

Location: East Lamar Boulevard
Property Owner: Arlington Commons Lands, LLC
835 East Lamar Blvd
Suite 175
Arlington TX 76011

About the Project

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

Goals of the Project

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

Current Status

Benefit to City

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

NOTE: 2nd Amended Master Agreement and numerous subsequent agreements

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

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

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

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

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

Incentives Allowed

Agreement Number and Nature of Agreement	Amount Authorized	Amount Paid to Date
Phase I Development Grant - in exchange for the demolition of the existing apartments within the Phase I Project City shall make a one time grant in the amount of \$1.5m to Developer. This will be paid within 30 days of Developer's presentation to City of an agreement with the architect, engineer or other design professionals to the Phase I Project.	\$ 1,500,000	\$ 1,500,000
Subsequent Phase Development Grant - in exchange for the demolition of the existing apartments within the Phase II or Phase III Project City shall make a one time grant in the amount of \$500k to Developer. City shall pay this grant when multi-family structures in Phase II or III have been demolished.	\$ 500,000	\$ 500,000
Grant for Detention and Drainage Improvements - in exchange for the demolition of the existing apartments within the Phase I Project City shall provide to Developer a grant in an amount not to exceed \$400k for the actual costs for the detention and drainage improvements for the Project. These improvements will be installed as part of Phase I of the Project. City will reimburse for actual costs not to exceed \$400k.	\$ 400,000	\$ 400,000
Grant for Demolition and Remediation - in exchange for demolition of existing apartments in each phase of the Project City shall provide to Developer a grant not to exceed \$1,808,592 for the actual costs of the demolition and environmental remediation of the existing structures located on the Premises.	\$ 1,808,592	\$ 1,808,592
Tax Abatement - for each Phase of the Project Developer shall be eligible to receive for a period of ten years a 90% tax abatement on the Value of the Premises and Real Property Improvements located on the Premises for that Phase of the Project (excluding the Base Year Value).	based on values at time of completion	\$ -
Grant related to Ad Valorem Taxes - for each Phase of the Project Developer shall be eligible to receive for a period of twenty years an annual grant paid from legally available funds by City to Developer equal to 90% of the taxes paid by Developer on the Value of the Premises and the Real Property Improvements located on the Premises for that Phase of the Project (excluding the Base Year Value). The twenty-year period shall begin January 1 in the year after the expiration of the tax abatement provided for that same Phase.	based on values at time of completion	\$ -
Fee Waiver and Grant - in exchange for Developer's agreement to construct a particular portion of the Project, City agrees to waive the payment of all building, park, or other fee of any kind related to the construction of that portion of the Project. In addition, City agrees to grant to Developer an amount equivalent to the impact fees paid by Developer for the Project.	estimated at \$750k	\$ -
Ancillary City Improvements - City and Developer will jointly design the ancillary City improvements. City will contribute a maximum of \$1.25m for the public improvements to be determined jointly by City and Developer.	\$ 1,250,000	\$ -
Grant for Difference in Purchase Price of Option Property - in exchange for demolishing existing apartments, City shall provide Developer a grant not to exceed \$5m. Such grant shall be paid only if the real property considered the Option Property is sold by Developer within three year from obtaining a Certificate of Occupancy for the 350 units in the Phase 1-A Project.	\$ 5,000,000	\$ -
Eligibility for Additional Incentives - If City is not called upon to provide the grant for the Option Property, and Developer has provided notice to City that it is not seeking the grant or the time to request such grant has expired, the City shall contribute an additional \$2.5m towards public improvements determined and designed jointly by City and Developer. Additionally, the Developer shall also be eligible to receive a grant in an amount not to exceed \$350k as reimbursement for the actual cost of detention and drainage improvements that are not reimburse by the Grant for Detention and Drainage Improvements, and a grant in an amount not to exceed \$2.1m as reimbursement for the actual cost of demolition and remediation that is not reimbursed by the Grant for Demolition and Remediation.	\$ 4,950,000	\$ -

Ordinance No. 14-071

An ordinance establishing Reinvestment Zone Number Forty-One; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; and becoming effective upon second reading

WHEREAS, the City Council of the City of Arlington, Texas, desires to promote the development or redevelopment of a certain area within its jurisdiction by the establishment of a Reinvestment Zone for commercial-industrial tax abatement; and

WHEREAS, on April 7, 2009, the City Council of the City of Arlington, Texas passed Resolution No. 09-079 authorizing staff, following a briefing to City Council regarding creation of the zone, to give notice required by law to call public hearings relative to creation of reinvestment zones for tax abatement; and

WHEREAS, a public hearing was held at which time interested persons were entitled to speak and present evidence for or against the designation of the property described in Exhibit "A" as Reinvestment Zone Number Forty-One, and notice of such public hearing was published in a newspaper of general circulation in the City of Arlington not later than the seventh day before the date of the scheduled hearing; and

WHEREAS, the City Council of the City of Arlington has established guidelines and criteria governing tax abatement agreements and has stated that the City elects to become eligible to participate in tax abatement; NOW THEREFORE,

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

1.

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

2.

The City Council, after conducting a public hearing and having considered all relevant evidence and testimony, has made the following findings and determinations based on such evidence and testimony:

- A. That a public hearing on the designation of Reinvestment Zone Number Forty-One has been properly called, held and conducted, and that notice of such hearing was published in accordance with the law; and
- B. That the boundaries of Reinvestment Zone Number Forty-One should be the proposed area of land more fully described in the property description attached hereto as Exhibit "A" and depicted on the map attached hereto as Exhibit "B"; and
- C. That the improvements sought to be made in Reinvestment Zone Number Forty-One are feasible and practical and would be a benefit to the land to be included in the Zone and to the City of Arlington following the expiration of an executed Tax Abatement Agreement; and
- D. That the proposed area of land to be designated Reinvestment Zone Number Forty-One is reasonably likely, as a result of this designation, to contribute to the retention or expansion of primary employment or to attract major investment in the Zone that would be a benefit to the property, thereby contributing to the economic development of the City of Arlington.

3.

In accordance with State law, the City of Arlington hereby officially creates Reinvestment Zone Number Forty-One for commercial-industrial tax abatement, which Zone shall hereafter encompass only that certain area of land more fully described in the property description attached hereto as Exhibit "A" and depicted on the map attached hereto as Exhibit "B"; and such Reinvestment Zone shall be officially designated as Tax Abatement Reinvestment Zone Number Forty-One of the City of Arlington, Texas.

4.

The designation of Reinvestment Zone Number Forty-One of the City of Arlington, Texas shall expire five (5) years after the effective date of its designation and may be renewed.

5.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington; and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

6.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

7.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

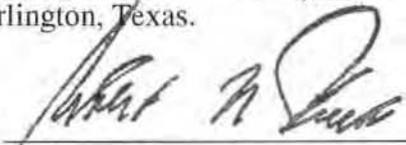
8.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

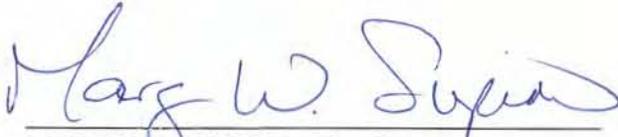
9.

This ordinance shall become effective upon second reading.

PRESENTED AND GIVEN FIRST READING on the 4th day of November, 2014, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 18th day of November, 2014, by a vote of 7 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

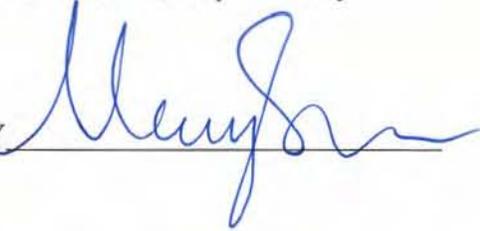

ROBERT N. CLUCK, Mayor

ATTEST:

A handwritten signature in blue ink, appearing to read "Mary W. Supino", written over a horizontal line.

MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY 

A handwritten signature in blue ink, appearing to read "Jay Doegey", written over a horizontal line.

Exhibit "A"

LEGAL DESCRIPTION
ARLINGTON COMMONS LANDS

Arlington Commons Lands is the sole owner of a 24.528 acre tract of land situated in the J. M. Henderson Survey, Abstract No. 696 and being all of Lot A-R, Block 5 of Parkway Central, an addition to the City of Arlington, according to plat filed for record in Volume 388-61, Page 1, Plat Records, Tarrant County, Texas (PRTCT), a portion of Lot D, Block 6 of Parkway Central, an addition to the City of Arlington, Tarrant County, Texas as recorded in Volume 388-75, Page 59 (PRTCT), a portion of Van Buren Drive (a variable 60.00 feet wide public right-of-way), all of Lot A, Block 6 of Parkway Central, an addition to the City of Arlington, according to plat filed for record in Volume 388-53, Page 96, Plat Records, Tarrant County, Texas (PRTCT), all of Lot B, Block 6 of Parkway Central, an addition to the City of Arlington, according to plat filed for record in Volume 388-61, Page 96, Plat Records, Tarrant County, Texas (PRTCT) and being more particularly described by metes and bounds as follows:

BEGINNING at a found 1/2 inch iron rod for corner, said point being at a 1/2 inch iron rod found with a cap stamped "GAI" for the Southwesterly corner of said Lot A-R, Block 5.

