



**Economic Development Corporation
(Type A) Agenda**

Tuesday, January 21, 2025
4:30 PM

City Hall - 141 W. Renfro
Burleson, TX 76028

1. **CALL TO ORDER**

2. **CITIZENS APPEARANCES**

Each person in attendance who desires to speak to the Board on an item NOT posted on the agenda, shall speak during this section. A speaker card must be filled out and turned in to the City Secretary prior to addressing the Board. Each speaker will be allowed three minutes to speak.

Each person in attendance who desires to speak on an item posted on the agenda shall speak when the item is called forward for consideration.

3. **GENERAL**

A. Consider approval of the minutes from the December 9, 2024 Economic Development Corporation (Type A) meeting. *(Staff Contact: Monica Solko, Deputy City Secretary)*

B. Consider and take possible action on a Performance Agreement between The Burleson 4A Economic Development Corporation and American Builder's and Contractor's Supply Company, Inc. to support industrial development in the City of Burleson, Texas. *(Staff Contact: Alex Philips, Economic Development Director)*

C. Consider and take possible action on a Second Amendment to and Restatement of Performance Agreement (4A020623FTG-Tulsa) between the Burleson 4A Economic Development Corporation and 2525 FTG – Tulsa, LLC. for a development located at 700, 708, 712, 714, 716, and 720 SW Wilshire Blvd in Burleson, Texas *(Staff Presenter: Alex Philips, Economic Development Director)*

4. **BOARD REQUESTS FOR FUTURE AGENDA ITEMS OR REPORTS**

5. **RECESS INTO EXECUTIVE SESSION**

In accordance with Chapter 551 of the Texas Government Code, the Board may convene in Executive Session in the City Council Workroom in City Hall to conduct a closed meeting to discuss any item listed on this Agenda. The Board may reconvene into open session and take action on posted items.

- A. Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071, Texas Government Code**
- B. Discussion regarding possible purchase, exchange, lease, or value of real property pursuant to Section 551.072, Texas Government Code**
- C. Deliberation regarding commercial or financial information received from or the offer of a financial or other incentive made to a business prospect seeking to locate, stay or expand in or near the territory of the City and with which the City is conducting**

economic development negotiations pursuant to Section 551.087, Texas Government Code

6. **ADJOURN**

CERTIFICATE

I hereby certify that the above agenda was posted on this the 15th of January 2025, by 5:30 p.m., on the official bulletin board at the Burleson City Hall, 141 W. Renfro, Burleson, Texas.



Amanda Campos

City Secretary

ACCESSIBILITY STATEMENT

The Burleson City Hall is wheelchair accessible. The entry ramp is located in the front of the building, accessible from Warren St. Accessible parking spaces are also available in the Warren St. parking lot. Sign interpretative services for meetings must be made 48 hours in advance of the meeting. Call the A.D.A. Coordinator at 817-426-9600, or TDD 1-800-735-2989.

Economic Development Corporation (Type A)

DEPARTMENT: City Secretary's Office
FROM: Monica Solko, Deputy City Secretary
MEETING: January 22, 2025

SUBJECT:

Consider approval of the minutes from the December 9, 2024 Economic Development Corporation (Type A) meeting. *(Staff Contact: Monica Solko, Deputy City Secretary)*

SUMMARY:

The Burleson 4A Economic Development Corporation Board duly and legally met on December 9, 2024 for a regular meeting.

RECOMMENDATION:

- 1) Board may approve the minutes as presented or approve with amendments.

FISCAL IMPACT:

N/A.

STAFF CONTACT:

Monica Solko, TRMC
Deputy City Secretary
msolko@burlesontx.com
817-426-9682

BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION
December 9, 2024
DRAFT MINUTES

BOARD MEMBERS PRESENT:

Larry Scott, Place 1
Phil Anderson, Place 2
Dan McClendon, President, Place 3

Adam Russell, Vice-President, Place 5

BOARD MEMBERS ABSENT:

Alexa Boedeker, Place 4

Staff present:

Tommy Ludwig, City Manager
Harlan Jefferson, Deputy City Manager
Eric Oscarson, Deputy City Manager
Amanda Campos, City Secretary
Monica Solko, Deputy City Secretary
Matt Ribitzki, Deputy City Attorney

1. CALL TO ORDER – 4:30 P.M.

President Dan McClendon called the meeting to order. **Time: 4:33 P.M.**

2. CITIZEN APPEARANCE

- No speakers.

3. GENERAL

A. Minutes from the November 18, 2024 Economic Development Corporation (Type A) meeting. (Staff Contact: Monica Solko, Deputy City Secretary)

Motion by Phil Anderson and seconded by Adam Russell to approve.

Motion passed 4-0, with Alexa Boedeker absent.

B. 4A12092024KimleyHornAmend, resolution authorizing an amendment to the professional services contract CSO#5045-03-2023 for \$120,277.00 with Kimley-Horn and Associates, Inc. for a total contract amount of \$1,211,192.00 for the design of the extension of Lakewood Drive from FM 1902 to Chisholm Trail Parkway. (Staff Contact: Michelle McCullough, P.E., CFM, City Engineer)

Michelle McCullough, City Engineer, presented a contract to the board.

Motion by Adam Russell and seconded by Larry Scott to approve.

Motion passed 4-0, with Alexa Boedeker absent.

- C. 4A12092024BethesdaWaterSup, performance agreement between the Burleson 4A Economic Development Corporation and the Bethesda Water Supply for infrastructure to support industrial development in City of Burleson, Texas. (Staff Contact: Alex Philips, Economic Development Director)**

Alex Philips, Economic Development Director, presented an agreement to the board.

Motion by Larry Scott and seconded by Adam Russell to approve.

Motion passed 4-0, with Alexa Boedeker absent.

- D. 4A12092024ParisBaguette, performance agreement between the Burleson 4A Economic Development Corporation and Paris Baguette U.S.A., Inc. for a 267,000 square foot food manufacturing facility located on Vantage Drive in Highpoint Business Park in Burleson, Texas (Staff Contact: Alex Philips, Economic Development Director)**

Alex Philips, Economic Development Director, presented an agreement to the board.

Motion by Phil Anderson and seconded by Adam Russell to approve.

Motion passed 4-0, with Alexa Boedeker absent.

4. BOARD REQUESTS FOR FUTURE AGENDA ITEMS OR REPORTS

- None.

5. RECESS INTO EXECUTIVE SESSION

- A. Pending or contemplated litigation or to seek the advice of the City Attorney pursuant to Section 551.071, Texas Government Code.**
- B. Discussion regarding possible purchase, exchange, lease, or value of real property pursuant to Section 551.072, Texas Government Code.**
- C. Deliberation regarding commercial or financial information received from or the offer of a financial or other incentive made to a business prospect seeking to locate, stay or expand in or near the territory of the City and with which the City is conducting economic development negotiations pursuant to Section 551.087, Texas Government Code.**

No executive session needed.

6. ADJOURNMENT

There being no further discussion President Dan McClendon adjourned the meeting.

Time: 4:57 P.M.

Monica Solko
Deputy City Secretary

Economic Development Corporation (Type A)

DEPARTMENT: Economic Development
FROM: Alex Philips, Economic Development Director
MEETING: January 21, 2025

SUBJECT:

Consider and take possible action on a Performance Agreement between The Burleson 4A Economic Development Corporation and American Builder's and Contractor's Supply Company, INC. to support industrial development in the City of Burleson, Texas. *(Staff Contact: Alex Philips, Economic Development Director)*

SUMMARY:

ABC Supply has been in business since 1982 and they have become North America's largest wholesale distributor of roofing supplies. Plus, one of the largest distributors of siding, windows and other select exterior and interior building products, tools and related supplies.

Their mission and values were developed with the understanding that it is ultimately *not* about them. Instead, it's about empowering their associates to serve the real-world business needs of contractors. Their stated mission is to be the biggest, best and easiest service company distributing select exterior and interior building products. They are recognized as an employee-first company producing world-class associate engagement, customer engagement and financial results.

The City has received a proposal for an expansion of ABC Supply. The expansion will include new parking for trucks and trailers, fencing that conforms with the City of Burleson standards as well as the addition of 6 new full-time employees. This expansion will increase sales tax collections from ABC Supply 20%-30% annually.

To encourage the expansion, the EDC desires to incentivize ABC Supply per full time job that is added to the company payroll. The EDC has determined and found that the project is suitable to develop new or expanded business in the community. 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 project being located in the City, and desires to have ABC Supply to construct and operate in the City. The project 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 project is anticipated to outweigh the amount of expenditures required of the EDC by the project under this Agreement.

RECOMMENDATION:

Approve a Performance Agreement between The Burleson 4A Economic Development Corporation and American Builder's and Contractor's Supply to support industrial development in the City of Burleson, Texas

PRIOR ACTION/INPUT (Council, Boards, Citizens):

N/A

REFERENCE:

Insert CSO# if applicable
Insert resolution or ordinance change

FISCAL IMPACT:

Project can be funded from the 4A fund. This will be included in the mid-year budget adjustment.

STAFF CONTACT:

Alex Philips
Economic Development Director
aphilips@burlesontx.com
817-426-9613



ABC Supply Co., Inc.

BURLESON 4A ECONOMIC DEVELOPMENT

JANUARY 21, 2025

American Builder's & Contractor's Supply Co. Inc.

- Primarily roofing materials supply
- Top 10 sales taxpayer within the City of Burleson
- Located on John Jones near Alsbury
- Storage is at capacity
- Lack of parking creates safety concern
 - 18 wheeler deliveries stack up on John Jones
 - Customers have been carted from Church of Christ
- Front of business is currently not ideal, and the current fence is legal non-conforming



Front of Burleson Location



American Builder's & Contractor's Supply Co. Inc.

- ABC would like to expand their storage and parking area
- Building standards require the new fence to be masonry and an appropriate height to provide screening
- ABC has not proceeded due to the prohibitive cost to build to current standards
- With expanded storage and parking, ABC estimates 25%-30% increase in sales and need for 6 new FTE



ABC Supply Obligations

- ABC has proposed an eight foot precast concrete fence and paved parking lot
- The intent is to conform to current building standards
- Commence construction within 45 days after the effective date of the masonry screening fence.
- Commence construction on the expansion of the parking lot and the pouring of the additional concrete for parking within 45 days after the effective date.
- Complete construction of the project within 180 after the effective date.
- Hire six (6) new Full Time Employees by December 31, 2026, with a minimum retention period of one (1) year.

Total approximate cost of the project is \$600,000



EDC Incentives

- Once ABC Supply satisfies all performance conditions and obligations under this Agreement, the EDC agrees to the following:
 - Upon the hiring of six (6) new Full Time Employees, BEDC shall issue ABC Supply a cash grant in the amount of Sixty Thousand Dollars (\$60,000) per employee with a cap on the grant amount of Three Hundred and Sixty Thousand Dollars (\$360,000)

If any of the Full Time Employees separates from employment for any reason, ABC Supply shall be permitted to replace such Full Time Employee that has been separated from employment and receive credit for the combined employment terms of such duplicate Full Time Employee.



Project Proforma

Project ABC 6 Jobs	2025 Year 1	2026 Year 2	2027 Year 3	2028 Year 4	2029 Year 5	2030 Year 6	2031 Year 7	2032 Year 8	2033 Year 9	2034 Year 10	2044 Year 20
CAPEX	\$ 595,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Appraised Value (70% of CAPEX)	\$ 416,500.00	\$ 428,995.00	\$ 441,864.85	\$ 455,120.80	\$ 468,774.42	\$ 482,837.65	\$ 497,322.78	\$ 512,242.46	\$ 527,609.74	\$ 543,438.03	\$ 730,335.27
Revenue											
4A Sales Tax	\$ -	\$ -	\$ 67,500.00	\$ 69,525.00	\$ 71,610.75	\$ 73,759.07	\$ 75,971.84	\$ 78,251.00	\$ 80,598.53	\$ 83,016.49	\$ 111,567.22
GF Sales Tax	\$ -	\$ -	\$ 135,000.00	\$ 139,050.00	\$ 143,221.50	\$ 147,518.15	\$ 151,943.69	\$ 156,502.00	\$ 161,197.06	\$ 166,032.97	\$ 223,134.43
Property Tax	\$ 2,634.36	\$ 2,713.39	\$ 2,794.80	\$ 2,878.64	\$ 2,965.00	\$ 3,053.95	\$ 3,145.57	\$ 3,239.93	\$ 3,337.13	\$ 3,437.25	\$ 4,619.37
Expenses											
Performance	\$ (120,000.00)	\$ (240,000.00)									
Annual	\$ (117,365.64)	\$ (237,286.61)	\$ 205,294.80	\$ 211,453.64	\$ 217,797.25	\$ 224,331.17	\$ 231,061.10	\$ 237,992.93	\$ 245,132.72	\$ 252,486.70	\$ 339,321.02
Cumulative		\$ (354,652.24)	\$ (149,357.45)	\$ 62,096.19	\$ 279,893.44	\$ 504,224.60	\$ 735,285.70	\$ 973,278.64	\$ 1,218,411.36	\$ 1,470,898.06	\$ 4,452,209.47

Projected Sales \$ 13,500,000.00 \$ 13,905,000.00 \$ 14,322,150.00 \$ 14,751,814.50 \$ 15,194,368.94 \$ 15,650,200.00 \$ 16,119,706.00 \$ 16,603,297.18 \$ 22,313,443.04

Questions / Comments

Alex Philips
Economic Development Director
aphilips@burlesontx.com
(817) 426-9613

**PERFORMANCE AGREEMENT BETWEEN THE BURLESON 4A ECONOMIC
DEVELOPMENT CORPORATION AND AMERICAN BUILDERS & CONTRACTORS
SUPPLY CO. INC.**

This Performance Agreement (this "Agreement") is entered into as of _____ (the "Effective Date") by and between the Burleson 4A Economic Development Corporation, a Texas municipal development corporation located in the City of Burleson, Texas ("BEDC"), acting by and through the President of its Board of Directors (the "BEDC Board"), and American Builders & Contractors Supply Co. Inc., ("ABC Supply"), a roofing material supply corporation, by and through its authorized managers. BEDC and ABC Supply may be referred to individually as "Party," or collectively as the "Parties."

