

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement (“Agreement”) is entered into by and between the City of Lewisville, Texas, a home rule city and municipal corporation of Denton County, Texas, duly acting by and through its City Manager (“City”); and Old Town Craft LLC, a Texas limited liability company (“Company”). The City and Company shall be referred to herein collectively as the “Parties.”

WITNESSETH:

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code (hereinafter referred to as "Statute"), the City adopted an Economic Incentive Policy for making economic development incentives and grants on June 5, 2023 (hereinafter referred to as "the Policy Statement"); and

WHEREAS, the Policy Statement constitutes appropriate guidelines and criteria governing economic development agreements to be entered into by the City as contemplated by the Statute; and

WHEREAS, in order to maintain and/or enhance the commercial, economic, and employment base of the Lewisville area to the long-term interest and benefit of the City, in accordance with said Statute, the City desires to enter into this Agreement; and

WHEREAS, on the 18th day of November, 2024, the City Council of the City of Lewisville, Texas, authorized this Agreement pursuant to the Statute; and

WHEREAS, the Company wishes to lease certain City-owned improved properties at 206 W. Main Street (the “206 W. Main Parcel”) and 207 Elm Street (the “207 Elm Parcel”) in Lewisville, Texas (collectively, the “Property”), which are more fully described in Attachment “A” attached hereto and made a part hereof; and

WHEREAS, the Company intends to redevelop the Property and operate a taproom, beer garden, cocktail bar, and food truck park thereupon; and

WHEREAS, the Parties shall enter into a lease agreement for Company to lease the Property in a form substantially similar to the lease agreement attached hereto as Attachment “B”; and

WHEREAS, the Company shall have the option and first right of refusal to purchase the Property from the City, subject to certain terms and conditions, during a certain portion of the term of the lease agreement; and

WHEREAS, the Property is not owned, held, or claimed by the City as a public square or park and was not acquired by the City from the previous owner by the exercise of eminent domain authority or the threat of the exercise of eminent domain authority; and

WHEREAS, the City has published notice to the public on two separate days within the ten (10) days before the execution of this Agreement in a newspaper of general circulation in the county in which the Property is located which meets all requirements of section 253.0125 of the Texas Local Government Code; and

WHEREAS, the City finds that, should the Company exercise its option to purchase the Property under the Lease Agreement (hereinafter defined) and purchase the Property, partial consideration for such transfer would be in the form of this Agreement, which the City finds to be in accordance with the requirements of section 253.0125 of the Texas Local Government Code; and

WHEREAS, the Company agrees to make a certain minimum investment in capital improvements to the Property as set forth herein, including but not limited to, developing or causing to be developed the Property by construction or installing the Required Improvements, including improving the façades of the buildings thereupon, in a manner materially consistent with the site plan and elevations attached hereto as Attachment “C” and to comply with the other terms and conditions of this Agreement; and

WHEREAS, the City desires to provide, pursuant to the Statute, incentives to the Company to complete or cause to be completed the Required Improvements (hereinafter defined) on the Property at the minimum investment set forth herein, to redevelop the Property and operate a cocktail bar and lounge and a taproom with a covered patio, a beer garden, and a food truck park thereupon, to develop the Property in a manner that is visually compatible with other structures in Old Town Lewisville, and to comply with the other terms and conditions of this Agreement; and

WHEREAS, the proposed project will not occur within the City of Lewisville without an offer of economic development incentives from the City and complies with the City’s Economic Development Policy and all applicable local, state, and federal laws; and

WHEREAS, the Parties desire to enter into this Agreement pursuant to the Statute; and

WHEREAS, the City finds that entering into this Agreement for development of the Property as a cocktail bar and lounge, and a taproom with a covered patio, a beer garden, and a food truck park would promote local economic development by providing jobs related to the construction activities in developing the Property, stimulate business and commercial activity within the City by making said Required Improvements to the currently-vacant Property and operating it for the Required Use, and would directly accomplish a public purpose; and

WHEREAS, the City has determined that this Agreement contains sufficient controls to ensure that the above-mentioned public purposes are carried out in all transactions involving the use of public funds and resources and that the City receives the return benefits set forth herein.

NOW THEREFORE, the City, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the Parties hereto do mutually agree as follows:

ARTICLE I

TERM

This Agreement shall be effective on the date that this Agreement is executed by the Parties (“Effective Date”), and the term of this Agreement shall continue through the later of the term of the Lease Agreement (hereinafter defined) or the Post-Purchase Required Use Period (hereinafter defined), subject to, and in accordance with, the terms and conditions of this Agreement; provided, however, this Agreement may terminate earlier in accordance with the provisions of this Agreement (“Term”).

ARTICLE II

DEFINITIONS

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“**206 W. Main Parcel**” shall have the meaning set forth in the recitals to this Agreement.

“**207 Elm Parcel**” shall have the meaning set forth in the recitals to this Agreement.

“**Agreement**” shall have the meaning set forth in the introductory paragraph of this Agreement.

“Building Permit Fee Waiver” shall have the meaning set forth in section 4.1 of this Agreement.

“Capital Investment” shall mean the amount of money invested or caused to be invested by the Company in the Required Improvements (hereinafter defined), prior to achieving Substantial Completion (hereinafter defined).

“City” shall have the meaning set forth in the introductory paragraph of this Agreement.

“Company” shall have the meaning set forth in the introductory paragraph of this Agreement.

“Effective Date” shall mean that point in time established in Article I of this Agreement.

“Event of Bankruptcy” shall mean the dissolution or termination of the Company’s existence as a going business, insolvency, appointment of receiver for any part of such party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Façade Improvements Grant” shall have the meaning set forth in section 4.4 of this Agreement.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of the Company created by acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, governmental or de facto governmental action including, but not limited to, government actions pertaining to the determination of flood zones or FEMA actions (unless caused by acts or omissions of the Company), fire, explosion, flood, strikes, pandemic, or endemic; provided, however, that (a) the event giving rise to Force Majeure was not caused by the act or omission of the Company and makes the performance of any obligation created under this Agreement illegal or impossible; and (b) the Company gives reasonable notice of the event giving rise to Force Majeure and exercises all reasonable diligence to remove the cause of Force Majeure.

“Impact Fee Grant” shall have the meaning set forth in section 4.2 of this Agreement.

“Impact Fees” shall mean water and sanitary sewer impact fees, also known as capital recovery fees.

“Lease Agreement” shall mean a lease agreement between the Parties, with a term of five (5) years with an option for Company to extend the term for two (2) additional years in case of Force Majeure as that term is defined therein during the last year of the Lease Agreement term, for Company’s lease of the Property, in a form substantially similar to that of the lease agreement attached hereto as Attachment “B”.

“Mural Condition” shall have the meaning given in section 5.4 of this Agreement.

“Mural Grant” shall have the meaning set forth in section 4.3 of this Agreement.

“Opening Date” shall mean the first day that the buildings on the Property are fully open for business for the Required Use. The Opening Date shall be on or after the date of Substantial Completion, but no later than 30 days following Substantial Completion.

“Policy Statement” shall have the meaning set forth in the recitals to this Agreement.

“Post-Purchase Required Use Period” shall have the meaning set forth in section 5.1 of this Agreement.

“Property” shall have the meaning set forth in the recitals to this Agreement.

“Required Improvements” shall mean the improvements required to (1) redevelop and operate the 206 W. Main Parcel as a cocktail bar and lounge and a beer garden; (2) redevelop and operate the 207 Elm Parcel as a taproom with a covered patio, which will include a food truck park equipped for a minimum of three (3) food trucks; and (3) develop any other ancillary facilities such as required landscaping, trees, turf, and a raised deck. Such improvements shall be completed in a manner consistent with the site plan and elevations attached hereto as Attachment “C”.

“Required Use” shall mean the Company’s continuous operation of a cocktail bar and lounge, a taproom with a covered patio, beer gardens, and a food truck park with a minimum of three (3) food trucks on the Property, provided that operations at the Property may temporarily cease for Force Majeure and outages in the normal course of business, as approved by the City Manager.

“**Statute**” shall have the meaning set forth in the recitals to this Agreement.

“**Substantial Completion**” shall be signified by the issuance of final certificates of occupancy for all of the Required Improvements for which a certificate of occupancy is required and acceptance in writing by the City Manager or her designee of all other Required Improvements for which a certificate of occupancy is not required.

“**Term**” shall have the meaning set forth in Article I of this Agreement.

“**Tree Condition**” shall have the meaning set forth in section 5.5 of this Agreement.

“**Tree Grant**” shall have the meaning set forth in section 4.5 of this Agreement.

ARTICLE III

GENERAL PROVISIONS

3.1 Within ten (10) business days of the Effective Date of this Agreement, the Parties shall enter into the Lease Agreement. The Lease Agreement shall include a provision giving Company the option and right of first refusal to purchase the Property from the City at any point during the Term of this Agreement following the Opening Date for a purchase price of \$850,000.00. Termination of the Lease Agreement for any reason other than purchase of the Property from the City by the Company pursuant to the option to purchase outlined in the Lease Agreement and the expiration of the Post-Purchase Required Use Period shall immediately terminate this Agreement.

3.2 As soon as practical after the Effective Date of this Agreement, the Company shall commence or cause to be commenced installation or construction of the Required Improvements.

3.3 The Company shall achieve Substantial Completion on or before the first anniversary of the Effective Date, and the Opening Date shall occur no later than 30 days following the date of Substantial Completion. Notwithstanding anything to the contrary in this Agreement or the Lease Agreement, the time to achieve Substantial Completion will be tolled during any 90-day notice period required by Section A. 18 of the Lease Agreement.

3.3.1 If, in the opinion of the City Manager, substantial progress has been made toward Substantial Completion, the City Manager may extend the date for Substantial Completion for up to one (1) year in her reasonable discretion.

3.3.2 If, in the opinion of the City Manager, substantial progress has been made toward meeting the requirements of the Opening Date, the City Manager may extend the deadline to reach the Opening Date for up to one (1) year in her reasonable discretion.

3.3.3 If Substantial Completion or the Opening Date is delayed by reason of Force Majeure, the deadline by which Substantial Completion or the Opening Date must be reached may be extended for a period of time equal to the delay caused by Force Majeure, subject to the City Manager's reasonable approval, which will not be unreasonably withheld, conditioned, or delayed. Nothing in this subsection or this Agreement shall require the City Manager to extend the deadline by which Substantial Completion or the Opening Date must be reached.

3.3.4 Subject to an extension pursuant to section 3.3.1 or 3.3.2 of this Agreement, failure to reach Substantial Completion or the Opening Date by the deadline provided shall constitute a breach of this Agreement.

3.4 During the Term of the Agreement, the Company shall be subject to all applicable City taxation not specifically abated or exempted by this or another agreement, including, but not limited to, sales tax and ad valorem taxation, if any, on inventory and supplies.

ARTICLE IV

ECONOMIC DEVELOPMENT INCENTIVES

4.1 Building Permit Fee Waiver. Subject to the satisfaction of the terms and conditions of this Agreement, the City agrees to waive one hundred percent (100%) of the total fees that would otherwise be required to be paid to the City at the time of issuance of the building permit for the Project, excluding Impact Fees. Notwithstanding any fee waiver, the Developer must still obtain all permits required by the City Code, including the Unified Development Code, for the Project.

4.2 Impact Fee Grant. Subject to the terms and conditions of this Agreement, the City agrees to provide an economic development grant to the Company in an amount equal to one hundred percent (100%) of all Impact Fees paid to the City at the time of applying for any building

permit for the Property (the “Impact Fee Grant”). Company will be paid the one-time Impact Fee Grant subject to the timing referenced in section 4.6.1, below.

4.3 Mural Grant. Subject to the terms and conditions of this Agreement, the City agrees to provide an economic development grant to the Company in an amount equal to fifty percent (50%) of the actual cost of satisfying the installation requirements set forth in the Mural Condition set forth in section 5.4, below (the “Mural Grant”). The total amount of the Mural Grant shall not exceed forty thousand dollars (\$40,000). Company will be paid the one-time Mural Grant subject to the timing referenced in section 4.6.2, below.

4.4 Façade Improvements Grant. Subject to the terms and conditions of this Agreement, the City agrees to provide an economic development grant to the Company in an amount equal to fifty percent (50%) of the actual cost of the construction, renovation, replacement and/or installation of the following façade improvements made to the two (2) buildings which are located on the Property on the Effective Date: brick repair, signage, awnings, windows, fixtures, landscaping, and lighting, as shown in the site plan and elevations attached hereto as Attachment “C”, (the “Façade Improvements Grant”). The Façade Improvements Grant shall be limited to \$40,000.00 for each building, for a total Façade Improvements Grant not to exceed \$80,000.00. Company will be paid the one-time Façade Improvements Grant subject to the timing referenced in section 4.6.3, below.

4.5 Tree Grant. Subject to the terms and conditions of this Agreement, the City agrees to provide an economic development grant to the Company in an amount equal to the actual cost of satisfying the initial planting requirements of the Tree Condition (the “Tree Grant”). The Tree Grant shall be limited to \$75,000.00. Company will be paid the one-time Tree Grant subject to the timing referenced in section 4.6.4, below.

4.6 Timing of Grants. The Company acknowledges that this Agreement makes an allowance for the grants provided for herein to be paid, subject to the terms and conditions of this Agreement, upon submittal of documents to the City in accordance with this Agreement. Subject to the satisfaction of the terms and conditions of this Agreement, the City agrees that the grants will be paid in full to the Company, within forty-five (45) days of the timely and satisfactory receipt of the below-listed items, except that disbursement of grant funds shall not occur before October 1, 2024. Any deadlines outlined in this section may be extended by the City Manager in her reasonable discretion for up to one (1) year. Grant funds shall be disbursed as follows:

4.6.1 Impact Fee Grant. Within forty-five (45) days following the of payment of the Impact Fees, Company shall submit to the City all of the following: (1) a letter of request for payment, (2) proof of payment for all Impact Fees, and (3) any other documentation or information required by the City.

4.6.2 Mural Grant. Within forty-five (45) days following the date of Substantial Completion, the Company shall submit to the City all of the following: (1) a letter of request for payment, (2) proof of payment for all actual cost of satisfying the installation requirements set forth in the Mural Condition; (3) documentation of completion of the mural in accordance with the agreed-to design as set forth in section 5.4.1, below, and (4) any other documentation or information reasonably required by the City. Should the City Manager, in her reasonable discretion, determine that provided documentation of completion of the mural does not show completion in accordance with the approved final mural design, the Company shall be provided with written notice and thirty (30) days to cure and resubmit documentation of completion. If, upon resubmission of documentation of completion, the City Manager, in her reasonable discretion, again determines that provided documentation of completion of the mural does not show completion in accordance with the approved final mural design, this shall be considered a failure to satisfy the terms and conditions of this Agreement for this incentive only, and the Mural Grant shall not be disbursed. This failure will not affect other incentives under this Agreement.

4.6.3 Façade Improvements Grant. Within forty-five (45) days following the date of Substantial Completion, the Company shall submit to the City all of the following: (1) a letter of request for payment, (2) proof of payment for the actual costs of the façade improvements as outlined in section 4.4, above, including but not limited to hard construction, construction equipment charges, and the costs of construction materials and the delivery thereof, and (3) any other documentation or information reasonably required by the City.

