

**RESOLUTION NO. R-2019-0112**

**WHEREAS**, the City of Round ("City") desires to enter into a Development Agreement with the Round Rock Transportation and Economic Development Corporation and M4 Greenlawn, LLC regarding the proposed project located south of SH 45 and north of Greenlawn Boulevard, known as The District development, Now Therefore

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,**

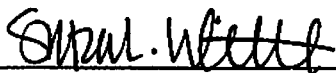
That the Mayor is hereby authorized and directed to execute a Development Agreement with the Round Rock Transportation and Economic Development Corporation and M4 Greenlawn, LLC, a copy of which is attached hereto as Exhibit "A" and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**RESOLVED** this 14th day of February, 2019.

  
\_\_\_\_\_  
CRAIG MORGAN, Mayor  
City of Round Rock, Texas

ATTEST:

  
\_\_\_\_\_  
SARA L. WHITE, City Clerk

## DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into to be effective as of the 14<sup>th</sup> day of FEBRUARY, 2019 (the "Effective Date"), by and among the City of Round Rock, Texas (the "City"), a home rule city organized under the laws of the State of Texas, the Round Rock Transportation and Economic Development Corporation, a "Type B corporation" created under the authority of Chapter 501, Texas Local Government Code (the "TED Corp."), and M4 Greenlawn, LLC, a California limited liability company (the "Developer"). The City, the TED Corp., and the Developer are collectively, the "Parties" to this Agreement.

### RECITALS

**WHEREAS**, the Developer is a developer of commercial developments; and

**WHEREAS**, the Developer is the owner of 65.492 acres of land (the "Property") located south of SH 45 and north of Greenlawn Blvd. as described in Exhibit A; and

**WHEREAS**, the Developer is considering the construction of a master-planned mixed-use project (the "Project") on the Property; and

**WHEREAS**, it is currently envisioned that the Project will include approximately one million (1,000,000) square feet of commercial office, hospitality, retail, service, residential, and parking structure construction (collectively, the "Improvements"); and

**WHEREAS**, the Developer intends to spend or cause to be spent over Two Hundred Million Dollars (\$200,000,000.00) to acquire, design and develop the Project and any other improvements thereon at full buildout (including all hard and soft costs); and

**WHEREAS**, the Project is anticipated to add millions of dollars in property tax base, generate millions of dollars in new sales tax and property tax revenues in the City; and

**WHEREAS**, the City and TED Corp. desire development such as the Project to locate in the City; and

**WHEREAS**, the City and/or TED Corp., as applicable, are willing to consider making expenditures to reimburse the Developer up to Twelve Million Five Hundred Sixty Thousand Dollars (\$12,560,000.00) (the "Maximum Reimbursement Amount") for the cost of the Public Improvements, as defined herein, necessary to promote or develop the Project in the City; and

**WHEREAS**, the City has adopted Resolution No. R-2019-\_\_\_\_, (the "Authorizing Resolution"), authorizing the Mayor to enter into this Agreement on behalf of the City with the

R-2019-012  
TB-2019-008

Developer in recognition of the positive economic benefits to the City through development of the Project on the Property; and

**WHEREAS**, the TED Corp. has authorized its President to enter into this Agreement on behalf of TED Corp. with the Developer in recognition of the positive economic benefits to the City through development of the Project on the Property; and

**WHEREAS**, the TED Corp. has found that the Public Improvements are required or suitable to promote or develop new business enterprises, pursuant to §501.103 of the Texas Local Government Code; and

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE I**  
**PURPOSE AND INTERPRETATION**

**1.01 Objectives.**

(a) The Developer has designated the city of Round Rock, Texas and the Property as a potential location for the Project. The Developer or its affiliates currently owns and operates other commercial projects in multiple locations in several states. The Developer sees an opportunity to expand its existing presence in the City, and to play a significant role in the future development of the City. The City believes that the development of the Project will attract additional businesses, development, and investment in the City in particular and Williamson County in general. The City recognizes that development of the Project will likely serve as an economic stimulus to the area, resulting in significant job growth and increased tax revenue for the City, the Round Rock ISD, and Williamson County.

(b) The Parties acknowledge that the present infrastructure of streets and utilities in the vicinity of the Property is insufficient to support the Project. In order to encourage the Developer to locate the Project on the Property, the Developer has requested that the City and/or the TED Corp. reimburse the Developer for the cost of the Public Improvements, up to the Maximum Reimbursement Amount, as described in Section 6.03.

**1.02 Concept and Structure.** Development of the Property will include the Public Improvements and the Project, which may occur on one or more separately platted lots or other legal parcels. The Developer will be responsible for the development and construction of the Project and Public Improvements. The Public Improvements will be financed and constructed as set forth in Sections 6.02 and 6.03. The Developer will operate and maintain the Project.

**1.03 Interpretation.** In this Agreement, unless a clear contrary intention appears;

(a) the singular number includes the plural number and vice versa;

(b) reference to any Party includes such Party's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Party in a particular capacity excludes such Party in any other capacity or individually;

(c) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(d) "hereunder", "hereof", "hereto", and words of similar import shall be deemed references to this Agreement as a whole and not to any particular article, section or other provision thereof;

(e) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and

(f) reference to any constitutional, statutory or regulatory provision means such provision as it exists on the Effective Date and any amendatory provision thereof or supplemental provision thereto.

**1.04 Legal Representation of the Parties.** This Agreement was negotiated by the Parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party shall not apply.

## **ARTICLE II** **DEFINITIONS**

**2.01 Definitions.** All capitalized terms used in this Agreement shall have the meanings ascribed to them in this Article II, or as otherwise provided herein.

"Agreement" means this Development Agreement by and among the City, the TED Corp., and the Developer.

"City" means the City of Round Rock, Texas.

"City Council" means the city council of the City.

"Developer" means M4 Greenlawn, LLC, a California limited liability company.

**"Greenlawn Blvd. Improvements"** mean the improvements to Greenlawn Blvd. as described in **Exhibit D**.

**"Improvements"** mean the approximately 1,000,000 square feet of commercial office, hospitality, retail, service, residential, and parking structure construction.

**"Maximum Reimbursement Amount"** means \$12,560,000.

**"Parties"** means the City, the TED Corp., and the Developer.

**"Party"** means the City or the TED Corp. or the Developer.

**"Project"** means a master-planned mixed-use project as described in Article V. The Project does not include the Public Improvements or the Greenlawn Blvd. Improvements.

**"Property"** means the real property described and shown on **Exhibit A**.

**"Public Improvements"** means the public improvements described in **Exhibit B** and includes any improvement or facility together with its associated public site, right-of-way or easement necessary to provide transportation, drainage, public utilities, or similar essential public services and facilities, for which the City will ultimately assume the responsibility for maintenance and operation or ownership, or both. This term also includes the following: drainage facilities, streets and other rights-of-way, potable water system, reuse water system, sanitary sewerage system, survey monuments, illumination including street lights, traffic control signs and traffic signalization, fire hydrants, sidewalks and curb ramps, street name signs, traffic control signs, street pavement markings, and parkland and open space improvements.

