



NOW THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Recitals Incorporated.** The recitals set forth above are hereby adopted and incorporated into the body of this Agreement as if fully set forth herein.

2. **Temporary Construction Easement.** Grantor does hereby create, grant and convey to and for the benefit of Grantee and its successors and/or assigns, a nonexclusive temporary construction easement over, under, through, across and along the Property for the purpose of allowing Grantee and its officers, directors, agents, contractors, employees, licensees, and/or permittees (collectively, the "Permittees") to access and use the Property in order to install the Irrigation Improvements (hereinafter defined) on the Property, to begin on the date of execution of this Agreement by both parties (the "Commencement Date") and expire upon the completion of the Irrigation Improvements (hereinafter defined) by Grantee and acceptance thereof by the Grantor unless sooner terminated in accordance with this Agreement, subject to the terms and restrictions set forth herein (the "Temporary Construction Easement"). The Temporary Construction Easement granted herein shall constitute a covenant running with the land and benefitting Grantee and its Permittees, and shall burden the Property, and shall bind Grantor until release, expiration or termination of such Temporary Construction Easement, as applicable, and subject to the terms, covenants, conditions and restrictions set forth herein.

Grantee is purchasing this Temporary Construction Easement for the purpose of installing or allowing its Permittees to install the Irrigation Improvements (hereinafter defined) on the Property, and will install such Irrigation Improvements (hereinafter defined) in accordance with the terms and restrictions outlined in this Agreement.

TO HAVE AND TO HOLD the same, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee, its successors and assigns forever, and Grantor(s) is (are) hereby bound, together with all heirs, executors, administrators, or successors, to Warrant and Forever Defend, all and singular the said Temporary Construction Easement unto the said Grantee, its successors and assigns, against any person lawfully claiming or to claim the same or any part of it, by, through, or under Grantor, but not otherwise (subject to the terms hereof and any easements, covenants, conditions, restrictions or other matters of record).

3. **Irrigation Improvements.**

a. *Installation.* Following the Commencement Date, the Grantee shall commence installation of the irrigation system on the Property as more fully described and shown in Exhibit "B" and in accordance with all applicable governmental requirements (the "Irrigation Improvements"). The City Manager or her designee may agree to amendments of Exhibit "B" on behalf of Grantor. Such installation shall be complete within 15 days of the Commencement Date. Grantee may engage a contractor or other third party to install the Irrigation Improvements, pursuant to the terms and restrictions outlined herein. Grantee may contract with a reputable irrigation installation contractor doing business in the region in which the Property is located in connection with the installation

of the Irrigation Improvements hereunder. Such contractor must comply with any applicable terms and requirements outlined herein, and must be and remain in compliance with any applicable licensing or other governmental requirements, including but not limited to, active registration with the City of Lewisville as a contractor, if required. Grantee shall be exclusively liable and responsible for the costs and expenses incurred in connection with the installation of the Irrigation Improvements pursuant to this Agreement, including any additional work required in accordance with section 3.b., below. Notwithstanding any other provision of this Agreement, Grantee shall install or cause to be installed as part of the Irrigation Improvements an irrigation controller selected and provided by Grantor. The irrigation controller shall be provided at no cost to the Grantee, though Grantee will remain exclusively liable and responsible for the costs and expenses incurred in connection with the installation of such irrigation controller.

b. *Grantor's Inspection and Acceptance.* Following completion of the Irrigation Improvements within the Property, Grantee shall notify the Grantor of completion, and Grantor, through the City Manager or her designee (the "City Manager"), shall have the opportunity to inspect the Irrigation Improvements. Upon inspection, the City Manager is hereby authorized to either require the Grantee to complete additional work if the Irrigation Improvements are, in her sole discretion, not completed in accordance with Exhibit "B", or to accept the Irrigation Improvements in writing. Following acceptance of the Irrigation Improvements by the Grantor through the City Manager, the Irrigation Improvements shall be immediately conveyed from the Grantee to the Grantor in exchange for the consideration outlined herein, and the Temporary Construction Easement granted herein shall immediately expire, as provided for in section 2, above.

c. *Warranty.* Any and all warranties, including implied warranties, made by Grantee's irrigation installation contractor shall be immediately transferred to Grantor upon conveyance of the Irrigation Improvements from the Grantee to the Grantor. Grantee shall ensure Grantee's irrigation installation contractor agrees to the transfer of warranties in writing.

