

CITY OF LEAGUE CITY

COUNTY OF GALVESTON

STATE OF TEXAS

CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVES GRANT AGREEMENT

This Chapter 380 Economic Development Incentives Grant Agreement (“Agreement”) is made by and between the City of League City, Texas (“City”), a home rule Municipal Corporation of the State of Texas, located at 300 West Walker Street, League City, Texas, 77573, and Home Asset Inc., dba NewQuest Properties, Inc. (the “Grantee”), located at 8827 West Sam Houston Parkway North, Suite 200, Houston, Texas, 77040.

RECITALS:

WHEREAS, the City is authorized, pursuant to Chapter 380 of the Texas Local Government Code, to establish and provide for the administration of one or more programs, including programs for making loans and grants of public money, to promote state or local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the Grantee proposes to develop a retail grocery anchored commercial center within the city limits of the City of League City, on a portion of an approximately 38.2 acre site generally located at the northeast and southeast corners of League City Parkway and Hobbs Road and more specifically described as noted in Exhibit “D” to this Agreement, which is attached hereto and incorporated by reference; and

WHEREAS, the City desires to offer incentives to the Grantee over a period of time which will enable the Grantee to develop the Property defined herein; and

WHEREAS, the City believes the development contemplated by Grantee will contribute to the economic development of the City by generating employment and other economic benefits to the City; and

WHEREAS, the City is authorized under Chapter 321 of the Texas Tax Code to assess and collect a sales tax on the receipts from the sale at retail of taxable items within the City; and

WHEREAS, to encourage the Grantee to develop The Property in the City to promote local economic development and to stimulate business and commercial activity in the City, the City desires to grant to the Grantee, under the terms and conditions set forth in this Agreement, a certain amount of public money consisting of a sum equal to a partial reimbursement of local sales tax based upon the volume of annual sales at this location.

NOW, THEREFORE, in consideration of the mutual benefits and premises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Authorization

The City has concluded that it is authorized to enter into this Agreement pursuant to Section 380.001, et seq. of the Texas Local Government Code and that the obligations of the City are valid and binding, subject to the conditions precedent as stated herein. The Grantee's execution and performance of this Agreement constitutes a valid and binding obligation of Grantee. The City acknowledges that the Grantee is acting in reliance upon the City's performance of its obligations under this Agreement in making its decision to commit substantial resources and money, and Grantee acknowledges that City is acting in reliance upon Grantee's full and complete performance of its obligations under this Agreement in making its decision to commit substantial resources to the development of the Property.

2. Definitions

"Calendar Year" means the period beginning January 1 and ending December 31.

"Certificate of Occupancy" means that final document issued by the City of League City, Texas, entitled "Certificate of Occupancy," indicating that all applicable codes, regulations, and ordinances enforced by the City of League City have been unconditionally, fully and completely complied with in all respects. A Certificate of Occupancy shall not include a certificate issued in error, mistake or misrepresentation of facts, nor any temporary or conditional document authorizing temporary or conditional occupancy.

"Chapter 380 Payment(s)" means the amount(s) paid by the City to the Grantee under this Agreement.

"Effective Date" means the date this Agreement has been signed by all Parties.

"Force Majeure" means any event in which any Party shall be delayed, hindered in or prevented from the performance of any act required under this Agreement by reason of casualty, fire, flood, windstorm, earthquake, explosion, lightning, or other act of God; strikes, lockouts, riots, wars, or other civil disturbances; or similar accident not reasonably within the Party's control which materially impairs the Party's ability to perform any act required under this Agreement.

"Sales Tax Revenues" means the amount of sales taxes collected by the City from retail sales generated from and within The Property, a portion of which will be repaid to Grantee in the form of Chapter 380 payments, as defined herein.

"The Property" means that certain tract of real property located in League City, Galveston County, Texas consisting of an approximately 38.2 acre site generally located at the northeast and southeast corners of League City Parkway and Hobbs Road and more specifically described as noted in Exhibit "A" to this Agreement, which is attached hereto and incorporated by reference.

