

Planning and Zoning Commission Meeting

Aubrey City Hall
107 S Main St.
Aubrey, TX 76227
September 12, 2024
6:00 PM



**(Notice of Potential Quorum for City Council, Board of Adjustment, Library Board, Municipal Development District, and Parks and Recreation Board - even though a quorum of the members of these boards may or may not be present, no official action will be taken by their members.)*

Notice Regarding Remote Participation of Board Members

Pursuant to Section 551.127, Texas Government Code, one or more commission members may attend this meeting remotely using videoconferencing technology. A quorum of the commission will be physically present at the location provided above. The video and audio feed of the videoconferencing equipment can be viewed and heard by the public by accessing Zoom utilizing the Public Participation link identified below.

Notice Regarding Public Participation

Individuals may attend the meeting in person at the above address, or access the meeting via videoconference, or telephone conference call.

Join the Zoom Meeting by clicking on the following

link: <https://us06web.zoom.us/j/89895676214?pwd=bOePvIEJzOT1x9Te1lQjKiT1nlwqN.1>

Meeting ID: 898 9567 6214 Password: 966888

To join the meeting by phone, dial 1 (346) 248-7799 and use the Meeting ID and password above.

Call to Order - Determine if a Quorum is Present:

Invocation & Pledge of Allegiance: Pledge of Allegiance to the Texas Flag - "Honor the Texas flag; I pledge allegiance to thee, Texas, one state, under God, one, and indivisible."

Community Announcements: Items of community interest may include recognizing Citizens and Staff for outstanding contributions to the community, a reminder about an upcoming event that is organized or sponsored by the governing body, and announcements of an imminent threat to public safety that has arisen after the posting of this agenda.

Citizen Input: Any person may address the Commission. If your comments are concerning an agenda item, you may wait until the discussion on that item if you prefer. Once recognized by the chairperson, please step forward to the speaker's podium, state your name and address and speak directly into the microphone so that people in the room and those attending remotely can hear comments and see presentations. To request to speak via videoconference, click on "Participants" at the bottom of the screen, and click "Raise Hand." The chairperson will acknowledge your request and allow you to speak. Citizen comments are limited to three (3) minutes per individual unless additional time is otherwise required by law. No discussion or action may be taken at this meeting on any item not listed on the agenda, other than to make statements of factual information or recite existing policy in response to a citizen's inquiry.

New Business: New items requested for consideration.

1. Hold a public hearing, consider, and make a recommendation to City Council regarding a Specific Use Permit request to allow for the sale of alcoholic beverages in conjunction with a restaurant use for the property located at 202B S. Main, Aubrey, Denton County, Texas. (*Dos Mezclas Restaurant*)
2. Hold a public hearing, consider, and make a recommendation to City Council regarding an amendment to Exhibit 14A, "Zoning Ordinance," in Chapter 14, "Zoning" of the Code of Ordinances of the City of Aubrey, Texas, and the official Zoning Map of the City as requested in an application for a change of zoning from unzoned land previously located in the City of Aubrey Extraterritorial Jurisdiction to Planned Development District (PD) with base zoning district of C – Commercial on approximately 20 acres of land located in the Francisco Trevino Survey, Abstract No. 1243, Denton County, Texas. The property is generally located south of E. Blackjack Road, west of FM 2931, and east of US Hwy 377. DCAD Parcel ID's 51970 and 557569. (Blackjack Pretium Capital, LLC)
3. Hold a public hearing, consider, and make a recommendation to City Council regarding an amendment to Exhibit 14A, "Zoning Ordinance," in Chapter 14, "Zoning" of the Code of Ordinances of the City of Aubrey, Texas, and the official Zoning Map of the City as requested in an application for a change of zoning from unzoned land previously located in the City of Aubrey Extraterritorial Jurisdiction to Planned Development District (PD) with base zoning districts of SF75 – Single-Family Residential 7,500 Square Feet and GR – General Retail on approximately 47.3 acres of land located in the J. Bridges Jr. Survey, Abstract No. 36, Denton County, Texas.

The property is generally located west of FM 2931, north of Frontier Parkway, and east of future Silverado Parkway. DCAD Parcel ID's 77033 and 52575. (Palomino)

4. Consideration and action on approving the minutes of the August 8, 2024 Planning and Zoning Commission meeting.

-ADJOURN-

I, Jenny Hicks, City Secretary, certify that this Notice of Meeting was posted, per the Open Meetings Act, on the official bulletin board at the City Hall of the City of Aubrey, Texas and on the City's website at www.aubreytx.gov in accordance with Chapter 551, Texas Government Code, and shall remain posted until the meeting is adjourned.

I certify that the attached notice and agenda of items to be considered by the Planning and Zoning Commission of the City of Aubrey, Texas was removed by me from the official bulletin board of the City of Aubrey, Texas, 107 South Main St, Aubrey, Texas on the _____ day of _____, 2024.

(The Planning and Zoning Commission reserves the right to adjourn into closed session at any time during the course of this meeting to consult with its attorney regarding any of the matters listed on this document, as authorized by Texas Government Code Section 551.071 Consultation with Attorney.)

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodation or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at (940) 440-9343 for further information.



*Case Report –Specific Use Permit– Dos Mezclas Restaurant
Planning and Zoning Commission –September 12, 2024
City Council – September 26, 2024*

To: Mayor, City Council, Planning and Zoning Commission

From: Helen-Eve Beadle, AICP, HE Planning+Design, LLC

Request: Hold a public hearing, consider, and make a recommendation to City Council regarding a Specific Use Permit request to allow for the sale of alcoholic beverages in conjunction with a restaurant use for the property located at 202B S. Main, Aubrey, Denton County, Texas. (*Dos Mezclas Restaurant*)

Business Owner: Dos Mezclas

Application Date: August 14, 2024

Location: The property is generally located at the southwest corner of S Main Street and Commerce Streets.

Zoning: GR-General Retail

Summary: Dos Mezclas has applied for the sale of alcoholic beverages for on-premises consumption as part of a restaurant use through a Specific Use Permit. The TABC application requires a municipality to approve a permit stating the location is approved for the legal sale of alcoholic beverage per the City's Zoning Ordinance.

Criteria for Approval: Traffic/Congestion: The proposed location is an existing retail shopping center.
TABC Compliance: Applicant has submitted the TABC application.
Type of Establishment: A restaurant with over fifty-five percent (55%) of sales from food.
Security: The owner/operator shall provide adequate number of employees for security and consult with Police Chief/Director for determination of number of qualified employees to meet obligation. The Chief of Police has received the SUP application and had no comments or conditions.
Parking: The proposed location is an existing retail shopping center with adequate parking.
Environmental Requirements: The owner/operator shall comply with nuisance ordinances.
Expiration: Unless specified as a condition of approval by the City Council for an SUP, a Specific Use Permit issued for any alcoholic beverage sales under this section shall automatically expire upon a change in use of the property, change of ownership to the property and/or business, change in tenant of the lease space, upon the revocation, termination, or expiration of the certificate of occupancy, and/or ceases to be operated at the permitted location for a minimum period of six (6) continuous months, or as otherwise provided for the revocation of SUPs, as outlined in the Zoning Ordinance, as amended.

Compliance with Subdivision Ordinance: The site is a developed/platted property.

Restaurant Proximity: The proposed location is not within 300 feet (measured in a direct line from property boundaries) of a public school, private school, church, day-care center, child-care facility, or public hospital.

Criteria for Denial: The City Council may deny an SUP if it affirmatively determines that the issuance of such SUP:

- Is incompatible with the surrounding uses or property; or
- Is detrimental or offensive to the neighborhood or contrary to the health, safety, and general welfare of the city and its inhabitants; or
- Is found to be in noncompliance with any city ordinances, including without limitation failure to comply with any one or more of the provisions of this Section.

Additional Conditions: The City Council may attach additional development conditions, or grant specific waivers to applicable code requirements, to the Specific Use Permit application that the Council, in its discretion, determines are appropriate for buffering, safety, security, and compatibility for and to adjacent properties.

Notifications: Notifications as required by Texas Local Government Code and the City of Aubrey Zoning Ordinance were provided.

At the time of agenda report submission, no letters either for or against the SUP application have been received.

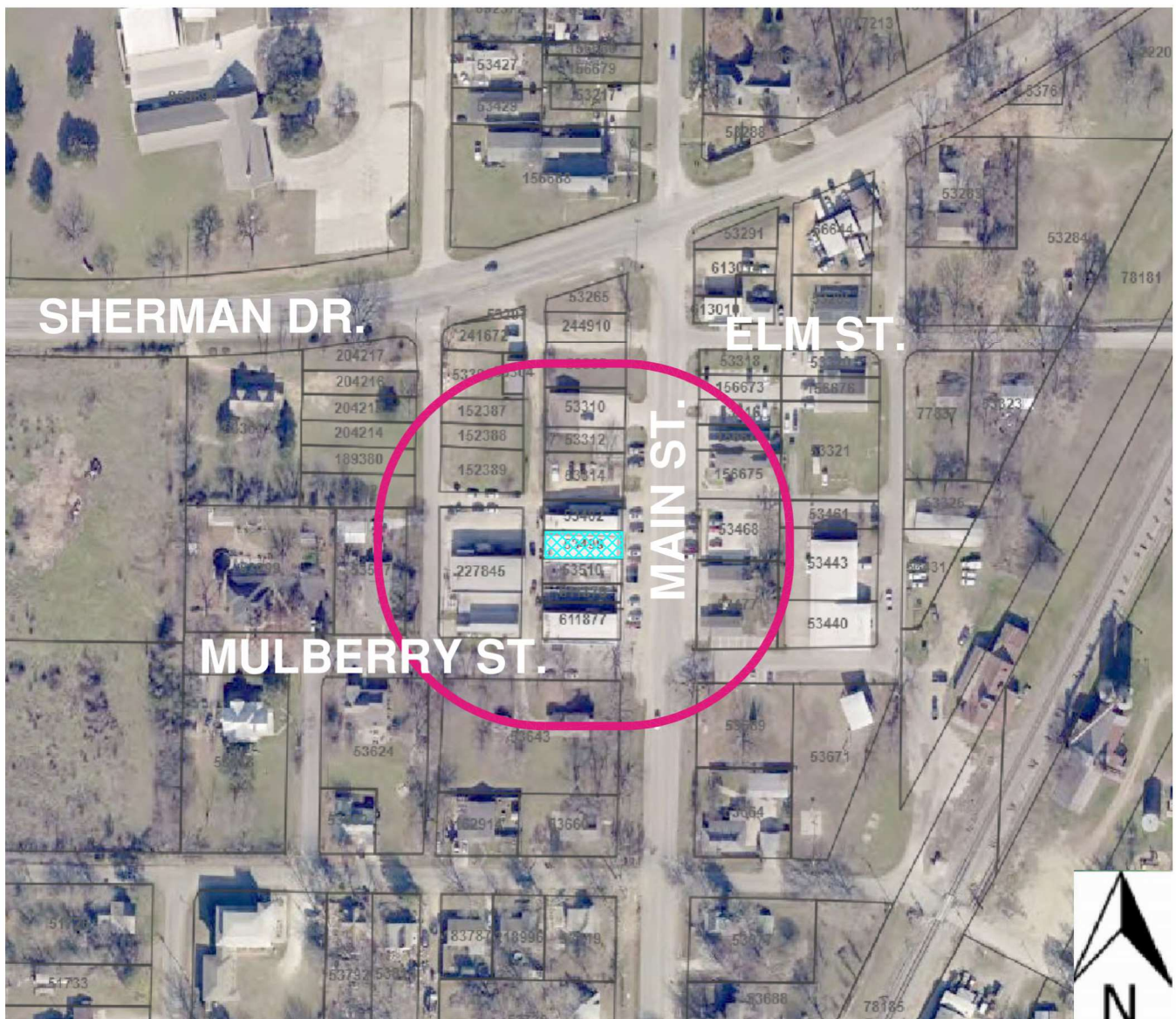
Recommendation: Staff recommends the PD Planned Development District for Palomino be approved as presented.

Action Options: The Planning and Zoning Commission may recommend to the City Council

1. Approve the SUP for alcoholic beverage sales in conjunction with a restaurant use;
2. Approve the SUP for alcoholic beverage sales in conjunction with a restaurant use with conditions; or
3. Deny the SUP for alcohol beverage sales in conjunction with a restaurant use.

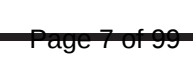
Attachments:

1. Location Notification Map
2. Layout of Restaurant
3. TABC Application



NOTIFICATION MAP FOR:

Public Hearing: An amendment to Exhibit 14A, "Zoning Ordinance," in Chapter 14, "Zoning" of the Code of Ordinances of the City of Aubrey, Texas, and the official Zoning Map of the City as requested in an application for a change in zoning on property zoned as GR – General Retail to provide for the addition of a Specific Use Permit (SUP) to allow for alcoholic beverage sales in conjunction with a restaurant use for the property located at 202B S. Main, Aubrey, Denton County, Texas. (Dos Mezclas Restaurant)





Document reference ID : 400183

Licensing Application Summary

You must review your application and confirm that the information displayed here is correct. Select **Review and Confirm** to continue and make the payment. If the information is not correct, select **Next** to return to the application, edit the data as needed and finalize the submission. If you need to store the application packet for your records, select **Download**.

Application ID:

400183

Applicant Name:

Dos Mezclas

License Type applied for:

Food and Beverage Certificate (FB)

Entity Information

Business Structure:

Limited liability company

FEIN/SSN Number:

993994040

Member Managed or Manager Managed:

Member Managed

Historically Underutilized Business:

No

Veteran-owned business:

No

Fraternal Owned:

No

Secretary of State Filing Number:

805630466

Date Filed:

7/22/2024

Filing State:

TX

Primary Business Entity Contact Information

Legal First Name:

Mit

Legal Middle Name:

Patel

Email Address:

mezclasdos@gmail.com

Phone Number:

469-688-9450

Initial Application Information

Authority Type:

I am a principal or authorized user with binding authority

Legal First Name:

Mit

Legal Middle Name:

Kamlesh

Legal Last Name:

Patel

Email Address:

mezclasdos@gmail.com

Phone Number:

469-688-9450

Principal Parties

Principal Parent Entity	Principal Party	Role	Ownership %
Dos Mezclas	Mit Patel	Member	100

Primary license number

Primary License Information

397665 - New Mixed Beverage Permit Application -
Initiated

Projected Sales Information

Sales Year:	2024
Alcohol Sale:	\$12,000.00
Food Sales:	\$60,000.00
Total Sales:	\$72,000.00



Document reference ID : 397665

Licensing Application Summary

You must review your application and confirm that the information displayed here is correct. Select **Review and Confirm** to continue and make the payment. If the information is not correct, select **Next** to return to the application, edit the data as needed and finalize the submission. If you need to store the application packet for your records, select **Download**.

Application ID: 397665

Applicant Name: Dos Mezclas

License Type applied for: Mixed Beverage Permit (MB)

Entity Information

Business Structure: Limited liability company

FEIN/SSN Number: 993994040

Member Managed or Manager Managed: Member Managed

Historically Underutilized Business: No

Veteran-owned business: No

Fraternal Owned: No

Secretary of State Filing Number: 805630466

Date Filed: 7/22/2024

Filing State: TX

Primary Business Entity Contact Information

Legal First Name: Mit

Legal Middle Name: Patel

Email Address: mezclasdos@gmail.com

Phone Number: 469-688-9450

Initial Application Information

Authority Type: I am a principal or authorized user with binding authority

Legal First Name: Mit

Legal Middle Name: Kamlesh

Legal Last Name: Patel

Email Address: mezclasdos@gmail.com

Phone Number: 469-688-9450

Principal Parties

Principal Parent Entity	Principal Party	Role	Ownership %
Dos Mezclas	Mit Patel	Member	100

Basic Business information

Business/Trade Name: Dos Mezclas

Business Type Restaurant

Location's Phone Numbers

Business Phone Number 469-688-9450

Alternate Phone Number 682-247-1407

Location Address

Address: 202B S Main St, Aubrey, TX, United States, Denton 76227

Is your location within city limits? Yes

Mailing Address Information

Address: 3812 High Country Rd, Aubrey, TX, United States, Denton 76227

Measurement Information

Measuring from the public entrance of your location along street lines and directly across intersections, will your location be within 1,000 feet of the nearest property line of a public or private school? No

Is a residential address or established neighborhood association located within 300 feet of any property line of your premises? No

Sixty Day Sign Requirements

Posted the 60 day sign:Yes

Date Posted:8/1/2024

Projected Sales Information

Sales Year:2024

Alcohol Sale:\$12,000.00

Food Sales:\$60,000.00

Total Sales:\$72,000.00

Property Ownership

Do you, the applicant, own the land, building, and/or warehouse at this proposed licensed location?No

Are you operating under?Lease

Franchise Agreement

Do you or anyone else at the location operate under a franchise agreement?No

Are there any agreements, exclusive of a franchise agreement, which involve alcohol in any way?No

Shared premise information

Do you share the premises with another business entity? No

Property Ownership Details

Property Type	Property Ownership Type	Entity Name
Building	Lessor	Individual

Location Diagram

**Will the license or permit
embrace the entire location
address?**

Yes



CERTIFICATE OF CITY SECRETARY FOR: (MB, BG & BE)

Section 11.37 & 61.37

Not later than the 30th day after the date a prospective applicant for a license or permit requests certification, the city secretary or clerk shall certify whether the location or address given in the request is in a wet area and whether the sale of alcoholic beverages for which the license or permit is sought is prohibited by ordinance.

I hereby certify on this _____ day of _____, _____, that the location for which the license/permit is sought is inside the boundaries of this city or town, in a **"wet"** area for such license/permit, and not prohibited by charter or ordinance in reference to the sale of such alcoholic beverages.

- ☐ **MB** Mixed Beverage Permit
- ☐ **MB/FB** Mixed Beverage Restaurant Permit with Food and Beverage Certificate
(MB must also hold a Food and Beverage Certificate)
- ☐ **BG/FB** Wine and Beer Retailer's Permit with Food and Beverage Certificate
(BG must also hold a Food and Beverage Certificate)
- ☐ **BG** Wine and Beer Retailer's Permit - **Election for given location was held for:**
 - ☐ legal sale of beer/wine (17%) on-premise **AFTER** Sept. 1, 1999
 - ☐ legal sale of beer/wine (14%) on-premise **BEFORE** Sept. 1, 1999
- ☐ **BE** Beer Retail Dealer's On-Premise License
- ☐ **BE/FB** Retail Dealer's On-Premise License with **required** Food and Beverage Certificate

OR

☐ I hereby refuse on this _____ day of _____, 20____ to certify this location.

SIGN HERE

City Secretary/Clerk

City

, TEXAS

S E A L



CERTIFICATE OF COUNTY CLERK FOR: (MB, BG & BE)

Section 11.37 & 61.37

Not later than the 30th day after the date a prospective applicant for a license or permit requests certification, the city secretary or clerk shall certify whether the location or address given in the request is in a wet area and whether the sale of alcoholic beverages for which the license or permit is sought is prohibited by ordinance.

I hereby certify on this _____ day of _____, _____, that the location for which the license/permit is sought is in a **"wet"** and is not prohibited by any valid order of the Commissioner's Court.

- ☐ **MB** Mixed Beverage Permit
- ☐ **MB/FB** Mixed Beverage Restaurant Permit with Required Food and Beverage Certificate
- ☐ **BG/FB** Wine and Beer Retailer's Permit with Required Food and Beverage Certificate
- ☐ **BG** Wine and Beer Retailer's Permit - **Election for given location was held for:**
- ☐ legal sale of beer/wine (17%) on-premise **AFTER** Sept. 1, 1999
- ☐ legal sale of beer/wine (14%) on-premise **BEFORE** Sept. 1, 1999
- ☐ **BE** Beer Retail Dealer's On-Premise License
- ☐ **BE/FB** Retail Dealer's On-Premise License with **required** Food and Beverage Certificate

OR

☐ I hereby refuse on this _____ day of _____, 20____ to certify this location.

SIGN HERE

County Clerk

County

SEAL



COMPTROLLER OF PUBLIC ACCOUNTS CERTIFICATES

I hereby certify on this _____ day of _____, _____, the applicant holds or has applied for and satisfies all legal requirements for the issuance of a Sales Tax Permit under the Limited Sales, Excise and Use Tax Act or the applicant as of this date is not required to hold a Sales Tax Permit.

