

## **DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** ("Agreement") is entered into by and between the Town of Prosper, Texas ("Town"), and Blue Star Allen Land L.P. and 701/709 Stadium Drive LLC ("Blue Star"), with the Town and Blue Star collectively referred to as "Parties," to be effective on the date last executed by any of the Parties (the "Effective Date").

**WHEREAS**, the Town is a home-rule municipal corporation, located in Collin County and Denton County, Texas, organized and existing under the laws of the State of Texas; and

**WHEREAS**, Blue Star has requested that Safety Way, a public street in the Town, be allowed to be extended east of Cook Lane with the Prosper Business Park development; and

**WHEREAS**, the Town and Blue Star acknowledge that the southern portion of the extension of Safety Way east of Cook Lane will encroach onto Town property, which property is currently planned for a Town joint Parks and Public Works Facility to be constructed by the Town; and

**WHEREAS**, as a consequence of the foregoing project, Blue Star has requested that the Town dedicate a portion of Town-owned property for the southern portion of the extension of Safety Way east of Cook Lane; and

**WHEREAS**, the Town is agreeable to the dedication of said right-of-way, which will allow the construction of Safety Way and in exchange for the Town dedicating the foregoing property as public right-of-way, Blue Star has agreed to certain conditions, more particularly defined herein.

**NOW, THEREFORE**, in consideration of the foregoing premises, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Parties to this Agreement agree as follows:

**1. Dedication of Town-Owned Property to Blue Star for the Extension of Safety Way; Construction Costs.**

(a) Upon the Effective Date of this Agreement by the Parties, the Town shall dedicate a portion of Town-owned property ("Property") for the southern portion of the extension of Safety Way east of Cook Lane, as more particularly described and depicted in Exhibit A, attached hereto.

(b) The Town further agrees to fund fifty percent (50%) of the construction costs associated with the construction of said portion of Safety Way described herein. For purposes of this Agreement, "construction costs" as used herein shall mean the actual construction costs, including design costs, construction costs, engineering costs, surveying costs and geotechnical materials testing associated with the construction of

said portion of Safety Way. The estimated construction costs are currently estimated to be One Million Two Hundred Fifty Thousand and 00/100 (\$1,250,000). Blue Star shall bid the construction costs of the extension of Safety Way and related improvements with three (3) qualified contractors and shall provide copies of the bids received for such items to the Town within five (5) business days of Blue Star's receipt of same. Blue Star shall provide to the Town the bids and the proposed contract(s) prices that Blue Star wishes to accept for the construction of the extension of Safety Way and any related improvements. Upon Town acceptance of the extension of Safety Way, the Town shall pay Blue Star its share of approved construction costs.

## **2. Blue Star's Obligations to the Town.**

(a) With the development of Blue Star's property south of the Town's joint Parks and Public Works Facility, Blue Star shall dedicate at no cost to the Town the right-of-way for the extension of Fifth Street, estimated at 60 feet wide, from BNSF Railroad to Cook Lane as more particularly described and depicted in Exhibit B, attached hereto. Blue Star shall have no obligation to construct the extension of Fifth Street with its development unless the extension of Fifth Street is essential and/or beneficial to its development. At such time, the Town and Blue Star shall enter into a Development Agreement for cost participation for the extension of Fifth Street. If the Town desires to construct Fifth Street, at its sole expense, from the BNSF Railroad to Cook Lane prior to Blue Star's development of the property encompassing the Fifth Street proposed right-of-way, Blue Star shall dedicate at no cost to the Town the extension of Fifth Street right-of-way from the BNSF Railroad to Cook Lane, within thirty (30) days of request by the Town.

