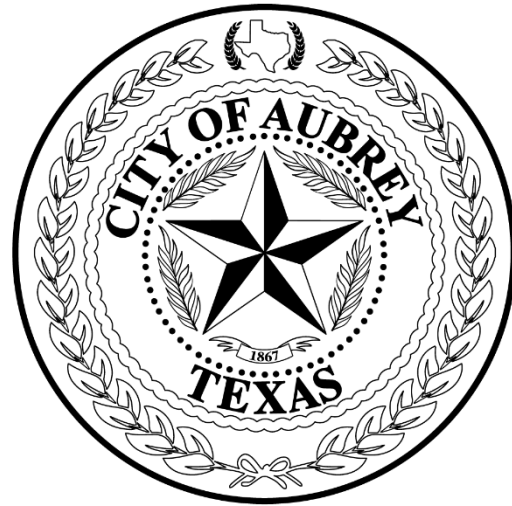


Planning and Zoning Commission Meeting

Aubrey City Council Chambers
226 Countryside Dr.
Aubrey, TX 76227
July 10, 2025
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.

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 can hear comments and see presentations. 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.

Consent Items: Items placed on the Consent Agenda are considered routine in nature and non-controversial. The Consent Agenda can be acted upon in one motion. Items may be removed from the Consent Agenda by the request of Council, board members or staff. Consideration and action on the following:

1. Approve minutes of the June 12, 2025 meeting.
2. Approve the request from Commission Member(s) identified in the Staff report as an excused absence from the June 12, 2025 regular meeting.

New Business: New items requested for consideration.

3. Hold a public hearing, consider, and make a recommendation to City Council on 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 a zoning classification of PD - Planned Development District with a base zoning district of C – Commercial on approximately 3.77 acres of land located in the Francisco Trevino Survey, Abstract No. 1243, Denton County, Texas. The property is generally located west of McNatt Road, north of Winterhaven Lane, and south of Spring Hill Road/FM 423. DCAD Parcel ID's 694193 and 1003909. (Cencor/SWC 428 McNatt LP PD-C)

-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 _____, 2025.

(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.

Planning and Zoning Commission Meeting Minutes

Aubrey City Council Chambers
226 Countryside Dr.
Aubrey, TX 76227
June 12, 2025
6:00 PM



The meeting was called to order at 6:00 PM.

Present: Candace Stone, Brittney Murray, Sina Tidwell, Nicole Shaw

Absent: Christal Johnson, Kyle Kennedy, Chuck Fuller

Staff Present: City Attorney Marie Johnson, City Secretary Jenny Hicks, Executive Director of Operations Leanne Wilson, Planner Helen-Eve Beadle

Sina Tidwell offered the Invocation and led the Pledge of Allegiance.

Community Announcements: None

Citizen Input: None

Consent Items: Items placed on the Consent Agenda are considered routine in nature and non-controversial. The Consent Agenda can be acted upon in one motion. Items may be removed from the Consent Agenda by the request of Commission members, City Council, board members or staff. Consideration and action on the following:

1. Approve the minutes of the May 8, 2025 meeting.
2. Approve the request from Commission Member(s) identified in the Staff report as an excused absence from the May 8, 2025 regular meeting.

P&Z Commissioner Sina Tidwell made a motion to approve the consent items. P&Z Commissioner Brittney Murray seconded. Motion Passed (4:0). None opposed.

New Business: New items requested for consideration.

3. Consider and make a recommendation to City Council regarding a Replat application for Aubrey Estates Lot 9R to create one (1) lot in approximately 11.062 acres of the John M. Fisher Survey, Abstract No. 432, Thomas White Survey, Abstract No. 223,

within the City of Aubrey Extraterritorial Jurisdiction, Denton County, Texas (*Aubrey Estates Replat Lot 9R, Hector and Ginger Araujo*)

City Planner Helen-Eve Beadle provided information.

P&Z Commissioner Candace Stone made a motion to recommend approval of the replat. P&Z Commissioner Nicole Shaw seconded. Motion Passed (4:0). None opposed.

4. Consider and make a recommendation to City Council regarding a Replat application for the Garland Wilson Addition, Lot 7R1 on approximately 0.628 acres in the Francisco Trevino Survey, Abstract No. 1243, within the City of Aubrey, Denton County, Texas (*Garland & Terri Wilson, Garland Wilson Lot 7R1 Replat*)

City Planner Helen-Eve Beadle provided information.

P&Z Commissioner Sina Tidwell made a motion to recommend approval of the replat. P&Z Commissioner Brittney Murray seconded. Motion Passed (4:0). None opposed.

5. Hold a public hearing, consider, and make a recommendation to City Council on 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 for property currently zoned as SF10-Single-Family Residential 10,000 Square Foot Lot to a new zoning classification of SF75-Single-Family Residential 7,500 Square Feet. The property contains approximately 0.604 acres of land out of the J.M. Fisher Survey, Abstract Number 432 City of Aubrey, Denton County, Texas and is addressed as 105 E. North Street. The property is located at the northwest corner of E. North Street and Brockett Street. Denton CAD Property ID 52030. (105 E North St. Burke)

City Planner Helen-Eve Beadle provided information.

The Public Hearing opened at 6:12 p.m. and closed at 6:13 p.m.

Randy Tarlton, representing First Christian Church on Main St, spoke in favor of the rezone.

P&Z Commissioner Brittney Murray made a motion to recommend approval of the rezoning application. P&Z Commissioner Candace Stone seconded. Motion Passed (4:0). None opposed.

6. 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 in zoning on an approximate 15.244 acres of land comprised of an approximate 6.25 acre tract of land currently unzoned and previously located in the City's Extraterritorial Jurisdiction to a zoning classification of SF75-Single Family Residential 7,500 Square Foot Lot and an approximate 8.994 acre tract of land currently zoned AG-R Agricultural Residential District and a small strip of private easements designated as C Commercial zoning

district to a new zoning classification of SF75-Single Family Residential 7,500 Square Foot Lot. The properties are located in the Francisco Trevino Survey, Abstract No. 1243, Denton County, Texas and generally located south of FM 428/Spring Hill Road, east of US Hwy 377, and north of E. Highmeadow Drive in the Extraterritorial Jurisdiction, City of Aubrey, Texas and in the City of Aubrey, Texas. DCAD Parcel ID's 563322, 52483, 193127, 193128, 52458, 52453, and 52471. (Aubrey ISD High School Annexation/Zoning SF-75)

City Planner Helen-Eve Beadle provided information.

