

**FIRST AMENDMENT TO AND RESTATEMENT OF
PERFORMANCE AGREEMENT BETWEEN THE BURLESON 4A ECONOMIC
DEVELOPMENT CORPORATION AND 2525 FTG - TULSA, LLC**

This First Amendment to and Restatement of Performance Agreement (the "Agreement") is entered into as of June 20, 2023 (the "Effective Date") by and between the Burleson 4A Economic Development Corporation, a Texas municipal development corporation located in the City ("BEDC"), by and through its Board President, and 2525 FTG - Tulsa, LLC, a Texas limited liability company ("Developer"), by and through its manager.

WITNESSETH:

WHEREAS, the City of Burleson, a Texas home rule municipal corporation ("City"), located in the counties of Johnson and Tarrant, has established a regional economic center with unique architecture in the State Highway 174 corridor ("Wilshire Corridor"); and

WHEREAS, the City desires to encourage and incentivize high quality development comprised of office, retail, restaurants, and commercial along the Wilshire Corridor to, among other things, improve drainage, site access, and walkability; and

WHEREAS, Developer is under contract to purchase real property in the Wilshire Corridor commonly known as 700, 708, 712, 714, 716, and 720 SW Wilshire Blvd in Burleson, Johnson County, Texas, and being more particularly described in **Exhibit A** (the "Property"); and

WHEREAS, Developer seeks to develop mixed-use facilities on the Property and greatly improve the drainage on the Property, especially along Wilshire Blvd, substantially modify the vehicular access to the Property from both Wilshire Blvd and Summercrest Blvd, and greatly improve the walkability to and through the Property; and

WHEREAS, the Property is not owned or leased by any member of the Burleson City Council, any member of the BEDC Board, or any member of the City Planning and Zoning Commission; and

WHEREAS, the BEDC Board finds and determines the Development will contribute to an increase in economic development in the City; and

WHEREAS, the BEDC Board finds and determines that the incentives contemplated in this Agreement constitute a "Project" as defined by the Development Corporation Act, codified in Subtitle C-1 of Title 12 of the Texas Local Government Code, in Section 501.103, in that the expenditures are for infrastructure improvements related to streets and roads, drainage, and site improvements necessary to promote new or expanded business development and enterprises; and

WHEREAS, the BEDC and Developer entered into a Performance Agreement executed on February 6, 2023, concerning the Development (defined below) (the “Original Agreement”); and

WHEREAS, the parties entered into the Original Agreement to accomplish the goals set forth in these recitals, and have now determined that the Original Agreement should be revised to, among other things, include additional infrastructure improvements related to streets and roads, specifically a turn lane off of Wilshire Blvd, and additional Incentives (defined below); and

WHEREAS, the parties deem it necessary to amend the Original Agreement and restate the agreement as set forth herein, to include all amendments to the Original Agreement in one document;

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

ARTICLE 1. **AUTHORIZATION**

The Burleson City Council and the BEDC Board both find and determine that this Agreement is authorized by Chapters 501 and 504 of the Texas Local Government Code, and that the incentives contemplated in this Agreement constitute a “Project” as defined by the Development Corporation Act, codified in Subtitle C-1 of Title 12 of the Texas Local Government Code, in Section 501.103.

ARTICLE 2. **DEFINITIONS**

2.01 The terms “Agreement,” “BEDC,” “City,” “Developer,” “Effective Date,” “Original Agreement,” “Project,” and “Property,” shall have the meanings provided, above.

2.02 “Building Permit” means the permit issued by the City’s building official reflecting that Developer may commence with construction of the Development in conformance with appropriate municipal codes.

2.03 “Capital Investment” means and shall include all hard and soft costs incurred relating to the Development, including actual construction costs including costs of all site preparation, environmental remediation costs, demolition costs, buildings, structures, infrastructure, utilities, landscaping and other onsite and offsite improvements, including all labor and materials, architect fees, and engineering fees but shall not include financing costs for the Capital Investments, tenant finish out costs not reimbursed by the Developer to the tenants, insurance costs, marketing costs, the purchase price of the Property, , or costs reimbursed to Developer by the BEDC in the form of Incentives.

2.04 “Certificate of Occupancy” means the document issued by the City certifying a building’s compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupation.

2.05 “City Manager” means the city manager of the City.

2.06 “Concept Plan” means the plan depicted on **Exhibit B**.

2.07 “Development” means the removal of the existing buildings on the Property and the construction of a new mixed-use building(s) on the Property of at least 8,500 square feet, of which a minimum of 3,000 square feet will be first class office or restaurant space and an additional minimum of 5,500 square feet of restaurant space, to contain restaurant, office and retail locations and related site improvements, including the Site Improvements, to be constructed in general conformance with the Concept Plan.

2.08 “Event of Bankruptcy” means the dissolution or termination of Developer’s existence as a going business, insolvency, appointment of receiver for any part of Developer’s property and such appointment is not terminated within 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 Developer and such proceeding is not dismissed within 90 days after the filing thereof.

2.09 “Incentives” mean the combined contributions, monetary or otherwise, of the BEDC towards completion of the Development, as required by this Agreement.

2.10 “Site Improvements” means the Street Improvements and the improvements and permanent enhancements which are set forth in item numbers 3 through 21 of **Exhibit C**, which are drainage improvements, access improvements, walkability improvements, environmental remediation, and other improvements to be constructed on the Property in general conformance with the Concept Plan.

2.11 “Street Improvements” means the improvements and permanent enhancements which are set forth in **Exhibit D**, which are infrastructure improvements related to a turn lane off of Wilshire Blvd and other improvements to be constructed adjacent to the Property in general conformance with the Concept Plan.

2.12 “Substantially Complete” or “Substantial Completion” means that all buildings in the Development are constructed as shell buildings in conformance with appropriate municipal codes and ready for tenant finish out. The shell buildings and Development shall be constructed to such an extent that upon tenant finish out, the area finished out shall be eligible to secure full utility service, be eligible for a Certificate of Occupancy, and permit occupancy.

ARTICLE 3.
TERM

The term of this Agreement shall commence on the Effective Date and will terminate ten years following the date of issuance of the first Certificate of Occupancy for the Development.

ARTICLE 4.
IN GENERAL

4.01 The Development. It is the parties' intent to cooperate in the creation of a high-end mixed-use development comprised of first class office space and desirable restaurants, retail, and commercial to enhance and compliment the Wilshire Corridor substantially in conformance with the Concept Plan set forth in **Exhibit B**. Developer will be responsible for constructing the Development, and in furtherance thereof the parties acknowledge and agree that Developer may accomplish this by hiring a general contractor to perform such construction on its behalf, or by leasing a portion of the Property to a tenant pursuant to a ground lease, and such tenant shall then perform, or cause to be performed, such construction on that portion of the Property. The BEDC will provide the Incentives set forth in this Agreement provided Developer is in compliance with its duties and obligations set forth herein.

4.02 BEDC Participation. The BEDC's obligations under this Agreement shall not exceed One Million Seventy-three Thousand Five Hundred Sixty Dollars (\$1,073,560.00) for all obligations set forth herein, including all Incentives. The BEDC authorizes the City Manager to allocate such funds as permitted by law, and as necessary to meet the BEDC obligations set forth in this Agreement.

4.03 The following uses will not be permitted in the Development and Developer shall be obligated, during the Term of this Agreement, to ensure that any lease or transfer of title prohibits such uses to the extent permitted by law:

- A. Cabinet and upholstery shop;
- B. Convenience store with automotive fuel sales;
- C. Fire or police station;
- D. Mortuary or funeral home;
- E. Plumbing shop (no outside storage);
- F. Railroad passenger terminal;
- G. Swimming pool; and

H. Taxidermy.

**ARTICLE 5.
COVENANTS OF DEVELOPER**

5.01 Covenants Regarding Developer Development and Operations. In consideration of BEDC agreeing to pay Developer the Incentives in accordance with the terms, provisions and conditions of this Agreement, Developer agrees to the following, which are not obligations of Developer, but are duties that must be fulfilled in order to receive the Incentives, subject to Article 12 below:

A. Design and construct the Development and Street Improvements in substantial conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.

B. Design and construct the Development and Street Improvements in substantial conformance with the Concept Plan.

C. Operate the Development in substantial conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.

D. Close and purchase and acquire fee simple title to the Property by May 1, 2023.

E. Complete any required zoning application and file with the City by May 31, 2023.

F. Commence construction (i.e., obtain a building permit from the City and start rough grading) on the Development no later than September 30, 2024.