(b) Additionally, Blue Star shall work with the Town to finalize and agree to the location of a regional retention pond that is partially on the property owned by Blue Star south of the joint Parks and Public Works Facility property owned by the Town, and north of future Fifth Street as more particularly described and depicted in Exhibit C. The Parties agree and acknowledge that the retention pond referenced herein shall be appropriately sized to accommodate the associated downtown drainage area upstream of the BNSF Railroad, the Town's joint Parks and Public Works Facility property, and such evaluation shall include detention for the adjacent properties owned by Blue Star. Upon final agreement of the Parties to the location of the retention pond, Blue Star shall dedicate at no cost to the Town, the portion of property owned by Blue Star relative to the retention pond. The Town shall be responsible for the design and construction of the retention pond to accommodate the included detention for the adjacent properties owned by Blue Star in exchange for the dedication of the property required for the retention pond.

**3. Covenant Running with the Land.** The terms, conditions, rights, obligations, benefits, covenants and restrictions of the provisions of this Agreement shall be deemed covenants running with the land, and shall be binding upon and inure to the benefit of Blue Star and its heirs, representatives, successors and assigns. This Agreement shall be deemed to be incorporated into each deed and conveyance of the Property or any portion thereof hereafter made by any other Owner of the Property, regardless of whether this Agreement is expressly referenced therein.

4. **Default.** No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than thirty (30) days after written notice of the alleged failure has been given). In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. If any Party is in default under this Agreement, any other Party shall have the right to enforce the Agreement in accordance with applicable law, provided, however, in no event shall any Party be liable for consequential or punitive damages.

5. **Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Collin County, Texas. Exclusive venue for any action arising under this Agreement shall lie in Collin County, Texas.

6. **Notice.** Any notices required or permitted to be given hereunder (each, a "Notice") shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the Town:

250 W. First Street  
P.O. Box 307  
Prosper, Texas 75078  
Attention: Town Manager

If to Blue Star:

Blue Star Allen Land L.P.  
One Cowboys Way, Suite 100  
Frisco, Texas 75034  
Attention: Legal Department

7. **Prevailing Party.** In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

8. **Entire Agreement.** This Agreement contains the entire agreement between the Parties hereto with respect to development of the Properties described and depicted in Exhibits A and B, and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party.

9. **Savings/Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

10. **Binding Agreement.** A telecopied facsimile or pdf of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein.

11. **Authority to Execute.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. Blue Star warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Blue Star to the same. The Town Council hereby authorizes the Mayor of the Town to execute this Agreement on behalf of the Town.

12. **Mediation.** In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.

13. **Notification of Sale or Transfer; Assignment of Agreement.** Blue Star has the right (from time to time without the consent of the Town, but upon written notice to the Town) to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest it has under this Agreement, to any person or entity (an "Assignee") that is or will become an Owner of any portion of the Property or that is an entity that is controlled by or under common control with said Owner. Each assignment shall be in writing executed by Blue Star and the Assignee and shall obligate the Assignee to be bound by this Agreement. A copy of each assignment shall be provided to the Town within ten (10) business days after execution. Provided that the successor owner assumes the liabilities, responsibilities, and obligations of the assignor under this Agreement, the assigning party will be released from any rights and obligations under this Agreement as to the Property (and associated obligations under this Agreement) that is the subject of such assignment, effective upon receipt of the assignment by the Town. No assignment by Blue Star shall release Blue Star from any liability that resulted from an act or omission by Blue Star that occurred prior to the effective date of the assignment. Blue Star shall maintain true and correct copies of all assignments made by Blue Star to any Assignee, including a copy of each executed assignment and the Assignee's Notice information.

14. **Sovereign Immunity.** The Parties agree that the Town has not waived its sovereign immunity from suit by entering into and performing its obligations under this Agreement.

**15. Effect of Recitals.** The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) are legislative findings of the Town Council; and (d) reflect the final intent of the Parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.

**16. Consideration.** This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

**17. Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile or pdf signature will also be deemed to constitute an original.

**18. Time.** Time is of the essence in the performance by the Parties of their respective obligations under this Agreement.

