

## AGREEMENT FOR EXCHANGE

This Agreement for Exchange (the “Agreement”) is made as of the Effective Date (hereinafter defined) by and between Montgomery County, Texas, a political subdivision of the State of Texas (“County”) and TW-VOGMVC, LLC, a Delaware limited liability company (“VOGM”). The County or VOGM may be referred to singly as “Party” or collectively as “Parties.”

### RECITALS

The County owns two (2) parcels of improved real estate currently housing the South Montgomery County Regional Library and the South Montgomery County Community Center (collectively the “County Owned Properties”).

VOGM recently acquired that certain improved property located in the Grogan’s Mill Village Retail Center, The Woodlands, Montgomery County, Texas (the “GM Property”). The GM Property is aging and VOGM would like to revitalize it.

The County would like to relocate the South Montgomery County Regional Library and the South Montgomery County Community Center and replace them with new, modern facilities located in a portion of the GM Property. The redevelopment of the County Owned Properties and the GM Property would benefit both the County and The Woodlands community at large.

The revitalization of the GM Property, as well as the modernization of the County Owned Properties will bring positive economic and social impacts to the County and coordinating with VOGM is the most efficient and beneficial means for achieving those benefits for county residents.

**1. DEFINITIONS** – In addition to any other defined terms contained in this Agreement, the following definitions will apply to those terms used in this Agreement:

- A. “County Owned Properties” being those two (2) parcels described as the “South Montgomery County Regional Library” and the “South Montgomery County Community Center.”
- B. “Design Documents” means all specifications, drawings, schematic, and other concepts, reports, BIM files, CAD files, and/or other design work and documents relating to developing and constructing the New County Facilities.
- C. “Development Agreement” being that certain Development Agreement executed concurrently herewith between County and VOGM, which sets forth the terms and provisions governing VOGM’s construction of the New County Facilities and other improvements. The Development Agreement shall constitute a part of this Agreement for all purposes.
- D. “GM Property” being a portion of the 8.72 acres, more or less, comprised of two (2) parcels described in (1) Special Warranty Deed from Grogan’s Mill Retail Center GP, LLC to TW-VOGMVC, LLC recorded under clerk’s file no. 2023039535 in the Official Public Records of Montgomery County, Texas; and (2)

Special Warranty Deed from Randall's Food and Drugs, LP to TW-VOGMVC, LLC recorded under clerk's file no. 2023039543 in the Official Public Records of Montgomery County, Texas, SAVE AND EXCEPT the retail tracts to be identified and retained by VOGM, being more particularly shown in **Exhibit A** attached to and made a part hereof.

- E. "South Montgomery County Regional Library" being that tract containing 3.0868 acres, more or less, in the John Taylor Survey, A-547 and the Walker County School Land Survey, A-599, described on **Exhibit B-1** attached hereto and made a part hereof and being the same property described in deed recorded under clerk's file no. 9236102 in the Official Public Records of Montgomery County, Texas.
- F. "South Montgomery County Community Center" being that tract containing 2.6415 acres, more or less, in the John Taylor Survey, A-547, being a portion of Restricted Reserve A, Metro Center Section 24, a subdivision in Montgomery County, Texas according to the map or plat of said subdivision recorded in Cabinet "F", sheet 088-A, Map Records of Montgomery County, Texas described on **Exhibit B-2** attached hereto and made a part hereof and being the same property described in deed recorded under clerk's file no. 99010759 in the Official Public Records of Montgomery County, Texas.
- G. "Effective Date" means the date on which this Agreement is last signed by the Parties.
- H. "Permitted Encumbrances" means those items reflected on the Title Commitments and/or Surveys, as further defined in Section 5.A. herein.
- I. "New County Facilities" means a community center and public library complex of one or more buildings to be constructed by VOGM or an affiliate of VOGM on the GM Property in accordance with Section 12.D of this Agreement and the Development Agreement (defined above).
- J. "Substantial Completion" will mean completion of the New County Facilities in accordance (in all material respects) with the scope set forth in the Development Agreement.

**2. PROPERTIES SUBJECT TO THIS AGREEMENT** — The Properties subject to this Agreement are the County Owned Properties and the GM Property. The County Owned Properties and the GM Property may be separately referred to as "Exchange Property" or "Exchange Properties".

**3. EXCHANGE** — For and in consideration of the exchange of the Exchange Properties (the "Exchange") and the further promises and obligations of the Parties contained herein, the Parties agree as follows:

- A. County agrees to exchange, transfer and convey to VOGM, and VOGM agrees to accept from the County, good and indefeasible title in fee simple to the County Owned Properties together with such other rights, interests, and properties relating

to the aforesaid property as may be specified in this Agreement to be sold, transferred, assigned or conveyed by the County to VOGM, on and subject to the terms and conditions herein set forth; and

- B. VOGM agrees to exchange, transfer and convey to County good and indefeasible title in fee simple to the GM Property and the New County Facilities together with such other rights, interests, and properties relating to the aforesaid properties as may be specified in this Agreement to be sold, transferred, assigned or conveyed by VOGM to the County, and subject to the terms and conditions herein set forth;

All of the Exchange Properties exchanged, conveyed, assigned and transferred to each party at Closing (hereinafter defined) shall be free and clear of all mortgages, deeds of trust, security interests, liens, and other encumbrances and subject only to the Permitted Encumbrances specifically approved by the Parties, as herein provided.

