

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Plano, Texas (“City”), and 5600 HQD Acquisitions, LLC, a Delaware limited liability company (“Company”), acting by and through their respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Company owns the real property and building located at 5600 Headquarters Drive, Plano, Texas 75024 (the “Building”), and intends to renovate and modernize the Building and Property for office use; and

WHEREAS, Company agrees to construct or cause to be constructed real property improvements that have a minimum value of \$20,253,412.00 on the Real Property; and

WHEREAS, Company has advised the City that a contributing factor that would induce the Company to make building modernization improvements, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, City Council finds that the investment of at least \$20,253,412.00 of real property improvements will promote economic development, stimulate commercial activity, and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 *et seq.* to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and its citizens, and will promote local economic development and stimulate business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

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

“Company” shall mean 5600 HQD Acquisitions, LLC, a Delaware limited liability company.

“Commencement of Construction” shall mean construction of the Modernization Improvements has commenced.

“Completion of Construction” shall mean that: (i) substantial completion of the Modernization Improvements has occurred; and (ii) the City has conducted a final inspection of the Modernization Improvements and verified completion of the Modernization Improvements.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly and significantly impact the Company’s operations in the City. An economic downturn shall not constitute an Event of Force Majeure.

“Effective Date” shall mean the last date on which all parties have executed this Agreement.

“Expiration Date” shall mean either (1) December 31, 2025, or (2) a date, to be determined by the City, in its sole discretion, after the Certificate of Compliance, as described in Section 4.02(b), has been submitted to the City for review and approval, whichever occurs first.

“Modernization Improvements” shall mean the improvements to the Building and Property with a minimum value of \$20,253,412.00 in accordance with approved Plans, including, but not limited to: (i) indoor fitness center; (ii) perimeter sidewalk along Headquarters Drive; (iii) hike and bike trail along Parkwood Boulevard; (iv) outdoor furniture, fixtures, and equipment and site amenities; (v) outdoor shade structure with fireplace/firepit; (vi) front courtyard artwork; (vii) outdoor kitchen and grill; and (viii) pickleball court.

“Plans” shall mean the plans for the Modernization Improvements to be approved by the City.

“Real Property” or “Property” shall mean 5600 Headquarters Drive, Plano, TX 75024.

Article II Term

The term of this Agreement shall begin on the Effective Date and continue until the Expiration Date, unless sooner terminated as provided herein (“Term”).

Article III Obligations of Company

In consideration of the grant of public funds as set forth in Section 4.01 below, the Company agrees to perform the following:

(a) Prior to the Effective Date (or, if later, the commencement of construction of such component of the Modernization Improvements), has or will prepare and receive approval of the Plans for such component of the Modernization Improvements from all applicable governmental authorities;

(b) Prior to the Effective Date (or, if later, the commencement of construction of such component of the Modernization Improvements), has or will obtain and pay for all necessary permits for the construction of for such component of the Modernization Improvements;

(c) By the Completion of Construction (other than the actions described in Article III(d) below), construct or cause to be constructed the Modernization Improvements; and

(d) Prior to submission of a Grant Request, as defined below, notify the City that construction of the Modernization Improvements as required in subsection (c) of this Article has been completed and to make the Building available for the City to conduct an inspection for compliance with this Agreement.

Article IV Economic Development Grant

4.01 **Grant.** City agrees to provide the Company a cash grant of \$1,972,700.00 (“Grant”) as long as Company meets each of the obligations of this Agreement.

4.02 **Grant Payment Requirements and Schedule.** Except as otherwise indicated, the Company shall be entitled to the Grant in accordance with the following requirements and schedule:

(a) **Modernization Grant.** Company shall be entitled to a grant payment of \$1,972,700.00 to offset costs to complete the construction of Modernization Improvements (“Modernization Grant”) if:

1. Company complies with the obligations set forth in Article III; and

2. Company submits a certification that the Company has completed the Modernization Improvements and added a minimum of \$20,253,412.00 in real property improvements on the Property.

(b) **Grant Payment Schedule.** Company shall be required to submit a request for payment to the City (“Grant Request”). Such Grant Request shall include any documentation required by Section 4.02 of this Agreement and by the City, at its sole discretion. With the Grant Request, Company shall submit an executed Certificate of Compliance form, attached hereto as **Exhibit “A.”** The Grant Request shall be submitted to the City by the Expiration Date. If Company does not submit its Grant Request to the City by the Expiration Date, City’s obligation to pay Company under the Modernization Grant shall terminate after the Expiration Date.

1. City will make the Grant payment within thirty (30) days of receipt of the Grant Request. City may, in its sole discretion, withhold Grant payment if additional documents or information is needed from the Company.

