STATE OF TEXAS	**§**	**PROJECT DEVELOPMENT AGREEMENT (AVENUE)**
	§	
COUNTY OF COLLIN	**§**	

This Project Development Agreement (this "Agreement") is made by and between the City of Allen, a Texas home rule municipality (the "City"**)**, and Thakkar Development Group, LLC, a Texas limited liability company ("Developer") (each a "Party" and collectively the "Parties"), acting by and through their respective authorized officers or general partner. The Parties are joined in this Agreement by _____ (the "Owners") for the limited purposes set forth in Article VIII, herein.

RECITALS:

WHEREAS, Developer is under contract with the Owners to develop the real property described in **Exhibit "A"** (the "Land") and intends to cause the Land to be developed for the Project (hereinafter defined); and

WHEREAS, Developer desires to contract with the City for the design and construction of the Project (herein after defined); and

WHEREAS, based on Developer's qualifications and experience, the City has selected Developer to act as the City's agent for the design and construction of the Public Infrastructure (hereinafter defined) included in the Project; and

WHEREAS, Developer has agreed to construct the Project in accordance with this Agreement, subject to reimbursement by the City of Developer's Eligible Costs (hereinafter defined) for the Public Infrastructure in an amount not to exceed the Maximum Reimbursement Amount (hereinafter defined), the AEDC (hereinafter defined) reimbursement of eligible costs for Infrastructure pursuant to the AEDC Agreement (hereinafter defined) and the ACDC (hereinafter defined) payment of a grant for the Central Plaza pursuant to the ACDC Agreement (hereinafter defined); and

WHEREAS, the Developer as additional consideration for this Agreement and in consideration for AEDC reimbursement of eligible costs for Infrastructure pursuant to the AEDC Agreement and the ACDC payment of a grant for the Central Plaza pursuant to the ACDC Agreement, has agreed to cause the owners of the Land to agree that buildings and other structures shall be designed and constructed in accordance with the standards set forth in Article VIII; and

WHEREAS, Developer has agreed to provide the City with any necessary rights-of-way and easements for the Public Infrastructure in which the Public Infrastructure is constructed by Developer as a part of the Project and, following completion of the thereof, to dedicate and convey ownership of such rights-of-way, easements and the Public Infrastructure to the City as provided herein; and

WHEREAS, Texas Local Government Code Section 271.908 authorizes the City to contract with Developer to act as the City's agent for the design, development, financing, and construction of the Public Infrastructure; and

WHEREAS, the City and Developer desire to enter into this Agreement for purposes of making Developer the City's agent for the design, development, financing, and construction of the Public Infrastructure, subject to the terms, conditions and provisions set forth in this Agreement;

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article I
Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"AEDC" shall mean the Allen Economic Development Corporation.

"AEDC Agreement" shall mean that certain agreement by and between AEDC and Developer relating to the reimbursement of eligible costs for the design and construction of the Infrastructure dated the approximate date herewith.

"ACDC" shall mean the Allen Community Development Corporation.

"ACDC Agreement" shall mean that certain agreement by and between Developer and the ACDC relating to the payment of the Central Plaza Grant to Developer for the design and construction of the Central Plaza dated approximate date herewith.

"Act of Default" or "Default" means the failure by a Party to comply with the requirements of this Agreement, subject to applicable notice and cure periods, as more particularly provided in **Article VI** below.

"ALDC" shall mean the Allen Land Development Code, as amended.

"Bankruptcy or Insolvency" shall mean the dissolution or termination of a Party's existence as a going business, insolvency, appointment of receiver for any part of such Party's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Capital Investment" shall mean Developer's capitalized costs for the design and construction of Phase 1 Infrastructure (inclusive of all hard and soft costs), the

Infrastructure, the Parking Garage, and/or the Project, as the case may be. Capital Investment does not include the cost of the Land, or rights-of-way.

"Change Order" means any change to the Plans and Specifications or the Construction Schedule.

"City" shall mean the City of Allen, Texas, acting by and through its City Manager, or other designated representative.

"Central Plaza" shall mean that area consisting of a minimum of 2 acres near the center of the Project consisting of a water feature and both hardscape and softscape park improvements to provide an outdoor gathering space for the public at the Project to be located on or adjacent to Lot 1, Block J as shown on the Preliminary Plat approved by the City of Allen on November 17, 2020.

"Central Plaza Grant" shall mean an economic development grant to be paid by ACDC to Developer in the amount equal to the costs incurred and paid by Developer not to exceed Nine Hundred Thousand Nine Hundred Dollars ($900,000.00), to be paid as set forth herein.

"Certificates of Obligation" shall mean certificate(s) of obligation issued by City in the approximate amount of Five Million Nine Hundred Thousand Dollars ($5,900,000.00) the sales proceeds from which will in part provide City funding for the Public Infrastructure pursuant to this Agreement.

"Class A Office Building" means a building that is typically characterized by high quality design and is constructed or equipped with the following features: (i) high quality standard finishes; (ii) state of the art heating, ventilation, and air conditioning and security systems; (iii) cabled and equipped to be compatible with current voice and data technology; (iv) exceptional accessibility and a definite market presence; (v) on-site support services/maintenance; (vi) a central, interior lobby; (vii) amenity spaces, fitness center, tenant lounge, and conference space; and (viii) access to all suites from inside the building.

"Commencement of Construction" shall mean (i) the Plans and Specifications have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of Phase 1 Infrastructure, the Public Infrastructure or the Project, as the case may be; (ii) all necessary permits for the construction of Phase 1 Infrastructure, the Public Infrastructure or the Project pursuant to the Plans and Specifications, as the case may be, have been issued by the applicable governmental authorities; and (iii) grading of the Land or construction of the Project and/or the Phase 1 Infrastructure has commenced.

"Competition Contract" shall mean any contract awarded by Developer as agent for the City for the design and construction of the Public Infrastructure and for which the cost thereof is to be reimbursed by the City to Developer pursuant to this Agreement.

"Competition Procedures" shall mean the state procurement laws applicable to each Competition Contract. With respect to Competition Contracts for Professional Services (as defined below), such Competition Procedures shall be those set forth in Chapter 2254 of the Texas Government Code. With respect to all other Competition Contracts in excess of $50,000, Developer shall have the option of selecting from the procurement methods set forth in Texas Local Government Code Section 252.021 as a means of satisfying the Competition Procedures. Contracts for more than $3,000 but less than $50,000 (excluding those for Professional Services) shall comply with the historically underutilized business requirement set forth in Texas Local Government Code Section 252.0215. Contracts for which the cost thereof is not to be reimbursed by the City to Developer pursuant to this Agreement, shall not be subject to any Competition Procedures.

"Completion of Construction" shall mean that: (A) with respect to Public Infrastructure: (i) the Public Infrastructure or portion thereof, has been constructed in accordance with the Plans and Specifications, and (ii) the City has completed its inspection of the Public Infrastructure or portion thereof and issued a written Final Acceptance Letter in accordance with this Agreement; (B) with respect to the Infrastructure: (i) the Infrastructure or portion thereof, has been constructed in accordance with the Plans and Specifications, and (ii) the City on behalf of AEDC has inspected and verified completion of the Infrastructure or portion thereof in accordance with this AEDC Agreement; (C) with respect to the Phase 1 Infrastructure that (i) the Phase 1 Infrastructure has been constructed in accordance with the Plans and Specifications; and (ii) (A) and (B) has been achieved; and (D) with respect to the Project: (i) the Project has been substantially completed, (ii) (A) and (B) above have been achieved, and (ii) the City has conducted a final inspection for the Office Building, the Parking Garage and all other the buildings comprising the Project including the buildings containing the retail and entertainment space.

"Construction Schedule" shall mean the estimated schedule of dates for the commencement and completion of the Public Infrastructure, as the same may be extended from time-to-time due to Project delays or events of Force Majeure.

"Contractor" shall mean the general contractor(s) or sub-contractor(s) selected by the Developer to perform work on the Public Infrastructure.

"Design" shall mean civil engineering, structural engineering, landscape architecture and design services.

"Design Standards" shall mean (i) the Standard Specifications for Public Works Construction – North Central Texas, Fourth Edition, (ii) the City Code of Ordinances, and (iii) all other applicable City ordinances, standards, rules regulations and construction and development standards applied uniformly by the City for all development of similar nature to the Project.

"Developer" shall mean Thakkar Development Group, LLC, a Texas limited liability company.

"Developer Affiliate" shall mean any entity that is directly or indirectly controlled by or is under common control with Developer.

"Developer's Construction Lender" shall mean one or more lenders selected by Developer (in its sole discretion) to provide a construction loan to develop and construct the Project.

"Developer's Investment" shall mean Developer has incurred, paid and expended at least Thirteen Million Six Hundred Thousand Dollars ($13,600,000.00) in Eligible Costs for the design and construction of the Phase 1 Infrastructure. For purposes of this Agreement, Developer Investment includes Eligible Costs incurred by Developer, Developer Affiliates or others in the design and construction of the Phase 1 Infrastructure on behalf of the Developer.

"Developer's Lender" shall mean Developer's Construction Lender or Developer's Permanent Lender, as applicable at the time.