**"Required Investment Amount"** means Two Hundred Million Dollars (\$200,000,000.00).

**"TED Corp."** means the Round Rock Transportation and Economic Development Corporation.

### **ARTICLE III** **GRANT OF EASEMENTS**

**3.01 Public Improvement Easements.** The Parties agree that the transportation and utility facilities currently in existence are not adequate to provide acceptable service to the Property and the Project. It is therefore understood that the Public Improvements will be necessary to adequately

serve the Property and Project. It is also understood that it may become necessary or convenient to install and/or construct the Public Improvements on, over, across, and/or under the Property in a location and design reasonably acceptable to Developer. Upon completion of the Public Improvements and payment of the Maximum Reimbursement Amount to Developer from the City, Developer agrees to convey to the City, at no charge, (a) the land under the applicable roads and sidewalks, the locations of which are further depicted in Exhibit B attached hereto, that are part of the Public Improvements and (b) all necessary easements in the location of the applicable Public Improvements (including the water, wastewater, and storm sewer utilities and the landscape and irrigation in the medians), in each case to the extent reasonably required for the City's use and maintenance of the Public Improvements and Developer shall dedicate such Public Improvements to the City via the plat for the Property and the City shall accept same upon completion of the applicable Public Improvements and inspection of same. In addition, in the event Developer requires access to or the use of adjacent property owned by third parties for the construction, use, or maintenance of the Public Improvements, the City will cooperate with and assist Developer in either acquiring easements over such property owned by third parties and in pursuing condemnation of such third-party property as reasonably necessary to permit the construction, use and maintenance of the Public Improvements. Notwithstanding the foregoing, Developer shall have the option to purchase the land under the applicable roads, the locations of which are further depicted in Exhibit B attached hereto, for the lesser of (a) the appraised value of the applicable land and (b) Twelve Million Five Hundred Sixty Thousand Dollars (\$12,560,000.00) (the "Purchase Option") by providing written notice to the City (the "Purchase Notice"). If Developer exercises the Purchase Option, upon conveyance of the roadways to Developer, such roads will become private roads. Along with the Purchase Notice, Developer shall provide a purchase and sale agreement (the "PSA") to the City. Upon Developer's exercise of the Purchase Option, the Parties agree that they will work together in good faith to execute the PSA and the City agrees to convey the land under the applicable roads to Developer pursuant to the terms and conditions of the PSA. The foregoing Purchase Option shall survive the expiration or termination of this Agreement and such Purchase Option shall be set forth in the dedication deed to the City at such time as Developer initially dedicates the roadways to the City. Notwithstanding the foregoing, Developer shall receive a credit against the Purchase Option equal to the sum of the Hurdle Reimbursement Amounts, to the extent that the Hurdle Reimbursement Amounts are paid to City and/or TED Corp., as applicable, by Developer pursuant to Section 6.03 hereof.

#### **ARTICLE IV**

#### **ZONING OF THE PROPERTY**

**4.01 Current Zoning.** The Property is currently zoned general commercial (C1-a). The current zoning is inconsistent with the plans to develop the mixed-use Project on the Property. The Parties agree that they will work together in good faith on a fast-track basis to re-zone the Property with a base zoning of MU-G along with a Planned Unit Development (the "Project PUD") for land uses

that are consistent with the terms of this Agreement and the design intent of the Project, with uses and restrictions at minimum described by the Dell/La Frontera Mixed-Use section of Round Rock's General Plan 2020. Regardless of anything herein to the contrary, nothing herein shall be construed as a contractual obligation on the part of the City to rezone the Property. Furthermore, the City agrees to conduct concurrent reviews of all submitted proposals and applications including, but not limited to the Project PUD, concept plan, sub division plan and infrastructure improvement plan.

## **ARTICLE V**

### **THE PROJECT**

**5.01 General Description.** The Project will be planned, developed and constructed on the Property by Developer in phases as determined by Developer and otherwise in accordance with any permits and approvals from any applicable governmental authorities. The Project will be a master-planned, mixed-use development which will contain a total of approximately one million (1,000,000) square feet of Improvements at such time as the Project is fully constructed, to be comprised of residential, retail, and office space. In addition, the Project may include entertainment, recreation, and other uses of the Property permitted by the Project PUD as may be amended from time to time. The Project will be developed in phases, as determined by Developer based on market conditions and in Developer's sole and absolute discretion. Developer may sell or lease portions of the Property to third parties for such third party to develop or manage such portion of the Project, and such conveyance or lease shall not be considered an assignment of this Agreement.

**5.02 Amount of Investment.** The Developer agrees to spend or cause to be spent a cumulative total of at least Two Hundred Million Dollars (\$200,000,000.00) (the "Required Investment Amount") in a combination of the following: (i) the acquisition of the Property; (ii) the design and permitting of the Project; (iii) and the construction of the Project and any and all other improvements thereon at full buildout (including all hard and soft costs). The Required Investment Amount does not include any costs of the Greenlawn Blvd. Improvements or the Maximum Reimbursement Amount.

**5.03 Jobs.** Developer estimates that the Project, upon full build-out, will result in the creation of primary and secondary jobs that will total approximately five thousand (5,000).

**5.04 Construction Schedule.** The Parties agree that it is their intention that, subject to adjustments for Events of Force Majeure, (i) the Public Improvements will be substantially completed no later than the third anniversary of the Effective Date of this Agreement, (ii) Developer will obtain a temporary certificate of occupancy (or similar) for shell improvements totaling at least 120,000 gross square feet no later than the third anniversary of the Effective Date

of this Agreement, (iii) the Developer will obtain a temporary certificate of occupancy (or similar) for shell improvements totaling at least 250,000 gross square feet no later than the tenth anniversary of the Effective Date of this Agreement, and (iv) the construction of the entire Project totaling at least 1,000,000 gross square feet will be completed (as evidenced by temporary certificates of occupancy (or similar) for the shell improvements) no later than the twentieth anniversary of the Effective Date of this Agreement. The Parties further agree that it is their intention to use their best efforts to work together to finalize a reasonable development schedule no later than September 30, 2019 for the design and construction of the Public Improvements and the Greenlawn Blvd. Improvements that are consistent with the aforesaid goals (the "Public Improvement Construction Schedule").

## **ARTICLE VI**

### **PUBLIC IMPROVEMENTS**

**6.01 General.** It is understood that extension and improvements to the transportation and utility facilities and the other Public Improvements will be necessary to adequately serve the Property and Project.

