

**FIRST AMENDMENT TO**  
**PERFORMANCE AGREEMENT BETWEEN THE BURLESON 4A ECONOMIC**  
**DEVELOPMENT CORPORATION AND – C&C BURLESON, LLC**

This First Amendment to the Performance Agreement (“Amendment”) is made and entered into as of September 26 2024 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 C&C Burleson, LLC (“C&C”), a Texas limited liability company, by and through its authorized manager.

**RECITALS:**

WHEREAS, on or about October 2, 2024, the BEDC, and C&C entered into that Performance Agreement (the “Agreement,” attached hereto as Exhibit “A” and incorporated herein by reference for all purposes); and

WHEREAS, the parties desire to amend the Agreement by revising it to read as set forth below, with all other terms to remain unchanged.

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:

1. **Amendments.** The following amendments are hereby made to the Agreement:
  - i. Section 4.02 entitled “BEDC Participation” of Article 4 entitled “In General” of the Agreement is hereby amended by revising 4.02 to read as follows:

“4.02 BEDC Participation. The BEDC’s obligations under this Agreement shall not exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) 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.”
  - ii. Subsection (I) of Section 5.01 entitled “Covenants Regarding Developer Development and Operations” of Article 5 entitled “Covenants of Developer” of the Agreement is hereby amended by revising subsection (I) to read as follows:

“I. Recruit to the Development at least four (4) new-to-market retail, restaurant, or medical tenants, with all tenants receiving a certificate of occupancy in the Development no later than December 31, 2025.”
  - iii. Section 6.01 entitled “Incentives” of Article 6 entitled “Covenants and Incentives of BEDC of the Agreement is hereby amended by revising section 6.02 to read as follows:

“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 Three Hundred Fifty Thousand Dollars (\$350,000.00), payable to Developer in the incremental, scheduled amounts specified below upon completion of the following milestones:

A. Upon Substantial Completion of the Deceleration Lane, the Incentive due to Developer shall be a reimbursement of Developer’s expenses related to Developer’s construction of the Deceleration Lane up to One Hundred Fifty Thousand Dollars (\$150,000.00); and

B. Upon receipt of a Certificate of Occupancy from two (2) new-to-market retail 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 or Deceleration Lane up to One Hundred Fifty Thousand Dollars (\$150,000.00); and

C. Upon receipt of a Certificate of Occupancy from a fourth (4<sup>th</sup>) new-to-market retail 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 or Deceleration Lane up to Fifty Thousand Dollars (\$50,000.00).”

2. **Effect of Amendment.** All other terms and conditions of the Agreement, with the exception of the terms modified by this Amendment, shall remain in full force and effect. Except for the terms modified by this Amendment, the parties hereby ratify the remainder of the Agreement in its entirety.

*[Remainder of Page Left Blank. Signature Pages to Follow.]*

EXECUTED on the respective dates of acknowledgement, to be effective as of the date first set forth above.

**BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION,  
a Texas economic development corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_, known personally by me to be the \_\_\_\_\_ of the Burleson 4A Economic Development Corporation, on behalf of said entity.

[Notary Seal]

\_\_\_\_\_  
Notary Public, State of Texas

**C&C BURLESON, LLC,**  
**A Texas limited liability company**

By: *Chad DuBose*

Name: Chad DuBose

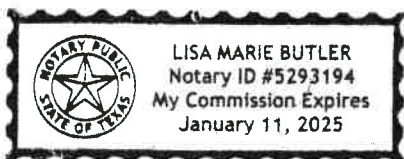
Title: Manager

Date: September 26, 2024

STATE OF TEXAS  
COUNTY OF Dallas

This instrument was acknowledged before me on 9-26, 2024 by Chad DuBose, known personally by me to be the Mgr. of C&C Burleson, LLC, on behalf of said entity.

[Notary Seal]



*Lisa Marie Butler*  
Notary Public, State of Texas

**Exhibit "A"**  
**The Agreement**

## 4A100223C&CBurleson

### PERFORMANCE AGREEMENT BETWEEN THE BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION AND – C&C BURLESON, LLC

This Performance Agreement (the "Agreement") is entered into as of <sup>October</sup> ~~September~~ 2, 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 C&C Burleson, 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 the current owner of real property in the Wilshire Corridor commonly known as 425 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 Wilshire 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 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," "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 "Deceleration Lane" means the turn lane from Wilshire Blvd that allows vehicular traffic to enter the Development as depicted on **Exhibit C**.

2.08 "Development" means the removal of the existing building on the Property and the construction of a new mixed-use building(s) on the **Property** of at least 8,014 square feet, of which a minimum of 3,600 square feet will be restaurant space, to contain restaurant

and retail locations and related site improvements, including the Site Improvements, to be **constructed** in general conformance with the Concept Plan.