4.6.4 Tree Grant. Within forty-five (45) days following the date of Substantial Completion, the Company shall submit to the City all of the following: (1) a letter of request for payment, (2) proof of payment for all costs incurred by Company to satisfy the initial planting requirements of the Tree Condition; (3) documentation of completion of the tree planting, and (4) any other documentation or information reasonably required by the

City. Should the City Manager, in her reasonable discretion, determine that provided documentation of completion of the tree planting does not show planting of such trees in a manner that will allow for continued healthy growth, the Company shall be provided with written notice and thirty (30) days to cure and resubmit documentation of completion. If, upon resubmission of documentation of completion, the City Manager, in her reasonable discretion, again determines that provided documentation of completion of the tree planting does not show planting of such trees in accordance with the requirements of the Tree Condition, this shall be considered a failure to satisfy the terms and conditions of this Agreement for this incentive only, and the Tree Grant shall not be disbursed. This failure will not affect other incentives under this Agreement.

ARTICLE V AGREEMENT CONDITIONS

5.1 Required Use Condition. During the Term of this Agreement following Substantial Completion and continuing thereafter until expiration of this Agreement or earlier termination of same, the Property shall not be used for any purpose other than the Required Use. In addition, should the Company choose to exercise its option to purchase the Property during the Term as set forth in the Lease Agreement, the Property shall not be used for any purpose other than the Required Use for a period of one (1) year following Company's closing on the Property (the "Post-Purchase Required Use Period").

5.2 Required Improvements Condition. During this Term of this Agreement prior to the date of Substantial Completion, Company shall complete the installation and construction of the Required Improvements in a manner consistent with the site plan and elevations attached hereto as Attachment "C".

5.3 Minimum Investment Condition. The total minimum Capital Investment shall be EIGHT HUNDRED THOUSAND DOLLARS AND NO CENTS (\$800,000.00). Company shall meet the minimum Capital Investment on or before the date of Substantial Completion.

5.4 Mural Condition. On or before the date of Substantial Completion, the Company shall install or cause to be installed a mural on the east wall of the building on the 207 Elm Parcel, and shall maintain such mural during the Term of this Agreement as set forth herein (the "Mural Condition").

5.4.1 Installation Requirements.

a. The mural shall comprise of at least 400 square feet of the total area of the wall.

b. Company shall provide the Director of Economic Development a copy of the final mural design for review. The City Manager or her designee shall have the authority to approve such design, and approval shall not be unreasonably denied, conditioned, or delayed. The City Manager or her designee shall provide written approval or denial with reasons for such denial via email to an email address provided by the Company with the final mural design within ten (10) business days of receipt of the final mural design. If the final mural design is denied, Company may choose to resubmit a final mural design or forfeit the Mural Grant.

5.4.2 Maintenance Requirements.

a. Company, at Company's sole cost and expense, shall maintain, and if necessary, repair the mural during the term of this Agreement so that the mural shall remain in compliance with the final mural design agreed to by the City Manager or her designee under section 5.4.1.b., above. Such maintenance and repair shall include, but not be limited to: repainting faded, chipped, or peeling paint; repairing masonry work; and removing or covering graffiti.

b. Company may remove the mural if Company determines that the mural is suffering excessive damage or Company is unwilling or unable to maintain the mural as required herein. If Company removes the mural from the Property under the provisions of this section, Company shall restore the wall upon which the mural was installed to, at a minimum, its condition prior to mural installation. Removal shall be at the Company's sole expense.

c. The City may require removal of the mural or any part thereof by the Company if the City Manager determines, in her reasonable discretion, that the mural is not being maintained and repaired as required by this Agreement, following written notice to Company and at least sixty (60) days to cure. Removal shall be at the Company's sole expense.

d. Should the mural or any part thereof be removed for any reason during the Term of this Agreement, including removal required by section 5.4.2.c.,

above, Company shall be obligated to repay the City a portion of the Mural Grant, prorated by month, proportional to the time remaining in the Term.

5.5 Tree Condition. On or before the date of Substantial Completion, the Company shall plant or cause to be planted at least five (5) mature trees on the Property (the “Tree Condition”).

5.5.1 Initial Planting Requirements.

a. Each tree planted shall be of a species selected from a list attached hereto as Attachment “D”, healthy, of at least 4” caliper, and mutually selected by Company and the City’s Director of Parks and Recreation or her designee.

b. The trees required by this section shall be planted between October 1, 2024 and May 31, 2025.

c. Trees shall be planted in accordance with the Standards and Specifications for Purchasing, Planting, and Maintaining Trees attached hereto as Attachment “E”, with adequate access to water for establishment and maintenance as set forth therein.

5.5.2 Maintenance Requirements.

a. Trees planted in order to satisfy the Tree Condition must be properly maintained, including but not limited to any necessary watering, pruning, or fertilizing.

b. In the event of the death or removal due to disease of a tree planted pursuant to this section during the Term, should the City Manager or her designee, in her reasonable discretion, determine that the death or removal due to disease of the tree was due to lack of maintenance by Company, then Company shall reimburse the City an amount equal to the prorated Tree Grant for that tree. As an example, if five (5) trees were planted by Company pursuant to this section, the reimbursement portion for each tree would equal 1/5 of the total Tree Grant.

5.6 Hours of Operation. Beginning on the Opening Date, the Property will be open to the public, including all food trucks on site, for the purposes of the Required Use for a minimum of seventy (70) hours per week with suggested days and hours of operation of:

a. Monday-Thursday: nine (9) hours per day;

b. Friday and Saturday: eleven (11) hours per day; and

c. Sunday: twelve (12) hours per day.

If any of the foregoing days falls on a nationally recognized holiday, Company will not be required to be open or operate on such days and such closure will not count against the minimum hours of operation. At any time during which all uses on the Property are not open to the public, such time shall not count towards the minimum hours of operation. The City Manager or her designee may, in her reasonable discretion, approve changes in the minimum hours of operation. In addition, should the Company choose to exercise its option to purchase the Property during the Term as set forth in the Lease Agreement, the Company shall comply with these hours of operation requirements during the Post-Purchase Required Use Period.

5.7 No Obligation. The City shall not be obligated to pay any commercial bank, lender, or similar institution for any loan or credit agreement made by the Company. None of the City's obligations with respect to the incentives under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

5.8 Employment of Undocumented Workers. During the term of this Agreement, the Company or a branch, division, or department of the Company does not and will not knowingly employ any undocumented workers as defined in Tex. Govt. Code §2264.001. If the Company or a branch, division, or department of the Company is convicted of a violation under 8 U.S.C. §1324a(f), the Company shall repay the amount of the grants and any other funds received by the Company from the City, or fees waived by the City, under this Agreement as of the date of such violation not later than one hundred and twenty (120) days after the date the Company is notified by the City of a violation of this section, plus interest from the date the grants were paid to the Company, at the rate periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by the City) as its prime or base commercial lending rate. The payment of interest shall be as if it had been accruing from the date the grants were paid to the Company until the date the grants are repaid to the City. Pursuant to Section 2264.101(c), Tex. Gov't Code, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

ARTICLE VI

TERMINATION

6.1 This Agreement may be terminated upon any one of the following:

6.1.1 By written agreement of the Parties;

6.1.2 By expiration of the Term;

6.1.3 By the City, if the Company breaches any terms or conditions, as determined in the City's reasonable discretion, of this Agreement and such breach is not cured within sixty (60) days after receipt of written notice thereof from the City and the Company has not commenced curative action within such 60-day period and has not diligently pursued such curative action to a satisfactory completion;

6.1.4 By the City, if the Company suffers an Event of Bankruptcy;

6.1.5 By the City, if any taxes or fees owed to the City or the State of Texas by the Company shall become delinquent and payment of delinquent amounts is not made within sixty (60) days after receipt of written notice thereof (provided, however, the Company retains the right to timely and properly protest and contest any such taxes or fees); and

6.1.6 By the City, within thirty (30) days of providing written notice to the Company if the Company is convicted of a violation of 8 U.S.C. §1324a(f) as determined by a court of competent jurisdiction or other competent authority; and

6.1.7 As otherwise stated within this Agreement.

6.2 Refund of Grants and Waived Fees.

6.2.1 In the event the Agreement is terminated by the City pursuant to section 6.1.3, 6.1.4, 6.1.5, or 6.1.7 of this Article, the Company shall pay back, within sixty (60) days of receiving written notice from the City, all grant funds received and all fees waived under this Agreement.

6.2.2 In the event the Agreement is terminated by the City pursuant to section 6.1.3 due to Company's failure to operate the Property in accordance with the Required Use Condition or the Hours of Operation condition during the Post-Purchase Required Use Period, the Company shall, in addition to the refund requirements set forth in subsection 6.2.1, above, be required to refund to the City the difference between the \$850,000.00 purchase price paid for the Property by the Company and the appraised value of the

Property on the date of closing of its sale to the Company by the City, which shall be determined by an retroactive appraisal obtained by the City which shall be prepared by a certified appraiser certified to practice as a certified general appraiser under Chapter 1103 of the Texas Occupations Code. The Company shall refund this amount to the City withing sixty (60) days of receiving the written determination of the difference between the sale price and appraised price from the City.

6.2.3 In the event the Agreement is terminated by the City pursuant to section 6.1.6, the Company shall, within one hundred and twenty (120) days after the date the Company is notified by the City of a violation, pay to the City the amounts specified in section 5.8 of this Agreement.

6.2.4 The requirements outlined in this section shall survive the termination of this Agreement.

ARTICLE VII MISCELLANEOUS

7.1 The terms and conditions of this Agreement are binding upon the successors and assigns of all Parties hereto. This Agreement cannot be assigned by the Company unless written permission is first granted by the City Manager. Any assignment without such permission shall be void. Upon assignment, the assignee must agree to be bound by all terms and conditions of this Agreement.

7.2 Notwithstanding anything else to the contrary in this Agreement, if the performance of any obligations or requirements under this Agreement is delayed by reason of Force Majeure, the Company shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement may be extended for a period of time equal to the period the Company was delayed, subject to approval of the City Manager, in her reasonable discretion. Pursuant to this section, the Term and any other applicable periods may be extended, subject to the City Manager's approval, in her reasonable discretion, if necessary, to provide the Company the Building Permit Fee Waiver, Mural Grant, Façade Improvements Grant, Tree Grant, and the Impact Fee Grant contemplated by this Agreement. Nothing in this subsection or this Agreement shall require the City Manager to extend the period of time applicable to any obligation, requirement, or grant hereunder, nor the Term of the Agreement.

7.3 It is understood and agreed between the Parties that the Company, in performing its obligations hereunder, is acting independently, and the City assumes no responsibility or liabilities in connection therewith to third parties. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

7.4 The Company further agrees that the City, its agents and employees, shall have reasonable rights of access to the Property during the Term to ensure that the construction of the Real Property Improvements is in accordance with all applicable agreements with the City, including this Agreement, and all applicable state and local laws and regulations, as well as the continuing right, subject to the Company's reasonable security requirements, to ensure that the Property are thereafter maintained, operated, and occupied in accordance with all applicable agreements with the City, provided that with respect to matters concerning this Agreement (a) the City must give the Company notice of any such inspection in accordance with the terms of the Lease Agreement, and (b) a representative of the Company shall have the right to accompany the agent or employee of the City when conducting such inspection. The notice requirements and right to accompany shall not apply to inspections to ensure compliance with applicable state and local laws and regulations, including any inspection necessary to issue required permits.

7.5 The City represents and warrants that the Property does not include any property that is owned by a member of the City Council having responsibility for the approval of this Agreement.

7.6 Notices required to be given to any party to this Agreement shall be given by email or personally, by nationally recognized overnight courier, or by certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered three (3) days after the date deposited in the United States' mail.

For the City by notice to:

City of Lewisville
Attn: Director of Economic Development
Email: economicdevelopment@cityoflewisville.com
151 W. Church Street
P.O. Box 299002
Lewisville, Texas 75057

For Company by notice to:

Old Town Craft LLC
Attn: John Williams
Email: thekid1254@yahoo.com
343 Hobson Ln.
Denton, TX 76205

Any party may change the address to which notices are to be sent by giving the other Parties written notice in the manner provided in this paragraph.

7.7 This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which in the aggregate shall constitute one agreement. This Agreement may be executed by facsimile transmission or email, in each case, with the same force and effect as originals.

7.8 If any provision contained in this Agreement is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

7.9 Whenever the context requires, all words herein shall be deemed to include the male, female, and neuter gender, and singular words shall include the plural, and vice versa.

7.10 THE COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY COMPANY'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OR INTENTIONAL TORT OF COMPANY, ITS AFFILIATES, OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

7.11 Venue for any litigation arising from this Agreement shall lie in Denton County, Texas.

7.12 This Agreement may be modified or rescinded only by a writing signed by both Parties or their duly authorized agents.

7.13 No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.

7.14 The City represents and warrants to the Company that this Agreement has been authorized by action of the Lewisville City Council, authorizing the City Manager to execute the Agreement on behalf of the City. Company represents and warrants that this Agreement has been approved by appropriate action of Company, and that the individual executing this Agreement on behalf of Company has been duly authorized to do so. This Agreement shall be binding on and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

7.15 Nothing in this Agreement shall constitute a waiver of the City's governmental immunity.

7.16 This Agreement shall be considered drafted equally by the Parties.

7.17 Where applicable, pursuant to Texas Government Code Chapter 2271, Company affirms that execution of this Agreement serves as written verification that Company: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the Agreement. This section shall not apply if Company employs fewer than ten (10) full-time employees, or if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00.

7.18 Where applicable, pursuant to Texas Government Code Chapter 2274, Company affirms that execution of this Agreement serves as written verification that Company: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as those terms are defined in that chapter; and (ii) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

This section shall not apply if Company employs fewer than ten (10) full-time employees, if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00, or if this Agreement is otherwise exempted from the requirements of Texas

Government Code Chapter 2274. Any terms used in this section which are defined in Texas Government Code Chapter 2274 shall have the meaning given therein.

7.19 Where applicable, pursuant to Texas Government Code Chapter 2276, Company affirms that execution of this Agreement serves as written verification that Company: (1) does not boycott energy companies, as defined by Texas Government Code Section 809.001; and (2) will not boycott energy companies during the term of this Agreement.

This section shall not apply if Company employs fewer than ten (10) full-time employees, if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00, or if this Agreement is otherwise exempted from the requirements of Texas Government Code Chapter 2276.

7.20 To the extent allowed by law, the City will safeguard and keep from release any documents marked “proprietary” or information not generally available to the public. However, the City will, if required, comply with all requirements of the Texas Public Information Act with regard to any documents in its possession at the time of a request made under that Act.

7.21 Submitted herewith is a completed Form 1295 generated by the Texas Ethics Commission’s (the “TEC”) electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the “**Form 1295**”). The City hereby confirms receipt of the Form 1295 from the Company, and the City agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. The Parties understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Company; and, neither the City nor its consultants have verified such information.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

DATED this the _____ day of _____, 2024.

