

**GRANT AGREEMENT BETWEEN THE
CITY OF COLLEGE STATION
AND
TEXAS AVENUE CROSSING L.P.**

This Agreement is entered into by and between the CITY OF COLLEGE STATION, TEXAS, a home-rule municipal corporation organized under the laws of Texas (hereinafter referred to as "CITY") and TEXAS AVENUE CROSSING L.P., a Texas Limited Partnership (hereinafter referred to as "DEVELOPER").

WHEREAS, CITY is authorized and empowered under applicable Texas law to aid in the development of commercial enterprises and redevelopment projects within the geographic boundaries of the CITY by offering economic and other incentives to prospective new, developing, and expanding businesses; and

WHEREAS, CITY actively seeks economic development prospects in College Station through its establishment of an Economic Development Office in College Station and participation in and establishment of other nonprofit economic development corporations; and

WHEREAS, CITY has targeted certain properties within the City of College Station for redevelopment; and

WHEREAS, CITY has determined that certain conditions at the former Redmond Terrace Shopping Center site including aging infrastructure, dilapidated structures, and flood plain exist that increase development costs and create barriers to redevelopment; and

WHEREAS, DEVELOPER is redeveloping property located within College Station for use as a retail shopping center to be known as "Texas Avenue Crossing Shopping Center"; and

WHEREAS, CITY provides cash incentives for use in attracting redevelopment projects within the CITY that are qualified economic development prospects;

WHEREAS, CITY considers DEVELOPER to be a qualified economic development prospect that will redevelop property, add capital investment, generate sales tax, and meet the goals of the City of College Station Strategic Plan; and

WHEREAS, DEVELOPER has relied upon the Cash Incentives and the terms and conditions for receiving the incentives in underwriting the Facility and making changes to upgrade Facility in order to provide a first class retail shopping center for the benefit of the citizens and residents of the CITY.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and promises hereinafter set forth, the Parties represent and agree as follows:



1. Definitions

For the purposes of this Agreement, when not inconsistent with the context, words, used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined in this Agreement shall be given their common and ordinary meaning.

1.1. **Certificate of Acceptance:** A certificate issued by the City Engineer stating that the construction conforms to the plans and specifications and the standards contained in or referred to in CHAPTER 9 OF THE CITY OF COLLEGE STATION CODE OF ORDINANCES.

1.2 **Certificate of Occupancy:** As defined in SECTION 110 OF THE INTERNATIONAL BUILDING CODE, 2000 EDITION AS ADOPTED AND AMENDED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION.

1.3 **Certificate of Completion/Compliance:** As defined in SECTION 1702 OF THE INTERNATIONAL BUILDING CODE, 2000 EDITION AS ADOPTED AND AMENDED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION.

1.4 **Economic Incentives:** Consist of the following:

1.4.1 **Cash Incentives:**

- (a) A lump sum in the amount of \$200,000.00 (the "Development Incentive") to DEVELOPER to facilitate redevelopment of the site as more fully described in Section 3.1.; and
- (b) An additional lump-sum early completion incentive of \$65,000 (the "Early Completion Incentive"). DEVELOPER will receive this payment if the construction is completed, DEVELOPER has the Facility lease-ready, DEVELOPER has a signed lease with Bed, Bath and Beyond, and Developer receives a Certificate of Completion for the Facility on or prior to February 28, 2004. Additionally, to receive this payment DEVELOPER may not be in default under this Agreement or be in violation of any applicable, federal, state law or City of College Station codes or ordinances.

1.5 **Effective Date:** Is that date on which this Agreement is signed by the last party whose signing makes the Agreement fully executed.

1.6 **Facility or Development:** The real property described in Section 1.7 and the improvements described in Sections 1.8, 3.1, and elsewhere herein to be constructed on the Property owned by DEVELOPER more commonly known as "Texas Avenue Crossing Shopping

BDD

Center", a retail shopping center development. The Facility is described in the plans and specifications attached hereto as Exhibit "B" and as approved and on file with the City of College Station Planning Department. The capital investment for the premises is described in Article 3.1 hereinbelow.