G. Substantially Complete construction of the Development and Street Improvements no later than December 31, 2024.

H. Make a minimum Capital Investment of no less than Four Million Dollars (\$4,000,000.00) in the Property no later than December 31, 2024.

I. Recruit to the Development at least four (4) new-to-market retail, office, or restaurant tenants, with each of the four tenants receiving a certificate of occupancy in the Development no later than December 31, 2025.

J. Developer shall remain current and paid on all property taxes, subject to appeal rights in accordance with law and subject to a right to cure any delinquency as set forth herein.

5.02 Verification of Capital Investment. On or before February 15, 2025, Developer shall provide written verification to the BEDC that the Capital Investment made by Developer meets or exceeds the requirements set forth in this Agreement. The BEDC may request, and Developer hereby agrees that it will permit reasonable review of information that permits the BEDC to verify that the Capital Investment made by Developer for the Development meets or exceeds the requirements of this Agreement.

ARTICLE 6.
COVENANTS AND INCENTIVES OF BEDC

6.01 Incentives. Subject to Developer complying with its duties and obligations under this Agreement, the BEDC agrees to the Incentives set forth in this Section. The Incentives shall be a reimbursement of Developer's expenses related to Developer's construction of the Site Improvements in the Development not to exceed One Million Seventy-Three Thousand Five Hundred Sixty Dollars (\$1,073,560.00), payable to Developer in the incremental, scheduled amounts specified below upon completion of the following milestones:

A. Upon Substantial Completion of the Development, the Incentive due to Developer shall be a reimbursement of Developer's expenses related to Developer's construction of the Site Improvements up to Four Hundred Twenty-Five Thousand Dollars (\$425,000.00); and

B. Upon receipt of a Certificate of Occupancy from four (4) new-to-market retail, office, or restaurant tenants in the Development, the Incentive due to Developer shall be a reimbursement of Developer's expenses related to Developer's construction of the Site Improvements up to Four Hundred Twenty-Five Thousand Dollars (\$425,000.00).

C. Upon the City inspecting and accepting the Street Improvements, the Incentive due to Developer shall be a reimbursement of Developer's expenses related to Developer's construction of the Street Improvements up to Two Hundred Twenty-Two Thousand Five Hundred Sixty Dollars (\$223,560.00).

6.02 Verification of Completion of Milestone. Following the completion of a milestone specified in Section 6.01, Developer shall provide written notice of such completion to the BEDC and provide proof of costs reasonably satisfactory to the BEDC. Developer agrees that BEDC shall not be required to make any Incentive payment under this Agreement until such time that Developer provides such written notice and proof of costs. The BEDC may request, and Developer hereby agrees that it will permit reasonable review of information that permits the BEDC to verify that the costs made by Developer for the Development meets or exceeds the requirements of this Agreement. Additionally, the BEDC may request, and Developer hereby agrees that it will permit reasonable inspection of the Property during normal business hours that permits the BEDC to verify that the improvements made by Developer for the Development meet or exceed the requirements of this Agreement. Following written notice of completion and proof of costs reasonably

satisfactory to the BEDC, BEDC shall pay Developer the Incentive amount specified in Section 6.01, subject to the terms and provisions of this Agreement, within 90 days.

ARTICLE 7.
REGULATIONS REGARDING BUILDING PRODUCTS, MATERIALS, OR METHODS

The parties hereto find that the area described herein constitutes an area of architectural importance and significance and the City Council of the City of Burleson, Texas, hereby designates it as an area of architectural importance and significance for purposes of Chapter 3000 of the Texas Government Code (the "Code"). In consideration for the mutual covenants and conditions contained herein and pursuant to Section 3000.002(d) of the Code, Developer voluntarily consents to the application of all City rules, charter provisions, ordinances, orders, building codes, and other regulations existing as of the Effective Date hereof (the "Regulations") that govern the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building on the Property regardless of whether a different building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. In addition, Developer voluntarily consents to the application of the Regulations that establish a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building, regardless of whether the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. The parties agree that: 1) the City will not issue any permits for the Property in violation of this Article; 2) the covenants contained within this Article constitute a material term of this Agreement; 3) Developer's voluntary consent to the application of the Regulations to the Property, as described in this Article, constitutes a material inducement for the BEDC to authorize the Incentives described herein; 4) the covenants contained herein shall run with the land and shall bind Developer and all successors and assigns; and 5) this Article shall survive termination or expiration of this Agreement.

ARTICLE 8.
AUTHORITY; COMPLIANCE WITH LAW

8.01 Developer hereby represents and warrants to the BEDC that it has full lawful right, power and authority to execute and deliver and perform the terms and obligations of this Agreement and that the execution and delivery of this Agreement has been duly authorized by all necessary action by Developer and this Agreement constitutes the legal, valid and binding obligation of Developer, and is enforceable in accordance with its terms and provisions.

8.02 Notwithstanding any other provision of this Agreement, Developer shall comply with all federal, state, and local laws.

8.03 During the term of this Agreement, Developer agrees not to knowingly employ any undocumented workers at the Development, and if convicted of a violation under 8 U.S.C. Section 1324a(f), Developer shall repay the amount of the Incentives received by Developer as of the date of such violation within 120 business days after the date Developer is notified by the City or the BEDC of such violation, plus interest at the rate the City of Burleson is paying on the most recent issuance of bonded indebtedness prior to Developer's violation of this Section.

8.04 Developer agrees, verifies, and certifies that it does not and during the duration of this Agreement will not:

- A. boycott Israel as that term is defined in Texas Government Code Section 808.001 and Chapter 2271, as amended;
- B. do business with Iran, Sudan, or a foreign terrorist organization, as defined in Texas Government Code Chapter 2270, as amended;
- C. boycott energy companies as defined in Texas Government Code Section 809.001 and Chapter 2274, as amended; or
- D. discriminate against a firearm trade association as defined in Texas Government Code Chapter 2274, as amended.

ARTICLE 9.
DEFAULT, REMEDIES AND TERMINATION

9.01 Default by Developer.

(A) False Representation and Falsification of Documentation. In the event Developer knowingly provides any false representation or provides any false documentation of costs or achievement of any milestone or requirement under this Agreement, Developer shall be in default of this Agreement and shall within thirty (30) days of the date of receipt of the of same from the BEDC return any funds received by Developer related to such false representation or false documentation.

(B) Other Default. In the event: (i) Developer fails to fulfill its obligations under Article 5 of this Agreement; (ii) Developer has delinquent ad valorem or sales taxes owed to the City provided that Developer retains the right to timely and properly protest and/or contest any such taxes; (iii) Developer materially breaches any of the material terms and conditions of this Agreement; or (iv) Developer experiences an Event of Bankruptcy, then Developer after the expiration of the notice and cure periods described herein, shall be in default of this Agreement. In the event of such a default, BEDC shall give Developer written notice of such breach and/or default, and if Developer has not cured such breach or default within 90 days after receipt of such notice, the BEDC may terminate this Agreement by written notice to Developer. If BEDC terminates this Agreement pursuant to this Section,

Developer shall not be entitled to any additional Incentive payments from BEDC and the BEDC shall have no further obligation to Developer.

(C) The repayment obligation of Developer set forth in Sections 8.03, 9.01(A), and 13.02 shall survive termination of this Agreement.

9.02 No waiver or any breach of any term or condition of this Agreement shall be construed to waive any subsequent breach of the same or any other term or condition of this Agreement. Any waiver of any term or condition of this Agreement must be in writing and approved by the BEDC Board of Directors and ratified by the City Council of Burleson.

ARTICLE 10. **RIGHT OF OFFSET**

Developer agrees that, subject to the provision of notice by BEDC and 90-day period following receipt of notice in which Developer may respond or act, BEDC may offset the amount of any compensation due to Developer for any calendar year under this Agreement against any amount which is: (i) lawfully due to City from Developer, and (ii) not subject to challenge by Developer in a court of competent jurisdiction.

ARTICLE 11. **VENUE AND GOVERNING LAW**

This Agreement is performable in Johnson County, Texas and venue of any action arising out of this Agreement shall be exclusively in Johnson County, Texas. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Burleson, applicable federal and state laws, violation of which shall constitute a default of this Agreement. To the extent permitted by law, the laws of the State of Texas shall apply without regard to applicable principles of conflicts of law, and the parties submit to the jurisdiction of the state and federal courts in Burleson, Johnson County, Texas.