"Developer's Permanent Lender" shall mean one or more lenders selected by Developer (in its sole discretion) to provide permanent financing for the Project.

"Development Regulations" shall collectively mean the ordinances, regulations, and policies, adopted by City, as presently in effect and as adopted or amended after the Effective Date, which are applicable to the development and use of the Land, including, but not limited to, applicable provisions of City's Code of Ordinances, as amended, the ALDC, and the PD 142.

"Director of Engineering" or "City Engineer" shall mean the person employed by City in the position of Director of Engineering, or such other City employee designated by the City Manager to perform the duties of City's Director of Engineering.

"Effective Date" shall mean the last date of execution hereof by all Parties.

"Eligible Costs" shall mean all costs that are incurred and paid by Developer as the agent of the City for the design and construction of the Public Infrastructure or by Developer for the design and construction of the Infrastructure, as the case may be, including, insurance premiums, permitting fees, and testing fees. Eligible Costs for Public Infrastructure shall only include the costs that are included in Competition Contracts awarded pursuant to this Agreement.

"Expiration Date" shall mean the date the Parties have fully satisfied their respective obligations hereunder.

"Final Acceptance" shall have the meaning set forth in Article IV herein.

"Force Majeure" shall mean that upon the occurrence of any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the

public enemy, war, riot, terrorism, civil commotion, insurrection, government or de facto governmental action, restrictions or interferences (unless caused by the intentional acts or omissions of the Party), fires, explosions, floods or other inclement weather, strikes, slowdowns or work stoppages, incidence of disease or other illness that reaches outbreak, epidemic, or pandemic proportions or similar causes affecting the area in which the Project is located that result in a reduction of labor force or work stoppage in order to comply with local, state, or national disaster orders, construction delays, shortages or unavailability of supplies, materials or labor, necessary condemnation proceedings, or any other circumstances which are reasonably beyond the control of the Party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstances are similar to any of those enumerated or not, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or performance shall be extended for a period of time equal to the period such Party was delayed, provided the Party whose performance is delayed provides written notice to the other Party not later than fifteen (15) business days after the last day of the month of the occurrence of the event(s) or condition(s) causing the delay or the date the Party whose performance has been delayed becomes aware or should have reasonably known of the event, describing such event(s) and/or condition(s) and the date on which such event(s) and/or condition(s) occurred.

"General Contract" means the contract between Developer and the Contractor.

"Impositions" shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Developer or any property or any business owned by Developer within the City.

"Infrastructure" shall mean the non-public infrastructure to be constructed in accordance with the Plans and Specifications, generally consisting of private streets, trails, parks, irrigation, landscaping, and open space areas as described in **Exhibit "B".**

"Land" shall mean the real property described in **Exhibit "A".**

"Maximum Reimbursement Amount" shall mean one hundred percent (100%) of the Eligible Costs for the Public Infrastructure not to exceed the lesser of: (i) Five Million Nine Hundred Thousand Dollars ($5,900,000.00); and (ii) thirty percent (30%) of the total costs incurred and paid by Developer for the Phase 1 Infrastructure.

"Owners" means, collectively _____ who, as of the Effective Date, own fee simple title to the Land.

"Parking Garage" shall mean a structured parking garage with a minimum of 600 parking spaces to be constructed on the Garage Site more fully described in the submittals filed by or on behalf of Developer with City from time to time in order to obtain one or more building permits for construction of the Parking Garage or any part thereof.

"Parking Garage Site" shall mean that area consisting of 2.52 acres near the center of the Project to be located on Lot 1, Block N as shown on the Preliminary Plat approved by the City of Allen on November 17, 2020, described in **Exhibit "C"**.

"PD-142" shall mean City of Allen, Texas, Ordinance No. 3732-2-20 adopted February 11, 2020, creating and adopting the development and use regulations of Planned Development "PD" No. 142, and all subsequent amendments to such ordinance as may be enacted from time to time.

"Phase 1 Infrastructure" shall collectively mean: (i) the design and construction of the Infrastructure; and (ii) the design and construction of Public Infrastructure including streetscape elements (irrigation, landscape, sidewalks, and lighting), for Phase 1 of the Project pursuant to this Agreement as described in **Exhibit "B".**

"Plans and Specifications" or "Approved Plans" shall mean the plans and specifications for the Public Infrastructure, the Infrastructure and/or the Project, as the case may be, as approved by the City, as modified by Changed Orders approved by the City or AEDC, as the case may be.

"Professional Services" shall have the meaning ascribed to it in Section 2254.002(2) of the Texas Government Code, as amended.

"Project" shall mean the design, construction and installation of the Phase 1 Infrastructure, the Parking Garage, a 5-story Class A Office Building containing no less than 125,000 rentable square feet of space, retail and entertainment containing no less 50,500 rentable square feet of space (not including any fueling station, gasoline station or related retail uses) and the Central Plaza.

"Project Engineer" shall an engineer or firm proposed by Developer and approved by the Director of Engineering.

"Project Price" shall mean the sum of all Eligible Costs incurred by Developer in connection with the Public Infrastructure, not to exceed the Maximum Reimbursement to be paid as set forth herein.

"Public Infrastructure" shall mean the public infrastructure to be designed and constructed in accordance with the applicable Plans and Specifications consisting of public streets, sanitary sewer mains, storm drainage facilities, sidewalks along public streets, water mains, and other public improvements associated with the development of Phase 1 of the Project as described in **Exhibit "B".**

"Related Agreement" shall mean any agreement (other than this Agreement) by and between (i) City, ACDC and/or AEDC and Developer and/or Developer Affiliate; (ii) the ACDC Agreement; and (iii) the AEDC Agreement.

"Sales Tax Revenue Bonds" shall mean sales tax revenue bonds to be issued by AEDC in the approximate amount of Four Million Five Hundred Thousand Dollars ($4,500,000.00) the sales proceeds from which will in part provide AEDC funding of the costs for Infrastructure pursuant to the AEDC Agreement.

"Sub-Contractor(s)" shall mean the sub-contractor(s) selected by the Contractor to perform work on the Public Infrastructure.

"Zoning" shall mean PD 142 and the applicable provisions of the ALDC.

Article II
Term

This Agreement shall begin on the Effective Date and shall continue until the Expiration Date, unless sooner terminated as provided herein.

Article III
Project

3.1 Competition Procedures. Competition Contracts are required for the construction of the Public Infrastructure. All Competition Contracts shall be awarded in conformance with the applicable Competition Procedures. Notwithstanding any other provision contained herein, any contract related to the Project the cost of which is not to be reimbursed to Developer by City shall not be considered a Competition Contract and shall not be required to comply with the Competition Procedures.

The following shall apply to the Developer Competition Procedures for the design and construction of the Public Infrastructure:

(i) The City shall approve all requests for sealed proposals, requests for bids or other solicitation for services;

(ii) The City shall approve all advertisements/notifications and advertisement/notification schedules for requests for sealed proposals, requests for bids or other solicitations for services;

(iii) The City shall be present at all pre-bid/proposal conferences;

(iv) The City shall be present at the opening of all bids/proposals or other responses to solicitations for services;

(v) The City shall be present during all evaluations of bids/proposals or other responses to solicitations for services;

(vi) The City shall approve all contractors selected by the Developer prior to the award of the applicable contract and entering into the contract; and

(vii) The Developer shall provide the City copies of all bid/proposal advertisements and schedules, requests for bids and sealed proposals, responses to requests for bid of sealed proposals of other solicitations for services, requests for bid or sealed proposal addendums.

The City Purchasing Manager and Director of Engineering shall be responsible for the coordination with the Developer regarding the City approvals, consents and guidance for the Developer Competition Procedures of the Project. The Director of Engineering, supported by the City Purchasing Department, shall direct the Developer and provide guidance on the steps and actions necessary, as enumerated (i-vii), above.

3.2 Construction of Phase 1 Infrastructure of the Project. Subject to events of Force Majeure, Developer agrees to cause the Commencement of Construction of the Phase I Infrastructure to occur on or before June 30, 2021, and, subject to events of Force Majeure, to cause Completion of the Construction of the Phase I Infrastructure to occur on or before December 31, 2022.

3.3 Completion of the Project. Subject to events of Force Majeure, Developer agrees to cause the Completion of the Construction of the Project to occur on or before December 31, 2023.

3.3 Right-of-Way. Developer shall, without additional cost to the City and prior to Final Acceptance of the Public Infrastructure, convey or dedicate, or cause the owner of the necessary property to dedicate, by plat or convey by separate instrument, in form reasonably acceptable to the City, any rights-of-way or easements necessary for the use, maintenance and repair of the Public Infrastructure ("Public Infrastructure Rights-of-Way").

3.4 Design and Construction of the Phase 1 Infrastructure and the Project.

(a) Design and Construction. Prior to Commencement of Construction, Developer shall make, or cause to be made, application for any necessary permits and approvals that are customarily required by City ordinances and any applicable governmental authorities to be issued for the construction of the Phase 1 Infrastructure and the Project. Developer shall cause the Project Engineer to design and the Contractor to construct the Public Infrastructure in accordance with the Plans and Specifications and the Design Standards.