(c) All certifications required under this Agreement must be executed by the Company’s chief executive or financial officer.

(d) Notwithstanding the \$20,253,412 minimum value requirement, if at the time Company submits its Grant Request to the City, Company has added less than \$20,253,412 in Modernization Improvements to the Building and Property, Company shall be entitled to a pro-rata share of the Modernization Grant. The pro-rata share shall be equal to the percentage of the dollar amount the Company has added in Modernization Improvements of the \$20,253,412 minimum value requirement. For example, if Company spends \$15,000,000 of the \$20,253,412 minimum value requirement, then Company shall be entitled to 74% of the total Grant funds under this Agreement.

4.03 **Refund/Repayment/Default.**

(a) The following events shall constitute an event of default (“Event of Default”) during the Term of this Agreement, if Company:

1. Fails to complete the Modernization Improvements;
2. Fails to refund any payments as required by the City;
3. Fails to fulfill any of the obligations set forth in this Agreement; or
4. Is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers.

(b) If any Event of Default occurs prior to any Grant funds being paid to the Company by the City, then Company shall forfeit the entire Grant and the City’s obligations under this Agreement shall terminate.

(c) If any Event of Default, excluding an Event of Default under Section 4.03(a)(4), occurs after Grant funds have been paid to the Company by the City, then Company shall repay to the City all Grant funds paid to it within thirty (30) days of written notice of default from the City. City may use any efforts to collect such sums owed and Company agrees to pay any and all interest, and expenses, including attorney fees and costs incurred by City. This obligation shall survive termination of this Agreement.

(d) If a default occurs under Section 4.03(a)(4), then Company shall repay to the City all Grant funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty. Repayment of grant funds and interest shall be due not later than 120 days after the date the Company is convicted of the offense.

Article V Termination

5.01 **Events of Termination.** This Agreement terminates upon any one or more of the following:

(a) By expiration of the term and where no defaults have occurred; or

(b) If a party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof by the non-defaulting party unless a longer period is provided. Any default under this provision and right to recover any claims, refunds, damages and/or expenses shall survive the termination of the Agreement.

The City Manager is authorized on behalf of the City to send notice of default and to terminate this Agreement for any default that is not cured.

5.02 **Effect of Termination/Survival of Obligations.** The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations or default(s) that existed prior to such termination or as otherwise provided herein and those liabilities and obligations shall survive the termination of this Agreement, including the refund provision, maintenance of records, and access thereto.

Article VI Retention and Accessibility of Records

6.01 Company shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. Company shall retain such records, and any supporting documentation for the greater of:

(a) Five (5) years from the end of the Agreement period; or

- (b) The period required by other applicable laws and regulations.

6.02 Company gives City, its designee, or any of their duly authorized representatives, access to and the right to examine relevant books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or personal and Real Property belonging to or in use by Company pertaining to the Economic Development Program Grant (the "Records") upon receipt of ten (10) business days written notice from the City. The City's access to Company's books and records will be limited to information needed to verify that Company is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by City. In no event shall City's access to Company's Records include any access to any personal and/or medical data of any employees of Company except to confirm payroll information compliance for Full-Time Job Equivalents. Company shall not be required to disclose to the City any information that by law Company is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the City reserves the right to require Company to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of Company. The rights to access the Records shall terminate five (5) years after the termination or expiration of this Agreement. Failure to provide reasonable access to the Records to authorized City representatives shall give the City the right to suspend or terminate this Agreement as provided for in Section 5.01 above, or any portion thereof, for reason of default. All Records shall be retained by Company for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. Company agrees to maintain the Records in an accessible location.

Article VII Assignment

This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its wholly owned affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than ninety (90) percent of the assets of the Company as long as the Company gives sixty (60) days prior written notice to the City and the assignee executes an agreement with the City to be bound to all the terms and conditions of this Agreement and be responsible for any default(s) that occurred prior to or after the assignment.

For any assignment not covered by (a) or (b) in the preceding paragraph, the Company must obtain the prior approval of the City through its City Manager and the assignee must agree to be bound to all the terms and conditions of this Agreement and to accept all liability for any default that occurred prior to and/or after the assignment.

Any assignment agreement must be furnished in a form acceptable to the City and be provided at least thirty (30) days prior to the effective assignment date. City agrees to notify the

potential assignee of any known default, but such notification shall not excuse defaults that are not yet known to the City.

**Article VIII
Miscellaneous**

8.01 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

8.02 **Notice of Bankruptcy.** In the event Company files for bankruptcy, whether involuntarily or voluntary, Company shall provide written notice to the City within three (3) business days of such event.