Sales Tax Permit Number _____

Outlet Number _____

Print Name of Comptroller Employee _____

Print Title of Comptroller Employee _____

SIGN HERE

Comptroller Representative

City

_____, TEXAS

SEAL



PUBLISHER'S AFFIDAVIT

Name of newspaper	
City, County	
Dates notice published in daily/weekly newspaper (MM/DD/YYYY)	
<i>Publisher or designee certifies attached notice was published in newspaper stated on dates shown</i>	
Signature of publisher or designee	
Sworn to and subscribed before me on this date	
Signature of Notary Public	
S E A L	
ATTACH PRINTED COPY OF THE NOTICE	



*Case Report –Planned Development District–Blackjack Pretium
Capital, 20 Acres.*

*Planning and Zoning Commission –September 12, 2024
City Council – September 26, 2024*

To: Mayor, City Council, Planning and Zoning Commission

From: Helen-Eve Beadle, AICP, HE Planning+Design, LLC

Request: Hold a public hearing, consider, and make a recommendation to City Council regarding a n amendment to Exhibit 14A, “Zoning Ordinance,” in Chapter 14, “Zoning” of the Code of Ordinances of the City of Aubrey, Texas, and the official Zoning Map of the City as requested in an application for a change of zoning from unzoned land previously located in the City of Aubrey Extraterritorial Jurisdiction to Planned Development District (PD) with base zoning district of C – Commercial on approximately 20 acres of land located in the Francisco Trevino Survey, Abstract No. 1243, Denton County, Texas. The property is generally located south of E. Blackjack Road, west of FM 2931, and east of US Hwy 377. DCAD Parcel ID’s 51970 and 557569. (Blackjack Pretium Capital, LLC)

Applicant: Pretium Capital, LLC

Location: The property is generally located south of Blackjack Road, east of US Hwy 377, and west of the future extension of McNatt Road.

Future Land Use Map Designation: Estate Neighborhood

Zoning: Unzoned, ETJ property

Summary: On August 22, 2024, the Aubrey City Council approved an Extraterritorial Jurisdiction Development Agreement (ETJDA) for the property.

The City Council approved a Preliminary Plat for the property at their March 28, 2024 meeting. The Preliminary Plat will require the Planning & Zoning Commission and City Council approval of an amendment to reflect the revisions included in the amended Development Agreement.

The agreement includes procedures for annexation and zoning of the property and the next step in the development process is to process a zoning application. Development regulations for the property are outlined in the attached PD Planned Development District Standards which are consistent with the approved Development Agreement.

Commercial Standards:
The proposed zoning is for PD Planned Development District with a base zoning district of C Commercial. The development regulations include:

1. Permitted uses in addition to those allowed in the C District;
2. No requirement for a Specific Use Permit (SUP) for restaurants meeting the food and beverage certificate requirements of the Texas Alcohol and

Beverage Commission (TABC) regulations;

3. Prohibited uses that are not necessarily desirable uses for a prominent commercial corner;
4. Schedule of regulations including setbacks, building height, lot size, etc.;
5. Tree preservation exemption;
6. Existing structure code requirements; and
7. PD Concept Plan being required to be submitted as a PD amendment prior to a Development Site Plan application.

Notifications: Notifications as required by Texas Local Government Code and the City of Aubrey Zoning Ordinance were provided.

At the time of agenda report submission, no letters either for or against the PD application have been received.

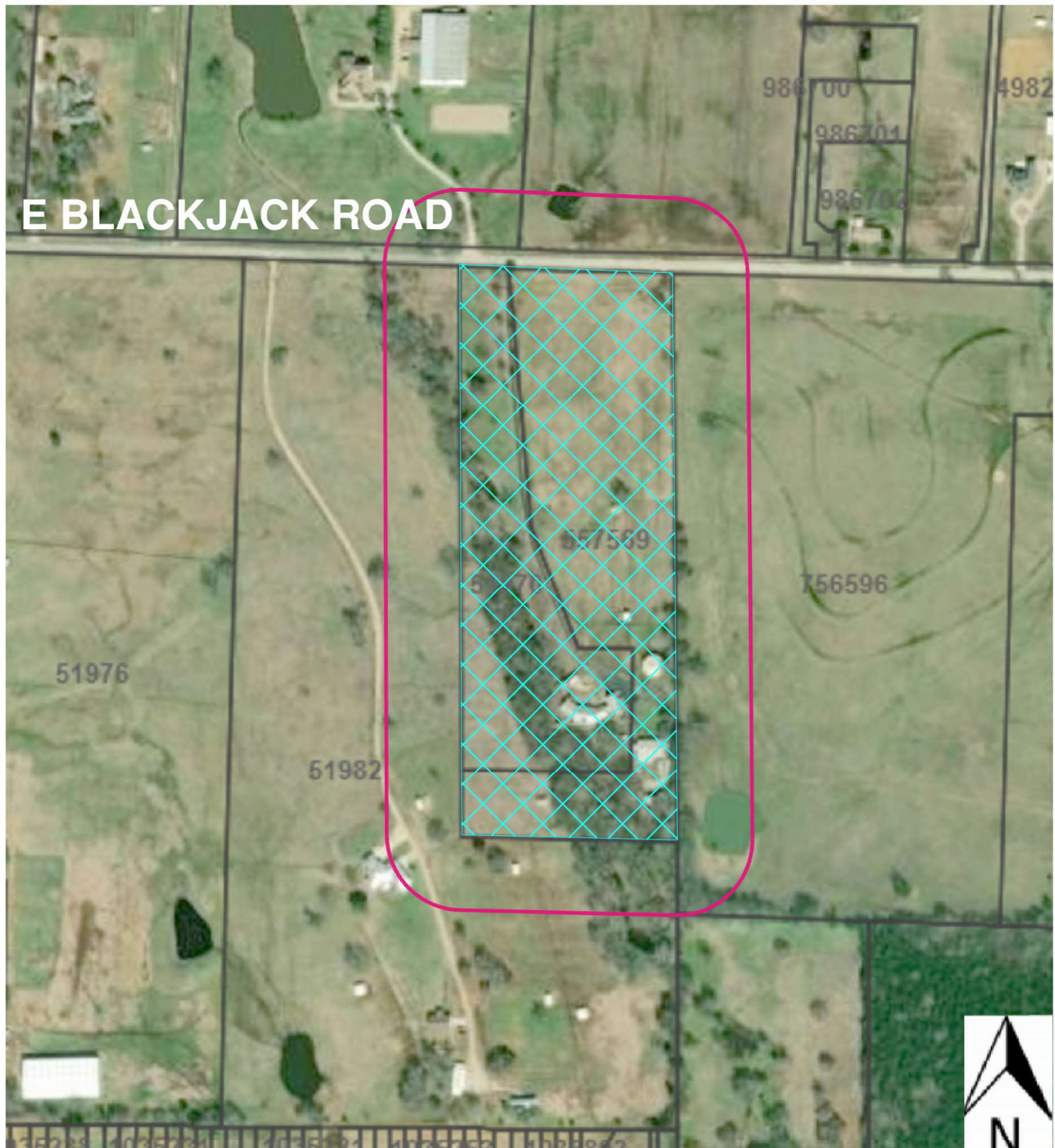
Recommendation: Staff recommends the PD Planned Development District for the Blackjack Pretium Capital property be approved as presented.

Action Options: The Planning and Zoning Commission may recommend to the City Council

1. Approve the PD as presented; or
2. Approve the PD with conditions; or

Attachments:

1. Location/Notification Map
2. PD Development Standards
3. Development Agreement



NOTIFICATION MAP FOR:

Public Hearing: An amendment to Exhibit 14A, "Zoning Ordinance," in Chapter 14, "Zoning" of the Code of Ordinances of the City of Aubrey, Texas, and the official Zoning Map of the City as requested in an application for a change of zoning from unzoned land previously located in the City of Aubrey Extraterritorial Jurisdiction to Planned Development District (PD) with base zoning district of C – Commercial on approximately 20 acres of land located in the Francisco Trevino Survey, Abstract No. 1243, Denton County, Texas. The property is generally located south of E. Blackjack Road, west of FM 2931, and east of US Hwy 377. DCAD Parcel ID's 51970 and 557569. (Blackjack Pretium Capital, LLC)

DEVELOPMENT REGULATIONS

Permitted uses and development regulations outlined in the Aubrey Code of Ordinances, Chapter 14, Zoning, Exhibit 14A, Zoning Ordinance., shall apply to the property as exists or may be amended, and as outlined herein. The base zoning district for the property shall be the Commercial District (C).

Permitted Uses:

1. All permitted uses in the base zoning district C Commercial, with express written exceptions outlined in the Prohibited Uses Section.
2. Day Care Center use shall be permitted by right (i.e. without a Specific Use Permit (SUP).
3. Event Venue
4. Office uses
5. Restaurants meeting the TABC requirements for food/alcoholic beverage sales (food and beverage certificate) and distance requirements to schools/daycares/churches/hospitals per the City's adopted regulations are permitted. Restaurants not meeting distance requirements will require school district/daycare/church/hospital permission and will be required to apply for a Specific Use Permit (SUP).
6. Event Venues meeting TABC requirements and distance to schools/daycares/churches per the City's adopted regulations are permitted. Event venues not meeting distance requirements will require school district/daycare/church/hospital permission and will be required to apply for a Specific Use Permit (SUP).

Uses that require a Specific Use Permit (SUP):

1. Alcoholic beverage sales.
All other alcoholic beverage sales (not listed above in Permitted Uses) shall require a Specific Use Permit (SUP) application. uses, other than Restaurants meeting the food and beverage certificate and Event Venues shall require application for a Specific Use Permit (SUP).

Prohibited Uses:

The following uses are prohibited on the property:

1. Car wash
2. Repair and storage garages
3. Tire repair shops
4. Auto body operations
5. Spray painting operations
6. Motels and apartment hotels
7. Rental truck and trailers with or without automobile service stations
8. Mini warehouse/self-storage facilities
9. Mortuary
10. Machinery and equipment sales and service establishments
11. Tobacco product stores
12. Variety Store. A retail establishment that offers for sale an assortment of inexpensive or discounted physical goods, products or merchandise directly to the consumer such as food or beverages for off-premise consumption, household products, personal grooming and health products and other consumer goods. Variety Store does not include a retail store that: contains a prescription pharmacy; sells gasoline or diesel fuel; or primarily sells specialty food items (e.g. meat, seafood, cheese, oils and vinegars, or confectioneries).

- a. Vehicle parking lot use and/or parking structure use as primary commercial use. However, parking lots and/or parking structures associated with a business are permitted; and
- b. Outside Storage uses.

Schedule of District Regulations:

Maximum Building Height	40 feet		
Minimum Side Yard	Adjacent to SF, PH, & TH	Adjacent to other districts	Adjacent to Dedicated Street
	1 story=25 feet	1 story 20 feet	1 story=30 feet
	2 story= 60 feet	2 story-20 feet	2 story=30 feet
Minimum Rear Yard	Adjacent to SF, PH, & TH	Adjacent to other districts	Adjacent to Dedicated Street
	1 story=30 feet	1 story=30 feet	1 story=25 feet
	2 story=60 feet	2 story=30 feet	2 story=25 feet
Minimum Front Yard	30 feet		
Minimum Lot Width	100 feet		
Minimum Lot Depth	100 feet		
Minimum square footage	5,000 square feet		
Maximum Lot Coverage	50%		

Tree Preservation:

The property will not be subject to tree preservation/tree mitigation requirements.

Existing Structure(s) Code Requirements:

The existing structures may be used and occupied as currently exist. Should the house and/or barn change uses, the structures shall meet the building code regulations for occupancy use.

Planned Development District Concept Plan:

A Planned Development District Concept Plan is not a part of this PD ordinance. A PD Concept Plan for the entire property shall be submitted and approved prior to a Development Site Plan application. The PD Concept Plan shall be processed as an amendment to the Planned Development District ordinance

DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”) is entered into by and Pretium Capital, LLC, a Texas limited liability company (the “Owner”) and the City of Aubrey, Texas, a home rule municipality (the “City”) to be effective on the date upon which the last of all of the Parties has approved and duly executed this Agreement (“Effective Date”).

RECITALS

WHEREAS, the City is a home-rule municipality of the State of Texas located within Denton County; and

WHEREAS, the Owner and the City (which are sometimes individually referred to as a “Party” and collectively as the “Parties”) desire to enter into this Agreement; and

WHEREAS, on the date the City Council voted to approve this Agreement the Owner owns approximately 20 acres of land, located at 1382 E. Blackjack Road which lies within the extraterritorial jurisdiction (“ETJ”) of the City, and within Denton County, Texas and is described by metes and bounds on Exhibit A and depicted in Exhibit B, (the “Property”); and

WHEREAS, the Owner intends to develop the Property pursuant to the terms of this Agreement as a planned development with general retail, shopping center, and commercial uses consistent with the development standards, attached hereto as Exhibit C (the “Development Standards”); and

WHEREAS, the Parties intend for the Property to be developed in a manner consistent with building material requirements and building code requirements applicable to properties located within the corporate limits of the City, except as otherwise provided herein; and

WHEREAS, the Parties intend for this Agreement to establish certain restrictions and to impose certain commitments in connection with the development of the Property as set forth in more detail herein and in Exhibit C hereto; and

WHEREAS, after annexation and zoning, the Parties intend for the Property to be developed in a manner consistent with the City’s zoning requirements, an approved Planned Development District zoning ordinance, an approved Concept Plan provided as part of the Planned Development District zoning for the Property (the “Concept Plan”), and the Building Elevations, consistent with the Planned Development District zoning for the Property (the “Building Elevations”); and

WHEREAS, the Owner intends to construct and/or make financial contributions to certain public infrastructure to serve the Development; and

WHEREAS, both the City and Mustang Special Utility District hold the certificate of convenience and necessity to provide retail water service to the Property; however, the Owner has elected and the Parties have agreed that the City will provide retail water service; and

WHEREAS, the City holds the certificate of convenience and necessity to provide retail wastewater service to the Property; and

WHEREAS, the Parties have the authority to enter into this Agreement pursuant to Section 212.171 *et seq* of the Texas Local Government Code and other applicable law; and

WHEREAS, the Parties contemplate that the Owner execute and return a petition satisfying all legal requisites for annexation of the Property under Subchapter C-3 of Texas Local Government Code, Chapter 43, as forth in Article III below.

NOW, THEREFORE, for and in consideration of the mutual covenants of the Parties set forth in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

ARTICLE I
DEVELOPMENT REGULATIONS AND FEES – ZONING AFTER ANNEXATION

1.1 Full Compliance with City Standards. Development of the Property shall be subject to any ordinance, rule, regulation, standard, policy, order, guideline, master plans, or other City-adopted or City-enforced requirement, as amended and adopted by the City for uniform application throughout the corporate limits, and as are applicable to the Development (the “City Regulations”).

1.2 Plat. The Owner may submit a plat for all or any portion of the Property. All plats submitted for the Property shall be in conformance with all City Regulations and the approved Concept Plan, as applicable after the Property has been zoned. The processing and content of all plats must adhere to the City Regulations, as they may be expressly altered by this Agreement.

1.3 Zoning; Building Codes, Fire Codes and Building Materials. While the Parties expressly acknowledge that the Property will be voluntarily annexed in accordance with **Section 3.1** of this Agreement, the Parties agree that the Development Standards set forth in **Exhibit C** and applicable provisions of this Agreement memorialize the plan for development of the Property as provided for in Section 212.172 of the Texas Local Government Code and other applicable law (the “Plan for Development”). The City shall consider zoning the Property consistent with the Development Standards and applicable provisions of this Agreement contemporaneously with the annexation of the Property. Through this Agreement, the Owner expressly consents and agrees to the zoning of the Property consistent with and as contemplated by the Development Standards and the Plan for Development. In the event of a conflict between this Agreement and the zoning of the Property, the Parties agree that the Development Standards to this Agreement shall constitute a “permit” under Chapter 245 of the Texas Local Government Code that is deemed filed with the City on the date upon which the last of all of the Parties has approved and duly executed this Agreement. Upon an administratively complete application for a final plat or site plan for any portion of the Property, the Owner may claim vested rights as to the portion of the Property contained in the final plat based upon ordinances in effect at the time of final plat application, except to the extent such claim would cause the City’s building material regulations in the zoning ordinance or in other City ordinances to be inapplicable

Further, in consideration for the City providing planning services for the preparation of the Development Standards set forth in Exhibit C to which the Owner and City have negotiated, the Owner has consented to and requested, and the Parties agree that the City-adopted building codes and local amendments as subsequently amended, the City-adopted fire codes and local amendments as subsequently amended, and the City's regulations for design standards including building materials, building articulation, form and massing and architectural compatibility contained in the zoning ordinance and in other City ordinances, all as subsequently amended, to apply to the Property, and voluntarily agrees to burden the Property with their applicability, except as modified in Exhibit C hereto. The Parties further acknowledge and agree that the terms, provisions, covenants, and agreements contained in, or referenced in, this paragraph are covenants that touch and concern the Property and that it is the intent of the Parties that such terms, provisions, covenants, and agreements shall run with the Property and shall be binding upon the Parties hereto, their successors and assigns, and all subsequent owners of the Property. Should any amendment to the design standards contained in the City Regulations, including without limitation the zoning ordinance or any other applicable City ordinances be held to be invalid by a court of competent jurisdiction, the Parties agree that the Development Standards, Exhibit C, shall then touch and concern the Property and be binding upon the Property.

1.4 Fees. The Property shall be subject to those fees and charges due and payable to the City in connection with the Development that are charged pursuant to City Regulations to other developments located in the corporate limits of the City, except as specified otherwise within this Agreement.

ARTICLE II PUBLIC INFRASTRUCTURE

2.1 Public Infrastructure.

(a) Standards. Except as otherwise expressly provided for in this Agreement, all water, wastewater, drainage, roadway, and other public infrastructure necessary to serve the Development on the Property (the "Public Infrastructure") shall be constructed by the Owner. Public Infrastructure shall be designed, constructed and installed by the Owner in compliance with the City Regulations. Construction and/or installation of Public Infrastructure shall not begin until complete and accurate plans and specifications have been approved by the City. To the extent easements or rights-of-way are needed within the Property and/or on the perimeter of the Property, they shall be dedicated by the Owner to the City at no cost to the City. The Public Infrastructure shall be installed within easements granted to the City or in the public right-of-way, however utilities must be in an easement separate from the right-of-way. The size of the Public Infrastructure shall be as finally determined by the City's engineer, however, should the City's engineer determine oversizing is needed to serve property other than the Development, then the City shall pay its proportionate share of such oversizing costs as they become due and payable under the construction contract.

(b) Water and Wastewater Facilities by Owner. As required by the City Regulations, the Owner shall, at its sole cost and expense, design and construct all water and wastewater

facilities required by the City Regulations and needed to serve the Development. Owner acknowledges and understands that City and Mustang Special Utility District ("Mustang") hold the certificate of convenience and necessity to provide retail water service to the Property; however, the Owner has elected and the Parties have agreed that the City shall be the exclusive provider of retail water service to the Property.

(c) Roadway Facilities by Owner. As required by the City Regulations, the Owner shall, at its sole cost and expense, design and construct all roadway facilities required by the City Regulations and needed to serve the Development.

(d) Storm Sewer Facilities by Owner. As required by the City Regulations, the Owner shall, at its sole cost and expense, design, construct and maintain all storm sewer facilities, including onsite detention ponds, required by the City Regulations and needed to serve the Development.

2.2 Inspections, Acceptance of Public Infrastructure.

(a) Inspections. The City shall have the right to inspect the construction of all Public Infrastructure at any time, which shall be inspected, designed and constructed in compliance with all statutory and regulatory requirements, including design and construction criteria, and the City Regulations. The timing of construction of the various components of the Public Infrastructure shall be as required by the City Regulations.

(b) No Release. The City's inspections shall not release the Owner from its responsibility to construct, or ensure the construction of, adequate Public Infrastructure in accordance with approved engineering plans, construction plans, and other approved plans related to the Development provided the City satisfies its obligations under this Agreement.

(c) City Owned. From and after the inspection and acceptance by the City of the Public Infrastructure and any other dedications required under this Agreement, such improvements and dedications shall be owned by the City.

(d) Approval of Plats/Plans. Approval of plats, permits, plans, designs or specifications by the City shall be in accordance with the City Regulations. Approval by the City, the City's engineer or other City employee or representative of any plats, permits, plans, designs or specifications submitted pursuant to this Agreement or pursuant to the City Regulations shall not constitute or be deemed to be a release of the responsibility and liability of the Owner, their engineer, employees, officers or agents for the accuracy and competency of their design and specifications. Further, any such approvals shall not be deemed to be an assumption of such responsibility and liability by the City for any defect in the design and specifications prepared by the Owner or the Owner's engineer, or engineer's officers, agents, servants, or employees, it being the intent of the parties that approval by the City's engineer signifies the City's approval on only the general design concept of the improvements to be constructed. All plats and plans of the Owner related to the Property shall meet the requirements of the applicable City Regulations.

