

RESOLUTION NO.

A RESOLUTION OF THE CITY OF LANCASTER, TEXAS, AUTHORIZING A DEVELOPMENT AGREEMENT (M25-06), ATTACHED AND INCORPORATED HERETO AS "EXHIBIT A", BETWEEN THE CITY OF LANCASTER, TEXAS, AND HARVEY PROPERTIES LIMITED PARTNERSHIP REGARDING BUILDING MATERIALS AND LANDSCAPING FOR DEVELOPMENT OF THE "PROJECT FRONTIER DEVELOPMENT SITE" FOR THE 73.380 ACRE PROPERTY LOCATED AT 2901 NOKOMIS ROAD, OUT OF THE N.R. WINNIFORD SURVEY, ABSTRACT No. 1543, JOHN EVEENS SURVEY, ABSTRACT No. 433, TRACT 7, CITY OF LANCASTER, DALLAS COUNTY, TEXAS; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Harvey Properties Limited Partnership is the owner of the 73.380-acre property located at 2901 Nokomis Road, out of the N.R. Winniford Survey, Abstract No. 1543 and John Eveens Survey, Abstract No. 433, Tract 7 City of Lancaster ("City"), and known as "Project Frontier Development Site", (the "Property"); and

WHEREAS, Harvey Properties Limited Partnership, has negotiated and agreed upon building materials and landscaping as described in "Exhibit 2" for the Property, and have agreed upon the Development Agreement attached hereto as "Exhibit A" for the property described in "Exhibit 1" "Legal Description" incorporated by reference; and

WHEREAS, the City Council of the City of Lancaster, Texas has determined that execution of the Development Agreement is in the best interest of the citizens of Lancaster, Texas, and desires to authorize the City to enter into the Agreement and to authorize the City Manager to execute the agreement on behalf of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANCASTER, TEXAS:

SECTION 1. All of the above recitals are hereby found to be true and correct and are approved and incorporated into the body of this Resolution as if copied in their entirety.

SECTION 2. The Development Agreement pertaining to the property and attached hereto as Exhibit "A", is hereby ratified and approved, and the City Manager is authorized to execute the agreement on behalf of the City.

SECTION 3. If any article, paragraph, subdivision, clause or provision of this resolution be adjudged invalid or held unconstitutional for any reason, such judgment or holding shall not affect the validity of this resolution as a whole or any part or provision thereof, other than the part so declared to be invalid or unconstitutional.

SECTION 4. All provisions of any resolution or ordinance in conflict with this resolution are hereby repealed to the extent they are in conflict, but such repeal should not abate any pending prosecution for violation of the repealed resolution/ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the resolution/ordinance. Any remaining portions of said resolution/ordinance shall remain in full force and effect.

SECTION 5. This resolution shall take effect immediately from and after the date of passage and is provided by law.

DULY PASSED and approved by the City Council of the City of Lancaster, Texas, on this the 24th day of February, 2025.

ATTEST:

APPROVED:

Sorangel O. Arenas, City Secretary

Clyde C. Hairston, Mayor

APPROVED AS TO FORM:

David T. Ritter, City Attorney

Exhibit A

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the City of Lancaster, Texas ("City"), and the owner of certain real property, Harvey Properties Limited Partnership, a Texas limited Partnership ("Owner") (the "Developer") City and Developer are each referred to herein as a "Party" or collectively as the "Parties." This Agreement is to be effective on the latest date executed by the Parties (the "Effective Date").

WHEREAS, the City is a home-rule municipal corporation, located in Dallas County, Texas, organized and existing under the laws of the State of Texas; and

WHEREAS, Owner is the owner of the ± 73.380 acre property located at 2901 Nokomis Road, in the City, the legal description of which is more particularly described in Exhibit 1, attached hereto and incorporated by reference (the "Property"); and

WHEREAS, Owner was requested by the City to specify certain requirements to be followed in the development of the Property; and

WHEREAS, this Agreement seeks to incorporate, in part, the negotiated and agreed upon development standards contained in the zoning ordinance, as may be amended, and/or this Development Agreement, to recognize Owner's reasonable investment-backed expectations in the Property, as may be amended, and as more fully described herein; and

WHEREAS, subject to the terms of this Agreement, Owner agrees and acknowledges that it will construct on the Property structures in accordance with the provisions, standards and notes reflected in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Parties to this Agreement agree as follows:

1. Design Elements/Development Standards. Design elements and development standards to be incorporated into the development of the Property, are included in Exhibit C.

