

**Denton County
Juli Luke
County Clerk**

Instrument Number: 97822

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AGREEMENT

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******* THIS PAGE IS PART OF THE INSTRUMENT *******

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.

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STATE OF TEXAS
COUNTY OF DENTON

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time
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Juli Luke
County Clerk
Denton County, TX

15222 KING ROAD DEVELOPMENT AGREEMENT

This 15222 King Road Development Agreement ("**Agreement**") is entered into between the **TOWN OF LITTLE ELM, TEXAS** ("**Town**"), and Kev King and Brighton King (collectively "**Developer**"), to be effective on _____, 2023.

SECTION 1

RECITALS

WHEREAS, the Development is the owner and/or developer of approximately 8.2 acres of real property with a street address of 15222 King Road located within the corporate limits of the Town ("**Property**") as depicted in *Exhibit A* attached hereto and incorporated herein by this reference for all purposes; and

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

WHEREAS, the Developer and the Town are sometimes collectively referenced in this Agreement as the "**Parties**" or, each individually, as a "**Party**"; and

WHEREAS, the Property was annexed by the Town into the Town's corporate limits in 2002, and subsequently zoned by the Town in 2003; and

WHEREAS, at the time of annexation of the Property, and at the time of zoning of the Property, the Property had some structures located on the Property, and some commercial and office warehouse uses were in operation on the Property; and

WHEREAS, Developer believes that the structures on the Property are legal; nonconforming structures and the uses currently operating on the Property are legal nonconforming uses; and

WHEREAS, the Town does not agree that all structures on the Property are legal nonconforming structures and that the uses currently operating are legal nonconforming uses; and

WHEREAS, the Town and the Developer have come to this Agreement, in order to determine going forward the rights and obligations for both Parties in regards to the status, use, and operation of the Property; and

WHEREAS, the Developer and the Town mutually desire to enter into this Agreement to provide for mutually agreeable uses for the Property, which uses the Town may, in its legislative discretion, implement through the enactment of a planned development zoning for the Property.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

SECTION 2

GENERAL DEVELOPMENT AND USE PROVISIONS

The Parties agree to the following general development and use provisions for the Property:

- A. The Development agrees to remove the existing metal fencing from the Property and to provide landscaping, bushes, and trees along the frontage of King Road that complies with the Town's landscape ordinance, per Town approval via Site Plan or Landscaping Plan, within 60 days after the construction of the portion of King Road that fronts the Property is completed by the Town of Little Elm. No permit or application fee will be charged by the Town of Little Elm in connection with this paragraph.
- B. The Developer shall submit a zoning application for a planned development district which will allow for certain current uses on the Property (which uses and their precise locations are set forth in *Exhibit A*) to continue in whatever percentage or portion of the Development is existing, or which may occur in the future, which zoning will then control the uses of the Property, as well as those uses allowed in the City's light commercial zoning districts. Once this Agreement is approved, the Town of Little Elm shall issue temporary Certificates of Occupancy for certain uses on the Development as set forth below. These uses, which are not allowed in the Light Commercial district of Little Elm, but which shall be allowed to continue on the Property during the pendency of the planned development district zoning request, and which shall be requested as a part of the uses allowed by right on the planned development district for the Property, shall include the following uses (as such uses as defined in the Town's zoning ordinances):

Office/warehouse, with no outside storage. This is defined as a building primarily devoted to storage, warehousing, and distribution of goods, merchandise, supplies, and equipment. Accessory uses may include retail and wholesale sales areas, sales offices, and display areas for products sold and distributed from the storage and warehousing areas. Also referred to as "flex space." It does not include outside storage.

Office/showroom, with no outside storage. This is defined as a building that primarily consists of sales offices and sample display areas for products and/or services delivered or performed off-premises. Catalog and telephone sales facilities are examples. Incidental retail sales of products associated with the primary products and/or services are also permitted. Warehousing facilities shall not exceed 50 percent of the total floor area. This designation does not include contractor's shop and storage yard. It does not include outside storage.

Warehouse/distribution center, with no outside storage. This is defined as a large facility used primarily for the storage of goods and may include an office incidental to the primary use, or an establishment engaged in the receipt, storage, and

distribution of goods, products, cargo, and materials to retailers, wholesalers, agents, brokers, and/or to industrial, commercial, institutional, or professional business users and may include an office incidental to the primary use. It does not include outside storage.

Contractor's Shop with no outside storage. This is defined as a facility for the contractor's office and the storage and maintenance of contractor's supplies and operational equipment, but without outside storage.

Minor Automotive Services with no outside storage. This is defined as a daytime retail operation wherein the sale of minor automotive parts and accessories and the installation and sale of window tint, paintless dent repair, car wraps and other similar uses and services. This excludes the outdoor storage of vehicles awaiting or under repair.

