

Arlington Commons Lands

Location: East Lamar Boulevard

Property Owner: Arlington Commons Lands, LLC

835 East Lamar Blvd

Suite 175

Arlington TX 76011

About the Project

In a public/private partnership with the developer, City of Arlington is assisting with the redevelopment of approximately 66 acres along East Lamar Blvd, between Rolling Hills Country Club and Lincoln Drive. The intent is to redevelop the project area and establish a new market rate rental standard that presently does not exist in Arlington. The private portion of this proposal includes the complete redevelopment of four existing apartment complexes – Huntington Chase, Pointe of North Arlington, Countrywood, and Water Chase, totaling approximately 31 acres. The public portion includes future improvements to Parkway Central city park and the adjacent right-of-way of East Lamar Blvd, totaling approximately 35 acres. The City's participation will offset a portion of the redevelopment costs, which include detention and drainage improvements, demolition and remediation, as well as improvement of the adjacent public spaces. The developer proposes to replace the existing complexes with a multi-year, phased, mix-use development that is consistent with the goals of the Lamar/Collins Overlay District. The developer is estimating that the total construction period for the entire project will take up to seven years.

Goals of the Project

Redevelopment of four aging and dilapidated apartment complexes; significant increase in property tax base; creation of new multifamily product that would appeal to young professionals

Current Status

Arlington Commons Phase 1A was completed in FY18. Per the terms of the agreement, the developer has continued to qualify for the additional incentives related to the public improvements associated with the project. Development of the other phases remains underway.

Benefit to City

\$200 million added to the City's property tax rolls; demolition of 3 aging apartment complexes; development of 1,328 new, market rate units to help attract new residents to the City; 350 indirect/direct jobs created

NOTE: 2nd Amended Master Agreement and numerous subsequent agreements

This large-scale, multi-faceted project that is being done over several years and in many phases required a Master Agreement. Under the Master Agreement are numerous subsequent agreements, and there is also a tax abatement agreement based on real property improvements. The Criteria Evaluated section below highlights the criteria listed in the Master Agreement. All the subsequent agreements are listed in the Incentives Allowed section below. Each of the agreements is attached, and each is evaluated and administered separately.

Year Master Agreement Approved by Council	2014
Total Estimated Investment by Company	\$ 200,000,000

Criteria Evaluated Developer will construct the Phase I Project on the Premises not later than January 1, 2024; Phase II will be constructed on the Premises not later than January 1, 2027; and Phase III will be constructed on the Premises not later than January 1, 2029. Extensions of time may be granted as long as Developer is activity pursuing in good faith the completion of the Project.

Developer must diligently and faithfully pursue the completion of the Project. Developer covenants and agrees to use all reasonable commercial efforts to cause the Project to be constructed and maintained in a good and workmanlike manner and in accordance with all applicable state and local laws and regulations.

City recognizes that Developer will seek zoning changes for the Project. Such changes will be evaluated by City through the zoning process. Developer shall construct the Project in a quality manner and as generally illustrated in Exhibit "C" [of the Master Development Agreement].

Incentives Allowed	Agreement Number and Nature of Agreement	Amount Authorized	Amount Paid to Date
Development Agmt 1	Phase I Development Grant - in exchange for the demolition of the existing apartments within the Phase I Project City shall make a one time grant in the amount of \$1.5m to Developer. This will be paid within 30 days of Developer's presentation to City of an agreement with the architect, engineer or other design professionals to the Phase I Project.	\$ 1,500,000	\$ 1,500,000
	Subsequent Phase Development Grant - in exchange for the demolition of the existing apartments within the Phase II or Phase III Project City shall make a one time grant in the amount of \$500k to Developer. City shall pay this grant when multi-family structures in Phase II or III have been demolished.	\$ 500,000	\$ 500,000
Development Agmt 2	Grant for Detention and Drainage Improvements - in exchange for the demolition of the existing apartments within the Phase I Project City shall provide to Developer a grant in an amount not to exceed \$400k for the actual costs for the detention and drainage improvements for the Project. These improvements will be installed as part of Phase I of the Project. City will reimburse for actual costs not to exceed \$400k.	\$ 400,000	\$ 400,000
	Grant for Demolition and Remediation - in exchange for demolition of existing apartments in each phase of the Project City shall provide to Developer a grant not to exceed \$1,808,592 for the actual costs of the demolition and environmental remediation of the existing structures located on the Premises.	\$ 1,808,592	\$ 1,808,592
Development Agmt 3	Additional Detention and Drainage Improvements - Developer shall also be eligible to receive a grant in an amount not to exceed \$350k as reimbursement for the actual cost of detention and drainage improvements that are not reimburse by the Grant for Detention and Drainage Improvements.	\$ 350,000	\$ 350,000
	Additional Demolition and Remediation - Developer shall also be eligible to receive a grant in an amount not to exceed \$2.1m as reimbursement for the actual cost of demolition and remediation that is not reimbursed by the Grant for Demolition and Remediation.	\$ 2,100,000	\$ 1,200,000
Development Agmt 4	Phase 1 Ancillary City Improvements - City and Developer will jointly design the ancillary City improvements. City will contribute a maximum of \$1.25m for the public improvements to be determined jointly by City and Developer.	\$ 1,250,000	\$ 1,187,493
	Phase 2A & 2B Ancillary City Improvements - If City is not called upon to provide the grant for the Option Property, and Developer has provided notice to City that it is not seeking the grant or the time to request such grant has expired, the City shall contribute an additional \$2.5m towards public improvements determined and designed jointly by City and Developer.	\$ 2,500,000	\$ 242,723
	Phase 3 Ancillary City Improvements - Additional incentive n additional incentive in the amount of \$591,953 for costs associated with extending the ancillary improvements from Ryan Plaza to Cooper Street.	\$ 591,953	\$ 51,343
TOTAL		\$ 11,000,545	\$ 7,240,151

STATE OF TEXAS §
COUNTY OF TARRANT § **First Amended and Restated**
Development Agreement Number One

THIS FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT NUMBER ONE (“Agreement”) is entered into by and between the **CITY OF ARLINGTON**, a Texas municipal corporation of Tarrant County, Texas (hereinafter referred to as “CITY”), and **ARLINGTON COMMONS LANDS, LLC**, a Texas limited liability company (hereinafter referred to as “DEVELOPER”), jointly referred to as the Parties.

WITNESSETH:

WHEREAS, on August 6, 2013, by Resolution 13-193, City Council approved a Phase I Development Grant 380 Agreement with JCKPL, LLC regarding economic development incentives associated with Phase I demolition, remediation and redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington, Texas; and

WHEREAS, on January 21, 2014, by Resolution 14-006, City Council approved Development Agreement Number One to amend the Phase I Development Grant 380 Agreement with JCKPL, LLC to reflect the change of the name of JCKPL, LLC to JCKPL AC, LLC, to increase the grant amount from \$1,500,000 to \$2,000,000, and to change the required dates for acquisition, demolition and construction; and

WHEREAS, JCKPL AC, LLC, as authorized by Article XV of Development Agreement Number One, assigned all rights and obligations under Development Agreement Number One to DEVELOPER; and

WHEREAS, DEVELOPER and CITY desire to amend Development Agreement Number One to reflect the assignment from JCKPL AC, LLC to DEVELOPER, and to amend completion deadlines for the project phases; NOW THEREFORE,

In accordance with the Master 380 Economic Development Program Agreement authorized by Resolution 13-146, and in consideration of the mutual covenants and obligations herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I.
Definitions

A. **“Master Agreement”** means that certain agreement titled Second Amended and Restated Master 380 Economic Development Program Agreement authorized by City Council Resolution No. 13-146 on June 18, 2013 and amended by City

Council Resolution No. 14-006 on January 21, 2014, and City Council Resolution No. 14-300 on November 18, 2014.

- B. **“Phase I Project”** means the demolition of the existing real property improvements located as of June 1, 2013 on Phase I of the Premises as shown on **Exhibit “B”** attached hereto, and the redevelopment of Phase I of the Premises through the construction of a new multi-family development to include a minimum of 800 multi-family units, with a Capital Investment of not less than \$60,000,000.00.
- C. **“Phase II Project”** means the demolition of the existing real property improvements located as of June 1, 2013 on Phase II of the Premises as shown on **Exhibit “B”** attached hereto, and the redevelopment of Phase II of the Premises through the construction of a new multi-family development to include a minimum of 350 multi-family units, with a Capital Investment of not less than \$35,000,000.
- D. **“Premises”** means the land described on **Exhibit “A”** attached hereto.
- E. **“Project”** means the redevelopment of the entire Premises that is shown as Phase I, Phase II, and Phase III on **Exhibit “B”** attached hereto. Such redevelopment shall include the demolition of the existing real property improvements located on the Premises as of June 1, 2013, and the redevelopment of the Premises through the construction of a new multi-family development to include a total of 1600 or more multi-family units and associated non-residential finished space as required by CITY’s Unified Development Code, with a Capital Investment of not less than \$130,000,000.00.

II. **Project**

In conjunction with the Project as defined herein, DEVELOPER agrees to demolish the apartments located on the area shown as Phase I and Phase II of the Premises as of June 1, 2013. A description of the tracts comprising the Premises, a map indicating the location and acreage of Phase I and Phase II of the Project, and general illustrations of DEVELOPER’s representations of the quality and appearance of the Project are attached hereto for all purposes and made a part of this agreement as **Exhibits “A”, “B”, and “C”**, respectively.

III. **Development Grant**

- A. Subject to the conditions contained in this Agreement, CITY agrees to make a one-time grant in the amount of \$2,000,000.00 to DEVELOPER (“Development Grant”).

- B. Subject to all limitations and conditions precedent contained in this Agreement, CITY agrees to pay to DEVELOPER the \$2,000,000.00 Development Grant in accordance with the following procedure:
1. DEVELOPER shall submit a written request for payment of the Development Grant along with required documentation to the Chief Financial Officer for the City of Arlington and the Economic Development Manager for the City of Arlington. The term “required documentation” means
 - (a) the executed closing documents demonstrating that the DEVELOPER has secured fee simple ownership of all applicable properties associated with the Phase I and Phase II components of the PROJECT as shown on **Exhibit “B”**, attached hereto; and
 - (b) an invoice demonstrating commencement of substantial design services of either civil engineering or architectural designs specifically created for and necessary to facilitate the new construction of the Phase I Project.
 2. DEVELOPER’s request for payment of the Development Grant must be submitted to the Chief Financial Officer for CITY on or before December 31, 2014. CITY will pay to DEVELOPER the Development Grant within thirty (30) days of CITY’s receipt of DEVELOPER’s written request along with the required documentation.

IV.

Waiver of Phase I and Phase II Development Fees

- A. Subject to the conditions contained in this Agreement, CITY agrees to waive specific development fees incurred by the DEVELOPER related to the plan review, permit issuance, and field inspections associated with Phase I and Phase II and required by the applicable development rules and regulations of the CITY. Such fees include plan review fees, building permit and inspection fees, park fees, irrigation review and inspection fees, demolition permit fees, early grading permit fees, landscape plan review fees, public utilities inspection fees, fire alarm permit and inspection fees, sprinkler system permit and inspection fees, fire pump permit and inspection fees, certificate of occupancy fees, water and sewer tap fees, water activation fees, meter and detector check fees, and cap existing service fees.
- B. This waiver of Phase I and Phase II development fees does not include CITY water, sewer, and roadway impact fees. The waiver of impact fees shall be addressed in a subsequent Chapter 380 agreement under the scope of the Master Agreement.
- C. The DEVELOPER shall be subject to payment to the CITY of all identified development fees for Phase I if all requisite certificates of occupancy are not issued for Phase I by January 1, 2024. The DEVELOPER shall be subject to

payment to the CITY of all identified development fees for Phase II if all requisite certificates of occupancy are not issued for Phase II by January 1, 2027. Completion dates for each phase may be extended upon written approval from the CITY.

V.

DEVELOPER's Obligations

- A. DEVELOPER agrees to cause the demolition of apartments existing as of June 1, 2013 within the Phase I Project and Phase II Project.
- B. In order to receive the Development Grant, DEVELOPER shall present to CITY an invoice from one or more design professionals (architect, engineer, or other design professional) hired by DEVELOPER for the Phase I Project. The invoice must indicate DEVELOPER's obligation to pay the above referenced design professionals for substantial services rendered in furtherance of the Phase I Project, as determined in CITY's sole reasonable discretion.
- C. DEVELOPER shall use good faith efforts to cause demolition of the apartments in the Phase I and Phase II Projects to be completed in a timely manner, in accordance with the contract documents, plans and specifications, if any, approved by CITY.
- D. In addition to the requirements of subparagraph C of this Article V, DEVELOPER shall fully and completely settle, by litigation or otherwise, any claims, lawsuits, enforcement actions, or any other type of action or claim related to or arising out of performance of the demolition contract, including all work related to asbestos, if any, without involving the CITY, **and will defend, indemnify and hold harmless CITY with regard to any such claims, actions and litigation.**

VI.

Force Majeure

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities (TXU Electric, Southwestern Bell Telephone, TXU Gas, AT&T Cable Services or their contractors), fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or 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 circumstance is 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 performance under this

agreement shall be extended for a period of time equal to the period such party was delayed.

VII.
Term

The term of this Agreement shall begin upon the execution by CITY and DEVELOPER and shall terminate upon the date that all obligations under this Agreement have been fulfilled or upon the date the Agreement is otherwise terminated in accordance with this Agreement.

VIII.
Breach and Recapture

- A. **Breach** – A breach of this Agreement by DEVELOPER may result in termination of this Agreement, recapture of any amounts of the Development Grant paid to DEVELOPER, and termination of CITY’s obligation to pay any additional amounts to DEVELOPER under the terms of this Agreement or the Master Agreement. Upon termination of this Agreement, the obligation of CITY to pay an amount not to exceed \$2,000,000.00, and any additional amounts to be paid to DEVELOPER as provided in the Master Agreement, shall terminate. The following conditions shall constitute a breach of this Agreement:

DEVELOPER fails to successfully complete demolition of the existing structures within Phase I and Phase II according to the requirements of the demolition permit for the Phase I and Phase II Project on or before June 30, 2015.

- B. **Notice of Breach** – In the event that CITY makes a reasonable determination that DEVELOPER has breached this Agreement as provided in Article VIII, subsection A above, then CITY shall give DEVELOPER written notice of such default. DEVELOPER has sixty (60) days following receipt of said written notice to reasonably cure such breach or this Agreement may be terminated by CITY. Notice of default shall be in writing and shall be delivered by personal delivery or certified mail to DEVELOPER at the address provided in Article X of this Agreement.
- C. After notice and failure to cure as provided in this Article VIII, subsections A and B above, DEVELOPER agrees to repay CITY \$2,000,000.00 within thirty (30) days of CITY’s demand for payment. DEVELOPER’s failure to repay to CITY \$2,000,000.00 as provided in this paragraph shall result in termination of the Master Agreement and CITY shall be under no obligation to provide any of the incentives or payments described in the Master Agreement and any additional agreements related to the Master Agreement that may have been executed prior to CITY’s demand for payment in accordance with this paragraph.

IX.
Venue and Governing Law

This Agreement is performable in Tarrant County, Texas and venue of any action arising out of this Agreement shall be exclusively in Tarrant County. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

X.
Notices

Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mail by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below or by hand delivery, subject to the right of either party to designate a different address by notice given in the manner just described.

DEVELOPER: Arlington Commons Lands, LLC
3104-7 North Collins Street
Arlington, Texas 76005
Attention: Robert H. Kembel

WITH A Winstead PC
COPY TO: 500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
Attention: Barry R. Knight

CITY: City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231
Attention: Economic Development Manager

XI.
Applicable Laws

This Agreement is made subject to the provisions of the CITY's Charter and ordinances, as amended, and all applicable State and federal laws.

XII.
Legal Construction

In case 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 any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement. Should any provision of this Agreement be in conflict with a provision of the Master Agreement, this Agreement shall apply as to the

specific conflicting provision; in all other instances the Master Agreement and this Agreement shall both apply.

XIII.
Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XIV.
Captions

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


XV.
Successors and Assigns

The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. It is intended by the parties hereto that this Agreement may be assigned by DEVELOPER to a successor owner and/or party only with prior written approval of the City Council, which approval will not be unreasonably withheld or delayed. Assignments to related entities where THE NEHEMIAH, LLC is the general partner or managing member shall be expressly allowed without City Council approval.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on the date indicated below, effective as of the later of such dates.

**ARLINGTON COMMONS LANDS,
LLC**

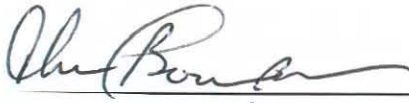
a Texas Limited Liability Company
By its member: The Nehemiah, LLC
a Texas Limited Liability Company

BY 
Robert H. Kembel
Manager of The Nehemiah, LLC
Date 12-9-2014

WITNESS:



CITY OF ARLINGTON, TEXAS

BY 

Theron L. Bowman Ph.D.
Deputy City Manager

Date 01/12/2015

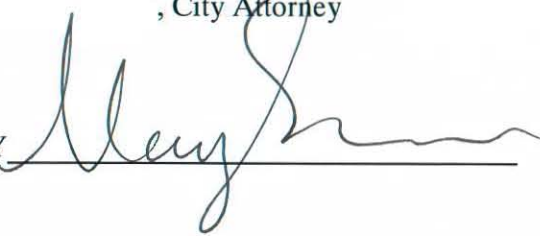
ATTEST:



MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:

, City Attorney

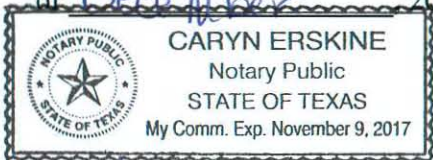
BY 

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

ARLINGTON COMMONS LANDS, LLC
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **ROBERT H. KEMBEL**, Manager of The Nehemiah, LLC, a Texas limited liability company, member of ARLINGTON COMMON LANDS, LLC, a Texas limited liability company, known to me (or proved to me on the oath of _____ or through Texas Driver's License (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of **ARLINGTON COMMONS LANDS, LLC**, an entity duly authorized to do business in the State of Texas, and as the **Manager of The Nehemiah, LLC**, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 30th day of December, 2014.



11/9/2017
My Commission Expires

Caryn Erskine
Notary Public in and for
The State of Texas
Caryn Erskine
Notary's Printed Name

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Heleen L. Bowman, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON, TEXAS**, a municipal corporation of Tarrant County, Texas, and as the **Deputy City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 12th day of January, ~~2014~~ 2015.

7/1/18
My Commission Expires

Ann Cheryl Riney
Notary Public in and for
The State of Texas
Ann Cheryl Riney
Notary's Printed Name

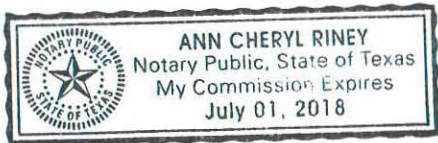


EXHIBIT "A"

The Premises

TRACT A - HUNTINGTON CHASE APARTMENTS

Tract A-R, Block 5, Parkway Central, an addition to the City of Arlington, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-61, Page 1, Plat Records, Tarrant County, Texas.

TRACT B - POINTE AT NORTH HIGHLAND APARTMENTS

Tract A, Block 6, Parkway Central, an addition to the City of Arlington, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-53, Page 96, Plat Records, Tarrant County, Texas.

TRACT C - COUNTRY WOOD APARTMENTS

Tract B, Block 6, Parkway Central, an addition to the City of Arlington, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-53, Page 96, Plat Records, Tarrant County, Texas.

TRACT D - WATER CHASE APARTMENTS

Tract CR, Block 2, Parkway Central Addition, an addition to the City of Arlington, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-159, Page 57, Plat Records, Tarrant County, Texas.

TRACT E - HUNTINGTON CHASE APARTMENTS

Tract D, Block 5, Parkway Central, an addition to the City of Arlington, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-75, Page 59, Plat Records, Tarrant County, Texas.