(b) Plans and Specifications. Prior to the bidding of the Public Infrastructure, Developer shall submit, or cause to be submitted, the proposed plans and specifications to the City for approval, which approval shall follow regular City process for permits and approvals for public works projects and which approval shall not be unreasonably withheld, conditioned or delayed. The City shall have sixty (60) days following receipt of the proposed plans and specifications to review and approve the plans and specifications. From time to time, Developer may submit proposed change orders to the Plans and Specifications to the City for approval, which approval will not be unreasonably withheld, conditioned or delayed. The City shall review, approve or deny a requested change order within thirty (30) days after receipt of the same. Failure of City to approve

or deny a requested change order within such period shall be deemed a denial of such requested change order. In no case shall a change order increase the Maximum Reimbursement Amount.

(c) Approval of Plans and Specifications.

(1) No approval of designs, plans, and specifications by City shall be construed as representing or implying that the improvements built in accordance therewith shall be free of defects, and any such approvals shall in no event be construed as representing or guaranteeing that any improvements built in accordance therewith will be designed or built in a good and workmanlike manner. The City, its elected officials, officers, employees, contractors, and/or agents shall be responsible or liable in damages or otherwise to anyone submitting plans and specifications for approval by City for any defects in any plans or specifications submitted, revised, or approved, any loss or damages to any person arising out of approval or disapproval or failure to approve or disapprove any plans or specifications, any loss or damage arising from the noncompliance of such plans or specifications with any governmental ordinance or regulation, nor any defects in construction undertaken pursuant to such plans and specifications.

(2) Approval by the Director of Engineering or other City employee, officer, or consultant of any plans, designs or specifications submitted by Developer under this Agreement shall not constitute or be deemed to be a release of the responsibility and liability of Developer, its engineers, contractors, employees, officers, or agents for the accuracy and competency of their design and specifications. Such approval shall not be deemed to be an assumption of such responsibility or liability by City for any defect in the design and specifications prepared by Developer's consulting engineer, its officers, agents, servants, or employees, it being the intent of the Parties that approval by the Director of Engineering or other City employee, officer or consultant signifies City approval of only the general design concept of the improvements to be constructed.

(3) For a period of three (3) years following Completion of Construction of the Phase 1 Infrastructure and the Project, Developer shall indemnify, defend and hold harmless City, its officers, agents, and employees, from any loss, damage, liability or expense on account of damage to property and injuries, including death, to any and all persons which may arise directly out of any defect or deficiency in the Phase 1 Infrastructure and the Project directly related to the designs and specifications set forth in the approved plans and specifications, but only to the extent prepared or caused to be prepared by Developer and incorporated into any improvements constructed by Developer in accordance therewith, and Developer shall defend at Developer's own expense any suits or other proceedings brought against City, its officers, agents, employees, or any of them, on account thereof, to pay all reasonable expenses and satisfy all judgments which may be incurred by or rendered against them, collectively or individually, personally or in their official capacity, in connection herewith.

(d) Pre-Construction Conference. Prior to the Commencement of Construction of the Public Infrastructure and the Project, the Developer, the Contractor and the Project Engineer shall

hold a pre-construction conference with the Director of Engineering and the applicable private and public utility companies, if necessary. At that time, Developer shall submit a Construction Schedule to the Director of Engineering setting forth the estimated timelines for the commencement and completion of the Phase 1 Infrastructure and the Project.

(e) Quality Control and Testing. Developer shall comply and shall cause the Contractor to comply with the following:

> Quality control testing of materials used in construction shall be in accordance with the requirements of the Standard Specifications for Public Works Construction-North Central Texas and shall be performed by a local qualified accredited laboratory which has been certified as having met the basic requirements of ASTM E 329 "Standard Recommended Practice for Inspection and Testing Agencies for Concrete, Steel and Bituminous Materials as Used in Construction." The laboratory contracted by the Developer (not the Contractor), shall be approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed, and the costs of such testing shall be paid by the Developer as Eligible Costs hereunder. All test results and reports of quality control testing in connection with the Project shall be made available to the Director of Engineering in a timely fashion.

(f) Completion of Construction. Developer shall comply with and shall cause the Contractor to comply with this Agreement and all applicable local and state laws and regulations regarding the design and construction of the Public Infrastructure in accordance with the Plans and Specifications, including, but not limited to, any applicable requirement relating to payment, performance and maintenance bonds. Upon Completion of the Public Infrastructure, the Phase 1 Infrastructure and the Project, as the case may be, the Developer shall provide City with (i) a final cost summary of all costs incurred and paid associated with the construction of the Public Infrastructure, the Infrastructure and the Project, and (ii) the Final Acceptance Package for the Public Infrastructure if not already so provided.

(g) Project Inspection. The Director of Engineering shall have the right to inspect the Project to determine whether the Public Infrastructure construction is in accordance with the requirements of this Agreement as well as City ordinances and regulations pertaining to the construction of Public Infrastructure. The Director of Engineering shall promptly notify the Developer in writing at any time the Director of Engineering determines that Public Infrastructure construction is defective, non-compliant, or is not in accordance with this Agreement. The Parties will meet to determine a commercially reasonable solution to any defective or non-compliant Public Infrastructure work and a commercially reasonable period of time in which any such Public Infrastructure work should be remedied; provided, however, any remedies agreed to the Parties shall not increase the Maximum Reimbursement Amount.

(h) Final Acceptance Procedures. The procedures for final acceptance ("Final Acceptance") of the Public Infrastructure or portion thereof shall be in accordance with Item 1.51.3 of the Standard Specifications for Public Works Construction-North Central Texas, Fourth Edition, and Developer shall submit a package to the City (the "Final Acceptance Package") containing the following items:

(i) An executed Developer's affidavit stating that all payrolls, invoices for materials and equipment, and other liabilities connected with the Public Infrastructure for which the City, or the City's property, might be responsible, have been fully paid or otherwise satisfied;

(ii) An executed Contractor's affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Public Infrastructure for which the City, or the City's property, might be responsible, have been fully paid or otherwise satisfied;

(iii) A Consent of Surety;

(iv) A full set of digital As-Built Records drawing in.pdf and .dwg formats;

(v) Dedication by plat or conveyance by separate instrument of the Public Infrastructure Rights-of-Way and easements shall have been achieved prior to Commencement of Construction;

(vi) Delivery of a bill of sale, deed, or other instrument conveying to the City the ownership of any part of the Public Infrastructure not already conveyed to the City;

(vii) Delivery of all warranties or assignment of warranties described in Article IV; and

(viii) Delivery of an application for the final payment and supporting documentation as described in Article IV.

Following Developer's delivery of the Final Acceptance Package, the City shall use reasonable and good faith efforts to review and approve the Final Acceptance Package for the Public Infrastructure or portion thereof, as expeditiously as possible, such approval not to be unreasonably withheld, conditioned or delayed.

3.5 Bonds. Prior to Developer commencing construction of the Public Infrastructure, Developer shall cause the Contractor to provide payment bonds and performance bonds for the construction of the Public Infrastructure to ensure completion of the Public Infrastructure in satisfaction of Chapter 2253, Texas Government Code, as amended, in forms reasonably satisfactory to City. Developer shall cause the Contractor to provide maintenance bonds in the amount of 100% of the total construction cost of the respective public improvements (for a period of one (1) year following completion of the Public Infrastructure and acceptance by the City in favor of the City for the Public Infrastructure in accordance with the City's standard requirements and regulations pertaining to maintenance bonds for public improvements uniformly applied by the City to construction projects of similar nature to public infrastructure.

3.6 Regulatory Requirements. Developer shall, with respect to the design and construction of the Public Infrastructure, comply with, and shall cause each Contractor to comply with the Design Standards, which include the following:

(a) Chapters 1001 and 1051, Texas Occupation Code;

(b) All laws relating to procurement of professional services under Chapter 2254 of the Texas Government Code;

(c) All laws relating to procurement under Chapters 252 and 271 of the Texas Local Government Code that apply to the City;

(d) The City design and construction standards;

(e) The Texas Accessibility Standards and ADA requirements;

(f) The City General Terms and Conditions applicable for public works projects;

(g) Applicable state, local and federal laws;

(h) The City rules and regulations pertaining to permitted days and hours allowed for construction activities within the City; and

(i) The Standard Specifications for Public Works Construction-North Central Texas published by the North Central Texas Council of Governments, Fourth Edition.

3.7 Cleaning the Project Site. Cleaning the Project Site. During the construction of the Phase 1 Infrastructure, and the Parking Garage Developer will use reasonable efforts to keep the area within which the Project work is being constructed free and clear of any trash or debris, and compliant with the City's stormwater management ordinance (i.e., City of Allen Code of Ordinances Chapter 6, Art. VII, as amended). Upon final completion of the Public Infrastructure work, Developer shall cause the sites within which the Project work is located to be cleaned and cause the removal of all waste, rubbish, temporary structures, and other materials. Developer shall cause the disposal of all refuse at Type I Municipal Solid Waste a landfill permitted by the Texas Commission for Environmental Quality. Any City property that is damaged by Developer, Contractor and/or the Sub-Contractor(s) during the construction of the Public Infrastructure or the Project shall be restored to its condition that existed prior to such damage. No additional payment shall be made by the City for this work.