THENCE North 00°11'11" West, a distance of 393.17 feet to a point for corner;

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

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

THENCE North 88°11'13" East, a distance of 380.88 feet to a point for corner;

THENCE North 01°06'10" West, a distance of 505.86 feet to a point for corner;

THENCE North 89°32'21" East, a distance of 142.55 feet to a point for corner;

THENCE South 01°01'09" East, a distance of 402.62 feet to a for the beginning of a tangent curve to the right having a radius of 423.50 feet, a central angle of 12°35'00", and a long chord which bears South 05°16'21" West, 92.82 feet;

THENCE along said curve to the right, an arc distance of 93.01 feet to a point for corner;

THENCE South 11°33'51" West, a distance of 12.86 feet to a point for corner;

THENCE North 89°27'51" East, a distance of 61.36 feet to a point for corner;

THENCE North 89°27'51" East, a distance of 375.00 feet to a point for corner;

THENCE North 54°18'04" East, a distance of 935.26 feet to a point for corner;

THENCE South $00^{\circ}22'23''$ West, a distance of 663.44 feet to a for the beginning of a curve to the right having a radius of 1269.86 feet and a central angle of $9^{\circ}31'59''$ and a long chord which bears South $81^{\circ}56'21''$ West, 211.04 feet;

THENCE along said curve to the right an arc distance of 211.28 feet to a for the beginning of a reverse curve to the left having a radius of 1041.05 feet, a central angle of $23^{\circ}32'44''$, and a long chord which bears South $73^{\circ}09'17''$ West, 424.81 feet;

THENCE along said curve to the left, an arc distance of 427.81 feet to a for the beginning of a compound curve to the left, having a radius of 1127.24 feet and a central angle of $6^{\circ}07'07''$, and a long chord which bears South $59^{\circ}37'24''$ West, 120.32 feet;

THENCE along said curve to the left an arc distance of 120.38 feet to a point for corner;

THENCE South $56^{\circ}33'51''$ West, a distance of 314.56 feet to a point for corner;

THENCE South $56^{\circ}33'51''$ West, a distance of 60.00 feet to a point for corner;

THENCE South $56^{\circ}33'51''$ West, a distance of 685.00 feet to a for the beginning of a tangent curve to the right having a radius of 786.70 feet, a central angle of $14^{\circ}20'10''$, and a long chord which bears South $63^{\circ}43'56''$ West, 196.33 feet;

THENCE along said curve to the right, an arc distance of 196.84 feet to a for the POINT OF BEGINNING and CONTAINING 1,068,480 square feet, 24.528 acres of land, more or less.



Parkway Central

REINVESTMENT ZONE #41

30



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

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

WITNESSETH:

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

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

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

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

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

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

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

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

I. DEFINITIONS

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

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

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

II. IMPROVEMENT CONDITIONS AND REQUIREMENTS

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

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

III. INCENTIVES

- A. The Phase I Development Grant.

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

B. Subsequent Phase Development Grant.

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

C. Grant for Detention and Drainage Improvements.

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

D. Grant for Demolition and Remediation.

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

E. Tax Abatement.

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

F. Grant related to Ad Valorem Taxes.

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

G. Fee Waiver and Grant.

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

H. Ancillary CITY Improvements.

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

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

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

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

J. Eligibility for Additional Incentives.

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

IV. ASSIGNMENTS

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

V. INDEMNIFICATION

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

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

VI. INSPECTIONS

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

VII. BREACH AND RECAPTURE

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

VIII. PROTESTS

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

IX. NOTICE

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

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

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

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

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

X. FORCE MAJEURE

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

XI. COUNTERPARTS

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

XII. AUTHORITY

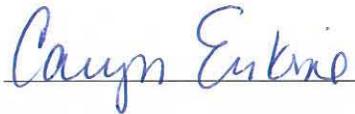
This Agreement was authorized by Resolution No. 14- 300 of the Arlington City Council, authorizing the City Manager or his designee to execute this Agreement on behalf of CITY and shall constitute a valid and binding agreement between CITY and DEVELOPER upon execution.

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

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

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

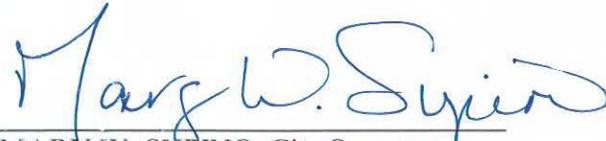
WITNESS:



CITY OF ARLINGTON, TEXAS

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

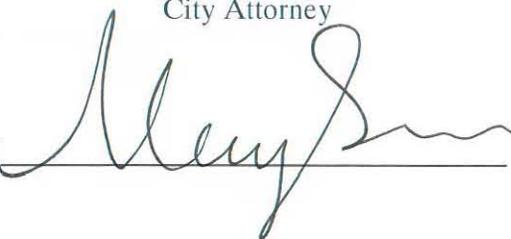
ATTEST:



MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:

City Attorney

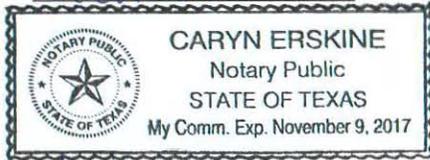
BY 

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

ARLINGTON COMMONS LANDS, LLC
Acknowledgment

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

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



11/9/2017
My Commission Expires

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

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

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

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

7/1/18
My Commission Expires

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

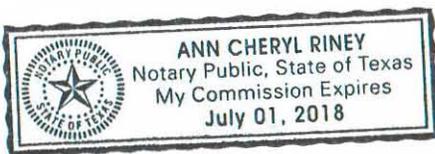


EXHIBIT "A"

