

**PERFORMANCE AGREEMENT BETWEEN**  
**THE BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION AND**  
**NATIONAL DCP, LLC, A DELAWARE LIMITED LIABILITY COMPANY**

This Performance Agreement (the "Agreement") is entered into as of October 31, 2023 (the "Effective Date") by and among The Burleson 4A Economic Development Corporation, a Texas municipal development corporation (the "EDC") created pursuant to the Development Corporation Act of 1979, as amended, codified as Subtitle C1 of Title 12 of the Texas Local Government Code (the "Act") located in the City of Burleson (the "City"), Counties of Johnson and Tarrant, State of Texas, by and through its President, and National DCP, LLC, a Delaware limited liability company ("Frosty"). In consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1.**  
**DEFINITIONS**

- 1.01 The terms "the Act," "Agreement," "City," "EDC," "Effective Date," and "Frosty," shall have the meanings provided above.
- 1.02 "Capital Investment" means and shall include all costs incurred relating to the acquisition of the Property and construction of the Development, including the actual construction costs, and other costs of all buildings, structures, improvements, infrastructure, fixed machinery and equipment, site development costs including demolition, grading and environmental abatement; engineering fees, architectural fees, legal fees and other professional fees; construction financing costs of the Development and tangible personal property, but shall not include financing costs for the Capital Investments, insurance costs, marketing costs, offsite improvements, or costs reimbursed to Frosty by the EDC in the form of Incentives.
- 1.03 "Certificate of Occupancy" means the document issued by the City of Burleson certifying the Development is in compliance with applicable building codes and other laws and indicating it to be a condition suitable for occupying.
- 1.04 "City Manager" means the city manager of the City.
- 1.05 "Commence Construction" means the beginning of construction in earnest on the Development on the Property and includes all of the following: (1) a signed contract with a general contractor or construction company to construct the Development, (2) proof of financing for the construction of the Development, (3) cleared the portion of the Property for the Development, and (4) installed proper erosion controls on the Property for the Development.

- 1.06 "Complete Construction" means the completion of construction of the Development on the Property and all buildings are ready for finish out and eligible for a Certificate of Occupancy.
- 1.07 "Development" means at least 85,000 square foot office, cold storage, and distribution facility to be occupied and operated by Frosty, as Frosty's cold storage and distribution center.
- 1.08 "Event of Bankruptcy" means the dissolution or termination of Frosty's existence as a going business, insolvency, appointment of receiver for any part of Frosty'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 Frosty and such proceeding is not dismissed within 90 days after the filing thereof.
- 1.9 "FTE" means a job requiring a minimum of One Thousand Nine Hundred Twenty (1,920) hours of work averaged over a twelve (12) month period with a minimum annual average salary of \$44,000.00.
- 1.10 "Governing Regulations" means the following regulations: (i) Subdivision Regulations, (ii) Municipal Building Codes, (iii) Plats, (iv) Zoning Ordinance, and (v) all state and federal statutes, rules, regulations, as amended, and other political subdivisions and governmental entities, if any, having jurisdiction over the Property and all applicable ordinances, rules, and regulations as amended by the City.
- 1.11 "Incentives" mean the combined contributions, monetary or otherwise, of the EDC towards completion of the Development, as required by this Agreement.
- 1.12 "Land Sale Contract" means the contract executed between Frosty and current owner of the Property by which Frosty will purchase and obtain fee simple title to the Property.
- 1.13 "Municipal Building Codes" means building, plumbing, electrical, mechanical, and fire codes and all amendments thereto in effect on the date of submittal of a permit application to the City pursuant to the Building Codes, except any amendments from which the Project is exempt pursuant to Chapter 245 of the Local Government Code.
- 1.14 "Open" means the date Frosty opens and begins to operate the Development as an office, cold storage, and distribution facility, and has the required Certificates of Occupancy to do so.
- 1.15 "Plat(s)" means any final plat(s) for a portion of the Property approved from time to time by the City in accordance with this Agreement.
- 1.16 "Project" means incentives offered by the EDC to encourage Frosty to locate the Development in Burleson.