WITNESSETH:

WHEREAS, the BEDC and the City of Burleson, Texas ("City"), a home rule municipal corporation located in the counties of Johnson and Tarrant, desires to facilitate the expansion and improvement of ABC Supply's storage and parking area; and

WHEREAS, ABC Supply is a for-profit company that specializes in roofing materials supply; and

WHEREAS, ABC Supply seeks to improve their property by constructing a masonry fence to comply with City screening ordinances and expanding the parking lot for additional employee and truck parking (the "Project"), located in the city limits of the City, generally located at 1075 NW John Jones Drive, Burleson, TX 76028 (the "Property"), and depicted on **Exhibit A** attached hereto; and

WHEREAS, the Property is not owned or leased by any member of the Burleson City Council, any member of the BEDC Board, nor any member of the City Planning and Zoning Commission; 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 501.101, in that expenditures are for land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are for the creation or retention of primary jobs and required or suitable for the development, retention, or expansion of regional facilities; and

WHEREAS, the BEDC has determined that substantial economic benefit and the creation of new opportunities of employment will accrue to the City as a result of the Project being located in the City, and desires to have ABC Supply expand their storage and parking area, and construct a new masonry fence that will conform to the Code of Ordinances, City of Burleson, Texas; and

WHEREAS, the Project 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 Project is anticipated to outweigh the amount of expenditures required of the BEDC by the Project under this Agreement; and

WHEREAS, the BEDC has found the Project will contribute to an increase in economic development in the City.

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, RECITALS, AND EXHIBITS

- 1.01 Authorization. The BEDC Board finds and determines 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 Sections 501.101 and 501.103.
- 1.02 Recitals. The recitals set forth in the foregoing “WHEREAS” clauses are true and correct, constitute representations and warranties of the Parties, constitute legislative findings of the governing bodies of the Parties, form the basis upon which the Parties have entered into this Agreement, and establish the intent of the Parties in entering into this Agreement. If 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 effect. The Parties have relied on the recitals as part of the consideration for entering into this Agreement and, but for the recitals, would not have entered into this Agreement.
- 1.03 Exhibits. The exhibit attached to this Agreement, incorporated herein by reference for all purposes, is as follows:

Exhibit A – Property Location with Project Improvements Depicted

ARTICLE 2.
DEFINITIONS

- 2.01 The terms “Agreement,” “BEDC,” “BEDC Board,” “City,” “ABC Supply,” “Effective Date,” “Project,” and “Property,” shall have the meanings provided above.
- 2.02 “Affiliate” means a parent company or wholly owned subsidiary entity that directly controls, is controlled by, or is under common control with ABC Supply.

- 2.03 "Certificate of Occupancy" means the certificate issued by the City's building official reflecting that construction has been completed in conformance with appropriate municipal codes and ABC Supply is authorized to secure full utility service and permit occupancy of the building.
- 2.04 "City Council" means the City Council of the City.
- 2.05 "Commence Construction" means the beginning of construction in earnest on the Project with: (1) a signed contract with a general contractor or construction company to construct the improvements, and (2) clearing of the portion of the Property for the improvements.
- 2.06 "Complete Construction" means the completion of construction on the improvements, and the issuance of a Certificate of Occupancy for the Project.
- 2.07 "Event of Bankruptcy" means the dissolution or termination of ABC Supply's existence as a going business, insolvency, appointment of receiver for any part of ABC Supply's property and such appointment is not terminated within ninety (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 ABC Supply and such proceeding is not dismissed within ninety (90) days after the filing thereof.
- 2.08 "Full Time Employee" means a job requiring a minimum of One Thousand Nine Hundred Twenty (1,920) hours of work averaged over a twelve (12) month period.
- 2.09 "Impositions" mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Developer or any property or any business owned by ABC Supply within the City.
- 2.10 "Interest" means the interest rate the City is paying on the most recent issuance of bonded indebtedness prior to the receipt of a notice of violation or default hereunder.
- 2.11 "Incentives" mean the combined contributions, monetary or otherwise, of the BEDC toward completion of the Project, as set forth in this Agreement.
- 2.12 "Party" means BEDC or ABC Supply, individually.

- 2.13 "Parties" mean BEDC or ABC Supply, collectively.
- 2.14 "Qualified Job" means a Full Time Employee in the following sector of the North American Industry Classification System ("NAICS"): 48-49 – Transportation and Warehousing.

ARTICLE 3. **TERM**

The Term of this Agreement shall commence on the Effective Date and terminate on December 31, 2026, unless terminated earlier as provided in Article 9.

ARTICLE 4. **IN GENERAL**

- 4.01 The Project and Qualified Jobs. ABC Supply will be primarily responsible for constructing the Project. Additionally, it is the Parties' intent that the Project will result in the creation of six (6) new Qualified Jobs. The BEDC will provide the Incentives set forth in this Agreement provided ABC Supply complies with its performance conditions and obligations set forth herein.
- 4.02 BEDC Participation. The BEDC's obligations under this Agreement shall not exceed the sum of Three Hundred and Sixty Thousand Dollars (\$360,000.00) for all obligations set forth herein, including all Incentives. The BEDC authorizes the city manager to allocate such funds as permitted by law and necessary to meet the BEDC obligations set forth in this Agreement.

ARTICLE 5. **COVENANTS OF ABC SUPPLY**

- 5.01 Covenants Regarding the Project and ABC Supply Operations. In consideration of BEDC agreeing to pay ABC Supply the Incentives or otherwise expending Incentive amounts in accordance with the terms, provisions, and conditions of this Agreement, ABC Supply agrees to the following which are duties of ABC Supply that must be fulfilled in order to receive the Incentives:
- (A) Commence Construction within forty-five (45) days after the Effective Date, on a masonry screening fence that complies with City ordinances on the Property and complete construction of the Project within 180 days after the Effective Date.
 - (B) Commence Construction on the expansion of the parking lot on the Property by pouring additional concrete for employee and truck parking within 45 days after the Effective Date..

- (C) Complete Construction for the Project within 180 days after the Effective Date.
 - (D) Hire six (6) new Full Time Employees by December 31, 2026, with a minimum retention period of one (1) year. If any of the Full Time Employees separates from employment for any reason, ABC Supply shall be permitted to replace such Full Time Employee that has been separated from employment and receive credit for the combined employment terms of such duplicate Full Time Employee.
- 5.02 Verification of Project Completion. Within thirty (30) days of the date construction is complete, ABC Supply shall provide written notice of such completion to the BEDC.
- 5.03 Verification of Full Time Employees and Qualified Jobs Information. In verifying milestones related to Full Time Employees and Qualified Jobs, ABC Supply's written documentation to the BEDC shall include the names of the employees, number of employees, job titles, average salary, full time status of employees, and NAICS classification numbers.
- 5.04 Impositions. ABC Supply shall remain current and paid on all Impositions, subject to appeal rights in accordance with law and subject to a right to cure any delinquency.

ARTICLE 6.
COVENANTS AND INCENTIVES OF BEDC

- 6.01 Covenants Regarding BEDC. Subject to ABC Supply satisfying all performance conditions and obligations under this Agreement, the BEDC agrees that upon the hiring of six (6) new Full Time Employees, BEDC shall issue ABC Supply a cash grant in the amount of Sixty Thousand Dollars (\$60,000) per employee with a cap on the grant amount of Three Hundred and Sixty Thousand Dollars (\$360,000).

ARTICLE 7.
PERFORMANCE BY AFFILIATE, DESIGNEE, OR OTHER QUALIFIED PARTY

Performance by an Affiliate, designee, or other qualified party, which ABC Supply has authorized to perform, shall be deemed performance by ABC Supply.

ARTICLE 8.
AUTHORITY; COMPLIANCE WITH LAW

- 8.01 ABC Supply hereby represents and warrants to 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 ABC Supply and this Agreement

constitutes the legal, valid, and binding obligation of ABC Supply, and is enforceable in accordance with its terms and provisions.

- 8.02 BEDC hereby represents and warrants to ABC Supply 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 the BEDC, and upon the approval of this Agreement by the City Council, this Agreement will constitute the legal, valid, and binding obligation of BEDC, and is enforceable in accordance with its terms and provisions.
- 8.03 In its performance under this Agreement, ABC Supply shall comply with all federal, state, and local laws.
- 8.04 During the term of this Agreement, ABC Supply agrees not to knowingly employ any undocumented workers at the Project and, if convicted of a violation under 8 U.S.C. Section 1324a(f), ABC Supply shall repay the amount of the Incentives received by ABC Supply as of the date of such violation within one hundred and twenty (120) business days after the date ABC Supply is notified by the BEDC of such violation, plus Interest. This Section shall supersede any other conflicting term in this Agreement and shall survive termination of the Agreement.

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, including 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 ABC Supply if ABC Supply experiences an Event of Bankruptcy;
 - (D) On the date of termination set forth in a written notice by BEDC to ABC Supply if ABC Supply has delinquent Impositions (provided that ABC Supply retains the right to timely and properly protest and/or contest any such taxes), and such delinquent Impositions are not paid within ninety (90) days after the BEDC sends notice to ABC Supply; 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.

- 9.02 No Additional Incentives Following Termination. In the event this Agreement is terminated by the BEDC pursuant to Section 9.01, then ABC Supply 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 ABC Supply.

- 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 ABC Supply has provided any false representation or provides any false documentation of investments, jobs, enrollment, costs, or achievement of any milestone or requirement under this Agreement, then ABC Supply shall, within thirty (30) days of the date of termination, return to the BEDC any funds received by ABC Supply related to such false representation or report with Interest 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 ABC Supply 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 9.04 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

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

ARTICLE 11.**MANDATORY STATUTORY CERTIFICATIONS**

- 11.01 By executing this Agreement, ABC Supply 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;
 - (D) Discriminate against a firearm trade association as defined in Texas Government Code Chapter 2274, as amended; or
 - (E) Operate as a foreign owned or controlled company in connection with a critical infrastructure project as defined in Texas Government Code Chapter 2275, as amended.
- 11.02 By executing this Agreement, ABC Supply 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 12.**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 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 13.
FORCE MAJEURE**

Performance of ABC Supply's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and ABC Supply's obligations shall be abated during any period of force majeure. Force majeure shall include, without limitation, acts of God, damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, disease outbreak, pandemic or epidemic, States of Emergency, delaying or withholding of the issuance of any permit and/or legal authorization (including engineering approvals) by any governmental entity, unexpected delays in governmental approvals and permits, shortage or delay in shipment of materials or fuel occasioned by any event referenced herein, labor shortages, delays caused by government action; acts of nature, unusually adverse weather or wet soil conditions or other causes beyond the Parties' reasonable control, including but not limited to, any court order or judgment affecting the ABC Supply performance, the Property, or this Agreement.

**ARTICLE 14.
GIFT TO PUBLIC SERVANT OR TO ABC SUPPLY REPRESENTATIVE**

14.01 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.

14.02 Right of Reimbursement. Notwithstanding any other legal remedies, BEDC may obtain reimbursement for any expenditure made to ABC Supply 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 15.
ASSIGNMENT**

15.01 Assignment. ABC Supply may not assign any part of this Agreement without consent or approval by the BEDC.

**ARTICLE 16.
INDEMNIFICATION**

16.01 ABC SUPPLY 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, COSTS, AND 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 ABC SUPPLY OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT; NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL ABC SUPPLY BE RESPONSIBLE FOR, NOR SHALL ITS INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS SECTION 16.01 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, AND ITS OFFICERS AND EMPLOYEES, THAT CONSTITUTE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. Nothing in this Section may be construed as waiving any governmental immunity available to the City under state law. This provision is solely for the benefit of ABC Supply, BEDC, and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

16.02 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 and BEDC) do not assume any responsibility to any third party in connection with ABC Supply's construction of the Project.

**ARTICLE 17.
MISCELLANEOUS MATTERS**

17.01 Time is of Essence. Time is of the essence in the performance of 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.

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

17.03 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.

- 17.04 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.
- 17.05 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.
- 17.06 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.
- 17.07 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 therefor; (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 (1) business day after depositing with such an overnight courier service, or (c) two (2) 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 Section.

ABC Supply: American Builders & Contractors
Supply Co. Inc.
One ABC Parkway
Beloit, WI 53511
Attn: ABC Legal Department

City: City Manager
City of Burleson
141 West Renfro
Burleson, Texas 76028

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

BEDC: Burleson 4A Economic Development Corporation
Attn: Economic Development Director
141 West Renfro
Burleson, Texas 76028

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

- 17.08 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.
- 17.09 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.
- 17.10 Approval by the City Council Required. The BEDC's action to enter into this Agreement is subject to the approval of the City Council. This Agreement shall not be effective until such Agreement is signed by the Parties and the City Council ratifies and approves the BEDC'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.

BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION

By: _____

Name: _____

Title: Board President

Date: _____

AMERICAN BUILDERS & CONTRACTORS SUPPLY CO. INC.

By:  _____
Jim Anderson (Dec 21, 2024 09:25 CST)

Name: Jim B. Anderson

Title: Senior VP & Chief Financial Officer

Date: **12/21/2024** _____

Exhibit A



Economic Development Corporation (Type A)

DEPARTMENT: Economic Development
FROM: Alex Philips, Economic Development Director
MEETING: January 21, 2025

SUBJECT:

Consider and take possible action on a Second Amendment to and Restatement of Performance Agreement between the Burleson 4A Economic Development Corporation and 2525 FTG – Tulsa, LLC. for a development located at 700, 708, 712, 714, 716, and 720 SW Wilshire Blvd in Burleson, Texas (*Staff Presenter: Alex Philips, Economic Development Director*)

SUMMARY:

On February 6, 2023, the Burleson 4A Economic Development Corporation (EDC) and City Council approved the Performance agreement for the development located on Wilshire Boulevard near Summercrest Drive. The performance agreement provides cash incentives of \$850,000 to the developer for meeting certain performance measures.