**4. TITLE COMPANY AND ESCROW AGENT** —Stewart Title of Montgomery County at 24 Waterway, Suite 250, The Woodlands, Texas 77380 (hereinafter called the “Title Company” and/or “Escrow Agent”) will act as the Escrow Agent for transaction contemplated hereby.

**5. TITLE POLICY AND COMMITMENT.**

- A. **TITLE POLICY.** Either party may obtain at its own expense an owner policy of title insurance (“Title Policy”) issued by Title Company in the amount of the appraised value of the property exchanged to the respective party, dated as of the date of Closing, insuring the party against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the Permitted Encumbrances affecting the GM Property and the County Owned Property and currently filed of record or to be filed and recorded in Montgomery County, Texas prior to Closing, and shall include, without limitation, the following:
- (1) the standard printed exceptions, excluding the standard survey exception, including those exceptions for standby fees and taxes,
  - (2) any and all exceptions pertaining to the reservation of oil, gas and other minerals,
  - (3) any and all utility easements or other easements, including without limitation all utility easements created by the plat or dedication, if any,
  - (4) the standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements;
  - (5) an exception to recorded or dedicated access to and from the Property to a public road;

- (6) with respect to the GM Property, an easement providing for (i) parking serving the retail components of VOGM's contiguous property and access to such components, (ii) access to such components and for use of a portion of such property for a farmer's market and parking in connection therewith, and (iii) parking serving the library and community center but subject to public use during local, state and federal elections (early voting and election day).
- (7) a license to Grogan's Mill Village Association for use of a portion of the GM Property for a farmers market and/or parking in connection therewith; and
- (8) any other exception which the Party acquiring such Exchange Property approves or is deemed to have approved.

B. **TITLE COMMITMENT.** Any Party requiring an owner's policy of title insurance shall request the same from the Title Company. Within thirty (30) days of a request for a Title Commitment, the Title Company shall furnish at the expense of the party requesting the same, the following:

- (1) Commitment for Title Insurance ("Title Commitment") from Title Company, setting forth the status of the title of the Property and showing all liens, claims, encumbrances, easements, rights-of-way, encroachments, reservations, restrictions, and any other matters affecting the Land or Improvements; and
- (2) True, complete, and legible copies of all documents referred to in the Title Commitment, including but not limited to, deeds, lien instruments, plats, reservations, restrictions, and easements ("Exception Documents").

Each party authorizes Title Company to mail, email or deliver the Commitment and Exception Documents to the respective Party's address shown in this Agreement.

**6. SURVEY** — Within sixty (60) days from the Effective Date of this Agreement, VOGM shall cause the Exchange Properties to be surveyed to reflect the boundary(ies) of the GM Properties to be exchanged and transferred to the County and to reflect the boundaries of the County Owned Properties. VOGM shall pay for the cost of the survey(s) for the Exchange Properties.

A. **CONTENT AND NATURE OF SURVEY** — Each Survey shall reflect:

- (1) the actual dimensions, outside boundary lines, and area (as described below) the Land;
- (2) the location of any:
  - a. easements, streets, roadways, rights-of-way, (existing or proposed);
  - b. set-back lines;

- c. encroachments, or overlaps thereon or there over;
  - d. area, if any, within the Land that has been designated by the Federal Insurance Administration, the Army Corps of Engineers, or any other governmental agency or body as being subject to special flooding hazards; and
  - e. the area and banks of any lakes, ponds, creeks, rivers, watercourses, and designated flood control detention areas;
- (3) the boundary lines of all Improvements;
  - (4) the area within the Land shall be expressed in total acres to the nearest ten thousandths of an acre and the total number of square feet of Land, and reflect the location, actual dimensions of and area within (expressed in square feet and in acres, to the nearest ten thousandths of an acre) of any portion(s) of the Land which is located with the areas described in paragraph (2d) above;
  - (5) all easements, set-back lines, and other matters referred to on the Title Commitment by the recording information indicated therein;
  - (6) the surveyor's registered number and seal, the date of the Survey, and a certificate satisfactory to Buyer and Title Company;
  - (7) reflect that there is access to and from the Land from a publicly dedicated street or road;
  - (8) be sufficient to cause the Title Company to delete (except for "shortages in area") the printed exception for "discrepancies, conflicts or shortages in area or boundary lines, or encroachments, or any overlapping of improvements" in the Owner's Title Policy to be delivered pursuant to the Agreement (the cost for such deletion shall be borne by the proposed insured);

B. SURVEYOR'S CERTIFICATION -- The certificate of the surveyor shall, in the absence of fraud, gross negligence or bad faith, be binding upon the parties hereto and shall be used for purposes of the property description to be included in the warranty deed to be delivered pursuant to this agreement. The field notes prepared by the surveyor shall control any conflicts or inconsistencies with the property description in this agreement, and such field notes shall be incorporated in this Agreement upon their completion and approval by the Parties.