3.8 Access to Work and Inspections. In addition to the City's inspection rights set forth herein, the City, and its respective representatives, shall have access to the Project at all times from Commencement of Construction through the Completion of Construction to perform inspections of the Public Infrastructure and the Project to ensure that such improvements are being constructed in accordance with the respective Plans and Specifications. Developer shall take whatever steps reasonably necessary to provide such access when requested. Subject to the foregoing, the City shall promptly notify the Developer of any defects or non-conformances in the work discovered by or on behalf of the City during the City inspection. The Parties will meet to determine a

commercially reasonable solution to any Public Infrastructure work defects or non-conformance and a commercially reasonable period of time in which any non-conformance should be remedied, provided, however, any remedies agreed to by the Parties shall not increase the Maximum Reimbursement Amount.

3.9 Indemnification.

THE CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE ACTS OR OMISSIONS OF THE DEVELOPER OR ITS CONTRACTORS PURSUANT TO THIS AGREEMENT. THE DEVELOPER HEREBY WAIVES ALL CLAIMS AGAINST THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO AS THE "CITY REPRESENTATIVES") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL ACT OF THE CITY REPRESENTATIVES. THE DEVELOPER DOES HEREBY DEFEND, INDEMNIFY AND SAVE HARMLESS THE CITY REPRESENTATIVES FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON, OR DAMAGE TO OR LOSS OF PROPERTY ARISING FROM THE DEVELOPER'S BREACH OF ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR BY REASON OF ANY ACT OR OMISSION ON THE PART OF THE DEVELOPER, ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUB-CONTRACTOR(S), LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS IN THE PERFORMANCE OF THIS AGREEMENT (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL ACT OF THE CITY REPRESENTATIVES). NOTWITHSTANDING THE FOREGOING, IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF BOTH THE CITY REPRESENTATIVES AND DEVELOPER, THE RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY REPRESENTATIVES AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST THE CITY REPRESENTATIVES IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, THE DEVELOPER SHALL BE REQUIRED, ON NOTICE FROM THE CITY, TO DEFEND SUCH ACTION OR PROCEEDINGS AT THE DEVELOPER'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO THE CITY.THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

3.10 Project Records and Audits.

(a) Developer shall keep and maintain, and shall require the Contractor to keep and maintain, all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement for two (2) years following Completion of Construction of the Phase 1 Infrastructure and the Project. Developer shall make, and cause the Contractor to make, such materials available to City for review and inspection during the term of this Agreement and for a period of two (2) years from the date of Completion of Construction of the Phase 1 Infrastructure and the Project, or until any pending litigation or claims are resolved, whichever is later.

(b) Upon not less than 72- hours prior written notice by City, Developer shall provide, and shall require the Contractor to provide, to City, during normal business hours for the purpose of making audits, examinations, excerpts, and transcriptions access to all Phase 1 Infrastructure and the Project records that are applicable to this Agreement at a location designated by Developer within Collin County, Texas, provided any such audit must be initiated not later than two (2) years following Completion of Construction of the Phase 1 Infrastructure and the Project.

3.11 Work by Debarred Person. Developer and its Contractors shall not knowingly contract with any person or entity that is suspended, debarred, proposed for disbarment, declared ineligible or voluntarily excluded from covered transactions by any federal agency or that is debarred or suspended by the State of Texas. Developer shall obtain and provide and cause each Sub-Contractor(s) to obtain and provide, to the City a debarment certificate prior to award or entering any contract for construction, engineering, architectural or other services for the Public Infrastructure.

3.12 Developer Investment. Developer shall within fifteen (15) business days after the date Developer has incurred the required Developer Investment provide City written notice of the date of achievement of the Developer Investment accompanied by copies of invoices, bills, receipts, and such other information, as may reasonably be requested by City, evidencing the Eligible Costs incurred and paid by Developer for the Phase 1 Infrastructure.

3.13 Capital Investment for Phase 1 Infrastructure. The Capital Investment for the Phase 1 Infrastructure is estimated to be at least Nineteen Million Five Hundred Thousand Dollars ($19,500,000.00) as of the date of Completion of Construction of the Phase 1 Infrastructure (the "Estimated Capital Investment for Phase 1 Infrastructure"). Company shall, within thirty (30) days after Completion of Construction of Phase 1 Infrastructure deliver to City copies of invoices, bills, receipts and such other information as may be reasonably requested by City to document compliance with the required Capital Investment. Company shall not be in default in the event the actual Capital Investment for Phase 1 Infrastructure is less than the Estimated Capital Investment for Phase 1 Infrastructure.

3.14 Capital Investment for Project. The Capital Investment for the Project shall be at least Forty-Five Million Dollars ($45,000,000.00) as of the date of Completion of Construction of the Project. Company shall, within thirty (30) days after Completion of Construction of Project deliver to City copies of invoices, bills, receipts and such other information as may be reasonably requested by City to document compliance with the required Capital Investment.

Article IV
Project Payments

4.1 Project Payments.

(a) The City shall pay, and the Developer shall accept, as full and complete payment for all of the Public Infrastructure work required herein the amounts in accordance with the terms, provisions and conditions set forth in this Article.

(b) Following the Completion of Construction of the Public Infrastructure or portion thereof, Developer shall provide the City a final written accounting of the total expenditures constituting Eligible Costs for the Public Infrastructure, or portion thereof for which Completion of Construction has been achieved.

(c) The Developer shall be responsible for payment of all work performed for the Public Infrastructure in excess of the Maximum Reimbursement Amount. The Developer shall retain or withhold five percent (5%) of all sums due to the Contractor until Completion of Construction of the Public Infrastructure.

(d) The Developer shall provide the City on a calendar quarter, basis a progress report and an itemized statement specifying the Eligible Costs for the Public Infrastructure that have been incurred to date and supporting copies of invoices from the Contractor and copies of all payments made to the Sub-Contractor(s) until Completion of Construction of the Public Infrastructure. Said progress report shall also include an up-to-date Public Infrastructure and Project schedule measuring the progress of work with the baseline Public Infrastructure and the Project schedule submitted to the City prior to Commencement of Construction. The report shall include explanations as to why the Public Infrastructure and Project schedule is ahead or behind the baseline Public Infrastructure and Project schedule. If the Public Infrastructure and/or Project schedule falls behind the baseline Public Infrastructure and/or Project schedule, the Developer will include in the progress report specific provisions and actions that will be implemented to get the Public Infrastructure and/or Project schedule back on track and in compliance with the baseline Public Infrastructure and Project schedule.

(e) Based upon the Developer's quarterly applications for payment submitted to City, the City shall make progress payments of Eligible Costs for the Public Infrastructure to the Developer for the Public Infrastructure after Commencement of Construction of the Public Infrastructure following the date Developer has achieved the Developer Investment. On or before the tenth (10th) day after each calendar quarter after Commencement of Construction of the Public Infrastructure, the Developer shall submit an application for payment for the period ending the last day of the calendar quarter to the City in such form and manner, and with such supporting data and content, as the City may reasonably require. The City will review the application for payment and may also review the Public Infrastructure work to determine whether the quantity and/or quality of the Public Infrastructure work is as represented in the application for payment and is as required by the Plans and Specifications. The City shall make progress payments of the Eligible Costs for the Public Infrastructure or portion thereof for which Final Acceptance has occurred to Developer of the amounts requested by the Developer within thirty (30) days after the City's

receipt and approval of each application for payment following the date the Developer's Investment has been achieved not to exceed the Maximum Reimbursement Amount.

(f) The Developer warrants that upon submittal of an application for payment, all Public Infrastructure work for Final Acceptance thereof has occurred shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Developer or any other person or entity whatsoever. Developer shall promptly pay, or cause the Contractor to pay, the Sub-Contractor(s) performing work on the Public Infrastructure for amounts due and upon request by the City provide proof to the City that such Sub-Contractor(s) have been paid, or otherwise satisfied for the amounts due.

(g) No progress payment, nor any use or occupancy of Public Infrastructure by the City, shall be interpreted to constitute an acceptance of any Public Infrastructure work not constructed in strict accordance with the Plans and Specifications. The City shall have no obligation to pay any Public Infrastructure during the occurrence of a breach of any term or condition of this Agreement on the part of the Developer, but the City may do so; provided, however, if the City elects to pay any such installment, no such payment shall be deemed a waiver of any remedies the City may have in respect to such breach.

(h) The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Developer for defective Public Infrastructure work, to protect the City from loss or damage because of:

(i) Defective Public Infrastructure work not remedied by the Developer or, in the reasonable opinion of City, not likely to be remedied by the Developer;

(ii) Failure by the Developer to pay or otherwise satisfy Contractor or others under contract with the Developer with respect to the Public Infrastructure for amounts due in a prompt and timely manner.