The Premises

TRACT A - HUNTINGTON CHASE APARTMENTS

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

TRACT B - POINTE AT NORTH HIGHLAND APARTMENTS

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

TRACT C - COUNTRY WOOD APARTMENTS

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

TRACT D - WATER CHASE APARTMENTS

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

TRACT E - HUNTINGTON CHASE APARTMENTS

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

Exhibit A

380 Tracts & Boundary

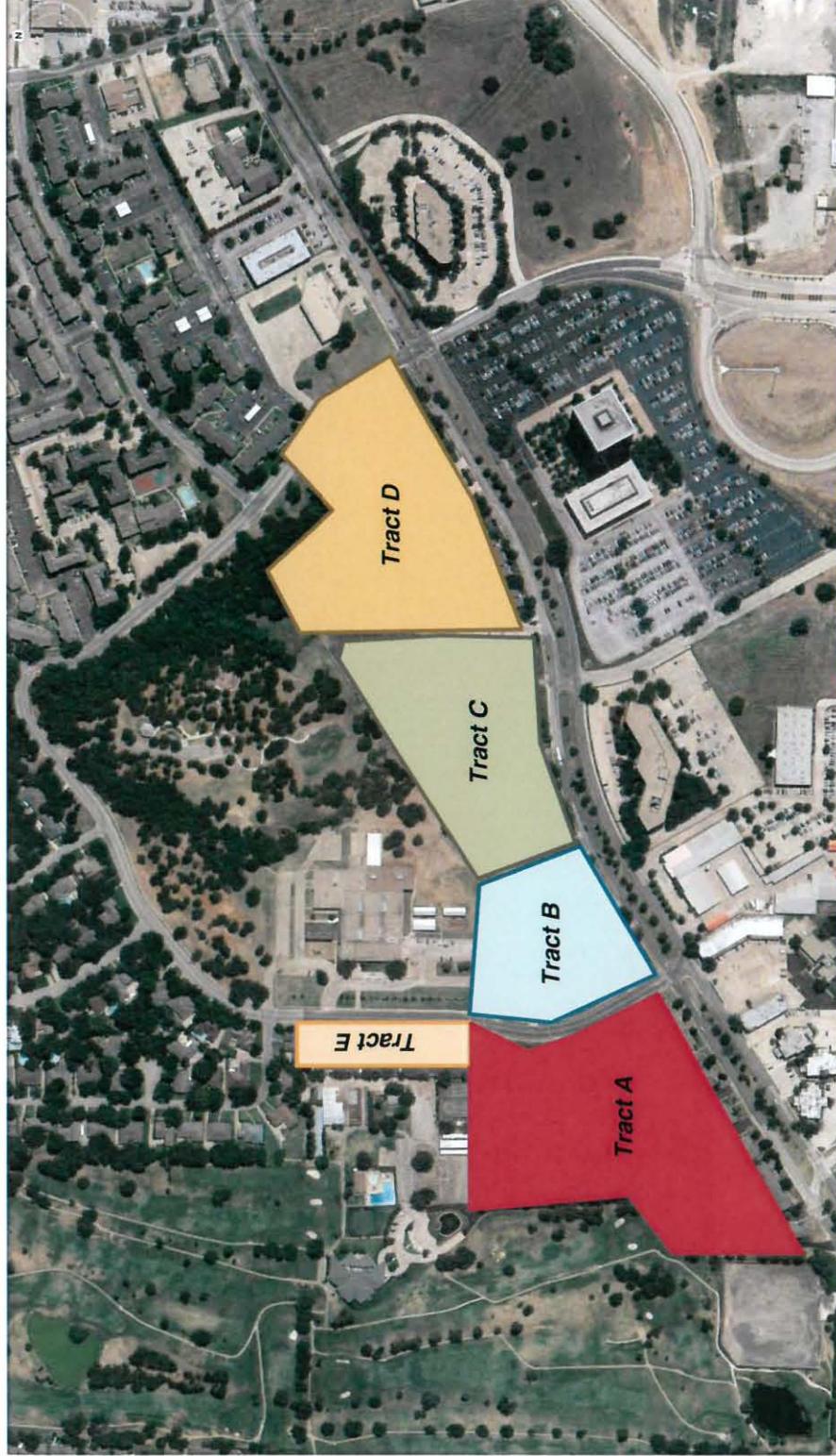


Exhibit B

Project With Phasing

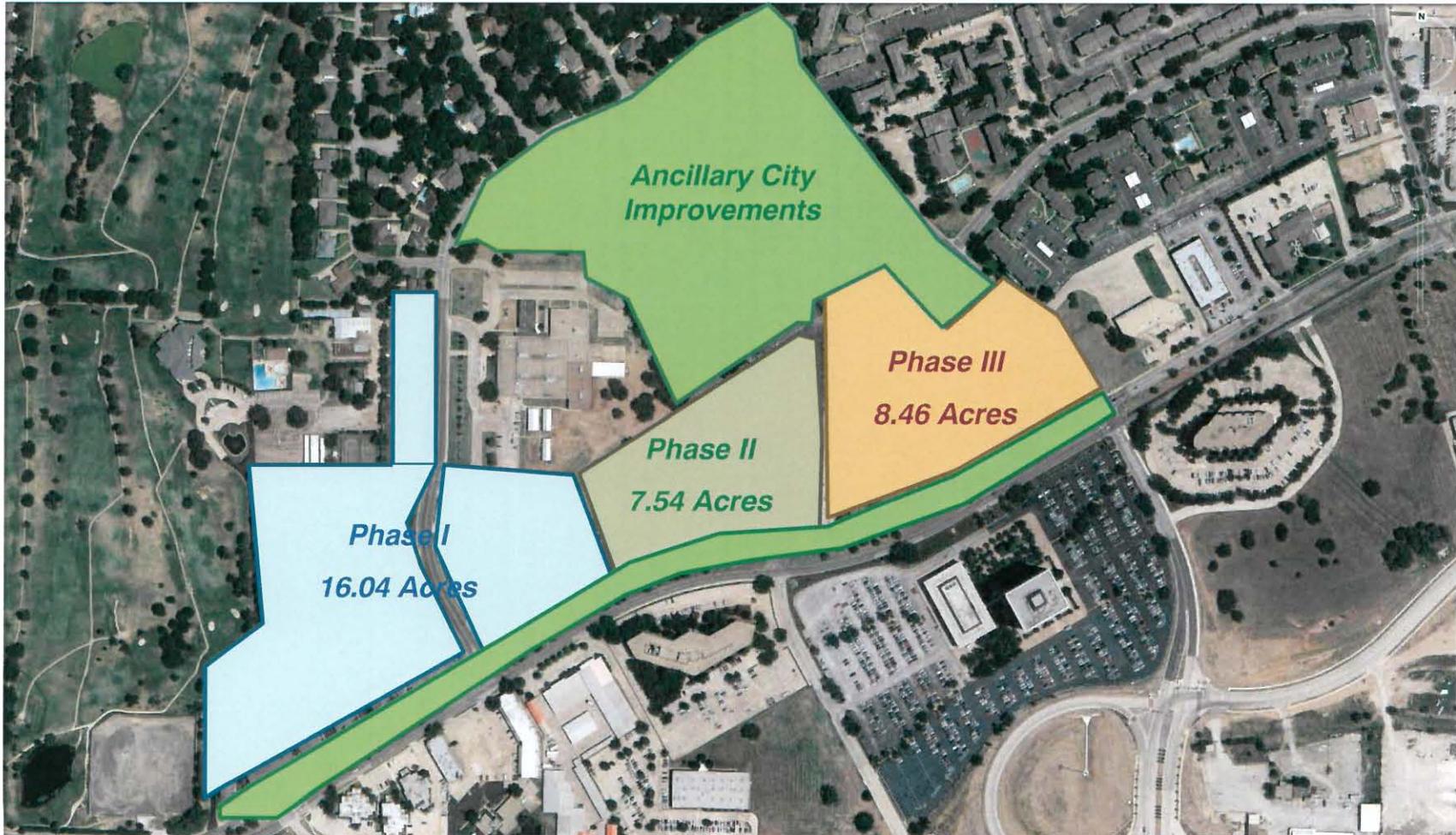
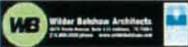


EXHIBIT "C"

EXHIBIT "C"

Lamar Redevelopment



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



Lamar Redevelopment





EXHIBIT "D"

Country Wood

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

The Pointe

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

Resolution No. 14-300

A resolution authorizing the execution of the Second Amended and Restated Master 380 Economic Development Program Agreement by and between Arlington Commons Lands, LLC and the City of Arlington, Texas amending the First Amended and Restated Master 380 Economic Development Program Agreement by and between JCKPL AC, LLC and the City of Arlington, Texas for economic development incentives associated with demolition, remediation and redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington, Texas, to reflect the assignment of the First Amended and Restated Master 380 Economic Development Program Agreement from JCKPL AC, LLC to Arlington Commons Lands, LLC, and to provide for changes to the grants related to ad valorem taxes, to provide for a tax abatement, and to provide for additional grant funds for demolition and environmental remediation

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

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

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

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

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

I.

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

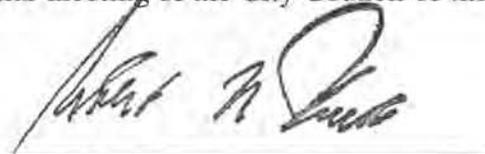
II.

That the City Manager or his designee is authorized to execute the Second Amended and Restated Master 380 Economic Development Program Agreement with Arlington Commons Lands, LLC and other necessary or required parties to provide certain economic incentives in exchange for Arlington Commons Lands, LLC's demolition, remediation and redevelopment in the area of East Lamar Boulevard and Lincoln Drive in the City of Arlington.

III.

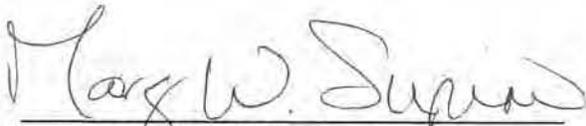
A substantial copy of the Second Amended and Restated Master 380 Economic Development Program Agreement is attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

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



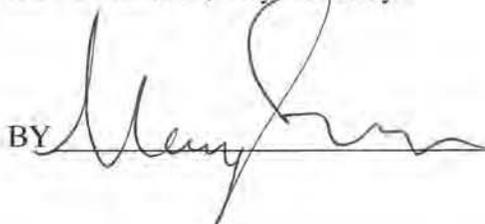
ROBERT N. CLUCK, Mayor

ATTEST:



MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY 

WHEREAS, the City Council finds that it is in the public interest to provide the tax abatement; NOW THEREFORE,

The CITY and OWNER, for and in consideration of the mutual premises and promises contained herein, do hereby agree, covenant and contract as set forth below:

I.
Definitions

- A. “Added Taxable Value” is defined as the value of the Eligible Property and Premises above the Base Year Value, as appraised by the Tarrant Appraisal District.
- B. “Base Year Value” is defined as the tax year 2015 taxable value of the Premises in Reinvestment Zone Number Forty-One, on January 1, 2015, as finally determined by Tarrant Appraisal District.
- C. “Eligible Property” is defined as real property improvements as provided in **Exhibit “A”** erected or affixed to the Premises after this Agreement is signed and through June 30, 2018. **Exhibit “A”** is attached hereto and incorporated herein for all purposes.
- D. “Premises” are defined as the real property (land only) located at 425 East Lamar Boulevard, described in **Exhibit “B”**, which existed on January 1, 2015, in Reinvestment Zone Number Forty-One, that is owned by OWNER. **Exhibit “B”** is attached hereto and incorporated herein for all purposes.
- E. “Phase I and Phase II Properties” are defined as the real property (land and improvements) located at 425, 501, and 525 East Lamar Boulevard and 1900 Van Buren Drive, described by metes and bounds in **Exhibit “C”**.
- F. “Reinvestment Zone Number Forty-One” is defined as the real property located in the City of Arlington and described by City of Arlington Ordinance No.14-071, attached hereto as **Exhibit “D”**.

II.
General Provisions

- A. The Premises are not in an improvement project financed by tax increment bonds.
- B. The Premises are not owned or leased by any member of the City Council or any member of the Planning and Zoning Commission of CITY.
- C. It is acknowledged and agreed by the parties that the completion of the Eligible Property is consistent with the purposes of encouraging development or redevelopment of the Reinvestment Zone.

III.
Improvement Conditions and Requirements

- A. OWNER shall cause the demolition of the existing real property improvements located as of June 1, 2013 on the Phase I and Phase II Properties on or before June 30, 2015.
- B. OWNER shall improve the Premises by completing the Eligible Property by June 30, 2018. Completion shall be demonstrated by obtaining all final requisite certificates of occupancy for the Eligible Property.
- C. OWNER's completion of the Eligible Property of this Agreement must result in Added Taxable Value above the Base Year Value ("Added Value") of at least \$7,000,000 the tax year beginning January 1, 2019 as finally determined by the Tarrant Appraisal District ("TAD").
- D. OWNER shall maintain the Eligible Property on the Premises for the term of this agreement and at all times maintain a Multi-Family License as required by Article XIV of the Uniform Housing Code Chapter of the Code of the City of Arlington.
- E. All proposed Eligible Property shall conform to the applicable building codes, zoning ordinances and all other ordinances and regulations or laws.
- F. OWNER shall not allow the ad valorem taxes owed to CITY on any property owned by OWNER and located within the City of Arlington to become delinquent beyond the last day they can be paid without assessment of penalty.
- G. OWNER shall not fail to render for taxation any property located within the City of Arlington.
- H. OWNER covenants and certifies that OWNER does not and will not knowingly employ an undocumented worker as that term is defined by section 2264.001(4) of the Texas Government Code. In accordance with section 2264.052 of the Texas Government Code, if OWNER is convicted of a violation under 8 U.S.C. Section 1324a(f), OWNER shall repay to the CITY the full amount of taxes abated under Section IV of this Agreement, plus 10% per annum from the date the abatement was made. Repayment shall be paid within 120 days after the date following such conviction that OWNER receives notice of violation from the CITY as provided by 2264.101(c) of the Texas Government Code. OWNER shall not be liable for a violation by a subsidiary, affiliate, or franchisee of OWNER or by a person with whom OWNER contracts.