**7. RIGHTS OF TERMINATION AND APPROVAL OF THE TITLE COMMITMENT AND THE SURVEY** — Either Party shall have until the expiration of twenty (20) days after delivery of the Title Commitments and Surveys (whichever is later) to examine the Surveys and Title Commitments and Exception Documents to specify in writing to the other Party and the Title Company those matters which the party finds objectionable (the "Objections"). Items not objected to within the Title Commitments, Exception Documents and Surveys shall be deemed non-objectionable items and are "Permitted Encumbrances". The standard printed exceptions and any and all exceptions pertaining to the reservation of oil, gas and other minerals and any utility

easements shall be Permitted Encumbrances and neither party may object to such exceptions. Each party, at its option and cost, shall use reasonable efforts to cure or remove all Objections, give the other party written notice thereof, and deliver at Closing an amended Survey and/or Title Commitment reflecting the cure of such matters. If either Party notifies the other Party of any Objection, the notified Party has five (5) days from receipt of notice to notify the objecting Party whether the notified Party will attempt to cure the Objection[s] before closing (“Cure Notice”). If the notified Party does not timely give its Cure Notice, the objecting Party may, within five (5) days after the deadline for the giving of the Cure Notice, notify the other Party that this Agreement is terminated or the objecting Party will proceed to close at such time as is otherwise provided for in Section 9.A of this Agreement, subject to the notified Party’s obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under the notified Party after the Effective Date, and cure only the Objection[s] that the notified Party has agreed to cure in the Cure Notice. If the objecting Party fails to timely give notice of its election to terminate, then the objecting Party will be deemed to waive its objection to the particular Objection and such item will be deemed a Permitted Exception. If a Party notifies the other party that it will attempt to cure a particular Objection, then the cure of such Objection will automatically become a condition precedent to the objecting Party’s obligation to close the transaction contemplated by this Agreement at such time as is otherwise provided for in Section 9.A of this Agreement. If a new exception is added to a Title Commitment after the Title Objection Deadline, then the Party who initially approved such Title Commitment will have five (5) business days from receipt of notice of such new exception to object to such new item. If the applicable Party does not timely object to such new item then such new item will be deemed a Permitted Exception. If the applicable Party timely objects to such new item, then the process described above will be followed (i.e. the non-objecting Party will have the right to deliver a Cure Notice and the objecting Party will have the right to terminate this Agreement if the non-objecting Party elects not to attempt to cure the particular item, all within the time periods provided above). Notwithstanding the foregoing, neither party shall be required to expend more than Five Hundred Dollars (\$500.00) or to engage in litigation to eliminate the Objections.

## **8. PROPERTY CONDITION.**

- A. INSPECTIONS — Each Party shall have a period of ninety (90) days following the Effective Date of this Agreement (“Inspection Period”) in order to inspect the property it will be acquiring and conduct such tests and studies it deems necessary, if any, subject to the terms of this Agreement. Each party, at such party’s expense, shall have the right to obtain a Phase I Environmental Study on the property such party is receiving.
- (1) Consent to Entry. Each Party’s right of access will be subject to the following terms and conditions:
- a. The inspecting Party will not damage or impair the other Party’s Exchange Property in any way as a result of its activities thereon;
  - b. The inspecting Party will not unreasonably interfere with existing operations or occupants of the Exchange Property being inspected, if any;

- c. The inspecting Party will notify the other in advance of its plans to conduct tests so that the owner of the Exchange Property may be present during the tests;
- d. The inspecting Party must repair any damage caused to the Exchange Property as a result of the inspecting Party's activities and restore the Exchange Property to its pre-inspection condition, as close as reasonably practicable, promptly after the alteration or damage occurs;
- e. The inspecting Party will deliver to the other Party copies of all inspection reports that it prepares or receives from third-party consultants or contractors; and
- f. The inspecting Party will abide by any other reasonable entry rules imposed by the other Party with regard to the inspecting Party's entry.

- (2) Right to Terminate. Either Party may terminate this Agreement for any reason by notifying the other Party before the end of the Inspection Period upon giving 5 days prior written notice to the other Party; provided however, that if County is the terminating Party, then County shall within 30 days reimburse VOGM for all reasonable actual costs incurred by VOGM in creating and delivering the Design Documents prior to commencement of construction of the New County Facilities.

