

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

LICENSE AND MOWING AGREEMENT

STATE OF TEXAS §
COUNTY OF DENTON § KNOW ALL PERSONS BY THESE PRESENTS:
§

This License and Mowing Agreement (this "Agreement") is made and entered into on the 15 day of July, 2024, by **the City of Lewisville**, a Texas home-rule municipality (the "City"), and Summit Avenue Owner LLC, a Delaware limited liability company (the "Licensee").

RECITALS:

WHEREAS, City is the owner of that certain land generally described as Lewisville Corporate Center, Lot A, Block 5R and more specifically described by the boundary line and curve table entries highlighted in green in Exhibit "A" attached hereto and as shown in the yellow and blue areas highlighted in Exhibit "A" (the "Property"); and

WHEREAS, Licensee owns the property immediately adjacent to the Property to the east; and

WHEREAS, Licensee wishes to be primarily responsible for performing the Mowing Obligations (as hereinafter defined) on a certain portion of the Property and have authority to perform Mowing Obligations as needed on a certain portion of the Property, as more particularly set out in the terms of this Agreement, in order to ensure that the area immediately adjacent to its multifamily housing property is mowed in a similar fashion as other portions of its own property which are visible to its residents; and

WHEREAS, the City wishes to grant Licensee a revocable license on the Property for the sole purpose of performing the Mowing Obligations (as hereinafter defined) on said Property during the term of this Agreement and any renewal terms, subject to the terms and restrictions set forth herein; and

WHEREAS, in consideration for the granting of the License (hereinafter defined) by the City, Licensee agrees to perform the Mowing Obligations (hereinafter defined) at its own cost, with no additional cost to the City.

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, City and Licensee 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. **Term.** The initial term of this Agreement will begin on July 15, 2024 (“Commencement Date”) and end on September 10, 2028, unless sooner terminated in accordance with this Agreement. The term of this Agreement shall automatically renew for additional five (5) year terms unless otherwise terminated under the terms outlined herein. This License is made subordinate to the right of the City to use the Property for a public purpose at any time. Either party may terminate the Agreement upon providing a minimum of thirty (30) days written notice to the non-terminating party.

3. **License.** The City hereby grants Licensee a nonexclusive, revocable license for the sole purpose of allowing Licensee and its employees, agents, contractors, successors, and assigns (collectively, “Permitees”) to access and use the Property in order to perform the Mowing Obligations (hereinafter defined) thereupon, subject to the terms and restrictions set forth herein (the “License”). The License granted herein shall constitute a covenant running with the land and benefitting Licensee and its Permitees, and shall burden the Property, and shall bind the City until release, expiration, revocation, or termination of such License, as applicable, and subject to the terms, covenants, conditions and restrictions set forth herein.

4. **Mowing Obligations.**

a. *Requirements.*

- i. *Primary Area.* Upon the Commencement Date, Licensee shall be primarily responsible for the mowing of the portion of the Property shown in yellow in Exhibit “A” (the “Primary Area”) in accordance with Exhibit “B” and all applicable governmental requirements and the standards of maintenance then applicable to the maintenance of the Property (the “Mowing Obligations”).
- ii. *Secondary Area.* While the City shall remain primarily responsible for mowing the portion of the property shown in blue in Exhibit “A” (the “Secondary Area”), upon the Commencement Date, Licensee shall be authorized to mow the portion of the Property shown in blue in Exhibit “A” (the “Secondary Area”) in accordance with the Mowing Obligations (Exhibit “B”) at the City’s sole and absolute discretion. Licensee may request to mow the Secondary Area by contacting the City at pard@cityoflewsville.com and must receive written approval from the City before performing any mowing in the Secondary Area it being acknowledged that approval via an email response shall constitute such written approval. Mowing in the Secondary Area by Licensee without the required written City approval will constitute a breach of this Agreement. The City shall maintain primary responsibility to mow or

cause to be mowed the Secondary Area, and nothing in this Agreement guarantees that Licensee will be provided authority to mow the Secondary Area upon request.