ARTICLE 12. **FORCE MAJEURE**

Performance of Developer's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and Developer's obligations shall be abated during any period of force majeure. Force majeure shall include, without limitation, damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, issuance of any permit and/or legal authorization (including engineering approvals by any governmental entity), governmental approvals and permits, shortage or delay in shipment of materials or fuel occasioned by any event referenced herein, acts of God, unusually adverse weather or wet soil conditions, pandemic, or other causes beyond the parties' reasonable control, including but not limited to, any court or judgment resulting from any litigation affecting the Property or this Agreement.

ARTICLE 13.
GIFT TO PUBLIC SERVANT OR TO DEVELOPER REPRESENTATIVE

13.01 No Benefit. Each party hereto represents to the other that it has not offered, conferred, or agreed to confer and that it will not offer, confer or agree to confer in the future any benefit upon an employee or official of the other party. For purposes of this section, "benefit" means anything reasonably regarded as economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include (i) a contribution or expenditure made and reported in accordance with law or (ii) payment of the Incentives.

13.02 Right of Reimbursement. Notwithstanding any other legal remedies, BEDC may obtain reimbursement for any expenditure made to Developer as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official or a BEDC employee or official.

ARTICLE 14.
ASSIGNMENT

Developer may not assign any part of this Agreement without consent or approval by the BEDC Board of Directors and ratification by the City Council.

ARTICLE 15.
INDEMNIFICATION

15.01 DEVELOPER EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE BEDC, AND ITS OFFICERS, AND EMPLOYEES, AND THE CITY, AND ITS OFFICERS, AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, OUT-OF-POCKET COSTS (INCLUDING REASONABLE ATTORNEYS' FEES) AND OUT-OF-POCKET EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT (COLLECTIVELY, "LOSSES"), SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF DEVELOPER OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT OF OR IN THE PERFORMANCE OF THIS CONTRACT; NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL DEVELOPER BE RESPONSIBLE FOR, NOR SHALL ITS INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS SECTION 15.01 EXTEND TO, ANY LOSSES ARISING OUT OF OR OCCASIONED BY THE ACTS OR OMISSIONS OF THE BEDC, AND ITS OFFICERS, AND EMPLOYEES, OR THE CITY, ITS OFFICERS AND EMPLOYEES, THAT CONSTITUTE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. Nothing in this paragraph may be construed as waiving any governmental immunity available to the City under state law. This provision is solely for the benefit of Developer, BEDC, and the City

and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

15.02 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. The City and BEDC (including its past, present and future officers, elected officials, directors, employees and agents of the City) do not assume any responsibility to any third party in connection with Developer's construction of the Development.

15.03 The provisions of this Article 15 shall survive termination of this Agreement.

ARTICLE 16. **MISCELLANEOUS MATTERS**

16.01 Time is of Essence. Time is of the essence in this Agreement. The parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

16.02 Agreement Subject to Law. This Agreement is made subject to and in accordance with the Burluson Home Rule Charter and ordinances of the City, as amended, and all applicable State and federal laws.

16.03 Interpretation. Each of the parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any party based on draftsmanship.

16.04 Counterparts Deemed Original; Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. Any pdf-format or other electronic transmission of any signature of a signatory shall be deemed an original and shall bind such signatory.

16.05 Captions. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

16.06 Complete Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in the Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached and made a part of this Agreement.

16.07 No Waiver. Nothing contained in this Agreement shall be construed as the granting of any permit or permission required by any City ordinance or regulation, or the waiver of any requirement of any City ordinance or regulation.

16.08 Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefore; or (ii) sent by a nationally recognized overnight courier service; or (iii) delivered by United States certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the respective party at its address set forth below, and shall be effective (a) upon receipt or refusal if delivered personally; (b) one business day after depositing, with such an overnight courier service or (c) two business days after deposit in the United States mail, if mailed. Any party hereto may change its address for receipt of notices by service of a notice of such change in accordance with this subsection.

Developer: 2525 FTG - TULSA, LLC
P. O. Box 471819
Fort Worth, Texas 76147
Attn: Louis E. Martin, III

BEDC: Burleson 4A Economic Development Corp.
Attn: Board President
141 West Renfro
Burleson, TX 76028

With a copy to: E. Allen Taylor, Jr., City Attorney
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place
Suite 200
Fort Worth, TX 76107

With a copy to: City Manager
City of Burleson, Texas
141 West Renfro
Burleson, TX 76028

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


16.10 Severability. In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In the event there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.

16.11 Approval by the City Council Required. The BEDC's action to enter into this Agreement is subject to the approval of the City Council of the City of Burleson,

Texas. This Agreement shall not be effective until such Agreement is signed by the parties and the City Council of the City of Burleson, Texas ratifies and approves the BEDC's action to enter into this Agreement.

[Signature pages to follow]


BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION

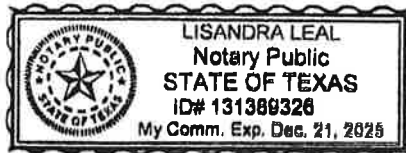
By: 
Name: Dan McClendon
Title: Board President
Date: June 20, 2023
Date: February , 2023

STATE OF TEXAS
COUNTY OF Johnson

This instrument was acknowledged before me on February 20, 2023, by Dan McClendon, known personally by me to be the Board President of the Burleson 4A Economic Development Corporation, on behalf of said entity.

[Notary Seal]


Notary Public, State of Texas



2525 FTG - TULSA, LLC,
A Texas limited liability company

By: 

Name: Louis E. Martin, III

Title: Manager

Date: ~~February~~ June 13, 2023

STATE OF TEXAS
COUNTY OF TARRANT

This instrument was acknowledged before me on ~~February~~ June 13, 2023 by Louis E. Martin, III, known personally by me to be the manager of 2525 FTG - Tulsa, LLC, on behalf of said entity.

[Notary Seal]


Notary Public, State of Texas

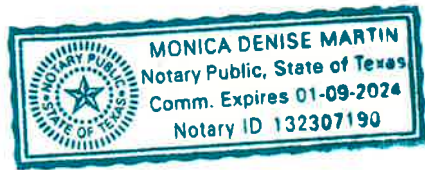
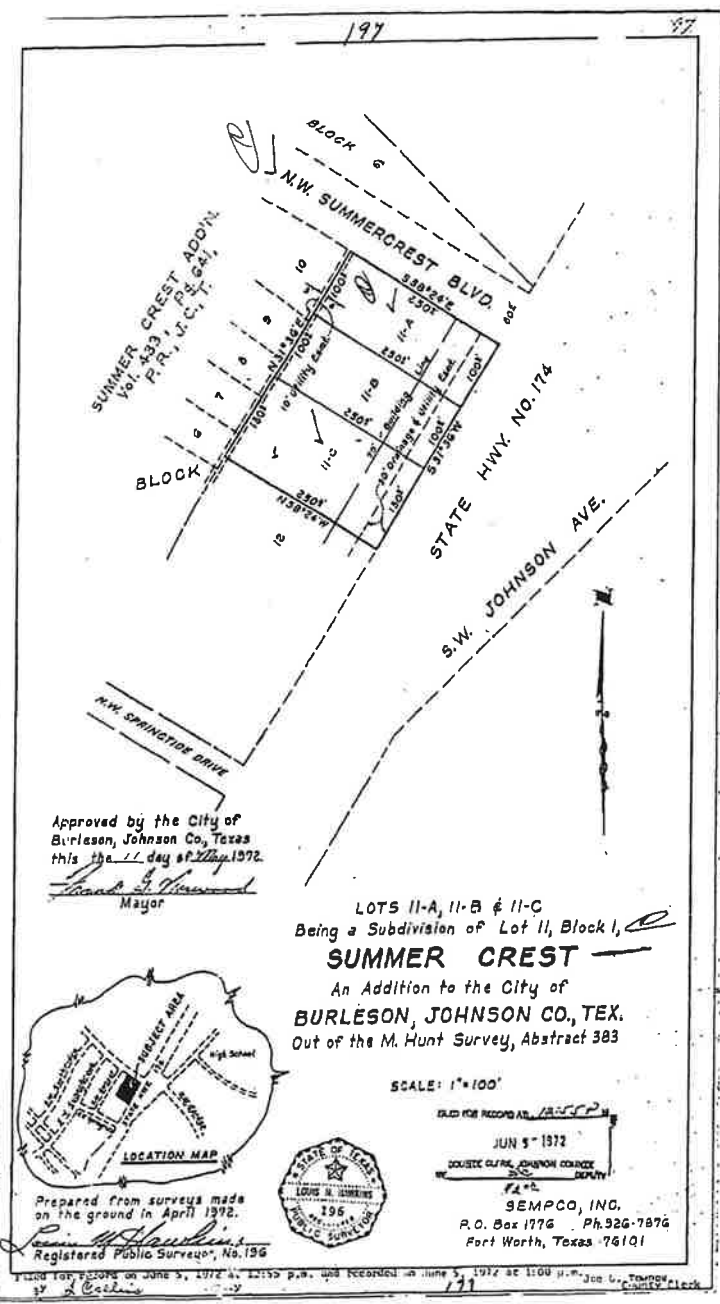