**B. REPRESENTATIONS, WARRANTIES, AND COVENANTS-** As their respective sole and exclusive warranties and representations, each Party represents to the other, and covenants that:

- (1) Authority. It has the authority to convey its Property to the other Party. All documents required by this Agreement to be executed and delivered to the other Party at Closing will be, duly authorized, executed, and delivered.
- (2) Clear Title. It has good and indefeasible title in fee simple to its respective Exchange Properties, free and clear of all liens (except those liens that will be released at or before closing), and no party, except as herein set forth, has or shall have on the Closing Date any rights in, or to acquire, either of the Exchange Properties, there being no other contracts outstanding for acquisition or lease of the Exchange Properties.
- (3) No Adverse Actions Pending. There are no actions, suits, claims, assessments, or proceedings pending or, to its knowledge, threatened that could materially adversely affect the ownership, operation, or maintenance of such Party's Exchange Property or its ability to perform hereunder.
- (4) All Bills Paid. All bills and other payments due with respect to the ownership, operation, and maintenance of its Property that could have an adverse impact on such Party's Exchange Property post-Closing have been

paid or will be paid (i) in the ordinary course of business and (ii) prior to the Closing Date.

- (5) Employees. There are no employees engaged in the operation or maintenance of their respective Exchange Property for whom the acquiring Party will be responsible after Closing.

Should any of the foregoing representations be found to be incorrect as of the Closing Date with respect to either Party; the other Party, as its sole and exclusive remedy, may either waive the incorrect representation and proceed to Closing or terminate the Agreement.

C. “AS IS” REPRESENTATIONS — Except as otherwise provided in this Agreement and in the Development Agreement, each Party acknowledges that the other Party has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, or future, of, as to, concerning or with respect to:

- (1) the value, nature, quality or condition of the Property, including, without limitation, the water, soil and geology;
- (2) the suitability of the Property for any and all activities and uses which the Buyer may conduct thereon;
- (3) the compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body;
- (4) the habitability, merchantability, marketability, profitability or fitness for a particular purpose, of the Property; or
- (5) any other matter with respect to the Property, (unless specifically provided otherwise in this Agreement) and specifically, that neither Party has made, does not make and specifically disclaims any representations regarding compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including whether the Property or its use is covered or restricted as wetlands.

Except as otherwise provided in this Agreement, each Party acknowledges and agrees that having been given the opportunity to inspect the Property, each Party is relying solely on its own investigation of the Property and not on any information provided or to be provided by the other Party.

Except as otherwise provided in this Agreement, each Party further acknowledges and agrees that any information provided or to be provided with respect to the Property has been obtained from a variety of sources and that the other Party has not made any independent investigations or verification of such information and makes no representations as to the accuracy or completeness of such information.

Except as otherwise provided in this Agreement, each Party represents, covenants and warrants to the other Party that the other Party will not be liable or be bound in any manner by any verbal or written statements, representations or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person and each party is not relying on any statements, representations, or information furnished by the other Party or any agent of other Party.

**EACH PARTY ACKNOWLEDGES AND AGREES THAT, AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT, IT IS TAKING THE PROPERTY "AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY BY THE OTHER PARTY THAT THE PROPERTY IS FIT FOR A PARTICULAR PURPOSE OR THAT THE PROPERTY HAS ANY PARTICULAR CHARACTERISTICS, USES OR BENEFITS. NEITHER PARTY IS RELYING UPON ANY REPRESENTATION, STATEMENT NOR OTHER ASSERTION WITH RESPECT TO THE PROPERTY CONDITION MADE BY THE OTHER PARTY, BUT IS RELYING UPON ITS OWN EXAMINATION OF THE PROPERTY. EACH PARTY TAKES THE PROPERTY UNDER THE EXPRESS UNDERSTANDING THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES (EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, THE DEVELOPMENT AGREEMENT, AND THE WARRANTIES OF TITLE SET FORTH IN THE EXCHANGE AND TRANSFER INSTRUMENTS AT CLOSING). THE PROVISIONS OF THIS PARAGRAPH AND THIS SECTION SHALL SURVIVE CLOSING.**

**ENVIRONMENTAL MATTERS – NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, ABOUT EXISTING OR FUTURE ENVIRONMENTAL CONDITIONS OF THE PROPERTY, INCLUDING POSSIBLE PRESENT OR FUTURE POLLUTION OF THE AIR, WATER OR SOIL FROM ANY SOURCES, SUCH AS UNDERGROUND MIGRATION OR SEEPAGE (INCLUDING RADON GAS), AND THE EXISTENCE OR FORMATION OF MOLD OR MILDEW. EACH PARTY EXPRESSLY DISCLAIMS ANY LIABILITY FOR ANY TYPE OF DAMAGES--WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL--WHICH THE PROPERTY, THE IMPROVEMENTS OR ITS INHABITANTS MAY SUFFER BECAUSE OF ANY PRESENT OR FUTURE ENVIRONMENTAL CONDITIONS. NOTWITHSTANDING THE PRECEDING, THIS SECTION 8(G) IS NOT AN AGREEMENT OF INDEMNIFICATION BY COUNTY AND VOGM FOR ANY DIRECT CAUSE OF ACTION BROUGHT BY A THIRD PARTY AGAINST ANY PARTY AFTER CLOSING, AND NEITHER PARTY SHALL BE RESPONSIBLE FOR ANY THIRD PARTY CLAIMS BROUGHT AGAINST IT OR THE OTHER PARTY FOR ENVIRONMENTAL CONTAMINATION TO THE PROPERTY, OR ADJOINING PROPERTY, ARISING FROM EACH PARTY'S OWNERSHIP OR OPERATION OF THE PROPERTY.**