2.3 Eminent Domain. The Owner agrees to use commercially reasonable efforts to obtain all third-party rights-of-way, consents, or easements, if any, required for the Public Infrastructure. If, however, the Owner is unable to obtain such third-party rights-of-way, consents, or easements within ninety (90) days of the Effective Date, the City agrees to take reasonable steps to secure same (subject to City Council authorization after a finding of public necessity) through the use of the City's power of eminent domain. The Owner shall be responsible for funding all reasonable and necessary legal proceeding/litigation costs, attorney's fees and related expenses, and appraiser and expert witness fees (collectively, "Eminent Domain Fees") paid or incurred by the City in the exercise of its eminent domain powers and shall, if requested in writing by the City, escrow with a mutually agreed upon escrow agent the City's reasonably estimated Eminent Domain Fees both in advance of the initiations of each eminent domain proceeding and as funds are needed by the City. Provided that the escrow fund remains appropriately funded in accordance with this Agreement, the City will use all reasonable efforts to expedite such condemnation procedures so that the Public Infrastructure can be constructed as soon as reasonably practicable. If the City's Eminent Domain Fees exceed the amount of funds escrowed in accordance with this paragraph, the Owner shall deposit additional funds as requested by the City into the escrow account within ten (10) days after written notice from the City. City is not required to continue pursuing the eminent domain unless and until the Owner deposits addition Eminent Domain Fees with the City. Any unused escrow funds will be refunded to the Owner with thirty (30) days after any condemnation award or settlement becomes final and non-appealable. Nothing in this subsection is intended to constitute a delegation of the police powers or governmental authority of the City, and the City reserves the right, at all times, to control its proceedings in eminent domain.

2.4 Operation and Maintenance. Upon inspection, approval, and acceptance of the water Public Infrastructure or any portion thereof, the City shall maintain and operate the accepted water infrastructure or any accepted portion thereof and provide water service to the Property.

ARTICLE III

ANNEXATION AND POST-ANNEXATION MATTERS

3.1 Annexation. This Agreement shall constitute the Owner's consent and written petition for voluntary annexation of the Property into the City for all municipal purposes pursuant to Chapter 43, Texas Local Government Code. The Owner agrees to execute and supply any and all petitions, instruments and/or other documentation necessary for the City to annex the Property into the City's corporate limits. This Agreement constitutes the written service plan agreement for providing City services to the Property in compliance with Subchapter C-3, Chapter 43, Texas Local Government Code. Upon annexation of the Property, the City will provide the same municipal services, including without limitation, police and fire services, available to other citizens of the City so long as the Owner pays City ad valorem taxes to the City. If the City is unable to complete the annexation of the Property for any reason, including but not limited to procedural error or legal challenge, Owner shall execute another voluntary annexation petition for the Property within ten (10) days of being requested to do so. Prior to annexation of the Property, the City shall have considered this Agreement, shall have submitted to Owner, and Owner shall review and approve, and this annexation service plan shall be considered a binding, and mutually agreed upon, contractual obligation between the City and Owner. Pursuant to Texas Local Government Code, Chapter 43, Subchapter C-3, or other such provisions governing land as they may then exist,

the City shall initiate annexation proceedings following the recordation of this Agreement in the Real Property Records of Denton County. Owner shall not petition for release from the City's ETJ pursuant to Chapter 42, Texas Local Government Code, as enacted by S.B. 2038, any amendments to Chapter 42, or any other future change in law. Any such action shall be deemed a breach of this Agreement. No subsequent change in the law regarding annexation shall affect the enforceability of this Agreement of the City's authority to annex the Property.

3.2 The Owner acknowledges the City's compliance with Federal and State Constitutions, rules and regulations, and all Statutes, case law, and local ordinance relating to annexation and waives any right or claim for a taking relating thereto. The Parties agree to cooperate in good faith with each other in such annexation process, including, but not limited to, the execution by the Owner and the City of such further documents or instruments as may be reasonably requested from time to time by either Party to properly effectuate such voluntary annexation. The Owner acknowledges and agrees that:

- (a) Section 3.1 was a material inducement for the City to enter into this Agreement with Owner;
- (b) the Owner is not required to enter into this Agreement;
- (c) the annexation procedures are described in this Agreement in plain language, provide a description of the annexation procedures applicable to the Property, and require the Owner's consent, and by entering into this Agreement, the Owner hereby voluntarily provides such consent and the City hereby waives immunity to suit under this Agreement; and
- (d) with this Agreement and the provisions contained herein, the City has provided to the Owner the written disclosure required by Section 212.172(b-1) of the Texas Local Government Code.

ARTICLE IV **TERM**

The term of this Agreement shall be for a period of fifteen (15) years after the Effective Date, except that Section 1.3, plus all provisions referenced in Section 1.3, of this Agreement are covenants that touch and concern the Property and shall run with the Property following the termination of this Agreement. The Parties may extend the term of this Agreement if they execute an agreement in writing.

ARTICLE V **INDEMNIFICATION AND OWNER'S ACKNOWLEDGMENT**

5.1 Indemnification and Hold Harmless.

(a) THE OWNER AND ITS SUCCESSORS AND ASSIGNS SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICIALS, EMPLOYEES, OFFICERS, REPRESENTATIVES AND AGENTS

(EACH AN "INDEMNIFIED PARTY"), FROM AND AGAINST ALL ACTIONS, DAMAGES, CLAIMS, LOSSES OR EXPENSE OF EVERY TYPE AND DESCRIPTION TO WHICH THEY MAY BE SUBJECTED OR PUT: (I) BY REASON OF, OR RESULTING FROM THE BREACH OF ANY PROVISION OF THIS AGREEMENT BY THE OWNER; (II) THE NEGLIGENT DESIGN, ENGINEERING AND/OR CONSTRUCTION BY THE OWNER OR ANY ARCHITECT, ENGINEER OR CONTRACTOR HIRED BY THE OWNER OF ANY OF THE PUBLIC INFRASTRUCTURE ACQUIRED FROM THE OWNER HEREUNDER; (III) THE OWNER'S NONPAYMENT UNDER CONTRACTS BETWEEN THE OWNER AND ITS CONSULTANTS, ENGINEERS, ADVISORS, CONTRACTORS, SUBCONTRACTORS AND SUPPLIERS IN THE PROVISION AND/OR CONSTRUCTION OF THE PUBLIC INFRASTRUCTURE; (IV) ANY CLAIMS OF PERSONS EMPLOYED BY THE OWNER OR ITS AGENTS TO CONSTRUCT THE PUBLIC INFRASTRUCTURE; OR (V) ANY CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO THE OWNER'S RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES, AND/OR TRUSTEES, REGARDING OR RELATED TO THE PUBLIC INFRASTRUCTURE OR ANY AGREEMENT OR RESPONSIBILITY REGARDING THE PUBLIC INFRASTRUCTURE, INCLUDING CLAIMS AND CAUSES OF ACTION WHICH MAY ARISE OUT OF THE PARTIAL NEGLIGENCE OF AN INDEMNIFIED PARTY (THE "CLAIMS"). NOTWITHSTANDING THE FOREGOING, NO INDEMNIFICATION IS GIVEN HEREUNDER FOR ANY ACTION, DAMAGE, CLAIM, LOSS OR EXPENSE DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE DIRECTLY ATTRIBUTABLE TO THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF ANY INDEMNIFIED PARTY. THE OWNER IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS, AND CITY IS REQUIRED TO REASONABLY COOPERATE AND ASSIST THE OWNER IN PROVIDING SUCH DEFENSE.

(b) IN ITS REASONABLE DISCRETION, THE CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY THE OWNER IN FULFILLING ITS OBLIGATIONS HEREUNDER TO DEFEND AND INDEMNIFY THE INDEMNIFIED PARTIES, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY THE CITY IN WRITING. THE INDEMNIFIED PARTIES RESERVE THE RIGHT TO PROVIDE A PORTION OR ALL OF THEIR/ITS OWN DEFENSE, AT THEIR/ITS SOLE COST; HOWEVER, INDEMNIFIED PARTIES ARE UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY AN INDEMNIFIED PARTY IS NOT TO BE CONSTRUED AS A WAIVER OF OWNER'S OBLIGATION TO DEFEND INDEMNIFIED PARTIES OR AS A WAIVER OF OWNER'S OBLIGATION TO INDEMNIFY INDEMNIFIED PARTIES PURSUANT TO THIS AGREEMENT. THE OWNER SHALL RETAIN THE CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN BUSINESS DAYS OF WRITTEN NOTICE FROM AN INDEMNIFIED PARTY THAT IT IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF OWNER FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, INDEMNIFIED PARTIES SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON THEIR OWN BEHALF, AND THE OWNER SHALL BE LIABLE FOR ALL REASONABLE COSTS INCURRED BY INDEMNIFIED PARTIES. THE CITY AGREES, UNLESS ADVISED BY DEFENSE COUNSEL TO THE CONTRARY, TO ASSERT ITS IMMUNITY FROM LIABILITY AND IMMUNITY FROM SUIT AND/OR OTHER AVAILABLE AFFIRMATIVE DEFENSES

(c) THIS SECTION 5.1 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

(d) THE PARTIES AGREE AND STIPULATE THAT THIS INDEMNIFICATION AND THE EXPRESS NEGLIGENCE TEXT COMPLIES WITH THE CONSPICUOUSNESS REQUIREMENT, AND IS VALID AND ENFORCEABLE AGAINST THE OWNER.

5.2 The Owner's Acknowledgement of the City's Compliance with Federal and State Constitutions, Statutes and Case Law and Federal, State and Local Ordinances, Rules and Regulations/Owners' Waiver and Release of Claims For Obligations expressly set forth in this Agreement.

(a) **THE OWNER ACKNOWLEDGES AND AGREES THAT, PROVIDED THERE ARE NO CITY DEFAULTS UNDER THIS AGREEMENT:**

(i) **THE PUBLIC INFRASTRUCTURE EXPRESSLY SET FORTH IN THIS AGREEMENT TO BE CONSTRUCTED UNDER THIS AGREEMENT, REGARDING THE PROPERTY, IN WHOLE OR IN PART, DO NOT CONSTITUTE A:**

(A) **TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;**

(B) **VIOLATION OF THE TEXAS LOCAL GOVERNMENT CODE, AS IT EXISTS OR MAY BE AMENDED; AND/OR**

(C) **NUISANCE.**

(ii) **THE AMOUNT OF THE OWNER'S FINANCIAL AND INFRASTRUCTURE CONTRIBUTION FOR THE PUBLIC INFRASTRUCTURE EXPRESSLY SET FORTH IN THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE DEMAND THAT THE OWNER'S ANTICIPATED IMPROVEMENTS AND THE OWNER'S DEVELOPMENT OF THE PROPERTY PLACES ON THE CITY'S INFRASTRUCTURE.**

(iii) **THE OWNER HEREBY AGREES, STIPULATES AND ACKNOWLEDGES THAT:**
(A) **ANY PROPERTY WHICH IT CONVEYS TO THE CITY OR ACQUIRES FOR THE CITY PURSUANT TO THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE BENEFIT RECEIVED BY THE OWNER FOR SUCH LAND, AND THE OWNER HEREBY WAIVES ANY CLAIM THEREFOR THAT IT MAY HAVE; AND (B) ALL PREREQUISITES TO SUCH DETERMINATION OF ROUGH PROPORTIONALITY HAVE BEEN MET, AND ANY VALUE RECEIVED BY THE CITY RELATIVE TO SAID CONVEYANCE IS RELATED BOTH IN NATURE AND EXTENT TO THE IMPACT OF THE DEVELOPMENT OF THE PROPERTY ON THE CITY'S INFRASTRUCTURE. THE OWNER FURTHER AGREES TO WAIVE AND RELEASE ALL CLAIMS IT MAY HAVE AGAINST THE CITY UNDER THIS AGREEMENT RELATED TO ANY AND ALL:**
(A) **CLAIMS OR CAUSES OF ACTION BASED ON ILLEGAL OR EXCESSIVE EXACTIONS; AND**
(B) **ROUGH PROPORTIONALITY AND INDIVIDUAL DETERMINATION REQUIREMENTS MANDATED BY THE UNITED STATES SUPREME COURT IN *DOLAN V. CITY OF TIGARD*, 512 U.S. 374 (1994), AND ITS PROGENY, AS WELL AS ANY OTHER REQUIREMENTS OF A NEXUS BETWEEN DEVELOPMENT CONDITIONS AND THE PROJECTED IMPACT OF THE PUBLIC INFRASTRUCTURE.**

(b) **THIS SECTION 5.2 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

ARTICLE VI

EVENTS OF DEFAULT; REMEDIES

6.1 Events of Default. No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given in writing (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time to be determined based on the nature of the alleged failure, but in no event more than 30 days after written notice of the alleged failure has been given). Notwithstanding the foregoing, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured and within such 30-day period gives written notice to the non-defaulting Party of the details of why the cure will take longer than 30 days with a statement of how many days are needed to cure.

6.2 Remedies. If a Party is in default, the aggrieved Party may, at its option and without prejudice to any other right or remedy under this Agreement, seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act, or actions for specific performance, mandamus, or injunctive relief.

ARTICLE VII

ASSIGNMENT AND ENCUMBRANCE

7.1 Assignment by Owner to Successors.

(a) The Owner may assign this Agreement, including any obligation, right, title, or interest of the Owner under this Agreement, to any person or entity (an “Owner Assignee”) with the prior written consent of the City. An Owner Assignee is considered the “Owner” and a “Party,” under this Agreement for purposes of the obligations, rights, title, and interest assigned to the Owner Assignee.

(b) Each assignment shall be in writing approved by the City executed by the Owner and the Owner Assignee and shall obligate the Owner Assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned.

7.2 Assignees as Parties. An assignee authorized in accordance with this Agreement and for which notice of assignment has been provided in accordance with this Agreement shall be considered a “Party” for the purposes of this Agreement.

7.3 No Third-Party Beneficiaries. This Agreement only inures to the benefit of, and may only be enforced by, the Parties. No other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this Agreement.

ARTICLE VIII

RECORDATION

This Agreement and all amendments hereto and assignments hereof shall be recorded in the deed records of each county within which the Property is located. This Agreement binds and constitutes a covenant running with the Property. Upon the Effective Date, this Agreement shall be binding upon the Parties and their successors and assigns permitted by this Agreement and forms a part of any other requirements for Development within the Property.

ARTICLE IV
ADDITIONAL PROVISIONS

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

9.2 Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to any Party shall be deemed to have been received when personally delivered or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows ("Notice"):

To the City:	Attn: Charles Kreidler, City Manager City of Aubrey 107 South Main Street Aubrey, Texas 76227
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With a copy to:	Attn: Patricia Adams, City Attorney Messer & Fort, PLLC 6371 Preston Road, Suite 200 Frisco, Texas 75034 E-mail: Patricia@txmunicipallaw.com
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To the Owner:	_____ _____ _____ _____
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With a Copy to:	_____ _____ _____
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Any Party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other Party.

9.3 Interpretation. The Parties acknowledge that each has been actively involved in negotiating this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this Agreement. In the event of any dispute over the meaning or application of any provision of this Agreement, the provision will be interpreted fairly and reasonably and neither more strongly for nor against any Party, regardless of which Party originally drafted the provision.

9.4 Time. In this Agreement, time is of the essence and compliance with the times for performance herein is required.

9.5 Authority and Enforceability. The City represents and warrants that this Agreement has been approved by official action by the City Council of the City in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been duly authorized to do so. The Owner represents and warrants that this Agreement has been approved by appropriate action of the Owner, and that the individual executing this Agreement on behalf of the Owner has been duly authorized to do so. Each Party respectively acknowledges and agrees that this Agreement is binding upon such Party and is enforceable against such Party, in accordance with its terms and conditions and to the extent provided by law.

9.6 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the subject matter of this Agreement. This Agreement shall not be modified or amended except in writing signed by the Parties.

9.7 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, then: (a) such unenforceable provision shall be deleted from this Agreement; (b) the unenforceable provision shall, to the extent possible and upon mutual agreement of the Parties, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.

9.8 Applicable Law; Venue. This Agreement is entered into pursuant to, and is to be construed and enforced in accordance with, the laws of the State of Texas, and all obligations of the Parties are performable in Denton County, Texas. Exclusive venue for any action to enforce or construe this Agreement shall be in Denton County District Court.

9.9 Non-Waiver. Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party of any term or condition of this Agreement shall be

deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

9.10 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.

9.11 Further Documents. The Parties agree that at any time after execution of this Agreement, they will, upon request of another Party, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request in order to effectuate the terms of this Agreement. This provision shall not be construed as limiting or otherwise hindering the legislative discretion of the City Council seated at the time that this Agreement is executed or any future City Council.

9.12 Exhibits. The following exhibits are attached to this Agreement and are incorporated herein for all purposes:

Exhibit A	Legal Description of the Property
Exhibit B	Depiction of the Property
Exhibit C	Development Standards

9.13 Governmental Powers; Waivers of Immunity. By its execution of this Agreement, the City does not waive or surrender any of its respective governmental powers, immunities, or rights except as provided in this section. The Parties acknowledge that the City waives its sovereign immunity as to suit solely for the purpose of adjudicating a claim under this Agreement. This is an agreement for the provision of goods or services to the City under Section 271.151 et seq. of the Texas Local Government Code.

9.14 Force Majeure. Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Agreement, and time shall be of the essence in such performance; however, in the event a Party is unable, due to force majeure, to perform its obligations under this Agreement, then the obligations affected by the force majeure shall be temporarily suspended. Within three (3) business days after the occurrence of a force majeure event, the Party claiming the right to temporarily suspend its performance, shall give notice to all the Parties, including a detailed explanation of the force majeure and a description of the action that will be taken to remedy the force majeure and resume full performance at the earliest possible time. A Party that fails to provide timely notice of an event of force majeure will be deemed to be able to resume full performance within thirty (30) days of such event. The term "force majeure" shall include events or circumstances that are not within the reasonable control of Party whose performance is suspended and that could not have been avoided by such Party with the good faith exercise of good faith, due diligence and reasonable care.

9.15 Amendments. This Agreement cannot be modified, amended, or otherwise varied, except in writing signed by the City and the Owner expressly amending the terms of this Agreement.

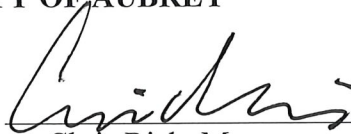
9.16 Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is hereby acknowledged.

9.17 Form 1295 Certificate. The Owner represents that it has complied with Texas Government Code, Section 2252.908 and in connection therewith, the Owner has completed a Texas Ethics Commission Form 1295 Certificate generated by the Texas Ethics Commission's electronic filing system in accordance with the rules promulgated by the Texas Ethics Commission. The Owner further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate. The Parties agree that, except for the information identifying the City and the contract identification number, the City is not responsible for the information contained in the Form 1295 completed by the Owner. The information contained in Form 1295 completed by the Owner has been provided solely by the Owner and the City has not verified such information.

EXECUTED by the City and the Owner on the respective dates stated below after approval of the City Council of the City on August 22, 2024.

Date: 8/22/2024

CITY OF AUBREY

By: 
Chris Rich, Mayor

ATTEST:


Jenny Hicks, City Secretary



STATE OF TEXAS §
 §
COUNTY OF DENTON §

 This instrument was acknowledged before me on the ____ day of _____, 2024, by
Chris Rich, the Mayor of the City of Aubrey, Texas, on behalf of said City.

(SEAL)

Notary Public, State of Texas

Name printed or typed

Commission Expires: _____

OWNER: PRETIUM CAPITAL LLC

By: _____

Name: _____

STATE OF TEXAS §

§

COUNTY OF DENTON §

This instrument was acknowledged before me on the ____ day of _____, 2024, by
_____, the _____ of Pretium Capital, on behalf of said
company.