2. Covenant Running with the Land. The terms, conditions, rights, obligations, benefits, covenants and restrictions of the provisions of this Agreement shall be deemed covenants running with the land, and shall be binding upon and inure to the benefit of the Owner and its heirs, representatives, successors and assigns. This Agreement shall be deemed to be incorporated into each deed and conveyance of the Property or any portion thereof hereafter made by any other owners of the Property, regardless of whether this Agreement is expressly referenced therein.

3. Applicability of City Ordinances. Owner shall develop the Property, and construct all structures on the Property, in accordance with all applicable City ordinances and building/construction codes.

4. Default. No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (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 determined based on the nature of the alleged failure, but in no event less than thirty (30) days after written notice of the alleged failure has been given). In addition, 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. If either Party is in default under this Agreement, the other Party shall have the right to enforce the Agreement in accordance with applicable law, provided, however, in no event shall any Party be liable for consequential or punitive damages.

5. Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Dallas County, Texas. Exclusive venue for any action arising under this Agreement shall lie in Dallas County, Texas.

6. Notice. Any notices required or permitted to be given hereunder (each, a "Notice") shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the City: The City of Lancaster
211 N. Henry St.
P.O. Box 940
Lancaster, Texas 75146
Attention: City Manager

If to Owner: Harvey Properties Limited Partnership
201 Main Street, Suite 2300
Fort Worth, Texas 76102

7. Prevailing Party. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

8. Entire Agreement. This Agreement contains the entire agreement between the Parties hereto with respect to development of the Property and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party.

9. Savings/Severability. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the

Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

10. Binding Agreement. A telecopied facsimile of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein, including without limitation a scanned copy sent via electronic mail by either party.

11. Authority to Execute. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. Owner warrants and represents that the individual executing this Agreement on behalf of Owner has full authority to execute this Agreement and bind Owner to the same. The City Council hereby authorizes the City Manager of the City to execute this Agreement on behalf of the City.

12. Filing in Deed Records. This Agreement, and any and all subsequent amendments to this Agreement, shall be filed in the deed records of Dallas County, Texas.

13. Mediation. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to nonbinding mediation.

14. Notification of Sale or Transfer; Assignment of Agreement. Owner shall notify the City in writing of any sale or transfer of all or any portion of the Property, within ten (10) business days of such sale or transfer. Owner has the right (from time to time without the consent of the City, but upon 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 "Assignee") that is or will become an owner of any portion of the Property or that is an entity that is controlled by or under common control with Owner. Each assignment shall be in writing executed by Owner and the Assignee and shall obligate the Assignee to be bound by this Agreement. A copy of each assignment shall be provided to the City within ten (10) business days after execution. Provided that the successor owner assumes the liabilities, responsibilities, and obligations of the assignor under this Agreement, the assigning party will be released from any rights and obligations under this Agreement as to the Property that is the subject of such assignment, effective upon receipt of the assignment by the City. 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. Owner shall maintain true and correct copies of all assignments made by Owner to Assignees, including a copy of each executed assignment and the Assignee's Notice information.

15. Sovereign Immunity. The Parties agree that the City has not waived its sovereign immunity from suit by entering into and performing its obligations under this Agreement.

16. Effect of 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; 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.

17. Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

18. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original.

19. Exactions/Infrastructure Costs. Owner has been represented by legal counsel in the negotiation of this Agreement and been advised or has had the opportunity to have legal counsel review this Agreement and advise Owner, regarding Owner's rights under Texas and federal law. Owner hereby waives any requirement that the City retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the City are roughly proportional or roughly proportionate to the proposed development's anticipated impact. Owner specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with § 212.904 of the Texas Local Government Code; however, notwithstanding the foregoing, Owner hereby releases the City from any and all liability under § 212.904 of the Texas Local Government Code, as amended, regarding or related to the cost of those municipal infrastructure requirements imposed by this Agreement.