IV.
Abatement Allowed

- A. If the Improvement Conditions and Requirements set forth in Section III are met, CITY agrees to exempt from taxation ninety percent (90%) of the Added Taxable Value. The exemption shall be for a period as follows, from the tax year beginning January 1, 2019 through and including the tax year beginning January 1, 2028.

V.
Reports, Audits and Inspections

- A. Annual Certification and Reports - Pursuant to state law, OWNER shall certify annually to taxing units that OWNER is in compliance with the terms of the Agreement, and shall provide taxing units with reports and records reasonably necessary to support each year of the Agreement, as follows:
1. Certification -- OWNER shall complete and certify a tax abatement certification to be provided by CITY for each year of the Agreement, to be due annually not later than April 1. This certification shall include reports on Eligible Property values and costs, a narrative description of the project's progress, and other submittals required by the Agreement.
 2. Additional Reports -- Additionally, throughout the term of this Agreement, OWNER shall furnish CITY any additional records and information reasonably requested to support the reports required by this Agreement.
- B. Right to Audit Books and Records - CITY shall have the right to audit the books and records related to the Eligible Property and supporting the Eligible Property reports. CITY shall notify OWNER in advance in writing of their intent to audit in order to allow OWNER adequate time to make such books and records available.
- C. Inspection - At all times throughout the term of this Agreement, CITY and TAD shall have reasonable access to the Premises for the purpose of inspecting the Premises to ensure that the Eligible Property is constructed, installed, maintained and operated in accordance with the terms of this Agreement. All inspections shall be conducted in a manner as to not unreasonably interfere with the installation and operation of the Eligible Property on the Premises. The inspections shall be conducted within a reasonable time period after notice by CITY or TAD to OWNER, provided, however, that all inspections shall be made with one (1) or more representative(s) of OWNER present and in accordance with the safety standards of OWNER.

VI.
Use of Premises

The Premises at all times shall be used in a manner that is consistent with CITY's zoning ordinances as well as any other laws, and in a manner consistent with the general purpose of encouraging development within Reinvestment Zone Number Forty-One.

VII.
Breach and Recapture

- A. Breach - A breach of this Agreement may result in termination of this Agreement. The following conditions shall constitute a breach of this Agreement:
1. The Premises are abandoned by OWNER by ceasing to operate the Eligible Property as multi-family for a consecutive period of at least six months, or operating at an occupancy rate below 33% for a consecutive period of six months or more in abatement years 5-10; or
 2. OWNER fails to complete and adhere to the OWNER's Improvement Conditions and Requirements as specified in Article III above; or
 3. OWNER fails to comply with the reporting or inspection requirements described in Article V of this Agreement.
- B. Notice of Breach - In the event that CITY makes a reasonable determination that OWNER has breached this Agreement then CITY shall give OWNER written notice of such breach. OWNER shall have sixty (60) days following receipt of said written notice to reasonably cure such breach or this Agreement may be terminated by CITY. Notice of default shall be in writing and shall be delivered by personal delivery or certified mail, return receipt requested, to OWNER at the addresses provided in Article VIII of this Agreement.
- C. Tax Lien Not Impaired - It is expressly agreed and acknowledged between the parties to this Agreement that nothing in this Agreement shall be deemed or construed to affect the lien for taxes against the property established by Section 32.01 of the Tax Code of the State of Texas. Such lien shall secure the payment of all taxes, penalties and interest ultimately imposed on the property, including any taxes abated and subject to recapture under this Agreement. Any such lien may be fully enforced pursuant to the provisions of the Code.

VIII.
Notice

All notices called for or required by this Agreement shall be addressed to the following, or such other party or address as either party designates in writing, by certified mail, return receipt requested, postage prepaid, or by hand delivery:

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

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

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

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

IX.
City Council Authorization

This Agreement was authorized by resolution of the City Council authorizing the City Manager or his designee to execute this Agreement on behalf of the CITY.

X.
Severability

In the event any section, subsection, paragraph, sentence, phrase or word is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

XI.
Estoppel Certificate

Any party hereto may request an estoppel certificate from another party hereto, so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which if requested, will be addressed to a subsequent purchaser or assignee of OWNER, shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default (or if default exists the nature of same), the remaining term of this Agreement, the levels and remaining term of the abatement in effect and such other matters reasonably requested by the party(ies) to receive the certificates.

XII.
Owner's Standing

OWNER, as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions or City Council actions authorizing same, and OWNER shall be entitled to intervene in said litigation.

XIII.
Applicable Law

This Agreement shall be construed under the laws of the State of Texas. Venue for any action under this Agreement shall be the State's District Court of Tarrant County, Texas. This Agreement is performable in Tarrant County, Texas.

XIV.
Indemnification

It is understood and agreed between the parties that the OWNER, in performing its obligations hereunder, is acting independently, and CITY assumes no responsibility or liability to third parties in connection therewith, and OWNER agrees to indemnify and hold harmless CITY from any such responsibility or liability. It is further understood and agreed among the parties that CITY, in performing its obligations hereunder, is acting independently, and the OWNER assumes no responsibility or liability to third parties in connection therewith, and CITY agrees to the extent allowed by law to indemnify and hold harmless OWNER from any such responsibility or liability.

XV.
Force Majeure

It is expressly understood and agreed by the parties to this Agreement that the parties shall not be found in default of this Agreement if any party's failure to meet the requirements of this Agreement is delayed by reason of war, act of God, fire or other casualty of a similar nature.

XVI.
No Other Agreement

This Agreement embodies all of the agreements of the parties relating to its subject matter as specifically set out herein, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified or supplemented only by an instrument or instruments in writing executed by the parties.

XVII.
Recordation of Agreement

A certified copy of this Agreement in recordable form shall be recorded in the Deed Records of Tarrant County, Texas.

XVIII.
Procurement of Goods and Services from Arlington Businesses and/or Historically Underutilized Businesses

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

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

XIX.
Headings

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XX.
Successors and Assigns

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

XXI.
Counterparts

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

XXII.
No Third-Party Beneficiaries

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

XXIII.
Remedies

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

XXIV.
Termination

This Agreement shall terminate, in accordance with the terms of this Agreement, unless extended by written agreement of the parties or a written instrument signed by all parties evidencing a delay by force majeure; however, in no event shall the abatement exceed 10 years.

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

**ARLINGTON COMMONS LANDS,
LLC**

a Texas Limited Liability Company

By its member: The Nehemiah, LLC

a Texas Limited Liability Company

BY 
Robert H. Kembel

Manager of The Nehemiah, LLC

Date 12-9-2017

WITNESS:

Caryn Estline

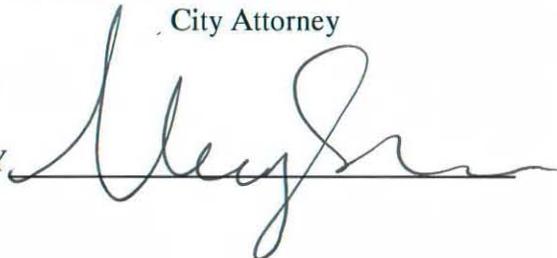
CITY OF ARLINGTON, TEXAS

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

ATTEST:


MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:

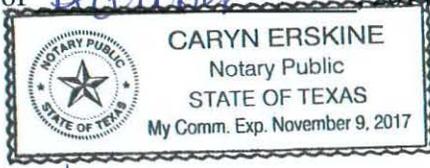
City Attorney
BY 

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

ARLINGTON COMMONS LANDS, LLC
Acknowledgment

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

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



Caryn Erskine
Notary Public in and for

The State of Texas
Caryn Erskine
Notary's Printed Name

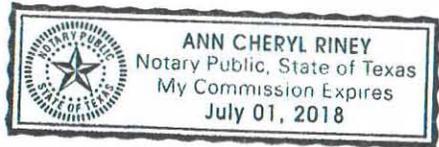
11/9/2017
My Commission Expires

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

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

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



Ann Cheryl Riney
Notary Public in and for

The State of Texas
Ann Cheryl Riney
Notary's Printed Name

7/1/18
My Commission Expires

Exhibit "A"

ELIGIBLE PROPERTY- Phase I-A Project

Phase IA of a multi-family redevelopment project to include the construction of new multi-family facility comprised of at least 350 multi-family units and a structured parking garage. Construction of the Phase I-A Project with a total minimum capital investment of \$100,000 per multi-family unit in overall project costs.