3. Term

This Agreement will become enforceable upon the Effective Date and will terminate on the first to occur of: (a) December 31, 2022 (which date is the end of the seven (7) year payment period for the Chapter 380 payments provided for under paragraph 5 below or (b) termination of this Agreement by the City as provided herein. In recognition of the fact that the Chapter 380 payments provided for under paragraph 5 are, by necessity, calculated and paid after taxes have been collected by the City and, therefore, will always be paid in arrears, the Term of this Agreement will be deemed extended until any such Chapter 380 payments have been paid by the City to the Grantee.

4. Grantee's New Investment and Design Commitments

(a) The Grantee understands that the City is entering into this Agreement based upon the following understanding of the Grantee's new investment in the City and in consideration of the Grantee's adherence to the conditions set forth in subsections (b) through (d) of this paragraph 4, and the Grantee represents and warrants that as of the date of this Agreement and the Grantee's agreement thereto, the following fairly describes its proposed undertaking on the Property.

(b) The development of The Property shall be substantially in accordance with the zoning map amendment (Z14-05) approved for The Property by the City on August 12, 2014, including any amendments thereto approved by the City, and the "Potential Driveway, Turn Lane, & Median Opening Locations" exhibit submitted to the City by Grantee and dated "7/30/2014" (July 30, 2014).

(c) Prior to the issuance of the Certificate of Occupancy for the retail grocery facility consisting of not less than one-hundred thousand (100,000) square feet of improvements located on The Property, the following improvements shall be completed at Grantee's cost:

- i. Completion of irrigation and landscaping improvements above and beyond that currently required by City and the zoning for The Property along the north and south sides of League City Parkway between the easternmost entrances to both the north and south sides of The Property east to Butler Road. Said irrigation and landscaping improvements shall not commence until a plan for such improvements has been submitted by Grantee to City and approved by City, and an agreement to maintain said improvements

- by the Grantee in an aesthetic, healthy growing condition in perpetuity is approved by the City; and
 - ii. As part of the approved irrigation and landscaping improvements described in paragraph "i.", above, completion of a monument sign at the intersection of Butler Road and League City Parkway based on a plan submitted by Grantee to City and approved by the City.
 - iii. Construction of a left turn lane for automobile movements traveling along northbound Hobbs Road to westbound Aberdeen Drive.
 - iv. Construction of a signalized intersection at the eastern most entrance to The Property and League City Parkway. Prior to the commencement of said improvement:
 - a. A synchronization study and implementation plan shall be submitted by Grantee to City and approved by City; and
 - b. An analysis of the functionality of the proposed signalized intersection in the League City Parkway corridor between Butler Road and Hobbs Road shall be submitted by Grantee to the City and approved by the City. Said analysis shall include a warrant study based on the most recently published version of "The Manual on Uniform Traffic Control Devices."
 - v. Construction of a right-turn/deceleration lane directly adjacent to and along the north side of League City Parkway for westbound automobile movements into the north side of The Property at the proposed signalized intersection.
- (d) Prior to the issuance of the first Certificate of Occupancy for any facility on The Property south of League City Parkway, the following improvements shall be completed at Grantee's cost:
- i. Dedication to the City of an estimated 0.25 acres (to be determined based on an engineering study approved by the City) of property at the southeast corner of Hobbs Road and League City Parkway for the sole purpose of constructing an auxiliary right-turn lane; and
 - ii. Construction of an auxiliary right-turn lane for automobile traffic movements in The Property described in paragraph "i.", above, from northbound Hobbs Road to eastbound League City Parkway; and
 - iii. Construction of a left-turn lane for westbound automobile traffic movements along League City Parkway south into the easternmost entrance (i.e. shared entrance with Verizon) on the south side of The Property.

5. Chapter 380 Payments – Sales Tax Calculus

- (a) Beginning January 1, 2016, and annually thereafter for the Term of this Agreement, the City shall pay Grantee a sum equal to forty-percent (40%) of that portion of Sales Tax Revenues generated on all sales which originate on The Property.