1.7 **Property:** The property owned by the DEVELOPER consisting of approximately 7.06 acres located at 1408 South Texas Avenue located in the corporate limits of College Station more fully described in the plat attached hereto as Exhibit "A", incorporated herein by reference and currently under development by DEVELOPER for use as a retail shopping center site.

1.8 **Property Improvements:** Means all enhancements to the Property including, but not limited to, any real property improvements, infrastructure improvements, buildings, furniture, fixtures and equipment, and landscaping, to be located at the Property, as part of DEVELOPER'S development of a retail shopping center.

2. CITY'S Incentive Package, Obligations and Representations

2.1. Incentives

2.1.1 CITY agrees to fund an economic development grant to provide incentives to DEVELOPER as authorized by CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE (VERNON 1999 AND VERNON SUPP. 2003). The grant will consist of the incentive(s) described in Section 1.3.

2.1.2 The incentive(s) will be granted to DEVELOPER on condition that and only after the requirements established in this Section 2 and Sections 3 and 5 hereinbelow as well as any other requirements specified in this Agreement or in any applicable requirement in the City of College Station Code of Ordinances (collectively, the "Requirements") have been fulfilled by DEVELOPER. These requirements are:

- (a) DEVELOPER receives a Certificate of Completion for the building shell of the Facility and related site improvements (the "Shell Certificate"), and Certificates of Completion for tenant space for Bed, Bath & Beyond, and Jason's Deli, each as issued by the City Engineer for the Facility constructed pursuant to Section 3 herein (cumulatively, the "Completion Certificates"). DEVELOPER will also be entitled to the incentive described in Section 1.4.1(b) upon compliance with the requirements therein;
- (b) Issuance of the Completion Certificates and the Project opens for business to the general public on or before December 31, 2004.
- (c) Issuance of a Certificate of Acceptance from the City Engineer for infrastructure constructed by DEVELOPER.

2.1.3 CITY shall pay to DEVELOPER the Cash Incentives set forth in Section 1.4 within twenty (20) business days after DEVELOPER fulfills the Requirements contained

in Sections 2, 3 and 5 of this Grant Agreement. Prior to payment of the Cash Incentives, CITY shall certify that all bills payable by DEVELOPER to CITY have been paid in full.

3. DEVELOPER'S Obligations and Representations

3.1 Capital Investment

3.1.1 In order to qualify DEVELOPER for the incentives specified in Section 1.3 DEVELOPER agrees to:

- (a) provide copies of executed leases to City for approximately 29,655 sq. ft. currently under lease with two tenants: Bed, Bath and Beyond and Jason's Deli prior to execution of this Agreement.
- (b) invest at least \$6,000,000 for Property Improvements completed on or before December 31, 2004.
- (c) redevelop, and construct a retail shopping center consisting of a minimum of 80,000 square feet of retail space. The Facility shall be constructed in substantial accordance with Exhibit "B" the plans, specifications and site plan approved and on file with the City of College Station Development Services Department as well as all applicable laws, ordinances, regulations, and rules.
- (d) use the façade, elevation and color scheme for the Facility, which is depicted in Exhibit "C" attached hereto and incorporated herein by reference.
- (e) have the Facility lease-ready on or before December 31, 2004.

4. Term

The term of this Agreement is from the date of execution of this Agreement through December 31, 2005.

5. Reporting Requirements

5.1. Reports

5.1.1 DEVELOPER shall submit to the CITY any and all reasonable information or reasonable reports reasonably requested to verify that the DEVELOPER has met all obligations as specified in Sections 2 and 3. DEVELOPER shall submit to the Economic Development Director a notarized affidavit stating that all bills for labor, materials, and incidentals incurred have been paid in full, that any claims from manufacturers, materialmen, and subcontractors have been released, and that there are no claims pending of which the Developer has been notified. The submission of these reports and information shall be the responsibility of DEVELOPER. Investment of the

minimum required amount set forth in Section 3.1.1(b) shall be certified by Brad Sondock in his capacity as a manager of DEVELOPER's general partner.