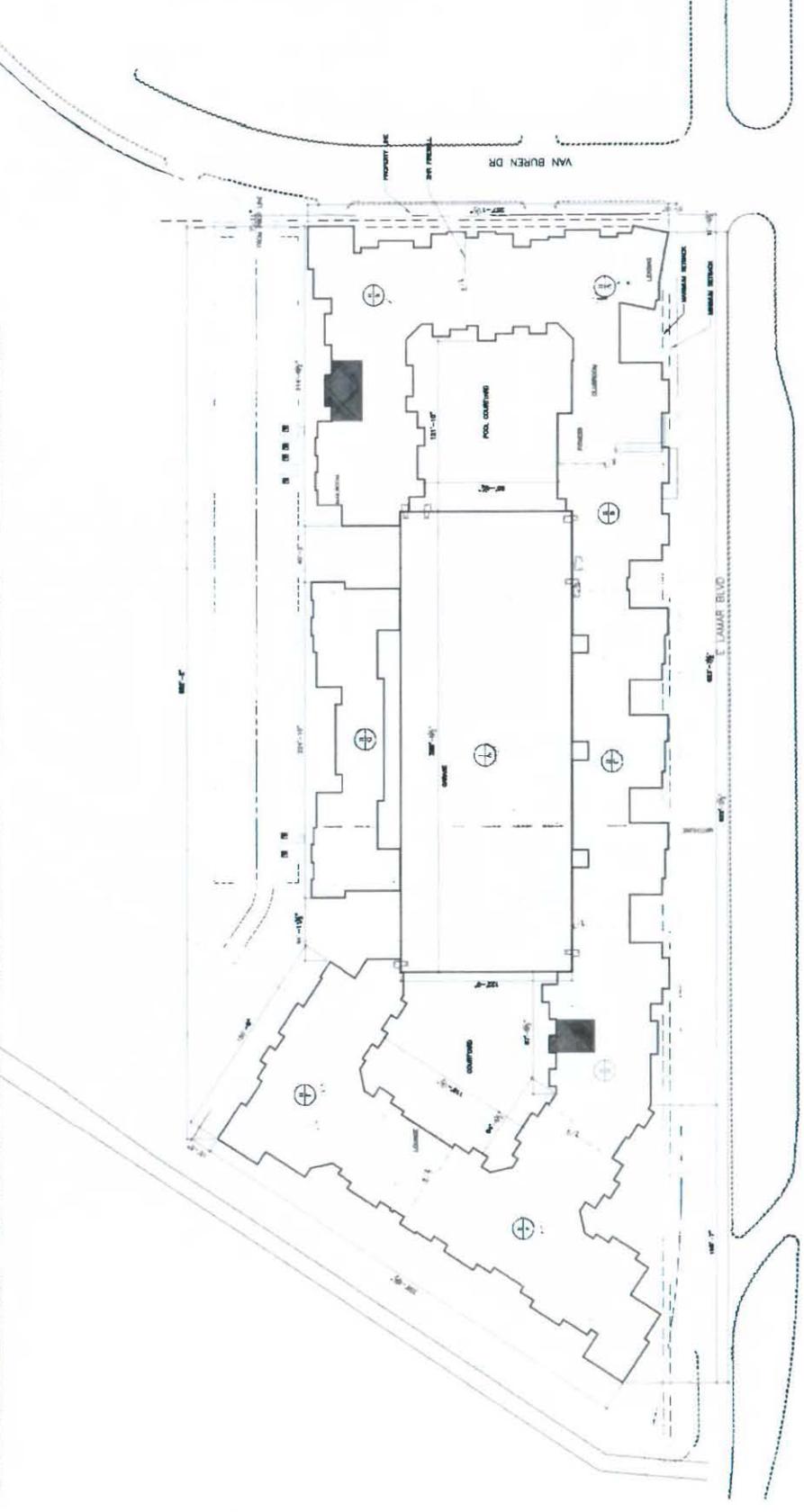
01 Accessible Parking Signage
 Scale: 1" = 32'-0"

02 Accessible Curb Ramp
 Scale: 1" = 12'-0"

03 Accessible Parking Space
 Scale: 1" = 12'-0"

04 Vicinity Map
 Scale: N.T.S.

05 Site Plan Notes & Legend



25 Architectural Site Plan
 Scale: 1" = 32'-0"



Exhibit "B"

PREMISES - Legal Property Description

Lot A-R-1, Block 5 Parkway Central (5.564 acres), an addition to the City of Arlington,
Tarrant County Texas.

Exhibit "C"

Metes and Bounds description of Phase I and Phase II property

Arlington Commons Lands is the sole owner of a 24.528 acre tract of land situated in the J. M. Henderson Survey, Abstract No. 696 and being all of Lot A-R, Block 5 of Parkway Central, an addition to the City of Arlington, according to plat filed for record in Volume 388-61, Page 1, Plat Records, Tarrant County, Texas (PRTCT), a portion of Lot D, Block 6 of Parkway Central, an addition to the City of Arlington, Tarrant County, Texas as recorded in Volume 388-75, Page 59 (PRTCT), a portion of Van Buren Drive (a variable 60.00 feet wide public right-of-way), all of Lot A, Block 6 of Parkway Central, an addition to the City of Arlington, according to plat filed for record in Volume 388-53, Page 96, Plat Records, Tarrant County, Texas (PRTCT), all of Lot B, Block 6 of Parkway Central, an addition to the City of Arlington, according to plat filed for record in Volume 388-61, Page 96, Plat Records, Tarrant County, Texas (PRTCT) and being more particularly described by metes and bounds as follows:

BEGINNING at a found 1/2 inch iron rod for corner, said point being at a 1/2 inch iron rod found with a cap stamped "GAI" for the Southwesterly corner of said Lot A-R, Block 5.

THENCE North 00°11'11" West, a distance of 393.17 feet to a point for corner;

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

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

THENCE North 88°11'13" East, a distance of 380.88 feet to a point for corner;

THENCE North 01°06'10" West, a distance of 505.86 feet to a point for corner;

THENCE North 89°32'21" East, a distance of 142.55 feet to a point for corner;

THENCE South 01°01'09" East, a distance of 402.62 feet to a for the beginning of a tangent curve to the right having a radius of 423.50 feet, a central angle of 12°35'00", and a long chord which bears South 05°16'21" West, 92.82 feet;

THENCE along said curve to the right, an arc distance of 93.01 feet to a point for corner;

THENCE South 11°33'51" West, a distance of 12.86 feet to a point for corner;

THENCE North 89°27'51" East, a distance of 61.36 feet to a point for corner;

THENCE North 89°27'51" East, a distance of 375.00 feet to a point for corner;

THENCE North $54^{\circ}18'04''$ East, a distance of 935.26 feet to a point for corner;

THENCE South $00^{\circ}22'23''$ West, a distance of 663.44 feet to a for the beginning of a curve to the right having a radius of 1269.86 feet and a central angle of $9^{\circ}31'59''$ and a long chord which bears South $81^{\circ}56'21''$ West, 211.04 feet;

THENCE along said curve to the right an arc distance of 211.28 feet to a for the beginning of a reverse curve to the left having a radius of 1041.05 feet, a central angle of $23^{\circ}32'44''$, and a long chord which bears South $73^{\circ}09'17''$ West, 424.81 feet;

THENCE along said curve to the left, an arc distance of 427.81 feet to a for the beginning of a compound curve to the left, having a radius of 1127.24 feet and a central angle of $6^{\circ}07'07''$, and a long chord which bears South $59^{\circ}37'24''$ West, 120.32 feet;

THENCE along said curve to the left an arc distance of 120.38 feet to a point for corner;

THENCE South $56^{\circ}33'51''$ West, a distance of 314.56 feet to a point for corner;

THENCE South $56^{\circ}33'51''$ West, a distance of 60.00 feet to a point for corner;

THENCE South $56^{\circ}33'51''$ West, a distance of 685.00 feet to a for the beginning of a tangent curve to the right having a radius of 786.70 feet, a central angle of $14^{\circ}20'10''$, and a long chord which bears South $63^{\circ}43'56''$ West, 196.33 feet;

THENCE along said curve to the right, an arc distance of 196.84 feet to a for the POINT OF BEGINNING and CONTAINING 1,068,480 square feet, 24.528 acres of land, more or less.



Parkway Central

REINVESTMENT ZONE #41

30



Exhibit "D"

**Ordinance 14-071
Creating
Reinvestment Zone Forty- One**

Ordinance No. 14-071

An ordinance establishing Reinvestment Zone Number Forty-One; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; and becoming effective upon second reading

WHEREAS, the City Council of the City of Arlington, Texas, desires to promote the development or redevelopment of a certain area within its jurisdiction by the establishment of a Reinvestment Zone for commercial-industrial tax abatement; and

WHEREAS, on April 7, 2009, the City Council of the City of Arlington, Texas passed Resolution No. 09-079 authorizing staff, following a briefing to City Council regarding creation of the zone, to give notice required by law to call public hearings relative to creation of reinvestment zones for tax abatement; and

WHEREAS, a public hearing was held at which time interested persons were entitled to speak and present evidence for or against the designation of the property described in Exhibit "A" as Reinvestment Zone Number Forty-One, and notice of such public hearing was published in a newspaper of general circulation in the City of Arlington not later than the seventh day before the date of the scheduled hearing; and

WHEREAS, the City Council of the City of Arlington has established guidelines and criteria governing tax abatement agreements and has stated that the City elects to become eligible to participate in tax abatement; NOW THEREFORE,

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

1.

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

2.

The City Council, after conducting a public hearing and having considered all relevant evidence and testimony, has made the following findings and determinations based on such evidence and testimony:

- A. That a public hearing on the designation of Reinvestment Zone Number Forty-One has been properly called, held and conducted, and that notice of such hearing was published in accordance with the law; and
- B. That the boundaries of Reinvestment Zone Number Forty-One should be the proposed area of land more fully described in the property description attached hereto as Exhibit "A" and depicted on the map attached hereto as Exhibit "B"; and
- C. That the improvements sought to be made in Reinvestment Zone Number Forty-One are feasible and practical and would be a benefit to the land to be included in the Zone and to the City of Arlington following the expiration of an executed Tax Abatement Agreement; and
- D. That the proposed area of land to be designated Reinvestment Zone Number Forty-One is reasonably likely, as a result of this designation, to contribute to the retention or expansion of primary employment or to attract major investment in the Zone that would be a benefit to the property, thereby contributing to the economic development of the City of Arlington.

3.

In accordance with State law, the City of Arlington hereby officially creates Reinvestment Zone Number Forty-One for commercial-industrial tax abatement, which Zone shall hereafter encompass only that certain area of land more fully described in the property description attached hereto as Exhibit "A" and depicted on the map attached hereto as Exhibit "B"; and such Reinvestment Zone shall be officially designated as Tax Abatement Reinvestment Zone Number Forty-One of the City of Arlington, Texas.