On June 20, 2023 the EDC and City Council approved a first amendment to add an additional incentive for site improvements in regards to traffic improvements on the site as well as on adjacent roadways. The additional cash incentive of \$223,650 is 50% of the total cost of the traffic improvements that are required for the development.

A second amendment has been requested by the developer, The Retail Connection (TRC), also known as 2525 FTG – Tulsa, LLC. Through the course of finalizing leases with four new-to-market businesses, TRC continued to receive high demand for the spaces from desirable tenants. The developer has created a new site plan to accommodate four spaces for the new tenant lineup which will now consist of The Great Greek, Ono Hawaiian BBQ, Dave's Hot Chicken and one to be named later. These changes have drawn out their project timeline which will not meet the required dates in the performance agreement. The second amendment will revise the site plan and performance measure dates. There are no changes to the total amount of incentives provided (\$1,073,560.00). To date, TRC has not received and payments from the EDC.

TRC has razed and cleared three previously vacant commercial buildings. TRC will redevelop the entire two-acre site to have three retail buildings.

The amended agreement states the following performance measures:

- A. Design and construct the Development and Street Improvements in substantial conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.
- B. Design and construct the Development and Street Improvements in substantial conformance with the Concept Plan.
- C. Operate the Development in substantial conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.
- D. Close and purchase and acquire fee simple title to the Property by May 1, 2023.
- E. Complete any required zoning application and file with the City by May 31, 2025.
- F. Commence construction (i.e., obtain a building permit from the City and start rough grading) on the Development no later than June 30, 2025.
- G. Substantially Complete construction of the Development and Street Improvements no later than March 31, 2026.
- H. Make a minimum Capital Investment of no less than Four Million Dollars (\$4,000,000.00) in the Property no later than March 31, 2026.
- I. Recruit to the Development at least four (4) new-to-market retail, office, or restaurant tenants, with each of the four tenants receiving a certificate of occupancy in the Development no later than March 31, 2026.
- 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.

As performance measures are met, TRC would receive the following incentives:

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

Developer's construction of the Street Improvements up to Two Hundred Twenty-Two Thousand Five Hundred Sixty Dollars (\$223,560.00).

OPTIONS:

- 1) Approve as presented
- 2) Deny

RECOMMENDATION:

Staff recommends approving a Second Amendment to and Restatement of Performance Agreement between the Burleson 4A Economic Development Corporation and 2525 FTG – Tulsa, LLC. for a development located at 700, 708, 712, 714, 716, and 720 SW Wilshire Blvd in Burleson, Texas.

PRIOR ACTION/INPUT (Council, Boards, Citizens):

N/A

FISCAL IMPACT:

\$1,073,560.00 is budgeted and will be paid from the 4A fund.

STAFF CONTACT:

Alex Philips
Economic Development Director
aphilips@burlesontx.com
817-426-9613

Project Facelift

2nd Amendment



The Retail Connection

- Approximately 2 acre site at Wilshire/Summercrest
- 4 lots have been vacant for several years



- Developer to receive \$850,000 4A incentive to assist with environmental, infrastructure and turn lane
- Developer has completed environmental clean-up and cleared the site

Proposed Development

- Development timeline extended due to high demand from additional higher quality tenants and need for new site plan
 - The Great Greek
 - Ono Hawaiian BBQ
 - Dave's Hot Chicken
 - TBD
- Developer is asking to amend performance measure dates to accommodate these changes
- Developer is not requesting any additional economic incentives



Requested Amended Dates

Performance Measure	Date
Complete zoning application	May 31, 2025
Commence construction	June 30, 2025
Substantially complete development	December 31, 2026
Minimum capital investment	December 31, 2026
C/O for four new retail/restaurant/office tenants	

Performance Measure	Incentive
Substantially complete development	\$425,000
C/O for four new retail/restaurant/office tenants	\$425,000
Acceptance of street improvements	\$223,560
Total	\$850,000

The Retail Connection

Approved by CC 2/6/23

Item C.

Project Facelift											2042
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 20
CAPEX	\$ 4,000,000.00	\$ 4,120,000.00	\$ 4,243,600.00	\$ 4,370,908.00	\$ 4,502,035.24	\$ 4,637,096.30	\$ 4,776,209.19	\$ 4,919,495.46	\$ 5,067,080.33	\$ 5,219,092.74	\$ 7,014,024.21
Appraised Value (70% of CAPEX)	\$ 2,800,000.00	\$ 2,884,000.00	\$ 2,970,520.00	\$ 3,059,635.60	\$ 3,151,424.67	\$ 3,245,967.41	\$ 3,343,346.43	\$ 3,443,646.82	\$ 3,546,956.23	\$ 3,653,364.91	\$ 4,909,816.95
Revenue											
Cumulative	\$ 140,000.00	\$ 140,000.00	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00
Property Tax	\$ 20,160.00	\$ 20,764.80	\$ 21,387.74	\$ 22,029.38	\$ 22,690.26	\$ 23,370.97	\$ 24,072.09	\$ 24,794.26	\$ 25,538.08	\$ 26,304.23	\$ 35,350.68
Expenses											
Sales Rebate											
Utility											
Demo & Env.	\$ (425,000.00)	\$ (425,000.00)									
Annual	\$ (264,840.00)	\$ (264,235.20)	\$ 181,387.74	\$ 182,029.38	\$ 182,690.26	\$ 183,370.97	\$ 184,072.09	\$ 184,794.26	\$ 185,538.08	\$ 186,304.23	\$ 195,350.68
Cumulative		\$ (529,075.20)	\$ (347,687.46)	\$ (165,658.08)	\$ 17,032.18	\$ 200,403.14	\$ 384,475.24	\$ 569,269.49	\$ 754,807.58	\$ 941,111.81	\$ 2,851,706.75

Projected Sales \$ 7,000,000.00 \$ 7,000,000.00 \$ 8,000,000.00 \$ 8,000,000.00 \$ 8,000,000.00 \$ 8,000,000.00 \$ 8,000,000.00 \$ 8,000,000.00 \$ 8,000,000.00 \$ 8,000,000.00 \$ 8,000,000.00 \$ 8,000,000.00

- 10 YR Return – 111%
- 20 YR Return – 335%

Tonight's Action

- Approve or Deny a Second Amendment to and Restatement of Performance Agreement between the Burleson 4A Economic Development Corporation and 2525 FTG - Tulsa, LLC. (The Retail Connection) for a development located at 700, 708, 712, 714, 716, and 720 SW Wilshire Blvd in Burleson, Texas

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

This Second Amendment to and Restatement of Performance Agreement (the “Agreement”) is entered into as of January ____, 2025 (the “Effective Date”) by and between the Burleson 4A Economic Development Corporation, a Texas municipal development corporation located in the City (“BEDC”), by and through its Board President, and 2525 FTG - Tulsa, LLC, a Texas limited liability company (“Developer”), by and through its manager.

WITNESSETH:

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

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

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

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

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

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

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

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

WHEREAS, the BEDC and Developer entered into a First Amendment to and Restatement of Performance Agreement executed on June 20, 2023, concerning the Development (defined below), which amended and superseded the Original Agreement (the “First Amendment”); and

WHEREAS, the parties entered into the Original Agreement and the First Amendment to accomplish the goals set forth in these recitals, and have now determined that the First Amendment should be revised to, among other things, alter the dates set forth in the Developer’s covenants; and

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

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

**ARTICLE 1.
AUTHORIZATION**

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

**ARTICLE 2.
DEFINITIONS**

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

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

2.03 “Capital Investment” means and shall include all hard and soft costs incurred relating to the Development, including actual construction costs including costs of all site preparation, environmental remediation costs, demolition costs, buildings, structures,

infrastructure, utilities, landscaping and other onsite improvements, including all labor and materials, architect fees, and engineering fees but shall not include financing costs for the Capital Investments, tenant finish out costs not reimbursed by the Developer to the tenants, insurance costs, marketing costs, the purchase price of the Property, offsite improvements, or costs reimbursed to Developer by the BEDC in the form of Incentives.

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

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

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

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

2.08 “Event of Bankruptcy” means the dissolution or termination of Developer’s existence as a going business, insolvency, appointment of receiver for any part of Developer’s property and such appointment is not terminated within 90 days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer and such proceeding is not dismissed within 90 days after the filing thereof.

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

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

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

2.12 “Substantially Complete” or “Substantial Completion” means that all buildings in the Development are constructed as shell buildings in conformance with appropriate municipal codes and ready for tenant finish out. The shell buildings and Development shall be constructed to such an extent that upon tenant finish out, the area finished out

shall be eligible to secure full utility service, be eligible for a Certificate of Occupancy, and permit occupancy.

ARTICLE 3.
TERM

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

ARTICLE 4.
IN GENERAL

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

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

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

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

- G. Swimming pool; and
- H. Taxidermy.

ARTICLE 5.
COVENANTS OF DEVELOPER

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

- A. Design and construct the Development and Street Improvements in substantial conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.
- B. Design and construct the Development and Street Improvements in substantial conformance with the Concept Plan.
- C. Operate the Development in substantial conformance with the criteria and development standards set forth in the ordinances of the City of Burleson and applicable state and federal laws.
- D. Close and purchase and acquire fee simple title to the Property by May 1, 2023.
- E. Complete any required zoning application and file with the City by May 31, 2025.
- F. Commence construction (i.e., obtain a building permit from the City and start rough grading) on the Development no later than June 30, 2025.
- G. Substantially Complete construction of the Development and Street Improvements no later than March 31, 2026.
- H. Make a minimum Capital Investment of no less than Four Million Dollars (\$4,000,000.00) in the Property no later than March 31, 2026.
- I. Recruit to the Development at least four (4) new-to-market retail, office, or restaurant tenants, with each of the four tenants receiving a certificate of occupancy in the Development no later than March 31, 2026.

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 June 15, 2026, Developer shall provide written verification to the BEDC that the Capital Investment made by Developer meets or exceeds the requirements set forth in this Agreement. The BEDC may request, and Developer hereby agrees that it will permit reasonable review of information that permits the BEDC to verify that the Capital Investment made by Developer for the Development meets or exceeds the requirements of this Agreement.

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

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

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

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

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

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

BEDC may request, and Developer hereby agrees that it will permit reasonable inspection of the Property during normal business hours that permits the BEDC to verify that the improvements made by Developer for the Development meet or exceed the requirements of this Agreement. Following written notice of completion and proof of costs reasonably satisfactory to the BEDC, BEDC shall pay Developer the Incentive amount specified in Section 6.01, subject to the terms and provisions of this Agreement, within 90 days.

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

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

ARTICLE 8.
AUTHORITY; COMPLIANCE WITH LAW

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

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

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

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

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

ARTICLE 9.
DEFAULT, REMEDIES AND TERMINATION

9.01 Default by Developer.

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

(B) Other Default. In the event: (i) Developer fails to fulfill its obligations under Article 5 of this Agreement; (ii) Developer has delinquent ad valorem or sales taxes owed to the City provided that Developer retains the right to timely and properly protest and/or contest any such taxes; (iii) Developer materially breaches any of the material terms and conditions of this Agreement; or (iv) Developer experiences an Event of Bankruptcy, then Developer after the expiration of the notice and cure periods described herein, shall be in default of this Agreement. In the event of

such a default, BEDC shall give Developer written notice of such breach and/or default, and if Developer has not cured such breach or default within 90 days after receipt of such notice, the BEDC may terminate this Agreement by written notice to Developer. If BEDC terminates this Agreement pursuant to this Section, Developer shall not be entitled to any additional Incentive payments from BEDC and the BEDC shall have no further obligation to Developer.

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

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

ARTICLE 10.
RIGHT OF OFFSET

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

ARTICLE 11.
VENUE AND GOVERNING LAW

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

ARTICLE 12.
FORCE MAJEURE

Performance of Developer’s obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and Developer’s obligations shall be abated during any period of force majeure. Force majeure shall include, without limitation, damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, issuance of any permit and/or legal authorization (including engineering approvals by any governmental entity), governmental approvals and permits, shortage or delay in shipment of materials or fuel occasioned by any event referenced

herein, acts of God, unusually adverse weather or wet soil conditions, pandemic, or other causes beyond the parties' reasonable control, including but not limited to, any court or judgment resulting from any litigation affecting the Property or this Agreement.

ARTICLE 13.
GIFT TO PUBLIC SERVANT OR TO DEVELOPER REPRESENTATIVE

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

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

ARTICLE 14.
ASSIGNMENT

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

ARTICLE 15.
INDEMNIFICATION

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

CONSTITUTE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. Nothing in this paragraph may be construed as waiving any governmental immunity available to the City under state law. This provision is solely for the benefit of Developer, BEDC, and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

15.02 It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The City and BEDC (including its past, present and future officers, elected officials, directors, employees and agents of the City) do not assume any responsibility to any third party in connection with Developer's construction of the Development.

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

ARTICLE 16.
MISCELLANEOUS MATTERS

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

16.02 Agreement Subject to Law. This Agreement is made subject to and in accordance with the 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: 2525 FTG - TULSA, LLC
P. O. Box 471819
Fort Worth, Texas 76147
Attn: Louis E. Martin, III

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

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

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

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

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

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

[Signature pages to follow]

BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION

By: _____

Name: _____

Title: Board President

Date: January ____, 2025

STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on January ____, 2025, by _____, known personally by me to be the Board President of the Burleson 4A Economic Development Corporation, on behalf of said entity.

