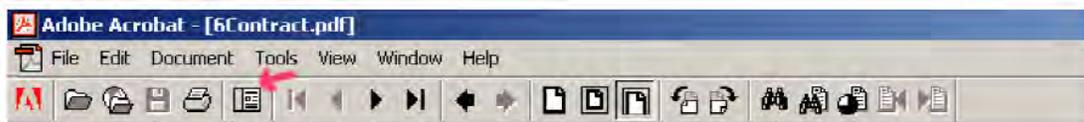




Lewisville City Council

The agenda and backup items follow in one continuous document. However, to view documents individually, click on the bookmark tab at the left of the screen. A list of all documents contained in the packet should appear in a screen to the left. If it does not, click on the “Show/Hide Navigation Pane” button in the toolbar at the top of the page.



Click on the item you would like to view, and it will appear in the window to the right.

A G E N D A

**LEWISVILLE CITY COUNCIL MEETING
APRIL 4, 2016**

**LEWISVILLE CITY HALL
151 WEST CHURCH STREET
LEWISVILLE, TEXAS 75057**

**WORKSHOP SESSION - 6:00 P.M.
REGULAR SESSION - 7:00 P.M.**

Call to Order and Announce a Quorum is Present.

WORKSHOP SESSION - 6:00 P.M.

- A. Discussion of Updates to the International Building Codes
- B. Discussion of Regular Agenda Items and Consent Agenda Items

REGULAR SESSION - 7:00 P.M.

- A. **INVOCATION:** Mayor Pro Tem Ferguson
- B. **PLEDGE TO THE AMERICAN AND TEXAS FLAGS:** Mayor Durham
- C. **PROCLAMATIONS:**
 - 1. Declaring the Week of April 10-16, 2016, as “National Public Safety Telecommunicators Week”
 - 2. Declaring the Week of April 10-16, 2016, as "Crime Victims' Rights Week"

**AGENDA
LEWISVILLE CITY COUNCIL
April 4, 2016**

D. PUBLIC HEARINGS:

- 1. Public Hearing: Consideration of an Ordinance Granting a Zone Change Request From Multi-Family Two District (MF-2) to Light Industrial District (LI), on an Approximately 0.631-Acre Tract of Land out of the J.W. Johnson Survey Abstract 1609 and the J. Chowning Survey Abstract 243, Located Approximately 1,200 North of SH 121, Between Leora Lane and Marina Vista Drive, as Requested by Pacheco Koch Consulting Engineers on Behalf of East Group Properties, L.P., the Property Owner (Case No. PZ-2016-03-07).**

ADMINISTRATIVE COMMENTS:

This 0.631 acre parcel of land is currently zoned Multi-Family Two District (MF-2). The applicant requests a rezoning of the property to Light Industrial (LI) zoning to allow this parcel to have the same zoning as the adjacent property (together making up a 28.103-acre parcel of land) on which the applicant intends to develop four office warehouse buildings. The Planning and Zoning Commission recommended unanimous approval (6-0) of the zone change request at their meeting of March 15, 2016.

RECOMMENDATION:

That the City Council approves the ordinance as set forth in the caption above.

AVAILABLE FOR QUESTIONS:

- Nika Reinecke, Director of Economic Development and Planning
- Paul M. Hames, PE, Pacheco Koch Consulting Engineers

- 2. Public Hearing: Consideration of an Ordinance Granting a Zone Change Request From Local Commercial District (LC) to Medical District (MD), on an Approximately 4.362-Acre Lot Legally Described as Lot 1, Block A, Parkway Baptist Addition, Located at 1165 West FM 3040, Approximately 880 Feet West of Valley Parkway, as Requested by G & A Consultants on Behalf of Parkway Baptist Church, the Property Owner (Case No. PZ-2016-03-08).**

**AGENDA
LEWISVILLE CITY COUNCIL
April 4, 2016**

ADMINISTRATIVE COMMENTS:

The current zoning of the property is Local Commercial (LC). The applicant is requesting Medical District (MD) zoning to allow for construction of a new senior living facility which will contain an assisted living and a memory care facility for those suffering from Alzheimer's and other forms of dementia. The existing church would be removed and four buildings each approximately 13,000 square feet in size would be constructed in two phases. The Planning and Zoning Commission recommended unanimous approval (6-0) of the zone change request at their meeting of March 15, 2016.

RECOMMENDATION:

That the City Council approves the ordinance as set forth in the caption above.

AVAILABLE FOR QUESTIONS:

- Nika Reinecke, Director of Economic Development and Planning
- Randi Rivera, G&A Consultants, LLC

3. **Public Hearing: Consideration of an Ordinance Granting a Zone Change Request From General Business District (GB) to Old Town Mixed Use Two District (OTMU2), on an Approximately 0.145-Acre Tract of Land out of the J.W. King Survey Abstract 696, Located on the West Side of South Mill Street Approximately 350 Feet South of Elm Street, at 277 South Mill Street, as Requested by Hat Group LLC., the Property Owner (Case No. PZ-2016-03-09).**

ADMINISTRATIVE COMMENTS:

The current zoning of the property is General Business (GB), which allows for a multitude of neighborhood services and offices primarily retail in nature. The applicant is requesting Old Town Mixed Use Two (OTMU2) zoning to allow for a mixed use of commercial and residential that would be part of the larger South Village development. The zone change to OTMU2 complies with the Old Town Master Plan for the area and allows for greater flexibility in developing the site. The Planning and Zoning Commission recommended unanimous approval (6-0) of the zone change request at their meeting of March 15, 2016.

RECOMMENDATION:

That the City Council approves the ordinance as set forth in the caption above.

**AGENDA
LEWISVILLE CITY COUNCIL
April 4, 2016**

- AVAILABLE FOR QUESTIONS:**
- Nika Reinecke, Director of Economic Development and Planning
 - Henry Rahmani, Hat Group, LLC

- E. **VISITORS/CITIZENS FORUM:** At this time, any person with business before the Council not scheduled on the agenda may speak to the Council. No formal action can be taken on these items at this meeting.
- F. **CONSENT AGENDA:** All of the following items on the Consent Agenda are considered to be self-explanatory by the Council and will be enacted with one motion. There will be no separate discussion of these items unless a Council Member or citizen so request. For a citizen to request removal of an item, a speaker card must be filled out and submitted to the City Secretary.
4. **APPROVAL OF MINUTES:** **City Council Minutes of the March 21, 2016, Workshop Session and Regular Session.**
5. **Approval of a Transportation Consultation Services Agreement With Innovative Transportation Solutions, Inc. in the Amount of \$90,000; and Authorization for the City Manager to Execute the Agreement.**

ADMINISTRATIVE COMMENTS:

Innovative Transportation Solutions, Inc. has been providing consultation services on a variety of transportation issues for the City of Lewisville since March 2000. Their services include a variety of tasks including coordinating the transportation needs of the City, seeking federal/state/county funding for new projects, and working with the North Central Texas Council of Governments and Denton County on future mobility needs. Innovative Transportation Solutions, Inc., in the past year, has worked on behalf of the City related to the Regional Toll Revenue Funds, Old Town Sustainable Development projects, the IH-35E Reconstruction Project, Denton County TRIP-08 bond projects as well as various coordination efforts with TXDOT on other local transportation issues. Innovative Transportation Solutions, Inc. is seeking a renewal of their contract in the amount of \$90,000. Funding is available in the Engineering Department Fiscal Year 2015/2016 budget.

RECOMMENDATION:

That the City Council approves the agreement as set forth in the caption above.

**AGENDA
LEWISVILLE CITY COUNCIL
April 4, 2016**

- 6. Approval of a Contract Award for Lake Park Soccer and Parking Renovations to C. Green Scaping, LP, Fort Worth, Texas in the Amount of \$654,498.60; and Authorization for the City Manager to Execute the Contract.**

ADMINISTRATIVE COMMENTS:

A total of thirty-two (32) requests for proposals were downloaded from Bidsync.com. A total of eight (8) proposals were received and opened February 11, 2016. Based on the evaluation matrix included in the request for proposals, C. Green Scaping, LP received the highest evaluation score and is being recommended for award. This project involves the renovation of the turf for 4 adult size soccer fields, converting the field turf from Common Bermuda to TifSport hybrid Bermuda, a small modification of the existing asphalt parking lot, and the construction of new concrete bleacher pads, and concrete trails to provide access from the parking areas to the bleacher pads. Funding is available in the Turf Renovation Capital Improvement Project.

RECOMMENDATION:

That the City Council approves the contract as set forth in the caption above.

G. REGULAR HEARINGS:

- 7. Consideration of the Charrette Process for Use and Design of 191 West Main Street.**

ADMINISTRATIVE COMMENTS:

At the February retreat City Council directed staff to move forward with a charrette process to consider uses for the city owned property located at 191 West Main Street. Staff is also working through the costs associated with the short-term use of the building as an entrepreneurial center. Staff recommends concurrently proceeding with the Council-requested charrette process to look at both the short and long term use/design of the bank building. Staff is recommending that the Council appoint two members from each of the boards that deal with Old Town issues as well as our Old Town business owners and expert consultants.

**AGENDA
LEWISVILLE CITY COUNCIL
April 4, 2016**

RECOMMENDATION:

That the City Council consider the proposed process and charrette team as set forth in the caption above.

- 8. Tabled Item: Consideration of an Ordinance Granting a Special Use Permit (SUP) for Minor Automobile Services Consisting of a Free-Standing Goodyear Auto Care Facility; and Consideration of Four Associated Variances on an Approximately 1.212-Acre lot, Legally Described as Lot 1, Block G, Carrington Village Addition Phase II, Located at the Northwest Corner of FM 3040 and SH 121 Business, as Requested by Steve Meier of Hummel Investments, LLC. on Behalf of Drexel Realty Lewisville LP, the Property Owner (Case No. SUP-2016-02-01).**

ADMINISTRATIVE COMMENTS:

The public hearing for the proposed SUP was continued from the February 15, 2016 and March 7, 2016 City Council meetings and held at the March 21, 2016 City Council meeting. Goodyear currently operates out of the retail center adjacent to this property. They have outgrown the facility and are looking to build a new 7,800 square-foot facility with 12 service bays. Staff recommends the following conditions if this SUP is approved: 1) overnight outside storage of vehicles shall not be allowed; 2) the outside storage of tires or other material shall not be allowed on the site; and 3) the hours of operation shall be limited to 7:30 a.m. to 7:00 p.m. Monday-Friday; 8:00 a.m. to 5:00 p.m. on Saturday and closed on Sunday, 4) an eight-foot, stained, board-on-board cedar fence with a top rail shall be installed on top of a minimum three-foot berm as shown on the fencing illustrations. This fence shall be kept in good repair for the life of the project. Four variances are requested: a) to waive the deceleration requirement; b) to waive the 250-foot control of access from the intersection of SH 121 Business; c) to waive the 230-foot driveway spacing requirement from an existing driveway on a separate lot; and d) to reduce the required 10-foot setback to 5 feet from the existing water and sanitary sewer easement. The Planning and Zoning Commission recommended approval of the SUP by a vote of 5-1 at their meeting on February 2, 2016.

RECOMMENDATION:

That the City Council approves the proposed ordinance and variances as set forth in the caption above.

**AGENDA
LEWISVILLE CITY COUNCIL
April 4, 2016**

- AVAILABLE FOR QUESTIONS:**
- Nika Reinecke, Director of Economic Development and Planning
 - Steve Meier, Hummel Investments, LLC.

- 9. Consideration of Two Variances to the Lewisville City Code, Section 6-144 – Screening Devices and Section 6-103(c)(4) Median Openings for Inspired Living at Lewisville, a Proposed Assisted Living and Memory Care Facility Located at the Southeast Corner of Valley Parkway and FM 3040, as Requested by Kimley-Horn and Associates, Inc. on Behalf of Senior Care Living VI, LLC, the Developer.**

ADMINISTRATIVE COMMENTS:

The 14-acre property located on the south side of FM 3040 between Valley Parkway and Ace Lane was rezoned on January 25, 2016 from Local Commercial to Medical District. The developer has submitted an Engineering Site Plan and Final Plat for staff review and intends to construct two new buildings meeting the City's Land Development Regulations with the exception of two variances, a) to allow an alternative screening wall in lieu of a masonry screening wall along the southern property line and b) to allow a median opening spacing less than 1,320 feet.

RECOMMENDATION:

That the City Council approves the variances as set forth in the caption above.

- AVAILABLE FOR QUESTIONS:**
- Nika Reinecke, Director of Economic Development and Planning
 - Bradley Moss, P.E., Kimley-Horn and Associates, Inc.

- 10. Consideration of a Variance to the Lewisville City Code, Section 6-144 – Screening Devices, for Creekview 121, a Proposed Office Warehouse Facility Located on the North Side of SH 121 Between Leora Lane and Marina Vista Drive, as Requested by Pacheco Koch and Associates on Behalf of EastGroup Properties, the Developer.**

**AGENDA
LEWISVILLE CITY COUNCIL
April 4, 2016**

ADMINISTRATIVE COMMENTS:

The 28-acre property is located on the north side of SH 121, between Leora Lane and Marina Vista Drive and just south of a large drainage channel for McWhorter Creek. The developer has submitted an Engineering Site Plan and Final Plat for staff review and intends to construct four buildings overall, with the construction of two new buildings in the first phase. The development meets minimum requirements of the City's Land Development Regulations with the exception of one variance: a) To allow live screening and irrigation in lieu of the required masonry screening wall along the northern property line.

RECOMMENDATION:

That the City Council approves the variance as set forth in the caption above.

AVAILABLE FOR QUESTIONS:

- Nika Reinecke, Director of Economic Development and Planning
- Paul Hames, Project Manager, Pacheco Koch

- 11. Consideration of a Variance to the Lewisville City Code Section 6-103(c)(2)(a) (Access Spacing) Regarding Driveway Spacing Requirements, Related to Quick Serve Restaurant Located at 401 FM 3040, as Requested by Jonathon Hake, P.E. of Cross Engineering Consultants, Inc., on Behalf of Hunt Properties, Inc.**

ADMINISTRATIVE COMMENTS:

The subject site is a 0.8666-acre lot zoned Light Industrial (LI) within the Weatherford Addition located at 401 East F.M. 3040. Hunt Properties, Inc., the prospective property owner, is proposing to redevelop the property from a full-service car wash to a new 37,690 square foot building for two restaurants. Hunt Properties, Inc. is requesting a variance to reduce the required separation between driveways to less than 230 feet to keep the existing driveway on the east side of the property in its current location.

RECOMMENDATION:

That the City Council approves the variance as set forth in the caption above.

- H. **REPORTS:** Reports about items of community interest regarding which no action will be taken.

AGENDA
LEWISVILLE CITY COUNCIL
April 4, 2016

- I. **CLOSED SESSION:** In Accordance with Texas Government Code, Subchapter D,
 - 1. Section 551.072 (Real Estate): Property Acquisition
 - 2. Section 551.087 (Economic Development): Deliberation Regarding Economic Development Negotiations

- J. **RECONVENE** into Regular Session and Consider Action, if Any, on Items Discussed in Closed Session.

- K. **ADJOURNMENT**

The City Council reserves the right to adjourn into closed session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Section 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.087 (Economic Development).

International Building Codes

Building Codes - Purpose

- ▶ *Health*
- ▶ *Safety*
- ▶ *Protection of Human Life*
- ▶ *Well-being of the Public*
- ▶ *Technological Guidance*
- ▶ *Structural Guidance*

US History of Building Codes

- ▶ *The first model codes were written from the point of view of insurance companies to reduce fire risks.*
- ▶ *Model codes are developed by private code groups for subsequent adoption by local and state government agencies as legally enforceable regulations.*

International Code Council (ICC)

- ▶ *Uniform system of codes was necessary*
- ▶ *Representatives from each of the code organizations formed the ICC in 1994*
- ▶ *First edition of the International Building Code published in 2000*



2015 International Code Council

Model Codes for Adoption

- ▶ *International Building Code*
- ▶ *International Energy Conservation Code*
- ▶ *International Fire Code*
- ▶ *International Fuel Gas Code*
- ▶ *International Mechanical Code*
- ▶ *International Plumbing Code*
- ▶ *International Property Maintenance Code*
- ▶ *International Residential Code*
- ▶ *International Existing Building Code - June 2016*
- ▶ *International Green Construction Code - June 2016*

2015 International Building Code - IBC Changes

- ▶ *Assembly Occupancies on Roofs - Exit Discharge and Fire Sprinkler Provisions*
- ▶ *Fire Sprinkler Provision - Small Bathrooms are no longer Exempt*
- ▶ *Rooftop Access for Equipment - Allows for Ladder or Ships Ladder rather than Stairs*
- ▶ *Egress Through Intervening Spaces- Allows for Exiting through Enclosed Elevator Lobby*

2015 International Building Code - IBC Changes

- ▶ *Carbon Monoxide Detection - Detectors are required near and within sleeping areas in Apartments with Attached Garages of Fuel Burning Appliances.*
- ▶ *Shower Compartments - Raised from 70 to 72 inches*
- ▶ *Apartment Conversions to Assisted Living Extensive Alarm Retrofitting Requirements*
- ▶ *Attic Venting - Updated to Accommodate Energy Codes*

2015 International Building Code - IBC Changes

- ▶ *Existing Buildings Chapter 34 Deleted and Published as a Separate Code Book*
- ▶ *Water Supply - Calculations Must Include Seasonal Changes in Fire Flow*
- ▶ *Smoke Alarms near Bathrooms - Increased Distance from Doorway*

2015 IBC & ICC A117.1 - Accessibility Standards - Changes

- ▶ *Smoke Alarms near Cooking Appliances - Increased Distance from Appliances*
- ▶ *Live/Work Units - Work Unit Required to be Accessible*
- ▶ *Apartments - New Accessible Requirements for Recreational Facilities*

2015 International Residential Code Changes

- ▶ *Energy & Water Conservation Provisions*
- ▶ *No Other Significant Changes*

2015 International Mechanical Code Changes

- ▶ *Ventilation - Specific requirements for R-2 Occupancies (Apartment, Hotel & Motel)*
- ▶ *No Other Significant Changes*

2015 International Plumbing & Fuel Gas Code

- ▶ *No Significant Changes*

2015 International Energy Conservation Code

- ▶ *Commercial - Performance Compliance Options - versus Prescriptive*
- ▶ *Commercial - Additional Choices for Energy Efficiencies (Packages)*
- ▶ *Commercial - Increased Hot Water Pipe Insulation and Length Limits*

2015 International Energy Conservation Code

- ▶ *Commercial - Increased Efficiency HVAC for Computer Rooms*
- ▶ *Commercial - High efficiency lighting Controls & Maintenance*

2015 International Fire Code - IFC Changes

- ▶ *Requiring two points of connection to the public water main whenever a new development exceeds 35,000 square feet, whenever three or more on-site fire hydrants are required, and when a dead-end water main exceeds 300-feet.*
- ▶ *For developments that require a multiple inlet Fire Department Connection to the fire sprinkler system, an additional large diameter inlet will be required.*

2012 International Fire Code - IFC Changes

- ▶ *The 2015 International Fire Code has lessened the requirements for the amount of water available from fire hydrants when the building is equipped with fire sprinklers. Staff is proposing keeping the amount of water required the same as in previous code editions as the amount of water required is too low if a fire is not contained by the fire sprinklers.*

2012 International Fire Code - IFC Changes

- ▶ *Proposed local amendment to allow the fire code official to approve fire lane widths to less than the minimum required 24 or 26 foot width. Previously the provision was allowed in the fire code and still allows this discretion for vertical clearance. This has been a fairly common variance to engineering site plans regarding existing fire lanes.*

QUESTIONS?

PROCLAMATION

Whereas, emergencies can occur at any time that require police, fire or emergency medical services; and,

Whereas, when an emergency occurs the prompt response of police officers, firefighters and paramedics is critical to the protection of life and preservation of property; and,

Whereas, the safety of our police officers and firefighters is dependent upon the quality and accuracy of information obtained from citizens who telephone the City of Lewisville police-fire communications center; and,

Whereas, public safety telecommunicators are the first and most critical contact our citizens have with emergency services; and,

Whereas, public safety telecommunicators of The City of Lewisville have contributed substantially to the apprehension of criminals, suppression of fires and treatment of patients;

Now, therefore, I Rudy Durham, Mayor of the City of Lewisville, Texas, and on behalf of the Lewisville City Council, do hereby proclaim the week of April 10 – 16, 2016 as:

“National Public Safety Telecommunicators Week”

in the City of Lewisville, in honor of the men and women whose diligence and professionalism keep our city and citizens safe.

Proclaimed this the 4th day of April, 2016.

Rudy Durham, Mayor
City of Lewisville

PROCLAMATION

WHEREAS, Americans are the victims of more than 20 million crimes each year, and crime can touch the lives of anyone regardless of age, national origin, race, creed, religion, gender, sexual orientation, immigration, or economic status; and,

WHEREAS, Too many communities feel disconnected from the justice and social response systems, and have lost trust in the ability of those systems to recognize them and respond to their needs; and,

WHEREAS, Honoring the rights of victims, including the right to be heard and to be treated with fairness, dignity, and respect, and working to meet their needs rebuilds trust in the criminal justice and social service systems; and,

WHEREAS, National Crime Victims' Rights Week, April 10-16, 2016, is an opportune time to commit to ensuring that all victims of crime are offered accessible and appropriate services in the aftermath of crime; and,

WHEREAS, the City of Lewisville Police Department is hereby dedicated to serving victims, building trust, and restoring hope for justice and healing.

NOW, THEREFORE, I, Rudy Durham, Mayor of the City of Lewisville, Texas, and on behalf of the Lewisville City Council, do hereby proclaim the week of April 10 – 16, 2016, as:

“CRIME VICTIMS’ RIGHTS WEEK”

Proclaimed this 4th day of April, 2016.

Rudy Durham, Mayor
City of Lewisville

MEMORANDUM

TO: Donna Barron, City Manager

FROM: Nika Reinecke, Director of Economic Development and Planning

DATE: April 4, 2016

SUBJECT: **Consideration of an Ordinance Granting a Zone Change Request From Multi-Family Two District (MF-2) to Light Industrial District (LI), on an Approximately 0.631-Acre Tract of Land out of the J.W. Johnson Survey Abstract 1609 and the J. Chowning Survey Abstract 243, Located Approximately 1,200 North of SH 121, Between Leora Lane and Marina Vista Drive, as Requested by Pacheco Koch Consulting Engineers on Behalf of East Group Properties, L.P., the Property Owner (Case No. PZ-2016-03-07).**

BACKGROUND

This particular portion of the overall 28.103-acre site was part of a larger tract that was once zoned Light Industrial (LI), but was rezoned to Multi-Family Two (MF-2) along with properties to the north in 2002. A large drainage channel that runs east-west at the rear of this property separates this site from the apartments under construction to the north fronting Lake Ridge Road.

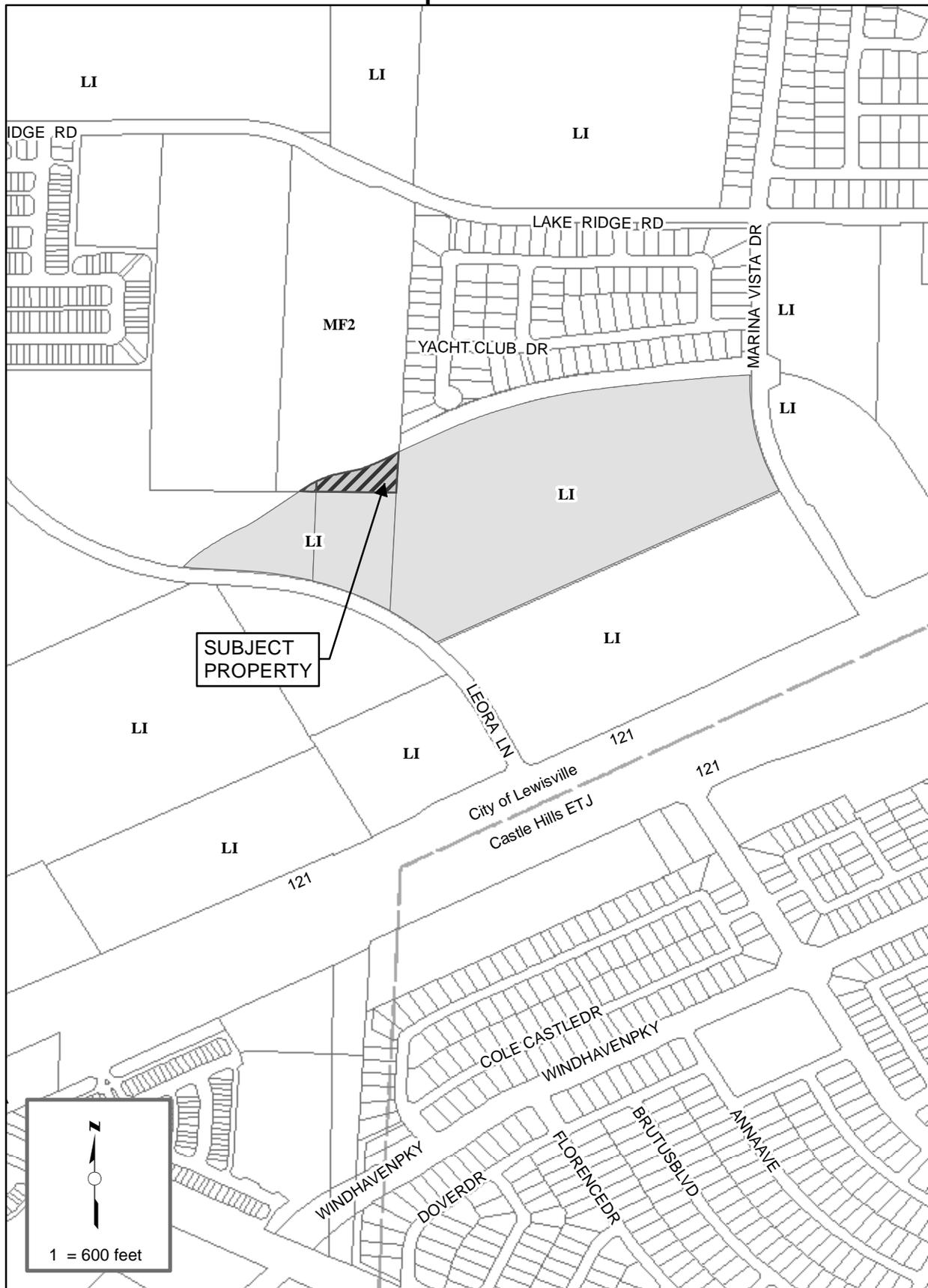
ANALYSIS

The purpose of the request is to provide consistent zoning for the entire 28.103-acre parcel. The zone change request is in alignment with the recommendation of the East Lewisville Plan for light industrial uses in this general area and is consistent with other zoning and uses in the area. Staff is currently reviewing a plat and engineering site plan for the southern portion of the overall site illustrating the applicant's plans to construct two new office warehouse buildings (121,758 and 70,823 square feet). Four office warehouse buildings constructed in two phases are proposed for the overall site. The Planning and Zoning Commission recommended unanimous approval (6-0) of the zone change request at their meeting of March 15, 2016.

RECOMMENDATION

It is City staff's recommendation that the City Council approves the ordinance as set forth in the caption above.

Location Map - Creekview 121



Aerial Map - Creekview 121



MINUTES
PLANNING AND ZONING COMMISSION
MARCH 15, 2016

Item 1:

The Lewisville Planning and Zoning Commission meeting was called to order at 6:30 pm. Members present: James Davis, Sean Kirk, Brandon Jones (arrived at item 3), Mary Ellen Miksa, Alvin Turner, and Kristin Green. Member Steve Byars was absent.

Staff members present: Richard Luedke, Mary Paron-Boswell and June Sin

Item 5:

Public Hearings for Zoning and Special Use Permits were next on the agenda. There were four items for consideration:

- A. Consideration of a Zone Change Request From Multi-Family Two District (MF-2) to Light Industrial District (LI); on an Approximately 0.649-Acre Tract of Land out of the J.W. Johnson Survey Abstract 1609 and the J. Chowning Survey Abstract 243; Located Approximately 1,200 North of SH 121, Between Leora Lane and Marina Vista Drive; as Requested by Pacheco Koch Consulting Engineers on Behalf of East Group Properties, L.P., the Property Owner. (Case No. PZ-2016-03-07)

Mary Paron-Boswell gave a brief presentation on the zone change request. This particular portion of the site overall was part of a larger tract that was once zoned Light Industrial (LI), but was rezoned to Multi-Family Two (MF-2) in 2002. The request is to provide consistent zoning for the entire parcel, on which office warehouse buildings will be constructed in two phases. The requested zone change is in alignment with the recommendation of the East Lewisville Plan for light industrial uses for this area. Chairman Davis opened the public hearing. Paul Hames, Pacheco Koch Consulting Engineers, came forward and offered to answer any questions. There being no one else present to speak on the item, the public hearing was then closed. *A motion was made by Brandon Jones to recommend approval, seconded by Kristine Green. The motion passed unanimously (6-0).*

SECTION 17-16. - "MF-2" MULTI-FAMILY TWO DISTRICT REGULATIONS

- (a) *Use.* A building or premise shall be used only for the following purposes:
- (1) Multi-family dwellings.
 - (2) Dormitories for students.
 - (3) Fraternity or sorority house.
 - (4) Nursing and convalescent homes.
 - (5) Day nurseries.
 - (6) Church worship facilities.
 - (7) Buildings and uses owned or operated by public governmental agencies.
 - (8) Schools, private, with full curriculum accredited by the State of Texas equivalent to that of a public elementary or high school.
 - (9) Temporary buildings for uses incidental to construction work on the premises, which buildings shall be removed upon the completion or abandonment of construction work.
 - (10) Accessory buildings and uses, customarily incidental to the above uses, and located on the same lot therewith, not involving the conduct of a retail business except as provided herein.
 - (11) Private Utility Plants or Sub-stations (including alternative energy) (SUP required).
 - (12) Gas and oil drilling accessory uses (SUP required).
 - (13) Cemetery, columbarium, mausoleum and accessory uses (SUP required).
- (b) *Height.* No building shall exceed forty-five (45) feet or three (3) stories in height, except that a building may be erected to a height of eighty (80) feet and eight (8) stories if set back from all required yard lines a distance of one (1) foot for each two (2) feet of additional height above forty-five (45) feet.
- (c) *Area.*
- (1) *Size of yards.*
 - a. *Front yard.* There shall be a front yard having a required depth of not less than twenty-five (25) feet. Furthermore, required parking shall not be allowed within the required front yard.
 - b. *Side yard.* There shall be a side yard on each side of the lot having a width of not less than twenty-five (25) feet.
 - c. *Rear yard.* There shall be a rear yard having a depth of not less than twenty-five (25) feet.
 - (2) *Size of lot.*
 - a. *Lot area.* No building shall be constructed on any lot of less than forty-five hundred (4500) square feet. No building containing two (2) or more dwelling units shall be constructed on any lot of less than nine thousand (9,000) square feet.
 - b. *Lot width.* The width of the lot shall not be less than fifty (50) feet at the front street building line, nor shall its average width be less than fifty (50) feet.
 - c. *Lot depth.* The average depth of the lot shall not be less than one hundred (100) feet, except that a corner lot, having a minimum width of not less than eighty (80) feet, may have an average depth of less than one hundred (100) feet provided that the minimum depth is not less than eighty (80) feet.
 - d. *[Exception]* Where a lot having less area, width and/or depth than herein required existed in separate ownership upon the effective date of this ordinance the above regulations shall not prohibit the erection of a one-family dwelling thereon.
 - (3) *Minimum dwelling size.*
 - a. The minimum floor area of each two (2), three (3), or four (4) family dwelling unit shall contain a minimum of seven hundred fifty (750) square feet of liveable floor

space, exclusive of garages, porches, breezeways, entry halls or incidental storage, for each family to be housed in said building.

- b. Every other building or portion thereof hereafter erected, reconstructed, altered or enlarged shall contain an average of seven hundred fifty (750) square feet and a minimum of five hundred (500) square feet of livable floor space, exclusive of garages, porches, breezeways, entry halls or incidental storage for each family to be housed in said building.
 - c. The seven hundred fifty (750) square feet average shall apply to the total number of units to be constructed under the same building permit where five or more buildings are to be erected under the same building permit.
- (4) *Lot coverage.* In no case shall more than fifty percent (50%) of the total lot area be covered by the combined area of the main buildings and accessory buildings.
- (5) *Density.* In no case shall the density of units per platted acre exceed twenty-four (24) units per acre. Drainage right-of-way which is dedicated to the city as a condition for development may be included in the total area for computing density. Otherwise, density shall be based on the size of the platted lot.

SECTION 17-23. - "LI" LIGHT INDUSTRIAL DISTRICT REGULATIONS

- (a) *Use.* Buildings and premises may be used for retail, wholesale, office and service uses and campus style light manufacturing and industrial uses provided there is no dust, fumes, gas, noxious odor, smoke, glare, or other atmospheric influence beyond the boundaries of the property on which such use is located, and which produces no noise exceeding in intensity at the boundary of the property the average intensity of noise of street traffic at that point, and no more than ten percent (10%) of the total lot is used for outside storage, and further provided that such use does not create fire or explosive hazards on adjacent property.
- (1) Any use permitted in districts "LC" and "GB" as regulated in said districts.
 - (2) Apparel and other products assembled from finished textiles.
 - (3) Bottling works.
 - (4) Warehouse distribution facilities.
 - (5) Airport/Heliport (SUP required).
 - (6) Auto repair shops including body shops (SUP required).
 - (7) Church worship facilities.
 - (8) Buildings and uses owned or operated by public governmental agencies.
 - (9) Cemetery, mausoleum, crematorium & accessory uses (SUP required).
 - (10) Cosmetic manufacturer.
 - (11) Drugs and pharmaceutical products manufacturing.
 - (12) Private Utility Plants or Sub-stations (including alternative energy) (SUP required).
 - (13) Electronic products manufacturing.
 - (14) Fur good manufacture, but not including tanning or dyeing (SUP required).
 - (15) Gas and oil drilling accessory uses (SUP required).
 - (16) Glass products, from previously manufactured glass.
 - (17) Heavy equipment – outdoor rental/sales/display/service (SUP required).
 - (18) Household appliance products assembly and manufacture from prefabricated parts.
 - (19) Industrial and manufacturing plants including the processing or assembling of parts for production of finished equipment.
 - (20) Musical instruments assembly and manufacture.
 - (21) Paint, shellac and varnish manufacture (SUP required).
 - (22) Plastic products manufacture, but not including the processing of raw materials.
 - (23) Racing facilities (SUP required).
 - (24) Recreational Vehicle (RV) Park. (Private) (SUP required).
 - (25) Self storage/mini warehouse facility (SUP required).
 - (26) Shooting Range (indoor or outdoor) (SUP required.).
 - (27) Sporting and athletic equipment manufacture.
 - (28) Testing and research laboratories.
 - (29) Auction yard (vehicle) (SUP required).
 - (30) Communication towers (SUP required).
 - (31) Temporary buildings for uses incidental to construction work on the premises, which buildings shall be removed upon the completion or abandonment of construction work.
 - (32) Accessory buildings and uses customarily incidental to any of the above uses, provided that such not be objectionable because of odor, smoke, noise, vibration or similar nuisance. Open storage shall be considered an accessory use but no more than ten percent (10%) of the platted lot may be used for outside storage, including access and maneuvering areas for moving the stored items.
 - (33) Cemetery, columbarium, mausoleum and accessory uses (SUP required).
 - (34) Other uses similar to the above listed uses are allowed by special use permit (SUP) only, except that the following uses are specifically prohibited:
 - a. Acetylene gas manufacture or storage.
 - b. Acid manufacture.
 - c. Alcohol manufacture.
 - d. Ammonia, bleaching powder or chlorine manufacture.
 - e. Arsenal.
 - f. Asphalt manufacture or refining.
 - g. Blast furnace.
 - h. Bag cleaning, unless clearly accessory to the manufacture of bags.

- i. Boiler works.
- j. Brick, tile, pottery or terra cotta manufacture other than the manufacture of handcraft or concrete products.
- k. Reserved.
- l. Celluloid manufacture or treatment.
- m. Cement, lime, gypsum, or plaster of paris manufacture.
- n. Central mixing plant for cement.
- o. Coke ovens.
- p. Cotton gins.
- q. Cottonseed oil manufacture.
- r. Creosote manufacture or treatment.
- s. Disinfectants manufacture.
- t. Distillation of bones, coal or wood.
- u. Dyestuff manufacture.
- v. Exterminator and insect poison manufacture.
- w. Emery cloth and sandpaper manufacture.
- x. Explosives or fireworks manufacture or storage.
- y. Fat rendering.
- z. Fertilizer manufacture.
- aa. Fish smoking and curing.
- bb. Forge plant.
- cc. Garbage, offal or dead animals reduction or dumping.
- dd. Gas manufacture or storage, for heating or illuminating purposes.
- ee. Glue, size or gelatine manufacture.
- ff. Hatchery.
- gg. Iron, steel, brass or copper foundry or fabrication plant.
- hh. Junk, iron or rag storage or baling.
- ii. Match manufacture.
- jj. Lampblack manufacture.
- kk. Oilcloth or linoleum manufacture.
- ll. Oiled rubber goods manufacture.
- mm. Ore reduction.
- nn. Oil or turpentine manufacture.
- oo. Paper and pulp manufacture.
- pp. Petroleum or its products, refining or wholesale storage of.
- qq. Pickle manufacturing.
- rr. Planing mills.
- ss. Potash works.
- tt. Pyroxline manufacture.
- uu. Rock crusher.
- vv. Rolling mill.
- ww. Rubber or gutta-percha manufacture or treatment but not the making of articles out of rubber.
- xx. Sauerkraut manufacture.
- yy. Salt works.
- zz. Shoe polish manufacture.
- aaa. Smelting of tin, copper, zinc, or iron ores.
- bbb. Soap manufacture other than liquid soap.
- ccc. Soda and compound manufacture.
- ddd. Stock yard or slaughter of animals or fowls.
- eee. Stone mill or quarry.
- fff. Storage yard.
- ggg. Stove polish manufacture.
- hhh. Tallow grease or lard manufacture or refining from or of animal fat.
- iii. Tanning, curing or storage of raw hides or skins.
- jjj. Tar distillation or manufacture.
- kkk. Tar roofing or water-proofing manufacture.
- lll. Tobacco (chewing) manufacture or treatment.
- mmm. Vinegar manufacture.

- nnn. Wool pulling or scouring.
- ooo. Yeast plant.

(b) *Height.* No building shall exceed in height the width of the street right-of-way on which it faces plus the depth of the front yard. In no event, however, shall the portion of a building located within one hundred fifty (150) feet of any property zoned for residential purposes exceed the height allowed in that residential zoning district.

(c) *Area.*

(1) *Size of yards.*

- a. *Front yard.* There shall be a front yard having a minimum depth of twenty-five (25) feet. No parking, storage or similar use shall be allowed in required front yards in district "LI", except that automobile parking (including automobile dealer display parking) will be permitted in such yards if separated by at least twenty-five (25) feet from any residential district.
- b. *Side yard.* A side yard of not less than fifteen (15) feet in width shall be provided on the side of a lot adjoining a side street. A side yard of not less than ten (10) feet in width shall be provided on the side of a lot adjoining a residential district. The required side yard shall be waived when a screening device is installed in accordance with the city's general development ordinance. The building itself can serve as a portion of the screening device when that portion of the building exterior is constructed of the same materials as the screening device. No parking, storage or similar use shall be allowed in any required side yard or in any side street yard adjoining a residential district.
- c. *Rear yard.* No rear yard is required except that a rear yard of not less than fifty (50) feet in depth shall be provided upon that portion of a lot abutting or across a rear street from a residential district, except that such yard requirement shall not apply where the property in the residential district also backs up to the rear street. No parking, storage or similar use shall be allowed in required rear yards in district "LI" within twenty-five (25) feet of the rear property line.

(2) *Reserved.*

(d) *Outside storage regulations.* In all zoning districts where outside storage yards are allowed, such storage yards shall be screened from view in accordance with the standards outlined in the city's general development ordinance. This provision applies to all outside storage which began after the original date of passage of this provision (April 4, 1994). Any variance request involving the requirements or standards relating to such required screening devices shall be considered by the city council in accordance with the city's general development ordinance. Areas which are used for infrequent and temporary storage for a period of thirty (30) days or less per year shall not be deemed as "storage yards".

This Section (Office Use Only)	
Case:	
PZ:	CC:
Sign/s Picked Up By:	



LEWISVILLE

ZONE CHANGE APPLICATION

Owner/s (name): <u>EAST GROUP PROPERTIES, L.P.</u>	
Company Name: <u>EAST GROUP PROPERTIES, L.P.</u>	
Mailing Address: <u>4220 WORLD HOUSTON PKWAY, STE. 170 HOUSTON, TX 77032</u>	
Work #: <u>(281) 987-7200</u>	Cell #: <u>N/A</u>
E-Mail: <u>brent.wood@eastgroup.net</u>	
Owner Signature (Owners Must Sign or Submit Letter of Authorization): <u>Brent Wood</u>	Date: <u>2-4-16</u>
Printed Name: <u>BRENT WOOD</u>	

Applicant/Agent (name): <u>PACHECO KOCH CONSULTING ENGINEERS</u>	
Company Name: <u>PACHECO KOCH CONSULTING ENGINEERS</u>	
Mailing Address: <u>7557 RAMBLER RD, STE 1400 DALLAS, TX 75231</u>	
Work #: <u>(972) 235-3031</u>	Cell #: <u>N/A</u>
E-Mail: <u>phames@pkce.com</u>	
Applicant/Agent Signature <u>Paul M. Hames</u>	Date: <u>2/4/16</u>
Printed Name: <u>Paul M. HAMES, P.E.</u>	

Current Zoning: <u>LI/MF2</u>	Requested Zoning: <u>LI</u>	Acres: <u>29.103 Ac</u>
Legal Description (Lot/ Block/Tract/Abstract): <u>(SEE ATTACHED DESCRIPTION)</u>		
Address/Location: <u>BETWEEN LEDRA LN. & MARINA VISTA DR, NORTH OF SRT</u>		

Application and Sign Fees:

	Less than 1/2 acre	\$ 150.00
	1/2 acre up to 4.99 acres	\$ 250.00
	5 acres up to 24.99 acres	\$ 400.00

X	25 acres up to 49.99 acres	\$ 750.00
	50 acres up to 99.99 acres	\$1,000.00
	100 acres and more	\$1,500.00

Qty: <u>5</u>	Zone Change Signs - \$35 each. 1 sign required for each 5 acres (max. 5 per site)	\$ <u>175</u>
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Sign(s) must be posted a minimum of ten (10) days prior to the Planning & Zoning hearing date.

Amount Due (application & sign fee)	\$ <u>925.00</u>
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LEWISVILLE
Deep Roots. Broad Wings. Bright Future.

REQUIRED:

Fully describe the plans for the property

Developing the tract in two phases to include four buildings with both office and warehouse uses, plus the associated parking, utilities, and landscaping.

NOTE:

Items must be staff approved and deemed complete before they will be placed on an agenda.

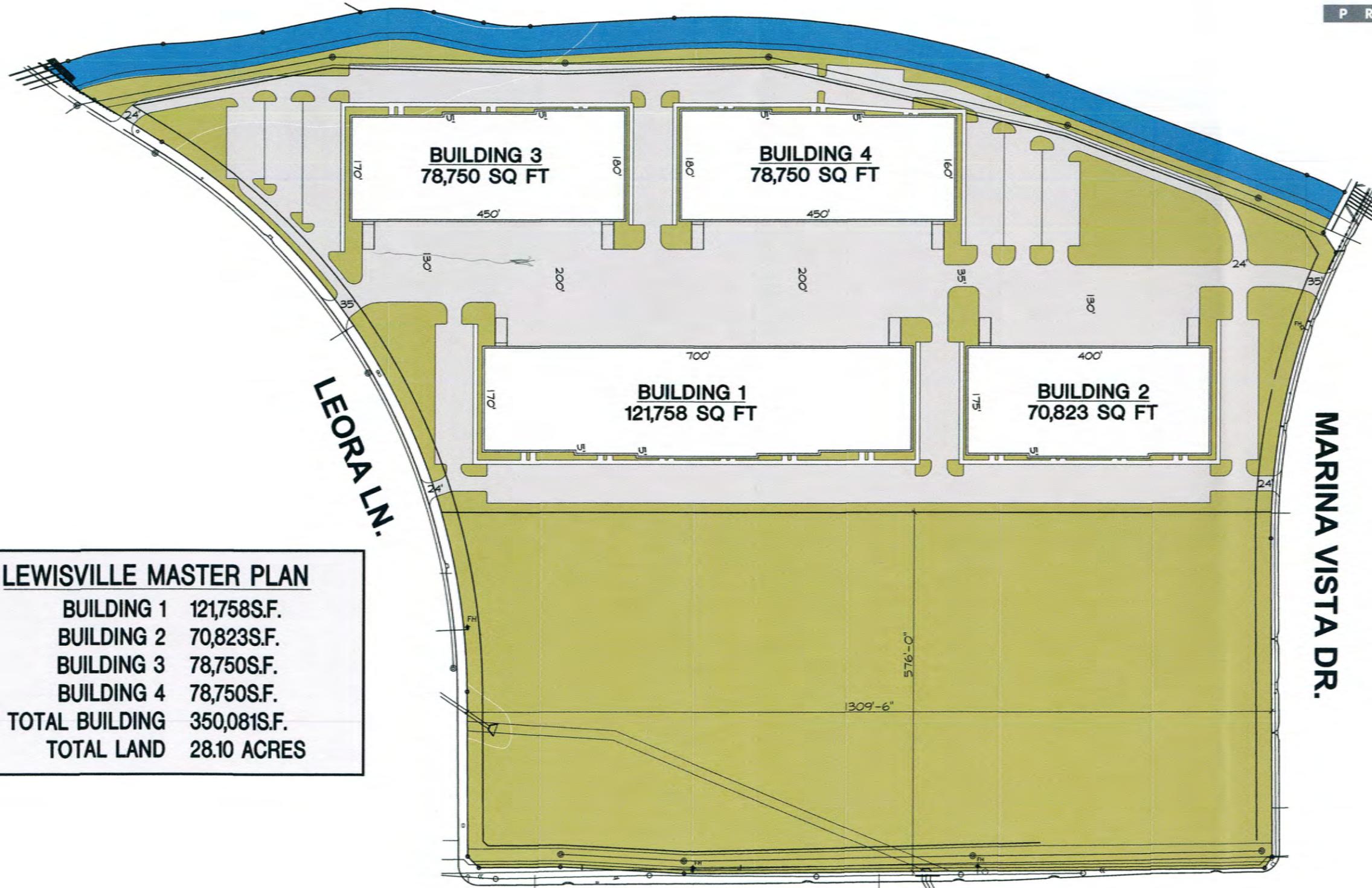
CreekView 121
Proposed Buildings 1 & 2
Lewisville, Texas



MASTER PLAN ◻ ◻ ◻ LEWISVILLE, TEXAS

MASTER PLAN - OFFICE AND WAREHOUSE BUILDINGS

SCHEME 2 - 10/01/15



LEWISVILLE MASTER PLAN	
BUILDING 1	121,758S.F.
BUILDING 2	70,823S.F.
BUILDING 3	78,750S.F.
BUILDING 4	78,750S.F.
TOTAL BUILDING	350,081S.F.
TOTAL LAND	28.10 ACRES

S.H.121

SCALE: 1" = 80'-0"



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PHONE 713.533.1370

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, AMENDING THE ZONING ORDINANCE OF THE CITY OF LEWISVILLE, TEXAS BY REZONING AN APPROXIMATELY 0.631-ACRE TRACT OF LAND OUT OF THE J.W. JOHNSON SURVEY, ABSTRACT NO. 1609 AND THE J. CHOWNING SURVEY, ABSTRACT NO. 243; LOCATED APPROXIMATELY 1,200 FEET NORTH OF SH 121 BETWEEN LEORA LANE AND MARINA VISTA DRIVE; FROM MULTI-FAMILY TWO DISTRICT (MF-2) ZONING TO LIGHT INDUSTRIAL DISTRICT (LI) ZONING; CORRECTING THE OFFICIAL ZONING MAP; PRESERVING ALL OTHER PORTIONS OF THE ZONING ORDINANCE; PROVIDING A CLAUSE RELATING TO SEVERABILITY; DETERMINING THAT THE PUBLIC INTERESTS AND GENERAL WELFARE DEMAND THIS ZONING CHANGE AND AMENDMENT THEREIN MADE; PROVIDING A PENALTY; AND DECLARING AN EMERGENCY.

WHEREAS, applications were made to amend the Official Zoning Map of Lewisville, Texas by making applications for same with the Planning and Zoning Commission of the City of Lewisville, Texas, as required by State statutes and the Zoning Ordinances of the City of Lewisville, Texas, said Planning and Zoning Commission has recommended that rezoning of the approximately 0.631-acre property described in the attached Exhibit "A" (the "Property") be **approved**, and all the legal requirements, conditions and prerequisites having been complied with, the case having come before the City Council of the City of Lewisville, Texas, after all legal notices, requirements, conditions and prerequisites having been complied with; and,

WHEREAS, the City Council of the City of Lewisville, Texas, at a public hearing called by the City Council of the City of Lewisville, Texas, did consider the following factors in making a determination as to whether this requested change should be granted or denied: effect on the

congestion of the streets; the fire hazards, panics and other dangers possibly present in the securing of safety from same; the effect on the promotion of health and the general welfare; effect on adequate light and air; the effect on the overcrowding of the land; the effect of the concentration on population; the effect on the transportation, water, sewerage, schools, parks and other public facilities; and,

WHEREAS, the City Council further considered among other things the character of the district and its peculiar suitability for particular uses and with the view to conserve the value of buildings, encourage the most appropriate use of land throughout this City; and,

WHEREAS, the City Council of the City of Lewisville, Texas, does find that there is a public necessity for the zoning change, that the public interest clearly requires the amendment, that the zoning changes do not unreasonably invade the rights of adjacent property owners; and,

WHEREAS, the City Council of the City of Lewisville, Texas, does find that the change in zoning lessens the congestion in the streets; helps secure safety from fire, panic and other dangers; promotes health and the general welfare; provides adequate light and air; prevents the overcrowding of land; avoids undue concentration of population; facilitates the adequate provisions of transportation, water, sewerage, schools, parks and other public requirements; and,

WHEREAS, the City Council of the City of Lewisville, Texas, has determined that there is a necessity and need for this change in zoning and has also found and determined that there has been a change in the conditions of the property surrounding and in close proximity to the Property since it was originally classified and, therefore, feels that a change in zoning classification for the Property is needed, is called for, and is in the best interest of the public at large, the citizens of the City of Lewisville, Texas, and helps promote the general health, safety, and welfare of this community.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, THAT:

SECTION 1. The Zoning Ordinance of the City of Lewisville, Texas, be, and the same is hereby amended and changed in that the zoning of the Property is hereby changed to **LIGHT INDUSTRIAL DISTRICT (LI) ZONING.**

SECTION 2. The City Manager, or her designee, is hereby directed to correct the official zoning map of the City of Lewisville, Texas, to reflect this change in zoning.

SECTION 3. That in all other respects the use of the tract or tracts of land hereinabove described shall be subject to all the applicable regulations contained in said City of Lewisville Zoning Ordinance and all other applicable and pertinent ordinances of the City of Lewisville, Texas.

SECTION 4. That the zoning regulations and districts as herein established have been made in accordance with the comprehensive plan for the purpose of promoting health, safety, and the general welfare of the community. They have been designed with respect to both present conditions and the conditions reasonably anticipated to exist in the foreseeable future, to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; provide adequate light and air; to prevent overcrowding of land, to avoid undue concentration of population; facilitate the adequate provisions of transportation, water, sewage, parks and other public requirements, and to make adequate provisions for the normal business, commercial needs and development of the community. They have been made with reasonable consideration, among other things of the character of the district, and its peculiar suitability for the particular uses and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the community.

SECTION 5. This Ordinance shall be cumulative of all other ordinances of the City of Lewisville, Texas, affecting zoning and shall not repeal any of the provisions of said ordinances, except in those instances where provisions of those ordinances which are in direct conflict with the provisions of this Ordinance.

SECTION 6. That the terms and provisions of this Ordinance shall be deemed to be severable and that if the validity of the zoning affecting any portion of the Property shall be declared to be invalid, the same shall not affect the validity of the zoning of the balance of the tract or tracts of land described herein.

SECTION 7. Any person, firm or corporation who violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof in the Municipal Court, shall be subject to a fine of not more than \$2,000.00 for each offense, and each and every day such offense is continued shall constitute a new and separate offense.

SECTION 8. The fact that the present Zoning Ordinance and regulations of the City of Lewisville, Texas are inadequate to properly safeguard the health, safety, peace and general welfare of the inhabitants of the City of Lewisville, Texas, creates an emergency for the immediate preservation of the public business, property, health, safety and general welfare of the public which requires that this Ordinance shall become effective from and after the date of its final passage, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, BY A VOTE OF _____ TO _____, ON THIS THE 4TH DAY OF APRIL, 2016.

ORDINANCE NO. _____

Page 5

APPROVED:

Rudy Durham, MAYOR

ATTEST:

Julie Heinze, CITY SECRETARY

APPROVED AS TO FORM:

Lizbeth Plaster, CITY ATTORNEY

Exhibit A
Legal Description

EXHIBIT A

Re-Zoning Description

J.W. Chowning Survey, Abstract No. 243
and the
J. W. Johnson Survey, Abstract No. 1609
City of Lewisville, Denton County, Texas

Description of 0.631 acre tract of land located in the J. W. Chowning Survey, Abstract No. 243, and the J. W. Johnson Survey, Abstract No. 1609, City of Lewisville, Denton County Texas, being part of that called 28.103 acre tract described by Special Warranty Deed to NSHE TX Stripped Bass, LLC, recorded in Document No. 2015-68443, Real Property Records, Denton County, Texas (RPRDCT), succeeded by Merger with Eastgroup Properties, LP, as recorded in Certificate of Merger, File No. 9778111, Secretary of State Records, for the State of Texas, said 0.631 acre tract being more particularly described by metes and bounds as follows:

COMMENCING at the most westerly corner of said Eastgroup Properties tract, being the southeasterly corner of Lot 1, Block A, Lakeside at One Twenty One Addition, an Addition to the City of Lewisville as recorded in Cabinet X, Page 522, Plat Records Denton County Texas (P.R.D.C.T), and being the intersection of the northerly right of way line for Leora Lane (80' right of way) and the centerline of a 100-foot wide private drainage channel easement, established by the Amended Plat of Crossroads Centre North, Lots 1 & 2, Block "A", and Right-of-Way for East Hill Park Road, Standridge Road, Marina Vista Road, and King-Pac Road, an Addition to the City of Lewisville, as recorded in Volume V, Page 234, P.R.D.C.T.,

THENCE northeasterly, departing said northerly right of way line, and along the centerline of said 100-foot wide private drainage channel easement and the northwesterly line of the Eastgroup Properties tract as follows:

North 44 degrees 06 minutes 14 seconds East, a distance of 37.05 feet to a point for the beginning of a curve;

Along the arc of said curve to the right, having a central angle of 14 degrees 58 minutes 44 seconds, a radius of 600.00 feet, an arc length of 156.86 feet, and a chord of North 51 degrees 35 minutes 36 seconds East, 156.41 feet to a point of reverse curvature;

Along the arc of said curve to the left, having a central angle of 09 degrees 21 minutes 23 seconds, a radius of 1000.00 feet, an arc length of 163.30 feet, and a chord of North 54 degrees 24 minutes 17 seconds East, 163.12 feet to a point;

North 49 degrees 43 minutes 35 seconds East, a distance of 161.99 feet to the POINT OF BEGINNING, being the beginning of a curve;

THENCE northeasterly continuing with the line common to said centerline of the 100 foot wide drainage channel easement and the Eastgroup Properties tract, and the southeasterly line of Lot 1, Block G, Crossroads Centre North, an Addition to the City of Lewisville as recorded in Document No. 2015-67, RPRDCT, as follows:

Along the arc of said curve to the right, having a central angle of 22 degrees 58 minutes 41 seconds, a radius of 300.00 feet, an arc length of 120.31 feet, and a chord of North 61 degrees 12 minutes 56 seconds East, 119.51 feet to a point;

Re-Zoning Description

J.W. Chowning Survey, Abstract No. 243
and the
J. W. Johnson Survey, Abstract No. 1609
City of Lewisville, Denton County, Texas

North 72 degrees 42 minutes 16 seconds East, a distance of 82.93 feet to a point for the beginning of a curve;

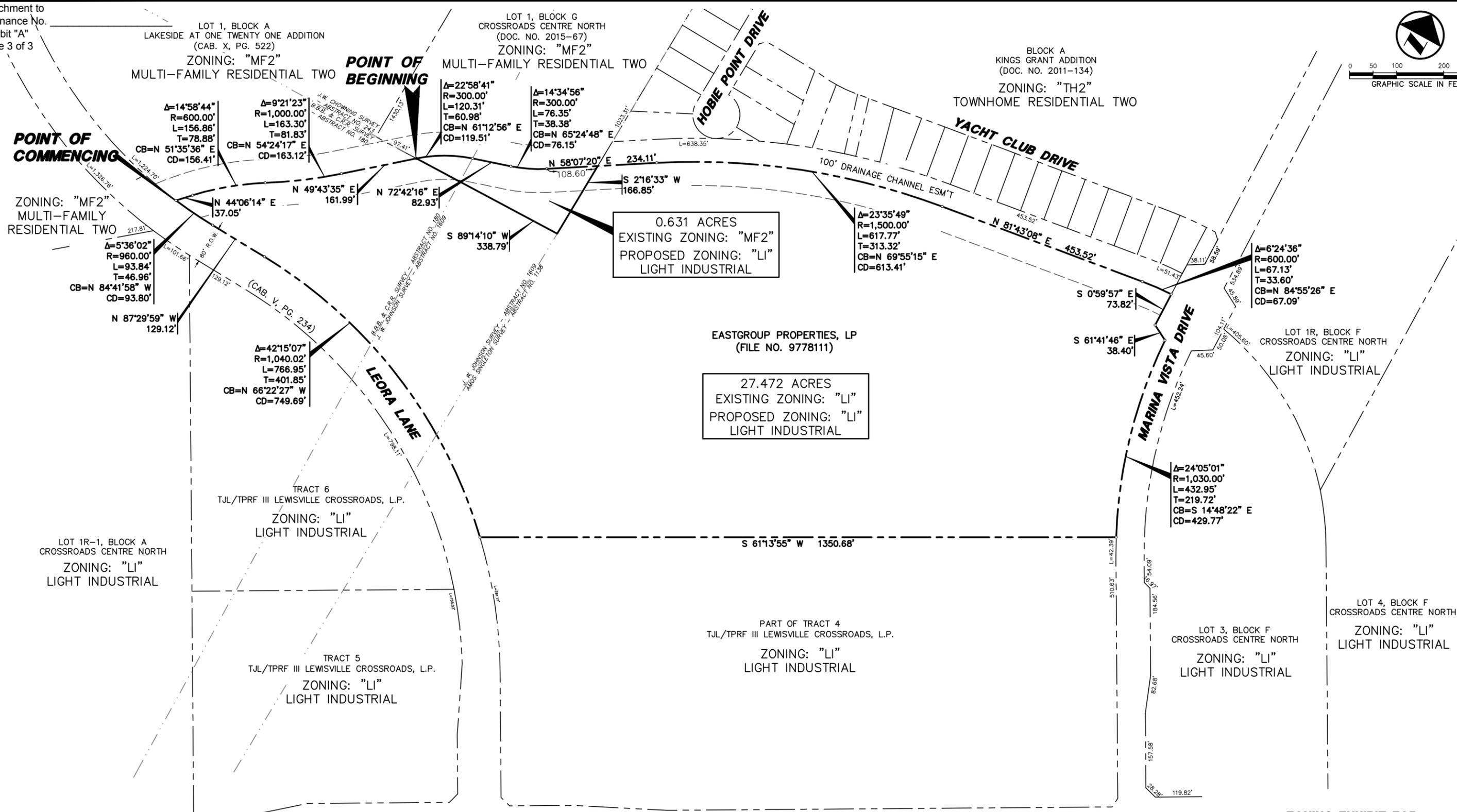
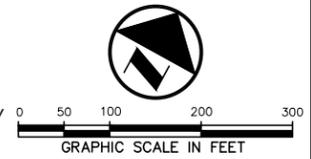
Along the arc of said curve to the left, having a central angle of 14 degrees 34 minutes 56 seconds, a radius of 300.00 feet, an arc length of 76.35 feet, and a chord of North 65 degrees 24 minutes 48 seconds East, 76.15 feet to a point;

North 58 degrees 07 minutes 20 seconds East, a distance of 108.60 feet to a point for corner;

THENCE South 02 degrees 16 minutes 33 seconds West, departing said line, a distance of 166.85 feet to a point for corner;

THENCE South 89 degrees 14 minutes 10 seconds West, a distance of 338.79 feet to the POINT OF BEGINNING;

CONTAINING 0.631 acre, more or less.