**6.02 Public Improvements.** The Public Improvements required for the Project are described in Exhibit B. The Developer shall be responsible for the design and construction of the Public Improvements. Developer shall design and construct the Public Improvements in accordance with the ordinances and regulations of the City and the City agrees to utilize its expedited review process related to the design, permitting, and inspection process for the Public Improvements. The design of the Public Improvements shall be subject to the approval of the City in accordance with its standard procedures for the expedited review process, which approval shall not be unreasonably delayed, conditioned or withheld. The construction of the Public Improvements shall be subject to the inspection of the City, which inspection and approval shall not be unreasonably delayed, conditioned or withheld. The City agrees to expedite all review and approval procedures. The Parties agree to utilize their best efforts to complete the construction of the Public Improvements in accordance with the Public Improvement Construction Schedule described in Section 5.04.

**6.03 Cost of Public Improvements.** Subject to the following, the Developer shall initially bear the cost of designing and constructing the Public Improvements. Upon completion of any segment of the Public Improvements categories listed on Exhibit B and final acceptance of such segment of the Public Improvements category by the City, the City will notify the TED Corp. of the completion and acceptance of same, and the City and/or TED Corp., as applicable, shall reimburse Developer within a commercially reasonable period of time for the value of such completed segment of the Public Improvements category, as such category value is described on Exhibit B attached hereto, but not to exceed the Maximum Reimbursement Amount. The City agrees to expedite all inspection and acceptance procedures for the Public Improvements.



Notwithstanding the foregoing, in the event the Developer does not substantially complete pursuant to the terms contained herein:

- a. the 120,000 gross square feet of Improvements on or before the second (2<sup>nd</sup>) anniversary of the deadline set forth in Section 5.04(ii) above (subject to adjustment for Events of Force Majeure or as otherwise reasonably agreed in writing by the Parties hereto) (such date being the "First Hurdle Date"), then the Developer shall refund to the City and/or TED Corp. as applicable, a proportionate share of the Maximum Reimbursement Amount previously delivered to Developer (the "First Hurdle Reimbursement Amount"). The calculation of the First Hurdle Reimbursement Amount is described in Exhibit E attached hereto;
- b. the 250,000 gross square feet of Improvements on or before the deadline set forth in Section 5.04(iii) above (subject to adjustment for Events of Force Majeure or as otherwise reasonably agreed in writing by the Parties hereto) (such date being the "Second Hurdle Date"), then the Developer shall refund to the City and/or TED Corp. as applicable, a proportionate share of the Maximum Reimbursement Amount previously delivered to Developer (the "Second Hurdle Reimbursement Amount"). The calculation of the Second Hurdle Reimbursement Amount is described in Exhibit E attached hereto; or
- c. all of the Improvements on or before the deadline set forth in Section 5.04(iv) above (subject to adjustment for Events of Force Majeure or as otherwise agreed in writing by the Parties hereto) (such date being the "Third Hurdle Date"), then the Developer shall refund to the City and/or TED Corp. as applicable, a proportionate share of the Maximum Reimbursement Amount previously delivered to Developer (the "Third Hurdle Reimbursement Amount"). The calculation of the Third Hurdle Reimbursement Amount is described in Exhibit E attached hereto.

The First Hurdle Date, the Second Hurdle Date, and the Third Hurdle date are collectively referred to as the "Hurdle Dates" and each may be individually referred to a "Hurdle Date". The First Hurdle Reimbursement Amount, the Second Hurdle Reimbursement Amount, and the Third Hurdle Reimbursement Amount are collectively referred to as the "Hurdle Reimbursement Amounts" and each may be individually referred to as a "Hurdle Reimbursement Amount".

In the event Developer is required to refund any portion of the Maximum Reimbursement Amount pursuant to Section 6.03(a), Section 6.03(b), or Section 6.03(c) due to failure to achieve substantial completion of the required gross square footage for the applicable Hurdle Date, at such time as Developer achieves 100% of the required gross square footage required for the applicable Hurdle Date, Developer may submit to the City and/or TED Corp. as applicable, a Notice that such gross

square footage has been constructed by Developer and request repayment of the amount previously refunded by Developer to the City and/or TED Corp. as applicable (excluding any Interest Amount paid to the City and/or TED Corp. with such refunded amount), plus the Interest Amount due to Developer from the City and/or TED Corp calculated from the date Developer pays any of the Reimbursement Amounts to the City and/or TED Corp., as applicable, to the date City and/or TED Corp., as applicable, refunds any amount to Developer as described in this Section. Any such Notice requesting repayment of the amount previously refunded by Developer pursuant to this paragraph following the Third Hurdle Date must be submitted on or before the 2<sup>nd</sup> anniversary of the Third Hurdle Date.

Any amounts refunded by the Developer to the City and/or TED Corp. as applicable pursuant to this Section 6.03, as well as any amounts recouped by the Developer from the City and/or TED Corp., as applicable, pursuant to this Section 6.03 shall include an interest payment in an amount equal to 2.5% per year of the amount being refunded or repaid, non-cumulative and compounded annually (the "Interest Amount").

Any such amounts due by Developer to City and/or TED Corp. pursuant to this Section shall be payable within ninety (90) days of Developer's receipt of written Notice from the City and/or TED Corp., as applicable, which request must be made, if at all, within thirty (30) days following the applicable Hurdle Date. Any such amounts due by the City and/or TED Corp., as applicable, pursuant to this Section shall be payable within ninety (90) days of the City's and/or TED Corp's receipt of written Notice from the Developer evidencing achievement of 100% of the gross square footage requirements for the latest Hurdle Date to have occurred.

**6.04 Greenlawn Blvd. Improvements.** The City shall be responsible for the design and construction of improvements to Greenlawn Boulevard (the "Greenlawn Blvd. Improvements") as further described in Exhibit D. City shall design and construct the Greenlawn Blvd. Improvements within a commercially reasonable period of time. Upon completion of the construction documents and specifications for the Greenlawn Blvd. Improvements (the "Greenlawn Blvd. Construction Documents"), City shall submit the Greenlawn Blvd. Construction Documents to a general contractor for bidding purposes. Within a commercially reasonable period of time after selecting the a general contractor, City shall cause the general contractor to construct the Greenlawn Blvd. Improvements in accordance with the Greenlawn Blvd. Construction Documents. The City agrees to use its their best efforts to complete the construction of the Greenlawn Blvd. Improvements in accordance with the Public Improvement Construction Schedule.

**6.05 Greenlawn Blvd Improvements Costs.** Notwithstanding Developer's obligations in Section 6.04, the City and/or TED Corp., as applicable, shall be responsible for reimbursing the Developer for the full total cost of the Greenlawn Blvd. Improvements (the "Greenlawn Blvd. Reimbursement Amount") including, but not limited to, all hard and soft costs of construction,

design fees, and contractors' fees. Upon completion of any segment of the Greenlawn Blvd. Improvement categories, and final acceptance of such segment of the Greenlawn Blvd. Improvements by the City, the City will notify the TED Corp. of the completion and acceptance of same, and the City and/or TED Corp., as applicable, shall reimburse Developer within a commercially reasonable period of time for the Greenlawn Blvd. Reimbursement Amount for such segment of the Greenlawn Blvd. Improvements.