20. Rough Proportionality. Owner hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution with respect to roadway or infrastructure requirements imposed by this Agreement. Owner and the City further agree to waive and release all claims one may have against the other related to any and all 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 terms of this Agreement, with respect to roadway or infrastructure requirements imposed by this Agreement.

21. Waiver of Texas Government Code § 3000.001 et seq. With respect to any structures or improvements constructed on the Property pursuant to this Agreement, Owner hereby waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005, effective as of September 1, 2019.

22. Time. Time is of the essence in the performance by the Parties of their respective obligations under this Agreement.

23. Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.

24. Amendment. This Agreement shall not be modified or amended except in writing signed by the Parties. A copy of each amendment to this Agreement, when fully executed and recorded, shall be provided to each Party, Assignee and successor owner of all or any part of the Land; however, the failure to provide such copies shall not affect the validity of any amendment.

25. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date referenced herein.

CITY:

THE CITY OF LANCASTER, TEXAS

By: _____

Name: Opal Mauldin-Jones

Title: City Manager, City of Lancaster

STATE OF TEXAS)

)

COUNTY OF DALLAS)

 This instrument was acknowledged before me on the ____day
of _____, 2024, by Opal Mauldin-Jones City Manager of the City of
Lancaster, Texas, on behalf of the City of Lancaster, Texas.

Notary Public, State of Texas

My Commission Expires: _____

OWNER:

Harvey Properties Limited Partnership

STATE OF TEXAS

)

By: _____

Name:

Title:

)

COUNTY OF DALLAS

)

This instrument was acknowledged before me on the ____ day
of _____, 2024, by Harvey Properties Limited Partnership known to be the
person whose name is subscribed to the foregoing instrument, and that he executed
the same on behalf of and as the act of Owner.

Notary Public, State of Texas

My Commission Expires: _____

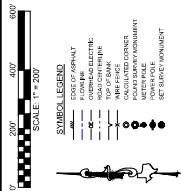
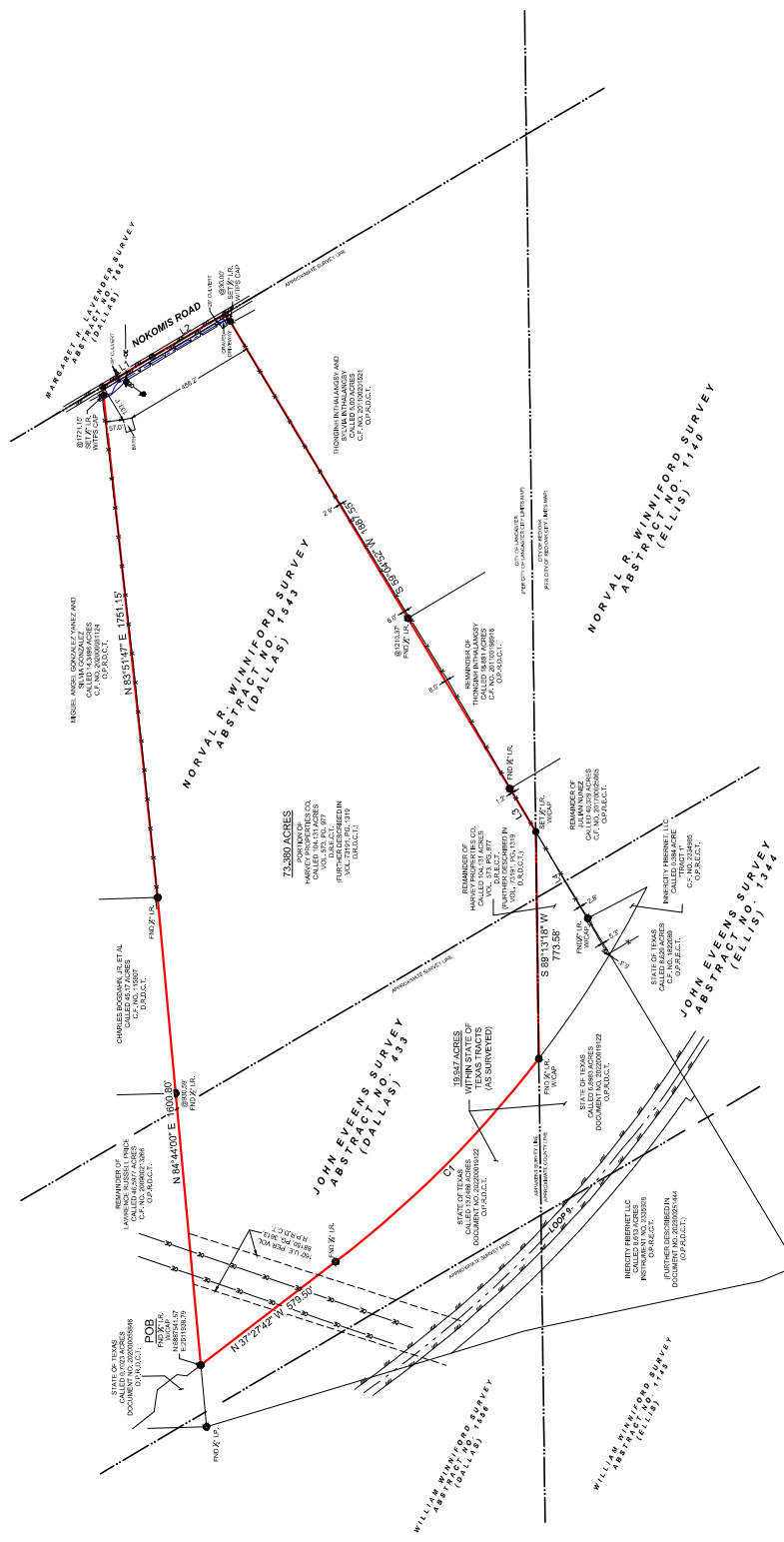