**19. Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.

**20. Amendment.** This Agreement shall not be modified or amended except in writing signed by the Parties. A copy of each amendment to this Agreement, when fully executed and recorded, shall be provided to each Party, Assignee and successor Owners of all or any part of the Property; however, the failure to provide such copies shall not affect the validity of any amendment.

**21. Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)**

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date referenced herein.

**TOWN:**

**THE TOWN OF PROSPER, TEXAS**

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

Name: Mario Canizares

Title: Town Manager

STATE OF TEXAS )

)

COUNTY OF COLLIN )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by Mario Canizares, Town Manager of the Town of Prosper, Texas, on behalf of the Town of Prosper, Texas.

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

My Commission Expires: \_\_\_\_\_



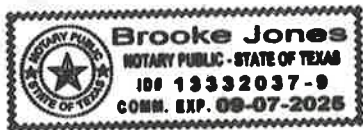
BLUE STAR ALLEN LAND L.P., a Texas  
limited partnership:

By: Blue Star Investments, Inc.,  
Its general partner

By: [Signature]  
Name: Thomas L Walker  
Title: CFO / Treasurer

STATE OF TEXAS       )  
                                  )  
COUNTY OF COLLIN    )

This instrument was acknowledged before me on the 3 day of  
November, 2023, by Thomas L Walker, in his capacity as  
CFO / Treasurer of Blue Star Investments, Inc., a Texas  
corporation, known to be the person whose name is subscribed to the foregoing  
instrument, and that he executed the same on behalf of and as the act of Blue Star  
Investments, Inc.



[Signature: Brooke Jones]  
Notary Public, State of Texas  
My Commission Expires: 9-7-25

701/709 STADIUM DRIVE LLC, a Texas  
limited liability company:

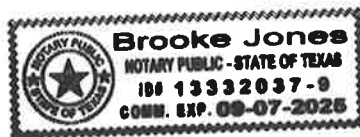
By: Blue Star Investments, Inc.,  
Its general partner

By: [Signature]  
Name: Thomas L Walker  
Title: CFO / Treasurer

STATE OF TEXAS     )  
                                  )  
COUNTY OF COLLIN    )

This instrument was acknowledged before me on the 3 day of  
November, 2023, by Thomas L Walker, in his capacity as  
CFO / Treasurer of Blue Star  
Investments, Inc., a Texas corporation, known to be the person whose name is  
subscribed to the foregoing instrument, and that he executed the same on behalf of and  
as the act of Blue Star Investments, Inc.

[Signature: Brooke Jones]  
Notary Public, State of Texas  
My Commission Expires: 9-7-25





**EXHIBIT A**  
**(Property Description—Town Property Dedicated to Blue Star)**

NEXT 2 PAGES

## RIGHT-OF-WAY DEDICATION

Collin County School Land Survey, Section No. 12, Abstract No. 147  
Town of Prosper, Collin County, Texas

### LEGAL DESCRIPTION

Being a 0.0074 acre tract of land out of the Collin County School Land Survey, Section No. 12, Abstract No. 147, situated in the Town of Prosper, Collin County, Texas, being a portion of a called 16.38 acre tract of land conveyed to Town of Prosper, Texas by deed of record in Document Number 20190204000116920 of the Official Public Records of Collin County, Texas, and being more particularly described by metes and bounds as follows:

**BEGINNING** at a 1/2 inch iron rod with green plastic cap stamped "EAGLE SURVEYING" set in the North line of said 16.38 acre tract, being the Southwest corner of Lot 9, Block B of Prosper Business Park, a subdivision of record in Volume 2022, Page 705 of the Plat Records of Collin County, Texas, and being the Southeast corner a called 30-foot right-of-way dedication for Cook Lane of record in Volume 2017, Page 715 of said Plat Records, from which a 3/4 inch iron rod found at the Northwest corner of said 16.38 acre tract, being the Southwest corner of said right-of-way dedication of record in Volume 2017, Page 715, also being the Southeast corner of a called 30-foot right-of-way dedication of record in Document Number 20060126000108620 of said Official Public Records, and being the Northeast corner of a right-of-way dedication of record in Volume 2020, Page 577 of said Plat Records, bears S89°56'51"W, a distance of 30.03 feet;