CITY OF LEWISVILLE, TEXAS

Claire Powell, City Manager

ATTEST:

Thomas Harris III, City Secretary

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney

COMPANY:
OLD TOWN CRAFT LLC

By: _____
Name: John Williams
Title: Manager

ATTACHMENT “A”

Property

206 W. Main Street, Lewisville TX

Being Lot 2, Block A, Salvation Army Addition, an addition to the City of Lewisville, Denton County, Texas, according to the plat thereof recorded in Cabinet N, Page 213, Plat records, Denton County, Texas.

207 Elm Street, Lewisville, TX

Being Lot 1, Block A, Salvation Army Addition, an addition to the City of Lewisville, Denton County, Texas, according to the plat thereof recorded in Cabinet N, Page 213, Plat records, Denton County, Texas.

ATTACHMENT “B”

Lease Agreement

Lease Agreement

Basic Terms

Effective Date: _____

Landlord: City of Lewisville, a Texas home rule municipality

Landlord's Address: 151 W. Church Street, Lewisville, Texas 75057

Tenant: Old Town Craft LLC, a Texas limited liability company

Tenant's Address: 343 Hobson Ln., Denton, TX 76205

Premises: 206 W. Main Street and 207 Elm Street, Lewisville, Texas 75057, as more specifically described in Exhibit "A" attached hereto.

Term: The Term of the Lease shall begin on the Commencement Date and shall end on the Termination Date.

Option: In the event of a Force Majeure event during the last twelve (12) months of the Term, as determined by the Landlord in the Landlord's reasonable discretion, the Tenant shall have the option to extend the Term for twenty-four (24) additional months beyond the original Termination Date. Tenant shall exercise such option by providing notice as set forth herein.

Commencement Date: The Lease shall commence upon full execution of this Lease by Landlord and Tenant and delivery of exclusive possession of the Premises to the Tenant.

Termination Date: (i) five (5) years following the end of the Rent Abatement Period (hereinafter defined), unless the Tenant exercises the option to extend the Term as set forth in the "Option" section, above; (ii) earlier termination of this Lease, as provided herein; or (iii) surrender of the Premises by Tenant to Landlord, whichever is the earlier to occur.

Rent: Following the Rent Abatement Period (hereinafter defined), Rent shall be paid monthly by the Tenant as follows:

Year of Term	Gross Monthly Rent
1	\$2,500
2	\$3,000
3	\$3,500
4	\$5,000
5	\$6,000

Year of Term	Gross Monthly Rent
Option – First 12 Months	\$7.000
Option – Second 12 Months	\$8,000

This Lease shall be a gross lease, with Landlord responsible for the real property taxes and insurance coverage for the Premises referenced below (except for Tenant's insurance obligations in Exhibit B), the Tenant responsible for payment of business personal property taxes.

Permitted Use: Continuous operation (at least 70 hours per week) of a cocktail bar and lounge and a taproom with a covered patio, a beer garden, and a food truck park with a minimum of three (3) food trucks on the Premises, provided that operations at the Property may temporarily cease for Force Majeure and outages in the normal course of business, as reasonably approved by the Landlord.

Tenant's Insurance: As required by Insurance Addendum, attached hereto as Exhibit "B".

Landlord's Insurance: Texas Municipal League Intergovernmental Risk Pool Property Endorsement.

Definitions

"Arises" An Environmental Claim or Environmental Cleanup Liability shall be deemed to Arise upon each discrete Release of a Chemical Substance.

"Chemical Substances" shall mean any chemical substance, including, but not limited to, any sort of pollutants, contaminants, chemicals, raw materials, metals, intermediates, products, industrial, solid, toxic or hazardous substances, materials, wastes, asbestos, asbestos-containing materials, polychlorinated biphenyls, or petroleum products, including crude oil or any derived product or component thereof, including, without limitation, gasoline and any material or substance of any kind containing any of the above.

"Economic Development Agreement" shall mean that agreement entered into between Landlord and Tenant under Chapter 380 of the Texas Local Government Code on even date herewith.

"Environmental Claim" shall mean any claim, demand, action, suit or proceeding for the injury, disease or death of any person (including, without limitation, the Tenant, or Tenant's successors, assigns, employees, agents and/or representatives), property damage, damage to the environment, or damage to natural resources made, arising or alleged to arise under, or relating to, any Environmental Law. Environmental Claim includes any damages, settlement amounts, fines and penalties assessed or costs of complying with any orders or decrees of courts, administrative tribunals or other governmental entities associated with resolving such claims, demands, actions, suits or proceedings and any costs, expenses and fees, including, without limitation, reasonable

attorney's fees, incurred in the investigation, defense and resolution of such claims, demands, actions, suits and proceedings.

"Environmental Cleanup Liability" shall mean any cost or expense of any nature whatsoever incurred to investigate, contain, remove, remedy, respond to, clean up, or abate any Release of Chemical Substances or other contamination or pollution of the air, surface water, groundwater, land surface or subsurface strata related to the operation, occupation, use, maintenance, abandonment or ownership of the Premises, whether such Release, contamination or pollution is located on, within, under or above the Premises or is located on, within, under or above any other lands or property including, but not limited to, any Release of Chemical Substances or other contamination or pollution arising out of or resulting from the manufacture, generation, formulation, processing, labeling, distribution, introduction into environment or commerce, or on site or off site use, treatment, handling, storage, disposal, or transportation of any Chemical Substance. Environmental Cleanup Liability includes, without limitation, any judgments, damages, settlements, costs or expenses (including, without limitation, attorneys', consultants, and experts' fees and expenses) incurred with respect to (i) any investigation, study, assessment, legal representation, cost recovery by a governmental agency or third party, or monitoring or testing in connection therewith, (ii) the Premises, as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, response, cleanup or abatement, and (iii) the resolution of such liabilities.

"Environmental Law" means any statutes or legal requirements relating to or regulating pollution, worker, employee and occupational safety and health, protection or cleanup of the environment or damage to or remediation of damage to real property and natural resources (including, but not limited to, ambient air, surface water, groundwater, and land surface or subsurface strata) including, without limitation, legal requirements contained in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq., as amended (CERCLA); the Resources Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., as amended (RCRA); the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, as amended (SARA); the Clean Air Act, 42 U.S.C. § 7401, et seq., as amended; the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., as amended; the National Environmental Policy Act, 42 U.S.C. § 4321, et seq., as amended (NEPA); and the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq., as amended; and/or any other federal, state or local laws, statutes, ordinances, rules, regulations or orders (including decisions of any court or administrative body) relating to pollution, worker, employee and occupational safety and health, damage to and protection or cleanup of, the environment, real property and/or natural resources as described above. Environmental Law shall also mean the Toxic Substance Control Act, 15 U.S.C. § 2601, et seq., as amended (TOSCA), and/or any other federal, state (including, without limitation, laws with respect to trespass, nuisance and other torts or similar legal theories which may be applied to establish liability or responsibility for Environmental Cleanup or Environmental Claims) or local laws, statutes, ordinances, rules, regulations or orders (including decisions of any court or administrative body) relating to (i) release, containment, removal, remediation, response, cleanup or abatement of any sort of Chemical Substance, (ii) the manufacture, generation, formulation, processing, labeling, distribution, introduction into environment or commerce, use, treatment, handling, storage, disposal or transportation of any Chemical Substance, (iii) exposure of persons, including agents, contractors and employees of Tenant, to any Chemical Substance and other occupational safety or

health matters, or (iv) the environmental hazards relating to the physical structure or condition of a building, facility, tank, fixture or other structure, including, without limitation, those relating to the management, use, storage, disposal, cleanup or removal of any Chemical Substance.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of the Tenant created by acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, governmental or de facto governmental action including, but not limited to, government actions pertaining to the determination of flood zones or FEMA actions (unless caused by acts or omissions of the Tenant), fire, explosion, flood, strikes, pandemic, or endemic; provided, however, that (a) the event giving rise to Force Majeure was not caused by the act or omission of the Tenant and makes the performance of any obligation created under this Agreement illegal or impossible; and (b) the Tenant gives reasonable notice of the event giving rise to Force Majeure and exercises all reasonable diligence to remove the cause of Force Majeure.

“Injury” means (a) damage, harm to or impairment or loss of property or its use, including without limitation, personal property, real property and/or natural resources, and (b) harm to or death of a person.

“Landlord” means Landlord and its elected officials, agents, employees, invitees, or licensees.

“Release” shall mean any spilling, leaking, pumping, pouring, emitting, spraying, emptying, discharging, escaping, leaching, dumping or disposing, in any way, manner or form, of any Chemical Substance into the environment (including, but not limited to, the ambient air, surface water, groundwater and/or land surface or subsurface strata) of any kind whatsoever (including without limitation the abandonment or temporary abandonment or discarding of barrels, containers, tanks or other receptacles containing or previously containing any Chemical Substance).

“Rent Abatement Period” shall mean a period beginning on the Commencement Date and continuing until one hundred and eighty (180) days following the date that the Tenant opens all Permitted Uses for business on the Premises.

“Tenant” means Old Town Craft LLC, a Texas limited liability company.

Clauses and Covenants

A. Tenant agrees to:

1. Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date. Notwithstanding, this Lease is expressly contingent upon Tenant’s ability to obtain building permits, liquor permits, and a Certificate of Occupancy for the Permitted Use. If such contingencies cannot be met, as reasonably determined by Tenant, Tenant will have the right to terminate this Lease upon thirty (30) days written notice to Landlord.

2. ACCEPT THE PREMISES IN THEIR PRESENT CONDITION “AS IS,” “WHERE IS” AND “WITH ALL FAULTS”, EXCEPT AS OTHERWISE PROVIDED FOR HEREIN. TENANT STIPULATES THAT IT HAS THOROUGHLY INSPECTED THE

PREMISES AND FINDS THAT THE PREMISES IS CURRENTLY SUITABLE FOR THE PERMITTED USE. EXCEPT AS PROVIDED HEREIN, LANDLORD MAKES NO REPRESENTATION, COVENANTS OR WARRANTIES, EXPRESSED, IMPLIED OR OF ANY KIND OR NATURE CONCERNING OR WITH RESPECT TO THE PREMISES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, QUALITY, HABITABILITY, SUITABILITY, OR FITNESS FOR PARTICULAR PURPOSE OR USE. TENANT STIPULATES TO LANDLORD THAT IT IS AWARE OF THE CONDITION OF THE PROPERTY. TENANT REPRESENTS AND WARRANTS TO LANDLORD THAT THERE WILL BE NO CHEMICAL SUBSTANCES CONTAINED OR STORED OR THAT HAVE BEEN RELEASED IN OR ON THE PREMISES DURING THE LEASE TERM THAT WOULD RESULT IN AN ENVIRONMENTAL CLAIM OR ENVIRONMENTAL CLEANUP LIABILITY. TENANT SHALL BE REQUIRED TO PERFORM ALL WORK NECESSARY TO OBTAIN A CERTIFICATE OF OCCUPANCY, INCLUDING ALL SIGNAGE AND FURNITURE, FIXTURES, AND EQUIPMENT.

3. Obey (a) all applicable laws relating to Tenant's use, maintenance of the condition, and occupancy of the Premises, and (b) any requirements imposed by utility companies serving, insurance companies, and/or the TML Intergovernmental Risk Pool, covering the Premises.

4. Following the Rent Abatement Period, pay monthly, in advance, on the first day of the month, the Rent due to Landlord at Landlord's address.

5. Pay a late charge of 5% of any Rent not received by the Landlord by the tenth (10th) day after it is due.

6. Obtain and pay for all utility services used by Tenant.

7. Pay all costs related to the utilities, of any kind or nature, consumed at the Premises.

8. After receiving at least twenty-four (24) hours' advance written notice (which may be sent by email), allow Landlord to enter the Premises to perform Landlord's obligations, if any, inspect the Premises, and show the Premises to prospective purchasers or tenants, if applicable. Twenty-four (24) hours' advance written notice shall not be required in case of an emergency requiring performance of Landlord's obligations. The notice requirement herein shall not apply to inspections to ensure compliance with applicable state and local laws and regulations, including any inspection necessary to issue required permits. At least once a year, Tenant shall accompany Landlord on a joint walkthrough and inspection of the Premises.

9. Maintain the Premises in a good state of condition, normal wear and tear excepted. Except as otherwise provided for in this section, Tenant shall be responsible for maintenance of any improvements installed, added, or changed by Tenant, grease trap, mainline utilities up to the point they enter the buildings on the Premises, the interiors, all utilities, HVAC, doors, windows and storefronts, landscaping, exterior doors and windows of the Premises, outdoor improvements, including but not limited to, patios, decks, and any other outdoor gathering areas and appurtenances thereto, for regular cleaning of the patios and outdoor areas, mowing and landscaping of outdoor areas. Landlord shall be solely responsible for maintaining the roof,

exteriors (not including doors, windows, and storefronts), structural components, and foundation so long as such maintenance is not required due to the actions of the Tenant.

10. Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord. Landlord shall commence all such repairs, replacement, and maintenance within thirty (30) days of receiving notice of the need therefor, with the exception of any roof leak causing water penetration into the Premises, which Landlord shall commence to repair within five (5) business days of receiving notice thereof, and in each event, Landlord shall thereafter diligently pursue such repair to completion. Requests shall be sent using the Landlord's provided repair request form and shall include whether Tenant believes repairs required hereunder must occur within thirty (30) calendar days or five (5) business days due to water intrusion. Where a request is silent, it will be assumed that repairs may commence within thirty (30) days. Landlord may make reasonable changes to the format of the repair form or the manner in which it is to be submitted upon thirty (30) days advance notice to Tenant.

11. Vacate, in its entirety, the Premises on or before the Termination Date. Tenant shall remove all personal property and trade fixtures and any other property, excepting the buildings, structures, improvements and other facilities that are fixtures, other than trade fixtures, to the Premises (collectively, "Tenant's Personal Property") owned by it from the Premises on or before the Termination Date, and shall execute a written stipulation waiving any and all rights the Tenant may have to the Premises and such property remaining on the Premises after that date, as set forth in subsection A.15, below.

12. INDEMNIFY, DEFEND, AND HOLD LANDLORD HARMLESS FROM ANY DAMAGE OR INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) OCCURRING IN OR RELATED TO ANY PORTION OF THE PREMISES UNLESS CAUSED BY THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR DEFAULT UNDER THIS LEASE OF THE LANDLORD, AND RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE LANDLORD UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE LANDLORD OR TENANT UNDER TEXAS LAW, AND THE LANDLORD'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE TENANT'S LIABILITY. **THE INDEMNITIES CONTAINED IN THIS PARAGRAPH ARE (A) INDEPENDENT OF TENANT'S INSURANCE, (B) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, AND (C) WILL NOT SURVIVE THE END OF THE TERM. LANDLORD SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, RESULTING FROM THE PERFORMANCE OF THIS AGREEMENT, WHETHER DAMAGES ARE GENERAL OR SPECIAL, AND WHETHER ARISING FROM BREACH OF CONTRACT OR TORT.**

13. During the term of this Lease, Tenant shall not locate, store or dispose in or on, or release or discharge from (including groundwater contamination) the Premises, any Chemical Substances that could result in an Environmental Claim or Environmental Cleanup Liability.