(b) Notwithstanding the provisions of paragraph “(a)”, above, in no case shall total payments from City to Grantee under the terms of this agreement exceed \$741,727.00.

(c) Grantee shall submit a semi-annual request for payment for the period from January 1 through June 30 and another request for payment for the period from July 1 through December 31 of each applicable year. The Grantee’s request for payment shall be accompanied by a true and correct copy of the Texas Sales and Use Tax Return filed with the Comptroller of Public Accounts for the corresponding reimbursement period from which the City can confirm the amount of Sales Tax Revenues for the period. The City shall make its payments to Grantee within 45 days of Grantee’s delivery to the City of a complete and accurate request for payment.

6. Default

If either party should default (the “Defaulting Party”) with respect to any of its obligations under this Agreement and should fail, within sixty days after delivery of written notice of such default from the other party (the “Complaining Party”) to cure such default, the Complaining Party, by action or proceeding at law or in equity, may be awarded its damages, if any, for such default.

7. Changes in Law

If during the term of this Agreement state law applicable to sales and use taxes changes and, as a result, the Chapter 380 Payments differ from the amount which would have been paid to the Grantee under the laws in effect as of the Effective Date, then the City, in its sole discretion, may adjust the Chapter 380 Payments utilizing whatever discretionary taxes and revenues are legally available to the City to be allocated to the Chapter 380 Payments. The foregoing does not require the City to use funds from sources which are not within the City’s discretion to allocate to the Agreement in order to achieve the same economic benefits to both Parties, which would have resulted if the law had not changed.

8. Mutual Assistance

The City and the Grantee shall take all reasonable measures which are necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

9. Representations and Warranties

The City represents and warrants to the Grantee that this Agreement is within the scope of its authority and the provisions of its charter and that it is duly authorized and empowered to enter into this Agreement. The Grantee represents and warrants to the City that it has the requisite authority to enter into this Agreement.

10. No Obligation by the Grantee to Commence Construction

In the event that the Grantee elects to not undertake the Improvements which are the subject of this agreement, this Agreement shall not create or impose any obligations upon the Grantee or City.

11. Attorney's Fees

In the event any legal action or proceeding is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action.

12. Statutes and Ordinances

Nothing in this Agreement shall alter the Grantee's obligation to comply with all state statutes, local ordinances, rules and regulations, covering the construction and operation of its development.

13. Section Names, Other Headings, and Construction

Section names or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All references to the singular shall include the plural, and to the plural the singular.

14. Severability

If for any reason any provision of this Agreement is held to be invalid by a court of competent jurisdiction, such holding shall not affect, impair or invalidate the remainder of the Agreement but shall be confined in its operation to the specific provision of this Agreement held invalid. The invalidity of any provision of this Agreement in any one or more instances shall not affect or prejudice in any way the validity of this Agreement in any other instance.

15. Amendment

This Agreement may only be amended, altered, or revoked by written instrument signed by both the Grantee and the City.

16. Successors and Assigns

This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

17. Notice

Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

Grantee: Home Asset, Inc., dba NewQuest Properties, Inc.
8827 West Sam Houston Parkway North
Suite 200
Houston, Texas 77040
Attention: Katherine Hatcher

City: City Manager of the City of League City
City Hall
300 West Walker Street
League City, Texas 77573

18. Interpretation

Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.

19. Applicable Law

This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas and venue of any cause of action to enforce this agreement shall lie in Galveston County, Texas.

20. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

EXECUTED this 29th day of October, 2014.