- 1.17 "Property" means an approximately 13.1 acre tract commonly known as 465 Forgotten Lane and 3005 S Interstate 35 W, Burleson, Johnson County, Texas, more fully described in the attached Exhibit A.
- 1.18 "Qualified Job" means an FTE in one of the following sectors of the North American Industry Classification System (NAICS): (i) 311-339 – Manufacturing; (ii) 42 – Wholesale Trade; (iii) 48-49 – Transportation and Warehousing, and (iv) Management of Companies and Enterprises.
- 1.19 "Subdivision Regulations" means the Subdivision and Development Ordinance and Design Standards manual or other regulations adopted in their place, as of the date a preliminary plat application is filed and approved with the City, including any dormancy regulations effective on the date a preliminary plat application is filed with the City. Should a preliminary plat "expire" in accordance with the applicable dormancy regulations, a new application must be filed and the Subdivision Regulations for purposes of the new application shall be the Subdivision and Development Ordinance and Design Standards manual, or other regulations adopted in their place, as of the date the new application is filed with the City, including any dormancy regulations effective as of the date the new application is filed with the City.
- 1.20 "Zoning Ordinance" means the zoning ordinance of the City on the Effective Date of the Agreement, currently City of Burleson Ordinance No. B-582, as it may be amended.

## **ARTICLE 2**

### **RECITALS**

- 2.01 Frosty seeks to acquire the Property, and Frosty (or affiliated entity) proposes to construct and operate the Development on the Property.
- 2.02 The Board of Directors of the EDC has determined and found that the Project will provide incentives for the Development, will create primary jobs as defined by Section 501.002(12) of the Act, and that the expenditures of the EDC set forth in this Agreement are suitable or required for the development of a new industrial enterprise, and fall within the definition of a "project" as defined in Section 501.101 of the Act.
- 2.03 The Board of Directors of the EDC, which has determined that substantial economic benefit and the creation of new opportunities of employment will accrue to City as a result of the Development being located in the City, desires to have Frosty construct the Development improvements and operate the Development in the City.
- 2.04 The Development will increase the taxable value in the City and will directly and indirectly result in the creation of additional jobs throughout the City and the value

of the benefits of the Development is anticipated to outweigh the amount of expenditures required of the EDC by the Project under this Agreement.

- 2.05 The EDC, to encourage the construction and operation of the Development on the Property, desires to provide incentives as set forth herein which are necessary in order for Frosty to locate the Development in the City and operate as hereinafter set forth, to aid and promote economic development in the City.
- 2.06 The Board of Directors of the EDC has found the Development will contribute to an increase in economic development in the City.
- 2.07 The Property is not owned or leased by any member of the Burleson 4A Economic Development Corporation, Burleson City Council, or any member of the City Planning and Zoning Commission.

### **ARTICLE 3.** **AUTHORIZATION**

The Burleson City Council and the EDC Board both find and determine that this Agreement is authorized by Chapters 501 and 504 of the Texas Local Government Code, and that 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 501.101.

### **ARTICLE 4.** **TERM**

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

### **ARTICLE 5.** **COVENANTS OF FROSTY**

- 5.01 Covenants Regarding Frosty Development and Operations. In consideration of EDC agreeing to pay Frosty the Incentives in accordance with the terms, provisions and conditions of this Agreement, Frosty agrees to the following, which are not obligations of Frosty, but are duties that must be fulfilled in order to receive the Incentives:
  - (A) Frosty shall design and construct the Development in conformance with the Governing Regulations.
  - (B) Frosty shall 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.

- (C) Frosty shall 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) Frosty shall remain current and paid on all property taxes on the Property accruing from and after the closing date under the Land Sale Contract, subject to appeal rights in accordance with law and subject to a right to cure any delinquency.
- (E) By February 1, 2024, Frosty and the current fee simple owner of the Property shall execute a Land Sale Contract whereby Frosty shall acquire fee simple title to the Property upon closing.
- (F) By April 9, 2024, Frosty shall submit to the City building plans of the Development for review.
- (G) By July 1, 2024, Frosty and the current fee simple owner of the Property shall complete closing on the Land Sale Contract whereby Frosty acquires fee simple title to the Property.
- (H) By July 1, 2024, Frosty shall obtain a building permit to construct the Development and Commence Construction on the Development.
- (I) By August 6, 2024, Frosty shall complete the pouring of the slab foundation for the Development.
- (J) By May 21, 2025, Frosty shall Complete Construction on the Development with a minimum Capital Investment in the Property of \$25 million dollars.
- (K) By June 10, 2025, Frosty shall obtain a Certificate of Occupancy on the Development.
- (L) By August 10, 2025, Frosty shall Open the Development.
- (M) After Frosty Opens the Development, Frosty shall operate the facility on the Property for the term of this Agreement subject to (i) force majeure, (ii) casualty and condemnation, and (iii) temporary closings for repair, renovations and/or alterations not to exceed ninety (90) consecutive days, in each event, subject to extensions for force majeure.
- (N) After Frosty Opens the Development, Frosty shall operate the facility on the Property with at least 50 FTEs, of which at least 25 shall be Qualified Jobs.