Exhibit A

380 Tracts & Boundary

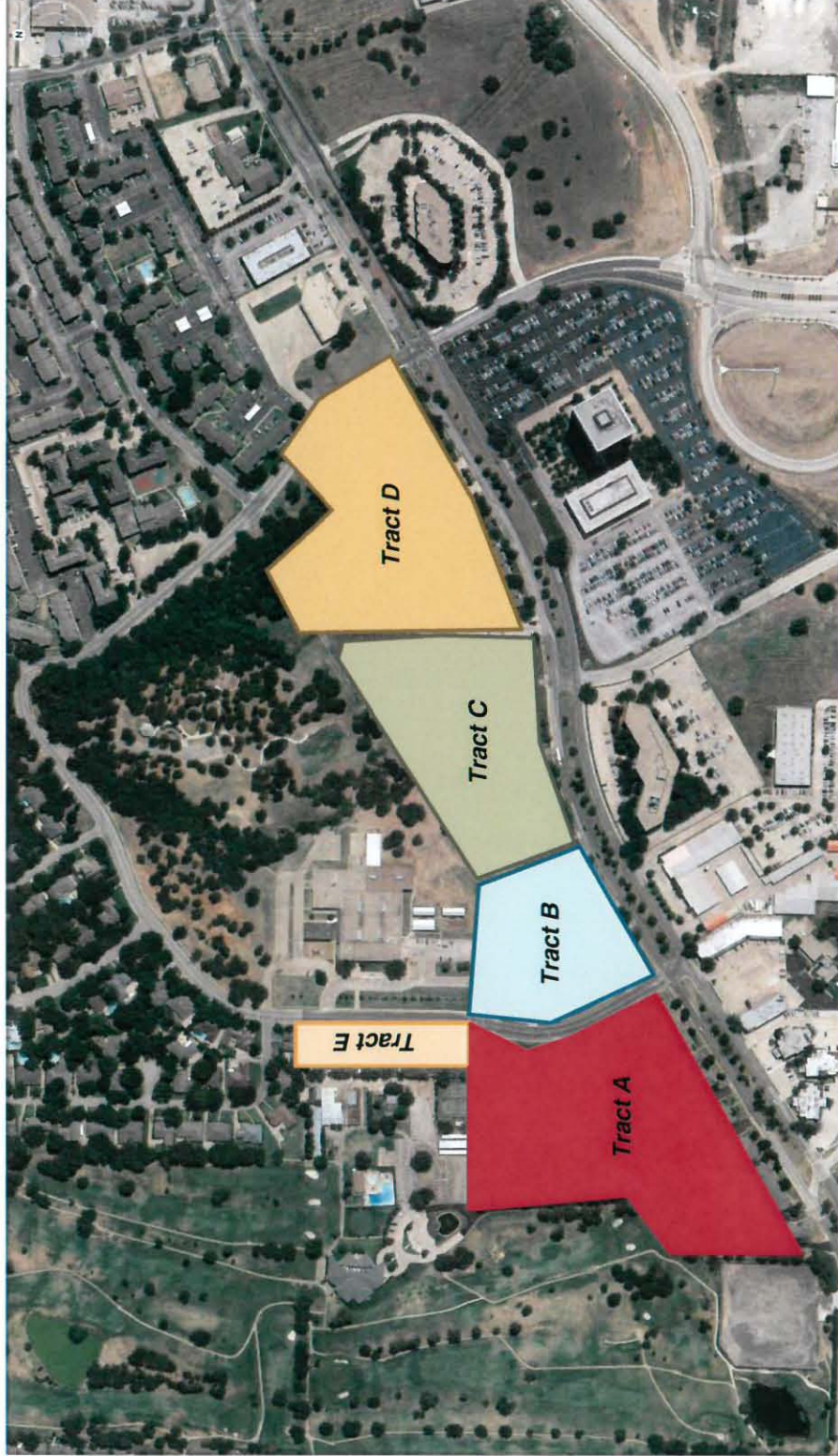


Exhibit B

Project With Phasing

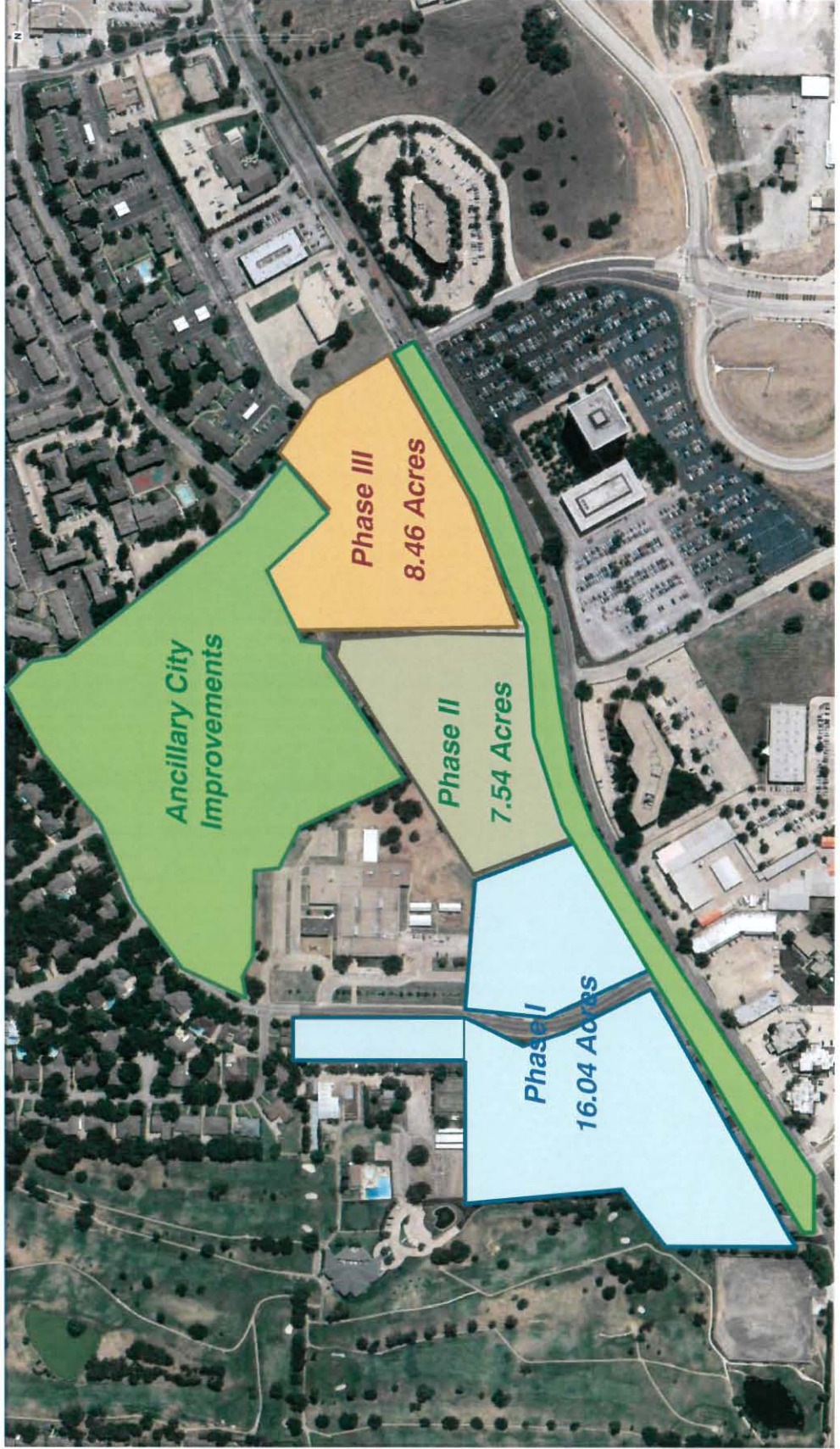
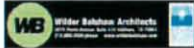


EXHIBIT "C"

Lamar Redevelopment



Lamar Redevelopment





THE STATE OF TEXAS §
COUNTY OF TARRANT §

**First Amended and Restated
Development Agreement Number Two**

THIS FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT NUMBER TWO (“Agreement”) is entered into by and between **ARLINGTON COMMONS LANDS, LLC**, a Texas limited liability company (hereafter referred to as “DEVELOPER”), and the **CITY OF ARLINGTON, TEXAS**, a home-rule city and municipal corporation of Tarrant County, Texas, acting by and through its City Manager or his designee (hereafter referred to as “CITY”).

WITNESSETH:

WHEREAS, on January 21, 2014, by Resolution 14-007, City Council approved Development Agreement Number Two with JCKPL AC, LLC for economic development incentives associated with Phase I-A demolition, remediation and redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington, Texas; and

WHEREAS, JCKPL AC, LLC, as authorized by Article XVIII of Development Agreement Number Two, assigned all rights and obligations under Development Agreement Number Two to DEVELOPER; and

WHEREAS, the CITY and DEVELOPER desire to amend Development Agreement Number Two to reflect the assignment of Development Agreement Number Two from JCKPL AC, LLC to DEVELOPER and to amend completion deadlines for the phases of the project, and to amend the ad valorem tax related grant; and

WHEREAS, the CITY has found that providing a program of incentives to DEVELOPER in exchange for DEVELOPER completing the Phase I-A Project will promote local economic development and stimulate business and commercial activity within the City of Arlington (hereafter referred to as PROGRAM); and

WHEREAS, the CITY has determined that the PROGRAM authorized by Resolution No. 13-146 will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that the public purpose is accomplished; and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the incentive provided herein; NOW THEREFORE,

The CITY and DEVELOPER for and in consideration of the mutual promises contained herein, do hereby agree as follows:

I.
DEFINITIONS

- A. “Base Year Value” is the taxable value of the land described by metes and bounds on **Exhibit “A”** on January 1, 2015, as established by final determination of the Tarrant Appraisal District. **Exhibit “A”** is attached to and incorporated into this Agreement for all purposes.
- B. “Capital Investment” means the amount of the investment in land and investment of the hard and soft costs in the design, construction, acquisition and installation of the Real Property Improvements and Personal Property Improvements on the Premises.
- C. “Consumer Price Index” means the U.S. Bureau of Labor Statistics index of the changes in the cost of goods and services paid by a typical consumer, expressed as the percentage change in the total cost of those same items over a previous base period.
- D. “Eligible Property” is defined as the taxable Premises and Real Property Improvements.
- E. “Grant” means payments from CITY to DEVELOPER.
- F. “Master Agreement” means that certain agreement titled “First Amended and Restated Master 380 Economic Development Program Agreement” authorized by City Council Resolution No. 13-146 on June 18, 2013, and amended by City Council Resolution No. 14-006 on January 21, 2014, and by City Council Resolution No. 14-300 on November 18, 2014.
- G. “Phase I-A Project” means the demolition of the existing Real Property Improvements located as of June 1, 2013 on the Premises and the redevelopment of the Premises through the construction of a new multi-family development with structured parking to include a minimum of 350 multi-family units, with a Capital Investment of not less than \$35 Million.
- H. “Premises” means the land described on **Exhibit “A”** attached hereto.
- I. “Project” is defined as the redevelopment of the entire property that is shown as Phase I, Phase II and Phase III on **Exhibit “B”** attached hereto. Such redevelopment shall include the demolition of the existing real property improvements located on the property as of June 1, 2013 and the redevelopment of the property through the construction of a new multi-family development to include a total of 1600 or more multi-family units and associated non-residential finished space as required by CITY’s Unified Development Code, with a Capital Investment of not less than \$130,000,000.

- J. “Real Property Improvements” means improvements to the Premises and shall include buildings, structures or fixtures erected or affixed to land or existing real property.
- K. “Taxable Value” means the assessed real property value determined by the Tarrant Appraisal District for each tax year during the term of this Agreement.

II.

IMPROVEMENT CONDITIONS AND REQUIREMENTS TO TRIGGER AD VALOREM TAX RELATED GRANT PAYMENT

In order to receive the Ad Valorem Tax Related Grant described in this Agreement, the following must occur:

- A. Demolition of the existing Real Property Improvements located as of June 1, 2013 on Phase I and Phase II properties, shown on **Exhibit “B”**, on or before June 30, 2015.
- B. DEVELOPER shall at all times maintain a Multi-Family License as required by Article XIV of the Uniform Housing Code Chapter of the Code of the City of Arlington.
- C. Construction of the Phase I-A Project with a total minimum Capital Investment of \$100,000 per multi-family unit in overall project costs. Construction of the Phase I-A Project shall be completed by June 30, 2018. Such date may be extended upon the written approval of the CITY; however, if such date is extended, the \$100,000 in minimum Capital Investment shall be adjusted every five (5) years based on the Consumer Price Index, or if the Consumer Price Index does not exist, a similar measurement to determine the equivalent amount of Capital Investment to equate to the minimum \$100,000 Capital Investment at the effective date of this Agreement.
- D. Issuance of all requisite certificates of occupancy for the completed Phase I-A Project; and
- E. Payment by DEVELOPER of the ad valorem taxes for the year to which the Grant request pertains; and
- F. Submission by DEVELOPER of a written request for payment of the Grant in accordance with subsection III (B)(1) of this Agreement.
- G. DEVELOPER has not commenced bankruptcy proceedings.

III.

AD VALOREM TAX RELATED GRANT

- A. CITY agrees to pay to DEVELOPER a Grant measured by and in the amount of ninety percent (90%) of the taxes paid by DEVELOPER on the value of Eligible

Property as established by final determination of the Tarrant Appraisal District (excluding the Base Year Value) for twenty (20) years starting in tax year beginning January 1, 2029 and ending in tax year beginning January 1, 2048 so long as conditions of the Grant are met and DEVELOPER has not breached on the terms of this Agreement.

- B. Provided all conditions and requirements of Article II herein have been met, and provided no breach of this Agreement has occurred, the Grant authorized in this Agreement shall be payable to DEVELOPER by CITY as follows:
1. DEVELOPER shall make written request to the Treasury Division of the City of Arlington for each Grant payment by way of the annual certification process on CITY's prescribed certification form. Each year, DEVELOPER must certify compliance by March 15 of payment in full of all real property taxes due for the completed Phase I-A Project, subject to the right of protest. Failure to timely submit the annual certification in accordance with this Article after notice and opportunity to cure as provided in Section VII (B) shall waive DEVELOPER's right to the Grant.
 2. Along with the written request, DEVELOPER shall provide the CITY proof of the amount of City of Arlington ad valorem taxes paid by DEVELOPER relating to the completed Phase I-A Project for the tax year to which the Grant request relates.
 3. The Grant payment will be paid to DEVELOPER annually, on or before June 1, after receipt by CITY of DEVELOPER's annual certification documents, including proof of DEVELOPER's full payment of all real property ad valorem taxes due for the completed Phase I-A Project each year during the term of this Agreement.
 4. The Grant payment authorized in this Agreement for any given year shall not exceed the amount of ad valorem taxes paid by DEVELOPER for the completed Phase I-A Project in that given year.
- C. DEVELOPER's right to request and receive the Grant described in this Agreement shall terminate upon the final Grant payment made in accordance with this Article III, if not sooner terminated in accordance with this Agreement.

IV. DEVELOPMENT GRANTS

- A. In exchange for the demolition of the existing apartments within the Phase I-A Project, CITY shall provide to DEVELOPER the following Grants:
1. An amount not to exceed \$400,000 measured by and in the amount of the actual costs for the detention and drainage improvements for the Project. The detention and drainage improvements will be installed as part of the

Phase I-A Project. DEVELOPER shall provide invoices or other evidence of payment for the detention and drainage improvements. CITY shall reimburse DEVELOPER for the actual cost, not to exceed \$400,000, for the detention and drainage improvements within thirty (30) days of DEVELOPER presenting CITY such said invoices or evidence; however, such Grant may not be requested by DEVELOPER until reasonable evidence is presented to the CITY's Economic Development Manager that debt and equity is in place for construction of the multi-family units in the Phase I-A Project. The Grant will be paid as detention and drainage improvements costs are incurred during the design and development of the Phase I-A Project.

2. An amount not to exceed \$1,808,592 measured by and in the amount of the actual costs of the demolition and environmental remediation of the existing structures located within the Phase I and Phase II properties Premises as shown in **Exhibit "B"** attached hereto. DEVELOPER shall provide invoices or other evidence of payment of the actual costs for the demolition and environmental remediation for Phase I-A Project. CITY shall reimburse DEVELOPER for the actual costs within thirty (30) days of presenting said invoices or evidence. The Grant will be paid as demolition and environmental remediation costs are incurred.

V. INDEMNIFICATION

- A. **It is understood and agreed between the parties that DEVELOPER, in performing DEVELOPER's respective obligations hereunder, is acting independently and CITY assumes no responsibility or liability to third parties arising or alleged to arise from this Agreement. DEVELOPER agrees to defend, indemnify and hold CITY harmless from any claims, damages, verdicts or judgments arising out of actions or omissions by DEVELOPER or caused by DEVELOPER in breach of this Agreement, but not otherwise; however, DEVELOPER will not indemnify or hold CITY harmless from any liabilities or responsibilities arising out of the CITY's breach of this Agreement or CITY's gross negligence or intentional misconduct.**
- B. **It is further understood and agreed among the parties that CITY, in performing its obligations hereunder, is acting independently and DEVELOPER does not assume any responsibility or liability allegedly arising from this Agreement and raised by third parties. However, DEVELOPER does assume responsibility and liability arising out of DEVELOPER's breach of this Agreement, and DEVELOPER accepts responsibility for DEVELOPER's gross negligence and intentional misconduct in connection with this Agreement.**

VI. INSPECTIONS

DEVELOPER agrees that CITY, its agents and employees shall have reasonable rights of access to the Premises and Phase I-A Project to inspect the Phase I-A Project and Real Property Improvements in order to insure that the construction of the Phase I-A Project and Real Property Improvements is in accordance with this Agreement and all applicable laws and regulations or that there has been a valid written waiver thereof. After completion of the Phase I-A Project and Real Property Improvements, CITY shall have the continuing right, subject to DEVELOPER's reasonable security requirements, to inspect the Phase I-A Project and Premises, the Real Property Improvements and DEVELOPER's pertinent business records to insure that the Phase I-A Project and Premises are thereafter maintained, operated, and occupied in compliance with this Agreement.

VII. BREACH AND TERMINATION

- A. Breach - A breach of this Agreement may result in termination of this Agreement. The following conditions shall constitute a breach of this Agreement:
1. The Premises are abandoned by DEVELOPER by ceasing to operate the Eligible Property as multi-family for a consecutive period of at least six months, or operating at an occupancy rate below 33% for a consecutive period of six months or more in years 5-30 after the Phase I-A Project is completed and a certificate of occupancy is issued; or
 2. DEVELOPER fails to complete and adhere to the DEVELOPER's Improvement Conditions and Requirements as specified in Article II above; or
 3. DEVELOPER allows its ad valorem taxes on any property located within the City of Arlington to become delinquent; or
 4. DEVELOPER fails to render for taxation any property located within the City of Arlington; or
 5. DEVELOPER fails to comply with the inspection requirements described in Article VI of this Agreement.
- B. Notice of Breach - In the event that CITY makes a reasonable determination that DEVELOPER has breached this Agreement then CITY shall give DEVELOPER written notice of such breach. DEVELOPER shall have sixty (60) days following receipt of said written notice to reasonably cure such breach or this Agreement may be terminated by CITY and future Grant payments withheld. Notice of default shall be in writing and shall be delivered by personal delivery or certified mail to DEVELOPER at the addresses provided in Article IX of this Agreement.

- C. Tax Lien Not Impaired - It is expressly agreed and acknowledged between the parties to this Agreement that nothing in this Agreement shall be deemed or construed to affect the lien for taxes against the property established by Section 32.01 of the Tax Code of the State of Texas. Such lien shall secure the payment of all taxes, penalties and interest ultimately imposed on the property, including any taxes abated and subject to recapture under this Agreement. Any such lien may be fully enforced pursuant to the provisions of the Code. For purposes of this Article VII, Section C, "property" refers to the Premises, Eligible Property and the Phase I-A Project described herein.

VIII. PROTESTS

This Agreement shall not be construed to prohibit DEVELOPER's protest or contest of any or all appraisals or assessments of any property in the Premises or Phase I-A Project, including Real Property Improvements thereon. The amount of the Grant provided in Article III above shall be based upon the real property taxes as finally determined by Tarrant Appraisal District to be due for the Premises and the Phase I-A Project after such protest or contest is finally determined.

IX. NOTICE

Notices required to be given to any party to this Agreement shall be delivered by hand delivery by a reputable delivery service or by certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and shall be deemed delivered as of the date of delivery or date deposited in the United States Mail:

DEVELOPER: Arlington Commons Lands, LLC
3104-7 North Collins Street
Arlington, Texas 76005
Attention: Robert H. Kembel

WITH A Winstead PC
COPY TO: 500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
Attention: Barry R. Knight

CITY: City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231
Attention: Economic Development Manager

Any party may change the address and add additional parties to whom notice will be sent by giving the other parties written notice in the manner provided in this Article.

**X.
ANNUAL CERTIFICATION**

Not later than the 15th day of March, after the issuance of all certificates of occupancy for each Sub-Phase Project, and not later than the 15th day of March annually thereafter, DEVELOPER shall certify to the CITY compliance with each applicable term of this Agreement in the form required by the CITY for that Sub-Phase Project.

**XI.
AUTHORITY**

This Agreement is part of a Chapter 380 Economic Development Program authorized by Resolution No. 13-146 of the Arlington City Council, and shall constitute a valid and binding agreement between CITY and DEVELOPER upon execution.

**XII.
MODIFICATION**

This Agreement may be modified by DEVELOPER and CITY by using the same procedure for approval of the modification as is required for entering into the Agreement.

**XIII.
FORCE MAJEURE**

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities (TXU Electric, Southwestern Bell Telephone, TXU Gas, AT&T Cable Services or their contractors), fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or 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 circumstance is 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 performance under this agreement shall be extended for a period of time equal to the period such party was delayed.

**XIV.
VENUE AND GOVERNING LAW**

This Agreement is performable in Tarrant County, Texas and venue of any action arising out of this Agreement shall be exclusively in Tarrant County. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

**XV.
LEGAL CONSTRUCTION**

In case 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 any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement. Should any provision of this Agreement be in conflict with a provision of the Master Agreement, this Agreement shall apply as to the specific conflicting provision; in all other instances the Master Agreement and this Agreement shall both apply.

**XVI.
COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**XVII.
CAPTIONS**

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

**XVIII.
SUCCESSORS AND ASSIGNS**

The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. It is intended by the parties hereto that this Agreement may be assigned by DEVELOPER to a successor owner and/or party only with prior written approval of the City Council, which approval will not be unreasonably withheld or delayed. Assignments to related entities where The Nehemiah, LLC is the general partner or managing member shall be expressly allowed without City Council approval.


**XIX.
AUTHORITY**

This Agreement was authorized by Resolution No. 14- 302 of the Arlington City Council, authorizing the City Manager to execute this Agreement on behalf of the CITY and shall constitute a valid and binding agreement between CITY and DEVELOPER upon execution.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on the date indicated below, effective as of the later of such dates.

**ARLINGTON COMMONS LANDS,
LLC**


a Texas Limited Liability Company
By its member: The Nehemiah, LLC
a Texas Limited Liability Company

BY 
Robert H. Kembel
Manager of The Nehemiah, LLC
Date 12-9-2014


WITNESS:



CITY OF ARLINGTON, TEXAS

BY 
Theron L. Bowman Ph.D.
Deputy City Manager
Date 01/12/2015

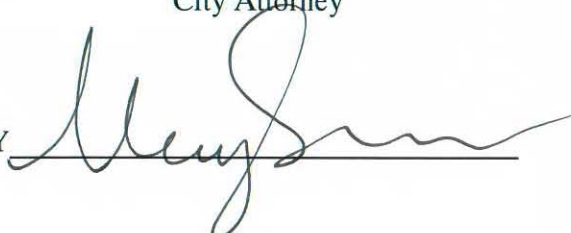
ATTEST:



MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:

City Attorney

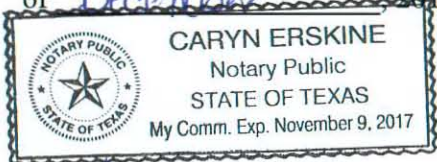
BY 

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

ARLINGTON COMMONS LANDS, LLC
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **ROBERT H. KEMBEL**, Manager of The Nehemiah, LLC, a Texas limited liability company, member of ARLINGTON COMMON LANDS, LLC, a Texas limited liability company, known to me (or proved to me on the oath of _____ or through Texas Driver's License (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of **ARLINGTON COMMONS LANDS, LLC**, an entity duly authorized to do business in the State of Texas, and as the **Manager of The Nehemiah, LLC**, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 30th day of December, 2014.



11/9/2017
My Commission Expires

Caryn Erskine
Notary Public in and for
The State of Texas
Caryn Erskine
Notary's Printed Name

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Theron LaBowman known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON, TEXAS**, a municipal corporation of Tarrant County, Texas, and as the **Deputy City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 12th day of January, 2014.