CITY OF LEAGUE CITY, TEXAS

R. Mark Rohr
Mark Rohr, City Manager

NEWQUEST PROPERTIES

BY: Katherine Hatcher
Katherine Hatcher, President/COO

ATTEST:

Diana M. Stapp
Diana Stapp, City Secretary

EXHIBIT D
Project Legal Description

April 3, 2014

***19.0992 acres of land in the Stephen F. Austin League, Abstract No. 3,
City of League City, Galveston County, Texas***

A FIELD NOTE DESCRIPTION of a 19.0992 acre (831,960 square feet) tract of land in the Stephen F. Austin League, Abstract No. 3, City of League City, Galveston County, Texas; said 19.0992 acre tract being the remainder of Unrestricted Reserve "A" and being a portion of Unrestricted Reserve "B", Brittany Bay Park, Section I, according to the map or plat recorded in Volume 18, Page 181-182 of the Galveston County Map Records, being conveyed to Brittany Estates III Associates Limited, as recorded in Galveston County Clerk's File No. 2008017463 and conveyed to YMCA of the Greater Houston Area, as recorded in Galveston County Clerk's File No. 2004068176; said tract being more particularly described by metes-and-bounds as follows with the bearings being based on Texas State Plane Coordinate System, South Central Zone (NAD83) per GPS Observations using National Geodetic Survey Continuously Operating Reference Stations:

BEGINNING at a 5/8-inch iron rod found in the east right-of-way line of Hobbs Road (80 feet wide), according to the maps or plats recorded in Book 17, Page 164-165 and Volume 18, Page 181-182 of the Galveston County Map Records and as recorded in Volume 113, Page 47 of the Galveston County Deed Records and in Galveston County Clerk's File No. 8715461 for the northwest corner of said Unrestricted Reserve "A" and for the northwest corner of this tract;

THENCE, North 85° 55' 38" East with the south line of a 225 feet wide fee strip conveyed to Houston Lighting and Power Co., as recorded in Volume 1671, Page 157 of the Galveston County Deed Records and with the north line of said Unrestricted Reserve "A", at a distance of 823.15 feet pass a 5/8-inch iron rod with cap stamped "Geo Surv" found for the northeast corner of said Unrestricted Reserve "A" for the northwest corner of said Unrestricted Reserve "B" and continuing for a total distance of 903.17 feet to a 5/8-inch iron rod with cap stamped "T.E.A.M." set for the northeast corner of this tract; from which a 5/8-inch iron rod found for the northeast corner of said Unrestricted Reserve "B" bears North 85° 55' 38" East - 741.98 feet;

THENCE, South 02° 58' 08" East - 933.79 feet to a 5/8-inch iron rod with cap stamped "T.E.A.M." set in the north right-of-way line of Brittany Bay Boulevard (League City Parkway, width varies), as recorded in Galveston County Clerk's File No. 8413030 for the southeast corner of this tract;

THENCE, South 85° 37' 31" West with the north right-of-way line of said Brittany Bay Boulevard and with the south line of said Unrestricted Reserve "B", at a distance of 80.02 feet pass a 5/8-inch iron rod with cap stamped "T.E.A.M." set and continuing for a total distance of 455.94 feet with the north right-of-way line of said Brittany Bay Boulevard and with the south line of said Unrestricted Reserve "A" to a cut "x" set for an angle point of this tract;

THENCE, North 88° 39' 51" West - 58.93 feet with the north right-of-way line of said Brittany Bay Boulevard and with the south line of said Unrestricted Reserve "A" to a cut "x" set for the beginning of a non-tangent curve to the right;

THENCE, in a westerly direction with the north right-of-way line of said Brittany Bay Boulevard and with said non-tangent curve to the right having a radius of 790.00 feet, a central angle of 03° 10' 19", a length of 43.74 feet and a chord bearing North 85° 35' 41" West - 43.73 feet to a cut "x" set for the end of said curve;

THENCE, North 84° 00' 32" West - 82.62 feet with the north right-of-way line of said Brittany Bay Boulevard to a cut "x" set for the beginning of a non-tangent curve to the left;

THENCE, in a westerly direction with the north right-of-way line of said Brittany Bay Boulevard and with said non-tangent curve to the left having a radius of 510.00 feet, a central angle of 11° 23' 13", a length of 101.36 feet and a chord bearing North 89° 42' 05" West - 101.19 feet to a cut "x" set for a point-of-compound-curvature;