Business Service, with no outside storage. This is defined as establishments primarily engaged in providing off-site services not elsewhere classified to business enterprises on a fee contract basis. Examples include, but are not limited to, plumbing services, cleaning services, computer/equipment repair services with certain on-site storage needs such as fleet vehicles used to provide off-site services to customers. It does not include outside storage, which means that no fleet or other service vehicles may be parked at the premises unless it is clear that those parked vehicles are associated with the business, are clearly marked, and are parked close to the business.

Such existing uses by existing tenants, however, may not be expanded during the pendency of the planned development district zoning request. Further, should any tenants occupy a suite after the effective date of this Agreement that intends to continue such uses, or should any existing tenant expand upon or change any existing use, all such new or modified uses must be brought into compliance with all applicable Town codes. Developer agrees that any major automotive uses will be terminated and discontinued on the Property by not later than October 31, 2023.

- C. The following use shall only be allowed through the issuance of a special use permit, which special use permit requirements shall be contained in the planned development district zoning on the Property:

Contractor's Shop with outside storage. This is defined as a facility for the contractor's office and the storage and maintenance of contractor's supplies and operational equipment, but with outside storage as permitted by a special use permit.

If any of the uses set forth in this Section 2 (C) are in effect on the Property as of the date that this Agreement is approved by the Little Elm Town Council, such uses shall terminate upon the expiration of the tenant's current leases for such uses, which shall

not extend beyond October 31, 2023, unless a special use permit for the use is granted by the Town.

- D. Developer agrees that any tenant and/or lessee that proposes a use for any suite on the Property, for which the tenant and/or lessee is required to obtain a certificate of occupancy from the Town, will only be allowed by Developer to use the suite as a continuation of an allowed nonconforming use as listed in subsection B, above, or a use allowed in the Light Commercial Zoning District, until such time that the Property is rezoned through the planned development zoning process set forth in Section 3 of this Agreement, which zoning will then control the uses on the Property, and for which the Town may issue a non-temporary certificate of occupancy.
- E. If a use specified in subsection B, above, for which a temporary certificate of occupancy has been issued, is discontinued for any period of time, and no new zoning has yet been established for the Property, Developer agrees that the uses made in the suite will be terminated and that all asserted grandfathered, legal nonconforming use rights, will cease to exist for that suite.
- F. All new tenants (those who occupy a suite after the effective date of this Agreement), and all new expanded or new uses by current tenants, shall have no grandfathered, legal nonconforming use rights and such new tenant must fully comply with the Town's zoning and development standards.
- G. Any current uses or tenants in the suites that are shown in the attached Exhibit A that exist prior to the effective date of this Agreement will be grandfathered up until the current use/tenant discontinues or vacates for any period of time of the suite. Any new uses/tenants or expansion of any grandfathering uses/tenants will have to follow the Town's zoning, subdivision and development standards.
- H. The Parties have met and conferred on site at the Property with CWD, the Town's waste management provider. The current use of the property and placement of the dumpster for waste management purposes shall be sufficient for the Property until such time as the Planned Development Ordinance is enacted, which Ordinance shall govern dumpster placement and screening.
- I. The Development agrees to ensure and continue to provide parking on the Property through a Planned Development rezoning for the uses contemplated for the Property at the parking ratios currently in place on the Property, which shall be set forth in the Planned Development Ordinance application.
- J. The Developer agrees to plat the Property in compliance with this Agreement, and all applicable requirements of the Town's subdivision ordinance and, when approved, the planned development district ordinance.
- K. The Developer agrees to connect to all Town utilities as required by the Town's subdivision ordinance and in accordance with the Letter issued by Matt Mueller to

Developer on October 25, 2022 in regards to Public Utility and Drainage Easement. Town will extend Town Utilities to the Property within six (6) months after the execution of this Agreement, provided that the Town has obtained all necessary easements to allow the extension of such utilities.

- L. The Parties agree that any suite or building that has a current use by a current tenant allowed in Section B, above, will not be required to be retrofitted, repaired or replaced in order to meet current health, building, and fire code requirements unless it is to comply with a fire or hazardous substance concern of the Town's Fire Marshall which shall include, but is not necessarily limited to, updating the building/suites Knox boxes on site per the Fire Marshall's requirements, and striping the fire lanes. However, all new tenants (those who occupy a suite after the effective date of this Agreement), and all new expanded or new uses by current tenants, must meet all current health, building and fire code requirements.
- M. The Developer agrees that for any future uses not currently operating on the Property, that suite or structure must meet the requirements of the Town's adopted technical codes that apply to the uses made on the Property including, but not necessarily limited to, the Town adopted versions of the International Building Code, International Fire Code, International Mechanical Code, International Fuel Gas Code, International Plumbing Code, National Electrical Code, International Energy Conservation Code, and International- Property Maintenance Code and any additional applicable building codes that ensure the health, safety and welfare of the development.