Exhibit A
The Property

1/197



Approved by the City of
Burlison, Johnson Co., Texas
this the 11 day of May, 1972.
Frank G. Howard
Mayor

LOTS 11-A, 11-B & 11-C
Being a Subdivision of Lot 11, Block 1,
SUMMER CREST
An Addition to the City of
BURLESON, JOHNSON CO., TEX.
Out of the M. Hunt Survey, Abstract 383



SCALE: 1" = 100'

FILED FOR RECORD AT
JUN 5 1972
JULIUS C. CLINE, JOHNSON COUNTY CLERK
DEPUTY



Prepared from surveys made
on the ground in April 1972.
James M. Henderson
Registered Public Surveyor, No. 196

SEMPCO, INC.
P.O. Box 1776 Ph. 926-7876
Fort Worth, Texas 76101

FILED FOR RECORD ON JUNE 5, 1972 A. 12:50 P.M. and RECORDED on June 5, 1972 at 1:00 P.M. Joe G. TAYLOR, COUNTY CLERK

Survey plat of
LOT 11-B, BLOCK 1
SUMMER CREST
 an addition to the City of Burleson,
 Johnson County, Texas
 according to the Plat recorded in
 Volume 1, Page 197
 Plat Records, Johnson County, Texas.



Combs Land Surveying, Inc.

P.O. Box 11370 Fort Worth, Texas 76110
 1374 W. Victory Blvd. Fort Worth, Texas 76107
 (817) 731-6400 (817) 731-6400 FAX

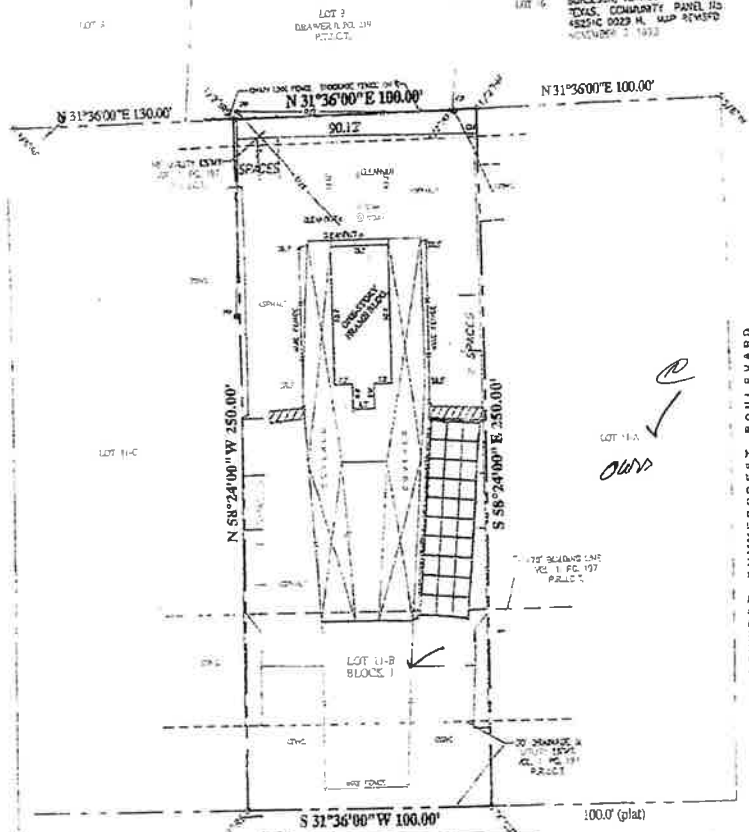
U.S. JOB NO. 11-0156
 OF NO. 07301-0001-7

NOTE
 ALL SUBJECT PROPERTY BOUNDARY
 LINE BEARINGS AND DISTANCES ARE
 PLAT IN ACTUAL UNLESS OTHERWISE
 NOTED HEREOF

PLAT OF 22.86 ACRES NORTHWEST QUARTER-OF-SECTION 10 OF
 SECTION 36-TWENTY-NINE BOULEVARD AS SHOWN ON PLAT RECORDED
 IN VOL. 1, PG. 197, P.F. 207

R7 20 FEETES FROM R.O.D. TOWN
 R5 (LENGTH FROM R.O.D. 50')

NOTE
 NO PORTION OF THIS PROPERTY
 LIES WITHIN A 100-YEAR FLOOD
 BOUNDARY LINE ACCORDING TO
 THE NATIONAL FLOOD INSURANCE
 PROGRAM'S FLOOD INSURANCE
 RATE MAP FOR THE CITY OF
 BURLESON, JOHNSON COUNTY,
 TEXAS, COMMUNITY PANEL NO.
 48254C 0029 H. MAP REVISED
 NOVEMBER 2, 1992



**708 SOUTHWEST
 WILSHIRE BOULEVARD**
 (S. N. 174)
 ASPHALT PAVEMENT
 VARIABLE WIDTH R.O.W.

SURVEYED ON THE GROUND
 SEPTEMBER 7, 2007
 RECORDED SEPTEMBER 13, 2007
 RONALD W. COOMBS R.F.L.S.
 STATE OF TEXAS NO. 5224



EXHIBIT A

Handwritten initials/signature

Exhibit C Site Improvements

Carrillo Engineering, LLC		Opinion of Probable Construction Cost			
				Date:	2/2/2023
Project:	Burlison Retail Summercrest			Prepared By:	KR
Project No.:	22-139-001			Checked By:	AC
Sheet 1 of 1					
Item No	Item Description	Quantity	Unit	Unit Price	Item Cost
1	Mobilization	1	LS	\$20,000.00	\$20,000
2	Site Preparation/Demolition	1	LS	\$19,000.00	\$19,000
3	Environmental Remediation	1	LS	\$41,000.00	\$41,000
4	SWPPP	1	LS	\$7,500.00	\$7,500
5	Full Depth Sawcut	380	LF	\$15.00	\$5,700
6	7" Concrete Pavement Drive Approach	135	SY	\$120.00	\$16,200
7	6" Concrete Pavement	7,817	SY	\$100.00	\$781,700
8	5" Concrete Pavement	135	SY	\$90.00	\$12,150
9	Concrete Drainage Flume	6	EA	\$1,000.00	\$6,000
10	4" Sidewalks	2,160	SF	\$10.00	\$21,600
11	4" Concrete Pilot Channel	110	SY	\$80.00	\$8,800
12	6" Sanitary Sewer Line	474	LF	\$75.00	\$35,550
13	Grease Trap	3	EA	\$15,000.00	\$45,000
14	Connect to Existing 6" Water Line	2	EA	\$1,800.00	\$3,600
15	8" Water Line	209	LF	\$80.00	\$16,720
16	2" Water Line	197	LF	\$40.00	\$7,880
17	1 1/2" Water Line	80	LF	\$30.00	\$2,400
18	1 1/2" Domestic Meter	1	EA	\$9,600.00	\$9,600
19	2" Domestic Meter	1	EA	\$3,000.00	\$3,000
20	1" Domestic Meter	2	EA	\$2,000.00	\$4,000
21	Irrigation Meter	11	EA	\$250.00	\$2,750
22	Wheel Stop	1	LS	\$75,000.00	\$75,000
	Landscape and Irrigation				
Basis for Cost Projection:				Subtotal:	\$1,057,650.00
				Contingency. (% +/-) 20%	\$211,530.00
				Total:	\$1,269,180.00

- Basis for Cost Projection:
- No Design Completed
 - Preliminary Design
 - Final Design

This total does not reflect engineering, technical services, inspection, permitting fees, development or impact fees other than water and sewer impact fees. It also does not include public roadway, water, sewer, or traffic signal improvements.

