement (the "Amendment"); and

WHEREAS, Allegiance has requested that certain terms of the Original Agreement, as amended by the Amendment, be again amended; and

WHEREAS, due to the nature of the requested amendments and to clarify the intent of the parties, Allegiance and the City desire to enter into a new agreement ("Agreement") with regard to the economic development grant described herein; and

WHEREAS, it is in the public interest to authorize the approval of the Agreement, which is attached hereto and made a part of; NOW, THEREFORE;

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

<u>SECTION 1</u>. The recitals and findings contained in the preamble of this Ordinance are incorporated into the body of this Ordinance.

<u>SECTION 2</u>. The Mayor, or the Mayor Pro Tem, is hereby authorized to execute the Agreement on behalf of the City of Denton and to exercise all rights and duties of the City of Denton under this Agreement, including without limitation the authorization to make the expenditures set forth in the Agreement.

<u>SECTION 3</u>. This Ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the 15th day of _____ 2010. BURROUGES, MAYOR

ATTEST: JENNIFER WALTERS, CITY SECRETARY

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APPROVED AS TO LEGAL FORM: ANITA BURGESS, CITY ATTORNEY

BY: <u>M</u> Mceil

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THE STATE OF TEXAS § COUNTY OF DENTON §

ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT WITH ALLEGIANCE HILLVIEW, L.P.

This Economic Development Program Grant Agreement (this "<u>Agreement</u>") is made and entered into by and between ALLEGIANCE HILLVIEW, L.P. ("<u>Grantee</u>"), a New York Limited Partnership, and the CITY OF DENTON, TEXAS (the "<u>City</u>"), a Texas municipal corporation, for the purposes and considerations stated below. Grantee and the City are individually referred to as a "<u>Party</u>" and collectively as the "<u>Parties</u>."

Section 1. Authorization.

This Agreement is made pursuant to the Economic Development Program provisions of TEXAS LOCAL GOVERNMENT CODE, Chapter 380 (the "Act") to promote local economic development and to stimulate business and commercial activity in the City.

Section 2. Definitions.

"Eligible Improvements" means any improvements included within the categories identified on Exhibit A.

"<u>Eligible Phase I Costs</u>" means the actual amounts paid for Eligible Improvements in Phase I, including amounts paid for the Highway 380 Improvements.

"<u>Eligible Phase II Costs</u>" means (i) the actual amounts paid for Eligible Improvements in Phase II plus (ii) the amount by which the amounts paid for Eligible Improvements in Phase I exceed \$20 million.

"<u>Grantee</u>" means Allegiance Hillview, L.P., and its successors and assigns as permitted by this Agreement.

"Highway 380 Improvements" means the reconstruction of US Highway 380 consisting of two additional lanes (one on the north side and one on the south side of the highway) from the intersection of US 380 and Bonnie Brae to the intersection of US 380 and the nearest service road right-of-way for Interstate 35, including utility relocations required by the reconstruction.

"<u>Monthly Sales Tax Report</u>" means the monthly report received from the Texas State Comptroller that shows the amount of Total Taxable Sales for a month period.

"<u>Phase I</u>" means the portion of the Property located north of US 380, consisting of approximately 153 acres described in <u>Exhibit B</u>.

"<u>Phase II</u>" means the portion of the Property located south of US 380, consisting of approximately 257 acres described in <u>Exhibit B</u>

"Program Effective Date for Phase I" is defined in Section 3 of this Agreement.

"Program Effective Date for Phase II" is defined in Section 3 of this Agreement.

"Program Grant for Phase I" means 240 consecutive monthly payments made by the City to Grantee beginning on the Program Effective Date for Phase I and continuing for the term of the Program Grant for Phase I as described in Section 4.1 of this Agreement. Each monthly payment will be calculated as a percentage of the 1.5% sales tax collected by the City with respect to Total Taxable Sales in Phase I as reported in the Monthly Sales Tax Report, all as described in Section 5.1 of this Agreement.

"Program Grant for Phase II" means 240 consecutive monthly payments made by the City to Grantee beginning on the Program Effective Date for Phase II and continuing for the term of the Program Grant for Phase II as described in Section 4.2 of this Agreement. Each monthly payment will be calculated as a percentage of the 1.5% sales tax collected by the City with respect to Total Taxable Sales in Phase II as reported in the Monthly Sales Tax Report, all as

described in Section 5.2 of this Agreement

"Property" means the approximately 410 acres described on Exhibit B.

"Required Infrastructure for Phase I" means the road and public utility infrastructure required to obtain final certificates of occupancy for the Retail Improvements or a phased portion of the Retail Improvements in Phase I, including but not limited to, Highway 380 Improvements and the road and utilities in Phase I that will be needed to serve the contemplated residential development at the north of Phase I.

"<u>Required Infrastructure for Phase II</u>" means the road and public utility infrastructure required to obtain final certificates of occupancy for the Retail Improvements or a phased portion of the Retail Improvements in Phase II, including but not limited to the portion of Heritage Trail located within Phase II.

"<u>Retail Improvements in Phase I</u>" means a minimum of 400,000 gross square feet (as measured to the exterior building walls) of retail or commercial shopping center buildings located in Phase I.

"<u>Retail Improvements in Phase II</u>" means a minimum of 600,000 gross square feet (as measured to the exterior building walls) of retail or commercial shopping center buildings located in Phase II, comprised of the Town Center (as described by the zoning applicable to the Property), and other retail development in Phase II.

"<u>Substantial Completion</u>" means: (i) with respect to the Retail Improvements in Phase I, when final certificates of occupancy have been issued for the Retail Improvements in Phase I; (ii) with respect to the Required Infrastructure for Phase I, when the Required Infrastructure for Phase I has been constructed and inspected in accordance with City and TxDot standards, as applicable, and as required to obtain final certificates of occupancy for the Retail Improvements or a phased portion of the Retail Improvements in Phase I; (iii) with respect to the Retail Improvements in Phase I, when final certificates of occupancy have been issued for the Retail Improvements in Phase I, when final certificates of occupancy have been issued for the Retail Improvements in Phase I, when final certificates of occupancy have been issued for the Retail Improvements in Phase I, when final certificates of occupancy have been issued for the Retail Improvements in Phase I, when final certificates of occupancy have been issued for the Retail Improvements in Phase II, when final certificates of occupancy have been issued for the Retail Improvements in Phase II, when final certificates of occupancy have been issued for the Retail Improvements in Phase II, when final certificates of occupancy have been issued for the Retail Improvements in Phase II, when final certificates of occupancy have been issued for the Retail Improvements in Phase II has the Retail Improvement h

Improvements in Phase II; and (iv) with respect to the Required Infrastructure for Phase II, when the Required Infrastructure for Phase II has been constructed and inspected in accordance with City and TxDot standards, as applicable, and as required to obtain final certificates of occupancy for the Retail Improvements or a phased portion of the Retail Improvements in Phase II.

"<u>Total Taxable Sales</u>" means the total amount of all sales from which sales and use tax are collected from businesses located in Phase I or Phase II, as applicable, excluding sales occurring at any Dillard's, J.C. Penney Co., Macy's, Sears Roebuck and Co., Barnes & Noble, DSW (Discount Shoe Warehouse), and Ross Dress for Less that locates within the Property and closes any store located within the retail shopping area commonly known as the "Golden Triangle Mall."

"<u>TxDot</u>" means the Texas Department of Transportation.

"US 380" means U.S. Highway 380.

Section 3. Terms of Program Grants for Phase I and Phase II.

3.1. Program Grant for Phase I. This Agreement shall be effective as of the date executed by both parties. At any time following execution of this Agreement and following Substantial Completion of the Required Infrastructure for Phase I (but not later than January 1, 2013), Grantee may designate the first day of any month to be the Program Effective Date for Phase I by providing written notice to the City at least 60 days prior to the designated Program Effective Date for Phase I. The City will begin making Program Grant for Phase I monthly installment payments on the designated Program Effective Date for Phase I and shall continue to make such monthly installment payments for 240 consecutive months as provided by this Agreement. This Agreement will terminate with respect to the Program Grant for Phase I upon the earlier to occur of (i) the date Grantee has been paid for the full amount of the Eligible Phase I Costs and the Eligible Phase II Costs, or (ii) 240 months after the Program Effective Date I Costs and Eligible Phase II Costs.

3.2 Program Grant for Phase II. This Agreement shall be effective as of the date executed by both parties. At any time following execution of this Agreement and following Substantial Completion of the Required Infrastructure for Phase II (but not later than January 1, 2015), Grantee may designate the first day of any month to be the Program Effective Date for Phase II by providing written notice to the City at least 60 days prior to the designated Program Effective Date for Phase II. The City will begin making Program Grant for Phase II monthly installment payments on the designated Program Effective Date for Phase II and shall continue to make such monthly installment payments for 240 consecutive months as provided by this Agreement. This Agreement will terminate with respect to the Program Grant for Phase II upon the earlier to occur of (i) the date Grantee has been paid for the full amount of the Eligible Phase II Costs, or (ii) 240 months after the Program Effective Date for Phase II regardless of whether Grantee has been paid the full amount of the Eligible Phase II Costs

Section 4. Installment Payments for Program Grants for Phase I and Phase II.

4.1. Program Grant for Phase I. For each month during the term of the Program Grant for Phase I, the City agrees, subject to the conditions contained in this Agreement, to make a Program Grant for Phase I installment payment to Grantee on or before thirty days following the City's receipt from the State Comptroller of the Monthly Sales Tax Report indicating Total Taxable Sales from the businesses located in Phase I. The Program Grant for Phase I installment payments shall be calculated as provided in Section 5.1 of this Agreement. Issuance of the first certificate of occupancy by the City to any tenant within Phase I shall be a condition precedent to the initiation of Program Grant for Phase I installment payments. Program Grant for Phase I installment payments may be withheld at any time if there are delinquent property taxes on any property owned by Grantee and located in the City, and such installment payments will not be resumed until such delinquency is cured. Notwithstanding anything contained herein to the contrary, if Substantial Completion of the Retail Improvements in Phase I has not occurred on or before January 1, 2013, the City, in its sole discretion, may cease the Program Grant for Phase I installment payments and terminate this Agreement as to the Program Grant for Phase I, and Grantee will refund to the City all Program Grant for Phase I installment payments previously

made. In addition, the City, in its sole discretion, may terminate this Agreement as to the Program Grant for Phase I if Substantial Completion of the Required Infrastructure for Phase I has not occurred on or before January 1, 2013.

4.2. Program Grant for Phase II. For each month during the term of the Program Grant for Phase II, the City agrees, subject to the conditions contained in this Agreement, to make a Program Grant for Phase II installment payment to Grantee on or before thirty days following the City's receipt from the State Comptroller of the Monthly Sales Tax Report indicating Total Taxable Sales from businesses located in Phase II. The Program Grant for Phase II installment payments shall be calculated as provided in Section 5.2 of this Agreement. Issuance of the first certificate of occupancy by the City to any tenant within Phase II shall be a condition precedent to the initiation of Program Grant for Phase II installment payments. Program Grant for Phase II installment payments may be withheld at any time if there are delinquent property taxes on any property owned by Grantee and located in the City, and such installment payments will not be resumed until such delinquency is cured. Notwithstanding anything contained herein to the contrary, if Substantial Completion of the Retail Improvements in Phase II has not occurred on or before January 1, 2015, the City, in its sole discretion, may cease the Program Grant for Phase II installment payments and terminate this Agreement as to the Program Grant for Phase II, and Grantee will refund to the City all Program Grant for Phase II installment payments previously made. In addition, the City, in its sole discretion, may terminate this Agreement as to the Program Grant for Phase II if Substantial Completion of the Required Infrastructure for Phase II has not occurred on or before January 1, 2015

Section 5. Calculation of Installment Payments for Phase I and Phase II.

5.1. <u>Program Grant for Phase I</u>. Program Grant for Phase I monthly installment payments during the term of the Program Grant for Phase I (as set forth in Section 3.1) shall be calculated as 50% of the 1.5% sales tax collected by the City with respect to the Total Taxable Sales from businesses in Phase I as established by the most recent State Comptroller's Monthly Sales Tax Report. The City's obligation to make such payments is contingent upon the City's receipt of the Monthly Sales Tax Report; provided, however, if the State Comptroller ceases to

issue Monthly Sales Tax Reports, the City and Grantee shall cooperate to arrive at a reasonably equivalent and mutually agreeable alternative method of computing the Program Grant for Phase I monthly installment payments. Payments of the Program Grant for Phase I monthly installment payments will be used FIRST, to repay Grantee for Eligible Phase I Costs up to a maximum of \$20 million and THEN to repay Grantee for Eligible Phase II Costs up to a maximum of \$42 million, providing that Phase II installments have been initiated.

Any adjustments resulting from overpayment or underpayment of sales tax by a retail business located within Phase I will be reflected in the monthly Program Grant for Phase I installment payment in which such overpayment or underpayment was reported by the State Comptroller. If for any reason the City is required to remit to the State Comptroller sales tax previously collected on reported sales within Phase I, the next scheduled Program Grant for Phase I installment payment will be adjusted by the amount of overpayment or underpayment. Should the adjustment result in a negative Program Grant for Phase I installment payment due, Grantee will remit the balance to the City within 30 days.

5.2. Program Grant for Phase II. Program Grant for Phase II monthly installment payments during the term of the Program Grant for Phase II (as set forth in Section 3.2) shall be calculated as 50% of the 1.5% sales tax collected by the City with respect to the Total Taxable Sales from businesses in Phase II as established by the most recent State Comptroller's Monthly Sales Tax Report. The City's obligation to make such payments is contingent upon the City's receipt of the Monthly Sales Tax Report; provided, however, if the State Comptroller ceases to issue Monthly Sales Tax Reports, the City and Grantee shall cooperate to arrive at a reasonably equivalent and mutually agreeable alternative method of computing the Program Grant for Phase II monthly installment payments. Payments of the Program Grant for Phase II monthly installment payments will be used to repay Grantee for Eligible Phase II Costs up to a maximum of \$42 million.