5.02 If Frosty is delayed in performing any of its covenants described above by force majeure (as defined below), then the deadlines for Frosty's performance of those covenants shall be extended an equal time period.

- 5.03 Verification of Capital Investment. Within 30 days following the receipt of a Certificate of Occupancy, Frosty shall provide written verification to the EDC that the Capital Investment made by Frosty for the Development meets or exceeds the requirements set forth in of this Agreement. The EDC may request, and Frosty hereby agrees that it will permit reasonable review of information (at no cost, expense or liability to Frosty) that permits the EDC to verify that the Capital Investment made by Frosty for the Development meets or exceeds the requirements of this Agreement excluding (i) financial information of Frosty not related to the Development, and (ii) proprietary information.
- 5.04 Verification of FTEs and Qualified Jobs Information. In verifying duties related to FTEs and Qualified Jobs, Frosty shall provide written proof and documentation to the EDC on or before June 10<sup>th</sup> annually, beginning June 10, 2025, of the FTEs and Qualified Jobs at the Development for the Term of this Agreement. Such documentation shall include an employee identification number for each employee, number of employees, job titles, average salary, full time status of employees, number of hours required, and NAICS classification numbers.

**ARTICLE 6.**  
**INCENTIVES PROVIDED BY THE EDC TO FROSTY**

- 6.01 Subject to and contingent upon Frosty complying with its duties and obligations under this Agreement, EDC agrees that, subject to the terms and conditions contained herein, EDC shall pay the contributions and benefits according to the schedule set forth in this Article.
- 6.02 Subject to Frosty complying with its duties and obligations under this Agreement, the EDC agrees to the Incentives set forth in this Section. The Incentives shall be paid to Frosty in the incremental, scheduled amounts specified below upon completion of the following milestones:
- (A) Upon the City completing and approving the inspection on the poured foundation for the Development, the Incentive payment due to Frosty shall be Two Hundred Thousand Dollars (\$200,000.00).
  - (B) Upon receiving a Certificate of Occupancy for the Development and delivering written verification of Frosty's Capital Investment to the EDC, the Incentive payment due to Frosty shall be Two Hundred Thousand Dollars (\$200,000.00).
- 6.03 EDC Participation. Notwithstanding anything to the contrary, the EDC's obligations under this Agreement shall not exceed Four Hundred Thousand Dollars (\$400,000.00) for all obligations set forth herein, including all Incentives. The EDC authorizes the City Manager to allocate such funds as permitted by law, and as necessary to meet the EDC obligations set forth in this Agreement.

- 6.04 Verification of Completion of Milestone. Following the completion of each milestone specified in Section 6.02, Frosty shall provide written notice of such completion to the EDC and provide documentation demonstrating achievement of the milestone reasonably satisfactory to the EDC. Frosty agrees that EDC shall not be required to make any Incentive payment under this Agreement until such time that Frosty provides such written notice and proof of documentation demonstrating achievement of the milestone. Following written notice of completion and proof of costs or other documentation demonstrating achievement of the milestone reasonably satisfactory to the EDC, EDC shall pay Frosty the Incentive amount specified in Section 6.02 subject to the terms and provisions of this Agreement, within ninety (90) days.