7/1/18
My Commission Expires

Anna C. Pines
Notary Public in and for
The State of Texas
Anna C. Pines
Notary's Printed Name

Exhibit "A"

LEGAL DESCRIPTION

Being a 10.278 acre tract of land situated in the J.M. Henderson Survey, Abstract No. 696, being all of Tract A-R, Block 5, Parkway Central, an addition to the City of Arlington, Tarrant County, Texas, as recorded in Volume 388-53, Page 96, Plat Records, Tarrant County, Texas, conveyed by deed to PNA Apartments, L.P. as recorded in Instrument No. D203438723, Deed Records, Tarrant County, Texas. Said 4.196 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a chiseled "x" in concrete found (Controlling Monument) for the southwest corner of said Tract A, Block 6, being the intersection of the north right-of-way line of Lamar Drive (a 120 foot R.O.W.) and the east right-of-way line of Van Buren Drive (a 60 foot R.O.W.);

THENCE South $56^{\circ}34'00''$ West, a distance of 684.98 feet to a for the beginning of a tangent curve to the right having a radius of 786.70 feet, a central angle of $14^{\circ}20'16''$, and a long chord which bears South $63^{\circ}44'09''$ West, 196.35 feet;

THENCE along said curve to the right, an arc distance of 196.86 feet to a to a ;

THENCE North $00^{\circ}11'11''$ West, a distance of 393.09 feet to a ;

THENCE North $89^{\circ}04'55''$ East, a distance of 132.51 feet to a ;

THENCE North $05^{\circ}05'41''$ West, a distance of 593.53 feet to a ;

THENCE North $88^{\circ}11'19''$ East, a distance of 380.87 feet to a ;

THENCE North $89^{\circ}55'45''$ East, a distance of 128.86 feet to a ;

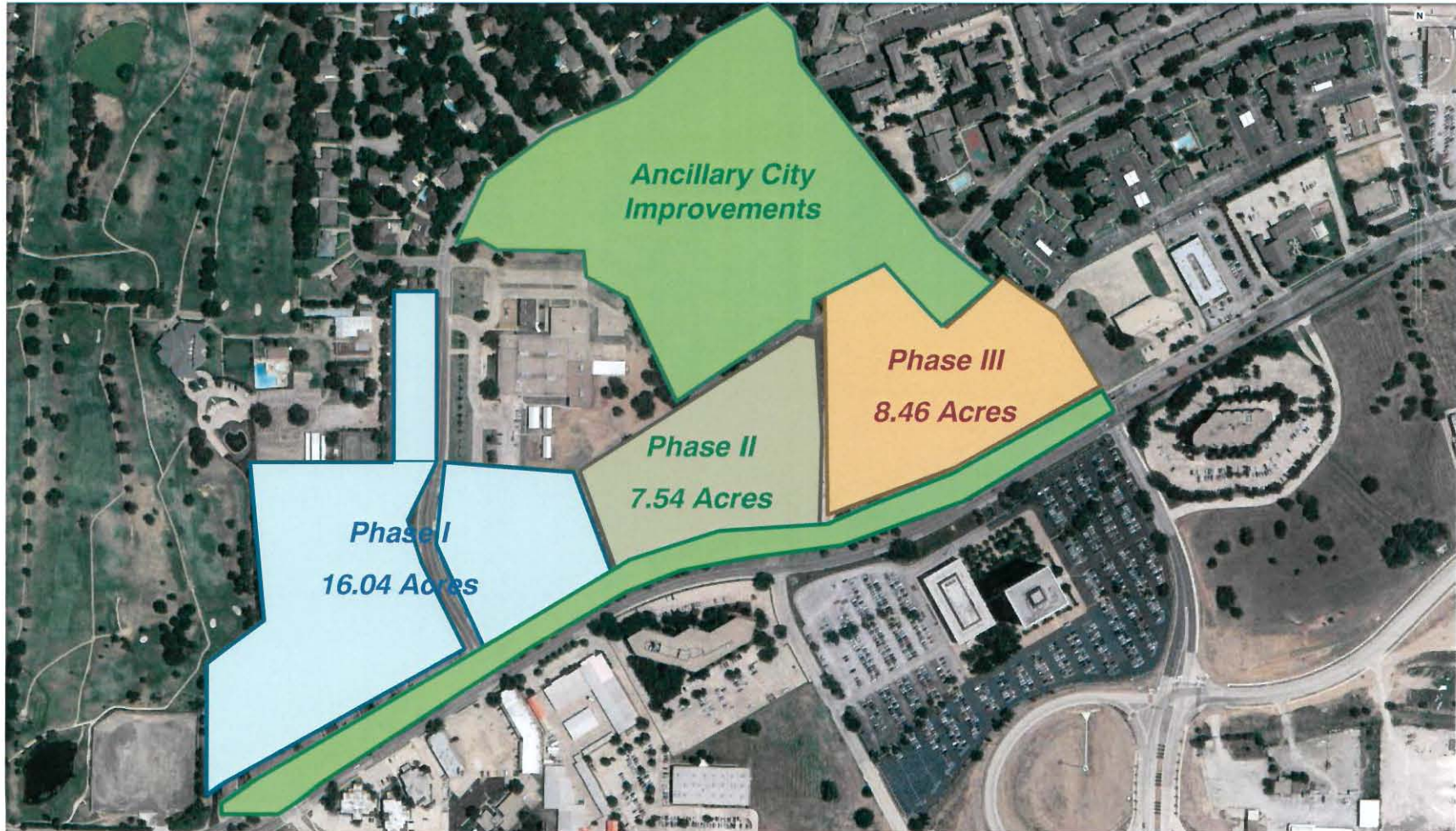
THENCE South $11^{\circ}32'15''$ West, a distance of 65.85 feet to a for the beginning of a tangent curve to the left having a radius of 392.13 feet, a central angle of $44^{\circ}59'58''$, and a long chord which bears South $10^{\circ}57'45''$ East, 300.12 feet;

THENCE along said curve to the left, an arc distance of 307.97 feet to a ;

THENCE South $33^{\circ}27'44''$ East, a distance of 209.94 feet to a for the POINT OF BEGINNING and CONTAINING 447689 square feet, 10.28 acres of land, more or less.

Exhibit B

Project With Phasing



STATE OF TEXAS §
 §
COUNTY OF TARRANT §

**First Amended and Restated
Development Agreement Number Three**

THIS FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT NUMBER THREE (“Agreement”) is entered into by and between the **CITY OF ARLINGTON**, a Texas municipal corporation of Tarrant County, Texas (hereinafter referred to as “CITY”), and **ARLINGTON COMMONS LANDS, LLC** (hereafter referred to as “DEVELOPER”), a Texas Limited Liability Company, jointly referred to as the Parties.

WITNESSETH:

WHEREAS, on February 11, 2014, by Resolution 14-026, City Council approved Development Agreement Number Three with JCKPL AC, LLC for economic development incentives associated with redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington, Texas; and

WHEREAS, JCKPL AC, LLC, as authorized by Article XIII of Development Agreement Number Three, assigned all rights and obligations under Development Agreement Number Three to DEVELOPER; and

WHEREAS, the CITY and DEVELOPER desire to amend Development Agreement Number Three to reflect the assignment of Development Agreement Number Three from JCKPL AC, LLC to Arlington Commons Lands, LLC and to amend completion deadlines for the phases of the project, and to amend the ad valorem tax related grant; NOW THEREFORE

In accordance with the Master 380 Economic Development Program Agreement authorized by Resolution 13-146, as amended by Resolution No. 14-005 and Resolution No. 14-006 and in consideration of the mutual covenants and obligations herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**I.
Definitions**

- A. **“Closing”** means the consummation of the sale by DEVELOPER of the Option Property as provided herein.
- B. **“Grant”** means the grant provided in Section II.A. hereof.
- C. **“Master Agreement”** means that certain agreement titled Master 380 Economic Development Program Agreement authorized by City Council Resolution No. 13-146 on June 18, 2013 and amended by City Council Resolution No. 14-005 on

January 21, 2014 and City Council Resolution No. 14-300 on November 18, 2014.

- D. **“Option Property”** means the real property described in **Exhibit “B”** attached hereto.
- E. **“Phase I-A Project”** means the demolition of the existing real property improvements located as of June 1, 2013 on Phase I of the Premises as shown on **Exhibit “A”** attached hereto, and the redevelopment of Phase I of the Premises through the construction of a new multi-family development to include a minimum of 350 multi-family units, with a Capital Investment of not less than \$35,000,000.00.
- F. **“Premises”** means the land that is shown as Phase IA, Phase IB, Phase IC, Phase II and Phase III and described on **Exhibit “A”** attached hereto.

II. Grant

- A. Grant for Difference in Purchase Price of Option Property. In exchange for the demolition of the existing apartment complexes located on Phase I and Phase II of the Premises, and completed construction of the Phase I-A Project, CITY shall provide to DEVELOPER a grant not to exceed \$5,000,000. Such grant shall be payable to DEVELOPER only if the Option Property is sold by DEVELOPER. The amount of such grant shall be an amount equal to the difference between \$7,000,000 and the greater of the following: (i) actual purchase price of said Option Property, or (ii) the fair market value of the Option Property as determined by an independent fee appraisal, the appraiser of which shall be from one of the following firms: CBRE or Integra Realty Resources, Inc. and licensed in the State of Texas. The appraisal will be prepared at the time the Option Property is listed for sale. DEVELOPER shall be eligible to request such grant only if the DEVELOPER meets the following conditions and requirements:
 - 1. All existing structures located on the real property associated with Phase I and Phase II as of January 1, 2014 have been demolished by June 30, 2015.
 - 2. A certificate of occupancy has been obtained for the first 350 multi-family units associated with Phase I, the Phase I-A Project, by June 30, 2018.
 - 3. DEVELOPER’s sale of the Option Property must occur no sooner than the date on which a certificate of occupancy has been obtained for the Phase I-A Project; and no later than three years from date the certificate of occupancy is obtained or the date on which construction plans are submitted for a building permit for Phase IC, whichever is earlier.
- B. Eligibility for Additional Incentives. If the CITY is not called upon to pay the grant, as provided in section II.A. above and DEVELOPER has provided notice to

CITY that it is not seeking the grant or the timeframe to request such has expired, then the CITY shall contribute an additional \$2,500,000 toward public improvements determined and designed jointly by the CITY and DEVELOPER as described in section III.H. of the Master Agreement. The DEVELOPER shall also be eligible to receive a grant in an amount not to exceed \$350,000 as reimbursement for the actual cost of detention and drainage improvements that are not reimbursed by the grant described in section III.C. of the Master Agreement, and a grant in an amount not to exceed \$2,100,000 as reimbursement for the actual cost of demolition and remediation that is not reimbursed by the grant described in section III.D. of the Master Agreement.

1. The grant not to exceed \$350,000 for reimbursement of detention and drainage improvements shall be measured by and in the amount of the actual costs for detention and drainage improvements for the Project that were not reimbursed under Development Agreement Number Two. DEVELOPER shall provide invoices and other evidence of payment for the detention and drainage improvements. If DEVELOPER is eligible to receive such grant the CITY shall reimburse DEVELOPER for the actual costs, not previously reimbursed, in an amount not to exceed \$350,000, within thirty (30) days of DEVELOPER presenting CITY such said invoices or evidence.
 2. A grant not to exceed \$2,100,000 for reimbursement of demolition and environmental remediation of the existing structures located within Phase I, II and III that is not reimbursed by the grant described in section III.D of the Master Agreement. DEVELOPER shall provide invoices and other evidence of payment for the actual costs for the demolition and environmental remediation. If eligible to receive such grant the CITY shall reimburse DEVELOPER \$2,100,000 in seven annual installments of \$300,000 for the actual costs not to exceed \$2,100,000 with the first installment to be paid within thirty (30) days of notice by DEVELOPER to CITY that CITY is not called upon to pay the grant provided for in section II.A and presenting said invoices or evidence. The remaining six annual installments of \$300,000 shall be payable on or before the anniversary date of the first installment payment date until DEVELOPER is fully reimbursed for the actual costs of demolition and environmental remediation not to exceed \$2,100,000. The CITY at its option may prepay said installment payments.
- C. Ad Valorem Tax Rebate for Phase IC, Phase II and Phase III. If the CITY is called upon to pay the grant, as provided in section II.A. above, the DEVELOPER shall not be eligible to receive the grants related to ad valorem taxes or tax abatement, as provided for in the Master Agreement, for Phase IC, Phase II and Phase III. Nor shall the DEVELOPER be eligible for waiver of any development fees associated with Phase IC, Phase II or Phase III, as provided in section III.G. of the Master Agreement, after Closing.

III.
Payment Procedure for Grant

- A. Subject to all limitations and conditions precedent contained in this Agreement, CITY agrees to pay to DEVELOPER the grant in accordance with the following procedure:
1. DEVELOPER shall provide a copy of the real estate purchase contract evidencing the purchase price of the Option Property to CITY at least 45 days before the Closing of the sale of the Option Property.
 2. DEVELOPER shall submit a written request for payment of the Grant along with required documentation to the Chief Financial Officer for the City of Arlington and the Economic Development Manager for the City of Arlington. The term "required documentation" means the executed Closing documents demonstrating that the DEVELOPER has conveyed fee simple ownership of the Option Property.
- B. DEVELOPER'S request for payment of the grant must be submitted to the Chief Financial Officer for CITY within thirty (30) days of Closing. CITY will pay to DEVELOPER the grant within sixty (60) days of CITY's receipt of DEVELOPER's written request along with the required documentation.

IV.
Force Majeure

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities (TXU Electric, Southwestern Bell Telephone, TXU Gas, AT&T Cable Services or their contractors), fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or 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 circumstance is 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 performance under this agreement shall be extended for a period of time equal to the period such party was delayed.

V.
Term

The term of this Agreement shall begin upon the execution by CITY and DEVELOPER and shall terminate upon the date that all obligations under this Agreement have been fulfilled or upon the date the Agreement is otherwise terminated in accordance with this Agreement.

VI.
Breach and Recapture

- A. Breach – A breach of this Agreement by DEVELOPER may result in termination of this Agreement. The following conditions shall constitute a breach of this Agreement:

DEVELOPER’S failure to successfully complete demolition of the existing structures within Phase I and Phase II by June 30, 2015 shall constitute a breach of this Agreement.

DEVELOPER’S failure to successfully complete the construction of the Phase I-A Project by June 30, 2018 shall constitute a breach of this agreement.

- B. Notice of Breach – In the event that CITY makes a reasonable determination that DEVELOPER has breached this Agreement as provided herein, then CITY shall give DEVELOPER written notice of such default. DEVELOPER has sixty (60) days following receipt of said written notice to reasonably cure such breach or this Agreement may be terminated by CITY. Notice of default shall be in writing and shall be delivered by personal delivery or certified mail to DEVELOPER at the address provided in Article VIII of this Agreement.

VII.
Venue and Governing Law

This Agreement is performable in Tarrant County, Texas and venue of any action arising out of this Agreement shall be exclusively in Tarrant County. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

VIII.
Notices

Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mail by certified letter, return receipt requested, addressed to the recipient at the recipient’s address shown below or by hand delivery, subject to the right of either party to designate a different address by notice given in the manner just described.

DEVELOPER: Arlington Commons Lands, LLC
3104-7 North Collins Street
Arlington, Texas 76005
Attention: Robert H. Kembel

WITH A Winstead PC
COPY TO: 500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
Attention: Barry R. Knight

CITY: City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231
Attention: Economic Development Manager

IX.
Applicable Laws

This Agreement is made subject to the provisions of the City's Charter and ordinances, as amended, and all applicable Texas and Federal laws.

X.
Legal Construction

In case 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 any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement. Should any provision of this Agreement be in conflict with a provision of the Master Agreement, this Agreement shall apply as to the specific conflicting provision; in all other instances the Master Agreement and this Agreement shall both apply.

XI.
Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XII.
Captions

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

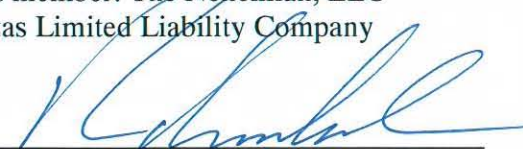
XIII.
Successors and Assigns

The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. It is intended by the parties hereto that this Agreement may be assigned by DEVELOPER to a successor owner and/or party only with prior written approval of the City Council, which approval will not be unreasonably withheld or delayed. Assignments to related entities where The Nehemiah, LLC is the general partner or managing member shall be expressly allowed without City Council approval.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on the date indicated below, effective as of the later of such dates.

**ARLINGTON COMMONS LANDS,
LLC**


a Texas Limited Liability Company
By its member: The Nehemiah, LLC
a Texas Limited Liability Company

BY 
Robert H. Kembel
Manager of The Nehemiah, LLC
Date 12-9-2014


WITNESS:



CITY OF ARLINGTON, TEXAS

BY 
Theron L. Bowman Ph.D.
Deputy City Manager
Date 01/12/2015

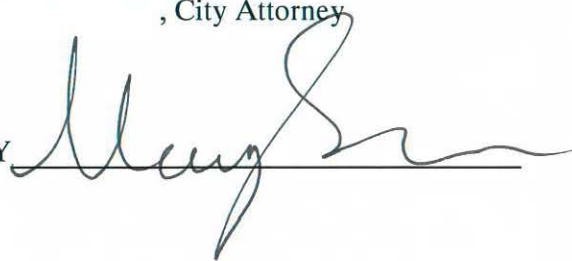
ATTEST:



MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:

, City Attorney

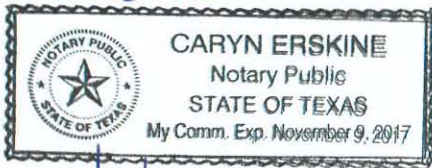
BY 

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

ARLINGTON COMMONS LANDS, LLC
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **ROBERT H. KEMBEL**, Manager of The Nehemiah, LLC, a Texas limited liability company, member of ARLINGTON COMMON LANDS, LLC, a Texas limited liability company, known to me (or proved to me on the oath of _____ or through Texas Driver's License (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of **ARLINGTON COMMONS LANDS, LLC**, an entity duly authorized to do business in the State of Texas, and as the **Manager of The Nehemiah, LLC**, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 30th day of December, 2014.



11/9/2017
My Commission Expires

Caryn Erskine
Notary Public in and for
The State of Texas
Caryn Erskine
Notary's Printed Name

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Theron L. Bowman known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON, TEXAS**, a municipal corporation of Tarrant County, Texas, and as the **Deputy City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 12th day of January, 2014.
2015

7/1/18
My Commission Expires

Ann Cheryl Riney
Notary Public in and for
The State of Texas
Ann Cheryl Riney
Notary's Printed Name

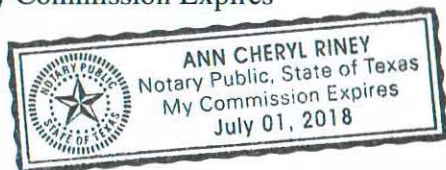


EXHIBIT A

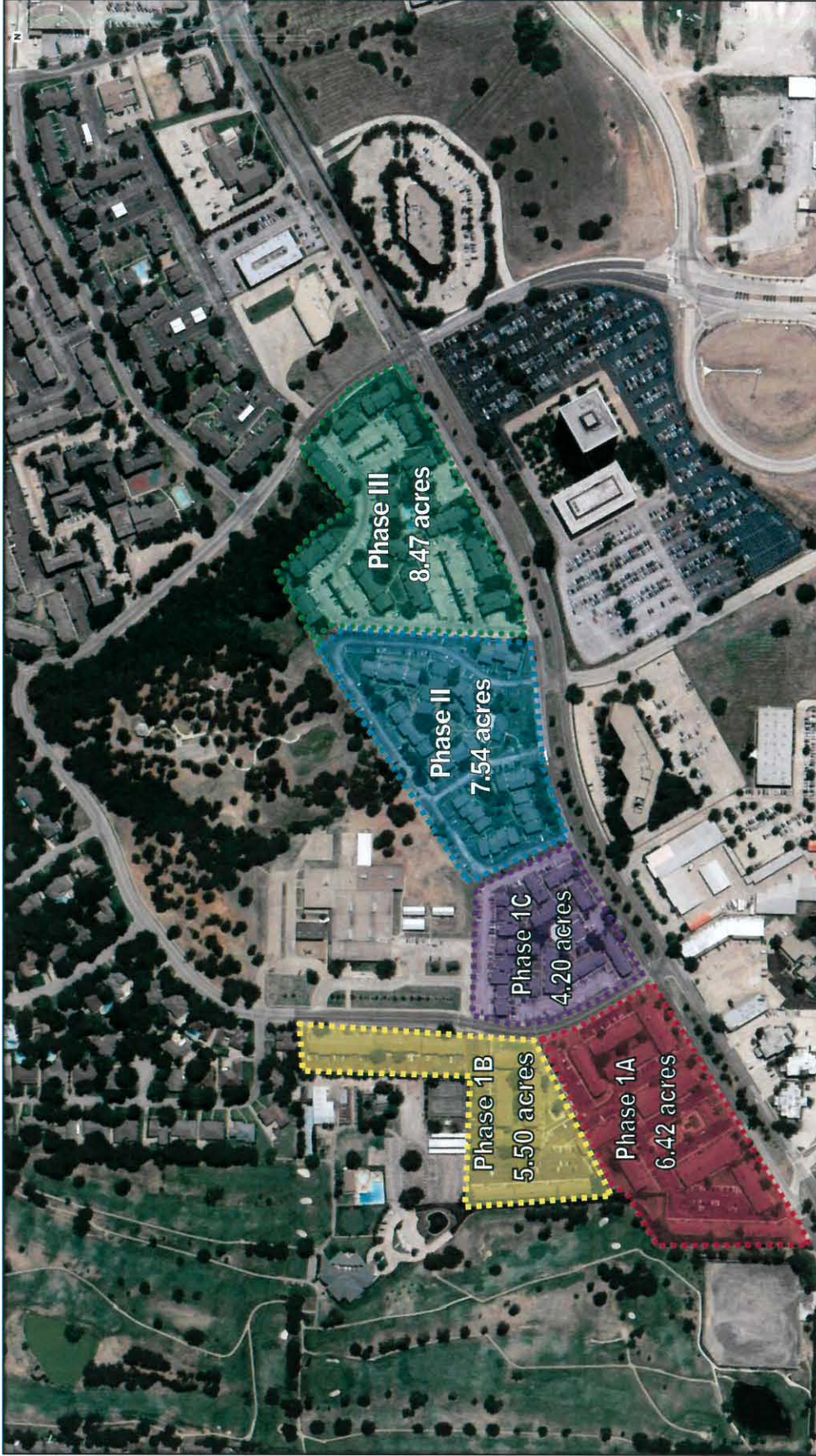


EXHIBIT "B"

Option Property

Country Wood

Being a tract of land situated in the J.M. Henderson Survey, Abstract No. 696 being all of Tract B, block 6 Parkway Central an addition to the City of Arlington, Texas, according to the Plat thereof recorded in Volume 399-53, page 96, plat records Tarrant County, Texas.