(SEAL)

Notary Public, State of Texas

Name printed or typed

Commission Expires: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Tract 1:

Being a tract of land situated in the F. TREVINO SURVEY, Abstract No. 1243, in Denton County, Texas, being a portion of that same tract of land conveyed to Marlon Kirk Swan and wife, Terrisa Delee Swan by deed recorded in Document No. 2004-74751, of the Deed Records of Denton County, Texas, and being more particularly described by metes and bounds as follows:

Commencing at a 1/2 inch iron rod found in Blackjack Road East, in the South line of a tract of land conveyed to Billie Joe Hampton and Bobbie L. Hampton by deed recorded in Volume 2936, Page 685 of the Deed Records of Denton County, Texas, said point being the Northwest corner of a tract of land conveyed to Billie Joe Hampton by deed recorded in Volume 818, Page 384 of the Deed Records of Denton County, Texas, same being the Northeast corner of said Swan tract;

Thence South 02 Degrees 04 Minutes 12 Seconds West, along the common line between said Bobbie Joe Hampton tract, and said Swan tract, a distance of 1021.19 feet to a point;

Thence North 87 Degrees 55 Minutes 48 Seconds West, departing the common line of said Swan and Bobbie Joe Hampton tract, a distance of 104.43 feet to a point for corner, said point being the most southerly Northeast corner of and Point of Beginning of herein described tract;

Thence South 02 Degrees 04 Minutes 12 Seconds West, 104.43 feet from and parallel to the common line of said Swan and Bobbie Joe Hampton tracts, a distance of 278.98 feet to a point for corner, said point being the Southeast corner of herein described tract;

Thence North 87 Degrees 55 Minutes 48 Seconds West, a distance of 320.30 feet to a point for corner, said point being the Southwest corner of herein described tract;

Thence North 03 Degrees 03 Minutes 15 Seconds West, a distance of 1323.16 feet to a point for corner in said Blackjack Road, in the South line of a tract of land conveyed to Blackjack Family Ranch, LLLP by deed recorded in Document No. 2004-12011 of the Deed Records of Denton County, Texas, same being the Northwest corner of herein described tract;

Thence South 86 Degrees 03 Minutes 46 Seconds East, along said Blackjack Road, a distance of 109.61 feet to a point for corner, said point being the most northerly Northeast corner of herein described tract;

Thence South 02 Degrees 05 Minutes 28 Seconds East, departing said Blackjack Road, a distance of 663.89 feet to a point for corner;

Thence South 18 Degrees 10 Minutes 41 Seconds East, a distance of 397.75 feet to a point for corner;

Thence South 87 Degrees 55 Minutes 48 Seconds East, a distance of 143.10 feet to the Point of Beginning and containing 217,582 square feet or 5.00 acres of land, more or less.

Tract 2:

Being a 14.975 acre tract of land situated in the FRANCISCO TREVINO SURVEY, Abstract Number 1243, Denton County, Texas, and being a 14.975 acre portion of a called 19.986 acre tract of land conveyed to Marion Kirk Swan and wife, Terrisa DeLee Swan by Deed recorded in Instrument Number 2004-74751, Official Public Records, Denton County, Texas and being more particularly described herein as follows:

BEGINNING at a steel pin found for the recognized and occupied Northeast corner of said 14.975 acre tract and being the Northeast corner of said Swan tract also being at or near the centerline of Blackjack Road East (a public road);

THENCE South 01 degrees 07 minutes 50 seconds East, a distance of 1,526.84 feet to a 3/8 inch iron rod found for the recognized and occupied Southeast corner of said 14.975 acre tract also being an Easterly corner of a called 41.640 acre tract of land conveyed to M. Mimsi Coon by Deed recorded in Document Number 2016-117151, Official Public Records, Denton County, Texas;

THENCE North 89 degrees 22 minutes 40 seconds West, along the South line of said Swan tract and a Northerly line of said Coon tract, a distance of 570.07 feet to a 1/2 inch iron rod found for the recognized and occupied Southwest corner of said Swan tract and being a re-entrant corner in the East line of said Coon tract;

THENCE North 01 degrees 06 minutes 47 seconds West, a distance of 1,527.96 feet to a steel pin found at or near the centerline of said Blackjack Road East and being the recognized and occupied Northwest corner of said Swan tract;

THENCE South 89 degrees 15 minutes 48 seconds East, along the centerline of said Blackjack Road East, a distance of 25.43 feet to a "Mag Nail" set for a Northwesterly corner of said Swan tract at or near the centerline of said Blackjack Road East;

THENCE over and across said Swan tract the following courses and distances:

South 06 degrees 22 minutes 45 seconds East, a distance of 1,323.16 feet to a 5/8 inch iron rod with cap stamped "PLS, INC" (typical) set for corner;

North 88 degrees 44 minutes 42 seconds East, a distance of 320.30 feet to a 5/8 inch iron rod set;

North 01 degrees 15 minutes 18 seconds West, a distance of 278.98 feet to a 5/8 inch iron rod set;

South 88 degrees 44 minutes 57 seconds West, a distance of 143.10 feet to a 5/8 inch iron rod set;

North 21 degrees 30 minutes 11 seconds West, a distance of 397.75 feet to a 5/8 inch iron rod set;

THENCE North 05 degrees 24 minutes 58 seconds West, a distance of 663.65 feet to a "Mag Nail" set for corner in the North line of said Swan tract also being at or near the centerline of said Blackjack Road East;

THENCE South 89 degrees 15 minutes 48 seconds East, at or near the centerline of said Blackjack Road East and the North line of said Swan tract, a distance of 434.58 feet to the POINT OF BEGINNING and containing, within the metes and bounds herein recited, 14.975 acres of land, more or less.

EXHIBIT B
DEPICTION OF THE PROPERTY



EXHIBIT C
DEVELOPMENT STANDARDS

DEVELOPMENT REGULATIONS

Permitted uses and development regulations outlined in the Aubrey Code of Ordinances, Chapter 14, Zoning, Exhibit 14A, Zoning Ordinance., shall apply to the property as exists or may be amended, and as outlined herein. The base zoning district for the property shall be the Commercial District (C).

Permitted Uses:

1. Day Care Center use shall be permitted by right (i.e. without a Specific Use Permit (SUP).
2. Event Venue
3. Office uses
4. Restaurants meeting the TABC requirements for food/alcoholic beverage sales (food and beverage certificate) and distance requirements to schools/daycares/churches/hospitals per the City's adopted regulations are permitted. Restaurants not meeting distance requirements will require school district/daycare/church/hospital permission and will be required to apply for a Specific Use Permit (SUP).
5. Event Venues meeting TABC requirements and distance to schools/daycares/churches per the City's adopted regulations are permitted. Event venues not meeting distance requirements will require school district/daycare/church/hospital permission and will be required to apply for a Specific Use Permit (SUP).

Uses that require a Specific Use Permit (SUP):

1. Alcoholic beverage sales.
All other alcoholic beverage sales (not listed above in Permitted Uses) shall require a Specific Use Permit (SUP) application. uses, other than Restaurants meeting the food and beverage certificate and Event Venues shall require application for a Specific Use Permit (SUP).

Prohibited Uses:

The following uses are prohibited on the property:

1. Car wash
2. Repair and storage garages
3. Tire repair shops
4. Auto body operations
5. Spray painting operations
6. Motels and apartment hotels
7. Rental truck and trailers with or without automobile service stations
8. Mini warehouse/self-storage facilities
9. Mortuary
10. Machinery and equipment sales and service establishments
11. Tobacco product stores
12. Variety Store. A retail establishment that offers for sale an assortment of inexpensive or discounted physical goods, products or merchandise directly to the consumer such as food or beverages for off-premise consumption, household products, personal grooming and health products and other consumer goods. Variety Store does not include a retail store that: contains a prescription pharmacy; sells gasoline or diesel fuel; or primarily sells specialty food items (e.g. meat, seafood, cheese, oils and vinegars, or confectioneries).

- a. Vehicle parking lot use and/or parking structure use as primary commercial use. However, parking lots and/or parking structures associated with a business are permitted; and
- b. Outside Storage uses.

Schedule of District Regulations:

Maximum Building Height	40 feet		
Minimum Side Yard	Adjacent to SF, PH, & TH	Adjacent to other districts	Adjacent to Dedicated Street
	1 story=25 feet	1 story 20 feet	1 story=30 feet
	2 story= 60 feet	2 story-20 feet	2 story=30 feet
Minimum Rear Yard	Adjacent to SF, PH, & TH	Adjacent to other districts	Adjacent to Dedicated Street
	1 story=30 feet	1 story=30 feet	1 story=25 feet
	2 story=60 feet	2 story=60 feet	2 story=25 feet
Minimum Front Yard	30 feet		
Minimum Lot Width	100 feet		
Minimum Lot Depth	100 feet		
Minimum square footage	5,000 square feet		
Maximum Lot Coverage	50%		

Tree Preservation:

The property will not be subject to tree preservation/tree mitigation requirements.

Existing Structure(s) Code Requirements:

The existing structures are being utilized for residential and barn/agricultural purposes. Those structures may be used and occupied as currently exist and are considered nonconforming structures and the uses are considered nonconforming uses. The structures and uses shall be subject to all nonconforming structure and nonconforming use regulations of the City. Should the use of the existing structures change from their present residential and barn/agricultural purposes , the structures shall comply with all City ordinances, including without limitation building code regulations for occupancy use.

Planned Development District Concept Plan:

A Planned Development District Concept Plan is not a part of this PD ordinance. A PD Concept Plan for the entire property shall be submitted and approved prior to a Development Site Plan application in accordance with adopted City ordinances and procedures. The PD Concept Plan shall be processed as an amendment to the Planned Development District ordinance in accordance with adopted City ordinances and procedures.



Case Report –Planned Development District–Palomino (Loyd)
Planning and Zoning Commission –September 12, 2024
City Council – September 26, 2024

To: Mayor, City Council, Planning and Zoning Commission

From: Helen-Eve Beadle, AICP, HE Planning+Design, LLC

Request: Hold a public hearing, consider, and make a recommendation to City Council regarding an amendment to Exhibit 14A, “Zoning Ordinance,” in Chapter 14, “Zoning” of the Code of Ordinances of the City of Aubrey, Texas, and the official Zoning Map of the City as requested in an application for a change of zoning from unzoned land previously located in the City of Aubrey Extraterritorial Jurisdiction to Planned Development District (PD) with base zoning districts of SF75 – Single-Family Residential 7,500 Square Feet and GR – General Retail on approximately 47.3 acres of land located in the J. Bridges Jr. Survey, Abstract No. 36, Denton County, Texas. The property is generally located west of FM 2931, north of Frontier Parkway, and east of future Silverado Parkway. DCAD Parcel ID’s 77033 and 52575. (Palomino)

Applicant: Lennar Homes of Texas Land and Construction, Ltd

Location: The property is generally located west of FM 2931, north of Frontier Parkway, and north of the Silverado neighborhood.

Future Land Use Map Designation: Suburban Neighborhood

Zoning: Unzoned, ETJ property

Summary: On February 22, 2024, the Aubrey City Council approved an Extraterritorial Jurisdiction Development Agreement (ETJDA) for the property and on June 27, 2024 the City Council approved an amendment to the Development Agreement to provide for revisions to the access points into the single-family residential subdivision and tract configurations for the GR General Retail tracts.

The City Council approved a Preliminary Plat for the property at their March 28, 2024 meeting. The Preliminary Plat will require the Planning & Zoning Commission and City Council approval of an amendment to reflect the revisions included in the amended Development Agreement.

The agreement includes procedures for annexation and zoning of the property and the next step in the development process is to process a zoning application. Development regulations for the property are outlined in the attached PD Planned Development District Standards along with the PD Concept Plan and PD Open Space Plan. All of which are consistent with the approved Development Agreement.

Single Family Standards:
The proposed PD allows for 300 single family lots on a minimum of a 3,000

square foot lot with a minimum lot width of 30 feet and a lot depth of 110 feet. The minimum front yard setback is 25 feet and the internal side yards are five (5) feet. Provisions for block length, front yard landscaping, exterior masonry, fencing/screening, open space requirements, product elevations, and entry monumentation are included in the PD standards.

General Retail Standards:

The GR tracts are to be development in accordance with the base zoning regulations with additional provisions for a Government Use tract and variety stores being prohibited in the commercial tracts.

Notifications: Notifications as required by Texas Local Government Code and the City of Aubrey Zoning Ordinance were provided.

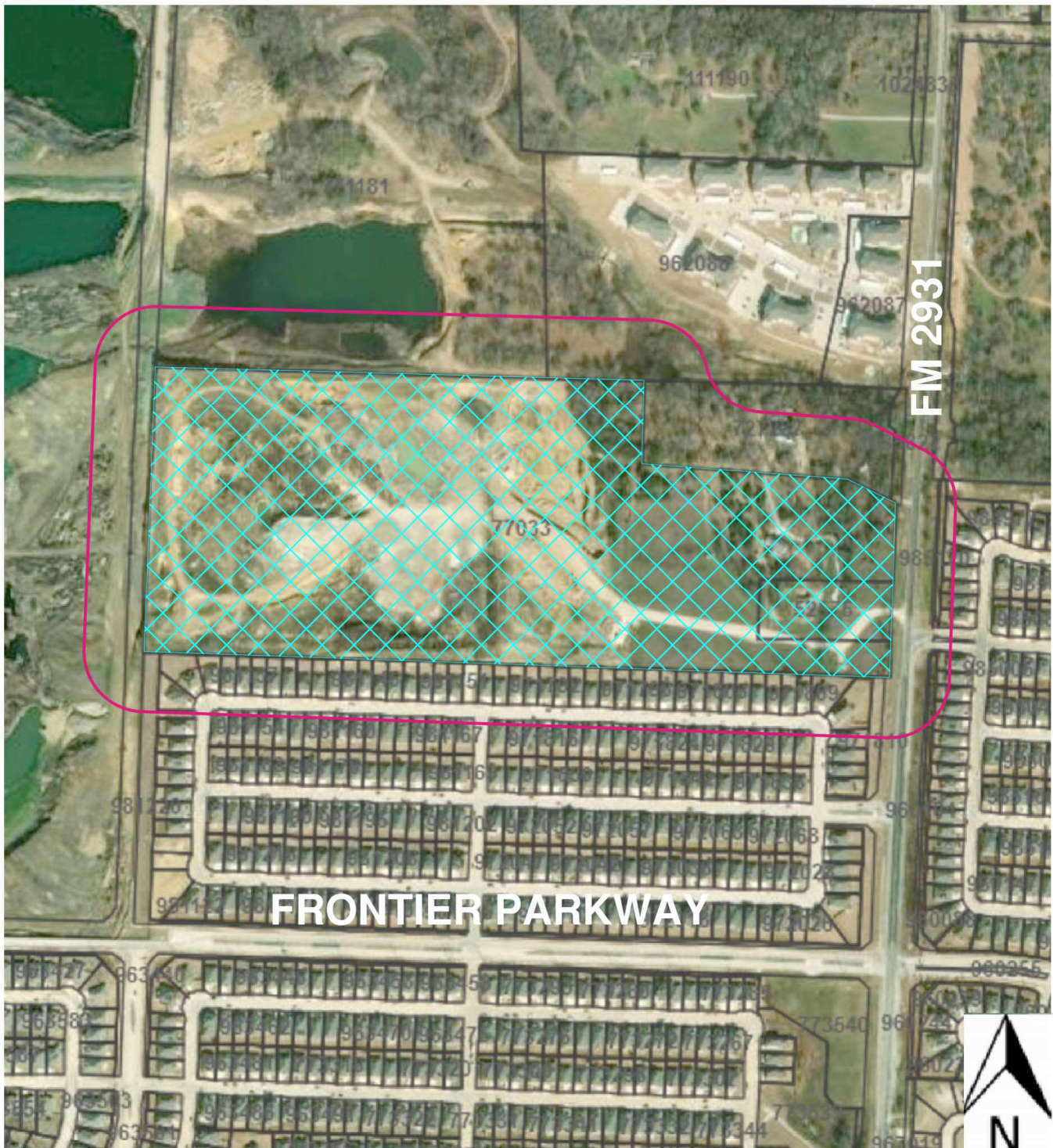
At the time of agenda report submission, no letters either for or against the PD application have been received.

Recommendation: Staff recommends the PD Planned Development District for Palomino be approved as presented.

Action Options: The Planning and Zoning Commission may recommend to the City Council
1. Approve the PD as presented; or
2. Approve the PD with conditions; or

Attachments:

1. Location/Notification Map
2. PD Development Standards
3. PD Concept Plan
4. PD Open Space Plan
5. PD Elevations
6. Development Agreement



NOTIFICATION MAP FOR:

Public Hearing: An amendment to Exhibit 14A, "Zoning Ordinance," in Chapter 14, "Zoning" of the Code of Ordinances of the City of Aubrey, Texas, and the official Zoning Map of the City as requested in an application for a change of zoning from unzoned land previously located in the City of Aubrey Extraterritorial Jurisdiction to Planned Development District (PD) with base zoning districts of SF75 – Single-Family Residential 7,500 Square Feet and GR – General Retail on approximately 47.3 acres of land located in the J. Bridges Jr. Survey, Abstract No. 36, Denton County, Texas. The property is generally located west of FM 2931, north of Frontier Parkway, and east of future Silverado Parkway. DCAD Parcel ID's 77033 and 52575. (Palomino)

Palomino PD - Development Standards.

1.1 Development Standards

The purpose and intent of these Development Standards are to provide quality subdivision development with residential uses for the Property. Capitalized terms not otherwise defined in Exhibit D have meanings given such terms in the Development Agreement to which Exhibit D is attached.

All streets, sidewalks, drainage ways, water and sewer lines, and improvements shall be designed, placed, and constructed in accordance with the Standard Specifications for City of Aubrey, North Central Texas Council of Government (NCTCOG), with all amendments thereto, except as amended or directly conflicted by these Development Standards. To the extent that there is a direct conflict between the regulations herein, and those found elsewhere, the regulations found herein shall control development within this property.

1.2 General Regulations

- a. All regulations for The Loyd Property not redefined by these Planned Development Standards shall conform to the regulations set forth in the City of Aubrey Zoning Ordinance with base zoning SF75 – Single Family Residential District and GR – General Retail.
- b. The Loyd Property shall comply with the Subdivision Ordinance as it exists on the effective date of this agreement, or as amended.
- c. A homeowners association shall be established and shall be responsible for the ownership and maintenance of all Common Areas.
- d. The maximum number of single-family residential lots within this development shall be 300. The layout for this development is shown on Exhibit C, Concept Plan.
- e. Residential street sections shall be 31' B-B and commercial collector streets shall be 37' B-B.
- f. Early Grading Permit. Owner will be granted an early grading permit following the submission of the following to the City: response to the first round of civil engineering comments and the SWPPP. Owner acknowledges the grading permit is an "at-risk" permit, and that revisions to the civil engineering drawings and grading operations due to subsequent City comments or revisions by Engineer of Record may be necessary.
- g. Construction Permit. The City shall review and approve construction plans prior to annexation, zoning, and preliminary plat approval. Owner may commence construction prior to annexation, zoning, and preliminary plat approval, so long as such construction is consistent with the terms of the Development Agreement and associated exhibits; however, final acceptance by the City of any improvements shall not occur until after annexation, zoning, and preliminary plat approval have occurred.
- h. A minimum of 30 off-street parking stalls shall be provided throughout the development.

1.3 Planned Development Regulations.

Single-Family. The following regulations will govern the design and development of the Property. The following lot standards shall apply:

a) SF-75 or as outlined herein:

Regulation	Criteria
1. Minimum Lot Size -	3,000 S.F.
2. Minimum Lot Width (*) -	30 feet
3. Minimum Lot Depth (**) -	110 feet
4. Minimum Front Yard Setback -	25 feet
5. Minimum Garage Setback -	25 feet
6. Side Yard Setback (Interior Lot) -	5 feet
7. Side Yard Setback (Corner Lot/Adjacent to ROW) -	10 feet
8. Rear Yard Setback -	15 feet
9. Maximum Height -	35 feet
10. Minimum Structure Size -	1,000 sf
11. Maximum Lot Coverage (***) -	65 percent

* Minimum Lot Width is measured along the front building line for all lots.

** Minimum Lot Depth along a “knuckle” or “cul-de-sac” shall be 90 feet. Minimum Rear yard Setback along a “knuckle” or “cul-de-sac” shall be 5 feet.

*** Maximum Lot Coverage percentage shall be exclusive of gazebos, pools, and outdoor living areas.

Garages: Each single-family dwelling unit shall provide a minimum one stall garage.

Commercial. This tract is intended to accommodate nonresidential uses following the City of Aubrey’s GR – General Retail zoning classification.

- a. Permitted Uses – The commercial tract shall develop under the provisions of the GR – General Retail Zoning District as outlined in Zoning Ordinance No. 135-87, as it currently exists, or as amended.
- b. The Northern Commercial tract shall be dedicated to the City, with a base zoning district of GR – General Retail and allow for Government Uses and Food Truck Park . The minimum lot depth shall be 100’ measured at the midpoint of the lot. No buffer yard along the northern property boundary is required.
- c. Variety stores are prohibited. Variety stores are defined as a store which sells at retail, an assortment of physical goods, products, or merchandise directly to the consumer, including food or beverages for off-premises consumption, household products, personal grooming and health products, and other consumer goods.

1.4 Block Lengths

The following block length requirements shall apply to the subject development. In general, intersecting streets determining the block length and widths shall be provided at such intervals as to serve cross traffic adequately and to meet existing streets. Where no existing subdivision establishes control, the block lengths shall not exceed those enumerated below. However, in cases where physical barriers or property ownership creates conditions where it is appropriate that these

standards be varied by the Planning and Zoning Commission, the length may be increased or decreased to meet the existing conditions, having due regard for connecting streets, circulation of traffic and public safety.