4.

The designation of Reinvestment Zone Number Forty-One of the City of Arlington, Texas shall expire five (5) years after the effective date of its designation and may be renewed.

5.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington; and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

6.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

7.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

8.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

9.

This ordinance shall become effective upon second reading.

PRESENTED AND GIVEN FIRST READING on the _____ day of _____, 2014, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the _____ day of _____, 2014, by a vote of _____ ayes and _____ nays at a regular meeting of the City Council of the City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

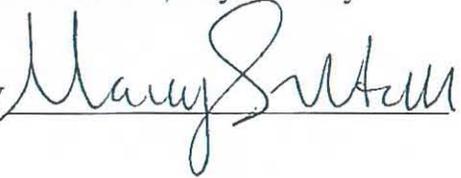
BY 

Exhibit "A"

**LEGAL DESCRIPTION
ARLINGTON COMMONS LANDS**

Arlington Commons Lands is the sole owner of a 24.528 acre tract of land situated in the J. M. Henderson Survey, Abstract No. 696 and being all of Lot A-R, Block 5 of Parkway Central, an addition to the City of Arlington, according to plat filed for record in Volume 388-61, Page 1, Plat Records, Tarrant County, Texas (PRTCT), a portion of Lot D, Block 6 of Parkway Central, an addition to the City of Arlington, Tarrant County, Texas as recorded in Volume 388-75, Page 59 (PRTCT), a portion of Van Buren Drive (a variable 60.00 feet wide public right-of-way), all of Lot A, Block 6 of Parkway Central, an addition to the City of Arlington, according to plat filed for record in Volume 388-53, Page 96, Plat Records, Tarrant County, Texas (PRTCT), all of Lot B, Block 6 of Parkway Central, an addition to the City of Arlington, according to plat filed for record in Volume 388-61, Page 96, Plat Records, Tarrant County, Texas (PRTCT) and being more particularly described by metes and bounds as follows:

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Exhibit "B"

Map



REINVESTMENT ZONE #41

Parkway Central

30



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

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

II. **Project**

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

III. **Development Grant**

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

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

IV.

Waiver of Phase I and Phase II Development Fees

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

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

V.
DEVELOPER's Obligations

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

VI.
Force Majeure

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities (TXU Electric, Southwestern Bell Telephone, TXU Gas, AT&T Cable Services or their contractors), fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to performance under this

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

VII.
Term

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

VIII.
Breach and Recapture

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

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

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

IX.
Venue and Governing Law

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

X.
Notices

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

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

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

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

XI.
Applicable Laws

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

XII.
Legal Construction

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement. Should any provision of this Agreement be in conflict with a provision of the Master Agreement, this Agreement shall apply as to the

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

XIII.
Counterparts

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

XIV.
Captions

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

XV.
Successors and Assigns

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

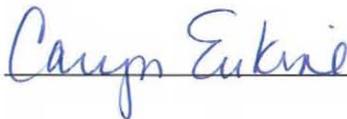
IN WITNESS WHEREOF, each party has caused this Agreement to be executed on the date indicated below, effective as of the later of such dates.

**ARLINGTON COMMONS LANDS,
LLC**

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

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

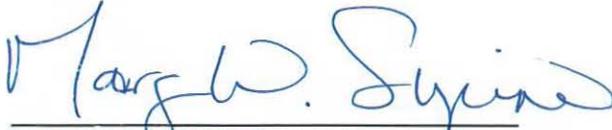
WITNESS:



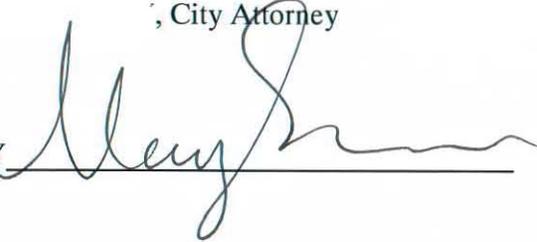
CITY OF ARLINGTON, TEXAS

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

ATTEST:


MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
, City Attorney

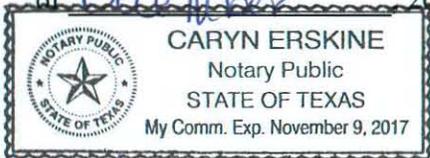
BY 

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

ARLINGTON COMMONS LANDS, LLC
Acknowledgment

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

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



11/9/2017
My Commission Expires

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

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

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

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

7/1/18
My Commission Expires

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

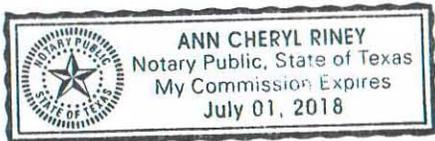


EXHIBIT "A"