The Pointe

Being a tract of land situated in the J.M. Henderson Survey, Abstract No. 696, being all of Tract A, Block 6, PARKWAY CENTRAL, an Addition to the City of Arlington, Texas, according to the Plat thereof recorded in Volume 388-53, Page 96, Plate Records, Tarrant County, Texas.

THE STATE OF TEXAS § First Amended and Restated
 § Development Agreement Number Four -
COUNTY OF TARRANT § Ancillary City Improvements

THIS FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT NUMBER FOUR - ANCILLARY CITY IMPROVEMENTS (“Agreement”) is entered into by and between **ARLINGTON COMMONS LANDS, LLC**, a Texas limited liability company, (hereafter referred to as “DEVELOPER”), and the **CITY OF ARLINGTON, TEXAS**, a home-rule city and municipal corporation of Tarrant County, Texas, acting by and through its City Manager or his designee, (hereafter referred to as “CITY”).

WITNESSETH:

WHEREAS, on September 18, 2018, by Resolution 18-240, City Council approved a Third Amended and Restated Master 380 Economic Development Program Agreement with DEVELOPER relative to economic development incentives associated with demolition, remediation, and redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington (hereafter referred to as the “Project”); and

WHEREAS, in accordance with Section III(H) and III(J) of the Third Amended and Restated Master 380 Economic Development Program Agreement, the CITY is to provide funding for Ancillary Improvements (defined herein) jointly designed by the CITY and DEVELOPER; and

WHEREAS, on January 3, 2017, by Resolution 17-009, City Council approved Development Agreement Number Four - Ancillary Improvements with DEVELOPER (hereafter referred to as the “Original Agreement”) relative to economic development incentives associated with the Project; and

WHEREAS, on October 9, 2017, DEVELOPER provided notice to the CITY that DEVELOPER is not seeking the Five Million Dollar (\$5,000,000) grant for the difference in the purchase price of certain Option Property (as such term is defined in the First Amended and Restated Development Agreement Number Three) pursuant to Section II.A. of the First Amended and Restated Development Agreement Number Three; and

WHEREAS, CITY and DEVELOPER desire to amend the Original Agreement to increase the scope of the ancillary improvements and incentives provided by the CITY; and

WHEREAS, the CITY has found that providing a program of incentives to DEVELOPER in exchange for DEVELOPER completing the Project will promote local economic development and stimulate business and commercial activity within the City of Arlington (hereafter referred to as “PROGRAM”); and

WHEREAS, the CITY has determined that the PROGRAM will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that the public purpose is accomplished; and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the incentive provided herein; NOW THEREFORE,

The CITY and DEVELOPER, for and in consideration of the mutual promises contained herein, do hereby agree as follows:

I. DEFINITIONS

- A. "Ancillary Improvements" are the public improvements in the median and right-of-way along Lamar Boulevard between Cooper Street and Lincoln Drive further detailed in **Exhibit "A."** **Exhibit "A"** is attached hereto and incorporated herein for all intents and purposes.
- B. "Phase 1 Ancillary Improvements" means the portion of the Ancillary Improvements identified in **Exhibit "A"** as Phase 1.
- C. "Phase 1 Grant" means the grant identified in Section III(H) of the Second Amended and Restated Master 380 Economic Development Program Agreement between the CITY and DEVELOPER, provided to DEVELOPER in exchange for DEVELOPER's Project, in an amount not to exceed One Million Two Hundred Fifty Thousand Dollars (\$1,250,000).
- D. "Phase 2A Ancillary Improvements" means the portion of the Ancillary Improvements identified in **Exhibit "A"** as Phase 2A.
- E. "Phase 2A Grant" means a portion of the grant identified in Section III(J) of the Second Amended and Restated Master 380 Economic Development Program Agreement between the CITY and DEVELOPER, provided to DEVELOPER in exchange for DEVELOPER's Project, in an amount not to exceed One Million Five Hundred Eighty-Two Thousand Twenty-Four Dollars (\$1,582,024).
- F. "Phase 2B Ancillary Improvements" means the portion of the Ancillary Improvements identified in **Exhibit "A"** as Phase 2B.
- G. "Phase 2B Grant" means a portion of the grant identified in Section III(J) of the Second Amended and Restated Master 380 Economic Development Program Agreement between the CITY and DEVELOPER, provided to DEVELOPER in

exchange for DEVELOPER's Project, in an amount not to exceed Nine Hundred Seventeen Thousand Nine Hundred and Seventy-Six Dollars (\$917,976).

- H. "Phase 3 Ancillary Improvements" means the portion of the Ancillary Improvements identified in **Exhibit "A"** as Phase 3.
- I. "Phase 3 Grant" means a grant provided to DEVELOPER in exchange for DEVELOPER's Project, in an amount not to exceed Five Hundred and Eighty-One Thousand Nine Hundred and Fifty-Three Dollars (\$591,953).
- J. "Phase I-A Project" means the demolition of the existing Real Property Improvements located as of June 1, 2013, on the Premises and the redevelopment of the Premises through the construction of a new multi-family development with structured parking to include a minimum of 350 multi-family units, with a Capital Investment of not less than \$35,000,000.
- K. "Phase I-C Project" means the redevelopment of the Premises through the construction of a new multi-family development on the portion of the Premises identified as Phase I-C.
- L. "Premises" means the land that is shown as Phase IA, Phase IB, Phase IC, Phase II, and Phase III on **Exhibit "B"** attached hereto.

II.

CONDITIONS AND REQUIREMENTS

- A. Before the CITY makes any disbursements of the Phase 1 Grant, the DEVELOPER must cause the following to occur:
 - 1. Construction of the Phase I-A Project has commenced as evidenced by obtaining all required building permit(s) for the Phase I-A Project and issuing a notice to proceed to the general contractor.
 - 2. All necessary three-way contracts for construction of the Phase 1 Ancillary Improvements in the CITY's right-of-way have been executed.
 - 3. DEVELOPER has paid all ad valorem taxes owed on any property owned by DEVELOPER in the City of Arlington.
 - 4. DEVELOPER remains solvent, and has not commenced bankruptcy proceedings.
- B. Before the CITY makes any disbursements of the Phase 2A Grant, the DEVELOPER must cause the following to occur:
 - 1. All requisite certificates of occupancy for the completed Phase I-A Project have been obtained.

2. Construction of the Phase I-C Project has commenced as evidenced by obtaining all required building permit(s) for the Phase I-C Project and issuing a notice to proceed to the general contractor.
 3. All necessary three-way contracts for construction of the Phase 2A Ancillary Improvements in the CITY's right-of-way have been executed.
 4. DEVELOPER has paid all ad valorem taxes owed on any property owned by DEVELOPER in the City of Arlington.
 5. DEVELOPER remains solvent, and has not commenced bankruptcy proceedings.
- C. Before the CITY makes any disbursements of the Phase 2B Grant, the DEVELOPER must cause the following to occur:
1. All requisite certificates of occupancy for the completed Phase I-A Project have been obtained.
 2. Construction of the Phase I-C Project has commenced as evidenced by obtaining all required building permit(s) for the Phase I-C Project and issuing a notice to proceed to the general contractor.
 3. All necessary three-way contracts for construction of the Phase 2B Ancillary Improvements in the CITY's right-of-way have been executed.
 4. DEVELOPER has paid all ad valorem taxes owed on any property owned by DEVELOPER in the City of Arlington.
 5. DEVELOPER remains solvent, and has not commenced bankruptcy proceedings.
- D. Before the CITY makes any disbursements of the Phase 3 Grant, the DEVELOPER must cause the following to occur:
1. Construction of the Phase I-A Project has commenced as evidenced by obtaining all required building permit(s) for the Phase I-A Project and issuing a notice to proceed to the general contractor.
 2. All necessary three-way contracts for construction of the Phase 3 Ancillary Improvements in the CITY's right-of-way have been executed.
 3. DEVELOPER has paid all ad valorem taxes owed on any property owned by DEVELOPER in the City of Arlington.
 4. DEVELOPER remains solvent, and has not commenced bankruptcy proceedings.

**III.
GRANT DISBURSEMENTS**

- A. Provided the applicable conditions and requirements delineated in Article II herein have been met, and provided DEVELOPER is not in default of this Agreement, DEVELOPER may request disbursements, no more frequently than once per month, of the Phase 1 Grant, Phase 2A Grant, Phase 2B Grant, and Phase 3 Grant in the following manner:
1. DEVELOPER shall make written request to the Treasury Division of the CITY for payment for the design, development, and construction of the Ancillary Improvements.
 2. DEVELOPER shall provide draw requisitions for the cost of work in progress for which DEVELOPER requests payment. After the initial payment is made by the CITY, each subsequent draw requisition from DEVELOPER must include documentation demonstrating that the previous payment was utilized by DEVELOPER to pay for the cost of work.
 3. Five percent (5%) retainage will be held from each payment until releases of liens and all close out documents have been provided to the CITY.
- B. If DEVELOPER completes construction of any one phase of the Ancillary Improvements and the total requested disbursements for such phase is less than the total grant amount identified for such phase ("Grant Savings") then the DEVELOPER may draw on the Grant Savings in a subsequent phase. Parties agree that the final design of each phase maybe adjusted to fit the budget.

**IV.
INDEMNIFICATION**

- A. It is understood and agreed between the parties that DEVELOPER, in performing DEVELOPER's respective obligations hereunder, is acting independently and CITY assumes no responsibility or liability to third parties arising or alleged to arise from this Agreement. DEVELOPER agrees to defend, indemnify, and hold CITY harmless from any claims, damages, verdicts, or judgments arising out of actions or omissions by DEVELOPER or caused by DEVELOPER in breach of this Agreement, but not otherwise; however, DEVELOPER will not indemnify or hold CITY harmless from any liabilities or responsibilities arising out of the CITY's breach of this Agreement or CITY's gross negligence or intentional misconduct.
- B. It is further understood and agreed among the parties that CITY, in performing its obligations hereunder, is acting independently and DEVELOPER does not assume any responsibility or liability allegedly

arising from this Agreement and raised by third parties. However, DEVELOPER does assume responsibility and liability arising out of DEVELOPER's breach of this Agreement, and DEVELOPER accepts responsibility for DEVELOPER's gross negligence and intentional misconduct in connection with this Agreement.

V. INSPECTIONS

DEVELOPER agrees that CITY, its agents, and employees shall have reasonable rights of access to the Premises to inspect the Project in order to ensure that the construction of the Project is in accordance with this Agreement and all applicable laws and regulations or that there has been a valid written waiver thereof.

VI. DEFAULT AND TERMINATION

- A. Default - A default of this Agreement may result in termination of this Agreement. The following conditions shall constitute a default of this Agreement:
1. DEVELOPER fails to complete and adhere to the Conditions and Requirements as specified in Article II above; or
 2. DEVELOPER fails to comply with the inspection requirements described in Article V of this Agreement.
- B. Notice of Default - In the event that CITY makes a reasonable determination that DEVELOPER is in default of this Agreement then CITY shall give DEVELOPER written notice of such. DEVELOPER shall have sixty (60) days following receipt of said written notice to reasonably cure such default or this Agreement may be terminated by CITY and/or future grant payments for the Ancillary Improvements withheld. Notice of default shall be in writing and shall be delivered by personal delivery or certified mail, return receipt requested, to DEVELOPER at the addresses provided in Article VII of this Agreement.

VII. NOTICE

Notices required to be given to any party to this Agreement shall be delivered by hand delivery by a reputable delivery service or by certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and shall be deemed delivered as of the date of delivery or date deposited in the United States Mail:

DEVELOPER: Arlington Commons Lands, LLC
Attention: Robert H. Kembel
835 E. Lamar Blvd., #254
Arlington, Texas 76011

WITH A Winstead PC
COPY TO: Attention: Barry R. Knight
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201

CITY: City of Arlington
Attention: Economic Development Manager
P.O. Box 90231
Arlington, Texas 76004-3231

Any party may change the address and add additional parties to whom notice will be sent by giving the other parties written notice in the manner provided in this Article.

VIII. FORCE MAJEURE

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities (Oncor Electric, AT&T Telephone, Atmos Gas, AT&T Cable Services, or their contractors), fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or 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 circumstance is 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 performance under this agreement shall be extended for a period of time equal to the period such party was delayed.

IX. VENUE AND GOVERNING LAW

This Agreement is performable in Tarrant County, Texas, and venue of any action arising out of this Agreement shall be exclusively in Tarrant County. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

Nothing in this Agreement shall constitute a replacement or substitute for, or otherwise excuse the DEVELOPER from (a) all permitting processes of Federal, state, or local governmental entity, authority, or agency applicable to the Phase I or Phase II Ancillary Improvements, or (b) any regulatory, permitting, zoning, enforcement,

licensing, or other governmental function of the City of Arlington relative to the Phase I or Phase II Ancillary Improvements.

**X.
LEGAL CONSTRUCTION**

In case 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 any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement. Should any provision of this Agreement be in conflict with a provision of the Master Agreement, this Agreement shall apply as to the specific conflicting provision; in all other instances the Master Agreement and this Agreement shall both apply.

**XI.
COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**XII.
CAPTIONS**

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

**XIII.
SUCCESSORS AND ASSIGNS**

The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. It is intended by the parties hereto that this Agreement may be assigned by DEVELOPER to a successor owner and/or party only with prior written approval of the City Council, which approval will not be unreasonably withheld or delayed. Assignments to related entities where The Nehemiah, LLC is the general partner or managing member shall be expressly allowed without City Council approval.

**XIV.
REMEDIES**

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this agreement may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Agreement.

**XV.
NO THIRD-PARTY BENEFICIARIES**

For purposes of this Agreement, including its intended operation and effect, the parties specifically agree that: (1) this Agreement only affects matters/disputes between the parties to this Agreement, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with CITY or DEVELOPER or both; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either CITY or DEVELOPER.

**XVI.
PROCUREMENT OF GOODS AND SERVICES FROM ARLINGTON
BUSINESSES AND/OR HISTORICALLY UNDERUTILIZED BUSINESSES**

In performing this Agreement, DEVELOPER agrees to use diligent efforts to purchase all goods and services from Arlington or Tarrant County businesses whenever such goods and services are comparable in availability, quality, and price.

As a matter of policy with respect to CITY projects and procurements, CITY also encourages the use, if applicable, of qualified contractors, subcontractors, and suppliers where at least fifty-one percent (51%) of the ownership of such contractor, subcontractor, or supplier is vested in racial or ethnic minorities or women. In the selection of subcontractors, suppliers, or other persons or organizations proposed for work on this Agreement, the DEVELOPER agrees to consider this policy and to use their reasonable and best efforts to select and employ such companies and persons for work on this Agreement.

**XVII.
AUTHORITY**

This Agreement was authorized by Resolution No. 18-242 of the Arlington City Council, authorizing the City Manager or his designee to execute this Agreement on behalf of the CITY, and shall constitute a valid and binding agreement between CITY and DEVELOPER upon execution.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on the date indicated below, effective as of the later of such dates.

**ARLINGTON COMMONS LANDS,
LLC**

a Texas Limited Liability Company

By its member: The Nehemiah, LLC

a Texas Limited Liability Company

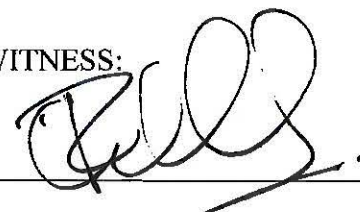
BY


Robert H. Kembel

Manager of The Nehemiah, LLC

Date 10-2-18

WITNESS:



CITY OF ARLINGTON, TEXAS

BY


JIM PARAJON

Deputy City Manager

Date 10/22/18

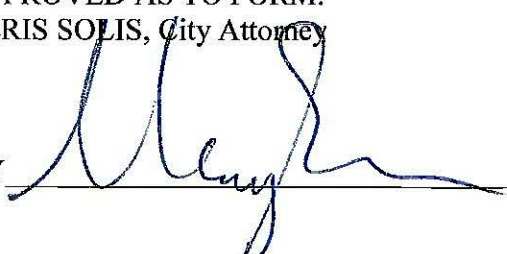
ATTEST:


ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:

TERIS SOLIS, City Attorney

BY

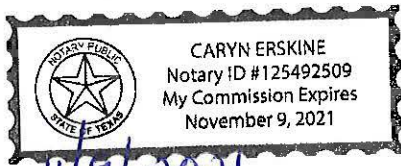


THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

ARLINGTON COMMONS LANDS, LLC
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **ROBERT H. KEMBEL**, Manager of The Nehemiah, LLC, a Texas limited liability company, member of ARLINGTON COMMONS LANDS, LLC, a Texas limited liability company, known to me or proved to me on the oath of _____ or through _____ (*description of identity card or other document*) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of **ARLINGTON COMMONS LANDS, LLC**, an entity duly authorized to do business in the State of Texas, and as the **Manager of The Nehemiah, LLC**, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 2nd day of October, 2018.



11/9/2021
My Commission Expires

Caryn Erskine
Notary Public in and for
The State of Texas
Caryn Erskine
Notary's Printed Name

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **JIM PARAJON**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON, TEXAS**, a municipal corporation of Tarrant County, Texas, and as the **Deputy City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 22nd day of October, 2018.

05/04/22
My Commission Expires

Brandi Brown
Notary Public in and for
The State of Texas
Brandi Brown
Notary's Printed Name

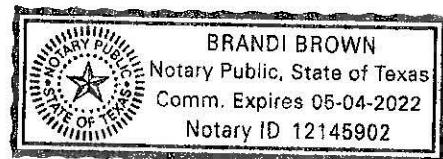
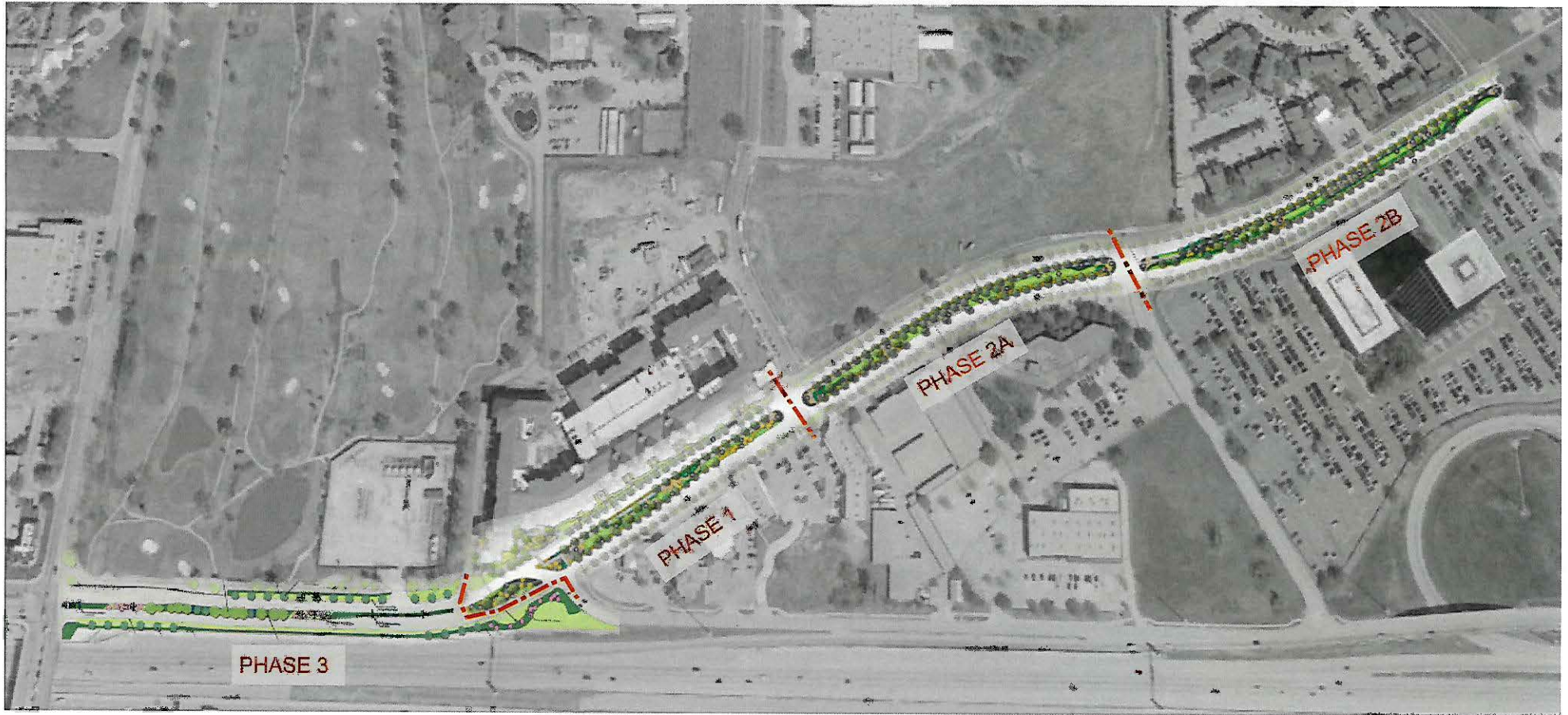
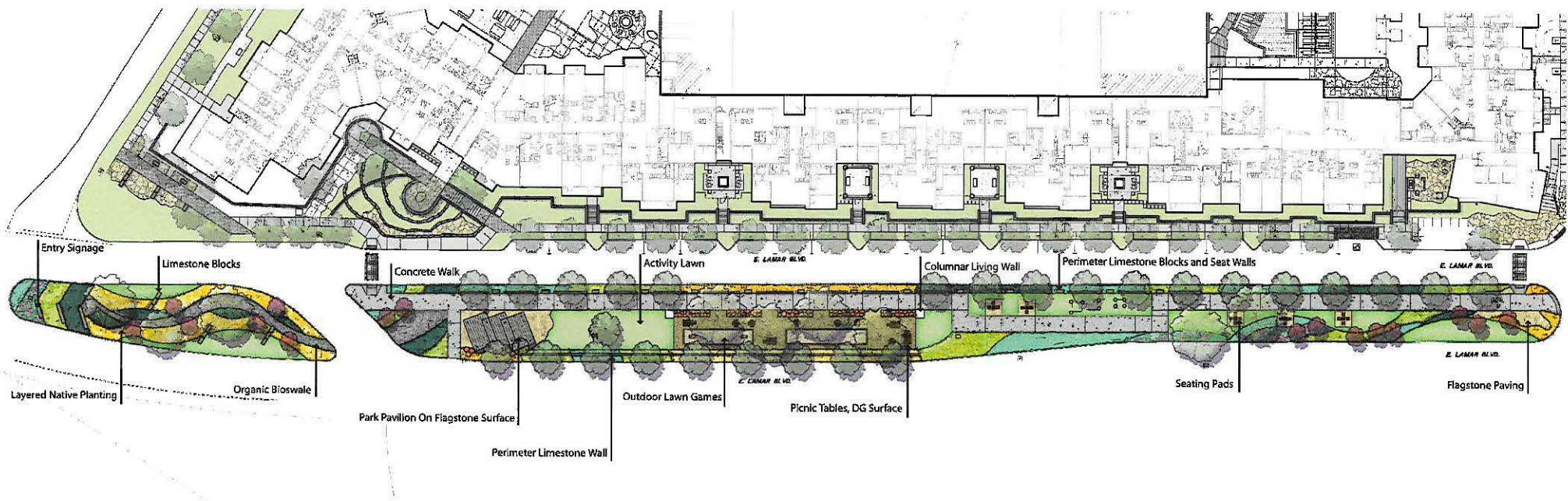


Exhibit "A"



Arlington Commons Ancillary Public Improvements (Phase 1, 2A, 2B & 3)
Median and right-of-way Lamar Boulevard between Cooper Street and Lincoln Drive



Arlington Commons Ancillary Public Improvements Phase 1
 Median and right-of-way Lamar Boulevard between Ryan Plaza Dr. & Van Buren Dr.