d. *Maintenance.* Following conveyance of the Irrigation Improvements to the Grantor, the Grantor shall be responsible for the maintenance, construction, and repair of the Irrigation Improvements.

e. *Fees.* The Grantee shall not be required to pay any City fees for the installation of the water meter required for the installation of the Irrigation Improvements.

f. *Failure to Perform.* In the event that Grantee fails to install the Irrigation Improvements as provided for herein, the Grantor may, upon ten (10) business days written notice delivered to Grantee, provided that Grantee has not cured such failure within the aforementioned ten (10) business day period, may, but has no obligation to, complete the installation of the Irrigation Improvements. In the event that Grantor is required to install any portion of the Irrigation Improvements, Grantee shall be obligated to reimburse the Grantor for work performed, and payment shall be made promptly upon Grantee's receipt of an invoice from the Grantor.

4. **No Assignment or Subletting.** Grantee will not assign this Agreement nor sublet the Property in whole or in part, and will not permit Grantee's interest in this Agreement to be vested in any third party by operation of law or otherwise without the express written permission of the Grantor. Any such assignment without the Grantor's written consent shall be void.

5. **Utilities.** Grantee represents that except to the extent necessary to complete the Irrigation Improvements, there will be no additional utilities needed and/or used on the Property beyond what is currently provided to the Property.

6. **Repairs.** Grantee takes the Property AS-IS with any and all defects. Grantee shall promptly repair, in a good and workmanlike manner, any damage to the Property or any improvements thereupon caused by any act or omission of Grantee, or of any Permittee. All repairs must be performed in accordance with all laws and regulations. All repairs must be approved by the Grantor and may require permits from the Grantor prior to commencement. The Grantor also reserves the right to require that performance, payment, and/or maintenance bonds be posted by the Grantee prior to beginning repairs of the Property. The form and substance of such bonds shall be determined by the Grantor. If Grantee fails to make repairs, the Grantor shall have the right to repair or hire a third party to repair the damage, defect, or dangerous condition, and Grantee shall promptly reimburse the Grantor for the reasonable cost of such repairs and any bonds obtained by the Grantor or its contractor. Payment shall be made promptly following Grantee's receipt of invoice from the Grantor. Prior to exercising this self-help option, the Grantor shall provide the Grantee with ten (10) days' notice of its intent to make repairs. The Grantor shall maintain any improvements within the Property except that the Grantee shall maintain the Irrigation Improvements up until the point that the Irrigation Improvements convey to the Grantor.

7. **Insurance.** The Grantee shall provide the insurance in the amounts and kinds listed in Exhibit "C" attached hereto. The Grantor shall be listed as an additional insured on Grantee's insurance policy. Grantee shall provide the Grantor with a certificate of insurance with respect thereto. Any contractor engaged by the Grantee to perform any work under this Agreement shall carry, at its sole cost and expense, insurance as indicated in Exhibit "C" and include the Grantor as an additional insured. Grantee shall provide the Grantor with certificates of insurance with respect thereto.

8. **Mechanic's or Materialmen's Liens Not Permitted.** The Grantee shall fully pay for all labor and materials used in, on or about the Property and will not permit or suffer any mechanic's or material man's liens of any nature be affixed against the Property or any improvements thereupon by reason of any work done or materials furnished to the Property at Grantee's instance or request.

9. **Events of Default.** The occurrence of any of the following shall constitute a material default and breach of the Agreement (an "Event of Default"):

- a. failure by Grantee to maintain the required insurance in the amount required by the Grantor and naming the Grantor as an additional insured;

b. failure by Grantee to observe and perform any other obligation under this Agreement beyond any applicable notice and cure period set forth herein;

c. making by Grantee of any general assignment for the benefit of creditors; the filing by or against Grantee of a petition to have such party adjudged as bankrupt or the filing of a petition for reorganization or arrangement under any law relating to bankruptcy; or

d. failure of Grantee to obey all federal, state, and local laws and regulations.

10. **Remedies.** When an Event of Default occurs, the non-defaulting party may immediately terminate this Agreement and the Temporary Construction Easement by providing notice as provided for herein, and may further exercise any remedy available at law or in equity.

11. **Alterations.** Grantee will not make any additions, improvements, or alterations in or to the Property beyond the Irrigation Improvements without the prior written consent of the Grantor.