The Premises

TRACT A - HUNTINGTON CHASE APARTMENTS

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

TRACT B - POINTE AT NORTH HIGHLAND APARTMENTS

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

TRACT C - COUNTRY WOOD APARTMENTS

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

TRACT D - WATER CHASE APARTMENTS

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

TRACT E - HUNTINGTON CHASE APARTMENTS

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

Exhibit A

380 Tracts & Boundary

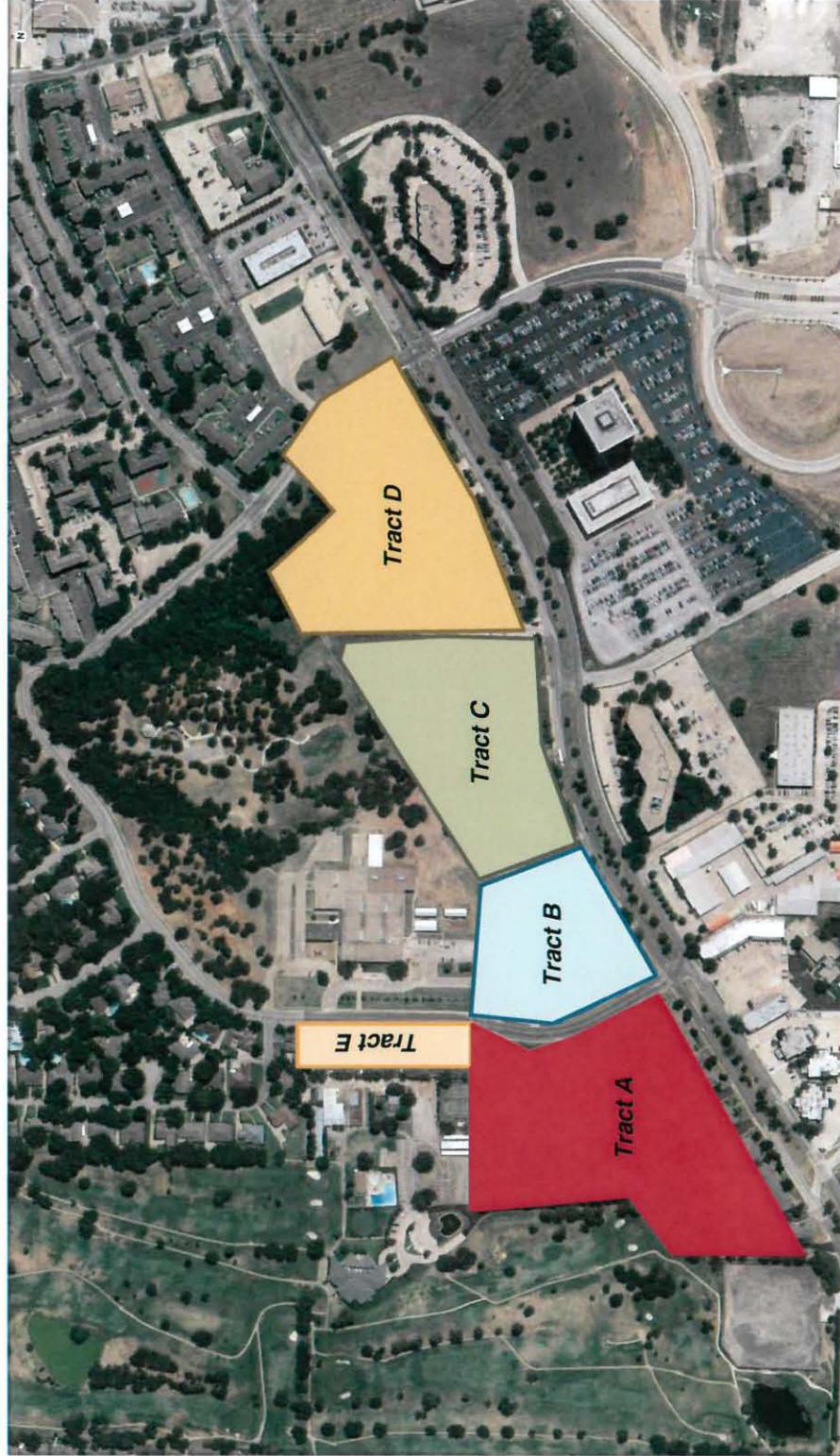


Exhibit B

Project With Phasing

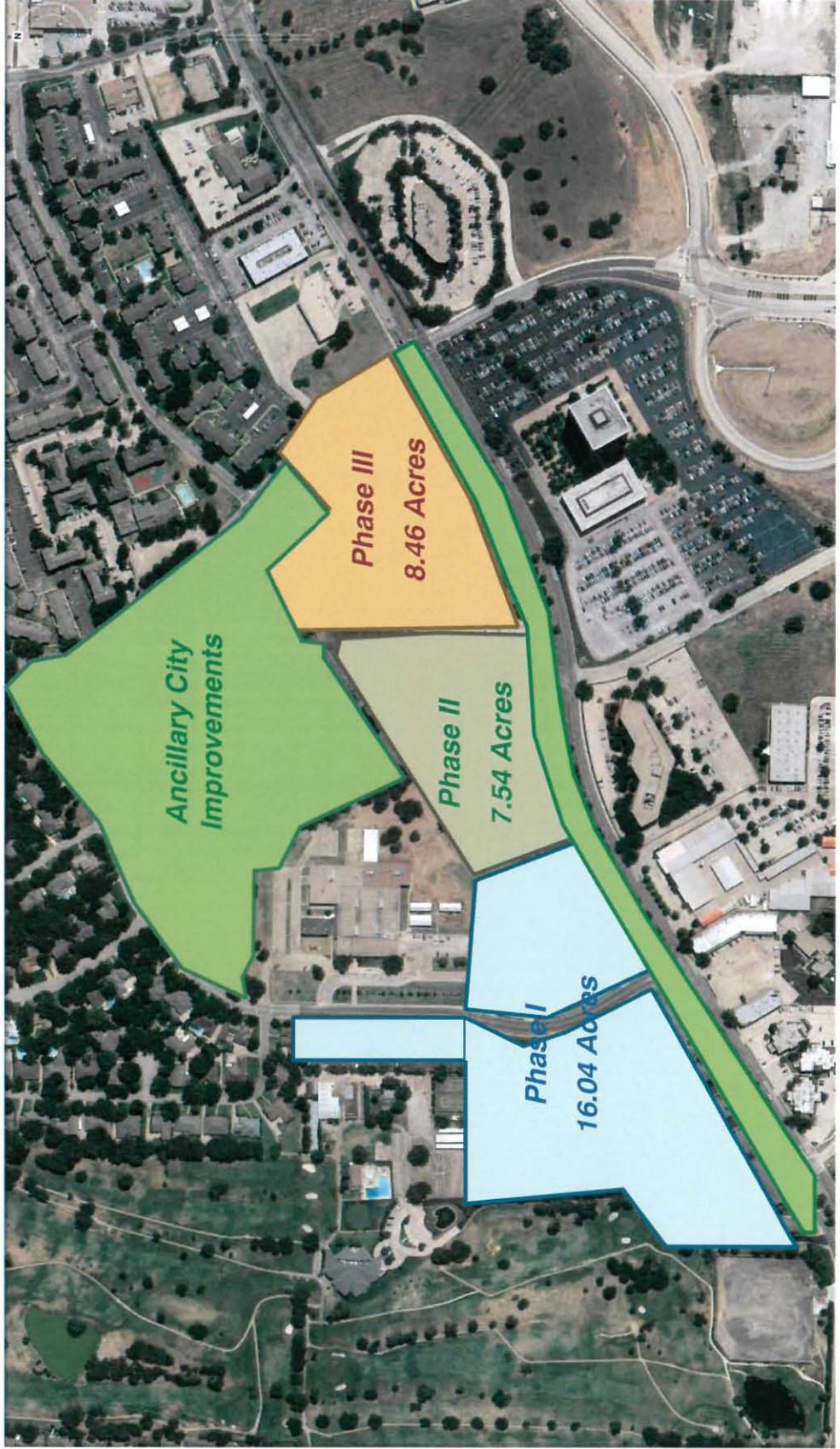
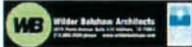


EXHIBIT "C"

Lamar Redevelopment



Lamar Redevelopment





I.
DEFINITIONS

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

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

II.

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

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

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

III.

AD VALOREM TAX RELATED GRANT

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

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

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

IV. DEVELOPMENT GRANTS

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

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

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

V. INDEMNIFICATION

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

VI. INSPECTIONS

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

VII. BREACH AND TERMINATION

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

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

VIII. PROTESTS

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

IX. NOTICE

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

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

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

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

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

**X.
ANNUAL CERTIFICATION**

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

**XI.
AUTHORITY**

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

**XII.
MODIFICATION**

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

**XIII.
FORCE MAJEURE**

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities (TXU Electric, Southwestern Bell Telephone, TXU Gas, AT&T Cable Services or their contractors), fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to performance under this agreement shall be extended for a period of time equal to the period such party was delayed.

**XIV.
VENUE AND GOVERNING LAW**

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

**XV.
LEGAL CONSTRUCTION**

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement. Should any provision of this Agreement be in conflict with a provision of the Master Agreement, this Agreement shall apply as to the specific conflicting provision; in all other instances the Master Agreement and this Agreement shall both apply.

**XVI.
COUNTERPARTS**

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

**XVII.
CAPTIONS**

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

**XVIII.
SUCCESSORS AND ASSIGNS**

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

**XIX.
AUTHORITY**

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

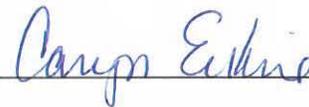
IN WITNESS WHEREOF, each party has caused this Agreement to be executed on the date indicated below, effective as of the later of such dates.

**ARLINGTON COMMONS LANDS,
LLC**

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

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

WITNESS:



CITY OF ARLINGTON, TEXAS

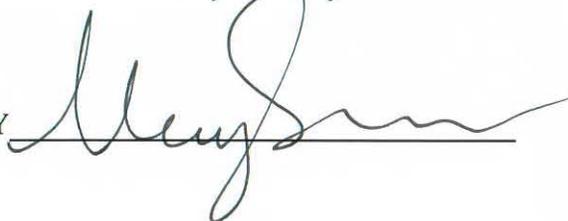
BY 
Theron L. Bowman Ph.D.
Deputy City Manager
Date 01/12/2015

ATTEST:


MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:

City Attorney

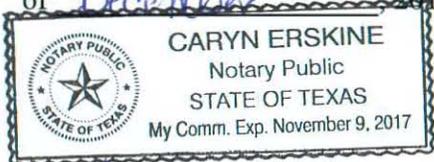
BY 

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

ARLINGTON COMMONS LANDS, LLC
Acknowledgment

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

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



11/9/2017
My Commission Expires

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

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

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

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

7/1/18
My Commission Expires

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

Exhibit "A"

LEGAL DESCRIPTION

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

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

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

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

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

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

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

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

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

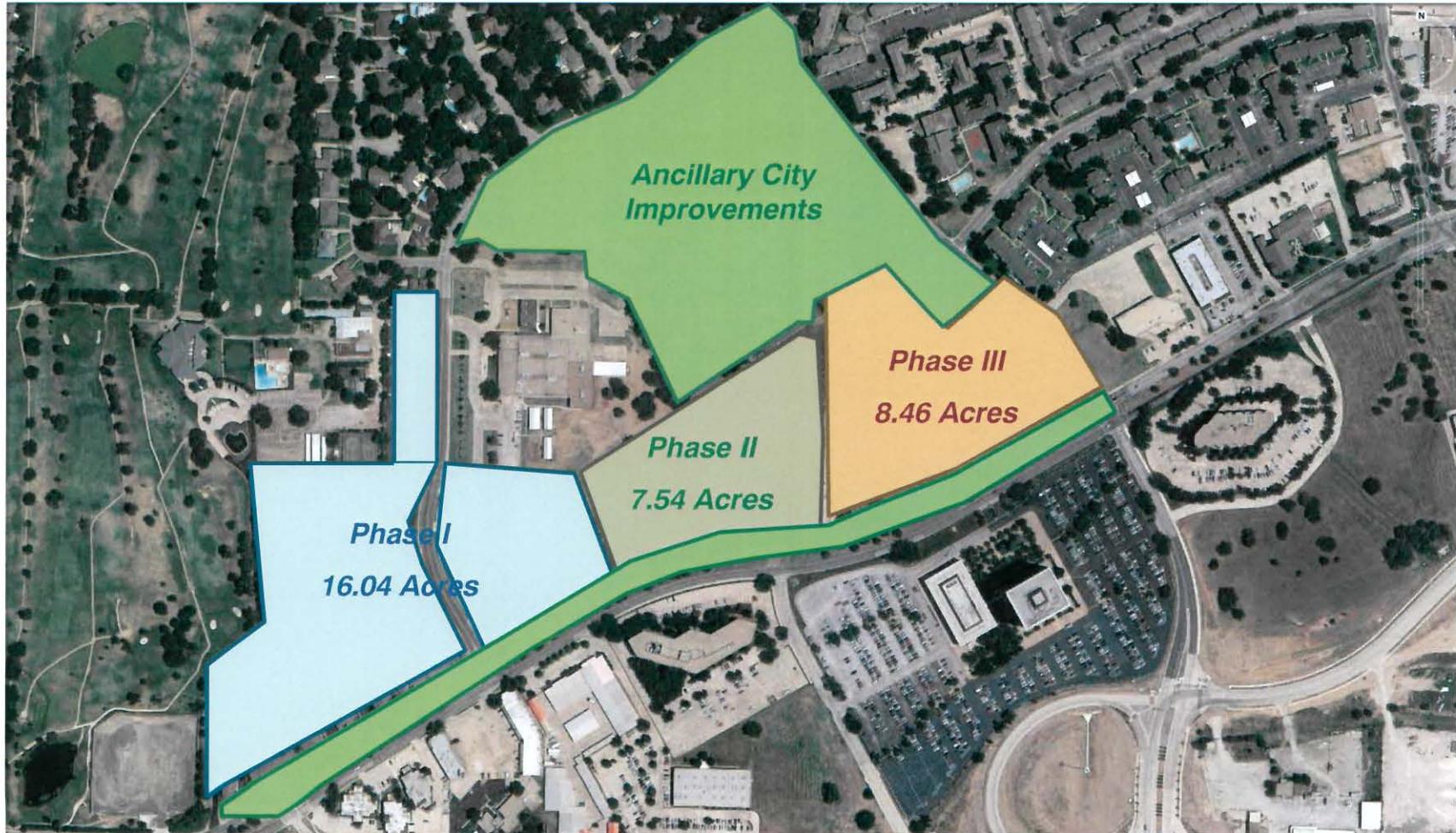
THENCE South $11^{\circ}32'15''$ West, a distance of 65.85 feet to a for the beginning of a tangent curve to the left having a radius of 392.13 feet, a central angle of $44^{\circ}59'58''$, and a long chord which bears South $10^{\circ}57'45''$ East, 300.12 feet;

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

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

Exhibit B

Project With Phasing



STATE OF TEXAS §
 §
COUNTY OF TARRANT §

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

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

WITNESSETH:

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

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

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

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

**I.
Definitions**

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

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

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

II. Grant

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

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

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

III.
Payment Procedure for Grant

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

IV.
Force Majeure

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligation hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities (TXU Electric, Southwestern Bell Telephone, TXU Gas, AT&T Cable Services or their contractors), fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to performance under this agreement shall be extended for a period of time equal to the period such party was delayed.

