

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Economic Development Agreement

This Economic Development Agreement (“Agreement”) is made by and between the City of Lancaster, Texas (“City”), and Blue Grove @ Beltline 2014 LP, a Texas limited partnership, (the “Company”), acting by and through their respective authorized representatives.

WITNESSETH:

WHEREAS, the Company has purchased approximately 7.5 acres of real property in the City of Lancaster, Texas, and being more particularly described in **Exhibit “A”** (the “Property”); and

WHEREAS, the Company intends to construct a retail shopping center with a minimum of 42,000 square feet of retail tenant space in one or more buildings and associated infrastructure with a capital improvement value to the Premises of approximately \$10,500,000 (the “Project”); and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to undertake the Project would be an agreement by the City to provide an economic development grant to the Company to reimburse it for a portion of the Real Estate Taxes (hereinafter defined); and

WHEREAS, the City desires to encourage business expansions within the City that will add property tax base and generate additional sales tax and other revenue for the City; and

WHEREAS, the promoting the expansion of new or existing businesses within the City will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the Premises tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development, and this Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs; and

WHEREAS, the City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 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 this Agreement is in accordance with the City Economic Development Policy and will: (i) further the objectives of the City; (ii) benefit the City and the City’s inhabitants; and (iii) will promote local economic development and stimulate business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties 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:

“Annual Grant(s)” shall mean annual economic development grants to be provided by the City in an amount equivalent to 40 percent (40%) of the Real Property Taxes assessed against the Premises and the Project for a given tax year for a period of five (5) consecutive tax years beginning with the first calendar year following the Commencement Date, to be paid as set forth herein.

“Casualty” shall mean the Improvements are wholly or partially destroyed by fire, tornado, hurricane, earthquake, flood or similar casualty that renders the Improvements unfit for the intended purpose.

“City” shall mean the City of Lancaster, Texas.

“Commencement Date” shall mean the later of (a) January 1 of the calendar year immediately following the date a Certificate of Occupancy is issued by the City for the Company’s occupancy of the improvements; and (b) January 1, 2015.

“Company” shall mean Blue Grove @ Beltline 2014 LP, a Texas limited partnership.

“Company Affiliate” shall mean any parent of Company or any wholly-owned subsidiary of either Company or of Company’s parent.

“Effective Date” shall mean the last date of execution hereof.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of a party’s existence as a going business, insolvency, appointment of receiver for any part of such party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“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, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the party), fires,

earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

“Expiration Date” shall mean the fourth (4th) year after the payment of the first Annual Grant.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Company or any property or any business owned by Company within the City.

“Premises” shall mean the real property described on Exhibit “A with or without improvements.”

“Payment Request” shall mean a written request from Company to the City for payment of an Annual Grant.

“Project” shall mean the commencement and completion of the development of the approximately 7.5 acre Premises and the construction of a shopping center in one or more buildings to include at least 42,000 square feet of retail tenant space and associated infrastructure for the operation of the retail shopping center.

“Real Property Taxes” shall mean all real estate ad valorem taxes assessed by the City on the real property with or without improvements..

“Required Use” shall mean continuous operation of a retail project on the Premises.

“Taxable Value” shall mean the assessed value of the Premises as certified by the appraisal district, or its successor, for a given year.

Article II Term

The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and end on December 31 of the fifth (5th) anniversary of the date of issuance by the City of a final certificate of occupancy for the Project.

Article III Economic Development Grants

3.1 **Annual Grants**. Subject to the Company’s continued satisfaction of all the terms and conditions of this Agreement, the City agrees to provide the Company with the Annual Grants to be paid on March 1 of each calendar year, (or the immediately following business day of March 1 is not a business day), beginning with March 1 of the first full calendar year following

the Commencement Date, provided the City has timely received the Real Estate Taxes assessed against the Premises and the Project in full for the respective tax year (i.e., the tax year immediately preceding the year in which an Annual Grant is made; and such Real Estate Taxes with respect to that immediately preceding tax year are used to determine the amount of each Annual Grant). For illustration purposes only, assume that the Real Estate taxes assessed against the Premises and the Project for tax year 2015 is \$100,000.00 then the amount of the first Annual Grant for the Premises and the Project for Tax Year 2015 would be, \$40,000.00 ($\$100,000.00 \times 40\%$), and would be paid on March 1, 2016.