4.2 Final Payment; Reconciliation. When the Completion of Construction of the Phase 1 Infrastructure has been achieved and Final Acceptance of all Public Infrastructure has been achieved, the Developer shall submit a final application for payment for the Public Infrastructure accompanied by final accounting of the total expenditures constituting Eligible Costs for the Public Infrastructure and eligible costs for the Infrastructure pursuant to the AEDC Agreement. Prior to final payment of Eligible Costs for the Public Infrastructure to Developer, the Developer and City shall reconcile the amount of the total expenditures constituting Eligible Costs for the Public Infrastructure and Eligible Costs for the Infrastructure (as defined in the AEDC Agreement) pursuant to the AEDC Agreement. In the event the amount that has been paid by City to Developer is less than 30% of the Eligible Costs for the Phase 1 Infrastructure then City shall pay such difference to Developer not to exceed the Maximum Reimbursement Amount.

4.3 Assignment of Warranties. Developer agrees, as a part of the costs of construction, and as consideration of the payment of the Public Infrastructure, to obtain and assign to the City the warranties from the Contractor and the Sub-Contractor(s) and suppliers providing labor and/or materials in connection with the Public Infrastructure, provided that such assignment shall not

prevent the Developer from enforcing the same. Such warranties shall: (a) be at least standard industry warranties with respect to the Public Infrastructure; and (b) obligate the Developer's Contractor, Sub-Contractor(s) and suppliers to repair all defects in the Public Infrastructure for a period of two (2) years following Completion of Construction of the Public Infrastructure.

4.4 Casualty. Risk of loss due to casualty shall be borne by Developer until Completion of Construction of the Public Infrastructure. Developer shall carry, or cause to be carried as an Eligible Cost, insurance in amounts sufficient to restore any portion of the Public Infrastructure damaged by casualty to the same condition as existed immediately prior to such casualty. Developer will, in any event, restore any portion of the Public Infrastructure damaged or destroyed by casualty as part of its obligation to construct the Public Infrastructure.

Article V
Insurance

5.1 Insurance. Developer shall obtain and maintain in full force and effect at its expense (but as an Eligible Cost), or shall cause the Project Engineer, Contractor and each Sub-Contractor (as applicable) to obtain and maintain at their expense (but as an Eligible Cost), the following policies of insurance and coverage:

(a) Commercial General Liability Policy covering bodily injury, death and property damage, including the property of the City and the City Representatives insuring against all claims, demands or actions relating to the work and services provided pursuant to this Agreement with minimum limits on a per project basis of not less than One Million Dollars ($1,000,000) combined single limit and Two Million Dollars ($2,000,000) aggregate, including products and completed operations coverage. This policy shall be primary to any policy or policies carried by or available to the City.

(b) Workers' Compensation/Employer's Liability Insurance Policy in full accordance with the statutory requirements of the State of Texas and shall include bodily injury, occupational illness or disease coverage with minimum Employer's Liability limits of not less than $500,000/$500,000/$500,000.

(c) Automobile Liability Insurance Policy covering all operations of Developer pursuant to this Agreement involving the use of motor vehicles, including all owned, non-owned and hired vehicles with minimum limits of not less than One Million Dollars ($1,000,000) combined single limit for bodily injury, death and property damage liability.

(d) Excess Liability Insurance Policy with a limit of not less than Ten Million Dollars ($10,000,000). Such insurance shall be in excess of the commercial general liability insurance, business auto liability insurance and employer's liability insurance. This insurance will apply as primary insurance with respect to any other insurance or self-insurance programs maintained by the City and shall be provided on a "following form basis". Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the Contractor's completed work, including its sub-Contractor(s), consultants and employees.

(e) Property/Builders Risk Insurance Policy with "all-risk" coverage on the entire Project construction value with replacement cost basis to include the interest of the City, Developer, the Contractor and sub-Contractor(s) in the Public Infrastructure work and materials in transit and stored off the Project site destined for incorporation.

(f) Professional Liability Insurance (if applicable) with limit of not less than Two Million Dollars ($2,000,000) for all negligent acts, errors and omissions by the Project Engineer that arise out of the performance of this Agreement.

(g) Waiver of Subrogation Rights. The Commercial General Liability, Worker's Compensation, Business Auto and Excess Liability insurance required pursuant to this Agreement shall provide for waivers of all rights of subrogation against the City.

(h) Additional Insured Status. With the exception of Worker's Compensation Insurance and any Contractor Professional Liability Insurance, all insurance required pursuant to this Agreement shall include and name City as additional insureds using Additional Insured Endorsements that provide the most comprehensive coverage to City under Texas law including products/completed operations. The Additional Insured status for City shall remain in force and effect for a minimum of two (2) years following abandonment or completion of the work and services provided pursuant to this Agreement and the termination of this Agreement.

5.2 Certificates of Insurance. Certificates of Insurance and policy endorsements in a form reasonably satisfactory to City shall be delivered to City prior to the commencement of any work or services under this Agreement and annually for a minimum of two (2) years following termination of this Agreement, abandonment or completion of Public Infrastructure work. All required policies shall be endorsed to provide City with thirty (30) days advance notice of cancellation or material change in coverage.

On every date of renewal of the required insurance policies, Developer shall deliver to City (and cause the Contractor to deliver to City (as applicable)) a Certificate of Insurance and policy endorsements to be issued evidencing the required insurance herein. In addition, Developer shall, within ten (10) business days after written request, provide City with Certificates of Insurance and policy endorsements for the insurance required herein (which request may include copies of such policies). The delivery of the Certificates of Insurance and the policy endorsements (including copies of such insurance policies) to City is a condition precedent to the payment of any amounts due to Developer by City. The failure to provide valid Certificates of Insurance and policy endorsements shall be deemed a breach of this Agreement. All policies and endorsements shall remain in effect for not less than two (2) years after abandonment of the work or services or the completion of the Public Infrastructure work and services provided pursuant to this Agreement.

5.3 Carriers. All policies of insurance required to be obtained by Developer and its Contractors pursuant to this Agreement shall be maintained with insurance carriers that are satisfactory to City and lawfully authorized to issue insurance in the state of Texas for the types and amounts of insurance required herein. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A-VII" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory

with any other insurance coverage and/or self-insurance maintained by City. All insurance coverage required herein shall be evidenced by a certificate of insurance and policy endorsements submitted by Developer's and its Contractors' insurer or broker. Certificates of insurance and policy endorsements received from any other source will be rejected.

Article VI
Default and Remedies

6.1 Developer Default.

(a) Developer Default. The Developer shall be deemed in default under this Agreement if Developer: (i) breaches any of the terms and conditions of this Agreement; (ii) fails to comply with its obligations under this Agreement: (iii) subject to events of Force Majeure, fails or refuses to prosecute the Public Infrastructure work in a timely manner consistent with its obligations hereunder; (iv) subject to events of Force Majeure, abandons the Public Infrastructure jobsite and fails to resume work within five (5) days of written notice thereof by the City; (v) fails to grant or allow access to the Public Infrastructure jobsite by the City or Engineer; (vi) fails to make prompt payment to or otherwise satisfy Subcontractors for amounts due for materials or labor for the Public Infrastructure; (vii) persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; (viii) fails to carry out the Public Infrastructure work in accordance with this Agreement; or (ix) actions or omissions of its Contractor reasonably establishes that the Public Infrastructure work will not be completed in time required for Final Completion of the Public Infrastructure (a "Developer Default"), and such failure is not cured and corrected within ninety (90) days after receipt of written notice thereof from the City; provided, however, if such breach is not capable of being cured within ninety (90) days, such period may be mutually extended by the Parties for such reasonable periods as may be required under the circumstances so long as the Developer is diligently prosecuting the cure of such breach to completion; and further provided that the Developer shall have only ten (10) business days to cure a monetary default.

(b) Remedies for Developer Default. Upon the occurrence of a Developer Default, and after expiration of the applicable notice and cure periods, the City may exercise any rights or remedies at law or in equity or elect to (i) suspend payment of the Project Price, or (ii) terminate this Agreement.

(c) Waiver of Consequential, Punitive or Speculative Damages. Developer shall not be liable to the City for any alleged consequential, punitive or speculative damages arising pursuant to this Agreement.

6.2 City Default.

(a) City Default. The City shall be deemed in default under this Agreement (a "City Default") if the City breaches any of the terms and conditions of this Agreement or fails to comply with its obligations under this Agreement and such failure is not cured and corrected within ninety (90) days after receipt of written notice thereof from Developer; provided, however, if such breach is not capable of being cured within ninety (90) days, such period may be mutually extended by

the Parties for such reasonable periods as may be required under the circumstances so long as the City is diligently prosecuting the cure of such breach to completion; and further provided that the City shall have only ten (10) business days to cure a monetary default.

(b) Remedies for City Default. Upon the occurrence of a City Default, the Developer may exercise any rights or remedies at law or in equity including a termination of this Agreement; provided, however, that in no event shall the City be liable to the Developer for an amount in excess of the Project Price.

(c) Waiver of Consequential, Punitive or Speculative Damages. City shall not be liable to Developer for any alleged consequential, punitive or speculative damages arising pursuant to this Agreement.

Article VII
Termination

7.1 Termination. This Agreement shall terminate on the Expiration Date, or may be terminated earlier upon any one of the following:

(a) by written agreement of the Parties;

(b) exercise by the City or the Developer of their remedies set forth in Article VI above upon the occurrence of a Developer Default or City Default, respectively;

(c) upon written notice from either Party, if the other Party suffers an event of Bankruptcy or Insolvency; or

(d) upon written notice from City, if any Impositions owed to the City or the State of Texas by Developer shall become delinquent and shall remain delinquent for more than thirty (30) days after written notice of such delinquency from City to Developer (provided, however, the Developer retains the right to timely and properly protest and contest any such Impositions).