ZONING EXHIBIT FOR CREEKVIEW 121
 LOCATED IN THE CITY OF LEWISVILLE, TEXAS AND BEING PART OF THE J.W. CHOWNING SURVEY, ABSTRACT NO. 243, AND THE J. W. JOHNSON SURVEY, ABSTRACT NO. 1609, DENTON COUNTY, TEXAS

Pacheco Koch
 7557 RAMBLER ROAD, SUITE 1400 DALLAS, TX 75231 972.235.3031 TX REG. ENGINEERING FIRM F-14439 TX REG. SURVEYING FIRM LS-10193805

DRAWN BY JQ	CHECKED BY JPH	SCALE 1"=100'	DATE MAR 2016	JOB NUMBER 3309-15.220
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J:\JUNINES_03\14\2016 - 11:30AM.MX\DWG-33\3309-15.220\ZONING EXHIBIT.DWG

CREEKVIEW 121, LOT 1, BLOCK A

MEMORANDUM

TO: Donna Barron, City Manager

FROM: Nika Reinecke, Director of Economic Development and Planning

DATE: April 5, 2016

SUBJECT: **Public Hearing: Consideration of an Ordinance Granting a Zone Change Request From Local Commercial District (LC) to Medical District (MD), on an approximately 4.362-acre Lot Legally Described as Lot 1, Block A, Parkway Baptist Addition, located at 1165 West FM 3040, Approximately 880 feet West of Valley Parkway, as Requested by G & A Consultants, LLC on Behalf of Parkway Baptist Church, the Property Owner (Case No. PZ-2016-03-08).**

BACKGROUND

The 4.362-acre property is currently home to Parkway Baptist Church, located at 1165 W. FM 3040, just west of Valley Parkway. The applicant plans to construct a new senior living facility which will contain an assisted living and a memory care facility for those suffering from Alzheimers and other forms of dementia. The existing church would be removed and four buildings each approximately 13,000 square feet in size would be constructed in two phases. The property backs up to an elementary school and abuts Local Commercial zoning to the east and single-family residential on the west.

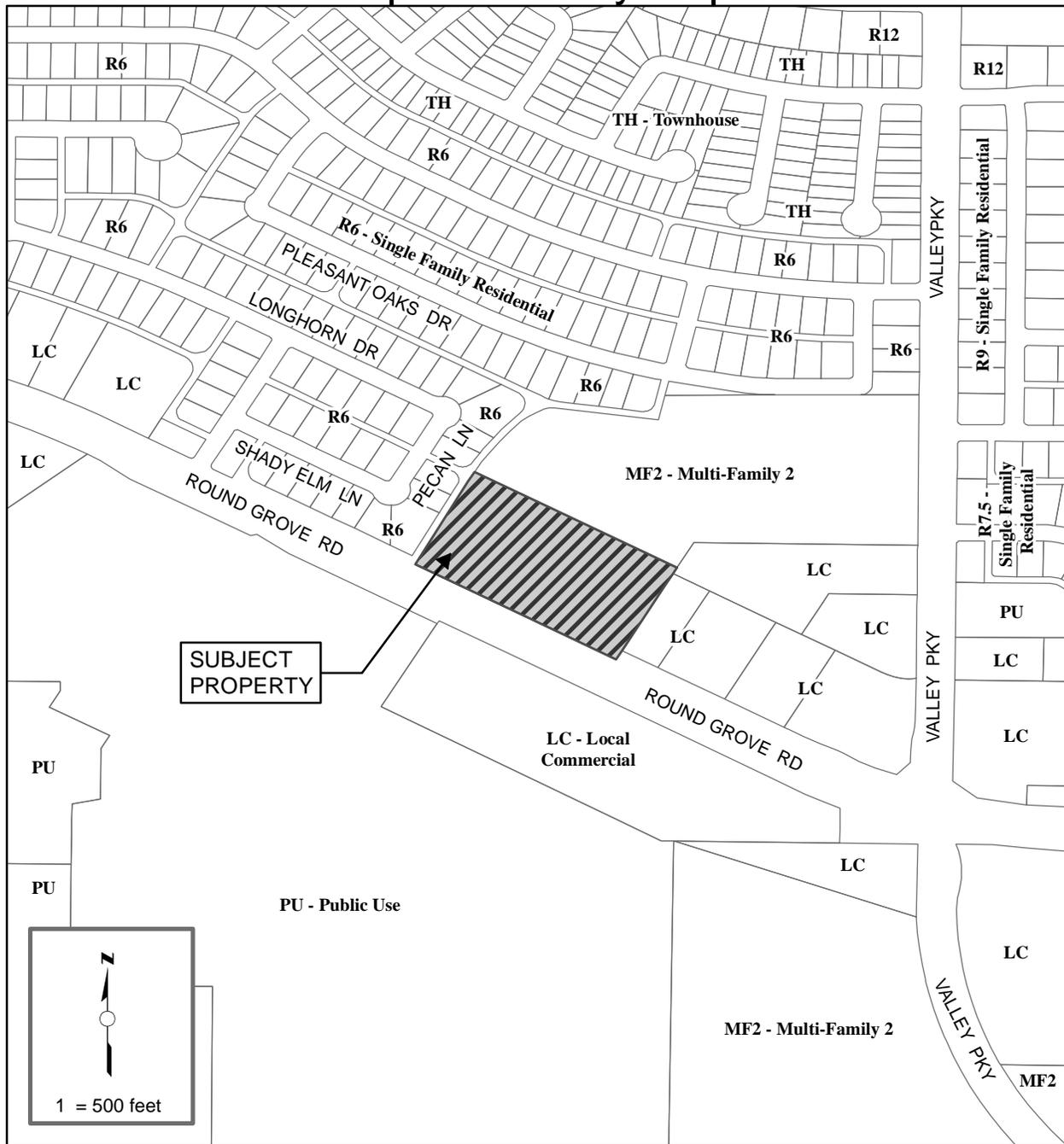
ANALYSIS

The current zoning of the property is Local Commercial (LC), which allows for a multitude of neighborhood services and offices primarily retail in nature. The applicant is requesting Medical District (MD) zoning to allow for a memory care facility and an assisted-living facility to be constructed in two phases. Assisted-living are typically low impact land uses and have minor traffic impacts. The rezoning and resulting development will improve the property and will compliment the surrounding land uses.

RECOMMENDATION

It is City staff's recommendation that the City Council approves the ordinance as set forth in the caption above.

Location Map - Parkway Baptist Church



ZONING CASE NO. PZ-2016-03-08

APPLICANT NAME: G & A CONSULTANTS
PROPERTY OWNER: PARKWAY BAPTIST CHURCH
PROPERTY LOCATION: 1165 W. FM 3040(4.362-ACRES)
CURRENT ZONING: LOCAL COMMERCIAL (LC)
REQUESTED ZONING: MEDICAL DISTRICT (MD)

Aerial Map - Parkway Baptist Church



MINUTES
PLANNING AND ZONING COMMISSION
MARCH 15, 2016

Item 1:

The Lewisville Planning and Zoning Commission meeting was called to order at 6:30 pm. Members present: James Davis, Sean Kirk, Brandon Jones (arrived at item 3), Mary Ellen Miksa, Alvin Turner, and Kristin Green. Member Steve Byars was absent.

Staff members present: Richard Luedke, Mary Paron-Boswell and June Sin

Item 5:

Public Hearings for Zoning and Special Use Permits were next on the agenda. There were four items for consideration:

- B. Consideration of a Zone Change Request From Local Commercial District (LC) to Medical District (MD); on an approximately 4.362-acre Lot Legally Described as Lot 1, Block A, Parkway Baptist Addition; located at 1165 West FM 3040, Approximately 880 feet West of Valley Parkway; as Requested by G & A Consultants on Behalf of Parkway Baptist Church, the Property Owner. (Case No. PZ-2016-03-08)

Mary Paron-Boswell gave a brief presentation on the zone change request. The current zoning of the property is Local Commercial (LC), which allows for a multitude of neighborhood services and offices primarily retail in nature. The applicant is requesting Medical District (MD) zoning to allow a memory care facility and an assisted-living facility to be constructed in two phases. Chairman Davis opened the public hearing. Randi Rivera, G&A Consultants, came forward and offered to answer any questions. Sean Kirk asked about phasing of the project and timeline for the completion date. Randi answered that the two center buildings of the four proposed will be constructed first. They are projecting about six to nine months for the first phase. The construction timing of phase two depends on the success of the first phase.

A motion was made by Sean Kirk to recommend approval, seconded by Alvin Turner. The motion passed unanimously (6-0).

SECTION 17-21. - "LC" LOCAL COMMERCIAL DISTRICT REGULATIONS

- (a) *Use.* A building or premise shall be used only for indoor, neighborhood office, retail, and services which are primarily retail in nature, including, but not limited to:
- (1) Any use permitted in district "OD" as regulated in said district.
 - (2) Grocery stores.
 - (3) Barber and beauty shops.
 - (4) Book, card, gift and stationary stores.
 - (5) Dry cleaning and laundry services.
 - (6) Gasoline service stations (SUP required).
 - (7) Minor automobile services including tune-up and repair services, tire stores and car washes, providing there is no overnight outside storage of vehicles (not including transmission or body shops) (SUP required).
 - (8) Restaurants.
 - (9) Florists.
 - (10) Video rental stores, movie theaters and other indoor amusements.
 - (11) Church worship facilities.
 - (12) Buildings and uses owned or operated by public governmental agencies.
 - (13) Other retail, office and service uses of a similar nature provided that the business establishment supplies the everyday needs of the immediate neighborhood and is subject to the following conditions:
 - a. There is no outside display and storage of merchandise or vehicles, except for the incidental and occasional sale of merchandise outside the building for periods not to exceed thirty (30) days (i.e. Christmas tree sales and sidewalk sales, etc.).
 - b. That required yards not be used for display, sale or storage of merchandise, or for the storage of vehicles, equipment, containers or waste material.
 - c. That such use not be objectionable because of odor, excessive light, smoke, dust, noise, vibration, or similar nuisance.
 - (14) Temporary buildings for uses incidental to construction work on the premises, which buildings shall be removed upon the completion or abandonment of construction work.
 - (15) Accessory buildings and uses customarily incidental to any of the above uses, provided that such not be objectionable because of odor, smoke, dust, noise, vibration or similar nuisance.
 - (16) Private Utility Plants or Sub-stations (including alternative energy) (SUP required).
 - (17) Cemetery, columbarium, mausoleum and accessory uses (SUP required).
 - (18) Beverage container recycling collection facility (SUP required).
 - (19) Kiosks, including water and ice sales (SUP required).
 - (20) Private stadium/arena/sports field (SUP required).
 - (21) Communication Towers (SUP required).
 - (22) Plant Nursery (Retail Sales) (Indoor)
 - (23) Plant Nursery (Retail Sales) (With Outdoor Display or Storage) (SUP required).
- (b) *Height.* No building shall exceed forty-five (45) feet or three (3) stories in height, except that a building may be erected to a height of eighty (80) feet and eight (8) stories if set back from all required yard lines a distance of one (1) foot for each two (2) feet of additional height above forty-five (45) feet. In no event, however, shall the portion of a building located within one hundred fifty (150) feet of any property zoned for residential purposes exceed the height allowed in that residential zoning district.
- (c) *Area.*
- (1) *Size of yards.*
 - a. *Front yard.* There shall be a front yard having a minimum depth of twenty-five (25) feet. No parking, storage or similar use shall be allowed in required front yards in district "LC", except that automobile parking will be permitted in such yards if separated by at least twenty-five (25) feet from any residential district.

- b. *Side yard.* A side yard of not less than fifteen (15) feet in width shall be provided on the side of a lot adjoining a side street. A side yard of not less than ten (10) feet in width shall be provided on the side of a lot adjoining a residential district. The required side yard shall be waived when a screening device is installed in accordance with the city's general development ordinance. The building itself can serve as a portion of the screening device when that portion of the building exterior is constructed of the same materials as the screening device. No parking, storage or similar use shall be allowed in any required side yard or in any side street yard adjoining a residential district.

- c. *Rear yard.* No rear yard is required, except that a rear yard of not less than twenty-five (25) feet in depth shall be provided upon that portion of a lot abutting or across a rear street from a residential district, except that such yard requirement shall not apply where the property in the residential district also backs up to the rear street. The required rear yard shall be waived when a screening device is installed in accordance with the city's general development ordinance. The building itself can serve as a portion of the screening device when that portion of the building exterior is constructed of the same materials as the screening device.

(2) *Reserved.*

SECTION 17-20. - "MD" MEDICAL DISTRICT REGULATIONS

- (a) *Use.* A building or premise shall be used only for the following purposes:
- (1) Day nursery or day care center.
 - (2) Nursing home or convalescent home.
 - (3) Assisted living or independent living units, limited to persons age 55 and above and including programs such as on-site meals, on-site doctor visits, medication management, organized fitness programs, housekeeping services, laundry services, craft and game programs, transportation to doctors and shopping, beauty and barber services, on-site entertainment and similar activities for senior citizens.
 - (4) Institution for care of alcoholic, narcotic, or psychiatric patients.
 - (5) Clinic: medical, dental or optical.
 - (6) Laboratory: medical, dental or optical.
 - (7) Laboratory: scientific research or testing.
 - (8) Retail sales and services for medical appliances.
 - (9) Florist.
 - (10) Drug store or pharmacy.
 - (11) Optical sales and service.
 - (12) Offices: medical, dental or optical.
 - (13) Hospital.
 - (14) Church worship facilities.
 - (15) Buildings and uses owned or operated by public governmental agencies.
 - (16) Uses similar to the above mentioned permitted uses, provided activities conducted observe the requirements of all city ordinances.
 - (17) Temporary buildings for uses incidental to construction work on the premises, which buildings shall be removed upon the completion or abandonment of construction work.
 - (18) Accessory buildings and uses customarily incidental to any of the above uses, provided that such not be objectionable because of odor, smoke, dust, noise, vibration or similar nuisance.
 - (19) Private Utility Plants or Sub-stations (including alternative energy) (SUP required).
 - (20) Gas and oil drilling accessory uses (SUP required).
 - (21) Cemetery, columbarium, mausoleum and accessory uses (SUP required).
- (b) *Height.* The maximum height for the main buildings shall not exceed one hundred (100) feet. In no event, however, shall the portion of a building located within one hundred fifty (150) feet of any property zoned for residential purposes exceed the height allowed in that residential zoning district.
- (c) *Area.*
- (1) *Size of yards.*
 - a. *Front yard.* There shall be a front yard having a minimum depth of twenty-five (25) feet. No parking, storage or similar use shall be allowed in required front yards in district "MD", except that automobile parking will be permitted in such yards if separated by at least twenty-five (25) feet from any residential district.
 - b. *Side yard.* There shall be a minimum side yard of ten (10) feet on each side of the lot or tract on which any single building or building complex is constructed.
 - c. *Rear yard.* No rear yard is required except, that a rear yard of not less than twenty-five (25) feet in depth shall be provided upon that portion of a lot abutting or across a rear street from a residential district, except that such yard requirement shall not apply where the property in the residential district also backs up to the rear street. The required rear yard shall be waived when a screening device is installed in accordance with the city's general development ordinance. The building itself can serve as a portion of the screening device when that portion of the building exterior is constructed of the same materials as the screening device.

(2) *Reserved.*

This Section (Office Use Only)	
Case:	
PZ:	CC:
Sign/s Picked Up By:	



LEWISVILLE

ZONE CHANGE APPLICATION

Owner/s (name): <u>Parkway Baptist Church</u>	
Company Name: <u>Parkway Baptist Church</u>	
Mailing Address: <u>2200 Remington Dr. Flower Mound TX 75028</u>	
Work #: <u>817-510-6700</u>	Cell #: <u>972-567-5965</u>
E-Mail: <u>d.parish@icloud.com</u>	
Owner Signature (Owner/s Must Sign or Submit Letter of Authorization): <i>D Parish</i>	Date: <u>1-27-16</u>
Printed Name: <u>David Parish</u>	

Applicant/Agent (name): <u>Randi Rivera</u>	
Company Name: <u>G+A Consultants</u>	
Mailing Address: <u>111 Hillside Drive Lewisville TX 75057</u>	
Work #: <u>972-436-9712</u>	Cell #:
E-Mail: <u>randi@gacon.com</u>	
Applicant/Agent Signature <i>Randi Rivera</i>	Date:
Printed Name: <u>Randi Rivera</u>	

Current Zoning: <u>LC - ^{Local} Commercial</u>	Requested Zoning: <u>MD - ^{Medical} District</u>	Acres: <u>4.362 A</u>
Legal Description (Lot/Block/Tract/Abstract): <u>Lot 1, Block A Parkway Baptist Church Addition</u>		
Address/Location: <u>Between Peachtree Ln and S Valley Pkwy on FM 3040</u>		

Application and Sign Fees:

	Less than 1/2 acre	\$ 150.00
✓	1/2 acre up to 4.99 acres	\$ 250.00
	5 acres up to 24.99 acres	\$ 400.00

	25 acres up to 49.99 acres	\$ 750.00
	50 acres up to 99.99 acres	\$1,000.00
	100 acres and more	\$1,500.00

Qty: _____	Zone Change Signs - \$35 each. 1 sign required for each 5 acres (max. 5 per site)	\$ _____
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Sign(s) must be posted a minimum of ten (10) days prior to the Planning & Zoning hearing date.

Amount Due (application & sign fee)	\$ _____
---	----------



LEWISVILLE
Deep Roots, Broad Wings, Bright Future

REQUIRED:

Fully describe the plans for the property

We are proposing 4 approximately 13,000 SF Memory Care buildings, to be completed in two phases. The memory care /assisted living use requires a change to MD - Medical District zoning.

Since 1995, Avalon Memory Care has provided quality treatment + care for those living with Alzheimers and other forms of dementia. They are dedicated to improving the quality of life for their residents, and providing peace of mind to their families. Each building is planned to create as home-y an environment as possible for the comfort of the residents, centered around a community living room and outdoor courtyard.

We feel that this is a quality development with a quality company that is filling a need in the local market. Please ~~not~~ do not hesitate to contact us if you have any questions.

NOTE:

Items must be staff approved and deemed complete before they will be placed on an agenda.

January 23 2016

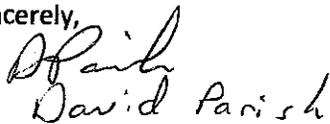
Mrs. Nika Reinecke
Director Economic Development & Planning
151 West Church Street
Lewisville, TX 75057

RE: AUTHORIZATION LETTER – LOT 1, BLOCK A - PARKWAY BAPTIST CHURCH ADDITION

Mrs. Reinecke,

As the owner of Lot 1, Block A of the Parkway Baptist Church Addition, I hereby authorize Three Willows Land Development and G&A Consultants, LLC to submit development applications, including a zoning change request, on the subject property.

Sincerely,

A handwritten signature in cursive script that reads "David Parish".

Parkway Baptist Church



Concept D
4.373 Acres

City of Lewisville
Denton County, Texas



ALZHEIMER'S DISEASE

Alzheimer's disease is a progressive disease that affects memory, thought, and behavior, culminating in a loss of ability to respond to one's environment and eventually ending in death.

- Alzheimer's is the *only disease* in the top 10 causes of death in America *without a way to prevent it, cure it, or slow its progression.*
- Alzheimer's disease is the *sixth-leading cause of death* in the United States.
- Each year, *Alzheimer's kills more Americans than breast and prostate cancer combined.*
- By age 80, 4 percent of Americans enter a nursing home. For people with Alzheimer's, *75 percent end up in a nursing home by age 80.*
- An estimated 10 million baby boomers will develop Alzheimer's. Of those who reach the age of 85, *nearly one in two will get it.*

ABOUT AVALON

In 1995 our founder Richard Seib was visiting a nursing home and was struck by the lack of options for Memory Care.

In addition to memory problems, people with Alzheimer's cannot always tell you when they are thirsty or whether they are in pain. They are often confused about their surroundings and may become anxious or frightened which can make things like bathing them difficult. They need continuous care for their own safety.

Twenty years ago people with Alzheimer's Disease and other dementias were placed in the general nursing home population where they were forced into an "off the rack" model of care. Caregivers would have to care for a large wing of residents and often did not have the time to give much attention to a single person. Patients who were unable to adhere to the nursing home's regimented lifestyle were often chemically and physically restrained.

When Richard started Avalon he chose to employ a resident-to-caregiver ratio of 4-5 to 1 in order to give each resident the care and attention they deserve.

He also noticed that people are affected by Alzheimer's in different ways and so a customized plan of care was developed for each resident upon admission.

Most importantly, Richard felt that residents would benefit from a more home-like environment. Every one of our locations are made to look as much like a home as possible.

Richard's approach worked and Avalon took off. We have established a reputation for excellence. The IBM Employees Benefit Trust selected Avalon as an outstanding provider of a unique revolutionary form of dementia care.

Avalon was honored as the original Texas founder of the concept of secured dementia care in a residential environment.

Today Avalon has locations all over Texas with plans to expand throughout the US. We are looking forward to becoming part of your neighborhood.

PROJECT SUMMARY

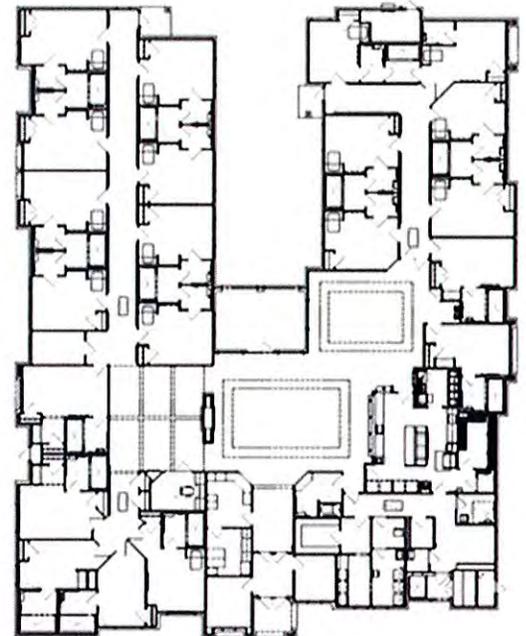


Avalon proposes to build a licensed Assisted Living Facility with Alzheimer's certification at 1165 W FM 3040 (Round Grove Rd) in Lewisville Texas.

- 12,555 square feet
- single story
- 16 master bedrooms
- composition shingle roof
- chopped stone and brick façade

When we designed our homes we wanted to keep the feel of a residential home and many of our door, window, finish and fixture choices reflect that. As part of our effort to pamper our residents we use high quality materials. Many times a resident's home at Avalon may even be a little nicer than what they are leaving.

Our homes are single story with a composition shingle roof. Local landscapers are contracted to ensure the grounds look nice and well-kept. The exterior has a chopped stone and brick façade accented with arches and residential-style windows.



EXISTING LOCATIONS CLOCKWISE FROM UPPER LEFT: ARLINGTON, FORT WORTH AND CARROLLTON





The foyer floor opens into a large common room divided by a stone faux fireplace. One half of this common room is used as a gathering room for activities and visiting while the other half is used as a living room complete with leather recliners just as you'd find in many homes.

A central courtyard is adjacent to the common room opposite the foyer. The courtyard porch has a cedar ceiling with brick columns and a large fan to keep the residents cool in summer. Many of our locations have a gazebo in the courtyard used as a place for residents to rest and relax while they are out enjoying the grounds.

A large open kitchen is on one end of the common room. Residents can sit and chat at the bar while caregivers serve them snacks and drinks. The bar has granite countertops supported with large wood corbels. The appliances in the kitchen are commercial grade but specially chosen to look like those found in a home. We use induction cooktops, large double ovens and stainless steel freezers and refrigerators. We even have a dishwasher that can do a load of dishes in less than a minute!



The dining room is located off of the common room with immediate access to the kitchen. We built a recessed ceiling accented with a wood trim and decorative frieze. The windows in the dining room offer a view of the central courtyard.

Residents also enjoy using our in-house beauty salon where they can gossip and get their hair done by a beautician. People with Alzheimer's and dementia may not be able to express it but they crave hugs and a caring touch the same way most other people do. The experience of getting their hair done on a weekly basis does wonders for their well-being.

Bedrooms are located along the corridors emanating from the large central common room. Each bedroom has a private bath with granite tile and a large walk-in shower.

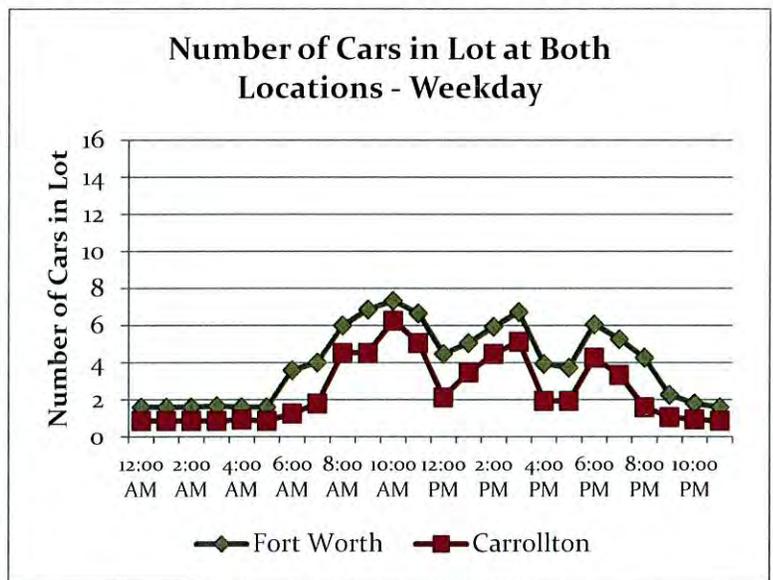
If you are interested in seeing more of our homes you can take a virtual tour at www.avalon-care.com.

TRAFFIC AND PARKING

The increase in traffic through your neighborhood is expected to be negligible. Our residents are not capable of driving, and typically do not leave the facility unless signed out by a family member or in the event of a medical emergency.

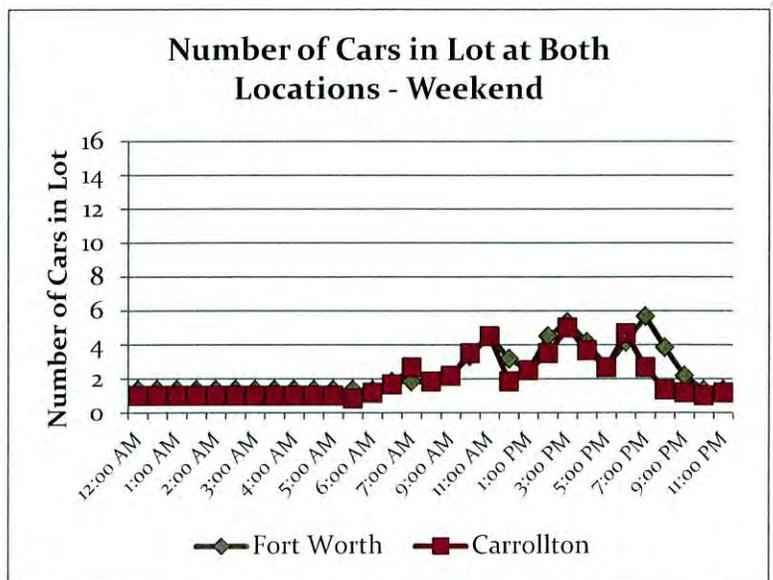
Traffic to and from our facility can then be broken up into four categories: employees, healthcare providers, visitors, and vendors.

- Visitors typically visit family outside of normal working hours. The peak time for visitors is between 6:00 and 8:00 PM on weekdays. On weekends the visits are more evenly spread throughout the day.
- Employees are on twelve hour shifts which change at 6:00 AM and 6:00 PM. At a census of 22 residents we would expect to have about 5 caregivers on duty.
- Healthcare Providers such as mobile physicians and dentists schedule their visits so that they can see as many residents in a single trip as possible. These trips are on weekdays and during business hours. Hospice and home health nurses visit as often as needed in order to care for their resident.
- Vendors are awarded contracts for supplies and services to reduce costs and to control access to the facility. Deliveries (food supplies, cleaning and incontinence products) occur once a week during normal business hours.



In 2015 Savant Group, Inc. did a parking study for a proposed Avalon location in Allen, Texas. They compared city parking requirements with parking usage at existing Avalon Memory Care facilities and recommendations provided by the Institute of Transportation Engineers (ITE).

They found that our historical parking usage was in line with ITE recommended parking for a land use of our size and type. The charts at right show the parking usage at the existing Avalon Memory Care facilities from that study. The parking demand for this new facility is expected to be similar.



FREQUENTLY ASKED QUESTIONS

The plans and photos of the facilities look OK now, but what will it look like if you lose government funding?

We are entirely private pay. We do not depend on government funding. We are required by the State to ensure that all outside areas are maintained in good condition and kept free of rubbish, garbage, and untended growth.

Additionally, census has no bearing on the amount of upkeep we do on the property. In fact, if the census is low we will be looking at ways to improve the curb appeal.

What steps do you take to vet your employees prior to employment?

The safety of our residents is of paramount importance. Passing a criminal background and sex offender registry check are prerequisites for employment. We also check the Nurse Aide Registry and the Employee Misconduct Registry before hiring caregiving staff to ensure they aren't listed as having committed an act of abuse, neglect, exploitation, misappropriation or misconduct against a resident or consumer.

Beyond that, it takes a very loving and understanding person to be a caregiver, even more so when dealing with people who have Alzheimer's and related dementias. Caregivers have been cursed at, kicked, bitten, hit, and spat on by residents and may not retaliate in any way. Most of our caregivers are women and many are parents experienced in the kind of patience and understanding required for dealing with residents.

Would the residents themselves pose a threat to my family?

It is unlikely any of our residents would pose a threat to anyone. They are generally very sweet, quiet and gentle. Residents may have outbursts when they feel threatened but our employees are trained in calming and redirecting them.

It is even more unlikely that they would be outside the secure Avalon home at all. In addition to cameras, we have magnetic locks on all outside doors to restrict entrance and exit. Visitors must be buzzed in and are warned not to allow any residents to elope. We also conduct two-hour checks to ensure all residents are present and well.

Will your home put my family in additional danger of contracting a disease?

Alzheimer's Disease and its related dementias are not contagious. Communicable disease will not have an opportunity to spread if you and your family members do not interact with anyone at our facility.

Our residents are an at-risk population and we take extreme care to prevent exposing them to any disease. They undergo a physical and TB test upon admission and once a year as long as they remain in the facility. Whenever there is a change in their condition our caregivers consult the resident's physician or nurse immediately. Since they largely remain in the home after admission they would hardly have a chance to infect anyone with anything. Threats to their health would most likely come from outside.

Family members and vendors are instructed not to visit while they are ill. Caregivers are able to trade shifts if they are sick so they don't have to worry about losing hours and taking home a smaller paycheck. We have procedures designed to safeguard against the spread of communicable diseases while caregivers are cleaning, cooking, doing laundry and caring for residents.

Avalon builds relationships with local dentists, nurses, geriatricians, podiatrists and other providers so that whenever a resident needs medical care we can get it for them on short notice right there at the facility. This ensures that our residents remain as healthy as possible for a person in their condition.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, AMENDING THE ZONING ORDINANCE OF THE CITY OF LEWISVILLE, TEXAS BY REZONING AN APPROXIMATELY 4.362-ACRE LOT LEGALLY DESCRIBED AS LOT 1, BLOCK A, PARKWAY BAPTIST CHURCH ADDITION; LOCATED ON THE NORTH SIDE OF WEST FM 3040 APPROXIMATELY 880 FEET WEST OF SOUTH VALLEY PARKWAY AT 1165 WEST FM 3040; FROM LOCAL COMMERCIAL DISTRICT (LC) ZONING TO MEDICAL DISTRICT (MD) ZONING; CORRECTING THE OFFICIAL ZONING MAP; PRESERVING ALL OTHER PORTIONS OF THE ZONING ORDINANCE; PROVIDING A CLAUSE RELATING TO SEVERABILITY; DETERMINING THAT THE PUBLIC INTERESTS AND GENERAL WELFARE DEMAND THIS ZONING CHANGE AND AMENDMENT THEREIN MADE; PROVIDING A PENALTY; AND DECLARING AN EMERGENCY.

WHEREAS, applications were made to amend the Official Zoning Map of Lewisville, Texas by making applications for same with the Planning and Zoning Commission of the City of Lewisville, Texas, as required by State statutes and the Zoning Ordinances of the City of Lewisville, Texas, said Planning and Zoning Commission has recommended that rezoning of the approximately 4.362-acre property described in the attached Exhibit "A" (the "Property") be **approved**, and all the legal requirements, conditions and prerequisites having been complied with, the case having come before the City Council of the City of Lewisville, Texas, after all legal notices, requirements, conditions and prerequisites having been complied with; and,

WHEREAS, the City Council of the City of Lewisville, Texas, at a public hearing called by the City Council of the City of Lewisville, Texas, did consider the following factors in making a determination as to whether this requested change should be granted or denied: effect on the

congestion of the streets; the fire hazards, panics and other dangers possibly present in the securing of safety from same; the effect on the promotion of health and the general welfare; effect on adequate light and air; the effect on the overcrowding of the land; the effect of the concentration on population; the effect on the transportation, water, sewerage, schools, parks and other public facilities; and,

WHEREAS, the City Council further considered among other things the character of the district and its peculiar suitability for particular uses and with the view to conserve the value of buildings, encourage the most appropriate use of land throughout this City; and,

WHEREAS, the City Council of the City of Lewisville, Texas, does find that there is a public necessity for the zoning change, that the public interest clearly requires the amendment, that the zoning changes do not unreasonably invade the rights of adjacent property owners; and,

WHEREAS, the City Council of the City of Lewisville, Texas, does find that the change in zoning lessens the congestion in the streets; helps secure safety from fire, panic and other dangers; promotes health and the general welfare; provides adequate light and air; prevents the overcrowding of land; avoids undue concentration of population; facilitates the adequate provisions of transportation, water, sewerage, schools, parks and other public requirements; and,

WHEREAS, the City Council of the City of Lewisville, Texas, has determined that there is a necessity and need for this change in zoning and has also found and determined that there has been a change in the conditions of the property surrounding and in close proximity to the Property since it was originally classified and, therefore, feels that a change in zoning classification for the Property is needed, is called for, and is in the best interest of the public at large, the citizens of the City of Lewisville, Texas, and helps promote the general health, safety, and welfare of this community.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, THAT:

SECTION 1. The Zoning Ordinance of the City of Lewisville, Texas, be, and the same is hereby amended and changed in that the zoning of the Property is hereby changed to **MEDICAL DISTRICT (MD) ZONING.**

SECTION 2. The City Manager, or her designee, is hereby directed to correct the official zoning map of the City of Lewisville, Texas, to reflect this change in zoning.

SECTION 3. That in all other respects the use of the tract or tracts of land hereinabove described shall be subject to all the applicable regulations contained in said City of Lewisville Zoning Ordinance and all other applicable and pertinent ordinances of the City of Lewisville, Texas.

SECTION 4. That the zoning regulations and districts as herein established have been made in accordance with the comprehensive plan for the purpose of promoting health, safety, and the general welfare of the community. They have been designed with respect to both present conditions and the conditions reasonably anticipated to exist in the foreseeable future, to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; provide adequate light and air; to prevent overcrowding of land, to avoid undue concentration of population; facilitate the adequate provisions of transportation, water, sewage, parks and other public requirements, and to make adequate provisions for the normal business, commercial needs and development of the community. They have been made with reasonable consideration, among other things of the character of the district, and its peculiar suitability for the particular uses and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the community.

SECTION 5. This Ordinance shall be cumulative of all other ordinances of the City of Lewisville, Texas, affecting zoning and shall not repeal any of the provisions of said ordinances, except in those instances where provisions of those ordinances which are in direct conflict with the provisions of this Ordinance.

SECTION 6. That the terms and provisions of this Ordinance shall be deemed to be severable and that if the validity of the zoning affecting any portion of the Property shall be declared to be invalid, the same shall not affect the validity of the zoning of the balance of the tract or tracts of land described herein.

SECTION 7. Any person, firm or corporation who violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof in the Municipal Court, shall be subject to a fine of not more than \$2,000.00 for each offense, and each and every day such offense is continued shall constitute a new and separate offense.

SECTION 8. The fact that the present Zoning Ordinance and regulations of the City of Lewisville, Texas are inadequate to properly safeguard the health, safety, peace and general welfare of the inhabitants of the City of Lewisville, Texas, creates an emergency for the immediate preservation of the public business, property, health, safety and general welfare of the public which requires that this Ordinance shall become effective from and after the date of its final passage, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, BY A VOTE OF _____ TO _____, ON THIS THE 4TH DAY OF APRIL, 2016.

ORDINANCE NO. _____

Page 5

APPROVED:

Rudy Durham, MAYOR

ATTEST:

Julie Heinze, CITY SECRETARY

APPROVED AS TO FORM:

Lizbeth Plaster, CITY ATTORNEY

Exhibit A
Legal Description

EXHIBIT A

LEGAL DESCRIPTION

Lot 1, Block A
Parkway Baptist Church Addition
City of Lewisville
Denton County, Texas

BEING all of that certain lot, tract or parcel of land situated in the J. Watkins Survey, Abstract No. 1328, City of Lewisville, Denton County, Texas, and being all of Lot 1, Block A, Parkway Baptist Church Addition, an addition to the City of Lewisville, Denton County, Texas, according to the plat thereof recorded in Cabinet I, Page 368 Plat Records, Denton County, Texas, and being more particularly described as follows:

BEGINNING at the most westerly corner of said Lot 1, and being in the northerly line of F.M. 3040, a public roadway;

THENCE N 29°05'00" E, a distance of 327.94 feet;

THENCE S 59°57'45" E, a distance of 599.93 feet;

THENCE S 29°00'27" W, a distance of 327.95 feet to a point on the northerly line of F.M. 3040;

THENCE Northwesterly with the northerly line of F.M. 3040 the following two (2) calls:

N 69°27'03" W, a distance of 101.08 feet;

N 60°55'00" W, a distance of 500.28 feet to the **POINT OF BEGINNING** and containing approximately 4.362 acres of land.

MEMORANDUM

TO: Donna Barron, City Manager

FROM: Nika Reinecke, Director of Economic Development and Planning

DATE: April 4, 2016

SUBJECT: **Public Hearing: Consideration of an Ordinance Granting a Zone Change Request From General Business District (GB) to Old Town Mixed Use Two District (OTMU2), on an Approximately 0.145-acre Tract of Land out of the J.W. King Survey Abstract 696, Located on the West Side of South Mill Street Approximately 350 Feet South of Elm Street; at 277 South Mill Street, as Requested by Hat Group LLC., the Property Owner (Case No. PZ-2016-03-09).**

BACKGROUND

The 0.145-acre property was home to Northwest Propane. The existing building will be demolished and the property will be combined with the South Village project currently under review by staff.

ANALYSIS

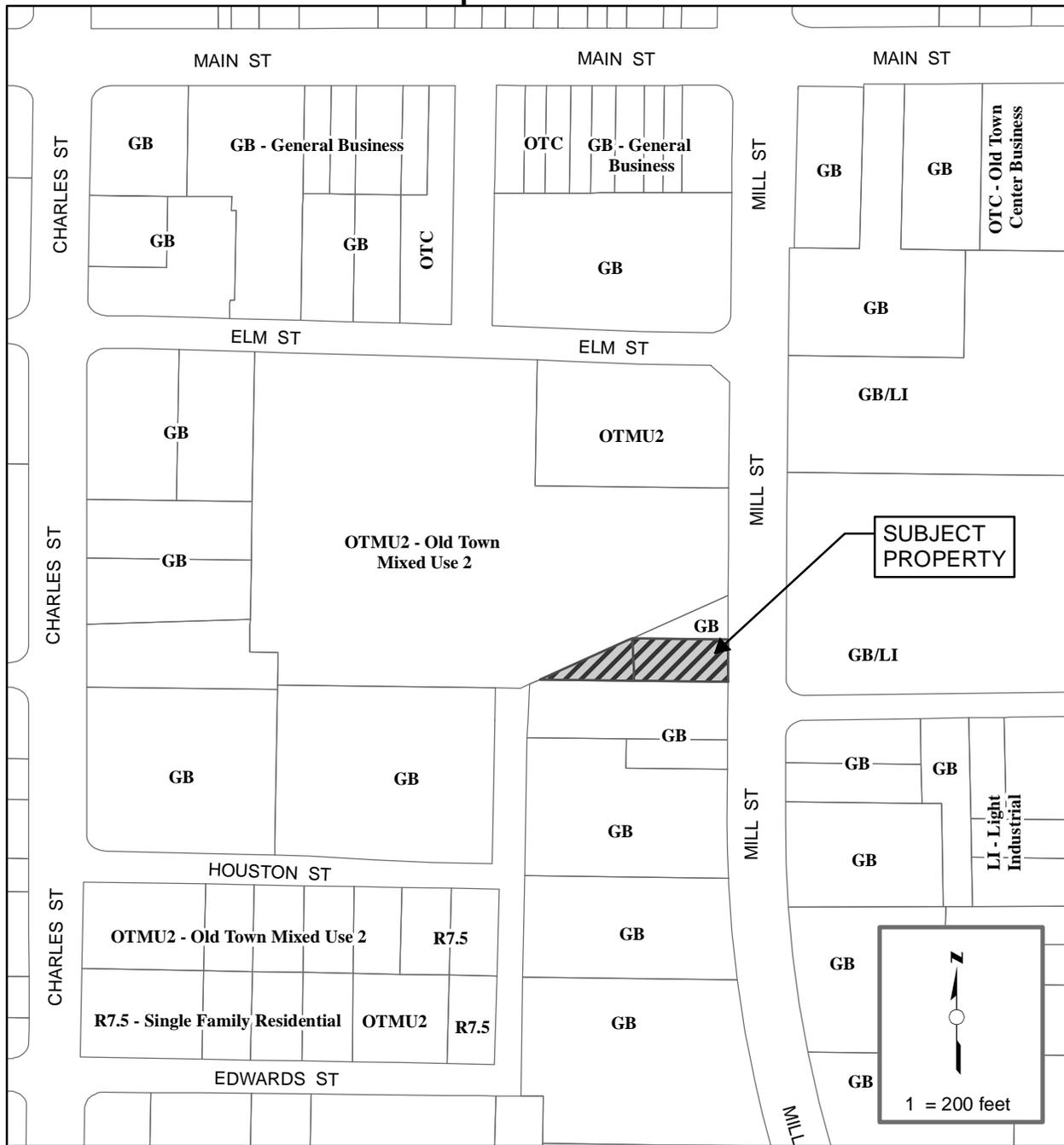
The current zoning of the property is General Business (GB), which allows for a multitude of neighborhood services and offices primarily retail in nature. The applicant is requesting Old Town Mixed Use Two (OTMU2) zoning to allow for a mixed use of commercial and residential that would be part of the larger South Village development. The zone change to OTMU2 complies with the Old Town Master Plan for the area and allows for greater flexibility in developing the site. The Planning and Zoning Commission recommended unanimous approval (6-0) of the zone change request at their meeting of March 15, 2016.

The next steps for the overall project is final plat approval, which is scheduled for a recommendation by the Planning and Zoning Commission on Tuesday, April 5, 2016. Final plat approval by the City Council is scheduled for April 18, 2016 since two variance requests are associated with the final plat. Once the final plat is approved, early grading at the site can begin ahead of construction of streets, drainage and utilities. The developer is also preparing Old Town Design Review Committee applications for the approval of the exterior design and materials for the residential units and the mixed use building proposed for the South Village development.

RECOMMENDATION

It is City staff's recommendation that the City Council approves the ordinance as set forth in the caption above.

Location Map - 277 S. Mill Street



ZONING CASE NO. PZ-2016-03-09

APPLICANT NAME: HAT GROUP LLC

PROPERTY LOCATION: 277 SOUTH MILL STREET (0.145-ACRES)

CURRENT ZONING: GENERAL BUSINESS (GB)

REQUESTED ZONING: OLD TOWN MIXED USE 2 (OTMU2)

Aerial Map - 277 S. Mill Street



**MINUTES
PLANNING AND ZONING COMMISSION
MARCH 15, 2016**

Item 1:

The Lewisville Planning and Zoning Commission meeting was called to order at 6:30 pm. Members present: James Davis, Sean Kirk, Brandon Jones (arrived at item 3), Mary Ellen Miksa, Alvin Turner, and Kristin Green. Member Steve Byars was absent.

Staff members present: Richard Luedke, Mary Paron-Boswell and June Sin

Item 5:

Public Hearings for Zoning and Special Use Permits were next on the agenda. There were four items for consideration:

- C. Consideration of a Zone Change Request From General Business District (GB) to Old Town Mixed Use Two District (OTMU2); on an Approximately 0.145-acre Tract of Land out of the J.W. King Survey Abstract 696; Located on the West Side of South Mill Street Approximately 350 Feet South of Elm Street; at 277 South Mill Street; as Requested by Hat Group LLC., the Property Owner. (Case No. PZ-2016-03-09)

Mary Paron-Boswell gave a presentation indicating that the applicant is requesting Old Town Mixed Use Two (OTMU2) zoning to allow for a mixed use of commercial and residential that would be part of the larger South Village development. The public hearing was opened and there being no one present to speak, the public hearing was then closed. *A motion was made by Brandon Jones to recommend approval of the zone change request, seconded by Kristin Green. The motion passed unanimously (6-0).*

SECTION 17-22. - "GB" GENERAL BUSINESS DISTRICT REGULATIONS

- (a) *Use.* A building or premise shall be used only for office, retail and service uses which are primarily retail in nature including, but not limited to:
- (1) Any use permitted in district "LC" as regulated in said district.
 - (2) Auto, boat, motorcycle, recreational vehicle or mobile home display, sales (outdoor) and/or repair (SUP required)
 - (3) Bakeries.
 - (4) Building material sales with outside storage or display, including lumber yards (SUP required).
 - (5) Business or commercial schools.
 - (6) Clinic, medical and dental, and professional offices.
 - (7) Carpentry, painting, plumbing or tinsmithing shop fully enclosed within a building.
 - (8) Cleaning, laundry and dyeing plants fully enclosed within a building.
 - (9) Creamery, ice cream manufacturing and dairy operations fully enclosed within a building.
 - (10) Farm implement display and sales room. (outdoor) (SUP required).
 - (11) Hotels, motels and inns.
 - (12) Mortuaries with or without crematoriums. (SUP required).
 - (13) Office buildings.
 - (14) Pet shops, retail, fully enclosed within a building.
 - (15) Printing, engraving and newspaper plants, fully enclosed within a building.
 - (16) Radio or television broadcasting station or studio with broadcasting towers (SUP required).
 - (17) Retail stores, fully enclosed within a building.
 - (18) Veterinarian or animal hospital with outdoor kennel or exercise runs (SUP required).
 - (19) Bowling alley and other commercial amusement (indoor) uses, fully enclosed within a building.
 - (20) Church worship facilities.
 - (21) Uses similar to the above mentioned permitted uses, provided activities conducted wholly inside a building and observe the requirements of all city ordinances.
 - (22) Temporary buildings for uses incidental to construction work on the premises, which buildings shall be removed upon the completion or abandonment of construction work.
 - (23) Accessory buildings and uses customarily incidental to any of the above uses, provided that such not be objectionable because of odor, smoke, noise, vibration or similar nuisance. Open storage shall be considered an accessory use but no more than ten percent (10%) of the platted lot may be used for outside storage, including access and maneuvering areas for moving the stored items.
 - (24) Dwelling units of 850 square foot minimum size when located over a retail, restaurant or similar use on the first floor (SUP required).
 - (25) Private Utility Plants or Sub-stations (including alternative energy) (SUP required).
 - (27) Cemetery, columbarium, mausoleum and accessory uses (SUP required).
 - (28) Commercial amusement, outdoor (SUP required).
 - (29) Drive-in theater (SUP required).
 - (30) Flea market, outdoor (SUP required).
 - (31) Helipad, helistop or landing strip (SUP required).
 - (32) Kennels with outdoor runs (SUP required).
 - (33) Nightclub, bar. (SUP required).
 - (34) Brewery, distillery, or winery.
- (b) *Height.* No building shall exceed in height the width of the street on which it faces plus the depth of the front yard. On a lot adjoining a residential district, no building shall exceed forty-five (45) feet in height, except that this height may be increased up to the maximum of twelve (12) stories or one hundred eighty (180) feet at the rate of two (2) feet of additional height for each one (1) foot of additional setback from required yard lines. In no event, however, shall the portion of a building located within one hundred fifty (150) feet of any property zoned for residential purposes exceed the height allowed in that residential zoning district.
- (c) *Area.*

(1) *Size of yards.*

- a. *Front yard.* There shall be a front yard having a minimum depth of twenty-five (25) feet. No parking, storage or similar use shall be allowed in required front yards in district "GB", except that automobile parking (including automobile dealer display parking) will be permitted in such yards if separated by at least twenty-five (25) feet from any residential district.
- b. *Side yard.* A side yard of not less than fifteen (15) feet in width shall be provided on the side of a lot adjoining a side street. A side yard of not less than ten (10) feet in width shall be provided on the side of a lot adjoining a residential district. The required side yard shall be waived when a screening device is installed in accordance with the city's general development ordinance. The building itself can serve as a portion of the screening device when that portion of the building exterior is constructed of the same materials as the screening device. No parking, storage or similar use shall be allowed in any required side yard or in any side street yard adjoining a residential district.
- c. *Rear yard.* No rear yard is required, except that a rear yard of not less than twenty-five (25) feet in depth shall be provided upon that portion of a lot abutting or across a rear street from a residential district, except that such yard requirement shall not apply where the property in the residential district also backs up to the rear street. The required rear yard shall be waived when a screening device is installed in accordance with the city's general development ordinance. The building itself can serve as a portion of the screening device when that portion of the building exterior is constructed of the same materials as the screening device.

(2) Reserved.

- (d) *Outside Storage Regulations.* In all zoning districts where outside storage yards are allowed, such storage yards shall be screened from view in accordance with the standards outlined in the city's general development ordinance. This provision applies to all outside storage which began after the original date of passage of this provision (April 4, 1994). Any variance request involving the requirements or standards relating to such required screening devices shall be considered by the city council in accordance with the city's general development ordinance. Areas which are used for infrequent and temporary storage for a period of thirty (30) days or less per year shall not be deemed as storage yards.

SECTION 17-22.7. - "OTMU2" OLD TOWN MIXED USE 2 DISTRICT REGULATIONS

- (a) *Use.* A building or premise shall be used only for the following purposes:
- (1) Single-family dwellings.
 - (2) Single-family attached dwellings, provided that no more than nine (9) dwelling units are attached in one continuous row or group, and provided that no dwelling unit is constructed above another dwelling unit.
 - (3) Two-family dwellings (duplexes).
 - (4) Multi-family dwellings. Projects shall be a minimum of one (1) acre in land area. More than one lot may be utilized to meet the one-acre requirement as long as the lots are contiguous or directly across street rights-of-way. A minimum of twenty (20) units must be built in the first phase of construction.
 - (5) Retail establishments including but not limited to: bakeries; book, card, gift and stationary stores; building material sales; clothing; florists; grocery stores; and pet shops or others of a similar nature and subject to the following condition:
 - a. Temporary, portable outside display of merchandise is allowed on a daily basis but is limited to the area directly adjacent to the building occupied by the business and no more than five (5) feet from the building. A clear aisle shall be maintained for pedestrian access. Otherwise, no outside display or storage is permitted.
 - (6) Barber and beauty shops.
 - (7) Buildings and uses owned or operated by public governmental agencies.
 - (8) Business or commercial schools.
 - (9) Church worship facilities.
 - (10) Clinic, medical and dental, and related professional offices.
 - (11) Communication towers (SUP required). Towers, antennas and communication dishes located on a building may be extend a maximum of 15 feet above the building, but must be screened from view.
 - (12) Day nurseries.
 - (13) Dry cleaning and laundry services.
 - (14) Gasoline service stations, excluding major motor or transmission repair services (SUP required).
 - (15) Hotels, motels and inns.
 - (16) Mortuaries (SUP required).
 - (17) Professional offices.
 - (18) Restaurants.
 - (19) Veterinarian or animal clinic provided that no kennel or exercise runway shall be located outside the building.
 - (20) Video rental stores and movie theaters.
 - (21) Accessory buildings and uses customarily incidental to any of the above uses, provided that such not be objectionable because of odor, smoke, noise, vibration or similar nuisance. Dwelling units of 850 square foot minimum size shall be allowed as an accessory use to retail businesses.
 - (22) Non-accessory dwelling units of 650 square foot minimum size when located over a retail, restaurant or similar use on the first floor.
 - (23) Temporary buildings for uses incidental to construction work on the premises, which buildings shall be removed upon the completion or abandonment of construction work.
 - (24) Bed and breakfast (SUP required).
 - (25) Uses similar to the above mentioned permitted uses; provided activities conducted observe the requirements of all city ordinances.
 - (26) Private Utility Plants or Sub-stations (including alternative energy) (SUP required).
 - (27) Gas and oil drilling accessory uses (SUP required).
 - (28) Cemetery, columbarium, mausoleum and accessory uses (SUP required).
 - (29) Brewery, distillery, or winery.
 - (30) Bar (SUP required).
- (b) *Single-family detached and two-family requirements.*

- (1) *Maximum height.* No building shall exceed forty-five (45) feet or three and one-half (3-1/2) stories in height.
- (2) *Minimum dwelling size.* The minimum floor area of any single-family dwelling shall be one thousand seven hundred (1,700) square feet, exclusive of garages, breezeways and porches.
- (3) *Front yard.* No front setback is required.
- (4) *Side yard.* There shall be a side yard on each side of the lot having a width of not less than five (5) feet.
- (5) *Rear yard.* There shall be a rear yard having a depth of not less than twenty (20) feet. If a residential garage directly adjoins a rear alley, then the rear yard may be four (4) feet.

(c) *Single-family attached requirements.*

- (1) *Maximum height.* No building shall exceed seventy-five (75) feet in height.
- (2) *Minimum dwelling size.* The minimum floor area of any single-family attached dwelling shall be one thousand two hundred (1,200) square feet.
- (3) *Front yard.* No front setback is required.
- (4) *Side yard.* There shall be a side yard on each side of the lot having a width of not less than five (5) feet.
- (5) *Rear yard.* There shall be a rear yard having a depth of not less than six and one half (6.5) feet except if a residential garage directly adjoins a rear alley, then the rear yard may be four (4) feet.

(d) *Multi-family requirements.*

- (1) *Maximum height.* No building shall exceed seventy-five (75) feet in height excluding parapet walls. Parapet walls shall have a maximum height of eight (8) feet.
- (2) *Minimum dwelling size.* The minimum floor area of any multi-family dwelling shall be six hundred fifty (650) square feet, exclusive of garages, breezeways and porches.
- (3) *Front yard.* No front setback is required.
- (4) *Side yard.* There shall be a side yard on each side of the lot having a width of not less than five (5) feet.
- (5) *Rear yard.* There shall be a rear yard having a depth of not less than six and one half (6.5) feet except if a residential garage directly adjoins a rear alley, then the rear yard may be zero (0) feet.