12. **Unattended Items.** Grantee shall at no time allow any items, including but not limited to equipment necessary for the installation of the Irrigation Improvements, to be unattended on the Property. Grantee is solely liable for any and all loss of or damage to items left unattended on the Property.

13. **Amendment.** This Agreement may be amended or modified by an instrument executed by Grantor and Grantee, except that amendments or modifications to Exhibit "B" may be executed by the City Manager, as provided for in section 3, above.

14. **Surrender.** Upon Event of Default, termination, or expiration of this Agreement, Grantee, upon request by the Grantor, shall remove any improvements and appurtenances owned by it, situated in, under, on or within the Property and shall restore such Property to substantially the condition of the Property prior to Grantee's encroachment at Grantee's sole expense.

15. **No Business Relationship.** The Grantor and Grantee are independent parties and under no circumstances will their relationship be held out as, or interpreted to be or create, an agency, franchise, partnership, employment, or joint venture relationship.

16. **Waiver of Breach.** Waiver by either party of non-performance or breach of any condition or legal right or remedy under this Agreement or under law, will not constitute any further waiver of any other condition or legal right or remedy. No waiver of any condition or legal right or remedy will be implied by the failure of either party to declare an Event of Default under this Agreement when that party has the right to do so. No waiver by either party of any condition or legal right or remedy will be valid unless it is in writing signed by the waiving party.

17. **INDEMNIFICATION. GRANTEE AGREES TO INDEMNIFY, DEFEND, AND HOLD THE GRANTOR, ITS AGENTS, OFFICIALS, EMPLOYEES, AGENTS, AND LICENSEES (FOR PURPOSES OF THIS PARAGRAPH COLLECTIVELY REFERRED**

TO AS "GRANTOR") HARMLESS FROM ANY LOSS, ATTORNEY'S FEES, COURT, AND OTHER COSTS, OR CLAIMS ARISING OUT OF GRANTEE'S USE OF THE PROPERTY OR ARISING OUT OF A BREACH OF THIS AGREEMENT BY GRANTEE. THE GRANTOR SHALL NOT BE LIABLE TO GRANTEE OR GRANTEE'S AGENTS, EMPLOYEES, INVITEES, LICENSEES OR VISITORS FOR ANY INJURY TO PERSON, LOSS OF OR DAMAGE TO PROPERTY, OR FOR LOSS OF OR DAMAGE TO GRANTEE'S BUSINESS, OCCASIONED BY OR THROUGH THE ACTS OR OMISSIONS OF THE GRANTOR, OR BY ANY CAUSE WHATSOEVER. THE GRANTOR SHALL NOT BE LIABLE FOR, AND GRANTEE SHALL INDEMNIFY THE GRANTOR AND SAVE HARMLESS FROM, ALL SUITS, ACTIONS, DAMAGES, LIABILITY, AND EXPENSE IN CONNECTION WITH LOSS OF LIFE, BODILY OR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM OR OUT OF ANY OCCURRENCE IN, UPON, AT OR FROM THE PROPERTY, OR THE OCCUPANCY OR USE BY GRANTEE, ITS AGENTS, EMPLOYEES, INVITEES, LICENSEES, OR VISITORS OF THE PROPERTY OR OCCASIONED WHOLLY OR IN PART BY AN ACTION OR OMISSION OF GRANTEE, ITS AGENTS, EMPLOYEES, INVITEES, LICENSEES, OR VISITORS. THIS INDEMNIFICATION ALSO INCLUDES, COVERS, AND RELATES TO, WITHOUT LIMITATION, ANY NEGLIGENT ACT AND/OR OMISSION (WHETHER JOINT, COMPARATIVE, OR CONCURRENT) OF THE GRANTOR. IF THE GRANTOR SHALL BE MADE A PARTY TO ANY ACTION COMMENCED BY OR AGAINST GRANTEE, ITS AGENTS, EMPLOYEES, INVITEES, LICENSEES, OR VISITORS, GRANTEE SHALL PROTECT AND HOLD THE GRANTOR HARMLESS THEREFROM AND ON DEMAND SHALL PAY ALL COSTS, EXPENSES, AND REASONABLE ATTORNEY'S FEES INCURRED BY THE GRANTOR IN CONNECTION THEREWITH. THIS INDEMNIFICATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

18. **No Real Property Interest Created.** Nothing in this Agreement shall or shall be deemed to grant, convey, create, or vest in Grantee a real property interest in land of any nature whatsoever, including any fee, leasehold interest, or easement. Furthermore, in no way shall this Agreement ever be construed as an abandonment of the Grantor's right-of-way or property.