- iii. *Amendments to Mowing Obligations.* The City Manager or her designee is hereby authorized to approve amendments to Exhibit "B" in writing as needed.
- iv. *Contractor Requirements.* Licensee may engage a contractor or other third party to perform the Mowing Obligations. Licensee must contract with a reputable landscaping contractor doing business in the region in which the Property is located.

b. *Cost.* Licensee shall be exclusively liable and responsible for the costs and expenses incurred in connection with satisfaction of its Mowing Obligations pursuant to this Agreement.

c. *Failure to Perform.* In the event that Licensee fails to perform the Mowing Obligations in the Primary Area, City may, upon ten (10) days written notice delivered to Licensee (the "Default Notice"), provided that Licensee has not cured such failure within the aforementioned ten (10) day period, terminate this Agreement and the license granted herein.

d. *Continued Right of Entry and Use.* The continued right of entry upon and use of the Property by the Licensee under the License herein granted is conditioned strictly upon compliance with the terms and requirements outlined in this Agreement.

4. **No Assignment or Subletting.** Licensee will not assign this Agreement nor sublet the Property in whole or in part, and will not permit Licensee'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 City. Any such assignment without the City's written consent shall be void.

6. **Utilities.** Licensee represents that there will be no additional utilities needed and/or used on the Property beyond what is currently provided to the Property.

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

the Property, except that the City shall not be responsible for the maintenance of any irrigation system which is not installed on the Property on the Commencement Date until the date of completion and acceptance by the City of such irrigation system.

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

9. **Mechanic's or Materialmen's Liens Not Permitted.** The Licensee 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 Licensee's instance or request.

10. **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 Licensee to maintain the required insurance in the amount required by the City and naming the City as an additional insured;

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

c. making by Licensee of any general assignment for the benefit of creditors; the filing by or against Licensee 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 Licensee to obey all federal, state, and local laws and regulations.

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

12. **Alterations.** Licensee will not make any additions, improvements, or alterations in or to the Property without the prior written consent of the City.

13. **Unattended Items.** Licensee shall at no time allow any items, including but not limited to equipment necessary for the performance of the Mowing Obligations, to be unattended on the Property. Licensee is solely liable for any and all loss of or damage to items left unattended on the Property.

14. **Amendment.** This Agreement may be amended or modified by an instrument executed by City and Licensee, except that amendments or modifications to Exhibit "B" may be executed by the City Manager, as provided for in section 4, above.

15. **Surrender.** Upon Event of Default, termination, or expiration of this Agreement, Licensee, upon request by the City, 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 Licensee's encroachment at Licensee's sole expense.

16. **No Business Relationship.** The City and Licensee 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.

17. **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.

18. **INDEMNIFICATION. LICENSEE AGREES TO INDEMNIFY, DEFEND, AND HOLD THE CITY, ITS AGENTS, OFFICIALS, EMPLOYEES, AGENTS, AND LICENSEES (FOR PURPOSES OF THIS PARAGRAPH COLLECTIVELY REFERRED TO AS "CITY") HARMLESS FROM ANY LOSS, ATTORNEY'S FEES, COURT, AND OTHER COSTS, OR CLAIMS ARISING OUT OF LICENSEE'S USE OF THE PROPERTY OR ARISING OUT OF A BREACH OF THIS AGREEMENT BY LICENSEE. THE CITY SHALL NOT BE LIABLE TO LICENSEE OR LICENSEE'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 LICENSEE'S BUSINESS, OCCASIONED BY OR THROUGH THE ACTS OR OMISSIONS OF THE CITY, OR BY ANY CAUSE WHATSOEVER. THE CITY SHALL NOT BE LIABLE FOR, AND LICENSEE SHALL INDEMNIFY THE CITY 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 LICENSEE, ITS AGENTS, EMPLOYEES, INVITEE, LICENSEE, OR VISITORS OF THE PROPERTY OR OCCASIONED WHOLLY OR IN PART BY AN ACTION OR OMISSION OF LICENSEE, ITS AGENTS, EMPLOYEES, INVITEES, LICENSEE, 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 CITY. IF THE CITY SHALL BE MADE A PARTY TO ANY ACTION COMMENCED BY OR AGAINST LICENSEE, ITS AGENTS, EMPLOYEES, INVITEES, LICENSEES, OR VISITORS, LICENSEE SHALL PROTECT AND HOLD THE CITY HARMLESS THEREFROM AND ON DEMAND SHALL PAY ALL COSTS, EXPENSES, AND REASONABLE ATTORNEY'S FEES**