(e) *Commercial and institutional building requirements.*

- (1) *Maximum height.* No building shall exceed seventy-five (75) feet in height excluding parapet walls. Parapet walls shall have a maximum height of eight (8) feet.
- (2) *Front yard.* No front setback is required.
- (3) *Side yard.* No side yard is required.
- (4) *Rear yard.* A rear yard of not less than ten (10) feet in depth shall be provided.

(f) *Other setbacks.*

- (1) The old town mixed use 2 district shall not be subject to the following provisions contained elsewhere in this ordinance:
 - a. "On a corner lot, the width of the yard along the side street shall not be less than any required front yard on the same side of such street between intersecting streets".
 - b. "...no accessory building shall be...closer than five feet to any rear or side lot line, and, in the case of corner lots, not less than the distance required for buildings from side streets".
 - c. "In any residential or MF district where 25 percent or more of the frontage upon the same side of a street between intersecting streets is occupied or partially occupied by a building or buildings having front yards of greater depth than is required by this chapter, no other lot upon the same side of such street between

such intersecting streets shall be occupied by a building with a front yard of less than the least depth of any such existing front yards.”

- (2) There shall be a minimum ten (10) foot setback on the driveway side of a lot when there is not sufficient maneuvering space on site to allow vehicles to exit the lot without backing onto a street identified as a thoroughfare on the Thoroughfare Plan.

This Section Office Use Only	
Case:	
PZ: 3-15-16	CC:
Sign/s Picked Up By:	YES



LEWISVILLE

ZONE CHANGE APPLICATION

Owner's Name:	HAT GROUP LLC	
Company Name:	SAME	
Mailing Address:	1170 CORPORATE DR. W. STE 204 ARLINGTON TX 76006	
Phone:	972-533-8353	Cell: Same
E-Mail:	henry@redgroups.com	
Owner Signature:		Date: 2-29-16
Printed Name:	HENRY RAHMANI	

Applicant/Agent Name:	HENRY RAHMANI	
Company Name:	HAT GROUP LLC	
Mailing Address:	1170 CORPORATE DR. W. STE 204 ARLINGTON TX 76006	
Work Phone:	972-533-8353	Cell: Same
E-Mail:	henry@redgroups.com	
Applicant/Agent Signature:		Date: 2-29-16
Printed Name:	HENRY RAHMANI	

Current Zoning:	GB	Requested Zoning:	OTMUZ	Acres:	0.145
Legal Description (Lot/Block/Tract/Abstract):	J.W. King, Abstrat 696, Tract 194; " " " " Tract 193				
Address/Location:	277 Simill St.				

Application and Sign Fees:

1/2 acre up to 1/4 acre	\$ 150.00
1/4 acre up to 1/2 acre	\$ 200.00
1/2 acre up to 1 acre	\$ 400.00

25 acres up to 50 acres	\$ 750.00
50 acres up to 100 acres	\$1,000.00
100 acres and more	\$1,500.00

Qty: 1	Zone Change Signs - \$35 each 1 sign required for each 5 acres (max. 5 per site)	\$ 35
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Sign(s) must be posted a minimum of ten (10) days prior to the Planning & Zoning hearing date.

Amount Due (application & sign fee)	\$ 185 35
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Application fee waived OT, only sign cost to pay - MP.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, AMENDING THE ZONING ORDINANCE OF THE CITY OF LEWISVILLE, TEXAS BY REZONING AN APPROXIMATELY 0.145-ACRE TRACT OF LAND OUT OF J.W. KING SURVEY, ABSTRACT NO. 696; LOCATED ON THE WEST SIDE OF SOUTH MILL STREET APPROXIMATELY 350 FEET SOUTH OF ELM STREET AT 277 SOUTH MILL STREET; FROM GENERAL BUSINESS DISTRICT (GB) ZONING TO OLD TOWN MIXED USE 2 DISTRICT (OTMU2) ZONING; CORRECTING THE OFFICIAL ZONING MAP; PRESERVING ALL OTHER PORTIONS OF THE ZONING ORDINANCE; PROVIDING A CLAUSE RELATING TO SEVERABILITY; DETERMINING THAT THE PUBLIC INTERESTS AND GENERAL WELFARE DEMAND THIS ZONING CHANGE AND AMENDMENT THEREIN MADE; PROVIDING A PENALTY; AND DECLARING AN EMERGENCY.

WHEREAS, applications were made to amend the Official Zoning Map of Lewisville, Texas by making applications for same with the Planning and Zoning Commission of the City of Lewisville, Texas, as required by State statutes and the Zoning Ordinances of the City of Lewisville, Texas, said Planning and Zoning Commission has recommended that rezoning of the approximately 0.145-acre property described in the attached Exhibit “A” (the “Property”) be **approved**, and all the legal requirements, conditions and prerequisites having been complied with, the case having come before the City Council of the City of Lewisville, Texas, after all legal notices, requirements, conditions and prerequisites having been complied with; and,

WHEREAS, the City Council of the City of Lewisville, Texas, at a public hearing called by the City Council of the City of Lewisville, Texas, did consider the following factors in making a determination as to whether this requested change should be granted or denied: effect on the congestion of the streets; the fire hazards, panics and other dangers possibly present in the securing

of safety from same; the effect on the promotion of health and the general welfare; effect on adequate light and air; the effect on the overcrowding of the land; the effect of the concentration on population; the effect on the transportation, water, sewerage, schools, parks and other public facilities; and,

WHEREAS, the City Council further considered among other things the character of the district and its peculiar suitability for particular uses and with the view to conserve the value of buildings, encourage the most appropriate use of land throughout this City; and,

WHEREAS, the City Council of the City of Lewisville, Texas, does find that there is a public necessity for the zoning change, that the public interest clearly requires the amendment, that the zoning changes do not unreasonably invade the rights of adjacent property owners; and,

WHEREAS, the City Council of the City of Lewisville, Texas, does find that the change in zoning lessens the congestion in the streets; helps secure safety from fire, panic and other dangers; promotes health and the general welfare; provides adequate light and air; prevents the overcrowding of land; avoids undue concentration of population; facilitates the adequate provisions of transportation, water, sewerage, schools, parks and other public requirements; and,

WHEREAS, the City Council of the City of Lewisville, Texas, has determined that there is a necessity and need for this change in zoning and has also found and determined that there has been a change in the conditions of the property surrounding and in close proximity to the Property since it was originally classified and, therefore, feels that a change in zoning classification for the Property is needed, is called for, and is in the best interest of the public at large, the citizens of the City of Lewisville, Texas, and helps promote the general health, safety, and welfare of this community.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, THAT:

SECTION 1. The Zoning Ordinance of the City of Lewisville, Texas, be, and the same is hereby amended and changed in that the zoning of the Property is hereby changed to **OLD TOWN MIXED USE 2 DISTRICT (OTMU2) ZONING.**

SECTION 2. The City Manager, or her designee, is hereby directed to correct the official zoning map of the City of Lewisville, Texas, to reflect this change in zoning.

SECTION 3. That in all other respects the use of the tract or tracts of land hereinabove described shall be subject to all the applicable regulations contained in said City of Lewisville Zoning Ordinance and all other applicable and pertinent ordinances of the City of Lewisville, Texas.

SECTION 4. That the zoning regulations and districts as herein established have been made in accordance with the comprehensive plan for the purpose of promoting health, safety, and the general welfare of the community. They have been designed with respect to both present conditions and the conditions reasonably anticipated to exist in the foreseeable future, to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; provide adequate light and air; to prevent overcrowding of land, to avoid undue concentration of population; facilitate the adequate provisions of transportation, water, sewage, parks and other public requirements, and to make adequate provisions for the normal business, commercial needs and development of the community. They have been made with reasonable consideration, among other things of the character of the district, and its peculiar suitability for the particular uses and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the community.

SECTION 5. This Ordinance shall be cumulative of all other ordinances of the City of Lewisville, Texas, affecting zoning and shall not repeal any of the provisions of said ordinances, except in those instances where provisions of those ordinances which are in direct conflict with the provisions of this Ordinance.

SECTION 6. That the terms and provisions of this Ordinance shall be deemed to be severable and that if the validity of the zoning affecting any portion of the Property shall be declared to be invalid, the same shall not affect the validity of the zoning of the balance of the tract or tracts of land described herein.

SECTION 7. Any person, firm or corporation who violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof in the Municipal Court, shall be subject to a fine of not more than \$2,000.00 for each offense, and each and every day such offense is continued shall constitute a new and separate offense.

SECTION 8. The fact that the present Zoning Ordinance and regulations of the City of Lewisville, Texas are inadequate to properly safeguard the health, safety, peace and general welfare of the inhabitants of the City of Lewisville, Texas, creates an emergency for the immediate preservation of the public business, property, health, safety and general welfare of the public which requires that this Ordinance shall become effective from and after the date of its final passage, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, BY A VOTE OF _____ TO _____, ON THIS THE 4TH DAY OF APRIL, 2016.

ORDINANCE NO. _____

Page 5

APPROVED:

Rudy Durham, MAYOR

ATTEST:

Julie Heinze, CITY SECRETARY

APPROVED AS TO FORM:

Lizbeth Plaster, CITY ATTORNEY

ORDINANCE NO. _____

Exhibit A
Legal Description

ZONING EXHIBIT A

Legal Description:

BEING a tract of land located in the J. W. King Survey, Abstract Number 696, Lewisville, Denton County, Texas, and being all of a tract of land to Hat Group LLC. recorded in Document Number 2015-131482, Deed Records Denton County, Texas, and being more particularly described as follows:

BEGINNING at a PK Nail found for the northeast corner of said Hat Tract same being the southeast corner of a tract of land described by deed to Kenneth W. Owens recorded in Document Number 2004-87752, Deed Records, Denton County, Texas, also lying on the east line of said Mill Street a called 80 feet wide right-of-way;

THENCE South 00 degrees 46 minutes 51 seconds East along the west line of said Mill Street and the east line of said Hat tract a distance of 40.00 feet to a PK Nail found for the southeast corner of said Hat tract;

THENCE South 89 degrees 35 minutes 30 seconds West departing the west line of said Mill Street and along the south line of said Hat tract, a distance of 200.94 feet to a 1/2 inch iron rod with cap stamped "G-A CONSULTANTS" found for the most southerly southeast corner of said Lot 2, Block A, South Village Addition, the southwest corner of said Hat tract and the northeast corner of Lot 1, Lewisville Center Addition, an addition to the City of Lewisville as recorded in Cabinet B, Page 340 Plat Records of Denton County, Texas;

THENCE North 64 degrees 22 minutes 01 second East, along the northwest line of said Hat tract, a distance of 93.77 feet to a PK Nail found for the northwest corner of same;

THENCE North 89 degrees 34 minutes 27 seconds East along the common line of said Owens tract and said Hat tract a distance of 115.85 feet to the POINT OF BEGINNING, containing 6,332 square Feet, or 0.145 of an acre of land.

MEMORANDUM

TO: Donna Barron, City Manager

FROM: David Salmon, P.E., City Engineer

VIA: Eric Ferris, Assistant City Manager

DATE: March 14, 2016

SUBJECT: Approval of a Transportation Consultation Services Agreement With Innovative Transportation Solutions, Inc. in the Amount of \$90,000; and Authorization for the City Manager to Execute the Agreement.

BACKGROUND

Innovative Transportation Solutions, Inc. has been providing consultation services on a variety of transportation issues for the City of Lewisville since March 2000. The City Council last approved a one-year contract with Innovative Transportation Solutions, Inc. (ITS, Inc.) in the amount of \$90,000 in March 2015 to provide a variety of services including traffic analyses, assisting staff in expediting time lines and funding issues with TxDOT through the NCTCOG on multiple state routes within the city, funding developments, etc.

ANALYSIS

A variety of transportation related projects are still ongoing within the City of Lewisville that require outside consultant services. Innovative Transportation Solutions, Inc. has assisted the City and continues to assist with the COG driven transportation calls for projects, traffic modeling issues and coordinating work efforts between Denton County and TxDOT on the IH-35E reconstruction. ITS, Inc. has worked successfully on the inclusion of several key City projects in Denton County TRIP-08 bond program. ITS, Inc. is involved in funding alternatives being discussed by TxDOT and mandated by state statute. ITS, Inc. has also helped City staff coordinate with TxDOT on issues related to Old Town Sustainable Development projects, Valley Ridge Blvd funding and other local transportation issues. They were instrumental this past year in securing \$4,700,000 in new RTR funding for Valley Ridge Blvd.

In the upcoming year, ITS will be working with City & NCTCOG staff to secure \$3,000,000 in state & federal funding for the Mill Street at Business 121 realignment, \$2,400,000 additional RTR funding for Valley Ridge Blvd., additional RTR funds for the Main & Mill Street project, locate possible funding opportunities for a pedestrian bridge over I-35, assist City staff with NCTCOG environmental documents and TIP modifications related to shifting funds between

Subject: Transportation Consultation Services
March 28, 2016
Page 2 of 2

segments of Corporate Drive and coordination of City interests with regard to the upcoming Denton County bond program and Proposition 7 Funds.

Innovative Transportation Solutions, Inc. is seeking a renewal of their annual contract in the amount of \$90,000. Funding is available in the General Operating Budget Account Number 101.30.200.4358 (Consultant/Advisory Fees).

RECOMMENDATION

It is City staff's recommendation that the City Council approves the agreement as set forth in the caption above.

TRANSPORTATION SERVICES CONTRACT

This TRANSPORTATION SERVICES CONTRACT (“Agreement”) is entered into by and between Innovative Transportation Solutions, Inc. (“ITS”) a Texas Corporation, and the City of Lewisville (“City”). ITS is pleased to submit this proposal to the City of Lewisville. ITS proposes the following scope of services and specific tasks.

I. INTRODUCTION

ITS is a full-service Transportation Consulting Firm led by John R. Polster, Sr. with an expertise in governmental affairs and extensive knowledge in the area of facilitating major transportation and infrastructure projects through local, state, and federal processes.

II. TERM

The term of this Agreement will be for one year beginning April 1, 2016, and ending March 31, 2017.

III. OBJECTIVES

As the City’s Transportation Consultants, ITS will serve as the entity responsible for such matters as project management, physical design, governmental interaction on local, state, and federal levels and fiscal considerations.

ITS proposes to move the City’s Transportation Projects forward utilizing its comprehensive knowledge and understanding of the City’s needs through the following objectives:

- Background investigations and analyses for all Projects;
- Develop a “critical path” time line identifying the actions necessary to bring each Project to completion;
- Assist the City in drafting and negotiating TxDOT minute orders and funding agreements, when appropriate;
- Develop a strategy for each Project based on the background investigation, critical path and input from the City; and
- Implement the developed strategy in an effort to bring each Project to completion.

IV. SCOPE OF SERVICES

In order to meet the City's Transportation needs, ITS proposes that the two parties enter into an agreement, where ITS will provide the following Transportation Consultation services for the City:

ITS will provide other transportation consulting services as directed by the appropriate City staff.

As a part of this Enhancement proposal, ITS will actively pursue all transportation related issues as identified by the City. ITS will continue dialogue with the City and appropriate City staff in order to ascertain the relative priority of each project to other projects and attend City of Lewisville Council meetings, when appropriate, to provide updates on all transportation activities. ITS will perform all tasks, as assigned by City Council or Staff related to advancing the transportation needs of the City of Lewisville.

V. COMPENSATION TERMS

In consideration of professional services rendered monthly by ITS, the City of Lewisville agrees to pay ITS a reasonable and customary annual fee of NINETY THOUSAND AND 00/100 DOLLARS (\$90,000.00) (the "Annual Fee") per year. The City of Lewisville agrees to pay ITS SEVEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$7,500.00) (the "Monthly Payment") per month towards the City's annual fee obligation. ITS shall submit to the City a monthly itemized statement for all professional services rendered. The City of Lewisville shall make Monthly Payment, processing the itemized statement in its usual and customary fashion, making all reasonable efforts to process the monthly payment within thirty (30) business days from the City's receipt of each monthly payment.

ITS shall submit its monthly invoices to the City of Lewisville's City Manager, at 151 West Church Street, Lewisville, Texas 75057.

VI. PROVISIONS

Services covered by this authorization shall be performed in accordance with the following Provisions:

1. AUTHORIZATION TO PROCEED

Signing this form shall be construed as authorization by CLIENT for Innovative Transportation Solutions ("ITS") to proceed with work, unless otherwise provided for in the authorization.

2. COST ESTIMATES

Any cost estimates provided by ITS will be on a basis of experience and judgement, but since it has no control over market conditions or bidding procedures, ITS cannot warrant that bids or ultimate construction costs will not vary from these cost estimates.

3. PROFESSIONAL STANDARDS

ITS shall be responsible, to the level of competency presently maintained by other practicing professional engineers in the same type of work in CLIENT'S community, for the professional and technical soundness, accuracy, and adequacy of all design, drawings, specifications, and other work and materials furnished under this Authorization. ITS makes no other warranty, expressed or implied.

4. LEGAL EXPENSES

In the event legal action is brought by CLIENT or ITS against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for fees, costs, and expenses as may be set by the court.

5. ADDITIONAL SERVICES

Services in addition to those specified in the "Scope" above, will be provided by ITS if authorized in a separate addendum signed by both parties. Additional services will be paid for by CLIENT as negotiated. Any agent of the CLIENT who has authorization to request or authorize work or in any way act on behalf of the CLIENT must sign this agreement or be appointed by the CLIENT through written notification to ITS. The CLIENT's signature indicates his / her agreement to pay for changes in the scope of work requested by such an agent acting on behalf of the CLIENT.

6. NON ASSIGNABLE CONTRACT

This contract is not assignable, except with prior written consent of ITS, and no assignment shall relieve the CLIENT of any obligations under this contract.

In case any one or more of the provisions contained in this Agreement shall be held illegal, the enforceability of the remaining provisions contained herein shall not be impaired thereby.

7. CONFLICT OF INTEREST

It is understood that as a consulting firm, ITS works with a variety of clients throughout the region with a broad scope of interests. Should the occasion arise where an ITS client has interests that must be brought before the City, ITS will notify the City so that conflict of interest issues can be resolved.

VII. WITHDRAWAL

The City agrees that ITS shall be entitled to withdraw from the agreement upon failure of the City to make timely payments as required by the Fee agreement. The City shall be entitled to withdraw from the engagement upon thirty (30) days written notice by the City to ITS. In the event of such withdrawal, ITS shall not be entitled to monthly payments for the months remaining in the term of this agreement after the withdrawal. Notice sent pursuant to this term, or any other notices required by this agreement shall be sent by facsimile transmission or certified mail to the following addresses:

City of Lewisville
151 West Church Street
Lewisville, Texas 75057

Innovative Transportation Solutions, Inc.
2701 Valley View Lane
Farmers Branch, Texas 75234
(972) 484-2525
FAX (972) 484-4545

VIII. CONCLUSION

ITS looks forward to the opportunity to assist you with your transportation needs. Thank you for your time and interest in our firm's qualifications. Should you have any questions or comments, please do not hesitate to contact me at (972) 484-2525.

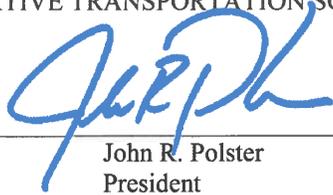
CITY OF LEWISVILLE, TEXAS

INNOVATIVE TRANSPORTATION SOLUTIONS, INC.

BY: _____

Donna Barron
City Manager

BY: _____



John R. Polster
President

ATTEST: _____

Julie Heinze, TRMC/CMC
City Secretary

ATTEST: _____



DATE: _____

DATE: March 14, 2016

CITY OF LEWISVILLE
151 West Church Street
Lewisville, Texas 75057

INNOVATIVE TRANSPORTATION SOLUTIONS, INC.
2701 Valley View Lane
Farmers Branch, Texas 75234

Approved As To Form:

Lizbeth Plaster
City Attorney

MEMORANDUM

TO: Donna Barron, City Manager

THROUGH: Brenda Martin, Finance Director

FROM: Todd White, Purchasing Manager

DATE: March 23, 2016

SUBJECT: **Approval of a Contract Award for Lake Park Soccer and Parking Renovations to C. Green Scaping, LP, Fort Worth, Texas in the Amount of \$654,498.60; and Authorization for the City Manager to Execute the Contract.**

BACKGROUND

A request for competitive sealed proposals was created and posted on Bidsync.com January 8, 2016. Specifications were created in accordance with Texas Government Code Chapter 2269, *Contracting and Delivery Procedures for Construction Projects*. Although not considered a traditional “construction project”, this law applies to construction or improvements to real property.

ANALYSIS

Proposals were due February 11, 2016 and eight were received. An evaluation team was created to review, analyze, and score the proposals in accordance with weighted factors that were listed in the specifications. The evaluation team consisted of myself, Bob Monaghan, Director of Parks and Leisure and Larry Apple, Parks Manager. One of the proposals received was deemed non-responsive due to pricing irregularities. Seven proposals were deemed responsive and were evaluated. Each proposal was evaluated using the following criteria:

Cost of Construction	40%
Previous Related Experience	50%
Self-Performance	15%
Athletic Turf Experience	25%
Turf Projects	10%
Project Schedule – Final Completion	10%

At the conclusion of the evaluation, C. Green Scaping, LP received the highest score. Although not the lowest cost to the City, their final completion date of 90 calendar days was much more favorable than the completion date of 143 calendar days as submitted by the proposer with the lowest cost.

Subject: Contract award C. Green Scaping, LP

March 23, 2016

Page 2 of 2

RECOMMENDATION

It is City's staff recommendation that the City Council approves the contract as set forth in the caption above.

MEMORANDUM

TO: Todd White, Purchasing Manager

FROM: Bob Monaghan, Director of Parks & Leisure Services

DATE: March 23, 2016

SUBJECT: Approval of a Contract Award for Lake Park Soccer and Parking Renovations to C. Green Scaping, LP, Fort Worth, Texas in the Amount of \$654,498.60; and Authorization for the City Manager to Execute the Contract.

BACKGROUND

The Lake Park soccer field turf renovation was originally set up to be a four phase project with two of the eight fields completed each year to minimize the effect of taking them out of service. The purpose of the project is to replace the common Bermuda grass with a hybrid sports turf that holds up better under heavy play conditions and recovers faster providing a high quality playing surface. Two fields were renovated in 2006 and two in 2007. With the new Railroad Park Complex nearing completion, it was then decided that the four remaining fields should be renovated as one project after the new complex added eight additional fields. Upon completion, the turf quality at the Lake Park soccer fields will equal the quality of the Railroad Park fields. This project will also provide ADA compliant walkways to the bleacher areas. Funding is available in Capital Improvements Projects.

ANALYSIS

Seven responsive request for proposals were received. An eight submittal was received but was deemed non-responsive due to pricing irregularities. Each proposal was evaluated using the following criteria:

Cost of Construction	40%
Previous Related Experience	50%
Self-Performance	15%
Athletic Turf Experience	25%
Turf Projects	10%
Project Schedule – Final Completion	10%

An evaluation committee was formed to review the proposals and rank each in accordance with the stated evaluation factors. The evaluation committee consisted of Todd White, Purchasing Manager, Bob Monaghan, Parks & Leisure Services Director, and Larry Apple, Parks Manager.

Subject: Contract award C. Green Scaping, LP

March 23, 2016

Page 2 of 2

After all scoring was completed, it was determined that C. Green Scaping, LP received the highest score from the evaluation committee and had also submitted the shortest completion time of 90 Calendar days.

RECOMMENDATION

It is City staff's recommendation that the City Council approves the contract as set forth in the caption above.

CITY OF LEWISVILLE																									
PURCHASING DIVISION																									
RFP # 16-17-C																									
LAKE PARK RENOVATIONS																									
		RLM EARTHCO				C.GREEN SCAPING, LP				COLE CONSTRUCTION INC.				AMERICAN LANDSCAPE SYSTEMS, INC.				SCHMOLDT CONSTRUCTION, INC.				FORT WORTH CIVIL CONSTRUCTORS, LLC			
		FORT WORTH, TEXAS		Score	FORT WORTH, TEXAS		Score	FORT WORTH, TEXAS		Score	LEWISVILLE, TEXAS		Score	PLANO, TEXAS		Score	CELINA, TEXAS		Score	FORT WORTH, TEXAS		Score			
Cost of Construction	40%	\$584,428.43			\$623,332.00			\$638,000.00			\$729,240.25			\$739,256.00			\$751,266.00			\$990,400.00					
5% Contingency		\$29,221.42			\$31,166.60			\$31,900.00			\$36,462.01			\$36,962.80			\$37,563.30			\$49,520.00					
Total Cost		\$613,649.85		40	\$654,498.60		38	\$669,900.00		37	\$765,702.26		32	\$776,218.80		32	\$788,829.30		31	\$1,039,920.00		24			
Previous Related Experience	50%																								
Self Performance	15%	84	Percent	13	98	Percent	15	Not Listed	0	55	Percent	8	65	Percent	10	10	Percent	2	60	Percent	9				
Athletic Turf Experience	25%			25			25		25			25			25			25			25				
Turf Projects	10%			10			10		10			10			10			10			10				
Project Schedule - Final Completion	10%	143	Calendar Days	6	90	Calendar Days	10	165	Calendar Days	5	140	Calendar Days	6	150	Calendar Days	6	150	Calendar Days	6	150	Calendar Days	6			
				94			98		77				82			83			74		74				

NOTE: AN OFFER WAS RECEIVED FROM GADBERRY GENERAL CONTRACTING & CONSTRUCTION BUT WAS DEEMED NON-RESPONSIVE DUE TO PRICING IRREGULARITIES.



AIA[®]

Document A101[™] – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the _____ day of March _____ in the year 2016

(In words, indicate day, month and year)

BETWEEN the Owner:

(Name, address and other information)

City of Lewisville, Texas
151 W. Church Street
Lewisville, TX 75057-9002
Attn: Donna Barron, City Manager
Telephone: (972) 219-3400
Facsimile: (972) 219-3412

and the Contractor:

(Name, address and other information)

C. Green Scaping, LP
2401 Handley Ederville Rd.
Fort Worth, TX 76118
817-577-9299

for the following Projects:

(Name, location, and detailed description)

Lake Park Soccer and Parking Renovations

The Architect:

(Name, address and other information)

Larry P. O'Flinn, ASLA
Principal Director, Planning + Landscape Architecture
Dunaway Associates, LP
500 Bailey Avenue, Suite 400
Fort Worth, Texas 76107
Tel: [817-335-1121](tel:817-335-1121)
Fax: [817-335-7437](tel:817-335-7437)

The Owner and Contractor agree as follows:

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201[™]-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS
10	INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9. The General Conditions which constitute part of this Contract is AIA Document A 201 2007 Edition, General Conditions of the Contract for Construction, as modified by the Owner, and any reference in the Contract Documents to General Conditions of the Contract, or to AIA Document A 201-2007 shall mean the AIA Document A201-2007 as modified by Owner. The term "Project Manual" as used in the Contract refers to the complete collection of the Contract Documents assembled or referenced in a volume for the performance of the Work.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date fixed in a notice to proceed issued by the Owner. *(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

The date of commencement will be immediately upon issuance of a notice to proceed by the Owner. If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

N/A

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion not later than seventy-five (75) calendar days from the date of commencement and shall achieve Final Completion of the entire Work not later than ninety (90) calendar days from the date of commencement.

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work

Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

Time is of the essence for the Contractor's performance of the Work. See paragraph 11.1 below for liquidated damage provision.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Six Hunderd Fifty-Four Thousand Four Hundred Ninety-Eight and 60/100 Dollars_(\$654,498.60), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 4.3 Unit prices, if any: None.

(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item

Units and Limitations

Price Per Unit

§ 4.4 Allowances included in the Contract Sum, if any: None

(Identify allowance and state exclusions, if any, from the allowance price.)

Item

Price

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

N/A

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the First day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the First day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)*

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in the AIA Document A201™–2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent (5%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect or Owner has withheld or nullified a Certificate for Payment as provided the Contract Documents.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to the Work and unsettled claims.

(Paragraph deleted)

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

Notwithstanding any provision in the Contract Documents to the contrary, retainage on the Contract Sum withheld by Owner and payable to the Contractor under the terms of the Contract Documents shall be due thirty (30) days after Final Payment is due. There shall be no reduction in retainage prior to Final Payment.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, except for retainage, shall be made by the Owner to the Contractor when

- .1 The Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in the AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 A final Certificate for Payment has been issued by the Architect and approved by Owner;
- .3 Contractor has provided all submittals and training, and has satisfied all close-out obligations required by the Contract Documents for Final Payment; and
- .4 The surety has consented to Final Payment.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

The Owner's final payment to the Contractor shall not be made until the thirty-first (31st) day after and subject to all of the following conditions precedent to final payment having occurred:

- .1 Those conditions stated in Section 5.2.1 have all been satisfied, each of which is an independent condition precedent to final payment;
- .2 The requirements of Section 9.10.2 of AIA Document A201-2007 have all been satisfied, each of which is an independent condition precedent to final payment;
- .3 A final Application for Payment and final accounting has been submitted by the Contractor and approved by the Owner and Architect; and
- .4 The Contractor has submitted a final release of lien (conditioned on final payment) and claims in the form required by the Owner from itself and each Subcontractor and supplier

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

N/A

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

Arbitration pursuant to Section 15.4 of AIA Document A201-2007

Litigation in a court of competent jurisdiction

Other *(Specify)*

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Undisputed payments not paid when due shall bear interest at the rate, and in accordance with the provisions set forth in, Section 2251.021 et seq. of the Texas Government Code.

(Insert rate of interest agreed upon, if any.)

N/A

§ 8.3 The Owner's representative:

(Name, address and other information)

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User Notes:

(1851356490)

City of Lewisville
151 West Church Street
Lewisville, TX 75057-9002
Attention: Donna Barron, City Manager
Telephone: 972-219-3400
Facsimile: 972-219-3412

§ 8.4 The Contractor's representative:
(Name, address and other information)

[mailto:Curtis J. Green](mailto:Curtis.J.Green)
C. Green Scaping, LP
2401 Handley Ederville Rd. Fort Worth, TX 76118
817-577-9299

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

§ 8.6.1 OWNER CONTINGENCY

The Contract Sum includes a "Contingency" initially in the amount of \$31,166.60. The Contractor shall separately track and account for the Contingency and it shall be separately set forth in the Schedule of Values submitted by the Contractor with each Application for Payment. The Contingency is for the convenience and sole use of the Owner for budgeting and financing purposes and may be used by the Owner to cover changes in the scope of Work or other costs for which the Owner is responsible. Contractor shall not be entitled to apply the Contractor's Fee or other markup for overhead or profit on costs expended from the Contingency. Use of the Contingency is subject to the prior written approval of the Owner. All unused Contingency shall be retained by the Owner.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor, and all Exhibits hereto.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction, as modified by Owner.

§ 9.1.3 The Supplementary and other Conditions, if any of the Contract.: None

Document	Title	Date	Pages
----------	-------	------	-------

§ 9.1.4 The Specifications provided to Contractor and set out or referenced in the Project Manual:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Contract Documents and Specifications for Lake Park Soccer & Parking Renovations, Proposal # 16-17-C;
January 2016

(Table deleted)

§ 9.1.5 The Drawings provided to Contractor and set out or referenced in the Project Manual:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Construction Documents for

Lake Park Soccer and Parking Renovations, January 8, 2016

(Table deleted)

§ 9.1.6 The Addenda, if any contained or referenced in the Project Manual or otherwise provided by Owner or Architect to Contractor:

Number	Date	Pages
One	January 20, 2106	1-6
Two	January 25, 2016	1-16
Three	January 27, 2016	16
Four	January 29, 2016	1
Five	February 2, 2016	1-4
Six	February 8, 2016	1-3

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:
N/A
- .2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor’s bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)
 - (1) all solicitation documents issued by Owner in connection with the Project, such as Owner’s Request for Sealed Bids, Request for Sealed Proposals, etc., including all addenda or amendments thereto, except as modified by the terms of the Contract;
 - (2) Contractor’s response to Owner’s solicitation, such as Contractor’s bid, or proposal, except as modified by the terms of the Contract; and
 - (3) any additional documents contained in the Project Manual or identified by Owner or Architect as being part of the Contract Documents.

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in of *(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)*

Type of insurance or bond	Limit of liability or bond amount (\$ 0.00)
See Exhibit B Insurance Requirements – General Contract For Services, Exhibit B to A101 Contract Specifications	Bonds shall be in the amount of 100% of the Contract Sums, as adjusted by Change Order; See Section 11.7 below, which is incorporated herein by this reference as is set forth in its entirety.

ARTICLE 11 ADDITIONAL CONTRACT TERMS

§ 11.1 Owner shall have the right to assess against the Contractor the sum of \$240.00 per day for each and every calendar day of unexcused delay in achieving Substantial Completion. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at or before the time of executing this Agreement. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not

required to, withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

§ 11.2 The Contract shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue for any action brought in connection with the Contract Documents shall lie in courts of competent jurisdiction in Denton County, Texas and if an action cannot be instituted in such courts, then in the federal courts for the Eastern District, Sherman Division.

§ 11.3 In the event of any suit or action arising out of or relating to the Contract, the prevailing party in such proceeding shall be entitled to recover reasonable attorney fees, expenses and court and other costs. If Owner is a municipality, reference is expressly made to the provisions of Section 271.159 of the Texas Local Government Code. The parties agree to mediate any dispute arising in connection with the Contract Documents in good faith prior to filing suit for damages.

§ 11.4 Notice. All notices required to be given under the Contract must be in writing. Any notice required or permitted to be given under the Contract shall be deemed delivered four days after it is deposited in the U.S. Mail, when sent by certified mail, return receipt requested, postage prepaid, correctly addressed to the party as set forth below, with a copy sent concurrently to such party by facsimile as set forth below:

To Owner:

City of Lewisville, Texas
151 West Church Street
Lewisville, TX 75057-9002
Attn: Donna Barron, City Manager
Telephone: (972) 219-3400
Facsimile: (972) 219-3412

With Copy to Architect:

Larry P. O'Flinn, ASLA
Principal Director, Planning + Landscape Architecture
Dunaway Associates, LP
500 Bailey Avenue, Suite 400
Fort Worth, Texas 76107
Tel: [817-335-1121](tel:817-335-1121)
Fax: [817-335-7437](tel:817-335-7437)

To Contractor:

Curtis J. Green
C. Green Scaping, LP
2401 Handley Ederville Rd. Fort Worth, TX 76118
817-577-9299

Notice given in any other manner will be deemed delivered if and when actually received Any person named above may change its address for notice by providing notice of such change in the manner set forth herein.

§ 11.5 Contractor shall maintain all insurance required in Exhibit "A" attached hereto and incorporated herein.

§ 11.6 Contractor shall comply with the prevailing wage rate requirements set forth in Chapter 2258 of the Texas Government Code, and shall require subcontractors to comply with the applicable provisions of said law. Contractor and each subcontractor shall pay not less than the prevailing wage rates as shown in Exhibit "B" attached hereto and incorporated herein.

Init.

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User Notes:

(1851356490)

§ 11.7 Contractor shall deliver to Owner Payment and Performance Bonds, each in the penal sum of \$654,498.60, no later than 10 days after the execution of this Agreement by Contractor. Each bond must be in the amount of 100% of the Contract Sum and must be issued by a corporate surety authorized to do business in the State of Texas. The bonds must be in form approved by or supplied by Owner and must comply with the requirements of Chapter 2253 of the Texas Government Code, and other applicable law, including the requirements of Section 7.19-1 of the Texas Insurance Code regarding reinsurance if the bond exceeds 10% of the Surety's capital and surplus. All sureties must be listed as approved sureties by the U.S. Department of Treasury.

Upon Substantial Completion of the Work, and acceptance by Owner, Contractor will furnish a two-year maintenance bond covering Contractor's warranty period obligations for the two years subsequent to Substantial Completion as provided in Section 12.2.2 of the General Conditions. The bonds shall be in form approved or supplied by Owner, issued by a corporate surety authorized to do business in the State of Texas and listed as approved by the U.S. Department of Treasury.

- .1 In the event any surety on the bonds becomes insolvent or is otherwise unable to perform its obligations under the bonds, the Contractor shall provide substitute bonds or equivalent security satisfactory to the Owner to protect the interests of Owner and of persons furnishing labor and materials in the prosecution of the Work.
- .2 Contractor shall not begin any Work on this Project until the payment and performance bonds and required insurance have been furnished by Contractor and approved by Owner.

§ 11.8 Pursuant to Section 406.096 of the Texas Labor Code, by execution of the Contract, Contractor certifies to Owner that it has Worker's Compensation insurance coverage for each employee of the Contractor employed on this Project. Contractor shall obtain from each Subcontractor a certificate which certifies that the Subcontractor has Worker's Compensation insurance coverage for each employee of the Subcontractor employed on this Project and shall promptly provide Owner with all such certificates.

§ 11.9 Contractor shall ensure that subcontracts with Subcontractors for this Project are consistent with and reflective of the terms of the Contract Documents applicable or relevant to Subcontractors, including, but not limited to, the prevailing wage rate requirements and the Labor Code requirements set forth above, as well as Owner's rights and remedies under the Contract Documents.

§ 11.10 All rights and remedies of Owner provided in the Contract Documents are in addition to all other rights and remedies provided by law or equity. All such rights and remedies are cumulative, and not exclusive, and may be exercised concurrently and/or successively.

§ 11.11 Change Orders When a cost or credit for a proposed change is requested from the Contractor, the Contractor shall submit an itemized breakdown of labor and materials for all trades involved, showing quantities and unit costs and/or credit on each item, as provided in Section 7.3.11 of the General Conditions, as well as profit and overhead, and the estimated impact of the change on the construction schedule.

- .1 Unless otherwise expressly agreed upon by the parties, the percentages for overhead and profit to be allowed to the Contractor and subcontractors on increases shall not exceed the following:

Combined Percentage Allowed (Overhead and Profit)

To Contractor for Work performed by the contractor's own forces -- 10%.

To Contractor for work performed by other than his own forces -- 5%.

To Subcontractor for Work performed by his own forces -- 10%.

To Subcontractor for work performed by other than his own forces -- 5%.

Allowable percentages shall include all costs for preparing change order (office personnel including field layout and supervision if required by the change).

For any changes in Work, overhead and profit will be calculated, at a maximum, for the Contractor and at most one subcontractor. Calculations shall be made in accordance with the provisions of Article 7 of the General Conditions and any other applicable provisions of the Contract Documents. On proposals involving both increases and

decreases in the Cost of the Work, overhead and profit will be allowed on the net increase. No percentages for overhead and profit will be allowed on tax.

- .2 For change orders, the Contractor has the option of using one of the following methods of calculating the General Conditions associated with a particular change order:
 - Itemize as a separate element general conditions costs required by a particular change order; or
 - Add **10%** of the Cost of the Work included in a particular Change Order.

This Agreement entered into as of the day and year first written above.

~~–See attached digital signatures page–~~

OWNER (Signature)

(Printed name and title)

~~–See attached digital signatures page–~~

CONTRACTOR (Signature)

(Printed name and title)

Digital Signatures Page

Additions and Deletions Report for AIA® Document A101™ – 2007

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:16:31 on 03/02/2016.

PAGE 1

AGREEMENT made as of the _____ day of March in the year 2016
(In words, indicate day, month and ~~year~~.)

...

(Name, ~~legal status~~, address and other information)

City of Lewisville, Texas
151 W. Church Street
Lewisville, TX 75057-9002
Attn: Donna Barron, City Manager
Telephone: (972) 219-3400
Facsimile: (972) 219-3412

...

(Name, ~~legal status~~, address and other information)

C. Green Scaping, LP
2401 Handley Ederville Rd.
Fort Worth, TX 76118
817-577-9299

for the following ~~Project~~:Projects:
(Name, ~~location~~ location, and detailed description)

...

Lake Park Soccer and Parking Renovations

...

*(Name, ~~legal status~~, address and other information)*address and other information

Larry P. O'Flinn, ASLA
Principal Director, Planning + Landscape Architecture
Dunaway Associates, LP
500 Bailey Avenue, Suite 400
Fort Worth, Texas 76107
Tel: 817-335-1121
Fax: 817-335-7437

...

The Owner and Contractor agree as ~~follows:~~follows:

PAGE 2

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9. The General Conditions which constitute part of this Contract is AIA Document A 201 2007 Edition, General Conditions of the Contract for Construction, as modified by the Owner, and any reference in the Contract Documents to General Conditions of the Contract, or to AIA Document A 201-2007 shall mean the AIA Document A201-2007 as modified by Owner. The term "Project Manual" as used in the Contract refers to the complete collection of the Contract Documents assembled or referenced in a volume for the performance of the Work.

...

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

...

The date of commencement will be immediately upon issuance of a notice to proceed by the Owner.

...

N/A

...

§ 3.3 The Contractor shall achieve Substantial Completion not later than seventy-five (75) calendar days from the date of commencement and shall achieve Final Completion of the entire Work not later than (—)ninety (90) calendar days from the date of commencement, or as follows: commencement.

PAGE 3

Time is of the essence for the Contractor's performance of the Work. See paragraph 11.1 below for liquidated damage provision.

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be (~~\$—~~), Six Hunderd Fifty-Four Thousand Four Hundred Ninety-Eight and 60/100 Dollars (\$654,498.60), subject to additions and deductions as provided in the Contract Documents.

...

§ 4.3 Unit prices, if any: None.

...

Item	Units and Limitations	Price Per Unit(\$0.00)
------	-----------------------	------------------------

...

§ 4.4 Allowances included in the Contract Sum, if any: None

...

N/A

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the First day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the First day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ~~(—)~~ Thirty (30) days after the Architect receives the Application for Payment.

PAGE 4

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ~~percent (—%)~~ five percent (5%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in ~~Section 7.3.9 of the~~ AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ~~percent (—%)~~ five percent (5%);

...

- .4 Subtract amounts, if any, for which the Architect or Owner has withheld or nullified a Certificate for Payment as provided in ~~Section 9.5 of AIA Document A201-2007~~ the Contract Documents.

...

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and ~~unsettled claims; and the Work and unsettled claims.~~ *(Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*
~~.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.~~

...

Notwithstanding any provision in the Contract Documents to the contrary, retainage on the Contract Sum withheld by Owner and payable to the Contractor under the terms of the Contract Documents shall be due thirty (30) days after Final Payment is due. There shall be no reduction in retainage prior to Final Payment.

...

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, except for retainage, shall be made by the Owner to the Contractor when

- .1 ~~the~~ The Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in ~~Section 12.2.2 of the~~ AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; ~~and~~
- .2 ~~a~~ A final Certificate for Payment has been issued by the ~~Architect~~ Architect and approved by Owner;
- .3 Contractor has provided all submittals and training, and has satisfied all close-out obligations required by the Contract Documents for Final Payment; and
- .4 The surety has consented to Final Payment.

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The Owner's final payment to the Contractor shall not be made until the thirty-first (31st) day after and subject to all of the following conditions precedent to final payment having occurred:

- .1 Those conditions stated in Section 5.2.1 have all been satisfied, each of which is an independent condition precedent to final payment;
- .2 The requirements of Section 9.10.2 of AIA Document A201-2007 have all been satisfied, each of which is an independent condition precedent to final payment;
- .3 A final Application for Payment and final accounting has been submitted by the Contractor and approved by the Owner and Architect; and
- .4 The Contractor has submitted a final release of lien (conditioned on final payment) and claims in the form required by the Owner from itself and each Subcontractor and supplier

...

N/A

...

Litigation in a court of competent jurisdiction

...

~~§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Undisputed payments not paid when due shall bear interest at the rate, and in accordance with the provisions set forth in, Section 2251.021 et seq. of the Texas Government Code.~~

...

~~%—N/A~~

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City of Lewisville
151 West Church Street
Lewisville, TX 75057-9002
Attention: Donna Barron, City Manager
Telephone: 972-219-3400
Facsimile: 972-219-3412

...

[mailto:Curtis J. Green](mailto:Curtis.J.Green)
C. Green Scaping, LP
2401 Handley Ederville Rd. Fort Worth, TX 76118
817-577-9299

...

§ 8.6.1 OWNER CONTINGENCY

The Contract Sum includes a "Contingency" initially in the amount of \$31,166.60. The Contractor shall separately track and account for the Contingency and it shall be separately set forth in the Schedule of Values submitted by the Contractor with each Application for Payment. The Contingency is for the convenience and sole use of the Owner for budgeting and financing purposes and may be used by the Owner to cover changes in the scope of Work or other costs for which the Owner is responsible. Contractor shall not be entitled to apply the Contractor's Fee or other

markup for overhead or profit on costs expended from the Contingency. Use of the Contingency is subject to the prior written approval of the Owner. All unused Contingency shall be retained by the Owner.

...

§ 9.1.1 The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and ~~Contractor~~ Contractor, and all Exhibits hereto.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for ~~Construction~~ Construction, as modified by Owner.

§ 9.1.3 The Supplementary and other ~~Conditions of the Contract~~ Conditions, if any of the Contract.: None

...

§ 9.1.4 The ~~Specifications~~ Specifications provided to Contractor and set out or referenced in the Project Manual: *(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

Contract Documents and Specifications for Lake Park Soccer & Parking Renovations, Proposal # 16-17-C; January 2016

Section	Title	Date	Pages
---------	-------	------	-------

§ 9.1.5 The ~~Drawings~~ Drawings provided to Contractor and set out or referenced in the Project Manual:

...

Construction Documents for Lake Park Soccer and Parking Renovations, January 8, 2016

Number	Title	Date
--------	-------	------

§ 9.1.6 The Addenda, if any: any contained or referenced in the Project Manual or otherwise provided by Owner or Architect to Contractor:

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<u>One</u>	<u>January 20, 2106</u>	<u>1-6</u>
Two	January 25, 2016	1-16
Three	January 27, 2016	16
Four	January 29, 2016	1
Five	February 2, 2016	1-4

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.Six February 8, 2016

1-3

...

N/A

...

- (1) all solicitation documents issued by Owner in connection with the Project, such as Owner's Request for Sealed Bids, Request for Sealed Proposals, etc., including all addenda or amendments thereto, except as modified by the terms of the Contract;
- (2) Contractor's response to Owner's solicitation, such as Contractor's bid, or proposal, except as modified by the terms of the Contract; and
- (3) any additional documents contained in the Project Manual or identified by Owner or Architect as being part of the Contract Documents.

...

The Contractor shall purchase and maintain insurance and provide bonds as set forth in ~~Article 11 of AIA Document A201-2007.~~

...

Type of insurance or bond

See Exhibit B Insurance Requirements – General Contract For Services, Exhibit B to A101 Contract Specifications

Limit of liability or bond amount ~~(\$0.00)~~(\$ 0.00)

Bonds shall be in the amount of 100% of the Contract Sums, as adjusted by Change Order; See Section 11.7 below, which is incorporated herein by this reference as is set forth in its entirety.

ARTICLE 11 ADDITIONAL CONTRACT TERMS

§ 11.1 Owner shall have the right to assess against the Contractor the sum of \$240.00 per day for each and every calendar day of unexcused delay in achieving Substantial Completion. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at or before the time of executing this Agreement. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required to, withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

§ 11.2 The Contract shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue for any action brought in connection with the Contract Documents shall lie in courts of competent jurisdiction in Denton County, Texas and if an action cannot be instituted in such courts, then in the federal courts for the Eastern District, Sherman Division.

§ 11.3 In the event of any suit or action arising out of or relating to the Contract, the prevailing party in such proceeding shall be entitled to recover reasonable attorney fees, expenses and court and other costs. If Owner is a municipality, reference is expressly made to the provisions of Section 271.159 of the Texas Local Government Code. The parties agree to mediate any dispute arising in connection with the Contract Documents in good faith prior to filing suit for damages.

§ 11.4 Notice. All notices required to be given under the Contract must be in writing. Any notice required or permitted to be given under the Contract shall be deemed delivered four days after it is deposited in the U.S. Mail, when sent by certified mail, return receipt requested, postage prepaid, correctly addressed to the party as set forth below, with a copy sent concurrently to such party by facsimile as set forth below:

To Owner:

City of Lewisville, Texas
151 West Church Street
Lewisville, TX 75057-9002
Attn: Donna Barron, City Manager
Telephone: (972) 219-3400
Facsimile: (972) 219-3412

With Copy to Architect:

Larry P. O'Flinn, ASLA
Principal Director, Planning + Landscape Architecture
Dunaway Associates, LP
500 Bailey Avenue, Suite 400
Fort Worth, Texas 76107
Tel: 817-335-1121
Fax: 817-335-7437

To Contractor:

Curtis J. Green
C. Green Scaping, LP
2401 Handley Ederville Rd. Fort Worth, TX 76118
817-577-9299

Notice given in any other manner will be deemed delivered if and when actually received Any person named above may change its address for notice by providing notice of such change in the manner set forth herein.

§ 11.5 Contractor shall maintain all insurance required in Exhibit "A" attached hereto and incorporated herein.

§ 11.6 Contractor shall comply with the prevailing wage rate requirements set forth in Chapter 2258 of the Texas Government Code, and shall require subcontractors to comply with the applicable provisions of said law. Contractor and each subcontractor shall pay not less than the prevailing wage rates as shown in Exhibit "B" attached hereto and incorporated herein.

§ 11.7 Contractor shall deliver to Owner Payment and Performance Bonds, each in the penal sum of \$654,498.60, no later than 10 days after the execution of this Agreement by Contractor. Each bond must be in the amount of 100% of the Contract Sum and must be issued by a corporate surety authorized to do business in the State of Texas. The bonds must be in form approved by or supplied by Owner and must comply with the requirements of Chapter 2253 of the Texas Government Code, and other applicable law, including the requirements of Section 7.19-1 of the Texas Insurance Code regarding reinsurance if the bond exceeds 10% of the Surety's capital and surplus. All sureties must be listed as approved sureties by the U.S. Department of Treasury.

Upon Substantial Completion of the Work, and acceptance by Owner, Contractor will furnish a two-year maintenance bond covering Contractor's warranty period obligations for the two years subsequent to Substantial Completion as provided in Section 12.2.2 of the General Conditions. The bonds shall be in form approved or supplied by Owner, issued by a corporate surety authorized to do business in the State of Texas and listed as approved by the U.S. Department of Treasury.

- .1 In the event any surety on the bonds becomes insolvent or is otherwise unable to perform its obligations under the bonds, the Contractor shall provide substitute bonds or equivalent security satisfactory to the Owner to protect the interests of Owner and of persons furnishing labor and materials in the prosecution of the Work.

.2 Contractor shall not begin any Work on this Project until the payment and performance bonds and required insurance have been furnished by Contractor and approved by Owner.

§ 11.8 Pursuant to Section 406.096 of the Texas Labor Code, by execution of the Contract, Contractor certifies to Owner that it has Worker's Compensation insurance coverage for each employee of the Contractor employed on this Project. Contractor shall obtain from each Subcontractor a certificate which certifies that the Subcontractor has Worker's Compensation insurance coverage for each employee of the Subcontractor employed on this Project and shall promptly provide Owner with all such certificates.

§ 11.9 Contractor shall ensure that subcontracts with Subcontractors for this Project are consistent with and reflective of the terms of the Contract Documents applicable or relevant to Subcontractors, including, but not limited to, the prevailing wage rate requirements and the Labor Code requirements set forth above, as well as Owner's rights and remedies under the Contract Documents.

§ 11.10 All rights and remedies of Owner provided in the Contract Documents are in addition to all other rights and remedies provided by law or equity. All such rights and remedies are cumulative, and not exclusive, and may be exercised concurrently and/or successively.

§ 11.11 Change Orders When a cost or credit for a proposed change is requested from the Contractor, the Contractor shall submit an itemized breakdown of labor and materials for all trades involved, showing quantities and unit costs and/or credit on each item, as provided in Section 7.3.11 of the General Conditions, as well as profit and overhead, and the estimated impact of the change on the construction schedule.

.1 Unless otherwise expressly agreed upon by the parties, the percentages for overhead and profit to be allowed to the Contractor and subcontractors on increases shall not exceed the following:

Combined Percentage Allowed (Overhead and Profit)

To Contractor for Work performed by the contractor's own forces -- 10%.

To Contractor for work performed by other than his own forces -- 5%.

To Subcontractor for Work performed by his own forces -- 10%.

To Subcontractor for work performed by other than his own forces -- 5%.

Allowable percentages shall include all costs for preparing change order (office personnel including field layout and supervision if required by the change).

For any changes in Work, overhead and profit will be calculated, at a maximum, for the Contractor and at most one subcontractor. Calculations shall be made in accordance with the provisions of Article 7 of the General Conditions and any other applicable provisions of the Contract Documents. On proposals involving both increases and decreases in the Cost of the Work, overhead and profit will be allowed on the net increase. No percentages for overhead and profit will be allowed on tax.

.2 For change orders, the Contractor has the option of using one of the following methods of calculating the General Conditions associated with a particular change order:

Itemize as a separate element general conditions costs required by a particular change order; or

Add 10% of the Cost of the Work included in a particular Change Order.

PAGE 10

THE CITY OF LEWISVILLE, TEXAS

C. GREEN SCAPING, LP

By:

By:

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, James L. Deem, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:16:31 on 03/02/2016 under Order No. 5860669134_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Lake Park Soccer and Parking Renovations

THE OWNER:

(Name and address)

City of Lewisville, Texas

151 West Church Street

Lewisville, TX 75057-9002

Attn: Donna Barron, City Manager

Telephone: (972) 219-3400

Facsimile: (972) 219-3412

THE ARCHITECT:

(Name and address)

Larry P. O'Flinn, ASLA

Principal Director, Planning + Landscape Architecture

Dunaway Associates, LP

500 Bailey Avenue, Suite 400

Fort Worth, Texas 76107

Tel: [817-335-1121](tel:817-335-1121)

Fax: [817-335-7437](tel:817-335-7437)

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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User Notes:

(945051747)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically expressly excluded in the Agreement, the Contract Documents include the solicitation documents used by Owner, including advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, and Addenda relating to such solicitation documents.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect (except to the extent that the services of Architect under these General Conditions shall constitute a part of Architect's Basic Services under the Agreement between Owner and Architect, and are incorporated therein) or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 AGREEMENT BETWEEN OWNER AND ARCHITECT

The term "agreement between Owner and Architect" means the agreement for professional services for this Project between Owner and Architect.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights in accordance with the terms of the agreement between Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work in any manner not permitted by the agreement between Owner and Architect.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Contractor shall pay for all permit fees and inspection fees required for performance of the Work other than inspection and testing fees which Owner contracts for separately with a third party, and Certificates of Occupancy fees. All of such fees shall be considered Cost of the Work unless Contractor is required to pay for them without reimbursement due to Contractor fault under other provisions of the Contract Documents. If Owner has used an alternative construction delivery method under Chapter 2269 of the Texas Government Code, then Owner is required by law to contract with a third party to provide inspection services, the testing of construction materials, and verification testing services necessary for acceptance of the Work.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor may utilize the information furnished by the Owner, with the understanding that the Owner shall have no liability to Contractor or to any other person for any deficiencies, errors, or inaccuracies in the information provided. OWNER DOES NOT IN ANY WAY REPRESENT, WARRANT OR GUARANTY TO CONTRACTOR OR TO ANY OTHER PERSON THE RELIABILITY, CONSTRUCTIBILITY, COMPLETENESS, OR ACCURACY OF ANY SURVEYS, REPORTS, STUDIES, TESTS, ARCHITECTURAL OR ENGINEERING PLANS, OR SIMILAR INFORMATION PROVIDED BY OWNER IN CONNECTION WITH THIS CONTRACT, NOR DOES OWNER REPRESENT, WARRANT OR GUARANTY THAT SUCH INFORMATION IS FREE FROM DEFECTS, ERRORS OR DEFICIENCIES, AND ALL SUCH REPRESENTATIONS, WARRANTIES AND GUARANTIES ARE HEREBY EXPRESSLY DENIED AND DISCLAIMED. Contractor shall confirm the location of each utility, shall excavate and dispose of each on-site utility and shall cap off-site utility as required by the Work and as may be included in the Specifications and in conformance with the rules and requirements of the affected utility provider. At the Owner's request, the Contractor shall make available the results of any site investigation, test borings, analyses, studies or other tests conducted by or in possession of the Contractor or any of its agents, subject to the terms of this subsection. The Contractor represents that it is generally familiar with the Project site. The Contractor shall exercise due care in executing subsurface work in proximity of known subsurface utilities, improvements and easements. Nothing in this Subparagraph shall be read or construed as limiting the responsibilities of the Contractor or its Subcontractors pursuant to Section 3.2.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services and the agreement by Owner to furnish such other information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor after notice and opportunity to cure, but in no event longer than ten (10) days, fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within thirty (30) days after demand by Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative. If the Work is performed under a Construction Manager at Risk delivery method, the term "Contractor" shall refer to the Construction Manager at Risk or its authorized representative.

§ 3.1.2 The Contractor shall perform the Work in a good and workmanlike manner, in accordance with the Contract Documents and all applicable laws.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

Contractor will also be representing by its execution that the Contractor has thoroughly reviewed all of the Contract Documents and that based on such review and to the best knowledge of Contractor as a contractor, not as a design professional, that said Contract Documents are sufficient to have enabled the Contractor to determine the Contract Sum and that the Contract Documents are sufficient to enable it to construct the Work outlined therein, and otherwise to fulfill all its obligations hereunder. The Contractor further acknowledges and declares that it has visited and examined the site (but only as to visible surface conditions or conditions ascertainable from the results of any subsurface tests required or provided in connection with this Project, or other reports and documents available to the Contractor) and reasonably examined the physical, legal and other conditions affecting the Work including, without limitation, all soil, subsurface, water, survey and engineering reports and studies delivered to or obtained by Contractor and the conditions described in this Section 3.2.1. In connection therewith, Contractor specifically will represent and warrant to Owner that it has, by careful examination, satisfied itself as to: (1) the nature, location, and character of the Project and the site; (2) the nature, location, and character of the general area in which the Project is located; and (3) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents. In arriving at the Contract Sum and the Contract Time, Contractor has, as an experienced and prudent manager and contractor, exercised its reasonable judgment and expertise to include the impact of such circumstances upon the Contract Sum and the Contract Time.