[Notary Seal]

Notary Public, State of Texas

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

By: _____

Name: _____

Title: Manager

Date: January ____, 2025

STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on January ____, 2025 by _____, known personally by me to be the manager of 2525 FTG - Tulsa, LLC, on behalf of said entity.

[Notary Seal]

Notary Public, State of Texas

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

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

WITNESSETH:

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

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

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

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

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

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

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

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

ARTICLE 1. **AUTHORIZATION**

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

2.08 “Event of Bankruptcy” means the dissolution or termination of Developer’s existence as a going business, insolvency, appointment of receiver for any part of Developer’s property and such appointment is not terminated within 90 days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer and such proceeding is not dismissed within 90 days after the filing thereof.

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

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

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

ARTICLE 3.
TERM

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

ARTICLE 4.
IN GENERAL

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

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

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

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

ARTICLE 5. **COVENANTS OF DEVELOPER**

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 6. COVENANTS AND INCENTIVES OF BEDC

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

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

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

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

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

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

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

ARTICLE 8.
AUTHORITY; COMPLIANCE WITH LAW

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

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

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

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

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

ARTICLE 9.
DEFAULT, REMEDIES AND TERMINATION

9.01 Default by Developer.

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

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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.

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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.

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

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

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

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

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

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

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

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

[Signature pages to follow]

BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION

By: [Signature]

Name: Dan McClemond
Title: Board President

Date: February 10, 2023

STATE OF TEXAS
COUNTY OF Johnson

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

[Notary Seal]

[Signature]
Notary Public, State of Texas



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

By: [Signature]

Name: Louis E. Martin III

Title: Manager

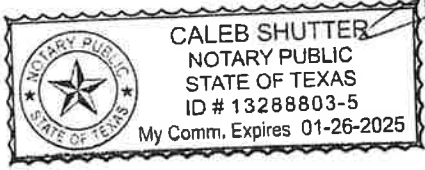
Date: February 3, 2023

STATE OF TEXAS
COUNTY OF Tarrant

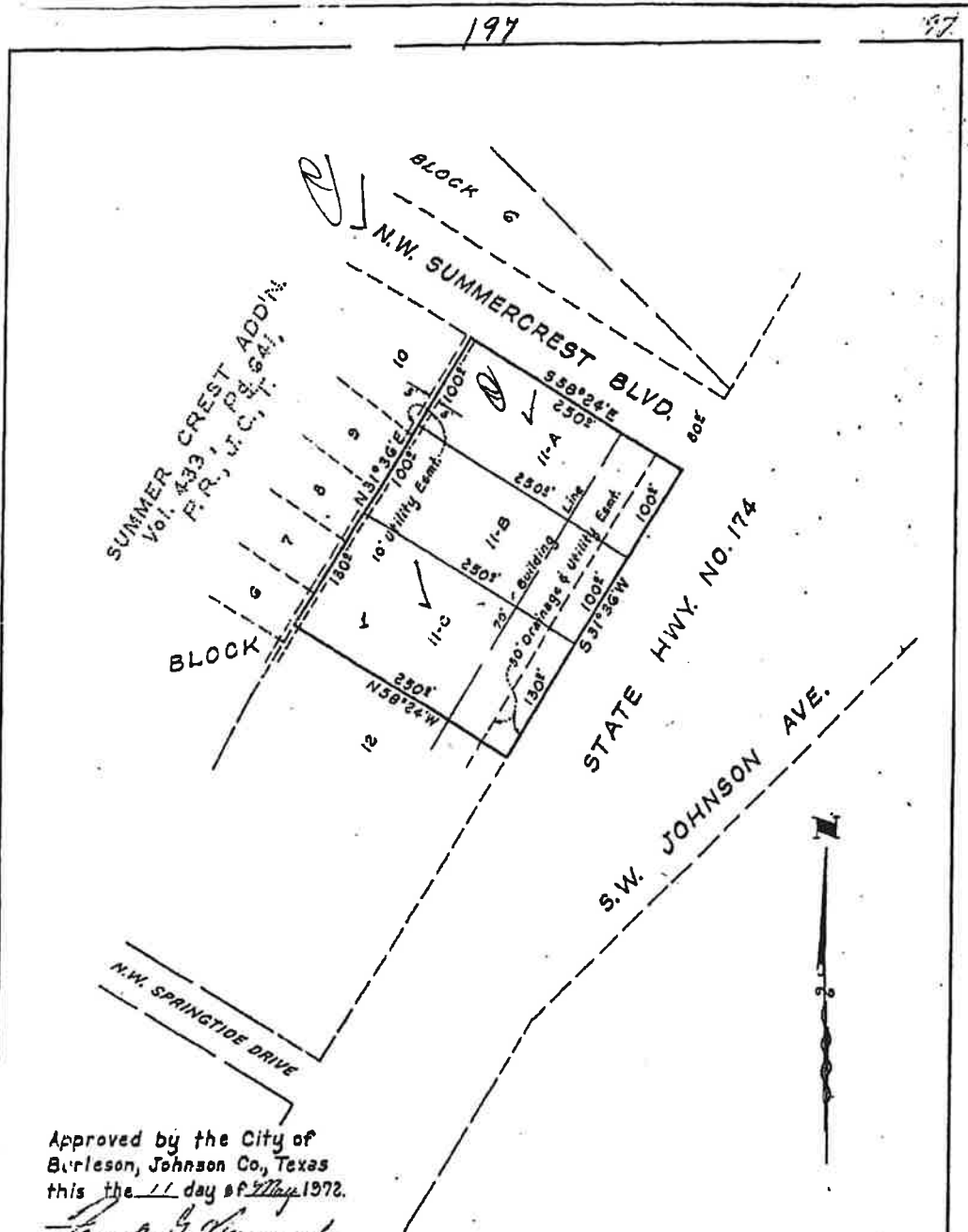
This instrument was acknowledged before me on February 3, 2023 by Louis E. Martin III, known personally by me to be the manager of 2525 FTG - Tulsa, LLC, on behalf of said entity.

[Notary Seal]

[Signature]
Notary Public, State of Texas



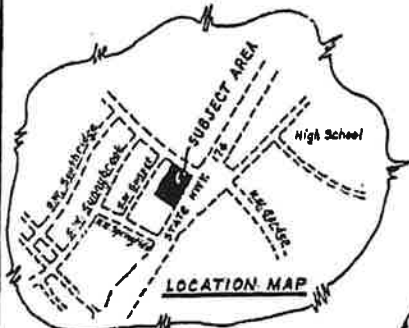
1/197



Approved by the City of
 Burleson, Johnson Co., Texas
 this the 11 day of May 1972.
Frank S. [Signature]
 Mayor

LOTS 11-A, 11-B & 11-C
 Being a Subdivision of Lot 11, Block 1,

SUMMER CREST
 An Addition to the City of
BURLESON, JOHNSON CO., TEX.
 Out of the M. Hunt Survey, Abstract 383



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



SCALE: 1"=100'

FILED FOR RECORD AT [Signature]

JUN 5 1972

CLERK OF COURSE CLERK JOHNSON COUNTY DEPUTY

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

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

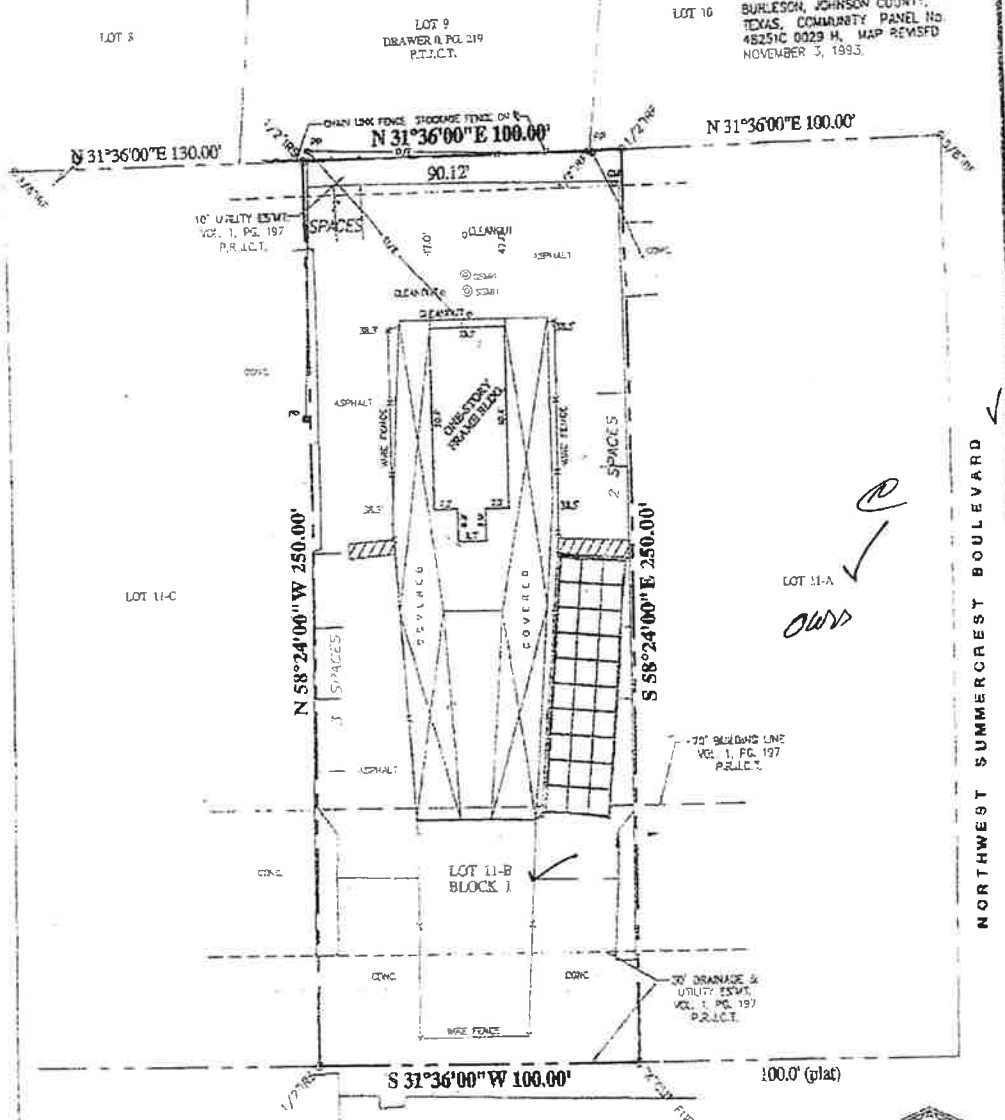
Coombs Land Surveying, Inc.
 P.O. Box 11370 Fort Worth Texas 76110
 4374 W. Vickery Blvd. Fort Worth, Texas 76107
 (817) 731-6400 (817) 731-6402 FAX
 C.L.S. JOB No. 07-0356
 OF No. 079121-CCNJ-A

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

*** NOTE ***
 NO PORTION OF THIS PROPERTY
 LIES WITHIN A 100-YEAR FLOOD
 BOUNDARY LINE ACCORDING TO
 THE NATIONAL FLOOD INSURANCE
 PROGRAM'S FLOOD INSURANCE
 RATE MAP FOR THE CITY OF
 BURLESON, JOHNSON COUNTY,
 TEXAS, COMMUNITY PANEL NO.
 48251C 0029 H, MAP REVISED
 NOVEMBER 3, 1993.

BASES OF BEARINGS: NORTHWEST RIGHT-OF-WAY LINE OF
 SOUTHWEST WILSHIRE BOULEVARD AS SHOWN ON PLAT RECORDED
 IN VOL. 1, PG. 197, P.R. 201.

RF DENOTES IRON ROD FOUND
 IRS DENOTES IRON ROD SET



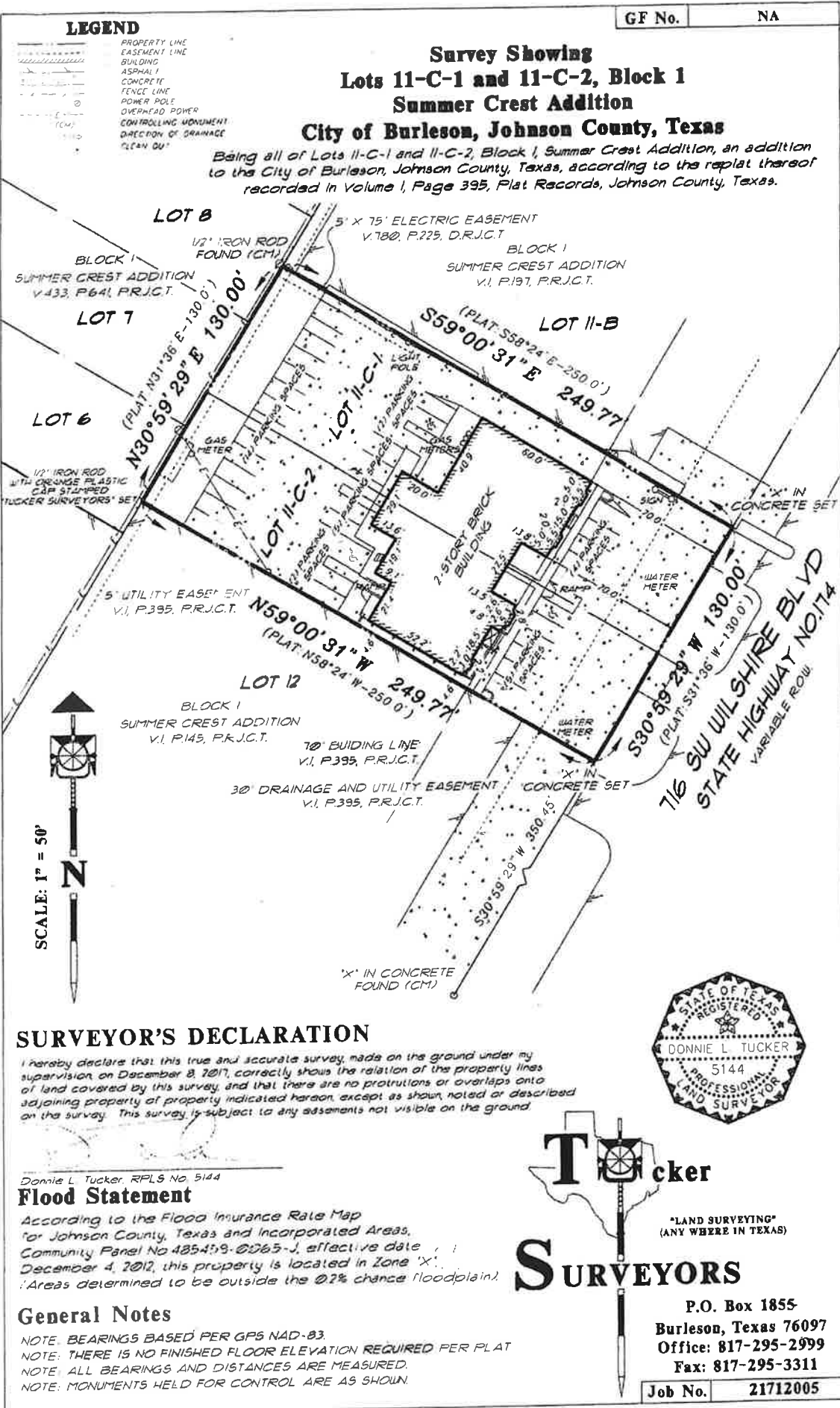
**708 SOUTHWEST
 WILSHIRE BOULEVARD**
 (S. H. 174)
 ASPHALT PAVEMENT
 VARIABLE WIDTH R.O.W.