THENCE, in a westerly direction with the north right-of-way line of said Brittany Bay Boulevard and with said curve to the left having a radius of 992.00 feet, a central angle of $06^{\circ} 06' 35''$, a length of 105.78 feet and a chord bearing South $81^{\circ} 33' 02''$ West – 105.73 feet to a cut "x" set at the southeast end of a cutback at the intersection of the north right-of-way line of said Brittany Bay Boulevard with the east right-of-way line of said Hobbs Road for a southwest corner of this tract;

THENCE, North $51^{\circ} 59' 49''$ West – 60.70 feet with said cutback to a cut "x" set at the northwest end of said cutback for a southwest corner of this tract;

THENCE, North $03^{\circ} 03' 12''$ West – 71.59 feet with the east right-of-way line of said Hobbs Road to a 5/8-inch iron rod with cap stamped "T.E.A.M." set for the beginning of a non-tangent curve to the left;

THENCE, in a northerly direction with the east right-of-way line of said Hobbs Road and with said non-tangent curve to the left having a radius of 510.17 feet, a central angle of $06^{\circ} 41' 50''$, a length of 59.63 feet and a chord bearing North $06^{\circ} 24' 08''$ West – 59.60 feet to a 5/8-inch iron rod with cap stamped "T.E.A.M." set for the end of said curve;

THENCE, North $09^{\circ} 45' 04''$ West – 44.14 feet with the east right-of-way line of said Hobbs Road to a 5/8-inch iron rod with cap stamped "T.E.A.M." set for the beginning of a non-tangent curve to the right;

THENCE, in a northerly direction with the east right-of-way line of said Hobbs Road and with said non-tangent curve to the right having a radius of 490.00 feet, a central angle of $05^{\circ} 24' 45''$, a length of 46.29 feet and a chord bearing North $07^{\circ} 02' 57''$ West – 46.27 feet to a 5/8-inch iron rod with cap stamped "T.E.A.M." for the end of said curve;

THENCE, North $02^{\circ} 53' 45''$ West – 648.14 feet with the east right-of-way line of said Hobbs Road and with the west line of said Unrestricted Reserve "A" to the POINT OF BEGINNING and containing 19.0992 acres (831,960 square feet) of land.

COMPILED BY:
TEXAS ENGINEERING AND MAPPING CO.
Civil Engineers - Land Surveyors
Stafford, Texas
Firm Registration No. 10119000
Job No. 356-179
W:\356-179_North&YMCA.doc

Brian Nesvadba
Registered Professional Land Surveyor
State of Texas No. 5776

January 10, 2014

Tract B

**19.1070 acres of land in the Stephen F. Austin League, Abstract No. 3,
City of League City, Galveston County, Texas**

A FIELD NOTE DESCRIPTION of a 19.1070 acre (832,299 square feet) tract of land in the Stephen F. Austin League, Abstract No. 3, City of League City, Galveston County, Texas; said 19.1070 acre tract being the remainder of Reserve "B", Brittany Bay Park, Section Two, according to the map or plat recorded in Volume 18, Page 1150 of the Galveston County Map Records and all of Unrestricted Reserve "D", Brittany Bay Park, Section I, according to the map or plat recorded in Volume 18, Page 181-182 of the Galveston County Map Records, conveyed to Brittany Estates II Associates Limited, as recorded in Galveston County Clerk's File No. 2004017395; said tract being more particularly described by metes-and-bounds as follows with the bearings being based on Texas State Plane Coordinate System, South Central Zone (NAD83) per GPS Observations using National Geodetic Survey Continuously Operating Reference Stations:

BEGINNING at a 5/8-inch iron rod with cap stamped "Baseline Corp." found at the southwest end of a cutback at the intersection of the east right-of-way line of Hobbs Road (80 feet wide), according to the maps or plats recorded in Volume 18, Page 1150 and Volume 18, Page 825-826 of the Galveston County Map Records and as recorded in Volume 113, Page 47 of the Galveston County Deed Records with the south right-of-way line of Brittany Bay Boulevard (League City Parkway, width varies), as recorded in Galveston County Clerk's File No. 8413030 for a northwest corner of said Reserve "B" and for a northwest corner of this tract;