- a. Interior Block Length – No block face may be longer than fourteen hundred feet (1400’); however, Open Space with a width greater than forty feet (40’) will be deemed to terminate a block face. Block face is measured along the Right-of-Way line.
- b. Perimeter Block Length – Along the perimeter of the property the block face may be extended to two-thousand feet (2000’); however, Open Space with a width greater than forty feet (40’) will be deemed to terminate a block face. Block face is measured along the Right-of-Way line.

1.5 Front Yard Landscaping Minimum Requirements. The following landscaping requirements shall apply to the subject development for all front yards.

1. Trees. A minimum of one (1) – three-inch (3”) caliper tree shall be provided measured twelve-inches (12”) from the ground. The following tree shall be acceptable:
 - a. Pecan
 - b. Cedar Elm
 - c. Texas Red
 - d. Southern Live Oak
 - e. Bur Oak
 - f. Western Soapberry
 - g. Texas Ash
 - h. American Elm
 - i. Chinkapin Oak
 - j. Lacey Oak
 - k. Shumard Red Oak
 - l. Caddo Sugar Maple
 - m. Bald Cypress
 - n. Chinese Pistache
 - o. Lacebark Elm
 - p. Southern Magnolia
2. Shrubs. A minimum of ten (10) three-gallon to five-gallon shrubs shall be provided. The following shrubs and ornamental grasses shall be acceptable:
 - a. Agarita
 - b. American Beautyberry
 - c. Coral Berry
 - d. Texas Nolina
 - e. Red Yucca
 - f. Skeletonleaf
 - g. Goldeneye

- h. Texas Sage
 - i. Japanese Barberry
 - j. Pampas Grass
 - k. Compact Abelia
 - l. Glossy Abelia
 - m. Nellie R. Stevens Holly
 - n. Dwarf Buford Holly
 - o. Dwarf Yaupon
 - p. Autumn Sage
 - q. Mexican Bush Sage
 - r. Russian Sage
 - s. Japanese Privet
 - t. Variegated Privet
 - u. Japanese Boxwood
 - v. Indian Hawthorn
 - w. Rosemary
 - x. Pink Muhly
 - y. Mexican Feather Grass
 - z. Purple Fountain Grass
 - aa. Sea Green Juniper
 - bb. Yucca
- 3. Lawn. Sod is required.
 - 4. Irrigation. Irrigation is required.

1.6 Exterior Wall Masonry

- a. Residential Structures.** All exterior walls of the residential structures, excluding doors, windows, and window units shall be masonry. Masonry product shall include stone, brick, cultured stone and cementitious materials such as HardiPlank and stucco.
- b. Commercial Structures.** All exterior walls of commercial structures, excluding doors, windows, and architectural features, shall be comprised of one hundred percent (100%) masonry product. Masonry product shall include stone, brick, cultured stone and cementitious materials such as HardiPlank and stucco. HardiPlank material shall be limited to fifty percent (50%) of the total amount of any exterior wall.

1.7 Fencing Minimum Requirements. The following requirements shall apply to the subject development for all fencing.

- 1. Fencing for lots adjacent to open spaces. All lots adjacent to the dog park and playground shall have four-foot (4') in height tubular steel or wrought iron fencing as shown on Exhibit G – Open

Space Plan. Wooden privacy fencing shall not be allowed for these lots. Landscaping adjacent to the fencing is allowed, but not required.

2. Fencing for interior lots not adjacent to open spaces. All lots that are not adjacent to open spaces shall provide wooden privacy fencing. Fence shall be six-foot (6') in height with four-inch (4") cedar pickets that are pre-stained. Fence shall be constructed with galvanized fence posts and hardware. Fence does not have to be board on board style construction.
3. Screening adjacent to Silverado Parkway. Subdivision fencing/screening along perimeter roadways shall be constructed of masonry (brick, stone, or split face concrete block), with masonry columns. Screening shall be six-foot (6') in height. Masonry columns shall be constructed on a maximum spacing of one-hundred feet (100') on center. The screen wall shall be owned and maintained by the HOA.
4. Screening adjacent to commercial uses. Screening between residential and commercial uses shall be constructed of masonry (brick, stone, or split face concrete block) with masonry columns as shown on Exhibit G – Open Space Plan. Screening shall be a minimum six-foot (6') in height. Masonry columns shall be constructed on a maximum spacing of one-hundred feet (100') on center. The Development that is constructed first shall be responsible for the construction of the masonry screening whether it is the commercial or residential use. No screening is required on the northern General Retail lot. Screen walls are to be owned and maintained by the HOA.
5. Lift Station. The lift station shall fencing/screening shall be constructed of masonry (brick, stone, or split face concrete block), with masonry columns. Screening shall be eight-foot (8') in height with a metal access gate per TCEQ and Mustang SUD requirements. Masonry columns shall be constructed on a maximum spacing of one-hundred feet (100') on center. The screen wall shall be owned and maintained by the HOA.

1.8 Entry Monumentation

1. Entry Monument. The primary monument sign adjacent to FM 2931 shall not exceed a height of eight feet in height, with a maximum area of 250 square feet. The monument sign shall consist of masonry stone or brick. The sign shall be located within the drive median within an HOA lot. A secondary monument adjacent to Silverado Parkway may be free standing or integrated into the screen wall.
2. Visibility. Monument signs shall not be placed within visibility triangles or corner clips as defined in the City's Technical Standards and Specifications (TCSS) Manual.



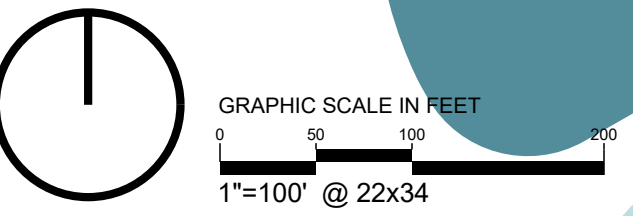
Single-Family Residential	36.7	77.7%
Commercial	3.6	7.6%
Open Space	2.5	5.2%
City Dedication	2.1	4.5%
Lift Station	0.1	0.3%
Retention	2.2	4.7%
Total	47.2	100.0%

30'x110'	300	100.0%
Total	300	100%

- NOTES:
1. THIS PLAN IS CONCEPTUAL IN NATURE AND MAY HAVE BEEN PRODUCED WITHOUT THE BENEFIT OF A SURVEY OR CONTACT WITH THE CITY, COUNTY, ETC.
 2. FLOOD PLAIN SHOWN IS SUBJECT TO CHANGE BASED ON A MORE DETAILED FULLY DEVELOPED FLOOD STUDY ANALYSIS.
 3. AERIAL IMAGE BY NEARMAP, COPYRIGHT 2024.

Kimley»Horn

June 2024



City Park Dedication	2.1	40.4%
Dog Park	0.6	11.5%
Open Space	2.5	48.1%
Total	5.2	100.0%

- NOTES:
1. THIS PLAN IS CONCEPTUAL IN NATURE AND MAY HAVE BEEN PRODUCED WITHOUT THE BENEFIT OF A SURVEY OR CONTACT WITH THE CITY, COUNTY, ETC.
 2. FLOOD PLAIN SHOWN IS SUBJECT TO CHANGE BASED ON A MORE DETAILED FULLY DEVELOPED FLOOD STUDY ANALYSIS.
 3. AERIAL IMAGE BY NEARMAP, COPYRIGHT 2024.

EXHIBIT G

Loyd Property

Aubrey, Texas

Kimley»Horn

6160 Warren Parkway, Suite 210
Frisco, Texas 75034
P 972-335-3580
State of Texas Registration No. F-928

June 2024

ELEVATION REQUIREMENTS

1,203 – 1,550

Sq. ft.

3 – 4

Bedrooms



2.5

Bathrooms



Stone, Brick,
Cultured Stone,
Stucco,
Cementitious

HardiPlank Masonry

THE WELLTON COLLECTION: 30' LOTS LOYD RANCH

LENNAR Kimley»Hom

FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT
(Palomino – formerly Loyd Ranch)

This First Amended and Restated Development Agreement (this “Agreement”) is entered into by and between Lennar Homes of Texas Land and Construction, Ltd., a Texas limited partnership (the “Owner”), and the City of Aubrey, Texas (the “City”), to be effective on the date upon which the last of all of the Parties has approved and duly executed this Agreement (“Effective Date”).

RECITALS

WHEREAS, certain terms used herein are defined in Article I; and

WHEREAS, the City is a home rule municipality organized under the laws of the State of Texas located within Denton County; and

WHEREAS, Owner and the City (which are sometimes individually referred to as a “Party” and collectively as the “Parties”) desire to enter into this Agreement; and

WHEREAS, Owner is under contract to purchase approximately 47.3 acres of real property described by metes and bounds on **Exhibit A** and depicted on **Exhibit B** attached hereto and has designated this project as the Palomino Development, formerly Loyd Ranch (the “Property”); and

WHEREAS, the Parties entered into a Development Agreement for the Property dated April 1, 2024 (the “Development Agreement”), and pursuant to Section 3.6, “Dedication of Site”, of the Development Agreement, Owner agreed to dedicate an approximate 0.81 acre tract of land, the location of which was identified in the Concept Plan, **Exhibit C**, attached thereto, such tract defined therein as the Dedicated Land; and

WHEREAS, subsequent to the execution of the Development Agreement, due to changes in the layout of a roadway within the proposed Development (defined below), the Parties agreed to make a change to the acreage and location of the Dedicated Land from the location identified in the Development Agreement; and

WHEREAS, the Owner and City have agreed that an approximate 0.97 acre tract of land located at the southeast corner of the Property as identified on the revised Concept Plan, attached hereto and incorporated herein as **Exhibit C**, should be dedicated to the City pursuant to Section 3.6 of this Agreement, and the Parties have determined that the Development Agreement should be amended to reflect the change in acreage and location of the Dedicated Land and to adopt a new **Exhibit C**; and

WHEREAS, the Development Agreement is hereby amended to adopt a new **Exhibit C**, (the “Concept Plan”) to identify the new location of the Dedicated Land; and

WHEREAS, the Property is currently located in the City's extraterritorial jurisdiction ("ETJ") and is not located in any other City's ETJ or corporate limits; and

WHEREAS, the Owner does not intend to take any action to request or cause the removal of the Property from the City's ETJ and Owner intends to cause the Property to be voluntarily annexed into the City's corporate limits and develop the Property as a master planned single family residential community with some commercial uses (the "Development") in accordance with the concept plan attached hereto as **Exhibit C** (the "Concept Plan") and the development standards set forth in those certain proposed development standards attached hereto as **Exhibit D** (the "Development Standards"); and

WHEREAS, Mustang Special Utility District ("Mustang") holds the certificates of convenience and necessity (the "CCNs") to provide retail water and wastewater service to the Property and the Parties intend for Mustang to provide retail water and wastewater service to the Property; and

WHEREAS, the Development will require the construction of certain onsite and offsite infrastructure, including streets and roads; drainage; water, sanitary sewer, and other utility systems; parks, open space, landscaping and trail systems; and land for all of the improvements (collectively, the "Public Improvements"), as detailed in **Exhibit E** attached hereto; and

WHEREAS, in consideration of Owner's agreements contained herein, the City is agreeable to creating a public improvement district ("PID") encompassing the Property to finance a portion of the cost of the Public Improvements in accordance with the provisions of this Agreement; and

WHEREAS, the City, subject to the consent and approval of the City Council, and in accordance with the terms of this Agreement and all legal requirements, including but not limited to the Bond Indenture under which PID Bonds are issued, is agreeable to: (i) adopt a Service and Assessment Plan; (ii) adopt an Assessment Ordinance (to pay for a specified portion of the estimated cost of authorized Public Improvements as more specifically identified herein and referred to as the "Authorized Improvements" and the costs associated with the administration of the PID and the issuance of the PID Bonds); and (iii) issue, in multiple series, if necessary, up to a maximum of **FIFTEEN MILLION AND NO/100 DOLLAS (\$15,000,000.00)** principal amount of PID Bonds for the purpose of financing a specified portion of the costs of the Authorized Improvements and paying associated costs as described herein; and

WHEREAS, the creation of a PID encompassing the Property will allow for greater amenities and public improvements to be provided to serve the Property; and

WHEREAS, after creation of the PID, all of the City's administrative costs associated with the PID will be funded by the levy of PID assessments on the Property in accordance with the PID Act; and

WHEREAS, this Agreement is entered into pursuant to Section 212.172 of the Texas Local Government Code and it is the intent of this Agreement to establish certain legally binding

restrictions and commitments to be imposed upon the development of the Property, which shall survive annexation of the Property.

NOW, THEREFORE, for and in consideration of the mutual covenants of the Parties set forth in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

ARTICLE I

GENERAL TERMS AND DEFINITIONS

1.1 Recitals. The recitals to this Agreement are incorporated herein for all purposes.

1.2 Definitions. Unless the context requires otherwise, the following terms shall have the meanings hereinafter set forth:

Assessment Ordinance means the ordinance approved by the City Council that levies Assessments on the Property in accordance with the PID Act to pay for the costs of the Authorized Improvements set forth in the SAP as well as the costs associated with the issuance of the PID Bonds, which provide a special benefit to the Property.

Authorized Improvements means the water, sewer, drainage, and roadway infrastructure and facilities needed to serve and fully develop the Property and to be constructed by the Owner on behalf of the City, including but not limited to the Public Improvements included in Exhibit E attached hereto and included in the approved Service and Assessment Plan.

Bond Indenture means a trust indenture by and between the issuer of the PID Bonds and a trustee bank under which the PID Bonds are issued and funds disbursed.

Building Codes means building, plumbing, electrical, mechanical, fire, and property maintenance codes adopted by the City and uniformly enforced within the City's corporate boundaries, in effect as of the date a building permit is requested.

CCN or CCNs mean certificates of convenience and necessity.

City means the City of Aubrey, Texas, a home rule municipality located in Denton County, Texas.

City Assignee is defined in Section 9.2.

City Council means the city council of the City.

City Dedicated Public Improvements is defined in Section 4.3.

Closing or Closing Date means a date on or before December 15, 2024 upon which Owner purchases the Property in fee simple.

Concept Plan means the new concept plan attached to this First Amended and Restated Development Agreement as **Exhibit C**, and as may be amended from time to time by ordinance during the zoning process for the Property.

Development is defined in the Recitals.

Development Standards means the development standards for the Property, which are set forth on **Exhibit D**.

Eminent Domain Fees is defined in Section 4.5.

End-Buyer is defined in Section 10.1.

ETJ is defined in the Recitals.

Final Plat means the final plat for the Property approved by City.

Fully Developed and Improved Lot means any lot, regardless of proposed use, which is served by the Public Improvements and for which a final plat has been approved by the City and recorded in the real property records of Denton County.

Governing Regulations has the meaning set forth in Section 2.1 of this Agreement.

Impact Fee means water, sewer, and/or roadway or other impact fees adopted by the City via ordinance pursuant to State law, which shall be due and payable to the City in accordance with the City's applicable ordinances, each individually referred to as "Water Impact Fee, "Sewer Impact Fee" or "Roadway Impact Fee".

Mustang means Mustang Special Utility District,

Owner is defined in the introductory paragraph.

Owner Assignee is defined in Section 9.1.

Park Development Fee(s) means those fees identified in Section 5, "Park Land and Public Facility Dedication" of Article 4, "Public Sites and Open Spaces" of the City's Subdivision Ordinance, as amended from time to time, of the City of Aubrey, Texas Code of Ordinances.

Parties means the Owner and the City.

Party means the Owner or the City.

PID means the Public Improvement District encompassing the Property to be created by the City pursuant to the PID Act.

PID Act means Chapter 372 of the Texas Local Government Code, as amended.

PID Assessment(s) or Assessment(s) means a special assessment levied by the City within the PID pursuant to the PID Act, pursuant to an Assessment Ordinance, to pay for a specific portion of the PID Project Costs.

PID Bonds means the assessment revenue bonds issued by the City through the PID to finance the Authorized Improvements that are constructed for the benefit of the PID and are secured solely from the Assessment Revenues.

PID Projects is defined in Section 7.1(c).

PID Project Costs is defined in Section 7.1(d).

PID Service and Assessment Plan means the PID service and assessment plan adopted by City Council, as may be amended or updated annually, to assess allocated costs of improvements against the Property located within the boundaries of the PID, and which has terms, provisions and findings approved and agreed to by Owner and the City in accordance with the PID Act.

Property means the real property described by metes and bounds on Exhibit A and depicted on Exhibit B.

Public Improvements means those onsite and offsite public improvements intended to serve and benefit the Property as detailed in Exhibit E attached hereto, as may be amended from time to time, which are permitted to be funded under the PID Act and shall be further described in the service and assessment plan to be prepared for the PID, or as identified in the Final Plat

Reimbursement Agreement means the agreement as authorized by the PID Act which provides for the reimbursement to Owner for those costs of design, engineering, acquisition and construction of the Public Improvement paid by Owner and providing for the issuance of PID Bonds to reimburse Owner for the costs of the Public Improvements paid by Owner.

Roadway Facilities means arterial or collector streets or roads that have been designated on the city's officially adopted Master Thoroughfare Plan and the City's adopted Capital Improvement Plan, together with all necessary appurtenances.

Subdivision Regulations means the City's current subdivision ordinance and all amendments thereto.

Water and Wastewater Public Improvements shall mean the water and wastewater public infrastructure identified on the approved Final Plat as part of the system owned and operated by Mustang Special Utility District, constructed by Owner and dedicated to Mustang.

ARTICLE II **DEVELOPMENT REGULATIONS**

2.1 Governing Regulations. Development of the Property shall be governed solely by the following (collectively, the "Governing Regulations"):

(a) the Concept Plan attached hereto as **Exhibit C**, as amended from time to time by ordinance approved by the City as part of the zoning process for the Property or in accordance with this Agreement;

(b) the Development Standards attached hereto as **Exhibit D**;

(c) the Subdivision Regulations;

(d) the Building Codes;

(e) approved Final Plats for all or a portion of the Property; and

(f) applicable federal and state regulations.

2.2 Enforcement of Regulations.

(a) The City will enforce the Subdivision Regulations and the Building Codes on the Property in the same manner in which the codes are enforced upon other property within the City's corporate boundaries, except as modified herein.

(b) The City will enforce the Governing Regulations on the Property in the same manner in which duly enacted zoning regulations are enforced within the City's corporate boundaries, except as expressly modified herein. The Property shall be subject to all ordinances of the City upon annexation.

(c) Prior to sale of any lot within the Property, the elevation requirements provided in **Exhibit F** hereto shall be filed by Owner as a deed restriction to ensure compliance with such elevation requirements and building material regulations.

2.3 Homeowner's Association Required.

(a) Owner shall create a sustainable and mandatory homeowner's association for the Property that requires membership by all of the owners of a lot within the Property that is subject to the special assessments being levied related to the PID (the "HOA").

(b) The HOA shall own and be responsible for the maintenance of any private streets, appurtenances, and open spaces/common areas, HOA owned lots, such as entry medians, amenities, and facilities within the Property.

(c) The HOA shall have covenants and bylaws, which must be approved by the City. The HOA shall require the payment of dues and assessments to maintain any private streets and common areas and facilities. The HOA covenants shall provide for assessments and liens for nonpayment of dues or assessments. The approved covenants of the homeowner's association must be recorded with the County Clerk for Denton County.

(d) Pursuant to Section 4.2, the HOA shall collect and remit to the City the Solid Waste Fees (defined below).

2.4 Conflicts.

(a) In the event of any conflict between this Agreement and any ordinance, rule, regulation, standard, policy, order, guideline or other City-adopted or City-enforced requirement, whether existing on the Effective Date or hereinafter adopted, this Agreement shall control.

(b) In the event of any conflict between the Development Standards and any other part of the Governing Regulations, the Development Standards shall control.

ARTICLE III **DEVELOPMENT CHARGES; OVERSIZING; IMPACT FEES; OPEN SPACE**

3.1 Development Charges. Except as specifically described below, Owner shall be subject to those fees and charges due and payable to the City in connection with the development of the Property that are charged uniformly to other developments located in the corporate limits of the City whether in effect on the date of this Agreement or implemented at a later date.

3.2 Oversizing. The City shall be responsible for all costs of any change to increase the size of any portion of the roadway and storm water Public Improvements to a size greater than is necessary to serve the Development. Oversizing shall be at the sole discretion of the City as determined necessary by the City to meet the City's present or future capacity needs.