SURVEYED ON THE GROUND
 SEPTEMBER 7, 2007
 REVISED SEPTEMBER 12, 2007
 RONALD W. COOMBS, R.P.L.S.
 STATE OF TEXAS No. 5294



EXHIBIT A

Handwritten initials/signature



SURVEYOR'S DECLARATION

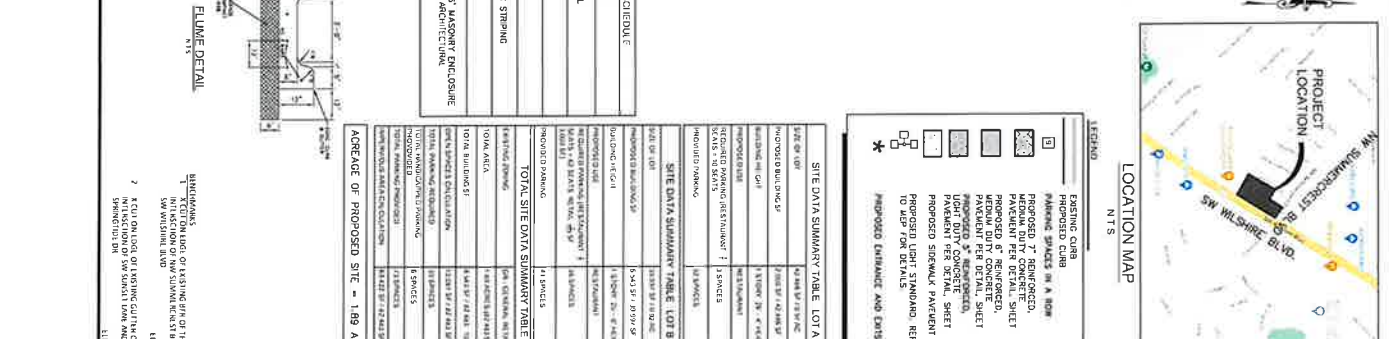
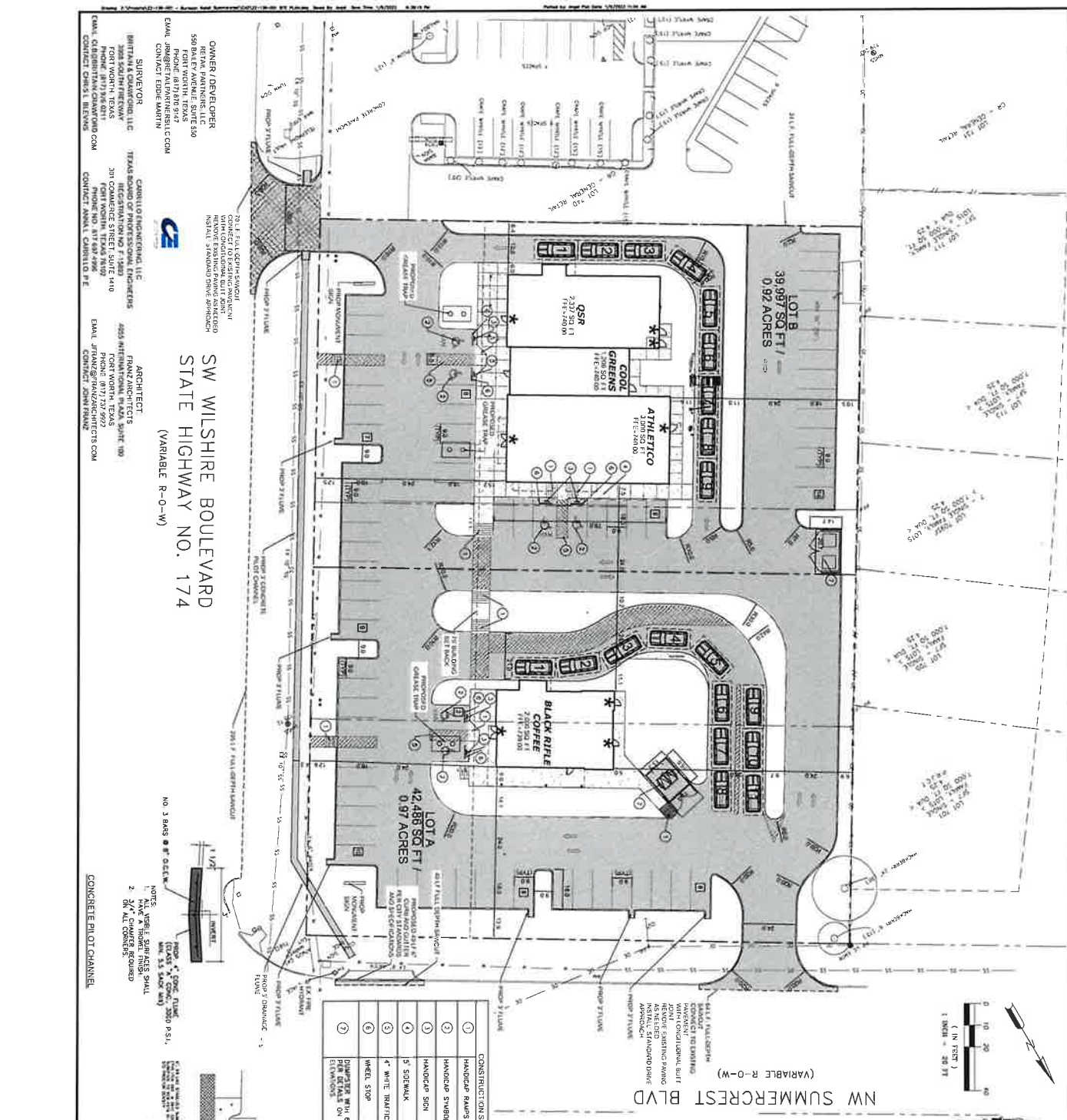
I hereby declare that this true and accurate survey, made on the ground under my supervision on December 8, 2017, correctly shows the relation of the property lines of land covered by this survey, and that there are no protrusions or overlaps onto adjoining property of property indicated hereon, except as shown, noted or described on the survey. This survey is subject to any easements not visible on the ground.

Flood Statement

According to the Flood Insurance Rate Map for Johnson County, Texas and Incorporated Areas, Community Panel No 485439-0265-J, effective date December 4, 2012, this property is located in Zone "X". (Areas determined to be outside the 0.2% chance floodplain).

General Notes

- NOTE: BEARINGS BASED PER GPS NAD-83.
- NOTE: THERE IS NO FINISHED FLOOR ELEVATION REQUIRED PER PLAT
- NOTE: ALL BEARINGS AND DISTANCES ARE MEASURED.
- NOTE: MONUMENTS HELD FOR CONTROL ARE AS SHOWN.



CONSTRUCTION SCHEDULE	
1	HANDICAP RAMPS
2	HANDICAP STAIRS
3	HANDICAP SIGN
4	5' SIDEWALK
5	WHITE PAINTING STRIPING
6	WHEEL STOP
7	ELIMINATE SIGN & MOUNTAIN ENCLOSURE

CONCRETE PAVEMENT	
1	NO. 3 BASS MAT
2	2.0" 3/4" CHANGES REQUIRED
3	OK ALL CONCRETS

ACREAGE OF PROPOSED SITE = 1.89 ACRES		
1	LOT 8	0.97 ACRES
2	LOT 9	0.92 ACRES
TOTAL SITE DATA SUMMARY TABLE		
NO. OF BUILDING FLOORS	1	
TOTAL AREA	1,888,000	
TOTAL FLOOR AREA	1,888,000	
TOTAL PERMITTED FLOOR AREA	1,888,000	
TOTAL PERMITTED SQUARE FEET	1,888,000	
TOTAL PERMITTED SQUARE FEET PER ACRE	1,888,000	

BURLESON RETAIL SUMMERCREST LOTS 1R, 12R, 11C1, 11B AND 11A BLOCK 1 SUMMERCREST ADDITION BURLESON, TEXAS SITE DEVELOPMENT PLAN

OWNER / DEVELOPER: 599 BALLETT AVENUE, SUITE 250 FORT WORTH, TEXAS 76102
CONTACT: ERIC MARTIN, ERIC@CARRILLO.COM
SURVEYOR: CARRILLO ENGINEERING, L.L.C. 3035 SOUTHHERNWAY FORT WORTH, TEXAS 76109
CONTACT: CAROL ANN, CAROL@CARRILLO.COM
ARCHITECT: FINN ARCHITECTS 4024 INTERNATIONAL PLAZA, SUITE 100 FORT WORTH, TEXAS 76109
CONTACT: JOHN FINN, JOHN@FINNARCHITECTS.COM

Carrillo Engineering, LLC
 3035 Southhernway, Fort Worth, Texas 76102
 Phone 817-697-4996, Fax 817-697-5893

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

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

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

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

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

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1. **AUTHORIZATION**

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

ARTICLE 2. **DEFINITIONS**

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

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

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

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

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

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

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

2.08 “Event of Bankruptcy” means the dissolution or termination of Developer’s existence as a going business, insolvency, appointment of receiver for any part of Developer’s property and such appointment is not terminated within 90 days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer and such proceeding is not dismissed within 90 days after the filing thereof.

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

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

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

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

ARTICLE 3.
TERM

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

ARTICLE 4.
IN GENERAL

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

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

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

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

H. Taxidermy.

**ARTICLE 5.
COVENANTS OF DEVELOPER**

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 6.
COVENANTS AND INCENTIVES OF BEDC

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

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

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

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

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

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

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

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

**ARTICLE 8.
AUTHORITY; COMPLIANCE WITH LAW**

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

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

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

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

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

ARTICLE 9. DEFAULT, REMEDIES AND TERMINATION

9.01 Default by Developer.

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

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

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

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

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

ARTICLE 10.
RIGHT OF OFFSET

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

ARTICLE 11.
VENUE AND GOVERNING LAW

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

ARTICLE 12.
FORCE MAJEURE

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

**ARTICLE 13.
GIFT TO PUBLIC SERVANT OR TO DEVELOPER REPRESENTATIVE**

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

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

**ARTICLE 14.
ASSIGNMENT**

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

**ARTICLE 15.
INDEMNIFICATION**

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

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

15.02 It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The City and BEDC (including its past, present and future officers, elected officials, directors, employees and agents of the City) do not assume any responsibility to any third party in connection with Developer's construction of the Development.