Any adjustments resulting from overpayment or underpayment of sales tax by a retail business located within Phase II will be reflected in the monthly Program Grant for Phase II installment payment in which such overpayment or underpayment was reported by the State Comptroller. If for any reason the City is required to remit to the State Comptroller sales tax previously collected on reported sales within Phase II, the next scheduled Program Grant for Phase II installment payment will be adjusted by the amount of overpayment or underpayment. Should the adjustment result in a negative Program Grant for Phase II installment payment due, Grantee will remit the balance to the City within 30 days.

Section 6. Other Grantee Obligations. In consideration of the Program Grant for Phase I and the Program Grant for Phase II, Grantee agrees as follows:

6.1 The Retail Improvements in Phase I and the Retail Improvements in Phase II shall be designed and constructed in accordance with the Rayzor Ranch Architectural Guidelines.

6.2 In the event of tenant turnover, Grantee shall diligently seek to obtain quality retail tenants that are new to the Denton retail market. However, existing Denton retail businesses shall not be prohibited from leasing retail space at the Property.

6.3 Grantee shall fund the Highway 380 Improvements and shall guarantee funding by providing the City with an irrevocable letter of credit pursuant to the Development Agreement for Rayzor Ranch (US 380). Failure to provide the letter of credit will be a default under this Agreement, and the City may withhold all Program Grant for Phase I and Program Grant for Phase II installment payments until an executed letter of credit is received by the City. Should Grantee receive reimbursement for the Highway 380 Improvements from TxDot, the amount of such reimbursement shall be deducted from the total amount of the Eligible Costs.

6.4 The Property will not be conveyed during the term of this Agreement to any entity whose ownership of the Property would cause the Property to become exempt from ad valorem taxes unless an agreement with the City to ensure a program of payments in lieu of ad valorem taxes has first been agreed upon; provided, however, this Section 6.4 shall not apply to the property designated for the future museum to be located on the Property, or property designated for parks or other public uses, including Cook Children's Hospital and the Denton Municipal Electric substation sites. 6.5 Grantee has dedicated within the Property all required right-of-way for the future expansion of Bonnie Brae as a secondary arterial.

6.6 In the event Grantee or any of its affiliates purchases any retail buildings in the retail shopping area commonly known as the "Golden Triangle Mall," Grantee or its affiliate shall offer in writing to sell such buildings to FMP Denton, LLC for: (i) the then fair market value of such buildings as established by a qualified, independent MAI appraiser, or (ii) the amount of any arms-length offer to purchase such buildings received by Grantee or its affiliate from any third-party retail user unrelated to Grantee or any of its affiliates, whichever is greater.

Section 7. Audits and Monitoring.

From time to time prior to and after the initiation of the Program Grant Installment Payments for Phase I, Grantee will submit statement(s) of Eligible Costs for Phase I expenditures. City will review the statement(s) and within 30 days provide Grantee with a letter, signed by the City Manager or his designee, notifying Grantee that items on the statement(s) are approved or denied as "eligible costs" or requesting additional detail if needed to make the determination of eligibility.

From time to time prior to and after the initiation of the Program Grant Installment Payments for Phase II, Grantee will submit statement(s) of Eligible Costs for Phase II expenditures. City will review the statement(s) and within 30 days provide Grantee with a letter, signed by the City Manager or his designee, notifying Grantee that items on the statement(s) are approved or denied as "eligible costs" or requesting additional detail if needed to make the determination of eligibility.

During the term of this Agreement, the City reserves the right to conduct audits of the sales and use tax records of businesses located within the Property if, in the sole opinion of the City, such action is determined to be necessary. Grantee agrees upon request to use reasonable efforts to assist the City in obtaining such records from tenant taxpayers. Failure to provide such assistance shall be grounds for default, and City may withhold any Program Grant installment payments until such assistance is provided. During the term of this Agreement, the City will

keep, or cause to be kept, copies of the Monthly Tax Reports and proper and current books and accounts in which complete and accurate entries shall be made of the amount of sales taxes received by the City from the State of Texas attributed to retail sales within both Phase I and Phase II and such other calculations, allocations and payments required by this Agreement. During the term, the City shall prepare within 180 days after the close of each fiscal year of the City, a complete financial statement for such year in reasonable detail covering the above information, and shall furnish a copy of such statement to Grantee. Upon the request of Grantee, and at Grantee's expense, City shall have the annual Program Grant for Phase I and the Program Grant for Phase II financial statements prepared by an independent certified public accountant. Upon request of Grantee, City shall provide copies of City-records related to the Program Grant for Phase I and/or the Program Grant for Phase II to investors, lenders, or other parties designated by the Grantee.

Section 8. **Default.** If a party fails to perform any of its obligations under this Agreement and such failure is not cured within 30 days after written notice, the failure of the nonperforming party to cure within such 30 day period (or to commence to cure if the nature of the failure cannot reasonably be cured within 30 days) shall constitute a default under this Agreement and shall entitle the non-defaulting party to all remedies available at law or in equity (including injunctive relief, specific performance, and suspending or withholding Program Grant for Phase I or Program Grant for Phase II payments); PROVIDED, HOWEVER, NOTWITHSTANDING THE FOREGOING, (i) MONETARY DAMAGES SHALL BE LIMITED TO THE AMOUNT NECESSARY TO ENFORCE SPECIFIC PERFORMANCE OF THE FAILED OBLIGATION; (ii) THE CITY CANNOT TERMINATE THIS AGREEMENT AS TO PHASE I UNLESS (1) SUBSTANTIAL COMPLETION OF THE RETAIL IMPROVEMENTS IN PHASE I DOES NOT OCCUR ON OR BEFORE JANUARY 1, 2013 AS PROVIDED BY SECTION 4 HEREOF, (2) SUBSTANTIAL COMPLETION OF THE REQUIRED INFRASTRUCTURE FOR PHASE I DOES NOT OCCUR ON OR BEFORE JANUARY 1, 2013 AS PROVIDED BY SECTION 4 HEREOF, OR (3) GRANTEE IS IN DEFAULT OF ITS OBLIGATION TO PROVIDE THE LETTER OF CREDIT AS PROVIDED BY SECTION 6.3 HEREOF; (iii) THE CITY CANNOT TERMINATE THIS AGREEMENT AS TO PHASE II UNLESS (1) SUBSTANTIAL COMPLETION OF THE RETAIL IMPROVEMENTS IN PHASE II DOES NOT OCCUR ON OR BEFORE JANUARY 1, 2015 AS PROVIDED BY SECTION 4 HEREOF, (2) SUBSTANTIAL COMPLETION OF THE REQUIRED INFRASTRUCTURE FOR PHASE II DOES NOT OCCUR ON OR BEFORE JANUARY 1, 2015 AS PROVIDED BY SECTION 4 HEREOF, OR (3) GRANTEE IS IN DEFAULT OF ITS OBLIGATION TO PROVIDE THE LETTER OF CREDIT AS PROVIDED BY SECTION 6.3 HEREOF; AND (iv) THE CITY MAY NOT TERMINATE, WITHHOLD OR SUSPEND PAYMENTS, OR TAKE ANY OTHER REMEDY WITH RESPECT TO PROGRAM GRANT FOR PHASE I PAYMENTS OR OTHERWISE RELATED TO PHASE I EXCEPT FOR DEFAULTS RELATED TO PHASE I AND THE CITY MAY NOT TERMINATE, WITHHOLD OR SUSPEND PAYMENTS, OR TAKE ANY OTHER REMEDY WITH RESPECT TO PROGRAM GRANT FOR PHASE II PAYMENTS OR OTHERWISE RELATED TO PHASE II EXCEPT FOR DEFAULTS RELATED TO PHASE II.

Section 9. Mutual Assistance. The City and the Grantee shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms and provisions of this Agreement.

Section 10. Indemnity. It is understood and agreed that Grantee in performing its obligations hereunder is acting independently and the City assumes no responsibilities or liabilities in connection therewith to third parties and Grantee agrees to defend, indemnify and hold harmless the City from and against any and all claims, suits, and causes of action of any nature whatsoever arising out of Grantee's obligations hereunder. Grantee's indemnification obligations include the payment of reasonable attorney's fees and expenses incurred by the City in connection with such claims, suits, and causes of action.

Section 11. Representations and Warranties by the City. The City represents and warrants that:

11.1 The City is a home rule Texas municipal corporation and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations hereunder; 11.2 The City knows of no litigation, proceedings, initiative, referendum, investigation or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed in writing to Grantee;

11.3 The City knows of no law, order, rule or regulation applicable to the City or to the City's governing documents that would be contravened by, or conflict with the execution and delivery of this Agreement;

11.4 This Agreement constitutes a valid and binding obligation of the City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Subject to the indemnity provided by Section 10 of this Agreement, the City will defend the validity of this Agreement in the event of any litigation arising hereunder that names the City as a party or which challenges the authority of the City to enter into or perform its obligations hereunder. City recognizes that Grantee intends to commence construction and expend substantial monies in reliance upon the accuracy of the representation and warranty of the City as set forth in this Section 11.

Section 12. Representations and Warranties by Grantee. Grantee represents and warrants that:

12.1 Grantee is a New York Limited Partnership duly organized and validly existing under the laws of the State of Texas and is, or will prior to the effective date of this Agreement, be qualified to do business in the State of Texas; has the legal capacity and the authority to enter into and perform its obligations under this Agreement;

12.2 The execution and delivery of this Agreement and the performance and observance of its terms, conditions and obligations have been duly and validly authorized by all necessary action on its part to make this Agreement;

12.3 Grantee knows of no litigation proceeding, initiative, referendum, or investigation or threat of any the same contesting the powers of the City, Grantee or any of its principals or officials with respect to this Agreement that has not been disclosed in writing to the City; and

12.4 Grantee has the necessary legal ability to perform its obligations under this Agreement and has the necessary financial ability, through borrowing or otherwise, to construct the Improvements. This Agreement constitutes a valid and binding obligation of Grantee, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

Section 13. Rights of Lenders and Interested Parties. The City is aware that financing for acquisition, development, and/or construction of the infrastructure and retail improvements required by this Agreement may be provided, in whole or in part, from time to time, by one or more third parties, including, without limitation, lenders, major tenants, equity partners and purchasers or developers of portions of the Property (individually, an "Interested Party" and collectively, "Interested Parties"). In the event Grantee fails to perform any of its obligations under this Agreement, all notices to which Grantee is entitled under Section 8 of this Agreement shall be provided to the Interested Parties at the same time they are provided to Grantee (provided the Interested Parties have previously been identified to the City and provided their notice addresses to the City). If any Interested Party is permitted under the terms of its agreement with Grantee, to cure the event of default and/or to assume Grantee's position with respect to this Agreement, the City agrees to recognize such rights of the Interested Party and to otherwise permit the Interested Party to cure the event of default and to assume all of the rights and obligations of Grantee under this Agreement. The City shall, at any time upon reasonable request by Grantee, provide to any Interested Party an estoppel certificate or other document evidencing that this Agreement is in full force and effect and that no event of default by Grantee exists hereunder (or, if appropriate, specifying the nature and duration of any existing event of default). Upon request by any Interested Party, the City will enter into a separate assumption or similar agreement with such Interested Party, consistent with the provisions of this Section 13.

Section 14. Compliance. This Agreement shall be conditioned upon and subject to compliance with all applicable federal, state and city laws, ordinances, rules and regulations, including, without limitation, all provisions of the Development Code of the City of Denton.

Section 15. Limitation. This Agreement shall never be construed as constituting permission or authority for development or construction pursuant to Chapter 245 of the Texas Local Government Code.

Section 16. Entire Agreement; Changes and Amendments. This Agreement constitutes the entire agreement of the Parties with regard to the subject matter hereof and supersedes and replaces in their entirety all prior agreements related to the subject matter hereof including, but not limited to, that certain "Economic Development Program Grant Agreement with Allegiance Hillview, LP" executed and effective on or about March 10, 2009, and passed and approved by City Ordinance No. 2009-064 dated March 10, 2009. Except as specifically provided otherwise in this Agreement, any alterations or deletions to the terms of this Agreement shall be by written amendment executed by both parties to this Agreement.

Section 17. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns. Grantee may assign all or part of its rights and/or obligations in or to or under this Agreement as related to Phase I and/or Phase II upon written notice to the City of such assignment. If an assignee agrees in writing to be bound by the terms and conditions of this Agreement and executes an amendment to this Agreement, the assignor shall be released as to the obligations assigned but not as to any obligations or liabilities of the assignor to the City that arose prior to the assignment.

Section 18. Notice. Any notice and/or statement required or permitted to be delivered shall be deemed delivered five business days after being deposited in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing. Any such notice and/or statement shall also be deemed delivered when delivered by a nationally recognized delivery

company (e.g., FedEx or UPS) with evidence of delivery signed by anyone at the delivery address.

If to Grantee:

Allegiance Hillview, L.P. 1345 Avenue of the Americas - 46th Floor New York, New York 10105 Attention: Constantine Dakolias, President

with a copy to:

Allegiance Hillview, L.P. 5221 North O'Connor Boulevard, Suite 700 Irving, Texas 75039 Attention: Andrew Osborne

If to the City:

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City of Denton Attn: City Manager 215 E. McKinney Denton, Texas 76201 Phone: 940.349.8307 Fax: 940.349.8596

With a copy to:

City of Denton Attn: City Attorney 215 E. McKinney Denton, Texas 76201 Phone: 940.349.8333 Fax: 940.382.7923

Section 19. Venue. The obligations of the Parties are performable in Denton County, Texas, and if legal action is necessary to enforce this Agreement, exclusive venue shall lie in Denton County, Texas.

Section 20. Applicable Laws. This Agreement is made subject to the provisions of the Charter and ordinances of City, as amended, and all applicable state and federal laws.

Section 21. Governing Law. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

Section 22. Benefit of Agreement. This Agreement is executed solely for the benefit of the Parties and their successors and assigns, and nothing in this Agreement is intended to create any rights in favor of or for the benefit of any third party.

Section 23. Legal Construction/Partial Invalidity of Agreement. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

EXECUTED and effective as of the 15^{th} day of 15^{th} day of 15^{th} , 2010, by the City, signing by and through its Mayor, duly authorized to execute same by action of the City Council, and by Grantee, acting through its duly authorized officials.