3.3 Impact Fees. The City shall collect and retain all applicable Impact Fees generated from building permits on the Property. Impact Fees shall be assessed at the time of platting and collected by the City at the time of issuance of a building permit. Notwithstanding the foregoing or anything herein to the contrary, to the extent that Owner constructs Roadway Facilities that are eligible for Roadway Impact Fee reimbursement to Owner pursuant to City Ordinance and State law (the "Eligible Roadway Facilities"), the Roadway Impact Fees collected by the City for such Eligible Roadway Facilities shall be remitted to Owner. Owner and the City agree that once Owner has been reimbursed for its actual costs of Eligible Roadway Facilities for the Project, the City shall continue to collect Impact Fees but no longer remit such Roadway Impact Fees to Owner.

3.4 Open Space. The City agrees that Owner shall be allowed to plan and design open spaces to be compliant with the open spaces designated on the Concept Plan attached hereto as **Exhibit C**. The City and Owner further agree that a minimum of five (5) acres shall be designated as open spaces, including the detention pond, as shown on **Exhibit C** attached hereto. Owner further agrees to dedicate at no cost to the City the community playground, private open space, and trails shown on **Exhibit C** (the "City Dedications").

3.5 Park Land Dedication and Park Development Fees. Owner agrees to construct such parks, landscaped and/or open space, and other recreational facilities as shown on the Concept Plan attached hereto as **Exhibit C**. Notwithstanding anything contained within Section 5, "Park Land and Public Facility Dedication" of Article 4, "Public Sites and Open Spaces" of the City's

Subdivision Ordinance (hereinafter "Section 5") to the contrary, the City agrees that, as consideration for Owner's dedication to the City of the City Dedication detailed in Section 3.4 and the Dedicated Tract (hereinafter defined) detailed in Section 3.6, Owner shall not be obligated to dedicate any additional land to the City or pay any fees in lieu of dedication. Owner shall, however, pay Park Development Fees in the amount of \$2,500.00 per dwelling unit pursuant to Section 5, which amount shall be locked in and unmodified for the duration of the term of this Agreement. The amount of land dedicated or cash payment in lieu of such land dedication and the amount of Park Development Fees paid by Owners hereunder has been negotiated by the Parties, and no future act by the City imposing Park Development Fees or regulating dedication of public sites or open spaces shall modify such agreed upon terms set forth in this Agreement. All payments due under this Section 3.5 shall be paid by Owner and all land to be dedicated under this Section 3.5 shall be transferred via special warranty deed to the City prior to the City's filing of the Final Plat. Prior to Owner's dedication of any land to the City in accordance with this Section 3.5, Owner shall not encumber such parcels and shall furnish documentation acceptable to the City upon request by City.

3.6. Dedication of Site. Owner has agreed to dedicate at no cost to City an approximate 0.97 acre tract of land identified on the new Concept Plan attached hereto as Exhibit C, (the "Dedicated Tract"), for use by City for any general municipal purpose or for economic development purposes. The use of the Dedicated Tract for either general municipal purposes or economic development purposes shall be in the sole discretion of the City, and the City in its sole discretion may: (i) retain the Dedicated Tract for municipal purposes or economic development purposes; (ii) transfer ownership of the Dedicated Tract to the Aubrey Municipal Development District with the restriction that the Dedicated Tract shall be used for economic development purposes; or (iii) transfer ownership of the Dedicated Tract to a third party pursuant to an agreement entered into under Chapter 380 of the Texas Local Government Code for economic development purposes. Prior to dedication of the Dedicated Tract to the City, Owner shall not encumber the Dedicated Tract and shall furnish documentation acceptable to the City upon request by City.

ARTICLE IV

WATER AND SEWER SERVICE; OTHER PUBLIC SERVICES; PUBLIC IMPROVEMENTS; DEDICATION OF PUBLIC LAND

4.1 Water and Sewer Service; Billing. Mustang shall be the retail provider of water and sewer service under water CCN No. 11856 and sewer CCN No. 20930 to the customers located within the Property.

4.2 Solid Waste Services. Owner agrees that solid waste and recycling services to the Property shall be provided by City's approved solid waste franchise service provider pursuant to the terms of the City's approved franchise ordinance and agreement (the "Franchise Agreement"), and that fees due under the Franchise Agreement shall be billed to the Property (the "Solid Waste Fees"). Billing services for collection of Solid Waste Fees are provided by Mustang as part of Mustang's billing process for water and sewer service, and Solid Waste Fees are remitted to City in accordance with a separate interlocal agreement between the City and Mustang (the "City/Mustang ILA"). In the event that the City/Mustang ILA terminates, within forty-five (45)

days of receipt of the City's written request, Owner shall cause the HOA to enter into a written agreement with City to provide for collection and remittance of Solid Waste Fees.

4.3 Public Improvements. The City and Owner hereby agree that all Water and Wastewater Public Improvements shall be designed, constructed and installed by Owner in compliance with Mustang's rules and regulations. Except as otherwise expressly provided for in this Agreement, all Roadway Facilities, including without limitation roadway and storm water improvements, and other Public Improvements, excluding Water and Wastewater Public Improvements (the "City Dedicated Public Improvements"), shall be designed, constructed and installed by Owner in compliance with the Governing Regulations. Construction and/or installation of Roadway Facilities and storm water Public Infrastructure shall not begin until complete and accurate plans and specifications have been approved by the City in accordance with standard City procedures, and City has received written notice from Mustang that specifications for all Water and Wastewater Public Improvements have been approved by Mustang. Owner shall provide or cause a single general contractor to provide a two-year maintenance bond following completion of the City Dedicated Public Improvements, which bond shall run in favor of the City responsible for maintenance of the City Dedicated Public Improvements. To the extent easements or rights-of-way are needed within the Property for City Dedicated Public Improvements, they shall be dedicated by Owner to the City at no cost to the City. The City Dedicated Public Improvements shall be installed within easements granted to the City or in the public right of way. The size of the City Dedicated Public Improvements shall be sized as finally determined by the City's engineer and could vary from the estimated sizes reflected in Exhibits E, and any costs associated with oversizing such City Dedicated Public Improvements to serve property outside the Development will be borne by the City.

4.4 Inspections, Acceptance of Public Improvements.

(a) Roadway and Storm Infrastructure. The City shall have the right to inspect, at any time, the construction of all roadway and storm water Public Improvements, and any related Public Improvements necessary to support the proposed development within the Property, which shall be inspected, designed and constructed in compliance with all statutory and regulatory requirements, including design and construction criteria, and the Governing Regulations. Owner shall pay infrastructure inspection fees in accordance with the City of Aubrey Code of Ordinances. All City Dedicated Public Improvements shall be dedicated to and become the property of City upon City's final acceptance of such improvements, and after final acceptance and expiration of any warranty period, shall be maintained by City in accordance with the terms of this Agreement. Roadway improvements include storm drainage infrastructure, sidewalks, traffic control devices and signage.

(b) Water and Wastewater Public Improvements. Mustang shall have the sole right to inspect the construction of all Water and Wastewater Public Improvements and the sole obligation to maintain all Water and Wastewater Public Improvements after acceptance.

(c) No Release. The City's inspections shall not release the Owner from its responsibility to construct, or ensure the construction of, adequate Public Improvements in accordance with approved engineering plans, construction plans, and other approved plans related to development of the Property.

(d) City Owned. From and after the inspection and acceptance by the City of the City Dedicated Public Improvements and any other dedications required under this Agreement, such improvements and dedications shall be owned by the City.

(e) Mustang Owned. Pursuant to the provisions of Section 372.023 of the PID Act, the City does consent to and approve of Owner conveying to Mustang all water and wastewater Public Improvements which are a part of the Authorized Improvements. From and after the inspection and acceptance by Mustang of the water and wastewater Public Improvements, such improvements shall be owned and maintained by Mustang.

(f) Approval of Plats/Plans. All plats, permits, plans, designs or specifications shall be subject to review and approval by the City in accordance with standard City processes upon payment of applicable fees and shall be in accordance with the Governing Regulations. Approval by the City, the City's engineer or other City employee or representative, of any plats, permits, plans, designs or specifications submitted by the Owner pursuant to this Agreement or pursuant to the Governing Regulations shall not constitute or be deemed to be a release of the responsibility and liability of the Owner, his engineer, employees, officers or agents for the accuracy and competency of their design and specifications. Further, any such approvals shall not be deemed to be an assumption of such responsibility and liability by the City for any defect in the design and specifications prepared by the Owner or the Owner's engineer, or engineer's officers, agents, servants or employees, it being the intent of the parties that approval by the City's engineer signifies the City's approval on only the general design concept of the improvements to be constructed. All plats and plans of the Owner related to the Property shall meet the requirements of the Governing Regulations. Notwithstanding anything contained herein to the contrary, the City acknowledges that Owner may seek pump and haul services from Mustang until such time that the wastewater Public Improvements are completed to serve the Property, and the City hereby agrees not to withhold its approval of any plats, permits, plans, designs, specifications, certificates of occupancy, or any other approvals for which the City has authority pursuant to this Agreement due to such wastewater Public Improvements not yet being complete at the time of such approval. Owner further agrees that the City shall have no responsibility with respect to such pump and haul services.

4.5 Eminent Domain. The Owner agrees to use commercially reasonable efforts to obtain all third-party rights-of-way, consents, or easements, if any, required for the City Dedicated Public Improvements. If, however, the Owner is unable to obtain such third-party rights-of-way, consents, or easements within ninety (90) days of the Effective Date, the City agrees to take reasonable steps to secure same (subject to City Council authorization after a finding of public necessity) through the use of the City's power of eminent domain. Unless otherwise set forth in this Agreement to the contrary, the Owner shall be responsible for funding all reasonable and necessary legal proceeding/litigation costs, attorney's fees and related expenses, and appraiser and expert witness fees and costs of acquisition, including payment of landowner attorney fees as required by law or ordered by a Court (collectively, "Eminent Domain Fees") paid or incurred by the City in the exercise of its eminent domain powers and shall, if requested in writing by the City, escrow with a mutually agreed upon escrow agent the City's reasonably estimated Eminent Domain Fees both in advance of the initiations of each eminent domain proceeding and as funds are needed by the City. Provided that the escrow fund remains appropriately funded in accordance with this Agreement, the City will use all reasonable efforts to expedite such condemnation

procedures so that the Public Improvements can be constructed as soon as reasonably practicable. If the City's Eminent Domain Fees exceed the amount of funds escrowed in accordance with this paragraph, the Owner shall deposit additional funds as requested by the City into the escrow account within ten (10) days after written notice from the City. The City is not required to continue pursuing the eminent domain unless and until the Owner deposits additional Eminent Domain Fees with the City. In the event that Owner fails to fund the escrow account and/or due to changed circumstances the third-party rights-of-way, consents, or easements are no longer required such that City ceases eminent domain proceedings and such cessation of proceedings results in an obligation for the City to pay attorneys fees or other costs related to or arising out of the eminent domain proceedings, Owner shall pay all such fees and costs to City within five (5) business days of written notice from City of the amounts due as a result of such cessation. Any unused escrow funds will be refunded to the Owner within thirty (30) days after any condemnation award or settlement becomes final and non-appealable. Nothing in this subsection is intended to constitute a delegation of the police powers or governmental authority of the City, and the City reserves the right, at all times, to control its proceedings in eminent domain.

4.6 Operation and Maintenance.

(a) Upon inspection, approval, and acceptance of the water and wastewater Public Improvements or any portion thereof, Mustang shall maintain and operate the accepted water and wastewater infrastructure or any accepted portion thereof and provide water and wastewater service to the Property.

(b) Upon inspection, approval, and acceptance of the roadway and storm water Public Improvements or any portion thereof, the City shall maintain and operate the roadways and storm water infrastructure or any accepted portion thereof.

(c) Maintenance and operation of open spaces, trails, common areas, right-of-way irrigation systems, right-of-way landscaping, screening walls, and any other common improvements or appurtenances is addressed in the Development Standards, and to the extent not addressed shall be maintained and operated by a homeowner's association in accordance with the Governing Regulations.

4.7 On-Site Rights-of-Way and Easements. Owner will transfer to the City any on-site rights-of-way and on-site easements necessary for Public Improvements at the time of adjacent development, or within one hundred twenty (120) days of the City requesting same for a City project.

ARTICLE V TERM

The term of this Agreement shall be for a period of thirty (30) years after the Effective Date. The Parties may extend the term of this Agreement if they execute an agreement in writing. Notwithstanding the foregoing or anything to the contrary in this Agreement, this Agreement shall automatically terminate, be *void ab initio* and shall be of no further force or effect if Owner does not close on the purchase of the Property by December 15, 2024, or if Owner notifies the City in writing prior to December 15, 2024 that it will not purchase the Property.

ARTICLE VI
ANNEXATION AND POST-ANNEXATION MATTERS

6.1 Annexation. Within ten (10) days after the Closing Date, Owner agrees to submit or to cause the submission of a voluntary annexation petition for the Property. Owner agrees to execute and supply any and all instruments and/or other documentation necessary for the City to annex the Property into the City's corporate limits. This Agreement constitutes the service plan agreement for providing City services to the Property. If the City is unable to complete the annexation of the Property for any reason, including but not limited to procedural error or legal challenge, Owner shall execute another voluntary annexation petition for the Property within ten (10) days of being requested to do so. Prior to annexation of the Property, the City shall have considered this Agreement, shall have submitted to Owner, and Owner shall review and approve, and this annexation service plan shall be considered a binding, and mutually agreed upon, contractual obligation between the City and Owner.

6.2 Zoning of Property. While the Parties expressly acknowledge that the Property will be voluntarily annexed in accordance with Section 6.1 of this Agreement, the Parties agree that the Governing Regulations and the applicable provisions of this Agreement memorialize the plan for development of the Property as provided for in Section 212.172 of the Texas Local Government Code and other applicable law. The City shall consider zoning the Property consistent with the Governing Regulations and applicable provisions of this Agreement contemporaneously with the annexation of the Property. Through this Agreement, the Owner expressly consents and agrees to the zoning of the Property consistent with and as contemplated by this section. In the event of a conflict between this Agreement and the zoning of the Property, the Parties agree that this Agreement shall control. The Owner agrees that nothing in this Agreement shall prevent the Governing Regulations, including but not limited to zoning, from being enforced against an End-Buyer.

ARTICLE VII
INFRASTRUCTURE FINANCING

7.1. PID Financing. Subject to the provisions of this Agreement and subsequent to the Closing Date, the City agrees to create the PID, and to consider the funding of all or a portion of the Public Improvements that will confer a special benefit upon the Property. As soon as reasonably practicable following creation of the PID and a request by Owner, and subject to Section 7.3 below, the City agrees to issue PID Bonds.

(a) The Owner will submit a PID creation petition to the City after the Closing Date.

(b) PID funding of certain Public Improvements as authorized by the PID Act and approved by the City will include, to the maximum extent authorized by State law, one or more of the following: (i) annual payments by the City to the Owner of PID assessments not pledged to the repayment of PID Bonds; (ii) the issuance by the City of PID Bonds secured by PID assessments and/or other security; (iii) the issuance by the City or other issuer of other bonds secured by PID assessments and/or other security; or (iv) any other method approved by the Parties.

(c) The Public Improvements to be funded by the PID will be the same as those described in the PID Service and Assessment Plan, which Public Improvements confer a special benefit on the Property (the “PID Projects”).

(d) The total estimated cost of the PID Projects (the “PID Project Costs”) will be as stated in the PID Service and Assessment Plan, as amended. The PID Project Costs will include the cost of two-year maintenance bonds for the PID Projects.

(e) The City and the Owner will jointly determine the PID Project Costs (which shall not include City right-of-way acquisition costs) and prepare a Service and Assessment Plan for the PID. After the City approves the final PID Project Costs, prepares a proposed assessment roll based thereon, and files the Service and Assessment Plan and proposed assessment roll with the Secretary for the City for public inspection, the City will levy special assessments against the Property.

(f) The City shall review and update the Service and Assessment Plan consistent with the requirements of Section 372.013(b) of the PID Act. As needed for consistency with the updated Service and Assessment Plan and consistent with the requirements of Sections 372.019 and 372.020 of the PID Act, the City shall make supplemental assessments, reassessments or new assessments such that assessments reflect the updated PID Project Costs. As needed to implement the Service and Assessment Plan, the City and the Owner will enter into a Reimbursement Agreement that provides for the Owner’s construction of certain PID Projects and the City’s reimbursement to the Owner of certain PID Project Costs.

(g) The City will use its reasonable efforts to issue one or more series of PID Bonds secured, in whole or in part, by assessments levied against benefited property within the PID. PID Bonds may also be secured by any other revenue authorized by the PID Act or other State law and approved by the City Council of the City. The net proceeds from the sale of PID Bonds (i.e., net of costs and expenses of issuance and amounts for debt service reserves and capitalized interest) will be used to pay PID Project Costs. Notwithstanding the foregoing, the obligation of the City to issue PID Bonds is conditioned upon the terms set forth in Section 7.3 and upon the adequacy of the bond security and the financial obligation of the Owner to pay the amount, if any, by which PID Project Costs exceed the net proceeds from the sale of PID Bonds and the amount, if any, of cost overruns. The City may require the Owner to secure its obligation to pay such deficit and cost overruns by providing a performance bond, letter of credit, or other security acceptable to the City prior to the issuance of the PID Bonds. The net proceeds from the sale of the PID Bonds will be deposited in and disbursed from a construction fund created and administered pursuant to the indenture under which the PID Bonds are issued.

7.2 PID Notices. When selling any of the Property, Owner shall provide notices in a form required by Section 5.014 of the Texas Property Code, as amended, to anyone who purchases property within the PID notifying the purchaser: (a) that the property is located in the PID; (b) that the City has issued or may issue PID bonds; (c) that the City has levied or may levy PID assessments; (d) of the unpaid reimbursement amount of the PID assessment against the Property; (e) of the estimated annual installments if PID assessments are not paid in full; and (f) of the estimated duration of the PID assessment and annual installments. Further, such Owner shall require builders selling homes to continuously post a notice of the PID assessments in a

conspicuous location in each model home and provide an explanation of the PID assessments in written brochures and promotional materials given to each prospective purchaser. This section applies to all owners of all or any portion of the Property.

7.3 PID Bond Issuance. Owner may request issuance of PID Bonds by filing with the City a list of the PID Projects to be funded or acquired with the PID Bond Proceeds and the estimated or actual costs of such PID Projects. Owner acknowledges that the City may require a professional services agreement that obligates Owner to fund the costs of the City's professionals relating to the preparation for and issuance of PID Bonds, which amount shall be agreed to by the Parties and considered a cost payable from such PID Bond Proceeds. The issuance of each series of PID Bonds is subject to the following conditions, as applicable, and subject to this Article VII:

(1) the adoption or amendment of the Service and Assessment Plan and an Assessment Ordinance levying assessments on all or any portion of the Property benefitted by such PID Projects in amounts sufficient to pay all costs related to such PID Bonds;

(2) the aggregate principal amount of all PID Bonds issued and to be issued for the PID shall not exceed FIFTEEN MILLION AND NO/100 DOLLARS (\$15,000,000.00) as shown on Exhibit E, except that said not-to-exceed amount may be adjusted based on actual interest rates and/or assessed values, subject to the limitations prescribed by this Section;

(3) the PID Bond Proceeds from each series of PID Bonds shall be in an amount estimated to be sufficient to fund the PID Projects for which such PID Bonds are being issued;

(4) if requested by the City, delivery by Owner to the City of a certification or other evidence from an independent appraiser or other professional acceptable to the City confirming that the special benefits conferred on the properties being assessed for the PID Projects increase the value of the property by an amount at least equal to the amount assessed against such property;

(5) approval by the Texas Attorney General of the PID Bonds and registration of the PID Bonds by the Comptroller of Public Accounts of the State of Texas;

(6) Owner is current on all taxes, assessments, fees and obligations to the City, including without limitation payment of Assessments;

(7) Owner is not in default under this Agreement or, with respect to the Property, any other agreement to which Owner and the City are parties;

(8) no outstanding PID Bonds are in default and no reserve funds have been drawn upon that have not been replenished;

(9) review and approval by the City of the plats and construction plans for the PID Projects for which the respective series of PID Bonds are being issued to fund;

(10) the Administrator has certified that the specified portions of the costs of the PID Projects to be paid from PID Bond Proceeds are eligible to be paid therewith;

(11) the PID Projects to be financed by the PID Bonds have been or will be constructed according to the Development Standards;

(12) the City has determined, in consultation with the City's Bond Counsel and Financial Advisor, that there will be no negative impact on the City's creditworthiness, bond rating, access to or cost of capital, and that the PID Bonds meet all regulatory and legal requirements applicable to the issuance of the PID Bonds;

(13) simultaneous with closing the PID Bonds, Owner shall either (i) fund or cause the funding of or (ii) provide evidence of financial security sufficient to fund the Authorized Improvements to the extent that the Authorized Improvements have not already been completed and paid for to the extent that the PID Bonds are insufficient to fund such Authorized Improvements;

(14) the City has determined, in consultation with the City's Financial Advisor, that the amount of proposed PID Assessments and the structure, terms, conditions, and timing of the issuance of the PID Bonds are suitable and reasonable for the PID Project Costs to be financed and the degree of development activity within the PID, and that there is sufficient security for the PID Bonds to be creditworthy;

(15) the City has determined, in consultation with the City's Bond Counsel and Financial Advisor, that the method of sale, investor suitability requirements, minimum bond denominations, and bond transferability restrictions are reasonable and meet all regulatory and legal requirements applicable to the issuance of the PID Bonds;

(16) the maximum maturity for PID Bonds shall not exceed 30 years from the date of delivery thereof;

(17) the final maturity for any PID Bonds shall be not later than 45 years from the date of this Agreement;

(18) no information regarding the City, including without limitation financial information, shall be included in any offering document relating to PID Bonds without the consent of the City;

(19) Owner agrees to provide periodic information and notices of material events regarding Owner and Owner's development of the Property within the PID in accordance with Securities and Exchange Commission Rule 15c2-12 and any Owner Continuing Disclosure Agreement;

(20) Owner is not in default under a Owner Continuing Disclosure Agreement;

(21) the maximum tax equivalent assessment rate for the assessment levy shall not exceed the greater of (i) \$0.54 per \$100 of projected buildout taxable assessed value per parcel, or (ii) an amount equal to \$1.00 minus the City's ad valorem tax rate per \$100.00 of projected buildout taxable assessed value per parcel;

(22) for the issuance of any Refunding Bonds, the amount of assessment necessary to pay the Refunding Bonds shall not exceed the amount of the assessments that were levied to pay the PID Bonds that are being refunded and the maturity of the PID Bonds refunded;

(23) the City's consulting engineer determines that the PID Projects Cost shown on **Exhibit E**, as updated and amended, are reasonable;

(24) except for the first phase of the Development, Owner has completed and the City has accepted the PID Projects for the previous phase of the Development.