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

**ARTICLE 16.
MISCELLANEOUS MATTERS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Signature pages to follow]

BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION

By: [Signature]

Name: Dan McClendon

Title: Board President

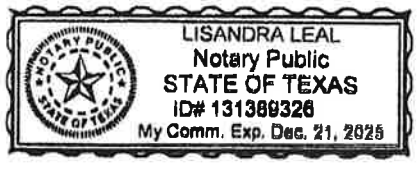
Date: June 20, 2023
February __, 2023

STATE OF TEXAS
COUNTY OF Johnson

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

[Notary Seal]

[Signature]
Notary Public, State of Texas



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

By: *[Signature]*

Name: Louis E. Martin, III

Title: Manager

Date: ~~February~~ ^{June 13}, 2023

STATE OF TEXAS
COUNTY OF TARRANT

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

[Notary Seal]

Monica D. Martin
Notary Public, State of Texas

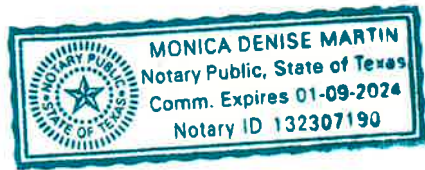
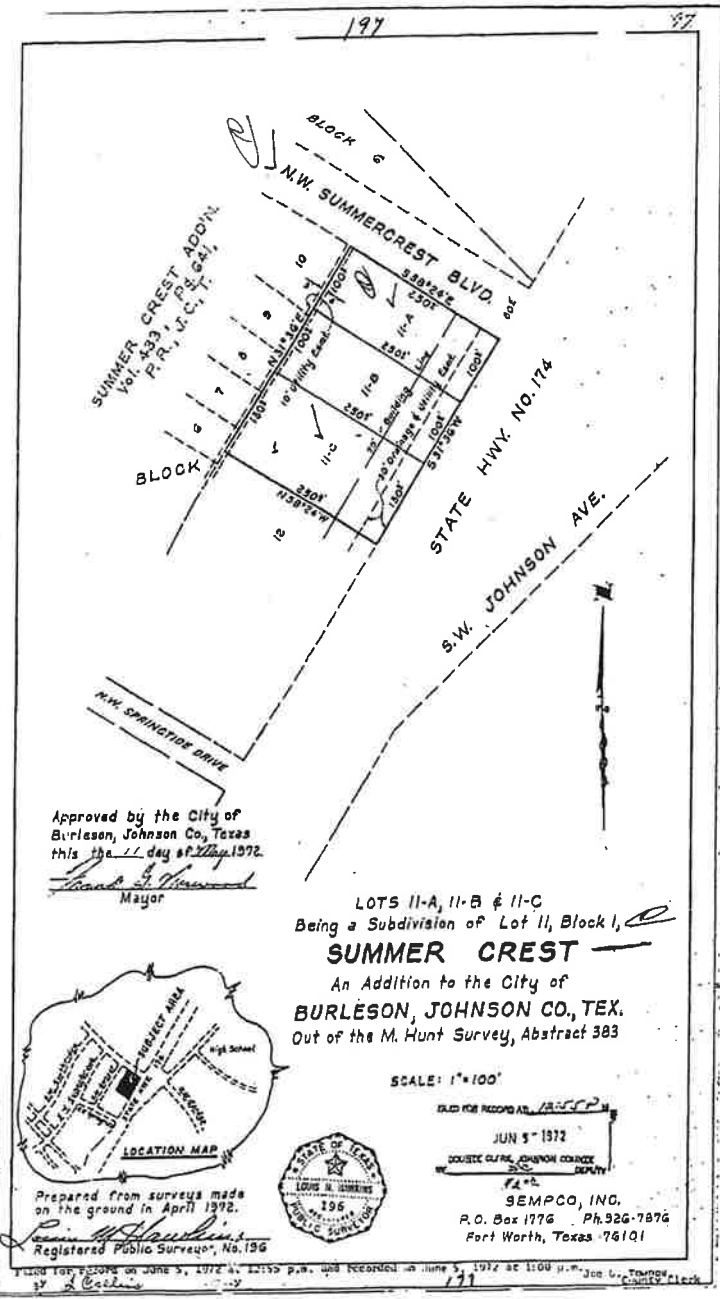


Exhibit A The Property

1/197



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

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



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

SCALE: 1" = 100'
FILED FOR RECORD AT
JUN 5 1972
JOHNIE CLARK, JOHNSON COUNTY CLERK
SEMPCO, INC.
P.O. Box 1776 Ph. 926-7876
Fort Worth, Texas 76101

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

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



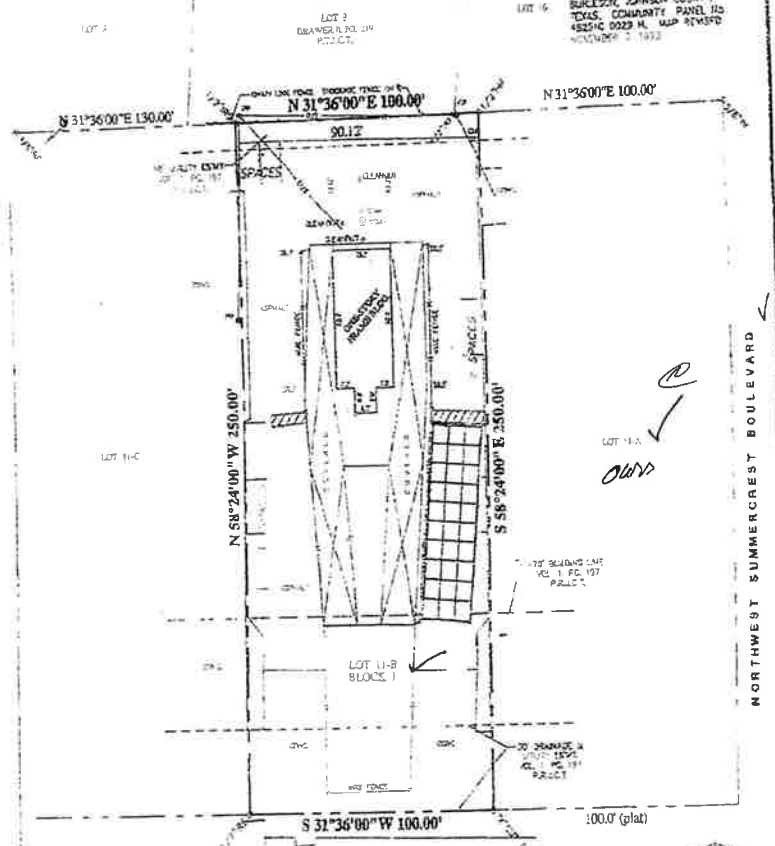
Combs Land Surveying, Inc.
 P.O. Box 11370 Fort Worth, Texas 76110
 1374 W. Victory Blvd. Fort Worth, Texas 76107
 (817) 731-6400 (817) 731-6400 FAX
 D.L. # 28 16 01-0156
 C.P. # 07910-0001-7

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

PLAT OF 22' R.O.W. NORTHWEST CORNER OF THE SW
 QUARTER - WILSHIRE BOULEVARD AS SHOWN ON PLAT RECORDED
 IN VOL. 1, PG. 197, P.F. 207

R7 DISTRICT 1801 RFD TOWN
 R5 (LENGTH 1000.00')

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



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

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



EXHIBIT A

Handwritten initials/signature

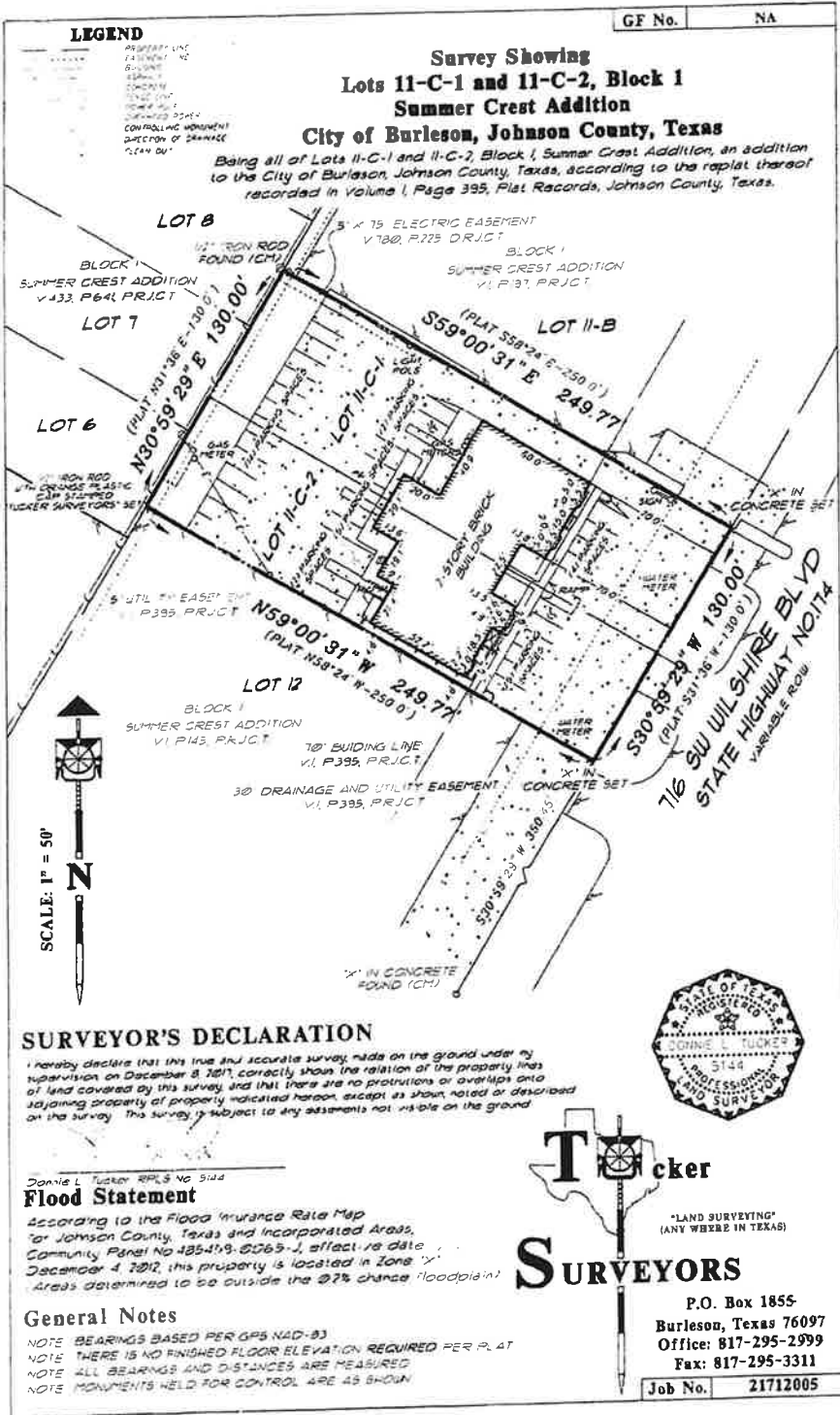


Exhibit B

Concept Plan

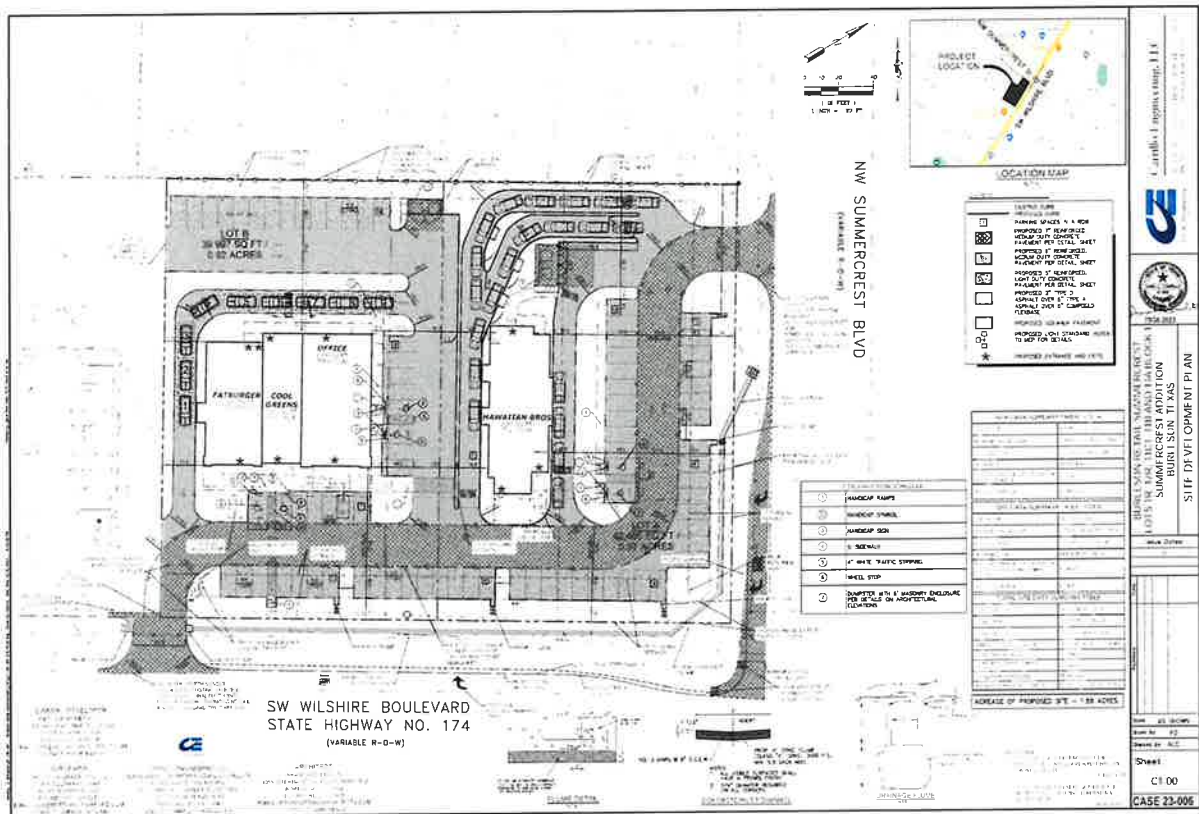


Exhibit C Site Improvements

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

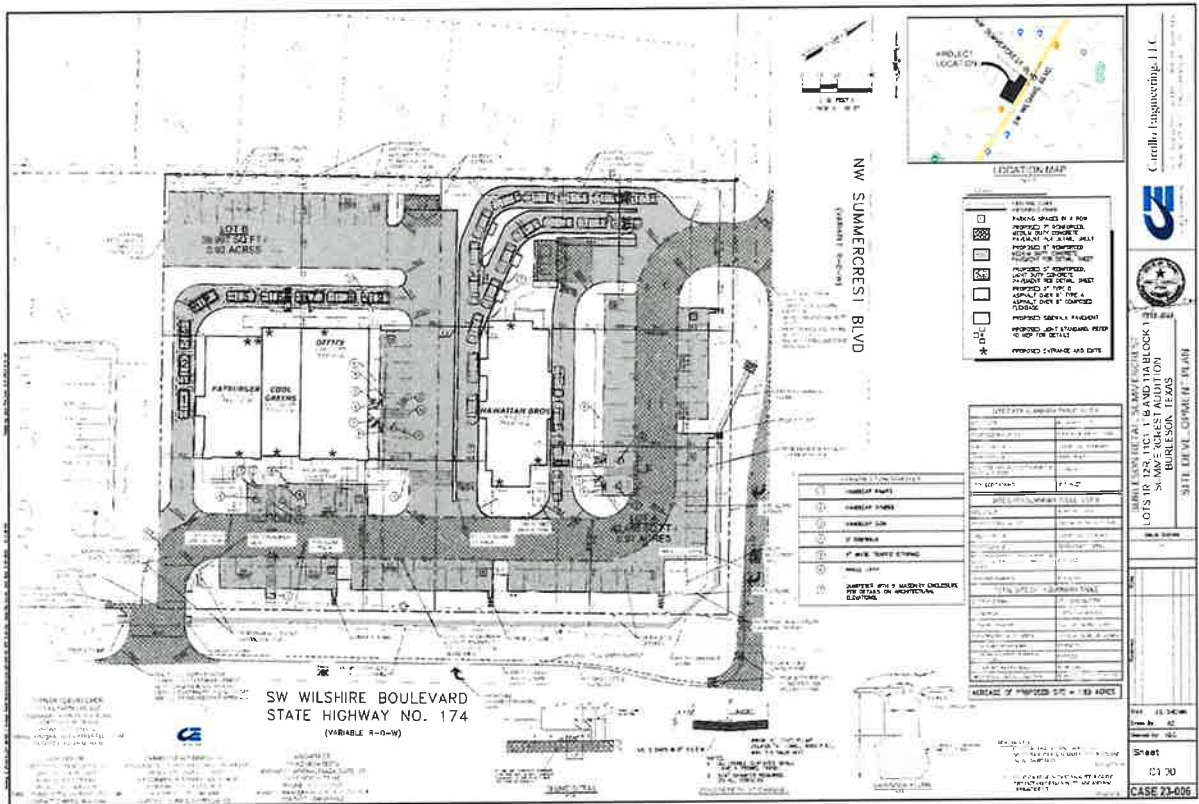
- Basis for Cost Projection:
- No Design Completed
 - Preliminary Design
 - Final Design