14. At no cost or expense to Landlord, take all actions necessary to comply with all Environmental Laws affecting the Premises which arise from any Chemical Substances Tenant locates, stores, or disposes in or on, or releases or discharges (including groundwater contamination) from the Premises.

15. Declare that any of Tenant's Personal Property remaining on the Premises after the Termination Date shall be deemed Abandoned Property, as prescribed by Section E.22., below, and may be disposed of by Landlord in any manner prescribed by Section E.22., below.

16. Waive all rights to protest the appraised value of the Premises or to appeal the same and all rights to receive notices of reappraisal as set forth in sections 41.413 and 42.015 of the Texas Tax Code.

17. Complete all improvements to the Premises as set forth in the Economic Development Agreement, within the timeframes provided therein, as they may be extended.

18. In accordance with section 2252.909 of the Texas Government Code, as it exists or may be amended:

- a. include in each contract for the construction, alteration, or repair of an improvement to the Premises a condition that the contractor:
 - i. Execute a payment bond that conforms to Subchapter I, Chapter 53 of the Texas Property Code; and
 - ii. Execute a performance bond in an amount equal to the amount of the contract for the protection of the Landlord and condition on the faithful performance of the contractor's work in accordance with the plans, specifications, and contract documents.
- b. Provide to the Landlord a notice of commencement consistent with section 2252.909 of the Texas Government Code, as it exists or may be amended, at least 90 days before the date the construction, alteration, or repair of any improvement to the Premises begins.

B. Tenant agrees not to:

1. Use the Premises for any purpose other than the Permitted Use.
2. Create a nuisance.
3. Permit any waste.
4. Use the Premises in any way that would increase insurance premiums or void insurance on the Premises.
5. Change the lock system of the Premises without the prior written consent of the Landlord, which will not be unreasonably withheld, conditioned, or delayed.

6. Alter the Premises except as set forth in the Economic Development Agreement.
7. Allow a lien to be placed on the Premises and fail to remove same within thirty (30) days of receiving notice thereof.
8. Assign this Lease or sublease any portion of the Premises.

C. Landlord agrees to:

1. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.
2. Permit Tenant to install its typical signage on the storefront of the buildings on the Premises, subject to government agency and Landlord approval, including, but not limited to, approval by the City of Lewisville Old Town Design Review Committee.

D. Landlord agrees not to:

1. Interfere with Tenant's possession of the Premises as long as Tenant is not in default hereunder beyond any applicable cure period.

E. Landlord and Tenant agree to the following:

1. *Alterations.* Any physical additions, improvements or alterations to the Premises made by Tenant must be either included in and carried out in accordance with the Economic Development Agreement or consented to by Landlord, in its reasonable discretion, such consent not to be unreasonably withheld, conditioned, or delayed. Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord.
2. *Abatement.* Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant will not be entitled to abatement of Rent for any reason.
3. *Insurance.* Tenant will maintain the insurance coverages described in the attached Insurance Addendum during the Term of this Lease. Tenant may not take exclusive possession of the Premises without Landlord's receipt of Tenant's certificate of insurance proving that Tenant carries all required insurance coverages.
4. *Release of Claims.* **TENANT RELEASES LANDLORD FROM ANY AND ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE PREMISES, DAMAGE TO OR LOSS OF PERSONAL PROPERTY WITHIN THE PREMISES, AND LOSS OF BUSINESS OR REVENUES INCIDENT TO, ARISING FROM OR RELATED TO TENANT'S OCCUPATION OF THE PREMISES. THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE, OF ANY KIND, TYPE OR DEGREE, OR STRICT LIABILITY OF LANDLORD BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE WILLFUL MISCONDUCT, GROSS NEGLIGENCE OF LANDLORD,**

OR LANDLORD'S FAILURE TO COMPLY WITH THIS LEASE AND/OR APPLICABLE LAW.

5. *Casualty/Total or Partial Destruction.* If the Premises are substantially damaged by casualty to the extent the Permitted Use may not continue absent repair, unless the Premises is repaired by Tenant as provided in Section A.9., above, this Lease will terminate without liability of any kind to Landlord and Tenant will have no further obligations under the Lease, except for those set forth in sections A.12 and E.4, which shall survive the termination of this Lease.

6. *Condemnation/Substantial or Partial Taking*

- a. If the Premises cannot be used for the purposes contemplated by this Lease because of condemnation or purchase in lieu of condemnation, this Lease will terminate.
- b. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation provided to Landlord by reason of such condemnation, however, Tenant will be entitled to apply for reimbursement from the condemning authority (if permitted by law) for an award of damages on account of the taking so long as such action shall not affect the amount of compensation otherwise recoverable by Landlord from the condemning authority.

7. *Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this Lease within thirty (30) calendar days after written notice.

8. *Default by Landlord/Tenant's Remedies.* Except as otherwise set forth in this Lease, Tenant's remedies for Landlord's default are solely to either (i) enforce the terms of this Lease by specific performance; or (ii) terminate this Lease. THE REMEDIES OF TENANT AS SET FORTH HEREIN ARE SOLE AND EXCLUSIVE AND TENANT WAIVES ANY OTHER RIGHT OR REMEDY THAT MIGHT BE AVAILABLE.

9. *Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent if such failure continues for more than ten (10) days beyond the date Rent is due; (b) Tenant abandoning or vacating a substantial portion of the Premises without surrendering the Premises to Landlord; (c) failing to adhere with the requirements of the Permitted Use at any time following written notice from Landlord, as follows: (i) if Tenant is closed at the time of notice, it must reopen within three (3) days of receiving notice of noncompliance from the City and adhere to the Permitted Use requirements; or (ii) if Tenant falls short of the minimum 70-hour weekly requirement, it will not be required to make up deficit hours; however, such shortfalls as set forth in (ii) shall not exceed three (3) instances per calendar year. The City Manager may, in her sole discretion, increase this number of days allowed for reopening following closure and notice as set forth in (i) or the annual cap for total instances of shortfall as set forth in (ii); (d) Tenant failing to comply, within twenty-one (21) calendar days after written notice or such longer period of time as is reasonably necessary under the circumstances, as reasonably approved by Landlord, so long as Tenant commences to cure such default within such period of time, and thereafter diligently

pursues such cure to completion), with any provision of this Lease, but excluding the defaults set forth in (a) and, (b) above, which shall require no notice of default to Tenant and the defaults set forth in (c) above, which shall require notice as set forth therein; (d) Tenant shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors; (e) a receiver or trustee shall be appointed for all or substantially all of the assets of Tenant; (f) Tenant shall file a voluntary petition in bankruptcy or admit in writing that it is unable to pay its debts as they become due; (g) Tenant shall apply for or consent to the appointment of a receiver, trustee, custodian, intervener or liquidator of itself or of all or substantial part of its assets; (h) Tenant shall file an answer admitting the material allegations of, or consent to, or default in answering, a petition filed against it in any bankruptcy, reorganization or insolvency proceeding; (i) any of Tenant's representations or warranties contained in this Lease are untrue at any time during the Term, and (j) termination of the Economic Development Agreement for any reason that is not related to Tenant's contingency set forth in section A.1.

10. *Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises, (b) terminate this Lease by written notice to Tenant, or (c) pursue condemnation of the leasehold estate. Landlord shall also have all other remedies available under the law in case of a default or termination.

11. *Default/Waiver/Mitigation.* It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Except as to the sole and exclusive remedies of Tenant and Landlord, pursuit of any remedies set forth in this Lease does not preclude pursuit of other remedies in this Lease or provided by applicable law.

12. *Holdover.* If Tenant does not vacate the Premises following termination of this Lease, Tenant will become a tenant at sufferance. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term. Tenant stipulates that its possession of the Premises after the expiration of the Term, as a tenant of sufferance, will cause damage to Landlord in an amount equal to twice the prorated Rent that would have been due for the period of holdover.

13. *Lease of Commercial Rental Property.* Tenant represents and warrants that the Premises is commercial rental property, as defined in Chapter 93 of the Texas Property Code.

14. *Option to Purchase Premises.* Landlord grants to Tenant an option to buy the leased premises at any time Tenant may elect following the beginning of the Rent Abatement Period and before the Termination Date, at a price of EIGHT HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$850,000.00), provided Tenant shall have performed the Lease and made all payments required up to that time, subject to the applicable notice and cure provisions provided for in this Lease. In the event of the exercise of this option as provided in this section, Landlord agrees to convey the property to Tenant by special warranty deed free and clear of all encumbrances except the taxes and assessments which under this lease are to be paid by Tenant and any preexisting easements on the Premises. In the event and upon the Tenant's exercise of the option to purchase the Premises in the manner provided, the terms of the sale including but not limited to earnest money, due diligence period, and closing period shall be formalized in a purchase contract. Whenever Tenant shall desire to exercise this option, Tenant shall give Landlord written notice. Absent Force Majeure, the purchase shall in any event be completed by conveyance of the

property and payment of the purchase price within ninety (90) days from the delivery of notice of intent to exercise this option, and if the notice is not given by Tenant ninety (90) days before the Termination Date, then this option shall be null and void. During the last thirty (30) days of the Term, if this option is not exercised, Landlord may place a sign on the Premises advertising the Premises for rent or for sale. **Upon advance written notice to Tenant, the City Manager may extend the timing to pay the purchase price and complete the conveyance of the property, as referenced in this paragraph, for up to sixty (60) days in her sole and absolute discretion.** In the event and upon the Tenant's exercise of the option to purchase the Premises in the manner provided, this Lease shall immediately terminate at the time of closing on the Premises. Tenant may file a memorandum of lease in the property records with respect to its ROFR.

15. *Right of First Refusal ("ROFR").* If, following the beginning of the Rent Abatement Period and before the Termination Date, the Landlord shall receive a bona fide offer to purchase the Premises which the Landlord desires to accept, the Landlord shall notify the Tenant in writing of such bona fide offer stating the price and other terms of the offer. Tenant shall have sixty (60) days following the mailing of this written notice within which to notify the Landlord in writing as to whether the Tenant desires to exercise the option to purchase the Premises as set forth in section E.14., above. Any neglect or failure on the part of the Tenant to respond to the Landlord's notice of the bona fide offer shall be conclusively deemed to be an election not to purchase the Premises. If the Tenant elects either directly or indirectly not to purchase the Premises by exercising the option set forth in section E.14., above, then the Landlord shall be at liberty to sell and convey the Premises. In the event and upon the Tenant's exercise of the option to purchase the Premises in the manner provided, the process to exercise such option and purchase the Premises shall move forward as set forth in section E.14., above. **Upon advance written notice to Tenant, the City Manager may extend the timing referenced in this paragraph for up to ninety (90) days in her sole and absolute discretion.**

16. *Notice of Possible Asbestos-Containing Materials.* Buildings or structures located on the Premises may contain asbestos-containing material or presumed asbestos-containing material as defined by OSHA regulations. Tenant has inspected the Premises and conducted such tests and inspections as Tenant deems necessary or desirable. Tenant will provide Landlord with copies of all such test results and inspections. Tenant will comply with all rules and regulations relating to asbestos in performing any maintenance, housekeeping, construction, renovation, or remodeling of the Premises, and Tenant will bear all costs related to removal and disposal of asbestos from the Premises.

17. *Venue.* EXCLUSIVE VENUE FOR ANY ACTION HEREUNDER IS IN DENTON COUNTY, TEXAS, THE COUNTY IN WHICH THE PREMISES ARE LOCATED.

18. *Entire Agreement.* This Lease, together with the attached exhibits, comprises the entire agreement of the parties, and there are no oral representations, warranties, agreements, or promises pertaining to this Lease or occupation of the Premises. Tenant is not relying on any statements or representations that are not in this Lease and any exhibits.

19. *Amendment of Lease.* This Lease may be amended only by an instrument in writing, duly authorized and signed by Landlord and Tenant. Notwithstanding anything to the contrary

herein, the authority to amend this Lease by Landlord is not delegated by the City Council of Landlord.

20. *Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, SUITABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

21. *Notices.* Any notice given by one party to the other in connection with this Lease shall be in writing and shall be sent by certified mail, return receipt requested, with postage fees prepaid, or via electronic mail as follows:

A. If to Landlord, addressed to:

City of Lewisville
Attn: Director of Economic Development
Email: economicdevelopment@cityoflewisville.com
151 W. Church Street
P.O. Box 299002
Lewisville, Texas 75057

B. If to Tenant, addressed to:

Old Town Craft LLC
Attn: John Williams
Email: thekid1254@yahoo.com
343 Hobson Ln.
Denton, TX 76205

Notice shall be deemed received for all purposes three (3) business days after being placed in the United States mail, as set forth herein, or when delivered by e-mail to the other party at the e-mail address provided above.

22. *Abandoned Property.* Landlord may retain, destroy, or dispose of any property, of any kind or type, including without limitation, Tenant's Personal Property left or remaining on the Premises after the Termination Date ("Abandoned Property") without liability of any kind to Landlord and without payment of consideration of any kind to Tenant.

23. *No Broker.* Tenant represents and warrants to Landlord that it has not contracted with or otherwise retained any broker or any other third party related to this Lease to whom any commission or other fee may be payable.

24. *Authority of Tenant and Landlord.* Tenant and Landlord represent and warrant to one another that each has taken all actions necessary to authorize the party executing this Lease to bind, in all respects, Tenant and Landlord, as the case may be, to all terms and provisions of this

Lease, and that such person possesses the authority to execute this Lease and bind Tenant and Landlord hereto.

25. *Delegation of Authority.* Except as otherwise expressly provided herein, any action that is to be or may be taken by Landlord under this Lease is hereby delegated by Landlord, pursuant to approval of this Lease by City Council of Landlord, to the City Manager of Landlord, or her designee.

TENANT:

Old Town Craft LLC

By: _____
John Williams, Manager

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF DENTON §

This instrument was acknowledged before me on _____ by John Williams, Manager of Old Town Craft LLC on behalf of Old Town Craft LLC, a limited liability company.

Notary Public, State of Texas

My commission expires: _____

LANDLORD:

CITY OF _____

BY: _____
_____, City Manager

ATTEST:
_____, CITY SECRETARY

BY: _____

APPROVED AS TO FORM:
_____, CITY ATTORNEY

BY: _____

STATE OF TEXAS §

COUNTY OF DENTON §

 This instrument was acknowledged before me on (date) by Claire Powell as City Manager of the City of Lewisville, Texas.