MARK A. BURROUGHS, MAYOR

NIFER WALTERS, CITY SECRETARY

APPROVED AS TO LEGAL FORM: the es

ANITA BURGESS, CITY ATTORNEY

GRANTEE:

ALLEGIANCE HILLVIEW, L.P., a New York limited partnership

By: TH GP LLC, a Delaware limited liability company, d/b/a TH Denton GP LLC in the State of Texas, its general partner

		-
By:		<u> </u>
Name:	Andrew US	borne
Title:	Authorized	Siznatory

ACKNOWLEDGMENTS

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STATE OF TEXAS §

COUNTY OF DENTON §

This instrument was acknowledged before me on the $\frac{15-4}{200}$ day of $\frac{100}{2000}$, 2010, by Mark A. Burroughs, Mayor of the City of Denton, Texas, on behalf of said city.

JANE E. RICHARDSON lotary Public, State of Texas My Commission Expires June 27, 2013

ane E. lichardson

Notary Public, in and for the State of Texas

My Commission expires: 06/27/13

STATE OF TEXAS §

COUNTY OF DALLAS

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This instrument was acknowledged before me on the <u>II</u> day of <u>June</u>, 2010, by <u>Andrew Osborne</u>, the <u>Andrew</u>, the

1915\010\9511.2

ick Notary Public, in and for the State of Texas

in and for the State of Texas

My Commission expires: 10-31-2013



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EXHIBIT A CATEGORIES OF ELIGIBLE IMPROVEMENTS

Categories of Eligible Improvements	Estimated Costs
Hwy 380 Improvements	\$ 8,133,150
Site drainage	4,720,750
Regional drainage improvements	2,696,750
Internal commercial roads, including water, sewer,	20,004,064
streetscapes, plazas and amenities	
Scripture Road improvements	675,050
Bonnie Brae improvements	1,271,900
Public Parking garage	6,730,375
Major public infrastructure relocation	2,013,650
Miscellaneous fees/services	5,754,311
Interest during construction on non-residential development	10,000,000
TOTAL	\$62,000,000

The actual cost of any individual Categories of Eligible Improvements may vary from the Estimated Costs shown on this Exhibit A. Grantee has the right to adjust individual line items of Estimated Costs of the individual Categories of Eligible Improvements so long as the Total of \$62,000,000 is not exceeded.

Exhibit B

METES AND BOUNDS, PART ONE AND PART TWO 410.28 ACRES (TOTAL) FRANCIS BATSON SURVEY, ABSTRACT ND. 43 B.B.B. & C.R.R. COMPANY SURVEY, ABSTRACT NO. 192 CITY OF DENTON, DENTON COUNTY, TEXAS

PART ONE

BEING a tract of land situated in the Francis Balson Survey, Abstract No. 43, in the City of Denton, Denton County, Texas, being sit of a called 121,4759 acro tract (description of Shaphard Hall Tract, Tract 2), described in deed to Denton Hillview, L.P., recorded in Denton County Clerk's File No: 2005-127450 of the Real Property Records of Denton County, Texas, all of a called 0.2254 acre tract (Tract 1), a called 2.1017 acro tract (Tract 2) and a called 2.2200 acre tract (Tract 3) described in deed to Quantum at Denton Self Storage, L.P., recorded in Volume 5021; Page 01847 of the Real Property Records of Denton County, Texas, part of a called 19.269 acre tract, described in deed to Denton County, Texas, part of a called 19.269 acre tract, described in deed to Denton County, Texas, all of a called 19.209 acre tract, described in deed to Denton County, Texas, so the Real Property Records of Denton County, Texas, and a called 2.999 acre tract, described in deed to Denton County, Texas, all of a called 2.999 acre tract, described in deed to Denton County, Texas, all of a called 2.999 acre tract, described in deed to Denton County, Texas, being part of a called 8.9217 acre tract of 2.999 acre tract, described in Denton County, Texas, being part of a called 8.9217 acre tract of 2.999 acre tract, described in deed to Denton County, Texas, being part of a called 8.9217 acre tract of 1.101 described in Deed to Meaguite Crack Development, Inc., recorded in Volume 4562; Page 0683 of the Real Property Records of Denton County, Texas, and all of Lot 1 of SANDY ADDITION, an addition to the City of Denton, Denton County, Texas, and all of Lot 1 of SANDY ADDITION, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Volume 13, Page 47 and Cabinet J, Silde 348 of the Plat Records of Denton County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod found for the north end of a corner clip at the intersection of the north right-of-way line of Wast University Drive (U.S. Highway No: 380, a 100.20 foot wide public right-of-way) and the wast right-of-way line of Bönnio Brae Street (a variable width public right-of-way) for the most obsterry southeast corner of the biforementioned Lot 1 of SANDY ADDITION;

THENCE with the corner clip, South 45*48'44" West, a distance of 90.93 feet to a 3/4-inch iron rod found for corner,

THENCE with the north right-of-way line of West University Drive, the following courses and distances to wit:

--North 69*07*28* West, a distance of 773.40 feet to a 5/8-Inch from rod with *KHA" cap set for comer, --North 80*56*28* West, a distance of 1761.77 feet to a 1/2-inch from rod found for the southeast comer of the called 8.9217 acre tract;

THENCE leaving the north right-of-way line of West University Drive with the cest line of the 8,9217 acro tract, North 00°23'40° East, a distance of 276.40 (eel to a point for comer;

THENCE crossing the called 8.9217 acre tract, the following courses and distances to wit:

--North 89" 10'52" West, a distance of 227.61 feet to a point for comer,

-North 00*59'35" East, a distance of 80.89 feet to a point for comer.

-North 89*00/25* West, a distance of 290.00 feet to a point for corner in the east line of Lot 1, Block A of PORTER/ANDRUS ADDITION, an addition to the City of Denton, Denton County, Texas, according to the Plat thereof recorded in Cabinet O, Stidu 45 of the Plat Records of Denton County, Texas,

Page 1 of 6

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THENCE with the east line of Lot 1, Block A and the east line of Lot 2, Block A of PORTER/ANDRUS ADDITION, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Cabinet V, Silde 855 of the Plat Records of Denton County, Texas, North 00°59'47' West, a distance of 217.71 feel to a 5/8-inch from rod with "KHA" cap set for the northeast comprise Lot 2; Block A;

THENCE with the north and wast lines of Lot 2, Block A, the following courses and distances to wit:

-North 88*42'36* Wast, a distance of 400.01 feet to a 5/8-linch from rod with *KHA* cap set for corner, -South 01*26'09* West, a distance of 28.89 feet to a 5/8-linch from rod with *KHA* cap set for the northeast corner of Lot 1R, Block 1 of ALVIN AND CHARLOTTE WHALEY ADDITION, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Cabinet I, Sildo 148 of the Plat Records of Denton County, Texas;

THENCE leaving the west line of LoI 2, Block A of PORTER/ANDRUS ADDITION with the north line of LoI 1R, Block 1 of ALVIN AND CHARLOTTE WHALEY ADDITION, North 96'3120' West, a distance of 399.39 feel to a 5/8-Inch from rod with "KHA" cap set in the northeesteriy right-of-way line interstate Highway No. 35 (a variable width public right-of-way) for the most northerly northwest corner of LoI 1R, Block 1 of ALVIN AND CHARLOTTE WHALEY ADDITION;

THENCE leaving the north line of Lot 1R, Block 1 of ALVIN AND CHARLOTTE WHALEY ADDITION with the northeasterly right-of-way line Interstate Highway No. 35, North 16'0754' West, a distance of 832.87 feet to a 5/8-Inch from rod with "KHA" cap sol for the southwest corner of Lot 14 of GREENWAY CLUB ESTATES, an addition to the City of Danton, Donton County, Texas, according to the plat thereof recorded in Volume 4, Page 27 of the Plat Records of Denton County, Texas;

THENCE leaving the northeasterly right-of-way line interstate Highway No. 35 with the south and east lines of GREENWAY CLUB ESTATES, the following courses and distances to wit:

-North 73*15'13" East, a distance of 518.79 feet to a 5/8-Inch from rod with "KHA" cap sol for the beginning of a curve to the right;

--Easterly, with the curve to the right, through a central angle of 16*47'40*, having a radius of 345.00 feet, and chord bearing and distance of Nonth:81*39'03* East, 100.76 feet, an arc distance of 101.13 feet to a 5/8-Inch (ron rod with *KHA* cap set for the ord of the curve;

-North 89*58'43" East, a distance of 384.46 feet to a5/8-inch iron rod with "KHA" cap set for comer; -North 00*57'04" West, a distance of 450.70 feet to a 5/8-inch iron rod with "KHA" cap set for the southwest comer of Lot 1, Block 10 of WESTGATE HEIGHTS, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Cabinet E, Stide 78 of the Plat Records of Denton County, Texas;

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THENCE leaving the east line of GREENWAY CLUB ESTATES with the south and east lines of WESTGATE HEIGHTS, the following courses and distances to wit:

-North 89"32"37" East, a distance of 40.23 feet to a 5/8-Inch iron rod with "KHA" cap set for comer, --South 87"34"57" East, a distance of 1042.99 feet to a 5/8-Inch iron rod with "KHA" cap set for comer, --North 00"32"57" East, a distance of 318.04 feet to a 5/8-Inch iron rod with "KHA" cap set for the most northerly northwest comer of the bioforementioned 121.4759 acre tract

THENCE leaving the east line of WESTGATE HEIGHTS with the north line of the 121.4759 acre tract, South 89*13'56" East, a distance of 2067:28 feel to a 5/8-inch iron rod with "KHA" cap set in the wast right-of-way line of Bonnie Bree Street;

Page 2 of 6

THENCE leaving the north line of the 121.4759 acre tract with the west right-of-way line of Bonnie Brae Street, the following courses and distances to wit:

-South 00*37'10" West, a distance of 1455.38 (set to a 6/8-lnch from rod with "KHA" cap set for corner, -South 00*26'45" West, a distance of 568.70 feet to the POINT OF BEGINNING and containing 153.37 acres of land.

Bearing system based upon Toxus State Plane Coordinate System, using monuments R0610108 AND R0610060.

PART TWO

BEING a tract of land situated in the B.B.B. & C.R.R. Company Survey, Abstract No. 192, in the City of Denton, Denton County, Toxas, being part of a called 265,6365 acre tract of land (description of Shephard Hall Tract, Tract 1), described in deed to Denton Hillview, L.P., recorded in Denton County Clerk's File No. 2005-127450 of the Real Property Records of Denton County, Texas, and all of Lot 3 of LOTS 1,2,0,3 PEARCY/CHRISTON ADDITION No. 1, an addition to the City of Denton, Danton County, Texas, according to the plat thereof recorded in Cabinei B, Silds 34 of the Plat Records of Denton County, Texas, and being more particularly described by mates and bounds as follows:

BEGINNING at a 5/8-inch from rod found in the south right-of-way line of Wast University Drive (U.S. Highway No. 380, a 100.20 foot wide public right-of-way) for the northerly common corner of Lots 2 and 3 of the beforementioned LOTS 1,2,8,3 PEARCY/CHRISTON ADDITION;

THENCE leaving the south right-of-way line of West University Drive with the common line of Lots 2 and 3, South 01*08/26* West, a distance of 600.00 feet to a 5/8-loch Iran rod found for the southerly common corner of Lots 2 and 3;

THENCE leaving the common line of Lots 2 and 3 with the south lines of Lot 2 and Lot 1-C of LOTS 1-A, 1-B, 1-C PEARCY/CHRISTON ADDITION No. 1, an addition to the City of Denton, Danton County, Texas, according to the plat thereof recorded in Cabinet L, Silde 188 of the Plat Records of Denton County, Texas, South 89°04'34" East, passing the southeast comer of Lot 1°C at a distance of 711.59 feet and continuing for a total distance of 730.60 feet to a 5/8-inch iron rod found in the west right-of-way line of Bonnio Brae Street (a variable width public right-of-way) for the most easterly nontheast comer of the beforementioned 265.8365 parce fract:

THENCE with the wost right-of-way line of Bonnie Brae Street, the following courses and distances to wit:

- South 00⁵8/54" West, a distance of 1438.01 feet to a 5/8-inch iron red with "KHA" cap set for comer; - South 00'48/51" West, a distance of 1175.58 feet to a 5/8-inch iron rod with "KHA" cap set for the beginning of a curve to the right;

--Southwesterly, with the curve to the right, through a central angle of 45*01/58*, having a radius of 321.07 (adi, and chord bearing and distance of South 23*19/47* West, 245.91 feet an arc distance of 252.35 feet to a 5/8-Inch from rod found for the beginning of a reverse curve to the left:

--Southwesterly, with the the curve to the left, through a central angle of 57*31'56*, having a redius of 392.01 feet, and chord bearing and distance of 8outh 17*04'48* Wost; 377.30 feet, an arc distance of 393.63 feet to a 5/8-inch from rod found for the end of the curve;

-South 11*41*10" East, a distance of 10.57 feel to a 5/8-Inch iron rod found for the north and of a comor clip at the intersection of the north right-of-way line of Scripture Street (a variable width public nght-of-way) and the west right-of-way line of Bonnie Brae Street;

THENCE with the corner clip. South 39*33'50" West, a distance of 11.48 (set to a 5/8-lnch lion rod found for the south and of the corner clip.