**ARTICLE 7.**  
**AUTHORITY; COMPLIANCE WITH LAW**

- 7.01 Frosty hereby represents and warrants to EDC 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 Frosty, and this Agreement constitutes the legal, valid and binding obligation of Frosty, and is enforceable in accordance with its terms and provisions.
- 7.02 Notwithstanding any other provision of this Agreement, Frosty shall comply with all applicable federal, state, and local laws.
- 7.03 During the term of this Agreement, Frosty 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), Frosty shall repay the amount of the EDC contribution(s) received by Frosty for the period of time of such violation within 120 business days after the date Frosty is notified by the City of such conviction (provided all appeals have been exhausted), plus interest at the rate the City is paying on the most recent issuance of bonded indebtedness prior to Frosty's violation of this Section. This Section shall supersede any other conflicting term in this Agreement and shall survive termination of the Agreement.

**ARTICLE 8.**  
**TERMINATION.**

- 8.01 Termination. This Agreement shall terminate at the expiration of the Term specified in Article 4 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 EDC to Frosty if Frosty experiences an Event of Bankruptcy;
- (d) On the date of termination set forth in a written notice by EDC to Frosty if Frosty has delinquent ad valorem or sales taxes owed to the City (provided that Frosty 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 EDC sends notice to Frosty; or
- (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.

8.02 No Additional Incentives Following Termination. In the event this Agreement is terminated by the EDC pursuant to Section 8.01, then Frosty shall not be entitled to any additional Incentive payments or other funds paid pursuant to this Agreement from EDC and the EDC shall have no further obligation to Frosty.

8.03 False Representation or Falsification of Documentation. In the event this Agreement is terminated by the EDC pursuant to Section 8.01(b) because Frosty has knowingly provided any false representation or provides any knowingly false documentation of investments, jobs, enrollment, costs, or achievement of any milestone or requirement under this Agreement, then Frosty shall within thirty (30) days of the date of termination return to the EDC any funds received by Frosty related to such knowingly false representation or report with Interest from the date of termination. The terms set forth in this Section shall survive termination.

8.04 Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary, in no event shall EDC be liable to Frosty 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.

8.05 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 9.**  
**RIGHT OF OFFSET; MANDATORY STATUTORY CERTIFICATIONS; AND VENUE**  
**AND GOVERNING LAW**

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

By executing this Agreement, Frosty 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.

- 9.03 This Agreement is fully performable in Johnson County, Texas and venue of any action arising out of this Agreement shall be exclusively in Johnson County, Texas. To the extent permitted by law, the substantive 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 courts in Johnson County, Texas.

**ARTICLE 10.**  
**FORCE MAJEURE**

Performance of Frosty's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and Frosty'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, inability to obtain (or delay in obtaining) any permit and/or legal authorization (including engineering approvals by any governmental entity), inability to obtain (or delay in obtaining) 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 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 11.**

##### **GIFT TO PUBLIC SERVANT OR COMPANY REPRESENTATIVE**

11.01 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 a contribution or expenditure made and reported in accordance with law.

11.02 Right of Reimbursement. Notwithstanding any other legal remedies, EDC may obtain reimbursement for any expenditure made to Frosty as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official. This Section shall supersede any other conflicting term in this Agreement and shall survive termination of the Agreement.

#### **ARTICLE 12.** **ASSIGNMENT**

Frosty may not assign any part of this Agreement without consent or approval by the EDC.

#### **ARTICLE 13.** **INDEMNIFICATION**

13.01 **FROSTY EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND ITS OFFICERS, AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, TO THE EXTENT CAUSED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF FROSTY OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT.** 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 the City, and its officers and employees, and is not intended to create or grant any rights, contractual or otherwise, in or to any other person. This Section shall survive termination of this Agreement.

- 13.02 Nothing in this Agreement shall be construed as waiving any governmental immunity available to the City or EDC under state law.
- 13.03 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 EDC (including its past, present and future officers, elected officials, directors, employees and agents of the City and EDC) do not assume any responsibility to any third party in connection with Frosty's construction of the Development.

#### **ARTICLE 14.** **MISCELLANEOUS MATTERS**

- 14.01 Time is of Essence. Time is of the essence in this Agreement. The parties hereto will make commercially reasonable efforts to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation. If any date for the performance of any matter under this Agreement (including the date for the sending of a Notice and the date on which a Notice is deemed to have been received) falls on a Saturday, Sunday, or legal holiday observed by national banks in the counties where the Property is located, then such date shall be extended to the next calendar day that is not a Saturday, Sunday, or such legal holiday.
- 14.02 Agreement Subject to Applicable Law. This Agreement is made subject in accordance with the Burleson Home Rule Charter and ordinances of City, as amended, and all applicable State and federal laws, violation of which shall constitute a default of this Agreement.
- 14.03 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.
- 14.04 Counterparts Deemed Original. 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.
- 14.05 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.