Article VIII
Building Materials Standards (TBD by Marc Kurbansade)

8.1 Additional Consideration. As additional consideration for this Agreement, Developer and the Owners agree that buildings and other structures shall be designed and constructed in accordance with the exterior design and materials standards set forth in this Article VIII. The Parties and the Owners acknowledge and agree the provisions of this Article are contractual in nature, have been negotiated as part of an arms-length transaction, and are supported by an exchange of good and valuable consideration by the Parties, the receipt and sufficiency of which the Parties each acknowledge. For purposes of this Article VIII, the Owners acknowledge and agree that the City's performance of the City's obligations pursuant to this Agreement directly and indirectly benefits the Owners and constitutes adequate consideration supporting the enforcement of the Owners' agreement to the provision of this Article VIII, including, but not

limited to, the Owners' agreement to encumber the Land with the restrictive covenants set forth in this Article VIII and granting to the City the right to enforce said restrictive covenants.

8.2 Building Materials Standards. Developer and the Owners agree the buildings and structures constructed on the Land shall be designed and constructed in accordance with the following exterior building materials standards:

(a) In the _____ District, _____-, the following buildings used for the following identified purposes shall be designed and constructed as follows:

(1) :

(i)

(ii)

(iii)

(2)

(i) ;

(ii)

(iii) .

(3) :

(i)

(ii)

(iii)

(4)

(i)

(ii)

(iii)

(5) :

(i)

(ii) .

(b) The exterior façades of buildings constructed in _____the following:

(1) ;

(2) ;

(3)

(4)

(5)

(6)

.

(c) Accessory buildings in all character districts shall be constructed of materials that complement the main structure.

(d) In all character districts, rear façades visible from adjoining properties and/or a public right-of-way shall be of a finished quality and consist of colors and materials that blend with the remainder of the building's primary facade(s).

(e) The percentage of building façade materials required herein may be increased by up to ten percent (10%) by approval of the City of Allen Planning and Zoning Commission. No zoning ordinance amendment is required for such approval.

(f) The provisions of this Section 8.2shall remain in effect and not be affected by any future change as it relates to exterior building materials made to the Allen Land Development Code.

8.3 Calculation of Building Material Areas.

(a) Except as provided in Section 8.3(b), below, for purposes of determining compliance with Section 8.2, above, _____

(b) Only for buildings constructed in _____.

8.4 Relationship of Article VIII to Zoning Regulations. The Parties and the Owners acknowledge and agree, by virtue of their contractual nature, the provisions of this Article VIII do not constitute the adoption of zoning or other regulations by the City that are otherwise prohibited and void as a matter of law under Chapter 3000 of the Texas Government Code and shall be enforceable solely as a provision of this Agreement. The provisions of this Article VIII may not be amended or superseded by the unilateral adoption of any resolution or ordinance of the City

Council after the Effective Date. For purposes of this Article VIII, the Parties' and the Owners' only remedies shall be as follows:

(a) City may withhold building permit(s) with respect to a building the plans and drawings for which indicate that the exterior materials to be installed fail to comply with the provisions of Section 8.2; and

(b) City may withhold issuance of a certificate of occupancy, conduct a final inspection, or authorize the provision of public utilities for a building which, when constructed, does not comply with the provisions of Section 8.2, unless and until such building is modified to comply with Section 8.2; and

(c) Developer and/or the Owners may file a mandamus to enforce the provisions of Section 8.2 if City does not issue a building permit or a certificate of occupancy based on an allegation the building fails to comply with Section 8.2 if such building in fact does comply with Section 8.2.

Neither of the Parties nor the Owners shall have the right to seek damages in any form for a breach of this Article VIII, nor shall a breach by any of the Parties and/or the Owners of any provision of this Article VIII constitute a breach of this Agreement as a whole such that a non-breaching Party would have the right to suspend the non-breaching Party's performance under this Agreement or seek termination of this Agreement.

8.5 City Manager Authority to Vary Percentages. The City Manager, may, at the City Manager's sole discretion and upon a finding that such change will be in the spirit of this Agreement and the intent of the Zoning:

(a) In the case of a provision of Section 8.2 that requires a minimum percentage of a type of building material (i.e., "not less than..."), reduce by no more than ten percent (10%) the minimum percentage of that type of building material required to be installed on the exterior façade of the building; and

(b) In the case of a provision of Section 8.2 that allows only a maximum percentage of a type of building material (i.e., "not greater than..."), increase by no more than ten percent (10%) the maximum percentage of that type of building material allowed to be installed on the exterior façade of the building.

Any request to the City Manager to vary the percentages set forth in Section 8.2 shall be on a building-by-building basis and be supported by detailed drawings, materials specifications, and, if requested by the City Manager material samples that provide sufficient detail to the City Manager on the exterior design and construction of the proposed building. The grant of a variance of the percentages by the City Manager pursuant to this Section 8.5 shall not constitute an amendment to this Agreement. Nothing in this Section 8.5 shall be construed as prohibiting Developer and/or the Owners from seeking approval from the City Council to a requested variance from the provisions of Section 8.2 if the City Manager fails to grant such request.

8.6 Restrictive Covenant. The provisions of this Article VIII and the restrictions, covenants, and conditions set forth herein are for the purpose of protecting the value and desirability of the Land and accomplishing City's public purposes and, consequently, shall run with the Land and be binding on Developer and the Owners and all parties having all right, title, or interest in the Land, in whole or in part, and their heirs, successors and assigns. The covenants, conditions and restrictions set forth in this Article shall be for the benefit of, and are enforceable by, the City. Article VIII of this Agreement is binding upon Developer and the Owners and each and every subsequent owner, tenant, subtenant, licensee, manager, and occupant of all or any portion of the Land but only during the term of such party's ownership, tenancy, license, management or occupancy of the Land, for which such party shall remain liable and shall be binding upon and inure to the benefit of City and its successors and assigns. It is expressly understood and agreed that acceptance of title to all or a portion of the Land shall automatically, and without further acknowledgement or confirmation from such owner, constitute such owner's assumption of the obligations of Developer and the Owners with respect to this Article VIII.

8.7 Developer Adoption of Covenants. Developer and the Owners agree to require, through the adoption of private restrictive covenants applicable to the Land, that successors in title to the Land or any portion thereof comply with all provisions of this Article VIII, which provisions (i) may be enforced by City and (ii) shall not be amended or terminated without the written consent of City.

8.8 Owners' Limited Joinder; Consent. The joinder by the Owners in this Agreement is limited for the purpose of agreeing to the provisions of this Article VIII and the applicable provisions of Article IX, below, in exchange for the consideration previously acknowledged in Section 8.1, above, it being the intent that the Developer shall be solely responsible to the City for all other provisions of this Agreement in addition to Article VIII and Article IX. The Owners further acknowledge that Developer's performance of Developer's obligations set forth in this Agreement impacts the Owners' development and use of the Land, and by joining in and signing this Agreement hereby consent to Developer's entry into this Agreement.

Article IX
Miscellaneous

9.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties (and, for purposes of Article VIII, the Owners).

9.2 Limitation on Liability. It is understood and agreed between the Parties that the Developer and the City, in satisfying the conditions of this Agreement, have acted independently, and assume no responsibilities or liabilities to third parties in connection with these actions.

9.3 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

9.4 Authorization. Each Party and the respective Owners each represent that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

9.5 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received (i) three (3) days after deposit into the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below, or (ii) on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City or Board, to:

Eric Ellwanger
City Manager
City of Allen, Texas
305 Century Parkway
Allen, Texas 75013

With a copy to:

Peter G. Smith
City Attorney
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201

If intended for Developer, to:

Poorvesh Thakkar
CEO
Thakkar Development Group, LLC
7850 Collin McKinney Parkway, #103
McKinney, Texas 75070

With a copy to:

David Pagan
Thakkar Development Group, LLC
7850 Collin McKinney Parkway, #103
McKinney, Texas 75070

If intended for the Owners, to:

9.6 Entire Agreement. This Agreement is the entire agreement between the Parties (inclusive of the Owners, with respect to Article VIII) with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties and/or the Owners that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

9.7 Governing Law. The Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties and the Owners agree to submit to the personal and subject matter jurisdiction of said court.

9.8 Amendment. This Agreement may only be amended by a written agreement executed by all Parties; provided, however, amendments to Article VIII, and only amendments to Article VIII, shall also require joinder of the Owners and/or their successors in title to the Land. The City Manager is authorized on behalf of the City to execute any amendments hereto and any instruments or other agreements related hereto.

9.9 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties and the Owners that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

9.10 Recitals. The recitals to this Agreement are incorporated herein.

9.11 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

9.12 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

9.13 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties and the Owners, as well as any rights and benefits of the Parties, and the Owners pertaining to a period of time following the termination of this Agreement shall survive termination.