**THENCE**, N89°56'51"E, along the South line of said Lot 9 and the common North line of said 16.38 acre tract, a distance of 25.29 feet to a point from which a 1/2 inch iron rod with plastic cap stamped "GRAHAM ASSOC" found at the Northeast corner of said 16.38 acre tract bears N89°56'51"E, a distance of 1,218.58 feet;

**THENCE**, leaving the South line of said Lot 9, over and across said 16.38 acre tract, the following two (2) courses and distances:

1. S44°48'53"W, a distance of 36.03 feet;
2. N00°13'56"E, a distance of 25.54 feet to the **POINT OF BEGINNING**, containing an area of 0.0074 acres (323 square feet) of land, more or less.

Bearings are based on GPS observations utilizing the AllTerra RTK Network, North American Datum of 1983 (Adjustment Realization 2011).

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**EAGLE SURVEYING, LLC**  
222 S. ELM STREET  
SUITE: 200  
DENTON, TX 76201  
(940) 222-3009  
TX FIRM # 10194177

JOB NUMBER	DRAWN BY	DATE
1809.012-18	CMW	10-18-2023

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a Registered Professional Land Surveyor under the laws of the State of Texas.

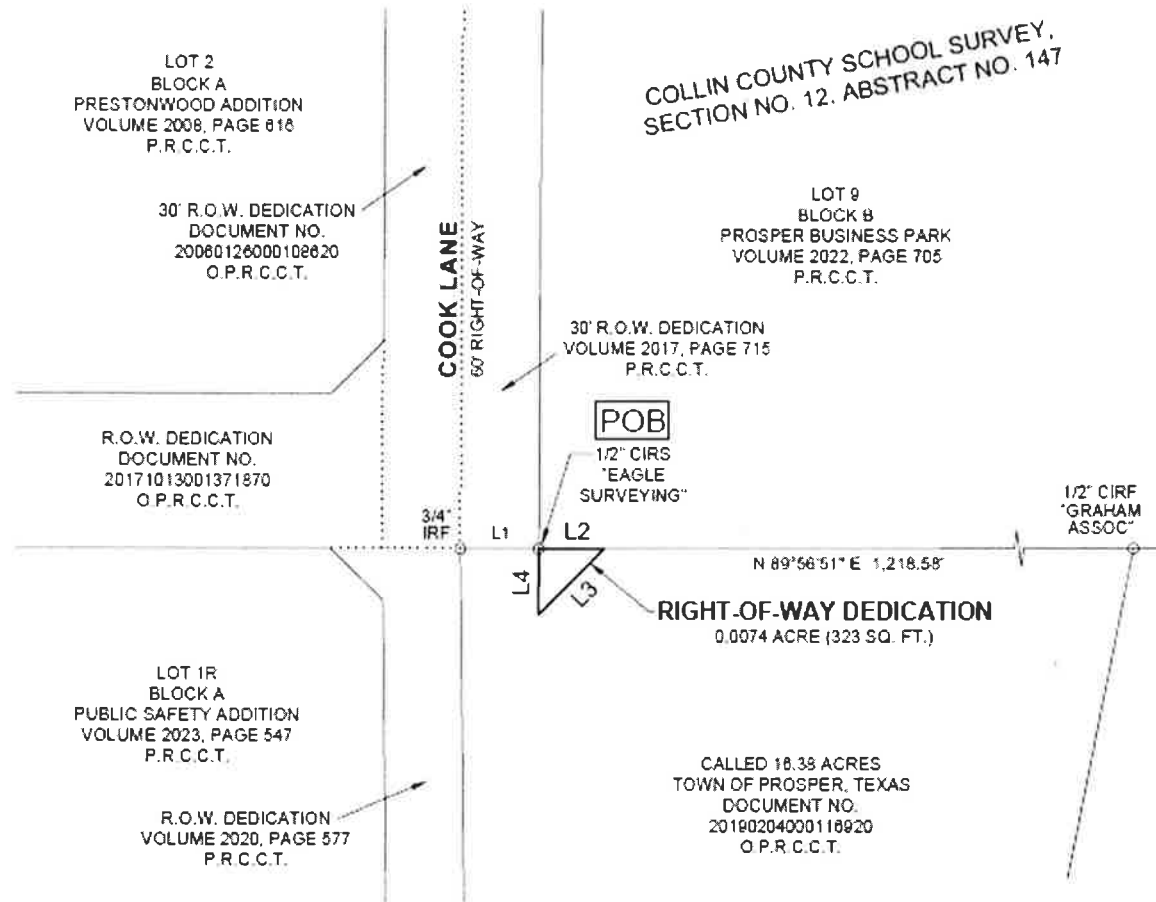
Caleb McCanlies  
R.P.L.S. # 7036



10-18-2023  
Date

## RIGHT-OF-WAY DEDICATION

Collin County School Land Survey, Section No. 12, Abstract No. 147  
Town of Prosper, Collin County, Texas



**NOTE:** Bearings are based on GPS observations utilizing the AllTerra RTK Network, North American Datum of 1983 (Adjustment Realization 2011).

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LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 89°56'51" W	30.03'
L2	N 89°56'51" E	25.28'
L3	S 44°48'53" W	36.03'
L4	N 00°13'58" E	25.54'