Exhibit 1

Legal Description



DATE	TIME	BY	FOR
10/10/2018	10:00 AM	[Signature]	[Signature]
10/10/2018	10:00 AM	[Signature]	[Signature]
10/10/2018	10:00 AM	[Signature]	[Signature]
10/10/2018	10:00 AM	[Signature]	[Signature]

Exhibit 1
Legal Description



TEXAS PROFESSIONAL SURVEYING, LLC.

3032 N. FRAZIER STREET, CONROE, TEXAS 77303
(936)756-7447 FAX (936)756-7448
FIRM REGISTRATION No. 100834-00

FIELD NOTE DESCRIPTION

73.380 ACRES

**IN THE JOHN EVEENS SURVEY, ABSTRACT NUMBER 433,
AND THE NORVAL R. WINNIFORD SURVEY, ABSTRACT NUMBER 1543,
DALLAS COUNTY AND ELLIS COUNTY, TEXAS**

BEING a 73.380 acre tract of land situated in the John Eveens (John A-433) Survey, Abstract Number 433, and the Norval R. Winniford (Winniford A-1543) Survey, Abstract Number 1543, being a portion of that certain called 104.131 acre tract described in instrument to Harvey Properties Co., recorded in Volume 573, Page 977, of the Deed Records of Ellis County, Texas (D.R.E.C.T.), being further described in Volume 73191, Page 1319, D.R.E.C.T., said 73.380 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod with cap found for the common corner of said remainder of 104.131 acre tract, that certain called 13.0486 acre tract described in instrument to the State of Texas, recorded under Document Number 202200019122, of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), that certain called 0.7023 acre tract described in instrument to the State of Texas, recorded under Document Number 202000055846, O.P.R.D.C.T., and the remainder of that certain called 46.5977 acre tract described in instrument to Lawrence Russell Price, recorded under Clerk' s File Number 200900213266, O.P.R.D.C.T., being the northwesterly corner of the herein described 73.380 acre tract, from which a 1/2 inch iron pipe found for the northwesterly corner of said 104.131 acre tract bears, South 84°41' 26" West, 211.12 feet, said **POINT OF BEGINNING** having a Texas State Plane value of **N: 6,887,541.57, E: 2,511,938.79**, North Central Zone, (4202), grid measurements;