The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Engineer at the time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

Exhibit D

Carrillo Engineering, LLC		Opinion of Probable Construction Cost		
				Date: 4/18/2023
Project:	Burleson Retail Summercrest			Prepared By: KR
Project No.:	22-139-001			Checked By: AC

Paving/Signal Improvements					
1	Mobilization	1	LS	\$20,000	\$20,000
2	Site Preparation	1	LS	\$19,000	\$19,000
3	Traffic Control	1	LS	\$30,000	\$30,000
4	Traffic Signal Improvements	1	EA	\$150,000	\$150,000
5	Right Turn Lanes Paving	850	SY	\$100	\$85,000
6	Right Turn Lanes Re-striping	2	EA	\$10,000.00	\$20,000
Subtotal:					\$324,000
Contingency (% +/-) 20%					\$64,800
Surveying/Engineering 18%					\$58,320
Total:					\$447,120

**PERFORMANCE AGREEMENT BETWEEN THE BURLESON 4A ECONOMIC
DEVELOPMENT CORPORATION AND 2525 FTG - TULSA, LLC**

This Performance Agreement (the "Agreement") is entered into as of February 16, 2023 (the "Effective Date") by and between the Burleson 4A Economic Development Corporation, a Texas municipal development corporation located in the City ("BEDC"), by and through its Board President, and 2525 FTG - Tulsa, LLC, a Texas limited liability company ("Developer"), by and through its manager.

WITNESSETH:

WHEREAS, the City of Burleson, a Texas home rule municipal corporation ("City"), located in the counties of Johnson and Tarrant, has established a regional economic center with unique architecture in the State Highway 174 corridor ("Wilshire Corridor"); and

WHEREAS, the City desires to encourage and incentivize high quality development comprised of office, retail, restaurants, and commercial along the Wilshire Corridor to, among other things, improve drainage, site access, and walkability; and

WHEREAS, Developer is under contract to purchase real property in the Wilshire Corridor commonly known as 700, 708, 712, 714, 716, and 720 SW Wilshire Blvd in Burleson, Johnson County, Texas, and being more particularly described in **Exhibit A** (the "Property"); and

WHEREAS, Developer seeks to develop mixed-use facilities on the Property and greatly improve the drainage on the Property, especially along Wilshire Blvd, substantially modify the vehicular access to the Property from both Wilshire Blvd and Summercrest Blvd, and greatly improve the walkability to and through the Property; and

WHEREAS, the Property is not owned or leased by any member of the Burleson City Council, any member of the BEDC Board, or any member of the City Planning and Zoning Commission; and

WHEREAS, the BEDC Board finds and determines the Development will contribute to an increase in economic development in the City; and

WHEREAS, the BEDC Board finds and determines that the incentives contemplated in this Agreement constitute a "Project" as defined by the Development Corporation Act, codified in Subtitle C-1 of Title 12 of the Texas Local Government Code, in Section 501.103, in that the expenditures are for infrastructure improvements related to streets and roads, drainage, and site improvements necessary to promote new or expanded business development and enterprises; and

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

ARTICLE 1. **AUTHORIZATION**

The Burseson City Council and the BEDC Board both find and determine that this Agreement is authorized by Chapters 501 and 504 of the Texas Local Government Code, and that the incentives contemplated in this Agreement constitute a "Project" as defined by the Development Corporation Act, codified in Subtitle C-1 of Title 12 of the Texas Local Government Code, in Section 501.103.

ARTICLE 2. **DEFINITIONS**

2.01 The terms "Agreement," "BEDC," "City," "Developer," "Effective Date," "Project," and "Property," shall have the meanings provided, above.

2.02 "Building Permit" means the permit issued by the City's building official reflecting that Developer may commence with construction of the Development in conformance with appropriate municipal codes.

2.03 "Capital Investment" means and shall include all hard and soft costs incurred relating to the Development, including actual construction costs including costs of all site preparation, environmental remediation costs, demolition costs, buildings, structures, infrastructure, utilities, landscaping and other onsite improvements, including all labor and materials, architect fees, and engineering fees but shall not include financing costs for the Capital Investments, tenant finish out costs not reimbursed by the Developer to the tenants, insurance costs, marketing costs, the purchase price of the Property, offsite improvements, or costs reimbursed to Developer by the BEDC in the form of Incentives.

2.04 "Certificate of Occupancy" means the document issued by the City certifying a building's compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupation.

2.05 "City Manager" means the city manager of the City.

2.06 "Concept Plan" means the plan depicted on **Exhibit B**.

2.07 "Development" means the removal of the existing buildings on the Property and the construction of a new mixed-use building(s) on the Property of at least 8,500 square feet, of which a minimum of 3,000 square feet will be first class office space and a minimum of 5,500 square feet of restaurant space, to contain restaurant, office and retail locations and related site improvements, including the Site Improvements, to be constructed in general conformance with the Concept Plan.

2.08 "Event of Bankruptcy" means the dissolution or termination of Developer's existence as a going business, insolvency, appointment of receiver for any part of Developer's property and such appointment is not terminated within 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 Developer and such proceeding is not dismissed within 90 days after the filing thereof.

2.09 "Incentives" mean the combined contributions, monetary or otherwise, of the BEDC towards completion of the Development, as required by this Agreement.

2.10 "Site Improvements" means the improvements and permanent enhancements which are set forth in item numbers 3 through 21 of **Exhibit C**, which are drainage improvements, access improvements, walkability improvements, environmental remediation, and other improvements to be constructed on the Property in general conformance with the Concept Plan.

2.11 "Substantially Complete" or "Substantial Completion" means that all buildings in the Development are constructed as shell buildings in conformance with appropriate municipal codes and ready for tenant finish out. The shell buildings and Development shall be constructed to such an extent that upon tenant finish out, the area finished out shall be eligible to secure full utility service, be eligible for a Certificate of Occupancy, and permit occupancy.

ARTICLE 3. **TERM**

The term of this Agreement shall commence on the Effective Date and will terminate ten years following the date of issuance of the first Certificate of Occupancy for the Development.

ARTICLE 4. **IN GENERAL**

4.01 The Development. It is the parties' intent to cooperate in the creation of a high-end mixed-use development comprised of first class office space and desirable restaurants, retail, and commercial to enhance and compliment the Wilshire Corridor substantially in conformance with the Concept Plan set forth in **Exhibit B**. Developer will be responsible for constructing the Development, and in furtherance thereof the parties acknowledge and agree that Developer may accomplish this by hiring a general contractor to perform such construction on its behalf, or by leasing a portion of the Property to a tenant pursuant to a ground lease, and such tenant shall then perform, or cause to be performed, such construction on that portion of the Property. The BEDC will provide the Incentives set forth in this Agreement provided Developer is in compliance with its duties and obligations set forth herein.

4.02 BEDC Participation. The BEDC's obligations under this Agreement shall not exceed Eight Hundred Fifty Thousand Dollars (\$850,000.00) for all obligations set forth herein, including all Incentives. The BEDC authorizes the City Manager to allocate such funds as permitted by law, and as necessary to meet the BEDC obligations set forth in this Agreement.

4.03 The following uses will not be permitted in the Development and Developer shall be obligated, during the Term of this Agreement, to ensure that any lease or transfer of title prohibits such uses to the extent permitted by law:

- A. Cabinet and upholstery shop;
- B. Convenience store with automotive fuel sales;
- C. Fire or police station;
- D. Mortuary or funeral home;
- E. Plumbing shop (no outside storage);
- F. Railroad passenger terminal;
- G. Swimming pool; and
- H. Taxidermy.

ARTICLE 5.
COVENANTS OF DEVELOPER

5.01 Covenants Regarding Developer Development and Operations. In consideration of BEDC agreeing to pay Developer the Incentives in accordance with the terms, provisions and conditions of this Agreement, Developer agrees to the following, which are not obligations of Developer, but are duties that must be fulfilled in order to receive the Incentives, subject to Article 12 below:

A. Design and construct the Development in substantial conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.

B. Design and construct the Development in substantial conformance with the Concept Plan.

C. Operate the Development in substantial conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.

D. Close and purchase and acquire fee simple title to the Property by May 1, 2023.

E. Complete any required zoning application and file with the City by May 31, 2023.

F. Commence construction (i.e., obtain a building permit from the City and start rough grading) on the Development no later than September 30, 2024.

G. Substantially Complete construction of the Development no later than December 31, 2024.

H. Make a minimum Capital Investment of no less than Four Million Dollars (\$4,000,000.00) in the Property no later than December 31, 2024.

I. Recruit to the Development at least four (4) new-to-market retail, office, or restaurant tenants, with each of the four tenants receiving a certificate of occupancy in the Development no later than December 31, 2025.

J. Developer shall remain current and paid on all property taxes, subject to appeal rights in accordance with law and subject to a right to cure any delinquency as set forth herein.