INCURRED BY THE CITY IN CONNECTION THEREWITH. THIS INDEMNIFICATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

19. **No Real Property Interest Created.** Nothing in this Agreement shall or shall be deemed to grant, convey, create, or vest in Licensee 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 City's right-of-way or property.

20. **Access.** Licensee agrees to allow the City to enter the Property at all times for any reason deemed necessary by the City.

21. **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 the City by notice to:
City of Lewisville, Texas
Attn: City Manager
151 W. Church Street
Lewisville, Texas 75057

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

22. **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.

23. **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.

24. **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.

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

26. **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.

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

28. **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.

29. **Covenant Running with the Land.** The provisions of this Agreement are hereby declared covenants running with the Property and are fully binding on the City and each and every subsequent owner of all or any portion of the Property but only during the term of such party's ownership thereof (except with respect to defaults that occur during the term of such person's ownership) and shall be binding on all successors, heirs, and assigns of the City which acquire any right, title, or interest in or to the Property, or any part thereof. Any person who acquires any right, title, or interest in or to the Property, or any part hereof, thereby agrees and covenants to abide by and fully perform the provisions of this Agreement.

30. **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.

31. **City Control and Right of Entry.** Nothing in this Agreement shall limit or abrogate the City's right to allow and control entry to the Property, or City's right to enter the Property at any time for any reason, including but not limited to entry in order to confirm Licensee's compliance with all terms and requirements of this Agreement. Licensee 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.

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, City has executed this Agreement as of the date first set forth above.

CITY:

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

LICENSEE:



Adam McGovern – Vice President
Summit Avenue Owner, LLC

STATE OF NEW YORK §

COUNTY OF NEW YORK §

⁴ This instrument was acknowledged before me on the 23rd day of July, 2023, by Adam McGovern, an Authorized Officer of Summit Avenue Owner, LLC on behalf of Summit Avenue Owner, LLC, a limited liability company.