14.06 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.

14.07 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 mails, 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.

**Frosty:** National DCP, LLC  
3805 Crestwood Parkway, Suite 400  
Duluth, GA 30096  
Attn: Steve Domonkos  
[Steve.domonkos@natdcp.com](mailto:Steve.domonkos@natdcp.com)

With a copy to: Frost Brown Todd  
400 West Market Street, Suite 3200  
Louisville, KY 40202  
Attn: Tanner Nichols  
[tnichols@fbtlaw.com](mailto:tnichols@fbtlaw.com)

**EDC:** Burleson 4A Economic Development Corporation  
Attn: City Manager  
141 W Renfro Street  
Burleson, Texas 76028  
Telephone: (817) 426-9613

With a copy to: Taylor, Olson, Adkins, Sralla & Elam, L.L.P.  
Attn: E. Allen Taylor, Jr., City Attorney  
6000 Western Place  
Suite 200  
Fort Worth, Texas 76107  
Telephone: (817) 332-2580

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

14.09 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.

- 14.10 Approval by the City Council Required. The EDC'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 EDC's action to enter into this Agreement.

*[Signature pages to follow]*

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

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

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

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

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

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

STATE OF TEXAS  
COUNTY OF JOHNSON

This instrument was acknowledged before me on \_\_\_\_\_, 2023 by \_\_\_\_\_, known personally by me to be the \_\_\_\_\_ of Burleson 4A Economic Development Corporation, on behalf of said corporation.

[Notary Seal]

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

NATIONAL DCP, LLC

By: Steven Domonkos

Name: Steven Domonkos

Title: Chief Operations Officer

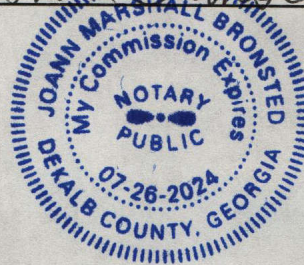
Date: October 31, 2023

STATE OF Georgia  
COUNTY OF DeKalb

This instrument was acknowledged before me on 10/31, 2023 by Steven Domonkos, known personally by me to be the COO of National DCP, LLC, on behalf of said company.

[Notary Seal]

Joann Marshall Bronsted  
Notary Public



**Exhibit A**  
**Legal Description of Land**

Real property located at 456 Forgotten Lane in Burleson, Texas 76028, described as follows:

A TRACT OF LAND SITUATED IN THE A.J. PATTON SURVEY ABSTRACT NO. 685, JOHNSON COUNTY, TEXAS, BEING ALL OF THAT TRACT OF LAND CONVEYED TO RA DEVELOPMENT LTD., IN THAT DEED RECORDED IN VOLUME 3489, PAGE 418, DEED RECORDS, JOHNSON COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A ½ INCH IRON PIPE FOUND IN THE SOUTHWESTERLY LINE OF SAID RA DEVELOPMENT, LTD. TRACT FOR THE MOST EASTERLY CORNER OF A TRACT OF LAND CONVEYED TO DAVID LEE FLETCHER IN THAT DEED RECORDED IN VOLUME 4431, PAGE 912, D.R.J.C.T.;

THENCE N 29°26'19" W ALONG THE NORTHEASTERLY LINE OF SAID FLETCHER TRACT AND SAID SOUTHWESTERLY LINE, A DISTANCE OF 238.38 FEET TO A 5/8 INCH ROD FOUND FOR THE MOST NORTHERLY CORNER OF SAID FLETCHER TRACT AND THE MOST EASTERLY CORNER OF THAT TRACT OF LAND CONVEYED TO DAVID P. EAKIN AND DEBORAH EAKIN IN THAT DEED RECORDED IN VOLUME 1992, PAGE 698, D.R.J.C.T.;

THENCE N 30°04'42" W ALONG THE NORTHEASTERLY LINE OF SAID EAKIN TRACT AND SAID SOUTHWESTERLY LINE, A DISTANCE OF 144.54 FEET TO A 5/8 INCH ROD FOUND FOR THE MOST NORTHERLY CORNER OF SAID EAKIN TRACT AND THE MOST EASTERLY CORNER OF TRACT 2 AS CONVEYED TO GALLERO NEW MEXICO LAND HOLDINGS TRUST IN THAT DEED RECORDED IN INSTRUMENT NO. 2013-26677, D.R.J.C.T.;