- .1 Claims for additional compensation or time because of the failure of the Contractor to familiarize itself with visible surface conditions, or conditions ascertainable from the results of any subsurface tests, or other reports and documents available to Contractor at the site will not be allowed.
- .2 The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the work is to be performed, including, without limitation, (1) the location,

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layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic and weather conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project Site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum, Guaranteed Maximum Price, if applicable, or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section 3.2.

- .3 Contractor represents that the Subcontractors, manufacturers and suppliers engaged or to be engaged by it are and will be familiar with the requirements for performance by them of their obligations.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, except to the extent that the Contractor knows or should reasonably know about an inconsistency between the Contract Documents and applicable law, and the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall notify the Owner prior to incurring such additional cost or expending such additional time, or if Contractor cannot reasonably provide notice prior to incurring costs or expending additional time, then as soon thereafter as reasonably possible, and may make Claims as provided in Article 15. Any such notice by the Contractor shall not entitle the Contractor to any relief if prohibited by Sections 3.2.1 through 3.2.3 or otherwise by the Contract Documents. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 Lot lines and permanent bench marks have been established as indicated on Drawings, Contractor shall be responsible for lay-out of Project according to Drawings with respect to location on property and elevation in relation to grade.

§ 3.3.5 All employees and subcontractors of the Contractor shall be qualified by training and experience to performance their assigned tasks. At the written request of Owner or Architect, the Contractor shall not use in the performance of the Work any employee or subcontractor reasonably deemed by Owner to be incompetent, careless, unqualified to perform the Work assigned to him, or otherwise unsatisfactory to Owner. Contractor shall engage sufficient workers on the Project at all times to perform the work in the time periods required by the Contract.

§ 3.3.6 In the event of a strike or stoppage of work resulting from a dispute involving or affecting the labor employed by the Contractor or any of its Subcontractors, Owner may, at its option and without any notice required by this Contract, terminate this Agreement for default unless the Contractor shall remedy the strike of work or work stoppage or other disruption within twenty (20) calendar days after the dispute arises.

§ 3.3.7 Contractor shall furnish Owner, on request, resumes of Contractor's key personnel involved in the day-to-day Work on the Project.

§ 3.3.8 Contractor will not permit at any time alcohol, controlled substances or firearms to be present at the Project Site. No smoking will be permitted in any area of the Project which is enclosed or in the finish-out stage of construction.

§ 3.3.9 The Contractor shall be solely responsible for properly laying out the Work, and for all lines, elevations and measurements for all of the work executed under the Contract Documents. He shall verify the figures shown on the drawings before laying out the work and will be held responsible for all costs resulting from his failure to do so.

§ 3.3.10 The Contractor has the responsibility to ensure that all materials suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. The Contractor shall coordinate its Work with that of all others on the Project including deliveries, storage, installations and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of all materials and equipment required under this Agreement. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan the most effective and efficient method of overall installation.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only as provided in the Contract Documents with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. The Architect will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the Project Manual and/or Contract Documents.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 Should the Owner desire to reduce the Contract Time and authorize overtime, the additional cost (premium portion only) shall be paid by the Owner and the Contract Sum and, if necessary, the Guaranteed Maximum Price shall be adjusted accordingly, only if such work is authorized in writing by the Owner prior to performance in a Change Order as provided by the Contract Documents. This provision for payment shall not apply when Owner accelerates the construction of the Project for Contractor's unexcused delays as provided in the Contract Documents.

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor further warrants to the Owner and the Architect that the Work will be performed and completed in a good and workmanlike manner, in accordance with the Contract Documents, all applicable building codes and good engineering and construction practices befitting the Work as specified. The Contractor shall perform all work reasonably required, to correct Work with errors, omissions, defects or deviations from what is required by the Contract Documents, at no cost to Owner.

§ 3.5.2 All warranties shall include labor and materials and shall be signed by the manufacturer and/or Subcontractor as the case may be and countersigned by the Contractor. All Warranties shall be delivered to the Architect upon completion of the work and before the submission of request for final payment. At the time of final completion of the work, the Contractor agrees to assign to the Owner any and all manufacturers' warranties relating to materials and labor used in the Work and further agrees to perform the work in such manner so as to preserve any and all such manufacturers' warranties.

§ 3.5.3 In addition to the foregoing stipulations, the Contractor shall comply with all other warranties referred to in any portions of the Contract Documents or otherwise provided by law or in equity, and where warranties overlap, the more stringent requirements shall govern.

§ 3.6 TAXES

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor for which Owner is not exempt from payment and that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.2 Notwithstanding any other term, covenant or condition of the Contract Documents, the Contract Sum, including itemizations and elements thereof and all prices quoted by the contractor or any subcontractor or supplier engaged by the Contractor or any subcontractor, is deemed to include all federal, state and local taxes, including without limitation sales taxes, customs duties and excise taxes. Any such tax which is found to be inapplicable or for which exemption may be obtained is, to the extent of any refund or exemption available, the property of Owner. The purchase, lease, rental, storage, use or other consumption of tangible personal property for the performance of this Contract by the contractor may be exempted from state and local sales tax pursuant to the Texas Limited Sales Excise and Use Tax Act (see Section 151.311 of the Texas Tax Code). Contractor will claim the benefit of any such exemption. To claim the benefit of this exemption, the Contractor must comply with such procedures as may be prescribed by the State Comptroller of Public Accounts. Owner shall receive the benefit of all reductions in the cost of construction attributable to the sale tax exemptions, whether or not Contractor takes the steps necessary to claim such exemption. This provision shall control over any provision of the Contract Documents to the contrary.

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper

execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded or otherwise required to be obtained by Contractor under the Contract Documents. The Contractor shall procure (as required by the Contract Documents) all certificates of inspection, use, occupancy, permits and licenses, pay all charges, deposits and fees and give all notices necessary and incidental to the due and lawful prosecution of the work, certificates of inspection, use and occupancy shall be delivered to the Architect upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved schedule for the Work. The costs of such procurement, payment and delivery are included within the Contract Sum, and constitute Costs of Work unless otherwise provided by the Contract Documents.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.4 The superintendent and all on-site supervisory staff shall be satisfactory to the Owner and Architect in all respects, and Owner and Architect shall have the right to reasonably require Contractor to remove from the Project any superintendent or on-site supervisor whose performance is not reasonably satisfactory to Owner and Architect, and to replace such superintendent or on-site supervisor with a superintendent or on-site supervisor reasonably satisfactory to Owner and Architect.

§ 3.9.5 The list of all supervisory personnel, including the project manager and superintendent, that the Contractor intends to use on the Project and a chain-of-command organizational chart shall be submitted to the Owner and Architect. The Contractor shall not engage supervisory personnel or utilize an organization and chain-of-command other than as approved by Owner and Architect, and shall not change such personnel or form of organization without the written approval of the Owner and Architect, which approval shall not be unreasonably withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's review and approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project and submitted to Architect and Owner for their review and approval, and shall be related to the entire Project to the extent required by the Contract Documents or Owner or Architect, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to, and approved by the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed, and shall be signed by the Contractor certifying to Owner thereby that they show complete and "as-built" conditions, stating sizes, kinds of materials, vital piping, conduit locations, and similar matters.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear

such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 The Contractor shall assemble for the Architect's review three complete copies in looseleaf binders of operating and maintenance data from the manufacturers whose equipment is or will be installed in the Work.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Contractor shall not permit any housing trailers to be maintained at the site, except for a security trailer and the superintendent's trailer, without the prior approval of Architect.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. Structural members shall not be cut except with written permission of the Architect. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 After installation of the Work, Contractor shall carefully fit around, close up, repair, patch and point such work to match adjoining surface by use of proper tools and materials using workers skilled in the required trades.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project. The Contractor shall maintain streets around the Project site in a clean condition. The Contractor shall remove all spillage and tracking arising from the performance of the Work from such areas, and shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights, intellectual property rights, and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an

infringement of a copyright, intellectual property rights, or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, AND ITS AGENTS AND EMPLOYEES AND THE ARCHITECT AND ITS CONSULTANTS OR ANY OF THEM FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, TO THE EXTENT THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, OR CLAIMS FOR OR BY EMPLOYEES, SUBCONTRACTORS, OR OTHER THIRD PARTIES, INCLUDING LOSS OF USE RESULTING THEREFROM, AND IS CAUSED IN WHOLE OR IN PART BY NEGLIGENT ACTS OR OMISSIONS OR BY ACTS OR OMISSIONS RESULTING IN THE LIABILITY, OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR PERFORMING WORK AT THEIR INSTANCE OR REQUEST, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE. THE CONTRACTOR'S OBLIGATION SHALL BE IN EFFECT REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY THE NEGLIGENCE OF A PARTY INDEMNIFIED HEREUNDER, PROVIDED THAT CONTRACTOR SHALL NOT BE OBLIGATED TO INDEMNIFY ANY SUCH PARTY FROM LOSS OR DAMAGES ATTRIBUTABLE TO SUCH PARTY'S OWN NEGLIGENCE. THIS INDEMNITY OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18. THESE OBLIGATIONS SHALL SURVIVE TERMINATION OR COMPLETION OF THE CONTRACT AND TERMINATION OF CONTRACTOR'S RIGHT TO PERFORM THE WORK UNDER THE CONTRACT.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 The provisions of Paragraph 3.18 shall survive the termination of this Contract, howsoever caused, and no payment, partial payment, nor issuance of a certificate of Substantial Completion nor a certificate of final completion nor acceptance of occupancy in whole or in part of the Work shall waive or release any of the provisions of Paragraph 3.18.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. Architect will promptly inform Contractor and Owner of any non-compliance observed. The Architect will exercise care and diligence when on site in discovering and properly reporting to the Owner any defects or deficiencies in the Work of the contractor or any of its Subcontractors, or their agents or employees, or any other person performing any of the Work in the construction of the Project. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized by the Owner or Architect, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Work progress and quality of the Work and the of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts Owner may consider other terms and provisions of the Contract Documents in determining the amount of payment to be made to the Contractor.

§ 4.2.6 The Architect and Owner each has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect and Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect or Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or Owner to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work, or constitute approval or acceptance of Work that is deficient or does not meet the requirements of the Contract Documents.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. Any change affecting the Contract Sum or Contract Time must be approved by the Owner in writing prior to commencement

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10. In the event Architect is required to perform more than one inspection to determine the date or dates of Substantial Completion or final completion, due to Contractor's failure to meet the conditions for such completion, Contractor shall be responsible for paying or reimbursing Owner for the cost of any Additional Services charged by Architect under the agreement between Owner and Architect.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor which shall be copied to the other through the Architect. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents, subject to the prior approval of Owner.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 4.2.15 The Architect's review of Shop Drawings, Product Data and Samples and on-site observations of the construction Work is to determine if the Contractor's submittals and Work appear to be in conformance with the design concept set forth in the Contract Documents prepared by the Architect. It is understood that the Architect's review shall not be considered to be complete in every detail or exhaustive and shall also not relieve any Contractor, Subcontractor, manufacturer, supplier, fabricator, consultant or other third party from responsibility for compliance with the requirements of the Contract Documents or for the responsibility to coordinate the Work, or portion of the work, of one trade with another.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site away from the site, or otherwise to furnish labor or materials. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor, unless otherwise indicated by the context. The term Subcontractor includes persons supplying materials or equipment for the Work.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site away from the site, or otherwise to furnish labor or materials. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor. The term Sub-subcontractor includes persons supplying materials or equipment for the Work.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was rejected for a reason other than good cause, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Good cause shall include, but not be limited to, Owner or Architect's prior experience of unsatisfactory work performed by the Subcontractor or debarment of the Subcontractor.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.2.5 The Owner may require the Contractor to change any Subcontractor or supplier previously approved by it, if such a change is due to failure of subcontractor to perform in accordance with the requirements of this Contract. If Owner requires removal of a subcontractor for such failure to perform, and Contractor reasonably objects to such removal, then Owner will pay any actual increase in the cost between the new subcontractor and the subcontractor replaced incurred by Contractor, taking into account any amounts which Contractor withholds or recovers in damages from the replaced subcontractor. If Contractor requests such payment from Owner, Contractor shall provide Owner with satisfactory proof of such additional costs incurred by Contractor.

§ 5.2.6 The Contractor, as soon as possible after selection, shall furnish to the Architect and Owner in writing a list of the names, current addresses, telephone numbers and proposed contract values of the Subcontractors and Material Suppliers for the principal portions of the Work.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will

similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract, provided, however, that Owner does not assume Contractor's obligations or liabilities for defaults occurring prior to Owner's assumption., which shall remain the responsibility of Contractor.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation may be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner, separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14. If such separate contractor initiates a claim or legal or any other proceedings against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at its own expense, and if any judgment or award against the Owner arises therefrom, based on Contractor's act or omissions or the act or omissions of Contractor's employees, Subcontractor or parties for whom Contractor has liability, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or other costs which the Owner has incurred over and above those paid for directly by the Contractor.

§ 6.2.6 Contractor shall be responsible for any delays to a separate contractor caused by Contractor or its Subcontractor.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

§ 6.4 ASSIGNMENT OF CONTRACTS

§ 6.4.1 Owner reserves the right to assign to Contractor contracts separately negotiated with other contractors performing Work on this Project and its appurtenances.

§ 6.4.2 Contractor agrees to accept assignments of contracts provided in paragraph 6.4.1 above and to administer and coordinate the work thereunder in same manner as if Contractor was original contracting party, but Contractor will not be required to employ persons or entities against whom he makes a reasonable objection.

§ 6.4.3 Contractor agrees prior to commencement of Work under assigned contracts to modify the Performance bond and Payment Bond under Contractor's original Contract to conform to adjusted Contract amount, including administration fee, as shown on said Change Order, covering modification provided for therein.

§ 6.4.4 Contractor further agrees to obtain modifications to insurance policies required in Contractor's original Contract to specifically include the Work provided for in said assigned contracts.

§ 6.4.5 Certification of modification to bonds and insurance policies acceptable to Owner shall be submitted to Owner through Architect prior to commencing Work under assigned contracts.

§ 6.4.6 Any additional costs incurred by such assignment shall be included in the Cost of the Work, and, if appropriate, the Guaranteed Maximum Price shall be increased by the amount of the additional costs plus the Contractor's Fee calculated as a percentage of such additional costs, provided, however, no additional amounts shall be due to Contractor as a result of long-lead items ordered by Owner as described in Section 2.1.7 of the Agreement. Contractor shall not be required to accept an assignment unless the subcontractor agrees to execute Contractor's standard subcontract agreement or other subcontract agreement in a form reasonably acceptable to Contractor, except for long-lead items procured by Owner.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

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§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone. A minor change is one that does not affect the Contract Time or Contract Sum.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.1.4 A field directive or field order shall not be recognized as having any impact on the Contract Sum or the Contract Time, and the Contractor shall have no claim therefor unless it shall, prior to complying with same and in no event later than ten (10) days from the date such directive or order was given, submit to Owner for Owner's written approval its change proposal.

§ 7.1.5 The provisions of the Agreement regarding Change Orders shall be observed.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 It is understood and agreed that refinement and detailing will be accomplished from time to time with respect to the Drawings and Specifications contained in the Contract Documents. No adjustment in the contract Sum or the Scheduled Completion Date shall be made unless such refinement or detailing results in changes in the scope, time for performance, quality, function and/or intent of the Drawings and Specifications not reasonably inferable or anticipatable by a contractor or Contractor's experience and expertise. The delivery of supplemental or revised Drawings to the Contractor by either the Architect or the Owner's Representative shall not be interpreted by the Contractor as fulfilling the requirements of the Article for a written order to proceed with the Work. The written order (signed by the Owner and Contractor) must be in addition to such Drawings.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive. When either the Owner or the Contractor or both do not agree with the determination made by the Architect concerning the adjustments in the Contract sum and Contract Time, such disagreement shall be resolved by negotiation. If an agreement cannot be reached between Owner and Contractor within a reasonable period of time, either party may require mediation

§ 7.3.11 The execution by Owner and Contractor of a Change order shall include all adjustments to the Contract Sum and/or Contract time applicable to the Work covered by such Change order or impacted by such Change Order, and no additional claims based on the Work performed in such Change order or its impact on other Work will be valid.

§ 7.3.12 All proposals for a change involving an increase or decrease in the amount of the Contract Sum shall be submitted by the Contractor in a completely itemized breakdown form which shall include but not be limited to the following:

- a. Material quantities and input prices (separated into trades),
- b. Labor costs,

- c. Construction equipment,
- d. Worker's Compensation and Public Liability insurance,
- e. Social Security Tax.
- f. General Conditions

The Contractor shall furnish spreadsheets from which the breakdowns were prepared, plus spreadsheets, if requested by Owner, from any Subcontractor.

Full credit, but without overhead, shall be given for deductions.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect and approved by Owner in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner's approval of such insurance. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work by Owner; or by labor disputes, fire, unavoidable casualties or other causes beyond the Contractor's control which do not arise through the action or inaction of Contractor or its Subcontractor or suppliers, could not have been reasonably anticipated and could not have been avoided through the exercise of reasonable care or prudent construction management by the Contractor; or by delay authorized by the Owner pending mediation, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine, subject to the Owner's concurrence. The foregoing notwithstanding, the Contractor shall not be entitled to an extension of time for changes in the Work required due to Contractor fault, or which extend beyond the time extension provided in a Change Order. Nothing in this provision will limit the rights of Owner under other provisions of this Contract, including Section 3.3.6 of this document.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. ANY PROVISION OF THE CONTRACT DOCUMENTS TO THE CONTRARY

NOTWITHSTANDING, IT IS EXPRESSLY AGREED THAT THE EXTENSION OF THE CONTRACT TIME SHALL BE CONTRACTOR'S SOLE REMEDY FOR ANY DELAY UNLESS THE SAME SHALL HAVE BEEN CAUSED BY ACTS CONSTITUTING INTERFERENCE BY THE OWNER WHICH INTERFERE WITH CONTRACTOR'S PERFORMANCE OF THE WORK, AND THEN ONLY TO THE EXTENT THAT SUCH ACTS CONTINUE AFTER CONTRACTOR'S WRITTEN NOTICE TO OWNER OF SUCH INTERFERENCE. OWNER'S EXERCISE OF ANY OF ITS RIGHTS UNDER THE CONTRACT DOCUMENTS OR OWNER'S EXERCISE OF ANY OF ITS REMEDIES OF SUSPENSION OF THE WORK OR REQUIREMENT OR CORRECTION OR RE-EXECUTION OF ANY DEFECTIVE WORK SHALL NOT UNDER ANY CIRCUMSTANCES BE CONSTRUED AS INTERFERENCE WITH CONTRACTOR'S PERFORMANCE OF THE WORK.

§ 8.3.4 In the event of inexcusable delay by Contractor, Owner may direct that the Work be accelerated by means of overtime, additional crews or additional shifts or resequencing of the Work. All such acceleration shall be at no cost to Owner.

§ 8.3.5 In the event that Contractor does not complete the Work within the Contract Time, then in addition to any other costs and damages (liquidated or otherwise) for which Contractor is responsible, Contractor will provide, at its expense, any bonds required by governmental authorities to enable Owner to secure a Certificate of Occupancy (if required) even though there are items of Work which are incomplete.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the Contractor hereunder if and for so long as the Contractor fails to perform any of its material obligations hereunder or otherwise is in default under any of the provisions of the Contract Documents, subject to the requirements of applicable law.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 All progress payment requests shall be accompanied by (i) an itemization of all Subcontractors and material suppliers, the amounts due each and the amounts to be paid out of said progress payment to each of them and (ii) by unconditional lien waivers releasing all liens and lien rights with respect to Work for which Owner has made payment under a prior progress payment request in a form reasonably satisfactory to Owner from Contractor

and all its subcontractors and material suppliers with contracts in excess of \$25,000.00. When Contractor submits its request for payment of retainage, Contractor shall submit "All Bills Paid" affidavits and unconditional final lien waivers fully releasing all liens and lien rights with respect to the Work in a form reasonably satisfactory to Owner from Contractor and all its Subcontractors and material suppliers with contracts in excess of \$25,000.00. Such Application for Payment shall be certified as correct by Contractor. Each Application for Payment shall also be accompanied by Certified Payrolls and such other affidavits, certificates, information, data and schedules as Owner may reasonably require. The Owner is not required to make any payment to Contractor to the extent reasonably necessary to protect Owner, if Contractor has not supplied all items required by the Agreement and this Subparagraph 9.3.1. The form of Application for Payment unless otherwise instructed, shall be AIA Document G702, *Application and Certification for Payment*, supported by AIA Document G703, *Continuation Sheet*.

§ 9.3.1.4 The Owner shall have the right at all times to contact the Contractor's Subcontractors and suppliers to ensure that the same are being paid by the Contractor for labor, materials, or both furnished for or in connection with the Work. Contractor will receive the payments made by Owner and will hold such payments as a trust fund to be applied first to the payment of any parties furnishing labor, materials, equipment or services for the Work in accordance with the provisions of their subcontracts; and Contractor will so apply the payments within seven (7) days after receipt from Owner before using any part thereof for any other purpose. Progress payments may, in the discretion of Owner, be made in the form of checks payable jointly to Contractor and such parties. In the event Owner receives any notices of non-payment from parties furnishing labor, materials, equipment or services for the Work progress payments and/or final payment may, in the discretion of Owner, be made in the form of checks payable jointly to Contractor and such parties for such amounts as Contractor agrees are due. If Contractor shall fail to pay promptly when due, all labor, materials, equipment and services furnished in connection with the performance of the Work, Owner may, after seven (7) days' written notice to Contractor and such amounts are not disputed by Contractor within said 7 day period, pay the amount of such liabilities and recover the amount therefrom from Contractor or deduct such amount from any monies due or to become due Contractor hereunder.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 Contractor's request for payment of the retainage may be made only upon expiration of thirty (30) days after Final Completion. The request shall be accompanied by the Contractor's Affidavit of Payment of Debts and Claims (AIA Document G706) or a comparable affidavit on a form acceptable to Owner. This document must be executed under oath and notarized.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. Owner may rely on other provisions of the Contract Documents, as well as on the Architect's Certificate, in determining the payment to be made to Contractor.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to

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an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents; or
- .8 failure to provide any submittals or documentation required under the Contract Documents in a timely manner, including a schedule of values and a construction schedule.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed to be in breach of the Contract Documents by reason of the withholding of any payment which Owner is entitled to withhold pursuant to or withholds in good faith in reliance on any provision of the Contract Documents, and, no interest shall accrue in connection with the withheld payment(s) determined to have been properly withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

The Contractor shall have the right to stop work for Owner's failure to pay undisputed amounts only in accordance with the provisions of applicable law.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Operation and maintenance data shall have been submitted and approved, system demonstrations have been performed, and a certificate of occupancy shall have been issued before Substantial Completion can be achieved. The Work will not be considered suitable for Substantial Completion review until all required governmental inspections and certifications have been made and posted, all final finishes within the Contract Documents are in place as required by the Specifications, and there shall have been a completion of and acceptance by Owner of all major punch-list items and a majority of minor items of a cosmetic nature, so that the Owner could occupy or otherwise utilize the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's (or those claiming by, through or under the Owner) normal business operations. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days following the date of Substantial Completion.

Upon Substantial Completion of the Work, and acceptance by Owner, Contractor will furnish a two-year maintenance bond covering Contractor's warranty period obligations for the two years subsequent to Substantial Completion. The bonds shall be in form approved or supplied by Owner, issued by a corporate surety authorized to do business in the State of Texas and listed as approved by the U.S. Department of Treasury.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so

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that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. Architect is obligated under the agreement between Owner and Architect to make only a limited number of site visits to determine Date of Substantial Completion of Project. Any interim determinations of Substantial Completion for portions of the Project which Owner agrees to accept separately will be conducted by Architect during normal site observations. Any fee which Owner incurs for additional site visits of Architect for determination of Substantial Completion will be at the expense of Contractor. Owner will deduct amount of Architect's compensation for reinspection services from final payment.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Owner may rely on other provisions of the Contract Documents, as well as the Architect's Certificate, in determining the payment to be made to Contractor. Architect is obligated under the agreement between Owner and Architect to make only a limited number of site visits to determine Final Completion of Project. Any fee which Owner incurs for additional site visits of Architect for determination of Final Completion will be at the expense of Contractor. Owner will deduct amount of Architect's compensation for reinspection services from final payment.

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§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted, less retainage. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. Nothing in this subsection is intended to limit or reduce Owner's rights and remedies in the event of a Contractor default.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of warranties required by the Contract Documents or provided by law.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Final payment is considered to have taken place when Contractor or any of its representatives negotiates Owner's final payment check, whether labeled final or not, for cash or deposits the check in any financial institution.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.1.2 Contractor shall be responsible for providing such security on the Work site as necessary to protect against loss or damage to materials or the Work.

§ 10.1.3 Contractor shall be responsible for providing safe paths of travel for the public, or any employee, invitee, agent or representative of Owner who has the right to access the Project or any portion of the Project prior to completion of Contractor's construction activities. Contractor shall confer with Architect and Owner on the travel route or routes to be used. Unless otherwise agreed by the Owner and Contractor, the safe access route shall include access from parking areas and public sidewalks, and Contractor shall reroute such access as necessary during the progress of the construction to maintain safe access.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 persons on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall give Owner reasonable advance notice and shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 The foregoing notwithstanding, it is understood that the Contractor will require its Subcontractors and suppliers to provide for the safety of their laborers and employees, or that such subcontractors and suppliers may be subject to safety requirements and obligations imposed by law. Nothing in the Contract Documents is intended to affect the contractual obligations of the Subcontractors or suppliers to Contractor under their subcontracts with Contractor, or to affect any safety obligations imposed upon Subcontractors or suppliers by law. As between Contractor and Subcontractors and suppliers, nothing in the Contract Documents is intended to relieve the Subcontractors and suppliers from the performance of their contractual and legal obligations. Nothing in the Contract Documents is intended to confer any right upon any person or entity not a party to the Agreement between Owner and Contractor to pursue a claim against Owner or Contractor based upon a safety violation, or to create third-party beneficiaries to the Agreement between Owner and Contractor.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 Prior to commencement of the Work, Owner will provide all reports in its possession or control relating to environmental condition of the Project site.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance located on the Project site solely by reason of performing Work as required by the Contract Documents, the Owner shall, to the extent permitted by applicable law, indemnify the Contractor for all reasonable remediation cost and expense thereby incurred, provided that Contractor shall first notify Owner of any claim made against Contractor by a governmental agency for remediation prior to commencing remediation. Owner shall have the right, but not the obligation, to undertake such remediation at Owner's expense.

§ 10.3.7 Except as may be required by the Contract Documents, the Contractor agrees that it shall not transport to, use, generate, dispose of or install at the Project site any hazardous substance (as defined in Subparagraph 10.3.5), except in accordance with applicable Environmental Laws. Further, in performing the Work, the Contractor shall not cause any release of hazardous substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws or as required by the Contract Documents. In the event the Contractor engages in any of the activities prohibited in this Paragraph 10.3, to the fullest extent permitted by law, the Contractor hereby indemnifies and holds harmless Owner and all of their respective officers, directors, agents and employees from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this Section 10.3.

§ 10.3.8 For purposes of this Contract, the term "hazardous substance" shall mean and include, but shall not be limited to, any element, constituent, chemical, substance, compound or mixtures, which are defined in or included under or regulated by any local, state or federal law, rule, ordinance, by-law or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including with limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA") and The Marine Protection Research and Sanctuaries Act ("MPRSA"), the Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state super-lien or environmental clean-up or disclosure statutes, including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is the Contractor's

responsibility to comply with this Section 10.3 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws, for all services rendered after the effective date of any such amendments.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

All insurance requirements are set out in the Agreement.

(Paragraphs deleted)

§ 11.3.7 WAIVERS OF SUBROGATION

CONTRACTOR RELEASES OWNER AND ITS EMPLOYEES, MEMBERS OF ITS GOVERNING BODY, OFFICERS, AGENTS AND REPRESENTATIVES FROM ALL CLAIMS OR LIABILITIES FOR (I) DAMAGES CAUSED BY FIRE OR OTHER CAUSES THAT ARE COVERED BY INSURANCE MAINTAINED BY CONTRACTOR, WHETHER REQUIRED UNDER THIS CONTRACT OR NOT, OR INSURANCE THAT WOULD HAVE BEEN COVERED BY REQUIRED INSURANCE IF THE CONTRACTOR FAILS TO MAINTAIN THE INSURANCE COVERAGES REQUIRED BY THIS CONTRACT. CONTRACTOR WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER ITS PROPERTY INSURANCE.. CONTRACTOR WILL NOTIFY THE ISSUING INSURANCE COMPANY OR COMPANIES OR TRUST ADMINISTRATOR OF THE RELEASE SET FORTH IN THIS SECTION AND WILL HAVE THE INSURANCE ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE AND TO WAIVE THE INSURER'S RIGHTS OF SUBROGATION AGAINST OWNER. **THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR STRICT LIABILITY OF THE OWNER, AND EVEN THOUGH THAT PERSON RELEASED WOULD OTHERWISE HAVE A DUTY OF INDEMNIFICATION, CONTRACTUAL OR OTHERWISE, DID NOT PAY THE INSURANCE PREMIUM DIRECTLY OR INDIRECTLY, AND WHETHER OR NOT SUCH PERSON HAD AN INSURABLE INTEREST IN THE PROPERTY DAMAGED.** The foregoing provisions will survive termination of this Contract , completion of the Contract, and termination of Contractor's right to perform the Work under the Contract.

(Paragraphs deleted)

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor is required to provide performance and payment bonds as set out in the Agreement.

Contractor is also obligated to provide the maintenance bonds required by the Agreement.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Owner's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5 if, within two years after the date of Substantial Completion of the entire Work or designated portion thereof agreed to in writing by the parties, or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so, by repairing or replacing it, as reasonably determined by Architect and Owner, unless the Owner has previously given the Contractor an express written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4 without waiving any warranties or rights. Any provision in the Contract Documents to the contrary notwithstanding, the Contractor's warranty obligations under this Section 12.2.2 are in addition to any other warranty obligations provided by this Agreement or law, including warranties provided by subcontractors, suppliers and manufacturers. Contractor shall assign all assignable subcontractor, supplier and manufacturer's warranties affecting the Work or any portion to Owner as a condition to final payment. Owner may enforce any warranty obligations separately, concurrently or successively.

§ 12.2.2.2 The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The two-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is defective or otherwise not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the two-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work. The corrective remedies set forth in this Paragraph 12.2 are not exclusive and shall not deprive the Owner of any action, right or remedy otherwise available to it for breach of any of the provisions of the Contract Documents.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Contractor shall pay all costs and expenses incurred by Owner in the evaluation of and determination to accept such defective Work, as well as the amount by which the value of the Work is diminished by the defect. If any such

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acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and compensating Owner for the costs described above and the diminished value of the defective Work. If acceptance occurs after final payment, Contractor will pay to Owner the appropriate amount within 30 days after demand.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served as provided in the Agreement.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 and other portions of the Contract Documents reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear as provided in the Agreement.

§ 13.7 Intentionally omitted

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time required by the Contract Documents, subject to any right of Owner to withhold funds or suspend payment under the Contract; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

(Paragraphs deleted)

§ 14.2.1 The Owner may terminate the Contract or Contractor's right to perform the Work under the Contract, if the Contractor

- .1 fails to supply enough properly skilled workers or proper materials or equipment to complete the Work in a diligent, efficient, workmanlike or timely manner;
- .2 fails to make payment to Subcontractors for materials, equipment or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

- .3 disregards applicable laws, statutes, ordinances, codes, rules, regulations, or lawful orders of a public authority;
- .4 disregards the instructions of the Architect or the Owner (when such instructions are based on the requirements of the Contract Documents);
- .5 fails to perform the Work in accordance with the Contract Documents or makes fraudulent statements;
- .6 makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts generally as they become due, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions or applies to any tribunal for any receiver or any trustee for the Contractor or any substantial part of its property, commences any action relating to the Contractor under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or if there is commenced against the Contractor any such action or the Contractor by any act indicates its consent to or approval of any trustee for the Contractor or any substantial part of its property or suffers any receivership or trustee to continue undischarged;
- .7 repudiates the Contract; or
- .8 otherwise does not fully comply with a material obligation under the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor or the Contract, and may:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and/or
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient, including making demand on the surety to perform the Work. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work, if Owner is claiming that Contractor owes Owner payment for amounts in excess of the remaining construction funds available for payment of Owner's expenses and damages in performing the Work under the Contract.

§ 14.2.3 When the Owner terminates the Contract or Contractor's right to perform the Work under the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment.

§ 14.2.4 If Owner performs the Work in whole or in part, and such costs and damages incurred by Owner, including compensation for Architect's services, attorneys' fees, and expenses made necessary by the Contractor's default or the termination, exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days after demand by Owner. If Owner (rather than the surety) performs the Work the amount to be paid to the Owner for the cost of the Work and the Architect's compensation (but not the other items of expense or damages) shall be certified by the Initial Decision Maker, upon request by Owner. The Contractor's obligation for payment shall survive termination of the Contract and/or termination of Contractor's right to perform the Work under the Contract.

§ 14.2.5 It is recognized that (i) if any order for relief is entered on behalf of or against the Contractor pursuant to Title 11 of the United States Code, (ii) if any other similar order is entered under any other debtor relief laws, (iii) if the Contractor makes a general assignment for the benefit of its creditors, or (iv) if a receiver is appointed for the benefit of credits, or (v) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate the Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon the occurrence of any such event, the Owner, in addition to other rights and remedies hereunder, shall be entitled to request the Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days after delivery of the request shall entitle the Owner to terminate the Contract or Contractor's right to perform thereunder and to the accompanying rights set forth above in Sections 14.2.1 through 14.2.5 hereof. In all events, pending receipt of adequate assurance of performance and actual performance in accordance therewith, the Owner shall be entitled to make demand on the surety or proceed with the Work with its own forces by assignment of the subcontractors or with other contractors on a time and material or other appropriate basis, the cost of which will be backcharged against the Contract Sum. If Owner performs the Work in whole or in part, and such costs and damages incurred by Owner, including compensation for Architect's services, attorneys' fees, and expenses made necessary by the Contractor's default or the termination, exceed the unpaid balance, the Contractor shall pay the difference to

the Owner within 30 days after demand by Owner. If Owner (rather than the surety) performs the Work the amount to be paid to the Owner for the cost of the Work and the Architect's compensation (but not the other items of expense or damages) shall be certified by the Initial Decision Maker, upon request by Owner. The Contractor's obligation for payment shall survive termination of the Contract and termination of Contractor's right to perform the Work under the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be subject to equitable adjustment for increases in the cost caused by suspension, delay or interruption as described in Section 14.3.1 lasting more than 60 consecutive days, and increases in time. Adjustment of the Contract Sum shall include profit, but only to the extent and to the degree that it is a component of the Contract Sum provided in this Contract. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed to the date of termination in accordance with the payment terms set out in the Agreement, and reasonable and necessary costs incurred by Contractor as a direct result of such early termination which are established to the reasonable satisfaction of Owner, but Owner shall not be responsible for the payment of any portion of Contractor's unearned fee, overhead or profit, or any other amounts. Contractor's right to payment and Owner's obligation to pay Contractor, are subject to the terms and provisions of this Contract.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

CONTRACTOR MUST NOTIFY OWNER AND ARCHITECT IN WRITING (A) WITHIN TWENTY-ONE DAYS (OR SUCH LATER PERIOD AS MAY BE REQUIRED BY LAW) AFTER OCCURRENCE OF THE EVENT GIVING RISE TO A CLAIM OR (B) WITHIN TWENTY-ONE DAYS (OR SUCH LATER PERIOD AS MAY BE REQUIRED BY LAW) AFTER THE CONTRACTOR FIRST RECOGNIZES, OR SHOULD HAVE RECOGNIZED, THE CONDITION GIVING RISE TO A CLAIM, WHICHEVER IS LATER. WITHIN A REASONABLE PERIOD OF TIME, BUT NOT LATER THAN TWENTY-ONE (21) DAYS AFTER SUBMITTING A CLAIM, CONTRACTOR MUST PROVIDE COMPLETE AND DETAILED DOCUMENTATION CONCERNING THE NATURE AND AMOUNT OF THE CLAIM, TO THE EXTENT SUCH INFORMATION IS REASONABLY AVAILABLE. FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION 15.1.2 CONSTITUTES A WAIVER OF CONTRACTOR'S CLAIM.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14 or other provisions of the Contract Documents, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

(Paragraphs deleted)

§ 15.1.6 Intentionally omitted

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner or the Architect.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the expense of the party making the Claim.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state

the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to litigation.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, request in writing that the other party submit to mediation within 60 days after the initial decision. If such a request is made and the party receiving the request fails to provide written notice within 10 days to the requesting party stating the recipient's agreement to submit to mediation within the time required, then the party requesting mediation may proceed to litigation.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered in accordance with the laws of the State of Texas. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. If the parties have not selected a mutually-acceptable mediator at the time the request for mediation is made, then the requesting party may suggest a mediator. The non-requesting party has 10 days after receipt of the request to respond to the requesting party in writing either accepting the mediator identified by the requesting party, or identifying a different mediator. If such notice is not timely made, then the mediator suggested by the party requesting mediation will be deemed the selected mediator. If a different mediator has been suggested, and the parties are unable to agree on a mediator within 10 days after the notice suggesting a different mediator is given, then the parties shall request the Initial Decision Maker to select a mediator, and this selection will be binding on both parties. The request for mediation may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally unless the parties agree otherwise. The mediation shall be held in the City in which the mediator has its office, or where the Project is located, or the City nearest the Project, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a

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written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

ARTICLE 16 WAGE RATES

§ 16.1 Contractor and its Subcontractors shall comply with the prevailing wage requirements applicable to Owner under Chapter 2258 of the Texas Government Code.

OWNER:

CONTRACTOR:

THE CITY OF LEWISVILLE, TEXAS

C. GREEN SCAPING, LP

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Additions and Deletions Report for AIA[®] Document A201[™] – 2007

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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Lake Park Soccer and Parking Renovations

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~~(Name, legal status (Name and address))~~

City of Lewisville, Texas

151 West Church Street

Lewisville, TX 75057-9002

Attn: Donna Barron, City Manager

Telephone: (972) 219-3400

Facsimile: (972) 219-3412

~~(Name, legal status and address)(Name and address)~~

Larry P. O'Flinn, ASLA

Principal Director, Planning + Landscape Architecture

Dunaway Associates, LP

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Fort Worth, Texas 76107

Tel: 817-335-1121

Fax: 817-335-7437

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1.1.1, ~~3.11.3~~, 11.1

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically ~~enumerated~~ expressly excluded in the Agreement, the Contract Documents ~~do not include the~~ include the solicitation documents used by Owner, including advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of and Addenda relating to bidding requirements such solicitation documents.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect (except to the extent that the services of Architect under these General Conditions shall constitute a part of Architect's Basic Services under the Agreement between Owner and Architect, and are incorporated therein) or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

...

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 AGREEMENT BETWEEN OWNER AND ARCHITECT

The term "agreement between Owner and Architect" means the agreement for professional services for this Project between Owner and Architect.

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§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including ~~copyrights~~ copyrights in accordance with the terms of the agreement between Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory

requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work ~~without the specific written consent of the Owner, Architect and the Architect's consultants.~~ in any manner not permitted by the agreement between Owner and Architect.

...

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means ~~the Owner or the Owner's authorized representative.~~ Owner.

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§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Contractor shall pay for all permit fees and inspection fees required for performance of the Work other than inspection and testing fees which Owner contracts for separately with a third party, and Certificates of Occupancy fees. All of such fees shall be considered Cost of the Work unless Contractor is required to pay for them without reimbursement due to Contractor fault under other provisions of the Contract Documents. If Owner has used an alternative construction delivery method under Chapter 2269 of the Texas Government Code, then Owner is required by law to contract with a third party to provide inspection services, the testing of construction materials, and verification testing services necessary for acceptance of the Work.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor ~~shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.~~ may utilize the information furnished by the Owner, with the understanding that the Owner shall have no liability to Contractor or to any other person for any deficiencies, errors, or inaccuracies in the information provided. OWNER DOES NOT IN ANY WAY REPRESENT, WARRANT OR GUARANTY TO CONTRACTOR OR TO ANY OTHER PERSON THE RELIABILITY, CONSTRUCTIBILITY, COMPLETENESS, OR ACCURACY OF ANY SURVEYS, REPORTS, STUDIES, TESTS, ARCHITECTURAL OR ENGINEERING PLANS, OR SIMILAR INFORMATION PROVIDED BY OWNER IN CONNECTION WITH THIS CONTRACT, NOR DOES OWNER REPRESENT, WARRANT OR GUARANTY THAT SUCH INFORMATION IS FREE FROM DEFECTS, ERRORS OR DEFICIENCIES, AND ALL SUCH REPRESENTATIONS, WARRANTIES AND GUARANTIES ARE HEREBY EXPRESSLY DENIED AND DISCLAIMED. Contractor shall confirm the location of each utility, shall excavate and dispose of each on-site utility and shall cap off-site utility as required by the Work and as may be included in the Specifications and in conformance with the rules and requirements of the affected utility provider. At the Owner's request, the Contractor shall make available the results of any site investigation, test borings, analyses, studies or other tests conducted by or in possession of the Contractor or any of its agents, subject to the terms of this subsection. The Contractor represents that it is generally familiar with the Project site. The Contractor shall exercise due care in executing subsurface work in proximity of known subsurface utilities, improvements and easements. Nothing in this Subparagraph shall be read or construed as limiting the responsibilities of the Contractor or its Subcontractors pursuant to Section 3.2.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services and the agreement by Owner to furnish such other

information or services.

...

If the Contractor after notice and opportunity to cure, but in no event longer than ten (10) days, fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or ~~repeatedly~~ fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or ~~entity,~~ entity, ~~except to the extent required by Section 6.1.3.~~

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within thirty (30) days after demand by Owner.

...

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative. If the Work is performed under a Construction Manager at Risk delivery method, the term "Contractor" shall refer to the Construction Manager at Risk or its authorized representative.

§ 3.1.2 The Contractor shall perform the Work in ~~accordance with the Contract Documents,~~ a good and workmanlike manner, in accordance with the Contract Documents and all applicable laws.

...

Contractor will also be representing by its execution that the Contractor has thoroughly reviewed all of the Contract Documents and that based on such review and to the best knowledge of Contractor as a contractor, not as a design professional, that said Contract Documents are sufficient to have enabled the Contractor to determine the Contract Sum and that the Contract Documents are sufficient to enable it to construct the Work outlined therein, and otherwise to fulfill all its obligations hereunder. The Contractor further acknowledges and declares that it has visited and examined the site (but only as to visible surface conditions or conditions ascertainable from the results of any subsurface tests required or provided in connection with this Project, or other reports and documents available to the Contractor) and reasonably examined the physical, legal and other conditions affecting the Work including, without limitation, all soil, subsurface, water, survey and engineering reports and studies delivered to or obtained by Contractor and the conditions described in this Section 3.2.1. In connection therewith, Contractor specifically will represent and warrant to Owner that it has, by careful examination, satisfied itself as to: (1) the nature, location, and character of the Project and the site; (2) the nature, location, and character of the general area in which the Project is located; and (3) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents. In arriving at the Contract Sum and the Contract Time, Contractor has, as an experienced and prudent manager and contractor, exercised its reasonable judgment and expertise to include the impact of such circumstances upon the Contract Sum and the Contract Time.

- .1 Claims for additional compensation or time because of the failure of the Contractor to familiarize itself with visible surface conditions, or conditions ascertainable from the results of any subsurface tests, or other reports and documents available to Contractor at the site will not be allowed.
- .2 The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the work is to be performed, including, without limitation, (1) the location, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic and weather conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project Site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum, Guaranteed Maximum Price, if applicable, or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section 3.2.
- .3 Contractor represents that the Subcontractors, manufacturers and suppliers engaged or to be engaged by it are and will be familiar with the requirements for performance by them of their obligations.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but except to the extent that the Contractor knows or should reasonably know about an inconsistency between the Contract Documents and applicable law, and the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall notify the Owner prior to incurring such additional cost or expending such additional time, or if Contractor cannot reasonably provide notice prior to incurring costs or expending additional time, then as soon thereafter as reasonably possible, and may make Claims as provided in Article 15. Any such notice by the Contractor shall not entitle the Contractor to any relief if prohibited by Sections 3.2.1 through 3.2.3 or otherwise by the Contract Documents. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

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§ 3.3.4 Lot lines and permanent bench marks have been established as indicated on Drawings, Contractor shall be responsible for lay-out of Project according to Drawings with respect to location on property and elevation in relation to grade.

§ 3.3.5 All employees and subcontractors of the Contractor shall be qualified by training and experience to performance their assigned tasks. At the written request of Owner or Architect, the Contractor shall not use in the performance of the Work any employee or subcontractor reasonably deemed by Owner to be incompetent, careless, unqualified to perform the Work assigned to him, or otherwise unsatisfactory to Owner. Contractor shall engage sufficient workers on the Project at all times to perform the work in the time periods required by the Contract.

§ 3.3.6 In the event of a strike or stoppage of work resulting from a dispute involving or affecting the labor employed by the Contractor or any of its Subcontractors, Owner may, at its option and without any notice required by this Contract, terminate this Agreement for default unless the Contractor shall remedy the strike of work or work stoppage or other disruption within twenty (20) calendar days after the dispute arises.

§ 3.3.7 Contractor shall furnish Owner, on request, resumes of Contractor's key personnel involved in the day-to-day Work on the Project.

§ 3.3.8 Contractor will not permit at any time alcohol, controlled substances or firearms to be present at the Project Site. No smoking will be permitted in any area of the Project which is enclosed or in the finish-out stage of construction.

§ 3.3.9 The Contractor shall be solely responsible for properly laying out the Work, and for all lines, elevations and measurements for all of the work executed under the Contract Documents. He shall verify the figures shown on the drawings before laying out the work and will be held responsible for all costs resulting from his failure to do so.

§ 3.3.10 The Contractor has the responsibility to ensure that all materials suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. The Contractor shall coordinate its Work with that of all others on the Project including deliveries, storage, installations and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of all materials and equipment required under this Agreement. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan the most effective and efficient method of overall installation.

...

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only as provided in the Contract Documents with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. The Architect will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the Project Manual and/or Contract Documents.

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§ 3.4.4 Should the Owner desire to reduce the Contract Time and authorize overtime, the additional cost (premium portion only) shall be paid by the Owner and the Contract Sum and, if necessary, the Guaranteed Maximum Price shall be adjusted accordingly, only if such work is authorized in writing by the Owner prior to performance in a Change Order as provided by the Contract Documents. This provision for payment shall not apply when Owner accelerates the construction of the Project for Contractor's unexcused delays as provided in the Contract Documents.

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor further warrants to the Owner and the Architect that the Work will be performed and completed in a good and workmanlike manner, in accordance with the Contract Documents, all applicable building codes and good engineering and construction practices befitting the Work as specified. The Contractor shall perform all work reasonably required, to correct Work with errors, omissions, defects or deviations from what is required by the Contract Documents, at no cost to Owner.

§ 3.5.2 All warranties shall include labor and materials and shall be signed by the manufacturer and/or Subcontractor as the case may be and countersigned by the Contractor. All Warranties shall be delivered to the Architect upon completion of the work and before the submission of request for final payment. At the time of final completion of the work, the Contractor agrees to assign to the Owner any and all manufacturers' warranties relating to materials and labor used in the Work and further agrees to perform the work in such manner so as to preserve any and all such manufacturers' warranties.

§ 3.5.3 In addition to the foregoing stipulations, the Contractor shall comply with all other warranties referred to in any portions of the Contract Documents or otherwise provided by law or in equity, and where warranties overlap, the more stringent requirements shall govern.

...

~~The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.~~
§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor for which Owner is not exempt from payment and that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.2 Notwithstanding any other term, covenant or condition of the Contract Documents, the Contract Sum, including itemizations and elements thereof and all prices quoted by the contractor or any subcontractor or supplier engaged by the Contractor or any subcontractor, is deemed to include all federal, state and local taxes, including without limitation sales taxes, customs duties and excise taxes. Any such tax which is found to be inapplicable or for which exemption may be obtained is, to the extent of any refund or exemption available, the property of Owner. The purchase, lease, rental, storage, use or other consumption of tangible personal property for the performance of this Contract by the contractor may be exempted from state and local sales tax pursuant to the Texas Limited Sales Excise and Use Tax Act (see Section 151.311 of the Texas Tax Code). Contractor will claim the benefit of any such exemption. To claim the benefit of this exemption, the Contractor must comply with such procedures as may be prescribed by the State Comptroller of Public Accounts. Owner shall receive the benefit of all reductions in the cost of construction attributable to the sale tax exemptions, whether or not Contractor takes the steps necessary to claim such exemption. This provision shall control over any provision of the Contract Documents to the contrary.

§ 3.7

PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations ~~concluded~~ concluded or otherwise required to be obtained by Contractor under the Contract Documents. The Contractor shall procure (as required by the Contract Documents) all certificates of inspection, use, occupancy, permits and licenses, pay all charges, deposits and fees and give all notices necessary and incidental to the due and lawful prosecution of the work, certificates of inspection, use and occupancy shall be delivered to the Architect upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved schedule for the Work. The costs of such procurement, payment and delivery are included within the Contract Sum, and constitute Costs of Work unless otherwise provided by the Contract Documents.

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- .1 ~~Allowances~~ allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

...

- .3 ~~Whenever~~ whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference

between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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§ 3.9.4 The superintendent and all on-site supervisory staff shall be satisfactory to the Owner and Architect in all respects, and Owner and Architect shall have the right to reasonably require Contractor to remove from the Project any superintendent or on-site supervisor whose performance is not reasonably satisfactory to Owner and Architect, and to replace such superintendent or on-site supervisor with a superintendent or on-site supervisor reasonably satisfactory to Owner and Architect.

§ 3.9.5 The list of all supervisory personnel, including the project manager and superintendent, that the Contractor intends to use on the Project and a chain-of-command organizational chart shall be submitted to the Owner and Architect. The Contractor shall not engage supervisory personnel or utilize an organization and chain-of-command other than as approved by Owner and Architect, and shall not change such personnel or form of organization without the written approval of the Owner and Architect, which approval shall not be unreasonably withheld or delayed

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's ~~information review and approval~~ a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work ~~and Project, and Project~~ and submitted to Architect and Owner for their review and approval, and shall be related to the entire Project to the extent required by the Contract ~~Documents, Documents or~~ Owner or Architect, and shall provide for expeditious and practicable execution of the Work.

...

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to to, and approved by the Owner and Architect.

...

The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as ~~constructed~~-constructed, and shall be signed by the Contractor certifying to Owner thereby that they show complete and "as-built" conditions, stating sizes, kinds of materials, vital piping, conduit locations, and similar matters.

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§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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§ 3.12.11 The Contractor shall assemble for the Architect's review three complete copies in looseleaf binders of operating and maintenance data from the manufacturers whose equipment is or will be installed in the Work.

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Contractor shall not permit any housing trailers to be maintained at the site, except for a security trailer and the superintendent's trailer, without the prior approval of Architect.

...

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. Structural members shall not be cut except with written permission of the Architect. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 After installation of the Work, Contractor shall carefully fit around, close up, repair, patch and point such work to match adjoining surface by use of proper tools and materials using workers skilled in the required trades.

...

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project. The Contractor shall maintain streets around the Project site in a clean condition. The Contractor shall remove all spillage and tracking arising from the performance of the Work from such areas, and shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas.

...

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of ~~copyrights~~ copyrights, intellectual property rights, and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a ~~copyright~~ copyright, intellectual property rights, or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

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§ 3.18.1 ~~To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.~~ TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, AND ITS AGENTS AND EMPLOYEES AND THE ARCHITECT AND ITS CONSULTANTS OR ANY OF THEM FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, TO THE EXTENT THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, OR CLAIMS FOR OR BY EMPLOYEES, SUBCONTRACTORS, OR OTHER THIRD PARTIES, INCLUDING LOSS OF USE RESULTING THEREFROM, AND IS CAUSED IN WHOLE OR IN PART BY NEGLIGENT ACTS OR OMISSIONS OR BY ACTS OR OMISSIONS RESULTING IN THE LIABILITY, OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR PERFORMING WORK AT THEIR INSTANCE OR REQUEST, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE. THE CONTRACTOR'S OBLIGATION SHALL BE IN EFFECT REGARDLESS OF WHETHER OR NOT SUCH

CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY THE NEGLIGENCE OF A PARTY INDEMNIFIED HEREUNDER, PROVIDED THAT CONTRACTOR SHALL NOT BE OBLIGATED TO INDEMNIFY ANY SUCH PARTY FROM LOSS OR DAMAGES ATTRIBUTABLE TO SUCH PARTY'S OWN NEGLIGENCE. THIS INDEMNITY OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18. THESE OBLIGATIONS SHALL SURVIVE TERMINATION OR COMPLETION OF THE CONTRACT AND TERMINATION OF CONTRACTOR'S RIGHT TO PERFORM THE WORK UNDER THE CONTRACT.

...

§ 3.18.3 The provisions of Paragraph 3.18 shall survive the termination of this Contract, howsoever caused, and no payment, partial payment, nor issuance of a certificate of Substantial Completion nor a certificate of final completion nor acceptance of occupancy in whole or in part of the Work shall waive or release any of the provisions of Paragraph 3.18.

...

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the ~~Owner, Contractor~~ Owner and Architect. Consent shall not be unreasonably withheld.

...

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate ~~for~~ For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. Architect will promptly inform Contractor and Owner of any non-compliance observed. The Architect will exercise care and diligence when on site in discovering and properly reporting to the Owner any defects or deficiencies in the Work of the contractor or any of its Subcontractors, or their agents or employees, or any other person performing any of the Work in the construction of the Project. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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Except as otherwise provided in the Contract Documents or when direct communications have been specially ~~authorized,~~ authorized by the Owner or Architect, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Work progress and quality of the Work and the of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such ~~amounts~~ amounts Owner may consider other terms and provisions of the Contract Documents in determining the amount of payment to be made to the Contractor.

§ 4.2.6 The Architect and Owner each has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect and Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect or Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or Owner to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the ~~Work~~ Work, or constitute approval or acceptance of Work that is deficient or does not meet the requirements of the Contract Documents.

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§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. Any change affecting the Contract Sum or Contract Time must be approved by the Owner in writing prior to commencement

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10. In the event Architect is required to perform more than one inspection to determine the date or dates of Substantial Completion or final completion, due to Contractor's failure to meet the conditions for such completion, Contractor shall be responsible for paying or reimbursing Owner for the cost of any Additional Services charged by Architect under the agreement between Owner and Architect.

...

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or ~~Contractor~~ Contractor which shall be copied to the other through the Architect. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

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§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract ~~Documents~~ Documents, subject to the prior approval of Owner.

...

§ 4.2.15 The Architect's review of Shop Drawings, Product Data and Samples and on-site observations of the construction Work is to determine if the Contractor's submittals and Work appear to be in conformance with the design concept set forth in the Contract Documents prepared by the Architect. It is understood that the Architect's review shall not be considered to be complete in every detail or exhaustive and shall also not relieve any Contractor, Subcontractor, manufacturer, supplier, fabricator, consultant or other third party from responsibility for compliance with the requirements of the Contract Documents or for the responsibility to coordinate the Work, or portion of the work, of one trade with another.

...

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site-site away from the site, or otherwise to furnish labor or materials. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or

subcontractors of a separate ~~contractor~~-contractor, unless otherwise indicated by the context. The term Subcontractor includes persons supplying materials or equipment for the Work.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the ~~site~~-site away from the site, or otherwise to furnish labor or materials. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor. The term Sub-subcontractor includes persons supplying materials or equipment for the Work.

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§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the ~~14 day~~-14 day period shall constitute notice of no reasonable objection.

...

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was ~~reasonably capable of performing the Work, the rejected for a reason other than good cause,~~ the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Good cause shall include, but not be limited to, Owner or Architect's prior experience of unsatisfactory work performed by the Subcontractor or debarment of the Subcontractor.

...

§ 5.2.5 The Owner may require the Contractor to change any Subcontractor or supplier previously approved by it, if such a change is due to failure of subcontractor to perform in accordance with the requirements of this Contract. If Owner requires removal of a subcontractor for such failure to perform, and Contractor reasonably objects to such removal, then Owner will pay any actual increase in the cost between the new subcontractor and the subcontractor replaced incurred by Contractor, taking into account any amounts which Contractor withholds or recovers in damages from the replaced subcontractor. If Contractor requests such payment from Owner, Contractor shall provide Owner with satisfactory proof of such additional costs incurred by Contractor.

§ 5.2.6 The Contractor, as soon as possible after selection, shall furnish to the Architect and Owner in writing a list of the names, current addresses, telephone numbers and proposed contract values of the Subcontractors and Material Suppliers for the principal portions of the Work.

By appropriate agreement, ~~written where legally required for validity,~~ written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the

Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

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When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the ~~subcontract~~ subcontract, provided, however, that Owner does not assume Contractor's obligations or liabilities for defaults occurring prior to Owner's assumption., which shall remain the responsibility of Contractor.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation ~~shall~~ may be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. ~~If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~

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§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the ~~Owner or~~ Owner, separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14. If such separate contractor initiates a claim or legal or any other proceedings against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at its own expense, and if any judgment or award against the Owner arises therefrom, based on Contractor's act or omissions or the act or omissions of Contractor's employees, Subcontractor or parties for whom Contractor has liability, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or other costs which the Owner has incurred over and above those paid for directly by the Contractor.

§ 6.2.6 Contractor shall be responsible for any delays to a separate contractor caused by Contractor or its Subcontractor.

...