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

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

Exhibit D

Street Improvements



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

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

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

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

WITNESSETH:

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

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

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

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

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

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

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

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

ARTICLE 1.
AUTHORIZATION

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

ARTICLE 2.
DEFINITIONS

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

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

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

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

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

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

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

2.08 “Event of Bankruptcy” means the dissolution or termination of Developer’s existence as a going business, insolvency, appointment of receiver for any part of Developer’s property and such appointment is not terminated within 90 days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer and such proceeding is not dismissed within 90 days after the filing thereof.

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

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

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

ARTICLE 3. **TERM**

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

ARTICLE 4. **IN GENERAL**

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

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

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

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

ARTICLE 5. COVENANTS OF DEVELOPER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE 8.
AUTHORITY; COMPLIANCE WITH LAW**

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

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

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

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

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

**ARTICLE 9.
DEFAULT, REMEDIES AND TERMINATION**

9.01 Default by Developer.

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

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

**ARTICLE 10.
RIGHT OF OFFSET**

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

**ARTICLE 11.
VENUE AND GOVERNING LAW**

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

**ARTICLE 12.
FORCE MAJEURE**

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

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

ARTICLE 13.

GIFT TO PUBLIC SERVANT OR TO DEVELOPER REPRESENTATIVE

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

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

ARTICLE 14. **ASSIGNMENT**

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

ARTICLE 15. **INDEMNIFICATION**

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

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

15.02 It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The City and BEDC (including its past, present and future officers, elected officials, directors, employees and agents of the City) do not assume any responsibility to any third party in connection with Developer's construction of the Development.

ARTICLE 16. MISCELLANEOUS MATTERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Signature pages to follow]

BURLESON 4A ECONOMIC DEVELOPMENT CORPORATION

By: *[Handwritten Signature]*

Name: Dan McDaniel

Title: Board President

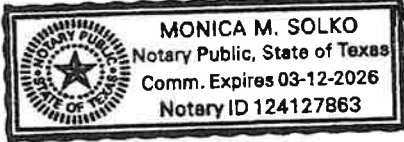
Date: February 10, 2023

STATE OF TEXAS
COUNTY OF Johnson

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

[Notary Seal]

[Handwritten Signature]
Notary Public, State of Texas



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

By [Signature]

Name: Corey E. Medley III

Title: Manager

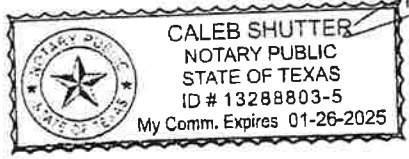
Date: February 3, 2023

STATE OF TEXAS
COUNTY OF Tarrant

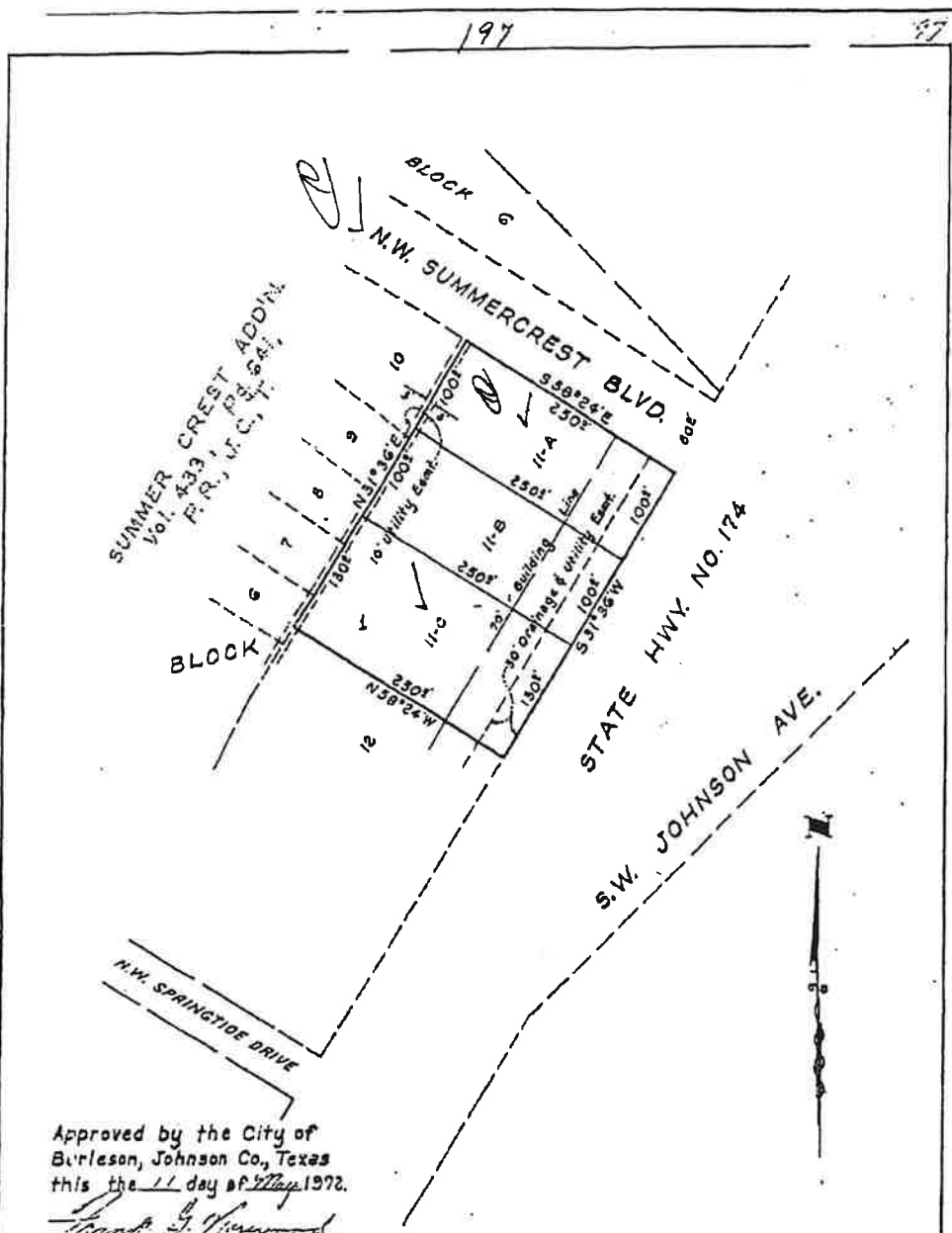
This instrument was acknowledged before me on February 3, 2023 by Corey E. Medley III, known personally by me to be the manager of 2525 FTG - Tulsa, LLC, on behalf of said entity.

[Notary Seal]

[Signature]
Notary Public, State of Texas

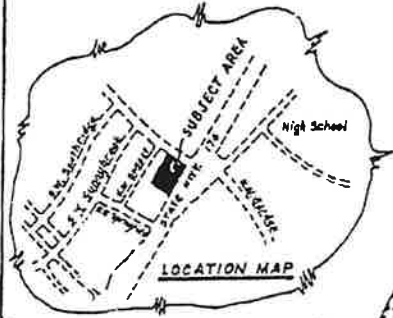


1/197



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

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



SCALE: 1" = 100'

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



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

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

Filed for Record on June 5, 1972 at 11:55 p.m. and recorded on June 5, 1972 at 1:00 p.m.
by *Carol* 177 Joe L. Townes County Clerk

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

Coombs Land Surveying, Inc.
P.O. Box 11370 Fort Worth Texas 76110
4374 W. Victory Blvd. Fort Worth, Texas 76107
(817) 731-6400 (817) 731-6400 FAX
C.L.S. No. 114-0254
OT No. 0791C -00007

ALL SUBJECT PROPERTY BOUNDARY
LINE BEARINGS AND DISTANCES AND
PLAT IS ACTUAL UNLESS OTHERWISE
NOTED HEREON.

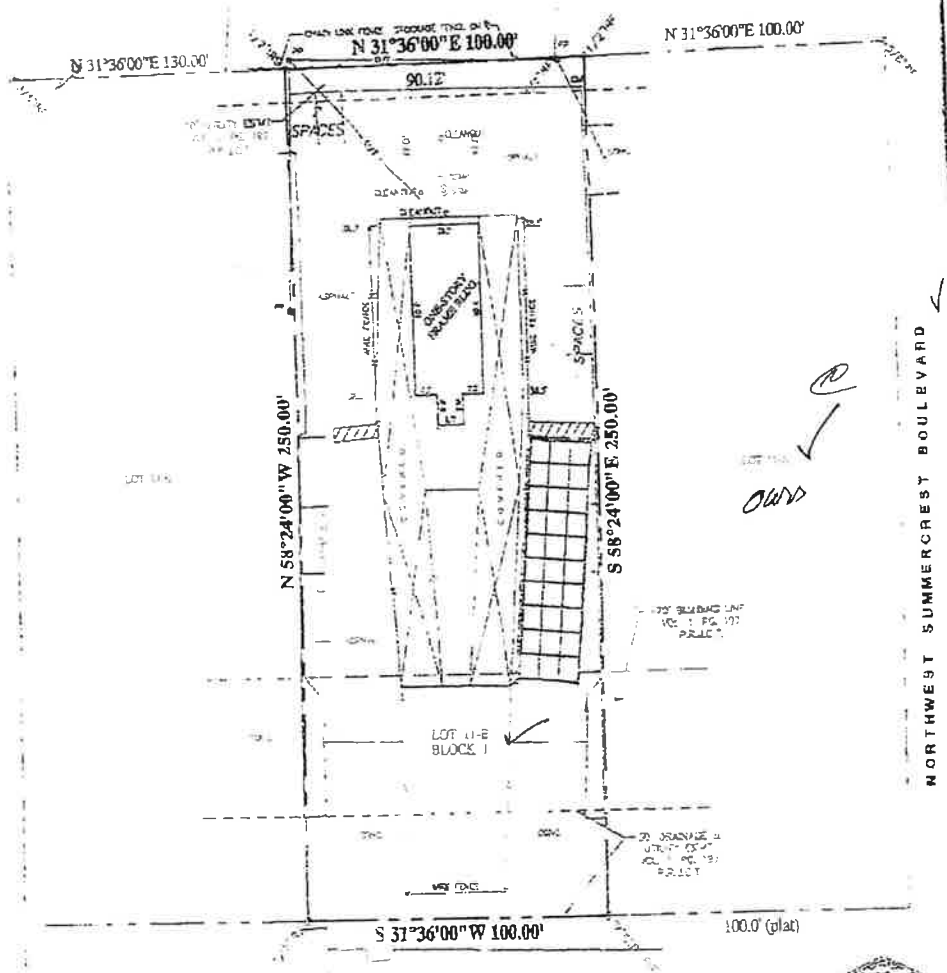
NO PORTION OF THIS PROPERTY
LIES WITHIN A 100-YEAR FLOOD
BOUNDARY LINE ACCORDING TO
THE NATIONAL FLOOD INSURANCE
PROGRAM'S FLOOD INSURANCE
RATE MAP FOR THE CITY OF
BURLESON, JOHNSON COUNTY,
TEXAS, COMMUNITY PANEL NO.
48251C 0229 H, MAP REVISED
NOVEMBER 3, 1992.

BACK OF BEARINGS: NORTHWEST CORNER OF
SOUTHWEST WILSHIRE BOULEVARD AS SHOWN ON PLAT RECORDED
IN VOL. 1, PG. 197, P.P. 207

BY NOTES FROM PLO 100.00'
BY NOTES FROM PLO 100.00'

LOT 9
DRAWER & PLO 100'
PLO CT.