Activity Lawn



Open Lawn with Moveable Seating



Bike Rack/Bike Share



- ① Paving Area
- ② Activity Lawn
- ③ Shade Structure with Rainwater Harvesting Cistern
- ④ Beer Garden - Food Park
- ⑤ Green Street Type Bioswale
- ⑥ Open Lawn with Moveable Seating
- ⑦ Bike Rack/Bike Share
- ⑧ Park Living Wall Kiosk
- ⑨ On Street Parking



Shade Structure with Rainwater Harvesting Cistern



Beer Garden - Food Park



Park Living Wall Kiosk

Arlington Commons Ancillary Public Improvements Phase 2A

Median and right-of-way Lamar Boulevard between Van Buren Dr. & Garfield Dr.



Paving Area



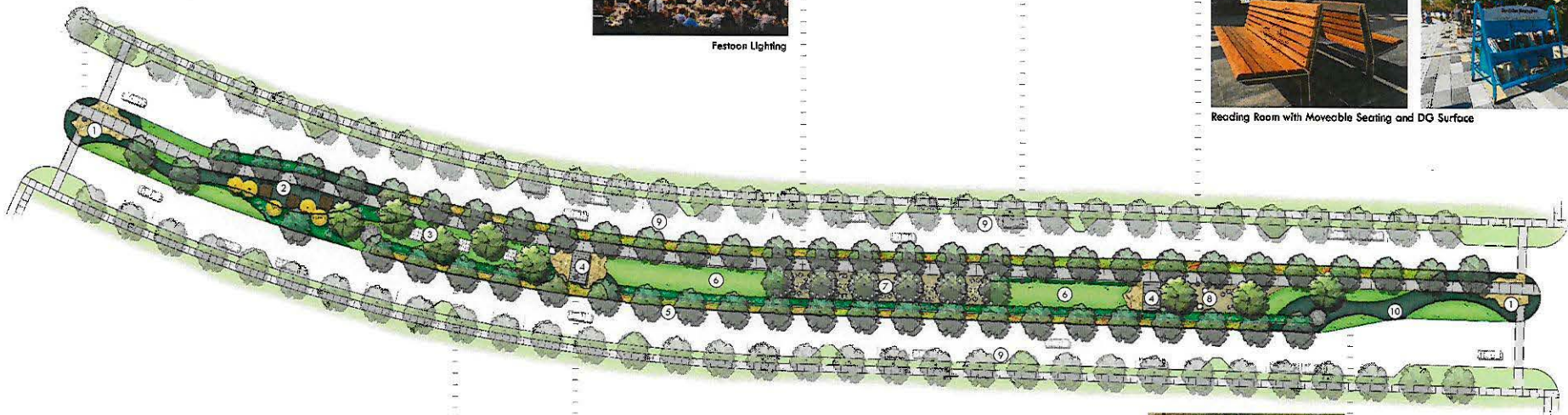
Festoon Lighting



Perimeter Seatwalls



Reading Room with Moveable Seating and DG Surface



Lawn Games and Game Tables



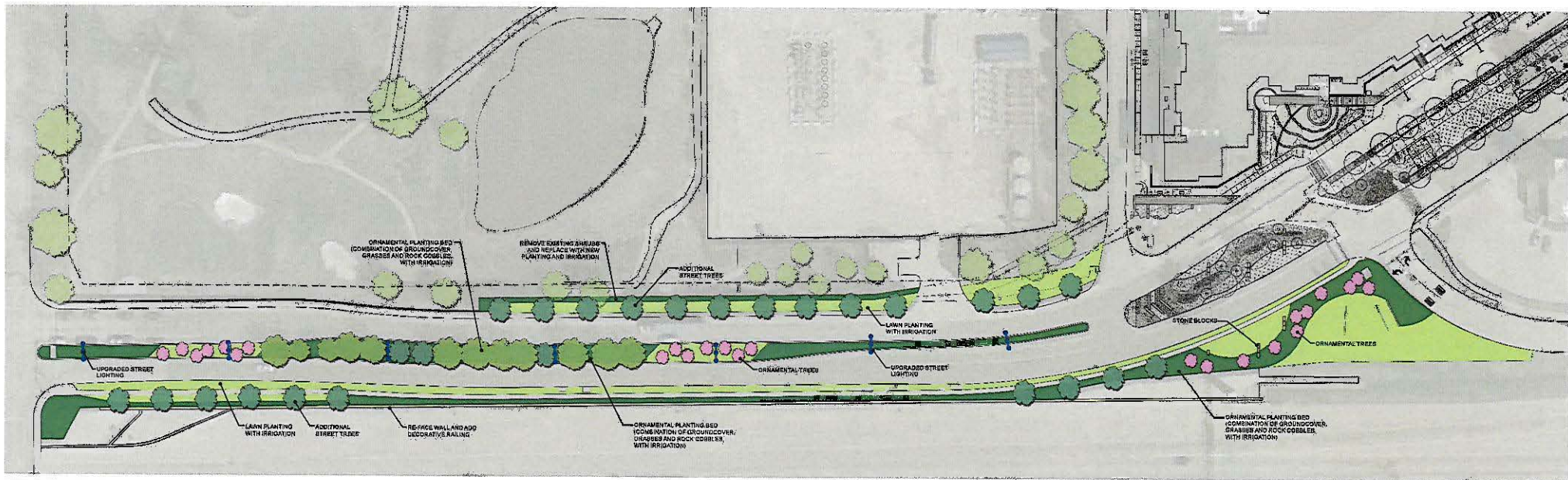
Shade Structure and Event Lawn



- ① Paving Area
- ② Seating Pads
- ③ Game Tables
- ④ Shade Structure with Rainwater Harvesting Cistern
- ⑤ Green Street Type Bioswale
- ⑥ Event Lawn
- ⑦ Food Park with DG Surface and Festoon Lighting
- ⑧ Reading Room with Moveable Seating and DG Surface
- ⑨ On Street Parking
- ⑩ Layered Native Planting

Arlington Commons Ancillary Public Improvements Phase 2B

Median and right-of-way Lamar Boulevard between Garfield Dr. & Lincoln Dr.



EAST LAMAR BOULEVARD LANDSCAPE IMPROVEMENTS / SCOPE EXHIBIT

Arlington, TX 11 June 2016



Arlington Commons Ancillary Public Improvements Phase 3

Median and right-of-way Lamar Boulevard between Cooper Street and Ryan Plaza

Exhibit "B"

PREMISES DESCRIPTION



THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

**Second Amended and Restated
Development Agreement Number Two**

THIS SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT NUMBER TWO (“Agreement”) is entered into by and between **ARLINGTON COMMONS LANDS, LLC**, a Texas limited liability company (hereafter referred to as “DEVELOPER”), and the **CITY OF ARLINGTON, TEXAS**, a home-rule city and municipal corporation of Tarrant County, Texas, acting by and through its City Manager or his designee (hereafter referred to as “CITY”).

WITNESSETH:

- WHEREAS, on January 21, 2014, by Resolution 14-007, City Council approved Development Agreement Number Two with JCKPL AC, LLC (“Original Agreement”) for economic development incentives associated with Phase I-A demolition, remediation, and redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington, Texas; and
- WHEREAS, JCKPL AC, LLC, as authorized by Article XVIII of Development Agreement Number Two, assigned all rights and obligations under Development Agreement Number Two to DEVELOPER; and
- WHEREAS, on January 12, 2015, the CITY and DEVELOPER entered into the First Amended and Restated Development Agreement Number Two to amend the Original Agreement to reflect the assignment from JCKPL AC, LLC to DEVELOPER, to amend completion deadlines for the phases of the project, and to amend the ad valorem tax related grant; and
- WHEREAS, on October 28, 2015, DEVELOPER transferred ownership of the Premises to Prince Commons, LLC and Monarch Commons, LCC as tenants in common (hereafter referred to as “OWNER”) and assigned all rights and obligations in Tax Abatement Agreement - Phase IA to OWNER; and
- WHEREAS, all rights and obligations in this Agreement will remain with DEVELOPER as an incentive for the development of the Project (as defined herein); and
- WHEREAS, the CITY and DEVELOPER desire to further amend the First Amended and Restated Development Agreement Number Two; and
- WHEREAS, the CITY has found that providing a program of incentives to DEVELOPER in exchange for DEVELOPER completing the Phase I-A Project will promote local economic development and stimulate business and commercial activity within the City of Arlington (hereafter referred to as PROGRAM); and

WHEREAS, the CITY has determined that the PROGRAM authorized by Resolution No. 13-146 will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that the public purpose is accomplished; and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the incentive provided herein; NOW THEREFORE,

The CITY and DEVELOPER, for and in consideration of the mutual promises contained herein, do hereby agree as follows:

**I.
DEFINITIONS**

- A. "Base Year Value" is the taxable value of the land described by metes and bounds on **Exhibit "A"** on January 1, 2015, as established by final determination of the Tarrant Appraisal District. **Exhibit "A"** is attached to and incorporated into this Agreement for all purposes.
- B. "Capital Investment" means the amount of the investment in land and investment of the hard and soft costs in the design, construction, acquisition, and installation of the Real Property Improvements and Personal Property Improvements on the Premises.
- C. "Consumer Price Index" means the U.S. Bureau of Labor Statistics index of the changes in the cost of goods and services paid by a typical consumer expressed as the percentage change in the total cost of those same items over a previous base period.
- D. "Eligible Property" is defined as the taxable Premises and Real Property Improvements.
- E. "Grant" means payments from CITY to DEVELOPER.
- F. "Master Agreement" means that certain agreement titled "Third Amended and Restated Master 380 Economic Development Program Agreement" authorized by City Council Resolution No. 18-240 on September 18, 2018.
- G. "Phase I-A Project" means the demolition of the existing Real Property Improvements located as of June 1, 2013, on the Premises and the redevelopment of the Premises through the construction of a new multi-family development with structured parking to include a minimum of 350 multi-family units, with a Capital Investment of not less than \$35,000,000.
- H. "Premises" means the land described on **Exhibit "A"** attached hereto.

- I. "Project" is defined as the redevelopment of the entire property that is shown as Phase I, Phase II, and Phase III on **Exhibit "B"** attached hereto. Such redevelopment shall include the demolition of the existing real property improvements located on the property as of June 1, 2013, and the redevelopment of the property through the construction of a new multi-family development to include a total of 1600 or more multi-family units and associated non-residential finished space as required by CITY's Unified Development Code, with a Capital Investment of not less than \$130,000,000.
- J. "Real Property Improvements" means improvements to the Premises and shall include buildings, structures, or fixtures erected or affixed to land or existing real property.
- K. "Taxable Value" means the assessed real property value determined by the Tarrant Appraisal District for each tax year during the term of this Agreement.

II.

IMPROVEMENT CONDITIONS AND REQUIREMENTS TO TRIGGER AD VALOREM TAX RELATED GRANT PAYMENT

In order to receive the Ad Valorem Tax Related Grant described in this Agreement, the following must occur:

- A. Demolition of the existing Real Property Improvements located as of June 1, 2013, on Phase I and Phase II properties, shown on **Exhibit "B"**, on or before June 30, 2015.
- B. The Phase I-A Project shall at all times maintain a Multi-Family License as required by Article XIV of the Uniform Housing Code Chapter of the Code of the City of Arlington or any subsequent City ordinance requiring the same, unless a Multi-Family License is no longer required by City ordinance.
- C. Construction of the Phase I-A Project with a total minimum Capital Investment of \$100,000 per multi-family unit in overall project costs. Construction of the Phase I-A Project shall be completed by June 30, 2018. Such date may be extended upon the written approval of the CITY; however, if such date is extended, the \$100,000 in minimum Capital Investment shall be adjusted every five (5) years based on the Consumer Price Index, or if the Consumer Price Index does not exist, a similar measurement to determine the equivalent amount of Capital Investment to equate to the minimum \$100,000 Capital Investment at the effective date of this Agreement.
- D. Issuance of all requisite certificates of occupancy for the completed Phase I-A Project; and
- E. Payment of the ad valorem taxes for the Phase I-A Project for the year to which the Grant request pertains; and

- F. Submission by DEVELOPER of a written request for payment of the Grant in accordance with subsection III (B)(1) of this Agreement.
- G. DEVELOPER has not commenced bankruptcy proceedings.

III.

AD VALOREM TAX RELATED GRANT

- A. CITY agrees to pay to DEVELOPER a Grant measured by and in the amount of ninety percent (90%) of the taxes paid to CITY on the value of Eligible Property as established by final determination of the Tarrant Appraisal District (excluding the Base Year Value) for twenty (20) years starting in the tax year beginning January 1, 2029, and ending in the tax year beginning January 1, 2048, so long as conditions of the Grant are met and DEVELOPER has not breached on the terms of this Agreement.
- B. Provided all conditions and requirements of Article II herein have been met, and provided no breach of this Agreement has occurred, the Grant authorized in this Agreement shall be payable to DEVELOPER by CITY as follows:
 - 1. DEVELOPER shall make written request to the Treasury Division of the City of Arlington for each Grant payment by way of the annual certification process on CITY's prescribed certification form. Each year, DEVELOPER must certify compliance by March 15 of the full payment of all real property taxes due for the completed Phase I-A Project, subject to the right of protest. Failure to timely submit the annual certification in accordance with this Article after notice and opportunity to cure as provided in Section VII (B) shall waive DEVELOPER's right to the Grant.
 - 2. The Grant payment will be paid to DEVELOPER annually, on or before June 1, after receipt by CITY of DEVELOPER's annual certification documents unless the real property taxes due for the Eligible Property become delinquent, in which case Section D of this Article III shall apply and the Grant shall be paid to DEVELOPER within sixty (60) days of full payment of all real property taxes and any penalty and interest owed.
 - 3. The Grant payment authorized in this Agreement for any given year shall not exceed the amount of ad valorem taxes paid for the completed Phase I-A Project in that given year.
- C. Should the real property taxes due for the Eligible Property be paid by OWNER, or subsequent owner, in protest and the appraised value of the Eligible Property be subsequently lowered, CITY shall reduce the following tax year's Grant payment by an amount equivalent to ninety percent (90%) of any taxes paid to CITY for the Eligible Property and reimbursed to OWNER, or subsequent owner. Should a reimbursement of taxes paid occur in tax year 2048, DEVELOPER shall reimburse the CITY an amount equivalent to ninety percent (90%) of any taxes

paid to CITY for the Eligible Property and reimbursed to OWNER, or subsequent owner within thirty (30) days of notice from CITY.

- D. Should the real property taxes due for the Eligible Property fail to be paid by OWNER, or subsequent owner, DEVELOPER shall not be entitled to receive the Grant provided for in this Article III until such time as the taxes, and any penalty and interest owed, are paid. Notwithstanding anything contained in this Agreement to the contrary, if the real property taxes due for the Eligible Property are not paid within one year from the date they are due DEVELOPER shall not be entitled to receive a Grant for said tax year.
- E. DEVELOPER's right to request and receive the Grant described in this Agreement shall terminate upon the final Grant payment made in accordance with this Article III, if not sooner terminated in accordance with this Agreement.

IV. DEVELOPMENT GRANTS

- A. In exchange for the demolition of the existing apartments within the Phase I-A Project, CITY shall provide to DEVELOPER the following Grants:
 - 1. An amount not to exceed \$400,000 measured by and in the amount of the actual costs for the detention and drainage improvements for the Project. The detention and drainage improvements will be installed as part of the Phase I-A Project. DEVELOPER shall provide invoices or other evidence of payment for the detention and drainage improvements. CITY shall reimburse DEVELOPER for the actual cost, not to exceed \$400,000, for the detention and drainage improvements within thirty (30) days of DEVELOPER presenting CITY such said invoices or evidence; however, such Grant may not be requested by DEVELOPER until reasonable evidence is presented to the CITY's Economic Development Manager that debt and equity is in place for construction of the multi-family units in the Phase I-A Project. The Grant will be paid as detention and drainage improvements costs are incurred during the design and development of the Phase I-A Project.
 - 2. An amount not to exceed \$1,808,592 measured by and in the amount of the actual costs of the demolition and environmental remediation of the existing structures located within the Phase I and Phase II properties Premises as shown in **Exhibit "B"** attached hereto. DEVELOPER shall provide invoices or other evidence of payment of the actual costs for the demolition and environmental remediation for Phase I-A Project. CITY shall reimburse DEVELOPER for the actual costs within thirty (30) days of presenting said invoices or evidence. The Grant will be paid as demolition and environmental remediation costs are incurred.

**V.
INDEMNIFICATION**

- A.** It is understood and agreed between the parties that DEVELOPER, in performing DEVELOPER's respective obligations hereunder, is acting independently and CITY assumes no responsibility or liability to third parties arising or alleged to arise from this Agreement. DEVELOPER agrees to defend, indemnify, and hold CITY harmless from any claims, damages, verdicts, or judgments arising out of actions or omissions by DEVELOPER or caused by DEVELOPER in breach of this Agreement, but not otherwise; however, DEVELOPER will not indemnify or hold CITY harmless from any liabilities or responsibilities arising out of the CITY's breach of this Agreement or CITY's gross negligence or intentional misconduct.
- B.** It is further understood and agreed among the parties that CITY, in performing its obligations hereunder, is acting independently and DEVELOPER does not assume any responsibility or liability allegedly arising from this Agreement and raised by third parties. However, DEVELOPER does assume responsibility and liability arising out of DEVELOPER's breach of this Agreement, and DEVELOPER accepts responsibility for DEVELOPER's gross negligence and intentional misconduct in connection with this Agreement.

**VI.
INSPECTIONS**

DEVELOPER agrees that CITY, its agents and employees shall have reasonable rights of access, provided to CITY by OWNER or any subsequent owner of the Premises through covenants running with the land, to the Premises and Phase I-A Project to inspect the Phase I-A Project and Real Property Improvements in order to ensure that the construction of the Phase I-A Project and Real Property Improvements is in accordance with this Agreement and all applicable laws and regulations or that there has been a valid written waiver thereof. After completion of the Phase I-A Project and Real Property Improvements, CITY shall have the continuing right, subject to OWNER's, or any subsequent owner's, reasonable security requirements, to inspect the Phase I-A Project and Premises, the Real Property Improvements, and pertinent business records to ensure that the Phase I-A Project and Premises are thereafter maintained, operated, and occupied in compliance with this Agreement.

**VII.
BREACH AND TERMINATION**

- A.** Breach - A breach of this Agreement may result in termination of this Agreement. The following conditions shall constitute a breach of this Agreement:

1. The Phase I-A Project abandoned by ceasing to operate the Phase I-A Project as multi-family for a consecutive period of at least six (6) months, or operating at an occupancy rate below 33% for a consecutive period of six (6) months or more in years 5-30 after the Phase I-A Project is completed and a certificate of occupancy is issued; or
 2. DEVELOPER fails to complete and adhere to the DEVELOPER's Improvement Conditions and Requirements as specified in Article II above; or
 3. DEVELOPER allows its ad valorem taxes on any property it owns located within the City of Arlington to become delinquent; or
 4. DEVELOPER fails to render for taxation any property it owns located within the City of Arlington; or
 5. CITY is not provided access in compliance with Article VI of this Agreement.
- B. Notice of Breach - In the event that CITY makes a reasonable determination that DEVELOPER has breached this Agreement then CITY shall give DEVELOPER written notice of such breach. DEVELOPER shall have sixty (60) days following receipt of said written notice to reasonably cure such breach or this Agreement may be terminated by CITY and future Grant payments withheld. Notice of default shall be in writing and shall be delivered by personal delivery or certified mail to DEVELOPER at the addresses provided in Article IX of this Agreement.
- C. Tax Lien Not Impaired - It is expressly agreed and acknowledged between the parties to this Agreement that nothing in this Agreement shall be deemed or construed to affect the lien for taxes against the property established by Section 32.01 of the Tax Code of the State of Texas. Such lien shall secure the payment of all taxes, penalties, and interest ultimately imposed on the property, including any taxes abated and subject to recapture under this Agreement. Any such lien may be fully enforced pursuant to the provisions of the Code. For purposes of this Article VII, Section C, "property" refers to the Premises, Eligible Property, and the Phase I-A Project described herein.

VIII. PROTESTS

This Agreement shall not be construed to prohibit protest or contest of any or all appraisals or assessments of any property in the Premises or Phase I-A Project, including Real Property Improvements thereon. The amount of the Grant provided in Article III above shall be based upon the real property taxes as finally determined by Tarrant Appraisal District to be due for the Premises and the Phase I-A Project after such protest or contest is finally determined.

**IX.
NOTICE**

Notices required to be given to any party to this Agreement shall be delivered by hand delivery by a reputable delivery service or by certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and shall be deemed delivered as of the date of delivery or date deposited in the United States Mail:

DEVELOPER: Arlington Commons Lands, LLC
Attention: Robert H. Kembel
835 E. Lamar Blvd., #254
Arlington, Texas 76011

WITH A Winstead PC
COPY TO: Attention: Barry R. Knight
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201

CITY: City of Arlington
Attention: Economic Development Manager
P.O. Box 90231
Arlington, Texas 76004-3231

Any party may change the address and add additional parties to whom notice will be sent by giving the other parties written notice in the manner provided in this Article.