The Public Hearing opened at 6:18 p.m. and closed at 6:18 p.m.

P&Z Commissioner Nicole Shaw made a motion to recommend approval of the rezoning application. P&Z Commissioner Candace Stone seconded. Motion Passed (4:0). None opposed.

7. Hold a public hearing, consider, and make a recommendation to City Council on an amendment to Exhibit 14A, "Zoning Ordinance," in Chapter 14, "Zoning" of the Code of Ordinances of the City of Aubrey, Texas, to repeal Section 27, "Sign Regulations" and adopt a new Chapter 27, "Sign Regulations" regulating signage within the corporate limits and extraterritorial jurisdiction of the City of Aubrey, including regulations for location, permitting, variances, nonconformities, and providing definitions. (Sign Ordinance Amendment)

City Planner Helen-Eve Beadle provided information.

The Public Hearing opened at 6:26 p.m. and closed at 6:31 p.m.

Randy Tarlton 404 S Main St spoke regarding the Museum needing signage, and the need to address the bright lights around some business windows.

Evaloio Owens, 106 E North St, spoke regarding existing pole signs being grandfathered.

P&Z Commissioner Sina Tidwell made a motion to recommend approval of the zoning ordinance amendment for sign regulations. P&Z Commissioner Brittney Murray seconded. Motion Passed (4:0). None opposed.

The meeting was adjourned at 6:32 PM.

PASSED and APPROVED by the Planning and Zoning Commission of the City of Aubrey, Texas this 10th day of July, 2025.

Sina Tidwell, Commission Chair

ATTEST:

Jenny Hicks, City Secretary



**Planning and Zoning Commission Meeting
Staff Report
July 10, 2025**

Agenda Item

Hold a public hearing, consider, and make a recommendation to City Council on 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 a zoning classification of PD - Planned Development District with a base zoning district of C – Commercial on approximately 3.77 acres of land located in the Francisco Trevino Survey, Abstract No. 1243, Denton County, Texas. The property is generally located west of McNatt Road, north of Winterhaven Lane, and south of Spring Hill Road/FM 423. DCAD Parcel ID's 694193 and 1003909. (Cencor/SWC 428 McNatt LP PD-C)

Staff Contact

Helen-Eve Beadle, Planner
heleneve@heplanningdesign.com
469-360-6618

Summary

On March 27, 2025, the Aubrey City Council approved a Development Agreement that included procedures for annexation and zoning of the subject property. The landowner has submitted a zoning application for a Planned Development (PD) District with a base zoning district of Commercial (C) that is consistent with the Development Agreement.

The permitted uses and development regulations outlined in the Aubrey Code of Ordinances, Chapter 14, Zoning, Exhibit 14A, Zoning Ordinance, shall apply the Property, as such ordinances exist or may be amended, and as outlined below.

Permitted Uses:

1. Permitted uses per the Commercial (C) District base zoning, with express written exceptions outlined in the Prohibited Uses section
2. Office uses.
3. Garden Center with outdoor storage and display shall only be permitted on the McNatt Road frontage.
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. Tire repair shops without outdoor storage or display of tires.

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. Package stores, requiring an SUP shall have a minimum square footage of 20,000 square feet and be a stand-alone structure.

Prohibited Uses:

The following uses are prohibited on the property:

1. Car wash
2. Repair and storage garages
3. Auto body operations
4. Spray painting operations
5. Motels and apartment hotels
6. Rental truck and trailers with or without automobile service stations
7. Mini warehouse/self-storage facilities
8. Mortuary
9. Machinery and equipment sales and service establishments
10. Tobacco product/Smoke Shop stores. Tobacco product/smoke shop stores are defined as a retail establishment utilized primarily for the sale of cigarettes, electronic cigarettes, vapes, cigars, tobacco, pipes, and other smoking supplies.
11. 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).
12. 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
13. Outside Storage uses.

Schedule of District Regulations:

Maximum Building Height	40 feet		
Minimum Side Yard	Adjacent to SF, PH, & TH 1 story=25 feet 2 story= 60 feet	Adjacent to other districts 1 story 20 feet 2 story-20 feet	Adjacent to Dedicated Street 1 story=30 feet 2 story=30 feet
Minimum Rear Yard	Adjacent to SF, PH, & TH 1 story=30 feet 2 story=60 feet	Adjacent to other districts 1 story=30 feet 2 story=30 feet	Adjacent to Dedicated Street 1 story=25 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%		

Supplementary District Regulations:

Other Supplementary District Regulations, Section 23, of the City of Aubrey Zoning, Chapter 14, Zoning Ordinance, Chapter 14A, include, but are not limited to Buffers, Nonresidential Design Standards, gas pumps and fueling stations, drive-thru facilities, sanitation containers, mechanical equipment, and accessibility contained within the Zoning Ordinance, as amended, shall be applicable except provided herein.

Tree Preservation:

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

Access:

24-foot mutual access/fire lane easements as required by the City's Subdivision Regulations shall be provided to the property to the west and south at the time of platting, subject to Developer's ability to expand the width of the easement with the neighboring property owner.

Concept Plan:

A Conceptual Site Plan to serve as a PD Concept Plan is included as an attachment to this agenda report.

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 zoning application had been received.

Comprehensive Plan Provisions:

The Comprehensive Plan identifies the subject property as "Estate Neighborhood."

Recommendation:

Staff recommend approval of the Planned Development (PD) District as presented.