Notary Public, State of Texas

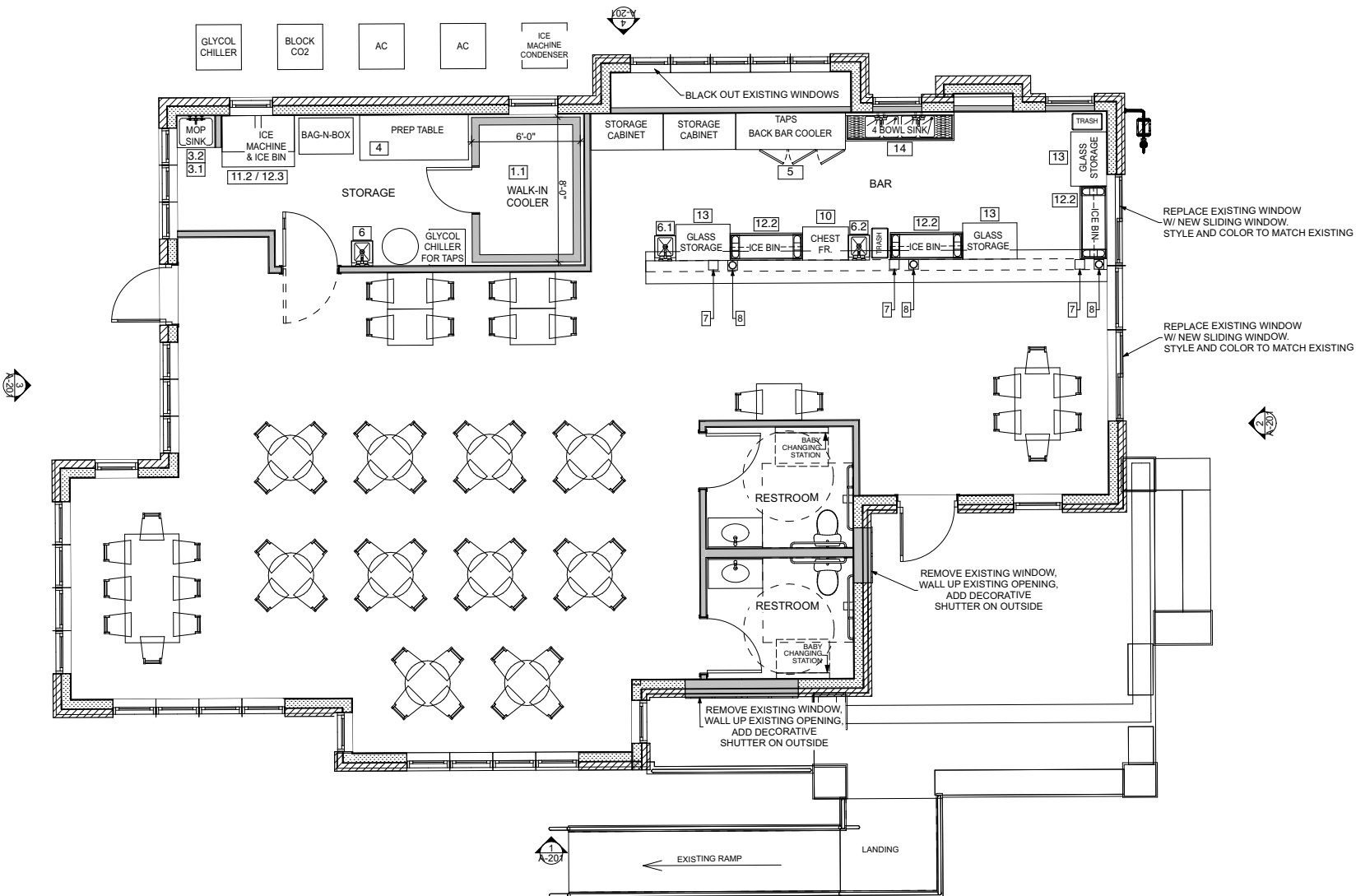
My commission expires: _____

ATTACHMENT “C”
Site Plan and Elevations



These plans are intended to provide the basic construction information necessary to substantially complete this structure. These construction documents must be verified and approved by a professional engineer or architect before they can be used for construction. If you are not a professional engineer or architect, you may wish to consult with one. It is your responsibility to make certain that the Designer has provided all the structural engineering services for foundation, HVAC, and structural, prior to construction of any kind. The Designer does not warrant that the design of these documents will conform to any part of these construction documents which may conflict with same, and must be strictly obeyed and followed before and during construction.

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1 FLOOR PLAN - MAIN STREET BUILDING
SCALE: 1/4" = 1'-0"

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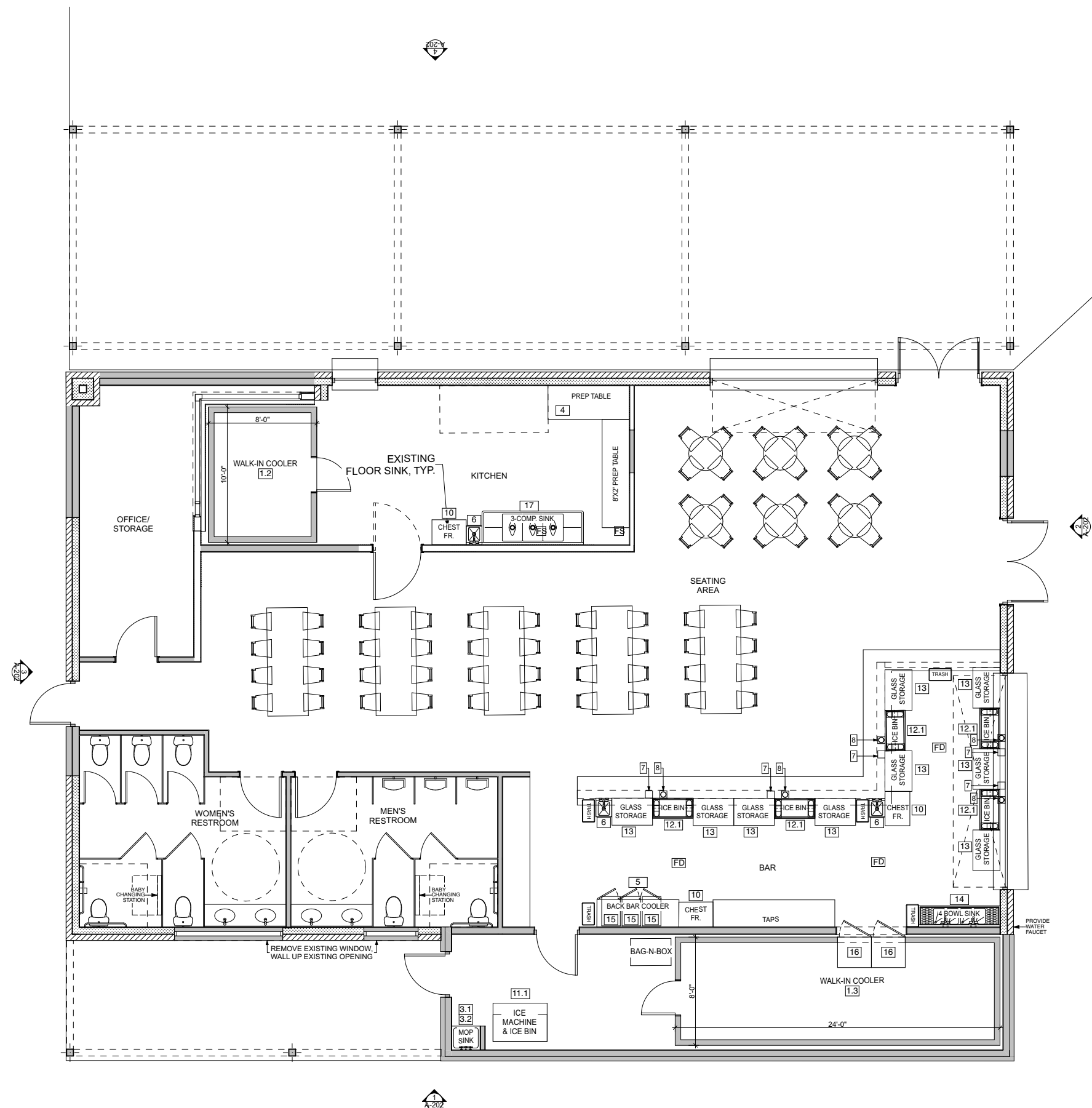
WILLIAM PECK & ASSOCIATES, LLC
105 W. MAIN ST
LEWISVILLE, TEXAS 75057
WWW.DESIGNPECK.COM
972.921.1424

OLD TOWN CRAFT, LLC
206 WEST MAIN STREET
LEWISVILLE, TX 75057

These plans are intended to provide the basic construction information necessary to substantially complete this structure. These construction documents must be verified and checked by the builder or person in authority of this project. Any discrepancy, error, and/or omission shall be the responsibility of the owner. The owner shall be responsible for obtaining all necessary permits and approvals from the appropriate authorities. The owner shall be responsible for obtaining all necessary insurance and bonding. The owner shall be responsible for obtaining all necessary engineering services for foundation, HVAC, and structural, prior to construction of any kind. NOTE: All Federal, state, and Local codes, ordinances, and regulations take precedence over these plans. The owner shall be responsible for obtaining all necessary permits and approvals from the appropriate authorities. The owner shall be responsible for obtaining all necessary insurance and bonding. The owner shall be responsible for obtaining all necessary engineering services for foundation, HVAC, and structural, prior to construction of any kind. THESE CONSTRUCTION DOCUMENTS AND THEIR USE ARE THE PROPERTY OF WILLIAM PECK & ASSOCIATES, LLC. NO PART OF THESE CONSTRUCTION DOCUMENTS SHALL BE REPRODUCED IN ANY WAY, BY ANY MEANS, WITHOUT THE EXPRESSED WRITTEN PERMISSION OF WILLIAM PECK & ASSOCIATES, INC. ALL RIGHTS RESERVED.

REVISIONS	

ISSUE DATE:	2024-07-10	OTDR
Scale:	REF. PLAN	
Drawn:	MW	
Job:	24-218-001	
Sheet Number:	A-101	



1 FLOOR PLAN - CHARLES STREET BUILDING
SCALE: 1/4" = 1'-0"

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FLOOR PLAN - CHARLES STREET

ISSUE DATE:
2024-07-10 OTDRC

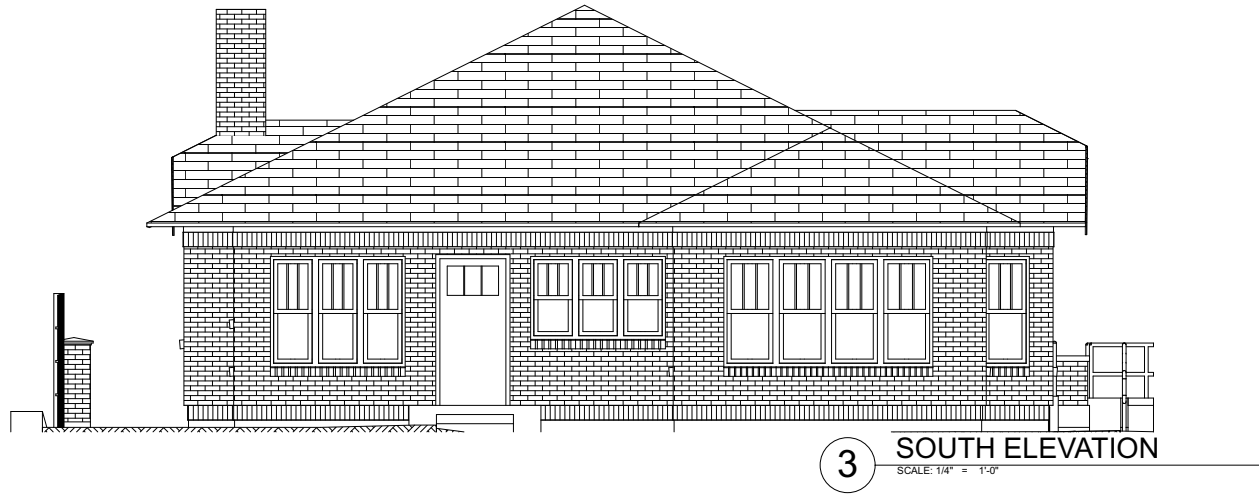
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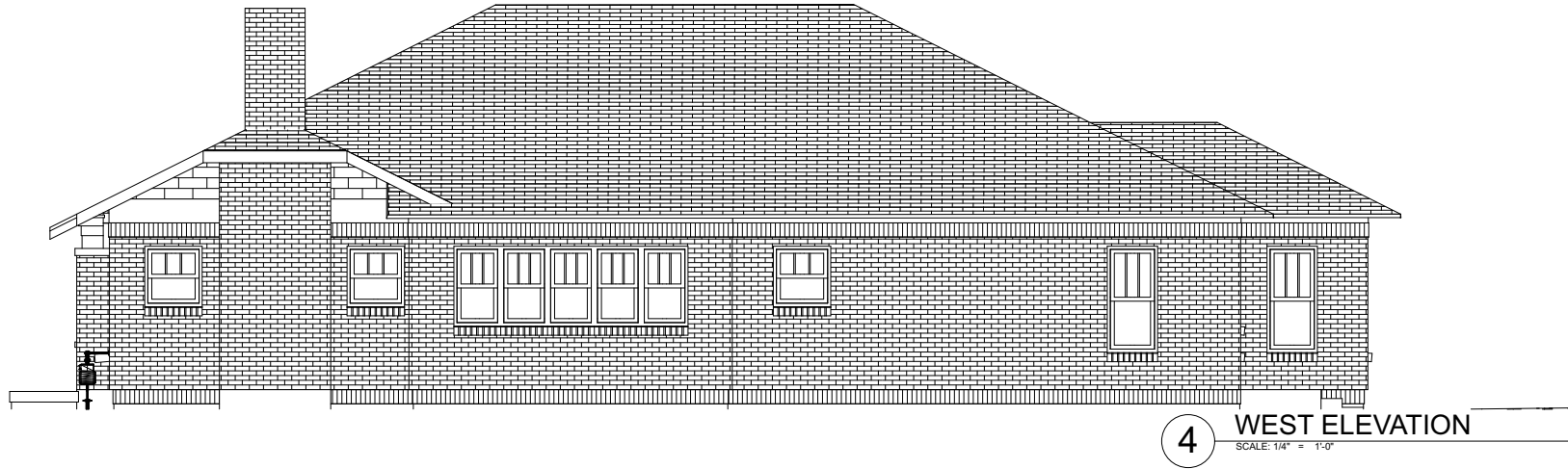
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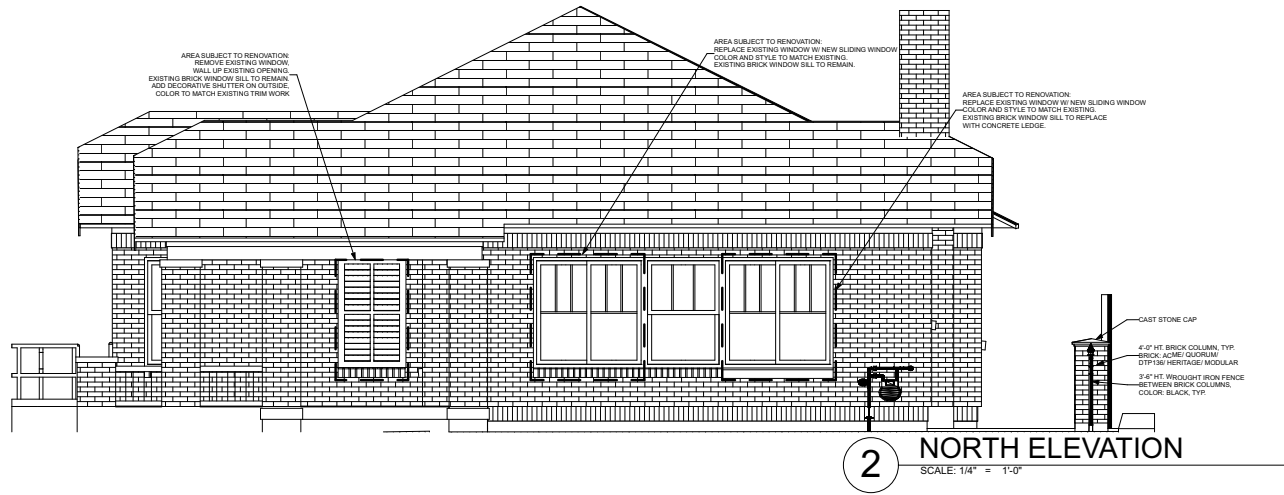
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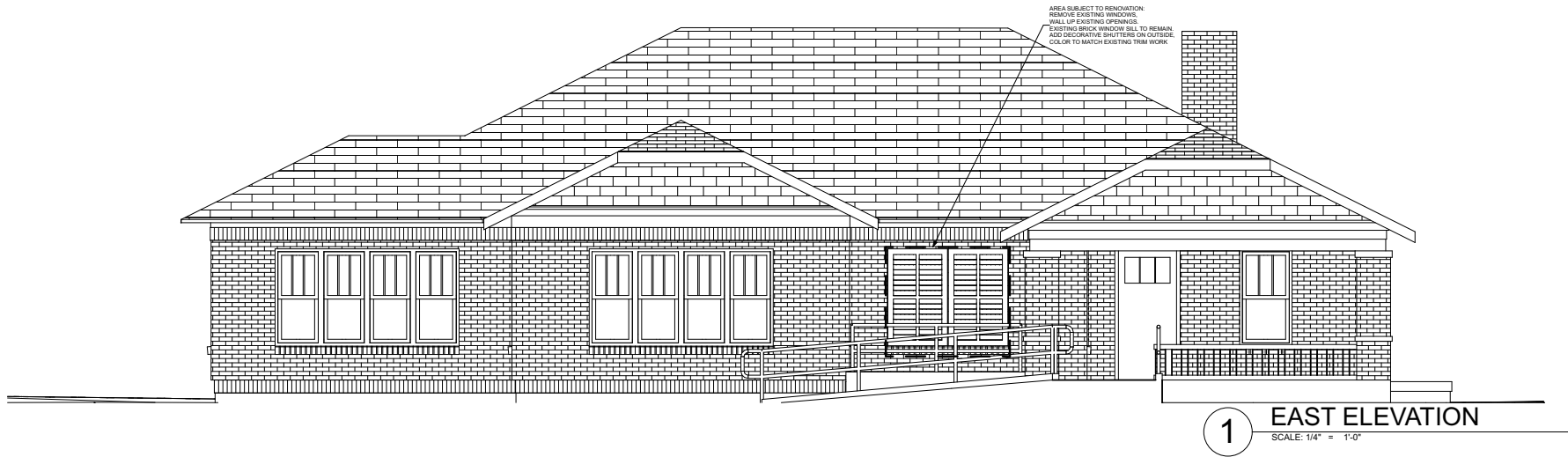
3 SOUTH ELEVATION
SCALE: 1/4" = 1'-0"