**6.06 Sidewalk Use.** As part of the Public Improvements, Developer agrees to construct public sidewalks that are at least five feet (5') wide. If Developer elects to construct sidewalks that are wider than five feet (5'), then the Developer shall have the right to use that portion of the sidewalk in excess of five feet (5') wide for any and all uses not in violation of applicable laws.

## **VII**

### **ADDITIONAL CONSIDERATION**

**7.01 Greenlawn Right-of-Way.** Within sixty (60) days of receipt of written request from the City (the "Conveyance Date"), Developer agrees to convey to the City, pursuant to the terms and conditions contained in this section, additional right-of-way along Greenlawn Boulevard necessary for the future widening and improvement of Greenlawn Boulevard (the "Greenlawn Right-of-Way"). The Greenlawn Right-of-Way shall in no event exceed more than Twenty-Three Thousand Five Hundred Twenty-Two (23,522) square feet in the aggregate or ten (10) feet in width in any location from the Property's eastern border as identified on the ALTA survey prepared by Chaparral Professional Land Surveying, Inc. dated May 24, 2007 attached hereto as Exhibit C. Developer and City shall cooperate in good faith and enter into a First Amendment to this Agreement to further define and finalize the location, width, and size (not to exceed the limits set forth herein) of the Greenlawn Right-of-Way. City shall pay to developer the fair market value for the Greenlawn Right-of-Way upon the Conveyance Date as determined by an appraisal dated within ninety (90) days of the Conveyance Date by a MAI appraiser mutually agreed upon in writing by Developer and City (the "Fair Market Value").

**7.02 Greenlawn Boulevard – General.** Such First Amendment to this Agreement referenced in Section 7.01 above shall incorporate the foregoing terms. The Greenlawn Blvd. Improvements shall not be part of the Public Improvements described herein and the Maximum Reimbursement Amount shall not apply to such Greenlawn Blvd. Improvements. The design, construction, and payment for the Greenlawn Blvd. Improvements shall be in accordance with Sections 6.04 and 6.05.

## **ARTICLE VIII**

### **MISCELLANEOUS**

**8.01 Mutual Assistance.** The City, the TED Corp. and the Developer will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions in order to put each other in the same economic condition contemplated by this Agreement regardless of any changes in public policy, the law, or taxes or assessments attributable to the Property.

**8.02 Default; Remedies.**

(a) No Party shall be in default under this Agreement until Notice of the alleged failure of such Party to perform has been given (which Notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure or to commence efforts to cure the alleged failure, such reasonable time determined based on the nature of the alleged failure, but in no event less than 30 days or more than 180 days after written Notice of the alleged failure has been given. In addition, no Party shall be in default under this Agreement for a non-monetary default if, within the applicable cure period, the Party to whom the Notice was given or another Party begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured.

(b) If a Party is in default beyond any applicable notice and cure period, the aggrieved Party may, at its option and without prejudice to any other right or remedy under this Agreement, seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgement Act, specific performance, mandamus, and injunctive relief. Notwithstanding the foregoing, however, no default under this Agreement shall:

- (i) entitle the aggrieved Party to terminate this Agreement; or
- (ii) adversely affect or impair the current or future obligations of the City to provide water or sewer service or any other service to the Property or Project; or
- (iii) entitle the aggrieved Party to seek or recover consequential monetary damages of any kind.

(c) In the event any legal action or proceeding is commenced between the Parties to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its actual reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

**8.03 Undocumented Workers.** The Developer certifies that, during the term of this Agreement, it does not and will not knowingly employ an undocumented worker for the construction of the Public Improvements in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the term of this Agreement, the Developer is convicted of a violation under 8 U.S.C. § 1324a(f), the Developer shall repay the amount of the public

subsidy provided under this Agreement as required by law. Pursuant to Section 2264.101, Texas Government 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.

**8.04 Binding Effect.** This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns.

**8.05 Assignment.** Except as otherwise provided in this section, the Developer may not assign all or part of its rights and obligations under this Agreement to a third party without the express written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Developer may assign (without the City's consent) all or part of its rights and obligations under this Agreement to an entity that is controlled by or under common control with the Developer (a "Permitted Assignee"). Developer shall provide a copy of any such assignment to the City within fifteen (15) days after the effective date of the assignment. The City may not assign this Agreement to an unrelated third party but may assignment to a City-created economic development corporation or other City-created entity and shall provide a copy of the assignment to the Developer within fifteen (15) days after the effective date of the assignment to such permitted assignee. Nothing herein shall prevent Developer from conveying or leasing all or any portion of the Property or Project to a third party (e.g., sale of office building, ground lease of pad site; leasing of residential units or commercial space; sale of land to developer of hotels or multifamily, etc.), and no such conveyance or lease shall be considered an Assignment of this Agreement unless such third party expressly assumes the rights and obligations of Developer hereunder in accordance with this Section 8.05.

**8.06 Amendment.** This Agreement may be amended only by the mutual written agreement of the Parties. As the Parties continue work on the pre-development activities contemplated herein and prepare the various agreements, plans, applications, and approvals referenced herein in connection with the design and construction of the Public Improvements and the design, development, and financing of the Project, the parties will cooperate in good faith, as necessary, to finalize such documents, and, if necessary, to amend this Agreement to reflect the terms of such agreements, plans, applications, and approvals.

**8.07 Notice.** Any notice and or statement required and permitted to be delivered shall be in writing and be deemed delivered by actual delivery, by electronic mail, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses (each, a "Notice"):

**If to City:**

City of Round Rock  
221 E. Main Street  
Round Rock, TX 78664  
Attn: City Manager  
Phone: (512) 218-5400  
Email: [citymanager@roundrocktexas.gov](mailto:citymanager@roundrocktexas.gov)

**With a required copy to:**

Sheets & Crossfield  
309 E. Main Street  
Round Rock, TX 78664  
Attn: Stephan L. Sheets  
Phone: (512) 255-8877  
Email: [steve@scrllaw.com](mailto:steve@scrllaw.com)

**If to the Developer:**

M4 Greenlawn, LLC  
c/o Mark IV Capital  
4450 MacArthur Blvd., Second Floor  
Newport Beach, CA 92660  
Attn: Regional Vice President  
Phone: 949-509-1444  
Email: [jbasie@markiv.com](mailto:jbasie@markiv.com)

**With a required copy to:**

M4 Greenlawn, LLC  
c/o Mark IV Capital  
4450 MacArthur Blvd., Second Floor  
Newport Beach, CA 92660  
Attn: Chief Executive Officer  
Phone: 949-509-1444  
Email: [pcate@markiv.com](mailto:pcate@markiv.com)