5.02 Verification of Capital Investment. On or before February 15, 2025, Developer shall provide written verification to the BEDC that the Capital Investment made by Developer meets or exceeds the requirements set forth in this Agreement. The BEDC may request, and Developer hereby agrees that it will permit reasonable review of information that permits the BEDC to verify that the Capital Investment made by Developer for the Development meets or exceeds the requirements of this Agreement.

ARTICLE 6. **COVENANTS AND INCENTIVES OF BEDC**

6.01 Incentives. Subject to Developer complying with its duties and obligations under this Agreement, the BEDC agrees to the Incentives set forth in this Section. The Incentives shall be a reimbursement of Developer's expenses related to Developer's construction of the Site Improvements in the Development not to exceed Eight Hundred Fifty Thousand Dollars (\$850,000.00), payable to Developer in the incremental, scheduled amounts specified below upon completion of the following milestones:

A. Upon Substantial Completion of the Development, the Incentive due to Developer shall be a reimbursement of Developer's expenses related to Developer's construction of the Site Improvements up to Four Hundred Twenty-Five Thousand Dollars (\$425,000.00); and

B. Upon receipt of a Certificate of Occupancy from four (4) new-to-market retail, office, or restaurant tenants in the Development, the Incentive due to Developer shall be a reimbursement of Developer's expenses related to Developer's construction of the Site Improvements up to Four Hundred Twenty-Five Thousand Dollars (\$425,000.00).

6.02 Verification of Completion of Milestone. Following the completion of a milestone specified in Section 6.01, Developer shall provide written notice of such completion to the BEDC and provide proof of costs reasonably satisfactory to the BEDC. Developer agrees that BEDC shall not be required to make any Incentive payment under this Agreement until such time that Developer provides such written notice and proof of costs. The BEDC may request, and Developer hereby agrees that it will permit reasonable review of information that permits the BEDC to verify that the costs made by Developer for the Development meets or exceeds the requirements of this Agreement. Additionally, the BEDC may request, and Developer hereby agrees that it will permit reasonable inspection of the Property during normal business hours that permits the BEDC to verify that the improvements made by Developer for the Development meet or exceed the requirements of this Agreement. Following written notice of completion and proof of costs reasonably satisfactory to the BEDC, BEDC shall pay Developer the Incentive amount specified in Section 6.01, subject to the terms and provisions of this Agreement, within 90 days.

ARTICLE 7.

REGULATIONS REGARDING BUILDING PRODUCTS, MATERIALS, OR METHODS

The parties hereto find that the area described herein constitutes an area of architectural importance and significance and the City Council of the City of Burleson, Texas, hereby designates it as an area of architectural importance and significance for purposes of Chapter 3000 of the Texas Government Code (the "Code"). In consideration for the mutual covenants and conditions contained herein and pursuant to Section 3000.002(d) of the Code, Developer voluntarily consents to the application of all City rules, charter provisions, ordinances, orders, building codes, and other regulations existing as of the Effective Date hereof (the "Regulations") that govern the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building on the Property regardless of whether a different building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. In addition, Developer voluntarily consents to the application of the Regulations that establish a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building, regardless of whether the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. The parties agree that: 1) the City will not issue any permits for the Property in violation of this Article; 2) the covenants contained within this Article constitute a material term of this Agreement; 3) Developer's voluntary consent to the application of the Regulations to the Property, as described in this Article, constitutes a material inducement for the BEDC to authorize the

Incentives described herein; 4) the covenants contained herein shall run with the land and shall bind Developer and all successors and assigns; and 5) this Article shall survive termination or expiration of this Agreement.

ARTICLE 8.
AUTHORITY; COMPLIANCE WITH LAW

8.01 Developer hereby represents and warrants to the BEDC that it has full lawful right, power and authority to execute and deliver and perform the terms and obligations of this Agreement and that the execution and delivery of this Agreement has been duly authorized by all necessary action by Developer and this Agreement constitutes the legal, valid and binding obligation of Developer, and is enforceable in accordance with its terms and provisions.

8.02 Notwithstanding any other provision of this Agreement, Developer shall comply with all federal, state, and local laws.

8.03 During the term of this Agreement, Developer agrees not to knowingly employ any undocumented workers at the Development, and if convicted of a violation under 8 U.S.C. Section 1324a(f), Developer shall repay the amount of the Incentives received by Developer as of the date of such violation within 120 business days after the date Developer is notified by the City or the BEDC of such violation, plus interest at the rate the City of Burleson is paying on the most recent issuance of bonded indebtedness prior to Developer's violation of this Section.

8.04 Developer agrees, verifies, and certifies that it does not and during the duration of this Agreement will not:

- A. boycott Israel as that term is defined in Texas Government Code Section 808.001 and Chapter 2271, as amended;
- B. do business with Iran, Sudan, or a foreign terrorist organization, as defined in Texas Government Code Chapter 2270, as amended;
- C. boycott energy companies as defined in Texas Government Code Section 809.001 and Chapter 2274, as amended; or
- D. discriminate against a firearm trade association as defined in Texas Government Code Chapter 2274, as amended.

ARTICLE 9.
DEFAULT, REMEDIES AND TERMINATION

9.01 Default by Developer.

In the event: (i) Developer fails to fulfill its obligations under Article 5 of this Agreement; (ii) Developer has delinquent ad valorem or sales taxes owed to the City provided that Developer retains the right to timely and properly protest and/or contest any such taxes; (iii) Developer materially breaches any of the material terms and conditions of this Agreement; or (iv) Developer experiences an Event of Bankruptcy, then Developer after the expiration of the notice and cure periods described herein, shall be in default of this Agreement. In the event of such a default, BEDC shall give Developer written notice of such breach and/or default, and if Developer has not cured such breach or default within 90 days after receipt of such notice, the BEDC may terminate this Agreement by written notice to Developer. If BEDC terminates this Agreement pursuant to this Section, Developer shall not be entitled to any additional Incentive payments from BEDC and the BEDC shall have no further obligation to Developer.

9.02 No waiver or any breach of any term or condition of this Agreement shall be construed to waive any subsequent breach of the same or any other term or condition of this Agreement. Any waiver of any term or condition of this Agreement must be in writing and approved by the BEDC Board of Directors and ratified by the City Council of Burleson.

ARTICLE 10. **RIGHT OF OFFSET**

Developer agrees that, subject to the provision of notice by BEDC and 90-day period following receipt of notice in which Developer may respond or act, BEDC may offset the amount of any compensation due to Developer for any calendar year under this Agreement against any amount which is: (i) lawfully due to City from Developer, and (ii) not subject to challenge by Developer in a court of competent jurisdiction.

ARTICLE 11. **VENUE AND GOVERNING LAW**

This Agreement is performable in Johnson County, Texas and venue of any action arising out of this Agreement shall be exclusively in Johnson County, Texas. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Burleson, applicable federal and state laws, violation of which shall constitute a default of this Agreement. To the extent permitted by law, the laws of the State of Texas shall apply without regard to applicable principles of conflicts of law, and the parties submit to the jurisdiction of the state and federal courts in Burleson, Johnson County, Texas.

ARTICLE 12. **FORCE MAJEURE**

Performance of Developer's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and Developer's obligations shall be abated during any period of force majeure. Force majeure shall include, without limitation, damage or destruction by fire or other casualty, condemnation, strike, lockout,

civil disorder, war, issuance of any permit and/or legal authorization (including engineering approvals by any governmental entity), governmental approvals and permits, shortage or delay in shipment of materials or fuel occasioned by any event referenced herein, acts of God, unusually adverse weather or wet soil conditions, pandemic, or other causes beyond the parties' reasonable control, including but not limited to, any court or judgment resulting from any litigation affecting the Property or this Agreement.

ARTICLE 13.

GIFT TO PUBLIC SERVANT OR TO DEVELOPER REPRESENTATIVE

13.01 No Benefit. Each party hereto represents to the other that it has not offered, conferred, or agreed to confer and that it will not offer, confer or agree to confer in the future any benefit upon an employee or official of the other party. For purposes of this section, "benefit" means anything reasonably regarded as economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include (i) a contribution or expenditure made and reported in accordance with law or (ii) payment of the Incentives.

13.02 Right of Reimbursement. Notwithstanding any other legal remedies, BEDC may obtain reimbursement for any expenditure made to Developer as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official or a BEDC employee or official.

ARTICLE 14.

ASSIGNMENT

Developer may not assign any part of this Agreement without consent or approval by the BEDC Board of Directors and ratification by the City Council.