THENCE N 30°20'42" W ALONG THE NORTHEASTERLY LINE OF SAID TRACT 2 AND SAID SOUTHWESTERLY LINE, A DISTANCE OF 160.52 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "RPLS 5544" FOR THE MOST NORTHERLY CORNER OF SAID TRACT 1 AND FOR THE MOST EASTERLY CORNER OF TRACT 1 AS CONVEYED TO GALLERO NEW MEXICO LAND HOLDINGS TRUST IN THAT DEED RECORDED IN INSTRUMENT NO. 2013-26677, D.R.J.C.T.;

THENCE N 30°24'36" W ALONG THE NORTHEASTERLY LINE OF SAID TRACT 1 AND SAID SOUTHWESTERLY LINE, A DISTANCE OF 227.45 FEET TO A 4" FENCE POST FOUND FOR THE MOST NORTHERLY CORNER OF SAID TRACT 1 AND FOR THE MOST EASTERLY CORNER OF A 1.124 ACRE TRACT OF LAND CONVEYED TO RA DEVELOPMENT, LTD., IN THAT DEED RECORDED IN INSTRUMENT NO. 2017-14151, D.R.J.C.T.;

THENCE N 29°34'48" W ALONG THE NORTHEASTERLY LINE OF SAID 1.124. ACRE TRACT AND SAID SOUTHWESTERLY LINE, A DISTANCE OF 255.66 FEET TO A ½" IRON ROD FOUND WITH A CAP STAMPED "RPLS 5544" IN THE NORTHWESTERLY LINE OF SAID RE DEVELOPMENT, LTD. TRACT;

THENCE N 60°25'12" E ALONG SAID NORTHWESTERLY LINE, A DISTANCE OF 583.50 FEET TO A ½" IRON ROD FOUND WITH A CAP STAMPED "RPLS 5544" FOR THE MOST WESTERLY CORNER

OF LOT 4, BLOCK 1, HIGHPOINT BUSINESS PARK EAST, PHASE 2, ACCORDING TO THAT PLAT RECORDED IN INSTRUMENT NO. 2021-104, PLAT RECORDS, JOHNSON COUNTY, TEXAS;

THENCE LEAVING SAID NORTHWESTERLY LINE ALONG THE SOUTHWESTERLY LINE OF SAID LOT 4, BLOCK 1 THROUGH THE FOLLOWING THREE COURSES,

S 29°38'09" E, A DISTANCE OF 251.59 FEET TO A ½" IRON ROD FOUND WITH A CAP STAMPED "RPLS 5544";

S 60°30'41" W A DISTANCE OF 24.48 FEET TO A ½" IRON ROD FOUND WITH A CAP STAMPED "RPLS 5544";

S 29°38'09" E, A DISTANCE OF 566.53 FEET TO A ½" IRON ROD FOUND WITH A CAP STAMPED "RPLS 5544" FOR THE MOST SOUTHERLY CORNER OF SAID LOT 4, BLOCK 1 AND FOR THE INTERSECTION OF THE NORTHWESTERLY RIGHT-OF-WAY LINE OF HIGHRIDGE DRIVE (50' R-O-W) AND THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF MERIDIAN DRIVE (50' R-O-W);

THENCE S 29°38'09" E ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 202.22 FEET TO A ½" IRON ROD FOUND WITH A CAP STAMPED "RPLS 5544" FOR THE MOST NORTHERLY CORNER OF LOT 1R, BLOCK 1 HIGHPOINT BUSINESS PARK EAST, PHASE 1, ACCORDING TO THAT PLAT RECORDED IN INSTRUMENT NO. 2020-32, PLAT RECORDS, JOHNSON COUNTY, TEXAS;

THENCE S 60°21'52" W ALONG THE NORTHWESTERLY LINE OF SAID LOT 1R, BLOCK 1, A DISTANCE OF 553.89 FEET TO THE POINT OF BEGINNING AND CONTAINING 13.171 ACRES OF LAND MORE OR LESS,

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