**Either Party may designate a different address at any time upon written Notice to the other Parties.**

**8.08 Interpretation.** Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

**8.09 Applicable Law.** This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.

**8.10 Severability.** In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected. It is also the intention of the Parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

**8.11 Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

**8.12 No Third Party Beneficiaries.** This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party.

**8.13 Force Majeure.** Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (each, an "Event of Force Majeure"). An Event of Force Majeure for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion, vandalism; storm or similar occurrences; orders or acts of military or civil authority; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay; unusual weather events; a recession; and unusual delays in obtaining City approvals of plats, permits, or other development approvals required to construct and operate the Project. For purpose of this Section 8.13, "recession" shall mean a recession consisting of two (2) consecutive quarters of negative economic growth as measured by the gross domestic product for the Austin-Round Rock TX metropolitan area according to the U.S. Department of Commerce, Bureau of Economic Analysis. Except as otherwise expressly provided herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any Event of Force Majeure (it being agreed that a day-for-day adjustment for each day of an Event of Force Majeure shall be deemed equitable).

**8.14 Exhibits.** The following exhibits are attached and incorporated by reference for all purposes:

- Exhibit A:** Property Description and Depiction
- Exhibit B:** Public Improvements
- Exhibit C:** ALTA Survey
- Exhibit D:** Greenlawn Blvd. Improvements
- Exhibit E:** Calculation of the Hurdle Reimbursement Amounts

**8.15 No Joint Venture.** It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the Parties. The City, its past, present and future officers, elected officials, employees and agents of

the City, do not assume any responsibilities or liabilities to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

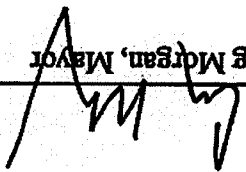
**8.16 Term.** This Agreement shall become enforceable upon its Effective Date and shall expire upon the earlier of (i) the 90<sup>th</sup> day following the 20<sup>th</sup> anniversary of the Effective Date or (ii) Developer's substantial completion of the Public Improvements and Greenlawn Blvd. Improvements and the City's acceptance of same and the substantial completion of the Project in accordance with Section 5.01 and Section 5.02 on or before the construction deadlines contemplated by Section 5.04.

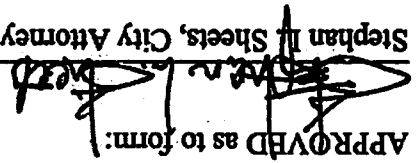
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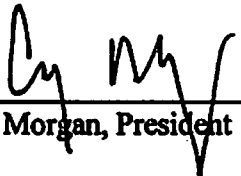
EXECUTED to be effective as of the Effective Date.

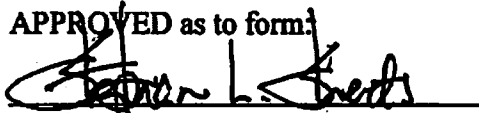
**CITY OF ROUND ROCK, TEXAS,**  
a home rule city and municipal corporation

By:  \_\_\_\_\_  
Craig Morgan, Mayor

APPROVED as to form:  \_\_\_\_\_  
Stephan J. Sheets, City Attorney

**ROUND ROCK TRANSPORTATION  
AND ECONOMIC DEVELOPMENT  
CORPORATION,**

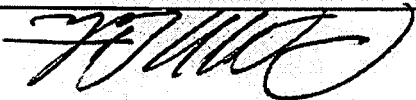
By:   
Craig Morgan, President

APPROVED as to form:  
  
Stephan L. Sheets, Corporation Attorney

Date: 2/9/15

Title: Chief Executive Officer

Name: Paul Gate

By: 

M4 GREENLAWN, LLC  
a California limited liability company

**EXHIBIT A**

**PROPERTY DESCRIPTION AND DEPICTION**

**[See attached]**

1. North 78°03'14" East, a distance of 105.32 feet to a 1/2" rebar with cap set;
2. With a curve to the left, having an arc length of 133.81 feet, a radius of 5788.00 feet, and a chord which bears North 78°30'58" East, a distance of 133.61 feet to a 1/2" rebar with cap set;
3. North 74°51'06" East, a distance of 280.07 feet to a TxDOT Type II monument found;
4. With a curve to the left, having an arc length of 372.49 feet, a radius of 5788.00 feet, and a chord which bears North 72°57'45" East, a distance of 372.43 feet to a TxDOT Type II monument found;
5. With a curve to the right, having an arc length of 365.84 feet, a radius of 6710.00

(8) courses:  
 THENCE with the south right-of-way line of State Highway 45 and the south line of TxDOT Parcel 104 Part 1 and over and across the 120.658 acre tract, the following six

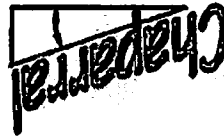
West, a distance of 763.49 feet;  
 County, Texas, from which a TxDOT Type II monument found bears South 78°03'14" Parcel 104 Part 1 in Document No. 2002099894 of the Official Records of Williamson County, Texas, for the southwest corner of a 6.500 acre tract described as TxDOT of Travis County, and in Document No. 9805675 of the Official Records of Williamson Addition, Phase 2, a subdivision of record in Volume 89, Page 181 of the Plat Records Highway 45 (right-of-way width varies), and the east line of Lot 2, Block 1, Section BEGINNING at a 1/2" rebar with cap set in the south right-of-way line of Texas State

FOLLOWS:  
 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 65.482 OFFICIAL RECORDS, WILLIAMSON COUNTY, AND VOLUME 1188, PAGE 1764 OF MAY 14, 1983, AND RECORDED IN BOTH VOLUME 2808, PAGE 883 OF THE IN A GENERAL WARRANTY DEED TO DELL COMPUTER HOLDINGS, L.P., DATED SURVEY NO. 102, ABSTRACT NO. 232 IN BOTH TRAVIS AND WILLIAMSON MEXICAN HUNT SURVEY, ABSTRACT NO. 2713, AND THE BOCRATES DARLING A DESCRIPTION OF 65.482 ACRES OF LAND (APPROX 2,852,822 S.F.) IN THE

65.482 ACRES  
 TRAVIS AND WILLIAMSON COUNTIES, TEXAS

Office 512-445-1724  
 Fax 512-441-6387  
 2907 Mercedes Road  
 Building One  
 Austin, Texas 78704

Professional Land Surveying, Inc.  
 Surveying and Mapping



PROPERTY DESCRIPTION

EXHIBIT "A"

Page 2

feet, and a chord which bears North 72°55'50" East, a distance of 366.76 feet to a TxDOT Type II monument found;

6. North 74°54'01" East, a distance of 90.39 feet to a 1/2" rebar with cap set in the northerly line of the 120.658 acre tract for an angle point in the south right-of-way line of State Highway 45 and the southeast corner of TxDOT Parcel 104 Part 1;