LOT 6



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

APPROVED BY THE BOARD OF
SURVEYORS OF TEXAS
REVISED SEPTEMBER
RONALD A. COOMBS, P.L.S.
P.L.S. NO. 114-0254



EXHIBIT A

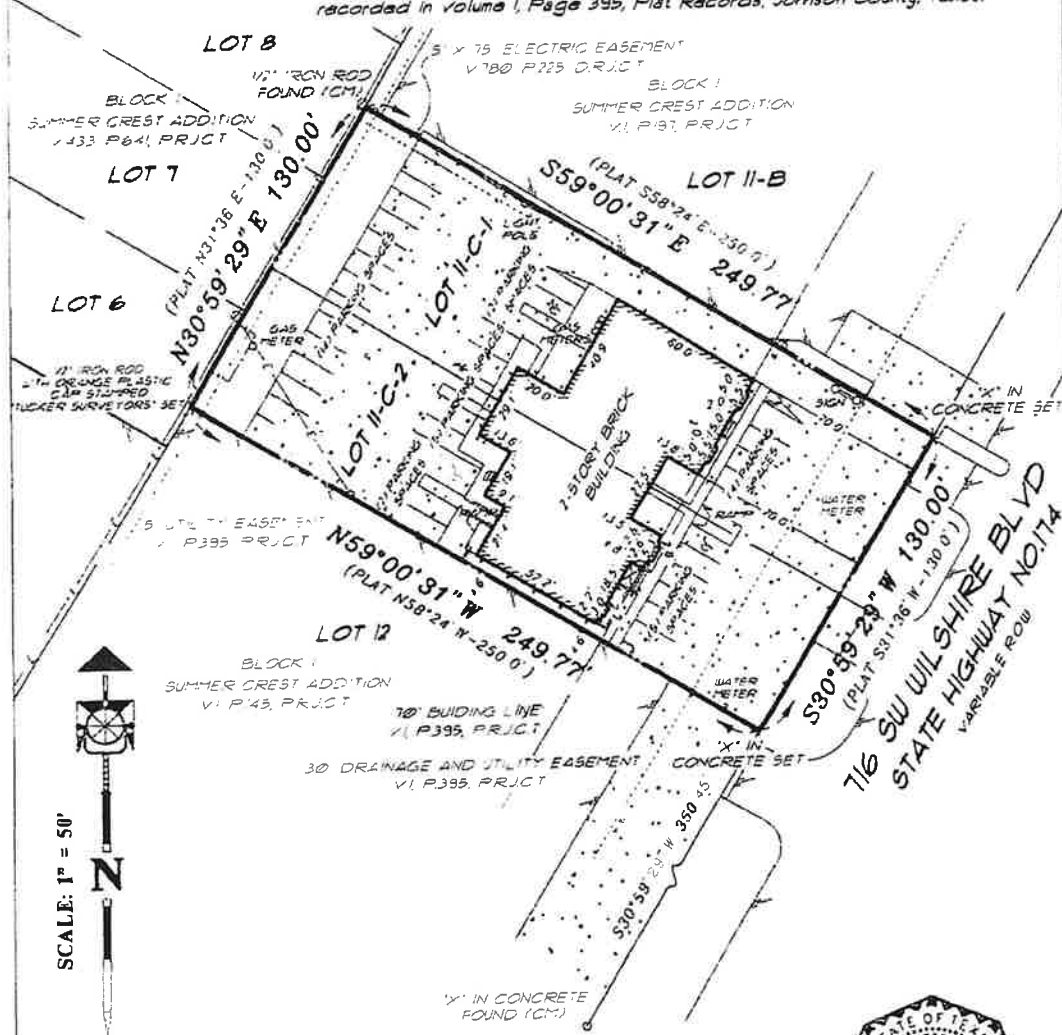
Handwritten initials/signature.

LEGEND

PROPERTY OF
 LOTS
 RIGHT OF WAY
 EASEMENTS
 UTILITIES
 CONVEYING INSTRUMENT
 SECTION OF DRAINAGE
 FOUND

Survey Showing Lots 11-C-1 and 11-C-2, Block 1 Summer Crest Addition City of Burleson, Johnson County, Texas

Being all of Lots 11-C-1 and 11-C-2, Block 1, Summer Crest Addition, an addition to the City of Burleson, Johnson County, Texas, according to the replat thereof recorded in Volume 1, Page 395, Plat Records, Johnson County, Texas.



SURVEYOR'S DECLARATION

I hereby declare that this true and accurate survey, made on the ground under my supervision on December 8, 2017, correctly shows the location of the property lines of land covered by this survey, and that there are no protrusions or overlaps onto adjoining property of property indicated herein, except as shown, noted or described on this survey. This survey is subject to any easements not visible on the ground.



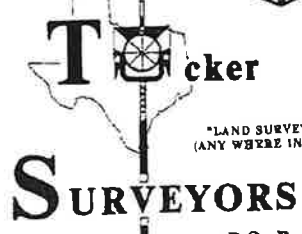
Donnie L. Tucker, RPLS No. 5144

Flood Statement

According to the Flood Insurance Rate Map for Johnson County, Texas and Incorporated Areas, Community Panel No. 4854-9, 0765-J, effective date December 4, 2012, this property is located in Zone "X". Areas determined to be outside the 1% chance floodplain.

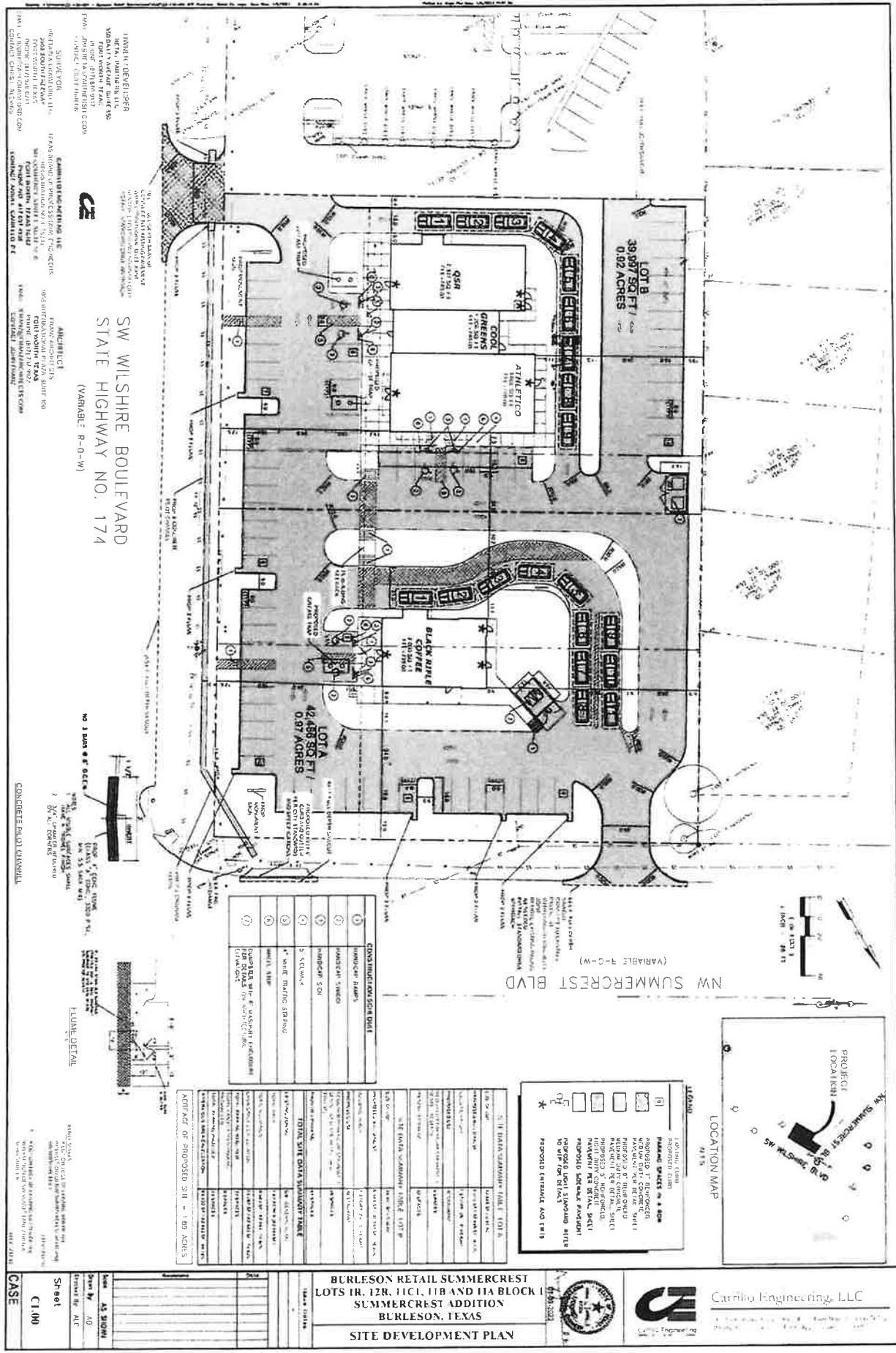
General Notes

- NOTE: BEARINGS BASED PER GPS NAD-83
- NOTE: THERE IS NO FINISHED FLOOR ELEVATION REQUIRED PER PLAT
- NOTE: ALL BEARINGS AND DISTANCES ARE MEASURED
- NOTE: MONUMENTS HELD FOR CONTROL ARE AS SHOWN



"LAND SURVEYING"
(ANY WHERE IN TEXAS)

P.O. Box 1855
 Burleson, Texas 76097
 Office: 817-295-2999
 Fax: 817-295-3311



OWNER: BURLESON RETAIL SUMMERCREST LLC
 12000 WILSHIRE BOULEVARD, SUITE 100
 BURLESON, TEXAS 76015
 PROJECT NO. 2018-001

ARCHITECT: CARROLL ENGINEERING LLC
 12000 WILSHIRE BOULEVARD, SUITE 100
 BURLESON, TEXAS 76015
 PROJECT NO. 2018-001

DATE: 08/15/2018
 SHEET: 1 OF 1
 CASE: CL100

SW WILSHIRE BOULEVARD
 STATE HIGHWAY NO. 174
 (VARIABLE R-0-W)

NW SUMMERCREST BLVD
 (VARIABLE R-0-W)

LOT A
 42,688 SQ FT /
 0.97 ACRES

LOT B
 38,097 SQ FT /
 0.82 ACRES

CONCRETE PILOT CHANNEL
 2' x 6" x 10" CONCRETE
 2' x 6" x 10" CONCRETE

LEGEND
 1. EXISTING BUILDING
 2. PROPOSED BUILDING
 3. EXISTING PARKING
 4. PROPOSED PARKING
 5. EXISTING DRIVEWAY
 6. PROPOSED DRIVEWAY
 7. EXISTING SIDEWALK
 8. PROPOSED SIDEWALK
 9. EXISTING CURB
 10. PROPOSED CURB
 11. EXISTING STREET LIGHT
 12. PROPOSED STREET LIGHT
 13. EXISTING UTILITY
 14. PROPOSED UTILITY
 15. EXISTING TREE
 16. PROPOSED TREE
 17. EXISTING FENCE
 18. PROPOSED FENCE
 19. EXISTING SIGN
 20. PROPOSED SIGN
 21. EXISTING LANDSCAPE
 22. PROPOSED LANDSCAPE
 23. EXISTING EROSION CONTROL
 24. PROPOSED EROSION CONTROL
 25. EXISTING OTHER
 26. PROPOSED OTHER

NOTES
 1. ALL DIMENSIONS ARE IN FEET AND INCHES.
 2. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
 3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.
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 26. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.

CONCRETE PILOT CHANNEL
 2' x 6" x 10" CONCRETE
 2' x 6" x 10" CONCRETE

CONCRETE PILOT CHANNEL
 2' x 6" x 10" CONCRETE
 2' x 6" x 10" CONCRETE

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 2' x 6" x 10" CONCRETE

CONCRETE PILOT CHANNEL
 2' x 6" x 10" CONCRETE
 2' x 6" x 10" CONCRETE

Carrillo Engineering, LLC		Opinion of Probable Construction Cost			
				Date:	2/2/2023
Project:	Burleson Retail Summercrest			Prepared By:	KR
Project No.:	22-139-001			Checked By:	AC
Sheet 1 of 1					
Item No.	Item Description	Quantity	Unit	Unit Price	Item Cost
1	Mobilization	1	LS	\$20,000.00	\$20,000
2	Site Preparation/Demolition	1	LS	\$19,000.00	\$19,000
3	Environmental Remediation	1	LS	\$41,000.00	\$41,000
4	SWPPP	1	LS	\$7,500.00	\$7,500
5	Full Depth Sawcut	380	LF	\$15.00	\$5,700
6	7" Concrete Pavement Drive Approach	135	SY	\$120.00	\$16,200
7	6" Concrete Pavement	7,817	SY	\$100.00	\$781,700
8	5" Concrete Pavement	135	SY	\$90.00	\$12,150
9	Concrete Drainage Flume	6	EA	\$1,000.00	\$6,000
10	4" Sidewalks	2,160	SF	\$10.00	\$21,600
11	4" Concrete Pilot Channel	110	SY	\$80.00	\$8,800
12	6" Sanitary Sewer Line	474	LF	\$75.00	\$35,550
13	Grease Trap	3	EA	\$15,000.00	\$45,000
14	Connect to Existing 6" Water Line	2	EA	\$1,800.00	\$3,600
15	6" Water Line	209	LF	\$80.00	\$16,720
16	2" Water Line	197	LF	\$40.00	\$7,880
17	1 1/2" Water Line	60	LF	\$30.00	\$2,400
18	2" Domestic Meter	1	EA	\$9,600.00	\$9,600
19	1" Domestic Meter	1	EA	\$3,000.00	\$3,000
20	1" Irrigation Meter	2	EA	\$2,000.00	\$4,000
21	Wheel Stop	11	EA	\$250.00	\$2,750
22	Landscape and Irrigation	1	LS	\$75,000.00	\$75,000
Basis for Cost Projection:				Subtotal:	\$1,057,650.00
				Contingency, (%,+/-) 20%	\$211,530.00
				Total:	\$1,269,180.00

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

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

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