2.09 "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.

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

2.11 "Site Improvements" means the improvements and permanent enhancements which are set forth in item numbers 3 through 7 of **Exhibit D**, 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.

2.12 "Substantially Complete" or "Substantial Completion" with regard to the Development 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. "Substantially Complete" or "Substantial Completion" with regard to the Deceleration Lane means the date upon which the City or Texas Department of Transportation issues a Letter of Substantial Acceptance to the Developer for completion of the construction of the Deceleration Lane.

### **ARTICLE 3.** **TERM**

The term of this Agreement shall commence on the Effective Date and will terminate five 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 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 Three Hundred Thousand Dollars (\$300,000.00) 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 **Exhibits.** The Exhibits to this Agreement, incorporated herein for all purposes, are as follows:

- Exhibit A – Property Description
- Exhibit B – Concept Plan
- Exhibit C – Deceleration Lane Depiction
- Exhibit D – List of Site improvements

#### **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 Deceleration Lane 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 Deceleration Lane 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. Intentionally Deleted.

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

F. Commence construction (i.e., obtain a building permit from the City and start rough grading) on the Development and Deceleration Lane no later than April 30, 2024; provided however, the obligation by Developer to commence construction shall be abated for any period of time for delays caused by applicable governmental authorities beyond the reasonable control of Developer.

G. Substantially Complete construction of the Development and Deceleration Lane no later than December 31, 2024; provided however, the obligation by Developer described herein shall be abated for any period of time for delays caused by applicable governmental authorities beyond the reasonable control of Developer.

H. Make a minimum Capital Investment of no less than Three Million Dollars (\$3,000,000.00) in the Property and Deceleration Lane no later than December 31, 2024.

I. Recruit to the Development at least two (2) new-to-market retail or restaurant tenants, with both 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 Three Hundred Thousand Dollars (\$300,000.00), payable to Developer in the incremental, scheduled amounts specified below upon completion of the following milestones:

A. Upon Substantial Completion of the Deceleration Lane, the Incentive due to Developer shall be a reimbursement of Developer's expenses related to Developer's construction of the Deceleration Lane up to One Hundred Fifty Thousand Dollars (\$150,000.00); and

B. Upon receipt of a Certificate of Occupancy from two (2) new-to-market retail 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 One Hundred Fifty Thousand Dollars (\$150,000.00).

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. This Section shall supersede any other conflicting term in this Agreement and shall survive termination of the Agreement.

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.

8.05 By executing this Agreement, Developer warrants, agrees, verifies, and certifies that to the best of its knowledge and belief, no member of City Council, City Manager, deputy city manager, city secretary, department heads, or deputy department heads of the City has direct or indirect financial interest in the award of this Agreement, or in the

services to which this Agreement relates, or in any of the profits, real or potential, thereof, in violation of Section 132 of the Home Rule Charter of the City.

**ARTICLE 9.  
TERMINATION.**

9.01 Termination. This Agreement shall terminate at the expiration of the Term specified in Article 3 unless terminated earlier as follows:

- (a) By written agreement of the Parties;
- (b) On the date of termination set forth in a written notice provided by a Party to the other Party in the event the other Party is in default and breaches any of the terms and conditions, or fails to meet any performance conditions, of this Agreement and such default is not cured within ninety (90) days after the non-breaching Party sends notice to the breaching Party of such breach;
- (c) On the date of termination set forth in a written notice by BEDC to Developer if Developer experiences an Event of Bankruptcy;
- (d) On the date of termination set forth in a written notice by BEDC to Developer if 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), and such delinquent ad valorem or sales taxes owed to the City are not paid within ninety (90) days after the BEDC sends notice to Developer;
- (e) On the date of termination set forth in a written notice by a Party to the other Party if either Party receives notice that any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal, or unenforceable; or

9.02 No Additional Incentives Following Termination. In the event this Agreement is terminated by the BEDC pursuant to Section 9.01, then Developer shall not be entitled to any additional Incentive payments or other funds paid pursuant to this Agreement from BEDC and the BEDC shall have no further obligation to Developer.

9.03 False Representation or Falsification of Documentation. In the event this Agreement is terminated by the BEDC pursuant to Section 9.01(b) because Developer made any false representation or provided any false documentation of investments, costs, or achievement of any milestone or requirement under this Agreement, then Developer shall within thirty (30) days of the date of termination return to the BEDC any funds received by Developer related to such false representation or report from the date of termination. The terms set forth in this Section shall survive termination.