THENCE South 16°17'03" East, with the northerly line of the 120.658 acre tract and the south right-of-way line of State Highway 45, passing at a distance of 0.98 feet a 1/2" rebar with aluminum TxDOT cap found for the northwest corner of Lot 2, Block "A", Amending Plat of Ramtron Subdivision, a subdivision of record in Document No. 169900349 of the Official Public Records, Travis County, and in Cabinet R, Slide 894 of the Plat Records, Williamson County, Texas, also being an angle point in the south right-of-way line of State Highway 45, and continuing with the west line of Lot 2 for a total distance of 298.66 feet to a 1" iron pipe found for an angle point in the northerly line of the 120.658 acre tract and the southwest corner of said Lot 2;

THENCE North 74°44'47" East, with the northerly line of the 120.658 acre tract and the south line of Lots 2 and 3, Block "A", of the said Amending Plat of Ramtron Subdivision, a distance of 468.80 feet to a 3/4" iron pipe found for an angle point of the 120.658 acre tract and the southeast corner of said Lot 3, Block "A";

THENCE North 16°17'07" West, with the northerly line of the 120.658 acre tract and the east line of Lots 3 and 4, Block "A", of the said Amending Plat of Ramtron Subdivision, passing at a distance of 267.85 feet a 1/2" rebar with aluminum TxDOT cap found for the northeast corner of said Lot 4, Block "A", and an angle point in the south right-of-way line of State Highway 45, for a total distance of 288.32 feet to a 1/2" rebar with cap set for an angle point in the south right-of-way line of State Highway 45 and the southwest corner of a 0.081 acre tract described as TxDOT Parcel 104 Part 2 in said Document No. 2002099984;

THENCE North 74°45'33" East, with the south right-of-way line of State Highway 45 and the south line of TxDOT Parcel 104 Part 2, and over and across the 120.658 acre tract, a distance of 19.66 feet to a 1/2" rebar with cap set in the south right-of-way line of State Highway 45 and the west line of a 3.7803 acre tract described in Volume 13028, Page 1774 of the Real Property Records of Travis County, and in Document No. 9742160 of the Official Records of Williamson County, Texas, also being the east line of the 120.658 acre tract, for the southeast corner of TxDOT Parcel 104 Part 2, from which a TxDOT Type II monument found bears North 74°45'33" East, a distance of 74.09 feet;

THENCE with the west line of the 3.7803 acre tract and the east line of the 120.658 acre tract, the following two tracts:

1. South 16°20'31" East, a distance of 307.12 feet to a 1/2" rebar found;

1. North 61°20'51" West, a distance of 201.47 feet to a 1/2" rebar found;

2. South 88°59'38" West, passing at a distance of 228.93 feet a 1/2" rebar found, a total distance of 505.07 feet to a 1/2" rebar found for the southeast corner of record in Document No. 200400091 of the Official Public Records of Travis County, Texas;

3. Final Part of Round Rock Gateway Section Three, a subdivision of record in Document No. 2003189480 of the Official Public Records of Travis County, Texas, and over and across the 120.658 acre tract, a distance of 1442.18 feet to a 1/2" rebar found for the northeast corner of said Lot 2, Block 1, Socarras being the southeast corner of said Lot 2, Block 1, Socarras;

THENCE North 15°14'52" West, with the east line of said Lot 2, Block 1, Socarras

THENCE with the south line of the 120.658 acre tract and the northeast line of the 12.742 acre tract and the north line of a 38.611 acre tract described in Volume 12434, Page 1610 of the Real Property Records of Travis County, Texas, the following two (2) courses:

1. With a curve to the left, having an arc length of 485.73 feet, a radius of 897.53 feet, and a chord which bears South 43°18'26" West, a distance of 479.53 feet to a 1/2" rebar with cap set;

2. South 27°48'18" West, a distance of 1618.18 feet to a 1/2" rebar found in the northeast line of a 12.742 acre tract described in Volume 12808, Page 274 of the Real Property Records of Travis County, Texas, for the southeast corner of the remainder of the 120.658 acre tract, from which a 1/2" iron pipe found in the east right-of-way line of Greenham Boulevard bears South 61°17'54" East, a distance of 132.03 feet;

THENCE with the northeast right-of-way line of Greenham Boulevard and over and across the 120.658 acre tract, the following two (2) courses:

1. With a curve to the left, having an arc length of 485.73 feet, a radius of 897.53 feet, and a chord which bears South 43°18'26" West, a distance of 479.53 feet to a 1/2" rebar with cap set;

2. South 27°48'18" West, a distance of 1618.18 feet to a 1/2" rebar found in the northeast line of a 12.742 acre tract described in Volume 12808, Page 274 of the Real Property Records of Travis County, Texas, for the southeast corner of the remainder of the 120.658 acre tract, from which a 1/2" iron pipe found in the east right-of-way line of Greenham Boulevard bears South 61°17'54" East, a distance of 132.03 feet;

THENCE South 27°08'09" West, with the east line of the 120.658 acre tract and the west line of the 43 acre tract, a distance of 362.52 feet to a 1/2" rebar found in the northeast right-of-way line of Greenham Boulevard (right-of-way width varies), from which a 1/2" rebar found bears North 59°29'38" East, a chord distance of 28.62 feet;

THENCE with the northeast right-of-way line of Greenham Boulevard and over and across the 120.658 acre tract, the following two (2) courses:

1. With a curve to the left, having an arc length of 485.73 feet, a radius of 897.53 feet, and a chord which bears South 43°18'26" West, a distance of 479.53 feet to a 1/2" rebar with cap set;

2. South 27°48'18" West, a distance of 1618.18 feet to a 1/2" rebar found in the northeast line of a 12.742 acre tract described in Volume 12808, Page 274 of the Real Property Records of Travis County, Texas, for the southeast corner of the remainder of the 120.658 acre tract, from which a 1/2" iron pipe found in the east right-of-way line of Greenham Boulevard bears South 61°17'54" East, a distance of 132.03 feet;

THENCE with the south line of the 120.658 acre tract and the northeast line of the 12.742 acre tract and the north line of a 38.611 acre tract described in Volume 12434, Page 1610 of the Real Property Records of Travis County, Texas, the following two (2) courses:

1. North 61°20'51" West, a distance of 201.47 feet to a 1/2" rebar found;

2. South 88°59'38" West, passing at a distance of 228.93 feet a 1/2" rebar found, a total distance of 505.07 feet to a 1/2" rebar found for the southeast corner of record in Document No. 200400091 of the Official Public Records of Travis County, Texas;

THENCE North 03°00'02" West, with the east line of said Lot 3 and the remainder of a 12.150 acre tract described in Document No. 2003189480 of the Official Public Records of Travis County, Texas, and over and across the 120.658 acre tract, a distance of 1442.18 feet to a 1/2" rebar found for the northeast corner of said Lot 2, Block 1, Socarras Addition, Phase 2;

THENCE North 15°14'52" West, with the east line of said Lot 2, Block 1, Socarras

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Addition, Phase 2, and continuing across the 120.858 acre tract, a distance of 476.75 feet to the POINT OF BEGINNING, containing 65.492 acres of land, more or less.