CONSISTENT WITH THE FOREGOING AND SUBJECT SOLELY TO THE PARTIES' WARRANTIES, EFFECTIVE AS OF THE CLOSING DATE, EACH PARTY, FOR ITSELF AND ITS AGENTS, AFFILIATES, SUCCESSORS AND ASSIGNS, HEREBY RELEASES, COVENANTS NOT TO SUE, AND FOREVER DISCHARGES THE OTHER PARTY AND THAT PARTY'S AGENTS, AFFILIATES, SUBSIDIARIES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASEES") FROM ANY AND ALL RIGHTS, LOSSES,

LIABILITIES, DAMAGES, COSTS, CLAIMS AND DEMANDS AT LAW OR IN EQUITY, WHETHER KNOWN OR UNKNOWN OR FORESEEN OR UNFORESEEN AT THE TIME OF THIS CONTRACT, WHICH EACH PARTY HAS OR MAY HAVE IN THE FUTURE, ARISING OUT OF THE PHYSICAL, ENVIRONMENTAL (INCLUDING THOSE RELATED TO THE PRESENCE OF HAZARDOUS OR TOXIC SUBSTANCES OR WASTE MATERIALS), ECONOMIC OR LEGAL CONDITION OF EITHER EXCHANGE PROPERTY, INCLUDING, WITHOUT LIMITATION, ALL CLAIMS IN TORT OR CONTRACT AND ANY CLAIM FOR INDEMNIFICATION OR CONTRIBUTION ARISING UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (42 U.S.C. SECTION 9601, ET SEQ.) OR ANY SIMILAR FEDERAL, STATE OR LOCAL STATUTE, RULE OR REGULATION. THE PROVISIONS OF THIS SECTION 6.2 INCLUDE A RELEASE OF THE RELEASEES FOR THEIR OWN NEGLIGENCE OR STRICT LIABILITY. EACH PARTY, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED THE OTHER AND ALL OTHER RELEASEES FROM AND AGAINST ANY AND ALL MATTERS AFFECTING THE EXCHANGE PROPERTIES, OR ANY PARTICULAR PORTIONS THEREOF, AS OF THE CLOSING.

The provisions of this Section 8.C shall survive indefinitely any closing or termination of this Agreement and shall not be merged into the closing documents.

## **9. CLOSING AND ACTION OF PARTIES & COSTS.**

A. CLOSING- The consummation (“Closing”) of the Exchange shall occur on or before sixty (60) days after the later of (i) County’s approval of the Substantial Completion of the New County Facilities in accordance with the Development Agreement and (ii) approval of the appraisals required by Texas Local Government Code § 263.006, and the Special Provisions (Section 12) of this Agreement. The exact time, location and date of Closing (“Closing Date”) shall be arranged with the Title Company.

B. ACTIONS OF PARTIES ON CLOSING — At the Closing, the following (which are mutually concurrent conditions) shall occur:

(1) ACTIONS REQUIRED OF VOGM — VOGM shall deliver or cause to be delivered to County the following:

One or more Special Warranty Exchange Deed(s) in the form mutually agreed by the Parties, fully executed and acknowledged by VOGM, conveying to County the Grogan’s Mill Center Properties and the New County Facilities together with such other interest and/or easements as provided by this Agreement or by law, subject only to the Permitted Encumbrances;

VOGM shall sign and acknowledge any and all notices, statements certificates, affidavits, releases, and other documents reasonably required of VOGM by this Agreement, the Title Commitment, the Title Company or

applicable law reasonably necessary for the closing of the sale and the issuance of any required Title Policy.

- (2) ACTIONS REQUIRED OF COUNTY — County shall deliver or cause to be delivered to VOGM the following:

one or more Special Warranty Exchange Deed(s) in the form mutually agreed by the Parties, fully executed and acknowledged by County conveying to VOGM the County Owned Properties together with such other interest and/or easements as provided by this Agreement or by law, subject only to the Permitted Encumbrances;

County shall sign and acknowledge any and all notices, statements certificates, affidavits, releases, and other documents reasonably required of County by this Agreement, the Title Commitment, the Title Company or applicable law reasonably necessary for the closing of the sale and the issuance of the Title Policy (including any Lender's Title Policy).