Action Options:

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

1. Approve the PD;
2. Approve the PD with additional conditions; or
3. Deny the PD.

Attachments:

1. Location/Notification Map
2. PD Concept Plan
3. Cencor Acquisition Company, Inc. Development Agreement

Financial Summary

Staff Recommended Action

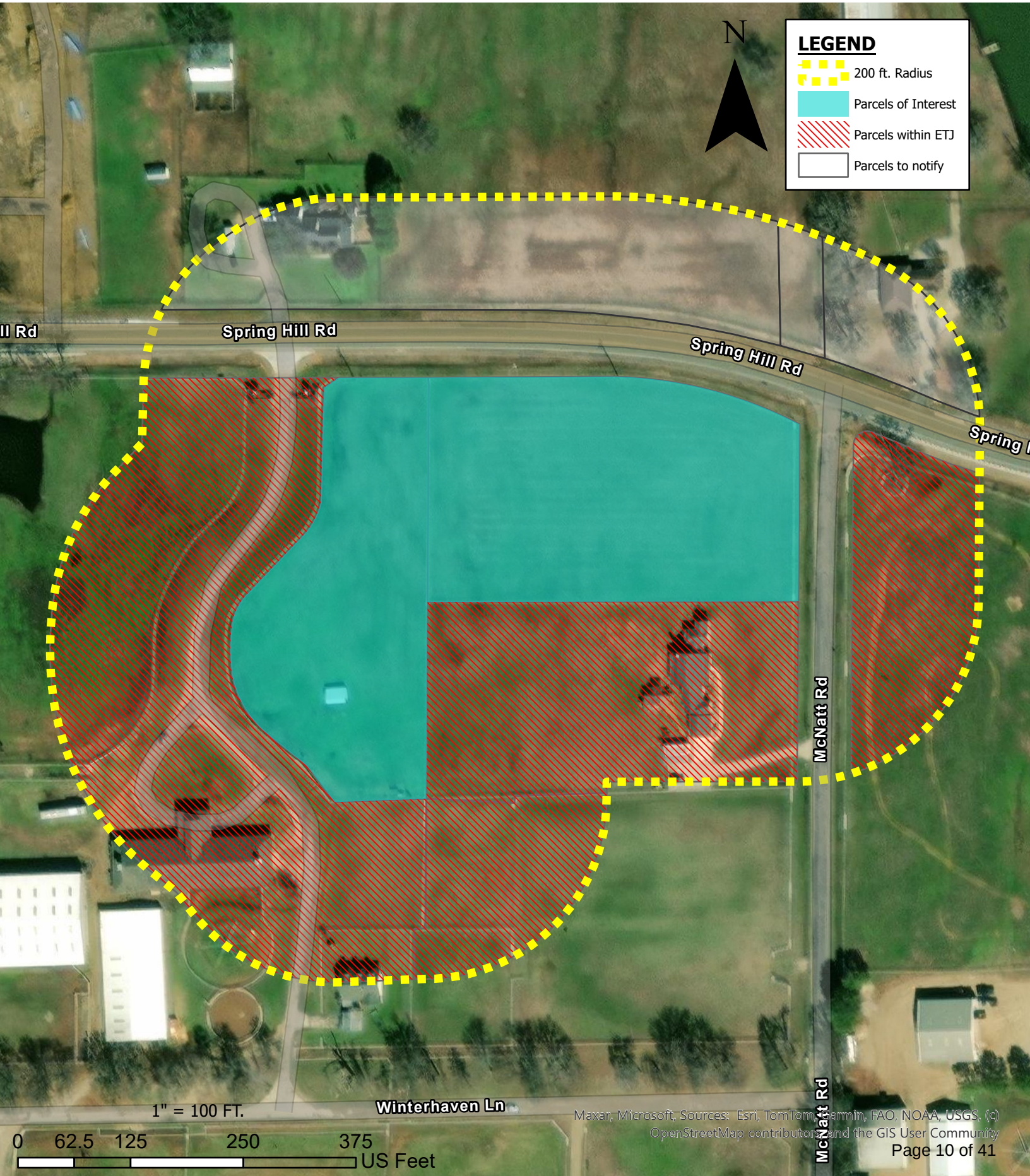
Approve

Staff Recommended Motion

Motion to approve the Planned Development District as presented.

200-FOOT NOTIFICATION MAP

MCNATT ROAD, AUBREY, TX 76227





Conceptual Site Plan

SWC_McNATT

THE INFORMATION SHOWN IS BASED ON THE BEST INFORMATION AVAILABLE AND IS SUBJECT TO CHANGE WITHOUT NOTICE

DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”) is entered into by and Cencor Acquisition Company, Inc., a Texas corporation, (the “Developer”) 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 Developer 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, the Developer is under contract and intends to purchase an approximate 3.76 acres of land, generally located at the southwest corner of McNatt Road and Spring Hill 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”) from Binyo Properties, LLC, (the “Property Owner”); 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; the Developer does not intend to take any action to request or cause the removal of the Property from the City’s ETJ; 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 herein (the “Development”) which commitments and obligations of the Developer and City are contingent upon Developer obtaining fee simple title to the Property and which commitments shall burden the Property upon the date that Developer closes on the purchase of the Property and obtains fee simple title to the Property from the Property Owner (the “Closing Date”); and

WHEREAS, the Developer intends to develop the Property pursuant to the terms of this Agreement substantially consistent with the Concept Plan, a copy of which is attached hereto and incorporated herein as **Exhibit C**, which the City acknowledges may be subject to changes after the date hereof as further detailed in Section 2.3 below (the “Concept Plan”) to include general retail, shopping center, and commercial uses and consistent with the development standards, attached hereto as **Exhibit D** (the “Development Standards”); and

WHEREAS, the Developer also intends for the Property to be developed in a manner consistent with the City’s zoning requirements, building material requirements and building code requirements, except as otherwise provided herein; and

WHEREAS, in accordance with the terms of this Agreement, the Developer intends to request that the Property be annexed into the corporate limits of the City and has agreed to submit 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 this Agreement; and

WHEREAS, contemporaneously with annexation, the Developer intends to submit an application to zone the Property as a Planned Development District with a base zoning district of Commercial (C) to allow general retail, shopping center, and commercial uses consistent with the Concept Plan (**Exhibit C**) and the Development Standard (**Exhibit D**); and

WHEREAS, the City and Mustang Water Supply hold dual certificates of convenience and necessity (the “CCN”) to provide retail water and wastewater service to the Property and the Parties intend for the City to provide retail water and wastewater service to the Property; and

WHEREAS, the Development will require the construction of certain offsite water and wastewater improvements, the details of which are more specifically identified in **Exhibit F**, (the “Water and Wastewater Public Improvements”) and improvements in accordance with the approved final plat for the Property, the details of which shall be included with civil construction plans during the platting process (collectively, the “Offsite Improvements”); and

WHEREAS, the Development will require the Developer to construct certain onsite public infrastructure, including streets and roads, drainage, water, sanitary sewer, and other utility systems that will be dedicated to the City, as well requiring Developer to provide open space and landscaping improvements for all of the Onsite Improvements (the “Onsite Improvements”), the details of which shall be included with civil construction plans during the platting process; and

WHEREAS, the Offsite Improvements and Onsite Improvements shall be referred to collectively as the “Public Improvements”); 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

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, including the cross promises contained in the foregoing Recitals, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

ARTICLE I **RECITALS/DEFINITIONS**

1.1 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.