5.1.2 DEVELOPER shall submit the information and/or reports required herein on or before the day that is twenty days after the earlier of (i) the date of issuance of the Completion Certificates and the DEVELOPER opens for business; or (ii) the date on which they are requested by the CITY (provided if not all requirements are then satisfied, then DEVELOPER shall be granted additional time not to exceed twenty days after the date of issuance of the Completion Certificates to submit information and reports supporting the satisfaction of those requirements). If DEVELOPER fails, within thirty (30) days after receipt of written notice from the CITY, to submit the information and/or reports, then DEVELOPER shall be ineligible to receive the economic incentive(s) specified in Section 1.3 and CITY's obligation to grant the incentives shall terminate without any liability.

5.1.3 All submittals in this Section shall be to the Director of Economic Development or her designee.

6. **Compliance with Applicable Laws**

DEVELOPER will remain in compliance with all applicable laws, rules and regulations including without limitation, all applicable environmental laws, rules and regulations during the term of this Agreement.

7. **Default**

7.1 **DEVELOPER Default**

7.1.1 If DEVELOPER defaults in any material term or condition of this Agreement, then CITY shall not be obligated to approve or disburse the grant incentives specified under this Grant Agreement unless such default is cured by the defaulting party after receipt of notice of the default, but not more than 30 days after the occurrence of said default, unless such cure will reasonably take more than thirty (30) days, in which case the City shall approve additional time to cure the default upon submission of a plan and schedule to promptly cure the default within a reasonable time, and provided the party commences the cure within the thirty (30) day period. In no event shall this Section 7 be construed to extend the time of this Agreement beyond the term specified in this Agreement and the parties acknowledge and agree that a default shall not extend the time for performance or cure beyond the end of the term specified in Section 4.

7.1.2 A material breach by DEVELOPER consists of, but is not limited to, any of the following individual or cumulative events: failure of DEVELOPER to locate the Facility at DEVELOPER's site within College Station; failure of DEVELOPER to meet the requirements outlined in Section 3; failure of DEVELOPER to comply with all laws, codes and ordinances relating to the construction of the infrastructure and improvements

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that constitute the subject matter of this Agreement; failure of DEVELOPER to meet the requirements for the receipt of the Completion Certificates on or before December 31, 2004; failure of DEVELOPER to open the Facility to the public on or before December 31, 2004; failure to obtain a certificate of acceptance for any infrastructure improvements; submittal of any information that DEVELOPER knows or should know is incorrect at the time of its submittal; and, any material misrepresentation of fact concerning the subject matter of this Agreement.

7.1.3 CITY shall give to DEVELOPER notice of any default of DEVELOPER. If DEVELOPER has not received grant funds, DEVELOPER shall have the right, but not the obligation, to cure the default as provided herein.

7.1.4 Except as expressly set forth in Section 8 of this Agreement, in the event DEVELOPER fails to cure any default under this Agreement within the notice and cure periods set forth in Section 7.1.1 hereof, then CITY's sole and exclusive remedy as to DEVELOPER shall be to withhold payment of the Cash Incentives. In no event shall DEVELOPER be liable to CITY for any consequential damages as a result of any breach or default under this Agreement.

7.2 CITY Default

In the event that CITY materially breaches its obligation to disburse the Cash Incentives to DEVELOPER under this Agreement and DEVELOPER is not in default and has fully performed all of his obligations under this Agreement, DEVELOPER, at its option, may specifically enforce this Agreement, and/or pursue its remedies available at law. In no event shall City be liable to DEVELOPER for any consequential damages as a result of any breach or default under this Agreement.

8. Indemnity

DEVELOPER agrees to and shall indemnify and hold harmless and defend CITY, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all reasonable expenses of litigation, court costs, reasonable attorney's fees, and other expenses for injury to or death of any person, for damage to any property, or its failure to abide by all applicable environmental laws, rules and regulations arising out of or in connection with DEVELOPER's operation and construction of improvements contemplated by this Agreement on DEVELOPER's site.

9. Release

DEVELOPER releases, relinquishes and discharges the CITY, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of, any person (whether they be either of the parties hereto, their employees or other third parties) and any loss of

or damage to property (whether property of either of the parties hereto, their employees, or of third parties) or their respective failure to abide by all applicable environmental laws, rules and regulations that is caused by or alleged to be caused by, arising out of, or in connection with DEVELOPER's operation and construction of improvements contemplated by this Agreement on DEVELOPER's site.