SECTION 3

ZONING

The Parties agree that the applicable provisions of this Agreement memorialize the plan for development and use of the Property. The Town agrees that it shall promptly consider zoning the Property as a planned development district consistent with the applicable provisions of this Agreement upon approval of this Agreement. Through this Agreement, the Developer expressly consents and agrees to the zoning of the Property consistent with and as contemplated by this Agreement. Nothing in this Section, however, is intended to constitute a delegation or contracting away of the governmental authority of the Town to zone, or to determine appropriate zoning, and the Town reserves the right, at all times, to control the zoning process for the Property that is to be zoned as a planned development district.

SECTION 4

MISCELLANEOUS

- A. **Compliance with Town Regulations.** Unless otherwise provided for in this Agreement, the Developer agrees that the use of the Property shall be in accordance with all applicable Town ordinances and building/construction codes, whether now existing or arising prior to

such construction in the future (“**Town Regulations**”). In the event of a conflict between the terms of this Agreement and the Town Regulations, the terms of this Agreement shall control. All land uses, unless defined to the contrary in this Agreement, shall have the meaning ascribed to them in the Town’s zoning ordinance.

- B. **Default/Mediation**. 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. 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 non-binding mediation.
- C. **Termination**. If the City fails to amend its zoning ordinance and establish a planned development district on the Property in conformity with this Agreement, this Agreement shall terminate upon the failure of a passage of the zoning ordinance by the Town Council, or in six months’ time, whichever date comes first.
- D. **Venue**. This Agreement and any dispute arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without reference to its conflict of law rules. In the event of any dispute or action under this Agreement, venue for any and all disputes or actions shall be instituted and maintained in Denton County, Texas.
- E. **Relationship of Parties**. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership, joint venture, joint enterprise, or other relationship between or among the Parties.
- F. **Severability**. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- G. **Cumulative Rights and Remedies**. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either Party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in

addition to any other rights the Parties may have by law statute, ordinance, or otherwise. The failure by any Party to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such Party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. Any rights and remedies any Party may have with respect to the other arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement, except as otherwise expressly set forth herein.

- H. **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
- I. **Surviving Rights.** Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination or expiration of this Agreement shall survive termination or expiration.
- J. **Applicable Laws.** This Agreement is made subject to the existing provisions of the Charter of the Town of Little Elm, its present rules, regulations, procedures and ordinances, and all applicable laws, rules, and regulations of the State of Texas and the United States.
- K. **Authority to Execute.** The undersigned officers and/or agents of the Parties hereto are the property authorized persons and have the necessary authority to execute this Agreement on behalf of the Parties hereto.
- L. **Amendments.** This Agreement may be only amended or altered by written instrument signed by the Parties.
- M. **Headings.** The headings and captions used in this Agreement are for the convenience of the Parties only and shall not in any way define, limit or describe the scope or intent of any provisions of this Agreement.
- N. **Entire Agreement.** This Agreement is the entire agreement between the Parties with respect to the subject matters covered in this Agreement. There are no other collateral oral or written agreements between the Parties that in any manner relates to the subject matter of this Agreement, except as provided or referenced in this Agreement.
- O. **Notification of Sale or Transfer; Assignment of Agreement.** The Developer may, with written notice but without consent by the Town, assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of the Developer under this Agreement, to any person or entity (an "Assignee"). Each assignment shall be in writing executed by the Developer and the Assignee and shall obligate the Assignee to be bound by this Agreement. A copy of each assignment shall be provided to the Town within ten (10) business days after execution. Provided that the successor developer 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, effective upon receipt of the assignment by the Town. No assignment by the Developer shall release the Developer from any liability that resulted from an act or omission by the Developer that occurred prior to the effective date of the assignment. The Developer shall maintain true and correct copies of all assignments made by the Developer to Assignees, including a copy of each executed assignment and the Assignee's notice information.