4 WEST ELEVATION
SCALE: 1/4" = 1'-0"



2 NORTH ELEVATION
SCALE: 1/4" = 1'-0"



1 EAST ELEVATION
SCALE: 1/4" = 1'-0"

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OLD TOWN CRAFT, LLC

WILLIAM PECK & ASSOCIATES, INC. DBA
1005 W. MAIN ST.
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972.921.1424

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REVISIONS

EXTERIOR ELEVATIONS - MAIN STREET

ISSUE DATE:
2024-07-10 OTDRC

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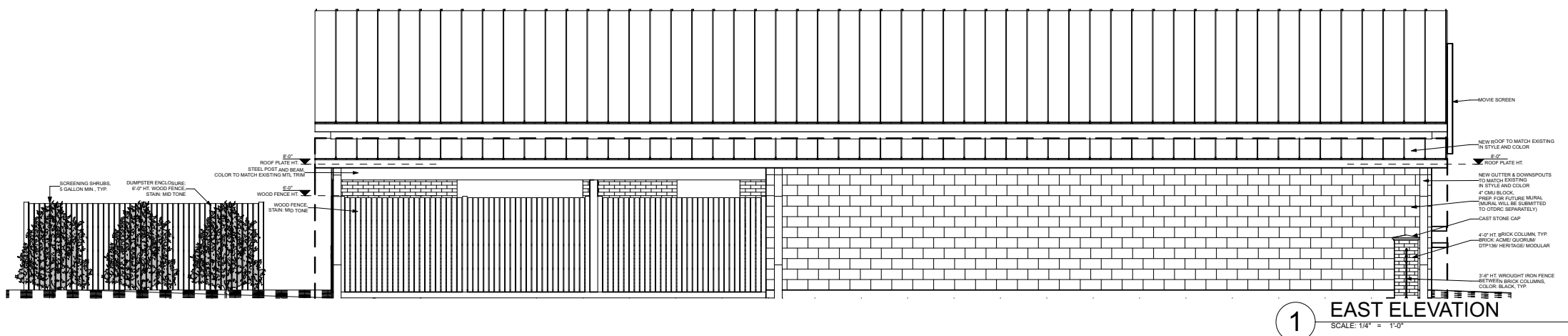
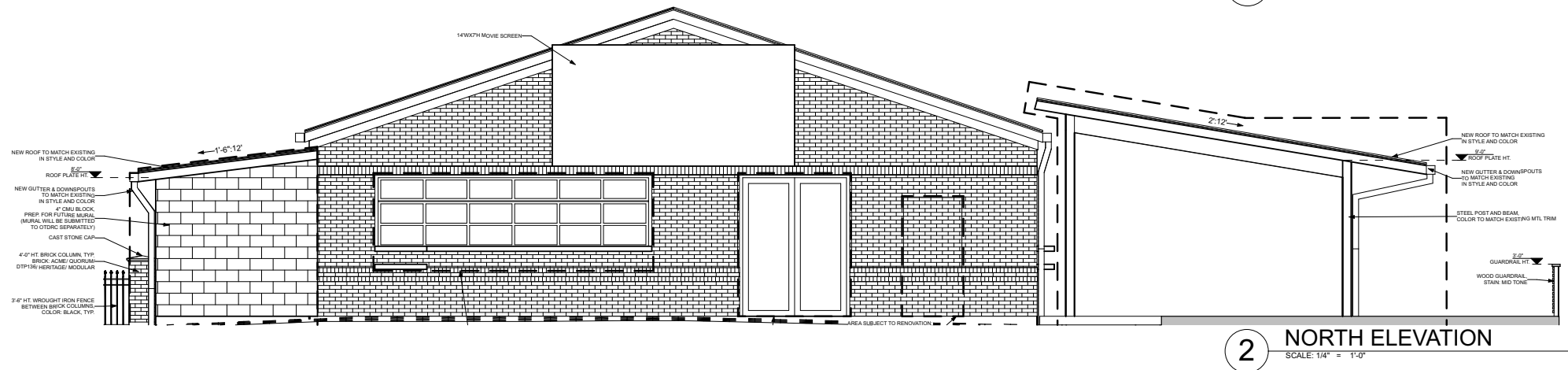
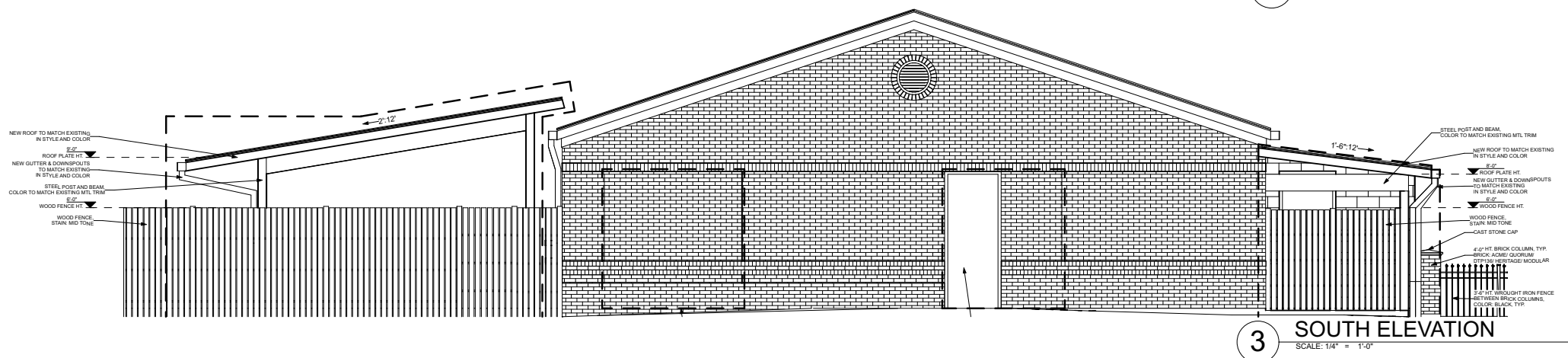
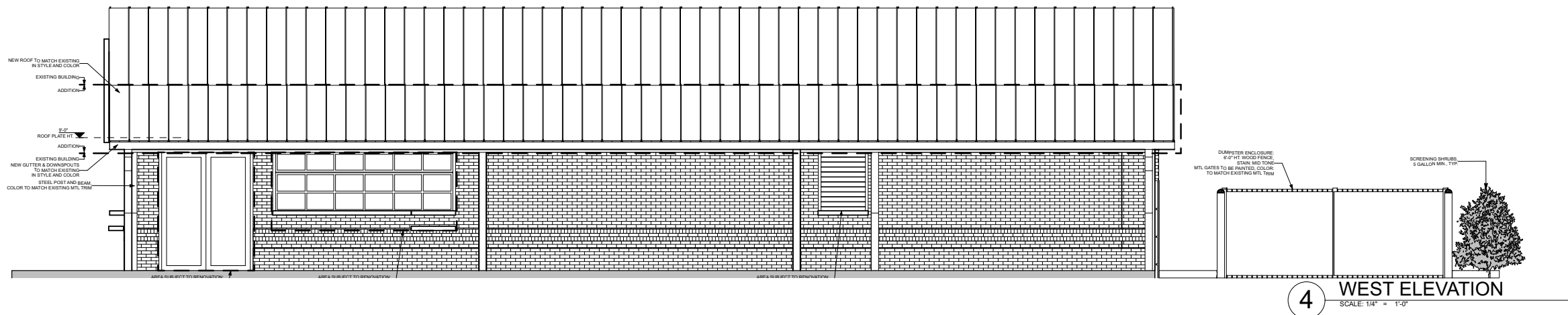
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Job: 24-218-001

Sheet Number:

A-201

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STREET

ISSUE DATE:
2024-07-10 OTDPRC

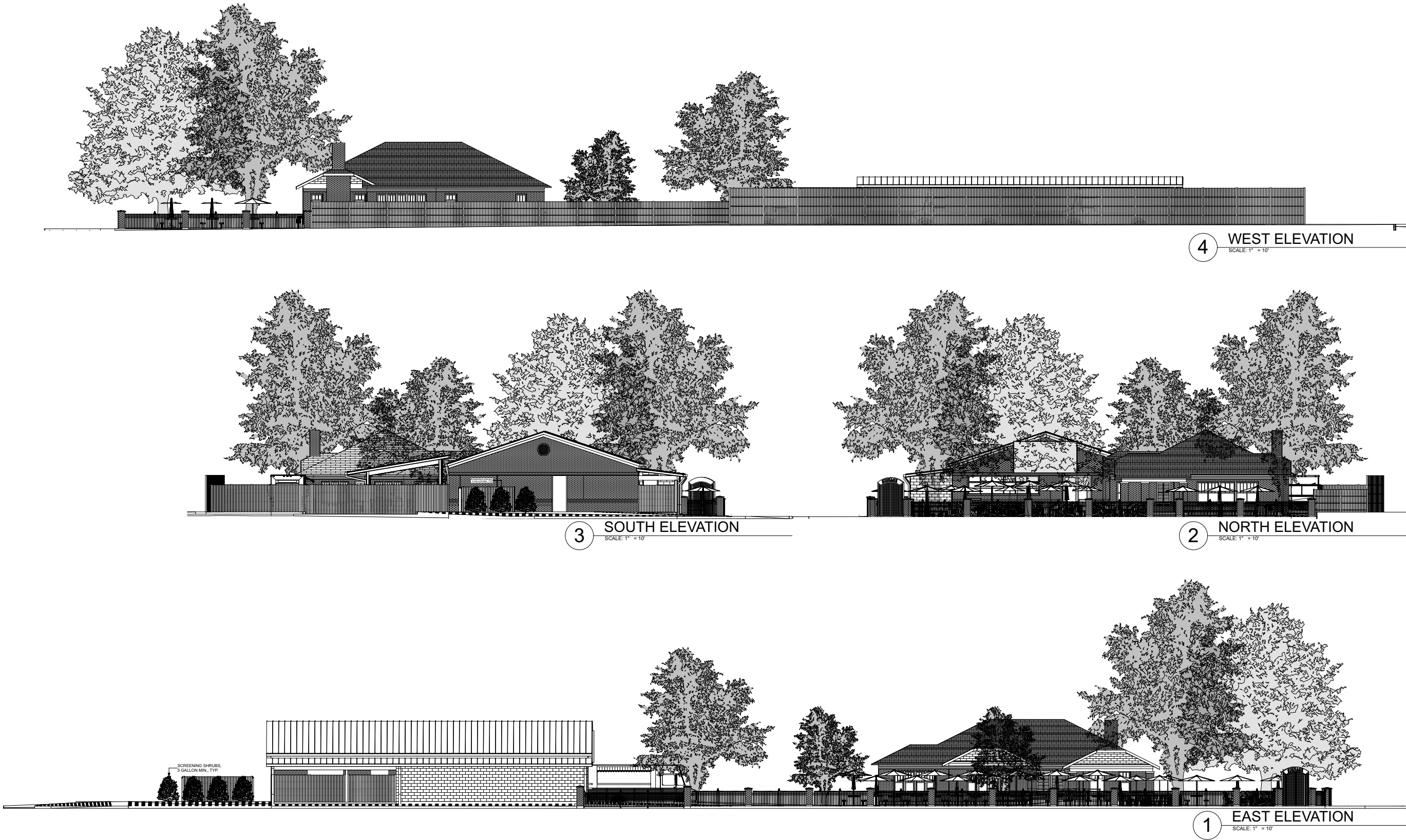
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EXTERIOR ELEVATIONS - SITE