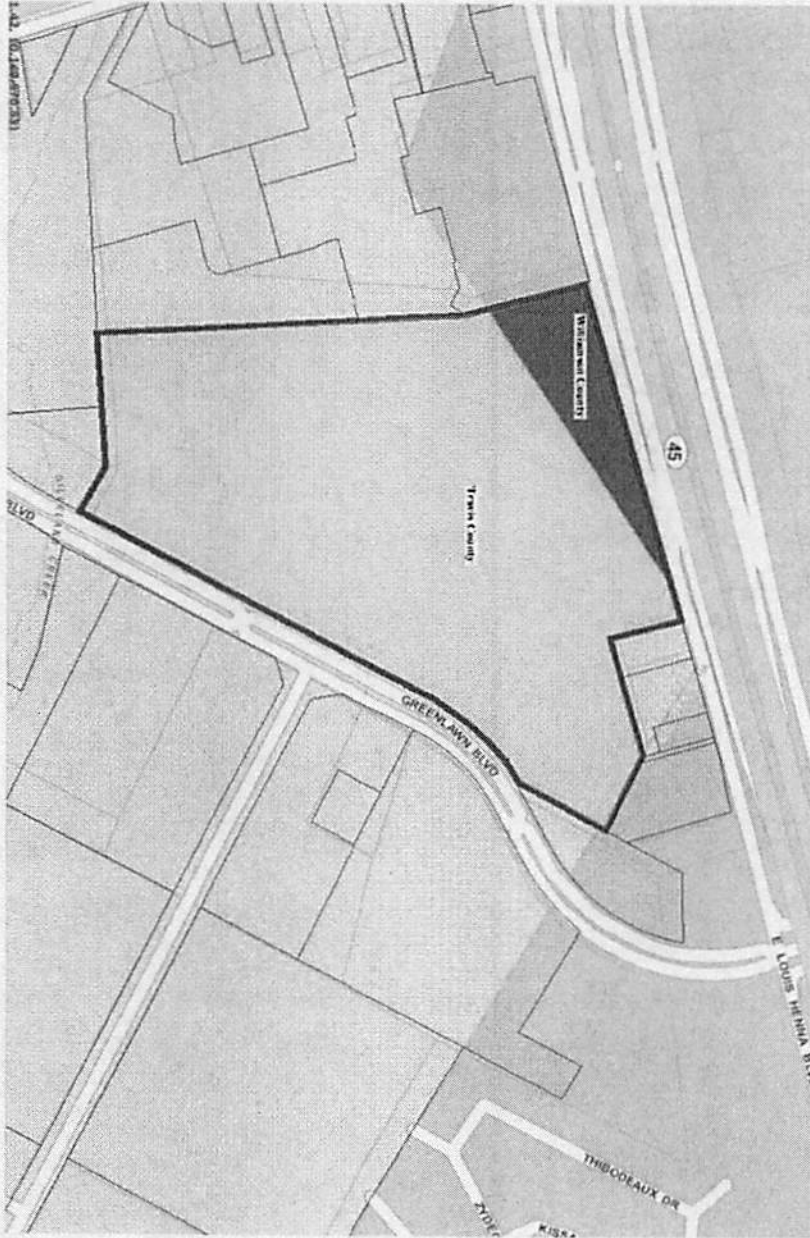
Surveyed on the ground on April 30, 2007. Bearing Basis; Grid Azimuth for Texas Central Zone, 1983/93 HARN values from LCRA control network. Attachments; Survey Drawing 559-001-BD1. Caps placed on set rebar are plastic, stamped "Chaparral 4855"

*S. J. Le* 5/24/07

Sloven D. Le  
Registered Professional Land Surveyor  
State of Texas No. 5940







**EXHIBIT B**  
**PUBLIC IMPROVEMENTS**

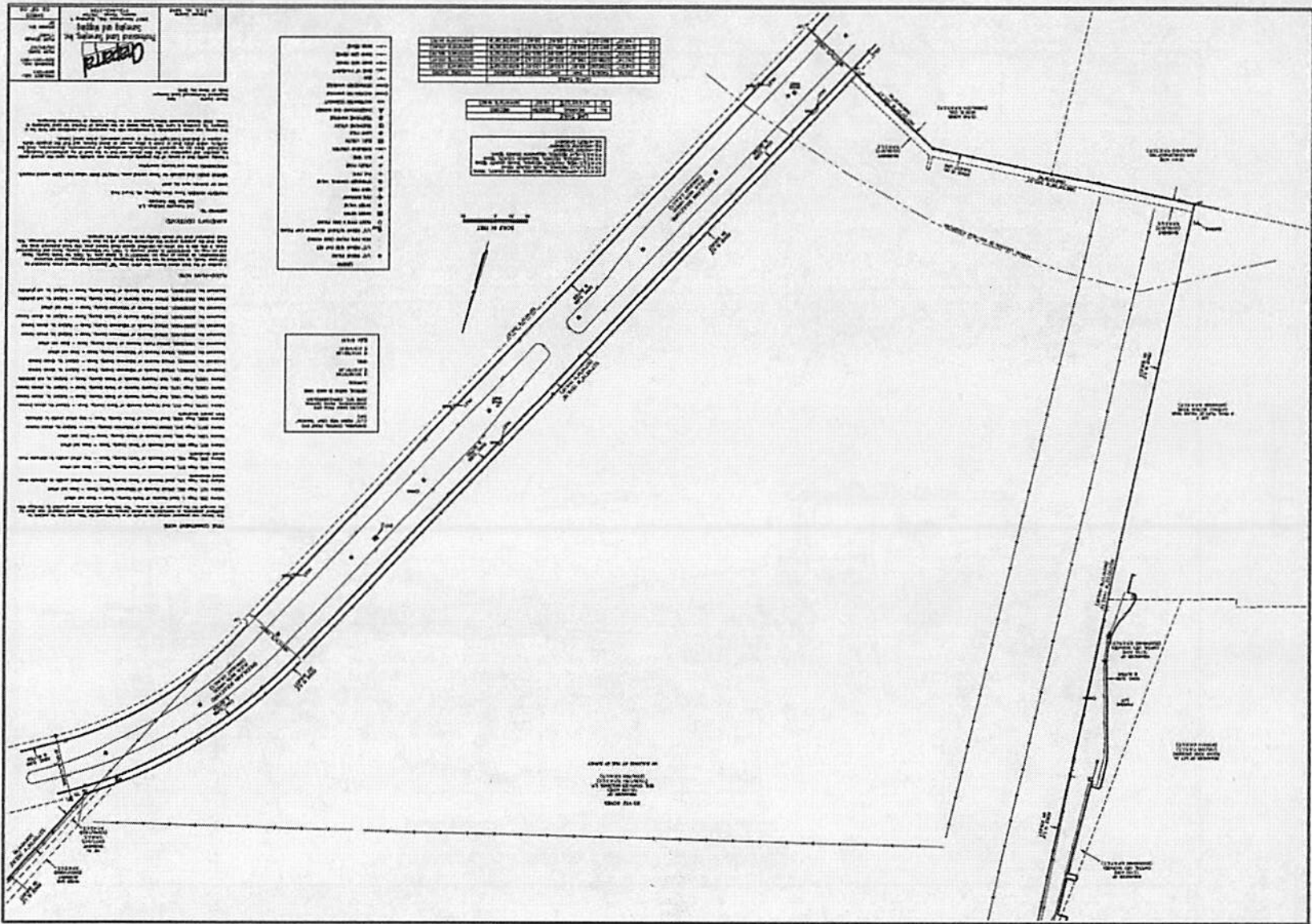
**THE DISTRICT - ONSITE INFRASTRUCTURE**