Page 1 of 6

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THENCE with the north right-of-way line of Scripture Street, North 88*58/00" West, a distance of 1265.16 feet to a 5/8-linch from rod found in the south line of the 265,8365 acre tract;

THENCE leaving the north right-of-way line of Scripture Street, the following courses and distances to will

-North 01*02'00" East, a distance of 500.06 feet to a 5/8-inch from rod found for comer-

-North 98°58'00" West, a distance of 751.58 feet to a 5/8-inch iron rod found for comer; --South 01'02'00" West, a distance of 500.06 feet to a 5/8-inch iron rod found in the north right-of-way

line of Scripture Street;

THENCE with the north right-of-way line of Scripture Street, the following courses and distances to with

--North 88*58'00" West, a distance of 318,44 feet to a 5/8-Inch iron rod with "KHA" cap set for comer, --North 88*48'26" West, a distance of 41,73 feet to a 5/8-Inch iron rod found in the northeasterly right-of-way line interstate Highway No. 35 (a variable width public right-of-way) and the north right-of-way line of Scripture Street for the most southerly southwast comer of the 258,6365 percentact;

THENCE with the northeasterly right-of-way line interstate Highway No. 35, the following courses and distances to wit:

-North 15*50'30' West, a distance of 38.32 feet to a 5/8-inch iron rod with "KHA" cap set for comer, - North 16*24'00" West, a distance of 3494.36 feet to a 5/8-inch iron rod found for comer, - North 14*50'05" East, a distance of 171.01 feet to a 3-inch brass disk in concrete found for comer, - North 46*04'12' East, a distance of 303.95 feet to a 5/8-inch iron rod found for comer, - North 66*32'22" East, a distance of 114.22 feet to a 5/8-inch iron rod found for comer, - North 60*32'22" East, a distance of 13.09 feet to a 5/8-inch iron rod found for comer, - North 60*32'22" East, a distance of 13.09 feet to a concrete monument found in the south right-of-way line of West University Drive;

THENCE leaving the nontheasterty right-of-way line interstate Highway No. 35 with the south right-of-way line of West University Drive, the following courses and distances to wit:

-South 88*56'20" East, a distance of 2440.08 feel to a 5/8-inch iron rod with "KHA" cap set for corner, -South 89*01'07" East, a distance of 117.72 feet to the POINT OF BEGINNING and containing 258.91 acres of land.

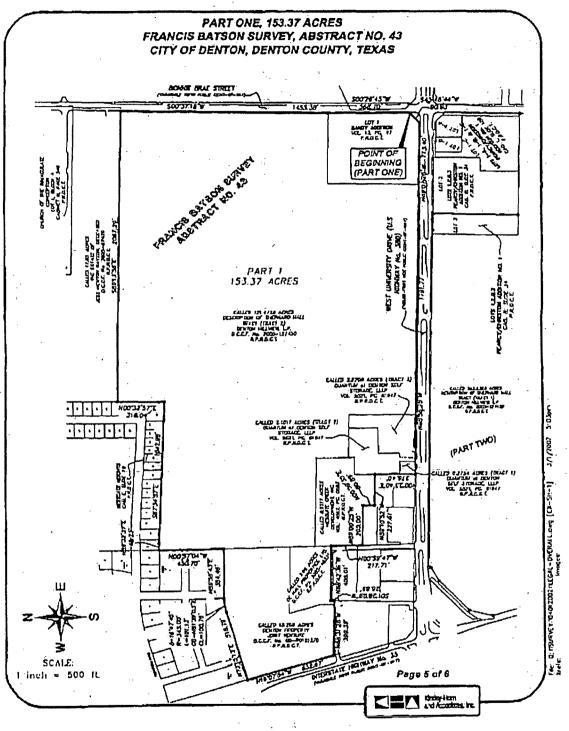
Bearing system based upon Texas State Plane Coordinate System, using monuments R0810108 AND R0810060.

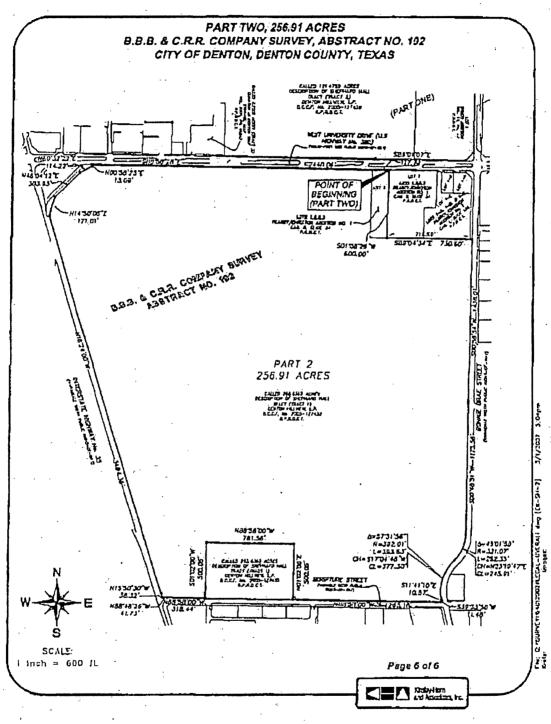
This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interacts implied or established by the creation or reconfiguration of the boundary of the pollical subdivision for which it was propared.

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Page 4 of 6





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EXHIBIT 2

ORDINANCE NO. 2010-210

AN ORDINANCE OF THE CITY OF DENTON, TEXAS APPROVING AN AMENDMENT TO AN ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT DATED JUNE 15, 2010 BETWEEN THE CITY OF DENTON AND ALLEGIANCE HILLVIEW, L.P., WHICH WAS DULY ASSIGNED, IN PART, TO RED RAYZOR RANCH, LLC; AND PROVIDING AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF DENTON, TEXAS HERBY ORDAINS:

<u>SECTION 1.</u> The City Manager, or his designee, is hereby authorized to execute an Amendment to Economic Development Program Grant Agreement (the "Amendment"), in substantially the form of the Amendment which is attached hereto and made a part of this ordinance for all purposes.

<u>SECTION 2.</u> The City Manager, or his designee, is authorized to exercise the City of Denton's rights and duties as set forth in the Amendment.

SECTION 3. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the 14th day of colomber, , 2010.

MARK ALBURROUGHS, MAYOR

ATTEST: JENNIFER WALTERS, CITY SECRETARY

BY:

APPROVED AS TO LEGAL FORM: ANITA BURGESS, CITY ATTORNEY

COUNTY OF DENTON

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FIRST AMENDMENT TO ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT WITH ALLEGIANCE HILLVIEW, L.P.

A. On June 15, 2010, Grantee and the City entered into a certain Economic Development Program Grant Agreement with Allegiance Hillview, L.P. (the "<u>Agreement</u>").

Β. Pursuant to the terms of that certain Assignment and Assumption Agreement, dated as of July 30, 2010, between Grantee and Assignee, a fully executed copy of which is attached to and made a part of this Agreement as Exhibit A (the "Assignment and Assumption Agreement"), Grantee assigned to Assignee, and Assignee accepted from Grantee, all of Grantee's right, title and interest in and to the following arising under the Agreement: (i) all obligations of Grantee with respect to Phase II (as defined in the Agreement) as set forth in the Agreement, including, but not limited to, those obligations set forth in Section 6 of the Agreement which are now the sole obligation of Assignee, (ii) the Program Grant for Phase II (as defined in the Agreement) and (iii) the rights of "Grantee" to payments of the Program Grant for Phase I (as defined in the Agreement) monthly installment payments pursuant to, in accordance with and subject to the terms of the last sentence of the first paragraph of Section 5.1 of the Agreement after Grantee has received Twenty Million and no/100ths Dollars (\$20,000,000.00) in such payments, provided, that the Phase II monthly installment payments have been initiated (collectively, the "Phase II Rights and Obligations"). In connection therewith and as set forth in the Assignment and Assumption Agreement, Assignee agreed to (1) be bound by the terms and conditions of the Agreement as it relates to the Phase II Rights and Obligations, and (2) timely perform all of the Phase II Rights and Obligations pursuant to and in accordance with the terms, provisions and conditions of the Agreement.

C. Pursuant to Section 17 of the Agreement, Grantee has the right to be fully and completely released from all of the Phase II Rights and Obligations as a result of such assignment and Assignee's agreement to (i) be bound by the terms and conditions of the Agreement as it relates to the Phase II Rights and Obligations and (ii) timely perform all of the Phase II Rights and Obligations pursuant to and in accordance with the terms, provisions and conditions of the Agreement.

D. Grantee and the City desire to amend the Agreement to effectuate the release of Grantee from the Phase II Rights and Obligations as set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Grantee, Assignee and the City agree as follows:

1. Grantee and Assignee represent and warrant to the City that the Assignment and Assumption Agreement has been fully executed and is in full force and effect.

2. Assignee hereby agrees to (i) be bound by the terms and conditions of the Agreement as it relates to the Phase II Rights and Obligations, and (ii) timely perform all of the Phase II Rights and Obligations pursuant to and in accordance with the terms, provisions and conditions of the Agreement.

3. Grantee is hereby fully and completely released from all of the Phase II Rights and Obligations; provided, however, that Grantee is not released from any obligations or liabilities of Grantee to the City under the Agreement for Phase I (as defined in the Agreement). Grantee is not released from any obligations or liabilities of Grantee to the City under the Agreement for Phase II based solely upon acts or events which occurred prior to the date of the Assignment and Assumption Agreement.

4. To the extent of any inconsistency between the terms and provisions of this Amendment and the Agreement, the terms and provisions of this Amendment will control. Except as amended by this Amendment, all of the terms, covenants and conditions of the Agreement are in full force and effect and the Agreement is hereby ratified and confirmed.

5. This Amendment will be binding upon and will inure to the benefit of the parties to this Amendment and their respective successors and permitted assigns.

6. This Amendment may be executed in one or more counterpart copies, all of which will constitute and be deemed an original, but all of which together will constitute one and the same instrument binding on Grantee, Assignee and the City. Delivery by facsimile or electronic mail of this Amendment or an executed counterpart hereof will be deemed a good and valid execution and delivery hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES APPEAR ON NEXT PAGE.]

Grantee, Assignee and the City have executed this First Amendment to Economic Development Program Grant Agreement with Allegiance Hillview, L.P. on the day and year first above written.

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GRANTEE:

ALLEGIANCE HILLVIEW, L.P.,

a New York limited partnership

a na na na sa sana ang sana ang sana ng sa gamananan mana kang sa sa

By: TH GP LLC (d/b/a TH Denton GP LLC, in the State of Texas), a Delaware limited liability company Its: General Partner

By: ___ Name: CHIEF ÛΡ ERATING OFFICER Its:

ACKNOWLEDGMENT

STATE OF <u>New York</u>) COUNTY OF <u>New York</u>)

This instrument was ACKNOWLEDGED before me on <u>July 30</u>, 2010, by Manic Frence, the <u>C.O.</u> of TH GP LLC (d/b/a TH Denton GP LLC, in the State of Texas), a Delaware limited liability company, the general partner of Allegiance Hillview, L.P., a New York limited partnership, on behalf of such limited partnership.

tary Public

Printed Name of Notary Public

[SEAL] My Commission Expires:

THOMAS SANTORA Notary Public, State of New York No. 01SA6191079 Qualified in New York County Commission Expires Aug. 4, 2012

OAKLAND.1866310.4

[SIGNATURE PAGE TO FIRST AMENDMENT TO ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT WITH ALLEGIANCE HILLVIEW, L.P.]

ASSIGNEE:

DB DENTON II LLC,

a Delaware limited liability company

By: DB Denton Holdings LLC, a Delaware limited liability company

Its: Sole Member

By: RED Rayzor Ranch, LLC, a Delaware limited liability company

Its: Managing Member

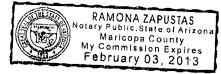
By: Michael Ebert

Its: Manager

ACKNOWLEDGMENT

STATE OF. COUNTY OF

This instrument was ACKNOWLEDGED before me on <u>Muy 29</u>, 2010, by Michael Ebert, the manager of RED Rayzor Ranch, LLC, a Delaware limited liability company, the managing member of DB Denton Holdings LLC, a Delaware limited liability company, the sole member of DB Denton II LLC, a Delaware limited liability company, on behalf of such limited liability company.



Notary Public

Printed Name of Notary Public

[SEAL] My Commission Expires: アース (ろ

OAKLAND.1866310.4

[SIGNATURE PAGE TO FIRST AMENDMENT TO ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT WITH ALLEGIANCE HILLVIEW, L.P.]

CITY:

CITY OF DENTON, TEXAS

George C. Campbell, City Manager

ACKNOWLEDGMENT

STATE OF TEXAS)) § COUNTY OF DENTON)

This instrument was ACKNOWLEDGED before me on <u>steplen her</u>, 14, 2010, by George C. Campbell, City Manager of the City of Denton, Texas, on behalf of the City of Denton, Texas.

otary Public ers nni

Printed Name of Notary Public

[SEAL] My Commission Expires:

JENNIFER K. WALTERS Notary Public, State of Texas My Commission Expires December 19, 2010

APPROVED AS TO LEGAL FORM: ANITA BURGESS, CITY ATTORNEY

for The BY:

EXHIBIT A

Assignment and Assumption Agreement

[See attached.]

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ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "<u>Assignment</u>"), is entered into as of July <u>30</u>, 2010 by and between Allegiance Hillview, L.P., a New York limited partnership ("<u>Assignor</u>"), and DB Denton II LLC, a Delaware limited liability company ("<u>Assignee</u>"). Assignor and Assignee are referred to herein individually as a "<u>Party</u>" and collectively, as the "<u>Parties</u>".

WHEREAS, Assignor has agreed to assign and transfer to Assignee all of Assignor's right, title and interest in and to the following arising under that certain Economic Development Program Grant Agreement with Allegiance Hillview, L.P., dated as of June 15, 2010 (the "<u>380 Grant</u>"), by and between Assignor and the City of Denton, Texas, a Texas municipal corporation (collectively, the "<u>Phase II Rights and Obligations</u>"): (a) all obligations of Assignor with respect to Phase II as defined and set forth in the 380 Grant, including, but not limited to, those obligations set forth in Section 6 of the 380 Grant, which shall be the sole obligation of Assignee, (b) the Program Grant for Phase II as defined and set forth in the 380 Grant and (c) the rights of "Grantee" to payments of the Program Grant for Phase I (as defined and set forth in the 380 Grant) monthly installment payments pursuant to, in accordance with and subject to the terms of the last sentence of the first paragraph of Section 5.1 of the 380 Grant after Assignor has received Twenty Million and no/100ths (\$20,000,000.00) in such payments, provided, that the Phase II monthly installment payments have been initiated; and

WHEREAS, Assignor desires to assign to Assignee, and Assignee desires to accept from Assignor and assume, all of the Phase II Rights and Obligations upon the terms and conditions set forth in this Assignment and the 380 Grant.

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignor hereby conveys, transfers and assigns to Assignee all of the right, title and interest of Assignor in and to the Phase II Rights and Obligations.

2. Assignee hereby accepts the assignment, transfer and conveyance of all the right, title and interest of Assignor in and to the Phase II Rights and Obligations, and Assignee assumes, undertakes and agrees to (a) be bound by the terms and conditions of the 380 Grant as it relates to the Phase II Rights and Obligations, and (b) timely perform all of the Phase II Rights and Obligations pursuant to and in accordance with the terms, provisions and conditions of the 380 Grant.