§ 6.4 ASSIGNMENT OF CONTRACTS

§ 6.4.1 Owner reserves the right to assign to Contractor contracts separately negotiated with other contractors performing Work on this Project and its appurtenances.

§ 6.4.2 Contractor agrees to accept assignments of contracts provided in paragraph 6.4.1 above and to administer and coordinate the work thereunder in same manner as if Contractor was original contracting party, but Contractor will not be required to employ persons or entities against whom he makes a reasonable objection.

§ 6.4.3 Contractor agrees prior to commencement of Work under assigned contracts to modify the Performance bond and Payment Bond under Contractor's original Contract to conform to adjusted Contract amount, including administration fee, as shown on said Change Order, covering modification provided for therein.

§ 6.4.4 Contractor further agrees to obtain modifications to insurance policies required in Contractor's original Contract to specifically include the Work provided for in said assigned contracts.

§ 6.4.5 Certification of modification to bonds and insurance policies acceptable to Owner shall be submitted to Owner through Architect prior to commencing Work under assigned contracts.

§ 6.4.6 Any additional costs incurred by such assignment shall be included in the Cost of the Work, and, if appropriate, the Guaranteed Maximum Price shall be increased by the amount of the additional costs plus the Contractor's Fee calculated as a percentage of such additional costs, provided, however, no additional amounts shall be due to Contractor as a result of long-lead items ordered by Owner as described in Section 2.1.7 of the Agreement. Contractor shall not be required to accept an assignment unless the subcontractor agrees to execute Contractor's standard subcontract agreement or other subcontract agreement in a form reasonably acceptable to Contractor, except for long-lead items procured by Owner.

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§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone. A minor change is one that does not affect the Contract Time or Contract Sum.

...

§ 7.1.4 A field directive or field order shall not be recognized as having any impact on the Contract Sum or the Contract Time, and the Contractor shall have no claim therefor unless it shall, prior to complying with same and in no event later than ten (10) days from the date such directive or order was given, submit to Owner for Owner's written approval its change proposal.

§ 7.1.5 The provisions of the Agreement regarding Change Orders shall be observed.

...

§ 7.2.2 It is understood and agreed that refinement and detailing will be accomplished from time to time with respect to the Drawings and Specifications contained in the Contract Documents. No adjustment in the contract Sum or the Scheduled Completion Date shall be made unless such refinement or detailing results in changes in the scope, time for performance, quality, function and/or intent of the Drawings and Specifications not reasonably inferable or anticipatable by a contractor or Contractor's experience and expertise. The delivery of supplemental or revised Drawings to the Contractor by either the Architect or the Owner's Representative shall not be interpreted by the Contractor as fulfilling the requirements of the Article for a written order to proceed with the Work. The written order (signed by the Owner and Contractor) must be in addition to such Drawings.

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§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive. When either the Owner or the Contractor or both do not agree with the determination made by the Architect concerning the adjustments in the Contract sum and Contract Time, such disagreement shall be resolved by negotiation. If an agreement cannot be reached between Owner and Contractor within a reasonable period of time, either party may require mediation

§ 7.3.11 The execution by Owner and Contractor of a Change order shall include all adjustments to the Contract Sum and/or Contract time applicable to the Work covered by such Change order or impacted by such Change Order, and no additional claims based on the Work performed in such Change order or its impact on other Work will be valid.

§ 7.3.12 All proposals for a change involving an increase or decrease in the amount of the Contract Sum shall be submitted by the Contractor in a completely itemized breakdown form which shall include but not be limited to the following:

- a. Material quantities and input prices (separated into trades),

- b. Labor costs,
- c. Construction equipment,
- d. Worker's Compensation and Public Liability insurance,
- e. Social Security Tax,
- f. General Conditions

The Contractor shall furnish spreadsheets from which the breakdowns were prepared, plus spreadsheets, if requested by Owner, from any Subcontractor.

Full credit, but without overhead, shall be given for deductions.

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§ 8.1.3 The date of Substantial Completion is the date certified by the Architect and approved by Owner in accordance with Section 9.8.

...

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and ~~Owner~~ Owner's approval of such insurance. The date of commencement of the Work shall not be changed by the effective date of such insurance.

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the ~~Work; Work by Owner;~~ or by labor disputes, fire, ~~unusual delay in deliveries,~~ unavoidable casualties or other causes beyond the Contractor's ~~control;~~ control which do not arise through the action or inaction of Contractor or its Subcontractor or suppliers, could not have been reasonably anticipated and could not have been avoided through the exercise of reasonable care or prudent construction management by the Contractor; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, mediation, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may ~~determine.~~ determine, subject to the Owner's concurrence. The foregoing notwithstanding, the Contractor shall not be entitled to an extension of time for changes in the Work required due to Contractor fault, or which extend beyond the time extension provided in a Change Order. Nothing in this provision will limit the rights of Owner under other provisions of this Contract, including Section 3.3.6 of this document.

...

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. ANY PROVISION OF THE CONTRACT DOCUMENTS TO THE CONTRARY NOTWITHSTANDING, IT IS EXPRESSLY AGREED THAT THE EXTENSION OF THE CONTRACT TIME SHALL BE CONTRACTOR'S SOLE REMEDY FOR ANY DELAY UNLESS THE SAME SHALL HAVE BEEN CAUSED BY ACTS CONSTITUTING INTERFERENCE BY THE OWNER WHICH INTERFERE WITH CONTRACTOR'S PERFORMANCE OF THE WORK, AND THEN ONLY TO THE EXTENT THAT SUCH ACTS CONTINUE AFTER CONTRACTOR'S WRITTEN NOTICE TO OWNER OF SUCH INTERFERENCE. OWNER'S EXERCISE OF ANY OF ITS RIGHTS UNDER THE CONTRACT DOCUMENTS OR OWNER'S EXERCISE OF ANY OF ITS REMEDIES OF SUSPENSION OF THE WORK OR REQUIREMENT OR CORRECTION OR RE-EXECUTION OF ANY DEFECTIVE WORK SHALL NOT UNDER ANY CIRCUMSTANCES BE CONSTRUED AS INTERFERENCE WITH CONTRACTOR'S PERFORMANCE OF THE WORK.

§ 8.3.4 In the event of inexcusable delay by Contractor, Owner may direct that the Work be accelerated by means of overtime, additional crews or additional shifts or resequencing of the Work. All such acceleration shall be at no cost to Owner.

§ 8.3.5 In the event that Contractor does not complete the Work within the Contract Time, then in addition to any other costs and damages (liquidated or otherwise) for which Contractor is responsible, Contractor will provide, at its expense, any bonds required by governmental authorities to enable Owner to secure a Certificate of Occupancy (if required) even though there are items of Work which are incomplete.

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~~The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.~~ § 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the Contractor hereunder if and for so long as the Contractor fails to perform any of its material obligations hereunder or otherwise is in default under any of the provisions of the Contract Documents, subject to the requirements of applicable law.

...

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the ~~Architect~~, Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

...

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section ~~9.2-9.2.~~, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

...

§ 9.3.1.3 All progress payment requests shall be accompanied by (i) an itemization of all Subcontractors and material suppliers, the amounts due each and the amounts to be paid out of said progress payment to each of them and (ii) by unconditional lien waivers releasing all liens and lien rights with respect to Work for which Owner has made payment under a prior progress payment request in a form reasonably satisfactory to Owner from Contractor and all its subcontractors and material suppliers with contracts in excess of \$25,000.00. When Contractor submits its request for payment of retainage, Contractor shall submit "All Bills Paid" affidavits and unconditional final lien waivers fully releasing all liens and lien rights with respect to the Work in a form reasonably satisfactory to Owner from Contractor and all its Subcontractors and material suppliers with contracts in excess of \$25,000.00. Such Application for Payment shall be certified as correct by Contractor. Each Application for Payment shall also be accompanied by Certified Payrolls and such other affidavits, certificates, information, data and schedules as Owner may reasonably require. The Owner is not required to make any payment to Contractor to the extent reasonably necessary to protect Owner, if Contractor has not supplied all items required by the Agreement and this Subparagraph 9.3.1. The form of Application for Payment unless otherwise instructed, shall be AIA Document G702, *Application and Certification for Payment*, supported by AIA Document G703, *Continuation Sheet*.

§ 9.3.1.4 The Owner shall have the right at all times to contact the Contractor's Subcontractors and suppliers to ensure that the same are being paid by the Contractor for labor, materials, or both furnished for or in connection with the Work. Contractor will receive the payments made by Owner and will hold such payments as a trust fund to be applied first to the payment of any parties furnishing labor, materials, equipment or services for the Work in accordance with the provisions of their subcontracts; and Contractor will so apply the payments within seven (7) days after receipt from Owner before using any part thereof for any other purpose. Progress payments may, in the

discretion of Owner, be made in the form of checks payable jointly to Contractor and such parties. In the event Owner receives any notices of non-payment from parties furnishing labor, materials, equipment or services for the Work progress payments and/or final payment may, in the discretion of Owner, be made in the form of checks payable jointly to Contractor and such parties for such amounts as Contractor agrees are due. If Contractor shall fail to pay promptly when due, all labor, materials, equipment and services furnished in connection with the performance of the Work, Owner may, after seven (7) days' written notice to Contractor and such amounts are not disputed by Contractor within said 7 day period, pay the amount of such liabilities and recover the amount therefrom from Contractor or deduct such amount from any monies due or to become due Contractor hereunder.

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§ 9.3.4 Contractor's request for payment of the retainage may be made only upon expiration of thirty (30) days after Final Completion. The request shall be accompanied by the Contractor's Affidavit of Payment of Debts and Claims (AIA Document G706) or a comparable affidavit on a form acceptable to Owner. This document must be executed under oath and notarized.

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. Owner may rely on other provisions of the Contract Documents, as well as on the Architect's Certificate, in determining the payment to be made to Contractor.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, suppliers, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 ~~repeated failure to carry out the Work in accordance with the Contract Documents; the Contract Documents; or~~
- .8 failure to provide any submittals or documentation required under the Contract Documents in a timely manner, including a schedule of values and a construction schedule.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed to be in breach of the Contract Documents by reason of the withholding of any payment which Owner is entitled to withhold pursuant to or withholds in good faith in reliance on any provision of the Contract Documents, and, no interest shall accrue in connection with the withheld payment(s) determined to have been properly withheld.

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If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents. The Contractor shall have the right to stop work for Owner's failure to pay undisputed amounts only in accordance with the provisions of applicable law.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Operation and maintenance data shall have been submitted and approved, system demonstrations have been performed, and a certificate of occupancy shall have been issued before Substantial Completion can be achieved. The Work will not be considered suitable for Substantial Completion review until all required governmental inspections and certifications have been made and posted, all final finishes within the Contract Documents are in place as required by the Specifications, and there shall have been a completion of and acceptance by Owner of all major punch-list items and a majority of minor items of a cosmetic nature, so that the Owner could occupy or otherwise utilize the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's (or those claiming by, through or under the Owner) normal business operations. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days following the date of Substantial Completion.

Upon Substantial Completion of the Work, and acceptance by Owner, Contractor will furnish a two-year maintenance bond covering Contractor's warranty period obligations for the two years subsequent to Substantial Completion. The bonds shall be in form approved or supplied by Owner, issued by a corporate surety authorized to do business in the State of Texas and listed as approved by the U.S. Department of Treasury.

...

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. Architect is obligated under the agreement between Owner and Architect to make only a limited number of site visits to determine Date of Substantial Completion of Project. Any interim determinations of Substantial Completion for portions of the Project which Owner agrees to accept separately will be conducted by Architect during normal site observations. Any fee which Owner incurs for additional site visits of Architect for determination of Substantial Completion will be at the expense of Contractor. Owner will deduct amount of Architect's compensation for reinspection services from final payment.

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§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Owner may rely on other provisions of the Contract Documents, as

well as the Architect's Certificate, in determining the payment to be made to Contractor. Architect is obligated under the agreement between Owner and Architect to make only a limited number of site visits to determine Final Completion of Project. Any fee which Owner incurs for additional site visits of Architect for determination of Final Completion will be at the expense of Contractor. Owner will deduct amount of Architect's compensation for reinspection services from final payment.

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§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. ~~If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment, accepted, less retainage.~~ Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. Nothing in this subsection is intended to limit or reduce Owner's rights and remedies in the event of a Contractor default.

...

.3 terms of ~~special warranties~~ required by the Contract ~~Documents~~. Documents or provided by law.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Final payment is considered to have taken place when Contractor or any of its representatives negotiates Owner's final payment check, whether labeled final or not, for cash or deposits the check in any financial institution.

...

~~The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.~~ § 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.1.2 Contractor shall be responsible for providing such security on the Work site as necessary to protect against loss or damage to materials or the Work.

§ 10.1.3 Contractor shall be responsible for providing safe paths of travel for the public, or any employee, invitee, agent or representative of Owner who has the right to access the Project or any portion of the Project prior to completion of Contractor's construction activities. Contractor shall confer with Architect and Owner on the travel route or routes to be used. Unless otherwise agreed by the Owner and Contractor, the safe access route shall include access from parking areas and public sidewalks, and Contractor shall reroute such access as necessary during the progress of the construction to maintain safe access.

...

.1 ~~employees~~ persons on the Work and other persons who may be affected thereby;

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§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall give Owner reasonable advance notice and shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss ~~(other than damage or loss insured under property insurance required by the Contract Documents)~~ to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in

whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

...

§ 10.2.9 The foregoing notwithstanding, it is understood that the Contractor will require its Subcontractors and suppliers to provide for the safety of their laborers and employees, or that such subcontractors and suppliers may be subject to safety requirements and obligations imposed by law. Nothing in the Contract Documents is intended to affect the contractual obligations of the Subcontractors or suppliers to Contractor under their subcontracts with Contractor, or to affect any safety obligations imposed upon Subcontractors or suppliers by law. As between Contractor and Subcontractors and suppliers, nothing in the Contract Documents is intended to relieve the Subcontractors and suppliers from the performance of their contractual and legal obligations. Nothing in the Contract Documents is intended to confer any right upon any person or entity not a party to the Agreement between Owner and Contractor to pursue a claim against Owner or Contractor based upon a safety violation, or to create third-party beneficiaries to the Agreement between Owner and Contractor.

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§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. Prior to commencement of the Work, Owner will provide all reports in its possession or control relating to environmental condition of the Project site.

...

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance located on the Project site solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred shall, to the extent permitted by applicable law, indemnify the Contractor for all reasonable remediation cost and expense thereby incurred, provided that Contractor shall first notify Owner of any claim made against Contractor by a governmental agency for remediation prior to commencing remediation. Owner shall have the right, but not the obligation, to undertake such remediation at Owner's expense.

§ 10.3.7 Except as may be required by the Contract Documents, the Contractor agrees that it shall not transport to, use, generate, dispose of or install at the Project site any hazardous substance (as defined in Subparagraph 10.3.5), except in accordance with applicable Environmental Laws. Further, in performing the Work, the Contractor shall not cause any release of hazardous substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws or as required by the Contract Documents. In the event the Contractor engages in any of the activities prohibited in this Paragraph 10.3, to the fullest extent permitted by law, the Contractor hereby indemnifies and holds harmless Owner and all of their respective officers, directors, agents and employees from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this Section 10.3.

§ 10.3.8 For purposes of this Contract, the term "hazardous substance" shall mean and include, but shall not be limited to, any element, constituent, chemical, substance, compound or mixtures, which are defined in or included

under or regulated by any local, state or federal law, rule, ordinance, by-law or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including with limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA") and The Marine Protection Research and Sanctuaries Act ("MPRSA"), the Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state super-lien or environmental clean-up or disclosure statutes, including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is the Contractor's responsibility to comply with this Section 10.3 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws, for all services rendered after the effective date of any such amendments.

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All insurance requirements are set out in the Agreement.

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1— Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2— Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3— Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4— Claims for damages insured by usual personal injury liability coverage;
- .5— Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6— Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7— Claims for bodily injury or property damage arising out of completed operations; and
- .8— Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

~~§ 11.1.4~~ The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

~~§ 11.2 OWNER'S LIABILITY INSURANCE~~

~~The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.~~

~~§ 11.3 PROPERTY INSURANCE~~

~~§ 11.3.1~~ Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

~~§ 11.3.1.1~~ Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

~~§ 11.3.1.2~~ If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

~~§ 11.3.1.3~~ If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

~~§ 11.3.1.4~~ This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

~~§ 11.3.1.5~~ Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

~~§ 11.3.2 BOILER AND MACHINERY INSURANCE~~

~~The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.~~

~~§ 11.3.3 LOSS OF USE INSURANCE~~

~~The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.~~

~~§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.~~

~~§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

~~§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.~~

~~The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for CONTRACTOR RELEASES OWNER AND ITS EMPLOYEES, MEMBERS OF ITS GOVERNING BODY, OFFICERS, AGENTS AND REPRESENTATIVES FROM ALL CLAIMS OR LIABILITIES FOR (1) DAMAGES CAUSED BY FIRE OR OTHER CAUSES of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity THAT ARE COVERED BY INSURANCE MAINTAINED BY CONTRACTOR, WHETHER REQUIRED UNDER THIS CONTRCT OR NOT, OR INSURANCE THAT WOULD HAVE BEEN COVERED BY REQUIRED INSURANCE IF THE CONTRACTOR FAILS TO MAINTAIN THE INSURANCE COVERAGES REQUIRED BY THIS CONTRACT. CONTRACTOR WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER ITS PROPERTY INSURANCE.. CONTRACTOR WILL NOTIFY THE ISSUING INSURANCE COMPANY OR COMPANIES OR TRUST ADMINISTRATOR OF THE RELEASE SET FORTH IN THIS SECTION AND WILL HAVE THE INSURANCE ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE AND TO WAIVE THE INSURER'S RIGHTS OF SUBROGATION AGAINST OWNER. THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR STRICT LIABILITY OF THE OWNER, AND EVEN THOUGH THAT PERSON RELEASED WOULD OTHERWISE HAVE A DUTY OF indemnification, contractual or otherwise, INDEMNIFICATION, CONTRATUAL OR ORTHERWISE, DID NOT PAY THE INSURANCE PREMIUM DIRECTLY OR INDIRECTLY, AND WHETHER OR NOT the person or entity SUCH PERSON HAD AN INSURABLE INTEREST IN THE PROPERTY DAMAGED. The foregoing provisions will survive termination of this Contract, completion of the Contract, and termination of Contractor's right to perform the Work under the Contract.~~

~~§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of~~

insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

~~§ 11.3.9~~ If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

~~§ 11.3.10~~ The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. Contractor is required to provide performance and payment bonds as set out in the Agreement. Contractor is also obligated to provide the maintenance bonds required by the Agreement.

...

§ 12.1.1 If a portion of the Work is covered contrary to the Owner's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, Architect or Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

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The Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

...

§ 12.2.2.1 In addition to the Contractor's obligations under Section ~~3.5,~~ 3.5 if, within ~~one year~~ two years after the date of Substantial Completion of the entire Work or designated portion thereof agreed to in writing by the parties, or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do ~~so-so,~~ by repairing or replacing it, as reasonably determined by Architect and Owner, unless the

Owner has previously given the Contractor ~~a~~an express written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one-year period for correction of Work, if~~ If the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section ~~2.4.2.4~~ without waiving any warranties or rights. Any provision in the Contract Documents to the contrary notwithstanding, the Contractor's warranty obligations under this Section 12.2.2 are in addition to any other warranty obligations provided by this Agreement or law, including warranties provided by subcontractors, suppliers and manufacturers. Contractor shall assign all assignable subcontractor, supplier and manufacturer's warranties affecting the Work or any portion to Owner as a condition to final payment. Owner may enforce any warranty obligations separately, concurrently or successively.

§ ~~12.2.2~~ 12.2.2 The ~~one-year~~two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ ~~12.2.3~~ 12.2.3 The ~~one-year~~two-year period for correction of Work shall ~~not~~ be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

...

§ ~~12.2.4~~ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is defective or otherwise not in accordance with the requirements of the Contract Documents.

§ ~~12.2.5~~ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the ~~one-year~~two-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work. The corrective remedies set forth in this Paragraph 12.2 are not exclusive and shall not deprive the Owner of any action, right or remedy otherwise available to it for breach of any of the provisions of the Contract Documents.

...

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Contractor shall pay all costs and expenses incurred by Owner in the evaluation of and determination to accept such defective Work, as well as the amount by which the value of the Work is diminished by the defect. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and compensating Owner for the costs described above and the diminished value of the defective Work. If acceptance occurs after final payment, Contractor will pay to Owner the appropriate amount within 30 days after demand.

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Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice ~~as provided in the Agreement.~~

...

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of ~~(1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and~~ (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

...

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 and other portions of the Contract Documents reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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Payments due and unpaid under the Contract Documents shall bear ~~interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ as provided in the Agreement.

§ 13.7 ~~TIME LIMITS ON CLAIMS~~

~~The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.~~ Intentionally omitted

...

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~30~~ 90 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

...

- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time ~~stated in the Contract Documents;~~ required by the Contract Documents, subject to any right of Owner to withhold funds or suspend payment under the Contract; or

...

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 ~~repeatedly refuses or fails to supply enough properly skilled workers or proper materials;~~
- .2 ~~fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;~~
- .3 ~~repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or~~
- .4 ~~otherwise is guilty of substantial breach of a provision of the Contract Documents.~~

§ 14.2.1 The Owner may terminate the Contract or Contractor's right to perform the Work under the Contract, if the Contractor

- .1 fails to supply enough properly skilled workers or proper materials or equipment to complete the Work in a diligent, efficient, workmanlike or timely manner;
- .2 fails to make payment to Subcontractors for materials, equipment or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards applicable laws, statutes, ordinances, codes, rules, regulations, or lawful orders of a public authority;
- .4 disregards the instructions of the Architect or the Owner (when such instructions are based on the requirements of the Contract Documents);
- .5 fails to perform the Work in accordance with the Contract Documents or makes fraudulent statements;
- .6 makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts generally as they become due, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions or applies to any tribunal for any receiver or any trustee for the Contractor or any substantial part of its property, commences any action relating to the Contractor under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or if there is commenced against the Contractor any such action or the Contractor by any act indicates its consent to or approval of any trustee for the Contractor or any substantial part of its property or suffers any receivership or trustee to continue undischarged;
- .7 repudiates the Contract; or
- .8 otherwise does not fully comply with a material obligation under the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety, or the Contract, and may:

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- .2 Accept assignment of subcontracts pursuant to Section 5.4; and/or
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient, including making demand on the surety to perform the Work. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work, if Owner is claiming that Contractor owes Owner payment for amounts in excess of the remaining construction funds available for payment of Owner's expenses and damages in performing the Work under the Contract.

§ 14.2.3 When the Owner terminates the Contract or Contractor's right to perform the Work under the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished, payment.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages Owner performs the Work in whole or in part, and such costs and damages incurred by Owner, including compensation for Architect's services, attorneys' fees, and expenses made necessary by the Contractor's default or the termination, exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, Owner within 30 days after demand by Owner. If Owner (rather than the surety) performs the Work the amount to be paid to the Owner for the cost of the Work and the Architect's compensation (but not the other items of expense or damages) shall be certified by the Initial Decision Maker, upon application, and this request by Owner. The Contractor's obligation for payment shall survive termination of the Contract. Contract and/or termination of Contractor's right to perform the Work under the Contract.

§ 14.2.5 It is recognized that (i) if any order for relief is entered on behalf of or against the Contractor pursuant to Title 11 of the United States Code, (ii) if any other similar order is entered under any other debtor relief laws, (iii) if the Contractor makes a general assignment for the benefit of its creditors, or (iv) if a receiver is appointed for the

benefit of credits, or (v) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate the Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon the occurrence of any such event, the Owner, in addition to other rights and remedies hereunder, shall be entitled to request the Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days after delivery of the request shall entitle the Owner to terminate the Contract or Contractor's right to perform thereunder and to the accompanying rights set forth above in Sections 14.2.1 through 14.2.5 hereof. In all events, pending receipt of adequate assurance of performance and actual performance in accordance therewith, the Owner shall be entitled to make demand on the surety or proceed with the Work with its own forces by assignment of the subcontractors or with other contractors on a time and material or other appropriate basis, the cost of which will be backcharged against the Contract Sum. If Owner performs the Work in whole or in part, and such costs and damages incurred by Owner, including compensation for Architect's services, attorneys' fees, and expenses made necessary by the Contractor's default or the termination, exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days after demand by Owner. If Owner (rather than the surety) performs the Work the amount to be paid to the Owner for the cost of the Work and the Architect's compensation (but not the other items of expense or damages) shall be certified by the Initial Decision Maker, upon request by Owner. The Contractor's obligation for payment shall survive termination of the Contract and termination of Contractor's right to perform the Work under the Contract.

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§ 14.3.2 The Contract Sum and Contract Time shall be ~~adjusted~~ subject to equitable adjustment for increases in the cost and time caused by suspension, delay or interruption as described in Section ~~14.3.1-14.3.1~~ 14.3.1 lasting more than 60 consecutive days, and increases in time. Adjustment of the Contract Sum shall include ~~profit~~ profit, but only to the extent and to the degree that it is a component of the Contract Sum provided in this Contract. No adjustment shall be made to the extent

...

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed, executed to the date of termination in accordance with the payment terms set out in the Agreement, and reasonable and necessary costs incurred by Contractor as a direct result of such early termination which are established to the reasonable satisfaction of Owner, but Owner shall not be responsible for the payment of any portion of Contractor's unearned fee, overhead or profit, or any other amounts. Contractor's right to payment and Owner's obligation to pay Contractor, are subject to the terms and provisions of this Contract.

...

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. CONTRACTOR MUST NOTIFY OWNER AND ARCHITECT IN WRITING (A) WITHIN TWENTY-ONE DAYS (OR SUCH LATER PERIOD AS MAY BE REQUIRED BY LAW) AFTER OCCURRENCE OF THE EVENT GIVING RISE TO A CLAIM OR (B) WITHIN TWENTY-ONE DAYS (OR SUCH LATER PERIOD AS MAY BE REQUIRED BY LAW) AFTER THE CONTRACTOR FIRST RECOGNIZES, OR SHOULD HAVE RECOGNIZED, THE CONDITION GIVING RISE TO A CLAIM, WHICHEVER IS LATER. WITHIN A REASONABLE PERIOD OF TIME, BUT NOT LATER THAN TWENTY-ONE (21) DAYS AFTER SUBMITTING A CLAIM, CONTRACTOR MUST PROVIDE COMPLETE AND DETAILED DOCUMENTATION CONCERNING THE NATURE AND AMOUNT OF THE CLAIM, TO THE EXTENT SUCH INFORMATION IS REASONABLY AVAILABLE. FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION 15.1.2 CONSTITUTES A WAIVER OF CONTRACTOR'S CLAIM.

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Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, ~~14~~ or other provisions of the Contract Documents, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

...

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- ~~1~~— damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- ~~2~~— damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

§ 15.1.6 Intentionally omitted

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the ~~Owner~~ Owner or the Architect.

...

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the ~~Owner's expense~~ expense of the party making the Claim.

...

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to ~~binding dispute resolution~~ litigation.

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§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, ~~demand~~ request in writing that the other party ~~file for~~ submit to mediation within 60 days ~~of~~ after the initial decision. If such a ~~demand~~ request is made and the party receiving the ~~demand~~ request ~~fails to file for~~ fails to provide written notice within 10 days to the requesting party stating the recipient's agreement to submit to mediation within the time required, then ~~both parties~~

~~waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision; the party requesting mediation may proceed to litigation.~~

...

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered ~~by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement.~~ in accordance with the laws of the State of Texas. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. ~~The request~~ If the parties have not selected a mutually-acceptable mediator at the time the request for mediation is made, then the requesting party may suggest a mediator. The non-requesting party has 10 days after receipt of the request to respond to the requesting party in writing either accepting the mediator identified by the requesting party, or identifying a different mediator. If such notice is not timely made, then the mediator suggested by the party requesting mediation will be deemed the selected mediator. If a different mediator has been suggested, and the parties are unable to agree on a mediator within 10 days after the notice suggesting a different mediator is given, then the parties shall request the Initial Decision Maker to select a mediator, and this selection will be binding on both parties. The request for mediation may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator’s fee and any filing fees ~~equally.~~ The mediation shall be held in the place where the Project is located, equally unless the parties agree otherwise. The mediation shall be held in the City in which the mediator has its office, or where the Project is located, or the City nearest the Project, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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ARTICLE 16 WAGE RATES

§ 16.1 Contractor and its Subcontractors shall comply with the prevailing wage requirements applicable to **Owner under Chapter 2258** of the Texas Government Code.

OWNER: _____ **CONTRACTOR:** _____
THE CITY OF LEWISVILLE, TEXAS **C. GREEN SCAPING, LP**

By: _____ By: _____
Name: _____ Name: _____
Title: _____ Title: _____

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, James L. Deem, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:18:46 on 03/02/2016 under Order No. 5860669134_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

MEMORANDUM

TO: Honorable Mayor & City Council

FROM: Donna Barron, City Manager
Claire Swann, Assistant City Manager

DATE: March 28, 2016

SUBJECT: **Consideration of the Charrette Process for Use and Design of 191 West Main Street.**

BACKGROUND

At the February retreat City Council directed staff to move forward with a charrette process to consider uses for the city owned property located at 191 W. Main Street. Staff is also working through the costs associated with the short-term use of the building as an entrepreneurial center. Staff recommends concurrently proceeding with the Council-requested charrette process to look at both the short and long term use/design of the bank building. Staff is recommending that the Council appoint two members from each of the boards that deal with Old Town issues as well as our Old Town business owners and expert consultants.

ANALYSIS

Beck Architecture LLC will facilitate our charrette process, which will take place in April or early May. The first few hours of the charrette will focus on identifying the highest and best use of the property. For this portion, Jason Claunch will partner with Beck Architectural to run the charrette. After the best uses are identified, Beck will draw up several concepts, which will focus on the best design for the building. At the conclusion of the charrette process, the use and design options will be presented to City Council.

To best facilitate this process, we recommend a small-group charrette made up of existing appointed board members, community stakeholders, and expert consultants. Staff recommends the individuals listed below for the charrette team. They have all expressed their enthusiasm and desire to be involved.

Ken Lannin	Arts Advisory Board
Craig Roberts	Arts Advisory Board
Scott Strange	Old Town TIF
Kellie Stokes	Old Town TIF
Casey Dunn	Old Town DRC Member
Amanda Ferguson	Old Town DRC Member
Kristen Green	2025 Committee

Subject: Charrette Process for 191 West Main Street

March 28, 2016

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Derik Hayenga	2025 Committee
Raj Daniels	Lewisville-area entrepreneur and founder of OpenTime, an application development company. Advocate for Entrepreneurial Center
Ryan Dehart	Co-owner of Witherspoon Distillery and Old Town resident
Sharrelle Evans-Jones	Chief Financial Officer at Woodall Rodgers Park Foundation and Lewisville resident
Trent Petty	Petty & Associates. Economic development and special projects consultant for City of Lewisville
Jason Claunch	Catalyst Commercial, President. Retail development strategy consultant for City of Lewisville

RECOMMENDATION

It is City staff's recommendation that the City Council consider the proposed process and charrette team as set forth in the caption above.

MEMORANDUM

TO: Donna Barron, City Manager

FROM: Nika Reinecke, Director of Economic Development and Planning

DATE: March 24, 2016

SUBJECT: **Tabled Item: Consideration of an Ordinance Granting a Special Use Permit (SUP) for Minor Automobile Services Consisting of a Free-Standing Goodyear Auto Care Facility; and Consideration of Four Associated Variances on an Approximately 1.212-Acre lot, Legally Described as Lot 1, Block G, Carrington Village Addition Phase II, Located at the Northwest Corner of FM 3040 and SH 121 Business, as Requested by Steve Meier of Hummel Investments, LLC. on Behalf of Drexel Realty Lewisville LP, the Property Owner (Case No. SUP-2016-02-01).**

BACKGROUND

The public hearing for the proposed SUP was continued from the February 15, 2016 and March 7, 2016 City Council meetings and held on the March 21, 2016 City Council meeting. This 1.212-acre property is located at the northwest corner of FM 3040 and SH 121 Business. The vacant property abuts a retail center zoned Local Commercial on the western boundary; the single-family residential development of Carrington Village on the northern boundary and State Highway 121 Business on the eastern boundary. This property was platted as part of the Carrington Village plat but has never been developed. Currently, the Goodyear Auto Care facility operates out of the end of the adjacent retail center to the west of the proposed site.

This site and the area that is now Carrington Village was rezoned from AO (Agriculture-Open Space) to GB in 1980. The site containing the adjacent retail center to the west was rezoned from AO to LC in 1984. The retail center was constructed in 1986. Carrington Village was rezoned from GB to ETH (Estate Townhouse) in 2005.

Staff has received two phone calls from neighboring residents concerned over the hours of operation and noise. Four letters from adjacent property owners were also submitted with concerns over noise, air quality, mosquitos and screening wall damage. Three of these residents have withdrawn their letters of opposition and have expressed their support for the project. The remaining property owner, who owns the retail center to the west, represents approximately 41% of the 200-foot notification area; therefore, a three-fourths (3/4) vote of all members of the City Council will be required to approve the SUP. A three-fourths (3/4) vote equates to a vote of 5-0. Two tenants from the retail center have also submitted letters of opposition.

After receiving the concerns related to noise, staff requested police reports at this location from the last year. Two noise complaints were received, one on October 2, 2015 and the other on October 19, 2015. In both instances, individuals were found behind the retail center working on a vehicle.

Subject: Goodyear Auto Care Facility SUP

March 24, 2016

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The individual in the first instance was in the process of leaving the site while the individual in the second instance was given a verbal warning by the police officer. The reports did not indicate that the individuals involved were employees of Goodyear. Copies of both police reports are provided as part of the backup information associated with this item. One concern of staff is the possible re-occupation of the existing facility for an automotive use after the Goodyear relocation to the adjacent site. Another automotive use can resume operation in the current Goodyear facility without approval of an SUP if done so within 90 days after Goodyear ceases operation at that facility.

The applicant has held meetings with adjacent residents to the north within Carrington Village over past few weeks to discuss the residents' concerns. The applicant has also met with the owner of retail center to the west to address his concerns. To address the concerns of the adjacent residents, the applicant proposes to add an 8-foot, stained, board-on-board cedar fence with a top rail on top of a 3-foot berm in the landscape buffer along the north and west property lines to provide additional screening.

Four variance requests are associated with this development that will be considered in conjunction with the SUP. The variances are: a) to waive the deceleration requirement; b) to waive the 250-foot control of access from the intersection of SH 121 Business; to waive the 230-foot driveway spacing requirement from an existing driveway on a separate lot; and d) to reduce the required 10-foot setback to 5 feet from the existing water and sanitary sewer easement. The Planning and Zoning Commission recommended approval of the SUP by a vote of 5-1 at their meeting of February 2, 2016.

ANALYSIS

Building

The applicant has outgrown the current facility and is proposing to build a new 7,800 square-foot building with 12 service bays. The services provided at this facility would include tire sales and installation, wheel alignment, fluid replacement, brake service, routine maintenance, as well as diagnostic and minor auto repairs. The facility will not provide services for body work or painting of vehicles. The proposed hours of operation by Goodyear are 7:30 a.m. to 6:00 p.m. (7:30 a.m. - 7:00 p.m. Summer) Monday-Friday; 8:00 a.m. to 5:00 p.m. on Saturday and closed on Sunday. The original site layout oriented the service bays toward FM 3040 and the residential neighborhood to the north. Staff encouraged the applicant to rotate the building and orient the service bays doors toward SH 121 Business and the existing commercial strip center. This minimizes the exposure of the service bays, customer parking and activity to the residential properties to the north. Brick and stone exterior materials are proposed in compliance with the City of Lewisville brick veneer gateway requirements. The wainscot of synthetic stone will cover the lower five feet of the building with the remainder of the building being constructed of brick. The building will have a blue standing seam metal roof as illustrated in the color elevations. The eastern and western elevations will each have six service bay doors with the ability to service 12 vehicles at one time. Customers will enter the facility from the western side of the building. The northern elevation facing the residential area has no windows or doors. The southern elevation, which will face FM 3040, will contain windows to the offices and customer waiting area.

Screening

An existing masonry screening wall six feet in height is located at the common property line between the single-family residential and this lot. The applicant is proposing to further screen the single-family residential by offsetting the building approximately 40-feet from the rear property line and creating a 15-foot landscape buffer that will contain 10 live oak trees. The applicant also proposes an 8-foot, stained, board-on-board cedar fence with a top rail on top of a 3-foot berm to provide additional screening.

Landscaping

All four sides of the site contain an enhanced landscape buffer. As indicated in the screening section, the rear portion of the property will have a 15-foot landscape buffer with 10 live oak trees shielding the residential area to the north. The FM 3040 frontage will have a 25-foot landscape buffer that will include trees and shrubs (chinese pistache, live oak, desert willow, cedar elm, silverberry, dwarf burford holly). The SH 121 frontage has a landscape buffer of approximately 30 feet filled with a variety of trees and plantings. The western side of the site abutting the retail center also has a minimum 25-foot landscape buffer that will be lined with a variety of trees. The applicant is providing triple the required number of trees on the site with a total of 37 trees compared to a minimum requirement of 12 trees.

Signage

The applicant is proposing a monument sign that will be constructed of brick and stone to match the building. The monument sign will contain an electronic reader board in compliance with ordinance requirements. No pole sign is proposed for this site. Additional wall signage is proposed for the building façade as depicted on the color elevations. The proposed wall signs must conform to ordinance requirements.

Variances

a) To waive the deceleration requirement

Section 6-103 (f)(3)(a)

All driveways connecting to Major Traffic Carriers such as FM 3040 require a deceleration lane. Per discussions with the Texas Department of Transportation (TxDOT), it was determined that TxDOT will not require a deceleration lane at the existing driveway to the subject property. TxDOT is requiring a 40-foot ingress radius to assist turning movement into the driveway. Staff has no opposition to waive the deceleration lane requirement.

b) To waive the 250-foot control of access from the intersection of SH 121 Business

Section 6-103 (c)(1)

Major Traffic Carriers on the City of Lewisville Thoroughfare Plan including FM 3040 require a 250-foot control of access from any street intersections. Control of access is the distance from a street intersection measured from the intersecting right of way lines to the radius point of the first permitted driveway along the street. The owner has requested a variance to allow an improved driveway to be 118.7 feet from SH 121 Business along FM 3040.

The existing driveway to the subject property will be improved by constructing a larger turning radii. The existing driveway was built by TxDOT in the 1990's with the FM 3040 improvement project and aligns with the median opening and left turn lane. Staff has no opposition to the request since the driveway aligns with the existing FM 3040 median opening and since TxDOT will not allow a driveway to the property from the SH 121 Business ramp of the east side of the property. This is the only driveway access to this property.

c) To waive the 230-foot driveway spacing requirement from an existing driveway on a separate lot

Section 6-103 (c)(2)(a)

The City of Lewisville Thoroughfare Plan requires a minimum 230-foot spacing between driveways on adjacent lots along Major Traffic Carriers. The improved driveway onto FM 3040 will be 66.18 feet from the adjacent driveway located west of this property. The variance would allow the improved driveway location access to the existing median opening and left turn lane on FM 3040. Staff is not opposed to the request. This will be the only driveway for the property since TxDOT will not allow a driveway from the SH 121 Business ramp on the east side of the property; and it aligns with the existing FM 3040 median opening.

d) To reduce the required 10-foot setback to 5-feet from the existing water and sanitary sewer easement.

Section 6-95 (b)

Per this section of the Land Development Regulations, a 10-foot building setback is required from all pressured utility line easements. The existing 20-foot water and sanitary sewer easement was dedicated by the Carrington Village Phase II plat to the City in 2007. Currently, there are no City water lines or sanitary sewer improvements in this existing easement. The existing water line along FM 3040 is built in the TxDOT right-of-way and the sanitary sewer serving the property is located at the northwest corner of the lot. In the future, the owner will be replatting the property to abandon the existing water and sanitary sewer easement. Staff is not opposed to this variance request since there are no existing or proposed water or sanitary sewer improvements that would use the existing 20-foot water and sanitary sewer easement.

The first three variance requests listed above are similar to variance requests granted at the Legends Car Wash site on the south side of FM 3040 east of the Walmart Super Center. If the SUP is denied, staff recommends that the City Council approve the four variance requests so that a future permitted use may move forward with development of the property.

SUP Conditions

Staff recommends the following conditions if this SUP is approved:

- 1) Overnight outside storage of vehicles shall not be allowed;
- 2) The outside storage of tires and other materials shall not be allowed on the site; and
- 3) The hours of operation shall be limited to 7:30 a.m. to 7:00 p.m. Monday-Friday; 8:00 a.m. to 5:00 p.m. on Saturday and closed on Sunday.

- 4) An eight-foot (8'), stained, board-on-board cedar fence with a top rail shall be installed on top of a minimum three-foot berm as shown on the fencing illustrations. This fence shall be kept in good repair for the life of the project.
- 5) The area between the existing masonry wall and the eight-foot (8'), stained, board-on-board cedar fence shall be maintained by the property owner.

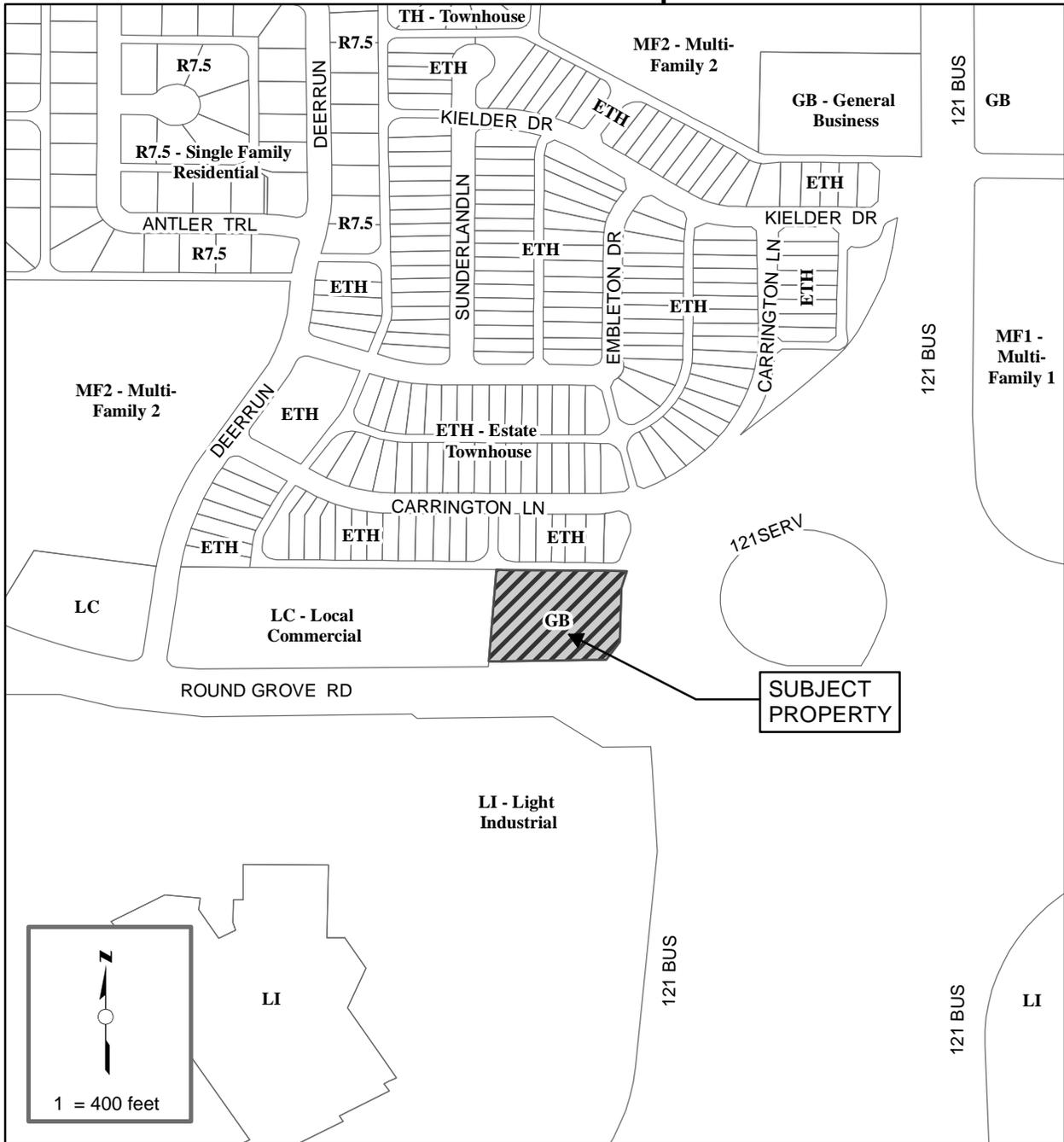
Summary

The applicant has laid out the site to minimize the impacts of the facility on the surrounding area. Enhanced architectural building design and landscaping have also minimized the visual impacts typically associated with an automotive repair facility. Over the past few weeks, the applicant has worked with the residential property owners to the north to address their concerns. These property owners, who were initially opposed to the project, now support the project. The applicant has confirmed that Goodyear will move out of the current facility at the end of the current lease regardless of the outcome of the SUP request. If the SUP is denied, the applicant has expressed a desire to pursue another location along the FM 3040 corridor. There also remains a possibility that a permitted use such a restaurant, office or retail establishment could develop at this site without additional landscape buffers and screening devices and without limited signage and hours of operation. Staff originally took a neutral stance on the SUP request due to the possibility that another automotive repair facility could continue operations in the current Goodyear facility without SUP approval if Goodyear relocates to the new site. Although this still holds true, when considering the factors discussed above, staff is comfortable with the proposal as presented and; therefore, recommends approval of the SUP.

RECOMMENDATION

It is City staff's recommendation that the City Council approve the Special Use Permit request for minor automobile services consisting of a free-standing Goodyear Auto Care facility; and the four associated variances.

Location Map



CASE NO. SUP-2016-02-01

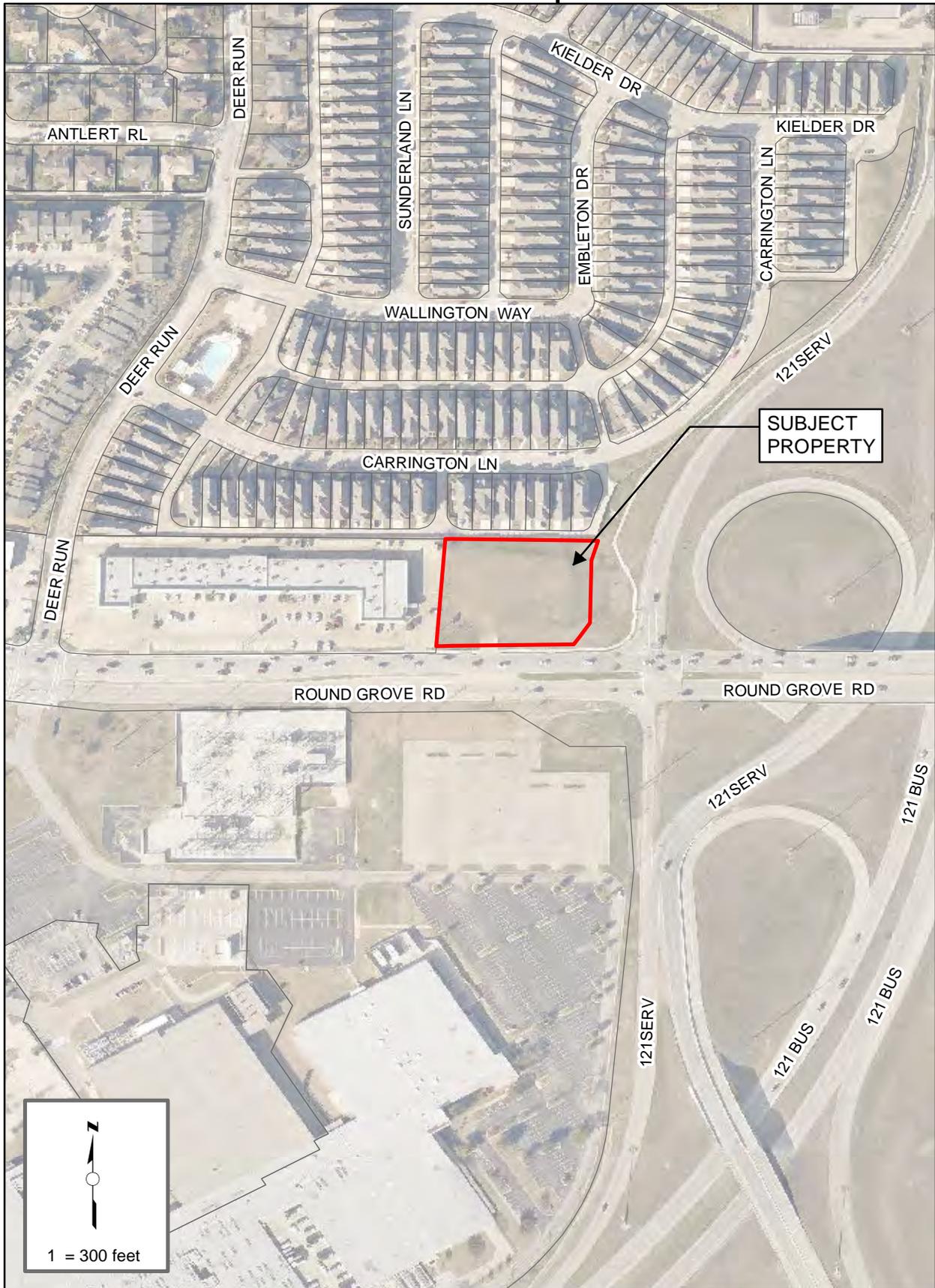
COMPANY NAME: HUMMEL INVESTMENTS LLC

PROPERTY LOCATION: NWC OF FM 3040 AND SH 121 BUSINESS (1.212-ACRES)

CURRENT ZONING: GENERAL BUSINESS (GB)

REQUESTED USE: A SPECIAL USE PERMIT (SUP) FOR A GOODYEAR AUTO CARE FACILITY

Aerial Map



**MINUTES
PLANNING AND ZONING COMMISSION
FEBRUARY 2, 2016**

Item 1:

The Lewisville Planning and Zoning Commission meeting was called to order at 6:30 pm. Members present: James Davis, Sean Kirk, Brandon Jones, Mary Ellen Miksa, Alvin Turner, Steve Byars and Kristin Green. Member Sean Kirk was absent.

Staff members present: Richard Luedke, Planning Manager and June Sin, Planner.

Item 4:

Public Hearings for Zoning and Special Use Permits were next on the agenda. There were two items for consideration:

- B. Consideration of a Special Use Permit (SUP) for Minor Automobile Services Consisting of a Free-Standing Goodyear Auto Care Facility; on an Approximately 1.212-Acre lot, Legally Described as Lot 1, Block G, Carrington Village Addition Phase II, Located at the Northwest Corner of FM 3040 and SH 121 Business, as Requested by Steve Meier of Hummel Investments, LLC. on Behalf of Drexel Realty Lewisville LP, the Property Owner. (Case No. SUP-2016-02-01).

Richard Luedke, Planning Manager, gave an overview of the proposal and provided details related to proposed building orientation and materials, landscaping, screening, buffering, signage and driveway access. Mr. Luedke also briefed the Commission on three letters of opposition that were submitted by adjacent property owners in the Carrington Village residential neighborhood north of the proposed site. The three property owners expressed concerns over potential noise, adequate screening and effects on air quality. Chairman Davis opened the public hearing. Mr. Steve Meier, the applicant, gave a detailed presentation on the history of the business and the plans for the new facility on the subject property. Mr. John Taylor, 222 Kielder Drive, President of the Carrington Village Home Owners Association, confirmed that the neighborhood contains a total of 183 homes. Mr. Terry Ellis, 234 Carrington Lane, spoke in opposition with concerns over cars parked overnight, noise, inadequate wall height and emissions affecting air quality. He also stated that felt that the distance between the SH 121 Business ramp and the proposed driveway was inadequate. Mr. Charles O'Banion, the owner of the current Goodyear facility, confirmed that the vehicles parked overnight and the noise complaints registered in October 2015 were not associated with Goodyear. He stated that all customer vehicles kept overnight are parked inside the building for liability issues. Mr. O'Banion further explained the state and federal requirements involved when disposing of tires, which are picked up from the facility every 7 to 10 days. The Commission asked questions related to the four variance requests associated with the SUP. Mr. Luedke explained each of the variance requests, three of which are related to the driveway location, while the forth request is related to a utility easement setback. Mr. Luedke confirmed that staff has no objections to the requested variances. Chairman Davis closed the public hearing. Alvin Turner expressed concern over the fact that the property has

only one point of access. A motion was made by Brandon Jones to recommend approval of the SUP with the following conditions:

- 1) Overnight outside storage of vehicles shall not be allowed;
- 2) The outside storage of tires and other materials shall not be allowed on the site; and
- 3) The hours of operation shall be limited to 7:30 a.m. to 7:00 p.m. Monday-Friday; 8:00 a.m. to 5:00 p.m. on Saturday and closed on Sunday.

The motion passed by a vote of 5-1 (No: Steve Byars).

SECTION 17-22. - "GB" GENERAL BUSINESS DISTRICT REGULATIONS

- (a) *Use.* A building or premise shall be used only for office, retail and service uses which are primarily retail in nature including, but not limited to:
- (1) Any use permitted in district "LC" as regulated in said district.
 - (2) Auto, boat, motorcycle, recreational vehicle or mobile home display, sales (outdoor) and/or repair (SUP required)
 - (3) Bakeries.
 - (4) Building material sales with outside storage or display, including lumber yards (SUP required).
 - (5) Business or commercial schools.
 - (6) Clinic, medical and dental, and professional offices.
 - (7) Carpentry, painting, plumbing or tinsmithing shop fully enclosed within a building.
 - (8) Cleaning, laundry and dyeing plants fully enclosed within a building.
 - (9) Creamery, ice cream manufacturing and dairy operations fully enclosed within a building.
 - (10) Farm implement display and sales room. (outdoor) (SUP required).
 - (11) Hotels, motels and inns.
 - (12) Mortuaries with or without crematoriums. (SUP required).
 - (13) Office buildings.
 - (14) Pet shops, retail, fully enclosed within a building.
 - (15) Printing, engraving and newspaper plants, fully enclosed within a building.
 - (16) Radio or television broadcasting station or studio with broadcasting towers (SUP required).
 - (17) Retail stores, fully enclosed within a building.
 - (18) Veterinarian or animal hospital with outdoor kennel or exercise runs (SUP required).
 - (19) Bowling alley and other commercial amusement (indoor) uses, fully enclosed within a building.
 - (20) Church worship facilities.
 - (21) Uses similar to the above mentioned permitted uses, provided activities conducted wholly inside a building and observe the requirements of all city ordinances.
 - (22) Temporary buildings for uses incidental to construction work on the premises, which buildings shall be removed upon the completion or abandonment of construction work.
 - (23) Accessory buildings and uses customarily incidental to any of the above uses, provided that such not be objectionable because of odor, smoke, noise, vibration or similar nuisance. Open storage shall be considered an accessory use but no more than ten percent (10%) of the platted lot may be used for outside storage, including access and maneuvering areas for moving the stored items.
 - (24) Dwelling units of 850 square foot minimum size when located over a retail, restaurant or similar use on the first floor (SUP required).
 - (25) Private Utility Plants or Sub-stations (including alternative energy) (SUP required).
 - (27) Cemetery, columbarium, mausoleum and accessory uses (SUP required).
 - (28) Commercial amusement, outdoor (SUP required).
 - (29) Drive-in theater (SUP required).
 - (30) Flea market, outdoor (SUP required).
 - (31) Helipad, helistop or landing strip (SUP required).
 - (32) Kennels with outdoor runs (SUP required).
 - (33) Nightclub, bar. (SUP required).
 - (34) Brewery, distillery, or winery.
 - (35) Hotels, motels and inns with rooms containing a cooktop or oven (SUP required).
- (b) *Height.* No building shall exceed in height the width of the street on which it faces plus the depth of the front yard. On a lot adjoining a residential district, no building shall exceed forty-five (45) feet in height, except that this height may be increased up to the maximum of twelve (12) stories or one hundred eighty (180) feet at the rate of two (2) feet of additional height for each one (1) foot of additional setback from required yard lines. In no event, however, shall the portion of a building located within one hundred fifty (150) feet of any property zoned for residential purposes exceed the height allowed in that residential zoning district.
- (c) *Area.*

(1) *Size of yards.*

- a. *Front yard.* There shall be a front yard having a minimum depth of twenty-five (25) feet. No parking, storage or similar use shall be allowed in required front yards in district "GB", except that automobile parking (including automobile dealer display parking) will be permitted in such yards if separated by at least twenty-five (25) feet from any residential district.
- b. *Side yard.* A side yard of not less than fifteen (15) feet in width shall be provided on the side of a lot adjoining a side street. A side yard of not less than ten (10) feet in width shall be provided on the side of a lot adjoining a residential district. The required side yard shall be waived when a screening device is installed in accordance with the city's general development ordinance. The building itself can serve as a portion of the screening device when that portion of the building exterior is constructed of the same materials as the screening device. No parking, storage or similar use shall be allowed in any required side yard or in any side street yard adjoining a residential district.
- c. *Rear yard.* No rear yard is required, except that a rear yard of not less than twenty-five (25) feet in depth shall be provided upon that portion of a lot abutting or across a rear street from a residential district, except that such yard requirement shall not apply where the property in the residential district also backs up to the rear street. The required rear yard shall be waived when a screening device is installed in accordance with the city's general development ordinance. The building itself can serve as a portion of the screening device when that portion of the building exterior is constructed of the same materials as the screening device.

(2) Reserved.

- (d) *Outside Storage Regulations.* In all zoning districts where outside storage yards are allowed, such storage yards shall be screened from view in accordance with the standards outlined in the city's general development ordinance. This provision applies to all outside storage which began after the original date of passage of this provision (April 4, 1994). Any variance request involving the requirements or standards relating to such required screening devices shall be considered by the city council in accordance with the city's general development ordinance. Areas which are used for infrequent and temporary storage for a period of thirty (30) days or less per year shall not be deemed as storage yards.