19. **Access.** Grantee agrees to allow the Grantor to enter the Property at all times for any reason deemed necessary by the Grantor.

20. **Notices.** Notices required to be given to any party to this Agreement shall be given personally 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. Either party may amend the contact information set forth herein by sending a written notice to the other party.

For Grantor by notice to:  
City of Lewisville, Texas  
Attn: City Manager  
151 W. Church Street  
Lewisville, Texas 75057

For Grantee by notice to:  
Summit Ave Owner LLC  
1801 N. Summit Ave  
Lewisville, TX 75077

21. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the matters contained herein. All provisions of this Agreement shall be strictly complied with and conformed to by the Parties, and no amendment to the Agreement shall be made except upon the written agreement of the Parties, which shall not be construed to release either party from any obligation of the Agreement except as specifically provided for in such amendment.

22. **Venue.** This Agreement shall be construed under and in accordance with the laws of the State of Texas and venue shall be only in Denton County, Texas.

23. **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.

24. **Ordinances.** Except as specifically provided in this Agreement, the Parties agree that Grantee shall be subject to all ordinances of the City of Lewisville, Texas, whether now existing or in the future arising.

25. **Authority to Execute.** The individuals executing this Agreement on behalf of the respective Parties represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

26. **Governmental Immunity.** Unless otherwise required under the law, the Parties agree that the Grantor has not waived its governmental immunity by entering into and performing their obligations under this Agreement.

27. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

28. **Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is

to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

29. **Grantor Control and Right of Entry.** Nothing in this Agreement shall limit or abrogate the Grantor's right to allow and control entry to the Property, or Grantor's right to enter the Property at any time for any reason, including but not limited to entry in order to confirm Grantee's compliance with all terms and requirements of this Agreement. Grantee understands and agrees that, notwithstanding any provision to the contrary herein, the Property is and shall remain open to the public, subject to applicable laws and regulations.

30. **Non-exclusive.** The Temporary Construction Easement granted herein is not exclusive, and the right is hereby reserved to Grantor to grant such other easements, rights or privileges with respect to the real property owned by it to such other persons and for such other purposes as Grantor in its discretion may elect, so long as such purposes do not unreasonably interfere with the Temporary Construction Easement granted herein.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]



IN WITNESS WHEREOF, we, the contracting parties, by our duly authorized agents, hereto affix our signatures as of the date listed above.

**GRANTOR:**

**CITY OF LEWISVILLE, TEXAS**  
**Approved by the Lewisville City**  
**Council \_\_\_\_\_**

By: \_\_\_\_\_  
Claire Powell, City Manager

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Thomas Harris III, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lizbeth Plaster, City Attorney

STATE OF TEXAS           §  
  §  
COUNTY OF DENTON     §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Claire Powell as city manager of the City of Lewisville, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

**GRANTEE:**



Adam McGovern – Vice President  
Summit Avenue Owner, LLC

STATE OF ~~TEXAS~~ <sup>New York</sup> §  
COUNTY OF ~~DENTON~~ <sup>New York</sup> §

This instrument was acknowledged before me on the 23rd day of July, 202~~3~~<sup>4</sup>, by Adam McGovern, a \_\_\_\_\_ Authorized Officer \_\_\_\_\_ of Summit Avenue Owner, LLC on behalf of Summit Avenue Owner, LLC, a limited liability company.