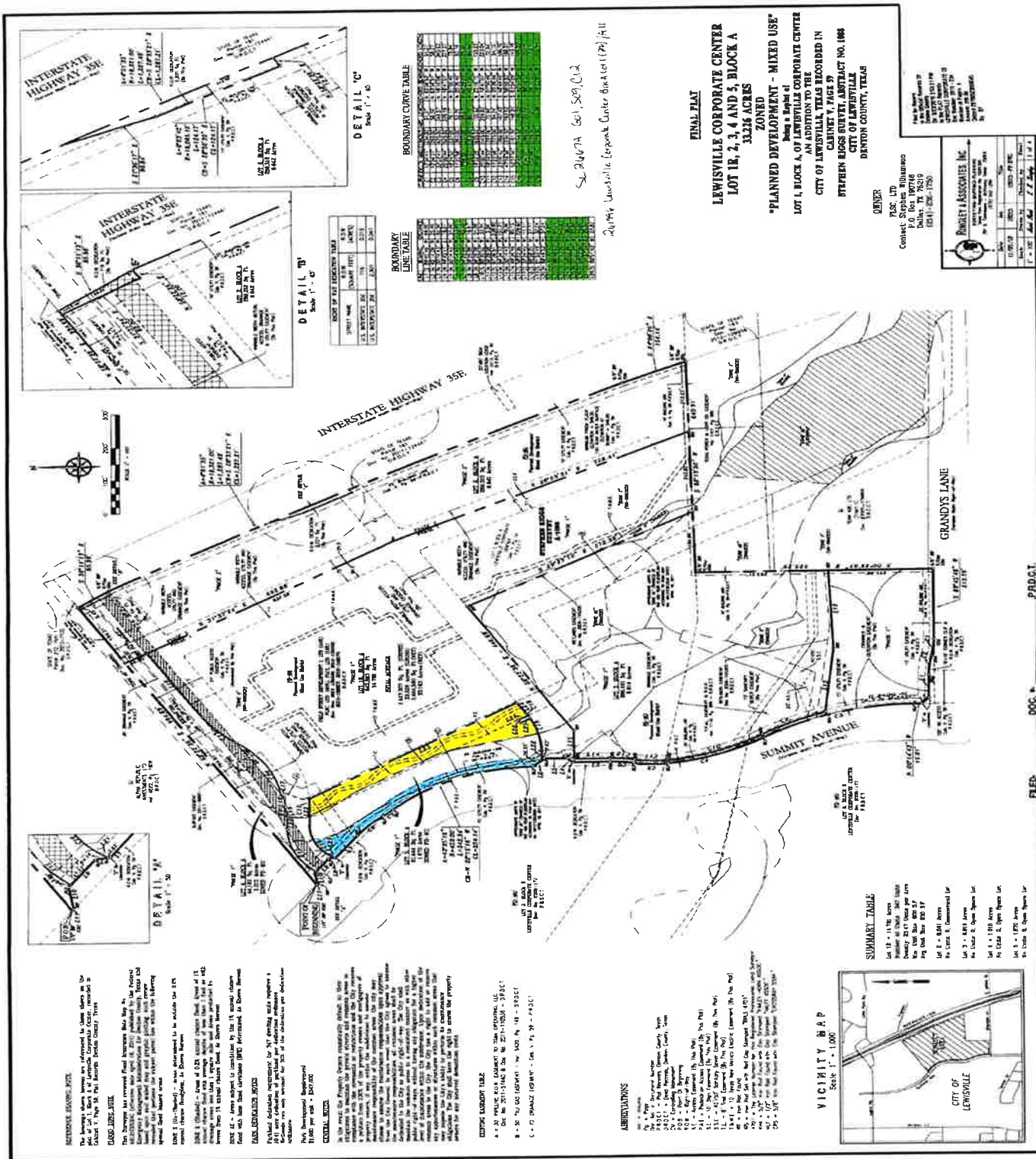
Notary Public, State of Texas
New York

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



DETAIL 'A'
Scale: 1" = 50'

BOUNDARY LINE TABLE

LINE NO.	BEARING	DISTANCE	AREA
1	N 89° 57' 12" E	150.00	13500.00
2	S 89° 57' 12" W	150.00	13500.00
3	N 00° 00' 00" E	150.00	13500.00
4	S 00° 00' 00" W	150.00	13500.00
5	N 89° 57' 12" E	150.00	13500.00

DETAIL 'B'
Scale: 1" = 50'

BOUNDARY CURVE TABLE

ARC NO.	BEARING	DISTANCE	AREA
1	N 89° 57' 12" E	150.00	13500.00
2	S 89° 57' 12" W	150.00	13500.00
3	N 00° 00' 00" E	150.00	13500.00
4	S 00° 00' 00" W	150.00	13500.00
5	N 89° 57' 12" E	150.00	13500.00