SECTION 17-21. - "LC" LOCAL COMMERCIAL DISTRICT REGULATIONS

- (a) *Use.* A building or premise shall be used only for indoor, neighborhood office, retail, and services which are primarily retail in nature, including, but not limited to:
- (1) Any use permitted in district "OD" as regulated in said district.
 - (2) Grocery stores.
 - (3) Barber and beauty shops.
 - (4) Book, card, gift and stationary stores.
 - (5) Dry cleaning and laundry services.
 - (6) Gasoline service stations (SUP required).
 - (7) Minor automobile services including tune-up and repair services, tire stores and car washes, providing there is no overnight outside storage of vehicles (not including transmission or body shops) (SUP required).
 - (8) Restaurants.
 - (9) Florists.
 - (10) Video rental stores, movie theaters and other indoor amusements.
 - (11) Church worship facilities.
 - (12) Buildings and uses owned or operated by public governmental agencies.
 - (13) Other retail, office and service uses of a similar nature provided that the business establishment supplies the everyday needs of the immediate neighborhood and is subject to the following conditions:
 - a. There is no outside display and storage of merchandise or vehicles, except for the incidental and occasional sale of merchandise outside the building for periods not to exceed thirty (30) days (i.e. Christmas tree sales and sidewalk sales, etc.).
 - b. That required yards not be used for display, sale or storage of merchandise, or for the storage of vehicles, equipment, containers or waste material.
 - c. That such use not be objectionable because of odor, excessive light, smoke, dust, noise, vibration, or similar nuisance.
 - (14) Temporary buildings for uses incidental to construction work on the premises, which buildings shall be removed upon the completion or abandonment of construction work.
 - (15) Accessory buildings and uses customarily incidental to any of the above uses, provided that such not be objectionable because of odor, smoke, dust, noise, vibration or similar nuisance.
 - (16) Private Utility Plants or Sub-stations (including alternative energy) (SUP required).
 - (17) Cemetery, columbarium, mausoleum and accessory uses (SUP required).
 - (18) Beverage container recycling collection facility (SUP required).
 - (19) Kiosks, including water and ice sales (SUP required).
 - (20) Private stadium/arena/sports field (SUP required).
 - (21) Communication Towers (SUP required).
 - (22) Plant Nursery (Retail Sales) (Indoor)
 - (23) Plant Nursery (Retail Sales) (With Outdoor Display or Storage) (SUP required).
- (b) *Height.* No building shall exceed forty-five (45) feet or three (3) stories in height, except that a building may be erected to a height of eighty (80) feet and eight (8) stories if set back from all required yard lines a distance of one (1) foot for each two (2) feet of additional height above forty-five (45) feet. In no event, however, shall the portion of a building located within one hundred fifty (150) feet of any property zoned for residential purposes exceed the height allowed in that residential zoning district.
- (c) *Area.*
- (1) *Size of yards.*
 - a. *Front yard.* There shall be a front yard having a minimum depth of twenty-five (25) feet. No parking, storage or similar use shall be allowed in required front yards in district "LC", except that automobile parking will be permitted in such yards if separated by at least twenty-five (25) feet from any residential district.
 - b. *Side yard.* A side yard of not less than fifteen (15) feet in width shall be provided on the side of a lot adjoining a side street. A side yard of not less than ten (10) feet in

width shall be provided on the side of a lot adjoining a residential district. The required side yard shall be waived when a screening device is installed in accordance with the city's general development ordinance. The building itself can serve as a portion of the screening device when that portion of the building exterior is constructed of the same materials as the screening device. No parking, storage or similar use shall be allowed in any required side yard or in any side street yard adjoining a residential district.

- c. *Rear yard.* No rear yard is required, except that a rear yard of not less than twenty-five (25) feet in depth shall be provided upon that portion of a lot abutting or across a rear street from a residential district, except that such yard requirement shall not apply where the property in the residential district also backs up to the rear street. The required rear yard shall be waived when a screening device is installed in accordance with the city's general development ordinance. The building itself can serve as a portion of the screening device when that portion of the building exterior is constructed of the same materials as the screening device.

(2) *Reserved.*

SECTION 17-29.5 - "SUP" SPECIAL USE PERMIT

(a) *Purpose.*

The special use permit (SUP) provides a means for evaluating land uses identified in this ordinance to ensure compatibility with adjacent properties. The intent of the special use permit process is to allow consideration of certain uses that would typically be incompatible or intensely dominate the area in which they are located, but may become compatible with the provision of certain conditions and restrictions.

(b) *Application submittal and approval process.*

(1) Application for an SUP shall be processed like an application for rezoning. An application shall not be complete and shall not be scheduled for a public hearing unless the following are submitted along with the application:

- a. A scaled development plan depicting the items listed in Section 17-29.5(b)(2);
- b. A meets and bounds description of the property boundary;
- c. A narrative explaining how the property and use(s) will function;
- d. Colored elevations of the building and other structures including dimensions and building materials;
- e. A Landscaping Plan, meeting the requirements of Section 6-124 of the Lewisville Code of Ordinances;
- f. A Tree Survey and Mitigation Plan if required by Section 6-125 of the Lewisville Code of Ordinances;
- g. Detailed elevations and descriptions of proposed signage;
- h. An exhibit illustrating any requested variances; and
- i. Any other information, drawings, operating data or expert evaluations that city staff determines are necessary to evaluate the compatibility criteria for the proposed use and development.

(2) The development plan submitted along with an SUP application must include the following:

- a. The layout of the site;
- b. A north arrow;
- c. A title block including project name, addition, lot, block, acreage, and zoning classification of the subject property;
- d. Name, address, and phone number for applicant, developer, owner, builder, engineer, and/or surveyor;
- e. Building location, property lines, and setbacks;
- f. Summary tables listing building square footage, required parking, and required landscaping;
- g. Locations of utility easements, if applicable;
- h. Zoning and ownership of adjacent properties;
- i. Easements, deed restrictions, or encumbrances that impact the property;
- j. Median openings, traffic islands, turning lanes, traffic signals, and acceleration and deceleration lanes;
- k. Streets, alleys, and easements adjacent to the site;
- l. Driveways and sidewalks;
- m. Parking configuration, including maneuvering lanes and loading areas;
- n. Location and details of dumpsters and screening devices; and
- o. Location of all proposed signage.

(3) Variances from the regulations of the city's General Development Ordinance may be granted at the discretion of the city council as part of the SUP approval. The granting of an SUP has no effect on uses permitted by right and does not waive the regulations of the underlying zoning district.

- (4) The planning and zoning commission or the city council may require additional information or drawings, operating data or expert evaluation or testimony concerning the location and characteristics of any building or uses proposed.
- (5) The planning and zoning commission, after holding a public hearing, shall recommend to the city council approval or denial of each SUP along with any recommended conditions. The city council shall review each case on its own merit, apply the compatibility criteria established herein, and if appropriate, grant the special use permit for said use(s).
- (6) Completion of a development plan for the SUP does not waive the requirement to provide an engineering site plan in accordance with the General Development Ordinance.

(c) *Compatibility criteria for approval.*

The planning and zoning commission shall not recommend approval of, and the city council shall not grant an SUP for a use except upon a finding that the use will:

- (1) complement or be compatible with the surrounding uses and community facilities and any adopted comprehensive plans or small area plans;
- (2) contribute to, enhance, or promote the welfare of the area of request and adjacent properties;
- (3) not be detrimental to the public health, safety, or general welfare; and
- (4) conform in all other respects to all zoning regulations and standards.

(d) *SUP conditions.*

The planning and zoning commission may recommend and the city council may adopt reasonable conditions upon the granting of an SUP consistent with the purpose and compatibility criteria stated in this section. The development plan, however, shall always be attached to and made a condition of the SUP. The other documents submitted with the SUP application may also be made conditions of the SUP.

(e) *Amendments, enlargement, modifications or structural alterations.*

- (1) Except for minor amendments, all amendments, enlargements, modifications or structural alterations or changes to the development plan shall require the approval of a new SUP. The city manager or his designee may authorize minor amendments to the development plan that otherwise comply with the SUP ordinance and the underlying zoning and do not:
 - a. Alter the basic relationship of the proposed development to adjacent property;
 - b. Increase the maximum density or height shown on the original development plan;
 - c. Decrease the number of off-street parking spaces shown on the original development plan; and/or
 - d. Reduce setbacks at the boundary of the site as specified by a building or setback line shown on the original development plan.
- (2) For purposes of this subsection, "original development plan" means the earliest approved development plan that is still in effect, and does not mean a later amended development plan. For example, if a development plan was approved with the specific use permit and then amended through the minor amendment process, the original development plan would be the development plan approved with the specific use permit, not the development plan as amended through the minor amendment process. If, however, the development plan approved with the specific use permit was replaced through the zoning process, then the replacement development plan becomes the original development plan. The purpose of this definition is to prevent the use of several sequential minor amendments to circumvent the zoning amendment process.

- (3) Although the city manager or his designee has the authority to grant minor amendments to the development plan, they are not obligated to do so. The city manager or his designee shall always maintain the discretion to require city council approval if he feels that it is within the public's interest that city council consider the amendment, enlargement, modifications, or structural changes at a public hearing.

(f) *Compliance mandatory with written requirements.*

- (1) No special use permit shall be granted unless the applicant, owner, and grantee shall be willing to accept and agree to be bound by and comply with the written requirements attached to the development plan drawings and approved by the city council.
- (2) A special use permit shall be transferable from one owner or owners of the subject property to a new owner or occupant of the subject property, however all regulations and conditions of the SUP shall remain in effect and shall be applicable to the new owner or occupant of the property.

(g) *Timing.*

All development plans submitted for review will be on the city's active list for a period of 90 days from the date of each submittal. After the 90-day period, a project will be considered abandoned and removed from the file. A building permit shall be applied for and secured within 180 days from the time of approval of the special use permit provided that the city may allow a one-time extension of the SUP for another 180 days. A SUP shall expire six months after its approval or extension date if no building permits have been issued for the site or if a building permit has been issued but has subsequently lapsed. Work must be completed and operations commenced within 18 months of approval.

(h) *Zoning map.*

When the city council authorizes granting of a special use permit the official zoning district map shall be amended according to its legend to indicate that the affected area has conditions and limited uses, said amendment to indicate the appropriate zoning district for the approved use, and suffixed by an "SUP" designation. A log of all special use permits shall be kept by the city.

(i) *Rescind and terminate a special use permit.*

City council may rescind and terminate an SUP after a public hearing if any of the following occur:

- (1) That one or more of the conditions imposed by the SUP has not been met or has been violated.
- (2) The SUP was obtained through fraud or deception.
- (3) Ad valorem taxes on the property are delinquent by six months or more.
- (4) Disconnection or discontinuance of water and/or electrical services to the property.
- (5) Abandonment of the structure, lease space, lot, or tract of land for 180 days or more. (For the purpose of this section, "abandon" shall mean to surrender occupancy by vacating or ceasing to operate or inhabit such property.)

This Section (Office Use Only)	
Case:	
PZ:	CC:
Sign/s Picked Up By:	



LEWISVILLE
Great Places. Great Living. Great Future.

**SPECIAL USE PERMIT (SUP)
APPLICATION**

Owner/s (name): Jimmy Grisham	
Company Name: Drexel Realty Lewisville LP, a Texas limited partnership	
Mailing Address: 3953 Maple Ave Suite 250 Dallas TX 75219	
Work #:	Cell #:
E-Mail: Jimmy.Grisham@CNLCRE.com	
Owner Signature (Owner/s Must Sign or Submit Letter of Authorization): <i>[Signature]</i> STEVE C. MEIER	Date: 12/4/15
Printed Name: STEVE C. MEIER	

Applicant/Agent (name): Steve Meier	
Company Name: Hummel Investments LLC	
Mailing Address: 8117 Preston Road Suite 120 Dallas TX 75225	
Work #: 214-416-9820 ext 104	Cell #: 214-632-9611
E-Mail: steve@hummelinvestments.com	
Applicant/Agent Signature	Date: 12/03/15
Printed Name: Steve Meier	

Current Zoning: GB	Requested Zoning: No Change	Acres: 1.221
Legal Description (Lot/ Block/Tract/Abstract): Lot 1 Block G Carrington Village Phase II		
Address/Location: NWC of FM 3040 and SH 121 Business		

Application and Sign Fees:

	Less than 1/2 acre	\$ 150.00
x	1/2 acre up to 4.99 acres	\$ 250.00
	5 acres up to 24.99 acres	\$ 400.00

	25 acres up to 49.99 acres	\$ 750.00
	50 acres up to 99.99 acres	\$1,000.00
	100 acres and more	\$1,500.00

Qty: 1	SUP Signs - \$35 each. 1 sign required for each 5 acres (max. 5 per site)	\$ 35.00
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Sign(s) must be posted a minimum of ten (10) days prior to the Planning & Zoning hearing date.

Amount Due (application & sign fee)	\$ 285.00
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LEWISVILLE

Where Access Means World-Class Business

REQUIRED:

Fully describe the plans for the property

The proposed development includes an approximately 7,800 square foot building with 12 Service Bays and a Customer Waiting Area. Parking for customers will be between the building and the west property line. Access to the site is provided by the existing drive approach on to FM 3040. We are proposing to push the building as far to the south and east as possible while still providing the required Fire Lane Access. The parking lot will be set back from the north property line, which abuts the adjacent residential use, at least 25' and more than 25' at some points – significantly more than required by city regulations. This will allow a greenbelt which will have significant landscape screening.

NOTE:

Items must be staff approved and deemed complete before they will be placed on an agenda.

Hummel Investments LLC

Real Estate Development

January 25, 2016

Richard Luedke
City of Lewisville
Economic Development & Planning
151 W. Church Street
Lewisville, Tx. 75057

**RE: *Goodyear Tire & Service
 NWC of FM 3040 & SH 121 Business
 Lewisville, Texas 75067***

Mr. Luedke,

This letter and attachments shall serve as a written request for four (4) Variance Requests to the city ordinances that apply to this site.

The first three (3) Variance Requests (**Variance A, B & C**) concern the city ordinance that requires drive approaches on FM 3040 to have Deceleration/Right Turn Lanes. The subject property is a vacant lot on the hard corner of FM 3040 and SH 121 Business. There is an existing drive approach into the subject property from FM 3040 that was installed by TxDot as part of the FM 3040 / SH 121 Interchange project. The drive approach only serves the subject property. The southbound SH 121 Frontage Road is directly adjacent to the east boundary the property and TxDot will not allow access from the off-ramp to the subject property.

Per Mr. Jeff Kelly, Asst. City Engineer, we will need to request three separate variances as follows:

- A. To waive the Deceleration Lane requirement
- B. To waive the required 250' control of access from the intersection of SH 121 Business
- C. To waive the required 230' driveway spacing from an existing driveway on a separate lot

Variance A

The hardship is that the property is subject to that warrants a Variance is that there is not a sufficient distance from the existing drive approach (referenced above – installed by TxDot) to the radius of the SH 121 Frontage Road intersection with FM 3040.

Additionally, we have had numerous discussions with the TxDot Area Engineer and she has told us as well Jeff Kelly, Asst. City Engineer, that TxDot will not approve a Deceleration/Right Turn Lane at this location as they felt that it interferes with the turning movement from the SH 121 Frontage

Road onto west bound FM 3040. Additionally, they did not think that the traffic load turning into our project outweighed the possible interference at the intersection.

The dimension of a typical City of Lewisville Deceleration/Right Turn Lane are as follows:

- 110 linear feet of tapered drive lane
- 60 linear feet of Stacking Space for vehicles wishing to turn
- 20 linear feet radius at the drive approach

This equates to an overall length of 190 feet for the installation of a Deceleration/Right Turn Lane at this location.

For these reasons, we respectfully request a Variance from the Decel Lane Ordinance.

Variance B

The hardship is that the existing drive approach was installed by TxDot as part of the FM 3040 / SH 121 Interchange project. This drive approach aligns with the median break in FM 3040 – also installed by TxDot as part of the FM 3040 / SH 121 Interchange project. The location of the existing drive approach was determined by TxDot. Presumably, TxDot placed the drive approach so that it would be as far from the SH 121 frontage road intersection as practical while maintaining some separation from the pre-existing drive approach on the adjacent property to the west.

Due to the design of the SH 121 intersection, there is not sufficient distance to comply with the city's 250' spacing requirement, and we respectfully request a Variance from the 250' spacing requirement.

Variance C

The hardship is really the same as that of Variance B. The existing drive approach was installed by TxDot as part of the FM 3040 / SH 121 Interchange project. The location of the existing drive approach was determined by TxDot. Presumably, TxDot placed the drive approach as close to the pre-existing drive approach on the adjacent property to the west as they deemed was practical in order to maximize the distance from the SH 121 frontage road intersection

Due to the design of the SH 121 intersection, there is not sufficient distance to comply with the city's 230' spacing requirement and we respectfully request a Variance from the 250' spacing requirement.

The fourth Variance Request (**Variance D**) concerns the city ordinance requiring a 10' building setback from an existing 20' Water & Sanitary Sewer Easement that parallels FM 3040 along the ROW line of the subject property.

Variance D

We are requesting a Variance to the city ordinance that requires a 10' building setback from a Water Easement so that we can place the front wall of the proposed building on the 25' Building Setback Line – which is dictated by the zoning regulations as well as the Plat.

After reviewing the 20' Water & Sanitary Sewer Easement in question as well as the location of the existing water and san. Sewer utilities with Mr. Jeff Kelly, Asst. City Engineer, he and the engineering staff determined that this 20' Water & San. Sewer Easement is not needed.

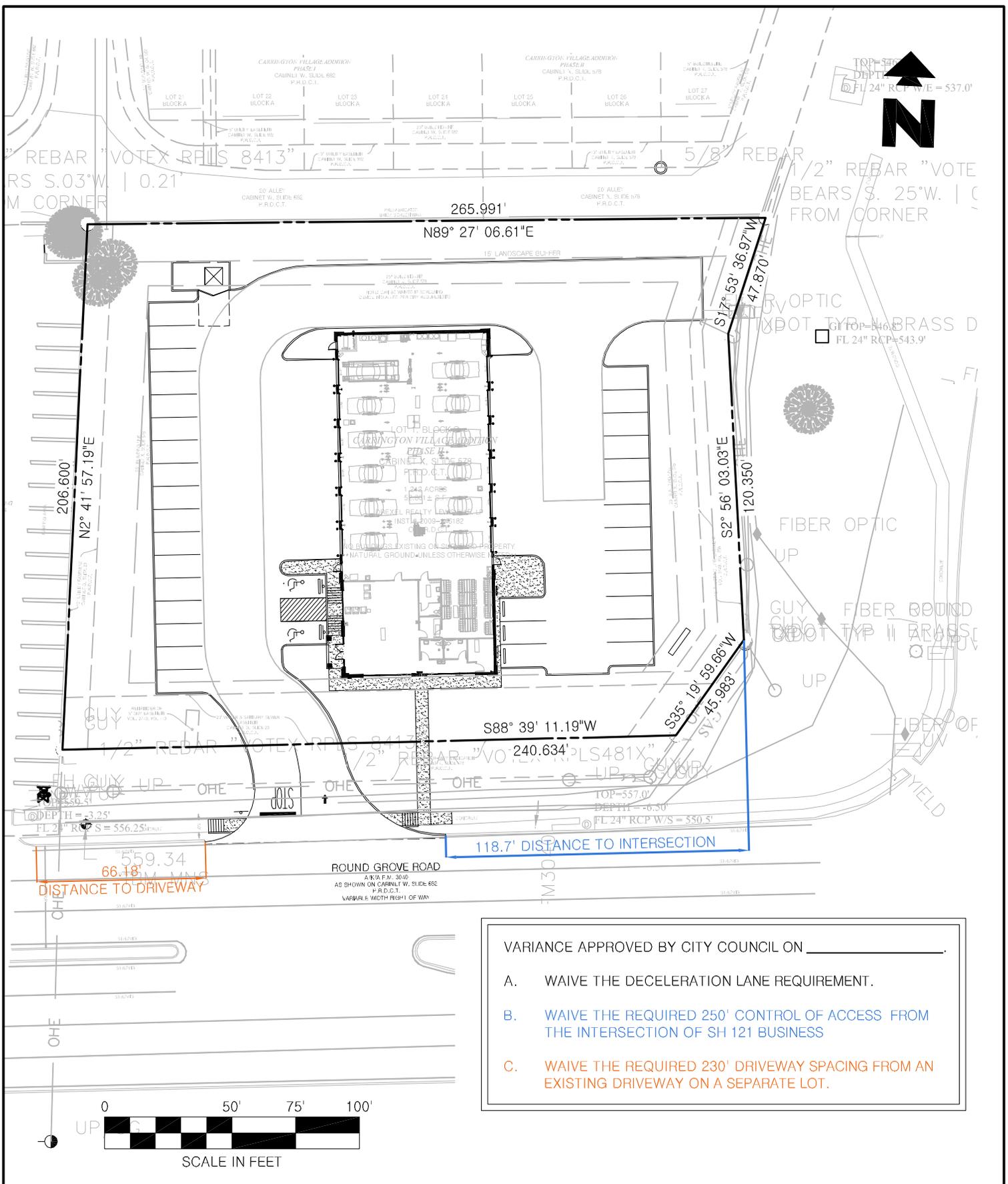
The Engineering Dept. is suggesting that we go through an abandonment process for this 20' Water & San. Sewer Easement. But in the interim, they are suggesting that we request a variance for the reduction of the standard city 10' building setback from a water easement to only a 5' setback so that we can accommodate the Planning Departments request that the front of the building be placed on the 25' building Setback Line so as to create a larger landscape buffer at the rear of the site.

We have attached an exhibit depicting this Variance requesting the 5' setback reduction. And we have depicted it on our Development Site Plan.

Please let me know if you have any questions or need any additional back-up documentation or exhibits.

Thank you,

Steve C. Meier, AIA
Director of Development
Hummel Investments LLC

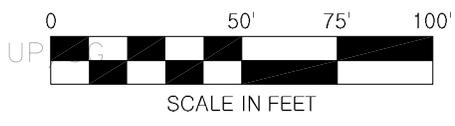


VARIANCE APPROVED BY CITY COUNCIL ON _____

A. WAIVE THE DECELERATION LANE REQUIREMENT.

B. WAIVE THE REQUIRED 250' CONTROL OF ACCESS FROM THE INTERSECTION OF SH 121 BUSINESS

C. WAIVE THE REQUIRED 230' DRIVEWAY SPACING FROM AN EXISTING DRIVEWAY ON A SEPARATE LOT.



Engineering Associates, Inc.

ENGINEERS • PLANNERS • SURVEYORS
LANDSCAPE ARCHITECTS • ENVIRONMENTAL SCIENTISTS

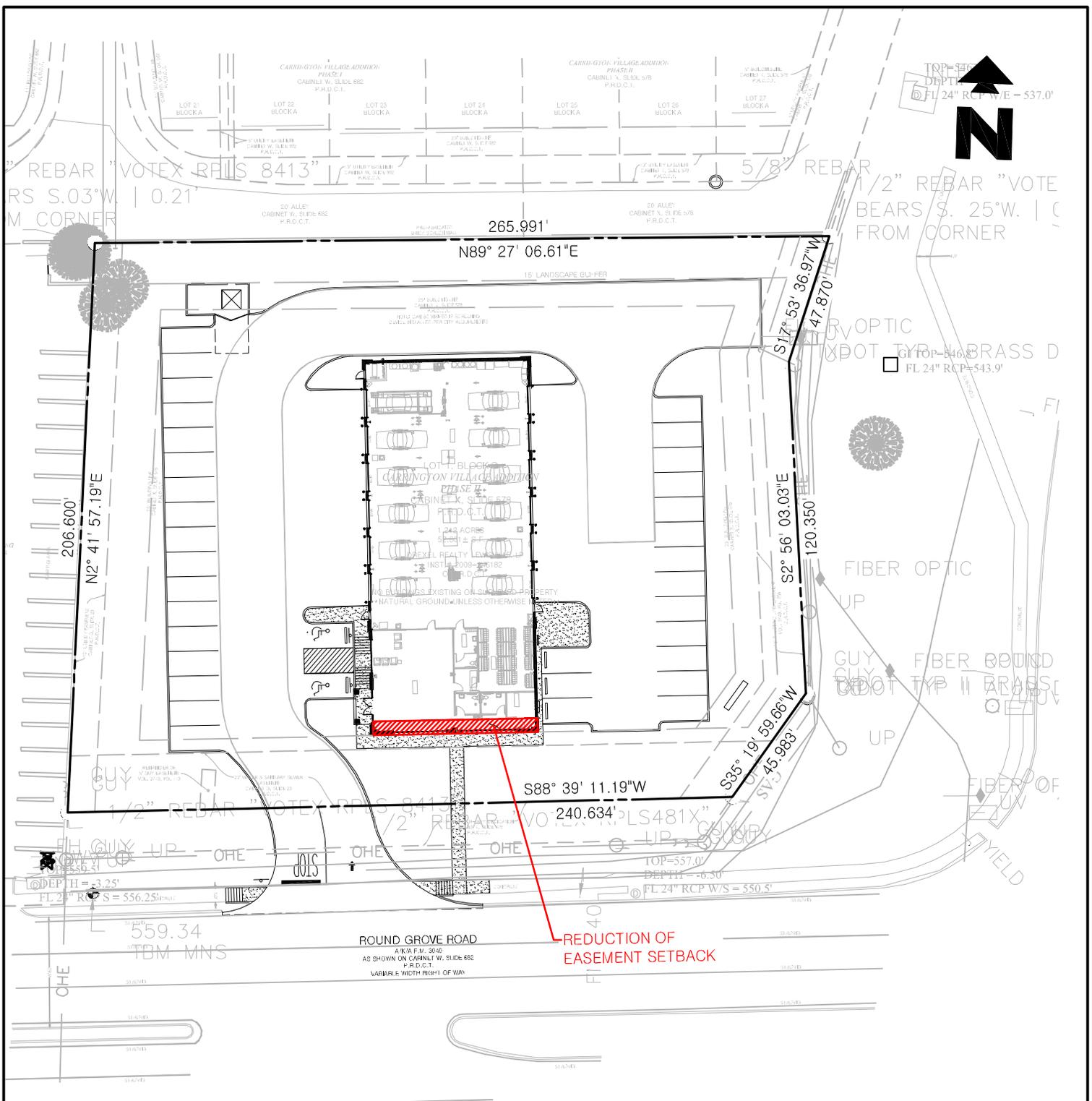
3030 LBJ Freeway, Suite 100
Dallas, TX 75234

(972)488-3737
FAX (972)488-6732

GOODYEAR

29310.0	1/25/16	ADS	BJD	TJA	TJA
CEI PROJECT NO.	DATE	DPOR	PM	DES	DRW
VARIANCE EXHIBIT				REV DATE	SHEET NO.
ROUND GROVE ROAD (F.M. 3040) & STATE HWY 121				1/25/16	---
LEWISVILLE, TEXAS				REV-1	---

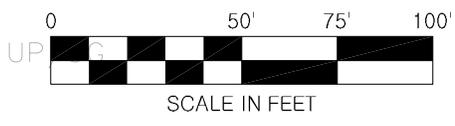
JOB # 29310.0 DRAWING: 29310_SP.dwg LAST SAVED BY: TALLEY



REDUCTION OF EASEMENT SETBACK

VARIANCE APPROVED BY CITY COUNCIL ON _____

D. WAIVE 5' OF THE REQUIRED 10' BUILDING SETBACK FROM THE EXISTING 20' WATER AND SANITARY SEWER EASEMENT.



Engineering Associates, Inc.

ENGINEERS • PLANNERS • SURVEYORS
LANDSCAPE ARCHITECTS • ENVIRONMENTAL SCIENTISTS

3030 LBJ Freeway, Suite 100
Dallas, TX 75234

(972)488-3737
FAX (972)488-6732

GOODYEAR

29310.0	1/25/16	ADS	BJD	TJA	TJA
CEI PROJECT NO.	DATE	DPOR	PM	DES	DRW

VARIANCE EXHIBIT
ROUND GROVE ROAD (F.M. 3040) & STATE HWY 121
LEWISVILLE, TEXAS

REV DATE	SHEET NO.
1/25/16	----
REV-1	----

JOB # 29310.0 DRAWING: 29310_SP.dwg LAST SAVED BY: TALLEY

February 15, 2016

Richard E. Luedke, AICP
Economic Development and Planning
City of Lewisville
151 West Church St.
P.O. BOX 299002
Lewisville, TX 75029-9002

RE: Special Use Permit- Case No. SUP 2016-02-01

Mr. Luedke,

Please accept this letter to document our opposition the Special Use Permit requested for a free-standing Good Year Auto Care facility at the Northwest corner of FM 3040 and SH121 Business, Lot 1, Block G, Carington Village Addition Phase II.

The intended use of the prime corner of FM 3030 and SH121 Business is not becoming of the redevelopment of the area. The Good Year store would create an industrial look at the prime entry into a professional area. An auto repair establishment should not be on this prime corner.

Thank you,

Lois Perrine
Daddy Rabbit's Pub
297 W. FM 3040 Suite 200
Lewisville, TX 75067

214-674-9212



Robert B. Neely
President of the General Partner
500 North Akard, Suite 3240
Dallas, Texas 75201
214.389-8910
email: rneely@tcprealty.com

Via email to: jsin@cityoflewisville.com

February 15, 2016

Mr. Richard E. Luedke, AICP

Economic Development and Planning
City of Lewisville
151 West Church St.
P.O. BOX 299002
Lewisville, TX 75029-9002

RE: Round Grove Road and SH 121 Business
Special Use Permit- Case No. SUP 2016-02-01

Dear Mr. Luedke,

I represent the owner, TCP Lewisville Partners II, LP, of Round Grove Shopping Center located adjacent to the subject property where a SUP is proposed for a Good Year. Lewisville Partners has been the owner of the project for over 20 years.

Please accept this letter to evidence our opposition to the SUP.

There is a tire and car repair shop in Round Grove Shopping Center and we, along with most of our tenants, are opposed to having another one right next door. Simon Auto Repair and Christian Auto Shop are west and WalMart Tire and Auto just east. Adding another one is just saturation!

This is a prime corner and should be a pleasant business or retail establishment that enhances the neighborhood and makes the community proud.

Regards,

A handwritten signature in black ink, appearing to read 'Robert Neely', written in a cursive style.

Robert B. Neely



TCP LEWISVILLE PARTNERS II, LP

Via email to: jsin@cityoflewisville.com
rluedke@cityoflewisville.com

Robert B. Neely
President of the General Partner
500 North Akard, Suite 3240
Dallas, Texas 75201
214.389-8910
email: rneely@tcprealty.com

February 15, 2016

Mr. Richard E. Luedke, AICP, Economic Development and Planning
Mayor and Council Members
City of Lewisville
151 West Church St.
P.O. BOX 299002
Lewisville, TX 75029-9002

RE: Round Grove Road and SH 121 Business
Special Use Permit- Case No. SUP 2016-02-01

Dear Gentlemen and Ladies,

I had previously sent an opposition letter and wish to amend as further information has come to light.

Per the published agenda, the SUP is not just asking for allowing an auto and tire facility, it is also requesting four variances:

1. to waive the deceleration requirement;
2. to waive the 250-foot control of access from the intersection of SH 121 Business;
3. to waive the 230-foot driveway spacing requirement from an existing driveway on a separate lot; and
4. to reduce the required 10-foot setback to 5 feet from the existing water and sanitary sewer easement.

These exceptions have not been fully digested by the neighborhood as the SUP has been on an extremely limited time schedule. The notice letter is dated January 22nd which is less than a month ago and MOST IMPORTANTLY did not have any mention of the variances requested.

On behalf of the neighboring community, we respectfully request a delay (at least until April) to allow adequate time to study, analyze and give everyone a full understanding of the impact of the variances requested.

Regards,

Robert B. Neely



TCP REALTY SERVICES, LLC
Commercial Real Estate Services

Rubin A. Kremling, CCIM, CPM
Vice President
5858 Westheimer, Suite 800
Houston, Texas 77057
713 243-6800 Office
713 243-6901 Fax
rkremling@tcprealty.com

February 15, 2016

Attn: Richard E. Luedke, AICP

Economic Development and Planning
City of Lewisville
151 West Church St.
P.O. BOX 299002
Lewisville, TX 75029-9002

RE: Special Use Permit- Case No. SUP 2016-02-01

Mr. Luedke,

Please accept this letter to document our opposition the Special Use Permit requested for a free-standing Good Year Auto Care facility at the Northwest corner of FM 3040 and SH121 Business, Lot 1, Block G, Carington Village Addition Phase II.

TCP Realty Services is the leasing agent for the Round Grove Shopping Center located adjacent to the subject property. Round Grove Shopping Center has Lewisville Tire & Service Shop currently as a tenant and with another car repair and tire shop, it will become an auto row. This is not favorable for the area and will hurt leasing in the area.

The intended use of the prime corner of FM 3030 and SH121 Business is not becoming of the redevelopment of the area. The Good Year store would create an industrial look at the prime entry into a professional area. An auto repair establishment should not be on this prime corner.

Thank you,
TCP Realty Services, LLC

A handwritten signature in cursive script that reads "Rubin A. Kremling".

Rubin A. Kremling, CCIM, CPM
Vice President



Richard Luedke <rluedke@cityoflewisville.com>

Fwd: the free standing auto care

June Sin <jsin@cityoflewisville.com>
To: Richard Luedke <rluedke@cityoflewisville.com>

Tue, Feb 16, 2016 at 4:17 PM

Richard,

This letter is for the Goodyear SUP.
Thank you.

----- Forwarded message -----

From: **Dr. Lance Terry** [REDACTED]
Date: Tue, Feb 16, 2016 at 2:53 PM
Subject: the free standing auto care
To: Jsin@cityoflewisville.com

February 15, 2016

Richard E. Luedke, AICP
Economic Development and Planning
City of Lewisville
151 West Church St.
P.O. BOX 299002
Lewisville, TX 75029-9002

RE: Special Use Permit- Case No. SUP 2016-02-01

Mr. Luedke,

Please accept this letter to document my opposition to the Special Use Permit requested for a free-standing Good Year Auto Care facility at the Northwest corner of FM 3040 and SH121 Business, Lot 1, Block G, Carrington Village Addition Phase II.

The intended use of the prime corner of FM 3030 and SH121 Business is not becoming of the redevelopment of the area. The Good Year store would create an industrial look at the prime entry into a professional area.

I am already disappointed that a Condom Sense and a Vape shop has moved into a free standing building at the corner of Round Grove and Edmonds, that was once a dry cleaning facility.

In 2017, it will be 20 years that I opened my office, Vista Ridge Chiropractic, at Round Grove and Deer Run. I have enjoyed the area and providing professional healthcare to those around me. It saddens me that this side of Lewisville may turn into an embarrassment to Lewisville.

Never the less an auto repair establishment should not be on this prime corner.

Thank you,

Lance Terry

Vista Ridge Chiropractic

Lewisville Tx, 972-315-0518

www.drlanceterry.com

—
June Sin

Planner

Economic Development & Planning

972) 219-3417



Richard Luedke <rluedke@cityoflewisville.com>

Goodyear Auto Care Facility Case No. SUP-2016-02-01

terrye [REDACTED] Mon, Mar 7, 2016 at 6:35 PM
To: "Castello, [REDACTED]" <rluedke@cityoflewisville.com> <rluedke@cityoflewisville.com>
Cc: "Shelli James [REDACTED]" "Kelley [REDACTED]"

Richard,

I will concur with Jeff's email below, as long as the verbal commitments made to our community in regards to the privacy fence being added and the repairs to our existing walls are made immediately.

In addition I would ask that this privacy wall addition also be noted as a requirement to the council as one of the provisions provided by Goodyear to our community.

Thank you,

Terry Ellis
234 Careington Lane
Lewisville, Texas 75067

From: Castello, Jeff [REDACTED]
Sent: Monday, March 7, 2016 3:20:06 PM
To: rluedke@cityoflewisville.com
Cc: Shelli James [REDACTED] Kelley [REDACTED]
terrye
Subject: Goodyear Auto Care Facility Case No. SUP-2016-02-01

To: Richard Luedke, AICP

[Quoted text hidden]



Richard Luedke <rluedke@cityoflewisville.com>

Goodyear expansion on 3040

Kim Keefe <[REDACTED]>
To: "rluedke@cityoflewisville.com" <rluedke@cityoflewisville.com>

Tue, Mar 8, 2016 at 9:15 PM

Hi Mr Luedke

I am writing to withdraw my protest regarding the Goodyear expansion on Round Grove. It is my understanding that Carrington Village has been assured from Steve Meier of Hummel Investments that the owner of Goodyear has agreed to install the privacy wall presented to the Carrington Village homeowners in a prior meeting. If this is your understanding as well, I would like to withdraw my protest. If this is not your understanding then my protest stands as previously submitted.

Thank you.

Regards,

Kim Keefe

222 Carrington Ln

Sent from my iPhone

> On Feb 1, 2016, at 9:24 AM, Kim Keefe <[REDACTED]> wrote:

>

> Dear Mr. Luedke,

>

> I am writing you in protest against the expansion of the Goodyear facility on 3040. I live behind the current facility and find it annoying how they work on cars late into the evening. When I retire for the night all I hear is engines revving and noise that is annoying and disruptive. Expanding this facility would cause more of the same. Not to say the increase in "health issues." We would experience a decrease in clean air for the engine work as well as an increase in Mosquitos from the large amount on tires being discarded. In addition Carrington Village has to bear the brunt of the wall repairs due to the way they park their cars against our wall. At a minimum the city should require them to put up a 10' wall for noise abatement.

>

> I strongly am against this expansion and hope the City of Lewisville will work with our community to vote against this expansion.

>

> Thank you for consideration of those of us behind this facility who do not want our property values reduced because of this expansion.

> Regards,

> Kim Keefe

> 222 Carrington Ln

>

>

> Sent from my iPhone



Richard Luedke <rluedke@cityoflewisville.com>

Goodyear Auto Care Facility Case No. SUP-2016-02-01

Castello, Jeff <[REDACTED]>

Mon, Mar 7, 2016 at 3:20 PM

To: "rluedke@cityoflewisville.com" <rluedke@cityoflewisville.com>

Cc: "Shelli James" <[REDACTED]>, "Kelley" <[REDACTED]>, terry <[REDACTED]>

To: Richard Luedke, AICP

Planning Manager City of Lewisville

RE: Case No. SUP-2016-02-01

We previously emailed you with regard to this proposed development , we have since had opportunity to meet with the Developer Steve Meir of Hummel Investments, he has been very responsive to our concerns with regard to the tire disposal and the potential loss of privacy.

Contingent upon their plans to store salvage tires, oil and debris inside, addition of a secondary privacy fence of minimum 8' on top of a 3' minimum berm and include evergreen trees to further screen the property line as well as have limited operating hours, we are dropping our complaint regarding this special use permit request. With regard to our damaged retaining wall it sounds like the owner has agreed to pay for repairing our existing wall near Goodyear's existing facility as a good faith gesture.

We had prepared a PowerPoint presentation for the council, but we understand we are not able to present it at tonight's meeting. Please take a moment to view it, as it will give you a better understanding of our concerns and give you an opportunity to see the issues with the current shopping center property from our perspective. Many of the items pictured we look at each day from our homes. This shopping center is in desperate need of maintenance there is standing water prior to the rain today, tripping hazards and a broken window that has not been addressed, possibly why Goodyear would like to be in a stand alone facility and not associated with its current location.

I have included a PDF copy of the Power Point for you use.

Thank you again.

Jeff Castello

230 Carrington Ln.
[REDACTED]

The following 22 images
were provided by
Jeff Castello, 230 Carrington Lane, on behalf of the
Carrington Village Home Owners Association

Goodyear Expansion Special Use Permit Request



Photo/Information Provided by Jeff Castello on Behalf of the Carrington Village HOA



Photo/Information Provided by Jeff Castello on Behalf of the Carrington Village HOA



Photo/Information Provided by Jeff Castello on Behalf of the Carrington Village HOA



Minimum requested wall height

Photo/Information Provided by Jeff Castello on Behalf of the Carrington Village HOA



Photo/Information Provided by Jeff Castello on Behalf of the Carrington Village HOA



Minimum requested wall height

Photo/Information Provided by Jeff Castello on Behalf of the Carrington Village HOA



STORAGE OF DISPOSAL TIRES

Photo/Information Provided by Jeff Castello on Behalf of the Carrington Village HOA

DAMAGE TO EXISTING PROPERTY WALL BETWEEN CURRENT FACILITY AND CARRINGTON VILLAGE



Photo/Information Provided by Jeff Castello on Behalf of the Carrington Village HOA

Carrington Village Request

- Increase height of wall the length of property being developed
 - Resolution property to be developed with 2nd buffer wall on berm for homeowner privacy
- Resolve outdoor tire disposal area issue
 - Is it a violation or not?
 - Roof and solid door on existing enclosure?
- Cleanup and keep misc. trash picked up regularly
- Concern of another auto repair business moving in

Existing Shopping Center Issues

- Poor maintenance, eye sore to our community & City of Lewisville
- Multiple Wall Paint Colors on rear wall of building
- Standing water behind building, health hazard
- Exposed dumpsters, lids open, trash hanging out of dumpsters
- Wheel stops need to be continued along existing wall to prevent unnecessary damage to screen wall



Photo/Information Provided by Jeff Castello on Behalf of the Carrington Village HOA



Photo/Information Provided by Jeff Castello on Behalf of the Carrington Village HOA



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Photo/Information Provided by Jeff Castello on Behalf of the Carrington Village HOA



Photo/Information Provided by Jeff Castello on Behalf of the Carrington Village HOA

Thank you for your time and
consideration of our concerns

Carrington Village Homeowners

CAD Operations Report

LEWISVILLE

Call Number 15089041

Printed: 01/29/2016 10:01 AM

Call Detail Information

Jurisdiction: LEWISVILLE

Call Number 15089041	Taker GPEDIGO	Pos 7	Call Owner	Status C	Date - Time Received Fri 10/02/2015 23:14:47	Inj 0			
Complaint ND NOISEDIST	Ten Code	Priority 3	Fire Grade	Class G	Alarm	How Received			
Incident Location 297 W ROUND GROVE RD	Apart/Suite 240	Floor/Bldg	Incident City LEWISVILLE	State TX	ZIP 00000-0000				
Caller Name ELLIS, TERRY	Telephone	Alt Telephone	Tower ID						
Caller Location CARRINGTON LANE	Apart/Suite	Floor/Bldg	Caller City LEWISVILLE	State TX	ZIP 00000-0000				
Landmark GOODYEAR TIRE-LEWISVILLE TIRE & SVC	Weapons								
IRA 326	Grid	Disp Zone DIST3	Fire Run Zn 3A	EMS Run Zn	ESN	Tract 326			
<input checked="" type="checkbox"/> Contacts	<input type="checkbox"/> Fire Plan	<input type="checkbox"/> Hazard	<input type="checkbox"/> Images	<input type="checkbox"/> Medical	<input type="checkbox"/> Traffic	<input checked="" type="checkbox"/> Previous			
<input type="checkbox"/> BOLO	<input type="checkbox"/> Warrant	RMS CH	RMS Alerts	<input type="checkbox"/> In Progress	<input type="checkbox"/> Report Req	<input type="checkbox"/> Subject Req			
ALL Time	Call Rec'd 23:14:47	Xmit 23:15:16	Dispatch 00:19:37	Enroute 00:19:37	OnScene 00:19:42	Departed	Arrived	Comp 00:23:17	Unit 449
X:	Y:	Z:	Lwr: S SH 121 BUS		Upr: DEER RUN				

Narrative...

[10/02/2015 23:15:16 : pos7 : GPEDIGO]
 Cross streets: S SH 121 BUS//DEER RUN
 Landmark: GOODYEAR TIRE-LEWISVILLE TIRE & SVC
 Geo Comment: MAPSCO 1A-A BOX 326

CALLER SAID EVERY NIGHT PARK THEIR RV AND IT IS VERY LOUD.

[10/02/2015 23:15:28 : pos7 : GPEDIGO]
 CALLER CAN HEAR IT AT THIER RESD

[10/02/2015 23:16:48 : pos7 : GPEDIGO]
REC ANOTHER CALL FROM A NEIGHBOR ON CARRINGTON.

[10/03/2015 00:23:01 : MOB : 449]
NO RV. LOCATED A TRUCK WITH LOUD MUFFLER BUT HE WAS IN THE PROCESS OF LEAVING AND JUST STARTED IT HE SAID. OFC CLR

Location Comment
 Geo Comment: MAPSCO 1A-A BOX 326

Department Numbers

Department	Dept Number	Unit ID
LPD	15078951	449

LEWISVILLE

Call Number 15089041

Printed: 01/29/2016 10:01 AM

Call Dispositions

Date - Time	Disposition	Unit Id
2015/10/03 00:23:13	NO REPORT MADE	

Call Log

Unit	Status	Date - Time	Dept	Type	Comments	Officers	Odo
449	ENR	10/3/2015 00:19:37	LPD	POL	297 W ROUND GROVE RD, LEWISVILLE	B.AFREDRIC	0.0
449	ONS	10/3/2015 00:19:42	LPD	POL	297 W ROUND GROVE RD, LEWISVILLE	B.AFREDRIC	0.0
449	COM	10/3/2015 00:23:16	LPD	POL	COM	B.AFREDRIC	0.0

Unit	Dept	DIS	ENR	ONS	LEF	ARR	BUS	REM	COM
449	LPD		00:19:37	00:19:42					00:23:16

Unit Log

Date-Time	Dept	Unit	Officer ID	Action	Comments
10/03/2015 00:20:42	LPD	449	B.AFREDRIC	NCIC VEHICLE	TX,AC97779,2010,PC,,,,,, 297 W ROUND GROVE RD, LEWISVILLE

Category	Last Name	First Name	Middle Name	Suffix	Crim Hist	RMS Alerts					
		Race	Sex	Ethnic	Height	Weight	Age	DOB	OLN		
		Clothing			Demeanor						
		Relationship			Hair Color					Eye Color	Complexion
Business Name		Description									
Location		Apt/Ste	Fir/Bld	City	ST	ZIP	Phone				

Call Subject Statistics

Question	Answer

Call References

Reference_Type	Reference	Related_Calls

CAD Operations Report

LEWISVILLE

Call Number 15094492

Printed: 01/29/2016 10:01 AM

Call Detail Information

Jurisdiction: LEWISVILLE

Call Number 15094492	Taker TWHITLEY	Pos 8	Call Owner	Status C	Date - Time Received Mon 10/19/2015 22:12:27	Inj 0			
Complaint ND NOISEDIST	Ten Code	Priority 3	Fire Grade	Class G	Alarm	How Received			
Incident Location 297 W ROUND GROVE RD	Apartment/Suite 240	Floor/Bldg	Incident City LEWISVILLE	State TX	ZIP 00000-0000				
Caller Name	Telephone	Alt Telephone	Tower ID						
Caller Location 297 W ROUND GROVE RD	Apartment/Suite 240	Floor/Bldg	Caller City LEWISVILLE	State TX	ZIP 00000-0000				
Landmark GOODYEAR TIRE-LEWISVILLE TIRE & SVC	Weapons								
IRA 326	Grid	Disp Zone DIST3	Fire Run Zn 3A	EMS Run Zn	ESN	Tract 326			
<input type="checkbox"/> Contacts	<input type="checkbox"/> Fire Plan	<input type="checkbox"/> Hazard	<input type="checkbox"/> Images	<input type="checkbox"/> Medical	<input type="checkbox"/> Traffic	<input checked="" type="checkbox"/> Previous			
<input type="checkbox"/> BOLO	<input type="checkbox"/> Warrant	<input checked="" type="checkbox"/> RMS CH	<input type="checkbox"/> RMS Alerts	<input type="checkbox"/> In Progress	<input type="checkbox"/> Report Req	<input type="checkbox"/> Subject Req			
ALI Time	Call Rec'd 22:12:27	Xmit 22:12:38	Dispatch 22:32:29	Enroute 22:32:29	OnScene 22:37:13	Departed	Arrived	Comp 22:44:47	Unit 231
X:	Y:	Z:	Lwr: S SH12 BUS			Upr: DEER RUN			

Narrative...

[10/19/2015 22:12:38 : pos8 : TWHITLEY]
Cross streets: S SH12 BUS//DEER RUN
Landmark: GOODYEAR TIRE-LEWISVILLE TIRE & SVC
Geo Comment: MAPSCO 1A-A BOX 326

[10/19/2015 22:13:19 : pos8 : TWHITLEY]
COMP CALLING FROM CARRINGTON LN

SAID THAT IT IS AN ONGOING ISSUE WITH THE GENERATOR
RUNNING HERE AFTER HOURS AND IT IS DISTURBING THE PEACE

[10/19/2015 22:38:29 : pos4 : EFLOWERS]
231/OUT WITH SOME PEOPLE WORKING ON A VEH

[10/19/2015 22:38:40 : pos4 : EFLOWERS]
NOT SURE IF THEY ARE EMPLOYEES ARE NOT

[10/19/2015 22:40:14 : pos4 : EFLOWERS]
231 ON NCIC

[10/19/2015 22:43:38 : MOB : 231]
Loud generator running in back of business, subject had it on truck to run lights while he worked on a car. verbal warning.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS AMENDING THE ZONING ORDINANCE OF THE CITY OF LEWISVILLE, TEXAS BY GRANTING A SPECIAL USE PERMIT FOR MINOR AUTOMOBILE SERVICES CONSISTING OF A FREE-STANDING GOODYEAR AUTO CARE FACILITY; ON A 1.212-ACRE LOT, LEGALLY DESCRIBED AS LOT 1, BLOCK G, CARRINGTON VILLAGE ADDITION PHASE II; LOCATED ON THE NORTHWEST CORNER OF FM 3040 AND SH 121 BUSINESS AND ZONED GENERAL BUSINESS DISTRICT (GB); PROVIDING FOR SEVERABILITY; PROVIDING A PENALTY; PROVIDING A REPEALER; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

WHEREAS, applications were made requesting approval of a Special Use Permit for minor automobile services by making applications for same with the Planning and Zoning Commission of the City of Lewisville, Texas, as required by state statutes and the Zoning Ordinances of the City of Lewisville, Texas; and said Planning and Zoning Commission has recommended that the Special Use Permit on the 1.212-acre lot, as described in the attached Exhibit “A” (the “Property”), be **approved with conditions**; and

WHEREAS, this application for a Special Use Permit comes before the City Council of the City of Lewisville, Texas (the “City Council”) after all legal notices, requirements, conditions and prerequisites have been met; and

WHEREAS, the City Council at a public hearing has determined that the proposed use, subject to the condition(s) stated herein: (1) complements or is compatible with the surrounding uses and community facilities; (2) contributes to, enhances, or promotes the welfare of the area of

request and adjacent properties; (3) is not detrimental to the public health, safety, or general welfare; and (4) conforms in all other respects to all zoning regulations and standards.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, THAT:

SECTION 1. FINDINGS INCORPORATED. The findings set forth above are incorporated into the body of this ordinance as if fully set forth herein.

SECTION 2. SPECIAL USE PERMIT GRANTED. Subject to the conditions provided for herein, applicant is granted a Special Use Permit to allow minor automobile services consisting of a free-standing Goodyear Auto Care Facility on the Property, which is zoned General Business (GB).

SECTION 3. CONDITIONS OF SPECIAL USE PERMIT. The Property shall be developed and maintained:

1. in compliance with the narrative and development plan, landscape plan, elevations and photometric plan, attached hereto as Exhibit "B";
2. in accordance with all federal, state, and local laws and regulations;
3. by prohibiting the overnight storage of vehicles;
4. by prohibiting the outside storage of tires and other materials on the site;
5. by restricting the hours of operation from 7:30 a.m. to 7:00 p.m. Monday through Friday; from 8:00 a.m. to 5:00 p.m. on Saturday and closed on Sunday;

6. by installing an eight-foot (8'), stained, board-on-board, cedar fence with a top rail on top of a minimum three-foot (3') berm as shown on the fencing illustrations and by keeping this fence in good repair for the life of the project; and
7. by ensuring that the area between the existing masonry wall and the eight-foot (8'), stained, board-on-board cedar fence is maintained by the property owner in compliance with all City code regulations as amended.

SECTION 4. CORRECTING OFFICIAL ZONING MAP. The City Manager, or her designee, is hereby directed to correct the official zoning map of the City of Lewisville, Texas, to reflect this Special Use Permit.

SECTION 5. COMPLIANCE WITH ALL OTHER MUNICIPAL REGULATIONS. The Property shall comply with all applicable municipal ordinances, as amended. In no way shall this Special Use Permit be interpreted to be a variance to any municipal ordinance.

SECTION 6. RESCINDING AND TERMINATION. The City Council may rescind and terminate the Special Use Permit after a public hearing if any of the following occur:

1. One or more of the conditions imposed by the Special Use Permit have not been met or have been violated.
2. The Special Use Permit was obtained through fraud or deception.
3. Ad valorem taxes on the property are delinquent by six months or more.
4. Disconnection or discontinuance of water and/or electrical services to the property.
5. Abandonment of the structure, lease space, lot, or tract of land for 180 days or more.

SECTION 7. REPEALER. Every ordinance or parts of ordinances found to be in conflict herewith are here by repealed.

SECTION 8. SEVERABILITY. If any section, sentence, clause, or phrase of this ordinance shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining sections, sentences, clauses, or phrases of this ordinance, but they shall remain in effect.

SECTION 9. PENALTY. Any person, firm or corporation who violates any provisions of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof in the Municipal Court, shall be subject to a fine of not more than \$2,000.00 for each offense, and each and every day such offense is continued shall constitute a new and separate offense.

SECTION 10. EFFECTIVE DATE. This Ordinance shall take effect and be in full force and effect from and after the date of its passage and publication as required by law.

SECTION 11. EMERGENCY. It being for the public welfare that this Ordinance be passed creates an emergency and public necessity and the rule requiring this Ordinance be read on three separate occasions be, and the same is hereby, waived and this Ordinance shall be in full force and effect from and after its passage and approval and publication, as the law in such cases provides.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 4TH DAY OF APRIL, 2016.

ORDINANCE NO. _____

Page 5

APPROVED:

Rudy Durham, MAYOR

ATTEST:

Julie Heinze, CITY SECRETARY

APPROVED AS TO FORM:

Lizbeth Plaster, CITY ATTORNEY

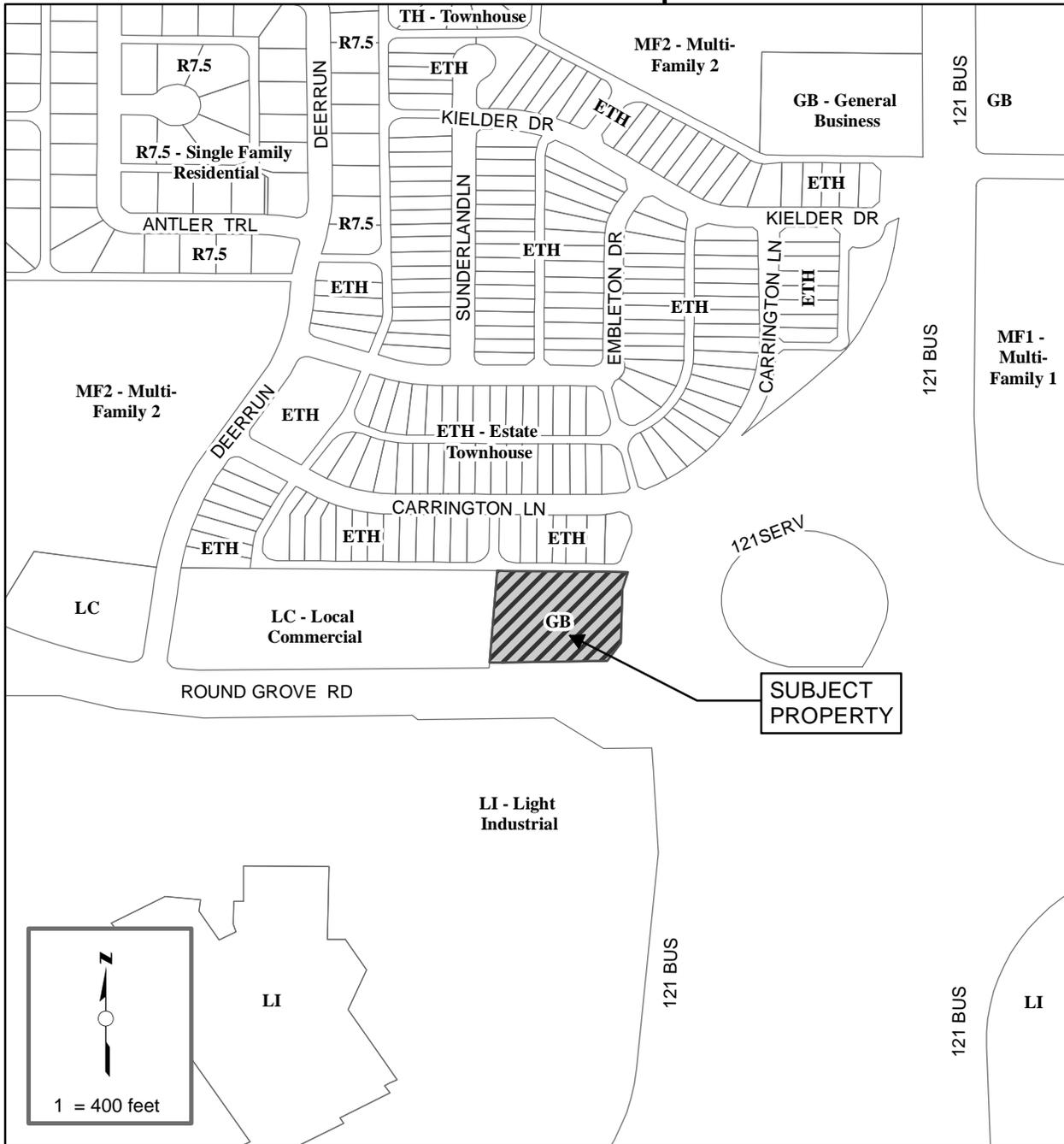
ORDINANCE NO. _____

Page 6

Exhibit A
Property Description

Exhibit B
SUP Narrative
Development Plan
Landscape Plan
Elevations
Photometric Plan
Fencing Illustrations

Location Map



CASE NO. SUP-2016-02-01

COMPANY NAME: HUMMEL INVESTMENTS LLC

PROPERTY LOCATION: NWC OF FM 3040 AND SH 121 BUSINESS (1.212-ACRES)

CURRENT ZONING: GENERAL BUSINESS (GB)

REQUESTED USE: A SPECIAL USE PERMIT (SUP) FOR A GOODYEAR AUTO CARE FACILITY

EXHIBIT B

Hummel Investments LLC

Real Estate Development

January 22, 2016

City of Lewisville
Planning Department
151 W. Church Street
Lewisville, TX 75209

**Re: Goodyear Auto Care Center
NWC FM 3040 & SH 121 Business**

To Whom It May Concern:

Gocha, LLC is a Goodyear Dealer that plans to develop the vacant northwest corner of FM 3040 & SH 121 to accommodate a free-standing Goodyear Auto Care facility. The development will consist of the auto care building, parking area and landscape buffers.