THENCE, North 35° 37' 46" East – 15.65 feet with said cutback to a cut "x" set at the northeast end of said cutback for a northwest corner of said Reserve "B" and for a northwest corner of this tract;

THENCE, in an easterly direction with the south right-of-way line of said Brittany Bay Boulevard, with the north line of said Reserve "B" and with a non-tangent curve to the right having a radius of 990.00 feet, a central angle of 11° 10' 52", a length of 193.20 feet and a chord bearing North 80° 02' 05" East – 192.89 feet to a 5/8-inch iron rod found for the end of said curve;

THENCE, North 79° 54' 53" East – 251.25 feet with the south right-of-way line of said Brittany Bay Boulevard and with the north line of said Reserve "B" to a 5/8-inch iron rod found for an angle point of this tract;

THENCE, North 85° 37' 31" East with the south right-of-way line of said Brittany Bay Boulevard, at a distance of 373.94 feet with the north line of said Reserve "B" pass a 5/8-inch iron rod found for the northeast corner of said Reserve "B" and for the northwest corner of said Unrestricted Reserve "D" and continuing for a total distance of 764.53 feet with the north line of said Unrestricted Reserve "D" to a 5/8-inch iron rod found for the northwest corner of Unrestricted Reserve "E" of said Brittany Bay Park, Section I, for the northeast corner of said Unrestricted Reserve "D" and for the northeast corner of this tract;

THENCE, South 02° 58' 08" East – 813.35 feet with the west line of said Unrestricted Reserve "E" and with the east line of said Unrestricted Reserve "D" to a 5/8-inch iron rod found in the north right-of-way line of Turner Road (55 feet wide), as recorded in Court Order No. 106-135 of the Galveston County Court Records and in Volume 18, Page 181-182 of the Galveston County Map Records for the southwest corner of said Unrestricted Reserve "E", for the southeast corner of said Unrestricted Reserve "D" and for the southeast corner of this tract;

THENCE, South 87° 05' 02" West with the north right-of-way line of said Turner Road, at a distance of 390.47 feet with the south line of said Unrestricted Reserve "D" pass a point for the southeast corner of said Reserve "B" and for the southwest corner of said Unrestricted Reserve "D" and continuing for a total distance of 865.76 feet with the south line of said Reserve "B" to a 5/8-inch iron rod with cap stamped "Geo Surv" found for the southeast corner of League City Fire Station No. 2, according to the map or plat recorded in Volume 2012A, Page 96 of the Galveston County Map Records and for the most southerly southwest corner of this tract;

THENCE, North 02° 53' 45" West – 365.00 feet with the east line of said League City Fire Station No. 2 to a 5/8-inch iron rod with cap found for the northeast corner of said League City Fire Station No. 2 and for an interior corner of this tract;

THENCE, South $87^{\circ} 05' 02''$ West – 350.00 feet with the north line of said League City Fire Station No. 2 to a 5/8-inch iron rod with cap stamped “Geo Surv” found in the east right-of-way line of said Hobbs Road for the northwest corner of said League City Fire Station No. 2 and for the most westerly southwest corner of this tract; from which a found cut “x” bears South $02^{\circ} 53' 45''$ East – 180.00 feet;

THENCE, North $02^{\circ} 53' 45''$ West – 361.62 feet with the east right-of-way line of said Hobbs Road and with the west line of said Reserve “B” to the POINT OF BEGINNING and containing 19.1070 acres (832,299 square feet) of land.

Note: This metes-and-bounds description was compiled in conjunction with a survey performed on even date.

COMPILED BY:

TEXAS ENGINEERING AND MAPPING
Civil Engineers - Land Surveyors
Stafford, Texas
Firm Registration No. 10119000
Job No. 356-179

Brian Nesvadba
Registered Professional Land Surveyor
State of Texas No. 5776