**X.
AUTHORITY**

This Agreement is authorized by Resolution No. 18-241 of the Arlington City Council, and shall constitute a valid and binding agreement between CITY and DEVELOPER upon execution.

**XI.
MODIFICATION**

This Agreement may be modified by DEVELOPER and CITY by using the same procedure for approval of the modification as is required for entering into the Agreement.

**XII.
FORCE MAJEURE**

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities (TXU Electric, Southwestern Bell Telephone,

TXU Gas, AT&T Cable Services, or their contractors), fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or 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 circumstance is 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 performance under this agreement shall be extended for a period of time equal to the period such party was delayed.

**XIII.
VENUE AND GOVERNING LAW**

This Agreement is performable in Tarrant County, Texas and venue of any action arising out of this Agreement shall be exclusively in Tarrant County. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

**XIV.
LEGAL CONSTRUCTION**

In case 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 any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement. Should any provision of this Agreement be in conflict with a provision of the Master Agreement, this Agreement shall apply as to the specific conflicting provision; in all other instances the Master Agreement and this Agreement shall both apply.

**XV.
COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**XVI.
CAPTIONS**

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

**XVII.
SUCCESSORS AND ASSIGNS**

The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. It is intended by the parties hereto that this Agreement may

be assigned by DEVELOPER to a successor owner and/or party only with prior written approval of the City Council, which approval will not be unreasonably withheld or delayed. Assignments to related entities where The Nehemiah, LLC is the general partner or managing member shall be expressly allowed without City Council approval.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on the date indicated below, effective as of the later of such dates.

**ARLINGTON COMMONS LANDS,
LLC**

a Texas Limited Liability Company

By its member: The Nehemiah, LLC

a Texas Limited Liability Company


BY


Robert H. Kembel

Manager of The Nehemiah, LLC

Date 10-2-18

WITNESS:



CITY OF ARLINGTON, TEXAS

BY


JIM PARAJON

Deputy City Manager

Date 10/22/18

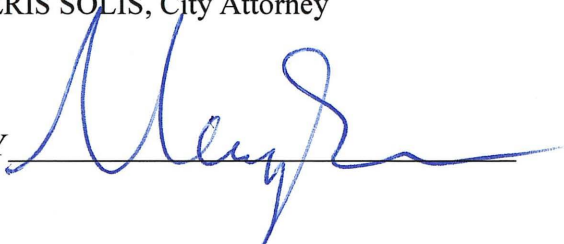
ATTEST:


ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:

TERIS SOLIS, City Attorney

BY

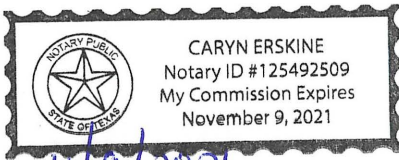


THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

ARLINGTON COMMONS LANDS, LLC
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **ROBERT H. KEMBEL**, Manager of The Nehemiah, LLC, a Texas limited liability company, member of ARLINGTON COMMONS LANDS, LLC, a Texas limited liability company, known to me (or proved to me on the oath of _____ or through _____ (*description of identity card or other document*)) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of **ARLINGTON COMMONS LANDS, LLC**, an entity duly authorized to do business in the State of Texas, and as the **Manager of The Nehemiah, LLC**, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 2nd day of October, 2018.



11/9/2021
My Commission Expires

Caryn Erskine
Notary Public in and for
The State of Texas
Caryn Erskine
Notary's Printed Name

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **JIM PARAJON**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON, TEXAS**, a municipal corporation of Tarrant County, Texas, and as the **Deputy City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 22nd day of October, 2018.

05/04/22
My Commission Expires

Brandi Brown
Notary Public in and for
The State of Texas
Brandi Brown
Notary's Printed Name

(11)

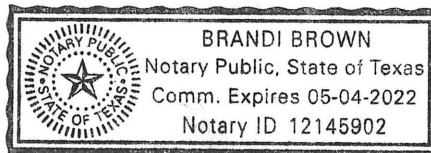


Exhibit "A"

LEGAL DESCRIPTION

Being a 10.278 acre tract of land situated in the J.M. Henderson Survey, Abstract No. 696, being all of Tract A-R, Block 5, Parkway Central, an addition to the City of Arlington, Tarrant County, Texas, as recorded in Volume 388-53, Page 96, Plat Records, Tarrant County, Texas, conveyed by deed to PNA Apartments, L.P. as recorded in Instrument No. D203438723, Deed Records, Tarrant County, Texas. Said 4.196 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a chiseled "x" in concrete found (Controlling Monument) for the southwest corner of said Tract A, Block 6, being the intersection of the north right-of-way line of Lamar Drive (a 120 foot R.O.W.) and the east right-of-way line of Van Buren Drive (a 60 foot R.O.W.);

THENCE South 56°34'00" West, a distance of 684.98 feet to a for the beginning of a tangent curve to the right having a radius of 786.70 feet, a central angle of 14°20'16", and a long chord which bears South 63°44'09" West, 196.35 feet;

THENCE along said curve to the right, an arc distance of 196.86 feet to a to a ;

THENCE North 00°11'11" West, a distance of 393.09 feet to a ;

THENCE North 89°04'55" East, a distance of 132.51 feet to a ;

THENCE North 05°05'41" West, a distance of 593.53 feet to a ;

THENCE North 88°11'19" East, a distance of 380.87 feet to a ;

THENCE North 89°55'45" East, a distance of 128.86 feet to a ;

THENCE South 11°32'15" West, a distance of 65.85 feet to a for the beginning of a tangent curve to the left having a radius of 392.13 feet, a central angle of 44°59'58", and a long chord which bears South 10°57'45" East, 300.12 feet;

THENCE along said curve to the left, an arc distance of 307.97 feet to a ;

THENCE South 33°27'44" East, a distance of 209.94 feet to a for the POINT OF BEGINNING and CONTAINING 447689 square feet, 10.28 acres of land, more or less.

Exhibit "B"



THE STATE OF TEXAS § Second Amended and Restated
 § Master 380 Economic Development
COUNTY OF TARRANT § Program Agreement

THIS SECOND AMENDED AND RESTATED MASTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (“Agreement”) is entered into by and between **ARLINGTON COMMONS LANDS, LLC**, a Texas limited liability company (hereafter referred to as “**DEVELOPER**”), and the **CITY OF ARLINGTON, TEXAS**, a home-rule city and municipal corporation of Tarrant County, Texas, acting by and through its City Manager or his designee (hereafter referred to as “**CITY**”).

WITNESSETH:

WHEREAS, on June 18, 2013, by Resolution 13-146, City Council approved a Master 380 Economic Development Program Agreement with JCKPL, LLC regarding economic development incentives associated with demolition, remediation and redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington; and

WHEREAS, on January 21, 2014, by Resolution 14-005, City Council approved a First Amended and Restated Master 380 Economic Development Program Agreement to reflect the change of the name of JCKPL, LLC to JCKPL AC, LLC, to provide an additional grant, and to change the required dates for acquisition, demolition and construction; and

WHEREAS, JCKPL AC, LLC, as authorized by Article IV of the First Amended and Restated Master 380 Economic Development Program Agreement, assigned all rights and obligations under the First Amended and Restated Master 380 Economic Development Program Agreement to DEVELOPER; and

WHEREAS, CITY and DEVELOPER desire to amend the First Amended and Restated Master 380 Economic Development Program Agreement to reflect the assignment of the First Amended and Restated Master 380 Economic Development Program Agreement from JCKPL AC, LLC to DEVELOPER, and to provide for changes to the grants related to ad valorem taxes, to provide for a tax abatement, and to provide for additional grant funds for demolition and environmental remediation; and

WHEREAS, CITY finds that providing a program of incentives to DEVELOPER in exchange for DEVELOPER to complete the project proposed by DEVELOPER would promote local economic development and stimulate business and commercial activity within the City of Arlington (hereafter referred to as “PROGRAM”); and

WHEREAS, CITY has determined that the PROGRAM will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that the public purpose is accomplished; and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the PROGRAM provided herein; NOW THEREFORE,

CITY and DEVELOPER, for and in consideration of the mutual promises contained herein, do hereby agree as follows:

I. DEFINITIONS

- A. "Base Year Value" is the Value of the particular phase of the Project that will be established on January 1 of the year following the demolition of the existing real property improvements on the particular phase of the Project.
- B. "Capital Investment" means the amount of the investment in the hard and soft costs in the design, construction, acquisition and installation of the Real Property Improvements and Personal Property Improvements on the Premises.
- C. "Premises" are defined as the land described on **Exhibit "A"** attached hereto.
- D. "Real Property Improvements" are defined as improvements to the Premises and shall include buildings, structures or fixtures erected or affixed within the Project.
- E. "Agreement" is this Agreement between DEVELOPER and CITY for the Project.
- F. "Phase I Project" is defined as the demolition of the existing real property improvements located on Phase I of the Premises, as shown on **Exhibit "B"** attached hereto, as of June 1, 2013 and the redevelopment of Phase I of the Premises through the construction of a new multi-family development to include a minimum of 800 multi-family units and associated non-residential finished space as required by CITY's Unified Development Code, with a Capital Investment of not less than \$60,000,000.
- G. "Project" is defined as the redevelopment of the entire Premises that is shown as Phase I, Phase II and Phase III on **Exhibit "B"** attached hereto. Such redevelopment shall include the demolition of the existing real property improvements located on the Premises as of June 1, 2013 and the redevelopment of the Premises through the construction of a new multi-family development to include a total of 1600 or more multi-family units and associated non-residential

finished space as required by CITY's Unified Development Code, with a Capital Investment of not less than \$130,000,000.

- H. "Value" means the appraisal value established upon final determination of Tarrant Appraisal District upon conclusion of any appeals by the owner of all or a part of the Premises. The term "value added" means the increase in value.

II. IMPROVEMENT CONDITIONS AND REQUIREMENTS

In order to receive and keep the incentives and benefits described in this Agreement, the following must occur:

- A. DEVELOPER will construct the Phase I Project on the Premises not later than January 1, 2024; Phase II will be constructed on the Premises not later than January 1, 2027; and Phase III will be constructed on the Premises not later than January 1, 2029. Extensions of time may be granted as long as DEVELOPER is actively pursuing in good faith the completion of the Project.
- B. DEVELOPER must diligently and faithfully pursue the completion of the Project. DEVELOPER covenants and agrees to use all reasonable commercial efforts to cause the Project to be constructed and maintained in a good and workmanlike manner and in accordance with all applicable state and local laws and regulations.
- C. CITY recognizes that DEVELOPER will seek zoning changes for the Project. Such changes will be evaluated by CITY through the zoning process. DEVELOPER shall construct the Project in a quality manner and as generally illustrated in **Exhibit "C"** attached hereto.

III. INCENTIVES

- A. The Phase I Development Grant.

In exchange for the demolition of the existing apartments within the Phase I Project CITY shall make a one time grant in the amount of \$1,500,000 to DEVELOPER. CITY shall pay such grant to DEVELOPER within 30 days of presentation to CITY of an agreement with the architect, engineer or other design professionals for the Phase I Project with work pursuant to the contract to be initiated within 180 days of CITY's payment of the grant to DEVELOPER. Additional conditions of this grant, including recapture provisions and proof of expenditure for agreed purposes, shall be set forth in a separate agreement.

B. Subsequent Phase Development Grant.

In exchange for the demolition of the existing apartments within the Phase II or Phase III Project CITY shall make a one time grant in the amount of \$500,000 to DEVELOPER. DEVELOPER shall provide invoices or other evidence of payment of the Capital Investment. CITY shall pay such grant to DEVELOPER when the existing multi-family structures in Phase II or III have been demolished. The conditions of this grant shall be set forth in a separate agreement.

C. Grant for Detention and Drainage Improvements.

In exchange for the demolition of the existing apartments within the Phase I Project CITY shall provide to DEVELOPER a grant in an amount not to exceed \$400,000 for the actual costs for the detention and drainage improvements for the Project. The detention and drainage improvements will be installed as part of the Phase I Project. DEVELOPER shall provide invoices or other evidence of payment of the actual construction costs for the detention and drainage improvements. CITY shall reimburse DEVELOPER for the actual cost, not to exceed \$400,000, for the detention and drainage improvements within thirty (30) days of DEVELOPER presenting CITY such said invoices or evidence. The grant will be paid as detention and drainage improvements costs are incurred during the design and development of the Phase I Project. The conditions of this grant shall be set forth in a separate agreement.

D. Grant for Demolition and Remediation.

In exchange for demolition of the existing apartments in each phase of the Project CITY shall provide to DEVELOPER a grant not to exceed \$1,808,592 for the actual costs of the demolition and environmental remediation of the existing structures located on the Premises. DEVELOPER shall provide invoices or other evidence of payment of the actual costs for the demolition and environmental remediation. CITY shall reimburse DEVELOPER for the costs within thirty (30) days of presenting such said invoices or evidence. The grant will be paid as demolition and environmental remediation costs are incurred. The conditions of this grant shall be set forth in a separate agreement.

E. Tax Abatement.

For each Phase of the Project DEVELOPER shall be eligible to receive for a period of ten (10) years a 90% tax abatement on the Value of the Premises and Real Property Improvements located on the Premises for that Phase of the Project (excluding Base Year Value). The 10-year abatement for each Phase of the Project shall begin January 1 of the year after the date a certificate of occupancy is issued for a particular Phase of the Project. Pursuant to Chapter 312 of the Texas Tax Code the specific terms of the abatement shall be established in a separate agreement after adoption of an ordinance creating a reinvestment zone.

F. Grant related to Ad Valorem Taxes.

For each Phase of the Project DEVELOPER shall be eligible to receive for a period of twenty (20) years an annual grant paid from legally available funds by CITY to DEVELOPER equal to 90% of the taxes paid by DEVELOPER on the Value of the Premises and the Real Property Improvements located on the Premises for that Phase of the Project (excluding Base Year Value). The 20-year grant period for each Phase of the Project shall begin January 1 of the year after the expiration of the tax abatement provided in subsection (E) above for that Phase of the Project. The specifics of the grant(s) described in this paragraph, including among other things the timing of payments, shall be established in a separate agreement.

G. Fee Waiver and Grant.

In exchange for DEVELOPER's agreement to construct a particular portion of the Project, CITY agrees to waive the payment of all building, park, or other fee of any kind related to the construction of that portion of the Project. In addition, CITY agrees to grant to DEVELOPER an amount equivalent to the impact fees paid by DEVELOPER for the Project. The conditions of this waiver and grant shall be set forth in a separate agreement.

H. Ancillary CITY Improvements.

CITY and DEVELOPER will jointly design the ancillary CITY improvements. CITY will contribute a maximum of \$1,250,000 for the public improvements to be determined jointly by CITY and DEVELOPER.

I. Grant for Difference in Purchase Price of Option Property.

In exchange for the demolition of the existing apartment complexes comprising Huntington Chase, The Pointe, and Countrywood, and completed construction of the first 350 units of the Project ("Phase I-A Project"), CITY shall provide to DEVELOPER a grant not to exceed \$5,000,000. Such grant shall be payable to DEVELOPER only if the real property described in **Exhibit "D"** attached hereto (the "Option Property") is sold by DEVELOPER within three years from obtaining a certificate of occupancy for the 350 units in the Phase I-A Project. The amount of such grant shall be an amount equal to the difference between \$7,000,000 and the greater of the following: actual purchase price of said Option Property or the fair market value of the Option Property as determined by an independent fee appraisal, the appraiser of which shall be from one of the following firms: CBRE or Integra Realty Resources, Inc. and licensed in the State of Texas. The appraisal will be prepared at the time the Option Property is listed for sale. DEVELOPER shall provide a copy of the real estate purchase contract evidencing the purchase price of the Option Property to CITY at least 45 days

before the closing of the sale of the Option Property. CITY shall provide the grant 30 days after closing. The specifics of the grant shall be set forth in a separate agreement.

J. Eligibility for Additional Incentives.

If the CITY is not called upon to provide the grant for the Option Property, as provided in section III.I. and DEVELOPER has provided notice to CITY that it is not seeking the grant or the time to request such has expired, then the CITY shall contribute an additional \$2,500,000 towards public improvements determined and designed jointly by the CITY and DEVELOPER as described in section III.H. The DEVELOPER shall also be eligible to receive a grant in an amount not to exceed \$350,000 as reimbursement for the actual cost of detention and drainage improvements that are not reimbursed by the grant described in section III.C., and a grant in an amount not to exceed \$2,100,000 as reimbursement for the actual cost of demolition and remediation that is not reimbursed by the grant described in section III.D. The conditions of these additional grants shall be set forth in a separate agreement.

IV. ASSIGNMENTS

It is intended by the parties hereto that this Agreement may be assigned by DEVELOPER to a successor owner and/or party only with prior written approval of the City Council, which approval will not be unreasonably withheld or delayed. Assignments to related entities where THE NEHEMIAH, LLC is the general partner or managing member shall be expressly allowed without City Council approval.

V. INDEMNIFICATION

- A. **It is understood and agreed between the parties that DEVELOPER in performing its obligations hereunder is acting independently and CITY assumes no responsibility or liability arising from this Agreement. DEVELOPER agrees to defend, indemnify and hold CITY harmless from any claims, damages, verdicts or judgments arising out of actions or omissions by DEVELOPER or caused by DEVELOPER in breach of this Agreement, but not otherwise; however, DEVELOPER will not indemnify or hold CITY harmless from any liabilities or responsibilities arising out of CITY's breach of this Agreement or CITY's gross negligence or intentional misconduct.**
- B. **It is further understood and agreed among the parties that CITY, in performing its obligations hereunder, is acting independently and DEVELOPER assumes no responsibility or liability allegedly arising from this Agreement and raised by third parties. However, DEVELOPER does**

assume its responsibility and liability arising out of its breach of this Agreement. DEVELOPER also accepts responsibility for DEVELOPER's gross negligence and intentional misconduct in connection with this Agreement.

VI. INSPECTIONS

DEVELOPER agrees that CITY, its agents and employees shall have reasonable rights of access to the Premises and the Project to inspect the Project in order to insure that the construction of the Project is in accordance with this Agreement and all applicable state and local laws and regulations, or that there has been a valid written waiver thereof. After completion of the Project, CITY shall have the continuing right, subject to DEVELOPER's reasonable security requirements, to inspect the Project and DEVELOPER's pertinent business records to insure that the Project is thereafter maintained, operated, and occupied in compliance with this Agreement and other agreements executed pursuant to this Agreement.

VII. BREACH AND RECAPTURE

Each incentive authorized by this Agreement shall be provided in accordance with a written agreement in addition to this Master Agreement. The written agreement for each incentive shall address the recapture of incentives, if any.

VIII. PROTESTS

This Agreement shall not be construed to prohibit an owner's protest or contest of any or all appraisals or assessments of any property in the Premises, including Real Property Improvements and Personal Property Improvements thereon. The amount of the Ad Valorem Tax Rebate Grant provided herein shall be based upon the real property taxes as finally determined after such protest or contest to be due for the Premises and the Project.

IX. NOTICE

Notices required to be given to any party to this Agreement shall be delivered by hand delivery or certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and shall be deemed delivered as of the date deposited in the United States Mail:

DEVELOPER: Arlington Commons Lands, LLC
3104-7 North Collins Street
Arlington, Texas 76005
Attention: Robert H. Kembel

WITH A Winstead PC
COPY TO: 500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
Attention: Barry R. Knight

CITY: City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231
Attention: Economic Development Manager

Any party may change the address and add additional parties to whom notice will be sent by giving the other parties written notice in the manner provided in this Section.

**X.
FORCE MAJEURE**

Neither CITY nor DEVELOPER, nor any successor in interest or assignee shall be considered in breach or default of their respective obligations under this Agreement, and time for performance of obligations hereunder shall be extended, in the event of any delay caused by force majeure, including damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, governmental action or inaction for an unreasonable period (unless caused by negligence or omissions by DEVELOPER), acts of God, or similar events.

**XI.
COUNTERPARTS**


This Agreement may be executed in any number of counterparts, each of which may be executed by any one or more of the parties hereto, but all of which shall constitute one instrument, and shall be binding and effective when all of the parties hereto have executed at least one counterpart.

**XII.
AUTHORITY**

This Agreement was authorized by Resolution No. 14- 300 of the Arlington City Council, authorizing the City Manager or his designee to execute this Agreement on behalf of CITY and shall constitute a valid and binding agreement between CITY and DEVELOPER upon execution.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on the date indicated below, effective as of the later of such dates.


**ARLINGTON COMMONS LANDS,
LLC**
a Texas Limited Liability Company
By its member: The Nehemiah, LLC
a Texas Limited Liability Company

BY 
Robert H. Kembel
Manager of The Nehemiah, LLC
Date 12-9-2014

WITNESS:



CITY OF ARLINGTON, TEXAS

BY 
Theron L. Bowman Ph.D.
Deputy City Manager
Date 01/12/2015

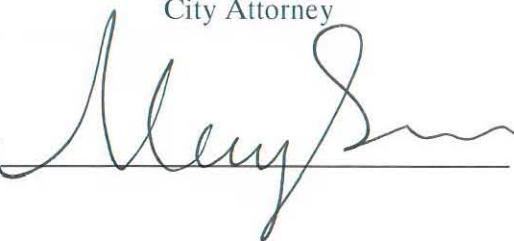
ATTEST:



MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:

City Attorney

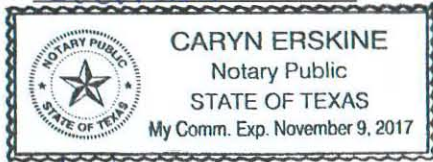
BY 

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

ARLINGTON COMMONS LANDS, LLC
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **ROBERT H. KEMBEL**, Manager of The Nehemiah, LLC, a Texas limited liability company, member of ARLINGTON COMMON LANDS, LLC, a Texas limited liability company, known to me (or proved to me on the oath of _____ or through Texas Driver's License (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of **ARLINGTON COMMONS LANDS, LLC**, an entity duly authorized to do business in the State of Texas, and as the **Manager of The Nehemiah, LLC**, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 30th day of December, 2014.



11/9/2017
My Commission Expires

Caryn Erskine
Notary Public in and for
The State of Texas
Caryn Erskine
Notary's Printed Name

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Sharon L. Bowman, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON, TEXAS**, a municipal corporation of Tarrant County, Texas, and as the **Deputy City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 12th day of January, ~~2014~~ 2015.