7.4. Qualified Tax-Exempt Status.

(a) Issuance of PID Bonds Prior to City Obligations.

(1) In the event the City issues PID Bonds prior to the issuance of City Obligations, the City, with assistance from its financial advisor, shall calculate the estimated Additional Costs based on the market conditions as they exist approximately thirty (30) days prior to the date of the pricing of the PID Bonds (the "Estimated Costs"). The Estimated Costs are an estimate of the increased cost to the City to issue its City Obligations as non-qualified tax exempt obligations ("non-QTEO"). Promptly following the determination of the Estimated Costs, the City shall provide a written invoice to Owner in an amount equal to the Estimated Costs. Owner, in turn, shall remunerate to the City the amount shown on said invoice on or before the earlier of: (i) fifteen (15) business days after the date of said invoice, or (ii) five (5) business days prior to pricing the PID Bonds. The City shall not be required to price or sell any series of PID Bonds until Owner has paid the invoice related to the PID Bonds then being issued.

(2) Upon the City's approval of the City Obligations, the financial advisor shall calculate the actual Additional Costs to the City of issuing its City Obligations as non-QTEO. The City will, within five (5) business days of the issuance of the City Obligations, provide written notice to Owner of the amount of the Additional Costs. In the event the Additional Costs are less than the Estimated Costs, the City will refund to Owner the difference between the Additional Costs and the Estimated Costs within fifteen (15) business days of the date of the City's notice to Owner required under this paragraph. If the Additional Costs are more than the Estimated Costs, Owner will pay to the City the difference between the Additional Costs and the Estimated Costs within fifteen (15) business days of the date of the City's notice required under this paragraph.

(b) Issuance of City Obligations Prior to PID Bonds.

(1) In the event the City issues City Obligations prior to the issuance of PID Bonds, the City, with assistance from the financial advisor, shall calculate the Estimated Costs based on the market conditions as they exist approximately twenty (20) days prior to the date of the pricing of the City Obligations. Promptly following the determination of the Estimated Costs, the City shall provide a written invoice to Owner: (1) in an amount equal to the Estimated Costs, and (2) that includes the pricing date for such City Obligations. The Owner, in turn, shall remunerate to the City the amount shown on said invoice at least five (5) days prior to the pricing date indicated on the invoice. If Owner fails to pay the Estimated Costs as required under this paragraph, the City,

at its option, may elect to designate the City Obligations as QTEO, and the City shall not be required to issue any PID Bonds in such calendar year.

(2) Upon the City's approval of the City Obligations, the financial advisor shall calculate the actual Additional Costs to the City of issuing non-QTEO City Obligations. The City will, within five (5) business days of the issuance of the City Obligations, provide written notice to Owner of the Additional Costs. In the event the Additional Costs are less than the Estimated Costs, the City will refund to Owner the difference between the Additional Costs and the Estimated Costs within fifteen (15) business days of the date of the City's notice to Owner. If the Additional Costs are more than the Estimated Costs, Owner will pay to the City the difference between the Additional Costs and the Estimated Costs within fifteen (15) business days of the date of the City's notice.

(3) To the extent any developer(s) or property owner(s) (including Owner, as applicable) has (have) paid Additional Costs for any particular calendar year, any such Additional Costs paid subsequently by a developer or property owner (including Owner, as applicable) to the City applicable to the same calendar year shall be reimbursed by the City to the developer(s) or property owner(s) (including Owner, as applicable) as necessary so as to put all developers and property owners (including Owner, if applicable) so paying for the same calendar year in the proportion set forth in subsection (d), below, said reimbursement to be made by the City within fifteen (15) business days after its receipt of such subsequent payments of such Additional Costs.

(4) The City shall charge Additional Costs attributable to any other developer or property owner on whose behalf the City has issued debt in the same manner as described in this section, and Owner shall only be liable for its portion of the Additional Costs under this provision, and if any Additional Costs in excess of Owner's portion has already been paid to the City under this provision, then such excess of Additional Costs shall be reimbursed to Owner. The portion owed by Owner shall be determined by dividing the total proceeds from any debt issued on behalf of Owner in such calendar year by the total proceeds from any debt issued by the City for the benefit of all developers (including Owner) in such calendar year.

ARTICLE VIII

EVENTS OF DEFAULT; REMEDIES

8.1 Events of Default. No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given in writing (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time to be determined based on the nature of the alleged failure, but in no event more than 30 days after written notice of the alleged failure has been given). Notwithstanding the foregoing, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured and within such 30-day period gives written notice to the non-defaulting Party of the details of why the cure will take longer than 30 days with a statement of how many days are needed to cure.

8.2 Remedies. If a Party is in default, the aggrieved Party may, at its option and without prejudice to any other right or remedy under this Agreement, seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act, or actions for specific performance, mandamus, or injunctive relief. NOTWITHSTANDING THE FOREGOING, HOWEVER, NO DEFAULT UNDER THIS AGREEMENT SHALL ENTITLE THE AGGRIEVED PARTY TO TERMINATE THIS AGREEMENT OR LIMIT THE TERM OF THIS AGREEMENT.

ARTICLE IX

ASSIGNMENT AND ENCUMBRANCE

9.1 Assignment by Owner to Successor Owners.

(a) After the Closing Date, Owner has the right (from time to time without the consent of the City, but upon prior written notice to the City) to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of Owner under this Agreement, to any person or entity (an “Owner Assignee”) that (i) is or will become an owner of any portion of the Property or (ii) is controlled by or under common control by the Owner, provided that the Owner is not in breach of this Agreement at the time of such assignment. An Owner Assignee is considered the “Owner” and a “Party,” and under this Agreement for purposes of the obligations, rights, title, and interest assigned to the Owner Assignee. Notice of each proposed assignment to an Owner Assignee shall be provided to the City at least fifteen (15) days prior to the effective date of the assignment, which notice shall include a copy of the proposed assignment document together with the name, address, telephone number, and e-mail address (if available) of a contact person representing the Owner Assignee.

(b) Each assignment shall be in writing executed by Owner and the Owner Assignee and shall obligate the Owner Assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. A copy of each fully executed assignment to an Owner Assignee shall be provided to all Parties within fifteen (15) days after execution. From and after such assignment, the City agrees to look solely to the Owner Assignee for the performance of all obligations assigned to the Owner Assignee and agrees that Owner shall be released from subsequently performing the assigned obligations and from any liability that results from the Owner Assignee’s failure to perform the assigned obligations; provided, however, if a copy of the assignment is not received by the City within fifteen (15) days after execution, Owner shall not be released until the City receives such copy of the assignment.

(c) No assignment by Owner shall release Owner from any liability that resulted from an act or omission by Owner that occurred prior to the effective date of the assignment unless the City approves the release in writing.

(d) Owner shall maintain written records of all assignments made by Owner to Owner Assignees, including a copy of each executed assignment and the Owner Assignee’s Notice information as required by this Agreement, and, upon written request from another Party, shall provide a copy of such records to the requesting person or entity.

9.2 Assignment by the City. The City has the right (from time to time without the consent of Owner, but upon prior written Notice to Owner) to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of the City under this Agreement, to any agency, authority, or political subdivision of the state (a "City Assignee"). Notice of each proposed assignment to a City Assignee shall be provided to Owner at least fifteen (15) days prior to the effective date of the assignment, which Notice shall include a copy of the proposed assignment document together with the name, address, telephone number, and e-mail address of a contact person representing the City Assignee who Owner may contact for additional information. Each assignment shall be in writing executed by the City and the City Assignee and shall obligate the City Assignee to be bound by this Agreement to the extent this Agreement applies or relates to the obligations, rights, title, or interests being assigned. A copy of each fully executed assignment to a City Assignee shall be provided to all Parties within fifteen (15) days after execution. From and after such assignment, Owner agrees to look solely to the City Assignee for the performance of all obligations assigned to the City Assignee and agrees that the City shall be released from subsequently performing the assigned obligations and from any liability that results from the City Assignee's failure to perform the assigned obligations; provided, however, if a copy of the assignment is not received by Owner within fifteen (15) days after execution, the City shall not be released until Owner receives such copy of the assignment. No assignment by the City shall release the City from any liability that resulted from an act or omission by the City that occurred prior to the effective date of the assignment unless Owner approves the release in writing. The City shall maintain written records of all assignments made by the City to City Assignees, including a copy of each executed assignment and the City Assignee's Notice information as required by this Agreement, and, upon written request from another Party, shall provide a copy of such records to the requesting person or entity.

9.3 Encumbrance by Owner and Assignees. Owner and Owner Assignees have the right, from time to time, to collaterally assign, pledge, grant a lien or security interest in, or otherwise encumber any of their respective rights, title, or interest under this Agreement for the benefit of their respective lenders without the consent of, but with prompt written Notice to, the City. The collateral assignment, pledge, grant of lien or security interest, or other encumbrance shall not, however, obligate any lender to perform any obligations or incur any liability under this Agreement unless the lender agrees in writing to perform such obligations or incur such liability. Provided the City has been given a copy of the documents creating the lender's interest, including Notice (hereinafter defined) information for the lender, then that lender shall have the right, but not the obligation, to cure any default under this Agreement and shall be given a reasonable time to do so in addition to the cure periods otherwise provided to the defaulting Party by this Agreement; and the City agrees to accept a cure offered by the lender as if offered by the defaulting Party. A lender is not a Party to this Agreement unless this Agreement is amended, with the consent of the lender, to add the lender as a Party. Notwithstanding the foregoing, however, this Agreement shall continue to bind the Property and shall survive any transfer, conveyance, or assignment occasioned by the exercise of foreclosure or other rights by a lender, whether judicial or non-judicial. Any purchaser from or successor owner through a lender of any portion of the Property shall be bound by this Agreement and shall not be entitled to the rights and benefits of this Agreement with respect to the acquired portion of the Property until all defaults under this Agreement with respect to the acquired portion of the Property have been cured.

9.4 Transfer of Warranties. Any Public Improvements that are transferred to the City shall be accompanied by all applicable third-party bonds and warranties related to construction and maintenance of such Public Improvements.

9.5 Assignees as Parties. An assignee authorized in accordance with this Agreement, and for which notice of assignment has been provided in accordance with this Agreement, shall be considered a "Party" for the purposes of this Agreement. With the exception of the End-Buyer of a lot within the Property, any person or entity upon becoming an owner of land or upon obtaining an ownership interest in any part of the Property shall be deemed to be a "Owner" and have all of the obligations of the Owner as set forth in this Agreement and all related documents to the extent of said ownership or ownership interest.

9.6 No Third-Party Beneficiaries. This Agreement only inures to the benefit of, and may only be enforced by, the Parties. No other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this Agreement.

ARTICLE X

RECORDATION AND ESTOPPEL CERTIFICATES

10.1 Binding Obligations. This Agreement and all amendments hereto and assignments hereof shall be recorded in the deed records of Denton County. This Agreement binds and constitutes a covenant running with the Property. Upon the Effective Date, this Agreement shall be binding upon the Parties and their successors and assigns permitted by this Agreement and forms a part of any other requirements for Development within the Property. This Agreement, when recorded, shall be binding upon the Parties and their successors and assigns as permitted by this Agreement and upon the Property; however, this Agreement shall not be binding upon, and shall not constitute any encumbrance to title as to, any end-buyer/homebuyer of a Fully Developed and Improved Lot (an "End-Buyer") and shall not negate the End-Buyer's obligation to comply with the City's Regulations, including but not limited to zoning ordinances, as they currently exist or may be amended.

10.2 Estoppel Certificates. From time to time upon written request of the Owner, if needed to facilitate a sale of all or a portion of the Property or a loan secured by all or a portion of the Property, the City will execute a written estoppel certificate in a form and substance satisfactory to the City, to its reasonable knowledge and belief, identifying any obligations of the Owner under this Agreement that are in default. The Owner shall pay the City \$500 at the time of the Owner's request for an estoppel certificate for each request in excess of one (1) per calendar year.

ARTICLE XI

ADDITIONAL PROVISIONS

11.1 Recitals. The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) are legislative findings of the City Council of the City; and (d) reflect the final intent of the Parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by

11.2 Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to any party shall be deemed to have been received when personally delivered or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

With a copy to: Attn: Patricia Adams
City Attorney
Messer Fort, PLLC
6371 Preston Road
Suite 200
Frisco, Texas 75034
Email: patricia@txmunicipallaw.com

To the Owner: Attn: Greg Urech
Lennar Homes of Texas Land and Construction, Ltd.
1707 Market Place Boulevard, Suite 100
Irving, Texas 75063
Email: Greg.Urech@Lennar.com

With a copy to: Attn: Mindy L. Koehne
Coats Rose, P.C.
14755 Preston Road, Suite 600
Dallas, Texas 75254
Email: mkoehne@coatsrose.com

11.3 Interpretation. The Parties acknowledge that each has been actively involved in negotiating this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this Agreement. In the event of any dispute over the meaning or application of any provision of this Agreement, the provision will be interpreted fairly and reasonably and neither more strongly for nor against any Party, regardless of which Party originally drafted the provision.

11.4 Time. In this Agreement, time is of the essence and compliance with the times for performance herein is required.

11.5 Authority and Enforceability. The City represents and warrants that this Agreement has been approved by official action by the City Council of the City in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings Act) and that the individual executing this Agreement on behalf of the City has been duly authorized to do so. The Owner represents and warrants that this Agreement has been approved by appropriate action of the Owner, and that the individual executing this Agreement on behalf of the Owner has been duly authorized to do so. Each Party respectively acknowledges and agrees that this Agreement is binding upon such Party and is enforceable against such Party, in accordance with its terms and conditions and to the extent provided by law.

11.6 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the subject matter of this Agreement. This Agreement shall not be modified or amended except in writing signed by the Parties.

11.7 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, then: (a) such unenforceable provision shall be deleted from this Agreement; (b) the unenforceable provision shall, to the extent possible and upon mutual agreement of the parties, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.

11.8 Applicable Law; Venue. This Agreement is entered into pursuant to, and is to be construed and enforced in accordance with, the laws of the State of Texas, and all obligations of the Parties are performable in Denton County. Exclusive venue for any action to enforce or construe this Agreement shall be in the Denton County District Court.

11.9 Non-Waiver. Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

11.10 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.

11.11 Further Documents. The Parties agree that at any time after execution of this Agreement, they will, upon request of another Party, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request in order to effectuate the terms of this Agreement. This provision shall not be construed as limiting or otherwise

hindering the legislative discretion of the City Council seated at the time that this Agreement is executed or any future City Council.

11.12 Exhibits. The following exhibits are attached to this Agreement and are incorporated herein for all purposes:

Exhibit A	Legal Description of the Property
Exhibit B	Depiction of the Property
Exhibit C	Concept Plan
Exhibit D	Development Standards
Exhibit E	Public Improvements
Exhibit F	Elevation Requirements
Exhibit G	Open Space Plan

11.13 Governmental Powers; Waivers of Immunity. By its execution of this Agreement, the City does not waive or surrender any of its respective governmental powers, immunities, or rights except as provided in this section. The Parties acknowledge that the City waives its sovereign immunity as to suit solely for the purpose of adjudicating a claim under this Agreement.

11.14 Force Majeure. Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Agreement, and time shall be of the essence in such performance; however, in the event a Party is unable, due to force majeure, to perform its obligations under this Agreement, then the obligations affected by the force majeure shall be temporarily suspended. Within three business days after the occurrence of a force majeure, the Party claiming the right to temporarily suspend its performance, shall give notice to all the Parties, including a detailed explanation of the force majeure and a description of the action that will be taken to remedy the force majeure and resume full performance at the earliest possible time. The term "force majeure" shall include events or circumstances that are not within the reasonable control of Party whose performance is suspended and that could not have been avoided by such Party with the good faith exercise of good faith, due diligence and reasonable care.

11.15 Amendments. This Agreement cannot be modified, amended, or otherwise varied, except in writing signed by the City and Owner expressly amending the terms of this Agreement.

11.16 Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is hereby acknowledged.

11.17 City Acknowledgment of Receipt of 1295 Form. Pursuant to Texas Government Code Section 2252.908, the City hereby acknowledges that Owner has delivered to the City signed and completed Texas Ethics Form 1295 and certifications of filing with the Texas Ethics Commission.

11.18 Certifications. Owner certifies:

- (a) Pursuant to Texas Government Code Chapter 2271, as amended, Owner verifies that at the time of execution and delivery of this Agreement and for the term of this

Agreement, neither Owner, its parent companies, nor its common-control affiliates currently boycott or will boycott Israel. The term "boycott Israel" as used in this paragraph has the meaning assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code, as amended; and

- (b) Pursuant to Texas Government Code, Chapter 2252, as amended, Owner represents and verifies that at the time of execution and delivery of this Agreement and for the term of this Agreement, neither Owner, its parent companies, nor its common-control affiliates (i) engage in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code.
- (c) Pursuant to Chapter 2276 of the Texas Government Code (as added by Senate Bill 13, 87th Texas Legislature, Regular Session, and redesignated by House Bill 4595, 88th Texas Legislature, Regular Session), Owner certifies that it is not a Company that boycotts energy companies and agrees it will not boycott energy companies during the term of this Agreement. The terms "boycotts energy companies" and "boycott energy companies" have the meaning assigned to the term "boycott energy company" in Section 809.001, Texas Government Code. For purposes of this paragraph, "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit, but does not include a sole proprietorship.
- (d) Pursuant to Chapter 2274 of the Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular Session, "SB 19"), Owner certifies that it is not a Company that has a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and agrees it will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The terms "discriminates against a firearm entity or firearm trade association" and "discriminate against a firearm entity or firearm trade association" have the meaning assigned to the term "discriminate against a firearm entity or firearm trade association" in Section 2274.001(3), Texas Government Code (as added by SB 19). For purposes of this paragraph, "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit, but does not mean a sole proprietorship.

[signatures on following pages]

EXECUTED by the City and Owner on the respective dates stated below.

Date: June 27, 2024

CITY OF AUBREY, TEXAS

By: _____

Chris Rich, Mayor

ATTEST:

Jenny Hicks
Jenny Hicks, City Secretary



APPROVED AS TO FORM

Patricia Adams
Patricia Adams, Attorney for City

STATE OF TEXAS

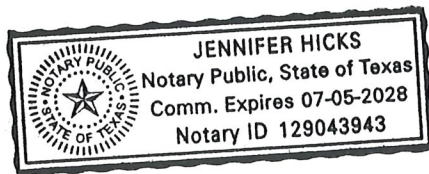
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COUNTY OF DENTON

This instrument was acknowledged before me on the 27 day of June, 2024,
by Chris Rich, the Mayor of the City of Aubrey, Texas, on behalf of said City.