ISSUE DATE:	
2024-07-10 OTDRC	
Scale:	REF. PLAN
Drawn:	MW
Job:	24-218-001
Sheet Number:	A-203

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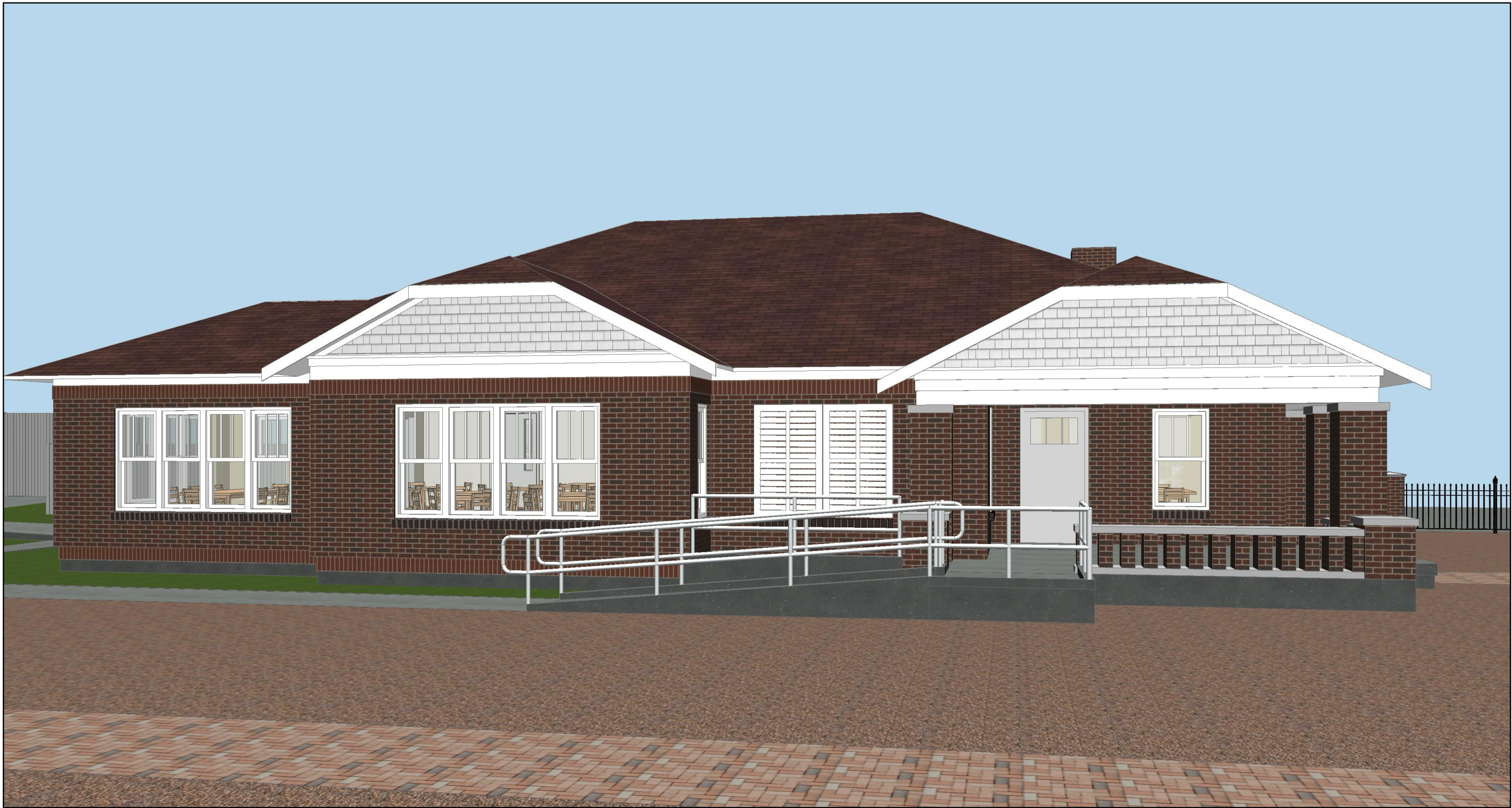
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LEWISVILLE, TX 75057

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OLD TOWN CRAFT, LLC

MAIN STREET BUILDING

DATE: 2024-07-10

206 WEST MAIN STREET LEWISVILLE, TX 75057

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MAIN STREET BUILDING

DATE: 2024-07-10

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MAIN STREET BUILDING

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CHARLES STREET BUILDING

DATE: 2024-07-10

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ATTACHMENT “D”

List of Tree Species Acceptable to Fulfill the Tree Condition

EXHIBIT VIII.3.3-3 APPROVED UNDERSTORY TREES

UNDERSTORY TREES

Common Name	Scientific Name
Carolina Buckthorn ¹	<i>Rhamnus caroliana</i>
Chittamwood ¹	<i>Sideroxylon lanuginosum (aka Burmelia lanuginose)</i>
Crepe Myrtle (tree form)	<i>Lagerstroemia indica</i>
Desert Willow ¹	<i>Chilopsis linearis</i>
Eastern Redbud ¹	<i>Cercis canadensis</i>
Eastern Red Cedar ¹	<i>Juniperus virginiana</i>
Eve's Necklace ¹	<i>Sophora affinis</i>
Hawthorne ¹	<i>Crataegus spp.</i>
Hollywood Juniper	<i>Juniperus chinensis 'Torulosa'</i>
Little Gem Magnolia	<i>Magnolia grandiflora 'Little Gem'</i>
Mexican Buckeye ¹	<i>Ungnadia speciosa</i>
Mexican Plum ¹	<i>Prunus mexicana</i>
Mexican Redbud ¹	<i>Cercis canadensis var. mexicana</i>
Possumhaw Holly (aka Deciduous Yaupon Holly) ¹	<i>Ilex decidua</i>
Prairie Flameleaf Sumac ¹	<i>Rhus lanceolata</i>

EXHIBIT VIII.3.3-3 APPROVED UNDERSTORY TREES

UNDERSTORY TREES

Common Name	Scientific Name
Red Buckeye ¹	<i>Aesculus pavia</i>
Roughleaf Dogwood ¹	<i>Cornus drummondii</i>
Rusty Blackhaw Viburnum ¹	<i>Viburnum rufidulum</i>
Texas Buckeye ¹	<i>Aesculus arguta/glabra</i>
Texas Mountain Laurel ¹	<i>Sophora secundiflora</i>
Texas Persimmon ¹	<i>Diospyrus texana</i>
Texas Redbud ¹	<i>Cercis canadensis var. texensis</i>
Thornless Common Honeylocust ¹	<i>Gleditsia triacanthos var. inermis</i>
Wax Myrtle ¹	<i>Myrica cerifera</i>
Western Soapberry ¹	<i>Sapindus drummondii</i>

¹ *Native species, which is preferred but not required.*

EXHIBIT VIII.3.3-2 APPROVED SHADE TREES

SHADE TREES

Common Name	Scientific Name
Afghan Pine	<i>Pinus eldarica</i>
American Elm ^{1,2}	<i>Ulmus americana</i>
Austrian Pine	<i>Pinus nigra</i>
Bald Cypress ¹	<i>Taxodium distichum</i>
Bigelow Oak ¹	<i>Quercus sinuate var. brevilba</i>
Black Hickory ^{1,2}	<i>Carya texana (aka Carya buckleyi)</i>
Black Locust	<i>Robinia pseudoacacia</i>
Caddo Maple	<i>Acer saccharum "Caddo"</i>
Cedar Elm ^{1,2}	<i>Ulmus crassifolia</i>
Chinquapin Oak ¹	<i>Quercus muhlenbergii</i>
Durrand Oak ¹	<i>Quercus sinuata var. sinuata</i>
Japanese Black Pine	<i>Pinus thunbergii</i>
Lacebark Elm ²	<i>Ulmus parvifolia</i>
Lacey Oak ¹	<i>Quercus fusiformis</i>

EXHIBIT VIII.3.3-2 APPROVED SHADE TREES

SHADE TREES

Common Name

Scientific Name

Live Oak ¹

Quercus virginiana

Mexican Sycamore

Platanus mexicana

Monterey Oak (aka Mexican White Oak) ^{1,2}

Quercus polymorpha

Pond Cypress

Taxodium accendens

Post Oak ¹

Quercus stellata

Sawtooth Oak

Quercus accutissima

Shumard Red Oak (aka Texas Red Oak) ^{1,2}

Quercus shumardii (aka texana)

Southern Magnolia ^{1,2}

Magnolia grandiflora

Texas Walnut ¹

Juglans microarpa

Willow Oak ^{1,2}

Quercus phellos

Winged Elm ^{1,2}

Ulmus alata

¹ Native species, which is preferred but not required.

EXHIBIT VIII.3.3-2 APPROVED SHADE TREES	
SHADE TREES	
Common Name	Scientific Name
² <i>Species approved for planting within the right-of-way along Streets and Thoroughfares</i>	

ATTACHMENT “E”

Standards and Specifications for Purchasing, Planting, and Maintaining Trees

APPENDIX A –STANDARDS AND SPECIFICATIONS FOR PURCHASING, PLANTING, AND MAINTAINING TREES

This Appendix is a compilation of the *Guideline Specification for Nursery Tree Quality: Strategies for Growing a High- Quality Root System, Trunk, and Crown in a Container Nursery, and the Tree Care Cue Cards*. It has been prepared to instruct awardees on how to select, plant, and care for young trees.

Illustrations by Edward F. Gilman, Professor, Environmental Horticulture Department, IFAS, University of Florida; adoptions from *Arboriculture: Integrated Management of Landscape Trees, Shrubs and Vines*, 4th ed., by R. W. Harris, J. R. Clark, and N. P. Matheny (Prentice Hall, 2003). *Copyright © 2011 Brian Kempf and Ed Gilman*.

Nursery Tree Quality

I. GENERAL SPECIFICATIONS

Proper Identification: All trees shall be true to name as ordered or shown on planting plans and shall be labeled individually or in groups by species and cultivar (as appropriate).

Compliance: All trees shall comply with federal and state laws and regulations requiring inspection for plant disease, pests, and weeds. Inspection certificates required by law shall accompany each shipment of plants.

Inspection: The buyer reserves the right to reject trees that do not meet specifications as set forth in these guidelines. If a defect or substandard element can be corrected easily, appropriate remedies shall be applied. If inspection of a root ball is to be done, the buyer and seller shall have a prior agreement as to the time and place of inspection, number of trees to be inspected, and financial responsibility for the inspected trees.

Delivery: The buyer shall stipulate how many days prior to delivery that delivery notification is needed. Buyer shall stipulate any special considerations to the nursery prior to shipment.

II. HEALTH AND STRUCTURE SPECIFICATIONS

These specifications apply to deciduous, broadleaf evergreen, and coniferous species. They do not apply to palms. Note that leaf characteristics will not be evident on deciduous trees during the dormant season.

Crown: The form and density of the crown shall be typical for a young specimen of the species or cultivar. The leader shall be intact to the very top of the tree.

Leaves: The size, color, and appearance of leaves shall be typical for the time of year and stage of growth of the species or cultivar. Trees shall not show signs of moisture stress as indicated by wilted, shriveled, or dead leaves.

Branches: Shoot growth (length and diameter) throughout the crown shall be appropriate for the age and size of the species or cultivar. Trees shall not have dead, diseased, broken, distorted, or otherwise injured branches.

Trunk: The tree trunk shall be relatively straight, vertical, and free of wounds (except properly made pruning cuts), sunscald areas, conks (fungal fruiting bodies), wood cracks, bleeding areas, signs of boring insects, cankers, girdling ties, or lesions (mechanical injury). The terminal bud on the leader shall be intact to the very top of the tree, and it shall be the highest point on the tree.

Roots: The root system shall be substantially free of injury from biotic (e.g., insects and pathogens) and abiotic (e.g., herbicide toxicity and salt injury) agents. Root distribution shall be uniform throughout the container substrate and shall be appropriate for the species or cultivar. At time of inspection and delivery, the root ball shall be moist throughout. Roots shall not show signs of excess soil moisture conditions as indicated by stunted, discolored, distorted, or dead roots. (see Figure 7)

See Texas A&M Forest Service's "[Selecting a Tree](#)" video for further clarification.



Figure 1.

Trees shall have one relatively straight central leader or be structurally pruned to only leave one central leader (Figure 1).



Figure 2.

Desirable

Not desirable

Main branches (Figure 2) shall be well distributed along the central leader, not clustered together. They shall form a balanced crown appropriate for the cultivar or species.

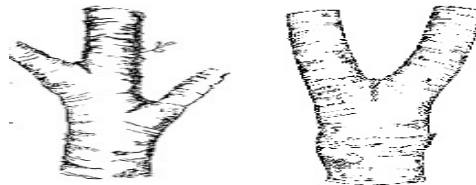


Figure 3.

Desirable

Not desirable

The diameter of branches (Figure 3) that grow from the central leader, or trunk, shall be no larger than two-thirds (one-half is preferred) the diameter of the trunk measured just above the branch.

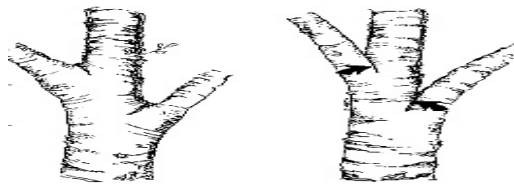


Figure 4.

Desirable

Not desirable

The largest branches shall be free of bark inclusions that extend into the branch union (Figure 4).

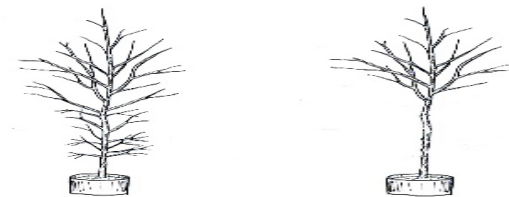


Figure 5.

Desirable

Not desirable

Small-diameter branches (Figure 5), particularly on trees less than 1-inch caliper, should be present along the lower trunk below the lowest main branch. The trunk shall be free of wounds, sunscald areas, conks (fungal fruiting bodies), wood cracks, bleeding areas, signs of boring insects, cankers, or lesions. Properly made recent or closed pruning cuts are acceptable.

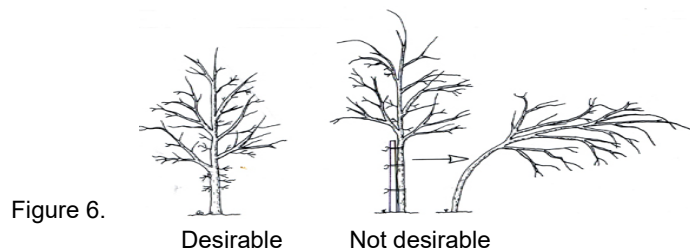


Figure 6.

The trunk caliper (diameter) and taper (Figure 6) shall be sufficient so that the tree remains vertical without a stake.