3.2 **Grant Limitations.** Under no circumstances shall City obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Company. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

3.3 **Current Revenue.** The Annual Grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City; provided however the City agrees during the term of this Agreement to make a good faith effort to appropriate funds each year to pay the Annual Grant for the then ensuing fiscal year. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grants except as allowed by law. The City shall not be required to pay any Annual Grants if prohibited under federal or state legislation or a decision of a court of competent jurisdiction.

3.4 **Tax Protest.** In the event the Company or the owner of the Premises timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Premises, or any portion thereof, with the applicable appraisal district (or its successor), and such protest and/or contest results in a final determination that changes the appraised value and/or the Taxable Value of the Premises or the amount of ad valorem taxes assessed and due for the Premises, or portion thereof, after an Annual Grant has been paid for such Premises for such tax year, the Annual Grant for such tax year shall be adjusted (increased or decreased as the case may be) accordingly and paid on the date of payment of the next Annual Grant payment date, or if change resulted in overpayment, differences shall be deducted from next annual grant or within sixty (60) business days after such determination in the event no further Annual Grant payments are due under the Agreement.

3.5 **Refunds.** In the event the City determines in its sole discretion that the amount of an Annual Grant paid by the City to the Company was incorrect, the Company shall, within sixty (60) days after receipt of written notification thereof from the City specifying the amount by which such Annual Grant exceeded the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), pay such amount to the City. If the City determines that the amount by which such Annual Grant was less than the correct amount to which the Company was entitled (together with such records, reports and other information necessary to support such determination), the City shall, within sixty (60) days, pay the adjustment to the Company. If the Company disputes the City's determination or the City's calculation of any Annual Grant, the parties shall seek to amicably resolve the matter, subject to either party's right to pursue any available rights or remedies in connection therewith.

Article IV
Conditions to the Economic Development Grant

The obligation of the City to provide the Grants shall be conditioned upon the Company's continued compliance with and satisfaction of each of the terms and conditions of this Agreement and each of the conditions set forth below:

4.1 During the term of this Agreement following the Commencement Date and continuing thereafter until the Expiration Date, or earlier termination, the Company agrees to continuously own the Improvements and shall not allow the operation of the Improvements in conformance with the Required Use to cease for more than ninety (90) days except in connection with, and to the extent of a Casualty or an Event of Force Majeure.

4.2 The Company shall commence and complete Project construction on the Premises within twelve months (12 months) of the execution date of this agreement subject to Casualty and any Event of Forced Majeure.

4.3 The Company shall not have an uncured breach or default of this Agreement.

4.4 The Company shall comply with all the terms and conditions of this Agreement.

Article V
Termination

5.1 This Agreement terminates on the Expiration Date, and may prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of the parties;
- (b) by either party, if the other party defaults or breaches any of the material terms or conditions of this Agreement and such default or breach is not cured within sixty (60) days after written notice thereof;
- (c) by City, if any Impositions owed to the City or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions);
- (d) by City, if Company suffers an Event of Bankruptcy or Insolvency; or
- (e) by either party if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

5.2 In the event the Agreement is terminated by the City pursuant to Section 5.1(b), (c), or (d), the Company shall not be entitled to receive any subsequent Annual Grants under this Agreement but shall have no obligation to refund to the City any Annual Grants (or portion thereof or interest accrued thereon) previously paid by the City to the Company.

5.3 In the event the Agreement is terminated by the City pursuant to Section 5.1(e), the Company shall, only if such legislation or court decision requires, immediately refund to the City an

amount equal to the annual Grant(s) paid by the City to the Company immediately preceding the date of such termination. The repayment obligation of Company set forth in this section 5.3 hereof shall survive termination.