Gocha, LLC currently operates in the adjacent shopping center directly to the west of this site. Their existing facility in the adjacent shopping center is leased from the shopping center owner and is antiquated and too small for their operation. For these reasons Gocha, LLC is planning to invest in the City of Lewisville by purchasing the subject site and building a new auto care facility. Also, when the new facility is completed, Gocha will cease operations in the shopping center.

This Goodyear Auto Care facility will provide the same services as are currently offered at Gocha's adjacent leased facility. These services include tire sales & installation, wheel alignment, fluid replacements, brake service, routine maintenance, as well as diagnostic and minor auto repairs. They do not perform body work or painting of vehicles. The hours of operation are from 7:30 AM to 6:00 PM Monday thru Friday, 8:00 AM to 5:00 PM on Saturday and the store is closed on Sunday. During the summer months, the store stays open until 7:00 PM Monday thru Friday.

The proposed development includes an approximately 7,800 square foot building with 12 Service Bays and a Customer Waiting Area. As for the site layout, the building is oriented such that the bay doors face east and west and DO NOT face Round Grove Road/FM 3040 per Staff's request. Parking for customers will be between the building and the west property line. Additional parking will be situated between the building and the SH 121 ROW. There will be no parking between the building and the street OR between the building and the rear property line/adjacent residential properties to the north.

We are proposing to place the front wall of the building as far to the south as possible – abutting the 25' Building Setback Line along Round Grove Road/FM 3040. The City Engineering Dept. has determined that the existing 20' Water and Sanitary Sewer Easement is not needed and is suggesting that the easement be abandoned via a separate action after the SUP is approved. However, since the easement is still of record, we are requesting a Variance for a reduction of the city standard "10' building setback from the edge of an easement" so that the building can be placed at the 25' Building Setback Line. The paved access drive at the rear of the site will be set back from the north property line, which abuts the adjacent residential use, at least 15' and more that 15' at some points – significantly more than required by city regulations. This will allow a greenbelt which will have significant landscape screening and berming.

Hummel Investments LLC

Real Estate Development

Access to the site is provided by the existing drive approach on to FM 3040. This existing drive approach was installed as part of the recent reconfiguration/construction of the FM 3040/SH 121 Bus. Interchange. The location of this drive approach was determined by TxDot in order to provide access to the site knowing that at that time and they were aware that the circumstances were such that some of their standards could not be met. We are requesting a Variance for a waiver of the Deceleration Lane requirement, the 250' setback for a driveway from the SH 121 intersection and the 250' driveway spacing requirement. The request and supporting exhibits for which are part of our re-submittal package.

We are proposing heavy landscape buffers on all four sides of the property with trees and shrubbery in widths that exceed the city requirements.

The developer for this project is Hummel Investments, 8117 Preston Road, Suite 120 Dallas, TX 75225. The contact at Hummel is Steve Meier, 214-632-9611.

The attached documents include an SUP application, site plan, landscape plan and exterior elevations. If you have any questions or comments, please do not hesitate to call.

Sincerely,

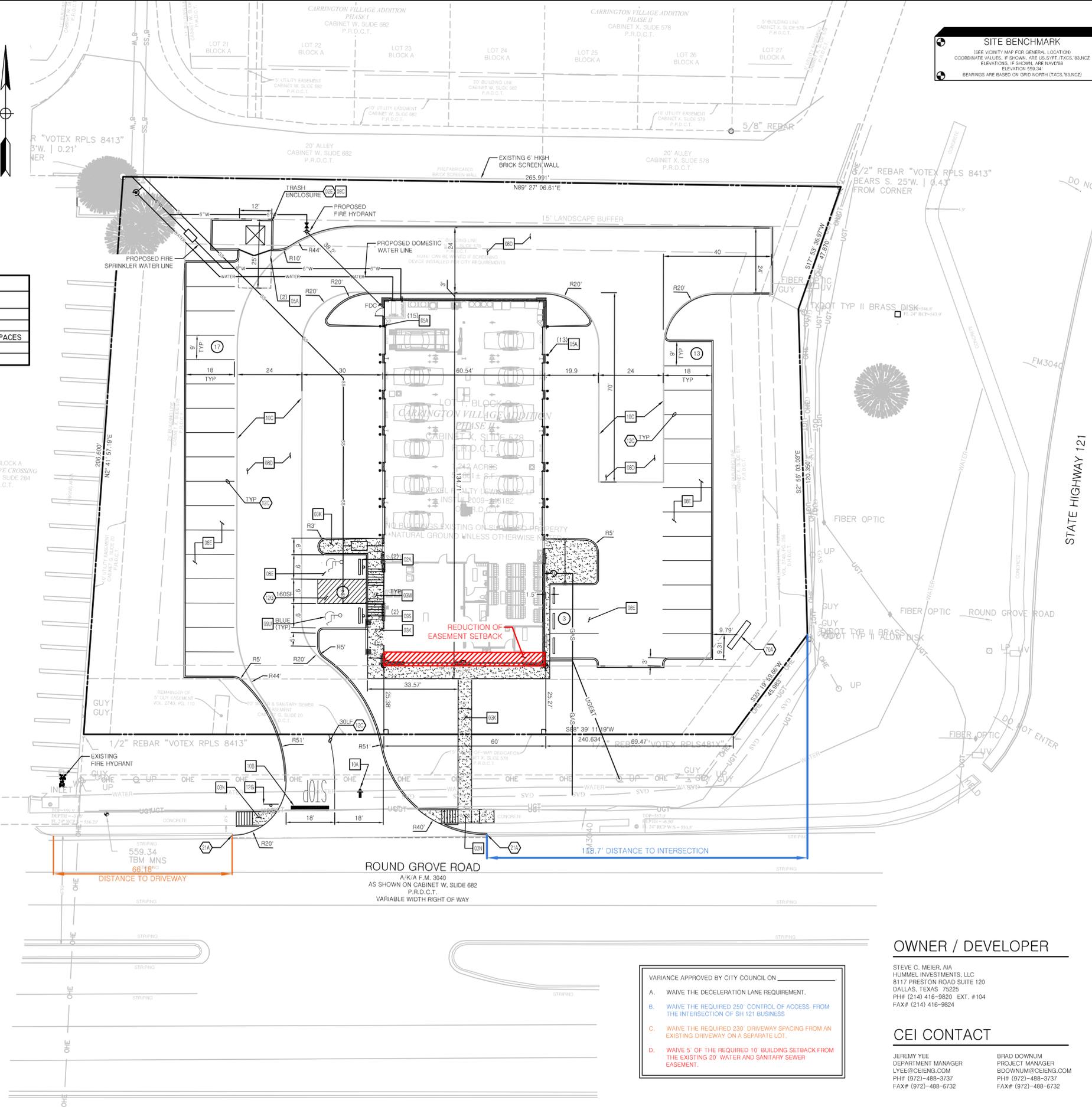


Steve C. Meier, AIA
Hummel Investments LLC

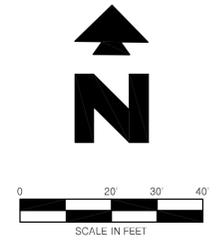


Vicinity Map
SCALE: 1" = 1,000'

SITE DATA	
SITE AREA:	1.212 ACRES (52,801 S.F.)
BLDG AREA:	8,103 S.F.
ZONING:	GB (GENERAL BUSINESS)
PARKING PROVIDED:	12 BAYS+35 OUTSIDE+47 SPACES
PARKING RATIO:	1/200
WORK BAYS PROVIDED:	12 BAYS



SITE BENCHMARK
1886 VICINITY MAP FOR GENERAL LOCATION
COORDINATE VALUES, IF SHOWN, ARE US S'YPT/TXCS/83UNZ
ELEVATIONS, IF SHOWN, ARE NAVD83
ELEVATION 559.34
BEARINGS ARE BASED ON GRID NORTH (TXCS/83UNZ)



NOTE:
SEE ARCHITECTURAL PLANS FOR EXACT LOCATIONS AND DIMENSIONS OF PORCHES, RAMPS, VESTIBULE, SLOPED PAVING, TRUCK DOCKS, BUILDING UTILITY ENTRANCE LOCATIONS AND PRECISE BUILDING DIMENSIONS.

LEGEND

EXISTING		
---	PROPERTY LINE	⊕ FIRE HYDRANT
---	RIGHT OF WAY	⊕ GRATE INLET
X'G	GAS	⊕ GAS METER
X'SS	SANITARY SEWER	⊕ GAS LINE
UG	UNDERGROUND ELECTRIC	⊕ UTILITY POLE ANCHOR
UGT	UNDERGROUND TELEPHONE	⊕ IRRIGATION VALVE
X'W	WATER	⊕ LANDSCAPE OR TREE LINE
OHT	OVERHEAD TELEPHONE	⊕ WATER VALVE
OHE	OVERHEAD ELECTRIC	⊕ ONE-FT CONTOUR (MAY 1988)
		⊕ TREE
		⊕ ROAD SIGN
		⊕ 36.7" SPOT ELEVATION
		⊕ STORM MANHOLE
		⊕ TELEPHONE MANHOLE
		⊕ UTILITY VAULT
		⊕ UTILITY POLE
		⊕ UTILITY SIGN
		⊕ DIAMETER IN INCHES AT GREATEST HEIGHT

PROPOSED		
---	PROPERTY LINE/RIGHT OF WAY LINE	FDC
---	CONCRETE CURB AND GUTTER. SEE DETAIL 01A/01B.	FIRE DEPARTMENT CONNECTION
---	BUILDING CONTROL POINT	LIMITS OF SIDEWALKS AND CONCRETE APRONS (PER ARCH. PLANS)
⊕	PROPOSED PARKING SPACES	

GENERAL SITE NOTES

- ALL DIMENSIONS SHOWN ARE TO THE FACE OF CURB UNLESS OTHERWISE NOTED.
- ALL CURB RETURN RADI SHALL BE 2'. AS SHOWN TYPICAL ON THIS PLAN, UNLESS OTHERWISE NOTED.
- UNLESS OTHERWISE SHOWN, CALLED OUT OR SPECIFIED HEREON OR WITHIN THE SPECIFICATIONS: ALL CURB AND GUTTER ADJACENT TO ASPHALT PAVING SHALL BE INSTALLED PER DETAIL 01A. ALL CURBING ADJACENT TO CONCRETE PAVING SHALL BE INSTALLED PER DETAIL 01B. PAVEMENT SHALL BE INSTALLED IN ACCORDANCE WITH DETAIL 09C, 09D. ONE OVER THE ENTIRE PARKING LOT AREA AND ALL APPROACH DRIVES. ALL PARKING LOT STRIPING INCLUDING ACCESSIBLE AND VAN ACCESSIBLE SPACES SHALL BE PAINTED PER DETAIL-09L.
- ALL PARKING LOT SIGN BASE SUPPORTS SHALL BE INSTALLED PER DETAIL 12F.
- ALL ACCESSIBLE PARKING STALLS SHALL HAVE SIGNAGE INSTALLED PER DETAIL 09S.
- THERE IS TO BE NO OUTSIDE VEHICLE STORAGE. ANY VEHICLES LEFT OVERNIGHT ARE TO BE PARKED INSIDE THE BUILDINGS GARAGE VEHICLE BAYS.
- BUILDING WILL REQUIRE AN AUTOMATIC FIRE SPRINKLER SYSTEM. A FIRE HYDRANT ALONG THE REAR FIRE LANE AND A FIRE HYDRANT WITHIN 100-FEET OF THE FDC.

SITE NOTES

- 02E TRASH DUMPSTER ENCLOSURE (PER ARCH PLANS)
- 12C 4 INCH REFLECTIVE WHITE LANE STRIPES (SEE LENGTH INDICATED AT SYMBOL)
- 12E PEDESTRIAN CROSSING-4 INCH WIDE PAINTED WHITE STRIPES, 2.0 FOOT O.C. @ 45 DEGREES (SEE SIZE INDICATED AT SYMBOL)
- 12G 4 INCH WIDE PAINTED WHITE STRIPES, 2.0 FOOT O.C. @ 45 DEGREES SEE SIZE INDICATED AT SYMBOL.
- 21A TAPER CURB TO MATCH EXISTING CURB
- 70A MONUMENT SIGN = 150 SQUARE FEET MAX (PER ARCH. PLANS)

SITE DETAILS

- 02A PRECAST CONCRETE WHEEL STOP
- 03K CONCRETE SIDEWALK
- 03M WHEELCHAIR RAMP IN SIDEWALK
- 03N WHEELCHAIR RAMP IN SIDEWALK (TYPICAL AT EACH DRIVEWAY CURB RETURN)
- 05A GUARD POST
- 08C HEAVY DUTY CONCRETE PAVING
- 08D Description Not Found
- 08E STANDARD DUTY CONCRETE PAVING
- 09S ACCESSIBLE / VAN ACCESSIBLE PARKING SIGN
- 09J ACCESSIBLE PARKING SYMBOL (SEE PAINT COLOR INDICATED AT SYMBOL)
- 10A TRAFFIC FLOW ARROW
- 10B STOP BAR
- 10C FIRE LANE MARKING
- 12G STOP SIGN

VARIANCE APPROVED BY CITY COUNCIL ON _____

- WAIVE THE DECELERATION LANE REQUIREMENT.
- WAIVE THE REQUIRED 250' CONTROL OF ACCESS FROM THE INTERSECTION OF SH 121 BUSINESS.
- WAIVE THE REQUIRED 230' DRIVEWAY SPACING FROM AN EXISTING DRIVEWAY ON A SEPARATE LOT.
- WAIVE 5' OF THE REQUIRED 10' BUILDING SETBACK FROM THE EXISTING 20' WATER AND SANITARY SEWER EASEMENT.

OWNER / DEVELOPER

STEVE C. MEIER, AIA
HUMMEL INVESTMENTS, LLC
8117 PRESTON ROAD SUITE 120
DALLAS, TEXAS 75225
PH# (214) 416-9820 EXT. #104
FAX# (214) 416-9824

CEI CONTACT

JEREMY YEE
DEPARTMENT MANAGER
LYEE@CEIENG.COM
PH# (972)-488-3737
FAX# (972)-488-6732

BRAD DOWNUM
PROJECT MANAGER
BDOWNUM@CEIENG.COM
PH# (972)-488-3737
FAX# (972)-488-6732

CARRINGTON VILLAGE ADDITION
LOT 1, BLOCK G
SITE AREA:
1.212 ACRES (52,801 SF)
ZONING:
GB GENERAL BUSINESS

29310.0	1/25/16	ADS	BUD	TJA	TJA
CEI PROJECT NO.	INITIAL DATE	DPOR	PM	DES	DRW

CEI Engineering Associates, Inc.
ENGINEERS • PLANNERS • SURVEYORS
LANDSCAPE ARCHITECTS • ENVIRONMENTAL SCIENTISTS

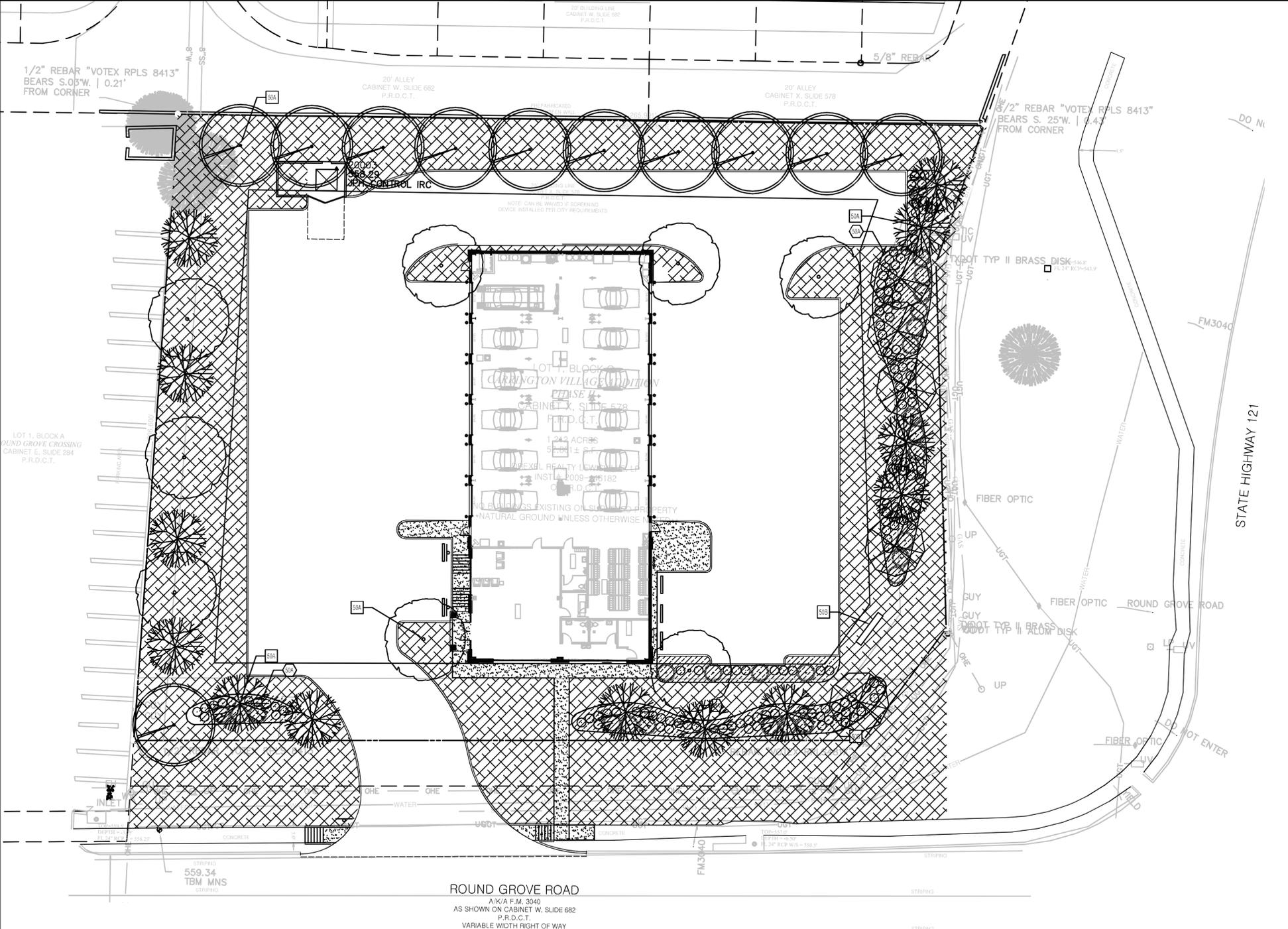
3030 LBJ Freeway, Suite 100
Dallas, TX 75234 (972)488-3737
FAX (972)488-6732

GOODYEAR

**ROUND GROVE ROAD (F.M. 3040) & STATE HWY 121
LEWISVILLE, TEXAS**

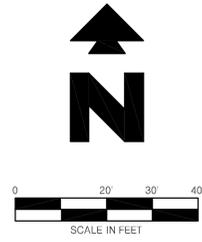
DEVELOPMENT PLAN

REV DATE 1/25/16 REV-1	SHEET NO. C30F10
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NOTE:
SEE ARCHITECTURAL PLANS FOR EXACT LOCATIONS AND DIMENSIONS OF PORCHES, RAMPS, VESTIBULE, SLOPED PAVING, TRUCK DOCKS, BUILDING UTILITY ENTRANCE LOCATIONS AND PRECISE BUILDING DIMENSIONS.

SITE BENCHMARK
(SEE VONITY MAP FOR GENERAL LOCATION)
COORDINATE VALUES, IF SHOWN, ARE U.S. S'FT. (72CS, 83NCZ)
ELEVATIONS, IF SHOWN, ARE NAVD83
ELEVATION 559.34
BEARINGS ARE BASED ON GRID NORTH (72CS, 83NCZ)

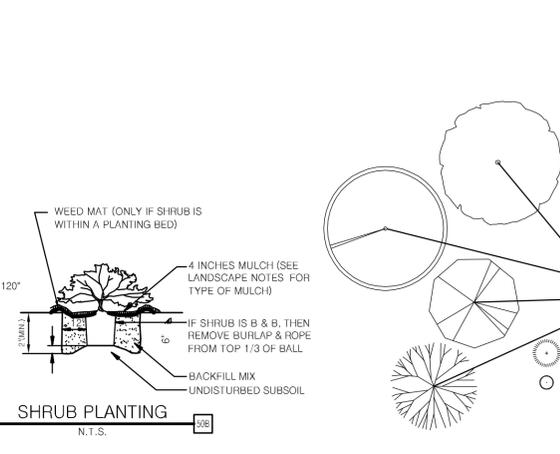
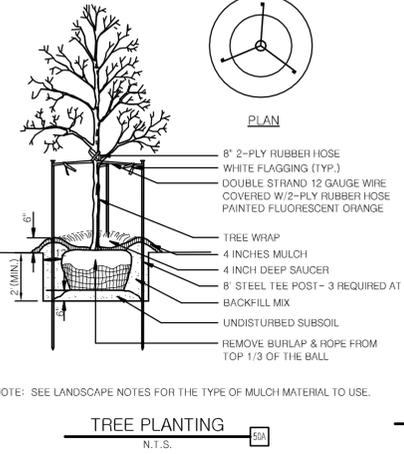


LEGEND

EXISTING		PROPOSED	
---	PROPERTY LINE	---	BERMUDA SOD
---	RIGHT OF WAY	---	4" HARDWOOD MULCH OVER LANDSCAPE FABRIC
X'G	GAS	○	TYPICAL PLANTING WITH QUANTITY AND KEY (SEE PLANT LIST)
X'SS	SANITARY SEWER	○	LANDSCAPE NOTES
UGT	UNDERGROUND ELECTRIC	○	LANDSCAPE DETAILS
UGT	UNDERGROUND TELEPHONE	○	50A TREE PLANTING
X'W	WATER	○	50B SHRUB PLANTING
OHT	OVERHEAD TELEPHONE	○	
OHE	OVERHEAD ELECTRIC	○	
⊕	FIRE HYDRANT	○	
⊕	GRATE INLET	○	
⊕	GAS METER	○	
---	GAS LINE	○	
---	UTILITY POLE ANCHOR	○	
---	IRRIGATION VALVE	○	
---	LANDSCAPE OR TREE LINE	○	
---	WATER VALVE	○	
---	UTILITY SIGN	○	
---	ONE-FT CONTOUR (NAVD 1988)	○	
---	TREE	○	
---	DIAMETER IN INCHES AT BREAST HEIGHT	○	

GENERAL NOTES

- CONTRACTOR IS RESPONSIBLE FOR THE INSURING THAT ALL PROPOSED LANDSCAPING IS INSTALLED IN ACCORDANCE WITH PLANS, DETAILS, SPECIFICATIONS (IF APPLICABLE) AND ALL LOCAL CODES AND REQUIREMENTS.
- CONTRACTOR TO INSPECT SITE AND VERIFY CONDITIONS AND DIMENSIONING PRIOR TO PROCEEDING WITH WORK DESCRIBED HERE IN. NOTIFY LANDSCAPE ARCHITECT OF ANY DISCREPANCIES PRIOR TO BEGINNING ANY CONSTRUCTION.
- QUANTITIES PROVIDED IN THE PLANT LIST ARE FOR GENERAL USE ONLY. CONTRACTOR IS RESPONSIBLE FOR VERIFICATION OF ALL PLANT AND LANDSCAPE MATERIAL QUANTITIES. SYMBOL COUNT ON PLAN TAKES PRECEDENCE OVER TABLE QUANTITIES.
- IMMEDIATELY AFTER AWARD OF CONTRACT, NOTIFY THE OWNER'S REPRESENTATIVE AND/OR THE LANDSCAPE ARCHITECT OF UNAVAILABILITY OF SPECIFIED PLANT MATERIAL FROM COMMERCIAL NURSERIES. THE OWNER'S REPRESENTATIVE AND/OR LANDSCAPE ARCHITECT WILL PROVIDE ALTERNATE PLANT MATERIAL SELECTIONS IF UNAVAILABILITY OCCURS. SUCH CHANGES SHALL NOT ALTER THE ORIGINAL BID PRICE UNLESS A CREDIT IS DUE TO THE OWNER.
- ALL PLANT MATERIALS TO CONFORM TO THE AMERICAN STANDARD FOR NURSERY STOCK ANSI Z60.1.
- CONTAINER GROWN STOCK SHOULD HAVE GROWN IN A CONTAINER LONG ENOUGH FOR THE ROOT SYSTEM TO HAVE DEVELOPED SUFFICIENTLY TO HOLD ITS SOIL TOGETHER.
- ANY PLANT SUBSTITUTIONS, RELOCATION, OR REQUIRED CHANGE SHALL REQUIRE THE WRITTEN APPROVAL OF THE LANDSCAPE ARCHITECT OR OWNER.
- THE OWNER'S REPRESENTATIVE AND/OR LANDSCAPE ARCHITECT RESERVE THE RIGHT TO REFUSE ANY MATERIAL THEY DEEM UNACCEPTABLE.
- COORDINATE WITH PROJECT REPRESENTATIVE FOR DISTURBED SITE TREATMENTS OUTSIDE LANDSCAPE IMPROVEMENTS. SEE CIVIL PLANS FOR SOIL STABILIZATION FOR EROSION CONTROL.
- CONTRACTOR TO ENSURE THAT AN AUTOMATED IRRIGATION SYSTEM THAT PROVIDES COMPLETE COVERAGE OF THE SITE IS INSTALLED PRIOR TO INSTALLING TREES/PALMS (SEE IRRIGATION PLAN SHEET IF PROVIDED). IF NO PLAN IS PROVIDED THE CONTRACTOR SHALL SUBMIT A PROPOSED DESIGN TO THE LANDSCAPE ARCHITECT/ENGINEER FOR APPROVAL PRIOR TO INSTALLATION. THE PROPOSED DESIGN MUST HAVE AN APPROVED BACKFLOW DEVICE AND RAIN SENSOR INSTALLED TO STOP IRRIGATION DURING RAIN EVENTS. CONTRACTOR SHALL ENSURE THAT THERE IS POSITIVE DRAINAGE AND NO PONDING OF WATER AT ROOT AREA.
- ALL SLOPES AND AREAS DISTURBED BY CONSTRUCTION SHALL BE GRADED SMOOTH AND FOUR INCHES OF TOPSOIL APPLIED. IF ADEQUATE TOPSOIL IS NOT AVAILABLE ON SITE, THE CONTRACTOR SHALL PROVIDE TOPSOIL, APPROVED BY THE OWNER, AS NEEDED. THE AREA SHALL THEN BE SEEDED/SODDED, FERTILIZED, MULCHED, WATERED AND MAINTAINED UNTIL HARDY GRASS GROWTH IS ESTABLISHED IN ALL AREAS. ANY RELOCATED TREES SHALL BE MAINTAINED UNTIL SUCH POINT AS TREE IS RE-ESTABLISHED. ANY AREAS DISTURBED FOR ANY REASON PRIOR TO FINAL ACCEPTANCE OF THE PROJECT SHALL BE CORRECTED BY THE CONTRACTOR AT NO ADDITIONAL COST TO THE OWNER.
- PRIOR TO CONSTRUCTION, THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING ALL UNDERGROUND UTILITIES AND SHALL AVOID DAMAGE TO ALL UTILITIES DURING THE COURSE OF THE WORK. LOCATIONS OF EXISTING BURIED UTILITY LINES SHOWN ON THE PLANS ARE BASED UPON BEST AVAILABLE INFORMATION AND ARE TO BE CONSIDERED APPROXIMATE. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR 1) TO VERIFY THE LOCATIONS OF UTILITY LINES AND ADJACENT TO THE WORK AREA 2) TO PROTECT OF ALL UTILITY LINES DURING THE CONSTRUCTION PERIOD 3) TO REPAIR ANY AND ALL DAMAGE TO UTILITIES, STRUCTURES, SITE APPEARANCES, ETC. WHICH OCCURS AS A RESULT OF THE CONSTRUCTION AT NO COST TO THE OWNER.
- ALL PLANT MATERIAL QUANTITIES SHOWN ARE APPROXIMATE. CONTRACTOR SHALL BE RESPONSIBLE FOR COMPLETE COVERAGE OF ALL PLANTING BEDS AT SPACING SHOWN.
- THE CONTRACTOR IS ENCOURAGED TO COMPLETE TEMPORARY OR PERMANENT SEEDING OR SODDING IN STAGES FOR SOIL STABILIZATION AS AREAS ARE COMPLETED AFTER GRADING.
- ALL PLANT MATERIAL IN TREE HOLDING AREAS SHALL BE MANUALLY WATERED/IRRIGATED TO KEEP MOIST UNTIL PLANTED.
- CONTRACTOR SHALL PROVIDE EXPANSION AND CONTROL JOINTS ON ALL LANDSCAPE SPECIFIC CONCRETE PROJECTS (SEE HARDSCAPE PLAN FOR DETAILS).



PLANT LIST

QTY	COMMON NAME/ BOTANICAL NAME	ROOT	SIZE	REMARKS
8	CEDAR ELM <i>Ulmus crassifolia</i>	B&R	2.5" CAL	
11	LIVE OAK <i>Quercus virginiana</i>	B&R	2.5" CAL	
5	DESERT WILLOW <i>Chilopsis linearis</i>	B&R	2.5" CAL	
13	CHINESE PISTACHE <i>Pistacia chinensis</i>	B&R	2.5" CAL	
25	SILVERBERRY <i>Elaeagnus macrocarpa</i>	CONT.	5 CAL	
152	DWARF BURFORD HOLLY <i>Ilex cornuta 'Burfordiana'</i>	CONT.	5 GAL	18"-24" HEIGHT - PLANT 3" O.C.

CITY LANDSCAPE REQUIREMENTS

REQUIREMENT	REQUIRED	PROVIDED
TO LANDSCAPE STRIP WITH ONE SHADE TREE (2.5" CALIPER MINIMUM) SHALL BE PROVIDED PER EVERY 500 SQUARE FEET, OR ANY PORTION THEREOF, OF LANDSCAPED STRIP	4250 SF / 500 = 8.5 TREES	15 TREES
LANDSCAPE STRIP ALONG A STREET RIGHT-OF-WAY, EVERGREEN SHRUBS MUST BE PROVIDED FOR SCREENING.	SCREENING ALONG ROUND GROVE ROAD AND STATE HIGHWAY 121	66 SHRUBS PROVIDED
TREES MUST BE PROVIDED IN EACH PARKING LOT SPACED AT A RATIO OF ONE SHADE TREE (2.5" INCH CALIPER MINIMUM) FOR EACH 15 PARKING SPACES PROVIDED, OR ANY FRACTION THEREOF.	41 SPACED / 15 = 2.7 TREES	5 TREES
INTERIOR PARKING LOT LANDSCAPING TOTAL PARKING AREA 6-24,999 SF REQUIRED LANDSCAPING 5%	24,996 SF OF PARKING = 1,249 SF REQUIRED	2,199 SF (8.8%) OF INTERIOR LANDSCAPING PROVIDED
TOTAL NUMBER OF TREES ONSITE	12 TREES REQUIRED TOTAL	37 TREES PROVIDED

CARRINGTON VILLAGE ADDITION
LOT 1, BLOCK G
SITE AREA:
1.212 ACRES (52,801 SF)
ZONING:
GB GENERAL BUSINESS

PRELIMINARY
NOT FOR
CONSTRUCTION

F-7524

29310.0 1/22/16 ADS BJD MMP MMP
CEI PROJECT NO. INITIAL DATE DPOR PM DES DRW

CEI Engineering Associates, Inc.
ENGINEERS PLANNERS SURVEYORS
LANDSCAPE ARCHITECTS ENVIRONMENTAL SCIENTISTS

3030 LBJ Freeway, Suite 100 (972)488-3737
Dallas, TX 75234 FAX (972)488-6732

GOOD YEAR

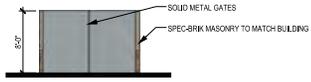
**ROUND GROVE ROAD (F.M. 3040) & STATE HWY 121
LEWISVILLE, TEXAS**

LANDSCAPE PLAN

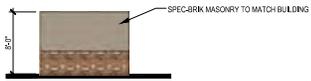
REV DATE SHEET NO.
1/22/16 L1
REV-1

PRELIMINARY

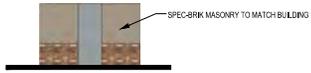
This document shall not be used for regulatory approval, permit, or construction.
Released under the authority of Nicholas King Cade, TBAE license # 9301



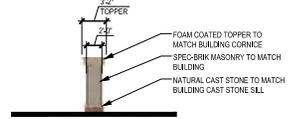
05 DUMPSTER ENCLOSURE
1/8"=1'-0"



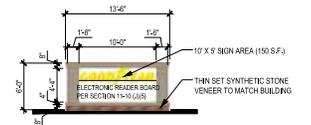
06 DUMPSTER ENCLOSURE
1/8"=1'-0"



07 DUMPSTER ENCLOSURE
1/8"=1'-0"



08 MONUMENT SIGN
1/8"=1'-0"



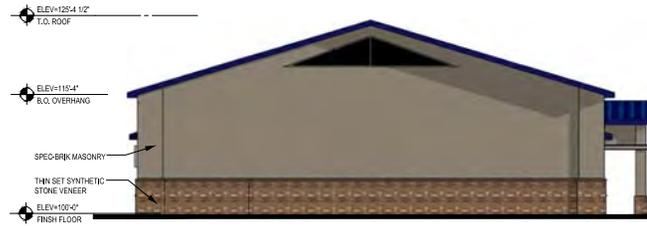
09 MONUMENT SIGN
1/8"=1'-0"



01 EAST ELEVATION
1/8"=1'-0"



02 WEST ELEVATION
1/8"=1'-0"



04 NORTH ELEVATION
1/8"=1'-0"



03 SOUTH ELEVATION
1/8"=1'-0"

NOTE:
THIS PROJECT IS ON A GATEWAY AND NO WALL ELEVATION CAN BE LESS THAN 80% BRICK VENEER

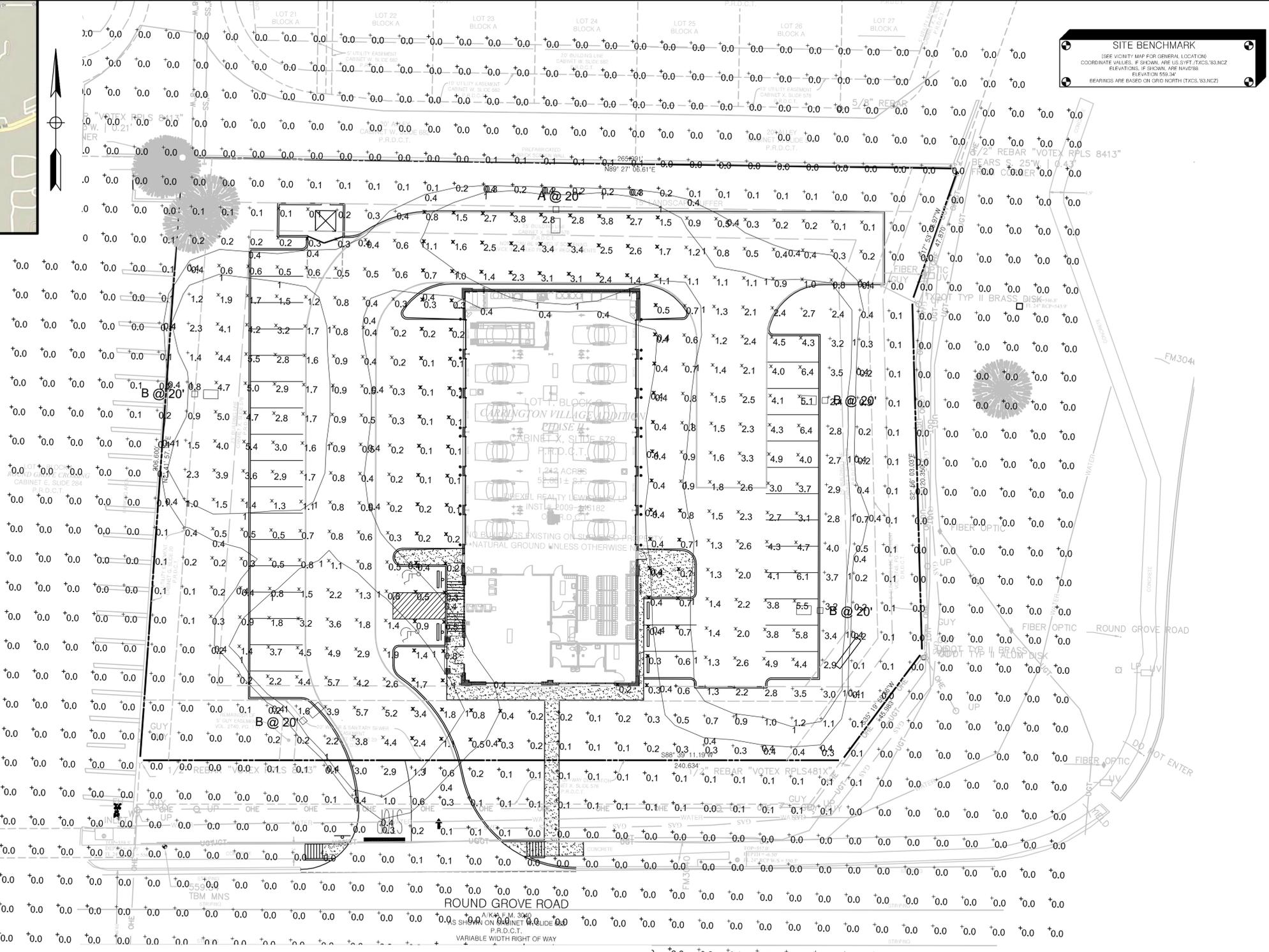


STATE HWY. 121 & ROUND GROVE RD.
COLORED ELEVATIONS
LEWISVILLE, TX - 28 JAN. 2016





Vicinity Map
SCALE: 1" = 1,000'



811
Know what's below.
Call before you dig.

NOTE:
SEE ARCHITECTURAL PLANS FOR EXACT LOCATIONS AND DIMENSIONS OF PORCHES, RAMPS, VESTIBULE, SLOPED PAVING, TRUCK DOCKS, BUILDING UTILITY ENTRANCE LOCATIONS AND PRECISE BUILDING DIMENSIONS.

SCALE IN FEET
0 20 30 40

LEGEND

EXISTING	
---	PROPERTY LINE
---	RIGHT OF WAY
X'G	GAS
X'SS	SANITARY SEWER
---	UNDERGROUND ELECTRIC
---	UNDERGROUND TELEPHONE
---	WATER
---	OVERHEAD TELEPHONE
---	OHE
---	LANDSCAPE OR TREE LINE
---	OVERHEAD UTILITY LINES
---	ROAD SIGN
---	36" SPOT ELEVATION
---	FIRE HYDRANT
---	GRATE INLET
---	GAS METER
---	UTILITY POLE ANCHOR
---	IRRIGATION VALVE
---	STORM MANHOLE
---	TELEPHONE MANHOLE
---	UTILITY CABINET
---	UTILITY VAULT
---	UTILITY POLE
---	UTILITY SIGN
---	WATER VALVE
---	ONE-FT CONTOUR (MAYD 1988)
---	TREE
---	DIAMETER IN INCHES AT BREAST HEIGHT

Symbol	Label	Quantity	Manufacturer	Catalog Number	Description	Lamp	Number Lamps	Filename	Lumens Per Lamp	Light Loss Factor	Wattage
□	A	1	CREE INC.	ARE-EDG-2MB-xx-06-E-UL-xx-700-40K-xxxx (BXALXG08E-UD7)	Cree Edge Area, Type II Medium w- BLS, 60 LEDs, 700mA, 4000K	Sixty White LEDs, Vertical Base-Up Position	1	ARE-EDG-2MB-xx-06-E-UL-700-40K.lvs	7953.106	1	133.6
□	B	4	CREE INC.	ARE-EDG-4MB-DA-12-E-UL-XX-125-40K (BXALH12EUC7)	Cree Edge Area, Type IV Medium w-Full BLS, 120 LEDs, 525mA, 4000K	One Hundred Twenty White LEDs, Vertical Base-Up Position	1	ARE-EDG-4MB-xx-12-E-UL-525-40K.lvs	13154.62	1	198.4

Statistics

Description	Symbol	Avg	Max	Min	Max/Min	Avg/Min	Avg/Max
Calc Zone #1	+	0.5 fc	6.4 fc	0.0 fc	N/A	N/A	0.1:1
Stat Zone # 1	✕	1.7 fc	6.4 fc	0.1 fc	64.0:1	17.0:1	0.3:1

OWNER / DEVELOPER

STEVE C. MEIER, AIA
HUMMEL INVESTMENTS, LLC
8117 PRESTON ROAD SUITE 120
DALLAS, TEXAS 75225
PH# (214) 416-9820 EXT. #104
FAX# (214) 416-9824

CEI CONTACT

JEREMY YEE
DEPARTMENT MANAGER
LYEE@CEIENG.COM
PH# (972)-488-3737
FAX# (972)-488-6732

BRAD DOWNUM
PROJECT MANAGER
BDOWNUM@CEIENG.COM
PH# (972)-488-3737
FAX# (972)-488-6732

CARRINGTON VILLAGE ADDITION
LOT 1, BLOCK G
SITE AREA:
1.212 ACRES (52,801 SF)
ZONING:
GB GENERAL BUSINESS

29310.0	1/21/16	ADS	BUD	TJA	TJA
CEI PROJECT NO.	INITIAL DATE	DPOR	PM	DES	DRW

CEI Engineering Associates, Inc.
ENGINEERS • PLANNERS • SURVEYORS
LANDSCAPE ARCHITECTS • ENVIRONMENTAL SCIENTISTS

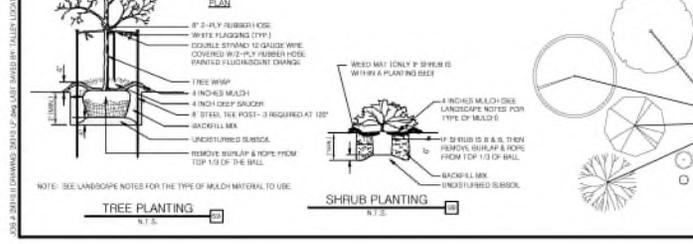
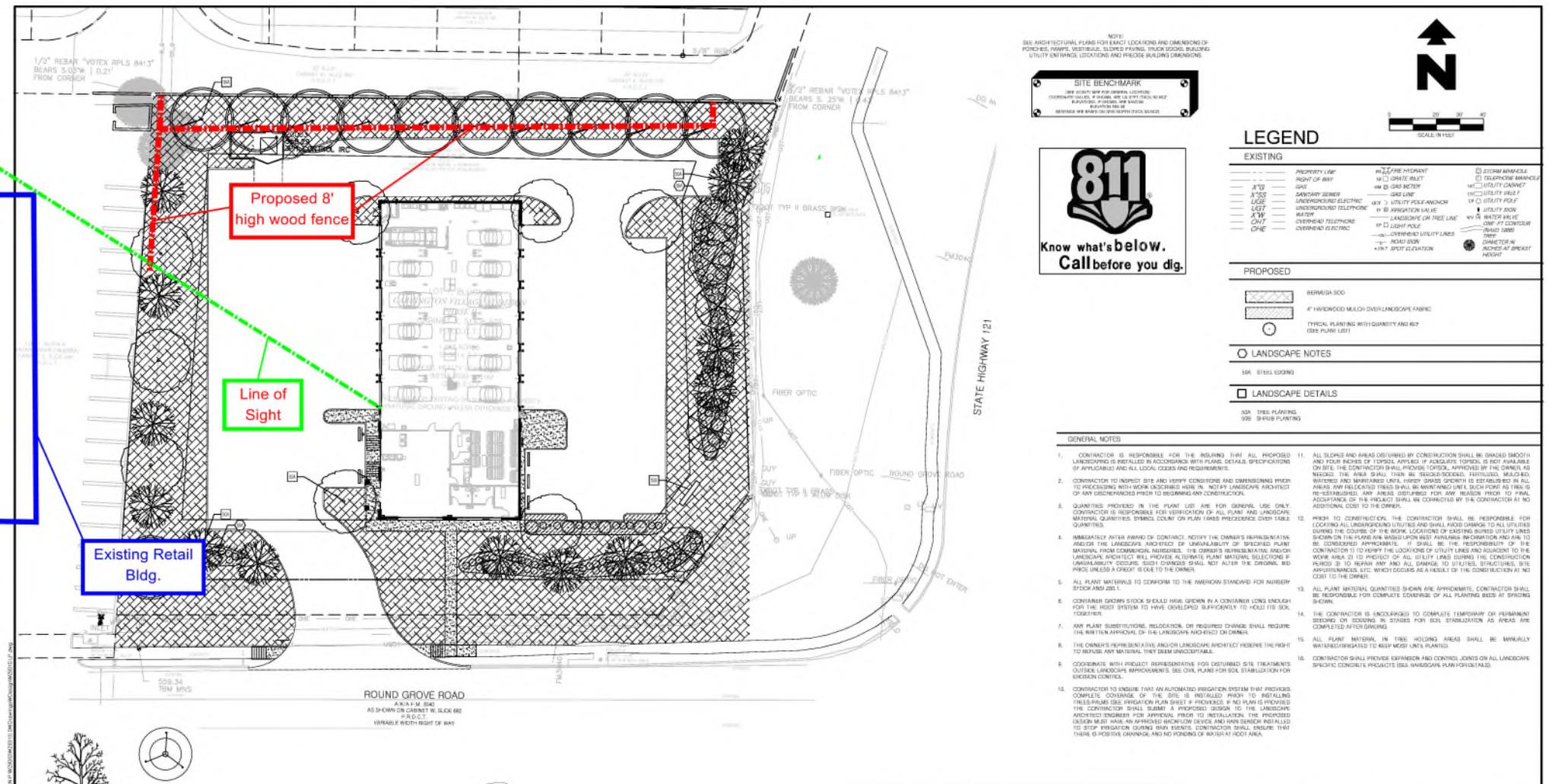
3030 LBJ Freeway, Suite 100
Dallas, TX 75234
(972)488-3737
FAX (972)488-6732

GOODYEAR

**ROUND GROVE ROAD (F.M. 3040) & STATE HWY 121
LEWISVILLE, TEXAS**

PHOTOMETRICS PLAN	REV DATE 1/21/16 REV-1	SHEET NO. C1 OF 10
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FENCING ILLUSTRATION



QTY	COMMON NAME / BOTANICAL NAME	ROOT	SIZE	REMARKS
4	1.0000	500	2.0' DIA.	
11	1.0000	500	2.0' DIA.	
1	1.0000	500	2.0' DIA.	
1	1.0000	500	2.0' DIA.	
1	1.0000	500	2.0' DIA.	
1	1.0000	500	2.0' DIA.	
1	1.0000	500	2.0' DIA.	
1	1.0000	500	2.0' DIA.	
1	1.0000	500	2.0' DIA.	
1	1.0000	500	2.0' DIA.	

REQUIREMENT	REQUIRED	PROVIDED
BY LANDSCAPE STEP WITHIN 30' OF RIGHT-OF-WAY, LANDSCAPE SHALL BE PROVIDED FOR EVERY 100 SQUARE FEET, OR ANY PORTION THEREOF, OF LANDSCAPED STEP.	4200 SF / 200 = 21 TREES	15 TREES
LANDSCAPE STEP ALONG A STREET RIGHT-OF-WAY, LANDSCAPE SHALL BE PROVIDED FOR SCREENING.	SCREENING ALONG ROUND GROVE ROAD AND STATE HWY 121	08 TREES PROVIDED
TREES MUST BE PROVIDED IN EACH PLANTING LOT SPACING AT LEAST ONE SHARP TURN. 1.5" RICH CALIPER PLANTING FOR EACH PLANTING SPACES PROVIDED FOR ANY FUNCTION (REQUIRED).	41 SPACING / 15 = 2.7 TREES	0 TREES
INTERIOR PLANTING LOT LANDSCAPING TOTAL PLANTING AREA IS 21,000 SF. REQUIRED LANDSCAPING IS 5%.	21,000 SF OF PLANTING - 5% IS 1,050 SF	1,100 SF (9.5%) OF INTERIOR LANDSCAPING PROVIDED
TOTAL NUMBER OF TREES (TOTAL)	12 TREES REQUIRED TOTAL	17 TREES PROVIDED

CITY LANDSCAPE REQUIREMENTS

DARRINGTON VILLAGE ADDITION LOT 1, BLOCK 5 SITE AREA: 1.212 ACRES (52,801 SF) ZONING: Q2 GENERAL BUSINESS

CEI Engineering Associates, Inc.
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LANDSCAPE ARCHITECTS • ENVIRONMENTAL SCIENTISTS

GOODYEAR

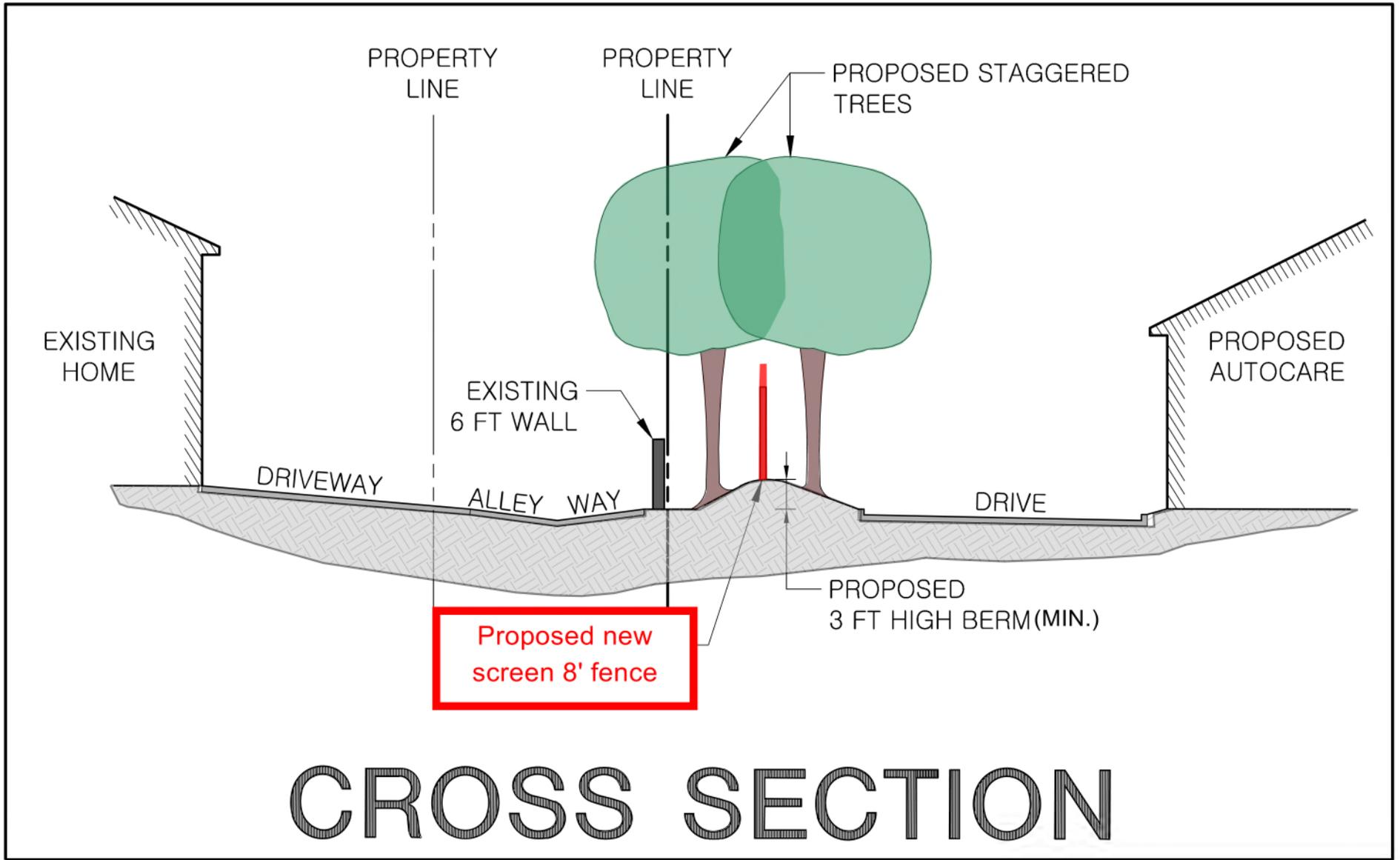
ROUND GROVE ROAD (FM 3040) & STATE HWY 121 LEWISVILLE TEXAS

LANDSCAPE PLAN

PRELIMINARY NOT FOR CONSTRUCTION

REV 04/18 01/18 02/18 03/18 04/18 05/18 06/18 07/18 08/18 09/18 10/18 11/18 12/18

FENCING ILLUSTRATION



CROSS SECTION

Not to Scale

MEMORANDUM

TO: Donna Barron, City Manager

FROM: Nika Reinecke, Director of Economic Development and Planning

DATE: April 4, 2016

SUBJECT: **Consideration of Two Variances to the Lewisville City Code, Section 6-144 – Screening Devices and Section 6-103(c)(4) Median Openings for Inspired Living at Lewisville, a Proposed Assisted Living and Memory Care Facility Located at the Southeast Corner of Valley Parkway and FM 3040, as Requested by Kimley-Horn and Associates, Inc. on Behalf of Senior Care Living VI, LLC, the Developer.**

BACKGROUND

The 14-acre property located on the south side of FM 3040 between Valley Parkway and Ace Lane was rezoned on January 25, 2016 from Local Commercial to Medical District. The developer has submitted an Engineering Site Plan and Final Plat for staff review and intends to construct two new buildings meeting the City's Land Development Regulations with the exception of two variances relating to an alternative screening wall and a median opening spacing requirement on FM 3040.

ANALYSIS

- a. Allow the existing six foot tall metal fence to remain with the addition of live screening and irrigation in lieu of the required six foot masonry wall.

Section 6-144 – Screening Devices

This section of Chapter 6 – Land Development Regulations requires that commercial developments adjacent to residential zoning must provide a masonry screening wall six feet in height. The adjacent property is zoned multi-family and was recently constructed with the metal fence along the common property line. The applicant is proposing to leave the existing fence and add additional live screening and irrigation along the fence line; in lieu of the required six-foot masonry screening wall. The live screening will consist of a combination of Savannah Holly trees and Dwarf Burford Holly shrubs lining the southern perimeter of the property as identified on the landscape plan. The applicant has contacted representatives of the neighboring apartments who provided a letter of support for the alternative live screening. The screening requirement is a tool to provide visual separation from residential to commercial properties. In this instance, the new facility will house independent living and a memory care facility similar to the multi-family use next door. Staff has no objection to the variance request.

Subject: Inspired Living Lewisville
April 4, 2016
Page 2

b. To allow a median opening spacing less than 1,320 feet.

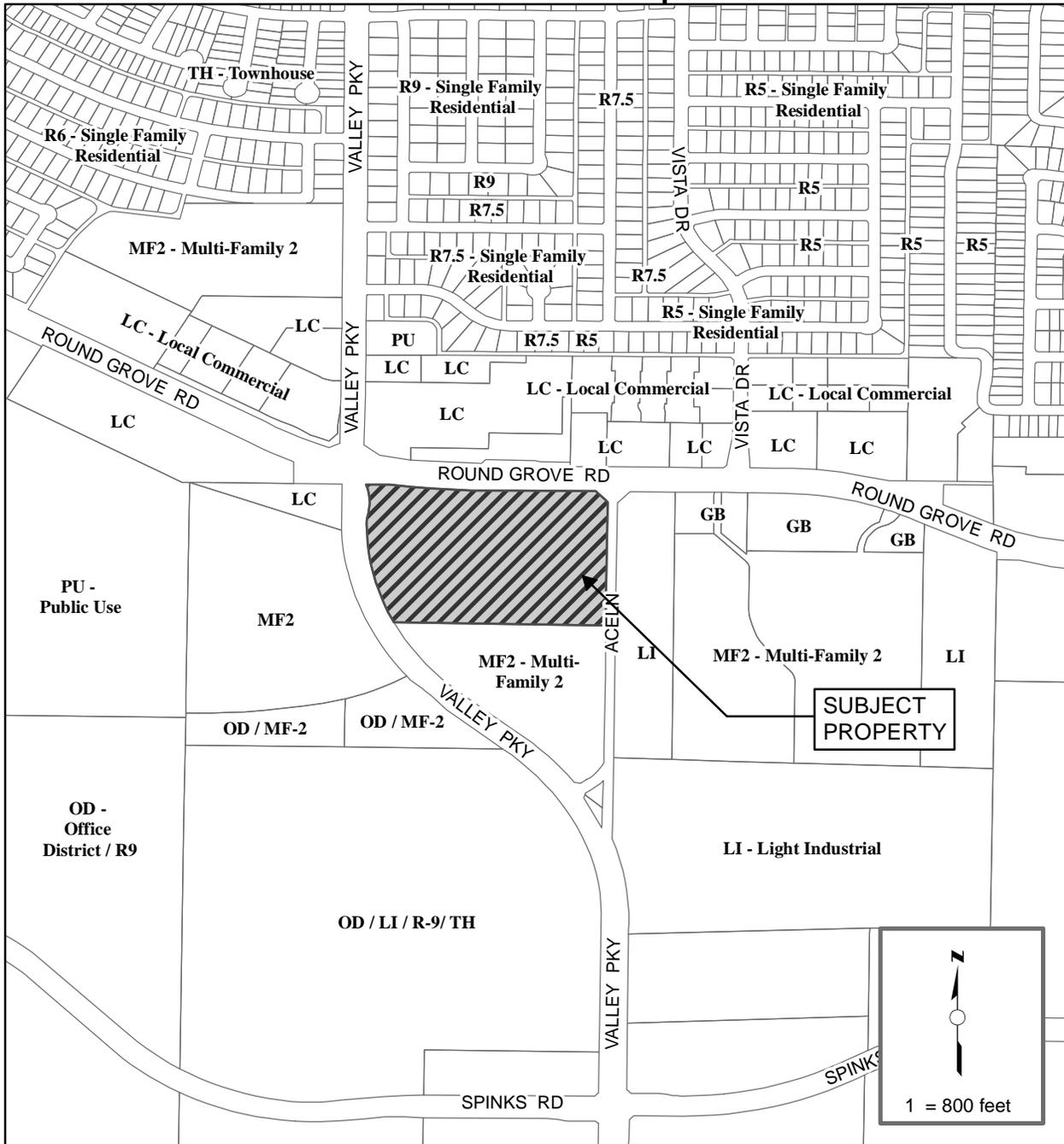
Section 6-103(c)(4) Median openings.