- P. **Sovereign Immunity**. The Parties agree that the Town has not waived its sovereign immunity from suit by entering into and performing its obligations under this Agreement.
- Q. **Exactions/Infrastructure Costs**. The Developer has been represented by legal counsel, or has had an opportunity to do so, in the negotiation of this Agreement, and been advised, or has had the opportunity to have legal counsel review this Agreement and advise the Developer, regarding the Developer's rights under Texas and federal law. The Developer hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the Town in this Agreement, if any, are roughly proportional or roughly proportionate to the proposed development's anticipated impact. The Developer 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, the Developer hereby releases the Town 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. This release does not include any future requests or exactions by the Town not specified in this Agreement.
- R. **Rough Proportionality**. The Developer hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution with respect to infrastructure requirements imposed by this Agreement. The Developer and the Town 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 infrastructure requirements imposed this Agreement. This waiver and release does not include any future requests or exactions by the Town not specified in this Agreement.
- S. **Non-Boycott of Israel**. In accordance with Chapter 2270, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the Company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Chapter 2270 does not apply to (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the company is not subject to Chapter 2270 for the reasons stated herein, the signatory executing this contract

on behalf of the Developer verifies by the Developer's signature on this Agreement that the company does not boycott Israel and will not boycott Israel during the term of this contract.

- T. **Form 1295 Certificate.** The Developer agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Developer agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and 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 Town, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.
- U. **Prohibition of Contracts with Certain Companies.** In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that the Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.
- V. **Verification Against Discrimination of Firearms or Ammunition Industries.** Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 19, 87th Tex. Reg. Session (2021) (effective September 1, 2021) unless otherwise exempt, if the Developer employs at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the Town, the Developer represents that: (1) the Developer does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Developer will not discriminate during the Term of the Agreement against a firearm entity or firearm trade association.
- W. **Verification Against Discrimination Developer Does Not Boycott Energy Companies.** Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 13, 87th Tex. Reg. Session (2021) (effective September 1, 2021) unless otherwise exempt, if the Developer employs at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the Town, the Developer represents that: (1) the Developer does not boycott energy companies; and (2) the Developer will not boycott energy companies during the Term of this Agreement.

[Signature Pages to Follow]

EXECUTED by the Parties on the dates set forth below, to be effective as of the date first written above.

TOWN OF LITTLE ELM, TEXAS

By: [Signature]
Name: Curtis J. Cornelious
Title: Mayor
Date: 9/5/2023

ATTEST:

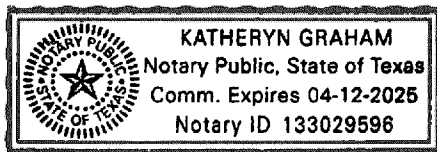
By: [Signature]
Name: Caitlin Biggs
Title: Town Secretary
Date: 09-05-2023



STATE OF TEXAS §
 §
COUNTY OF DENTON §

This instrument was acknowledged before me on the 5 day of September, 2023 by Curtis J. Cornelious, the Mayor of the Town of Little Elm, Texas, on behalf of the Town.

(SEAL)



[Signature]
Notary Public

Katheryn Graham
Name printed or typed

My Commission Expires: 4/12/2025

DEVELOPER:

By: K. Mehdizadeh
Name: KAMRAN MEHDIZADEH
Title: Managing Member
Date: 8/7/23

STATE OF TEXAS §
 §
COUNTY OF DENTON §

This instrument was acknowledged before me on the ____ day of _____, 2023 by _____, as _____ of _____, a Texas _____, on behalf of said company.

(SEAL)

Notary Public

Name printed or typed

My Commission Expires: _____

*See attached
Notary Seal
8-8-23*

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles)

On August 8, 2023 before me, Gina Elizabeth Cupp Notary Public
(insert name and title of the officer)

personally appeared Kamran Mehdizadeh
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Gina Elizabeth Cupp (Seal)



EXHIBIT A – LIST OF ALL CURRENT LAND USES AND THEIR LOCATIONS

701 Elite Outdoor Living	Bld 7	702 Frisco Craft Studio	703 Elevate Life Church
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801 Mark Z Fitness and Nutrition	Bld 8	802 Tumble and Stunt	803 Tumble and Stunt
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901 Vacant	Bld 9	902 Vacant	903 Bepproise Performance
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501 SGSG Groceries	502 Vacant	503 Gym 580
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109 Marr Strength & Conditioning	209 People Cool Pool	309 SGSG Groceries
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301 Trident Plumbing	Bld 3	302 Pest Solutions of North Texas	303 Totally Awesome Crier
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401 Elevated Roofing	Bld 4	402 Elevated Roofing	403 Crystal Heirress
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1004 Pulse Stage Lighting	1003 The Wood Shed	1002 Legacy Plumbing	1001 Pattern Solutions
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101 Sharp Construction	Bld 1	102 BSP Motorsports	103 BSP Motorsports
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201 Molinar's Carpet Care	Bld 2	202 Pristine Auto	203 Pristine Auto	204 Vacant
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1101 Wyle's Custom Construction	Bld 11	1102 Vacant	1103 LovePacs
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