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

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 means City's certificate of convenience and necessity.

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

City Council means the city council of the City.

City Regulations means 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, including without limitation, the City's Subdivision Regulations as defined herein.

Concept Plan means the concept plan attached hereto as **Exhibit C**.

Development is defined in the Recitals.

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

ETJ is defined in the Recitals.

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

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

Mustang means Mustang Special Utility District,

Developer is defined in the introductory paragraph.

Developer Assignee is defined in Article VIII.

Parties means the Developer and the City.

Party means the Developer or the City

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 the approved construction plans and identified in the approved Final Plat.

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

ARTICLE II. **DEVELOPMENT REGULATIONS AND FEES**

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 in accordance with this Agreement;
- (b) the Development Standards attached hereto as **Exhibit D**;
- (c) the Building Elevations attached hereto as **Exhibit E**;
- (d) the Water Public Improvements attached hereto as **Exhibit F**;
- (e) City Regulations;
- (f) the Building Codes;
- (g) approved Final Plats for all or a portion of the Property; and
- (h) applicable federal and state regulations.

2.2 City Regulations. 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 City Regulations upon annexation.

2.3. Development Standards. The Parties agree that the Property shall be developed in accordance with **Exhibit D** (the "Development Standards"), the concept plan, attached hereto as **Exhibit C** (the "Concept Plan"), and the building elevations, attached hereto as **Exhibit E** (the "Building Elevations"). Notwithstanding the foregoing, until the Property is zoned pursuant to Section 4.3 of this Agreement, the Parties agree that Developer may update the Concept Plan from the version attached hereto as **Exhibit C** as may be necessary due to changes in design, layout, or other development concepts without the written approval of City; provided, however, if Developer changes to Concept Plan are due to the addition of land to the Property, Developer agrees to obtain City's written consent to the revised Concept Plan, such consent not to be unreasonably withheld, conditioned, or delayed. For the avoidance of doubt, the Building Elevations are attached so as to communicate the general character and design of the development in order to guide Developer's

design choices for the developed Property, but the Parties agree that Developer shall not be required to use the exact materials and designs as shown on the Building Elevations but may use substantially similar materials and design consistent with the general character and design for the Development as set forth in the Concept Plan, **Exhibit C**. Notwithstanding the foregoing, the Building Elevations shall be in conformance with the Development Standards, **Exhibit D**, and the approved Planned Development District zoning ordinance for the Property.

2.4 Plat. The Developer may submit a plat for all of the Property. All plats and plans of the Developer related to the Property shall meet the requirements of the Governing Regulations. All plats and plans of the Developer related to the Property shall meet the requirements of the Governing Regulations. 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 Developer 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 Developer, 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 Developer or the Developer'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.

2.5 Permits and 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. Except as otherwise expressly provided herein, Developer, or any subsequent owner of any portion of the Property, as appropriate, shall request and obtain all development permits, including without limitation building permits, from the City for all work done or caused to be done, and every structure constructed, upon the Property or related to the Development.

2.6 Vested Rights. Upon an administratively complete application for a final plat or site plan for any portion of the Property, under Chapter 245 of the Texas Local Government Code, the Developer 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.

ARTICLE III **PUBLIC INFRASTRUCTURE**

3.1 Water and Sewer Service; Billing. The City shall be the retail provider of water and wastewater service under water CCN No. 11234 and sewer CCN No. 20491 to the customers located within the Property, which service shall be provided at the same rates charged pursuant to adopted City Ordinance. The City agrees to provide sufficient water and sewer capacity to serve

the entire Development, including capacity necessary to provide the required fire flows, in accordance with an approved final plat. Upon annexation, such service shall be provided at the same rates charged to other customers located within the corporate limits of the City. The City will bill the customers directly for its retail water and sewer service.

3.2 Public Improvements. Except as otherwise expressly provided for in this Agreement, all Onsite Improvements shall be designed, constructed and installed by Developer in compliance with the Governing Regulations at the expense of Developer. Construction and/or installation of Public Improvements shall not begin until complete and accurate plans and specifications have been approved by the City in accordance with standard City procedures. Each of such contracts shall require a two-year maintenance bond following completion, which bond shall run in favor of the City for maintenance of the completed Public Improvements. To the extent easements or rights-of-way are needed within the Property, they shall be dedicated by Developer to the City at no cost to the City. The Public Improvements will be installed within easements granted to the City or in the public right of way. The size of the Public Improvements shall be sized as finally determined by the City's engineer and could vary from the estimated sizes reflected in **Exhibit F**, and any costs associated with oversizing the Public Improvements to serve property outside the Development will be borne by the City.

3.3 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. All roadway improvements and storm infrastructure as required by the Final Plat of the Property shall be dedicated to and become the property of City and shall be maintained by City in accordance with the terms of this Agreement upon City's final acceptance of such improvements. Roadway improvements include storm drainage infrastructure, sidewalks, traffic control devices and signage.

(b) Water and Wastewater Infrastructure. The City shall have the right to inspect the construction of all water and wastewater Public Improvements at any time, which water and wastewater shall be located within publicly dedicated easements or right-of-way, as applicable, inspected, designed and constructed in compliance with all statutory and regulatory requirements, including design and construction criteria, and the Governing Regulations. All water and wastewater Public Improvements shall be dedicated to and become property of the City in accordance with the terms of this Agreement upon City's final acceptance of such improvements.

(c) No Release. The City's inspections shall not release the Developer 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 Public Improvements and any other dedications required under this Agreement, such improvements and dedications shall be owned by the City.

(e) 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 Developer 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 Developer, 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 Developer or the Developer'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 Developer related to the Property shall meet the requirements of the Governing Regulations.

ARTICLE IV.

ANNEXATION AND POST-ANNEXATION MATTERS

4.1 Annexation. Within ten (10) days of the Closing Date, Developer agrees to submit a voluntary annexation petition for the Property and execute documents necessary to complete the annexation. Developer 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. 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, Developer shall execute another voluntary annexation petition and provide necessary documents for annexation of the Property within ten (10) days of being requested to do so by City. Prior to annexation of the Property, the City shall have considered this Agreement, shall have submitted to Developer, and Developer shall review and approve, and this annexation service plan shall be considered a binding, and mutually agreed upon, contractual obligation between the City and Developer.