FINAL PLAT
LEWISVILLE CORPORATE CENTER
LOT 1R, 2, 3, 4 AND 5, BLOCK A
33226 ACRES

"PLANNED DEVELOPMENT - MIXED USE"
ZONE
As a part of
LOT 1, BLOCK A, OF LEWISVILLE CORPORATE CENTER
AN ADDITION TO THE
CITY OF LEWISVILLE, TEXAS INCORPORATED IN
COURTY, PAGE 33
STEPHEN EDWARDS SURVEY, INSTRUMENT NO. 1000
CITY OF LEWISVILLE, TEXAS
DANTON COUNTY, TEXAS

OWNER
PISC, LTD.
Contact: Stephen Edwards
10000 Old Katy Road
Dallas, TX 75249
(817) 258-1750

PREPARED BY:
BOWLEY ASSOCIATES, INC.
10000 Old Katy Road
Dallas, TX 75249
(817) 258-1750

SUMMARY TABLE

LOT NO.	ACRES	COMMENTS
1R	11.76	25.7' wide on Hwy
2	21.7	25.7' wide on Hwy
3	11.76	25.7' wide on Hwy
4	11.76	25.7' wide on Hwy
5	11.76	25.7' wide on Hwy
6	11.76	25.7' wide on Hwy
7	11.76	25.7' wide on Hwy
8	11.76	25.7' wide on Hwy
9	11.76	25.7' wide on Hwy
10	11.76	25.7' wide on Hwy
11	11.76	25.7' wide on Hwy

VICINITY MAP
Scale: 1" = 1000'

Map showing the location of the property within the City of Lewisville, Texas. The map highlights the project area and shows major roads including Interstate Highway 35E, Grandway Lane, and Summit Avenue.

INTERSTATE HIGHWAY 35E
 SUMMIT AVENUE
 GRANDWAY LANE
 PROJECT, DOC. NO. FLEES, 000, P. 1

EXHIBIT "B"

MOWING OBLIGATIONS

1. Turf shall be maintained to ensure a solid, healthy grass stand virtually free of weeds and undesirable grasses. (*applicable only to the Primary Area as defined in the Agreement*)
2. The mowing of the specified areas shall include the mowing and trimming of all weeds and grasses within each area. A minimum cutting height of 2 inches with maximum cutting height of 2.5 inches is required.
3. All litter shall be removed by the Grantee prior to mowing. This includes, but is not limited to bottles, cans, paper, brush, rocks, tree limbs, etc., which are not intended to be part of the landscape.
4. Bruising or rough cutting of grass is not permitted. The blades of mowers shall remain sharpened, and the height of mowers' deck will be adjusted and operated so that the grass is cut at a uniform height.
5. Do not mow designated non-mow areas and ensure stands of wildflowers are not mowed before seeds have matured, unless otherwise directed by the city representative.
6. Clippings shall not be blown or allowed to fall into the streets, roadways, and storm drainage system. Excessive clippings in the street or roadways must be removed from the site *immediately* after each mowing and properly disposed.
7. Trimming shall include, but is not limited to, cutting or removal of plant material adjacent to or under structures, trees, poles, signs, fences, etc. Contractor is also responsible for removal of all weeds and grass from expansion joints and cracks in all asphalt and concrete surfaces. Trimming shall include use of mechanical string trimming and chemical trimming when approved by City. Approved chemicals shall be used for trim spraying where mechanical string trimming is not effective. Chemicals should have a distinct dye to mark where it has been applied.
8. All edges shall be neatly edged (curbs and sidewalks-steel blade edger required) after each cutting. All material dislodged by edging must be removed from the site.

9. Grantee will be responsible for any damage done to plant material or other property during maintenance operations.

10. Any damage done to irrigation (heads, bubblers, etc.) shall be immediately repaired by the Grantee at their expense. The Grantee shall notify City Representative of any damage to irrigation system. The City Representative shall inspect repair and determine if City Irrigation Crews need to make additional repairs. The Grantee will be responsible for reimbursing City for repairs made by City Irrigation Crews due to damage caused by Contractor.

EXHIBIT "C"

CITY'S INSURANCE REQUIREMENTS