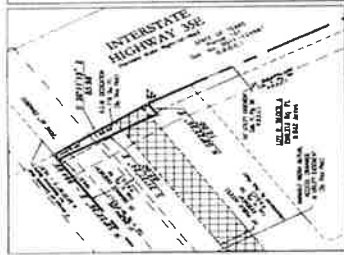
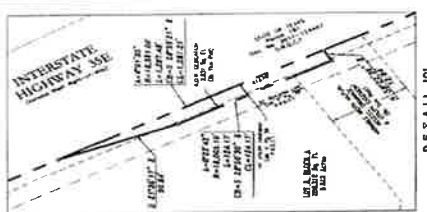
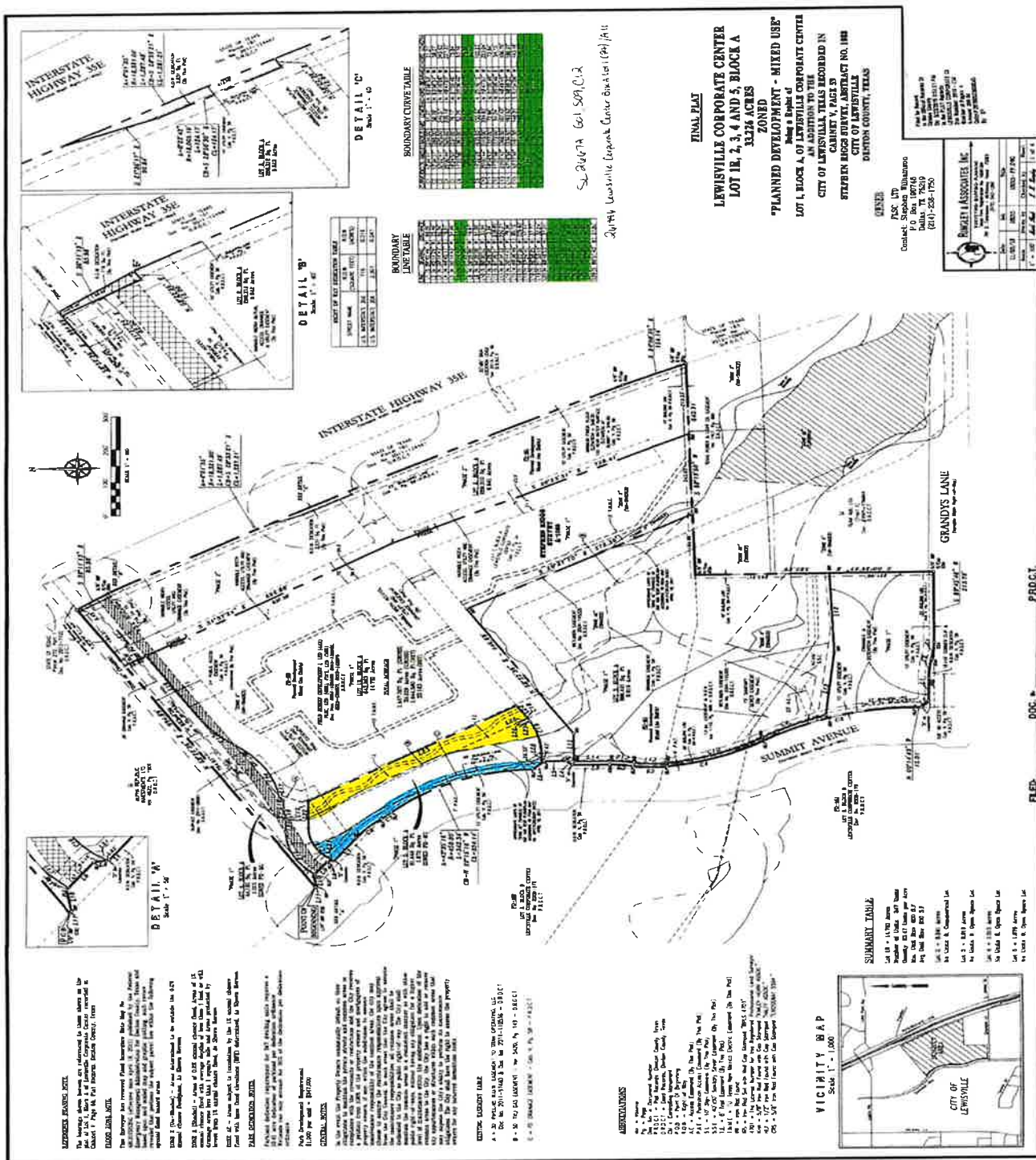
Notary Public, State of Texas  
New York

VIRGINIA RODRIGUEZ  
Notary Public, State of New York  
No. 01RO6106304  
Qualified in New York County  
Commission Expires March 1, 2028

# EXHIBIT "A"

## LEGAL DESCRIPTION OF THE PROPERTY

LEWISVILLE CORPORATE CENTER BLK A LOT 5R



BEARING	DISTANCE	AREA	PERCENTAGE
N 11° 15' 00" E	118.75	1,142.14	100%

BOUNDARY CURVE TABLE

BEARING	DISTANCE	CURVE DATA	AREA	PERCENTAGE
N 11° 15' 00" E	118.75	R 118.75	1,142.14	100%

BOUNDARY LINE TABLE

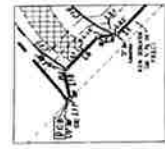
BEARING	DISTANCE	AREA	PERCENTAGE
N 11° 15' 00" E	118.75	1,142.14	100%