ARTICLE 15.

INDEMNIFICATION

15.01 DEVELOPER EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE BEDC, AND ITS OFFICERS, AND EMPLOYEES, AND THE CITY, AND ITS OFFICERS, AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, OUT-OF-POCKET COSTS (INCLUDING REASONABLE ATTORNEYS' FEES) AND OUT-OF-POCKET EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT (COLLECTIVELY, "LOSSES"), SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF DEVELOPER OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT OF OR IN THE PERFORMANCE OF THIS CONTRACT; NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL DEVELOPER BE RESPONSIBLE FOR, NOR SHALL ITS INDEMNIFICATION OBLIGATIONS SET

FORTH IN THIS SECTION 15.01 EXTEND TO, ANY LOSSES ARISING OUT OF OR OCCASIONED BY THE ACTS OR OMISSIONS OF THE BEDC, AND ITS OFFICERS, AND EMPLOYEES, OR THE CITY, ITS OFFICERS AND EMPLOYEES, THAT CONSTITUTE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. Nothing in this paragraph may be construed as waiving any governmental immunity available to the City under state law. This provision is solely for the benefit of Developer, BEDC, and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

15.02 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. The City and BEDC (including its past, present and future officers, elected officials, directors, employees and agents of the City) do not assume any responsibility to any third party in connection with Developer's construction of the Development.

ARTICLE 16. **MISCELLANEOUS MATTERS**

16.01 Time is of Essence. Time is of the essence in this Agreement. The parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

16.02 Agreement Subject to Law. This Agreement is made subject to and in accordance with the Burluson Home Rule Charter and ordinances of the City, as amended, and all applicable State and federal laws.

16.03 Interpretation. Each of the parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any party based on draftsmanship.

16.04 Counterparts Deemed Original; Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. Any pdf-format or other electronic transmission of any signature of a signatory shall be deemed an original and shall bind such signatory.

16.05 Captions. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

16.06 Complete Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in the Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached and made a part of this Agreement.

16.07 No Waiver. Nothing contained in this Agreement shall be construed as the granting of any permit or permission required by any City ordinance or regulation, or the waiver of any requirement of any City ordinance or regulation.

16.08 Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefore; or (ii) sent by a nationally recognized overnight courier service; or (iii) delivered by United States certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the respective party at its address set forth below, and shall be effective (a) upon receipt or refusal if delivered personally; (b) one business day after depositing, with such an overnight courier service or (c) two business days after deposit in the United States mail, if mailed. Any party hereto may change its address for receipt of notices by service of a notice of such change in accordance with this subsection.

Developer: 2525 FTG - TULSA, LLC
P. O. Box 471819
Fort Worth, Texas 76147
Attn: Louis E. Martin, III

BEDC: Burleson 4A Economic Development Corp.
Attn: Board President
141 West Renfro
Burleson, TX 76028

With a copy to: E. Allen Taylor, Jr., City Attorney
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place
Suite 200
Fort Worth, TX 76107

With a copy to: City Manager
City of Burleson, Texas
141 West Renfro
Burleson, TX 76028

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

16.10 Severability. In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection,

paragraph, subparagraph, sentence, phrase, or word. In the event there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.

- 16.11 Approval by the City Council Required. The BEDC's action to enter into this Agreement is subject to the approval of the City Council of the City of Burleson, Texas. This Agreement shall not be effective until such Agreement is signed by the parties and the City Council of the City of Burleson, Texas ratifies and approves the BEDC's action to enter into this Agreement.

[Signature pages to follow]

BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION

By: *[Signature]*
Name: Dan McDaniel
Title: Board President

Date: February 10, 2023

STATE OF TEXAS
COUNTY OF Johnson

This instrument was acknowledged before me on February 10, 2023, by Dan McDaniel known personally by me to be the Board President of the Burleson 4A Economic Development Corporation, on behalf of said entity.

[Notary Seal]

[Signature]
Notary Public, State of Texas



2525 FTG - TULSA, LLC,
A Texas limited liability company

By 

Name: Caleb E. Shutter III


Title: Manager

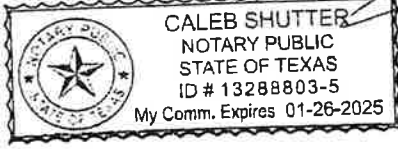
Date: February 3, 2023

STATE OF TEXAS
COUNTY OF Tarrant

This instrument was acknowledged before me on February 3, 2023 by Caleb E. Shutter III, known personally by me to be the manager of 2525 FTG - Tulsa, LLC, on behalf of said entity.

[Notary Seal]

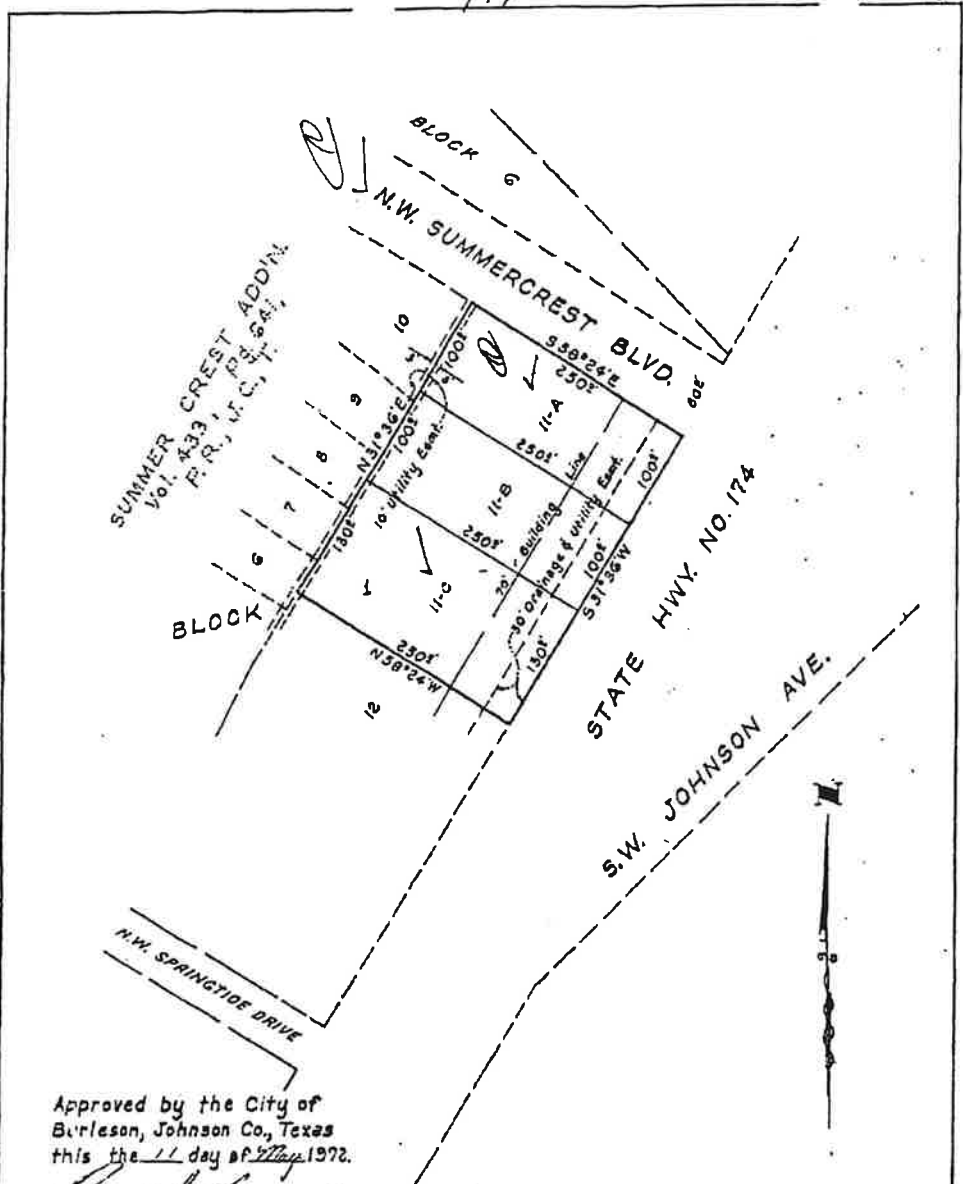

Notary Public, State of Texas



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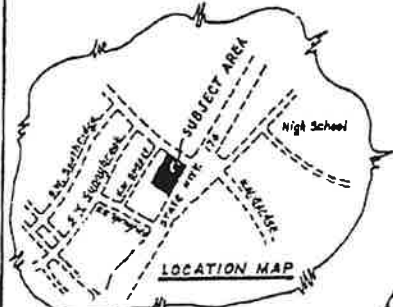
97