FM 3040, identified as a Major Traffic Carrier, requires a minimum of 1,320 feet for median opening spacing from any signalized intersection. In this case, the applicant is proposing to construct a new hooded median opening and westbound left turn lane on FM 3040, which would necessitate a median opening spacing of 422 feet from the signalized intersection of Ace Lane and 478 feet from the signalized intersection of Valley Parkway. A hooded median opening is desirable to prevent traffic from turning left to go westbound on FM 3040 for safety reasons. An existing hooded median opening and turn lane is currently in place at this location for eastbound traffic to access the existing Tom Thumb shopping center north of FM 3040. Staff is not opposed to the request since there has not been any issues with the existing adjacent hooded median opening. TxDOT will need to approve the proposed hooded median opening and associated left turn lane prior to its construction.

RECOMMENDATION

It is City staff's recommendation that the City Council approves the variances as set forth in the caption above.

Location Map



ZONING CASE NO. PZ-2015-12-21

APPLICANT NAME: SENIOR CARE LIVING VI, LLC

PROPERTY LOCATION: LOCATED ON THE SOUTHWEST CORNER OF FM 3040 AND ACE LANE (14.310 ACRES)

CURRENT ZONING: LOCAL COMMERCIAL (LC)

REQUESTED ZONING: MEDICAL DISTRICT (MD)

Aerial Map





March 07, 2016

City of Lewisville
151 W. Church Street
Lewisville, TX 75067

Re: Site Plan Variance – Inspired Living at Lewisville

To whom it may concern,

This letter is in reference to the subject 14.310-acre property, located at the southwest corner of FM 3040 and Ace Ln in Lewisville, TX. We would like to request a variance on ordinance items shown below:

Variance A

The subject site currently has an existing aluminum fence along the southern property line. The proposed landscaping will provide screening in lieu of required masonry screening wall (*see attached exhibit “Variance A” and “Landscape Exhibit”*). We respectfully request on behalf of Inspired Living at Lewisville, for variance “A” of the screening ordinances from masonry screening wall to landscaped screening wall.

Variance B

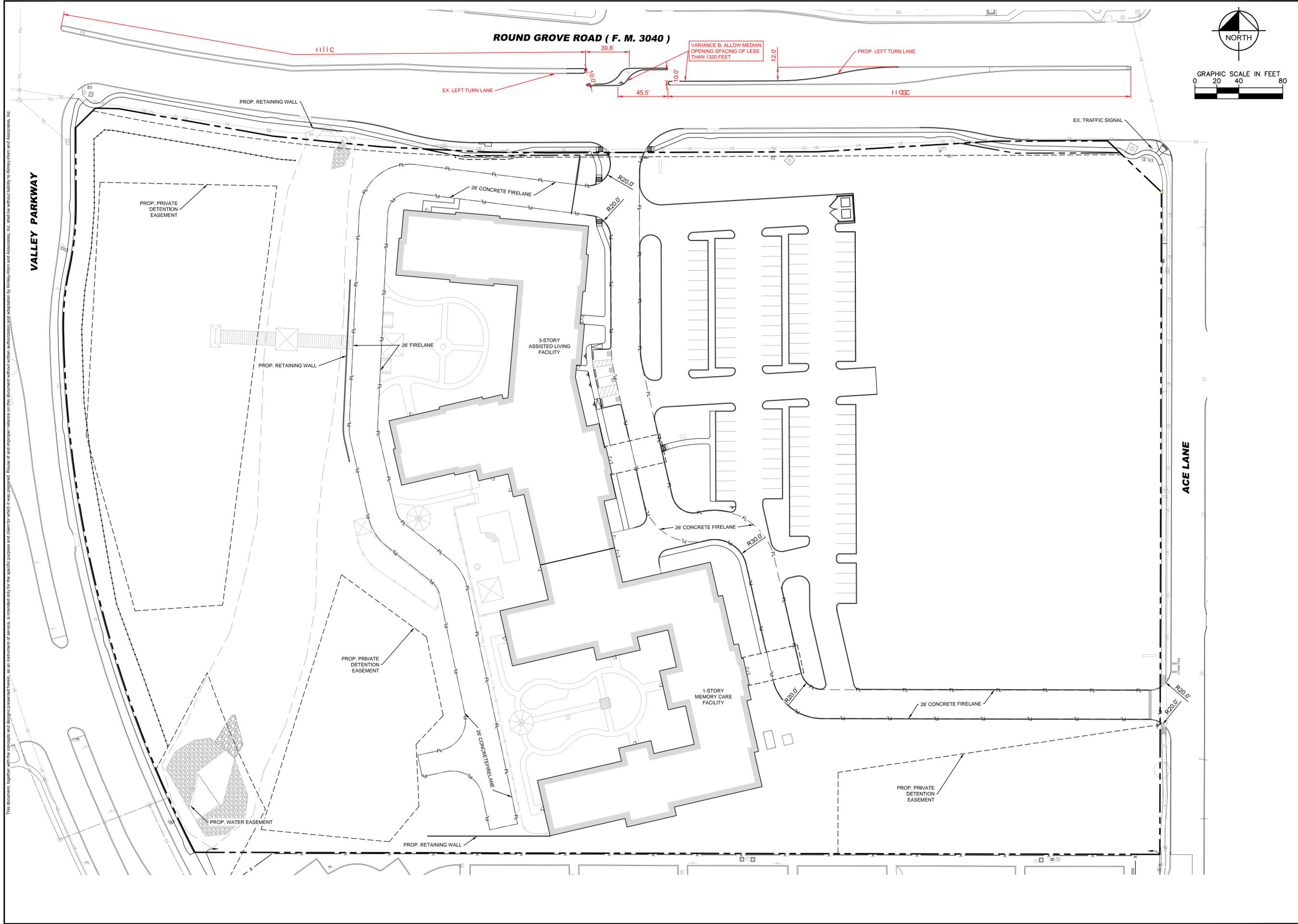
The proposed site has a median opening spacing of less than the required 1320 feet (*see attached exhibit “Variance B”*). We respectfully request on behalf of Inspired Living at Lewisville, for variance “B” of the development ordinance from median opening spacing of 1320 feet to median opening spacing of 422 feet to Ace Lane and a spacing of 478 feet to Valley Parkway.

If there are any questions or concerns regarding the variance request, please contact me at (972) 770-1316

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

Bradley Moss, P.E.
V.P.
Kimley-Horn and Associates, Inc.



This document, together with the concepts and designs presented herein, is intended only for the specific purpose and client for which it was prepared. Release of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

KHA PROJECT 064495000		DATE AS SHOWN		DESIGNED BY DRAWN BY CHECKED BY	
VARIANCE B					
LEWISVILLE SENIOR LIVING JESSE WATKINS SURVEY, ABSTRACT NO. 1327, TRACT 1, 14.310 ACRES, ZONED: MD PREPARED FOR SENIOR CARE LIVING VI, LLC LEWISVILLE TEXAS					
SHEET NUMBER					
KIMLEY HORN		12750 MERIT DRIVE, SUITE 1000, DALLAS, TX 75251 PHONE: 972-770-1300 FAX: 972-239-3820 WWW.KIMLEY-HORN.COM TX F-528 1 8016 KIMLEY-HORN AND ASSOCIATES, INC.			
REVISIONS		DATE		BY	
No.					



Price Brothers

March 7, 2016

Dear City of Lewisville,

We are writing in support of the Screen Variance request made by Senior Care Living VI, LLC for the Inspried Living at Lewisville project. It is our understanding that Code requires the new development to install a solid screen wall running parallel to the existing fence along our northern property boundary of Ovation at Lewisville. It is also our understanding that Senior Care Living VI is proposing a landscape buffer as an alternative to the required wall. We support the developer's requested alternative.

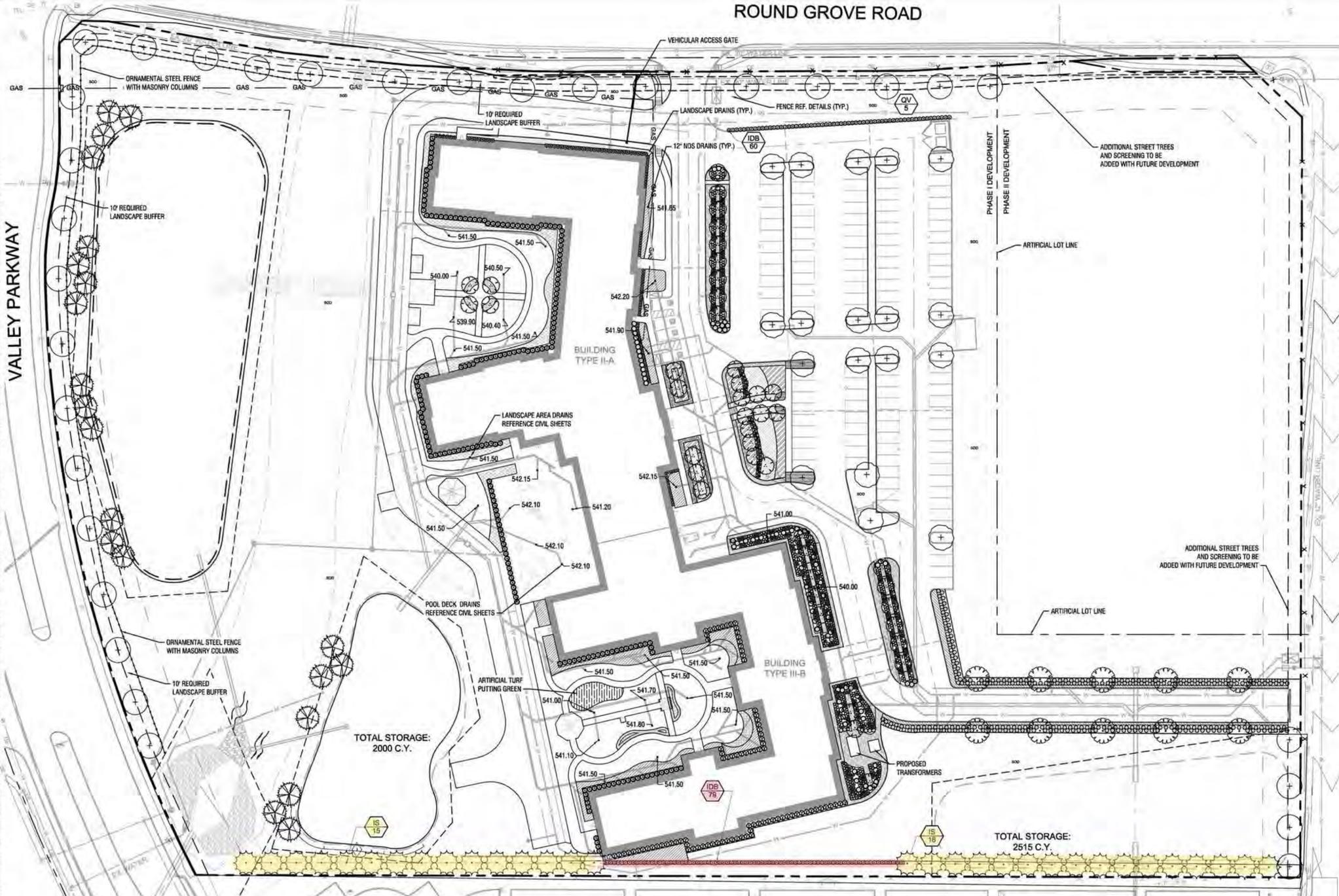
Sincerely,

Sheryl Sabin
VP Asset Management
Price Brothers Management Company

ROUND GROVE ROAD

PLANT SCHEDULE

TREES	CODE	BOTANICAL NAME	COMMON NAME
	IS	ILEX X ATTENUATA 'SAVANNAH'	SAVANNAH HOLLY
	IDB	ILEX CORNUTA 'DWARF BURFORD'	DWARF BURFORD HOLLY



NO.	REVISIONS	DATE	BY

Kimley»Horn
 12750 MERIT DRIVE, SUITE 1000, DALLAS, TX 75251
 PHONE: 972-702-1300 FAX: 972-239-3820
 WWW.KIMLEY-HORN.COM TX F-562
 © 2016 KIMLEY-HORN AND ASSOCIATES, INC.

FOR REVIEW ONLY
 Not for construction or permit purposes.
Kimley»Horn
 I.L.A. JOHN A. FIELDER
 L.A. No. 2344 Date: MARCH 2016

KHA PROJECT	064495000
DATE	MARCH 2016
SCALE	AS SHOWN
DESIGNED BY	MKT
DRAWN BY	MKT
CHECKED BY	JAF

LEWISVILLE SENIOR LIVING

INSPIRED LIVING AT
LEWISVILLE
 INSPIRED LIVING AT LEWISVILLE ADDITION,
 LOT 1, BLOCK A, 14.31 ACRES, ZONED: MD
 PREPARED FOR
SENIOR CARE LIVING VI, L.L.C.
 LEWISVILLE, TEXAS

SHEET NUMBER
L-001

City of Lewisville Code of Ordinance		
SEC. 6-123. Multi-Family and Non-Residential Landscaping Requirements		
	Required	Provided
B. A minimum of 10' wide landscaped strip shall be provided adjacent to all public and private streets. Within the landscaped strip, 1 shade tree (2.5" Cal. minimum) shall be provided per every 500 SF. Trees shall be spaced evenly along street frontage, not clustered.		
Ace Lane Landscape Strip = 1,920 SF/500 = 4 Trees*	4 Trees	4 Trees*
Round Grove Road Landscape Strip = 7,580 SF/500 = 15 Trees*	15 Trees	15 Trees*
Valley Parkway = 6,585 SF/500 = 13 Trees	13 Trees	13 Trees
C. Where parking lots and drives abut the landscape strip along a street ROW, Evergreen shrubs must be provided for screening. The shrubs must be a minimum height of 2' and spaced appropriately. Screen must extend along the entire street frontage of the parking lot, exclusive of driveways and visibility clips.	YES	YES
D. Trees must be provided in each parking lot spaced at a ratio of 1 shade tree (2.5" Cal. minimum) for each 15 parking spaces provided. Trees must be spaced a maximum of 15 parking spaces apart.		
Number of Parking Spaces = 119 Total Parking Spaces/15 = 8 Trees	8 Trees	17 Trees
Interior Parking Lot Requirement: Interior parking lot areas shall provide an interior landscape area		
49,350 SF of Parking requires 8% of Interior Landscape Area	3,948 SF	9,209 SF
49,350 SF * 8% = 3,948 SF		

*NOTE: The road frontage distance has been modified to limit planting requirements to the developed portions of the current phase. (Reference limits of artificial lot line.) Additional trees and any screening requirements will be provided in future development phases.

- LANDSCAPE PLAN NOTES:**
1. ALL LANDSCAPED AREAS MUST BE IRRIGATED BY AN AUTOMATIC UNDERGROUND IRRIGATION SYSTEM EQUIPPED WITH OPERATING RAIN AND FREEZE SENSORS.
 2. ALL BED AREAS MUST BE SEPARATED FROM TURF AREAS BY STEEL EDGING.
 3. THE PROPERTY OWNER MUST MAINTAIN ALL LANDSCAPING IN ACCORDANCE WITH THE LANDSCAPE PLAN APPROVED BY THE CITY PLAN COMMISSION.
 4. LANDSCAPE MATERIAL WITHIN DESIGNATED SIGHT VISIBILITY TRIANGLES AND PARKING ISLANDS MUST BE LESS THAN 2" IN HEIGHT FOR GROUND COVER AND SHRUBS AND LOWER TREE LIMBS MUST BE A MINIMUM OF 7' FROM THE ADJACENT GROUND.

BENCH MARK LIST

BM 1: Aluminum Disk in concrete stamped "City of LEWISVILLE, Texas, Monument No. 27, January 2005, Control Monument". 11.5'± north of the south curb of the center median of Vista Ridge Mall Road and 344'± west of the center of the intersection of Denton Tap Road and Vista Ridge Mall Road. Elev. = 544.63
BM 2: Aluminum Disk in concrete stamped "City of LEWISVILLE, Texas, Monument, January 2005, Control Monument". 10'± east of the west curb of the center median of Valley Parkway and 800'± north of the center of the intersection of Round Grove Road and Valley Parkway. Elev. = 561.61
TBM 53: "X" on the northwest corner of a drop inlet. 150'± west from the centerline of Ace Lane and 706'± south from the center of the intersection of Round Grove Road and Ace Lane. Elev. = 530.01

CAUTION!!

MANY EXISTING UNDERGROUND UTILITIES EXIST IN THE AREA. THE UTILITIES SHOWN ON THIS PLAN ARE FROM SURVEY AND AVAILABLE PLANS ONLY-THE INFORMATION IS VERY UNLIKELY TO BE COMPLETE OR PRECISE. THE CONTRACTOR IS RESPONSIBLE FOR DETERMINING THE HORIZONTAL AND VERTICAL LOCATION OF ALL UTILITIES SHOWN OR NOT SHOWN PRIOR TO CONSTRUCTION. CONTRACTOR SHALL BE RESPONSIBLE FOR ANY REPAIRS TO UTILITIES DUE TO DAMAGE DURING CONSTRUCTION. CONTRACTOR SHALL NOTIFY THE ENGINEER OF ANY DISCREPANCIES ON THE PLANS.



Before



After



LEWISVILLE SENIOR LIVING
Lewisville, Texas

MEMORANDUM

TO: Donna Barron, City Manager

FROM: Nika Reinecke, Director of Economic Development and Planning

DATE: April 4, 2016

SUBJECT: **Consideration of a Variance to the Lewisville City Code, Section 6-144 – Screening Devices, for Creekview 121, a Proposed Office Warehouse Facility Located on the North Side of SH 121 Between Leora Lane and Marina Vista Drive, as Requested by Pacheco Koch and Associates on Behalf of EastGroup Properties, the Developer.**

BACKGROUND

The 28-acre property is located on the north side of SH 121, between Leora Lane and Marina Vista Drive and just south of a large drainage channel for McWhorter Creek. The developer has submitted an Engineering Site Plan and Final Plat for staff review and intends to construct four buildings overall, with two new buildings proposed for construction in the first phase. The development meets the minimum requirements of the City's Land Development Regulations with the exception of one variance relating to an alternative screening wall along the northern portion of the site backing up to the channel.

ANALYSIS

- a) Allow live screening and irrigation in lieu of the required six foot masonry wall.

Section 6-144 – Screening Devices

This section of Chapter 6 – Land Development Regulations states that industrial developments adjacent to residential zoning must provide a masonry screening wall eight feet in height. The adjacent properties are a combination of multi-family and single-family detached. 16 of the 18 single-family homes back up to the channel while the other two have side yards adjacent to the channel. All 18 detached residential lots contain an existing six-foot wood fence adjacent to the channel. The rear fences of the single family homes are approximately 102 feet from the proposed live screen. The closest wall of the future phase two building would be approximately 160 feet from the rear fences. EastGroup Properties is proposing to plant the living screen with phase one construction. Phase one consists of constructing two buildings on the south side of the property. This will allow the proposed living screen an opportunity to mature before phase two is constructed closer to the channel. The applicant is proposing to add live screening with irrigation along the top of a proposed retaining wall adjacent to the channel. The proposed retaining wall would consist of dry stack masonry along the creek's southern slope with a coniferous planting screen on top. An evergreen hedgerow of four-foot tall Nellie R. Stevens holly bushes will be planted and spaced to allow a healthy and dense growth pattern.

Subject: EastGroup Properties – Screening Wall Variance
April 4, 2016
Page 2 of 2

These will double in height within two years. In addition to the bushes, Palatka Holly and Live Oak trees will be planted to enhance the visual screening. The applicant has contacted the neighboring single-family residential HOA, who has provided a letter of support for the alternative live screening. The screening requirement is a tool used to provide visual separation from residential to commercial properties. Staff has no objection to the variance request. The applicant has also contacted the multi-family property owners to request letters of support. One of the multi-family property owners has provided a letter of support while the other has provided an email expressing support for the variance request.

RECOMMENDATION

It is City staff's recommendation that the City Council approves the variance request as set forth in the caption above.

Aerial Map - Creekview 121



March 14, 2016

Richard Luedke
Planning Manager
City of Lewisville
151 W Church Street
Lewisville, TX 75029

RE: Screening Variance Request
Creekview 121 Addition

Dear Mr. Luedke:

We are contacting you on behalf of our client, EastGroup Properties, concerning their property at Creekview 121 Addition, zoned as 'Light Industrial'. In lieu of the required, opaque screening wall between commercial and residential uses [Ord. Sec. 6-144], we are requesting a variance to install a screening hedge [Ord. Sec. 6-145].

This screening hedge area is intended to provide a sustainable and diverse natural buffer between the industrial development, drainage channel, and the adjacent neighborhood. Currently, the McWhorter Creek drainage channel provides a natural buffer between the adjacent properties. This creek has an approximate width of 100-feet. The EastGroup development will install a dry stack masonry retaining wall along the creek's southern slope with coniferous planting screen on top.

In order to satisfy the hedge requirements, EastGroup is proposing an Evergreen hedgerow of four foot-tall "Nellie R. Stevens" Holly bushes spaced 5-feet apart, from trunk-to-trunk. These bushes are to screen at a height of 4-feet when planted, reach a height of 6-feet after one year and 8-feet after two years. The 5-foot spacing has been carefully considered by the Landscape Architect to allow for healthy, mature growth providing a dense screen between the residential areas and the EastGroup property.

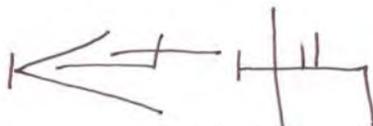
Additional specimen trees will be planted interior to the landscaping screen area that will include East Palatka Holly and Live Oak trees. The East Palatkas will be 8-foot tall at time of planting and spread 18-feet apart. The Live Oak trees will be 3-inch caliper at time of planting and spread 30-feet apart.

All of the landscaping described in this screening hedge will have an irrigation system designed and installed capable of providing controlled watering as required for maturation and healthy vegetation.

Included with this letter, please find the following exhibits regarding our request:

1. Lewisville King's Grant HOA letter of support
2. Landscape Architect's Planting Plan
3. Master Plan – illustrating proposed site design upon completion
4. Enlarged Plan & Render – with dimensions to buildings, McWhorter Creek, and residences

Respectfully,



Keith Holley, AIA, NCARB, LEED AP

Lewisville King's Grant Homeowners Association, Inc.

February 16, 2016

Richard Luedke
Planning Manager
City of Lewisville
151 W. Church Street
Lewisville, Texas 75029

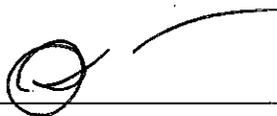
Re: Screening Variance Request
Creekview 121 Addition

Mr. Luedke:

I am the President of the Lewisville Kings Grant Homeowners Association Inc. Board located at the southwest corner of Lake Ridge Road and Marina Vista Drive, Lewisville, Texas (Kings Grant Addition, Plat Document Nos. 2011-134, 2011-221; zoned "Town Home 2"). Our neighborhood is separated from the Creekview 121 Addition (zoned "Light Industrial") by a 100-foot wide, private drainage channel/McWhorter Creek that adjoins the northeastern border of the proposed commercial development (Creekview 121 Addition) by EastGroup Properties, L.P. After meeting with EastGroup and reviewing their alternative screening and development plans for the site, and understanding that this alternative screening will be installed at an appropriate time during the beginning of their construction process, please accept this letter as our formal notification that our Board is in favor of EastGroup's proposed request for a living screen. The live screening is an architecturally designed combination of native trees, ornamental trees, shrubs, bushes, and grasses that will create a visual natural green wall as much as possible providing privacy between the subdivision and the Creekview 121 development. This live screening is in lieu of an 8-foot high, masonry screening wall (or similar) along the northern edge of their development. The live screening will be properly maintained through each season and the area kept clean.

Regards,

Kings Grant Homeowners Association Inc.

By:  _____

Name: Pritiben Patel (On behalf of Kings Grant Homeowners Association, Inc.)

Title: President, Lewisville Kings Grant Homeowners Association Inc.

Date: February 16, 2016

March 22, 2016

Richard Luedke
Planning Manager
City of Lewisville
151 W. Church Street
Lewisville, Texas 75029

Dear Mr. Luedke:

**Re: Screening Variance Request
Creekview 121 Addition**

I am the General Manager – Acquisition and Asset Management for Melcor Developments Ltd, who is the owner of the Lakeside 121 multi-family project located at 701 N Leora Lane, Lewisville, Texas (Lakeside at One Twenty One Addition, Lot 1, Block A; zoned “Mult-Family Residential Two / MF2”). Our project is separated from the Creekview 121 Addition (zoned “Light Industrial”) by a 100-foot wide, private drainage channel/McWhorter Creek that adjoins the northwestern border of the proposed commercial development (Creekview 121 Addition) by EastGroup Properties, L.P.

After discussing with EastGroup and reviewing their alternative screening and development plans for the site, and understanding that this alternative screening will be installed at an appropriate time during the beginning of their construction process, please accept this letter as our formal notification that Melcor Developments Ltd. is in favor of EastGroup’s proposed request for a living screen (an architecturally designed combination of native tree, ornamental trees, shrubs, bushes, and grasses) in lieu of an 8-foot high, masonry screening wall (or similar) along the northern edge of their development. The live screening will be properly maintained through each season and the area kept clean.

Regards,

MELCOR DEVELOPMENTS LTD.

By: _____



Name: _____

Greg Stevenson
General Manager
Acquisition & Asset Management

Title: _____

Date: _____

March 28/16



Mary Paron <mparon@cityoflewisville.com>

RE: Request for Support Letter - EastGroup Properties - CreekView 121 development

5 messages

Brent Wood <Brent.Wood@eastgroup.net>

Thu, Mar 24, 2016 at 11:43 AM

To: "mparon@cityoflewisville.com" <mparon@cityoflewisville.com>

Cc: Keith Holley <keith@architects-plus.com>, "Paul M. Hames" <phames@pkce.com>, Christine Wright <christine@architects-plus.com>, David Hicks <David.Hicks@eastgroup.net>

Mary – Just want to give you an update. The email below was received from one of the two multi-family owners that border us to the north. We are hopeful to have him sign the actual letter but wanted to pass their approval (non-dissent) along to you.

As for the other owner, we have favorable feedback and remain optimistic of gaining their consent soon.

Please let us know when you can confirm that we are on the April 4 agenda.

Thank you,

Brent

From: Nick Wilhelmson [mailto:nwilhelmson@allresco.com]

Sent: Thursday, March 24, 2016 11:29 AM

To: David Hicks <David.Hicks@eastgroup.net>; Christine Wright <christine@architects-plus.com>

Cc: Brent Wood <Brent.Wood@eastgroup.net>; Keith Holley <keith@architects-plus.com>; Paul M. Hames <phames@pkce.com>

Subject: RE: Request for Support Letter - EastGroup Properties - CreekView 121 development

David,

Thanks for all of the information. We will not oppose your variance request.

Good luck,

Nick

Nick Wilhelmson

Alliance Residential Company

8111 Preston Road | Suite 700 | Dallas, TX 75225

(214) 389-2016 - direct

(214) 636-5445 - cell

nwilhelmson@allresco.com

Mary Paron <mparon@cityoflewisville.com> Thu, Mar 24, 2016 at 11:51 AM
To: Brent Wood <Brent.Wood@eastgroup.net>
Cc: Keith Holley <keith@architects-plus.com>, "Paul M. Hames" <phames@pkce.com>, Christine Wright <christine@architects-plus.com>, David Hicks <David.Hicks@eastgroup.net>, Richard Luedke <rluedke@cityoflewisville.com>

Great! Thanks for the update. I will update our people accordingly.

[Quoted text hidden]

—
Mary Paron-Boswell
Sr. Planner
City of Lewisville, Texas
[972-219-3457](tel:972-219-3457)

Mary Paron <mparon@cityoflewisville.com> Thu, Mar 24, 2016 at 11:52 AM
To: Richard Luedke <rluedke@cityoflewisville.com>

----- Forwarded message -----

From: **Brent Wood** <Brent.Wood@eastgroup.net>

Date: Thu, Mar 24, 2016 at 11:43 AM

Subject: RE: Request for Support Letter - EastGroup Properties - CreekView 121 development

[Quoted text hidden]

—
Mary Paron-Boswell
Sr. Planner
City of Lewisville, Texas
[972-219-3457](tel:972-219-3457)

Paul M. Hames <phames@pkce.com> Mon, Mar 28, 2016 at 2:53 PM
To: Mary Paron <mparon@cityoflewisville.com>, Richard Luedke <rluedke@cityoflewisville.com>

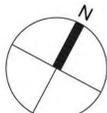
CREEKVIEW 121 ◻ ◻ ◻ LEWISVILLE, TEXAS

MASTER PLAN - OFFICE AND WAREHOUSE BUILDINGS

SCHEME 1 12/04/15



CREEKVIEW 121 MASTER PLAN	
PHASE 1	
BUILDING 1	121,758S.F.
BUILDING 2	70,823S.F.
PHASE 2	
BUILDING 3	78,450S.F.
BUILDING 4	78,450S.F.
TOTAL BUILDING	349,481S.F.
TOTAL LAND	28.10 ACRES

SCALE: 1" = 80'-0" 

ARCHITECTS - PLUS www.architects-plus.com

INNOVATIVE CREATIVE

personal service

ARCHITECTURE DESIGN PLANNING INTERIORS

730 NORTH POST OAK DR., SUITE 311
HOUSTON, TEXAS 77024

PHONE 713.533.1370

CREEKVIEW 121 ◻ ◻ ◻ LEWISVILLE, TEXAS

ENLARGED SITE PLAN

SCHEME 1 12/04/15

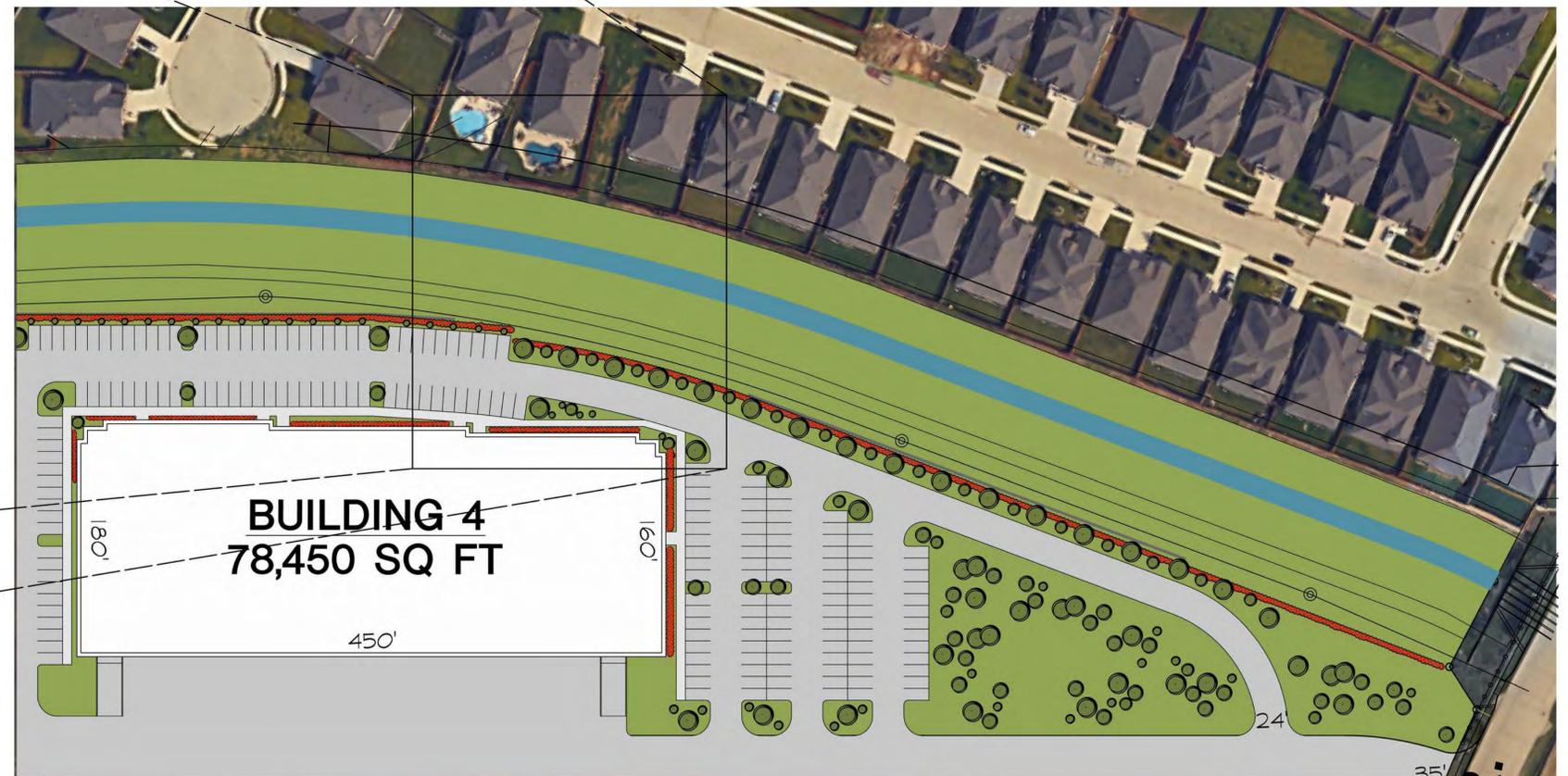
EASTGROUP
PROPERTIES



ENLARGED PLAN DETAIL



VIEW FROM KINGS GRANT NEIGHBORHOOD



ARCHITECTS - PLUS

www.architects-plus.com

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ARCHITECTURE

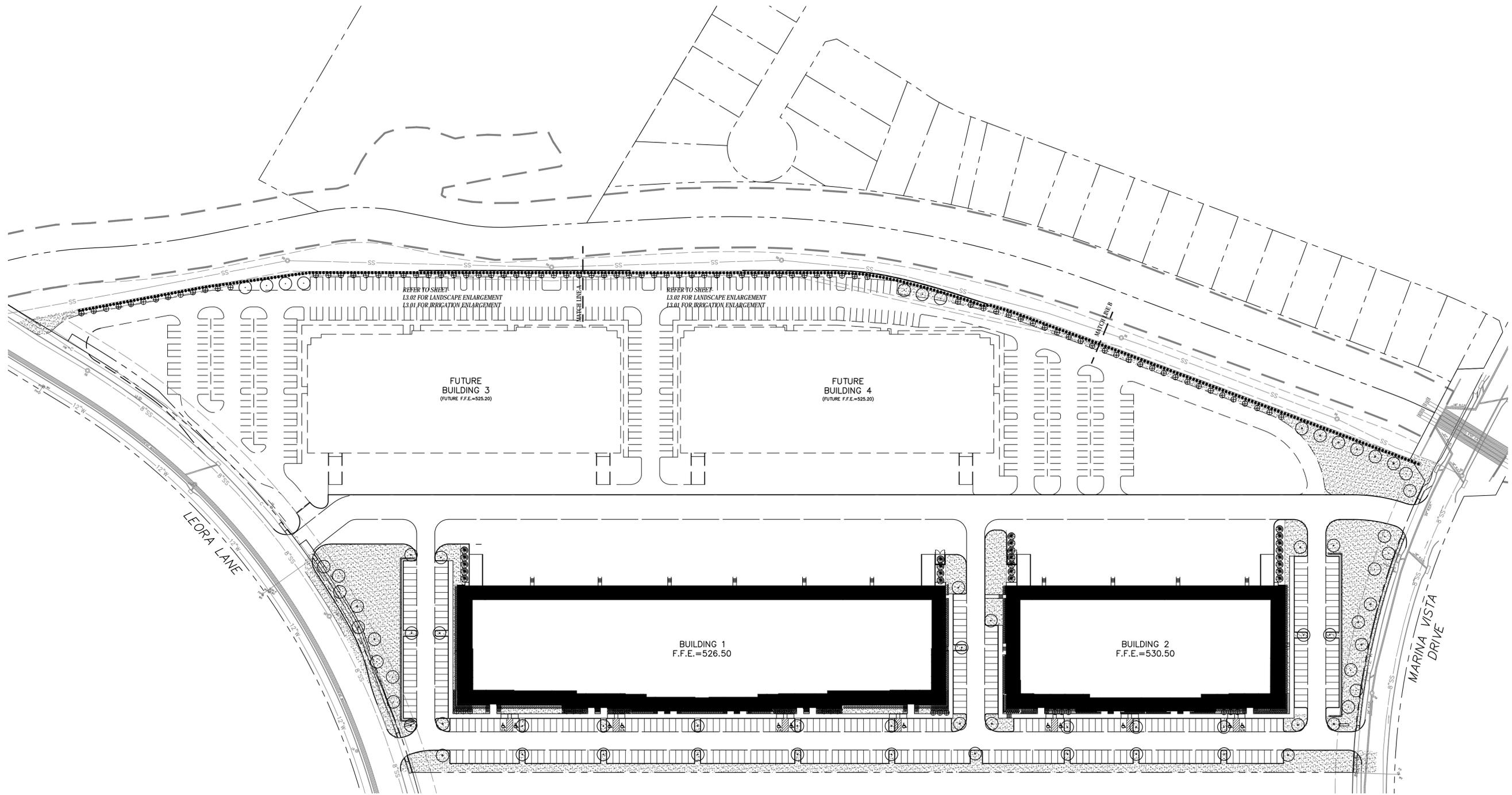
DESIGN

PLANNING

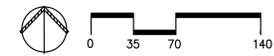
INTERIORS

730 NORTH POST OAK DR., SUITE 311
HOUSTON, TEXAS 77024

PHONE 713.533.1370



01 LANDSCAPE SITE PLAN
SCALE: 1"=70'



PLANT LIST - NORTH PROPERTY LINE

TREES					
QTY.	TYPE	COMMON NAME	BOTANICAL NAME	SIZE	REMARKS
86	EP	East Palatka Holly	<i>Ilex x attenuata 'East Palatka'</i>	8 ht.	container grown, 4' spread, tree form, matching
13	LO	Live Oak	<i>Quercus virginiana</i>	3" cal.	container grown, 13' ht, 5' spread min.
395	NRS	Nelle R. Stevens Holly	<i>Ilex x Nelle R. Stevens</i>	4 ht.	container grown, 42' spread, full to base

NOTE: Plant list is an aid to bidders only. Contractor shall verify all quantities on plan. All heights and spreads are minimums. All plant material shall meet or exceed remarks as indicated. All trees to have straight trunks and be matching within varieties.

EastGroup Properties
4220 World Houston
Parkway
Suite 170
Houston, TX 77032

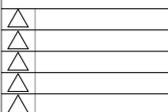
smr
landscape architects, inc.
1708 N. Griffin Street Dallas, Texas 75202
Tel 214.871.0088 Fax 214.871.0545
Email smr@smr-la.com

**CREEKVIEW 121
LANDSCAPE VARIANCE
LEWISVILLE, TEXAS**



- Issue For:
- Design Development
 - Progress
 - Bidding
 - Permit
 - Construction

Original Issue Date:
29 FEBRUARY 2016



Sheet Description:
**N. PROPERTY
LINE LANDSCAPE
PLAN**

Drawn By: CMT

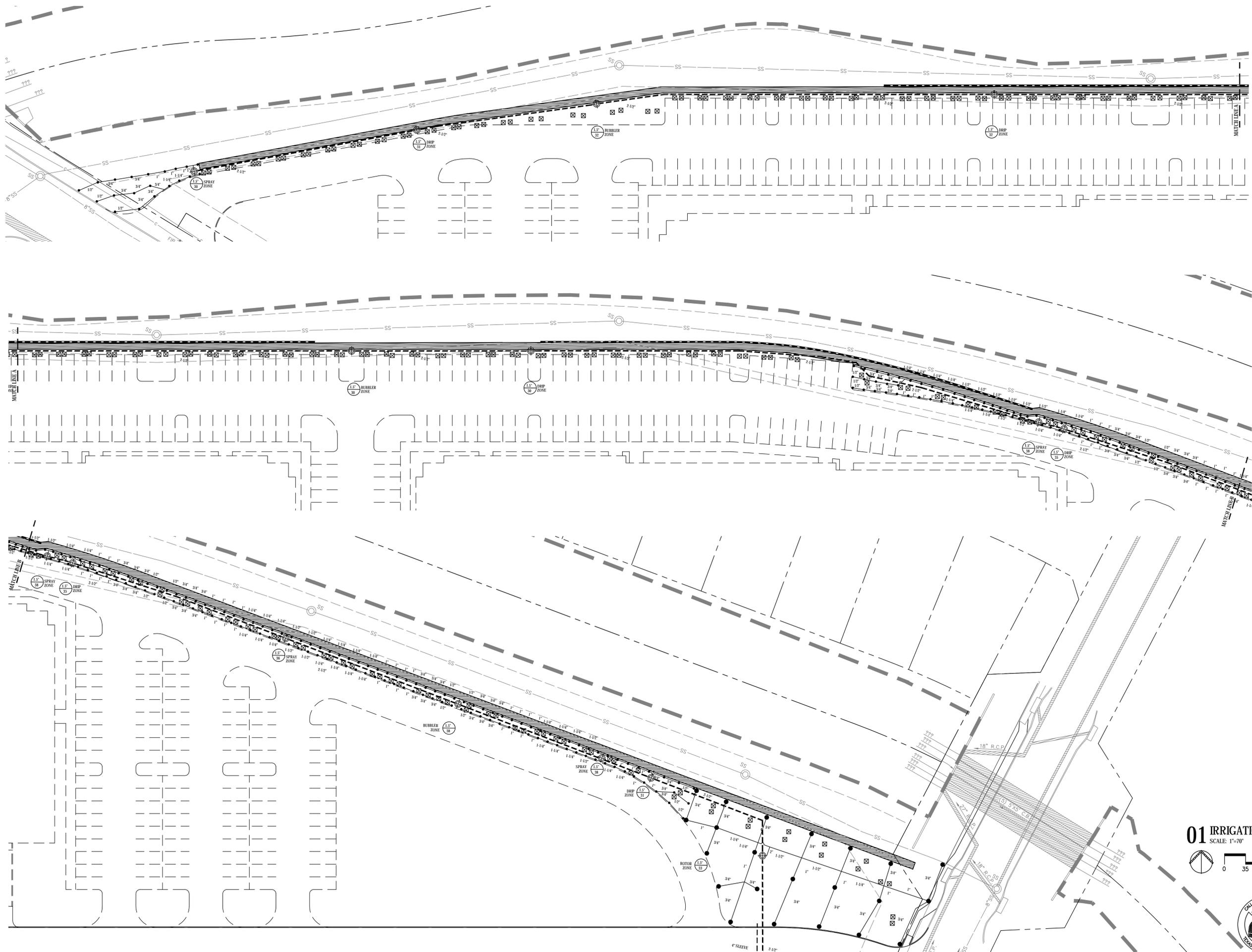
Checked By: CMT

Current Date:
14 MARCH 2016

Drawing #

L3.01





01 IRRIGATION PLAN
SCALE: 1"=70'



EastGroup Properties
4220 World Houston
Parkway
Suite 170
Houston, TX 77032

smr
landscape architects, inc.
1708 N. Griffin Street Dallas, Texas 75202
Tel: 214.871.0083 Fax: 214.871.0545
Email: smr@smr-ls.com

**CREEKVIEW 121
LANDSCAPE VARIANCE
LEWISVILLE, TEXAS**



- Issue For:
- Design Development
 - Progress
 - Bidding
 - Permit
 - Construction
 -

Original Issue Date:
29 FEBRUARY 2016

▲
▲
▲
▲

Sheet Description:
**N. PROPERTY
LINE IRRIGATION
PLAN**

Drawn By: CMT

Checked By: CMT

Current Date:
14 MARCH 2016

Drawing #
L3.03

MEMORANDUM

TO: Donna Barron, City Manager

FROM: David Salmon, P.E., City Engineer

Via: Eric Ferris, Assistant City Manager

DATE: March 15, 2016

SUBJECT: **Consideration of a Variance to the Lewisville City Code Section 6-103(c)(2)(a) (Access Spacing) Regarding Driveway Spacing Requirements, Related to Quick Serve Restaurant Located at 401 FM 3040, as Requested by Jonathon Hake, P.E. of Cross Engineering Consultants, Inc., on Behalf of Hunt Properties, Inc.**

BACKGROUND

The subject site is a 0.8666-acre lot zoned Light Industrial (LI) within the Weatherford Addition located at 401 East F.M. 3040. Hunt Properties, Inc., the prospective property owner, is proposing to redevelop the property from a full-service car wash to a new 37,690 square foot building for two restaurants. At this time the restaurants have yet to be determined. Hunt Properties, Inc. is requesting a variance to reduce the required separation between driveways to less than 230 feet to keep the existing driveway on the east side of the property in its current location.

ANALYSIS

- a) To allow driveway spacing less than 230 feet.

Article V, Section 6-103(c)(2), Access Spacing

The ordinance requires that driveways on adjacent properties be spaced at least 230 feet apart on major traffic carriers such as FM 3040. The existing driveway on the east side of the property currently has a spacing of 115.12 feet to the nearest existing driveway to the west and 126.70 feet to the nearest existing driveway to the east. Staff has no objection to the request as they are existing driveways and the overall circulation pattern on the property is not changing.

RECOMMENDATION

It is City staff's recommendation that the City Council approves the variance as set forth in the caption above.

CROSS ENGINEERING CONSULTANTS

131 S. Tennessee St.
972.562.4409



McKinney, Texas 75069
Fax 972.562.4471

February 19, 2016

Mr. Jeff Kelly, P.E.
Assistant Civil Engineer
City of Lewisville
151 W. Church Street
Lewisville, Texas 75029-9002

**Re: Variance Request
Hunt Retail/Restaurant Building
Lot 1-A-3 Weatherford Addition**

Dear Mr. Kelly,

On behalf of Hunt Properties, Inc., we are formally requesting a variance to the required driveway spacing along Round Grove Road.

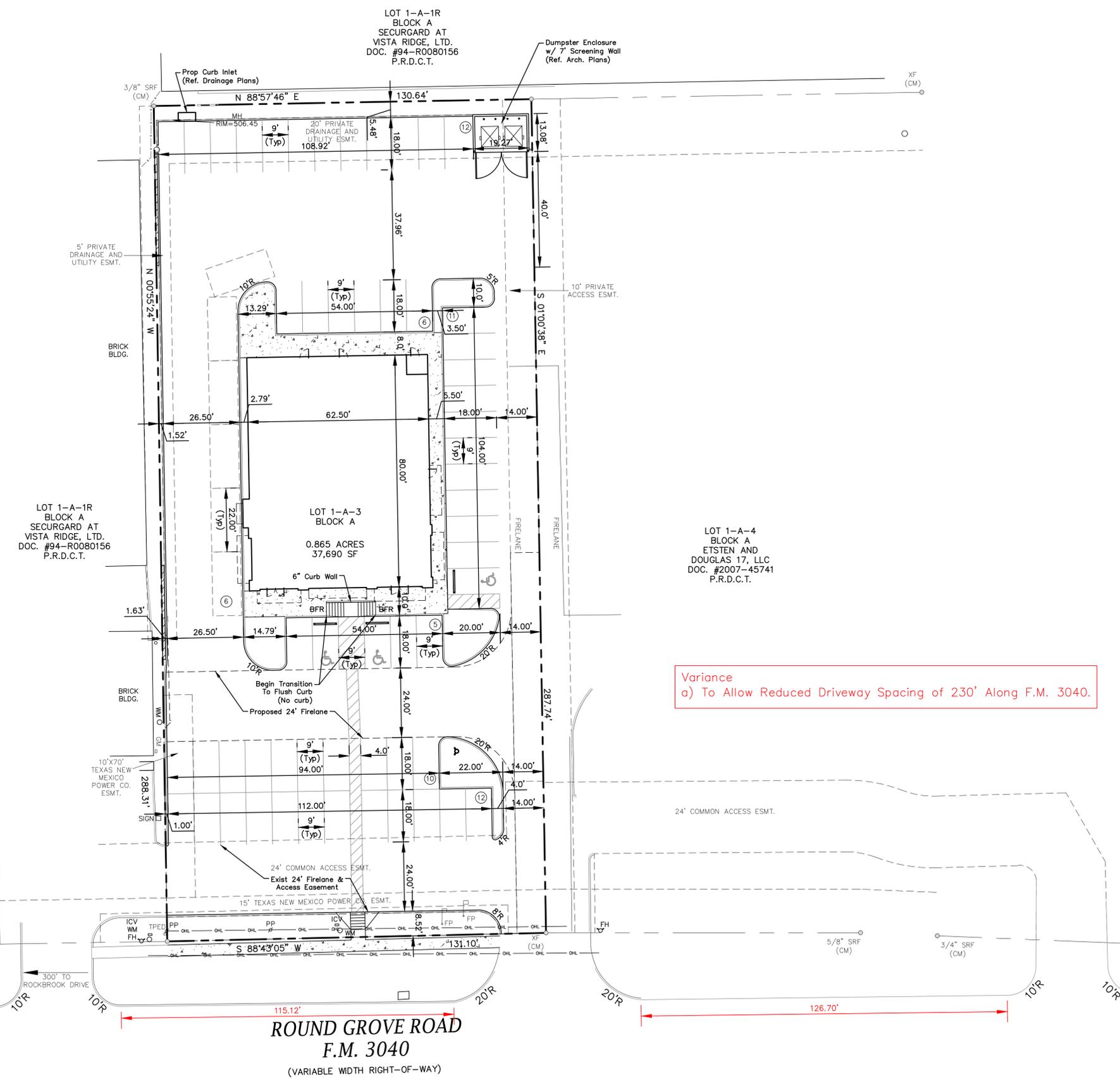
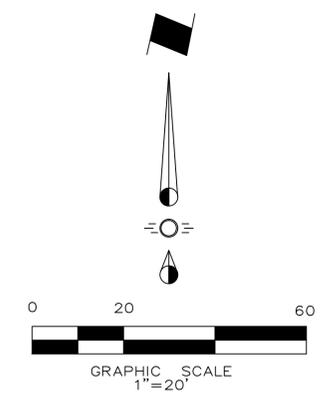
The existing site is a car wash. Hunt Properties, Inc. is proposing to remove the existing car wash and construct an approximately 5,000 square foot retail/restaurant building. Please see the attached Conceptual Site Plan for reference. The existing car wash site has access to Round Grove Road via existing mutual access easements to both the east and the west. To the west the site access Round Grove Road through the mini-storage facility. To the east, access to Round Grove Road is provided via a shared access drive with the existing shopping center. The existing driveways do not meet the current minimum driveway spacing requirement of the City of Lewisville. With the proposed re-development of the property, we are requesting to access Round Grove Road through the existing mutual access easements. Therefore we are requesting a variance to the driveway spacing.

We respectfully request your approval of the variance requested. If you need any additional information please feel free to contact me.

Sincerely,
CROSS ENGINEERING CONSULTANTS, INC.



Jonathan Hake, P.E.
Vice President



Variance
 a) To Allow Reduced Driveway Spacing of 230' Along F.M. 3040.

ROUND GROVE ROAD
F.M. 3040
 (VARIABLE WIDTH RIGHT-OF-WAY)

Issue Dates:	Revisions:	Date:
1	1	
2	2	
3	3	
4	4	
5	5	
6	6	

CROSS ENGINEERING CONSULTANTS
 131 S. Tennessee St. • McKinney, Texas 75069
 972.562.4409 • Texas P.E. Firm No. F-5935

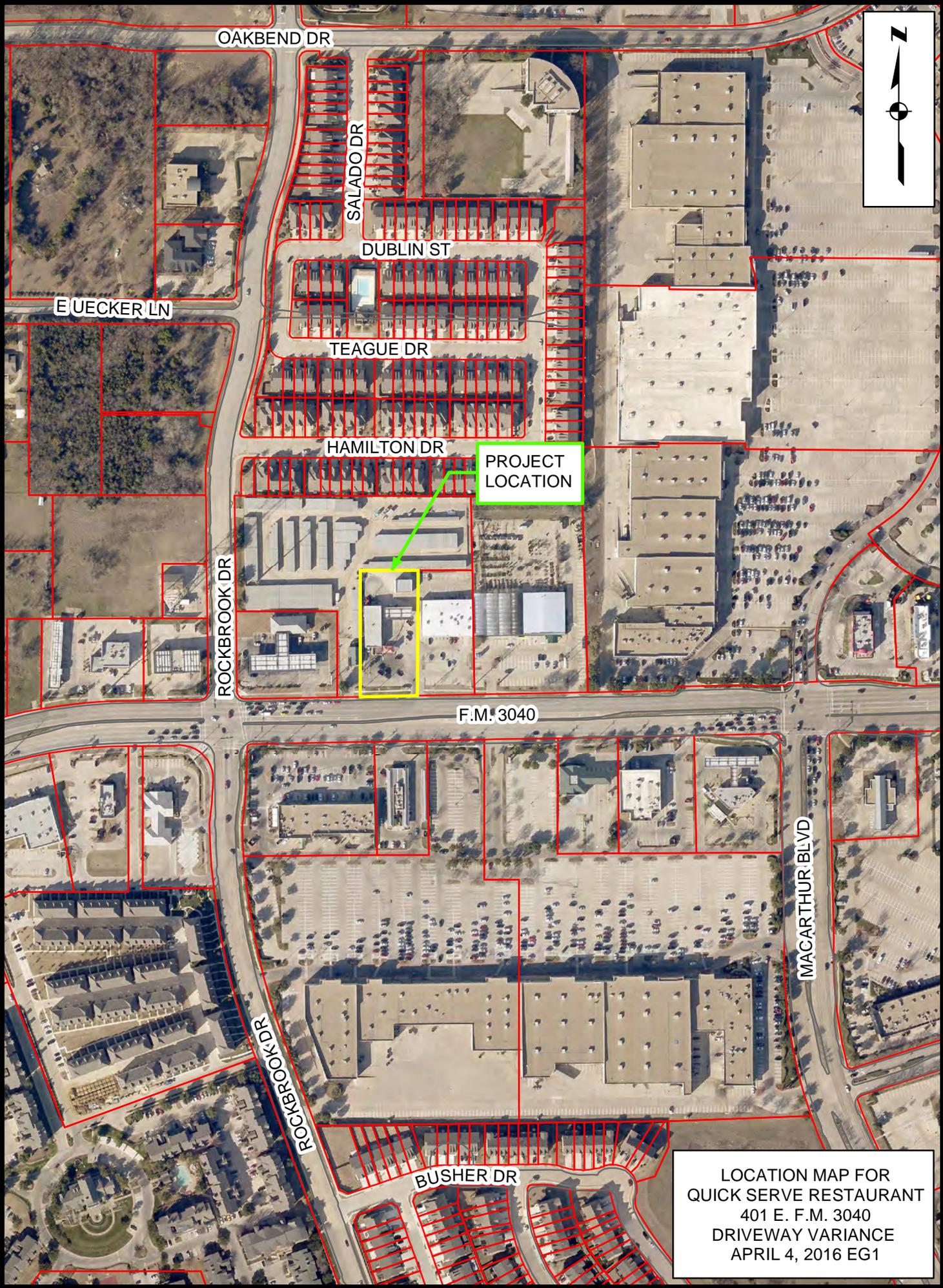
Drawn By: C.E.C.I. Checked By: J.D.H. Scale: 1"=20'

THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF JONATHAN D. HAKE, P.E. NO. 94738 ON 02/19/16. IT IS NOT TO BE USED FOR CONSTRUCTION, BIDDING, OR PERMIT PURPOSES.

VARIANCE EXHIBIT A
QUICK SERVE RESTAURANT
 CROSS ARCHITECTS, PLLC
 CITY OF LEWISVILLE, TEXAS

Sheet No.
Ex. A
 Project No.
 16019

VARIANCE EXHIBIT A



OAKBEND DR

SALADO DR

DUBLIN ST

TEAGUE DR

HAMILTON DR

PROJECT LOCATION

ROCKBROOK DR

F.M. 3040

MACARTHUR BLVD

ROCKBROOK DR

BUSHER DR

EUECKER LN

LOCATION MAP FOR
QUICK SERVE RESTAURANT
401 E. F.M. 3040
DRIVEWAY VARIANCE
APRIL 4, 2016 EG1