- C. PAYMENT OF CLOSING COSTS — VOGM will pay for the Exchange Property Title Policies; escrow fees charged by Title Company; the costs to prepare and file the deeds; the costs to obtain, deliver, and record releases of all liens to be released at closing; the costs to record all documents to cure Objections agreed to be cured by each Party; Title Company's inspection fees to delete from the Title Policy the customary exception for parties in possession or limited to the County; the cost of certificates or reports of ad valorem taxes; the costs to deliver copies of the instruments described in the Title Exceptions; and VOGM's attorney's fees. The County shall pay all other costs, including the cost for the appraisal of the County Owned Properties and the County Attorney's fees, if any.
- D. TAXES — The parties acknowledge that the County is exempt from taxes or assessments on its property and that the County Owned Properties are exempt from real estate taxes up until such time as same may be conveyed to VOGM. VOGM shall be liable for all real estate taxes and assessments for the GM Properties up until such time as they may be conveyed to the County. VOGM shall pay all such taxes on or before the closing date. State, County and City ad valorem taxes, including any community association assessments (collectively, "Taxes") for the then-current calendar year or other applicable tax period as of the Closing shall be apportioned or prorated between County and VOGM with regard to the respective properties being exchanged as provided herein. If final tax statements for the calendar year or other applicable tax period in which the Closing occurs are not available at Closing, the parties shall prorate Taxes for such calendar year or other applicable tax period based upon the most recent ascertainable assessed values and tax rates. All prorations shall be based upon a fraction determined by dividing the number of days elapsed up through the date of the Closing Date by 365 (or, if applicable, 366). The parties shall make the appropriate adjusting payment between them when the final tax statements are available.

- E. POSSESSION OF EXCHANGED PROPERTY — County shall deliver possession of the County Owned Facilities to VOGM no later than 30days after Closing. VOGM shall deliver possession of the New County Facilities to County at Closing..
- F. CONDITIONS PRECEDENT TO CLOSING —
  - (1) VOGM’S CONDITIONS PRECEDENT – The following conditions precedent to VOGM’s obligation and duty to close must occur or be waived by VOGM: None.
  - (2) COUNTY’S CONDITIONS PRECEDENT — It is a condition precedent to County’s obligation and duty to close that this Agreement and the transactions contemplated thereby have been properly approved by the Commissioners Court of Montgomery County, Texas and all requirements of Chapter 263 of the Texas Local Government Code have been met.

**10. CASUALTY LOSS** — If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this Agreement, the Party owning the Property, at the owner’s option and exercised at owner’s sole discretion, may either (1) restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date, or (2) terminate this Agreement and release the other Party from any obligations under this Agreement. The Parties recognize that should the New County Facilities be damaged during construction or between Substantial Completion of construction and Closing, and should VOGM elect to restore the New County Facilities, such restoration would be in accordance with the plans approved pursuant to the terms of the Development Agreement.

**11. DEFAULT.**

- A. COUNTY’S REMEDIES UPON VOGM’S DEFAULT — Subject to VOGM’s rights of termination as described in this Agreement; if VOGM refuses to consummate the Exchange pursuant to this Agreement for any reason other than VOGM’s termination hereof pursuant to a right granted to VOGM in this Agreement to do so, or a breach by VOGM of its representations, warranties or agreements hereunder, then VOGM shall be in default and County may either (a) enforce specific performance, or (b) terminate this Agreement and seek to recover its reasonable and necessary costs incurred in this transaction to a maximum amount of Five Thousand and no/100 (\$5,000.00) dollars. The receipt of the County’s reimbursable costs by County shall constitute and effect a release of VOGM for all liability, if any, connected with this Agreement and all actions, omissions or other matters in any way between the parties. (County and VOGM hereby acknowledging that the amount of damages resulting from a breach of this Agreement by VOGM would be difficult or impossible to accurately ascertain). In the event that County elects specific performance of this contract, County hereby waives any right to receive damages of any kind, including but not limited to, the rental value of the property from the date of VOGM’s alleged breach and all incidental, consequential and punitive damages. Nothing contained in this agreement will enable County to obtain money damages from VOGM and County

hereby expressly waives any and all right to sue and/or recover money damages for VOGM' breach of this Agreement and/or any act or omission of VOGM relating to the Property or this agreement.

- B. VOGM'S REMEDIES UPON COUNTY'S DEFAULT — Subject to County's rights of termination as described in this Agreement, if County refuses to consummate the exchange of the County Owned Properties pursuant to this Agreement for any reason other than County's termination hereof pursuant to a right granted to County in this Agreement to do so, or a breach by County of its representations, warranties or agreements hereunder then County shall be in default and VOGM may either (a) enforce specific performance, or (b) terminate this Agreement and seek to recover its reasonable and necessary costs incurred in this transaction to a maximum amount of Five Thousand and no/100 (\$5,000.00) dollars. The receipt of the VOGM's reimbursable costs by VOGM shall constitute and effect a release of County for all liability, if any, connected with this Agreement and all actions, omissions or other matters in any way between the parties. (County and VOGM hereby acknowledging that the amount of damages resulting from a breach of this Agreement by VOGM would be difficult or impossible to accurately ascertain). In the event that VOGM elects specific performance of this contract, VOGM hereby waives any right to receive damages of any kind, including but not limited to, the rental value of the property from the date of the County's alleged breach and all incidental, consequential and punitive damages. Nothing contained in this agreement will enable VOGM to obtain money damages from County and VOGM hereby expressly waives any and all right to sue and/or recover money damages for County's breach of this agreement and/or any act or omission of County relating to the Property or this agreement.