By entering into this Agreement, the City does not waive its governmental immunity or the limitations as to damages contained in the Texas Tort Claims Act.

10. Assignment

This Agreement may not be assigned by DEVELOPER without the express consent of the College Station City Council.

11. Invalidity

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

12. Written Notice

All notices required by this Agreement (i) shall be in writing, (ii) shall be addressed to the parties as set forth below unless notified in writing of a change in address, and (iii) shall be deemed to have been delivered either when personally delivered or, if sent by mail, in which event it shall be sent by registered or certified mail, return receipt requested, three (3) business days after mailing. The addresses of the parties are as follows:

To DEVELOPER: Texas Avenue Crossing, L.P.
720 N. Post Oak, Suite 300
Houston, TX 77024
Attn: Brad Sondock

With a copy to: Reid C. Wilson
Wilson, Cribbs & Goren, P.C.
2500 Fannin
Houston, Texas 77002

To CITY: City of College Station
P.O. Box 9960
College Station, Texas 77842



Attn: City Manager

With a copy to:

City Attorney
1101 Texas Avenue
College Station, TX 77842

13. Entire Agreement

It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings, written or oral, between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the CITY, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

14. Amendment

No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of CITY and DEVELOPER.

15. Texas Law

This Agreement has been made under and shall be governed by the laws of the State of Texas.

16. Place of Performance and Jurisdiction

Performance and all matters related thereto shall be in Brazos County, Texas, United States of America and venue shall lie in a court of competent jurisdiction in Brazos County, Texas.

17. Authority to Contract

Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective entity.

18. Waiver

Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in

writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

19. Representation

DEVELOPER represents and warrants that no member of the College Station City Council has an interest in the Property, and that the same are not owned or leased by any member of the College Station City Council. DEVELOPER further represents and warrants that no member of the College Station City Council is under contract either directly or indirectly with DEVELOPER or its agents, contractors or subcontractors. This representation and warranty shall be in effect for the full term of this Agreement.

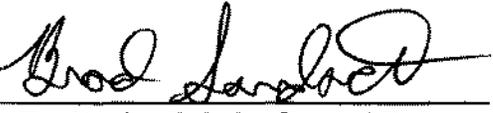
20. Construction

The parties acknowledge that each party and its counsel have reviewed and revised this Contract and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any amendments or exhibits hereto.

[signatures follow on next page]

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TEXAS AVENUE CROSSING, L.P.

By: 
SonTor Realty, L.L.C., General Partner
By Brad Sondock, General Partner

Date: _____

CITY OF COLLEGE STATION, TEXAS

By: _____

Ron Silvia, Mayor

Date: _____

Connie Hooks, City Secretary

Date: _____

APPROVED:

Thomas E. Brymer, City Manager

Date: _____

Charles Cryan, Director of Fiscal Services

Date: _____


City Attorney

Date: _____

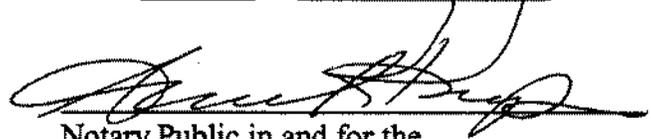
THE STATE OF TEXAS §
COUNTY OF HARRIS §

ACKNOWLEDGMENT

Before me, the undersigned authority, on this day personally appeared Brad Sondock, as General Partner of SonTor Realty, L.L.C., a Texas Limited Liability Corporation and General Partner of Texas Avenue Crossing, and known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 18th of NOVEMBER, 2003.




Notary Public in and for the
State of Texas

THE STATE OF TEXAS §
COUNTY OF BRAZOS §

ACKNOWLEDGMENT

Before me, the undersigned authority, on this day personally appeared Ron Silvia, as Mayor of the CITY OF COLLEGE STATION, a Texas home rule municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the _____ of _____, 2003.

Notary Public in and for the
State of Texas