9.04 Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary, in no event shall BEDC be liable to Developer for consequential, incidental, punitive, special, or exemplary damages, including lost revenues, profits, delays, or other economic loss arising from any cause including breach of warranty, breach of contract, tort, strict liability or any other cause whatsoever. To the extent permitted by law, any statutory remedies that are inconsistent with this provision of the Agreement are waived. The terms set forth in this Section shall survive termination.

9.05 No Waiver. 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 authorized representatives of the parties and approved by the City Council.

**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 Burleson 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:** C&C Burleson, LLC  
The Gild North  
8350 N. Central Expressway, Suite 1313  
Dallas, Texas, 75206  
Attn : Chad DuBose

**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, Oison, 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]*

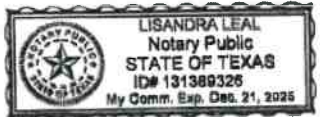
**BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION**

By:   
Name: Dan McClendon  
Title: Board President  
Date: ~~September~~ October 2nd, 2023

STATE OF TEXAS  
COUNTY OF Johnson

This instrument was acknowledged before me on ~~September~~ October 2, 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

C&C Burleson, LLC,  
A Texas limited liability company

By: Chad DuBose

Name: Chad DuBose

Title: Manager

Date: September 26, 2023

STATE OF TEXAS  
COUNTY OF Texas

This instrument was acknowledged before me on September 26, 2023 by Chad DuBose, known personally by me to be the manager of C&C Burleson, LLC, on behalf of said entity.



Lisa Marie Butler  
Notary Public, State of Texas

**Exhibit A**

Property Description

Lot 7-C-R, Block 2, of WILSHIRE SQUARE ADDITION, an Addition to the City of Burleson, Johnson County, Texas, according to the Map or Plat thereof recorded in Volume 7, Page 58, of the Plat Records of Johnson County, Texas.

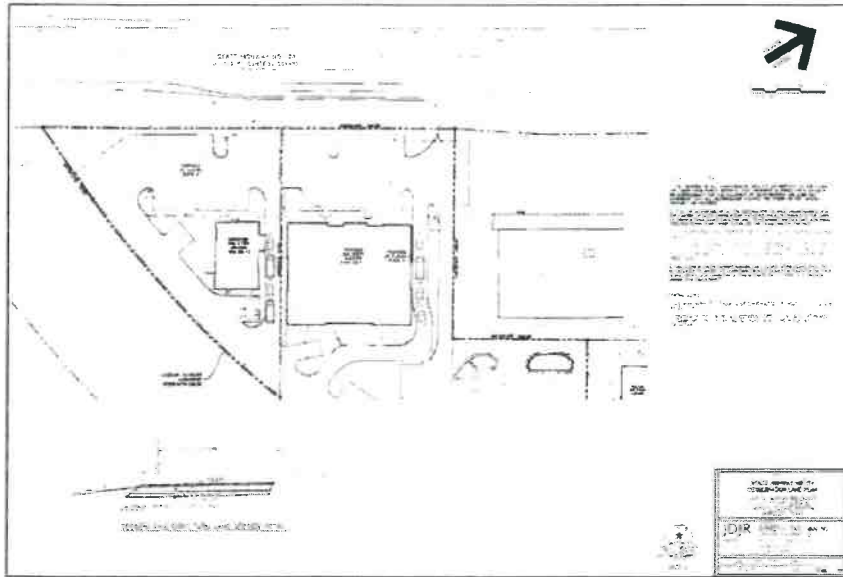
**Exhibit B**

Concept Plan



**Exhibit C**

**Deceleration Lane Depiction**



**Exhibit D**

List of Site Improvements



Date: July 5<sup>th</sup>, 2023  
Proposal # 2313

Jimmell General Contractors, LLC  
14901 H. DeLoach Expressway, Suite 280  
Dallas, TX 75221  
(903)821-0971  
jtkemmel@jtkemmelgc.com

TCG  
Chad Embree  
8200 N Central Expressway, #1313  
Dallas, TX 75206  
(214)261-8455  
Chad@tcbemba.com

JCP  
1 Overlook Blvd - Civil Construction Proposal - 425 SW Wichita Blvd

DESCRIPTION	COST PRICE	LINE TOTAL
1 General Conditions (Erosion Controls Included)		\$30,000.00
2 Demolition		\$84,360.00
3 Earthwork		\$170,740.00
4 Concrete		\$442,800.00
5 Sanitary Sewer		\$29,800.00
6 Fire, Domestic, Irrigation Water Lines, Taps, Hydrants, FDC included		\$304,175.00
7 Storm Utilities		\$43,750.00
8 Supervision		\$45,000.00
9 O&M		\$30,000.00

S&S Total 14,017,929.00  
Incentive (15%) 600,679.00  
Total 14,618,608.00