**Article VI
Miscellaneous**

6.1 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto.

6.2 **Limitation on Liability.** It is understood and agreed between the parties that the Company and City, in satisfying the conditions of this Agreement, have acted independently, and the City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.3 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

6.4 **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. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

6.5 **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 City, to:

City of Lancaster
Attn: Opal Mauldin Robertson
City Manager
P. O. Box 940
211 North Henry Street
Lancaster, Texas 75146-0946

With a copy to:

Robert E. Hager
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

If intended for Company:

Blue Grove @ Beltline 2014 LP
Attn: Kent Stainback
5622 Dyer Street Suite 200
Dallas, Texas 75206

6.6 **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, except as provided in any Exhibits attached hereto.

6.7 **Governing Law.** The Agreement shall be governed by 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; and exclusive venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

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

6.9 **Legal Construction.** 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.

6.10 **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.11 **Successors and Assigns.** This Agreement may not be assigned without the City's prior written consent, except to a Company Affiliate. Neither the Company nor its legal representatives or successors in interest shall, by operation of law or otherwise, assign, mortgage, pledge, encumber or otherwise transfer this Agreement or any part hereof, or the interest of the Company under this Agreement in either case except to a Company Affiliate, without obtaining the City's prior written consent, which may be given or withheld in the City's sole discretion. Any attempted assignment by the Company, except to a Company Affiliate, in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement. Notwithstanding the foregoing, in the event that the Company ceases to lease the Property prior to the end of the Term of this Agreement, Company may assign this Agreement to the then-current owner of the Property, subject to the City's consent, which shall not be unreasonably withheld.

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

6.13 **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.

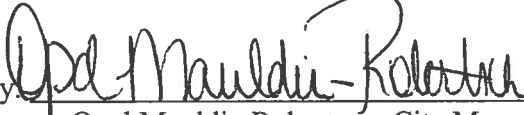
6.14 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.15 **Conditions Precedent.** This Agreement is subject to and conditioned upon the following conditions which are conditions precedent to the obligations of the parties: (i) Company shall diligently and faithfully, in a good and workmanlike manner, make or cause the construction and finish out improvements to the Premises in accordance with all applicable state and local laws and regulations or a valid waiver thereof; (ii) Company shall obtain a Certificate of Occupancy for the Premises.


Signature page to follow

EXECUTED on this 22nd day of September, 2014.

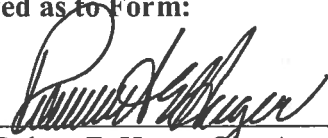
CITY OF LANCASTER, TEXAS

By: 
Opal Mauldin Robertson, City Manager

Attest:

By: 
Sorangel O. Arenas, City Secretary

Approved as to Form:

By: 
Robert E. Hager, City Attorney

EXECUTED on this 24th day of SEPTEMBER, 2014.

BLUE GROVE @ BELTLINE 2014 LP

By: KMS Retail, Inc.
a Texas corporation
its general partner

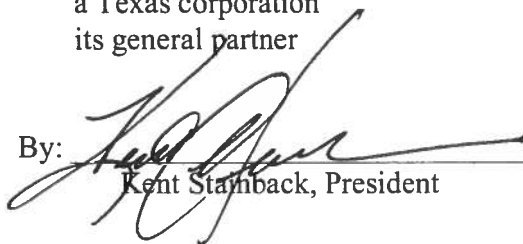
By: 
Kent Starnback, President

EXHIBIT A

PROPERTY

BEING a tract of land situated in the A, Bledsoe Survey, Abstract No. 113, City of Lancaster, Dallas County, Texas, and being a portion of a called 4.119 acre tract of land described in the deed to Mills Branch Village Center, LTD., as recorded in Volume 2004039, Page 8433, Deed Records of Dallas County, Texas, and a portion of a called 9.012 acre tract of land described in the deed to Mills Branch Village Center, LTD., as recorded in Volume 2004039, Page 8437, said Deed Records of Dallas County, Texas, and a portion of a called 1.104 acre tract of land described in the deed to Mills Branch Village Center, LTD., as recorded in Instrument No. 20080077097, Official Public Records of Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod found at the southwest corner of a corner clip at the intersection of the east right-of-way line of Blue Grove Road and the south right-of-way line of West Belt Line Road, said point being the western-most northwest corner of said 4.119 acre tract;