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

8.04 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas
Attention: Mr. Mark D. Israelson
City Manager
1520 K Avenue
P.O. Box 860358
Plano, TX 75086-0358

If intended for the Company:
5600 HQD Acquisitions, LLC
c/o Rubenstein Partners
2929 Arch Street, 28th Floor
Philadelphia, PA, 19104
Attention: Rick Furches

With a copy to:

City of Plano, Texas
Attention: Ms. Paige Mims
City Attorney
1520 K Avenue
P.O. Box 860358
Plano, TX 75086-0358

With a copy to:

5600 HQD Acquisitions, LLC
c/o Rubenstein Partners
2929 Arch Street, 28th Floor
Philadelphia, PA, 19104
Attention: Chief Operating Officer
and Legal Department

8.05 **Compliance with Equal Rights Ordinance.** Company agrees to comply with Section 2-11(F) of the City Code of Ordinances, which reads as follows:

“It shall be unlawful for an employer to discriminate against any person on the basis of race, color, sex, religion, age, national origin, genetic information, sexual orientation, gender

identity, disability status or United States military/veteran status by the following actions or inactions:

- (a) for an employer to fail or refuse to hire, or to discharge, any person;
- (b) for an employer to discriminate against any person with respect to compensation, terms, conditions or privileges, of employment;
- (c) for an employer to limit, segregate or classify employees or applicants for employment in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee;
- (d) for an employment agency to fail or refuse to refer for employment, or to otherwise discriminate against, any person because of a protected employment characteristic;
- (e) for an employment agency to classify or refer for employment any person, on the basis of a protected employment characteristic;
- (f) for a labor organization to exclude or expel from its membership, or to otherwise discriminate against, any person because of a protected employment characteristic;
- (g) for a labor organization to fail or refuse to refer for employment any person because of a protected employment characteristic;
- (h) for a labor organization to limit, segregate or classify its members or applicants for membership, in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee or as an applicant for employment;
- (i) for a labor organization to cause or attempt to cause an employer to discriminate against a person in violation of this subsection;
- (j) for an employer, a labor organization or a joint labor-management committee, to discriminate against any person because of a protected employment characteristic in the admission to, or employment in, any program established to provide apprenticeship or other training;
- (k) for an employer to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by the employer that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic;
- (l) for an employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to membership in or any classification or referral for employment by the employment agency that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic; or

(m) for a joint labor-management committee to print or publish, or cause to be printed or published, any notice or advertisement relating to admission to, or employment in, any program established to provide apprenticeship or other training by the joint labor-management committee that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic.”

Company also understands that it is entitled to apply to the City Manager for a waiver from the Equal Rights Ordinance’s application to its business if applying it would conflict with state or federal law. During the review of the waiver request, the contract will be placed on hold.

8.06 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

8.07 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

8.08 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

8.09 **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

8.10 **Recitals.** The recitals to this Agreement are incorporated herein.

8.11 **Authorized to Bind.** The persons who execute their signatures to this Agreement represent and agree that they are authorized to sign and bind their respective parties to all of the terms and conditions contained herein.

8.12 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

[INTENTIONALLY LEFT BLANK. SIGNATURES TO FOLLOW]

This Agreement shall be effective upon the last date on which all parties have executed this Agreement.

ATTEST:

CITY OF PLANO, TEXAS, a home-rule
municipal corporation

Lisa C. Henderson, CITY SECRETARY

Mark D. Israelson, CITY MANAGER
Date: _____

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

ATTEST:

5600 HQD Acquisitions, LLC, a Delaware
limited liability company

Name: Jeffrey T. Kusumi
Title: Assistant Secretary

By: _____
Name: Eric G. Schiela
Title: Senior Managing Principal
Date: _____

EXHIBIT "A"
CERTIFICATE OF COMPLIANCE

Please select one of the options below, as applicable: (Due by December 31, 2025)

Modernization Grant

___ a. I hereby certify that 5600 HQD Acquisitions, LLC has completed the obligations in Article III of the Agreement and has added _____ of the \$20,253,412.00 minimum requirement in Modernization Improvements to the Building and the Real Property on or before December 31, 2025, and is in compliance with all terms of the Agreement and is entitled to receive payment in accordance with the Agreement.

___ b. I hereby certify that 5600 HQD Acquisitions, LLC has not completed the obligations in Article III of the Agreement and has failed to add any portion of the \$20,253,412.00 minimum requirement in Modernization Improvements to the Building and the Real Property on or before December 31, 2025, and is not entitled to receive payment in accordance with the Agreement.

ATTEST:

5600 HQD Acquisitions, LLC, a Delaware
limited liability company

Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Date

This Certificate of Compliance should be mailed to:

City of Plano
Finance Department
P.O. Box 860358
Plano, TX 75086-0358