V.
Term

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

VI.
Breach and Recapture

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

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

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

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

VII.
Venue and Governing Law

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

VIII.
Notices

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

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

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

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

IX.
Applicable Laws

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

X.
Legal Construction

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement. Should any provision of this Agreement be in conflict with a provision of the Master Agreement, this Agreement shall apply as to the specific conflicting provision; in all other instances the Master Agreement and this Agreement shall both apply.

XI.
Counterparts

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

XII.
Captions

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

XIII.
Successors and Assigns

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

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

**ARLINGTON COMMONS LANDS,
LLC**

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

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

WITNESS:



CITY OF ARLINGTON, TEXAS

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

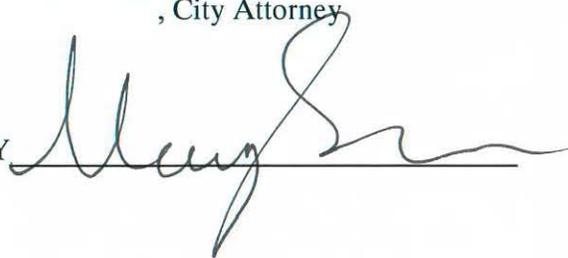
ATTEST:



MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:

, City Attorney

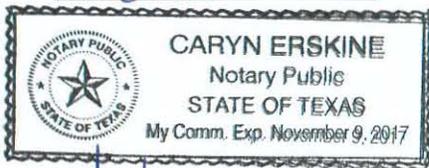
BY 

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

ARLINGTON COMMONS LANDS, LLC
Acknowledgment

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

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



11/9/2017
My Commission Expires

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

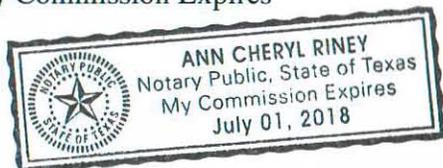
THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

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

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

7/1/18
My Commission Expires



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

EXHIBIT A

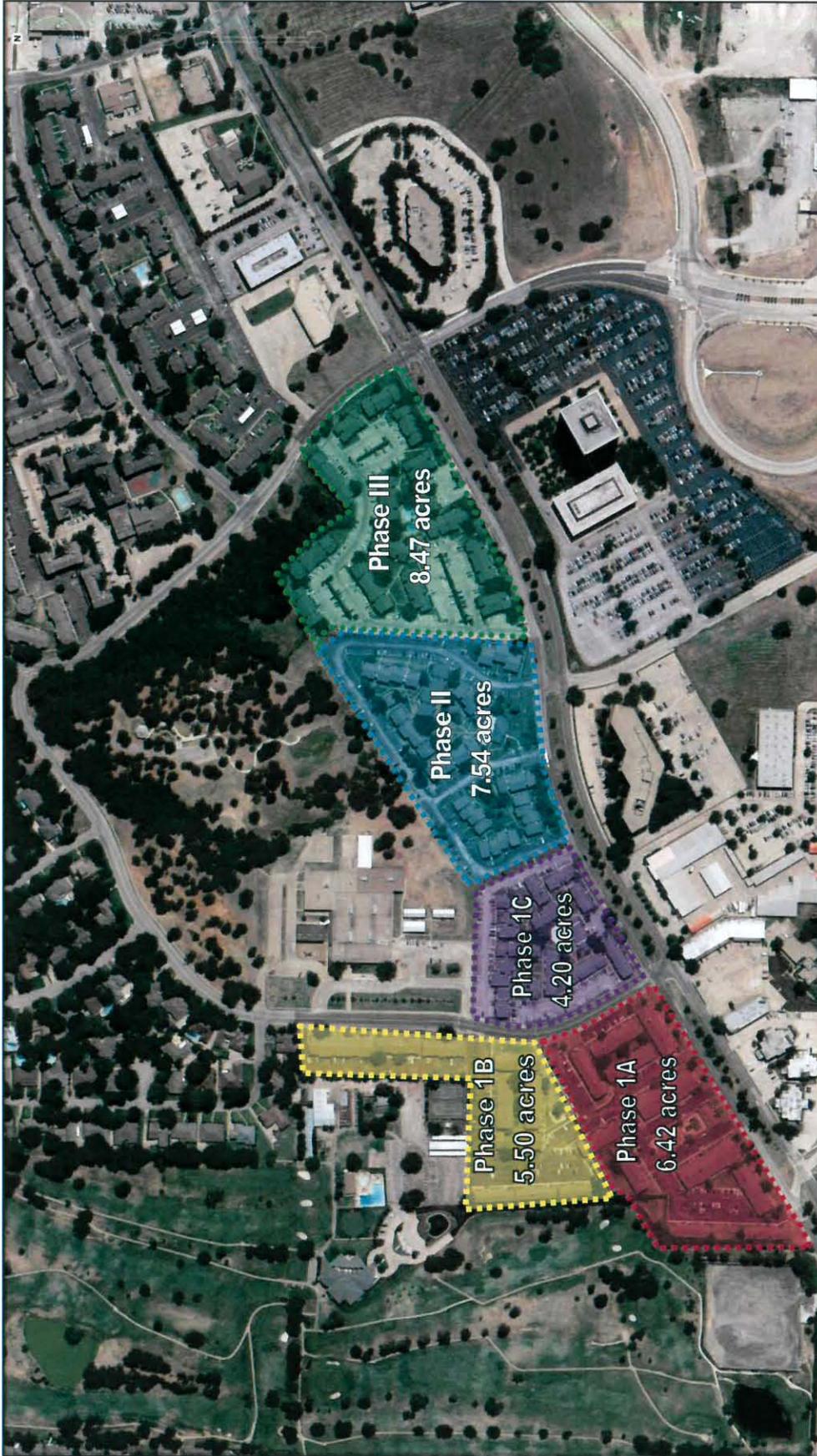


EXHIBIT "B"

Option Property

Country Wood

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

The Pointe

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

ARLINGTON COMMONS LANDS, LLC
3104-7 North Collins Street
Arlington, Texas 76005

December 3, 2015

Sent via U.S. mail

DEC 14 '15 AM 11:52

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

Re: Notice of Assignment; Tax Abatement Agreement – Phase 1A effective as of January 12, 2015 (the “**Tax Abatement Agreement**”), by and between **Arlington Commons Lands, LLC** (“**AC Lands**”) and the **City of Arlington, Texas** (the “**City**”)

Dear Sir/Madame:

The above-referenced Tax Abatement Agreement relates to certain real property located in the City of Arlington, Tarrant County, Texas, as more particularly described in Exhibit “B” to the Agreement (the “**Premises**”). All capitalized terms used but not otherwise defined in this notice have the meanings given to those terms in the Tax Abatement Agreement.

The purpose of this notice is to inform the City that the Premises have been sold and conveyed to Prince Commons, LLC, a Texas limited liability company (“**Prince Commons**”), and Monarch Commons, LLC, a Texas limited liability company (“**Monarch Commons**”), as tenants in common. In connection with the sale and conveyance of the Premises, Prince Commons and Monarch Commons have been assigned all of AC Land’s rights, title and interest in and to the Tax Abatement Agreement.

As contemplated under Article XX of the Tax Abatement Agreement, The Nehemiah, L.L.C. is a managing member of each of Prince Commons and Monarch Commons and has the sole authority to make all company decisions relating to the Tax Abatement Agreement.

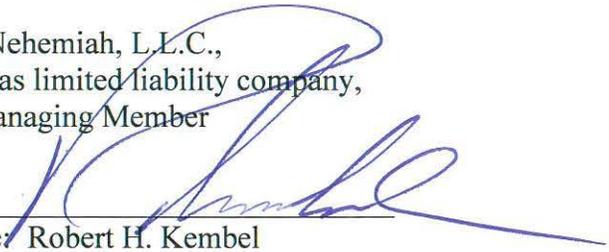
Please note that Prince Commons and Monarch Commons have leased the Premises to Arlington Commons I, LLC pursuant to the terms of a ground lease (the “**Ground Lease**”), and Arlington Commons I, LLC will construct and own the Eligible Property on the Premises as required by the Tax Abatement Agreement. The Nehemiah, L.L.C. is the sole managing member of Arlington Commons I, LLC.

If you have any questions regarding this matter, please contact Bob Kembel at 214-499-4654.

Sincerely,

Arlington Commons Lands, LLC,
a Texas limited liability company

By: The Nehemiah, L.L.C.,
a Texas limited liability company,
its Managing Member

By: 
Name: Robert H. Kembel
Title: Manager