4.2 Disclosure. The Developer 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 Developer 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 Developer acknowledges and agrees that this Agreement is City's offer to enter into an agreement under Chapter 212, Subchapter G of the Texas Local Government Code and that:

(a) **Section 4.1 was a material inducement for the City to enter into this Agreement with Developer;**

(b) the Developer is not required to enter into this Agreement;

(c) the annexation procedures described in plain language in this Agreement require the Developer's consent, and by entering into this Agreement, the Developer hereby voluntarily provides such consent; and

(d) with this Agreement and the provisions contained herein, the City has provided to the Developer the written disclosure required by Section 212.172(b-1) of the Texas Local Government Code.

4.3 Zoning and Development of Property. While the Parties expressly acknowledge that the Property will be voluntarily annexed in accordance with Section 4.1 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 Developer 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 the adopted zoning ordinance shall control. The Developer agrees that nothing in this Agreement shall prevent the Governing Regulations, including but not limited to zoning, from being enforced against an End-Buyer.

4.4 Solid Waste Services. Upon annexation, 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").

ARTICLE V **TERM**

The term of this Agreement shall be for a period of fifteen (15) years after the Effective Date, except that Article II, plus all provisions referenced in Article II, 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. Notwithstanding anything to the contrary in this Agreement, this Agreement shall automatically terminate, be *void ab initio* and shall be of no further force and effect if the Closing does not occur on or before July 31, 2025.

ARTICLE VI **INDEMNIFICATION AND DEVELOPER'S ACKNOWLEDGMENT**

6.1 Indemnification and Hold Harmless.

(a) THE DEVELOPER 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 DEVELOPER; (II) THE NEGLIGENT DESIGN, ENGINEERING AND/OR CONSTRUCTION BY THE DEVELOPER OR ANY ARCHITECT, ENGINEER OR CONTRACTOR HIRED BY THE DEVELOPER OF ANY OF THE PUBLIC INFRASTRUCTURE ACQUIRED FROM THE DEVELOPER HEREUNDER; (III) THE DEVELOPER'S NONPAYMENT UNDER CONTRACTS BETWEEN THE DEVELOPER 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 DEVELOPER OR ITS AGENTS TO CONSTRUCT THE PUBLIC INFRASTRUCTURE; OR (V) ANY CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO THE DEVELOPER'S RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEEES, 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 DEVELOPER IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS, AND CITY IS REQUIRED TO REASONABLY COOPERATE AND ASSIST THE DEVELOPER 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 DEVELOPER 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 DEVELOPER'S OBLIGATION TO DEFEND INDEMNIFIED PARTIES OR AS A WAIVER OF DEVELOPER'S OBLIGATION TO INDEMNIFY INDEMNIFIED PARTIES PURSUANT TO THIS AGREEMENT. THE DEVELOPER 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 DEVELOPER FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, INDEMNIFIED PARTIES SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON THEIR OWN BEHALF, AND THE DEVELOPER SHALL BE LIABLE FOR ALL REASONABLE COSTS INCURRED BY INDEMNIFIED PARTIES. THE CITY AGREES, UNLESS ADVISED BY DEFENSE COUNCIL TO THE CONTRARY, TO ASSERT ITS IMMUNITY FROM LIABILITY AND IMMUNITY FROM SUIT AND/OR OTHER AVAILABLE AFFIRMATIVE DEFENSES

(c) THIS SECTION 6.1 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 DEVELOPER.

6.2 The Developer'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/Developers' Waiver and Release of Claims for Obligations expressly set forth in this Agreement.

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

(III) THE DEVELOPER 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 DEVELOPER FOR SUCH LAND, AND THE DEVELOPER 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 DEVELOPER 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 6.2 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

7.1 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.

7.2 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 VIII

ASSIGNMENT AND ENCUMBRANCE

8.1 Assignment by Developer to Successors. Assignment of this Agreement shall be subject to the following:

(a) Developer has the right (from time to time with the consent of the City to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of Developer under this Agreement, to any person or entity (an “Developer 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 Developer, provided that the Developer is not in breach of this Agreement at the time of such assignment. A Developer Assignee is considered the “Developer” and a “Party,” and under this Agreement for purposes of the obligations, rights, title, and interest assigned to the Developer Assignee. Notice of each proposed assignment to a Developer Assignee shall be provided to the City at least ten (10) calendar 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 Developer Assignee.

(b) Each assignment shall be in writing executed by Developer and the Developer Assignee and shall obligate the Developer 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 Developer 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 Developer Assignee for the performance of all obligations assigned to the Developer Assignee and agrees that Developer shall be released from subsequently performing the assigned obligations and from any liability that results from the Developer 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, Developer shall not be released until the City receives such copy of the assignment.

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

(d) Developer shall maintain written records of all assignments made by Developer to Developer Assignees, including a copy of each executed assignment and the Developer 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.

8.2 Encumbrance by Developer and Assignees. Developer and Developer 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 Developer 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.

8.3 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.

8.4 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 "Developer" and have all of the obligations of the Developer as set forth in this Agreement and all related documents to the

extent of said ownership or ownership interest.

8.5 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 IX **RECORDATION AND ESTOPPEL CERTIFICATES**

9.1 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.

9.2 From time to time, upon written request of Developer or any future owner, and upon the payment to the City of all reasonable costs incurred by the City in providing the certificate described in this section 9.2, the City Manager, or his/her designee will, in his/her official capacity and to his/her reasonable knowledge and belief, execute a written estoppel certificate identifying any obligations of an owner under this Agreement that are in default.

ARTICLE X **ADDITIONAL PROVISIONS**

10.1 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, TX 76227
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With a copy to:	Attn: Patricia Adams Messer & Fort, PLLC 6371 Preston Road, Suite 200 Frisco, Texas 75034 E-mail: Patricia@txmunicipallaw.com
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To the Developer: Cencor Acquisition Company, Inc.
Attn: Cameron Aderhold & Stephen Schmidt
3102 Maple Ave., Suite 500
Dallas, TX 75201
E-mail: caderhold@weitzmangroup.com;
srschmidt@weitzmangroup.com

With a copy to: Cencor Acquisition Company, Inc.
Attn: General Counsel
3102 Maple Ave., Suite 500
Dallas, TX 75201

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.

10.2 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.