THENCE North 43°54'46" East, along said corner clip, a distance of 11.23 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for corner in said south right-of-way line of West Belt Line Road;

THENCE North 88°50'03" East, along the north line of said 4.119 acre tract, a distance of 495.82 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for corner from which the northern-most northwest corner of 0.706 acre street easement described in the deed to City of Lancaster, as recorded in Instrument No. 20080063068, said Official Public Records of Dallas County, Texas, bears North 88°50' 03" East, a distance of 178.96 feet;

THENCE South 01°09'57" East, departing said south right-of-way line of West Belt Line Road, crossing said 9.012 acre tract and said 1.104 acre tract, a distance of 654.17 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for corner in the south line of said 1.104 acre tract, and in the north line of a called 73.962 acre tract described in the deed to C.T. Beckhamt as recorded in Instrument No. 200600470490, said Official Public Records of Dallas County, Texas, and from which the southeast corner of said 1.104 acre tract bears North 88° 29' 40" East, a distance of 448.03 feet;

THENCE South 88°29'40" West, along the south line of said 1.104 acre tract, and along the north line of said 73.962 acre tract, a distance of 515.24 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for corner in said east right-of-way line of Blue Grove Road;

THENCE along said east right-of-way line of said Blue Grove Road, the following four (4) courses and distances:

North 1°29'52" West, a distance of 268.79 feet to a 1/2 inch capped iron rod stamped "C&P INC" found for corner at a salient corner in the said east right-of-way line of Blue Grove Road;

North 88°39'18" East, a distance of 33.45 feet to a 1/2 inch iron rod found for corner at an-entrant corner in said east line of said Blue Grove Road;

North $0^{\circ}44'18''$ West, a distance of 200.30 feet to a 5/8-inch iron rod with a red plastic cap, stamped "KHA" set for corner at the beginning of a curve to the left having a central angle of $14^{\circ}37'31''$, a radius of 712.78 feet, a chord bearing and distance of North $8^{\circ}06'31''$ West, 181.45 feet;

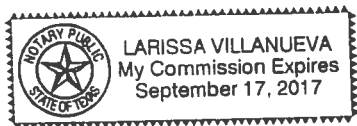
In a northwesterly direction, with said curve to the left, an arc distance of 181.94 feet to a point at the **POINT OF BEGINNING** containing 326,642 square feet, containing 7.499 acres of land, more or less.

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Opal Mauldin-Roberts, City Manager of the City of Lancaster, a Texas non-profit corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the 22nd day of September, 2014.



Larissa Villanueva
Notary Public, State of Texas

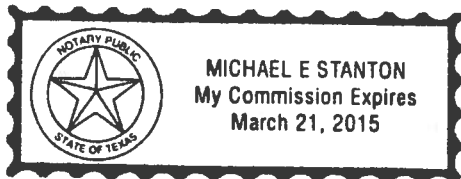
My Commission Expires:
September 17, 2017

ACKNOWLEDGMENT

STATE OF TEXAS §
 COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of TEXAS, on this day personally appeared KENT STAINBACK, PRESIDENT OF KMS Retail, Inc. general partner of Blue Grove @ Beltline 2014 LP, a Texas Limited Partnership known to me to be the person and agent whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said corporation, and that he executed the same as the act of said corporation for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND SEAL OF OFFICE this the 24th day of September, 2014.



My Commission Expires:
3-21-2015

Michael E Stanton
 Notary Public, State of ~~California~~ TEXAS