9.14 Successors and Assigns. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties and, where applicable, the Owners. This Agreement may not be assigned by the Developer without the prior written consent of the City Manager. The Developer shall have the right to grant a security interest in this Agreement by collaterally assigning any portion of Developer's rights under this Agreement to Developer's Lender as security for a loan for the Project. City agrees to execute and deliver any documents reasonably requested by Developer's Lender to evidence and/or perfect its rights under this Agreement. At no time shall City be required to make any payments under this Agreement to any party other than Developer or a party to whom this Agreement has been fully assigned and has agreed in writing to assume all liabilities and obligations of Developer as set forth in this Agreement.

9.17 Prohibition of Boycott Israel. Developer verifies that it does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended. This section does not apply if the Developer is a sole proprietor, a non-profit entity or a governmental entity; and only applies if: (i) the Developer has ten (10) or more fulltime employees and (ii) this Agreement has a value of $100,000.00 or more to be paid under the terms of this Agreement.

9.18 Conditions Precedent. The following are conditions precedent to this Agreement and the obligations of the Parties pursuant to this Agreement are expressly subject to the following: (i) the ACDC Agreement; (ii) the execution of AEDC Economic Agreement; (iii) the issuance of the Sales Tax Revenue Bonds; (iv) the issuance of the Certificates of Obligation; and (v) the Owners have consented to the terms and conditions of this Agreement and this Agreement has

been recorded in the Official Public Records of Collin County, Texas.

9.19 Recording. This Agreement shall be recorded in the Official Public Records of Collin County, Texas.

[Signature Page to Follow]

City's Signature Page

EXECUTED on this _____ day of _____, 2021.

CITY OF ALLEN, TEXAS

By: _____
Eric Ellwanger, City Manager

APPROVED AS TO FORM:

By:_____
Peter G. Smith, City Attorney

State of Texas §
§
County of Collin §

This instrument was acknowledged before me on the _____ day of _____, 2021, by Eric Ellwanger, as City Manager for the City of Allen, Texas, a Texas home rule municipality, on behalf of said municipality.

_____
Notary Public, State of Texas

(Notary Seal)

My Commission Expires:_____

Developer's Signature Page

EXECUTED the _____ day of _____, 2021.

THAKKAR DEVELOPMENT GROUP, LLC, A TEXAS LIMITED LIABILITY COMPANY_

By:_____
Name:_____
Title:_____

State of Texas §
§
County of _____ §

This instrument was acknowledged before me on the _____ day of _____, 2021, by _____, as _____ for Thakkar Development Group, LLC, a Texas limited liability company, on behalf of said company.

_____
Notary Public, State of Texas

(Notary Seal)

My Commission Expires:_____

The Owner's Signature Page

Insert Signature Lines for the Owners and related notary acknowledgments

EXHIBIT "A"
Legal Description of the Land

A 79.285 acre TRACT OF LAND SITUATED IN JAMES W. PARSONS SURVEY, ABSTRACT NO. 705, THOMAS PHILIPS SURVEY, ABSTRACT NO. 717, AND JOHN PHILIPS SURVEY, ABSTRACT NO. 718 CITY OF ALLEN, COLLIN COUNTY, TEXAS; SAID 79.284 acre TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "KHA" FOUND FOR THE MOST NORTHERLY NORTHEAST CORNER OF SAID 79.285 acre TRACT OF LAND, SAME BEING THE NORTH END OF A CORNER CLIP AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF STATE HIGHWAY NO. 121 (VARIABLE WIDTH PUBLIC RIGHT OF WAY) WITH THE WESTERLY RIGHT OF WAY LINE OF ALMA ROAD (VARIABLE WIDTH PUBLIC RIGHT OF WAY);

THENCE SOUTH 63°01'45" EAST, ALONG SAID CORNER CLIP, A DISTANCE OF 29.31 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "KHA" FOUND FOR THE SOUTH END OF SAID CORNER CLIP, AND BEING THE POINT OF CURVATURE OF A NON TANGENT CURVE TO THE LEFT HAVING A RADIUS POINT WHICH BEARS NORTH 89°15'49" EAST, A DISTANCE OF 1,046.00 FEET;

THENCE ALONG THE WESTERLY RIGHT OF WAY LINE OF SAID ALMA ROAD, THE FOLLOWING CALLS:

SOUTHEASTERLY WITH SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 42°15'18" FOR AN ARC LENGTH OF 771.41 FEET HAVING A CHORD BEARING OF SOUTH 21°51'50" EAST, AND A CHORD DISTANCE OF 754.05 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "KHA" FOUND FOR CORNER;

SOUTH 43°00'26" EAST, A DISTANCE OF 106.35 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1,154.00 FEET;

SOUTHEASTERLY WITH SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 16°44'56" FOR AN ARC LENGTH OF 337.34 FEET, HAVING A CHORD BEARING OF SOUTH 34°37'58" EAST AND A CHORD DISTANCE OF 336.14 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "KHA" FOUND FOR THE POINT OF TANGENCY;

SOUTH 26°15'31" EAST, A DISTANCE OF 70.07 FEET TO A POINT FOR CORNER;

SOUTH 24°37'19" EAST, A DISTANCE OF 19.55 FEET TO A 5/8 INCH IRON ROD FOUND FOR CORNER;

SOUTH 25°12'19" EAST, A DISTANCE OF 530.60 FEET A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "KHA" FOUND FOR THE NORTH END OF A CORNER CLIP AT THE INTERSECTION OF THE WESTERLY RIGHT OF WAY LINE OF SAID ALMA ROAD WITH THE NORTHERLY RIGHT OF WAY LINE OF RIDGEVIEW DRIVE (VARIABLE

WIDTH PUBLIC RIGHT OF WAY);
THENCE SOUTH 18°43'49" WEST, ALONG SAID CORNER CLIP, A DISTANCE OF 21.17 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "KHA" FOUND FOR THE SOUTH END OF SAID CORNER CLIP;

THENCE ALONG THE NORTHERLY RIGHT OF WAY LINE OF SAID RIDGEVIEW DRIVE, THE FOLLOWING CALLS:

SOUTH 63°51'31" WEST, A DISTANCE OF 209.69 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "KHA" FOUND FOR CORNER;

SOUTH 61°24'16" WEST, A DISTANCE OF 350.32 FEET TO A POINT FOR CORNER;

SOUTH 63°51'31" WEST, A DISTANCE OF 230.14 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "KHA" FOUND FOR CORNER;

SOUTH 62°53'11" WEST, A DISTANCE OF 128.18 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "KHA" FOUND FOR THE POINT OF CURVATURE OF A NON TANGENT CURVE TO THE RIGHT HAVING A RADIUS POINT WHICH BEARS NORTH 26°14'10" WEST, A DISTANCE OF 940.00 FEET;

SOUTHWESTERLY WITH SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 43°07'19" FOR AN ARC LENGTH OF 707.46 FEET, HAVING A CHORD BEARING OF SOUTH 85°19'30" WEST AND A CHORD DISTANCE OF 690.88 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "KHA" FOUND FOR THE POINT OF TANGENCY;

NORTH 73°06'50" WEST, A DISTANCE OF 176.23 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "KHA" FOUND FOR THE POINT OF CURVATURE OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1,060.00 FEET;

NORTHWESTERLY WITH SAID CURVE TO THE LEFT THOUGH A CENTRAL ANGLE OF 14°44'39" FOR AN ARC LENGTH OF 272.77 FEET, HAVING A CHORD BEARING OF NORTH 80°29'10" WEST AND A CHORD DISTANCE OF 272.02 FEET TO A POINT FOR THE SOUTHWEST CORNER OF SAID 79.285 acre TRACT OF LAND, SAME BEING THE SOUTHEAST CORNER OF A CALLED 31.492 acre TRACT OF LAND DESCRIBED IN A DEED TO COLLIN COUNTY COMMUNITY COLLEGE DISTRICT, RECORDED IN INSTRUMENT NUMBER 20170616000786140, O.P.R.C.C.T.;

THENCE DEPARTING THE NORTHERLY RIGHT OF WAY LINE OF SAID RIDGEVIEW DRIVE, ALONG THE COMMON LINE OF SAID 79.285 acre TRACT OF LAND AND SAID 32.016 acre TRACT OF LAND, THE FOLLOWING CALLS;

NORTH 23°33'15" WEST, A DISTANCE OF 773.39 FEET TO A POINT FOR CORNER;

SOUTH 80°59'38" WEST, A DISTANCE OF 102.94 FEET TO A POINT FOR CORNER;

NORTH 23°33'15" WEST, A DISTANCE OF 665.23 FEET TO A POINT FOR THE NORTHWEST CORNER OF SAID 79.285 acre TRACT OF LAND, SAME BEING THE NORTHEAST CORNER OF SAID 32.016 acre TRACT OF LAND, AND BEING IN THE SOUTHERLY RIGHT OF WAY LINE OF SAID STATE HIGHWAY NO. 121, AND FROM WHICH A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "PACHECO KOCH" FOUND BEARS NORTH 32°27'36" WEST, A DISTANCE OF 1.2 FEET;

THENCE ALONG THE SOUTHERLY RIGHT OF WAY LINE OF SAID STATE HIGHWAY NO. 121, THE FOLLOWING CALLS:

NORTH 66°18'21" EAST, A DISTANCE OF 610.14 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "KHA" FOUND FOR CORNER;

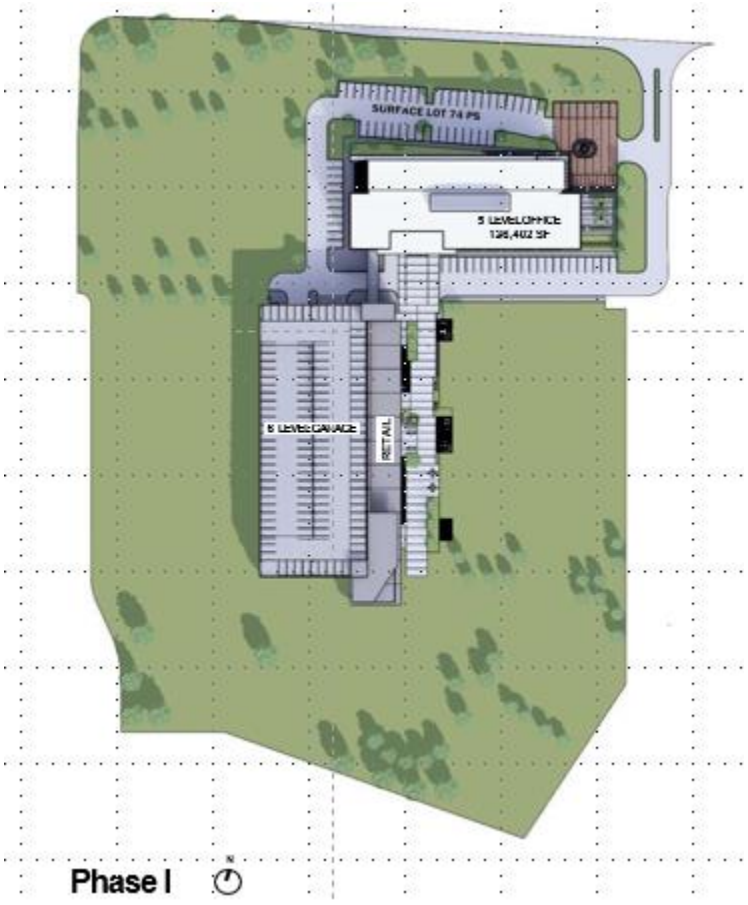
NORTH 70°38'44" EAST, A DISTANCE OF 934.79 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "KHA" FOUND FOR CORNER;

NORTH 63°47'13" EAST, A DISTANCE OF 361.98 FEET TO A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "KHA" FOUND FOR CORNER;

NORTH 66°19'01" EAST, A DISTANCE OF 26.60 FEET TO THE POINT OF BEGINNING, CONTAINING A COMPUTED AREA OF 3,453,646 SQUARE FEET OR 79.285 ACRES OF LAND.

EXHIBIT "B"
Infrastructure

EXHIBIT "C"
Parking Garage Site



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Parking Garage Site

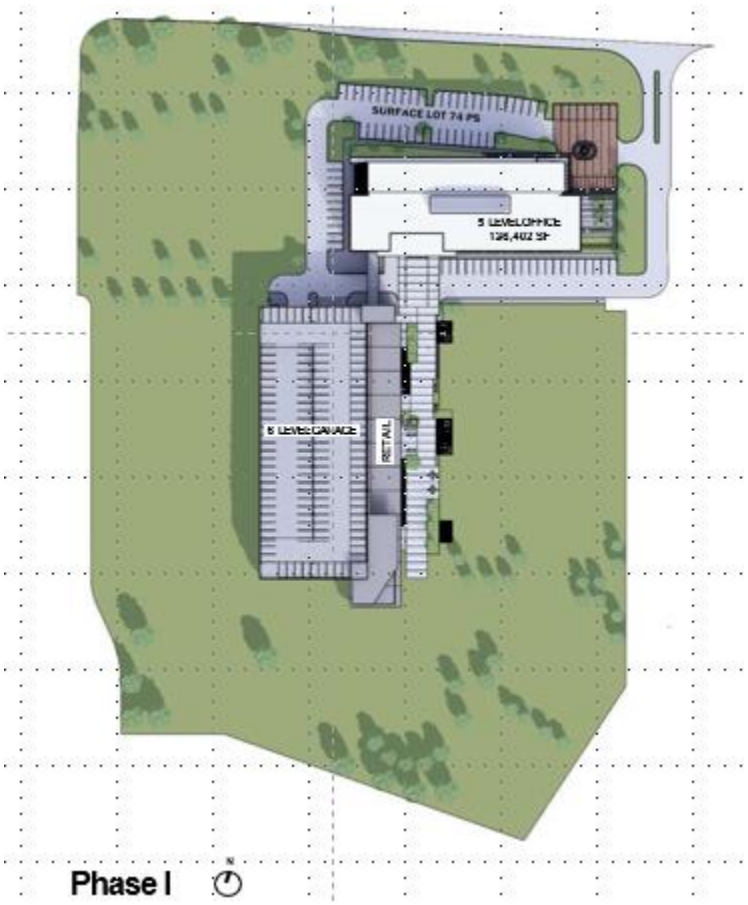

EXHIBIT "C"
Parking Garage Site

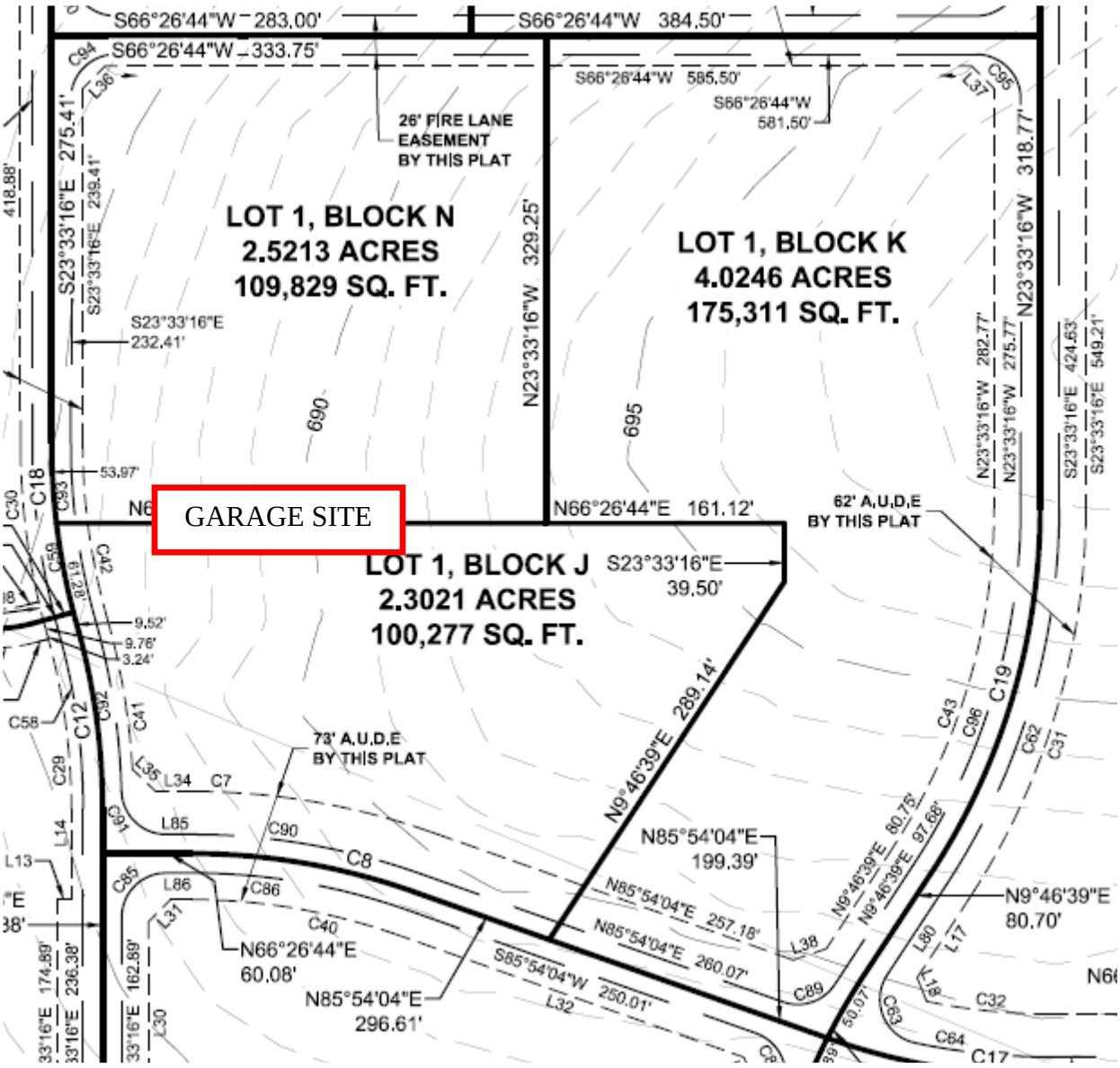

EXHIBIT "C"
Parking Garage Site