3. Assignor shall indemnify, defend, and hold Assignee harmless from and against any and all claims, judgments, liabilities, damages, injuries, losses, costs, and expenses whatsoever (including reasonable attorneys' fees and disbursements) which Assignee may incur, or which may be claimed against Assignee, by reason of (a) any breach or alleged breach of any of the Phase II Rights and Obligations occurring prior to the date hereof, and/or (b) any obligation owed by, or any liability incurred by, Assignor with respect to any of the Phase II Rights and Obligations accruing, or arising out of actions which occur, prior to the date hereof. Assignee shall indemnify, defend, and hold Assignor harmless from and against any and all claims, judgments, liabilities, damages, injuries, losses, costs, and expenses whatsoever (including reasonable attorneys' fees and disbursements) which Assignor may incur, or which may be claimed against Assignor, by reason of (i) any breach or alleged breach of any of the Phase II Rights and Obligation owed by, or any liability incurred by, assignor may incur, or which may be claimed against Assignor, by reason of (i) any breach or alleged breach of any of the Phase II Rights and Obligations occurring from and after the date hereof, and/or (ii) any obligation owed by, or any liability incurred by, Assignee with respect to any of the Phase II Rights and Obligations occurring from and after the date hereof.

4. Nothing in this Assignment, express or implied, is intended or will be construed to expand or defeat, impair or limit in any way the rights, obligations, claims or remedies of the Parties at law or in equity.

5. Nothing in this Assignment, express or implied, is intended or will be construed to confer upon, or give to, any person, other than Assignor and Assignee, any rights, remedies, obligations or liabilities.

6. This Assignment inures to the benefit of and is binding upon Assignor and Assignee and their respective successors and assigns. From and after the date of this Assignment, (a) Assignor agrees that Assignor will not modify or amend, nor take any action to modify or amend, the 380 Grant with respect to any of the Phase II Rights and Obligations and (b) Assignee agrees that Assignee will not modify or amend, nor take any action to modify or amend, the 380 Grant with respect to Phase I (as defined and set forth in the 380 Grant) or the Program Grant for Phase I (as defined and set forth in the 380 Grant).

7. Assignor and Assignee hereby agree to execute any additional documents or instruments as the other may reasonably request to carry out or give effect to this Assignment. In such regard, Assignor and Assignee acknowledge and agree that as soon as reasonably practicable after the date of this Assignment they will submit to the City of Denton, Texas (the "City") a signed original First Amendment to Economic Development Program Grant Agreement with Allegiance Hillview, L.P. in form and content attached to and made a part of this Assignment as Exhibit A (the "Amendment") in order to have Assignor released from all of the Phase II Rights and Obligations under the 380 Grant pursuant to the terms of Section 17 of the 380 Grant. Assignor and Assignee will each use their commercially reasonable efforts to have the City execute the Amendment as soon as reasonably practicable after the date of this Assignment.

8. This Assignment may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together shall constitute one and the same instrument.

9. A signature to this Assignment delivered by telecopy or other electronic means will be deemed valid and as effective as delivery in person.

10. This Assignment shall be governed by and construed in accordance with the laws of the State of Texas.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES APPEAR ON NEXT PAGE.]

Each of the Parties has caused this Assignment and Assumption Agreement to be duly executed and delivered by its duly authorized representative as of the date first written above.

ASSIGNOR:

ALLEGIANCE HILLVIEW, L.P., a New York limited partnership

By:	TH GP LLC (d/b/a TH Dento in the State of Texas), a Delay liability company	
	Its: General Partner	
	Ву:	
	Name:	
	Its: MARC K. F	
	CHIEF OPERA	TING OFFICER

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OAKLAND, 1868952.7

[SIGNATURE PAGE TO ASSIGNMENT AND ASSUMPTION AGREEMENT BY AND BETWEEN ALLEGIANCE HILLVIEW, L.P. AND DB DENTON II LLC]

ASSIGNEE:

DB DENTON II LLC, a Delaware limited liability company

- By: DB Denton Holdings LLC, a Delaware limited liability company
- Its: Sole Member
 - By: RED Rayzor Ranch, LLC, a Delaware limited liability company
 - Its: Managing Member

By: Michael Ebert

Its: Manager

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OAKLAND.1868952.7

EXHIBIT 3

ORDINANCE NO. 2014-143

AN ORDINANCE OF THE CITY OF DENTON, TEXAS APPROVING A SECOND AMENDMENT TO AN ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT DATED JUNE 15, 2010 BETWEEN THE CITY OF DENTON AND ALLEGIANCE HILLVIEW; AND PROVIDING AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF DENTON, TEXAS HEREBY ORDAINS:

<u>SECTION 1</u>. The City Manager, or his designee, is hereby authorized to execute a Second Amendment to Economic Development Program Grant Agreement (the "Second Amendment"), in substantially the form of the Second Amendment which is attached hereto and made a part of this ordinance for all purposes.

<u>SECTION 2</u>. The City Manager, or his designee, is authorized to exercise the City of Denton's rights and duties as set forth in the Amendment.

SECTION 3. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the 1.3th day of May . 2014. MARK A. BURROL MAYOR ÍGHS

ATTEST: JENNIFER WALTERS, CITY SECRETARY

APPROVED AS TO LEGAL FORM ANITA BURGESS, CITY ATTORNEY

lun BY:

STATE OF TEXAS)) COUNTY OF DENTON)

SECOND AMENDMENT TO ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT WITH ALLEGIANCE HILLVIEW, L.P.

This Second Amendment to Economic Development Program Grant Agreement with Allegiance Hillview, L.P. (this "Second Amendment") is made and entered into as of the 13th day of <u>May</u>, 2014, by Allegiance Hillview, L.P., a New York limited partnership ("<u>Grantee</u>"); DB Denton II LLC, a Delaware limited liability company ("<u>Assignee</u>"), and the City of Denton, Texas, a Texas municipal corporation (the "<u>City</u>"), Grantee, Assignee, and the City are individually referred to as a "<u>Party</u>" and collectively as the "<u>Parties</u>."

WHEREAS, on June 15, 2010, Grantee and the City entered into that certain Economic Development Program Grant Agreement with Allegiance Hillview, L.P. (the "Agreement");

WHEREAS, on September 14, 2010, Grantee, Assignee, and the City entered into that certain First Amendment to Economic Development Program Grant Agreement with Allegiance Hillview, L.P., (the "<u>First Amendment</u>"), which First Amendment approved the assignment of certain right, title, and interest of Grantee in and to the Agreement to Assignee;

WHEREAS, capitalized terms used but not defined in this Second Amendment shall have the meanings given to them in the Agreement and the First Amendment; and

WHEREAS, the Parties desire to further amend the Agreement and the First Amendment to expand the categories of Eligible Improvements, to increase the total cost of the Eligible Improvements, to approve Eligible Phase I Costs and Eligible Phase II Costs, to expand the definition of Total Taxable Sales, to define Retail Improvements in Phase II to include "Initial" and "Additional" improvements, and to extend the Program Grant for Phase II.

NOW THEREFORE, for good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Parties agree to amend the Agreement and First Amendment as follows:

1. Revised Definitions

a. Eligible Improvements and Eligible Costs. The term "Eligible Improvements" is revised to mean any improvements included within the Categories of Eligible Improvements identified on **Exhibit** A to this Second Amendment. The maximum Estimated Cost for the Eligible Improvements shown on said **Exhibit** A is increased to \$68,000,000. Payments of the Program Grant for Phase I monthly installment payments shall be used FIRST to repay Grantee for Eligible Phase I Costs up to a maximum of \$20,000,000 and THEN, if Program Grants for Phase

II have been initiated by the Assignee, to repay Assignee for Eligible Phase II Costs up to a maximum of \$21,000,000.00 upon Substantial Completion of the Initial Retail Improvements in Phase II and up to an additional \$27,000,000.00 upon Substantial Completion of the Additional Retail Improvements in Phase II.

b. <u>Required Infrastructure for Phase II</u>. The term "Required Infrastructure for Phase II" is revised in its entirety as follows: "<u>Required Infrastructure for Phase II</u>" means the road and public utility infrastructure required to obtain final certificates of occupancy for the Initial Retail Improvements in Phase II or the Additional Retail Improvements in Phase II, as applicable [including but not limited to the portion of Heritage Trail located within Phase II).

Substantial Completion. The term "Substantial Completion" is revised in its entirety as c. follows: "Substantial Completion" means: (i) with respect to the Retail Improvements in Phase I, when final certificates of occupancy have been issued for the Retail Improvements in Phase I; (ii) with respect to the Required Infrastructure for Phase I, when the Required Infrastructure for Phase I has been constructed and inspected in accordance with City and TxDot standards, as applicable, and as required to obtain final certificates of occupancy for the Retail Improvements or a phased portion of the Retail Improvements in Phase I; (iii) with respect to the Initial Retail Improvements in Phase II, when final certificates of occupancy have been issued for the Initial Retail Improvements in Phase II; (iv) with respect to the Required Infrastructure for Phase II for the Initial Retail Improvements in Phase II, when such Required Infrastructure for Phase II has been constructed and inspected in accordance with City and TxDot standards, as applicable, and as required to obtain final certificates of occupancy for the Initial Retail Improvements in Phase II: (v) with respect to the Additional Retail Improvements in Phase II, when final certificates of occupancy have been issued for the Additional Retail Improvements in Phase II; (vi) with respect to the Required Infrastructure for Phase II for the Additional Retail Improvements in Phase II, when such Required Infrastructure for Phase II has been constructed and inspected in accordance with City and TxDot standards, as applicable, and as required to obtain final certificates of occupancy for the Additional Retail Improvements in Phase II.

d. <u>Program Grant for Phase II</u>. The reference to "240 consecutive monthly payments" in the definition of "Program Grant for Phase II" is amended to be "300 consecutive monthly payments".

2. <u>Approved Eligible Costs</u>. The categories and costs for Eligible Improvements will be reviewed by the City's Engineering, Real Estate, and Economic Development staff based on information provided by Grantee. The Eligible Costs acknowledged by this Second Amendment include, but are not limited to, Eligible Costs in the amount of \$24,146,498 for Phase I (north of Highway 380) and \$15,930,322 for Phase II (south of Highway 380) for a total of \$40,076,820 as approved July 12, 2010, by letter from Linda Ratliff, Director Economic Development, to Allegiance Hillview, L.P., regarding "Rayzor Ranch Chapter 380 Agreement – Eligible Costs Approval," including Attachment "Request #1 Rayzor Ranch Eligible Costs", attached hereto as Exhibit B.

3. <u>Total Taxable Sales</u>. The term "Total Taxable Sales" is revised in its entirety to read as follows: "Total Taxable Sales means the total amount of all sales (including mixed beverage sales covered by HB 3572 effective January 1, 2014) from which the City receives sales tax with a point of sale in Phase I or Phase II, regardless of whether such sales are retail sales and use occurring at a business located in Phase I or Phase II (excluding sales occurring at

any Dillard's, J.C. Penney Co., Macy's, Sears Roebuck and Co., Barnes & Noble, DSW (Discount Shoe Warehouse), and Ross Dress for Less that locates within the Property and closes any store located within the retail shopping area commonly known as the 'Golden Triangle Mall'). All references in the Agreement that indicate that the Total Taxable Sales and the information shown on the Monthly Sales Tax Report are limited to sales from businesses located within Phase I or Phase II shall be expanded to include mixed beverage sales and all sales with a point of sale in Phase I or Phase II, regardless of whether such sales are retail sales occurring at a business located in Phase I or Phase II.

4. <u>Retail Improvements in Phase II</u>. The term "Retail Improvements in Phase II" is defined to include the following "Initial" and "Additional" improvements:

a. "<u>Initial Retail Improvements in Phase II</u>" means a minimum of 300,000 gross square feet (as measured to the exterior building wall) of retail or commercial shopping center buildings located in Phase II, comprised of the Town Center (as described by the zoning applicable to the Property), and other retail development in Phase II.

b. "Additional Retail Improvements in Phase II" means a minimum of 300,000 additional gross square feet (as measured to the exterior building wall) of retail or commercial shopping center buildings located in Phase II, comprised of the Town Center (as described by the zoning applicable to the Property), and other retail development in Phase II, and which, in any case, are not included in the Initial Improvements in Phase II.