**EAGLE SURVEYING, LLC**  
222 S. ELM STREET  
SUITE: 200  
DENTON, TX 76201  
(940) 222-3009  
TX FIRM # 10194177



1" = 60'  
0 30 60

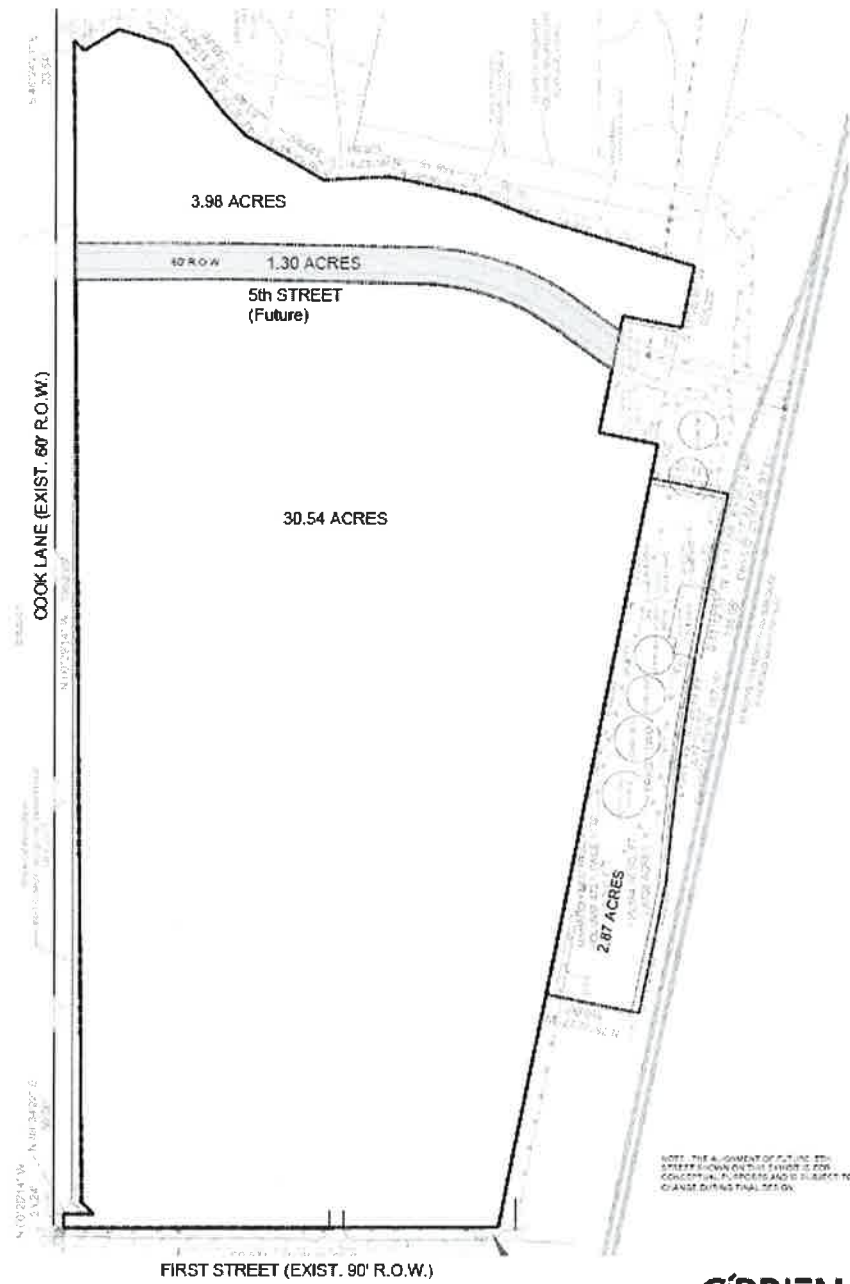
### LEGEND

○	BOUNDARY MONUMENTATION
SQ. FT.	SQUARE FEET
R.O.W.	RIGHT-OF-WAY
IRF	IRON ROD FOUND
CIRF	CAPPED IRON ROD FOUND
CIRS	CAPPED IRON ROD SET
POB	POINT OF BEGINNING
P.R.C.C.T.	PLAT RECORDS,
	COLLIN COUNTY, TEXAS
O.P.R.C.C.T.	OFFICIAL PUBLIC RECORDS,
	COLLIN COUNTY, TEXAS

JOB NUMBER	DRAWN BY	DATE
1809.012-18	CMW	10-18-2023

## EXHIBIT B

**(General Depiction of Blue Star Property to be Dedicated to the Town)**



SCALE: NTS

JOB No.: 00078

DATE: 09/28/23

**O'BRIEN**

0 100 Feet

5th STREET  
(Future)

COOK LANE (EXIST. 60' R.O.W.)

30.54 ACRES

1" = 195.275'

1st Street, 2nd Street, 3rd Street, 4th Street, 6th Street, 7th Street, 8th Street, 9th Street, 10th Street, 11th Street, 12th Street, 13th Street, 14th Street, 15th Street, 16th Street, 17th Street, 18th Street, 19th Street, 20th Street, 21st Street, 22nd Street, 23rd Street, 24th Street, 25th Street, 26th Street, 27th Street, 28th Street, 29th Street, 30th Street, 31st Street, 32nd Street, 33rd Street, 34th Street, 35th Street, 36th Street, 37th Street, 38th Street, 39th Street, 40th Street, 41st Street, 42nd Street, 43rd Street, 44th Street, 45th Street, 46th Street, 47th Street, 48th Street, 49th Street, 50th Street, 51st Street, 52nd Street, 53rd Street, 54th Street, 55th Street, 56th Street, 57th Street, 58th Street, 59th Street, 60th Street, 61st Street, 62nd Street, 63rd Street, 64th Street, 65th Street, 66th Street, 67th Street, 68th Street, 69th Street, 70th Street, 71st Street, 72nd Street, 73rd Street, 74th Street, 75th Street, 76th Street, 77th Street, 78th Street, 79th Street, 80th Street, 81st Street, 82nd Street, 83rd Street, 84th Street, 85th Street, 86th Street, 87th Street, 88th Street, 89th Street, 90th Street, 91st Street, 92nd Street, 93rd Street, 94th Street, 95th Street, 96th Street, 97th Street, 98th Street, 99th Street, 100th Street.