20194 Lewisville Corporate Center Block A (P) JAL

**FINAL PLAN**  
**LEWISVILLE CORPORATE CENTER**  
**LOT 1B, 2, 3, 4 AND 5, BLOCK A**  
**33.26 ACRES**  
**ZONED**  
**"PLANNED DEVELOPMENT - MIXED USE"**  
 This is a portion of  
 LOT 1, BLOCK A, OF LEWISVILLE CORPORATE CENTER  
 AN ADDITION TO THE  
 CITY OF LEWISVILLE THIS RECORDED IN  
 CABINET V, PAGE 59  
 STEPHEN ROOSE SURVEY, INSTRUMENT NO. 188  
 CITY OF LEWISVILLE, TEXAS  
 DEUTER COUNTY, TEXAS

**OWNER**  
 P&G, Inc.  
 Contact: Stephen  
 P.O. Box 197748  
 Dallas, TX 75219  
 (214) 256-1750

**ENGINEER ASSOCIATES, INC.**  
 1100 West Loop West, Suite 100  
 Houston, TX 77027  
 (713) 866-1111  
 www.associatesinc.com



**LEGEND**  
 The boundary lines shown on this plan are shown as they exist on the ground. If they do not exist on the ground, they are shown as they would exist if they were.

**NOTES**  
 1. This plan was prepared by the Engineer for the purpose of showing the location and extent of the property described herein.

**LEGAL DESCRIPTION**  
 The property shown herein is described as follows: All that certain lot 5R, Block A, of Lewisville Corporate Center, as shown on the plat of Lewisville Corporate Center, Block A, recorded in Cabinet V, Page 59, of the Public Records of Deuter County, Texas.

**ACREAGE**  
 The total area of the property is 33.26 acres. The area of Lot 5R is 1.14214 acres, which is 3.43% of the total area.

**ADDITIONS**  
 This plan is a portion of the Lewisville Corporate Center, Block A, as shown on the plat of Lewisville Corporate Center, Block A, recorded in Cabinet V, Page 59, of the Public Records of Deuter County, Texas.

**BOUNDARY TABLE**  
 The boundary lines of Lot 5R are as follows:  
 North: N 11° 15' 00" E, 118.75 feet  
 East: S 77° 45' 00" W, 118.75 feet  
 South: S 77° 45' 00" W, 118.75 feet  
 West: N 11° 15' 00" E, 118.75 feet

**VICINITY MAP**  
 Scale 1" = 1000'  
 The vicinity map shows the location of Lot 5R within the Lewisville Corporate Center, Block A, and its proximity to Interstate Highway 35E and Grandview Lane.

**SUMMARY TABLE**

LOT	AREA (ACRES)	PERCENTAGE OF TOTAL
LOT 1B	1.14214	3.43%
LOT 2	1.14214	3.43%
LOT 3	1.14214	3.43%
LOT 4	1.14214	3.43%
LOT 5	1.14214	3.43%
TOTAL	5.56856	16.74%

## EXHIBIT "B"

### IRRIGATION IMPROVEMENTS

#### **Irrigation**

1. General - It is important for City of Lewisville Park Maintenance to have a consistency in the installation, repair and service of their irrigation systems. Below are standards and specific brands used for the parks, ballfields, and flower gardens for the City of Lewisville. The software, controllers and flow meters listed are essential for monitoring the health and efficiency of the irrigation system that can detect flow rates, water leaks and usage.
2. Standards & Equipment Recommendations
  - Irrigation
    - Hunter Industries - Sprinkler heads, nozzles, bubblers, valves, and wire.
  - Software
    - ICC Software - powerful graphic interface allows insertion of actual site photographs, maps, and project renderings. IRRInet-FIU uses wireless and cellular connections.
  - Controllers
    - IRRInet systems utilize Motorola controllers to control water functions and reporting to ICC software.
  - Flow Meters
    - ARAD Hydrometer used to meter water and electrically activated double chambered irrigation valves.

**EXHIBIT "C"**

**CITY'S INSURANCE REQUIREMENTS**