5. <u>Program Grant for Phase II</u>.

a. Section 3.2 of the Agreement is revised in its entirety to read as follows: "<u>Program Grant for Phase II</u>. This Agreement shall be effective as of the date executed by the City and Grantee. At any time following execution of this Agreement and following Substantial Completion of the Required Infrastructure for Initial Retail Improvements in Phase II (but not later than January 1, 2018), Assignee may designate the first day of any month to be the Program Effective Date for Phase II by providing written notice to the City at least 60 days prior to the designated Program Effective Date for Phase II. The City will begin making Program Grant for Phase II monthly installment payments on the designated Program Effective Date for Phase II and shall continue to make such monthly installment payments for 300 consecutive months as provided by this Agreement. This Agreement will terminate with respect to the Program Grant for Phase II upon the earlier to occur of (i) the date Assignee has been paid for the full amount of the Eligible Phase II Costs, or (ii) 300 months after the Program Effective Date for Phase II regardless of whether Assignee has been paid the full amount of the Eligible Phase II Costs."

b. Section 4.2 of the Agreement is revised in its entirety to read as follows: "<u>Program Grant for Phase II</u>. For each month during the term of the Program Grant for Phase II, the City agrees, subject to the conditions contained in this Agreement, to make a Program Grant for Phase II installment payment to Assignee on or before thirty days following the City's receipt from the State Comptroller of the Monthly Sales Tax Report indicating Total Taxable Sales from the preceding month that are allocable to Phase II. The Program Grant for Phase II installment payments shall be calculated as provided in Section 5.2 of this Agreement. Issuance of the first certificate of occupancy by the City to any tenant within Phase II shall be a condition precedent to the initiation of Program Grant for Phase II installment payments. Program Grant for Phase II installment payments may be temporarily withheld at any time if there are delinquent property taxes or assessments on any property owned by Assignee and located in the City, and such installment payments will not be resumed until such delinquency is cured, at which time withheld payments shall be paid to Assignee. The 300 month term for payment of Program Grant for Phase II shall not be suspended or extended if installment payments are withheld pursuant to prior sentence. Notwithstanding anything contained herein to the contrary, the Program Grant for Phase II installment payments will cease, this Agreement will automatically terminate as to the Program Grant for Phase II, and Assignee will refund to the City all Program Grant for Phase II installment payments previously made if Substantial Completion of the Initial Retail Improvements in Phase II has not occurred on or before January 1, 2018. In addition, the City, in its sole discretion, may terminate this Agreement as to the Program Grant for Phase II has not occurred on or before January 1, 2018. In addition, the City, in its sole discretion of the Required Infrastructure for Phase II for the Initial Retail Improvements in Phase II has not occurred on or before January 1, 2018."

c. The first paragraph of Section 5.2 of the Agreement is revised in its entirety to read as follows: "Program Grant for Phase II. Program Grant for Phase II monthly installment payments during the term of the Program Grant for Phase II shall be calculated as 50% of the 1.5% sales tax collected by the City with respect to the Total Taxable Sales allocable to Phase II during the preceding month as established by the most recent State Comptroller's Monthly Sales Tax Report. The City's obligation to make such payments is contingent upon the City's receipt of the sales taxes from the Texas State Comptroller and the Monthly Sales Tax Report; provided, however, if the State Comptroller ceases to issue Monthly Sales Tax Reports, the Parties shall cooperate to arrive at a reasonably equivalent and mutually agreeable alternative method of computing the Program Grant for Phase II monthly installment payments. Payments of the Program Grant for Phase II monthly installment payments will be used to repay Assignee for Eligible Phase II Costs not otherwise paid with Program Grant for Phase I payments (up to a maximum of \$21,000,000.00 upon Substantial Completion of the Initial Retail Improvements in Phase II and up to an additional \$27,000,000.00 upon Substantial Completion of the Additional Retail Improvements in Phase II)."

6. Default. Section 8 of the Agreement is revised in its entirety to read as follows: "Default. If a party fails to perform any of its obligations under this Agreement and such failure is not cured within 30 days after written notice, the failure of the non-performing party to cure within such 30 day period (or to commence to cure if the nature of the failure cannot reasonably be cured within 30 days) shall constitute a default under this Agreement and shall entitle the nondefaulting party to all remedies available at law or in equity (including injunctive relief, specific performance, and suspending or withholding Program Grant for Phase I or Program Grant for Phase II payments); PROVIDED, HOWEVER, NOTWITHSTANDING THE FOREGOING, (i) MONETARY DAMAGES SHALL BE LIMITED TO THE AMOUNT NECESSARY TO ENFORCE SPECIFIC PERFORMANCE OF THE FAILED OBLIGATION; (ii) THE CITY CANNOT TERMINATE THIS AGREEMENT AS TO PHASE I UNLESS (1) SUBSTANTIAL COMPLETION OF THE RETAIL IMPROVEMENTS IN PHASE I DOES NOT OCCUR ON OR BEFORE JANUARY 1, 2013, AS PROVIDED BY SECTION 4 HEREOF, (2) SUBSTANTIAL COMPLETION OF THE REQUIRED INFRASTRUCTURE FOR PHASE I DOES NOT OCCUR ON OR BEFORE JANUARY 1, 2013, AS PROVIDED BY SECTION 4 HEREOF, OR (3) GRANTEE IS IN DEFAULT OF ITS OBLIGATION TO PROVIDE THE LETTER OF CREDIT AS PROVIDED BY SECTION 6.3 HEREOF; (iii) THE CITY CANNOT TERMINATE THIS AGREEMENT AS TO PHASE II UNLESS (1) SUBSTANTIAL COMPLETION OF THE INITIAL RETAIL IMPROVEMENTS IN PHASE II DOES NOT OCCUR ON OR BEFORE JANUARY 1, 2018, AS PROVIDED IN SECTION 4 HEREOF, (2) SUBSTANTIAL COMPLETION OF THE REQUIRED INFRASTRUCTURE FOR THE INITIAL RETAIL IMPROVEMENTS IN PHASE II DOES NOT OCCUR ON OR BEFORE JANUARY 1, 2018, AS PROVIDED BY SECTION 4 HEREOF, OR (3) GRANTEE IS IN DEFAULT OF ITS OBLIGATION TO PROVIDE THE LETTER OF CREDIT AS PROVIDED BY SECTION 6.3 HEREOF; AND (iv) THE CITY MAY NOT TERMINATE, WITHHOLD OR SUSPEND PAYMENTS, OR TAKE ANY OTHER REMEDY WITH RESPECT TO PROGRAM GRANT FOR PHASE I PAYMENTS OR OTHERWISE RELATED TO PHASE I EXCEPT FOR DEFAULTS RELATED TO PHASE I AND THE CITY MAY NOT TERMINATE, WITHHOLD OR SUSPEND PAYMENTS, OR TAKE ANY OTHER REMEDY WITH RESPECT TO PROGRAM GRANT FOR PHASE I AND THE CITY MAY NOT TERMINATE, WITHHOLD OR SUSPEND PAYMENTS OR OTHERWISE RELATED TO PHASE I EXCEPT FOR DEFAULTS RELATED TO PHASE I AND THE CITY MAY NOT TERMINATE, WITHHOLD OR SUSPEND PAYMENTS, OR TAKE ANY OTHER REMEDY WITH RESPECT TO PROGRAM GRANT FOR PHASE II PAYMENTS OR OTHERWISE RELATED TO PHASE II EXCEPT FOR DEFAULTS RELATED TO PHASE II PAYMENTS OR OTHERWISE RELATED FOR DEFAULTS RELATED TO PHASE II PAYMENTS OR OTHERWISE RELATED TO PHASE II EXCEPT

7. Offer to Sell. Section 6.6 is revised in its entirety to read as follows: "In the event Grantee or any of its affiliates purchases any retail buildings in the retail shopping area commonly known as the "Golden Triangle Mall," Grantee or its affiliate shall offer in writing to sell such buildings to FMP Denton, LLC (or to the then-current owner of the Golden Triangle Mall) for: (i) the then fair market value of such buildings as established by a qualified, independent MAI appraiser, or (ii) the amount of any arms-length offer to purchase such buildings received by Grantee or its affiliate from any third-party retail user unrelated to Grantee or any of its affiliates, whichever is greater."

8. <u>Auditing</u>. The City's right to conduct audits of the sales and use tax records of businesses located within the Property, and Grantee's and Assignee's obligation to use reasonable efforts to assist the City in obtaining such records from tenant taxpayers, shall apply only to the extent the City is unable to obtain from the Texas State Comptroller the "Monthly Sales Tax Reports" showing the amount of Total Taxable Sales for a month period pursuant to Section 321.3022 of the Texas Tax Code.

9. <u>Public Improvement District Financing of Eligible Improvements</u>. If the City levies public improvement district assessments to pay any portion of the Assignee's costs of the Eligible Improvements shown on <u>Exhibit A</u>, the amount levied and collected from the Assignee shall be reimbursable costs under this Second Amendment so long as the TOTAL of such assessments and other Eligible Phase II Costs does not exceed the <u>Exhibit A</u> maximum amount of \$68,000,000.

10. <u>Conflicts; Effect of Second Amendment</u>. To the extent of any inconsistency between the terms and provisions of this Second Amendment and the Agreement and the First Amendment, the terms and provisions of this Second Amendment will control. Except as amended by this Second Amendment, all of the terms, covenants and conditions of the Agreement and the First Amendment are in full force and effect and the Agreement and First Amendment are hereby ratified and confirmed. All references in the Agreement to January 1, 2015, are hereby amended to read January 1, 2018.

11. <u>Binding Effect</u>. This Second Amendment will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns.

12. <u>Counterparts</u>. This Second Amendment may be executed in one or more counterpart copies, all of which will constitute and be deemed an original, but all of which together will constitute one and the same instrument binding on the Parties. Delivery by facsimile or electronic mail of this Second Amendment or an executed counterpart hereof will be deemed a good and valid execution and delivery hereof.

Allegiance Hillview, L.P., a New York limited partnership

By: TH GP LLC, a Delaware limited liability company, d/b/a TH Denton GP LLC in the State of Texas, its general partner



ACKNOWLEDGMENT STATE OF _

This instrument was ACKNOWLEDGED before me on May 15th, 14, by AMY (WODOM) the MARONE (Springer TH GP LLC (d/b/a TH Denton GP LLC, in the State of Texas), a Delaware limited liability company, the general partner of Allegiance Hillview, L.P., a New York limited partnership, on behalf of such imited partnership.

Notary Public

Printed Name of Notary Public

[SEAL] My Commission Expires:

COUNTY OF

HEATHER N. MARTIN Notary Public, State of Texas My Commission Expires June 06, 2016

DB DENTON II LLC,

a Delaware limited liability company

- By: DB Denton Holdings LLC, a Delaware limited liability company
- Its: Sole Member
 - By: RED Rayzor Ranch, LLC, a Delaware limited liability company

Its: Managing Member By: Michael Ebert

Its: Manager

ACKNOWLEDGMENT

STATE OF AW252)§ COTIC COUNTY OF

This instrument was ACKNOWLEDGED before me on <u>Uau</u>, <u>H</u>, <u>Zou</u> by Michael Ebert, the manager of RED Rayzor Ranch, LLC, a Delaware limited liability company, the managing member of DB Denton Holdings LLC, a Delaware limited liability company, the sole member of DB Denton II LLC, a Delaware limited liability company, on behalf of such limited liability company.



Notary Public /ATEL DXA Printed Name of Notary Public

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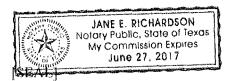
My Commission Expires:

CITY OF DENTON, TEXAS Scorge A. Campbell, City Manager C acc

ACKNOWLEDGMENT

STATE OF TEXAS)) § COUNTY OF DENTON)

This instrument was ACKNOWLEDGED before me on <u>May 13</u>, <u>2014</u>, by -Mark A. Burroughs; the Mayor of the City of Denton, Texas, on behalf of the City of Denton, Texas. George C. Campbell, the City Manager



Jane E. Richardson Jane E. Richardson

Printed Name of Notary Public

My Commission Expires:

Exhibit A

Table A-1	
Categories of Eligible Improvements	Estimated Costs
Hwy 380 Improvements	\$8,133,150
Site drainage	\$4,720,750
Regional drainage improvements	\$2,696,750
Internal commercial roads, including water, sewer, streetscapes, plazas, and amenities	\$20,004,064
Scripture Road improvements	\$675,050
Bonnie Brae improvements	\$1,271,900
Public Parking garage	\$6,730,375
Major public infrastructure relocation	\$2,013,650
Miscellaneous fees/services	\$5,754,311
Interest during construction on non-residential development	\$10,000,000
SUBTOTAL Table A-1	\$62,000,000
The actual cost of any individual category of Eligible Improvements may vary from the	
Estimated Costs shown on this Table A-1. Grantee and Assignee have the right to adjust	
individual line items of the Estimated Costs of the individual Categories of Eligible	
Improvements so long as the SUBTOTAL of \$62,000,000 is not exceeded.	
Table A-2	
I-35 access roads and ramps	\$3,000,000
Additional Interest during construction on non-residential development after 1/1/15	\$3,000,000

The actual cost of Table A-2 individual category of Eligible Improvements may NOT exceed the Estimated Costs shown on this Table A-2. Actual costs up to but NOT exceeding the amounts in Table A-2 are considered Estimated Costs of Eligible Costs.

TOTAL Table A-1 and Table A-2

SUBTOTAL Table A-2

\$68,000,000

\$6,000,000

The amounts levied and collected through PID Assessments by the City for Eligible Improvements defined in Table A-1 and Table A-2 shall be considered reimbursable costs so long as the amounts levied and collected through PID Assessments are deducted from the Category(ies) in Table A-1 or Table A-2 above and so long as the TOTAL of \$68,000,000 is not exceeded.



215 E. McKinney Denton, Texas 76201

(940) 349-7776 phone (940) 349-8596 fax

Economic Development Department

July 12, 2010

Allegiance Hillview, L.P. 1345 Avenue of the Americas - 46th Floor New York, New York 10105 Attention: Constantine Dakolias, President

Re: Rayzor Ranch Chapter 380 Agreement – Eligible Costs Approval

Dear Andy:

I am in receipt of your Request #1 detailing eligible costs incurred to date for the Rayzor Ranch project. Request #1 reflects a subtotal of \$24,146,498 for Phase I (north of Hwy 380) and \$15,930,322 for Phase II (south of Hwy 380), for a combined total of \$40,076,820. The categories and costs have been reviewed by our Engineering, Real Estate and Economic Development staff and have been approved as Eligible Costs per the Chapter 380 Agreement dated June 15, 2010.

Please let me know if you have any questions.

Sincerely,

Linda Raxling

Linda Ratliff, Director Economic Development

Attachment: Request #1 Rayzor Ranch Eligible Costs

cc: George Campbell, City Manager Andrew Osborne, Allegiance Hillview, L.P.

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EXHIBIT 4

ORDINANCE NO. 2015-331

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, APPROVING A THIRD AMENDMENT TO AN ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT DATED JUNE 15, 2010 BETWEEN THE CITY OF DENTON AND ALLEGIANCE HILLVIEW; AND PROVIDING AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or his designee, is hereby authorized to execute a Third Amendment to Economic Development Program Grant Agreement (the "Third Amendment"), in substantially the form of the Third Amendment which is attached hereto and made a part of this ordinance for all purposes.

SECTION 2. The City Manager, or his designee, is authorized to exercise the City of Denton's rights and duties as set forth in the Amendment.

SECTION 3. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the 10 day of Movember, 2015.

Ch UN IS WATTS, MAYOR

ATTEST: JENNIFER WALTERS, CITY SECRETARY

BY:

APPROVED AS/TO LEGAL FORM: ANITA BURGESS, CITY ATTORNEY

BY: <u>ff 211 - 2715</u>

STATE OF TEXAS § SCOUNTY OF DENTON §

THIRD AMENDMENT TO ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT WITH ALLEGIANCE HILLVIEW, L.P.