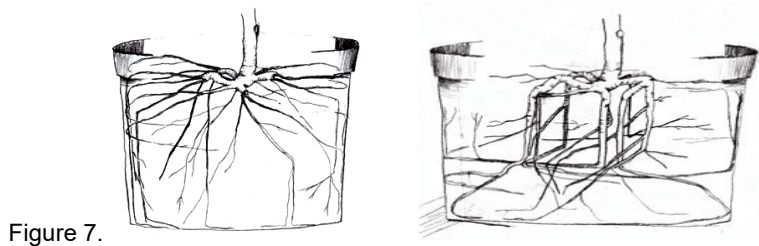


Figure 7.

The root collar (the uppermost roots) (Figure 7) shall be within the upper 2 inches of the soil media (substrate). The root collar and the inside portion of the root ball shall be free of defects, including circling, kinked, and stem-girdling roots. Roots at the surface should grow mostly straight to the side of the container. You may need to remove soil near the root collar to inspect for root defects.

The tree shall be well rooted in the soil media. Roots shall be uniformly distributed throughout the container, meaning that roots should not be concentrated at the bottom of the root ball. Some roots should contact the container wall in the top half of the root ball (Figure 7). When the container is removed, the root ball shall remain intact. When the trunk is lifted, both the trunk and root system shall move as one. The imprint of the liner or smaller container shall not be visible (Figure 7).

The root ball shall be moist throughout at the time of inspection and delivery. The roots shall show no signs of excess soil moisture as indicated by poor root growth, root discoloration, distortion, death, or foul odor. The crown shall show no signs of moisture stress as indicated by wilted, shriveled, or dead leaves or branch dieback.

Tree Planting

Selecting quality trees: Planting quality trees begins by selecting the right tree for the right location and choosing vigorous, structurally sound trees from the nursery.

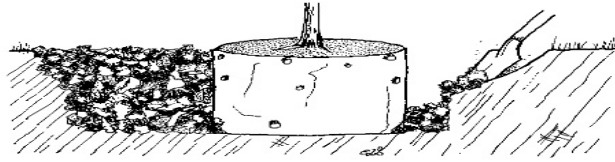


Figure 8. Loosening soil in a large area around the root ball allows for rapid root growth and quick establishment.

Digging the hole: A firm, flat-bottomed hole will prevent trees from sinking. Dig the hole only deep enough to position the root collar 1 to 2 inches above the landscape soil surface (Figure 8). Dig the hole 2 to 3 times the width of the root ball. This loose soil promotes rapid root growth and quick establishment.

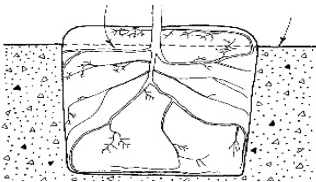


Figure 9. Remove soil and roots growing over the root collar and place collar 1 to 2 inches above soil surface.

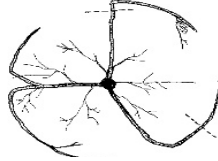


Figure 10. Cut roots at to form new roots that grow away from the trunk. Do not cut roots at since the root defects will regrow.

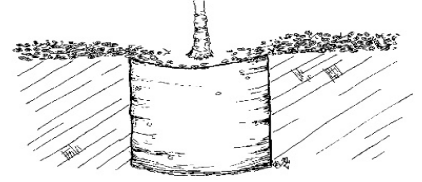


Figure 11. Mulch shall taper to a slightly thinner layer on top of the root-ball.

Installing the tree: Remove soil and roots from the top of the root ball to expose the root collar; cut away any roots that grow over the collar (Figure 9). Cut any roots that circle or mat along the sides and bottom of the root ball (Figure 10). The root collar shall be 1 to 2 inches above the landscape ground level to allow for settling after planting (see Figure 9). Backfill with soil removed from the hole. Minimize air pockets by packing gently and applying water. Build a berm around the root ball to help force water through the root ball.

Mulching: A layer of organic mulch, such as leaf litter, shredded bark, or wood chips, helps protect tree roots from temperature extremes and conserves soil moisture. Mulch also helps prevent grass from competing with the tree for water and nutrients. The mulched area makes it easier to operate mowers and weed eaters without hitting the trunk and compacting soil. Apply mulch to a depth of 2 to 3 inches (Figure 11). Mulch should be kept away from contact with the trunk.

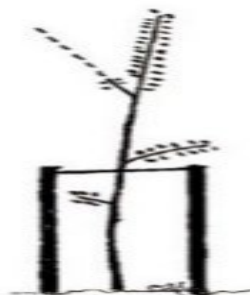


Figure 12. Double

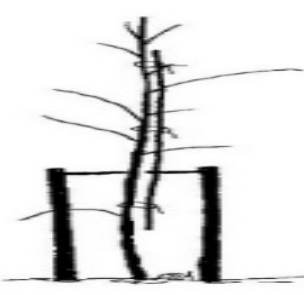


Figure 13. Double staked with splint stake.



Figure 14. Single staked with splint stake.

Staking: The method of staking is dependent on a tree's ability to stand on its own and the location of the planting site. If the tree can stand on its own, it does not need to be staked. Staking is used to hold trees erect, allow the root ball to anchor, and protect the trunk from damage by equipment. The ties around the trunk and to the stakes should not be tight – the tree should be able to move slightly in the wind. Stakes should be removed when the tree can stand on its own and the root ball is anchored. Stakes should be positioned away from the tree and secured to the trunk at the point where the tree stands straight. Do not use wire or any strap that will

girdle the tree or damage the bark. Acceptable staking examples may be seen in Figures 12, 13, and 14. Another acceptable method of staking is the use of tree anchor stakes which are driven completely through the root ball into the firm soil below.

See Texas A&M Forest Service's "[How to Plant a Tree in your Yard](#)" video for further clarification.

Tree Training in the Early Years

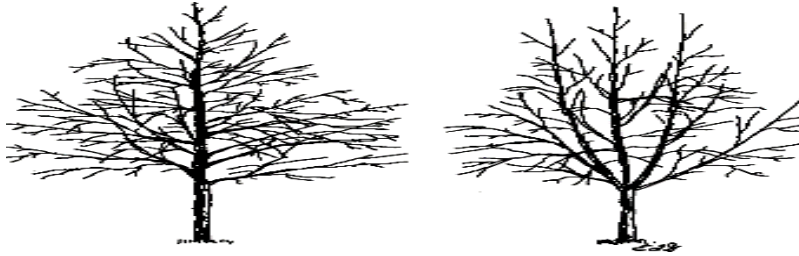


Figure 15. Good tree structure (left); poor structure (right).

Trees with branches spaced along the central leader, or trunk (Figure 15) are stronger than trees with branches clustered together (Figure 15). Prune trees at planting to one central leader by removing or shortening (shown) competing stems (Figure 16). All branches and stems shall be considerably shorter than the central leader after pruning is completed (Figure 16).

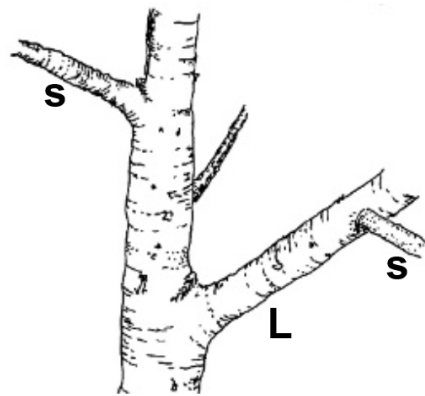


Figure 17. Only large branches need pruning (L). Small branches (S) do not need to be pruned.

Remove or shorten branches that are larger than half the trunk diameter at planting. (Figure 17). The central leader shall be more visible in the crown center after pruning. Only large-diameter branches need to be pruned because they compete with the leader and could be weakly attached (Figure 17, L). Small branches (Figure 17, S) do not need pruning because they will not compete with the leader.

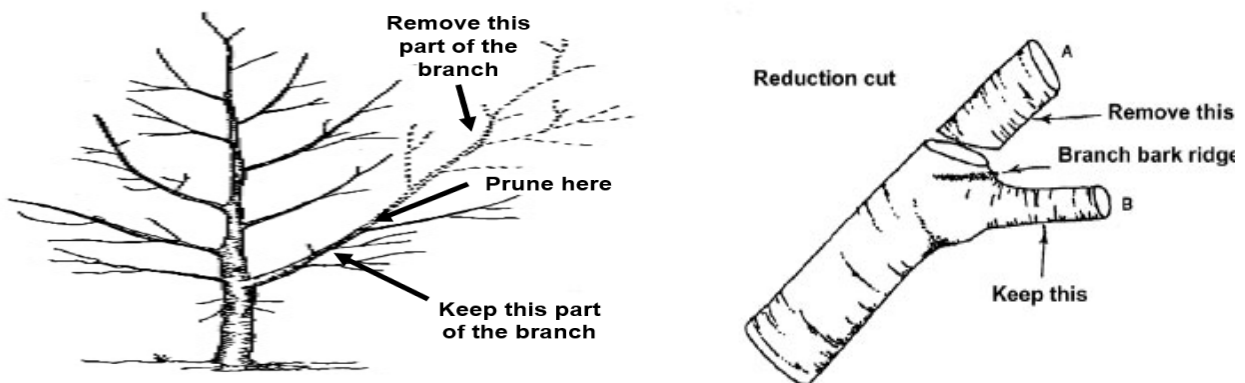


Figure 18. Shortening larger low branches concentrates growth in the leader and improves tree structure.

The best way to shorten large or long stems and branches is to cut them back using a reduction cut to a live lateral branch (Figure 18). This slows growth on the pruned parts and encourages growth in the dominant leader creating sound structure. Reduction cuts can be used on trees at planting to subordinate branches that are codominant (Figure 18). Some upright stems and branches can be removed entirely back to the trunk.

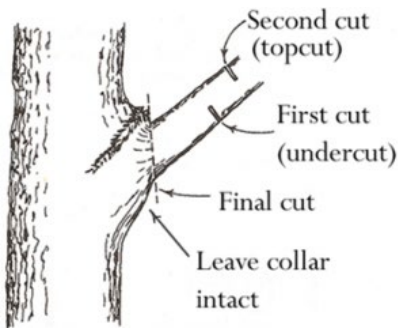


Figure 19. The 3-Cut Method

Remove larger branches by making three cuts (Figure 19). This prevents the bark from peeling or splitting off the trunk below the cut. Make the final cut back to the branch collar (enlarged area around union of branch where it joins the trunk).

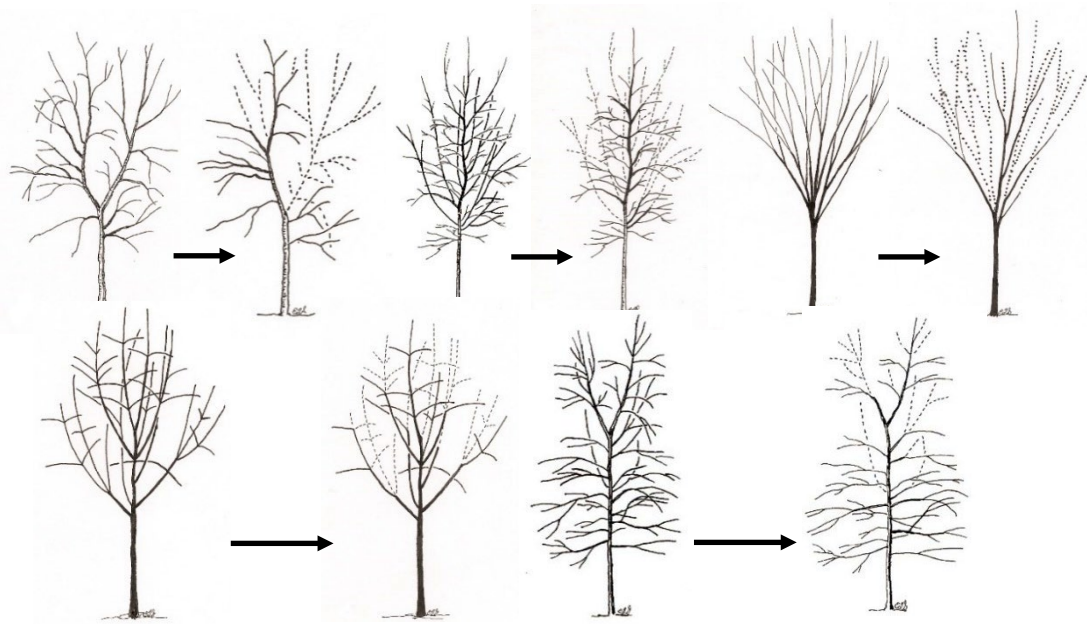


Figure 20. Before and after pruning at planting

Structural Pruning Checklist

1. Develop and maintain a central leader.
2. Prevent branches below the permanent crown from growing larger than half the trunk diameter.
3. Space main branches along the central leader.
4. Reduce vigorous upright stems back to lateral branches or remove entirely (Figure 20).

Irrigation

Consistent irrigation is critical for tree establishment.

- At planting, water immediately: first apply 25% of the tree's original container volume, let the soil and tree settle for a few minutes, straighten the tree, re-stake if necessary; then apply a second application of 25% of the container volume.
- Apply 5 gallons of water per inch of trunk diameter over the root ball 12 times per month for the first three months. Water quantity may be increased during the summer and decreased during the winter. Adjust as needed to prevent the soil from drying out or staying saturated.
- Increase volume and decrease frequency as the tree becomes established. Weekly irrigation during the second year and bimonthly irrigation during the third year should be sufficient for establishment.
- Once established, irrigation requirements depend on species, planting site, climate, and soil conditions.
- Irrigation devices should be regularly checked for breaks and leaks.
- If recycled water of adequate quality is available, consider its use if the species has been determined capable of tolerating recycled water while complying with all state permitting requirements.

Year	Amount	Frequency
YEAR 1		
First month after planting	Trunks smaller than 2" (5 cm): 3 gallons per inch of trunk diameter. Trunks larger than 2" (5cm): 5 gallons per inch of trunk diameter.	Water three (3) times a week over the root ball.
Second month after planting	Trunks smaller than 2" (5 cm): 4 gallons per inch of trunk diameter. Trunks larger than 2" (5cm): 6 gallons per inch of trunk diameter.	Water two (2) times a week over the root ball.
Third month after planting	Trunks smaller than 2" (5 cm): 5 gallons per inch of trunk diameter. Trunks larger than 2" (5cm): 7 gallons per inch of trunk diameter.	Water once (1) per week over the root ball.
Fourth to ninth month after planting	Trunks smaller than 2" (5 cm): 7 gallons per inch of trunk diameter. Trunks larger than 2" (5cm): 10 gallons per inch of trunk diameter.	Water twice per month over the root ball.
YEAR 2		
Hottest months	Trunks smaller than 2" (5 cm): 5 gallons per inch of trunk diameter. Trunks larger than 2" (5cm): 7 gallons per inch of trunk diameter.	Water twice per month over the root ball only. During a drought, water once weekly.
Cooler months		Monitor and respond.
YEAR 3		
Hottest months	Trunks smaller than 2" (5 cm): 5 gallons per inch of trunk diameter. Trunks larger than 2" (5cm): 7 gallons per inch of trunk diameter.	Water twice per month, twice the width of the root ball. During a drought, water once weekly.
Cooler months		Monitor and respond.