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

10.4 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 Developer represents and warrants that this Agreement has been approved by appropriate action of the Developer, and that the individual executing this Agreement on behalf of the Developer 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.

10.5 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.

10.6 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.

10.7 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.

10.8 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.

10.9 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.

10.10 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.

10.11 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	Building Elevations
Exhibit F	Water Public Improvements

10.12 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.

10.13 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.

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

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

10.16 Form 1295 Certificate. The Developer represents that it has complied with Texas Government Code, Section 2252.908 and in connection therewith, the Developer 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 Developer 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 Developer. The information contained in Form 1295 completed by the Developer has been provided solely by the Developer and the City has not verified such information.

EXECUTED by the City and the Developer on the respective dates stated below after approval of the City Council of the City on _____, 2025.

Date: _____

CITY OF AUBREY

By: _____
Chris Rich, Mayor

ATTEST:

Jenny Hicks, City Secretary

APPROVED AS TO FORM:

Patricia A. Adams, City Attorney

STATE OF TEXAS §
 §
COUNTY OF DENTON §

This instrument was acknowledged before me on the ____ day of _____, 2025, 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:_____

DEVELOPER: CENCOR ACQUISITION COMPANY, INC., a Texas corporation

By: _____
Name: R. Marshall Mills
Title: President and Chief Executive Officer

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, a Notary Public in and for the State of Texas, duly authorized to take acknowledgments, on _____, 2025, R. Marshall Mills, President and Chief Executive Officer of Cencor Acquisition Company, Inc. personally appeared and acknowledged that they executed the foregoing document on behalf of Cencor Acquisition Company, Inc.

Notary Public in and for the State of Texas

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

TRACT 1:

Being Lot 1, Block A, of WINTERHAVEN 7 ADDITION, an Addition to the City of Aubrey, Denton County, Texas, according to the Plat thereof recorded in cc# 2016-2135, Real Property Records, Denton County, Texas.

TRACT 2:

BEING all that certain lot, tract or parcel of land situated in the Francisco Trevino Survey, Abstract No. 1243, Denton County, Texas, being a part of a tract of land described in deed to Sandra Jane Harting, recorded under Instrument No. 2005-160025, Deed Records, Denton County, Texas (D.R.D.C.T.), and being more particularly described by the following metes and bounds description:

BEGINNING at a 1/2 inch iron rod found for corner in the South line of E. Farm to Market 428, at the Northwest corner of Lot 1, Block A, Winterhaven 7 Addition, an Addition to the City of Aubrey, Denton County, Texas, according to the Plat thereof recorded under Instrument No. 2016-2135, Plat Records, Denton County, Texas (P.R.D.C.T.), at the Northeast corner of said Harting tract;

THENCE South 00 deg. 18 min. 43 sec. West, a distance of 469.67 feet to a fence post for corner at the Southwest corner of Lot 2 of said Block A, at the Northwest corner of Lot 3 of said Block A:

THENCE South 88 deg. 07 min. 58 sec. West, a distance of 105.14 feet to a fence post for corner;

THENCE North 37 deg. 51 min. 05 sec. West, a distance of 51.32 feet to a fence post for corner;

THENCE North 51 deg. 08 min. 39 sec. West, a distance of 50.15 feet to a fence post for corner, being the beginning of a curve to the right having a central angle of 42 deg. 59 min. 22 sec., a radius of 105.51 feet, and a chord bearing and distance of North 32 deg. 51 min. 20 sec. West, 77.32 feet;

THENCE Northwesterly along said curve to the right an arc distance of 79.17 feet to a fence post for corner, being the beginning of a curve to the right having a central angle of 18 deg. 17 min. 34 sec., a radius of 186.79 feet, and chord bearing and distance of North 01 deg. 45 min. 57 sec. West, a distance of 59.38 feet;

THENCE Northwesterly along said curve to the right an arc distance of 59.64 feet to a fence post for corner, being the beginning of a curve to the right having a central angle of 31 deg. 00 min. 48 sec., a radius of 73.39 feet, and a chord bearing and distance of North 26 deg. 48 min. 46 sec. East, 39.24 feet;

THENCE Northeasterly along said curve to the right an arc distance of 39.73 feet to a fence post for corner;

THENCE North 43 deg. 50 min. 46 sec. East, a distance of 79.69 feet to a fence post for corner, being the beginning of a curve to the left having a central angle of 43 deg. 01 min. 00 sec., a radius of 78.63 feet, and a chord bearing and distance of North 27 deg. 46 min. 42 sec. East, 57.66 feet;

THENCE Northeasterly along said curve to the left an arc distance of 59.04 feet to a fence post for corner;

THENCE North 01 deg. 10 min. 31 sec. East, a distance of 119.92 feet to a fence post for corner;

THENCE North 54 deg. 33 min. 06 sec. East, a distance of 22.17 feet to a 1/2 inch yellow-capped iron rod set for corner in the said South line;

THENCE North 89 deg. 42 min. 07 sec. East, a distance of 101.67 feet to the PLACE OF BEGINNING and containing 76,001 square feet or 1.74 acres of land.

TRACT 3: Easement Estate

Non-exclusive easement rights as set forth in Easement Agreement for Access, executed by Sandra Jane Harting AKA Sandra Jane Holt to BINYO PROPERTIES LLC, dated 06/30/2022, filed 06/30/2022, recorded in cc# 2022-96516, Official Public Records, Denton County, Texas.

EXHIBIT B
DEPICTION OF THE PROPERTY



BOUNDARY SURVEY

FROM REGISTRATION NO. 15104306

BARRY S. RHODES Registered Professional Land Surveyor (214) 326-1090

This is to certify that I have, this date, made a careful and accurate survey on the ground of property located at No. 33408 E.F.M. 423 in Denton County, Texas.

BEING all the corner lot, tract or parcel of land owned in the Precinct Texas Survey, Abstract No. 1245, Denton County, Texas, being a part of a tract of land described as to Block 1, Block A, Texas Standard Liability Insurance, recorded under Instrument No. 2012-05071, Deed Records, Denton County, Texas (D.R. D.C.T. A), and being more particularly described by the following notes and words hereunto annexed.

BEING also a 1/2 section and found for corner in the South line of E. F. M. 423, at the Northeast corner of Lot 1, Block A, Winterhaven Lane, Addition to the City of Ashby, Denton County, Texas, according to the Partition (Crossed under Instrument No. 2014-02123, Map Records, Denton County, Texas (D.R. D.C.T. A), at the Northeast corner of said Winterhaven Lane.