1/197



Approved by the City of
Burleson, Johnson Co., Texas
this the 11 day of May 1972.
Frank G. Vincent
Mayor

LOTS 11-A, 11-B & 11-C
Being a Subdivision of Lot 11, Block 1,
SUMMER CREST
An Addition to the City of
BURLESON, JOHNSON CO., TEX.
Out of the M. Hunt Survey, Abstract 383



Prepared from surveys made
on the ground in April 1972.
Louis H. Jenkins
Registered Public Surveyor, No. 196



SCALE: 1" = 100'

FILED FOR RECORD AT 12:55 P.M.
JUN 5 1972
COUNTY CLERK, JOHNSON COUNTY
BY *FAOR* DEPUTY

SEMPCO, INC.
P.O. Box 1776 Ph. 926-7876
Fort Worth, Texas 76101

Survey plat of
LOT 11-B, BLOCK 1
SUMMER CREST
 an addition to the City of Harrison
 Johnson County, Texas
 according to the Plat recorded in
 Volume 1, Page 197
 Plat Records, Johnson County, Texas.



Coombs Land Surveying, Inc.

P.O. Box 11370 Fort Worth Texas 76110
 4374 W. Victory Blvd. Fort Worth, Texas 76107
 (817) 731-6400 (817) 731-6402 FAX

CLS JOB NO. 11-0216
 DT No. 0791C - 00117

ALL SUBJECT PROPERTY BOUNDARY
 BEARINGS AND DISTANCES AND
 PLAT & ACTUAL ALIENS THEREOF
 MUST BE RECORDED.

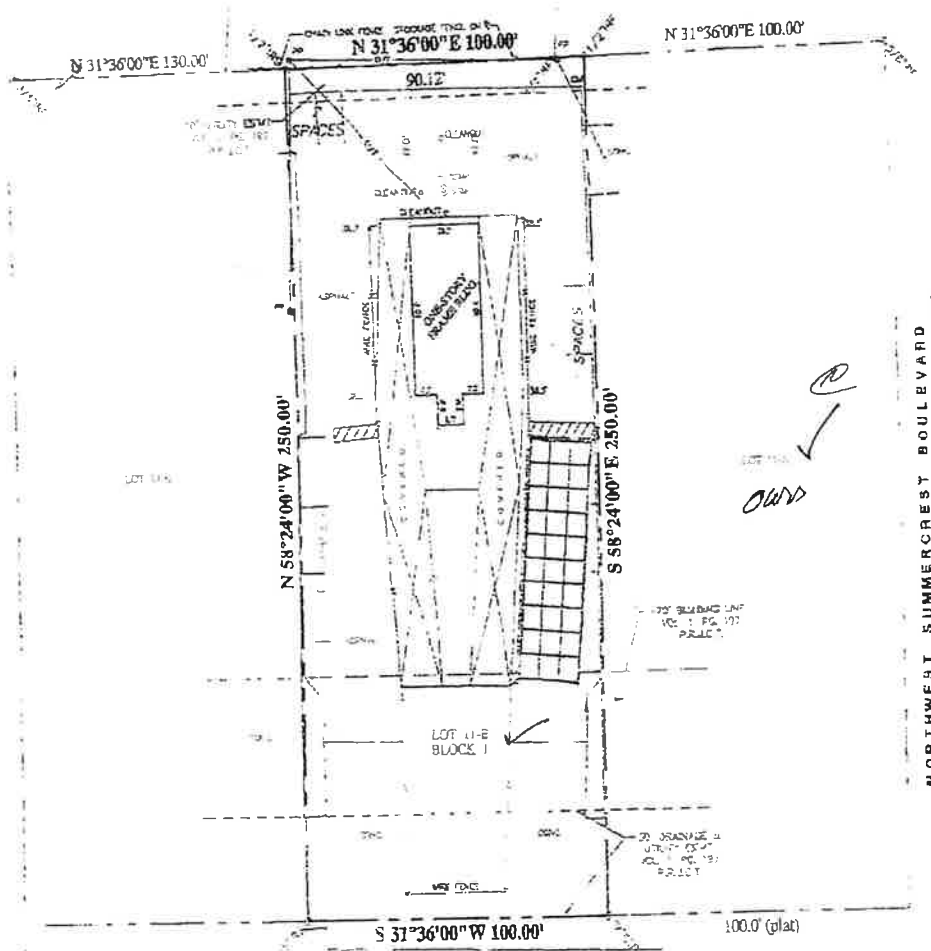
NO PORTION OF THIS PROPERTY
 LIES WITHIN A 100-YEAR FLOOD
 BOUNDARY LINE ACCORDING TO
 THE NATIONAL FLOOD INSURANCE
 PROGRAM'S FLOOD INSURANCE
 RATE MAP FOR THE CITY OF
 HARRISON, JOHNSON COUNTY,
 TEXAS, COMMUNITY PANEL NO.
 48251C 0029 H. MAP REVISED
 NOVEMBER 3, 1992.

DATE OF BEARINGS: NORTHWEST CORNER OF LOT 11-B
 SOUTHWEST CORNER OF LOT 11-B AS SHOWN ON PLAT RECORDED
 IN VOL. 1, PG. 197, P.P. 207

BY: [Signature] FROM: [Signature]
 AS: [Signature] FROM: [Signature]

LOT 9
 DRAWER & POL. 119
 POL. CT.

LOT 6



**708 SOUTHWEST
 WILSHIRE BOULEVARD**
 (S. H. 174)
 ASPHALT SURFACING
 VARIABLE WIDTH R.O.W.

APPROVED BY THE BOARD OF
 SUPERVISORS OF JOHNSON COUNTY
 REVISED SEPTEMBER 1992
 RONALD A. COOMBS, P.L.S.
 FORT WORTH, TEXAS 76107



EXHIBIT A

Handwritten initials/signature

Carrillo Engineering, LLC		Opinion of Probable Construction Cost			
				Date:	2/2/2023
Project:	Burleson Retail Summercrest			Prepared By:	KR
Project No.:	22-139-001			Checked By:	AC
Sheet 1 of 1					
Item No.	Item Description	Quantity	Unit	Unit Price	Item Cost
1	Mobilization	1	LS	\$20,000.00	\$20,000
2	Site Preparation/Demolition	1	LS	\$19,000.00	\$19,000
3	Environmental Remediation	1	LS	\$41,000.00	\$41,000
4	SWPPP	1	LS	\$7,500.00	\$7,500
5	Full Depth Sawcut	380	LF	\$15.00	\$5,700
6	7" Concrete Pavement Drive Approach	135	SY	\$120.00	\$16,200
7	6" Concrete Pavement	7,817	SY	\$100.00	\$781,700
8	5" Concrete Pavement	135	SY	\$90.00	\$12,150
9	Concrete Drainage Flume	6	EA	\$1,000.00	\$6,000
10	4" Sidewalks	2,160	SF	\$10.00	\$21,600
11	4" Concrete Pilot Channel	110	SY	\$80.00	\$8,800
12	6" Sanitary Sewer Line	474	LF	\$75.00	\$35,550
13	Grease Trap	3	EA	\$15,000.00	\$45,000
14	Connect to Existing 6" Water Line	2	EA	\$1,800.00	\$3,600
15	6" Water Line	209	LF	\$80.00	\$16,720
16	2" Water Line	197	LF	\$40.00	\$7,880
17	1 1/2" Water Line	80	LF	\$30.00	\$2,400
18	2" Domestic Meter	1	EA	\$9,600.00	\$9,600
19	1" Domestic Meter	1	EA	\$3,000.00	\$3,000
20	1" Irrigation Meter	2	EA	\$2,000.00	\$4,000
21	Wheel Stop	11	EA	\$250.00	\$2,750
22	Landscape and Irrigation	1	LS	\$75,000.00	\$75,000
Basis for Cost Projection:				Subtotal:	\$1,057,650.00
				Contingency, (%,+/-) 20%	\$211,530.00
				Total:	\$1,269,180.00

- Basis for Cost Projection:
- No Design Completed
 - Preliminary Design
 - Final Design

This total does not reflect engineering, technical services, inspection, permitting fees, development or impact fees other than water and sewer impact fees. It also does not include public roadway, water, sewer, or traffic signal improvements.

The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Engineer at this time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.