7/1/18
My Commission Expires

Ann Cheryl Riney
Notary Public in and for
The State of Texas
Ann Cheryl Riney
Notary's Printed Name

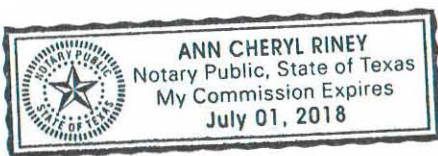


EXHIBIT "A"

The Premises

TRACT A - HUNTINGTON CHASE APARTMENTS

Tract A-R, Block 5, Parkway Central, an addition to the City of Arlington, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-61, Page 1, Plat Records, Tarrant County, Texas.

TRACT B - POINTE AT NORTH HIGHLAND APARTMENTS

Tract A, Block 6, Parkway Central, an addition to the City of Arlington, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-53, Page 96, Plat Records, Tarrant County, Texas.

TRACT C - COUNTRY WOOD APARTMENTS

Tract B, Block 6, Parkway Central, an addition to the City of Arlington, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-53, Page 96, Plat Records, Tarrant County, Texas.

TRACT D - WATER CHASE APARTMENTS

Tract CR, Block 2, Parkway Central Addition, an addition to the City of Arlington, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-159, Page 57, Plat Records, Tarrant County, Texas.

TRACT E - HUNTINGTON CHASE APARTMENTS

Tract D, Block 5, Parkway Central, an addition to the City of Arlington, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-75, Page 59, Plat Records, Tarrant County, Texas.

Exhibit A

380 Tracts & Boundary

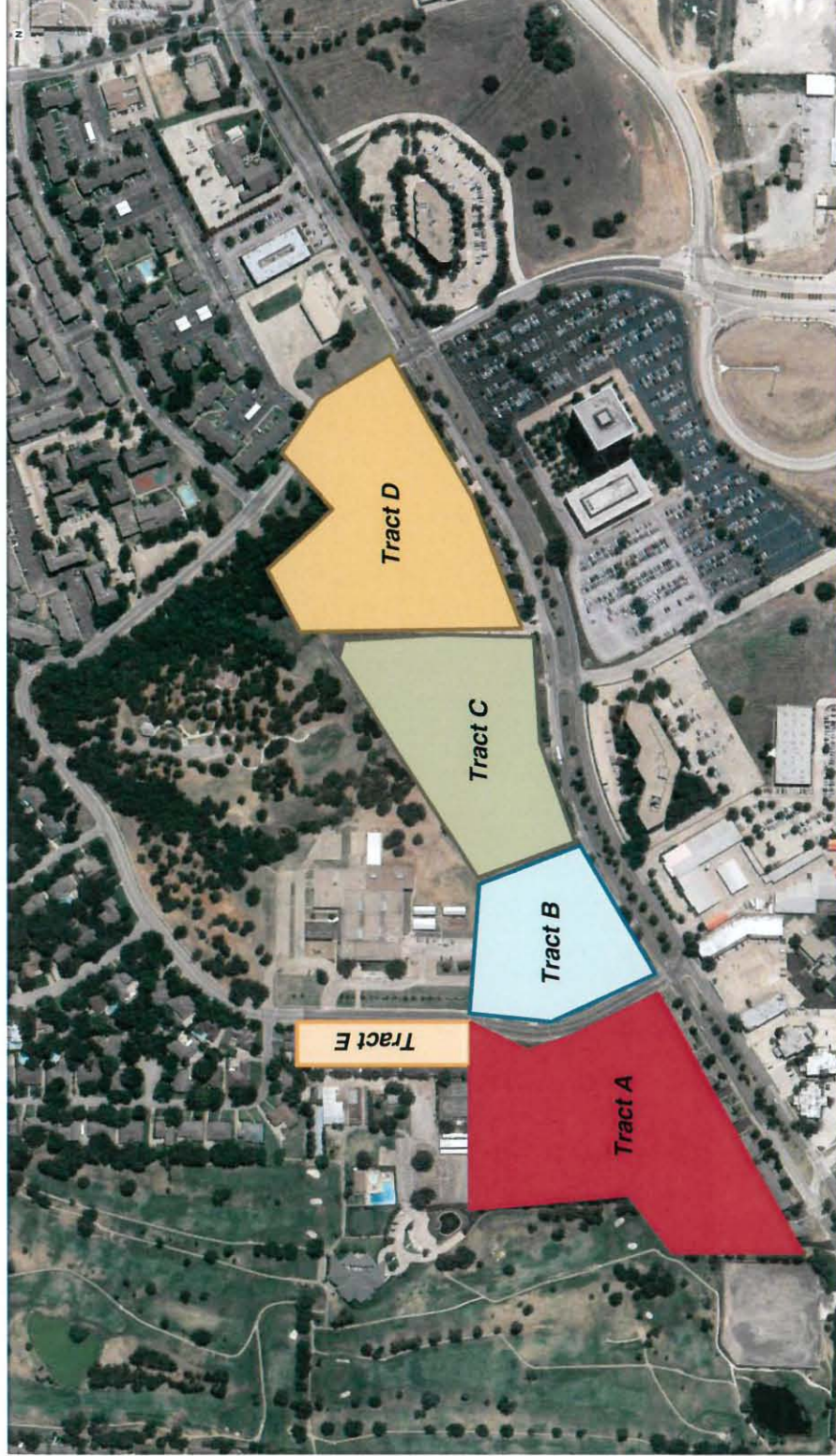


Exhibit B

Project With Phasing

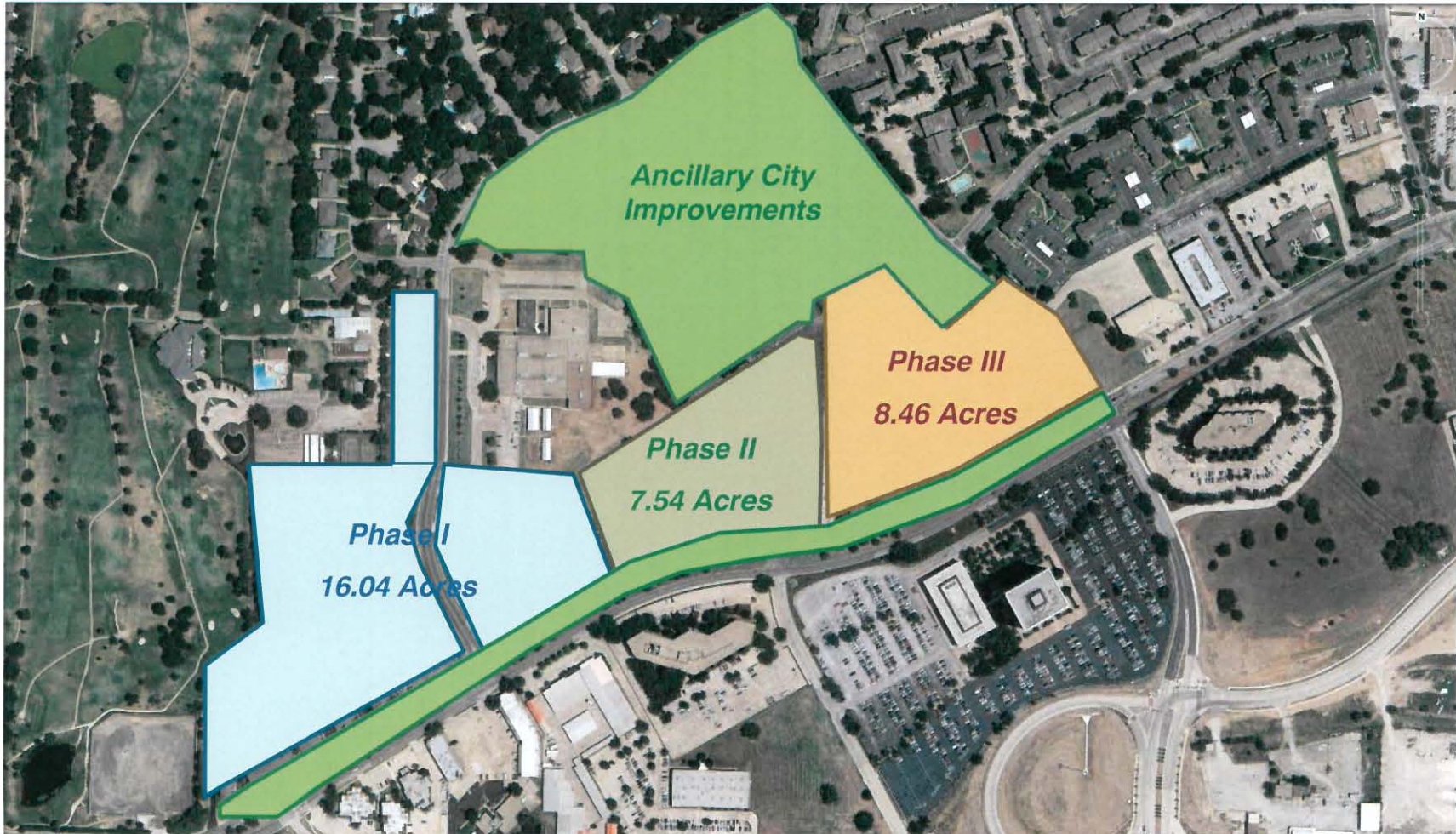
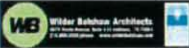


EXHIBIT "C"

EXHIBIT "C"

Lamar Redevelopment



Weber Bahson Architects
1000 Broadway, Suite 1000, Denver, CO 80202
303.733.1111 | www.weberbahson.com



Lamar Redevelopment





EXHIBIT "D"

Country Wood

Being a tract of land situated in the J.M. Henderson Survey, Abstract No. 696 being all of Tract B, block 6 Parkway Central an addition to the City of Arlington, Texas, according to the Plat thereof recorded in Volume 399-53, Page 96, plat records Tarrant County, Texas

The Pointe

Being a tract of land situated in the J.M. Henderson Survey, Abstract No. 696, being all of Tract A, Block 6, PARKWAY CENTRAL, an Addition to the City of Arlington, Texas, according to the Plat thereof recorded in Volume 388-53, Page 96, Plate Records, Tarrant County, Texas.

THE STATE OF TEXAS §
 § **Development Agreement Number Five (Phase IC)**
COUNTY OF TARRANT §

THIS DEVELOPMENT AGREEMENT NUMBER FIVE (PHASE IC) (“Agreement”) is entered into by and between **ARLINGTON COMMONS LANDS, LLC**, a Texas limited liability company (hereafter referred to as “DEVELOPER”), and the **CITY OF ARLINGTON, TEXAS**, a home-rule city and municipal corporation of Tarrant County, Texas, acting by and through its City Manager or his designee (hereafter referred to as “CITY”).

WITNESSETH:

WHEREAS, on September, 2018, by Resolution No. 18-240, City Council approved a Third Amended and Restated Master Economic Development Program Agreement with Arlington Commons Lands, LLC relative to economic development incentives associated with demolition, remediation and redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington (hereafter referred to as the “Project”); and

WHEREAS, the CITY has found that providing a program of incentives to DEVELOPER in exchange for DEVELOPER completing the Phase IC Project will promote local economic development and stimulate business and commercial activity within the City of Arlington (hereafter referred to as PROGRAM); and

WHEREAS, the CITY has determined that the PROGRAM authorized by Resolution No. 18-240 will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that the public purpose is accomplished; and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the incentive provided herein; NOW THEREFORE,

The CITY and DEVELOPER, for and in consideration of the mutual promises contained herein, do hereby agree as follows:

**I.
DEFINITIONS**

A. “Added Taxable Value” is defined as the Taxable Value of the Eligible Property and Premises above the Base Year value, as established by final determined of the Tarrant Appraisal District.

- B. “Base Year Value” is the tax year 2015 Taxable Value of the Premises, as established by final determination of the Tarrant Appraisal District.
- C. “Capital Investment” means the amount of the investment in land and investment of the hard and soft costs in the design, construction, acquisition and installation of the Real Property Improvements on the Premises.
- D. “Eligible Property” is defined as the taxable improvements to the Premises, including all buildings, structures or fixtures erected or affixed to land after this Agreement is executed and through June 30, 2021.
- E. “Grant(s)” means the payments from CITY to DEVELOPER provided for under Article III of this Agreement.
- F. “Master Agreement” means that certain agreement titled “Third Amended and Restated Master 380 Economic Development Program Agreement” authorized by City Council Resolution No. 18-240 on September 18, 2018.
- G. “Phase IC Project” means the redevelopment of the Premises through the construction of the Eligible Property, to include a new multi-family development with a minimum of 350 multi-family units and a structured parking facility resulting in a Capital Investment of not less than \$35 Million.
- H. “Premises” means the land described on **Exhibit “A”** attached hereto.
- I. “Taxable Value” means the assessed real property value determined by the Tarrant Appraisal District for each tax year during the term of this Agreement.

**II.
IMPROVEMENT CONDITIONS AND REQUIREMENTS
TO TRIGGER AD VALOREM TAX RELATED GRANT PAYMENT**

In order to receive the Grants provided for under Article III of this Agreement, the following must occur:

- A. DEVELOPER shall improve the Premises by completing the Eligible Property on or before June 30, 2021. Completion shall be demonstrated by obtaining all final requisite certificates of occupancy for the Eligible Property.
- B. DEVELOPER’s completion of the Eligible Property must result in Added Taxable Value of at least \$7,000,000 in the tax year beginning January 1, 2022.
- C. DEVELOPER shall maintain the Eligible Property on the Premises for the term of this Agreement and at all times maintain a Multi-Family License for the Eligible Property as required by Article XIV of the Uniform Housing Code Chapter of the Code of the City of Arlington.
- D. Eligible Property shall at all times conform to the applicable building codes,

zoning ordinances and all other ordinances and regulations or laws.

- E. DEVELOPER shall not allow the ad valorem taxes owed to CITY on any property owned by DEVELOPER and located within the City of Arlington to become delinquent beyond the last day they can be paid without assessment of penalty.
- F. DEVELOPER shall not fail to render for taxation any property located within the City of Arlington.
- G. DEVELOPER shall submit a written request for payment of the Grants in accordance with subsection III (B)(1) of this Agreement.
- H. DEVELOPER has not commenced bankruptcy proceedings.

III.

AD VALOREM TAX RELATED GRANT

- A. CITY agrees to pay to DEVELOPER a Grant measured by and in the amount of ninety percent (90%) of the taxes paid by DEVELOPER to the CITY on the Added Taxable Value for a period of twenty (20) years commencing in the tax year beginning on January 1, 2032, and ending in the tax year beginning on January 1, 2051, so long as all improvements and conditions contained in Article II of this Agreement are met and DEVELOPER is not in breach of this Agreement.
- B. Process for Grant Payment:
 - 1. DEVELOPER shall make written request to the Treasury Division of the City of Arlington for each Grant payment by way of the annual certification process on CITY's prescribed certification form. Each year, DEVELOPER must certify compliance by March 15 of payment in full of all real property taxes due for the Eligible Property, subject to the right of protest. Failure to timely submit the annual certification in accordance with this Article after notice and opportunity to cure as provided in Section VII (B) shall waive DEVELOPER's right to the Grant.
 - 2. The Grant payment will be paid to DEVELOPER annually, on or before June 1, after receipt by CITY of DEVELOPER's annual certification documents.
- C. DEVELOPER's right to request and receive the Grants shall terminate upon the final Grant payment made in accordance with this Article III, if not sooner terminated in accordance with the terms of this Agreement.

**IV.
FEE WAIVER**

So long as DEVELOPER is not in breach of this Agreement, CITY agrees to waive the following development fees in relation to development of the Phase IC Project: plan review fees, building permit and inspection fees, park fees, irrigation review and inspection fees, demolition permit fees, early grading permit fees, landscape plan review fees, public utilities inspection fees, fire alarm permit and inspection fees, sprinkler system permit and inspection fees, fire pump permit and inspection fees, certificate of occupancy fees, water and sewer tap fees, water activation fees, meter and detector check fees, cap existing service fees, impact fees and water meter fees.

**V.
INDEMNIFICATION**

- A. It is understood and agreed between the parties that DEVELOPER, in performing DEVELOPER's respective obligations hereunder, is acting independently and CITY assumes no responsibility or liability to third parties arising or alleged to arise from this Agreement. DEVELOPER agrees to defend, indemnify and hold CITY harmless from any claims, damages, verdicts or judgments arising out of actions or omissions by DEVELOPER or caused by DEVELOPER in breach of this Agreement, but not otherwise; however, DEVELOPER will not indemnify or hold CITY harmless from any liabilities or responsibilities arising out of the CITY's breach of this Agreement or CITY's gross negligence or intentional misconduct.**
- B. It is further understood and agreed among the parties that CITY, in performing its obligations hereunder, is acting independently and DEVELOPER does not assume any responsibility or liability allegedly arising from this Agreement and raised by third parties. However, DEVELOPER does assume responsibility and liability arising out of DEVELOPER's breach of this Agreement, and DEVELOPER accepts responsibility for DEVELOPER's gross negligence and intentional misconduct in connection with this Agreement.**

**VI.
INSPECTIONS**

DEVELOPER agrees that CITY, its agents and employees shall have reasonable rights of access to the Premises to inspect the Eligible Property in order to ensure that the construction of the Eligible Property is in accordance with this Agreement and all applicable laws and regulations or that there has been a valid written waiver thereof. After completion of the Eligible Property, CITY shall have the continuing right, subject to DEVELOPER's reasonable security requirements, to inspect the Eligible Property and DEVELOPER's pertinent business records to ensure that the Eligible Property is thereafter maintained, operated, and occupied in compliance with this Agreement. The

approvals or consents by the CITY of any matter submitted to the CITY pursuant to this Agreement shall not constitute, replace or substitute, or otherwise excuse DEVELOPER from any permitting, licensing or approval processes required by CITY or other governmental authorities to construct, operate, or maintain the Eligible Property.

VII. BREACH AND TERMINATION

- A. Breach - A breach of this Agreement may result in termination of this Agreement. The following conditions shall constitute a breach of this Agreement:
1. The Premises are abandoned by DEVELOPER by ceasing to operate the Eligible Property as multi-family for a consecutive period of at least six months or operating at an occupancy rate below 33% for a consecutive period of six months or more in years 5-30 after the Phase IC Project is completed and a certificate of occupancy is issued; or
 2. DEVELOPER fails to complete and adhere to the DEVELOPER's Improvement Conditions and Requirements as specified in Article II above; or
 3. DEVELOPER allows its ad valorem taxes on any property it owns located within the City of Arlington to become delinquent; or
 4. DEVELOPER fails to render for taxation any property it owns located within the City of Arlington; or
 5. DEVELOPER fails to comply with the inspection requirements described in Article VI of this Agreement.
- B. Notice of Breach - In the event that CITY makes a reasonable determination that DEVELOPER has breached this Agreement then CITY shall give DEVELOPER written notice of such breach. DEVELOPER shall have sixty (60) days following receipt of said written notice to reasonably cure such breach or this Agreement may be terminated by CITY and future Grant payments withheld. Notice of breach shall be in writing and shall be delivered by personal delivery or certified mail to DEVELOPER at the addresses provided in Article IX of this Agreement.
- C. Tax Lien Not Impaired - It is expressly agreed and acknowledged between the parties to this Agreement that nothing in this Agreement shall be deemed or construed to affect the lien for taxes against the property established by Section 32.01 of the Tax Code of the State of Texas. Such lien shall secure the payment of all taxes, penalties, and interest ultimately imposed on the property, including any taxes abated and subject to recapture under this Agreement. Any such lien may be fully enforced pursuant to the provisions of the Code. For purposes of this Article VII, Section C, "property" refers to the Premises, Eligible Property, and the Phase IC Project described herein.

**VIII.
PROTESTS**

This Agreement shall not be construed to prohibit DEVELOPER's protest or contest of any or all appraisals or assessments of any property in the Premises or Phase IC Project, including Real Property Improvements thereon. The amount of the Grant provided in Article III above shall be based upon the real property taxes as finally determined by Tarrant Appraisal District to be due for the Premises and the Phase IC Project after such protest or contest is finally determined.

**IX.
NOTICE**

Notices required to be given to any party to this Agreement shall be delivered by hand delivery by a reputable delivery service or by certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and shall be deemed delivered as of the date of delivery or date deposited in the United States Mail:

DEVELOPER: Arlington Commons Lands, LLC
Attention: Robert H. Kembel
835 E. Lamar Blvd., #254
Arlington, Texas 76011

WITH A Winstead PC
COPY TO: Attention: Barry R. Knight
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201

CITY: City of Arlington
Attention: Economic Development Manager
P.O. Box 90231
Arlington, Texas 76004-3231

Any party may change the address and add additional parties to whom notice will be sent by giving the other parties written notice in the manner provided in this Article.

**X.
AUTHORITY**

This Agreement is authorized by Resolution No. 18-239 of the Arlington City Council, and shall constitute a valid and binding agreement between CITY and DEVELOPER upon execution.

**XI.
MODIFICATION**

This Agreement may be modified by DEVELOPER and CITY by using the same procedure for approval of the modification as is required for entering into the Agreement.

**XII.
FORCE MAJEURE**

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities (TXU Electric, Southwestern Bell Telephone, TXU Gas, AT&T Cable Services, or their contractors), fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or 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 circumstance is 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 performance under this agreement shall be extended for a period of time equal to the period such party was delayed.

**XIII.
VENUE AND GOVERNING LAW**

This Agreement is performable in Tarrant County, Texas and venue of any action arising out of this Agreement shall be exclusively in Tarrant County. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

**XIV.
LEGAL CONSTRUCTION**

In case 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 any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement. Should any provision of this Agreement be in conflict with a provision of the Master Agreement, this Agreement shall apply as to the specific conflicting provision; in all other instances the Master Agreement and this Agreement shall both apply.

**XV.
COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**XVI.
CAPTIONS**

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

**XVII.
SUCCESSORS AND ASSIGNS**

The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. It is intended by the parties hereto that this Agreement may be assigned by DEVELOPER to a successor owner and/or party only with prior written approval of the City Council, which approval will not be unreasonably withheld or delayed. Assignments to related entities where The Nehemiah, LLC is the general partner or managing member shall be expressly allowed without City Council approval.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on the date indicated below, effective as of the later of such dates.