THENCE South 00 deg. 18 min. 43 sec. West, a distance of 409.67 feet to a fence post for corner at the Southeast corner of Lot 2 of said Block A, at the Northeast corner of Lot 3 of said Block A;

THENCE South 00 deg. 07 min. 55 sec. West, a distance of 105.14 feet to a fence post for corner;

THENCE North 57 deg. 31 min. 49 sec. West, a distance of 51.32 feet to a fence post for corner;

THENCE North 51 deg. 08 min. 29 sec. West, a distance of 50.15 feet to a fence post for corner, being the beginning of a curve to the right having a central angle of 42 deg. 59 min. 22 sec., a radius of 105.51 feet, and a chord bearing and distance of North 32 deg. 51 min. 20 sec. West, 73.32 feet;

THENCE Northwesterly along said curve to the right as a distance of 78.37 feet to a fence post for corner, being the beginning of a curve to the right having a central angle of 18 deg. 17 min. 34 sec., a radius of 506.79 feet, and a chord bearing and distance of North 01 deg. 43 min. 57 sec. West, a distance of 59.50 feet;

THENCE Northwesterly along said curve to the right as a distance of 54.44 feet to a fence post for corner, being the beginning of a curve to the right having a central angle of 31 deg. 00 min. 08 sec., a radius of 73.79 feet, and a chord bearing and distance of North 20 deg. 48 min. 44 sec. East, 70.25 feet;

THENCE Northwesterly along said curve to the right as a distance of 78.37 feet to a fence post for corner;

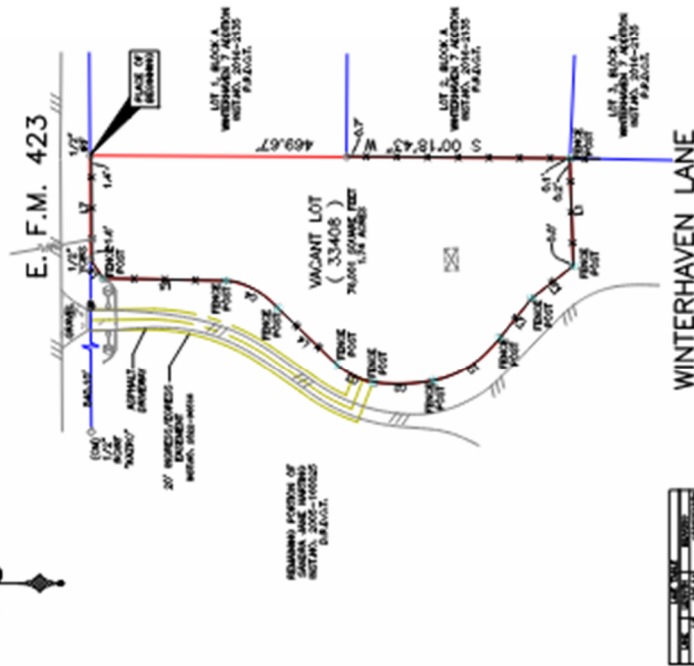
THENCE North 43 deg. 58 min. 44 sec. East, a distance of 70.69 feet to a fence post for corner, being the beginning of a curve to the left having a central angle of 43 deg. 01 min. 48 sec., a radius of 170.63 feet, and a chord bearing and distance of North 37 deg. 46 min. 43 sec. East, 57.66 feet;

THENCE Northwesterly along said curve to the left as a distance of 58.84 feet to a fence post for corner;

THENCE North 01 deg. 08 min. 21 sec. East, a distance of 118.92 feet to a fence post for corner;

THENCE North 54 deg. 33 min. 46 sec. East, a distance of 22.17 feet to a fence post for corner in the said South line;

THENCE North 09 deg. 42 min. 07 sec. East, a distance of 301.67 feet to the PLATE OF BEGINNING and containing 76,000 square feet or 1.74 acres of land.



PROPERTY SUBJECT TO EASEMENTS & ENCUMBRANCES NOTED BY THE SURVEYOR. THE SURVEYOR HAS NOT BEEN ADVISED OF ANY OTHER EASEMENTS OR ENCUMBRANCES AFFECTING THE PROPERTY. THE SURVEYOR HAS NOT BEEN ADVISED OF ANY OTHER EASEMENTS OR ENCUMBRANCES AFFECTING THE PROPERTY.

BEING also a 1/2 section and found for corner in the South line of E. F. M. 423, at the Northeast corner of Lot 1, Block A, Winterhaven Lane, Addition to the City of Ashby, Denton County, Texas, according to the Partition (Crossed under Instrument No. 2014-02123, Map Records, Denton County, Texas (D.R. D.C.T. A), at the Northeast corner of said Winterhaven Lane.

THENCE South 00 deg. 18 min. 43 sec. West, a distance of 409.67 feet to a fence post for corner at the Southeast corner of Lot 2 of said Block A, at the Northeast corner of Lot 3 of said Block A;

THENCE South 00 deg. 07 min. 55 sec. West, a distance of 105.14 feet to a fence post for corner;

THENCE North 57 deg. 31 min. 49 sec. West, a distance of 51.32 feet to a fence post for corner;

THENCE North 51 deg. 08 min. 29 sec. West, a distance of 50.15 feet to a fence post for corner, being the beginning of a curve to the right having a central angle of 42 deg. 59 min. 22 sec., a radius of 105.51 feet, and a chord bearing and distance of North 32 deg. 51 min. 20 sec. West, 73.32 feet;

THENCE Northwesterly along said curve to the right as a distance of 78.37 feet to a fence post for corner, being the beginning of a curve to the right having a central angle of 18 deg. 17 min. 34 sec., a radius of 506.79 feet, and a chord bearing and distance of North 01 deg. 43 min. 57 sec. West, a distance of 59.50 feet;

THENCE Northwesterly along said curve to the right as a distance of 54.44 feet to a fence post for corner, being the beginning of a curve to the right having a central angle of 31 deg. 00 min. 08 sec., a radius of 73.79 feet, and a chord bearing and distance of North 20 deg. 48 min. 44 sec. East, 70.25 feet;

THENCE Northwesterly along said curve to the right as a distance of 78.37 feet to a fence post for corner;

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THENCE Northwesterly along said curve to the left as a distance of 58.84 feet to a fence post for corner;

THENCE North 01 deg. 08 min. 21 sec. East, a distance of 118.92 feet to a fence post for corner;

THENCE North 54 deg. 33 min. 46 sec. East, a distance of 22.17 feet to a fence post for corner in the said South line;

THENCE North 09 deg. 42 min. 07 sec. East, a distance of 301.67 feet to the PLATE OF BEGINNING and containing 76,000 square feet or 1.74 acres of land.