Jennifer Hicks
Notary Public in and for the State of Texas

(SEAL)



OWNER:

LENNAR HOMES OF TEXAS LAND AND
CONSTRUCTION, LTD.,
a Texas limited partnership

By: U.S. Home LLC,
a Delaware limited liability company
its General Partner

By: _____

Name: _____

Title: _____

STATE OF TEXAS §

§

COUNTY OF _____ §

BEFORE ME, a Notary Public in and for the State of Texas, duly authorized to take acknowledgments, on _____, 20__, personally appeared _____, _____ of U.S. Home LLC, a Delaware limited liability company, General Partner of Lennar Homes of Texas Land and Construction, Ltd., a Texas limited partnership, and acknowledged that he executed the foregoing document on behalf of said limited partnership.

Notary Public in and for the State of Texas

(SEAL)

EXHIBIT A
DESCRIPTION OF THE PROPERTY

EXHIBIT A

LEGAL DESCRIPTION

BEING a tract of land situated in the J. Bridges Jr. Survey, Abstract No. 36, City of Aubrey ETJ, Denton County, Texas, and being the remainder of a called 53.35 acre tract of land described in a deed to Sandra Gay Loyd, as recorded in Instrument No. 2015-76654 of the Official Records of Denton County, Texas, and affected by Termination/Reconveyance of Life Estates recorded in Instrument No. 2023-106643 of the Official Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod with plastic cap stamped "KHA" set for the southeast corner of said 53.35 acre tract, common to the northeast corner of Silverado Phase 6, according to the plat thereof recorded in Instrument No. 2021-153 of the Official Records of Denton County, Texas, same being on the current westerly right of way line of F.M. 2931, a variable width right of way;

THENCE North 88°56'21" West, departing the current westerly right of way line of said F.M. 2931, along the southerly line of said 53.35 acre tract, the northerly line of said Silverado Phase 6 and the northerly line of Silverado Phase 7, according to the plat thereof recorded in Instrument No. 2021-242 of the Official Records of Denton County, Texas, a distance of 2,464.96 feet to the southwest corner of said 53.35 acre tract, common to the northwest corner of said Silverado Phase 7, being on the easterly line of a tract of land described as Parcel 2, Tract 3 in a deed to Aubrey Aggregates LLC, as recorded in Instrument No. 2017-115329 of the Official Records of Denton County, Texas, and on the easterly line of a 50 foot wide City of Aubrey Easement and Right of Way recorded in Instrument No. 2020-76205 of the Official Records of Denton County, Texas, from which, a 5/8 inch iron rod found for witness bears North 25°02' East, 0.21 feet;

THENCE North 02°01'46" East, along the westerly line of said 53.35 acre tract, the easterly line of said Parcel 2, Tract 3 and the easterly line of said easement and right of way, a distance of 933.89 feet to the northwest corner of said 53.35 acre tract, common to the southwest corner of a called 55.30 acre tract of land described in a deed to ALCM Construction, LLC, as recorded in Instrument No. 2019-139804 of the Official Records of Denton County, Texas, from which, a 5/8 inch iron rod with plastic cap stamped "RPLS 4561" found for witness bears North 73°40' West, 0.23 feet;

THENCE South 89°20'47" East, departing the easterly line of said Parcel 2, Tract 3 and the easterly line of said easement and right of way, along the northerly line of said 53.35 acre tract, the southerly line of said 55.30 acre tract, and the southerly line of Pecan Creek Addition, Phase 1, according to the plat thereof recorded in Document No. 2020-349 of the Plat Records of Denton County, Texas, a distance of 1,606.55 feet to a 1/2 inch iron rod found for the northwest corner of a called 6.095 acre tract of land described in a deed to Britt Allen Loyd and April Diane Loyd, as recorded in Instrument No. 2018-15410 of the Official Records of Denton County, Texas;

THENCE South 00°41'47" West, departing the northerly line of said 53.35 acre tract and the southerly line of said Pecan Creek Addition, Phase 1, and along the westerly line of said 6.095 acre tract, a distance of 275.76 feet to a 5/8 inch iron rod with plastic cap stamped "RPLS 4561" found for the southwest corner of said 6.095 acre tract;

THENCE South 86°08'34" East, along the southerly line of said 6.095 acre tract, a distance of 684.10 feet to a 5/8 inch iron rod with plastic cap stamped "RPLS 4561" found for corner;

THENCE South 65°22'48" East, continuing along the southerly line of said 6.095 acre tract, a distance of 188.91 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for the southeast corner of said 6.095 acre tract, being on the easterly line of said 53.35 acre tract and the current westerly right of way line of said F.M. 2931;

THENCE South 02°38'59" West, along the easterly line of said 53.35 acre tract and the current westerly right of way line of said F.M. 2931, a distance of 0.42 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

THENCE South 08°21'37" West, continuing along the easterly line of said 53.35 acre tract and the current westerly right of way line of said F.M. 2931, a distance of 100.50 feet to a 5/8 inch iron rod found for corner;

THENCE South 02°38'59" West, continuing along the easterly line of said 53.35 acre tract and the current westerly right of way line of said F.M. 2931, a distance of 300.00 feet to a point for corner, from which, a 5/8 inch iron rod found for witness bears South 79°05' East, 0.46 feet;

THENCE South 03°03'39" East, continuing along the easterly line of said 53.35 acre tract and the current westerly right of way line of said F.M. 2931, a distance of 100.50 feet to a 5/8 inch iron rod found for corner;

THENCE South 02°38'59" West, continuing along the easterly line of said 53.35 acre tract and the current westerly right of way line of said F.M. 2931, a distance of 60.32 feet to the **POINT OF BEGINNING** and containing 47.275 acres (2,059,294 square feet) of land, more or less.

47.275 ACRES

PROPOSED TXDOT RIGHT OF WAY LINE BASED UPON MAP PROVIDED BY TXDOT

FM 2931

SILVERADO PHASE 6

SILVERADO PHASE 7

Boundary measurements (clockwise from top-left):

- S89°20'47"E 1606.55'
- N0°41'47"E 275.76'
- N0°41'47"E 275.76'
- N86°08'34"W 684.10'
- N65°22'48"W 188.91'
- S8°21'37"W 100.50'
- S2°38'59"W 300.00'
- S3°03'39"E 100.50'
- N2°38'59"E 80.37'
- N2°01'46"E 933.89'
- N88°56'21"W 2464.96'
- S2°38'59"W 300.00'
- S2°38'59"W 300.00'
- N65°22'48"W 188.91'
- N65°22'48"W 188.91'

5160 Warren Parkway, Suite 210
Frisco, Texas 75034
(972) 336-3580
State of Texas Registration No. F-928

EXHIBIT B
Property Exhibit
Aubrey, Texas
January 2024

EXHIBIT C **CONCEPT PLAN**



EXHIBIT D **DEVELOPMENT STANDARDS**

Exhibit D - Development Standards.

1.1 Development Standards

The purpose and intent of these Development Standards are to provide quality subdivision development with residential uses for the Property. Capitalized terms not otherwise defined in Exhibit D have meanings given such terms in the Development Agreement to which Exhibit D is attached.

All streets, sidewalks, drainage ways, water and sewer lines, and improvements shall be designed, placed, and constructed in accordance with the Standard Specifications for City of Aubrey, North Central Texas Council of Government (NCTCOG), with all amendments thereto, except as amended or directly conflicted by these Development Standards. To the extent that there is a direct conflict between the regulations herein, and those found elsewhere, the regulations found herein shall control development within this property.

1.2 General Regulations

- a. All regulations for The Loyd Property not redefined by these Planned Development Standards shall conform to the regulations set forth in the City of Aubrey Zoning Ordinance with base zoning SF75 – Single Family Residential District and GR – General Retail.
- b. The Loyd Property shall comply with the Subdivision Ordinance as it exists on the effective date of this agreement, or as amended.
- c. A homeowners association shall be established and shall be responsible for the ownership and maintenance of all Common Areas.
- d. The maximum number of single-family residential lots within this development shall be 300. The layout for this development is shown on Exhibit C, Concept Plan.
- e. Residential street sections shall be 31' B-B and commercial collector streets shall be 37' B-B.
- f. Early Grading Permit. Owner will be granted an early grading permit following the submission of the following to the City: response to the first round of civil engineering comments and the SWPPP. Owner acknowledges the grading permit is an "at-risk" permit, and that revisions to the civil engineering drawings and grading operations due to subsequent City comments or revisions by Engineer of Record may be necessary.
- g. Construction Permit. The City shall review and approve construction plans prior to annexation, zoning, and preliminary plat approval. Owner may commence construction prior to annexation, zoning, and preliminary plat approval, so long as such construction is consistent with the terms of the Development Agreement and associated exhibits; however, final acceptance by the City of any improvements shall not occur until after annexation, zoning, and preliminary plat approval have occurred.
- h. A minimum of 30 off-street parking stalls shall be provided throughout the development.

1.3 Planned Development Regulations.

Single-Family. The following regulations will govern the design and development of the Property.
The following lot standards shall apply:

a) SF-75 or as outlined herein:

Regulation	Criteria
1. Minimum Lot Size -	3,000 S.F.
2. Minimum Lot Width (*) -	30 feet
3. Minimum Lot Depth (**) -	110 feet
4. Minimum Front Yard Setback -	25 feet
5. Minimum Garage Setback -	25 feet
6. Side Yard Setback (Interior Lot) -	5 feet
7. Side Yard Setback (Corner Lot/Adjacent to ROW) -	10 feet
8. Rear Yard Setback -	15 feet
9. Maximum Height -	35 feet
10. Minimum Structure Size -	1,000 sf
11. Maximum Lot Coverage (***) -	65 percent

* Minimum Lot Width is measured along the front building line for all lots.

** Minimum Lot Depth along a "knuckle" or "cul-de-sac" shall be 90 feet. Minimum Rear yard Setback along a "knuckle" or "cul-de-sac" shall be 5 feet.

*** Maximum Lot Coverage percentage shall be exclusive of gazebos, pools, and outdoor living areas.

Garages: Each single-family dwelling unit shall provide a minimum one stall garage.

Commercial. This tract is intended to accommodate nonresidential uses following the City of Aubrey's GR – General Retail zoning classification.

- a. Permitted Uses – The commercial tract shall develop under the provisions of the GR – General Retail Zoning District as outlined in Zoning Ordinance No. 135-87, as it currently exists, or as amended.
- b. The Northern Commercial tract shall be dedicated to the City, with a base zoning district of GR – General Retail and allow for Government Uses and Food Truck Park . The minimum lot depth shall be 100' measured at the midpoint of the lot. No buffer yard along the northern property boundary is required.
- c. Variety stores are prohibited. Variety stores are defined as a store which sells at retail, an assortment of physical goods, products, or merchandise directly to the consumer, including food or beverages for off-premises consumption, household products, personal grooming and health products, and other consumer goods.

1.4 Block Lengths

The following block length requirements shall apply to the subject development. In general, intersecting streets determining the block length and widths shall be provided at such intervals as to serve cross traffic adequately and to meet existing streets. Where no existing subdivision establishes control, the block lengths shall not exceed those enumerated below. However, in cases where physical barriers or property ownership creates conditions where it is appropriate that these standards be varied by the Planning and Zoning Commission, the length may be increased or decreased to meet the existing conditions, having due regard for connecting streets, circulation of traffic and public safety.

- a. Interior Block Length – No block face may be longer than fourteen hundred feet (1400'); however, Open Space with a width greater than forty feet (40') will be deemed to terminate a block face. Block face is measured along the Right-of-Way line.
- b. Perimeter Block Length – Along the perimeter of the property the block face may be extended to two-thousand feet (2000'); however, Open Space with a width greater than forty feet (40') will be deemed to terminate a block face. Block face is measured along the Right-of-Way line.

1.5 Front Yard Landscaping Minimum Requirements. The following landscaping requirements shall apply to the subject development for all front yards.

1. Trees. A minimum of one (1) – three-inch (3") caliper tree shall be provided measured twelve-inches (12") from the ground. The following tree shall be acceptable:
 - a. Pecan
 - b. Cedar Elm
 - c. Texas Red
 - d. Southern Live Oak
 - e. Bur Oak
 - f. Western Soapberry
 - g. Texas Ash
 - h. American Elm
 - i. Chinkapin Oak
 - j. Lacey Oak
 - k. Shumard Red Oak
 - l. Caddo Sugar Maple
 - m. Bald Cypress
 - n. Chinese Pistache
 - o. Lacebark Elm
 - p. Southern Magnolia
2. Shrubs. A minimum of ten (10) three-gallon to five-gallon shrubs shall be provided. The following shrubs and ornamental grasses shall be acceptable:
 - a. Agarita
 - b. American Beautyberry

- c. Coral Berry
- d. Texas Nolina
- e. Red Yucca
- f. Skeletonleaf
- g. Goldeneye
- h. Texas Sage
- i. Japanese Barberry
- j. Pampas Grass
- k. Compact Abelia
- l. Glossy Abelia
- m. Nellie R. Stevens Holly
- n. Dwarf Buford Holly
- o. Dwarf Yaupon
- p. Autumn Sage
- q. Mexican Bush Sage
- r. Russian Sage
- s. Japanese Privet
- t. Variegated Privet
- u. Japanese Boxwood
- v. Indian Hawthorn
- w. Rosemary
- x. Pink Muhly
- y. Mexican Feather Grass
- z. Purple Fountain Grass
- aa. Sea Green Juniper
- bb. Yucca

- 3. Lawn. Sod is required.
- 4. Irrigation. Irrigation is required.

1.6 Exterior Wall Masonry

- a. **Residential Structures.** All exterior walls of the residential structures, excluding doors, windows, and window units shall be masonry. Masonry product shall include stone, brick, cultured stone and cementitious materials such as HardiPlank and stucco.
- b. **Commercial Structures.** All exterior walls of commercial structures, excluding doors, windows, and architectural features, shall be comprised of one hundred percent (100%) masonry product. Masonry product shall include stone, brick, cultured stone and cementitious materials such as HardiPlank and stucco. HardiPlank material shall be limited to fifty percent (50%) of the total amount of any exterior wall.

1.7 Fencing Minimum Requirements. The following requirements shall apply to the subject development for all fencing.

1. Fencing for lots adjacent to open spaces. All lots adjacent to the dog park and playground shall have four-foot (4') in height tubular steel or wrought iron fencing as shown on Exhibit G – Open Space Plan. Wooden privacy fencing shall not be allowed for these lots. Landscaping adjacent to the fencing is allowed, but not required.
2. Fencing for interior lots not adjacent to open spaces. All lots that are not adjacent to open spaces shall provide wooden privacy fencing. Fence shall be six-foot (6') in height with four-inch (4") cedar pickets that are pre-stained. Fence shall be constructed with galvanized fence posts and hardware. Fence does not have to be board on board style construction.
3. Screening adjacent to Silverado Parkway. Subdivision fencing/screening along perimeter roadways shall be constructed of masonry (brick, stone, or split face concrete block), with masonry columns. Screening shall be six-foot (6') in height. Masonry columns shall be constructed on a maximum spacing of one-hundred feet (100') on center. The screen wall shall be owned and maintained by the HOA.
4. Screening adjacent to commercial uses. Screening between residential and commercial uses shall be constructed of masonry (brick, stone, or split face concrete block) with masonry columns as shown on Exhibit G – Open Space Plan. Screening shall be a minimum six-foot (6') in height. Masonry columns shall be constructed on a maximum spacing of one-hundred feet (100') on center. The Development that is constructed first shall be responsible for the construction of the masonry screening whether it is the commercial or residential use. No screening is required on the northern General Retail lot. Screen walls are to be owned and maintained by the HOA.
5. Lift Station. The lift station shall fencing/screening shall be constructed of masonry (brick, stone, or split face concrete block), with masonry columns. Screening shall be eight-foot (8') in height with a metal access gate per TCEQ and Mustang SUD requirements. Masonry columns shall be constructed on a maximum spacing of one-hundred feet (100') on center. The screen wall shall be owned and maintained by the HOA.

1.8 Entry Monumentation

1. Entry Monument. The primary monument sign adjacent to FM 2931 shall not exceed a height of eight feet in height, with a maximum area of 250 square feet. The monument sign shall consist of masonry stone or brick. The sign shall be located within the drive median within an HOA lot. A secondary monument adjacent to Silverado Parkway may be free standing or integrated into the screen wall.
2. Visibility. Monument signs shall not be placed within visibility triangles or corner clips as defined in the City's Technical Standards and Specifications (TCSS) Manual.

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EXHIBIT F
ELEVATION REQUIREMENTS



1,203 – 1,550
Sq. ft.
3 – 4
Bedrooms

2.5
Bathrooms
Stone, Brick,
Cultured Stone,
Stucco,
Cementitious
HardiPlank Masonry

LENNAR Kimley»Horn

THE WELLTON COLLECTION: 30' LOTS **LOYD RANCH**

EXHIBIT G
OPEN SPACE PLAN



Planning and Zoning Commission Meeting Minutes

Aubrey City Hall
107 S. Main St
Aubrey, TX
76227
August 8, 2024
6:00 PM



The meeting was called to order at 06:13 p.m.

Present: Christal Johnson, Donald Smith, Karen Skinner (via videoconference), Candace Stone, Sina Tidwell, Nicole Shaw (Alternate)

Absent: Kyle Kennedy, Brittney Murray, Chuck Fuller

Staff Present: City Attorney Heather Shankle, City Secretary Jenny Hicks, Director of Development Services and Public Works Leanne Wilson, Municipal Development Director Christine Gossett, Planner Helen-Eve Beadle

Commissioner Johnson offered the Invocation and Commissioner Stone led the Pledge of Allegiance.

Community Announcements:

Commissioner Tidwell spoke regarding the first day of school on August 14th, Aubrey2045.com/survey for input into comprehensive plan, and Aubrey Citizens University Fall session applications are open.

Citizen Input: None

New Business: New items requested for consideration.

1. Consider and make a recommendation to City Council regarding a Site Plan application for proposed Lot 1, Block A, Aubrey High School Addition, being approximately 63.613 acres out of the Francisco Trevino Survey, Abstract 1243 generally located south of FM 428 (Spring Hill Road) and east of U.S. Highway 377, City of Aubrey, Denton County, Texas. (A/SD)

Luke Powell, Huckabee Architects, 5830 Granite Pkwy, Ste 750 Plano TX,

provided information.

P&Z Commissioner Sina Tidwell made a motion to approve the Site Plan with conditions. P&Z Commissioner Christal Johnson seconded. Motion Passed (6:0). None opposed.

Conditions:

- 1. Approval of the mechanical screening equipment variances and revision of NOTE #2 to reflect P&Z and Council consideration/approval;**
 - 2. An updated lighting and photometric plan meeting the City's standards shall be submitted for review; and**
 - 3. The Site Plan is in review and approval is subject to subsequent review comments by the City Planner and City Engineer.**
2. Consider and make a recommendation to the City Council regarding a Final Plat application for Lot 1, Block A, Aubrey High School Addition, being approximately 63.613 acres out of the Francisco Trevino Survey, Abstract 1243 generally located south of FM 428 (Spring Hill Road) and east of U.S. Highway 377, City of Aubrey, Denton County, Texas. *(AISD)*

P&Z Commissioner Christal Johnson made a motion to approve the Final Plat with the condition that the Final Plat is in review and approval is subject to subsequent review comments by the City Planner and City Engineer. P&Z Commissioner Donald Smith seconded. Motion Passed (6:0). None opposed.

3. Consider and make a recommendation to the City Council regarding a Preliminary Plat application for Lots 1-12, Block A, Hightpointe Commercial, being approximately 27.243 acres out of the Francisco Trevino Survey, Abstract 1243 generally located north of FM 428 (Spring Hill Road) and east of U.S. Highway 377, City of Aubrey, Denton County, Texas. *(Hightpointe Commercial, LLC)*

Mike Feather, with Kimley Horn, provided information.

P&Z Commissioner Candace Stone made a motion to approve the Preliminary Plat for Lots 1-13, Block A, Hightpointe Commercial, with the condition that the Preliminary Plat and Utility/Grading/Storm Plans are in review and approval is subject to subsequent review comments by the City Planner and City Engineer. P&Z Commissioner Nicole Shaw seconded. Motion Passed (6:0). None opposed.

4. Approve minutes of the July 11, 2024 meeting.

P&Z Commissioner Donald Smith made a motion to approve the minutes. P&Z Commissioner Candace Stone seconded. Motion Passed (6:0). None opposed.

The meeting was adjourned at 06:35 p.m.

PASSED and APPROVED by the Planning and Zoning Commission of the City of Aubrey, Texas this 12th day of September, 2024.

Sina Tidwell, Commission Chair

ATTEST:

Jenny Hicks, City Secretary