THENCE North 84°44'00" East, with the common line between said remainder of 104.131 acre tract and said remainder of 46.5977 acre tract, at a distance of 930.59 feet, pass a 1/2 inch iron rod found for the common southerly corner of said remainder of 46.5977 acre tract and that certain called 45.17 acre tract described in instrument to Charles Bogdahn, Jr., et al, recorded under Clerk' s File Number 115807, of the Deed Records of Dallas County, Texas (D.R.D.C.T.), thence, with the common line between said 104.131 acre tract and said 45.17 acre tract, in all, a total distance of 1600.80 feet, to a 1/2 inch iron rod found for the common corner of said remainder of 104.131 acre tract, said 45.17 acre tract, and that certain called 14.3496 acre tract described in instrument to Miguel Angel Gonzalez Yanez and Silvia Gonzalez, recorded under Clerk' s File Number 202000081124, O.P.R.D.C.T., being an angle point in the northerly line of the herein described 73.380 acre tract;

THENCE North 83°51'47" East, with the common line between said remainder of 104.131 acre tract and said 14.3496 acre tract, at a distance of 1721.15 feet, pass a 1/2 inch iron rod with cap stamped " TPS 100834-00" set for reference in the westerly margin of Nokomis Road, in all, a total distance of 1751.15 feet, to a calculated point in the approximate centerline of said Nokomis Road, for the common easterly corner of said remainder of 104.131 acre tract and said 14.3496 acre tract, being the northeasterly corner of the herein described 73.380 acre tract;

THENCE with the approximate centerline of said Nokomis Road, the easterly line of said remainder of 104.131 acre tract, the following two (2) courses and distances:

1. South 30°52'31" East, 196.67 feet, to a calculated point for corner;
2. South 30°40'25" East, 289.78 feet, to a calculated point for the common easterly corner of said remainder of 104.131 acre tract and that certain called 5.00 acre tract described in instrument to Thonginh Inthalangsy and Slyvia Inthalangsy, recorded under Clerk' s File Number 201100201521, O.P.R.D.C.T., being the southeasterly corner of the herein described 73.380 acre tract;

THENCE South 59°04'52" West, with the common line between said remainder of 104.131 acre tract and said 5.00 acre tract, at a distance of 30.00 feet, pass a 1/2 inch iron rod with cap stamped " TPS 100834-00" set for reference in the westerly margin of said Nokomis Road, at a distance of 1210.37 feet, pass a 1/2 inch iron rod found for the common northerly corner of said 5.00 acre tract and the remainder of that certain called 18.891 acre tract described in instrument to Thonginh Inthlangsy, recorded under Clerk' s File Number 201100198916, O.P.R.D.C.T., thence, with the common line between said remainder of 104.131 acre tract and said remainder of 18.891 acre tract, in all, a total distance of 1887.55 feet, to a 5/8 inch iron rod found for the common corner of said remainder of 104.131 acre tract, said remainder of 18.891 acre tract, and the remainder of that certain called 40.329 acre tract described in instrument to Julian Nunez, recorded under Clerk' s File Number 201700025065, of the Official Public Records of Ellis County, Texas (O.P.R.E.C.T.), being an angle point in the southerly line of the herein described 73.380 acre tract;

THENCE South 58°57'13" West, 170.95 feet, with the common line between said remainder of 104.131 acre tract and said remainder of 40.329 acre tract, to a 1/2 inch iron rod with cap stamped " TPS 100834-00" set in the apparent common line between said Winniford A- 1543 and Norval R. Winniford Survey, Abstract Number 1140, and being a southeasterly corner of herein described 73.380 acre tract;

THENCE South 89°13'18" West, 773.58 feet, severing over and across said 104.131 acre tract, to a 5/8 inch iron rod with a cap found in the apparent common line of said Eveens A-433 and John Eveens Survey, Abstract Number 1344, for the common easterly corner of that certain called 6.8983 acre tract described in instrument to the State of Texas, recorded under Document Number 202200019122, O.P.R.D.C.T., and that certain called 13.0486 acre tract described in instrument to the State of Texas, recorded under Document Number 202200019122, O.P.R.D.C.T., and being the southeast corner of herein described 73.380 acre tract, being in the arc of a curve to the right;