## 12. SPECIAL PROVISIONS.

- A. The County will, at VOGM's request, execute an amendment to the existing land use designation(s) encumbering the County Properties which would, upon acquisition of the County Owned Properties by VOGM, permit the County Owned Properties to be used for commercial purposes.
- B. The Exchange must comply with the provisions of Texas Local Government Code § 263.006, including but not limited to the provisions of § 263.006(b) providing for notice of the proposed exchange and § 263.006(c) that the County must receive total consideration for the Exchange that is equal to or greater than the fair market value of the interest in real property being exchanged by the County. County will obtain the appraisal of the County Owned Properties required by Texas Local Government Code § 263.006. Within sixty (60) days from the final survey of the GM Property identifying the exact GM Property to be transferred to the County, VOGM shall cause the GM Properties to be appraised. The Parties will cause the appraisals to be updated if the Closing occurs more than 180 days after County's acceptance of the appraisals.

- C. VOGM shall be responsible for the design, plans and construction of the New County Facilities. Before commencement of construction (except for site preparation and planning), VOGM will consult with the Pct. 3 Commissioner and must obtain the County's approval of the design and materials for the New County Facilities. The New County Facilities must be designed and must meet all construction standards for a Class A commercial building. VOGM will transfer all warranties to County upon transfer of the New County Facilities.

**13. NOTICES** — All notices, requests, demands and other communications under this Agreement shall be given by electronic mail and either (i) overnight courier or (ii) hand delivery addressed as follows:

Montgomery County, Texas: James Noack, Commissioner

1130 Pruitt Rd  
Spring, TX 77380  
Email: [Evan.besong@mctx.org](mailto:Evan.besong@mctx.org)

With a copy to:

B. D. Griffin, County Attorney  
501 N. Thompson St., Suite 300  
Conroe, Texas 77301  
(936) 539-7828  
Email: [Bd.griffin@mctx.org](mailto:Bd.griffin@mctx.org)

VOGM:

Jim Carman, President  
c/o The Howard Hughes Corporation  
9950 Woodloch Forest Drive, Suite 1200  
The Woodlands, Texas 77380  
Email: [jim.carman@howardhughes.com](mailto:jim.carman@howardhughes.com)

With a copy to:

General Counsel  
The Howard Hughes Corporation  
9950 Woodloch Forest Drive  
The Woodlands, Texas 77380  
Email: [GeneralCounsel@howardhughes.com](mailto:GeneralCounsel@howardhughes.com)

**14. ASSIGNMENT** — Neither Party may assign this Agreement without the prior written consent of the other Party which consent may be withheld in the Party's sole discretion. This Agreement, if assigned, shall inure to the benefit of and be binding on the Parties hereto and their respective heirs, legal representatives, successors and assigns.

**15. GOVERNING LAW AND VENUE** — This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without regard to its conflict of law provisions. Venue for any action shall be in the state courts of Montgomery County, Texas.

**16. TITLE DISCLOSURE** — IN ACCORDANCE WITH THE TERMS OF THE REAL ESTATE LICENSE ACT OF TEXAS YOU, AS BUYER, ARE ADVISED THAT YOU

SHOULD HAVE THE ABSTRACT COVERING THE PROPERTY EXAMINED BY AN ATTORNEY OF YOUR CHOICE, OR BE FURNISHED WITH OR OBTAIN A POLICY OF TITLE INSURANCE. BUYER ACKNOWLEDGES RECEIPT OF SUCH NOTICE BY HIS EXECUTION OF THIS AGREEMENT.

**17. BROKER'S FEES** — Neither Party has used the serviced of a real estate broker and there are no obligations of any Party for payment of brokers' fees.

**18. ATTORNEY'S FEES** — No Party in any legal proceeding, arbitration or mandatory dispute resolution procedure related to this Agreement will be entitled to recover reasonable attorney's fees and costs of such proceeding, each Party being responsible for its own attorney's fees and costs. This paragraph is not applicable to any eminent domain proceeding or inverse condemnation proceeding brought by any of the parties with respect to the Property or any part thereof.

**19. NOTICES OF TITLE MATTERS.**

- A. NOTICE REGARDING POSSIBLE ANNEXATION (Tex.Prop.Code §5.011) — If the property that is the subject of this Agreement is located outside the limits of a municipality, the property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the property for further information.
- B. MANDATORY OWNERS' ASSOCIATION MEMBERSHIP — The Property is / is not subject to mandatory membership in an owner's association.
- C. STATUTORY TAX DISTRICTS — If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code requires County to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this Agreement.