Category	Value
Sidewalks & Concrete (incl. curb, gutter, and driveways)	\$ 1,697,863
Roadways (incl. lime stabilization, base, asphalt, striping, and signs)	\$ 1,988,965
Pond Excavation	\$ 344,573
Street Lighting (Posts, Electrical Conduit, & Light Pole Bases)	\$ 1,035,375
Handicap Ramps	\$ 96,250
Water	\$ 684,200
Wastewater	\$ 390,500
Storm Sewer	\$ 853,600
Electric	\$ 1,316,397
Gas	\$ 105,600
Landscape & Irrigation	\$ 535,445
Data & Communications	\$ 506,000
Cost Contingency	\$ 1,192,151
Insurance	\$ 85,993
General Conditions	\$ 650,106
Contractor's Fee	\$ 401,982
Design	\$ 675,000
<b>Grand Total</b>	<b>\$ 12,560,000</b>











**EXHIBIT D**

**GREENLAWN BLVD. IMPROVEMENTS**



The crosshatched area in the diagram above depicts approximate location of the Greenlawn Blvd. Improvements to be constructed by City pursuant to the terms and conditions of this Agreement. The Greenlawn Blvd. Improvements shall include: widening Greenlawn Blvd. to approximately 150 feet; construction of medians; installation of curbs, gutters, sidewalks, and street lights; landscaping; and any other work required to construct the Greenlawn Blvd. Improvements in accordance with the City's specifications for 150' wide rights-of-way.

## EXHIBIT E

### CALCULATION OF THE HURDLE REIMBURSEMENT AMOUNTS

#### **First Hurdle Reimbursement Amount**

The First Hurdle Reimbursement Amount shall be calculated as a proportionate share of twelve percent (12%) of the Maximum Reimbursement Amount previously delivered to Developer, which proportionate share shall be the percentage of the difference between the 120,000 gross square feet required to be constructed on or before the First Hurdle Date and the actual gross square feet constructed by Developer on or before the First Hurdle Date, plus the Interest Amount commencing on the date the Maximum Reimbursement Amount was fully paid to the Developer by the City and/or TED Corp., as applicable.

#### **Second Hurdle Reimbursement Amount**

The Second Hurdle Reimbursement Amount shall be calculated as a proportionate share of twenty-five percent (25%) of the Maximum Reimbursement Amount previously delivered to Developer, which proportionate share shall be the percentage of the difference between the 250,000 gross square feet required to be constructed on or before the Second Hurdle Date and the actual gross square feet constructed by Developer on or before the Second Hurdle Date, plus the Interest Amount commencing on the date the Maximum Reimbursement Amount was fully paid to the Developer by the City and/or TED Corp., as applicable. Notwithstanding the foregoing, the Second Hurdle Reimbursement Amount shall exclude any portion of the First Hurdle Reimbursement Amount not recouped by Developer, if any, as set forth in Section 6.03 of the Agreement.

#### **Third Hurdle Reimbursement Amount**

The Third Hurdle Reimbursement Amount shall be calculated as a proportionate share of the Maximum Reimbursement Amount previously delivered to Developer, which proportionate share shall be the percentage of the difference between the 1,000,000 gross square feet required to be constructed on or before the Third Hurdle Date and the actual gross square feet constructed by Developer on or before the Third Hurdle Date, plus the Interest Amount commencing on the date the Maximum Reimbursement Amount was fully paid to the Developer by the City and/or TED Corp., as applicable. Notwithstanding the foregoing, the Third Hurdle Reimbursement Amount shall exclude any portion of the First Hurdle Reimbursement Amount and/or Second Hurdle Reimbursement Amount not recouped by Developer, if any, as set forth in Section 6.03 of the Agreement.

#### **Example**

By way of example only, if the Project contains 114,000 gross square feet as of the First Hurdle Date, 200,000 gross square feet as of the Second Hurdle Date, and 900,000 gross square feet as of the Third Hurdle Date, and the City and/or TED Corp., as applicable, had delivered the entire Maximum

Reimbursement Amount to Developer on February 14, 2020 (prior to the First Hurdle Date), then Developer would be responsible for refunding:

- a. on the First Hurdle Date, the amount of \$84,780, calculated as follows:
  - $(1 - 114,000 \text{ gross square feet} / 120,000 \text{ gross square feet}) \times \$1,507,200 = \$75,360$
  - Interest Amount = \$9,420
  - First Hurdle Reimbursement Amount:  $\$75,360 + \$9,420 = \$84,780$
- b. on the Second Hurdle Date, assuming that the amount refunded to the City after the First Hurdle Date has not been recouped by Developer prior to the Second Hurdle Date, the amount of \$700,220, calculated as follows:
  - $(1 - 200,000 \text{ gross square feet} / 250,000 \text{ gross square feet}) \times \$3,140,000 - \$84,780 = \$543,220$ .
  - Interest Amount = \$157,000
  - Second Hurdle Reimbursement Amount:  $\$543,220 + \$157,000 = \$700,220$
- c. on the Third Hurdle Date, assuming that the amount refunded to the City after the First Hurdle Date and Second Hurdle Date have not been recouped by Developer prior to the Third Hurdle Date, the amount of \$1,099,000, calculated as follows:
  - $(1 - 900,000 \text{ gross square feet} / 1,000,000 \text{ gross square feet}) \times \$12,560,000 - \$84,780 - \$700,220 = \$471,000$ .
  - Interest Amount = \$628,000
  - Third Hurdle Reimbursement Amount:  $\$471,000 + \$628,000 = \$1,099,000$