THENCE Northwesterly, with the arc of said curve to the right, having a radius of 3743.00 feet, a central angle of 15°01'47", and a chord that bears North 44°59'16" West, 979.05 feet, with the common line between said remainder of 104.131 acre tract and said 13.0486 acre tract, to a 5/8 inch iron rod found for an angle point in the westerly line of the herein described 73.380 acre tract;

THENCE North 37°27'42" West, 579.50 feet, with the common line between said remainder of 104.131 acre tract and said 13.0486 acre tract, to the **POINT OF BEGINNING** and containing a computed area of 73.380 acres of land within this Field Note Description.

This Field Note Description was prepared from a survey performed on the ground on December 14, 2023, by Texas Professional Surveying, LLC., Registered Professional Land Surveyors and referenced to Survey Drawing Project 35365.

All coordinates, bearings, distances, and areas shown hereon are grid measurements on GPS observations and referenced to the North American Datum 1983 (NAD83), Texas State Plane Coordinate System, Central Zone, U.S. Survey Feet.

This description does not constitute a legal subdivision of land and should not be used for conveyance purposes.

June 27, 2024
Date



Thomas A. McIntyre

Exhibit 2
Design Elements/Development Standards

In consideration for the approval of M25-06, the developer includes the following design elements/development standards to correspond to the approval from the City Council, along with other items as listed below:

Additional Design Elements/Development Standards

1. **Exterior Wall Materials:** Façade Materials: One hundred percent (100%) of each exterior wall facing a public street shall be finished with brick, stone, synthetic stone, stucco, EIFS (Exterior Insulation and Finish Systems), architectural CMU (Concrete Masonry Unit), architecturally finished concrete tilt-wall construction, or architectural metal wall panels. Metal cladding shall not be permitted, except for cladding that meets ASTM standards.
2. The landscaping must adhere to all landscaping requirements required by Article 8- Landscape Regulations and Standards, per the Lancaster Development Code.
3. The owner shall be responsible for the maintenance of all landscaping. The owner is responsible for regular mowing, edging, pruning, fertilizing, watering, weeding and other such activities common to the maintenance of landscaping.
4. All required landscaping shall be maintained in a neat and orderly manner at all times. Landscaped areas shall be kept free of trash, litter, weeds and other such material or plants not a part of the landscaping. All plant material shall be maintained in a healthy and growing condition as is appropriate for the season of the year.
5. Plant materials which die shall be removed and replaced with plant material of similar variety and size within sixty (60) days. Trees with a trunk diameter in excess of six inches (6") measured twenty-four inches (24") above the ground may be replaced with ones of similar variety having a trunk caliper of no less than three inches (3") measured twenty-four inches (24") above the ground.

Exhibit 3 Conceptual Plan



SITE METRICS:

LOT	
AREA (ACRES)	±75.6
ELLIS COUNTY (ACRES)	± 2.2
DALLAS COUNTY (ACRES)	±73.4

CAMPUS

QTY OF BUILDINGS	5
IT CAPACITY PER BLDG (MW)	67.2
TOTAL IT CAPACITY (MW)	336

BUILDING

NO. OF FLOORS	3
AREA PER FLOOR (SF)	± 230,000
TOTAL AREA (SF)	± 700,000
NUMBER OF DH PER FLOOR	4
NUMBER OF DH PER BUILDING	12

WATER RETENTION

AREA (ACRES)	± 2.2
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LANDSCAPE BUFFERS

AREA (ACRES)	± 21.1 (27%)
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PARKING

ESTIMATED PER BUILDING	± 68
TOTAL PARKING (SITE)	± 340

IMPERVIOUS COVER:

AREA (ACRES)	±52 (68%)
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LEGEND:

LANDSCAPE BUFFER	
DRIVE LANE/HARDSCAPE	
UTILITIES	
SUBSTATION	
WATER RETENTION	