This Third Amendment to Economic Development Program Grant Agreement with Allegiance Hillview, L.P. (this "<u>Third Amendment</u>") is made and entered into as of the <u>10</u> day of <u>Theorement</u>, 2015, by Allegiance Hillview, L.P., a New York limited partnership ("<u>Grantee</u>"), DB Denton II LLC, a Delaware limited liability company ("<u>Assignee</u>"), and the City of Denton, Texas, a Texas municipal corporation (the "<u>City</u>"), Grantee, Assignee, and the City are individually referred to as a "<u>Party</u>" and collectively as the "<u>Parties</u>."

WHEREAS, on June 15, 2010, Grantee and the City entered into that certain Economic Development Program Grant Agreement with Allegiance Hillview, L.P. (the "<u>Agreement</u>");

WHEREAS, on September 14, 2010, Grantee, Assignee, and the City entered into that certain First Amendment to Economic Development Program Grant Agreement with Allegiance Hillview, L.P., (the "<u>First Amendment</u>"), which First Amendment approved the assignment of certain right, title, and interest of Grantee in and to the Agreement to Assignee;

WHEREAS, on May 13, 2014, Grantee, Assignee, and the City entered into that certain Second Amendment to Economic Development Program Grant Agreement (the "Second Amendment") to expand the categories of Eligible Improvements, to increase the total cost of the Eligible Improvements, to approve Phase I Costs and Eligible Phase II Costs, to expand the definition of Total Taxable Sales, to define Retail Improvements in Phase II to include "Initial" and "Additional" improvements, and to extend the Program Grant for Phase II; and

WHEREAS, Grantee and Allegiance GL LLC, a Delaware limited liability company ("<u>Allegiance</u>"), entered into that certain Assignment and Assumption Agreement dated as of April 1, 2015, pursuant to which Grantee assigned to Allegiance the Phase I Rights and Obligations of Grantee under the Agreement; and

WHEREAS, the Parties desire to further amend the Agreement to facilitate the development of a Hotel and Convention Center in Phase II;

NOW THEREFORE, for good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Parties agree to amend the Agreement and First Amendment as follows:

1. <u>Revised Definitions</u>

a. <u>Total Taxable Sales</u>. The term "Total Taxable Sales" is revised in its entirety to read as follows: "Total Taxable Sales means the total amount of all sales (including mixed beverage sales covered by HB 3572 effective January 1, 2014) from which the City

receives sales tax with a point of sale in Phase I or Phase II, regardless of whether such sales are retail sales and use occurring at a business located in Phase I or Phase II (excluding sales occurring at any Dillard's, J.C. Penney Co., Macy's, Sears Roebuck and Co., Barnes & Noble, DSW (Discount Shoe Warehouse), and Ross Dress for Less that locates within the Property and closes any store located within the retail shopping area commonly known as the 'Golden Triangle Mall'), and excluding all sales occurring at the Hotel and Convention Center Project developed by O'Reilly Hotel Partners Denton, or its successors and assigns, as depicted in Exhibit A. All references in the Agreement that indicate that the Total Taxable Sales and the information shown on the Monthly Sales Tax Report are limited to sales from businesses located within Phase I or Phase II shall be expanded to include mixed beverage sales and all sales with a point of sale in Phase I or Phase II, regardless of whether such sales are retail sales occurring at a business located in Phase I or Phase II.

b. <u>Initial Retail Improvements in Phase II</u>. The term "Initial Retail Improvements in Phase II means a minimum of 300,000 gross square feet (as measured to the exterior building wall) of retail or commercial shopping center buildings located in Phase II, comprised of (i) the Town Center (as described by the zoning applicable to the Property, (ii) the ground floor of the hotel and the convention center space that is part of or planned to be part of the Hotel and Convention Center Project whether or not the Hotel and Convention Center Project by January 1, 2018; and (iii) other retail or commercial shopping center buildings located in Phase II.

2. Program Grant for Phase II.

a. Section 3.2 of the Agreement is revised in its entirety to read as follows: "Program Grant for Phase II. This Agreement shall be effective as of the date executed by the City and Grantee. At any time following execution of this Agreement and following Substantial Completion of the Required Infrastructure for Initial Retail Improvements in Phase II (but not later than January 1, 2018), Assignee may designate the first day of any month to be the Program Effective Date for Phase II by providing written notice to the City at least 60 days prior to the designated Program Effective Date for Phase II. The City will begin making Program Grant for Phase II monthly installment payments on the designated Program Effective Date for Phase II and shall continue to make such monthly installment payments for 300 consecutive months as provided by this Agreement. This Agreement will terminate with respect to the Program Grant for Phase II upon the earlier to occur of (i) the date Assignee has been paid for the full amount of the Eligible Phase II Costs, or (ii) 300 months after the Program Effective Date for Phase II regardless of whether Assignee has been paid the full amount of the Eligible Phase II Costs. Additional Program Grant for Hotel and Convention Center Project, as depicted in Exhibit A. The City will begin making Additional Program Grant for Hotel and Convention Center Project monthly installment payments commencing the first month following receipt of the certificate of occupancy of the Hotel and Convention Center Project and following commencement of Phase II Grant Payments, and paid monthly until Assignee has received \$5,000,000 as consideration for lost revenue in Phase II as a result of the Hotel and Convention Center Project.

- b. The first paragraph of Section 5.2 of the Agreement is revised in its entirety to read as follows: "Program Grant for Phase II. Program Grant for Phase II monthly installment payments during the term of the Program Grant for Phase II shall be calculated as 50% of the 1.5% sales tax collected by the City with respect to the Total Taxable Sales allocable to Phase II during the preceding month as established by the most recent State Comptroller's Monthly Sales Tax Report. The City's obligation to make such payments is contingent upon the City's receipt of the sales taxes from the Texas State Comptroller and the Monthly Sales Tax Report; provided, however, if the State Comptroller ceases to issue Monthly Sales Tax Reports, the Parties shall cooperate to arrive at a reasonably equivalent and mutually agreeable alternative method of computing the Program Grant for Phase II monthly installment payments. Payments of the Program Grant for Phase II monthly installment payments will be used to repay Assignee for Eligible Phase II Costs not otherwise paid with Program Grant for Phase I payments (up to a maximum of \$21,000,000.00 upon Substantial Completion of the Initial Retail Improvements in Phase II and up to an additional \$27,000,000.00 upon Substantial Completion of the Additional Retail Improvements in Phase II). Additional Program Grant for Hotel and Convention Center Project. Program Grant for Hotel and Convention Center Project shall be calculated as 15% of the 1.5% sales tax collected by the City with respect to the Total Taxable Sales allocable to Phase I and Phase II during the preceding month as established by the most recent State Comptroller's Monthly Sales Tax Report. The City's obligation to make such payments is contingent upon the City's receipt of the sales taxes from the Texas State Comptroller and the Monthly Sales Tax Report; provided, however, if the State Comptroller ceases to issue Monthly Sales Tax Reports, the Parties shall cooperate to arrive at a reasonably equivalent and mutually agreeable alternative method of computing the Program Grant for the Hotel and Convention Center Project monthly installment payments. Payments of the Program Grant for the Hotel and Convention Center Project will be made monthly until Assignee has received \$5,000,000 as consideration for lost revenue in Phase II as a result of the Hotel and Convention Center Project.
- 3. <u>Conflicts: Effect of Third Amendment</u>. To the extent of any inconsistency between the terms and provisions of this Third Amendment and the Agreement, the First Amendment and the Second Amendment, the terms and provisions of this Third Amendment will control. Except as amended by this Third Amendment, all of the terms, covenants and conditions of the Agreement, the First Amendment, and the Second Amendment are in full force and effect and the Agreement, First Amendment, and Second Amendment are hereby ratified and confirmed.
- 4. <u>Binding Effect</u>. This Third Amendment will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns.
- 5. <u>Counterparts</u>. This Third Amendment may be executed in one or more counterpart copies, all of which will constitute and be deemed an original, but all of which together will constitute one and the same instrument binding on the Parties. Delivery by facsimile or electronic mail of this Third Amendment or an executed counterpart hereof will be deemed a good and valid execution and delivery hereof.

<u>CITY</u>

CITY OF DENTON, DENTON, TEXAS A TEXAS MUNICIPAL CORPORATION

GEØRGE C. CAMPBELL, CITY MANAGER

ATTEST: JENNIFER WALTERS, CITY SECRETARY

BY:

APPROVED AS TO LEGAL FORM: ANITA BURGESS, CITY ATTORNEY

BY:

GRANTEE

ALLEGIANCE HILLVIEW, L.P., a New York limited partnership

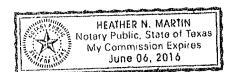
By: TH GP LLC (d/b/a TH Denton GP LLC, in the State of Texas), a Delaware limited liability company Its: General Partner

By: Name: Andrew Osborne Its: Authorized Signatory

ACKNOWLEDGMENT

STATE OF COUNTY O

This instrument was ACKNOWLEDGED before me on the state of Texas), a Delaware limited liability company, the general partner of Allegiance Hillview, L.P., a New York limited partnership, on behalf of such limited partnership.



Notary Public

Printed Name of Notary Public

[SEAL]

My Commission Expires:

ASSIGNEE

DB DENTON II LLC, a Delaware limited liability company

By: DB Denton Holdings LLC, a Delaware limited liability company

Its: Sole Member

By: RED Rayzor Ranch, LLC, a Delaware limited liability company

Its: Managing Member

By:

Michael Ebert Its: Manager

ACKNOWLEDGMENT

STATE OF LZERCS Ílcopes COUNTY OF

This instrument was ACKNOWLEDGED before me on <u>Ouroroup 28</u>, <u>who</u> by Michael Ebert, the manager of RED Rayzor Ranch, LLC, a Delaware limited liability company, the managing member of DB Denton Holdings LLC, a Delaware limited liability company, the sole member of DB Denton II LLC, a Delaware limited liability company, on behalf of such limited liability company.

RAMONA ZAPUSTAS Notary Public, Stele of Alizona Maricopa County My Commission Expires February 03, 2017 [SEAL]	Charge Control Notary Public Real Dr A Costas Printed Name of Notary Public
My Commission Expires:	
2:3.17	
	CITY OF DENTON, TEXAS George C. Campbell, City Manager.
АСК	NOWLEDGMENT

STATE OF TEXAS § SCOUNTY OF DENTON §

This instrument was ACKNOWLEDGED before me on <u>MADMUSON 10</u>, <u>2015</u> by George C. Campbell, the City Manager of the City of Denton, Texas, on behalf of the City of Denton, Texas.



otary Public

Printed Name of Notary Public

[SEAL] My Commission Expires: 12/19/18

METES AND BOUNDS DESCRIPTION Convention Center Tract

BEING a 11.951 acre tract situated in the B. B. B & C. R. R. Survey, Abstract Number 192, Denton County, Texas, being a portion of the tract of land described as Tract One in the deed to Allegiance Hillview, L.P. recorded in Document Number 2006-41743, Deed Records of Denton County, Texas and a portion of the tract of land described in the deed to DB Denton II, LLC recorded in Document Number 2010-74478, Deed Records of Denton County, Texas said 11.951 acre tract of land being more particularly described as follows:

COMMENCING at a point in the easterly right-of-way line of Interstate Highway 35 (a variable width right-of-way) for the southwesterly corner of the tract of land described in the deed to DB Denton II, LLC recorded in Document Number 2010-74478, Deed Records of Denton County, Texas;

THENCE with the southerly line of said DB Denton II, LLC tract the following:

North 73' 36' 21" East a distance of 121.73 feet to a point;

South 17° 16' 37" East a distance of 15.00 feet to a point;

North 73° 36' 21" East a distance of 99.88 feet to the point of curvature of a curve to the right having a radius of 485.00 feet;

Northeasterly along said curve through a central angle of 12° 18' 37" an arc distance of 104.21 feet with a chord bearing of North 79° 45' 39" East and a chord distance of 104.00 feet to the POINT OF BEGINNING;

THENCE departing the southerly line of said DB Denton II, LLC tract North 16° 23' 26" West a distance of 217.87 feet to a point;

THENCE North 73° 13' 43" East a distance of 364.79 feet to a point;

THENCE North 00° 56' 56" East a distance of 69.07 feet to a point;

THENCE South 89° 03' 00" East a distance of 384.45 feet to the beginning of a non-tangent curve to the right having a radius of 38.25 feet;

THENCE Southeasterly along said curve through a central angle of 90° 00' 04" an arc distance of 60.08 feet with a chord bearing of South 44° 03' 05" East and a chord distance of 54.09 feet to the end of said curve;

THENCE South 00° 56' 58" West at a distance of 362.89 feet passing the southerly line of said DB Denton II, LLC tract in all a total distance of 688.23 feet to a point;

THENCE South 73° 33' 31" West a distance of 572.34 feet to a point;

THENCE North 16° 23' 26" West a distance of 533.72 feet to the POINT OF BEGINNING;

CONTAINING a computed area of 11.951 acres (520,592 square feet) of land.

B000056.004

OCTOBER 28, 2015

A drawing of even date accompanies this metes and bounds description.