**ARLINGTON COMMONS LANDS,
LLC**

a Texas Limited Liability Company

By its member: The Nehemiah, LLC

a Texas Limited Liability Company

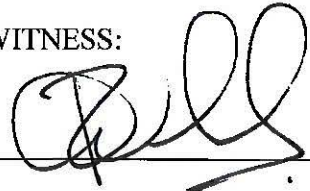
BY 

Robert H. Kembel

Manager of The Nehemiah, LLC

Date 10/2/18

WITNESS:



CITY OF ARLINGTON, TEXAS

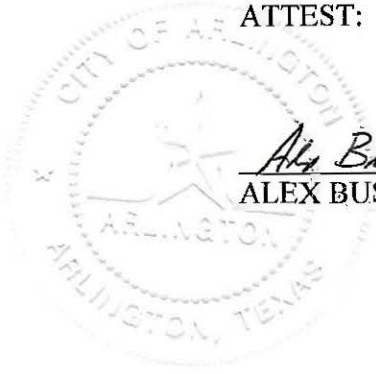
BY 

JIM PARAJON

Deputy City Manager

Date 10/22/18

ATTEST:



Alex Busken
ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

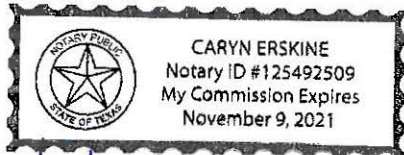
BY Teris Solis

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

ARLINGTON COMMONS LANDS, LLC
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **ROBERT H. KEMBEL**, Manager of The Nehemiah, LLC, a Texas limited liability company, member of ARLINGTON COMMONS LANDS, LLC, a Texas limited liability company, known to me (or proved to me on the oath of _____ or through _____ (*description of identity card or other document*)) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of **ARLINGTON COMMONS LANDS, LLC**, an entity duly authorized to do business in the State of Texas, and as the **Manager of The Nehemiah, LLC**, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 2nd day of October, 2018.



11/9/2021
My Commission Expires

Caryn Erskine
Notary Public in and for
The State of Texas.
Caryn Erskine
Notary's Printed Name

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **JIM PARAJON**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of the **CITY OF ARLINGTON, TEXAS**, a municipal corporation of Tarrant County, Texas, and as the **Deputy City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 22nd day of October, 2018.

05/04/22
My Commission Expires

Brandi Brown
Notary Public in and for
The State of Texas
Brandi Brown
Notary's Printed Name

(10)

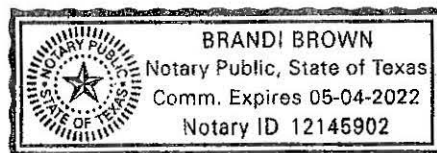
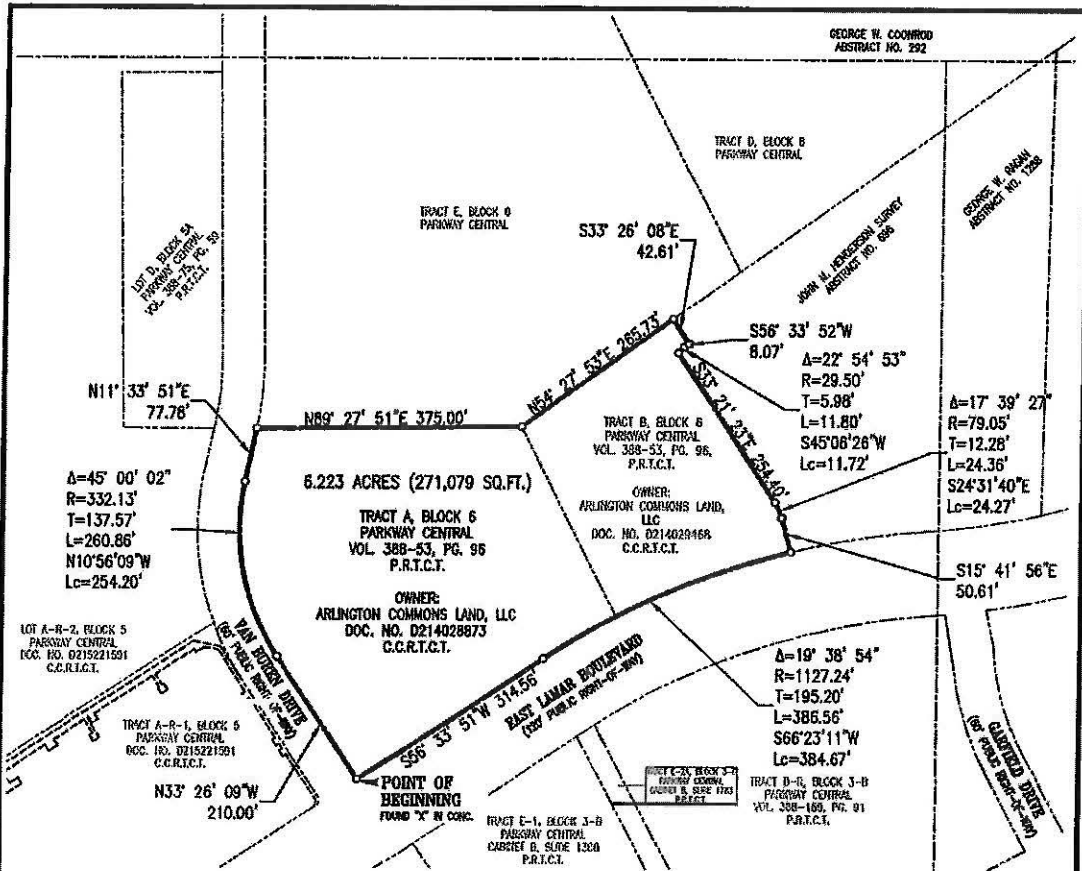


Exhibit "A" Premises



LEGEND

C.C.R.T.C.T. = COUNTY CLERK RECORDS, TARRANT COUNTY, TEXAS
D.R.T.C.T. - DEED RECORDS, TARRANT COUNTY, TEXAS

BASIS OF BEARING IS THE STATE PLANE COORDINATE SYSTEM, TEXAS NORTH CENTRAL ZONE 4202, NORTH AMERICAN DATUM OF 1983, ADJUSTMENT REALIZATION 2011

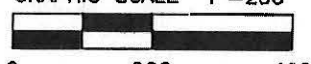
BOUNDARY EXHIBIT

BEING A 6.223 ACRE (271,079 SQ.FT.) TRACT OF LAND
ARLINGTON COMMONS LAND, LLC
DOCUMENT No. D214028873, COUNTY CLERK RECORDS, TARRANT COUNTY, TEXAS
SITUATED IN JOHN M. HENDERSON SURVEY, ABSTRACT NO. 696,
CITY OF ARLINGTON, TARRANT COUNTY, TEXAS



Graham Associates, Inc.
CONSULTING ENGINEERS & PLANNERS
600 SIX FLAGS DRIVE, SUITE 500
ARLINGTON, TEXAS 76011 (817) 640-8535
TBPE FIRM: F-1191/TBPLS FIRM: 101538-00

GRAPHIC SCALE 1"=200'



0 200 400



DRAWN BY: GAI DATE: APRIL 2018
PROJECT NO.: XXXX-XXX SHEET 1 OF 3

BOUNDARY EXHIBIT

Being a 6.223 acre tract of land situated in the John M. Henderson Survey, Abstract No.696, Tarrant County, Texas and being all of Tract A, Block 6, Parkway Central Addition, as recorded in Volume 388-53, Page 96, Plat Records, Tarrant County, Texas, and conveyed by deed to Arlington Commons Land, LLC., as recorded in Document No. D214028873, County Clerk Records, Tarrant County, Texas, and being a portion of Tract B, Block 6, Parkway Central Addition, as recorded in Volume 388-53, Page 96, Plat Records, Tarrant County, Texas, and conveyed by deed to Arlington Commons Land, LLC., as recorded in Document No. D214029468, County Clerk Records, Tarrant County, Texas, and being more particularly described as follows:

BEGINNING at a found "x" in concrete, said point being the southwest corner of said Tract A, Block 6, and being at the intersection of the existing north right-of-way line of East Lamar Boulevard (having a 120' R.O.W.) and the existing west right-of-way line of Van Buren Drive (having a 60' R.O.W.);

THENCE North 33°26'09" West, leaving said existing north right-of-way line, and along said existing west right-of-way line, a distance of 210.00 feet to a point for corner, for the beginning of a tangent curve to the right having a radius of 332.13 feet, a central angle of 45°00'02", and a long chord which bears North 10°56'09" West, 254.20 feet;

THENCE continuing along said existing west right-of-way line, and along said tangent curve to the right, an arc distance of 260.86 feet to a point for corner;

THENCE North 11°33'51" East, continuing along said existing west right-of-way line, a distance of 77.78 feet to a point for corner, said point being the northwest corner of said Tract A, Block 6;

THENCE North 89°27'51" East, leaving said existing west right-of-way line, and along the north line of said Tract A, a distance of 375.00 feet to a point for corner, said point being the northeast corner of said Tract A, and being the northwest corner of said Tract B, Block 6;

THENCE North 54°27'53" East, leaving said north line of Tract A, and along the north line of said Tract B, Block 6, a distance of 265.73 feet to a point for corner;

THENCE South 33°26'08" East, leaving said north line of Tract B, a distance of 42.61 feet to a point for corner;

THENCE South 56°33'52" West, a distance of 8.07 feet to a point for corner, for the beginning of a tangent curve to the left having a radius of 29.50 feet, a central angle of 22°54'53", and a long chord which bears South 45°06'26" West, 11.72 feet;

THENCE along said tangent curve to the left, an arc distance of 11.80 feet to a point for corner;

THENCE South 33°21'23" East, a distance of 254.40 feet to a point for corner, for the beginning of a tangent curve to the right having a radius of 79.05 feet, a central angle of 17°39'27", and a long chord which bears South 24°31'40" East, 24.27 feet;

THENCE along said tangent curve to the right, an arc distance of 24.36 feet to a point for corner;

THENCE South $15^{\circ}41'56''$ East, a distance of 50.61 feet to a point for corner, for the beginning of a non-tangent curve to the left having a radius of 1127.24 feet and a central angle of $19^{\circ}38'54''$, and a long chord which bears South $66^{\circ}23'11''$ West, 384.67 feet, said point being in the existing north right-of-way line of said East Lamar Boulevard;

THENCE along said existing north right-of-way line, and along said non-tangent curve to the left an arc distance of 386.56 feet to a point for corner;

THENCE South $56^{\circ}33'51''$ West, continuing along said existing north right-of-way line, a distance of 314.56 feet to the POINT OF BEGINNING and CONTAINING 271,079 square feet, 6.223 acres of land, more or less.

Resolution No. 14-301

A resolution authorizing the execution of the First Amended and Restated Development Agreement Number One, by and between Arlington Commons Lands, LLC and the City of Arlington, Texas amending Development Agreement Number One by and between JCKPL AC, LLC and the City of Arlington, Texas for economic development incentives associated with demolition, remediation and redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington, Texas, to reflect the assignment of Development Agreement Number One from JCKPL AC, LLC to Arlington Commons Lands, LLC, and to amend completion deadlines for the project phases

WHEREAS, on August 6, 2013, by Resolution 13-193, City Council approved a Phase I Development Grant 380 Agreement with JCKPL, LLC regarding economic development incentives associated with Phase I demolition, remediation and redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington, Texas; and

WHEREAS, on January 21, 2014, by Resolution 14-006, City Council approved Development Agreement Number One to amend the Phase I Development Grant 380 Agreement with JCKPL, LLC to reflect the change of the name of JCKPL, LLC to JCKPL AC, LLC, to increase the grant amount from \$1,500,000 to \$2,000,000, and to change the required dates for acquisition, demolition and construction; and

WHEREAS, JCKPL AC, LLC, as authorized by Article XV of Development Agreement Number One, assigned all rights and obligations under Development Agreement Number One to Arlington Commons Lands, LLC; and

WHEREAS, the City and Arlington Commons Lands, LLC desire to amend Development Agreement Number One to reflect the assignment of Development Agreement Number One from JCKPL AC, LLC to Arlington Commons Lands, LLC, and to amend completion deadlines for the project phases; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its official record.

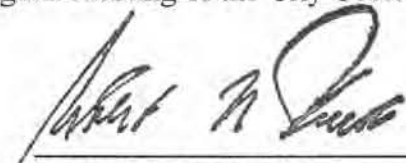
II.

That the City Manager or his designee is authorized to execute the First Amended and Restated Development Agreement Number One with Arlington Commons Lands, LLC and other necessary or required parties to provide certain economic incentives in exchange for Arlington Commons Lands, LLC's demolition, remediation, and redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington, Texas.

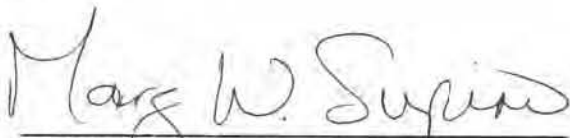
III.

A substantial copy of First Amended and Restated Development Agreement Number One is attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

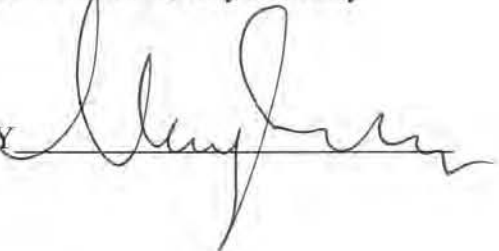
PRESENTED AND PASSED on this the 18th day of November, 2014, by a vote of 7 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.


ROBERT N. CLUCK, Mayor

ATTEST:


MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY 

Resolution No. 14-303

A resolution authorizing the execution of the First Amended and Restated Development Agreement Number Three by and between Arlington Commons Lands, LLC and the City of Arlington, Texas for economic development incentives associated with redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington, Texas to reflect the assignment of Development Agreement Number Three from JCKPL AC, LLC to Arlington Commons Lands, LLC, and to amend completion deadlines for the phases of the project, and to amend the ad valorem tax related grant

WHEREAS, on February 11, 2014, by Resolution 14-026, City Council approved Development Agreement Number Three with JCKPL AC, LLC for economic development incentives associated with redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington, Texas; and

WHEREAS, JCKPL AC, LLC, as authorized by Article XIII of Development Agreement Number Three, assigned all rights and obligations under Development Agreement Number Three to Arlington Commons Lands, LLC; and

WHEREAS, the City and Arlington Commons Lands, LLC desire to amend Development Agreement Number Three to reflect the assignment of Development Agreement Number Three from JCKPL AC, LLC to Arlington Commons Lands, LLC and to amend completion deadlines for the phases of the project, and to amend the ad valorem tax related grant;
NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its official record.

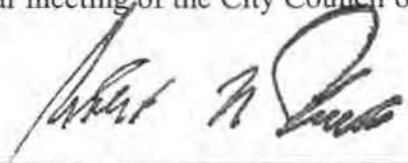
II.

That the City Manager or his designee is authorized to execute the First Amended and Restated Development Agreement Number Three with Arlington Commons Lands, LLC and other necessary or required parties to provide certain economic development incentives in exchange for Arlington Commons Lands, LLC redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington, Texas.

III.

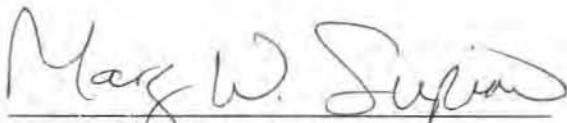
A substantial copy of the First Amended Development Agreement Number Three is attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the 18th day of November, 2014, by a vote of 7 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.



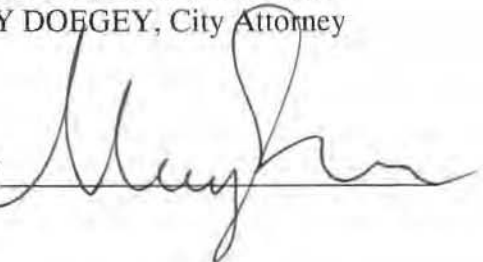
ROBERT N. CLUCK, Mayor

ATTEST:



MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY 

Resolution No. 18-242

A resolution authorizing the execution of the First Amended and Restated Development Agreement Number Four – Ancillary City Improvements by and between Arlington Commons Lands, LLC and the City of Arlington, Texas for economic development incentives relative to ancillary improvements associated with the Arlington Commons Development

WHEREAS, on November 18, 2014, City Council approved Resolution 14-300 approving the Second Amended and Restated Master 380 Economic Development Program Agreement by and between Arlington Commons Lands, LLC (the “Developer”) and the City of Arlington, Texas (the “City”) relative to economic development incentives associated with demolition, remediation, and redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington, Texas (the “Arlington Commons Development”); and

WHEREAS, in accordance with Section III(H) of the Second Amended and Restated Master 380 Economic Development Program Agreement, the City is to provide funding for ancillary improvements associated with the Arlington Commons Development and jointly designed by the City and the Developer; and

WHEREAS, on January 3, 2017, City Council approved Resolution 17-009 approving Development Agreement Number Four - Ancillary City Improvements with the Developer relative to ancillary improvements associated with the Arlington Commons Development and jointly designed by the City and the Developer; and

WHEREAS, on 9/18, 2018, City Council approved Resolution 18-240 approving the Third Amended and Restated Master 380 Economic Development Program Agreement with the Developer to reflect the current status of the Arlington Commons Development and the timing of the subsequent phases associated with the Arlington Commons Development; and

WHEREAS, in accordance with Section III(H) and III(J) of the Third Amended and Restated Master 380 Economic Development Program Agreement, the City is to provide funding for ancillary improvements associated with the Arlington Commons Development and jointly designed by the City and the Developer; and

WHEREAS, the City and the Developer now desire to amend Development Agreement Number Four – Ancillary City Improvements to include a Phase 3 of ancillary improvements associated with the Arlington Commons Development, which will include additional improvements to the Lamar Boulevard right-of-way between the intersections of Ryan Plaza and Cooper Street and an additional grant in an amount not to exceed \$591,953; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its official record.

II.

That the City Manager or his designee is authorized to execute the First Amended and Restated Development Agreement Number Four – Ancillary City Improvements with Arlington Commons Lands, LLC to increase the scope of the ancillary improvements and incentives provided by the City associated with the Arlington Commons Development.

III.


A substantial copy of the First Amended and Restated Development Agreement Number Four – Ancillary City Improvements is attached hereto as Exhibit “A” and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the 18th day of September, 2018, by a vote of 7 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

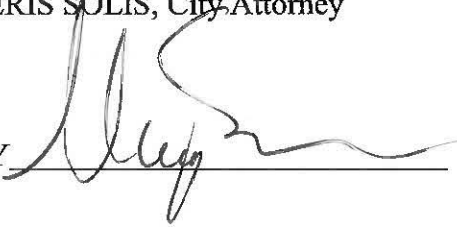


W. JEFF WILLIAMS, Mayor

ATTEST:


ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY 



Resolution No. 18-239

A resolution authorizing the execution of Development Agreement Number Five (Phase IC) by and between Arlington Commons Lands, LLC and the City of Arlington, Texas for economic development incentives associated with Phase IC demolition, remediation and redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington

WHEREAS, on 9/18, 2018, by Resolution No. 18-240, City Council approved a Third Amended and Restated Master Economic Development Program Agreement with Arlington Commons Lands, LLC relative to economic development incentives associated with demolition, remediation and redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington (hereafter referred to as the "Project"); and

WHEREAS, CITY has found that providing a program consisting of a grant of funds to Arlington Commons, LLC (hereinafter referred to as "DEVELOPER") in exchange for DEVELOPER'S completion of the project proposed by DEVELOPER will promote local economic development and stimulate business and commercial activity and create jobs within the City of Arlington (hereafter referred to as "PROGRAM"); and

WHEREAS, CITY has determined that the PROGRAM authorized by Resolution No. 18-239 will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that the public purpose is accomplished; and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the PROGRAM provided herein; and,

WHEREAS, the Arlington City Council has elected to participate in economic development incentives in accordance with V.T.C.A. Local Government Code, Chapter 380, and has adopted policy statements, guidelines, criteria and procedures for evaluating and considering applications and agreements for such incentives; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its official record.

II.

That the City Manager or his designee is authorized to execute Development Agreement Number Five (Phase IC) with DEVELOPER to provide certain economic incentives associated with Phase IC demolition, remediation, and redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington.

III.

In authorizing the execution of and in executing the referenced agreement, the City of Arlington, Texas, through its City Council and City officials, hereby exercises a governmental function in accordance with but not limited to Section 101.0215 of the Texas Civil Practices and Remedies Code.

IV.

A substantial copy of Development Agreement Number Five (Phase IC) is attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the 18th day of September, 2018, by a vote of 7 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.



W. JEFF WILLIAMS, Mayor

ATTEST:



ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY 

Resolution No. 18-241

A resolution authorizing the execution of the Second Amended and Restated Development Agreement Number Two by and between Arlington Commons Lands, LLC and the City of Arlington, Texas for economic development incentives associated with Phase I-A demolition, remediation and redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington, Texas

- WHEREAS, on January 21, 2014, by Resolution 14-007, City Council approved Development Agreement Number Two with JCKPL AC, LLC for economic development incentives associated with Phase I-A demolition, remediation and redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington, Texas; and
- WHEREAS, JCKPL AC, LLC, as authorized by Article XVIII of Development Agreement Number Two, assigned all rights and obligations under Development Agreement Number Two to Arlington Commons Lands, LLC; and
- WHEREAS, on November 18, 2014, by Resolution No. 14-302, City Council approved the First Amended and Restated Development Agreement Number Two with Arlington Commons Lands, LLC to reflect the assignment of Development Agreement Number Two from JCKPL AC, LLC to Arlington Commons Lands, LLC, to amend completion deadlines for the phases of the project, and to amend the ad valorem tax related grant; and
- WHEREAS, on October 28, 2015, Arlington Commons Lands, LLC transferred ownership of the Premises to Prince Commons, LLC and Monarch Commons, LCC as tenants in common and assigned all rights and obligations in Tax Abatement Agreement - Phase IA to Prince Commons, LLC and Monarch Commons, LCC; and
- WHEREAS, all rights and obligations in the First Amended and Restated Development Agreement Number Two will remain with Arlington Commons Lands, LLC as an incentive to complete the Phase I-A demolition, remediation, and redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington, Texas; and
- WHEREAS, the City and Arlington Commons Lands, LLC desire to further amend Development Agreement Number Two to reflect that the incentives will be paid to Arlington Commons Lands, LLC; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON,
TEXAS:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its official record.

II.

That the City Manager or his designee is authorized to execute the Second Amended and Restated Development Agreement Number Two with Arlington Commons Lands, LLC and other necessary or required parties to provide certain economic incentives in exchange for Arlington Commons Lands, LLC's Phase I-A demolition, remediation and redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington, Texas.

III.

A substantial copy of the Second Amended and Restated Development Agreement Number Two is attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the 18th day of September, 2018,
by a vote of 7 ayes and 0 nays at a regular meeting of the City Council of the
City of Arlington, Texas.



W. JEFF WILLIAMS, Mayor

ATTEST:



ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY