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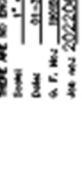
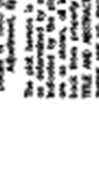
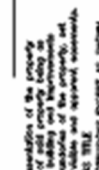


EXHIBIT C CONCEPT PLAN

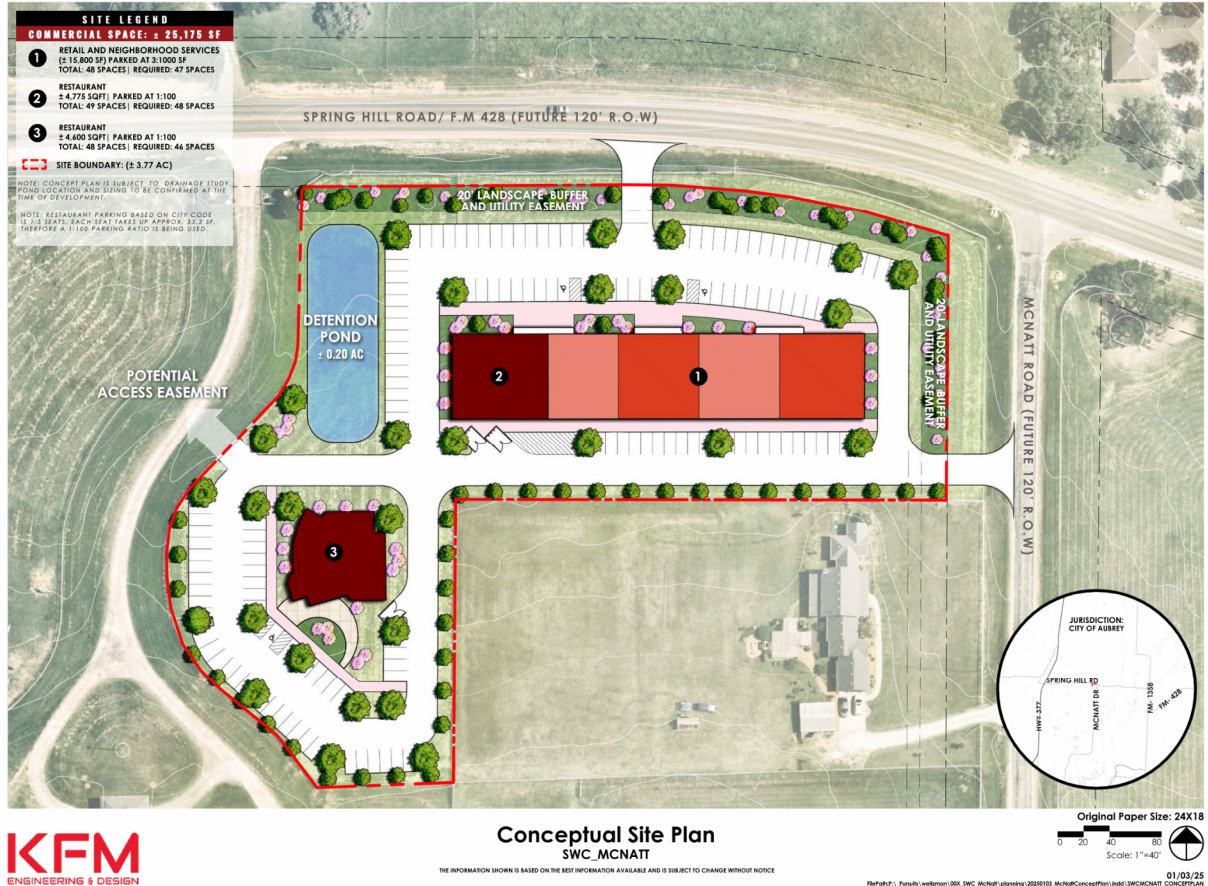


EXHIBIT D
DEVELOPMENT STANDARDS

C – COMMERCIAL DISTRICT TRACT
SWC SPRING HILL ROAD AND MCNATT ROAD

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 depicted in Exhibit A (the “Property”), as such ordinances exist or may be amended, and as outlined herein. The property shall be zoned as a PD-Planned Development District with a base zoning district of C-Commercial District.

Permitted Uses:

1. Permitted uses per the Commercial (C) District base zoning, with express written exceptions outlined in the Prohibited Uses section.
2. Office uses.
3. Garden Center with outdoor storage and display shall only be permitted on the McNatt Road frontage.
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. Tire repair shops without outdoor storage or display of tires.

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. Package stores, requiring an SUP shall have a minimum square footage of 20,000 square feet and be a stand-alone structure.

Prohibited Uses:

The following uses are prohibited on the property:

1. Car wash
2. Repair and storage garages
3. Auto body operations
4. Spray painting operations
5. Motels and apartment hotels
6. Rental truck and trailers with or without automobile service stations
7. Mini warehouse/self-storage facilities

8. Mortuary
9. Machinery and equipment sales and service establishments
10. Tobacco product/Smoke Shop stores. Tobacco product/smoke shop stores are defined as a retail establishment utilized primarily for the sale of cigarettes, electronic cigarettes, vapes, cigars, tobacco, pipes, and other smoking supplies.
11. 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%		

Supplementary District Regulations:

Other Supplementary District Regulations, Section 23, of the City of Aubrey Zoning, Chapter 14, Zoning Ordinance, Chapter 14A, include, but are not limited to Buffers, Nonresidential Design Standards, gas pumps and fueling stations, drive-thru facilities, sanitation containers, mechanical

equipment, and accessibility contained within the Zoning Ordinance, as amended, shall be applicable except provided herein.

Tree Preservation:

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

Access: 24-foot mutual access/fire lane easements as required by the City's Subdivision Regulations shall be provided to the property to the west and south at the time of platting, subject to Developer's ability to expand the width of the easement with the neighboring property owner.

EXHIBIT E
BUILDING ELEVATIONS



EXHIBIT F
WATER PUBLIC IMPROVEMENTS¹