550 Balley Avenue • Sulte 400 • Fort Worth, Texas 76107 Tel: 817,335,1121 • Fox: 817,335,7437 FIRM REGISTRATION 10098100

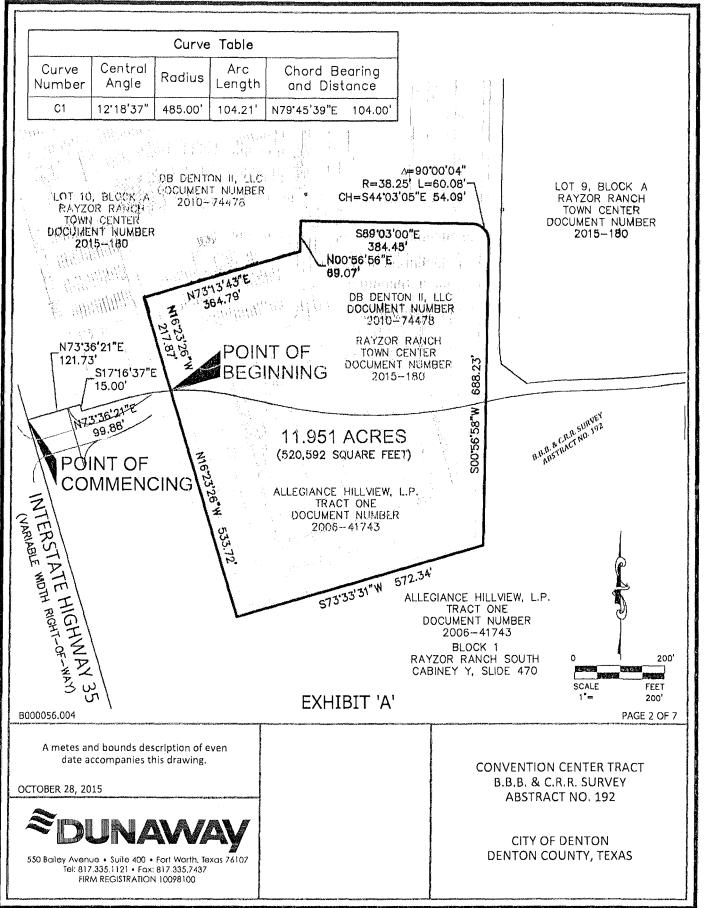
EXHIBIT 'A'

PAGE 1 OF 7

CONVENTION CENTER TRACT B.B.B. & C.R.R. SURVEY ABSTRACT NO. 192

CITY OF DENTON DENTON COUNTY, TEXAS

PLOTED BY: Junge, Kevin ON: Friday, October 30, 2015 AT: 11:43 AM FILEP ATH: G:\Production\(00000\80



PLOTTED BY: Mary, Marthew QN: Friday, October 30, 2015 AT: 12:49 PM FILEPATH: G:\Production\000000\8000056 00!\Survey-DA\Drawings\C3D\2015\8000056 004 Convention Center Entitions KMJ.dwg

METES AND BOUNDS DESCRIPTION Convention Center - DB Denton II, LLC Tract

BEING a 6.159 acre tract situated in the B. B. B & C. R. R. Survey, Abstract Number 192, Denton County, Texas, being a portion of the tract of land described in the deed to DB Denton II, LLC recorded in Document Number 2010-74478, Deed Records of Denton County, Texas, also being situated in Lot 10, Block A, Rayzor Ranch Town Center, an addition to the City of Denton according to the plat recorded in Document Number 2015-180, Plat Records of Denton County, Texas, said 6.159 acre tract of land being more particularly described as follows:

COMMENCING at a point in the easterly right-of-way line of interstate Highway 35 (a variable width right-of-way) for the southwesterly corner of said DB Denton II, LLC tract;

THENCE with the southerly line of said DB Denton II, LLC tract the following:

North 73" 36' 21" East a distance of 121.73 feet to a point;

South 17' 18' 37" East a distance of 15.00 feet to a point;

North 73° 36' 21" East a distance of 99.88 feet to the point of curvature of a curve to the right having a radius of 485.00 feet;

Northeasterly along said curve through a central angle of 12° 18' 37" an arc distance of 104.21 feet with a chord bearing of North 79° 45' 39" East and a chord distance of 104.00 feet to the POINT DF BEGINNING;

THENCE departing the southerly line of said DB Denton II, LLC tract North 16° 23' 26" West a distance of 217.87 feet to a point;

THENCE North 73° 13' 43" East a distance of 364.79 feet to a point;

THENCE North 00° 56' 56" East a distance of 69.07 feet to a point;

THENCE South 89° 03' 00" East a distance of 384.45 feet to the beginning of a non-tangent curve to the right having a radius of 38.25 feet;

THENCE Southeasterly along said curve through a central angle of 90° 00' 04" an arc distance of 60.08 feet with a chord bearing of South 44° 03' 05" East and a chord distance of 54.09 feet to the end of said curve;

THENCE South 00° 56' 58" West a distance of 362.89 feet to a point in the southerly line of said DB Denton II LLC tract;

THENCE with the southerly line of said DB Denton II LLC tract the following:

South 77° 47' 38" West a distance of 36.00 feet to the point of curvature of a curve to the right having a radius of 1,015.00 feet;

continued next page...

EXHIBIT 'A'

PAGE 3 OF 7

CONVENTION CENTER -DB DENTON II, LLC TRACT B.B.B. & C.R.R. SURVEY ABSTRACT NO. 192

CITY OF DENTON DENTON COUNTY, TEXAS

B000056.004

A drawing of even date accompanies this metes and bounds description.

OCTOBER 28, 2015



Northwesterly along said curve through a central angle of 24° 32' 43" an arc distance of 434.82 feet with a chord bearing of North 89° 56' 00" West and a chord distance of 431.51 feet to the point of tangency of said curve;

North 77° 39' 38" West a distance of 102.42 feet to the point of curvature of a curve to the left having a radius of 485.00 feet;

Northwesterly along said curve through a central angle of 16° 25' 24" an arc distance of 139.02 feet with a chord bearing of North 85° 52' 20" West and a chord distance of 138.55 feet to the POINT OF BEGINNING;

CONTAINING a computed area of 6.159 acres (268,287 square feet) of land.

OCTOBER 28, 2015

A drawing of even date accompanies this metes and bounds description.

INA

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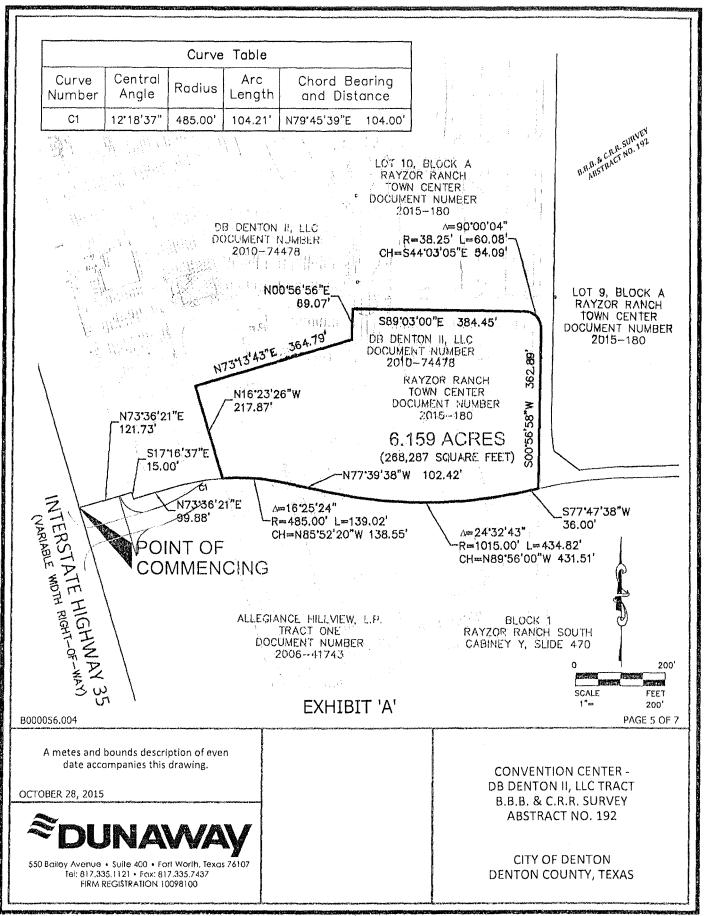
EXHIBIT 'A'

PAGE 4 OF 7

CONVENTION CENTER -DB DENTON II, LLC TRACT B.B.B. & C.R.R. SURVEY ABSTRACT NO. 192

CITY OF DENTON DENTON COUNTY, TEXAS

PLOTTED BY: Junge, Kevin ON: Friday, October 30, 2015 AT: 11:43 AM FILEP ATH: G:\Production\300000\8000056.001\Survey-DA\Drawings\C30\20120\2015)E30055.004 Convention Center Exhibits KMJ.dwg



METES AND BOUNDS DESCRIPTION Convention Center - Allegiance Hillview Tract

BEING a 5.792 acre tract situated in the B. B. B & C. R. R. Survey, Abstract Number 192, Denton County, Texas, being a portion of the tract of land described as Tract One in the deed to Allegiance Hillview, L.P. recorded in Document Number 2006-41743, Deed Records of Denton County, Texas, said 5.792 acre tract of land being more particularly described as follows:

COMMENCING at a point in the easterly right-of-way line of Interstate Highway 35 (a variable width right-of-way) for the southwesterly corner of the tract of land described in the deed to DB Denton II, LLC recorded in Document Number 2010-74478, Deed Records of Denton County, Texas;

THENCE with the southerly line of said DB Denton II, LLC tract the following:

North 73° 36' 21" East a distance of 121.73 feet to a point;

South 17° 16' 37" East a distance of 15.00 feet to a point;

North 73° 36' 21" East a distance of 99.88 feet to the point of curvature of a curve to the right having a radius of 485.00 feet;

Northeasterly along said curve through a central angle of 12° 18' 37" an arc distance of 104.21 feet with a chord bearing of North 79° 45' 39" East and a chord distance of 104.00 feet to the POINT OF BEGINNING;

Southeasterly continuing along said curve through a central angle of 16° 25' 24" an arc distance of 139.02 feet with a chord bearing of South 85° 52' 20" East and a chord distance of 138.55 feet to the point of tangency of said curve;

South 77° 39' 38" East a distance of 102.42 feet to the point of curvature of a curve to the left having a radius of 1,015.00 feet;

Southeasterly along said curve through a central angle of 24° 32' 43" an arc distance of 434.82 feet with a chord bearing of South 89° 56' 00" East and a chord distance of 431.51 feet to the point of tangency of said curve;

North 77° 47' 38" East a distance of 36.00 feet to a point;

THENCE departing the southerly line of said DB Denton II, LLC tract South 00° 56' 58" West a distance of 325.33 feet to a point;

THENCE South 73° 33' 31" West a distance of 572.34 feet to a point;

THENCE North 16° 23' 26" West a distance of 533.72 feet to the POINT OF BEGINNING;

CONTAINING a computed area of 5,792 acres (252,305 square feet) of land.

B000056.004

OCTOBER 28, 2015

A drawing of even date accompanies this metes and bounds description.

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FIRM REGISTRATION 10098100

EXHIBIT 'A'

PAGE 6 OF 7

CONVENTION CENTER -ALLEGIANCE HILLVIEW TRACT B.B.B. & C.R.R. SURVEY ABSTRACT NO. 192

CITY OF DENTON DENTON COUNTY, TEXAS

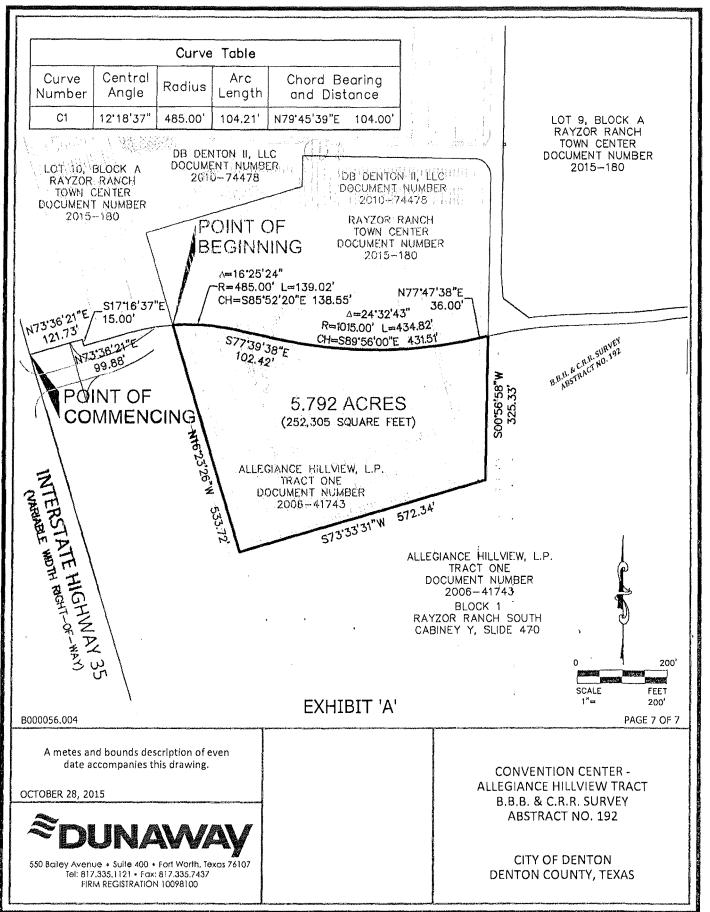


EXHIBIT 5

CITY OF DENTON CERTIFICATE OF COMPLIANCE

Company: DB Denton II, LLC (DB)

Date:

- I. Terms of Program Grant for Phase II
- 1.1 Section 3.1b of the Chapter 380 Agreement requires a minimum of 300,000 gross square feet (as measured to the exterior building wall) of retail or commercial shopping center buildings located in Phase II have a Certificate of Occupancy (CO) or a completed foundation approved by the Building Official by April 1, 2018.
 - a. Did grantee complete 300,000 gross square feet (as measured to the exterior building wall) of retail or commercial shopping center buildings located in Phase II that have a CO or a completed foundation approved by the Building Official by April 1, 2018? (If no, please complete 1.2).
 - □ YES □ NO
- 1.2 DB states that at least 270,000 gross square feet (approximately 90% of the Initial Retail Improvements in Phase II) of retail or commercial shopping center buildings located in Phase II have received a CO or have completed foundations approved by the Building Official of the City on or before April 1, 2018.
 - a. A total of ______ gross square feet have received a CO in Phase II. (Please attach any documentation)
 - b. A total of ______ gross square feet have a completed foundation approved by the City Building Official. (Please attach any documentation)

II. Additional Covenants

- 2.1 Did grantee timely submit this Certificate of Compliance as required under Section 3.1b. of the Chapter 380 Agreement?
 - □ YES □ NO
- 2.2 Did grantee comply with the other provisions of the Agreement?

□ YES □ NO

I, the authorized representative for DB hereby certify that the above information is correct and accurate pursuant to the terms of the Agreement. I further certify that grantee has fully complied with the Chapter 380 Agreement including compliance with the City of Denton Code of Ordinances, Texas Department of Public Safety Regulations, and other applicable federal, state, or local law.

DB Denton II, LLC		
Signature:		
Printed Name:	 	
Title:	 	
Date:	 	