**20. EXECUTION** — Notwithstanding anything to the contrary contained herein, this Agreement shall not be binding upon or enforceable against County and VOGM until the County Commissioners Court has approved this Agreement in a properly noticed open meeting of the Commissioners Court and until executed by VOGM and County. If not executed and delivered as aforesaid, this Agreement and the offer to purchase evidenced hereby shall be void.

**21. EXHIBITS** — All exhibits referenced in and attached to this Contract are incorporated into this Contract.

**22. ENTIRE AGREEMENT** — This Agreement constitutes the entire and final expression of the agreement of the Parties and supersedes all previous agreements and understanding of the Parties, either oral or written, including without limitation the Memorandum of Agreement

previously executed by the Parties. There are no other agreements, oral or written, between the Parties regarding the Property, and this Agreement can be amended only by written agreement signed by the parties hereto and by reference made a part hereof. TIME IS OF THE ESSENCE OF THIS AGREEMENT.

**23. CONFIDENTIALITY** — County may disclose the transaction contemplated under this Agreement or of any other information related to this Agreement or the transactions contemplated hereby as required to comply with applicable public disclosure or open records laws (collectively, “Laws”). Prior to making any such disclosure, however, County shall make best efforts to (i) give VOGM prior written notice sufficient to allow VOGM to seek a protective order or other remedy (except to the extent that County’s compliance would cause it to violate any Laws), (ii) disclose only such information as is required under those Laws, and (iii) use commercially reasonable efforts to obtain confidential treatment for any information that is so disclosed.

**24. HEADINGS** — Article and section headings are for convenience only and shall not affect the meaning and interpretation of this Contract.

**25. EXECUTION IN COUNTERPARTS**— This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by pdf e-mail counterparts of the signature pages, all of which shall be the same as an original. Electronic signatures (i.e. any electronic symbol or process attached to, or logically associated with this Agreement and executed or adopted by a person with the intent to sign such record) shall have the same legal and evidentiary validity and enforceability as a manually executed signature to the fullest extent permitted by applicable law, including the federal Electronic Signatures in Global and National Commerce Act, any state law based on the Uniform Electronic Transactions Act, or any other similar laws, and any amendments, restatements, or successors to such acts or laws, and the parties hereby waive any objection to the contrary.

County and VOGM have executed this Agreement on the dates set forth below, to be effective as of the later of the dates shown below (the “Effective Date”).

COUNTY:

MONTGOMERY COUNTY, TEXAS

By: \_\_\_\_\_  
Evan Besong, Sr. Chief of Staff  
Pct. 3 Commissioner James Noack

Date: \_\_\_\_\_, 2023.

VOGM:

TW-VOGMVC, LLC

By: \_\_\_\_\_  
Jim Carman, President

Date: \_\_\_\_\_, 2023.

Exhibit A



Exhibit B-1

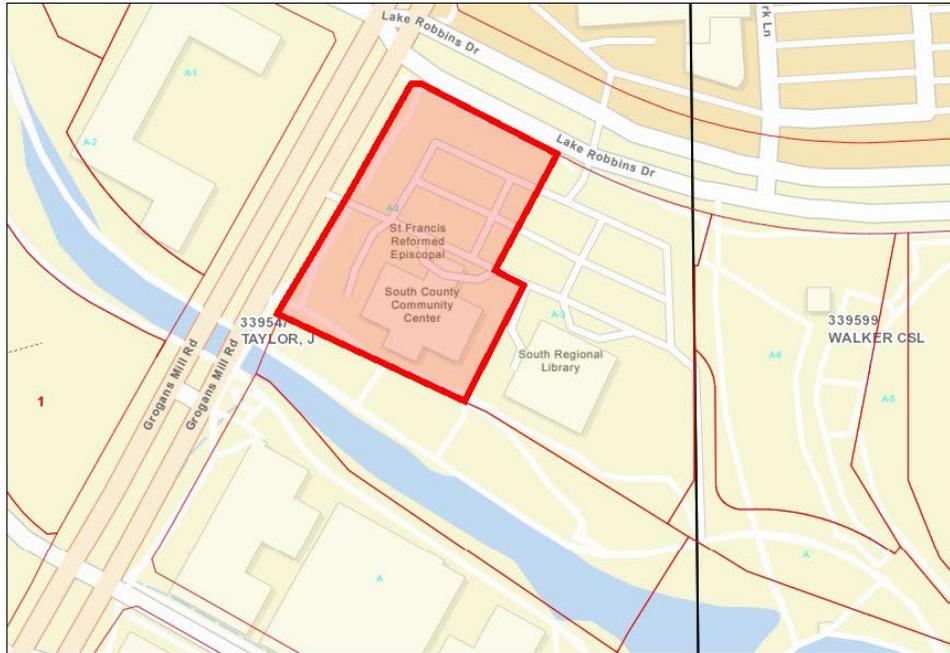


Exhibit B-2

